



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Olang v Nuaga alias Lucas Njagi Njeru & 13 others (Environment and Land
Case 52 of 2019) [2025] KEELC 6989 (KLR) (15 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 6989 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND CASE 52 OF 2019
SM KIBUNJA, J
OCTOBER 15, 2025

BETWEEN

MARGARET AKOTH OLANG PLAINTIFF

AND

LUCAS NUAGA ALIAS LUCAS NJAGI NJERU 1ST DEFENDANT
MARY YOSI 2ND DEFENDANT
MARGRET MUENI 3RD DEFENDANT
PAUL MUTINDA 4TH DEFENDANT
DANIEL MAKUNYI MWITHI 5TH DEFENDANT
ANDEGE 6TH DEFENDANT
CLARA KAKULA 7TH DEFENDANT
PATRICIA MUSINI 8TH DEFENDANT
REV. ERNEST OMBEVA 9TH DEFENDANT
SIMON D. WEKESA 10TH DEFENDANT
SAMUEL OUMA AWUOR 11TH DEFENDANT
TITUS CALEB WEGULO 12TH DEFENDANT
MIRRIAM WANJIRU NJERU 13TH DEFENDANT
CATHERINE WAITHERA MUHOHO 14TH DEFENDANT



JUDGMENT

1. The plaintiff commenced this suit through the plaint dated 20th March 2019, against the defendants, averring inter alia that she is the registered owner of a parcel of land Mombasa/Block I/ MS/1668 measuring 0.317 ha, the suit property, and has been paying the required rent and rates; that the defendants trespassed onto the suit property and have prevented her use and quiet enjoyment of the said property; that she has suffered loss and gave particulars of damage on the suit property such as the defendants erecting houses on the suit property thereby defacing and devaluing the same and so forth; that she attempted to resolve the dispute through a meeting held on 5th February 2019 at the Likoni Deputy County Commissioner's office but there was no amicable settlement, and she filed this suit praying for the following orders against the defendants:
 - a. "Eviction of the Defendants, their agents, servants from the suit property.
 - b. A permanent injunction restraining the defendants, whether by themselves, or their servants or agents or otherwise howsoever, from remaining on or continuing in occupation of the suit property.
 - c. General damages for trespass and depriving the plaintiff enjoyment and use of the plaintiff's land.
 - d. Costs of this suit.
 - e. Any other relief as may appear just and proper to this Honourable Court."
2. The suit was heard *ex parte* and a judgment thereof delivered on 26th June 2023 after the defendants failed to file a defence. However, on 6th December 2023 the *ex parte* judgement was set aside on application by the defendants dated 17th August 2023, and were granted thirty days to file defence. The defendants failed to comply with the timelines set for filing a defence, and on 12th February 2024 the court struck out their Defence and Counterclaim dated 5th February 2024 that was filed outside time and without leave. The Defendants then filed another application dated 20th February 2024 seeking for inter alia enlargement of time to comply with the order of 6th December 2023, and leave to enter appearance and file defence. The application was heard and found to *res judicata* through the ruling dated 25th September 2024. The defendants were not done, and filed a fresh suit being ELCC No. E065 of 2025, and sought to consolidate it with this suit, but their application was rejected on 18th June 2025. The hearing in this suit then proceeded.
3. The plaintiff testified as PW1, and adopted her statement dated 20th March 2019, as her evidence in chief. She produced the documents in her list of documents dated 20th March 2019 as exhibits. It was her case that she has been the registered owner of the suit property since 2011 and has been paying rates. That the defendants entered the suit property without permission which forced her to report to the chief. That the 11th defendant approached her to sell the land to him for purposes of building a school, but she declined. She testified that she bought the land while it was vacant but in 2009 and the title was issued to her in 2011. That when she discovered that there were people on the suit property, she instructed an advocate who is now deceased, to serve notices to vacate upon them. She then went to the area Chief and District Officer with a view of getting those people vacate, before getting her current lawyer who filed this suit. During cross-examination, PW1 testified that the suit property belonged to the defunct Mombasa Municipal Council before it was allocated to her, and it was vacant at the time.



She also stated that there are no graves on the suit property. She added that she has not constructed a house on the suit property, because of the people who had trespassed on it.

