



REPUBLIC OF KENYA



**Hussein v Kenya Pipeline Company Limited (Environment & Land Case
358 of 2015) [2025] KEELC 3766 (KLR) (8 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 3766 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT & LAND CASE 358 OF 2015**

E ASATI, J

MAY 8, 2025

BETWEEN

HADIJA SHEILA BARAKWE HUSSEIN PLAINTIFF

AND

KENYA PIPELINE COMPANY LIMITED DEFENDANT

JUDGMENT

1. Vide the amended plaint dated 10th November, 2022, the Plaintiff sued the Defendant for the following relief;
 - a. an order of permanent injunction restraining the Defendant by itself, its agents, servant, employees and/or assigns from interfering with the Plaintiff's property rights, peaceful enjoyment of and possession of L.R. No. Kisumu Municipality BlockII/121.
 - b. an order directing the Defendant to remove the pipes and equipment installed on the suit property, L.R. NO. Kisumu Municipality /Block II/121 and restore it to is condition prior to the interference by the Defendant.
 - c. In the alternative, an order directing the Defendant to pay the Plaintiff the sum of Kshs.109,250,000 being the value of the suit property of Kshs.95,000,000 and 15 percent disturbance allowance of Kshs 14,250,000 together with interest at court rates from the date of filing suit.
 - d. Damages for breach of her right as enshrined under article 40 of *the Constitution* of Kenya 2010.
 - e. Costs of the suit plus interest.
2. The Defendant denied the Plaintiff's claim vide the amended defence dated 4th July, 2023.



3. The Plaintiff's case is that at all material times relevant to the proceedings, she was and remains the sole registered proprietor of land parcel known as Kisumu Municipality/Block II /121 measuring 1.50 Hectares situate in Kisumu having purchased it in 2008 for valuable consideration from Plantex Ltd.
4. That on 25th November, 2015, the Defendant through its agents without any color of right trespassed onto and dug across the Plaintiff's land and laid new pipelines on the land thereby greatly damaging and diminishing the value of the land. That the nature of the said pipes is such that it has rendered the entire suit property unfit for any use, whether commercial or otherwise.
5. That vide the judgement delivered on 14th November, 2018 in KSM ELC Petition NO.25 of 2017 the Honourable court found that the title to the suit property had not been revoked and that effectively the Plaintiff's title still stands.
6. That the Defendant's actions are in flagrant breach of article 40 of *the Constitution* and various provisions of the *Land Act* which all do not envisage a person to be arbitrarily deprived of property.
7. The Plaintiff testified as PW1 and called one witness. The Plaintiff stated vide her witness statement dated 23rd December, 2015 that she bought the land from Plantex Ltd. That the directors of the said company disclosed to her that the Defendant never paid compensation when it laid the first pipeline on the suit land in the year 1991.
8. That the Defendant trespassed onto the land and laid pipelines without consulting her. That the actions of the Defendant have exposed the suit land to damage and diminished its value for which she sought compensation.
9. The Plaintiff produced the bundle of documents dated 23rd December 2015 which contained certificate of lease, Green card certified on 24. 7. 2015, Certificate of official search dated 24. 7. 2015 and official receipt for search certificate dated 15. 7. 2015 and those contained in the list of documents dated 22nd January 2014 being copy of judgement entered on 14/11/2018 and valuation report by Zenith [Management] Valuers Ltd dated 19/3/2019, as exhibits.
10. PW2 Moses Muriithi Njuguna, a valuer testified that he valued the suit property at Kshs.109,250,000 and prepared a valuation report dated 19/3/2019 which was produced as exhibit.
11. On behalf of the Defendant, one witness Wilfred Mengich testified as DW1. He stated vide his witness statement dated 29th January, 2024 which was adopted as his evidence that he is a Senior Administrative Officer with the Defendant. That the Kenya Pipeline constructed the original Nairobi – Kisumu pipeline from the year 1990. That the suit land where the pipeline passes was at that time owned by the Ministry of Livestock and Fisheries and was thus unalienated.
12. That as the land was considered government land, Kenya Pipeline did not have to pay for way leaves to any person for it to lay its pipelines.
13. That a company known as Plantex Limited later acquired the suit land in the year 1996 or thereabouts and the Plaintiff acquired it later in the year 2008.
14. That the person to be paid ought to have been the registered owner as of the year 1990 and not future owners. That easements run with the land and not with ownership.
15. He testified further that the National Land Commission revoked the title to the suit land as the original and true owners of the land are the Ministry of Livestock and Fisheries.
16. DW1 produced copy of Kenya Gazette, letter dated 9th August, 1990 and letter dated 10th August, 1990.



