



**Ng'ong'a v Ochieng & 5 others (Environment and Land Case  
77 of 2014) [2025] KEELC 4772 (KLR) (26 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4772 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
ENVIRONMENT AND LAND CASE 77 OF 2014**

**E ASATI, J  
JUNE 26, 2025**

**BETWEEN**

**ALFRED BUORE NG'ONG'A ..... PLAINTIFF**

**AND**

**CAPTAIN JOSEPH OMONDI OCHIENG ..... 1<sup>ST</sup> DEFENDANT**

**ALFRED OMONDI ADIPO ..... 2<sup>ND</sup> DEFENDANT**

**LEAH AKINYI ADIPO ..... 3<sup>RD</sup> DEFENDANT**

**FRANCIS ADIPO ONDEYO ..... 4<sup>TH</sup> DEFENDANT**

**KISUMU COUNTY GOVERNMENT ..... 5<sup>TH</sup> DEFENDANT**

**NATINAL LAND COMMISSION ..... 6<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. The court record shows that this suit was commenced vide the plaint dated 19<sup>th</sup> March 2014 which was later amended and replaced with the amended plaint dated 12<sup>th</sup> April 2021. Vide the amended plaint the plaintiff claimed to have been allocated land parcel number IR 143066 by the Commissioner of Lands. He further claimed that he was shocked to find that the 1<sup>st</sup> Defendant had trespassed thereunto and erected a temporary (Mabati) structure. That the acts of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants amounted to fraud, illegality and irregularity. He therefore sought for orders of:
2.
  - a. permanent injunction restraining the defendants, their agents, servants, or anybody claiming through them from trespassing, encroaching or continuing to interfere with land parcel grant number IR 143066.



- b. An order directed to the 1<sup>st</sup> Defendant to remove any structure which might have been constructed or restored the changes made on that land and an order for vacant possession and loss of income
  - c. declaration that land parcel Grant No. IR 143066 belongs to the plaintiff
  - d. costs of this suit and interest at court rates.
  - e. any other relief this court deems fit and just to grant.
3. The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants filed a defence dated 23<sup>rd</sup> January 2023 denying the plaintiff's claim.
  4. In response to the plaintiff's claim, the 5<sup>th</sup> Defendant filed Statement of Defence dated 14<sup>th</sup> April, 2014 denying the claim.

### **The evidence**

5. The Plaintiff testified as PW1 and called 8 witnesses. He adopted the contents of his witness statements dated 18<sup>th</sup> March 2014 and 14<sup>th</sup> December 2021 as his evidence in chief. He stated in the witness statement dated 18<sup>th</sup> March 2014 that he was allocated a residential plot by the Commissioner of Lands on 28<sup>th</sup> April, 1994 for which he paid the statutory fees and charges demanded. That the land was surveyed, fenced and trees were planted thereon.
6. That on 10<sup>th</sup> June 2013 in the company of Harun Omom Okal and one Joseph Owiti Oguta, he discovered that a temporary shed had been constructed on he said land and a watchman employed to keep guard over the same by one Captain John Omondi Ochieng who claimed to have bought the land. He stated that he is the legally registered bona fide owner of the land.
7. Vide the witness statement dated 14<sup>th</sup> December 2021 he added that the land in dispute is situate at Kanyakwar "B" in Kisumu City and registered as L.R No 29001 (Grant No. IR 143066/1). That the purported allocation of the land to the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants by the Kisumu Municipal Council and by extension the 5<sup>th</sup> defendant was null and void in law.
8. That allotments or allocations of plot Nos E/312 and E/313 were voided by the National Land Commission vide Kenya Gazette Notice No. 6863 dated 17<sup>th</sup> July 2017. That the defendants do not have legal ownership of the plots. He stated further that before the encroachment by the 1<sup>st</sup> Defendant, he had entered into various negotiations for construction contract by Dynaforce Technical Services Ltd to construct a 4-bedroom mansionette (Town House) for rental income purposes.
9. That he is the one who has been paying the annual property rates for the suit land to the County Government. He produced the documents in the list of documents dated 27<sup>th</sup> January 2021 as exhibits P.1 to P.20 and the further list of documents dated 30<sup>th</sup> September 2022.
10. On cross examination the plaintiff stated that the suit land was allocated to him in the year 1994 when it was still un-surveyed. That the land was surveyed in the year 2011 when he was issued with a beacon certificate. He stated further that the 1<sup>st</sup> Defendant had erected a structure on plot No. E312 and E 313 which is the same location as his parcel of land. That the allocation in respect of Parcel No. E312 and E313 were nullified vide the Gazette Notice which revoked all allocations by the Municipal Council of Kisumu.
11. PW2 was Harun Omom Okal. He adopted the contents of his witness statement dated 18<sup>th</sup> September 2014 and stated that he did not know that one Leah Akinyi and Francis Adipo had sold land to the 1<sup>st</sup> Defendant.



