



REPUBLIC OF KENYA



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**Sagalla Ranchers Limited v Makalo & 97 others (Environment & Land Case E005 of 2023)
[2025] KEELC 4622 (KLR) (Environment and Land) (19 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4622 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
ENVIRONMENT AND LAND
ENVIRONMENT & LAND CASE E005 OF 2023**

EK WABWOTO, J

JUNE 19, 2025

BETWEEN

SAGALLA RANCHERS LIMITED PLAINTIFF

AND

AMOS MAKALO & 97 OTHERS DEFENDANT

JUDGMENT

1. The suit was instituted by a plaint dated 13th December 2023. The Plaintiff sought the following reliefs:-
 - a. That the Plaintiff is the rightful owner of the suit properties and it is entitled to exclusive, peaceful and unhindered possession and use thereof and an order for eviction from the said parcel of land restore the suit land to its original condition do issue forthwith against the Defendant.
 - b. In the event of default of the Defendant to (a) above, the Plaintiff be at liberty to so evict or cause to be evicted from the suit land in strict adherence to the law and restore the suit land to its original condition at the cost of the Defendant.
 - c. A permanent injunction do issue perpetually restraining the Defendant, his servants and or agents from laying claim to utilizing, developing, carrying out any works on, continuing in possession or in any other manner dealing with the suit properties and/or interfering with the Plaintiff's ownership, possession and/or use of the said parcel of land.
 - d. Damages for trespass.
 - e. Compensatory damages for injury to Plaintiffs trees and other valuables uprooted by the Defendants without any cause.



2. The suit was contested by the defendants who filed their statement of defence denying the averments made in the plaint.

The Plaintiff's case and evidence

3. The Plaintiff averred that it is registered as the absolute proprietor of all that land parcels No. 12177/8 and LR No. 12177/9 situated at Taita Taveta County and that the Defendants have without consent, permission or authority intentionally knowingly and/or voluntarily and without lawful justification or any color of right, trespassed on the respective suit properties and remained in illegal possession of the suit properties and have been cutting and logging trees, burning charcoal, cultivation of crops, grazing livestock, harvesting sand, cutting building stones and cutting down trees causing permanent and irreparable damages to the suit property.
4. It was averred that as a consequence of the Defendant's wrongful occupation of the suit properties, the Defendants have misused, damaged, wasted, cut trees, destroyed and degraded the suit properties and as a result of which the Plaintiff has been deprived of the use and enjoyment of the suit properties.
5. It was stated that the Defendants have persistently disrupted, misused, and engaged in the cutting down of trees on the suit properties and such unlawful actions continuing unabated to date.
6. During trial Raphael Lewela Mbinga testified on behalf of the Plaintiff as PW1. He adopted and relied on his witness statement and bundle of documents that had been filed together with the plaint.
7. It was his testimony that the property had never been subdivided and the Defendants have no claim to the same. He also stated that the Defendants have caused extensive damage to the property and have declined to move out completely.
8. On cross-examination, he stated that the Ranch was established in 1972. The boundaries were also fixed. There is a map showing when boundaries were done. The Surveyor used the original drawings from the original title and he had produced the report before court.
9. On further cross-examination, he stated that the issue in the suit is about encroachment and that the Defendants had participated in the review of the boundary but had disputed the report. He also stated that the disputed area does not border the settlement scheme. There is a buffer zone in between the property and the settlement scheme. He also stated that he could not know the exact size of encroached area but should be more than 10 acres. He also stated that the Defendants had also caused damage to the property but he did not have a report on the same even though the issue had been reported to the police but no O.B had been produced.
10. He also stated in his cross-examination that there are no government projects in the disputed area. The land has no buildings. The Defendants have been in the disputed area for a long time. He is not aware if some of the Defendants have title deeds.
11. When re-examined, he stated that the boundary determination was concluded but the beacons were removed. The Defendants have resisted the conclusion of the boundary determination.
12. He also reiterated that the Surveyors followed the initial boundary during the survey exercise and the Defendants participated in the process but later disputed the same and that is why the report has not been concluded.
13. In respect to the titles held by the Defendants, he stated that the same do not concern Sagalla Ranch and further that the Defendants are not members of the Plaintiff. He also stated that the 1st and 2nd



Defendants who are members of the County assembly are only inciters since they do not have any land in the area.

14. He further stated that the Defendants have encroached about 100 acres and have never challenged the existence of their titles. He also stated that the Plaintiff is still willing to have a peaceful resolution of the said dispute.