17. He testified further that Kenya Pipeline had acquired a corridor of 30 metres for laying the first pipeline. That the land under contention belongs to the government. That the valuation report has a sketch which shows a section of 30 metres along the road. That the valuation is for compensation of the entire land yet the pipeline does not cover the entire land. That the Plaintiff acquired the land after the pipeline had been laid.

Submission

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

Submissions for the Plaintiff

19. Vide the written submissions dated 7th October, 2024 and filed by the firm of Ahmednasir Abdullahi Advocates on behalf of the Plaintiff, Counsel proposed the issues for determination in the suit to be;
- a. whether the Plaintiff is the lawful owner of the suit property,
 - b. whether the Defendant trespassed upon the suit land and illegally laid pipelines thereupon; and
 - c. whether the Plaintiff is entitled to the relief sought in the Amended Plaint dated 10th November, 2022.
20. Counsel submitted that section 24 of the *Land Registration Act* provides that registration of a person as proprietor gives such person the absolute ownership of the land with all rights and privileges belonging and appurtenant thereto. That Section 25[1] provides that the rights of the registered owner are indefeasible and are held free from all other interests and claims and that the rights can only be defeated in the manner prescribed in the Act. That under Section 26 of the same Act, Certificate of Title issued is prima facie evidence of absolute and indefeasible rights of ownership and that Article 40 of *the Constitution* protects the right to own property and prohibits arbitrary and unlawful deprivation of the right.
21. Relying on the case of *Alice Chemutai Too v Nickson Kipkurui Korir & 2 Others* [2015]eKLR on the grounds upon which title to land can be impeached, Counsel submitted that the legal burden of proof lay squarely with the Defendant to prove on a balance of probabilities that the suit property belonged to the Ministry or that the Plaintiff committed a fraud when acquiring the property.
22. Counsel also relied on the case of *Gatirau Peter Munya v Dickson Mwinda Kithinji & 2 Others*, [2014]eKLR, *Mbuthis Macharia v Annah Mutua Ndunga & Another* [2017]eKLR and *Gover & 5 Others v Kenya Medical Research Institute & 3 Others* [2020] eKLR to support the submissions on legal burden of proof.
23. Counsel submitted that while the Plaintiff produced the documents of ownership showing that she became owner of the suit land on 21st November, 2008 after buying the land from Plantex Limited, the Defendant had not produced any documents to show that the land belongs to the Ministry of Livestock and Fisheries. That there was no evidence of fraud tendered by the Defendant.
24. Regarding the contention by the Defendant that the Plaintiff's title to the suit land had been revoked, Counsel referred the court to the decision in *Petition Case No. 25 of 2017, Hadija Sheila v National Land Commission* where the court held that there was no revocation decision in respect of the suit property that was capable of being called into the court for quashing and submitted that the Plaintiff's title had not been revoked. That as at 24th July, 2015, the Plaintiff was the registered owner of the suit property.



25. On whether the Defendant trespassed upon the suit land and laid pipes thereon, Counsel submitted that the occupation of the Defendant is illegal, unlawful and amounts to forceful acquisition or annexure of the Plaintiff's land contrary to Article 40 of *the Constitution*.
26. That because of the illegal occupation, the Plaintiff has been deprived of the use and utilization of her land presently and in the future. That the illegal occupation by the Defendant results in a continuing trespass in nature and that the Plaintiff seeks damages in regard to the same.
27. On whether the Plaintiff is entitled to the relief sought, Counsel submitted that section 148[1] of the Act provides that compensation shall be payable to any person for the use of land of which the person is in lawful or actual occupation as a way leave which compensation shall be based on a value of the land to be determined by a qualified valuer.
28. Counsel relied on the cases of Duncan Nderitu Ndegwa v Kenya Pipeline Company Limited & Another [2013]eKLR and Philip Ayaya Aluchio v Chrispanus Ngayo [2014]eKLR on the measure of damages for trespass. That the Plaintiff adduced a valuation report to show the value of the suit land and called an expert witness.
29. Counsel urged the court to award the Plaintiff the value of the property and disturbance allowance of 15 percent and general damages for breach of her right to property under article 40 of *the Constitution* 2010 as well as continuing trespass.

