



**Osman & another v Hassan & another (Environment & Land Case
E003 of 2023) [2025] KEELC 4765 (KLR) (26 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4765 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT GARISSA
ENVIRONMENT & LAND CASE E003 OF 2023**

JM MUTUNGI, J

JUNE 26, 2025

BETWEEN

BASAANE MOHAMUD OSMAN 1ST PLAINTIFF

SHUKRI SANTUR IMAN 2ND PLAINTIFF

AND

OSMAN MOHAMED HASSAN 1ST DEFENDANT

MOHAMED MUKHTAR SHIDIYE 2ND DEFENDANT

JUDGMENT

1. The plaintiffs filed the instant suit vide a plaint dated 4th October 2023 where they prayed for judgment against the defendants for orders;
 - a. A mandatory injunction restraining the defendants, their agents, servants, assigns or anyone acting through them from degrading, trespassing or in any way dealing with the parcel of land LR No. 31332.
 - b. A declaration that the defendants have no proprietary interest in the suit property.
 - c. General damages.
 - d. Interest on (c) above at the prevailing commercial rates.
 - e. Costs of the suit.
 - f. Any other/further relief that this Honourable Court may deem fit to grant.
2. The plaintiffs claim was that they were the lawful and registered proprietors of land parcel LR No. 31332 IR Title No. 257283 a leasehold interest of all that piece of land situate in the North East of Garissa Township in Garissa District measuring approximately 100 hectares or thereabouts. The



plaintiffs averred the defendants sometimes in 2023 trespassed onto their land wherein the 1st defendant demolished temporary structures put up by the plaintiffs while the 2nd defendant erected an illegal fence in the property.

3. The defendants were served with the pleadings and summons to enter appearance but did not appear and/or file any defence. The suit was fixed for formal proof hearing on 24th March, 2025 when the 1st plaintiff and their counsel appeared and the suit was heard and the 1st plaintiff testified as the sole witness in support of the plaintiffs' case.
4. PW1 Basaane Mohamud Osman testified that he was the 1st plaintiff and was testifying on his own behalf and on behalf of the 2nd plaintiff. He adopted his witness statement as his evidence in chief and also produced the documents listed in the plaintiffs bundle of documents namely;
 - i. Grant of letters adlitem of the estate of Hassan Galbinoor issued on 4.10.2023.
 - ii. Lease of land parcel LR No. 31332 measuring approximately 100 hectares to Shukri Santhur Iman and Hassan Galbinoor dated 9th June 2021.
 - iii. Certificate of Title I.R. No. 257283 of L.R No. 31332 annexing Deed Plan No. 414401 duly registered
5. PW1 testified that the defendants entered onto their land and damaged some semi-permanent structures belonging to some of the group members they represent. He stated that the 1st defendant vacated from the land after he was served with the initial interlocutory order and the pleadings but the 2nd defendant still persisted in trespassing on the suit land.
6. The defendants were duly served with the pleadings, mention and hearing notices as per the affidavits of service filed but did not appear or file any responses to either the application or the suit. The Court permitted the plaintiffs to proceed with the hearing of the suit *exparte*.
7. There is irrefutable evidence that the plaintiffs are the registered proprietors of land parcel LR No. 31332 (I.R. No. 257283) measuring approximately 100 hectares. The plaintiffs tendered in evidence the lease issued to them by the government dated 9th June, 2021 which was duly registered on 23rd February 2022 and a certificate of title I.R. No. 257283 issued on the same date. As the registered proprietors of the suit land, the plaintiffs were vested with the interest and conferred rights of ownership as provided under Section 24 and 25 of the [Land Registration Act](#), 2012. Section 24(b) provides as follows:-

24. Subject to this Act-

- (a) ...
- (b) the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.

Section 25(1) of the [Land Registration Act](#), 2012 provides as follows;

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- (1) The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of Court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all



privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject—

- (a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and
- (b) to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register

8. The plaintiffs being the registered owners of the suit property, are entitled to enjoy all the ownership rights that are conferred through registration which include the right to occupy, possess and use the land without any interference from third parties. The evidence by the plaintiffs that the defendants and in particular, the 2nd defendant trespassed and are interfering with their right of occupation, possession and use of the land was not challenged as the defendants did not enter appearance and/or file any defence. The Court has no reason to disbelieve the plaintiffs evidence and accepts the evidence as truthful.
9. The plaintiffs have demonstrated that they are the registered owners of the suit property and the Court finds and holds that they have proved their case against the defendants on a balance of probabilities. The Court takes note that the plaintiff affirmed that the 1st defendant vacated and ceased acts of trespass upon being served with summons and the Court order. The 2nd defendant however, persisted in being defiant and has continued acts of trespass. The plaintiffs have prayed for damages for trespass and the Court is cognizant that where trespass is proved, actual damage need not be proved for damages to be awarded. As the 2nd defendant has persisted in trespass I will award nominal damages of Kshs.100,000/= for trespass but will make no award of damages as against the 1st defendant who immediately vacated from the land upon being served summons.
10. In the premises I enter judgment in favour of the plaintiff as against the defendants and make the following consequential final orders: -
 1. The plaintiffs are hereby declared to be the lawful owners of land parcel LR No. 31332 (I.R. No. 257283) North East of Garissa Township.
 2. The 2nd defendant be and is hereby ordered to vacate from the suit land within 30 days of being served with the decree herein failing which an order of eviction to issue on application.
 3. General damages for trespass of Kshs.100,000/= are awarded against the 2nd defendant with interest at Court rates from the date of the judgement until payment in full.
 4. The costs of the suit are awarded to the plaintiffs as against the 2nd defendant.

JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT GARISSA THIS 26TH DAY OF JUNE, 2025.

J. M. MUTUNGI

ELC JUDGE