The Defendants case and evidence

15. Five witnesses testified on behalf of the Defendants during trial.
16. Amos Makalo the MCA for Kasighau Ward testified as DW1. He adopted and relied on his witness statement dated 15th July 2024. It was his testimony that there was a boundary dispute between the Defendants and Plaintiff and he had been involved in the matter because he had tried to resolve the said dispute. The community was never given a chance to participate in the survey and equally the County Government was never involved.
17. When cross-examined, he stated that he is a member of Kasigau Ward that borders Sagalla Ranch. He also stated that he does not reside in the area. He also stated that he was aware of the exercise being conducted on the determination of the boundary. He denied ever seeing any report on the same. He also stated that the Plaintiffs prematurely filed the case before the dispute had been determined.
18. When re-examined, he stated that he has never been approached by the Plaintiff to resolve the issue. He also stated that he was not present when the exercise was carried out.
19. Stephen Nzai Mkala MCA for Marungu Ward testified as DW2. He adopted and relied on his statement dated 15th July 2024 in his evidence in chief. It was his testimony that he had attended a meeting seeking to resolve the dispute. The boundary exercise had been done but the County Government had not been involved. He also stated that the part bordering Marungu had been completed but the side of Kasigau was yet to be completed. He also stated that he has not encroached on the Plaintiff's land since he has not been on the disputed parcel for 20 years.
20. On cross-examination, he stated that he is not aware if the Defendants have encroached on the land. He stated that there could be 2 or 3 people who have encroached on the land but that does not indicate that the majority of the Defendants have encroached and trespassed on the said land.
21. On further cross-examination, he stated that the community is benefiting through carbon reduction program and there was public participation prior to the commencement of the same upon which the community was given 70 acres for that program.
22. He also stated that his people have titles but they only wanted the survey exercise to be done in the presence of the County Government Surveyors.
23. James Oliver Nyale testified as DW3. He adopted and relied on his witness statement dated 8th July 2024 in his evidence in chief. He also produced and relied on the Defendants bundle of documents dated 8th July 2024 in support of the Defendants case.
24. When cross-examined, he stated that he previously served as an Assistant Chief having been appointed in 1997. He also stated that he was born at Kasighau Location in 1953.
25. He further stated that he was aware that there had been some meetings to resolve the dispute. He also stated that according to him the surveyors had declined to listen to them when they came to the site. They did not tell them when the beacons were indicated. He also stated that he knows the location of the beacons. He denied staying in the disputed parcel.



26. On re-examination, he stated that the beacons were placed in 1972 when Surveyors were surveying the Ranches. He also stated that the Defendants who have been sued had not encroached on the Plaintiff's land.
27. Daniel Nyae Ngao testified as DW4. He adopted and relied on his witness statement dated 8th July 2024. It was his testimony that he stays in the disputed land and has been residing there since 1968. He was issued with an allotment letter which was produced in evidence. It was his testimony that the land belongs to the community and he has not encroached on the Plaintiff's land.
28. When cross-examined, he stated that he does not know the entire size of the land. His land is about 4km from Sagalla Ranch. He is not on the boundary. Their land borders Izera Ranch. He also stated that he saw the beacons as earlier as 1972. He also stated that his property is about 10 acres and is in Buguta Settlement Scheme and that Buguta Settlement Scheme is not inside Sagalla Ranch.
29. When asked whether he has benefited from any carbon credit program he stated in the negative. He also stated that he was informed of the dispute herein in 2011 that they had encroached in the Plaintiff's land. He also stated that he did not participate in the survey exercise.
30. When re-examined, he denied encroaching on the Plaintiff's land. He has his letter of allotment and that his land is not in Sagalla Ranch.
31. William Kibwaga Nganga testified as DW5. He relied on his statement dated 8th July 2024 in his evidence in chief. It was his testimony that he does not have any land and neither does he stay in the area.
32. When cross-examined, he stated that he is the Chairman of Buguta Committee dealing on issues of land. He stated that he has land in Buguta but does not own any land in the disputed area. He stated that he had attended a meeting to resolve the dispute but there was no consensus between the parties.
33. He also stated that if the survey is done properly then they will accept the results. He further stated that the disputed area is owned by the community of Buguta. He denied destruction of any trees in the area.
34. When re-examined, he stated that the members of the Buguta Community have not encroached on the Plaintiff's land and neither have they destroyed any trees.

