



**Joyce Sarange Kenyatta v Nyangweso (Environment and Land Case
232 of 2014) [2025] KEELC 7385 (KLR) (28 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 7385 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT AND LAND CASE 232 OF 2014**

M SILA, J

OCTOBER 28, 2025

BETWEEN

JOYCE SARANGE KENYATTA PLAINTIFF

AND

LUCAS NYAMBEGERA NYANGWESO DEFENDANT

JUDGMENT

1. This suit was commenced through a plaint filed on 18 June 2014. The plaintiff pleads that she is the registered proprietor of the land parcel Kisii Municipality/Block I/595 (parcel No. 595 or the suit property). She avers that she became the registered proprietor after purchasing the suit property from the previous proprietor, one Petiro Ongwacho Ongwacho, and obtaining an assignment of lease on 11 November 2013. She avers that the title was transferred to her on 24 November 2013 and she obtained a certificate of lease. She pleads that she commenced construction in March 2017 (probably meant 2014) after obtaining approval of her development plans. She avers that sometime on 28 May 2014 while construction was on-going, the defendant together with his accomplices, came to the site and demanded construction to stop. On 29 May 2014, the defendant came in company of his agents and police officers, chased away her workers and confiscated their tools, and as a consequence the construction stalled. She pleaded to have suffered damages being missing construction tools of Kshs. 12,000/=; damaged substructure at Kshs. 444,000/= ; substructure – Kshs. 187,000/= and labour charges paid of Kshs. 150,000/=. In the plaint, the plaintiff has asked for the following :-
 - a. A permanent injunction restraining the defendant his agents/servants from transferring the suit property.
 - b. Damages
 - c. Costs.



2. The defendant filed a defence and counterclaim which he later amended. He contends that the suit land was hived of a Plot 48G which he had purchased on 24 February 1990 from one Nelson Gichana. He avers that he enjoyed quiet possession until 2006 when he discovered that some unknown people had fraudulently purported to subdivide this Plot No. 48G into five portions identified as U, V, W, X and Y. He avers that the plots No. V, W and X were found to be on a road reserve and he continued occupying Plot No. 'U' and 'Y'. He pleads that on 11 June 1998, he was issued with a letter of allotment in respect of the plot No. 'U'. He adds that after purchasing the suit premises he carried out renovation of existing two houses on the plot. He contends that the suit property is actually Plot No. 'U'. In the counterclaim he asks for the following orders :
 - (a) Eviction against the defendant to vacate this Plot No. 'U' Kisii Municipality.
 - (b) An order of demolition of the storey building constructed by the plaintiff.
 - (c) A permanent injunction against the plaintiff to stop her from the Plot No. 'U'.
 - (d) General damages.
 - (e) Costs and interest.
3. Hearing commenced on 3 October 2024 when the plaintiff testified. She testified that she purchased the suit land from Petero Ongwacho in November 2013. She came armed with the original lease to the suit property which was in name of Kennedy Ogaro Mongare and the original Certificate of Lease in his name. She was not aware of any Plot No. 48G or a Plot 'U'. She testified that she purchased the plot at Kshs. 1.4 million and when she was cross-examined she availed bank deposit slips to Bluu Nile Inter Hotel, of Kshs. 1, 194,750/= dated 11 November 2013, and Kshs. 170,000/= dated 27 December 2013. She was also questioned on the transfer of lease which had a slightly different ID number compared to the copy of ID annexed to the instrument. There was a variance of one digit, (3 in one and 9 in the other) which she attributed to a typographical error. She acknowledged that she did not have a surveyor's report to demonstrate that she has built on the parcel Block I/595. With that evidence the plaintiff closed her case.
4. DW -1 was the defendant. He testified that he is a retired Civil Servant, having retired in 2016. He testified that he bought the Plot No. 48G from Nelson Mabeya, who was a friend of his father. He bought it for Kshs. 200,000/=. He testified that this plot No. 48G was subdivided by people he did not know into the Plots No. U, V, W, X, and Y. He complained and the Land Registrar directed an investigation. He testified that the plot he claims from the plaintiff is the Plot 'W'. He testified that this Plot 'W' was further subdivided into two portions, being the parcel No. 475 and the parcel No. 595 (the suit property). He testified that he got title to the parcel No. 1022 which was the plot 'U'. He added that he also has title to the parcel No. 1012 which was the Plot No. 'Y'. He acknowledged that from the five subdivisions (U,V,W,X and Y) he has got two titles thereof.
5. In cross-examination, his pleadings were put to him and he testified that at the moment Plot 'U' does not exist as it is now registered as Kisii/Block I/1022 with a title in his name and he has developed it. He insisted that the suit plot and the plot No. 475 are in the larger Plot 'W'. He testified that after survey some other people were allotted the Plots W, V and X. He did not have the PDP and also did not have the survey for the plots. He did not have any minutes of allocation of the plots. He did not know the measurements of this alleged Plot 48G and neither did he know the particular measurements for these alleged Plots U,V,W,X, and Y. He however knew the size of his Plot No. 1022 which he said is 0.0559 Ha. He did not know the size of the plot No. 1012 and he had not carried that title to court. He stated that he was given allotment letters for Plots 'Y' and 'U' only. He did not know if the person



