



**Gacina v Embakasi Ranching Co Ltd & another (Environment & Land  
Case E116 of 2023) [2025] KEELC 3628 (KLR) (8 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 3628 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E116 OF 2023**

**JG KEMEI, J**

**MAY 8, 2025**

**BETWEEN**

**DANSON KIMANI GACINA ..... PLAINTIFF**

**AND**

**EMBAKASI RANCHING CO LTD ..... 1<sup>ST</sup> DEFENDANT**

**THE HON ATTORNEY GENERAL ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. Vide a plaint dated the 20/9/2023 the Plaintiff filed suit against the Defendants seeking the following orders;
  - a. That there be a declaration that he is the lawful exclusive owner of plots NAIROBI/BLOCK 1X6/10XX5 AND NAIROBI/BLOCK 1X6/10XX7 situated at Ruai within Embakasi Ranching Company Limited Settlement Scheme by the virtue of his being the holder of 1<sup>st</sup> Defendant's share certificate Number 5108 and as confirmed by the Certificate of Leases.
  - b. That as a result of the above continued trespass, intermeddling and threat of further destruction and eviction by the Defendants, their agents, employees and/or servants, the plaintiff prays that injunction does issue against the defendants, severally, their agents, and/or employees from evicting the plaintiff, selling, dealing with, trespassing, alienating, damaging and/or constructing or destroying the developments upon NAIROBI/BLOCK 1X6/10XX5 AND NAIROBI/BLOCK 1X6/10XX5 situated at Ruai within Embakasi Ranching Company Limited Settlement Scheme.
  - c. That eviction orders to issue as against the defendants severally, their agents, servants and/or employees removing them from plots NAIROBI/BLOCK 1X6/10XX5 AND NAIROBI/BLOCK 1X6/10XX7 situated at Ruai within Embakasi Ranching Company Limited



Settlement Scheme and the OCS, Ruai Police Station does assist in service and effecting of the orders.

- d. The plaintiff prays for damages/Mesne profits.
  - e. Cost and interests.
2. The Plaintiff avers that he is the registered/equitable owner by virtue of allotment by the 1<sup>st</sup> Defendant of parcels Nos NBI/Block 1X6/10XX5 and 10XX7 within Ruai – Embakasi settlement area. He avers that he was allocated the two shares that comprised of the two parcels of land on 28/11/1982 where upon he paid the requisite charges and was shown the land. That however the defendants have illegally and unlawfully trespassed, damaged and destroyed the plots and eviction of the Plaintiffs from the suit lands.
  3. Despite service of summons having been served upon the 1<sup>st</sup> and 2<sup>nd</sup> Defendants none entered appearance nor filed a defence.
  4. PW1- Danson Kimani Gacina testified and relied on his witness statement dated the 20/9/23 as his evidence in chief. In support of his case he produced documents marked as PEX No 1-4.
  5. He stated that he is the owner of the two plots namely 10XX5 and 10XX7. That as a member of the 1<sup>st</sup> Defendant, was allocated 2 shares, paid for the shares and allocated land which was confirmed by the company on the ground. That some people have trespassed onto the land with the knowledge of the 1<sup>st</sup> Defendant. He urged the court to allow his claim as pleaded.
  6. With that the plaintiff closed his case.
  7. The Plaintiff filed written submissions which I have read and considered.
  8. The key issue for determination is whether the Plaintiff is entitled to the orders sought.
  9. The court has analyzed the evidence led by the Plaintiff together with the documents produced and find as follows; the Plaintiff was a shareholder of the 1<sup>st</sup> Defendant as shown by the share certificates Nos 31XX8 and 5XX8 issued as early as 1982. Various receipts on record attest to the payment of shares and all other incidentals as demanded by the 1<sup>st</sup> Defendant. Of very fundamental importance is the letter dated the 14/3/2017 confirming that the Plaintiff is the bonafide owner of share certificate No 5XX8 for plot No E1X and E1X beacon certificate No 8XX9 as per the records of the company. It further confirmed that the plot is situated within the farm in Ruai and the ground position has been pointed out to him leading to the processing and issuance of two titles in his name.
  10. Section 26 of the [Land Registration Act](#) mandates the court to take a certificate of title as a prima facie evidence of ownership of title in the absence of any challenge to the title.
  11. Further Section 26 of the [Land Registration Act](#) provides two instances in which a title may be impeached, that is to say on the ground of fraud or misrepresentation to which the person is proved to be a party; or where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme. There is no evidence that has been presented to support the impeachment of the Plaintiffs title under the above parameters or at all
  12. Has the Plaintiff proved trespass? Trespass has been defined as any unjustifiable intrusion by one person upon the land in the possession of another. See Clerk & Lindsell on Torts, 18<sup>th</sup> Edition at page 923. The onus is on the plaintiff to prove that he is the owner of the suit property and that the defendant has invaded and occupied the same without any justifiable cause.



13. The court is satisfied on the material presented before me that the plaintiff is the registered owner of the suit properties. The plaintiff tendered in evidence copies of the title deeds for the suit properties in his name. Under section 24(a) of the *Land Registration Act*, 2012, the registration of a person as the proprietor of land vests in that person the absolute ownership of that land together with all rights and privileges associated with that status. From the evidence tendered before the court I am satisfied the 1<sup>st</sup> defendant has trespassed on the suit land. The Plaintiff has prayed for an award of Kshs 20 Million for the continuous trespass from 1988 to date.
14. How are general damages calculated? Halsbury 4<sup>th</sup> ed, Vol 45 at para 26, 1503 provides as follows on computation of damages in an action of trespass: -
- (a) If the plaintiff proves the trespass he is entitled to recover nominal damages, even if he has not suffered any actual loss.
  - (b) If the trespass has caused the plaintiff actual damage, he is entitled to receive such amount as will compensate him for his loss.
  - (c) Where the defendant has made use of the plaintiff's land, the plaintiff is entitled to receive by way of damages such sum as would reasonably be paid for that use.
  - (d) Where there is an oppressive, arbitrary or unconstitutional trespass by a government official or where the defendant cynically disregards the rights of the plaintiff in the land with the object of making a gain by his unlawful conduct, exemplary damages may be awarded.
  - (e) If the trespass is accompanied by aggravating circumstances which do not allow an award of exemplary damages, the general damages may be increased.
15. In the case of *Nakuru Industries Limited (supra)* the court cited the case of *Duncan Ndegwa V Kenya Pipeline HCC No. 2577 of 1990 (Nairobi)* where the court held: -
- “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 reinstatement of the land. The overriding principle is to put the claimant in the position he was prior to the infliction of the harm.”
16. It is trite that mesne profits are akin to special damages. The Plaintiff having failed to plead and prove special damages, I find that this prayer cannot stand. It is dismissed.
17. On general damages, it is trite that trespass is actionable *per se* that is to say without the need to lead evidence in support. Guided by the above precedents I allow a sum of Kshs 500,000/- being general damages for trespass.
18. Final orders for disposal
- a. The case of the Plaintiff succeeds and I grant the prayers as prayed.
  - b. The plaintiff is awarded Kshs 500,000/- payable by the 1<sup>st</sup> Defendant.
  - c. I make no orders as to costs.
16. Orders accordingly

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 8<sup>TH</sup> DAY OF MAY 2025 VIA MICROSOFT TEAMS.**



**J. G. KEMEI**  
**JUDGE**

