



Maungu Ranching (DA) Company Ltd v Haji & another (Environment and Planning Civil Case 3 of 2023) [2025] KEELC 4830 (KLR) (Environment and Land) (30 June 2025) (Judgment)

Neutral citation: [2025] KEELC 4830 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
ENVIRONMENT AND LAND
ENVIRONMENT AND PLANNING CIVIL CASE 3 OF 2023
EK WABWOTO, J
JUNE 30, 2025
FORMERLY MOMBASA ELC NO. 250 OF 2021**

BETWEEN

MAUNGU RANCHING (DA) COMPANY LTD PLAINTIFF

AND

ABDISATAR HAJI 1ST DEFENDANT

MOHAMED HAJI 2ND DEFENDANT

JUDGMENT

1. This suit relates to a dispute in respect to Land Parcel No. CR. 73822. The Plaintiff instituted this suit vide a plaint dated 21st December 2021 seeking for the following reliefs:-
 - a. A mandatory injunction to restrain the Defendants by themselves, their servants and or agents or otherwise howsoever from trespassing, interfering with or alienating or continuing with their illegal mining activities or continuing in occupation of the Plaintiff's parcel of land No. Cr. 73822 and to demolish and remove any structures erected thereon.
 - b. Costs of and incidental to this suit and interest thereon at court rates.
 - c. Any other and or further relief that this Honourable Court may deem fit and just to grant.
2. Upon service of the pleadings and summons to the Defendants. The 1st Defendant filed a Statement of Defence dated 19th January 2023 denying the averments made in the plaint and sought for the dismissal of the suit. The second Defendant did not file any response neither did he participate in the proceedings despite being notified of the same.



The Plaintiff's case

3. The Plaintiff's case is that at all material times to this suit the Plaintiff it was and and has been the registered owner of all that parcel of land situate at Maungu in Taita Taveta County measuring approximately 21,619 hectares being land parcel No. CR. 73822.
4. On or about the 12th December 2021 the Defendants trespassed on the Plaintiff's said land by entering thereon illegally, unlawfully and forcefully and commenced mining activities thereon without the Plaintiff's consent and or authority thus depriving the Plaintiff quiet and lawful enjoyment of the parcel of land.
5. In spite of the Plaintiff's effort to have the Defendants stop their acts of trespass and waste the Defendants have refused to heed the warning and advice of the provincial administration and by reason of the matters aforesaid the Plaintiff has been deprived of the use and enjoyment of the said land and has thereby suffered loss and damage.
6. The Defendants have provided to be very rude and adamant and are bent on continuing with their acts of waste which are very destructive of the land.
7. During trial, Nathaniel Mramba the Chairman of the Plaintiff testified as the sole Plaintiff's witness. He relied and adopted his witness statement filed on 19th February 2024, Plaintiff's bundle of documents dated 21st December 2024 and a further bundle of documents dated 15th February 2024 in his evidence in chief.
8. Upon cross-examination by Counsel for the 1st Defendant he stated that he has been the Plaintiff's Chairman since 2018. He stated that he had filed a report showing that the issue of the boundary had been resolved. He also stated that the 2nd Defendant came to their land to explore minerals without their consent. They have never seen the 1st Defendant on the said land.
9. He further stated he had produced photos showing the 2nd Defendant undertaking illegal mining in their land. He also stated that he could not blame the 1st Defendant because he has never seen him on their land. He further stated that the 2nd Defendant was taken to Mwatate Police Station after he was confronted as to why he was undertaking mining activities on their land. He also stated that when they reported the matter to the police, the police advised them to take the matter to court.
10. On further cross-examination, he stated that the boundary was placed in 1972 and the beacons are in place. He also stated that none of the Defendants was involved when they went to verify the boundary and the beacons and neither had he filed that report in court. He also stated that according to him the Defendants are step brothers.

The case of the 1st Defendant

11. The 1st Defendant filed a Statement of Defence dated 19th January 2023 denying the averments made in the plaint and seeking for dismissal of the suit. It was averred that the ownership dispute over the parcel of land number 73822 is between the Plaintiff and the Wananchi Ranching [Directed Agricultural] Company Limited and not the 1st Defendant. It was further averred that Wananchi Ranching [Directed Agricultural] Company Limited is a liability company with corporate personality that cannot be transferred to an individual outside the law.
12. During trial, Abdi Starr Haji testified as the sole witness on behalf of the 1st Defendant. He relied on his witness statement filed on 15th February 2023 and Defendants bundle of documents dated 19th January 2023 and filed on 15th February 2023 in his evidence in chief.