12. PW3 was Malachi Ochieng Opondo. He too adopted the contents of his witness statement and stated that John Omondi (1<sup>st</sup> Defendant) bought land in the neighbourhood and built on the land in the year 2014. That he built on the land parcel of Alfred Ngong'a.
13. PW4 was Samuel Owenga Osumo. He stated that he knew Leah Millicent Akinyi and Francis Adipo who are people from his village and that he did not know that they had land. That he had worked for the 1<sup>st</sup> defendant when he was developing his land. That he worked for the 1<sup>st</sup> defendant on the same land which they had fenced for the plaintiff.  
PW5 was stood down.
14. PW6 one Luke Okeyo Madende a Valuer, testified that he did valuation for the plaintiff in the year 2021 in respect of land parcel No. L.R 29001 IR No. 143066. That he visited and inspected the property on 3<sup>rd</sup> December 2021. That the valuation was to estimate the rental value of a building which was to be built. That as at 2017, the rent could have been Kshs.27,000/= per month and that as at the year 2021, Kshs 40,000/=. He produced the valuation report as exhibit. He stated on cross examination that the land he valued was L.R No. 29001, IR 143066 and that he did not know where plot Nos KISUMU.MUN/KANYAKWAR/PLOT NO. E312 and E313 are. That he did not have a survey report to confirm that where he did the valuation was on the suit land. On re-examination he stated that he did the valuation on land parcel No. IR 143066 which was pointed out to him by the plaintiff and that the site matched the survey plan.
15. PW7 Patrick Opiyo, a surveyor, testified that he carried out a survey of the suit land using scientific method and confirmed that the house was within land No. L.R 29001. He produced a surveyor's report dated 26/3/2021 as exhibit.
16. On cross examination he stated that some of the plots issued by the Municipal Council of Kisumu were Kanyakwar E312 and E313. That he has never visited the two plots.
17. PW8 was David Joseph Onyango Ariri, a quantity surveyor. He produced a bill of quantities in respect of project that was to be done on land reference No. Kanyakwar 'B' 29001.
18. PW9 – William Okello was a contractor. He testified that he was instructed by the plaintiff to give a quotation for building a house but that before they could start there was a dispute. That they had entered into an agreement dated 20/5/2013.
19. On behalf of the defence, the 1<sup>st</sup> Defendant testified as DW1. He adopted the contents of his witness statement dated 23<sup>rd</sup> February 2023 as his evidence in chief. He had stated in the witness statement that he was not in occupation of land parcel No. IR 143066 or any portion thereof. That he is in occupation of plot Numbers E312 and E313 Kanyakwar Kisumu Municipality wherein he has built a residential house. That he bought the two plots from the 3<sup>rd</sup> and 4<sup>th</sup> Defendants to whom he was introduced by the 2<sup>nd</sup> defendant. That the land sale agreement dated 1<sup>st</sup> August 2011 was executed before Joseph N. Musomba Advocate on 3<sup>rd</sup> August 2011. That subsequent to the purchase he took possession and stated paying plot rates for the same.
20. He produced letters of allotment, demand notices, copy of agreement dated 1<sup>st</sup> August 2011, demand notice for fees for change of ownership from Kisumu County Government and demand notices for plot rent.
21. He denied that he had encroached onto the plaintiff's land. On cross examination DW1 stated that he bought the plots and applied for transfer. That the allotment letters are in the names of the people who sold the land to him. That they were in the process of transferring the lands to him when the suit



