



**Achando v Imbiakha (Environment and Land Case 129 of 2017)  
[2025] KEELC 7369 (KLR) (29 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 7369 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA  
ENVIRONMENT AND LAND CASE 129 OF 2017  
DO OHUNGO, J  
OCTOBER 29, 2025**

**BETWEEN**

**VINCENT MUKANGAYI ACHANDO ..... PLAINTIFF**

**AND**

**CHRISTOPHER IMBIAKHA ..... DEFENDANT**

**JUDGMENT**

1. The Plaintiff commenced these proceedings on 26<sup>th</sup> April 2017, through Plaintiff of the same date. He averred that he was the registered proprietor of the parcel of land known as Butso/ Shikoti/13847 (the suit property) and that the Defendant trespassed into the suit property in the year 2006 and constructed a semi-permanent house thereon. Consequently, the Plaintiff prayed for judgment against the Defendant for:
  - a. A permanent injunction be issued to restrain the defendant whether by himself, his servants, agents, heirs, personal representatives and or any other person acting on his behalf from interfering with, tilling, constructing, disposing off or in other manner dealing with the parcel of land known as BUTSOTSO/SHIKOTI/13847.
  - b. An order of eviction be issued against the Defendant, his family members, servants, agents, heirs, personal representatives and or any person acting on his behalf from the parcel of land known as BUTSOTSO/SHIKOTI/13847.
  - c. The OCS, KAKAMEGA POLICE STATION to enforce the eviction order against the Defendant.
  - d. Costs of this suit.



2. Hearing of the matter initially proceeded ex parte, and judgment was delivered on 21<sup>st</sup> November 2018 granting the Plaintiffs the reliefs sought in the Plaint. The judgment was however set aside through a ruling delivered by the Court on 23<sup>rd</sup> November 2021.
3. Thereafter, the Defendant filed Statement of Defence and Counterclaim dated 24<sup>th</sup> January 2022. He admitted the Plaintiff's proprietorship of the suit property but denied the allegation of trespass. He averred that on 12<sup>th</sup> March 2005 he purchased a two acre portion of the parcel of land known as Butso/Shikoti/2891 from the late Joseph Makero Omolo, took possession, constructed a semi-permanent, and used the portion until 25<sup>th</sup> October 2019 when the Plaintiff demolished the home and evicted him together with his family.
4. The Defendant therefore prayed for judgment against the Plaintiff for:
  - a. General damages for pain, suffering and loss of amenities.
  - b. Mesne profits and loss of earnings and profits.
  - c. Costs of the suit.
  - d. Interest on a, b and c above at Court rates.
5. At the hearing, the Plaintiff testified as PW1. He adopted his witness statement dated 26<sup>th</sup> April 2017 and produced copies of the documents listed as item numbers 1 to 4 in his list of documents dated 26<sup>th</sup> April 2017 as his exhibits. He stated that he remained the registered proprietor of the suit property as of the date of his testimony and that he had acquired the suit property from his father Michael Achando Omolo. That on 18<sup>th</sup> May 2006, the Defendant unlawfully entered a one acre portion of the suit property and constructed a semi-permanent house thereon hence depriving him of the use of the portion.
6. In his oral testimony, the Plaintiff stated that the Defendant had been evicted as of the date of his testimony and had not returned to the suit property since the eviction. The Plaintiff's case was thereafter closed.
7. At the conclusion of the Plaintiff's case, the Defendant sought and was granted an adjournment. He however later failed to attend Court on the date scheduled for defence hearing. As a result, his case was closed without any evidence being received from him.
8. Subsequently, directions were given that parties file and exchange written submissions. The Plaintiff filed submissions dated 9<sup>th</sup> December 2024. The Defendant did not file any.
9. When the matter came up on 9<sup>th</sup> October 2024, Mr Osango who appeared for the Plaintiff told the Court that the Defendant having been evicted, the only issue that remains for determination is costs of the suit. I note that in his aforesaid written submissions, the Plaintiff contended that the Defendant had been evicted pursuant to the initial judgment and that the only issue he now pursues is costs of the suit.
10. I have carefully considered the pleadings, the evidence and the submissions. The Defendant did not offer any evidence to support his counterclaim. In the circumstances, the counterclaim has no leg to stand on and is dismissed for want of merit.
11. Regarding the Plaintiff's prayers for permanent injunction and eviction, I note the Plaintiff's testimony as well as his counsel's submissions that the Defendant has since been evicted and has not returned to the suit property. The Defendant confirmed the eviction in his Defence and Counterclaim. In those



circumstances, the reliefs of permanent injunction and eviction are moot and cannot issue. As the Supreme Court stated in *Dande & 3 others v Inspector General, National Police Service & 5 others* (Petition 6 (E007), 4 (E005) & 8 (E010) of 2022 (Consolidated)) [2023] KESC 40 (KLR) (16 June 2023) (Judgment), a matter is moot when there exists no live controversy with the result that the Court's decision would not have the effect of resolving any actual and present controversy.

12. Nevertheless, there is uncontroverted evidence on record that the Defendant entered into a portion of the suit property in May 2006 and constructed a semi-permanent house thereon without the Plaintiff's consent. In those circumstances, the Plaintiff was justified in filing this case and is thus entitled to costs of the suit.

13. In the result, I make the following orders:

**a. The Defendant's counterclaim is dismissed.**

**b. Considering that the Defendant has since been evicted and has not returned to the suit property, the Plaintiff's prayers for permanent injunction and eviction are moot and cannot issue.**

**c. The Plaintiff shall have costs of the suit.**

**Dated, signed, and delivered through Microsoft Teams, at Nyamira, this 29<sup>th</sup> day of October 2025.**

**D. O. OHUNGO**

**JUDGE**

Delivered in open court in the presence of:

No appearance by the Plaintiff

No appearance by the Defendant

Court Assistant: B Kerubo

ELCC No. 129 of 2017 (Kakamega) Page 2 of 2

