



Muema & 25 others v Kamau & 12 others (Environment and Land Case 147 of 2021) [2025] KEELC 6694 (KLR) (2 October 2025) (Judgment)

Neutral citation: [2025] KEELC 6694 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND CASE 147 OF 2021**

**YM ANGIMA, J
OCTOBER 2, 2025**

BETWEEN

PHILIP NGILA MUEMA & 25 OTHERS & 25 OTHERS PLAINTIFF

AND

DANIEL KAMAU & 12 OTHERS & 12 OTHERS DEFENDANT

JUDGMENT

A. Plaintiffs' Claim

1. By a plaint dated 29.07.2021 the plaintiffs sued the defendants seeking the following reliefs;
 - a. A declaration that the defendants have no interest in all those properties known as Subdivision Numbers 5861 (Original No. 5836/32) of Section III Mainland North, Subdivision NO. 5849 (Original No. 5836/14) of Section III Mainland North, Subdivision NO. 5855 (Original No. 5836/20) of Section III Mainland North, Subdivision No. 5851 (Original No. 5836/16) of Section III Mainland North, Subdivision No. 5858 (Original No. 5836/23) of Section III Mainland North, Subdivision No. 5847 (Original No. 5836/12) of Section III Mainland North, Subdivision No. 5837 (Original No. 5836/2) of Section III Mainland North, Subdivision No. 5859 (Original No. 5836/24) of Section III Mainland North, Subdivision No. 5840 (Original No. 5836/5) of Section III Mainland North, Subdivision No. 5850 (Original No. 5836/15) of Section III Mainland North, Subdivision No. 5857 (Original No. 5836/22) of Section III Mainland North, Subdivision No. 5845 (Original No. 5836/10) of Section III Mainland North, Subdivision No. 589 (Original No. 5836/4) of Section III Mainland North, Subdivision No. 5842 (Original No. 5836/14) of Section III Mainland North, Subdivision No. 5852 (Original No. 5836/17) of III Mainland North, Subdivision No. 5842 (Original No. 5836/7) of Section III Mainland North, Subdivision No. 5838 (Original No. 5836/3) of Section III Mainland North, Subdivision No. 6837 (Original No. 4382/17)



of Section III Mainland North, Subdivision No. 5839 (Original No. 5836/4) of Section III Mainland North, the same being owned by the plaintiffs.

- b. Eviction of the defendants from all those properties known as Subdivision Numbers 5861 (Original No. 5836/32) of Section III Mainland North, Subdivision No. 5849 (Original No. 5836/14) of III Mainland North, Subdivision No. 5855 (Original No. 5836/20) of Section III Mainland North, Subdivision No. 5851 (Original No. 5836/16) of Section III Mainland North, Subdivision No. 5858 (Original No. 5836/23) of Section III Mainland North, Subdivision No. 5847 (Original No. 5836/12) of Section III Mainland North, Subdivision No. 5837 (Original No. 5836/2) of Section III Mainland North, Subdivision No. 5859 (Original No. 5836/24) of Section III Mainland North, Subdivision No. 5840 No. 5836/5) of Section III Mainland North, Subdivision No. 5850 (Original No. 5836/15) of Section III Mainland North, Subdivision No. 5857 (Original No. 5836/22) of Section III Mainland North, Subdivision No. 5845 (Original No. 5836/10) of Section III Mainland North, Subdivision No. 589 (Original No. 5836/4) of Section III Mainland North, Subdivision No. 5842 (Original No. 5836/14) of Section III Mainland North, Subdivision No. 5852 (Original No. 5836/17) of Section III Mainland North, Subdivision No. 5842 (Original No. 5836/7) of Section III Mainland North, Subdivision No. 5838 (Original No. 5836/3) of Section III Mainland North, Subdivision No. 6837 (Original No. 4382/17) of Section III Mainland North, Subdivision No. 5839 (Original No. 5836/4) of Section III Mainland North.
 - c. General damages
 - d. Costs and interest at court rates
2. The plaintiffs pleaded that at all material times they were the registered proprietors of the various parcels of land specified in paragraph 3 of the plaint. They pleaded that in violation of their property rights, the defendants had without any lawful justification or excuse trespassed into the suit properties and erected temporary structures thereon.
 3. The plaintiffs further pleaded that in spite of issuance of a demand and notice of intention to sue the defendants had failed to vacate the suit properties thereby making the suit necessary. The details of the suit properties were particularized as follows;
 - a. Subdivision Number 5861 (Original No. 5836/26) of Section III Mainland North,
 - b. Subdivision No. 5849 (Original No. 5836/14) of Section III Mainland North,
 - c. Subdivision No. 5855 (Original No. 5836/20) of Section III Mainland North,
 - d. Subdivision No. 5851 (Original No. 5836/16) Of Section III Mainland North,
 - e. Subdivision No. 5858 (Original No. 5836/23) of Section III Mainland North,
 - f. Subdivision No. 5847 (Original No. 5836/12) of Section III Mainland North,
 - g. Subdivision No. 5837 (Original No. 5836/2) of Section III Mainland North,
 - h. Subdivision No. 5859 (Original No. 5836/24) of Section III Mainland North,
 - i. Subdivision No. 5840 (Original No. 5836/5) of Section III Mainland North,
 - j. Subdivision No. 5850 (Original No. 5836/15) of Section III Mainland North,
 - k. Subdivision No. 5857 (Original No. 5836/22) of Section III Mainland North,