was filed so they could not proceed. That the land already had the beacons. He stated further that he was not aware of the existence of Kenya Gazette Notice No. 97 dated 17/7/2017 and that he was not aware that the National Land Commission revoked land allocations, including his. That he did not know that the gazette Notice confirmed that parcel No. L.R 29001 belonged to the plaintiff.

22. That the plots were identified to him by the sellers and some officials from the County Government. That he had never been notified by the sellers or the County Government that the plots were cancelled.

### **Submissions**

23. At the close of the evidence, parties filed written submissions on the case. It was submitted on behalf of the plaintiff vide the written submissions dated 28<sup>th</sup> November 2024 that the issues for determination in the suit are;-

24.

- a. Whether it is the plaintiff or the 1<sup>st</sup> and/ or 3<sup>rd</sup> and/or 4<sup>th</sup> defendant who is the bona fide owner of the suit land.
- b. Whether the 1<sup>st</sup> defendant has trespassed onto the suit land and irregularly constructed structures thereon.
- c. Whether the allocation of land parcel E312 and E313 to the 3<sup>rd</sup> and 4<sup>th</sup> defendants and subsequent sale to the 1<sup>st</sup> defendant was valid or lawful.
- d. Whether the 1<sup>st</sup> defendant's acts have occasioned any loss to the plaintiff.
- e. Whether the plaintiff has suffered irreparable injury which would not be compensated by an award of damages.
- f. Who should bear costs of the suit.

25. Counsel submitted that the plaintiff's case was supported by the evidence of his witnesses and the documents he produced.

26. That the plaintiff acquired ownership of the suit land through a lawful process. That the plaintiff's ownership of the suit land was confirmed by the National Land Commission when it upheld all allocations by the Commissioner of Lands and revoked allocations by the Municipal Council of Kisumu vide the gazette Notice.

27. That the defendants trespassed onto the plaintiff's land. That this has prevented the plaintiff from using or developing the parcel of land. Counsel submitted that Kshs.10,000,000/- would be adequate Compensation for the plaintiff's loss.

28. Counsel urged the court to dismiss the defences filed by the defendants and enter judgment for the plaintiff with costs.

29. Written submissions dated 10<sup>th</sup> February 2015 were filed on behalf for the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants by the firm of Maxwell O. Ogonda & Associates Advocates. Counsel framed the issues for determination as;

30.

- a. Whether plot numbers E312 Kanyakwar Kisumu Municipality and E313 Kanyakwar Kisumu Municipality are distinct and separate from IR 143066.



- b. Whether the prayers sought by the plaintiff can be granted.
  - c. Whether the defendants have any remedies.
31. Counsel submitted that the burden of proof lies on the person who wishes the court to believe in the existence of a particular fact.
  32. Counsel relied on the case of Anthony Francis Wareham t/a AF Wareham & 2 Others –vs- Kenya Post Officer Savings Bank (2004)eKLR where it was held inter alia that in our adversarial system of litigation cases are tried and determined on the basis of the pleadings made and the issues of law and fact framed by the parties to the court. Counsel submitted that the defendants had been able to demonstrate that the parcels of land in question are separate and distinct. That the plaintiff's witnesses' evidence was that they do not know plot Nos E312 and E313.
  33. On whether or not the plaintiff is entitled to the relief sought, Counsel submitted that the plaintiff did not challenge the authenticity of the 1<sup>st</sup> defendant's allotment letters issued by the Municipal Council of Kisumu.
  34. That there was no particular reference in the gazette notice to the allotment in respect of the 2<sup>nd</sup> and 3<sup>rd</sup> defendants for land plot No. E312 and No. E313 who in turn sold the lands to the 1<sup>st</sup> defendant. That in the circumstances, the plaintiff's suit fails.
  35. Counsel urged the court to find that the plaintiff's suit is not merited and to dismiss it with costs to the defendants.
  36. No submissions were filed on behalf of the 5<sup>th</sup> and 6<sup>th</sup> defendants.

