



REPUBLIC OF KENYA



Tamrock Concrete Company Limited v Mambo & 19 others (Environment and Land Case 65 of 2019) [2025] KEELC 6815 (KLR) (1 October 2025) (Judgment)

Neutral citation: [2025] KEELC 6815 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND CASE 65 OF 2019
A NYUKURI, J
OCTOBER 1, 2025**

BETWEEN

TAMROCK CONCRETE COMPANY LIMITED PLAINTIFF

AND

BRAYAN MAMBO & 19 OTHERS & 19 OTHERS & 19 OTHERS . DEFENDANT

JUDGMENT

1. Vide a plaint dated 10th June 2019, the plaintiff sought against the defendants the following orders jointly and severally;
 - a. A declaration that the 18th, 19th and 20th defendants have breached their constitutional duty in respect to the plaintiff's property Land Reference Number 11895/9 Mavoko in Machakos County.
 - b. A declaration that the persons who are occupying the plaintiff's parcel of land land L.R No. 11895/9 Mavoko in Machakos County are squatters and their occupation and their structures whether temporary or permanent is illegal and unlawful and violates the plaintiff's right of ownership of the suit property.
 - c. A mandatory injunction to remove all squatters, Trespassers, servants, employees, third parties or agents and from all that parcel of land situate North West of Machakos County containing by measurement One Two decimal (12.15) Hectares or thereabout that is to say Land reference number 11895/9 or in the alternative,
 - d. An order evicting all squatters, trespassers, servants, employees, third parties or agents and from all that parcel of land situate North West of Machakos County containing by measurement One Two decimal (12.15) Hectares or thereabout that is to say Land reference number 11895/9 Mavoko in Machakos County.



- e. An order that the costs of eviction as prayed in (c) or (d) above be borne by the defendants.
 - f. An order for mesne profits from the time of the illegal and unlawful occupation of the suit property Land Reference Number 11895/9 Mavoko in Machakos County.
 - g. In the alternative, an order for compensation by the 20th defendant for breach of duty of the suit property Land Reference Number 11895/9 Land Reference Number 11895/9 Mavoko in machakos County at the market value.
 - h. Costs of the suits and (e) and (f) above.
2. It was the plaintiff's assertion that it is the registered proprietor and entitled to possession of all that parcel known as Land Reference Number 11895/9 Mavoko in Machakos County measuring 12.15 Hectares (hereinafter referred to as the suit property). The plaintiff described the 1st to 17th defendants as squatters who had invaded the suit property, squatted and erected structures thereon without consent or authority of the plaintiff with intention to displace the plaintiff. It stated that at all material times it had notified the 18th, 19th, and 20th defendants about the illegal and unlawful entry and occupation of its property by the 1st to 17th defendants and that it is the duty of the 18th and 19th defendants to protect the suit property from unlawful and illegal occupation by squatters. It blamed the 18th, 19th and 20th defendants of both failure and negligence to act as per their Constitutional mandate to protect the plaintiff's property. It set out particulars of negligence of the 18th defendant as being failure to instruct the 19th defendant to protect the suit property; ignoring the plight of the plaintiff in respect to the suit property; failure to admonish the 19th defendant for not heeding to the complaint of the plaintiff, and refusing and ignoring to carry out its Constitutional duty in respect of the suit property and failure to stop the illegal occupation of the suit property.
 3. Concerning the 19th defendant, the plaintiff's complaint was that it was negligent in that it failed to protect the suit property despite the plaintiff's complaint, refused to carry out its constitutional duty in respect to the suit property; ignored and refused to evict trespassers and squatters on the suit property and that it failed to stop the illegal occupation of the suit property. Regarding the 20th defendant, the plaintiff blamed them of dereliction of duty; failing to advise the 18th and 19th defendants on the consequences of the illegal occupation of the suit property by the 1st to 17th defendants and failing to take action to stop the illegal occupation of the suit property.
 4. Despite service there was no appearance on the part of the 1st to 17th defendants. The 18th, 19th, and 20th defendants filed their statement of defence dated 15th, August 2019. They denied the plaintiff's claim and stated that they were strangers to the averments in the plaint. They stated that they were not in any way affiliated with the 1st to 17th defendants. They denied the particulars of negligence and dereliction of duty. They stated that their duty to maintain law and order is owed to the general public and not to the plaintiff alone. They stated that the plaintiff had failed to demonstrate the steps it has taken in protecting its property from being invaded by squatters.
 5. The suit proceeded by way of oral evidence whereof the plaintiff presented one witness. No evidence was presented by the defendants.

Plaintiff's evidence

6. PW1 was Gopal Patel, a director of the plaintiff. He adopted his witness statement filed on 12th June 2019 as his evidence in chief and produced documents attached to the list of documents dated 15th January 2024 as Plaintiff Exhibit numbers 1 to 8.