Submissions

35. Upon the close of the parties respective case, the parties were directed to file their written submissions. The Plaintiff filed written submissions dated 30th April 2025 while the Defendant filed written submissions dated 6th May 2025.
36. The Plaintiff submitted on the following issues:-
 - i. Whether the Plaintiff is the lawful and absolute proprietor of the suit properties.
 - ii. Whether the Defendants have any lawful rights and or interest on the suit property and if not, whether the Defendants should be evicted for trespassing on the suit properties.
 - iii. Whether the Plaintiff is entitled to the reliefs sought.
37. Citing Section 24 and 26 of the [Land Registration Act](#) No. 3 of 2012 it was contended that the Plaintiff followed due process in obtaining the Certificate of Title and hence the court should not allow a stranger to interfere with the land. The following cases were cited in support; Milan Kumar Shah & 2 Others =Versus= City Council of Nairobi & the A.G (Nairobi HCCC No. 1024 of 2005 (OS), Nzioka Mwanja & 3 Others =Versus= Benson Mutuku Kitenge (2005) eKLR and the Supreme Court case of



Hareharan Singh Sehmi & Another =Versus= Tarebara Co. Limited & 5 Others Petition No. E033 of 2023.

38. It was further contended that there was no evidence of fraud, misrepresentation or illegality affecting the Plaintiff's title in the instant matter as such the title remains absolute and indefeasible.
39. As to whether the Defendants have any lawful rights and or interest on the suit properties and if not whether the Defendants should be evicted for trespassing on the suit properties, it was submitted that the Plaintiff has produced certified survey maps and official certificates of title for L.R No. 12177/8 and L.R No. 12177/9 which clearly define and confirm registration of the suit properties in its name, leaving no room for ambiguity or informal boundary claims and affirming its indefeasible proprietary rights. The Plaintiff acted in good faith by inviting a resolution of any boundary issue but the Defendants declined to step forward as required by law. The refusal to participate in boundary demarcation became a prelude to the massive encroachment and trespass by the Defendants which is in breach of the law.
40. It was further submitted that boundaries of registered land are determined by the records held by the Land Survey Department and Mapping Department and authenticated by the Survey of Kenya. The Plaintiff's boundaries are lawfully established in accordance with Section 18 and 19 of the [Land Registration Act](#), No. 3 of 2012 and in the absence of a formal boundary dispute referred to the Land Registrar, the Defendants claim based on vague cutline is legally untenable.
41. It was contended that the Defendants having halted and withdrew from participating in boundary demarcation to its logical conclusion as required by law, the same demonstrated their lack of good faith and confirmed that they have no genuine claim.
42. It was further contended that the Defendants have not pursued any legal redress in the form of a counterclaim, adjudication process, or constitutional land rights claim to anchor their continued presence on the land. The Plaintiff has provided proof of its registration as the owner of the suit properties and therefore the Defendants are just trespassers to the said land. It was also submitted that the Plaintiff had even ceded 70 acres to the neighbouring community as part of its CSR but the Defendants are still ungrateful.
43. On whether the Plaintiff is entitled to the prayers sought, it was argued that the Plaintiff has demonstrated and proven ownership of the suit parcel and has exclusive legal right to possess, use and control the suit properties and is entitled to all the reliefs sought. The court was also urged to grant costs of the suit.
44. The Defendants submitted on the following issues in their submissions dated 6th May 2025:-
 - i. Whether the Plaintiff is the lawful owner of the Land Parcels No. 12177/8 and LR No. 12177/9?
 - ii. Whether the Defendants have trespassed into the Land Parcels No. 12177/8 and LR No. 12177/9?
 - iii. Whether the Plaintiff is entitled to the remedies sought?
 - iv. Whether the subject of the suit herein is a boundary dispute and if yes what orders can the court make in that respect.
 - v. Who is to bear costs of the suit?



45. It was submitted that proof of ownership alone does not amount to trespass and that there is no nexus between Parcels No. 12177/8 and 12177/9 the disputed portion.
46. It was further submitted that PW1's testimony had referred to two different parcels of land being LR No. 12277/8 and 12277/9 as opposed to the parcels referred to in the plaint being L.R NO. 12177/8 and 12177/9 and that during his cross-examination he did not adduce any evidence to prove that trespass in form of a survey report and that the Defendants had been on the disputed area for more than 40 years.
47. It was further submitted that the issue in dispute revolved around the boundary location which had never been concluded. DW3, DW4 and DW5 had confirmed that they were not living in the disputed area and further DW4 had confirmed that they had been issued with letters of allotment which was produced in evidence.
48. The Defendants concluded their submissions by urging the court to dismiss the suit with costs since trespass on the Plaintiff's land had not been proved.

Analysis and Determination

49. The court has considered the pleadings, submissions filed and the evidence adduced by the parties and the following issues arise for determination:-
 - i. Whether the Plaintiff is the lawful owner of the suit parcels 12177/8 and 12177/9.
 - ii. Whether the Plaintiff has proved trespass against the Defendants on the said parcels.
 - iii. Whether the Plaintiff is entitled to the reliefs sought in the plaint.
50. The court shall now proceed to analyze the said issues sequentially.