### **Issues for determination**

37. From the pleadings filed, the evidence placed before court, submissions made and the issues framed by the parties, the following emerge as the issues for determination herein; -
  - a. Whether or not land parcel numbers IR 143066, L.R No. 29001, and plot No. E312 and E313 Kanyakwar describe one and the same piece of land or separate and distinct pieces of land.
  - b. Whether or not the allocation of land to the 2<sup>nd</sup> and 3<sup>rd</sup> defendants (which land they sold to the 1<sup>st</sup> Defendant) was revoked.
  - c. Whether or not the 1<sup>st</sup> defendant trespassed onto the suit land.
  - d. Whether or not the plaintiff is entitled to the relief sought in the plaint.
  - e. Costs of the suit.

### **Analysis and determination**

38. The 1<sup>st</sup> issue for determination is whether or not land parcel numbers IR 143066, L.R 29001 and plot numbers E312 and E313 Kanyakwar describe one and the same piece of land or separate and distinct pieces of land.
39. The plaintiff pleaded in the amended plaint that he is the registered owner of the land parcel Grant No. 143066 registered on 1/5/1994. That he was shocked to find that the 1<sup>st</sup> defendant had constructed a temporary (Mabati) structure on plot No. 143066 and hired a watchman to guard the land. The plaintiff further pleaded that the acts of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants amounted to fraud, illegality and irregularity.



40. The plaintiff itemized the particulars of fraud, illegality and irregularity under paragraph 11 of the amended pleadings. A reading of the said particulars show that the complaint of the plaintiff is that the 1<sup>st</sup> defendant working in cahoots with the other defendants unlawfully caused land parcel known as 143066 belonging to the plaintiff to be registered in favour or in the name of the 1<sup>st</sup> defendant as plot numbers E312 and E313 without regard to the fact that the land already belonged to the plaintiff and without the plaintiff's knowledge or consent.

The Defendants denied this claim.

41. It was therefore upon the plaintiff to prove that a parcel of land known as 143066 exists, that the same belongs to him and that it is the same land that the defendants or at least the 1<sup>st</sup> defendant was claiming to be plot E312 and plot E313 Kanyakwar allocated to the 3<sup>rd</sup> and 4<sup>th</sup> defendants and sold to the 1<sup>st</sup> defendant.

42. The Plaintiff reiterated the contents of the amended pleadings in his testimony. He produced documents as exhibits. To prove the aforementioned matters, one needed to produce documents of ownership and a surveyor's report to show that it is the same land parcel described by the plaintiff as L.R 29001 or IR 143066 and by the defendants as Plot No. E312 and E313 Kanyakwar.

43. The plaintiff produced a Grant in respect of I.R 143066 for a term of 99 years running from 1<sup>st</sup> May 1994. The land was described in the Grant as

“ALL that piece of land situate in Kisumu Municipality in Kisumu District containing by measurement nought decimal nought seven nought nought (0.0700) hectares or thereabouts that is to say L.R 29001”

44. To the Grant was attached an extract of deed plan No. 332368 dated 31<sup>st</sup> October 2011. The Grant was dated 14<sup>th</sup> November 2012.

