



Kisumu Pamoja Housing Co-operative Society Limited v Maeri & another (Environment and Land Case E012 of 2024) [2025] KEELC 4848 (KLR) (26 June 2025) (Judgment)

Neutral citation: [2025] KEELC 4848 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND CASE E012 OF 2024**

**SO OKONG'O, J
JUNE 26, 2025**

BETWEEN

**KISUMU PAMOJA HOUSING CO-OPERATIVE SOCIETY
LIMITED PLAINTIFF**

AND

**JOSEPH MOKAYA MAERI 1ST DEFENDANT
SAMWEL ORIMBA HONGO 2ND DEFENDANT**

JUDGMENT

1. The Plaintiff is the registered owner of all that parcel of land known as L.R No. 15356(Grant No. I.R 55485) situated within Kibos area, off Kibos Road, opposite Kenya Ports Authority Inland Depot, Kisumu, measuring 1.4 Ha. (hereinafter referred to as “the suit property”). The Plaintiff brought this suit against the Defendants through a plaint dated 9th April 2024 seeking the following reliefs;
 1. A declaration that the Plaintiff is the legal and rightful owner of the suit property.
 2. A declaration that if the 1st and 2nd Defendants or any of them have a claim to the suit property, the same is invalid, null and void, and the title if any held by them is quashed.
 3. A Permanent injunction restraining the 1st and 2nd Defendants by themselves, their officers, servants and/or agents or otherwise whosoever from entering upon, taking possession, trespassing, continuing to trespass, evicting the Plaintiff, disposing off, selling, alienating, transferring, charging, pledging, leasing, building upon, wasting or in any manner howsoever dealing or interfering with the Plaintiff’s peaceful and quiet possession of the suit property.
 4. An order of eviction of the Defendants from the suit property at their own costs, failure to which the Plaintiff shall be at liberty to evict the Defendants from the property at the Plaintiff’s costs, which shall be recovered from the Defendants.



5. General damages for trespass.
 6. General damages for detinue and conversion of title.
 7. Costs of the suit and interest.
2. The Plaintiff averred that it was the bona fide registered owner of the suit property, which it purchased at a public auction on 20th April 2006. The Plaintiff averred that it enjoyed quiet possession and use of the suit property from 2006 when it acquired the same until May 2023, when without any lawful cause or authority, the Defendants by themselves and through their agents, workers and employees forcefully and illegally entered a portion of the suit property measuring approximately 0.735Ha. and attempted to fence the same with barbed wires. The Plaintiff averred that it reported the incident at Kasagam Police Station and at the intervention of the Police from Kasagam Police Station, the Defendants vacated the said portion of the suit property.
 3. The Plaintiff averred that in March 2024, the Defendants forcibly re-entered the said portion of the suit property illegally and started carrying out construction of a building thereon. The Plaintiff averred that the Police were unable to stop the Defendants' activities on the suit property. The Plaintiff averred that it had not sold the suit property or any portion thereof to the Defendants and as such the Defendants' entry and occupation of the said portion of the suit property was illegal, fraudulent, null and void.
 4. The Plaintiff averred that the Defendants' said acts of trespass had deprived the Plaintiff and its members of their right to own, occupy and use the suit property. The Plaintiff averred that if the Defendants were holding any title to the whole or a portion of the suit property, the same was fraudulent, irregular and illegal, and should be revoked.
 5. The Defendants entered an appearance but did not file a defence to the Plaintiff's suit despite having been given time to do so. When the suit came up for hearing on 3rd December 2024, the Plaintiff called one witness, George Juma Kopala (PW1). PW1 told the court that he was the chairman of the Plaintiff. He adopted his witness statement filed together with the plaint as his evidence in chief and produced the documents attached to the Plaintiff's List of Documents dated 9th April 2024 as a bundle as P.EXH.1. The Defendants' advocate who was in court during the hearing did not cross-examine PW1. He told the court that he was unable to proceed with the matter as he did not have his file and his colleague who was handling the matter wanted to add more parties to the suit. His application to adjourn the matter was dismissed by the court.
 6. After the close of the Plaintiff's case, the court directed the parties to make closing submissions in writing. The Plaintiff filed submissions dated 4th February 2025, while the Defendant did not file submissions. The Plaintiff submitted that the suit was not defended and that it was entitled to the orders sought. The Plaintiff submitted that it had proved that it was the registered owner of the suit property and that the Defendants had trespassed on the property. On damages payable, the Plaintiff urged the court to award Kshs. 10,000,000/- as damages for trespass. The Plaintiff relied on Philip Ayaya Aluchio v Crispinus Ngayo[2014]eKLR, Nakuru Industries Limited v S S Mehta & Sons [2016]eKLR and Willesden Investments Limited v Kenya Hotel Properties Limited, Nairobi H.C.C No. 367 of 2000 in support of this submission. On costs, the Plaintiff submitted that costs follow the event and that since it had proved its claim against the Defendants, it was entitled to the costs of the suit. On interest, the Plaintiff urged the court to award interest on damages at court rates from the date of filing suit until payment in full.