Submissions for the Defendant

30. On behalf of the Defendant, written submissions dated 6th November, 2024 were filed by firm of Gicheru & Company Advocates. Counsel proposed the following to be the issues for determination;
 - a. whether the Plaintiff has a valid title to the suit land.
 - b. whether the suit parcel is public land.
 - c. whether any orders of permanent injunction ought to be issued in favour of the Plaintiff against the Defendant.
 - d. whether there exists an easement in favour of the Defendant over the suit property.
 - e. was the suit property compulsorily acquired or earmarked for compulsory acquisition at any material time relevant to this suit to warrant compensation in law?
 - f. whether the Plaintiff's right to property has been breached/violated to warrant compensation.
 - g. whether the Defendant should be directed to remove the pipes and equipment installed on the suit property.
 - h. who should bear the costs of the suit.
31. Counsel submitted that although the Plaintiff pegs her case on validity of the title document that she holds, the Defendant's case is that the title document held by the Plaintiff was unprocedurally acquired and therefore it does not enjoy the backing and protection of the law as do all other legally acquired title documents. Counsel relied on the provisions of article 40[b] of *the Constitution* of Kenya 2020 for this submission.
32. Counsel submitted that the Plaintiff has not clarified her relationship with Plantex Limited save for the vendor-purchaser relationship to grant her the authority to claim what was due to Plantex Limited, if at all, considering the doctrine of privity of contract. That from the evidence, by the time Plantex



- Limited was registered as Lessee of the suit land in 1997, the pipeline was already existing. That Plantex Limited, and by extension the Plaintiff, have no right whatsoever to seek compensation for the existence of an easement that predates their interest if at all they have legitimate interest on the suit land.
33. That the Defendant's position is that the title document held by the Plaintiff is suspect having been acquired un-procedurally.
 34. Counsel referred the court to Kenya Gazettes Notice dated 18th July, 2014 VOL.CXVI NO.86 produced as exhibit by the Defendant and which concerns review of grants and dispositions of public land and submitted that the effect of the Gazette Notice is revocation of the plaintiff's title document.
 35. Referring to the judgement in Kisumu ELC Petition NO.25 of 2017 which the Plaintiff relied on, Counsel submitted that the Petition was dismissed with costs. That the court determined that the decision sought to be quashed was not availed to the court for the orders sought to issue. That in essence, the court did not quash the Gazette Notice revoking the title documents to the suit land. That hence the Gazette Notice revoking the title documents of the suit land is valid and it continues to have the force of law.
 36. That the findings of the National Land Commission therefore stand as to the illegal manner the suit parcel was converted from public land to private land.
 37. That it is not enough for the Plaintiff to allege sanctity of title when the root of the title has been challenged. That the Plaintiff ought to have proved that the process of conversion of the suit property from public to private was proper. Counsel submitted that there was no change of user or issuance of an allotment letter to validate the resultant title document.
 38. On whether the suit parcel is public land, Counsel submitted that it can be deduced from the white card produced by the Plaintiff that prior to 19th March, 1997 the suit land was unalienated public land.
 39. That in the present case, a finding was made by the National Land Commission on 18th July, 2014 that the suit parcel No. Kisumu/Municipality Block II/121 was public land and the attempt to convert it to private land was set aside. That the Plaintiff's petition to challenge the decision of the National Land Commission was dismissed with costs. That the suit property is therefore public land.
 40. On whether or not orders of permanent injunction ought to issue in favour of the Plaintiff against the Defendant, Counsel relied on the cases of *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014]KECA, *Giella v Casman Brown Co. Ltd.* [1973]E.A. 358 and *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* [2003] KLR 125 and submitted that the basis of granting the Plaintiff any orders sought is the sanctity of the title document. That the title document held by the Plaintiff are suspect and that the National Land Commission has already decided on it and the decision has not been set aside. That there is no irreparable injury that may be occasioned on the Plaintiff. That the valuation report was done 4 years after the alleged cause of action arose and does not reflect the true value of the suit property as at November, 2015. Counsel urged the court to dismiss the prayer for permanent injunction.
 41. As to whether there exists an easement in favour of the Defendant over the suit property, Counsel submitted that the Defendant produced documents that an easement was created over several parcels of land when the pipeline was being extended from Nairobi to Kisumu and Eldoret. That the easement was created sometime in 1990 when the suit land was still unalienated land under the Ministry of Livestock and Fisheries. That the pipeline was laid within the 30 metres corridor and beacons put to delineate the pipeline corridor. That the valuation report acknowledged that the suit land contains numerous concrete beacons bearing the initials of the Defendant. That overriding interests do not generally appear on the face of search documents.