45. The letter of Allotment also produced by the plaintiff as exhibit was dated 28<sup>th</sup> April, 1994 and was addressed to the plaintiff. The land allocated was described therein as “Uns Residential Plot B Kisumu.” The size of the land was given as 0.07 hectares.

46. These are the documents of ownership held by the plaintiff. The 1<sup>st</sup> Defendant produced two letters both dated 19<sup>th</sup> November 2010 one addressed to the 3<sup>rd</sup> defendant Leah Akinyi Adipo and the other to the 4<sup>th</sup> Defendant, Francis Adipo Ondeyo the subject of the letters was offer of plot No. E313 Kanyakwar Kisumu Municipality and offer of plot No E313 Kanyakwar Kisumu Municipality respectively. Each of the plots measures 0.40 Ha approximately hence the total size of the two plots is 0.08 Hectares.

47. The plaintiff called a surveyor as an expert witness. He testified as PW7 and produced a report dated 26/3/2021. He stated in the report that one of the purposes of the report was to determine whether residential house constructed and existing had indeed been constructed within the suit plot's fixed boundaries. One of the conclusions he reached was that the said house was within land parcel No, IR 143066, LR 29001.

“In respect of plots E312 and E313, PW7 stated that he carried out further searches at the Survey records office at survey of Kenya in Nairobi to find out the availability and existence in the official survey records, if any in respect of the above-mentioned plot E312 and E313, and that there were no records to indicate that the two plots had been surveyed for title or any other purpose by the survey of Kenya.”



48. No other expert evidence was availed to counter the evidence of PW7.
49. From the evidence of PW7, it is clear that the area/space that the 1<sup>st</sup> defendant claims to be plot Nos E312 and E313 Kanyakwar and on which he admits to have built a residential house, is L.R No, 29001, IR 143066 belonging to the plaintiff. It is therefore clear that the parcel numbers as given by the Plaintiff and the 1<sup>st</sup> Defendant do not describe two separate and distinct pieces of land but one piece of land namely; IR 143066, LR 29001 allocated to the plaintiff.
50. The next issue for determination is whether or not the offer of allotment of land to the 3<sup>rd</sup> and 4<sup>th</sup> defendant (which they later sold to the 1<sup>st</sup> defendant) was revoked.
51. It was the plaintiff's case that all allocations of land by the 5<sup>th</sup> Defendant were revoked by the 6<sup>th</sup> Defendant vide gazette Notice No. Vol CXIX- No. 97 dated 17<sup>th</sup> July 2017 No. 6862. I have perused a copy of the Kenya gazette produced by the plaintiff as exhibit and also attached to PW7's report as an annexure. On page 4258 of the gazette the National Land Commission published recommendations and way forward in respect of allocation of land by the defunct Municipal Council of Kisumu between the years 2009 and 2010. Some of the recommendations were
- i. that the Commission upheld all the allocations by the Commissioner of Lands.
  - ii. land reference No. 29001 measuring 0.0700 hectares for Alfred Buore Ng'ong'a title by Commissioner of Lands was upheld.
  - iii. Commission found that all allocations by the predecessor of the County Government of Kisumu were illegal.
  - iv. the Commission revoked all the allocations by the Municipal Council of Kisumu.
52. On the basis of this evidence I find that the allocation, if any, by the Municipal Council of Kisumu of plots known as E 312 and E313 to the 3<sup>rd</sup> and 4<sup>th</sup> Defendants done in 2010 were revoked by the National Land Commission.
53. The next issue for determination is whether or not the 1<sup>st</sup> defendant trespassed onto the plaintiff's land.
54. It was not denied that there is a structure/house built on the suit land. The plaintiff pleaded and testified that after he caused the survey and fencing of the land, he was shocked to discover that the 1<sup>st</sup> defendant had entered thereunto, built a temporary (mabati) structure and placed a guard to secure the place.
55. The 1<sup>st</sup> defendant justified his actions by claiming that the land was his and was registered as plots E312 and E313 Kanyakwar and which were separate and distinct from the plaintiff's land. No evidence was however availed by the 1<sup>st</sup> Defendant to prove this assertion. Under section 109 of the *Evidence Act* the burden of proof lay with the 1<sup>st</sup> defendant to prove the fact that the piece of land claimed by the plaintiff was separate and distinct from what he (1<sup>st</sup> Defendant) claimed to be his plots.
56. Having found that the two descriptions refer to one and the same parcel of land and that it was the plaintiff's ownership of the said piece of land that was upheld by the National Land Commission, it follows that the rights of the plaintiff over the piece of land are protected by both *the Constitution* and statute. Thus, the acts of the 1<sup>st</sup> Defendant of entering onto the suit land which was already surveyed and fenced at the instance of the plaintiff, building a house/temporary structure thereon and placing a guard to secure it amounted to trespass and infringed on the plaintiff's right to land by denying him access, use and quiet enjoyment of the land.



