



REPUBLIC OF KENYA



Kikalu Coffee Factory & another v Nzuki & another (Environment and Land Appeal E031 of 2024) [2025] KEELC 4709 (KLR) (24 June 2025) (Judgment)

Neutral citation: [2025] KEELC 4709 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND APPEAL E031 OF 2024**

NA MATHEKA, J

JUNE 24, 2025

BETWEEN

KIKALU COFFEE FACTORY 1ST APPELLANT

KAWETHEI FARMERS CO-OPERATIVE SOCIETY 2ND APPELLANT

AND

JAMES MUIA NZUKI 1ST RESPONDENT

SIMON KITHUSI MUTUA 2ND RESPONDENT

JUDGMENT

1. The Appellants herein Appeal against the whole of the above-mentioned Judgment and set forth the following grounds of Appeal;
 1. The learned Magistrate erred in law and fact in making a finding that the 2nd Respondent herein was an employee, servant and/or agent of the 1st and 2nd Appellants yet no evidence was adduced in support of this assertion.
 2. The learned Magistrate erred in law and fact in making a finding that the 1st and 2nd Appellants herein had trespassed onto the 1st Respondent's land and cut down and/or destroyed trees and crops yet the 1st Respondent did not demonstrate any cause of action against the Appellants.
 3. The learned Magistrate erred in law and fact by failing to consider the principles set forth in awarding general damages for tort of trespass.
 4. The award under the head general damages is manifestly excessive altogether disproportionate and is not in keeping with other comparable awards made in respect of similar matters.



5. The learned trial Magistrate erred in law and fact in delivering a Judgment against the Appellants herein against the weight of the evidence presented before the trial Court by the Appellants.
2. The Appellants ask this Honourable Court for orders:-
 - a. That the Appeal be allowed.
 - b. That the lower court's Judgment dated 2nd October, 2023 be set aside in its entirety and substituted with an order dismissing the 1st Respondent's suit against the 1st and 2nd Appellants herein.
 - c. That in the alternative to prayer (b) hereinabove the lower court's Judgment dated 2nd October, 2023 on general damages be revised to be commensurate to the evidence on record.
 - d. Any other and/or further order in favour of the Appellants that this Court may deem fit and just to grant in the circumstances.
 - e. That the costs of this Appeal and proceedings in the lower court be borne by the Respondents.
3. This court has considered the evidence and the submissions therein. This is the first appeal, the primary role of the court is to re-evaluate, re-assess and re-analyze the evidence on record and decide as to whether the conclusion reached by the learned magistrate was sound, and give reasons either way. This duty was emphasized by the Court of Appeal in *Mbogo and another vs Shah* (1968) EA 93 where it was held that;

“I think it is well settled that this court will not interfere with the exercise of its discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matter on which it should not have acted or because it has failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion. It is for the company to satisfy this court that the judge was wrong and this, in my view it has failed to do.”
4. The matter began by a plaint filed in court on 7th December 2017 where the plaintiff averred that on the 25th July 2012 the defendants trespassed on his land parcel number Kangundo/Mbusyani/1645 and caused destruction by cutting down trees and crops worth Kshs. 449,642/=. They invaded his land without his consent or permission.
5. DW1 Anthony Ngala Masila the Chairman of the Appellant societies testified that there is a road passing near the coffee factory. That the government through KERRA came and created a road and some trees on the plaintiff's land were cut. They are not the ones who changed the position of the road. That the road had been closed by the plaintiff.
6. Section 3 (1) of the *Trespass Act*, Cap 294 provides that;

“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.”
7. Thus, trespass is an intrusion by a person into the land of another who is in possession and ownership
8. Through the Surveyor's report dated 12th December 2012 it has as been confirmed by the Surveyor that the road passed through the suit property owned by the plaintiff parcel No. Kangundo/



Mbusyani/1645 on the ground instead of through parcel No. Kangundo/Mbusyani/313. Plaintiff never authorized the defendant to enter his land and carry out works of creating a road. I am therefore inclined to find that appellants trespassed on the suit land belonging to the plaintiff. I am also satisfied that the defendants jointly altered the map on position of the road and on the ground hence the trespass.

9. Plaintiff has sought for special damages, general damages for trespass and loss of user. For special damages, the plaintiff has claimed Kshs. 449,642/- which includes value of trees cut from the suit land. The assessment was based on the valuation report done on 26th September 2021 and produced as PEx 4 by PW6 the Forest Officer. It itemised the damages done to the tress within the plaintiff's property. PW4 the Agricultural Officer produced PEx6 a report on the crop damage on the suit property by the road that was created. It is trite law that special damages require to be specifically pleaded and proved. In this case, the plaintiff has pleaded and proved this claim through production of the expert reports and receipts. I hence allow the claim of special damages.
10. On the issue of general damages for trespass, the case of Philip Ayaya Aluchio vs Crispinus Ngayo (2014) eKLR it was held as follows;

“The plaintiff is entitled to general damages for trespass. The issue which arises is as to what is the measure of such damage? 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.”

11. In Nakuru Industries Limited vs S S Mehta & Sons (2016) eKLR the court faced held as follows;

“A similar situation pertains in the present case. The exact value of the land before and after the trespass is not proved. However, I have found the defendants did trespass onto the plaintiff's land and conduct some excavation. For this reason I award the defendant damages in the amount of Ksh 500,000/= (five hundred thousand only) plus interest and costs of this suit from the date of this judgment until payment in full.”

12. In the case of Willesden Investments Limited vs Kenya Hotel properties Limited NBI H.C.C. NO. 367 of 2000 the court stated that;

“There is no mathematical or scientific formula in these types of cases and that the guiding factors are the circumstances in each case. It is my considered view that K.Sh. 10 000 000 is a reasonable award for general damages”.

13. I find that trial Magistrate did not err in law and fact by finding that the defendants trespassed onto his private land and caused damages. Be that as it may, I have taken into account the fact that the damage occurred in a rather large part of the land the land is in a rural area. I am of the view that an award of Kshs.1,000,000/- as general damages is excessive as awarded by the trial court. I find that the appeal succeeds in part and I grant the following orders;

1. General damages of Kshs. 200,000/=
2. Special damages of Kshs.449,642/=
3. Plaintiff will have the costs in the trial court suit.
4. Each party to bear their cost of the appeal.

It is so ordered.



DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 24TH DAY OF JUNE 2025.

N.A. MATHEKA

JUDGE