42. On whether the suit land was compulsorily acquired from the Plaintiff or earmarked for compulsory acquisition at any material time relevant to the suit to warrant compensation in law, Counsel submitted that the Plaintiff has failed to prove that the Defendant has intentions of compulsorily acquiring the subject land and that the only portion of the suit land affected by the pipeline is the 30 metres wide corridor and not the entire land.
43. And as to whether the Plaintiff's right to property has been breached/violated to warrant compensation, Counsel submitted that since the suit property was illegally converted from public land to private use, the Plaintiff has no basis to seek for compensation. That the Plaintiff's rights have not been violated in any way.
44. On whether the Defendant should be directed to remove the pipes and equipment installed on the suit property, Counsel submitted that it would be impractical to grant this prayer on the pretext that the Plaintiff has been injured by the existence of the 30 metres wide pipeline corridor which has been in existence for more than three decades serving the populace including the Plaintiff. Counsel urged the court to dismiss the prayer.

Counsel urged the court to dismiss the case with costs.

Issues for Determination

45. The issues for determination that arise are: -
 - a. Whether or not the Plaintiff is the lawful owner of the suit land.
 - b. Whether or not the suit land is public land.
 - c. Whether or not the Defendant trespassed onto the suit land.
 - d. Whether or not the Plaintiff is entitled to the relief sought in the amended plaint dated 10th November, 2022.
 - e. Costs.

Analysis and Determination

46. Order 21 Rule 4 Civil Procedure Rules requires that judgments in defended suits consist of the issues for determination, the decision on each issue and the reasons for the decision.
47. The first issue for determination herein is whether or not the Plaintiff is the lawful owner of the suit land.
48. The Plaintiff pleaded in paragraph 4 of the amended plaint that she was the sole lawfully registered proprietor of the suit land having purchased it in the year 2008 from Plantex Ltd.
49. As part of her evidence, the Plaintiff produced a certificate of lease dated 24th November, 2008, white card in respect of the suit land and certificate of official search dated 24th July, 2015 all showing that the suit land was registered in her name.
50. It was submitted that under the provisions of section 24, 25 and 26 of the [Land Registration Act](#), the Plaintiff is therefore the lawful owner of the suit land holding an indefeasible title thereto.
51. On its part the Defendant, while acknowledging that the Plaintiff held the title document, contended that the title was not valid for reasons firstly that the plaintiff did not prove that the process of conversion of the suit land that was originally public land to private land was lawful and procedural



- and secondly, because the National Land Commission revoked the title held by the Plaintiff thereby reverting the land to public land.
52. It was not denied that the suit land was a subject of proceedings before the National Land Commission under review of grant/disposition of public land which vide the gazette notice dated 18th July, 2014 VOL. CXVI NO.86, determined that L.R. No. Kisumu Municipality /Block 2/121 in Kisumu Municipality, Kisumu County of which the Interested Parties were Ministry of Livestock and Fisheries, the title was revoked.
 53. It is also not contested that the National Land Commission is the body empowered by the law to review Grants and Disposition of public land under article 68[c][v] of *the Constitution* of Kenya and Section 14[4], [5], [6], [7] and [8] of the *National Land Commission Act*.
 54. Having been revoked by the National Land Commission, the title document held by the Plaintiff then ceased to be valid.
 55. The Plaintiff's response to this is that she challenged the decision of the National Land Commission in Kisumu ELC Petition No.25 of 2017 in which the court's finding were that the Plaintiff's title to the suit land was not revoked and that the petition was premature given that there was revocation that was capable of being called to the court for quashing. That therefore the Plaintiff's title remains intact.
 56. It is clear that the plaintiff believed that her title had been evoked by the National Land Commission and that is why she set out to quash the revocation by filing Petition No. 25 of 2017 in court claiming that the revocation was unlawful.
 57. The Judgement in Petition No. 25 of 2017 was produced as exhibit by the Plaintiff. The judgment shows that the Plaintiff had petitioned the court, seeking, inter alia, for an order of certiorari to remove into the court and quash the decision by the National Land Commission to revoke her title to the suit property. The court having found that the Plaintiff had failed to discharge the burden of proof under section 107 of the Evidence by proving that the Respondent had revoked the title to the suit land, proceeded to dismiss the petition with costs.
 58. While the Plaintiff interprets this dismissal as having the effect of leaving her title to the suit land intact and unrevoked, the Defendant contends that as the revocation was not quashed, it remained intact and hence the Plaintiff's title remains revoked.
 59. The judgement was delivered on 14th November, 2018, which was about 4 years from the date of the Gazette Notice dated 18th July, 2014. The petition was filed in 2016. This means that the Gazette Notice was in existence as at the time the petition was filed, heard and determined. None of the parties produced the gazette Notice as evidence. The court therefore observed;

