



**Lokoel v Aberun & another (Environment and Land Appeal
E001 of 2024) [2025] KEELC 4666 (KLR) (18 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4666 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT LODWAR
ENVIRONMENT AND LAND APPEAL E001 OF 2024**

**CK NZILI, J
JUNE 18, 2025**

BETWEEN

WILSON EKALE LOKOEL APPELLANT

AND

BILLY ABERUN 1ST RESPONDENT

ELIYE SPRINGS LIMITED 2ND RESPONDENT

*(eing an appeal from the Judgment of Hon. N.M. Idagwa (PM)
in Lodwar ELC No. E002 of 2022, delivered on 16/04/2024)*

JUDGMENT

1. What is before the court is the Memorandum of Appeal dated 8/5/2024. The appellant who was the plaintiff at the lower court had sued the respondents by a plaint dated 8/2/2022, seeking a permanent injunction restraining the respondents from charging, leasing, transferring, or interfering with his Plot No. 5X7 and for removal of a container placed at its frontage. The record shows that the defendants failed to file a statement of defense and interlocutory judgment was entered on 20/12/2022, by the lower court. The 1st defendant filed a notice of appointment thereafter and sought time to put in a defense.
2. He also filed a notice of motion dated 23/2/2023, which was seeking to be allowed to defend the suit. By a ruling dated 30/5/2023, the application was dismissed for lack of merits.
3. At the trial, Wilson Ekale testified as PW1. He relied on a witness statement dated 8/2/2022 as his evidence in chief. He told the court that on 13/9/2006, he purchased a plot measuring 33 by 100 feet from an unsurveyed plot belonging to one Andrew Aberun Muya, located at Nawoitotong along Lodwar Kitale highway. That the purchase price was Kshs.90,000/=, paid a deposit of Kshs.25,000/= and the balance was used to construct a house for the seller; at which a second agreement was signed on 17/9/2007, confirming the compliance with the initial agreement. PW1 said that he took possession,



- fenced off the plot, and has been on the land which forms part of a larger portion belonging to the seller, who is the father to the 1st defendant. PW1 said that he was issued with an allotment letter on 7/10/2008 and has been paying rates with no one claiming the plot.
4. Again, PW1 told the court that in May 2018, the defendants placed a metal container in front of his plot, hence blocking its access. PW1 said that appeals and pleas for the defendants to remove the container have been unsuccessful, hence he made a report to the police and the Ministry of Lands, Physical Planning and Urban Area Management.
 5. As a result, PW1 said that on 8/11/2018, the County Physical Planner wrote a letter to the defendants, to remove the container but they refused. PW1 further, said that the County Administrators summoned the parties to his office on 12/11/2018, but were unable to resolve the dispute. As a consequence, PW1 said that he is unable to utilize his plot as the 1st defendant has moved into the houses that he has erected on the plot, on top of pulling down the fence separating the plot from the other one of the vendors.
 6. PW1 said that the defendants want to repossess his plot purporting to refund the consideration which is not acceptable to him for the sale of the land was on the basis of a willing buyer and willing seller. PW1 produced the sale agreement dated 13/9/2006, quotation dated 15/10/2006, assessment dated 17/9/2008, an allotment letter, letter dated 8/4/2009 from the Ministry of Lands, receipts dated 7/10/2008, 15/3/2012, and 15/5/2016, letters dated 8/11/2018 and 12/11/2018, and minutes dated 27/1/2019 as exhibited before the court.
 7. By an application dated 4/7/2023, the court was asked to review the ruling dated 20/1/2023. The court found no merits in the same by a ruling delivered on 8/8/2023. Though the plaintiff was given a chance to avail more witnesses, he did not do so and hence closed the case on 7/11/2023.
 8. The trial court thereafter delivered the judgment on 16/4/2024, dismissing the suit. The appellant faults the trial court for:
 - (1) Failing to hear his witnesses.
 - (2) Not considering or allowing erroneously omitted vital documents at the filing of the suit.
 - (3) Not conducting a site visit.
 - (4) Failing to allow the production of documentary evidence from the lands office.
 - (5) Granting reliefs not sought by the respondents.
 - (6) Overly relying on the respondents' evidence that was contradictory and inconsistent.
 - (7) Rendering an unjust finding.
 9. The appeal was directed to be canvassed by way of written submissions due by 3/4/2025. The role of an appellate court of the first instance is to re-hear, re-appraise, and or review the record of the court below, come up with independent findings on facts and the law while giving credit since the lower court had an opportunity to see and hear the witnesses testify. See *Gitobu Imanyara & Others -vs- Attorney General* [2016] eKLR, *Peters -vs- Sunday Post Limited* [1958] EA 424.
 10. There is no dispute that the suit at the lower court was undefended. The claim was that of trespass to land. Trespass refers to unjustified entry into the private land of another and the commission of acts therein without the consent or approval of the owner. See Section 3(3) of the *Trespass Act* (Cap 394).



11. In Kenya Power & Lighting Company Limited -vs- Fleetwood Enterprises Limited [2017] KECA 358 (KLR), the court said that trespass is actionable per se and is proved by the affected party who need not prove suffering, any loss or damage. In Aster Holdings Ltd -vs- City Council of Nairobi [2017] eKLR, the court considered the size, value, and location of the plot and the duration that the applicant had been kept off the land to grant damages. See also Caroget Investment Limited -vs- Aster Holdings Limited & 4 others [2019] KECA 79 (KLR).
12. The appellant's case is that he bought a plot from the 1st respondent's father who put him into possession in 2006, but the respondents in May 2018 placed a metal container on its frontage, hence completely denying him access to the land. Equally, the appellant pleaded and testified that the 1st respondent entered into some of the houses he had developed on the plot and took possession of them without any justification. The appellant produced ownership documents starting from the sale agreement, plot allotment letter, letter from the District Surveyor, notices from the County Physical Planner, and a demand letter dated 10/11/2018.
13. The ownership documents, reports, and maps produced by the appellant fit in the description of official documents under Section 79 and 80 of the *Evidence Act*. The said documents were not impeached by the defendants. An owner of a land has the right of access and use under Section 25(1) of the *Land Registration Act*.
14. In Mellen Mbera -vs- James Theuri Wambugu [2020] KECA 832 (KLR), the appellant had trespassed into the land and refused to vacate it claiming that it belonged to his late father. On appeal, the court found no merits in the appeal.
15. To prove trespass, all that the appellant was required to do was to prove possession, ownership and entry into it by an intruder. There is evidence that the appellant discharged the burden by availing the official documents to show that after he bought the plot, the same was demarcated and allocated to him. Ownership of the plot was not under contest. The prayer by the appellant was for permanent injunction and for the removal of the container from his land. The letter dated 25/5/2016 was clear on the plot, its area, demarcation, checking, and authentication by the County Surveyor. A letter dated 8/11/2018 by the County Physical Planner ordered the removal of the container.
16. This was clear evidence that the container was on a road reserve blocking the access of the users. The respondents had been ordered to demolish the structures in vain. The evidence by the appellant was not controverted. I find the appeal with merits. It is allowed with costs. The lower court suit is allowed in terms of prayers (a) and (b), as follows:
 - (a) An order of permanent injunction restraining the respondents from charging, leasing, transferring, or in any way interfering with the appellants possession, occupation, and use of the parcel of land known as Plot No. 5X7.
 - (b) Order to issue directing the respondents to remove the container placed in front of Plot No. 5X7.

JUDGMENT DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 18TH DAY OF JUNE 2025.

In the presence of:

Court Assistant - Dennis

Appellant in person

Respondents absent



HON. C.K. NZILI
JUDGE, ELC KITALE.