13. It was his testimony that Wananchi Ranching [Directed Agricultural] Company is their company and they have not had any issue with the Plaintiff. He also stated that the said company is not in Maungu Ranch and is rightfully mining in its own land. He denied ever trespassing on the Plaintiff's land. He also stated that Mohamed Haji is his father and he died in 1996. Before his death, he was a Director at the company and they have never had any boundary dispute with the Plaintiff. He also stated that the Plaintiff never involved them when they did the survey. He further stated that they share a boundary with the Plaintiff and there is a road separating Wananchi Ranch and Maungu Ranch. He further stated that the company has been mining since 1975 in their own land and they are still on the same land. He also stated that he has not seen any survey report and neither were they involved in the survey exercise.

Plaintiff's submissions

14. The Plaintiff filed written submissions dated 11th June 2025 and submitted as follows: that the Plaintiff's case was that the Defendants had invaded the land belonging to the Plaintiff and were busy carrying on mining activities thereon. In spite of the Plaintiff's efforts to stop the Defendants' illegal and unlawful activities on their land, the Defendants had proved adamant and refused to stop the said unlawful activities and or vacate from the land.
15. The Defendants activities are very destructive causing a lot of waste on the Plaintiff's land. "PW1" Nathaniel Mramba further testified that the Defendants had commenced the illegal and unlawful mining on the Plaintiff's land No. CR.73822 on 12th December 2021. This suit was filed on 21st December 2021. The Plaintiffs engaged a surveyor who carried out a survey and the survey report was produced in evidence as the Plaintiff's further list of documents dated 15th February 2024. The survey report confirmed that there was an encroachment on the Plaintiff's land being CR. 73822 in the form of a mining excavation into the Plaintiff's land and the size of the excavation was found to be 70 metres by 75 metres or 0.5Hectares.
16. It was further submitted that neither in the statement of defence nor in the statement of the 1st Defendant nor in his evidence in court does the 1st Defendant state the number of the land belonging to the Wananchi Ranching [Directed Agricultural] Company Limited. The 1st Defendant had sought to prove that what was involved was a boundary dispute but his Preliminary Objection to this effect was dismissed.
17. It was argued that the documents relied on by the 1st Defendant as per his list of documents dated 19th January 2023 are a Certificate of Registration of the Wananchi Ranching [Directed Agricultural] Company Limited and a copy of the title for the land belonging to the Wananchi Ranching [Directed Agricultural] Company Limited.
18. Whereas the 1st Defendant claims to be a Director of the Wananchi Ranching [Directed Agricultural] Company Limited the Certificate of Registration produced the 1st Defendant shows clearly that he is not one of the directors of the company and what he is stating is untrue. According to the Plaintiff, no other document was provided to prove his alleged directorship.
19. It was argued that the certificate of title provided showed that Wananchi Ranching [Directed Agricultural] Company Limited was granted a lease of 45 years from the 1st February 1975 which expired in the year 2020. The entries on the title show that on the 7th November 1991 the lease was transferred to Wananchi Estates Limited a separate legal entity from Wananchi Ranching [Directed Agricultural] Company Limited and that the logical conclusion from all this was that Wananchi



- Ranching [Directed Agricultural] Company Limited does not own any land in the area. The evidence contained in the survey report produced on behalf of the Plaintiff has not been challenged or rebutted.
20. The Defendants admitted that they are carrying on mining activities while it has been proved that they own no land in the area and the said activities can only be concluded to have been unlawfully and illegally carried out on land belonging to the Plaintiff.
 21. The court was urged to find that the Plaintiff has proved its case to the required standard and grant the prayers sought.