- who sold him the plot had a title to this Plot No.48G. He testified that he had sued the owner of the Parcel No. 475 and he lost the case.
6. DW – 2 was Cecilia Oswera Harriet, a Land Registrar in Kisii who appears to have been called to produce a letter dated 23 March 2006. There was objection raised to her producing this letter, which objection I sustained, after which counsel opted to withdraw the witness.
 7. DW- 3 was David Lemaiyan, a Surveyor working with the Ministry of Lands in Kisii. He could not confirm if the suit property is related to Plot 48G. He did not have the history of the suit property. Cross-examined, he testified that there is usually a Part Development Plan (PDP) before survey of land is done. He was pointed to the letter of 23 March 2006 and he acknowledged mention of existence of a Plot No. 48G.
 8. With that evidence the defendant closed his case.
 9. I invited counsel to file their written submissions, which they did, and I have taken the same into account before arriving at my disposition.
 10. It is the plaintiff's case that she is the rightful proprietor of the land parcel Kisii Municipality/Block I/495 and she has of course complained of interference from the defendant. In his pleadings the defendant asserted that the suit land is Plot 'U' carved out of the Plot 48G which he had purchased. It will however be observed that the defendant's evidence was radically different from his pleadings. In court, he now alleged that the suit plot is the Plot 'W' and that this Plot 'W' was subdivided to produce the land parcels No. 475 and 595 (the suit plot).
 11. His prayers in the counterclaim ask for eviction of the plaintiff from what is described as Plot 'U' and nowhere in his pleadings does he mention to have any claim to this alleged Plot 'W'. Indeed, his pleadings were that this Plot 'W', together with the Plots V and X were on a road reserve. Now, in his evidence, he contended that what he is claiming is Plot 'W'. There is certainly a clear departure from the pleadings and I am now left wondering what exactly the defendant's case is.
 12. Be that as it may, if we look at his pleadings, he of course alleged that he purchased a large Plot 48G from Nelson Mabeya. I have seen no allotment letter in respect of this alleged Plot No. 48G. I have also not seen any concrete evidence, say a survey report of subdivision, to suggest that this Plot No. 48G was later subdivided into five plots bearing the letters U,V,W, X and Y. There is mention of such in the letter dated 23 March 2006 but I cannot vouch for it for the letter was never produced as an exhibit. What the defendant availed as an exhibit was an allotment letter in his name for a Plot 'U' which letter is dated 11 June 1998. Let me pause here a bit because in his pleadings, the defendant alleged that some unknown persons carved out five plots, being U,V,W,X and Y, and that he only came to know of this in 2006. I am surprised, because the defendant has actually produced an allotment letter dated 11 June 1998 in his name for a Plot 'U'. In his evidence, the defendant testified that this Plot U is now titled as Parcel No. 1022. He also testified that he has title to the other Plot 'Y', which is parcel No. 1012. It befuddles me because in his pleadings he claimed that the suit property, i.e parcel No. 595 is Plot 'U', but in his evidence he stated that Plot 'U' is the parcel No. 1022 and he has title.
 13. Well, going by his pleadings, he has no case whatsoever because he claimed the suit land to be Plot 'U' and in his evidence he claims Plot 'U' is the parcel No. 1022. Going by his evidence, he also fails because his evidence, i.e that the suit land is Plot W, is not backed up by the pleadings. Either way, as I have explained, he has not presented anything concrete to show the connection between the suit property and the alleged Plot 48G , U, V, W, X, or Y. It will be recalled that he mentioned that he had sued over the parcel No. 475 which he claimed was from Plot 'W', same as where he claimed the suit



property came from, and he lost the case. I am not surprised because even within this suit he has failed to demonstrate that he has any interest in the suit property i.e parcel No.595.

14. I have seen that the plaintiff has a Certificate of Lease in her name for the suit property. Having held that the defendant has not demonstrated any interest in this title No. 595, I have no hesitation in holding that as between the plaintiff and defendant, it is the plaintiff who has demonstrated title to this land parcel No. 595. There is no substance in the counterclaim and it is dismissed with costs.
15. What about the prayers in the plaint ? I have no issue with granting the plaintiff the order of permanent injunction to restrain the defendant from the suit land. But I have some hesitation on the issue of damages. First, the prayer (b) in the plaint never elaborated whether the plaintiff was seeking the monies pleaded in the body of the plaint as special damages. If she was, then she needed to make that specific in the prayers, but all she asked for in the prayer was simply 'damages' and I wonder whether this is a prayer for general or special damages. I am not, in those circumstances, persuaded to give the damages pleaded in the body of the plaint as they are not specified in the prayers. In any event, even the same (the amounts in the body of the plaint) were not specifically proved.
16. What I am ready to award the plaintiff is a sum in general damages, in recognition of the fact that the defendant interfered with her quiet possession of the suit property yet he had no right whatsoever to it. You do not go interrupting people from peaceably enjoying their properties when you have no legitimate interest in the same. In my discretion, I will award the plaintiff the sum of Kshs. 250,000/= as general damages for trespass against the defendant.
17. The plaintiff will also have costs and interest of the suit from the date of filing.
18. Judgment accordingly.

DATED AND DELIVERED THIS 28 DAY OF OCTOBER 2025

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT AT KISII.

Delivered in the presence of :

Ms. Nyaenya for the plaintiff instructed by M/s Bosire Gichana & Company Advocates

Mr. Manyara for the defendant instructed by M/s Oyugi & Company Advocates

Court Assistant – Michael Oyuko

