



**Kibondori v Keror (Environment and Land Case E024 of 2024)
[2025] KEELC 6331 (KLR) (25 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6331 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND CASE E024 OF 2024
A OMBWAYO, J
SEPTEMBER 25, 2025**

BETWEEN

CHARLES ISABOKE ONYANCHA KIBONDORI PLAINTIFF

AND

ANN D KEROR DEFENDANT

JUDGMENT

Introduction

1. The Plaintiff commenced this suit vide a Complaint dated 18th March, 2024 against the Defendant seeking the following orders:
 - a. A temporary injunction in the short term and a permanent injunction in the long term to restrain the defendant by herself, her agents, servants, employees or others whatsoever from entering into, trespassing upon, cultivating, weeding, leasing out, selling, transferring, harvesting, charging or dealing in any other manner with property title number Nakuru/Olenguruone/Kiptagich/1158.
 - b. Immediate vacant possession of the suit property and in default, eviction do issue.
 - c. General damages for trespass during the last 11 years.
 - d. Special damages in the sum of Kshs. 1,500,000/= on account of avocado and tea harvested and sold for profit.
 - e. Costs of this suit together with interest at court rates.
 - f. Any other or further reliefs that the court may deem appropriate.
2. The Defendant filed her Statement of Defence dated 3rd April, 2024 where she denied the allegations in the Amended Complaint.



3. The Defence case was closed due to non-attendance and the Plaintiff's case proceeded for hearing. Plaintiff's case
4. Charles Onyancha Kibondori testified as PW1 where his witness statement dated 18th March, 2024 was adopted as his evidence in chief. He also produced the Copy of Title as PEx 1 and photos of the Defendant as PEx 2a – 2h. He also produced the documents as listed in his supplementary list of documents dated 14th October, 2024. The same were marked as PEx3-PEx6. He testified that the land belonged to him and that it measured 7 acres. He testified that he has been the owner since 1990 after being allocated by the state. It was his testimony that he took possession fenced and constructed. He went on to testify that due to land clashes, he vacated the suit land and when he returned, he found the Defendant living on the suit land and she refused to vacate.
5. It was his testimony that the Defendant sold the 300kgs trees that were on the land where she used to get Kshs. 7,200 per month. He testified that he had tried to evict her since 2004 and urged the court to assist in evicting her from the suit land.
6. That marked the close of the Plaintiff's case.

Submissions

7. Counsel for the Plaintiff filed his submissions dated 4th August, 2025 where he identified four issues for determination. The first issue was whether the Plaintiff is the registered proprietor of property title number Nakuru/Olenguruone/Kiptagich/1158. While submitting in the affirmative, he argues that evidence of the title deed and rates receipts that were produced confirmed that the Plaintiff was the registered owner of the suit parcel. He further submits that the Defendant did not plead any rights or interest in the suit land and that her failure to attend court meant that her trespass was motivated by ill will. He relied on Section 26(1) of the *Land Registration Act* and the case of *Kamoye v Tipango & 2 Others* (Environment & Land Case E011 of 2023) [2024] KEELC 4227 (KLR). It was his submission that the authenticity of the title deed was not challenged by the Defendant.
8. The second issue was whether the Defendant trespassed on the property title number Nakuru/Olenguruone/Kiptagich/1158. He referred to paragraph 5 of the Defendant's statement of defence where the Defendant admitted that she was in occupation of the suit land. He further referred to item 1 of the Defendant's list of documents headed as Commitment and signed by the Defendant which stated that she would vacate the suit parcel if she was paid Kshs. 2,500,000 by a third party. He submits that it is thus clear from the Defendant's pleadings that she trespassed onto the suit land.
9. The third issue was whether the Plaintiff is entitled to general damages for trespass. He relied on the case of *Duncan Nderitu Ndegwa v Kenya Pipeline Company Limited & Another* [2013] eKLR and urged the court to award the Plaintiff Kshs. 500,000 in general damages for trespass for over 11 years by the Defendant.
10. The final issue on special damages, he submits that the Plaintiff prayed for special damages in the sum of Kshs. 1,500,000. He submits that the Defendant earned Kshs. 7,200 per month from the harvest of tea on the suit land.

Analysis and Determination

11. I have considered the pleadings, evidence on record and submissions and I am of the view that the following issues arise for determination:
 - a. Who is the registered proprietor of the suit property?



- b. Whether there was trespass by the Defendant onto the suit property.
- c. Whether the Plaintiff is entitled to the prayers sought.
- d. Who should bear the costs of the suit.

Who is the Registered Proprietor of the Suit Property?