The 1st Defendants submissions

22. The 1st Defendant filed written submissions dated 29th June 2025. Counsel submitted on the following issues:-
 - a. Whether the Plaintiff has sued proper parties.
 - b. Whether any cause of action exists against the 1st Defendant.
 - c. Whether the Plaintiff has proved trespass against the 1st Defendant.
 - d. Whether the Plaintiff is entitled to the reliefs sought.
23. On the first issue, it was submitted that the 1st Defendant affirms that any activities he is conducting are being carried out exclusively on parcel number LR No. 12924 which is registered in the name of Wananchi Ranching [Directed Agricultural] Company Limited, a distinct legal entity. The Plaintiff has not sued this company, which is the proper party in the event of any boundary dispute involving LR No. 12924 and CR 73822.
24. The Plaintiff in its submissions, seeks to dispute the fact that the 1st Defendant is a director of Wananchi Ranching [Directed Agricultural] Company Limited. However, this assertion is not supported by any evidence.
25. It was also submitted that the Plaintiff had not adduced any evidence to demonstrate that the 1st Defendant is not a Director of Wananchi Ranching [Directed Agricultural] Company Limited and as such submissions are not evidence and cannot displace properly adduced evidence on record. The Court of Appeal case of Daniel Toroitich Arap Moi v Mwangi Stephen Muriithi & Another [2014] eKLR was cited in support.
26. It was also submitted that the Plaintiff has not pleaded or proved any fraud, illegality, or exceptional circumstances that would justify piercing the corporate veil and holding the 1st Defendant personally liable for actions attributable to the company.
27. In addition, the Plaintiff has failed to sue Wananchi Ranching [Directed Agricultural] Company Limited, which is the registered proprietor of LR No. 12924 and therefore the necessary and proper party if any encroachment or trespass onto that parcel is to be alleged.
28. It was argued that failure to join the registered proprietor renders the Plaintiff's claim fundamentally defective. Reliance was made to the case of Departed Asians Property Custodian Board v Jaffer Brothers Ltd [1999] EA 55, where it was held that a suit must be brought against the party who holds legal responsibility.
29. It was argued that this court had already determined that L.R No. 12924 lawfully belongs to Wananchi Ranching [Directed Agricultural] Company Limited in Voi ELC Case No. 7 of 2024 Fatuma Mohamed & 2 Others v Wananchi Estates Limited & 5 Others.



30. On this issue the court was urged to find that the suit against the 1st Defendant in his personal capacity is misconceived, legally defective and unsustainable.
31. As to whether there exists any cause of action against the Defendants, it was submitted that in order to bring clarity to the issues arising, the 2nd Defendant is deceased. Under Section 45 of the *Law of Succession Act*, Cap. 160 proceedings can only be sustained against the estate of a deceased person where proper legal representation exists. Reliance was made to the case of *Imbali v Mbulika & Mugami* [2024] KEHC 11375 [KLR], where the court held that only legal representatives with valid Letters of Administration can sue or be sued on behalf of a deceased person. No such representative had been joined in this suit.
32. It was further submitted that the 1st Defendant is merely a director of Wananchi Ranching [Directed Agricultural] Company Limited and holds no personal proprietary interest in either CR 73822 or LR No. 12924.
33. Citing the case of *Lee v Lee's Air Farming Ltd* [1961] AC 12 and *Macaura v Northern Assurance Co. Ltd* [1925] AC 619 it was argued that a director is not personally liable for acts done on behalf of a company except in cases of fraud or abuse of the corporate structure.
34. Further reference was made to the case of *Arthi Highway Developers Ltd v West End Butchery Ltd & 6 Others* [2015] KECA 816 [KLR], where the Court of Appeal held that:

“Directors cannot be held personally liable for actions of the company unless there is proof of fraud, dishonesty or other exceptional circumstances.”
35. It was contended that the Plaintiff has not pleaded or produced any evidence of fraud, misrepresentation or illegal conduct that would justify lifting the corporate veil to hold the 1st Defendant personally liable.
36. Additionally, although the Plaintiff alleges ownership of CR 73822, it has not produced any admissible evidence to prove trespass or wrongful entry by the 1st Defendant onto that parcel. The 1st Defendant maintains that he has never entered CR 73822 but only carries out activities on LR No. 12924 which belongs to the company which he is a director.
37. While making reference to the case of *Kenya African National Union v Cabinet Secretary Ministry of Lands & Physical Planning & 5 Others* [2024] KEELC 4563 [KLR], it was submitted that property rights are protected under Article 40 of *the Constitution* only where a party demonstrates a legally recognizable interest. The Plaintiff has failed to demonstrate that any recognized interest in CR 73822 has been violated by the 1st Defendant.
38. As to whether the 1st Defendant has trespassed onto the Plaintiff's land, it was submitted that in the present case, the Plaintiff relies solely on a survey exercise allegedly conducted by it or on its instructions. However, this survey was undertaken unilaterally by the Plaintiff's own agents without involving the 1st Defendant or the Land Registrar as required under statute. The surveyor who prepared the alleged report did not testify in court and was not subjected to cross-examination. Consequently, the contents of the said report are inadmissible and of no probative value, as they amount to hearsay.
39. Further Section 18 of the *Land Registration act*, 2012 vests exclusive jurisdiction in the Land Registrar to determine and fix boundaries where a boundary dispute arises. It is obvious in this case that the boundary issue takes the center stage. The Registrar must carry out an inquiry and hear all affected parties before determining any boundary. The Plaintiff failed to involve the Land Registrar, failed to



give notice to the 1st Defendant or adjoining proprietors and therefore the purported survey exercise conducted falls short of which the law requires.

40. The 1st Defendant submitted that in the absence of a lawful boundary determination by the Land Registrar, the survey conducted unilaterally by the Plaintiff lacks legal validity and cannot serve as evidence of the Defendants alleged trespass. As provided under Section 18[4] of the [Land Registration Act](#), until boundaries are lawfully fixed any boundary shown on the cadastral map is deemed to be general or approximate and not conclusive and this court cannot rely on a general or approximate measurement or averments.
41. According to the 1st Defendant, the Plaintiff's allegations of trespass are fatally undermined by the absence of a properly conducted and jointly participated survey and demarcation exercise. The survey relied upon by the Plaintiff was conducted unilaterally without the involvement, consent or participation of the 1st Defendant in breach of the principles of natural justice.
42. It was submitted that the report further acknowledges that actual ground demarcation along natural features, including rivers and swamps would be necessary to avoid future disputes. Despite these clear admissions, the Plaintiff proceeded to assert claims of trespass without first resolving the boundary uncertainties through proper legal and technical processes. In the circumstances, the Plaintiff's claims are speculative and premature and cannot be sustained in the absence of a properly determined boundary. The case of *Sagalla Ranchers Limited v Makalo & 97 others* [Environment & Land Case E005 of 2023] [2025] KEELC 4622 [KLR] [Environment and Land] [19 June 2025] [Judgment] was cited in support.
43. It was further submitted that this court has no jurisdiction to determine a matter that seems apparent to be a boundary dispute. It is in the realm of the Land Registrar. The surveyor's report cannot be relied on to determine a boundary related issues as it is the function of the Land Registrar.
44. In the circumstances, the Plaintiff's claim for trespass must fail for want of proof.
45. As to whether the Plaintiff is entitled to the reliefs sought it was submitted that the Plaintiff has failed to establish any reasonable cause of action against the individual Defendants that would warrant the grant of the orders sought. The suit is fundamentally defective for want of proper parties, absence of jurisdiction over non-parties and non-compliance with mandatory statutory procedures governing boundary disputes including Sections 18, 19 and 20 of the [Land Registration Act](#).
46. The Plaintiff has failed to prove its allegations of trespass against the 1st Defendant. No credible evidence has been adduced to demonstrate any specific act of trespass or encroachment upon parcel number CR 73822 by the 1st Defendant. The 1st Defendant has consistently maintained that his activities are confined to parcel number LR No. 12924 which is lawfully registered in the name of Wananchi Ranching [Directed Agricultural] Company Limited.
47. In the absence of a properly surveyed, jointly agreed and officially demarcated boundary and considering that even the Plaintiff's own unilateral survey admits to uncertainty on the ground this Honourable Court cannot be invited to find trespass where the precise location of the boundary remains unresolved.
48. In the absence of proven acts of trespass, there is no violation of any proprietary or possessory right of the Plaintiff that would warrant the injunctive reliefs sought.
49. The court was urged to dismiss the Plaintiff's suit with costs.