- l. Subdivision No. 5845 (Original No. 5836/10) of Section III Mainland North,
- m. Subdivision No. 589 (Original No. 5836/4) of Section III Mainland North,
- n. Subdivision No. 5842 (Original No. 5936/14) of Section III Mainland North,
- o. Subdivision No. 5852 (Original No. 5836/17) of Section III Mainland North,
- p. Subdivision No. 5842 (Original No. 5836/7) of Section III Mainland North,
- q. Subdivision No. 5838 (Original No. 5836/3) of Section 111 Mainland North,
- r. Subdivision No. 6837 (Original No. 4382/17) of Section III Mainland North,
- s. Subdivision No. 5839 (Original No. 5836/4) of Section III Mainland North,

B. 1st Defendants' defence

- 4. The 1st defendant filed a statement of defence dated 13.03.2025 denying liability for the plaintiffs' claim. He denied that the plaintiffs were the registered owners of the suit properties. He also denied having trespassed on the suit properties and put the plaintiffs to strict proof thereof.
- 5. The 1st defendant pleaded that he bought a piece of land from an entity known as Mbuyuni Committee which was seeking to obtain ownership thereof from one Zahra Salim Bin Islam. As such, the 1st defendant denied the plaintiffs' claim in its entirety and sought its dismissal with costs.

C. 2nd – 13th defendants' defence

- 6. The 2nd to 13th defendants filed a written statement of defence dated 10.01.2022 denying the plaintiffs' claim in its entirety. They denied that the plaintiffs were the registered proprietors of the suit properties and put them to strict proof thereof. They also denied having trespassed on the suit properties.
- 7. The defendants pleaded that they were living on what they considered to be their ancestral land where their forefathers had lived for a long time hence they were not aware of the plaintiffs' claim. They further pleaded that the plaintiffs could not possibly have obtained valid titles to the suit properties since the subject land had never been publicly adjudicated and titles issued. As a result, they sought dismissal of the plaintiffs' suit with costs.

D. Trial of the action

- 8. At the trial hereof, the 16th defendant, Fredrick Odhiambo, testified on his own behalf and on behalf of his co-plaintiffs. He adopted his witness statement as his evidence in chief and produced the documents in the plaintiffs' 3 lists of documents as exhibits. The gist of the plaintiffs' evidence was that they were the registered owners of the suit properties hence the defendants had no right to enter or occupy the same.
- 9. The 1st defendant testified on his own behalf as the sole witness and closed his case. He adopted the contents of his witness statement dated 13.03.2025 as his evidence in chief and produced the documents in his list of documents as exhibits. The gist of his defence was that he lawfully bought the piece of land he was occupying from the Mbuyuni committee in 2019.
- 10. The 13th defendant testified at the trial on his own behalf and on behalf of the 2nd – 13th defendants. He adopted his witness statement as his evidence in chief. He also produced the 17 documents in their list of documents as exhibits. The gist of his evidence was the defendants were residing on plot No.



109 which was government land and that they had been in occupation thereof for 50 years. He denied knowledge of sub-division of the land or issuance of title documents to the plaintiffs.

E. Directions on submissions

11. Upon conclusion of the trial, the parties were given timelines within which to file and exchange their respective submissions. However, the record shows that none of the parties had filed submission by the time of preparation of the judgment.