4. The counsel for the defendants closed their case, without calling any witnesses as they had not filed any statement of defence.
5. The court gave parties fourteen days to file and exchange submissions, starting with the plaintiff. The learned counsel for the plaintiff filed their submissions dated 8th May 2024, which the court has considered.
6. The following are the issues for the court's determinations:
 - a. Who is the registered and legal owner of the suit property.
 - b. Whether the defendants have trespassed onto the suit property.
 - c. What relief is the plaintiff entitled to.
 - d. Who bears the costs of the suit?
7. The court has carefully considered the pleadings, oral and documentary evidence, submissions by counsel for the plaintiff, superior court decisions cited thereon and come to the following determinations:

- a. It is obvious that the plaintiff's claim is undefended as there is no statement of defence filed by or on behalf of the defendants as can be discerned in paragraph (2) above. One would therefore think that the prayers sought by the plaintiff should be granted automatically, but that is not the case, as the court has the duty to satisfy itself that the plaintiff has proved her claim on a balance of probabilities. In the case of *Karugi & Another versus Kabiya & 3 Others* [1983] KECA 38 (KLR), Hancox, JA. Stated as follows on the standard of proof in matters that are undefended:

“I wholly agree with Chesoni Ag JA (whose judgment I have had the advantage of reading in draft), that there was not a shred of admissible evidence to connect the respondents with that which was done by the authorities concerned. I agree with the trial judge that, on the available material, it was they who should have been sued. Neither can I agree with Mr. Waweru that the burden of proof is in any way lessened because the case is heard by way of formal proof. The burden on the plaintiff to prove his case remains the same, though it is true that, where the matter is not defended, or, as here, validly defended that burden may become easier to discharge.”

And Plat Ag. JA. held:

“The plaintiff has therefore to prove his case. To do so he calls evidence, such evidence before the court, the court may consider it unchallenged and proceed upon it, unless it is clear that it is intrinsically unreliable. No court will believe that the noon is actually the sun however unchallenged that statement may be.”

- b. The plaintiff has proved that she has been the registered owner of the suit property since 14th June 2011. The Registered *Land Act* Chapter 300 of Laws of Kenya (repealed) was the applicable statute in force at that time, and section 32 (2) thereof provided that a certificate of title shall be prima facie evidence of the entries in the register. Further section 27 provided that registration vests absolute ownership of property in the person registered and section 28



provided that those rights cannot be defeated except as provided by the said Act. The only time the title would not stand is where it is proved that it was obtained through fraud or mistake as provided in various sections in the Act. The plaintiff's title remains unimpugned, as defendants failed to file defence to challenge her title.

- c. On the issue of trespass, the plaintiff testified that the defendants had moved onto the suit property without her consent, and she has also relied on the demand letter by counsel dated 4th March 2019, which again remains uncontested. I find there is sufficient evidence to show that the defendants have trespassed onto the suit property.
 - d. One of the reliefs sought by the plaintiff is general damages for trespass. In the case of Duncan Nderitu Ndegwa versus Kenya Pipeline Company Limited and Another (2013) eKLR the court held that the damages is the difference between the value of the land before the acts of trespass, and immediately thereafter. That as the plaintiff did not provide a valuation report to show the extent of the damages to the land, I will award her Kshs.100,000/- as damages.
 - e. Other prayers sought by the plaintiff are of eviction of the defendants, their servants or agents, and permanent injunction to restrain them from entering onto the suit property. The court finds the plaintiff is entitled to those reliefs.
 - f. Under section 27 of the *Civil Procedure Act* chapter 21 of Laws of Kenya, costs follow the event unless where there is good reason to depart from that edict. That as the plaintiff came to court due to the defendants' action of trespassing onto her land, and in view of the observed theatrics since, I find the plaintiff is entitled to costs.
8. From the foregoing conclusions, the court finds the plaintiff has proved her claim against defendants in accordance with the law. The court therefore enters judgement against the defendants and orders as follows:
- a. That the defendants are given ninety (90) days from today, within which to vacate from the suit property, and give the plaintiff vacant possession, and in default, eviction orders to issue.
 - b. That upon giving vacant possession or being evicted the defendants shall remain permanently restrained from remaining on or continuing in occupation of the suit property.
 - c. The defendants to pay the plaintiff general damages for trespass assessed at Kshs.100,000/- [one hundred thousand].
 - d. The defendants to bear the costs of this suit.

Orders accordingly.

DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 15TH DAY OF OCTOBER 2025.

S. M. KIBUNJA, J.

ELC MOMBASA.

In The Presence:

Plaintiff : Mr. Jengo

Defendant : M/s Sindinyu

Kalekye-court Assistant.