Analysis and Determination

50. The court has considered the pleadings filed, oral and documentary evidence adduced together with the written submissions filed by the Plaintiff and the 1st Defendant and has outlined the following issues for determination:-
- i. Whether the Plaintiff has sued the proper parties.
 - ii. Whether the Plaintiff has proved trespass against the Defendants.
 - iii. Whether the Plaintiff is entitled to the reliefs sought.

Issue No. [i]

Whether the Plaintiff has sued the proper parties

51. The 1st Defendant objected to this suit inter alia on the grounds that the Plaintiff had sued the wrong party. It was stated in his defence that the 1st Defendant is a Director of the Wananchi Ranching [Directed Agricultural] Company Limited and therefore cannot be sued in his individual capacity for the alleged wrongs of the company. It was also averred that the ownership dispute over the parcel of land Number 73822 is between the Plaintiff and the Wananchi Ranching [Directed Agricultural] Company Limited and not the 1st Defendant and further the liability of the company cannot be transferred to an individual outside the law.
52. Submitting on this issue, the 1st Defendant argued that the Plaintiff has not sued the company which is the proper party in the event of any dispute involving L.R No. 12924 and CR 7382.
53. It was contended that the Plaintiff had submitted that the Certificate of Registration produced by the 1st Defendant did not indicate that he is one of the Directors of the Company and further that the Certificate of Title that was provided shows that the Wananchi Ranching [Directed Agricultural] Company Limited was granted a lease of 45 years from the 1st February 1975 which expired in the year 2020. The entries on the title showed that on 7th November 1991, this lease was transferred to Wananchi Estates Limited which is a separate legal entity from Wananchi Ranching [Directed Agricultural] Company Limited and thus Wananchi Ranching [Directed Agricultural] Company Limited does not own the land in the area.
54. The Plaintiff in responding to the said issue also submitted that the 1st Defendant had not pleaded in his statement of defence nor in his evidence adduced in court that the land belongs to Wananchi Ranching [Directed Agricultural] Company Limited and further his Preliminary Objection to that effect had been dismissed.
55. The importance of parties in proceedings before a court of law cannot be gainsaid. In Apex International Ltd and Anglo Leasing and Finance International Finance Ltd v Kenya Anti Corruption Commission [2012] eKLR the court quoted the words of Mukhtar J. of the Supreme Court of Nigeria in Goodwill and Trust Investment Ltd v Will and Bush Ltd [2011] LCN [SC] as follows:-

“It is trite law that to be competent and have jurisdiction over a matter proper parties must be identified before the action can succeed, the parties must be shown to be proper parties whom rights and obligations arising from the cause of action attach. The question of proper parties is a very important issue which would affect the jurisdiction of the suit in limine. When proper parties are not before court, the court lacks jurisdiction to hear the suit and



where the court purports to exercise jurisdiction which it does not have, the proceedings before it and its judgment will amount to a nullity no matter how well reasoned.”

56. In the instant case, it was the Plaintiff’s case that the Defendants had trespassed on the Plaintiff’s land Parcel No. 73822 and had commenced mining activities without the Plaintiff’s consent. The Defendant then in response to the allegations made in the plaint filed a Statement of Defence pleading that the dispute was between the Plaintiff and Wananchi Ranching [Directed Agricultural] Company Limited and not the 1st Defendant.
57. During trial, evidence was tendered to the effect that mining activities was being undertaken in their land, however it was not expressly stated that the same was being done by Wananchi Ranching [Directed Agricultural] Company Limited.
58. The 1st Defendant having raised the objection as to whether the Defendants were not the proper parties who ought not to have been sued herein, he equally ought to have demonstrated the same. The 1st Defendant filed and produced CR 12 dated 12th June 1991 which did not list him as one of the directors of the company.
59. In considering this issue this court also makes reference to Order 1 Rule 9 of the Civil Procedure Rules and the Court of Appeal case of William Kiprono Towett & 1597 Others v Fairyland Aviation Ltd & 2 Others [2016] eKLR where the Court of Appeal held that misjoinder and non joinder of parties cannot be a ground to defeat a suit.
60. In view of the foregoing and considering that the 1st Defendant had not been expressly listed as a Director of Wananchi Ranching [Directed Agricultural] Company Limited as per the CR 12 dated 12th June 1991 which was produced in evidence, it is therefore the finding of this court that the 1st Defendant was a proper party to the proceeding herein and the Plaintiff’s suit cannot fail on that basis alone.