57. The next issue is whether or not the plaintiff is entitled to the relief sought in the plaint.
58. On the basis of the foregoing determinations that the suit land belongs to the plaintiff and that the Defendants trespassed onto the land, the court finds that the plaintiff is entitled to the relief sought in the amended plaint save for the claim of loss of income. Loss of income being special damages ought to have been specifically pleaded and strictly proved. The evidence of PW6 the valuer, PW8 the quantity surveyor and PW9 the contractor all alluded to speculative damage based on expectation of future developments that were yet to be undertaken and for which no factual basis was laid.
59. Concerning general damages, though the plaintiff's Counsel submitted that Kshs 10,000,000 would be sufficient compensation for the plaintiff's loss, no basis was laid for it. Further general damages for trespass was not prayed for among the prayers in the amended plaint.
60. Regarding costs, under the provisions of section 27 of the *Civil Procedure Act*, costs follow the event unless the court for good reason orders otherwise. No reason has been given to the court to order otherwise.

### **Conclusion.**

61. The summary of the evidence placed before court is that while the 5<sup>th</sup> Defendant unlawfully allotted the suit land to the 3<sup>rd</sup> and 4<sup>th</sup> Defendants as plot numbers E312 and E313, the 3<sup>rd</sup> and 4<sup>th</sup> Defendants sold the land to the 1<sup>st</sup> Defendant and the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants showed the 1<sup>st</sup> Defendant the site and they all trespassed onto the suit land. The 1<sup>st</sup> defendant unlawfully took possession of the land thereby denying the plaintiff his rights to the land.
62. No cause of action was demonstrated against the 6<sup>th</sup> defendant (the National Land Commission).
63. For the foregoing reason, the court finds that the plaintiff has proved his case against the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> 4<sup>th</sup> and 5<sup>th</sup> Defendants on a balance of probabilities. Judgment is therefore hereby entered in favour of the plaintiff against the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants for; -
  - i. declaration that the parcel of land claimed by both the plaintiff and the 1<sup>st</sup> Defendant herein is parcel No. IR 143066, LR 29001 which belongs to the plaintiff.
  - ii. An order that the Defendants do vacate the suit land and hand over vacant possession thereof to the plaintiff within 90 days of this judgement failing which the Defendants shall be evicted from the land as by law provided.
  - iii. a permanent injunction restraining the defendants, their agents, servants, or anybody claiming through them from trespassing onto, encroaching on or continuing to interfere with land parcel grant number IR 143066, LR No. 29001.
  - iv. costs of the suit and interest at court rates.
64. Orders accordingly

**JUDGMENT DATED AND SIGNED AT KISUMU, READ VIRTUALLY THIS 26<sup>TH</sup> DAY OF JUNE, 2025 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.**

**E. ASATI**

**JUDGE.**

In the presence of:

Maureen: Court Assistant.



Omondi T for the Plaintiff.

No appearance for the Defendants.

