



**Mworia v Muraya (Environment & Land Case E105 of 2022)
[2025] KEMC 113 (KLR) (15 May 2025) (Judgment)**

Neutral citation: [2025] KEMC 113 (KLR)

**REPUBLIC OF KENYA
IN THE NAKURU LAW COURTS
ENVIRONMENT & LAND CASE E105 OF 2022
PA NDEGE, SPM
MAY 15, 2025**

BETWEEN

HANNAH NJERI MWORIA PLAINTIFF

AND

CAROLYNE WANJIRU MURAYA DEFENDANT

JUDGMENT

1. Before me is a claim by the plaintiff, Hannah Njeri Mworia, for a permanent injunction against the defendant by herself, her agents, and or servants from in any way interfering with the plaintiff's occupation and use of the properties namely, Bahati/Kabatini Block1/1XX85 and Bahati/Kabatini Block1/1XX84, which are two parcels of land adjacent to one another.
2. The plaintiff, through her plaint in paragraph 3, avers that she is the registered owner of all those pieces of land namely Bahati/Kabatini Block1/1XX85 and Bahati/Kabatini Block1/1XX84 and the same is confirmed by the exhibits she adduced in court which are plaintiff exhibit 1 and plaintiff exhibit 2, which are certified copies of the title deeds of the two parcels of land, both which proves that the plaintiff is the registered proprietor. It is common ground herein that the defendant has been trespassing on the land parcels without any rights, thereby causing the plaintiff to suffer damage.
3. Contemporaneous to the suit herein, the plaintiff filed an application for temporary injunction, which was responded to by the defendant, via a Replying Affidavit dated 14/06/2024. On 06/06/2024, this application came up for inter partes hearing, but was compromised by a consent that status quo was to prevail pending the determination of the main suit herein. The defendant was also granted leave to file and served her defence, documentary exhibits and witness statements so as to enable the hearing of the main suit, and that in case of default, the hearing of the main suit was to proceed ex parte.



4. On 26/11/2024, both parties appeared before me for the necessary pre-trial directions. Parties however, failed to inform the court that the defendant had not filed her defence, nor her compliance documents. This matter was therefore fixed for the hearing without a defence having been filed.
5. Thus the defendant, as seen from record, was served with the suit papers but failed to file her defence, hence this suit is undefended. Her subsequent appointment of an advocate after the close of hearing did not also aid her much as the submissions filed on her behalf appear misplaced or misdirected as they appear to relate to the interlocutory application that had been compromised herein and not the main case herein. They are thus not relevant to the claim herein. It is necessary to point out that Parties must plead their case before proceeding to prove them. For a defendant, she must plead her defence in a Statement of Defence. In *Daniel Otieno Migore Vrs South Nyanza Sugar Co. Ltd* [2018] eKLR, Justice A C Mrima stated thus: -

Pleadings are the bedrock upon which all the proceedings derive from. It hence follows that any evidence adduced in a matter must align with the pleadings. Any evidence, however strong, that tends to be at variance with the pleadings must be disregarded.

6. As addressed by a Tanzanian court in the case of *Salim Said Mtomekeal Vrs Mohamed Abdallah Mohamed*, Dar-es-salaam Court of Appeal Civil Appeal NO. 149 Of 2019 (Mugasha. J.A. Kihwelq. J.A. Rumanyika. J.A.) where it was held: -

Pleading in law means, a written presentation by a litigant in a lawsuit setting forth the facts upon which he/she claims legal relief or challenges the claims of his opponent. It includes claims and counterclaims but not the evidence that the litigant intends to prove his case ... That said, since the pleading is a basis upon which the claim is found, it is settled law that, parties are bound by their pleadings and that any evidence produced by any of the parties which is not supportive or is at variance with what is stated in the pleadings must be ignored.

Determination

7. I thus find that the plaintiff has proved her case and since there was no defence filed against her case, I find no reason to doubt or dismiss her claim as proved herein. I do therefore grant her the prayer sought and do hereby enter judgment against the defendant for an order of a permanent injunction against the defendant by herself, her agents, and or servants from in any way interfering with the plaintiff's occupation and use of the properties known as Bahati/Kabatini Block1/1XX85 and Bahati/Kabatini Block1/1XX84. Costs of this suit are awarded to the plaintiff.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 15th DAY OF May 2025

ALOYCE-PETER-NDEGE

SENIOR PRINCIPAL MAGISTRATE.