Analysis and determination

7. I have considered Plaintiff's case as pleaded and the evidence adduced by the Plaintiff in proof thereof. I have also considered the submissions by the Plaintiff's advocates. The Plaintiff's claim against the Defendants is based on the tort of trespass. Trespass has been defined as any intrusion by a person on the land in the possession of another without any justifiable cause. See, Clerk & Lindsell on Torts, 18th Edition, page 923, paragraph 18-01. In *Gitwany Investments Limited v Tajmal Limited & 3 others* [2006] eKLR, it was held that title to land carries with it legal possession.
8. Section 3 of the *Trespass Act*, Chapter 294 Laws of Kenya defines a trespasser as:
 - (1) Any person who without reasonable excuse enters, is or remains upon, or erects any structure on, or cultivates or tills, or grazes stock or permits stock to be on, private land without the consent of the occupier thereof shall be guilty of an offence.
9. What I need to determine is whether the Plaintiff has proved that it is the owner of the suit property and that the Defendants entered and occupied the suit property without any justifiable cause. The plaintiff has demonstrated that it is the registered owner of the suit property by producing in evidence a copy of Grant No. I.R 55485 for L.R No. 15356 in his name. The Plaintiff produced evidence showing that it purchased the suit property at a public auction on 20th April 2006 and that the property was registered in its name on 25th October 2013 under the Registration of Titles Act, Chapter 281 Laws of Kenya (now repealed).
10. Section 23 of the Registration of Titles Act, Chapter 281 Laws of Kenya (now repealed) provides as follows:

“The certificate of title issued by the registrar to a purchaser of land upon a transfer or transmission by the proprietor thereof shall be taken by all courts as conclusive evidence that the person named therein as proprietor of the land is the absolute and indefeasible owner thereof, subject to the encumbrances, easements, restrictions and conditions contained therein or endorsed thereon, and the title of that proprietor shall not be subject to challenge, except on the ground of fraud or misrepresentation to which he is proved to be a party”.
11. Section 26 of the *Land Registration Act*, 2012 which repealed the Registration of Titles Act, provides as follows:

“26.

 - (1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—
 - (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or



- (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.
- (2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original.”
12. This suit was not defended by the Defendants. The Plaintiff’s evidence was therefore not controverted. The Plaintiff’s title to the suit property was not contested. The Plaintiff’s testimony that the Defendants entered into and constructed a storey building on the suit property without its consent or authority was also not challenged. The Plaintiff having proved his ownership of the suit property and the Defendants’ entry and use thereof, the onus was upon the Defendants to justify their entry and use of the property.
13. In the absence of any evidence from the Defendants, the only conclusion this court can reach is that the Defendants had no justifiable cause for entering and undertaking construction of a building on the suit property and as such they were trespassers thereon. For the foregoing reasons, I am satisfied that the Plaintiff has proved its claim against the Defendants. The Plaintiff sought several reliefs. The Plaintiff is entitled to a declaration that it is the lawful owner of the suit property and a permanent injunction restraining the Defendants from trespassing on the property. The Plaintiff is also entitled to an order of eviction of the Defendants from the suit property. The Plaintiff had also claimed damages for trespass. In *Park Towers Ltd. v John Mithamo Njika and 7 Others* 2014 eKLR, the court stated as follows:
- “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 general damages. The court in such circumstances is under a duty to assess the damages awardable depending on the unique circumstances of each case.”
14. In *Halsbury’s Laws of England 4th Edition Volume 45 para. 26 1503* the authors have stated as follows on assessment of damages for 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 an amount 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, general damages may be increased.”
15. The Plaintiff did not prove that it had suffered actual loss as a result of the trespass. The Plaintiff had in its submission proposed an award of Kshs. 10,000,000/-. I will award the Plaintiff nominal damages



for trespass. I am of the view that an award of Kshs. 3,000,000/- would reasonably compensate the Plaintiff for the loss and damage suffered as a result of the Defendants' trespass.

Conclusion

16. I therefore enter judgment for the Plaintiff against the Defendants jointly and severally for;
1. A declaration that the Plaintiff is the lawful owner of all that parcel of land known as L.R No. 15356(Grant No. I.R 55485) situated within Kibos area, off Kibos Road, opposite Kenya Ports Authority Inland Depot, Kisumu, measuring 1.4 Ha. (“the suit property”).
 2. A declaration that the 1st and 2nd Defendants or any of them have no valid claim or title to all that parcel of land known as L.R No. 15356 (Grant No. I.R 55485) or any portion thereof.
 3. A permanent injunction restraining the 1st and 2nd Defendants by themselves, their officers, servants and/or agents or otherwise whosoever from entering upon, taking possession, trespassing, continuing to trespass, evicting the Plaintiff, disposing off, selling, alienating, transferring, charging, pledging, leasing, building upon, wasting or in any manner howsoever dealing or interfering with the Plaintiff's peaceful and quiet possession of all that parcel of land known as L.R No. 15356 (Grant No. I.R 55485).
 4. The Defendants shall vacate and hand over vacant possession of all that parcel of land known as L.R No. 15356 (Grant No. I.R 55485) or any portion thereof in their possession at their cost within 45 days from the date of hereof in default of which the Plaintiff shall be at liberty to apply to court for a warrant for the forceful eviction of the Defendants from the suit property. The costs incurred by the Plaintiff in the eviction exercise shall be taxed by the taxing officer and shall be recovered from the Defendants.
 5. Kshs. 3,000,000/- being general damages for trespass.
 6. The Plaintiff shall have the costs of the suit.

DELIVERED AND SIGNED AT KISUMU ON THIS 26TH DAY OF JUNE 2025.

S. OKONG'O

JUDGE

Judgment delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:

Mr. Maube for the Plaintiff

N/A for the Defendants

Ms. J. Omondi-Court Assistant