Issue No. 1 Whether the Plaintiff is the lawful owner of the suit parcels 12177/8 and 12177/9

51. The Plaintiff's case before court is that it is registered as the absolute proprietor of all that land parcels No. 12177/8 and LR No. 12177/9 situated at Taita Taveta County and that the Defendants have without consent, permission or authority intentionally knowingly and/or voluntarily and without lawful justification or any color of right, trespassed on the respective suit properties and remained in illegal possession of the suit properties and have been cutting and logging trees, burning charcoal, cultivation of crops, grazing livestock, harvesting sand, cutting building stones and cutting down trees causing permanent and irreparable damages to the suit property.
52. During trial, the Plaintiff's witness adduced evidence that the said parcels are duly registered in the names of the Plaintiff.
53. From the evidence tendered and also as rightfully submitted by both the Plaintiff and the Defendant, there is no doubt that the Plaintiff is the lawful and registered owner of the suit parcels.
54. The issuance of the certificate of title to and in favour of the Plaintiff and which certificates have not been challenged confirms ownership of the Plaintiff in respect to the said suit parcels claim.
55. To this end, it suffices to cite and reference the provisions of Section 24 and 25 of the [Land Registration Act, 2012](#).
56. Same are reproduced as hereunder;
 24. Subject to this Act—



- a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and
- (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. Rights of a proprietor.

25.

- (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.

57. In addition, the significance of a certificate of title to land, whose validity has not been impugned, was also highlighted in the cases of *Dr. Joseph N.K. Arap Ng'ok v Moiyo Ole Keiwua & 4 others* [1997] eKLR and *Mohansons (Kenya) Limited versus Registrar of Titles & 2 others* [2017] eKLR.

58. In view of the ratio decided highlighted in the various decisions cited and coupled with the fact that the evidence on behalf of the Plaintiff confirmed the said ownership, it is the finding of this court that the Plaintiff herein is the legitimate proprietor of the suit parcels.

Issue No. 2 Whether the Plaintiff has proved trespass against the Defendants on the said parcels

59. It is trite law that he who alleges must prove. This is set out under Section 107(1)(2) of the *Evidence Act*, which provides as follows:

- “(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
- (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”

Sections 109 and 112 of the same Act states;

- “109. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.
- “112. In civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving that fact is upon him.”



60. 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 tilts or grazes stock or permits stock to be on, private land without the consent of the occupier thereof shall be guilty of an offence.”
61. Additionally, Black’s Law Dictionary (11th Edition, page 1810) defines trespass to land as follows:
- “An unlawful act committed against the person or property of another; especially, wrongful entry of another’s real property”
62. Manson CJ, Brennan and Toohey JJ, in *Plenty vs Dillon* (1991) 171 CLR 635 at 645:
- “Every unauthorized entry upon property is a trespass, the right of a person in possession or entitled to possession of premises to exclude others from those premises being a fundamental common law right.”
63. Furthermore, we submit that Lord Camden CJ, in *Entick V Carrington* 95 ER 807, defined the tort of trespass to land as: “Every invasion of private property, be it ever so minute, is a trespass. No man can set his foot upon my ground without my license, but he is liable to an action, though the damage be nothing, which is proved by every declaration in trespass, where the Defendant is called upon to answer for bruising the grass and even treading upon the soil. If he admits the fact, he is bound to show by way of justification, that some positive law has empowered or excused him.”
64. As rightly submitted by the Plaintiff four distinct actions that amount to trespass include the following:
- a. Entry onto another’s land without permission.
 - b. Remaining on land after permission has been withdrawn.
 - c. Placing or projecting objects onto another’s land.
 - d. Causing third parties or objects to enter onto the land.
65. Trespass refers to unjustified entry into and commission of acts injurious to the land of another without their permission. See Section 3 (3) of the *Trespass Act* and the case of Kariuki (suing as legal representative of *Eustace Karuri Githenya*) vs *Joreth Ltd & others (Civil appeal E391 of 2020/2024)* KECA 420 (KLR) (26th April 2024) (Judgment).
66. According to Supreme Court case of Uganda Justine E.M.N. Lutaaya vs Sterling Civil Engineering Co. SCCA No.11 of 2002 trespass to land occurs “when a person makes an unauthorized entry upon land, and thereby interfering, or portends to interfere, with another person’s lawful possession of that land”. Court in that case added that the tort is committed not against the land, but against person who is in actual or constructive possession of the land. It was also held that in order to succeed in such a case one must prove; that the disputed land belonged to the Plaintiff, that the Defendant had entered upon it, and that entry was unlawful in that it was made without permission or that the Defendant had no claim or right or interest in the disputed land.
67. Article 40 of *the Constitution* grants the owner the right to protection from being deprived of his land. Sections 24, 25, 26 & 27 of the *Land Registration Act* provide that the registration of a person as owner of land bestows him all the rights and privileges belonging or appurtenant thereto. Proof of trespass entails ownership and evidence of illegal entry without justification. Whoever desires a court to give a



judgment as to a legal right or liability dependent on the existence of facts, which he who asserts, must prove those facts exist.