12. To begin with, it is noteworthy that the Defendant filed a defence dated 3rd April, 2024 but failed to adduce any evidence in support of her claim. It is therefore a fact that the Plaintiff's evidence remained uncontroverted. In the case of *Charterhouse Bank Limited (Under Statutory Management) v Frank N. Kamau* [2016] KECA 153 (KLR) the court found as follows:

“We would therefore venture to suggest that before the trial court can conclude that the plaintiff's case is not controverted or is proved on a balance of probabilities by reason of the defendant's failure to call evidence, the court must be satisfied that the plaintiff has adduced some credible and believable evidence, which can stand in the absence of rebuttal evidence by the defendant. Where the defendant has subjected the plaintiff or his witnesses to cross-examination and the evidence adduced by the plaintiff is thereby thoroughly discredited, judgment cannot be entered for the plaintiff merely because the defendant has not testified. The plaintiff must adduce evidence, which in the absence of rebuttal evidence by the defendant convinces the court that on a balance of probabilities, it proves the claim. Without such evidence, the plaintiff is not entitled to judgement merely because the defendant has not testified. The proposition that failure by the defendant to call evidence lessens the burden on the plaintiff to make out his case on a balance of probabilities...”

13. It was PW1's evidence that the Defendant had trespassed onto his suit parcel Nakuru/Olenguruone/Kiptagich/1158. Section 26 (i) of the *Registered Land Act* provides that:

“The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or 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 contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge.”

14. It is a fact that the Plaintiff produced a copy of the title deed issued to him on 28th June, 1990. It is this court's view that he is therefore the registered owner of the suit property. It is also a fact that the said title has not been challenged by the Defendant. It is my opinion that the title being an indefeasible evidence of ownership of land, the Plaintiff is therefore the registered proprietor of the suit property.

Whether There Was Trespass by the Defendant Onto the Suit Property.

15. The Plaintiff produced photographs PEx 2a – 2h which he testified that they were photos of the Defendant on the suit parcel.
16. The photographs were adopted as the Plaintiff's exhibit in support of his case and thus the same remains unchallenged. In addition, the claim by the Defendant from her pleadings that the Plaintiff sold the land to one Henry Kipruto Kosgei was never substantiated. This court therefore finds that the Defendant has trespassed into the Plaintiff's land parcel.



Whether the Plaintiff is entitled to the prayers sought.

17. Having found that the Defendant trespassed onto the Plaintiff's land, the Plaintiff is therefore entitled to the prayers sought in his plaint dated 18th March, 2024. In the case of *Duncan Nderitu Ndegwa v KP& LC Limited & Another* (2013) eKLR the court held as follows:

“...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. This court accordingly awards an amount of Kshs 100,000/= as compensation of the infringement of the Plaintiff's right to use and enjoy the suit property occasioned by the 1st and 2nd Defendants trespass”

18. Notably, the Plaintiff also sought for special damages of Kshs. 1,500,000 being costs of avocado and tea harvested and sold for profit by the Defendant. It is not in dispute that he failed to produce any material evidence in support of the same. In the case of *David Bagine v Martin Bundi* [1997] KECA 54 (KLR) the court held that:

“It has been held time and again by this court that special damages must be pleaded and strictly proved.”

19. It is this court's view that special damages ought to be strictly proved and the Plaintiff having failed to produce documentary evidence in support of the same, the said prayer fails in totality.

Who Should Bear the Costs of the Suit.

20. Costs generally follow the event, and in the present case, since the Plaintiff has been inconvenienced, I find that he is entitled to costs of the suit.
21. The upshot of the above is that the Plaintiff has proved his case on a balance of probabilities. I therefore enter judgement for the Plaintiff against the Defendant in the following terms: -
- a. A Declaration that the Plaintiff is the lawful and/or registered proprietor of the suit land, Nakuru/Olenguruone/Kiptagich/1158.
 - b. A Permanent Injunction is hereby issued restraining the Defendant, his servants and/or agents or any other person whatsoever acting on instructions and authority of the Defendant whether express or implied from taking possession, selling, disposing, alienating, charging, advertising for sale or in any manner dealing with the property known as Nakuru/Olenguruone/Kiptagich/1158
 - c. An order of vacant possession on Nakuru/Olenguruone/Kiptagich/1158 be and is hereby issued.
 - d. Kshs. 200,000/= being General Damages for trespass.
 - e. Costs of the suit. It is so ordered.

DATED, SIGNED AND DELIVERED THIS 25TH DAY OF SEPTEMBER, 2025.

HON. JUSTICE ANTONY O. OMBWAYO

ENVIRONMENT AND LAND COURT