F. Issues for determination

12. The material on record shows that the parties did not file an agreed statement of issues for determination. In that case, the court shall frame the issues for determination as stipulated under Order 15 Rule 2 of the Civil Procedure Rules. Under the said rule, the court may frame issues from any of the following;
 - a. The allegations made in the pleadings or in answers to interrogatories.
 - b. The allegations made on oath by or on behalf of the parties.
 - c. The contents of documents produced by the parties.
13. The court has considered the pleadings, evidence and documents on record in this matter. The court is of the view the following are the main issues which arise for determination herein;
 - a. Whether the plaintiffs are the registered owners of the suit properties.
 - b. Whether the plaintiffs have proved their claim against the defendants.
 - c. Whether the plaintiffs are entitled to the reliefs sought in the suit.
 - d. Who shall bear costs of the suit.

G. Analysis and determination

a. Whether the plaintiffs are the registered owners of the suit properties

14. The court has considered the material and evidence on record on this issue. The court has noted that the plaintiffs produced copies of their certificates of title as evidence of their ownership of the suit properties. The 1st defendant's claim that he bought his piece of land from Mbuyuni committee was not adequately substantiated. None of the agreements which the 1st defendant referred to made reference to any of the suit properties. Moreover, there was no credible evidence before court to demonstrate that the said committee had a legal right to sell the piece of land to the 1st defendant.
15. The basis of the 2nd – 13th defendants' claim on the suit properties was twofold. First, it was claimed that it was their ancestral land. Second, that it was unalienated government land which had not been adjudicated upon hence the plaintiffs had no legitimate claim to it.
16. Apart from the defendants' bare statement that the suit properties constituted their ancestral land, there was no credible evidence on record to demonstrate the allegation. If the defendants had truly occupied the suit land as ancestral land for 50 years how come they never took steps to have their interest in the land legally documented and protected for so long? The documents on record show that their earliest claim over the land was made to the National Land Commission (NLC) in 2017. The defendants' Community Based Organization (CBO) was registered in 2018 whereas the NLC commenced an inquiry into alleged historical injustice in 2021 or thereabouts. In contrast, the



plaintiffs' evidence shows that they purchased the suit properties much earlier and obtained their title documents in 2011.

17. The court is not satisfied that the suit properties constitute unalienated government land which could be allocated to the defendants. The material on record shows that by the time the defendants or the Mbuyuni committee sought adjudication and allocation of the land in 2017 the subject land was already titled and in private hands. The defendants have not expressly pleaded any fraud or particulars of fraud against the plaintiffs in their acquisition of the suit properties. There was also no credible evidence of fraud tendered at the trial. The court is, therefore, satisfied that the plaintiffs are the lawfully registered proprietors of the suit properties.

b. Whether the plaintiffs have proved their claim against the defendants

18. The court has found that the plaintiffs are the legitimate owners of the suit properties. The defendants have not demonstrated any lawful justification or excuse for their entry and occupation of the suit properties. The 1st defendant has failed to demonstrate that he validly purchased any of the suit properties from the Mbuyuni committee members. The 2nd – 13th defendants have also failed to demonstrate any legitimate claim over the suit properties.
19. The claim by the Mbuyuni committee or the CBO of an historical injustice was never demonstrated either before this court or before the NLC. There is no indication on record to demonstrate if the inquiry by the NLC into the alleged historical injustice was ever conducted to its logical conclusion. There is nothing on record to demonstrate the outcome or recommendation of the NLC. The court is not aware of any law which would entitle it to deprive a registered proprietor of his interest in land on account of an alleged historical injustice. The court is thus satisfied that the plaintiffs have proved their claim against the defendants to the required standard.

c. Whether the plaintiffs are entitled to the reliefs sought in the suit

20. The court has already found that the plaintiffs are the legitimate owners of the suit properties and that they have proved their case against the defendants. The plaintiffs are entitled to enjoy all the rights of a proprietor as stipulated under Sections 24 and 25 *Land Registration Act*. As a result, the court takes the view that the plaintiffs are entitled to the reliefs sought in the plaint.
21. Since the parties did not file any submissions, the court did not have the benefit of considering their submissions in the assessment of general damages. The court is, however, aware that the tort of trespass is actionable per se. A successful litigant does not have to demonstrate having suffered any particular damage for the law presumes such damage to be a natural consequence of trespass.
22. In the case of *Duncan Nderitu Ndegwa vs Kenya Power and Lighting Co & Another* [2013] eKLR the court awarded general damages of the Kshs.100,000.00 for trespass to land. The court is of the view that each plaintiff should be awarded a sum of Kshs.100,000.00 to be paid by the defendants jointly and severally. Thus the total amount the defendants shall be liable to pay is Kshs.2,600,000/= since there are 26 plaintiffs in the suit .

d. Who shall bear the costs of the suit

23. Although costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the *Civil Procedure Act* (Cap 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. See *Hussein Janmohamed & Sons –vs- Twentsche Overseas Trading Co. Ltd*



[1967] EA 287. The court finds no good reason to depart from the general rule. As a consequence the plaintiffs shall be awarded costs of the suit.

