



Brawny Properties Limited v Fulson Company Limited & 2 others (Environment & Land Case E080 of 2024) [2025] KEELC 4986 (KLR) (25 June 2025) (Judgment)

Neutral citation: [2025] KEELC 4986 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE E080 OF 2024**

**EK MAKORI, J
JUNE 25, 2025**

BETWEEN

BRAWNY PROPERTIES LIMITED PLAINTIFF

AND

FULSON COMPANY LIMITED 1ST DEFENDANT

OPHET VELD GERT RUDA JOSEPHINE MARIA CORN 2ND DEFENDANT

ANTONIO DEGREGORIO 3RD DEFENDANT

JUDGMENT

1. The Plaintiff filed a plaint on July 26, 2024, seeking, among other remedies, possession of the premises, parcel of land known as LR No. 17835-Kilifi, CR 35336, a permanent injunction, general damages, punitive damages, and exemplary damages for trespass. The Plaintiff also requests an eviction order, a directive to the Officer Commanding Police Division (OCPD), Kilifi, to ensure compliance, and any additional relief the Court may deem appropriate.
2. The Defendants were served but did not appear or file a defense; the case proceeded to formal proof.
3. At the close of the Plaintiff's case, the court directed that the issues arising from the trial be canvassed through written submissions – the Plaintiff complied.
4. Based on the materials presented to me and the submissions by the Plaintiff, the issues I frame for the determination of this matter are whether the Plaintiff has proved a case against the Defendants on a balance of probabilities, whether the Plaintiff is entitled to the orders sought, and the issue of costs.
5. The sole witness for the Plaintiff, Pietro Cannobbio, who testified as PWI and adopted his witness statement dated July 26, 2024, as evidence in chief, stated that the circumstances that led to the cause of action are that the Plaintiff is the bona fide, legal, and registered owner of the parcel of land known



as LR No. 17835-Kilifi, CR 35336, measuring approximately 2.884 hectares or thereabouts, for a lease term of 99 years commencing in 1999.

6. PW1 produced Exhibit 3 to establish that the company is properly registered, and Exhibit 1, which confirms its resolution to bring this matter before the Court. Exhibit 4, the certificate of postal search dated February 7, 2024, verifies that the Plaintiff remains the registered owner. Exhibit 5 confirms that the Plaintiff, through one of its directors, PW1 herein, purchased the property known as LR No. 17835-Kilifi, CR 35336, for a consideration of Kshs 14,000,000/= on February 23, 2007. Exhibits 8 and 9 demonstrate that when the then Senior Registrar of Titles at the Coast Registry failed to transfer the property, the Court, through Mombasa Miscellaneous Civil Appeal (JR) No. 2 of 2008, compelled the Registrar to effect the transfer in favor of the Plaintiff. Upon transfer, a certificate of title was issued. Exhibit 11 shows the Letter of Allotment dated January 23, 1996, issued to Ramada Ltd., which sold the property to the Plaintiff. Exhibits 12 through 23 establish that the Plaintiff has diligently paid all rates, as evidenced by the receipts issued in its favor.
7. From the foregoing, the witness has provided relevant evidence clearly showing the origin of its title, from allocation to acquisition. This evidence remains uncontested. Exhibit 24 contains photographs of the Defendants unlawfully trespassing onto the property. No statement of defense has been submitted to explain their actions. Their conduct amounts to interference with the plaintiff's right to ownership, as protected under Article 40 of *the Constitution*.
8. Based on the balance of probabilities, the court is convinced that the Plaintiff has sufficiently proved its case against the Defendants.
9. The subsequent inquiry is to ascertain whether the requests for relief contained in the Plaint can be granted to the Plaintiff based on the evidence tendered.
10. Learned counsel for the Plaintiff, Mr. Makworo, in his submissions, citing various provisions of the law and judicial precedents, contends that the Plaintiff is entitled to the orders sought in the plaint.
11. Section 26 (1) of the *Land Registration Act*, 2012 provides thus:

“The certificate of Title issued by the Registrar upon Registration, or to a purchaser of land upon a transfer or a 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.....”
12. Regarding the indefensibility of title and in accordance with Section 26(1) of the *Land Registration Act*, reference is made to the decisions in *Keiyian Group Ranch v Samuel Oruta & 9 Others* [2021] eKLR, where the Court stated:

“It has been said time and again that a Title Deed is an indefeasible evidence of the ownership of land.”
13. The Plaintiff claims that the Defendants have trespassed onto its property. This is demonstrated by the walls and building stones shown in the photographic evidence tendered. The plaintiff thus seeks an order for vacant possession, a permanent injunction against trespass, as well as general, punitive, and exemplary damages. The Plaintiff further seeks an eviction order and prays that the OCPD Kilifi ensure compliance.