7. The witness stated that pursuant to a Grant registered as L. R Number 51760/1, the plaintiff was allotted all that parcel of land situated in Mavoko in Machakos County containing in measurements 12. 15 Hectares being L.R. Number 11895/9. He stated that the grant was issued in the year 2000 and the plaintiff has been in possession of the suit property since then, paying the requisite taxes to both the County and National Governments as required by law. He also stated that sometimes in 2012, the plaintiff noticed that trespassers had encroached into the suit property prompting him to cause a notice to be published in the daily newspaper warning the public against illegal entry into the suit property. That the trespassers did not heed his warning and continued to illegally occupy the suit property.
8. He stated that he had notified the relevant Government institutions about the trespass but that they have failed to protect the plaintiff from illegal actions. It was also his testimony that the plaintiff has a constitutional right to acquire and own property in the Republic of Kenya and that he was apprehensive that the squatters have the intention of finally displacing the plaintiff and violate its right to the suit property.
9. The witness produced the Grant; rent clearance certificate; rates clearance certificate; rates payment receipts; caveat in the Daily Nation newspaper; documents showing advertisement fee, demand letter and feasibility report.

Analysis and determination

10. Having considered the pleadings as well as the plaintiff's testimony, the issues that arise for the court's determination are whether the 1st to 17th defendants have trespassed on the suit property and whether the 18th, 19th and 20th defendants were negligent in executing their Constitutional duties.
11. Article 40 (1) of *the Constitution* of Kenya protects the right of every person to own property in any part of the country.
12. Section 26 of the *land registration act* provide for indefeasibility of title as follows;

“Certificate of title to be held as conclusive evidence of proprietorship

 - (1) 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, except—
 - (a) On the ground of fraud or misrepresentation to which the person is proved to be a party; or
 - (b) Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”
13. Therefore, unless there is proof that the acquisition of title by a registered proprietor was by fraud, misrepresentation, illegality or corruption, registration vests in a proprietor of land, absolute and indefeasible rights.
14. Sections 24 and 25 of the *Land Registration Act* provide for interests and rights of registered owners of land as follows;



24. Interest conferred by registration
- 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.
25. Rights of a proprietor
- (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.
 - (2) Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee.
15. It follows therefore, that registration of land confers on the owner, the right to enjoy the property to the exclusion of third parties subject only to overriding interests prescribed in section 28 of the [Land Registration Act](#).
16. In the instant case, the plaintiff produced a Grant dated 18th February 1991 showing that it has a registered leasehold interest in the suit property with effect from 1st August 1990, for a term of 45 years. The plaintiff also demonstrated payment of land rent and rates and therefore, I am satisfied that it has demonstrated that it is the lawful registered proprietor of the suit property. None of the defendants contested this registration or averred that it was acquired unlawfully and therefore the plaintiff having shown that they are the lawful registered proprietors of the suit property, are entitled to legal protection of the same. The 1st to 17th defendants did not deny trespassing on the suit property.
17. Section 3 of the [Trespass Act](#) states as follows;
- “Any person who without reasonable excuse enters, is or remains upon, or erects any structure on or cultivates or tills, or grazes stock or permits stock to be on, private land without the consent of the occupier thereof shall be guilty of an offence.”
18. The Blacks Law Dictionary 11th Edition defines “trespass” as;
- “An unlawful act committed against the property of another especially wrongful entry on another’s real property.”



19. In the instant case, the plaintiff has shown that it is the registered proprietor of the suit property and maintained that it did not grant consent or authority to the 1st to 17th defendants to enter and occupy the suit property. These defendants have not demonstrated to this court any lawful justification as to why they entered the suit property or occupied the same in view of the fact that they are not the owners thereof. In the premises, I find and hold that the 1st to 17th defendants have trespassed on the suit property. A squatter is one who occupies another's unoccupied land without paying rent and without the owner's permission. Therefore, in view of the evidence provided by the plaintiff, I find and hold that the 1st to 17th defendants are both trespassers and squatters on the suit property.
20. The plaintiff sought mesne profits in respect of the unlawful occupation of the suit property by the 1st to 17th defendants. Mesne profits are defined in the Blacks Law Dictionary 11th Edition as profits of an estate received by a tenant in wrongful possession between two dates.
21. In the case of *Rajan Shah T/A Rajan S. Shah & Partners v Bipin P. Shah* [2016]e KLR, the court defined mesne profits as follows;

“Mesne profits are the rents and profits which a trespasser has or might have received or made during his occupation of the premises, and which therefore he must pay over to the true owner as compensation for the tort which he has committed. A claim for rent is therefore liquidated while a claim for mesne profits is always unliquidated.