H. Conclusion and disposal orders

24. The upshot of the foregoing is that the court finds and holds that the plaintiffs have proved their claim against the defendants on a balance of probabilities. As a consequence, judgment is hereby entered for the plaintiffs against the defendants jointly and severally as follows;
- a. A declaration that the defendants have no interest in all those properties known as Subdivision Numbers 5861 (Original No. 5836/32) of Section III Mainland North, Subdivision NO. 5849 (Original No. 5836/14) of Section III Mainland North, Subdivision NO. 5855 (Original No. 5836/20) of Section III Mainland North, Subdivision No. 5851 (Original No. 5836/16) of Section III Mainland North, Subdivision No. 5858 (Original No. 5836/23) of Section III Mainland North, Subdivision No. 5847 (Original No. 5836/12) of Section III Mainland North, Subdivision No. 5837 (Original No. 5836/2) of Section III Mainland North, Subdivision No. 5859 (Original No. 5836/24) of Section III Mainland North, Subdivision No. 5840 (Original No. 5836/5) of Section III Mainland North, Subdivision No. 5850 (Original No. 5836/15) of Section III Mainland North, Subdivision No. 5857 (Original No. 5836/22) of Section III Mainland North, Subdivision No. 5845 (Original No. 5836/10) of Section III Mainland North, Subdivision No. 589 (Original No. 5836/4) of Section III Mainland North, Subdivision No. 5842 (Original No. 5836/14) of Section III Mainland North, Subdivision No. 5852 (Original No. 5836/17) of III Mainland North, Subdivision No. 5842 (Original No. 5836/7) of Section III Mainland North, Subdivision No. 5838 (Original No. 5836/3) of Section III Mainland North, Subdivision No. 6837 (Original No. 4382/17) of Section III Mainland North, Subdivision No. 5839 (Original No. 5836/4) of Section III Mainland North, the same being owned by the plaintiffs.
 - b. An eviction of the defendants from all those properties known as Subdivision Numbers 5861 (Original No. 5836/32) of Section III Mainland North, Subdivision No. 5849 (Original No, 5836/14) of III Mainland North, Subdivision No. 5855 (Original No. 5836/20) of Section III Mainland North, Subdivision No. 5851 (Original No. 5836/16) of Section III Mainland North, Subdivision No. 5858 (Original No. 5836/23) of Section III Mainland North, Subdivision No. 5847 (Original No. 5836/12) of Section III Mainland North, Subdivision No. 5837 (Original No. 5836/2) of Section III Mainland North, Subdivision No. 5859 (Original No. 5836/24) of Section III Mainland North, Subdivision No. 5840 (Original No. 5836/5) of Section III Mainland North, Subdivision No. 5850 (Original No. 5836/15) of Section III Mainland North, Subdivision No. 5857 (Original No. 5836/22) of Section III Mainland North, Subdivision No. 5845 (Original No. 5836/10) of Section III Mainland North, Subdivision No. 589 (Original No. 5836/4) of Section III Mainland North, Subdivision No. 5842 (Original No. 5836/14) of Section III Mainland North, Subdivision No. 5852 (Original No. 5836/17) of Section III Mainland North, Subdivision No. 5842 (Original No. 5836/7) of Section III Mainland North, Subdivision No. 5838 (Original No. 5836/3) of Section III Mainland North, Subdivision No. 6837 (Original No. 4382/17) of Section III Mainland North, Subdivision No. 5839 (Original No. 5836/4) of Section III Mainland North.
 - c. The plaintiffs are hereby awarded general damages Kshs. 2,600,000 for trespass against the defendants jointly and severally.
 - d. The plaintiffs are hereby awarded costs of the suit.



It is so decided

**JUDGMENT DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA
MICROSOFT TEAMS ON THIS 2ND DAY OF OCTOBER 2025.**

.....

Y. M. ANGIMA

JUDGE

In the presence of:

Court assistant Gillian

Mr. Wameyo for plaintiffs

Ms. Seif Omar for 1st defendant

Mr. Magolo for 2nd – 13th defendant