“the court has checked through the documents filed with the Affidavits in support of the Petition and the Notice of Motion that was later abandoned and seen no such confirmation. That there is no revocation decision in respect of the suit property, that is capable of being called into this court for quashing.”
 60. The effect of the judgement was to leave the situation as it was; it did not quash the decision of the National land Commission as contained in the gazette notice. It also did not declare the title deed as having been revoked. Instead, the court pronounced that there was no revocation decision in respect of the suit property that was capable of being quashed. There is no evidence that any of the parties in that petition has gone back to court to challenge the court's pronouncement by way of either review or appeal so as to confirm that indeed title was revoked or gazette notice was quashed.



61. For purposes of the suit herein, the court proceeds on the premise of the court's pronouncement in Petition No. 25 of 2017 that there was no revocation decision and hence the title held by the Plaintiff remains intact.
62. The second issue for determination is whether the suit land is public land
63. Having found that the title of the Plaintiff remained intact with the pronouncement of the court in Petition No. 25 of 2017, it follows that the suit land remains private property registered in the name of the Plaintiff.
64. The third issue for determination is whether or not the Defendant trespassed onto the suit land
65. The Plaintiff pleaded in paragraph 7 of the amended plaint that on 25th November, 2015 the Defendant through its agents without any colour of right or permission of the Plaintiff trespassed onto and dug across the Plaintiff's parcel of land and has laid new pipelines on the suit land thereby greatly damaging and diminishing the value of the land. She reiterated this in her evidence.
66. The Defendant's position is that the pipelines were laid within a 30 metres corridor which forms an easement acquired in favour of the Defendant before the land was acquired by the Plaintiff or by Plantex Limited, the Company that sold the land to the Plaintiff.
67. It was common ground that as at the time of registration of the suit land in the name of Plantex Limited, there was a pipeline already laid on the land and that the same position obtained as at the time of transfer of the land to the Plaintiff. No evidence was adduced by the Plaintiff in form of a Surveyor's report to show that the pipeline laid in the year 2015 was outside the said 30 metres corridor where the earlier pipeline laid in the year 1991 runs. The valuation report produced by PW2 concerned itself with the value of the entire of the suit land and not the position[s] of the pipeline[s] complained of. The plaintiff had the burden of proof which she failed to discharge.
68. I find that the Plaintiff has not proved that the Defendant trespassed onto the suit land.
69. The next issue for determination is whether or not the Plaintiff is entitled to the relief sought in the amended plaint
70. The first relief sought by the Plaintiff is a permanent injunction restraining the Defendant by itself or its agent from interfering with the suit land. Having found that the Plaintiff has not proved trespass, there is no basis for grant of an order of permanent injunction. The conditions for grant of a permanent injunction have not been met. This applies to the prayer for an order that the defendant be directed to remove the pipes and equipment from the suit land or to restore the land to its original condition.
71. Regarding the alternative prayer that the Defendant be directed to pay the Plaintiff the sum of Kshs.109,250,000 being the value of the suit land and disturbance allowance, the court similarly finds no basis for grant of the same; there is no allegation or prove by the plaintiff of compulsory acquisition of the suit land by the Defendant.
72. Although the Plaintiff alleged that the placing of the pipeline in the year 2015 damaged and diminished the value of the suit land, no evidence was adduced to prove this. There is no evidence that the pipe covered the entire land. The valuation report as stated in its terms of reference, was purely a valuation of the current open market value of the suit property for compensation purposes. The valuer indicted that the instructions he received were to inspect the property with a view to advising on its current open market value for compensation purposes only.



73. The Plaintiff further sought general damages for breach of her rights as enshrined under article 40 of *the Constitution* of Kenya 2010. The Plaintiff having not proved any breach of her rights under article 40 of *the Constitution* is not entitled to general damages.

I find that the Plaintiff is not entitled to the relief sought.

74. As the Plaintiff's claim was premised on trespass which has not been proved, there is no basis for awarding her claim.

75. For the foregoing reasons, the court finds that the Plaintiff has failed to prove her case on a balance of probabilities. The suit is therefore hereby dismissed. Each party to bear own costs of the suit.

76. 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.

Mohammed Billow for the Plaintiff.

Ogongo for the Defendant.