68. From the analysis of the evidence tendered, PW1 Raphael Lewela Mbinga, in his statement which was adopted in evidence, referred to two different parcels of land, that is LR No. 12277/8 and 12277/9 as opposed to the parcels referred to in the plaint being LR No. 12177/8 and 12177/9. In his evidence in chief, he stated that the Defendants had trespassed into more than 100 acres of their land. He went on to state that the Defendants had their settlement scheme and that the Defendants had refused to participate in boundary establishment.
69. However, on cross-examination, he stated that though he had talked of trespass, there was no evidence to prove that trespass in form of a survey report. He also stated that the Defendants had been on the disputed area for more than 40 years. He further confirmed that between the Plaintiff's land and the settlement scheme, there was a buffer zone of about 20 meters wide. When questioned on the title deeds produced by the Defendants and the social amenities in the area, he stated that the said title deeds did not concern them and that there were no structures on their land. He also stated that the issue revolved around the boundary location which he stated had never been concluded.
70. From the analysis of the evidence tendered, the Defendants, DW3, DW4 and DW5 confirmed that they were not living within the disputed area. They all confirmed that they had been issued with title deeds within the settlement scheme. DW4 Daniel Nyale Ngao, stated that he had been issued with a letter of allotment in respect of the portion he occupies which is within the disputed area.
71. DW1 and DW2 both testimonies were to the effect that neither of their members had encroached into the Plaintiff's land. DW2 stated that from his constituency, only 2 people were inside the Plaintiff's land with the authority of the Plaintiff. DW1 stated that there could not have been an encroachment without a boundary. He stated that he was not aware of any encroachment by his members.
72. In the instant case, all the Defendants' witness who testified denying ever trespassing on the plaintiff's land. From the analysis of the evidence tendered it is evident that the issue of the location of the exact boundaries of the Plaintiff's suit parcel has not been settled herein and while the Plaintiff has laid claim to the dispute suit parcel the Plaintiff's witness did not produce any surveyor's report confirming actual trespass on the disputed parcel. A surveyor's report could have provided the crucial evidence regarding the extent of the trespass and the specific area of encroachment. Considering this uncertainly it is the finding of this court that the Plaintiff has not demonstrated nor proved the acts of trespass by the Defendants to its suit parcels to the satisfaction of this court.

Issue No. 3 Whether the Plaintiff is entitled to the reliefs sought

73. The Plaintiff has sought for several reliefs as pleaded in the plaint, however this court having found that the Plaintiff has failed to prove actions of trespass by the Defendants, the said reliefs are not for granting since the Plaintiff's case has not been ultimately proved to the required standard.
74. In respect to costs of the suit, as provided by Section 27 of the *Civil Procedure Act*, costs are awarded at the discretion of the court. Costs follow the event, and are ordinarily awarded to the successful litigant, unless there are circumstances warranting the court to depart from the above rule. However, in the instant case, considering the intention of the parties as was demonstrated during trial to have the boundary and survey exercise completed it would not be prudent for the Plaintiff to be condemned to bear the costs of the suit. The appropriate order would be to direct each party to bear own costs of the suit.



Conclusion

75. In conclusion, it is the finding of this court that the Plaintiff's case has not been proved to the required standard and the Plaintiff's suit is hereby dismissed. Each party to bear own costs of the suit.

DATED, SIGNED AND DELIVERED IN OPEN COURT/VIRTUALLY AT VOI THIS 19TH DAY OF JUNE 2025.

E. K. WABWOTO

JUDGE

In the presence of:-

Mr. Kurgat for Plaintiff.

Ms. Nyange for the 1st and 2nd Defendants.

Mr. Mutinda for the 3rd, to 7th, 9th to 11th, 39th, 40th, 42nd to 47th, 49th to 53rd, 55th to 60th, 62nd to 70th, 72nd to 78th, 80th, 82nd, 83rd, 86th to 91st, 93rd and 98th Defendants.

Court Assistants: Mary Ngoira and Norah Chao.