In *Bramwell v Bramwell*, Justice Goddard stated that "... mesne profits is only another term for damages for trespass, damages which arise from the particular relationship of landlord and tenant." Similarly, in an Australian case, *Williams & Bradley v Tobiasen* it was stated that these words: "Mesne profits are the pecuniary benefits deemed to be lost to the person entitled to possession of land, or to rents and profits, by reason of his being wrongly excluded there from.

The wrongful occupant is a trespasser, and the remedy rests on that fact. The action is based on the claimant's possession, or right to possession, which has been interfered with.

A more useful description of mesne profits can be found in Halsbury's Laws of England, which defines mesne profits as an action by a land owner against another who is trespassing on the owner's lands and who has deprived the owner of income that otherwise may have been obtained from the use of the land. The landlord may recover in an action for mesne profits the damages which he has suffered through being out of possession of the land. Mesne profits being damages for trespass can only be claimed from the date when the defendant ceased to hold the premises as a tenant and became a trespasser. The action for mesne profits does not lie unless either the landlord has recovered possession, or the tenant's interest in the land has come to an end.

Halsburys, op. cit, 4th, above, suggests that where mesne profits are awarded they usually follow the previous rent rate and in the absence of that, a fair market value rent.

The Black's Law Dictionary defines mesne profits as: - "the profits of an estate received by a tenant in wrongful possession between (2) two dates." The Concise Oxford English Dictionary defines mesne profits as: - "the profits of an estate received by a tenant in wrongful possession and recoverable by the Landlord."



22. The Court of Appeal in the case of Attorney General v Halal Meat Products Limited [2016] eKLR stated as follows: -

“It follows therefore that where a person is wrongfully deprived of his property he/she is entitled to damages known as mesne profits for loss suffered as a result of the wrongful period of occupation of his/her property by another. See McGregor on Damages, 18thEd. para 34-42.”

23. It is clear therefore that mesne profits are damages which a trespasser might have received for the period the trespasser has deprived the owner the use of his or her land. As mesne profits are damages, they must not only be pleaded, but the same must also be strictly proved. In the instant suit, the plaintiff sought mesne profits but in both its pleadings and evidence failed to specify what the defendants received or would have received as profits in regard to the trespass of the suit property. No valuation or any other evidence was tendered in respect to this claim. In the premises, I therefore find and hold that the claim for mesne profits in this matter was not proved and I decline to grant the same.

24. On whether the 18th, 19th, and 20th defendants breached their Constitutional duties, I have considered the pleadings and evidence. The plaintiff did not specify the constitutional provisions placing specific duties on the said defendants specifically in regard to the suit property and the manner in which the defendants failed to execute those duties. The 18th defendant is the Ministry of Interior and Coordination of National Government and the plaintiff did not state the manner in which that Ministry violated its duty when the 1st to 17th defendants entered the suit property. According to him, he realized that the 1st to 17th defendants had entered his land. I do not think that it is the duty of the 18th defendant to guard all the parcels of land in Kenya for purposes of stopping trespass. That applies to the Inspector General of police who is the 19th Defendant. Besides, the plaintiff has not informed this court how the 20th defendant failed in his duty when the 1st to 17th defendants entered its land. In the premises, I find no evidence of negligence or dereliction of duty on the part of the 18th, 19th, and 20th defendants regarding the 1st to 17th defendants’ trespass on the suit property.

25. Ultimately, for the above reasons I find and hold that the plaintiff has failed to prove its case on the required standard against the 18th, 19th and 20th defendants and therefore I hereby dismiss its claim against the said defendants, with no order as to costs. I however find that the plaintiff has proved its case on the required standard as against the 1st to 17th defendants and I enter judgment for the plaintiff against the 1st to the 17th defendants as follows;

- a. A declaration be and is hereby made that the persons who are occupying the plaintiff’s parcel of land L.R No. 11895/9 Mavoko in Machakos County and more specifically the 1st to 17th defendants and any other person claiming through them, their servants, employees or agents are squatters and their occupation and their structures whether temporary or permanent on the suit property are illegal and unlawful and violates the plaintiff’s right of ownership of the suit property.
- b. An order is hereby made that the 1st to 17th defendants and any other persons claiming through them, their servants, agents, employees, third parties and squatters are ordered to vacate all that parcel of land situate North West of Machakos County containing by measurement One Two decimal one five (12.15) Hectares or thereabout that is to say Land reference Number 11895/9 Mavoko in Machakos County, within 90 days of this judgment and in default, eviction orders to issue. The costs of eviction shall be borne by the 1st to 17th defendants.
- c. The costs of the suit are awarded to the plaintiff and shall be borne by the 1st to 17th Defendants.



26. It is so ordered

DATED, SIGNED AND DELIVERED AT KAKAMEGA IN OPEN COURT/VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM THIS 1ST DAY OF OCTOBER, 2025.

A. NYUKURI

JUDGE

In the presence of;

Mr. Michuki for the plaintiff.

No appearance for the defendants

Court Assistant: Delphine.