14. Halsbury Laws of England, 4th Edition, vol. 45, at paragraph 26, page 1503, states the following:
 - a. If the plaintiff proves trespass, he is entitled to recover nominal damages, even if he has not suffered any actual loss.
 - b. If the trespass has caused 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."
15. The Plaintiff has submitted photographs showing building stones on the property and constructed walls. These actions are considered trespass because they were done without the plaintiff's permission or consent. The plaintiff is likely to face significant costs for demolishing the wall and removing debris from the premises. Such costs constitute a measurable loss; therefore, the Defendant should be ordered to cover these expenses. Reference is made to the decision cited by the Plaintiff, which I agree with—*Duncan Nderitu Ndegwa v KP & Limited & Another* [2013] eKLR, where Nyamweya J. ruled that:

"..... once a trespass to land is, established, it is actionable per se, and indeed no proof of damage is necessary for the Court to award general damages....."
16. Also refer to the judgment in *Johnson Mainga Mogaka v Kenya Power & Lighting Company* [2021] eKLR, which cites the case of *Philip Ayaya Aluochio v Crispus Nyayo* [2014] eKLR, where the Court held that the Plaintiff was entitled to general damages for trespass, mirroring the situation that obtains in the current suit. The issue that arises is the measure of such damages. It has been held that the measure of damages for trespass is the difference in the value of the Plaintiff's property immediately after the trespass or the costs of restoration, whichever is less; see *Hostler v Green Park Development Co.*, 186 S.W.2d 500 (No. App 1999).
17. The Plaintiff contends that, given that expenses will be incurred to demolish the walls and structures standing on the suit property, such costs should be awarded by the court to the Plaintiff to facilitate complete restoration. Referencing the case of *David Kimugun Koskei v Benjamin Tuwei & Another* [2019] eKLR, which cites *Park Towers Ltd v John Mithamo Njika and 7 others* [2014] eKLR, it is established that where trespass is proven, a party is not required to demonstrate specific damages or losses to be entitled to such damages. In such circumstances, the Court has a duty to assess the damages payable, considering the unique facts and circumstances of each case.
18. While agreeing with the cited authorities on how damages for trespass should be calculated, the Plaintiff did not provide this Court with an assessment report to show the cost of removing the structures and walls built by the Defendants.
19. Nonetheless, the Court recognizes that the trespass has been ongoing since 2016, as outlined in paragraph 5 of the plaint, which states that the acts of trespass constitute a continuing trespass that should be stopped (see the decision in *Eliud Njoroge Gachiri v Stephen Kamau Nganga* [2018] eKLR). Considering this, I will award an amount of Kshs. 500,000, considering the costs related to demolition and the fact that the trespass has persisted since 2016, without the owner's consent.
20. Based on the above, judgment will be entered for the Plaintiff against the Defendants, and these will be the court's final orders:



- a. The Defendants are hereby ordered to give vacant possession of the parcel of land known as LR No. 17835-Kilifi, CR 35336.
- b. Failure to voluntarily comply with (a) above, the Defendants are to be forcibly evicted, with a directive to the Officer Commanding Police Division (OCPD), Kilifi, to ensure compliance.
- c. A permanent injunction is hereby issued, directed at the Defendants, barring them from remaining on, entering, or interfering in any way with the suit property
- d. General damages amounting to Kshs 500,000/- for trespass.
- e. Costs to the Plaintiff.

DATED, SIGNED, AND DELIVERED VIRTUALLY AT MALINDI ON THIS 25TH DAY OF JUNE 2025.

E. K. MAKORI

JUDGE

In the Presence of:

Mr. Makworo, for the Plaintiff

Happy: Court Assistant