Issue No. [ii]

Whether the Plaintiff has proved trespass by the Defendants

61. As to whether or not the Plaintiff has proved trespass by the Defendant, it is worth noting that trespass refers to unjustified entry into and commission of acts injurious to the land of another without their permission. See Section 3 [3] of the *Trespass Act* and the case of Kariuki [suing as legal representative of *Eustace Karuri Githenya*] v *Joreth Ltd & others* [Civil appeal E391 of 2020/2024] KECA 420 [KLR] [26th April 2024] [Judgment].
62. In respect to the trespass by the 1st Defendant, the Plaintiff’s witness conceded in cross-examination that he has never seen the 1st Defendant on their land and neither has he trespassed on the same. To be precise, he stated as follows:-

“I have never seen the 1st Defendant [Abdi Starr Haji] on our land. I cannot blame him for any trespass.”
63. In view of the foregoing, it is evident that trespass as against the 1st Defendant has not been proved to the required standard and the Plaintiff’s claim in so far as it relates to the 1st Defendant fails.
64. In respect to the 2nd Defendant, Plaintiff Witness PW1 testified that they found him mining on their land on 12th December 2021 without their consent and when he was confronted he became violent and they took him to Mwatate Police Station but they were later referred by the police to file a case in court.



65. According to PW1 he stated that the 2nd Defendant was a step brother to the 1st Defendant and he was the one undertaking the mining activities without their consent. The 2nd Defendant never filed any response nor participated in these proceeding. The court also notes that the 1st Defendant had submitted in his written submissions filed before this court that the 2nd Defendant passed away and hence the suit against him could not be sustained. However, no evidence was produced in court either by way of a death certificate or any letters of administration confirming the same. In view of the foregoing, this court is unable to ascertain the said position. It therefore follows that the Plaintiff's claim as against the 2nd Defendant was not controverted and the Plaintiff having tendered evidence against him, it is the finding of this court that the Plaintiff has successful proved trespass by the 2nd Defendant on their land.

Issue No. [iii]

Whether the Plaintiff is entitled to the reliefs sought

66. The Plaintiff sought for various reliefs as enumerated in the plaint which have also been captured at paragraph 2 of this judgment.
67. This court having made a finding that the Plaintiff has been able to prove trespass as against the 2nd Defendant, it is clear that the Plaintiff is entitled to the said reliefs as against the 2nd Defendant.
68. In respect to the prayer of permanent Injunction that was sought, it is worth noting that a permanent injunction fully determines the right of the parties before the court and is normally meant to perpetually restrain the commission of an act by the Defendants in order for the rights of the Plaintiff to be protected. This court having made a finding that indeed the 2nd Defendant had trespassed onto the Plaintiff's land will proceed to grant the said relief.
69. In respect to costs, as a general rule, costs follow the event unless the court for good reasons orders otherwise. In the present case, the court notes that the Plaintiffs suit has only succeeded as against the 2nd Defendant and considering that the 2nd Defendant never filed any pleadings nor contested the same, this court directs each party to bear own costs of the suit.

Final Orders

70. In the end, it is the finding of this court that the Plaintiff has been able to prove its case as against the 2nd Defendant to the required standard and this court enters judgment as follows: -
- i. The Plaintiff's suit against the 1st Defendant is hereby dismissed.
 - ii. A mandatory injunction is hereby issued restraining the 2nd Defendant by himself, his servants and our agents from trespassing, interfering with or alienating and or continuing with his illegal mining activities or continuing in occupation of the Plaintiff's parcel of land No. CR 73822 and to forthwith demolish and remove any structures erected thereon.
 - iii. Each party to bear own costs of the suit.

Judgment accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI THIS 30TH DAY OF JUNE 2025.

E. K. WABWOTO

JUDGE



In the presence of:-

Mr. Mwawasi for the Plaintiff.

Mr. Kurgat for the 1st Defendant.

N/A for the 2nd Defendant.

Court Assistant: Mary Ngoira

