

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT**  
**MACHAKOS**  
**ELC CASE NO. 29 OF 2020**

**SAM VENTURES (K) LIMITED .....**  
**.....PLAINTIFF**

**VERSUS**

**ODHIAMBO** **OUKO.....**  
**.....DEFENDANT**

**AND**

**EVANCE MUKUNGU MBURU**  
**T/A MBUGAMU ENTERPRISES.....INTERESTED**  
**PARTY**

**JUDGMENT**

**Introduction**

1. In a plaint dated 19<sup>th</sup> March 2020, the plaintiff sought the following prayers against the defendant;

- a) A permanent injunction restraining the defendant whether in person T/A Mbugamu Enterprises and or through agents, servants or employees and or any persons claiming under him from evicting, constructing structures, alienating, fencing, surveying,**

**planting crops, moving onto, trespassing and or in any manner whatsoever from interfering with the plaintiff's peaceful ownership, occupation, possession and use of Land Reference No. 2358/18 (Original Number 2358/9/6, IR No. 195230 situate in Mavoko municipality Machakos County.**

**b) A mandatory injunction do issue compelling the defendant, at his expense whether in person or through agents, servants and or employees, and or any person claiming under him to forthwith remove all structures, debris, construction stones, steel rods, building sand and other materials he had deposited/stored, or placed upon the plaintiff's parcel of Land Reference No. 2358/18(Original number 2358/9/6, IR No. 195230 situate in Mavoko municipality Machakos County and to restore to their original state.**

**c) That the OCS KBC Police Station to assist and ensure in compliance with the orders**

**d) General and special damages as a result of destruction of property and general damages as a result of trespass of property.**

**e) Interest on (C) above at court rates**

**f) Costs of the suit**

**g) Any other or further relief the court may deem fit and just to grant.**

2. The plaintiff averred that it is the registered proprietor of Land Reference No. 2358/18(Original number 2358/9/6), IR No. 195230 situate in Mavoko Municipality, Machakos County (suit property). That the defendant while armed with a fire arm and in the company of rowdy youth who were armed with crude weapons, stormed the suit property, chased away the plaintiff's agents, demolished the fence and began putting up structures thereon. That on being confronted, the defendant stated that he was the owner of the suit property but did not avail any documentary proof of the same. That the plaintiff reported the matter at KBC Police Station and lodged a complaint with the National Land Commission (NLC) which investigated the matter, heard the parties herein and concluded that the defendant's documents were fraudulent because; the search of the suit property showed that the plaintiff was the owner and that the allotment and deed plans in possession of the defendant

are inconsistent with the suit property; the allotment by the defendant had a registration number of the suit property yet the survey map was generated with issuance of the allotment which is not possible; the allotment of the defendant was issued seven months before commencement of the lease; and the stand premium shown in the defendant's documents is Kshs. 120, 000/= which is below the acreage of the suit property.

3. That despite the NLC findings, the defendant continues in the trespass and that the plaintiff has suffered loss.

4. The suit was opposed. The defendant filed defence and counterclaim dated 4<sup>th</sup> November 2022. He denied the plaintiff's claim and stated that he was the registered proprietor of parcel No. L.R Mavoko 2358/9 measuring 7.728 Hectares and is in possession of the original title deed. He denied having been summoned at KBC Police station or at the NLC. He stated that together with the late Edward Mugunyi Mburu, they were the registered proprietors of parcel No. L.R Mavoko 2358/9 (IR 87 291) measuring 7.27 Hectares. That the two proprietors applied for allocation and were issued with allotment

letter which they accepted and paid the required levies. That the defendant is the surviving owner. That the said parcel was surveyed on 14<sup>th</sup> April 2000 and the survey approved by the Director of surveys on 2<sup>nd</sup> August 2000. That thereafter the grant IR No. 87292/1 was issued to the defendant on 3<sup>rd</sup> April 2003.

5. That in 2018, he surveyed and subdivided the land and began putting up structures thereon and put up an office to handle prospective buyers. That he later learnt that some cartels including the plaintiff had acquired forged documents with intention of dispossessing him of the land. That the report from NLC is not factual or authentic. That the NLC has no power to investigate private property. That the property investigated by the NLC has a different registration number hence not the same property as the defendant's.
6. That on 22<sup>nd</sup> February 2017, the plaintiff attempted to transfer LR 2358/9 to Royal Housing Cooperative Society Limited at a consideration of Kshs. 66, 500, 000/= but that the same was unsuccessful as the accompanying deed plan was not authentic. That he has suffered loss of

mesne profits due to unlawful possession of the suit property by the plaintiff .

7. The defendant counterclaimed for the following orders;

**a) Damages for loss of earnings occasioned by the defendant's illegal occupation of the plaintiff's parcel being L.R 2358/9 without our consent or authority.**

**b) An order of cancellation of all the alleged titles held by the defendant in the counterclaim in this suit.**

**c) An order of declaration that the plaintiff in the counterclaim is the absolute sole legal and registered owner of the suit properties herein.**

**d) Costs of the suit against the defendant in the counterclaim and interest accruing thereon at court rates from the date of filing the suit.**

**e) Any other relief that this honourable court may deem fit and just to grant.**

8. The plaintiff filed reply to defence and defence to counterclaim dated 8<sup>th</sup> November 2022, denying the defendant's counterclaim.

9. Evans Mukungu Mburu filed an application dated 2/06/2020 seeking to be joined to these proceedings as an interested party. That application was allowed by the court's ruling made on 11<sup>th</sup> May 2022 which granted the interested party leave to file his pleadings, witness statements and documents in 14 days. The interested party failed to file the documents as ordered and after being indulged for several months, on 12<sup>th</sup> October 2022, the court made an order barring him from participating in these proceedings.

10. The suit proceeded by way of *viva voce* evidence. The plaintiff presented one witness while the defendant presented two witnesses

### **Plaintiff's evidence**

11. PW1 was Daniel Kianda Muthui, a director and shareholder of the plaintiff. He adopted his witness statement dated 19<sup>th</sup> March 2020 as his evidence in chief. His testimony was that the plaintiff is the registered proprietor of the suit property.

12. That the defendant while armed with a fire arm and in the company of rowdy youths who were armed with crude weapons stormed the suit property, chased away the plaintiff's agents, demolished the fence and began putting up structures thereon. That on being confronted the defendant stated that he was the owner of the suit property but failed to demonstrate ownership. That the plaintiff reported the matter at KBC Police Station and lodged a complaint with the NLC which investigated the matter, heard the parties herein and concluded that the defendant's documents were fraudulent because. That despite the NLC findings, the defendant continues in the trespass and that the plaintiff has suffered loss.

13. He produced exhibits 1 to 18 which were certificate of title, CR 12, NLC report, photographs, letter of allotment, Land Registrar's authentication, letters from Mutiso & Co. Advocates, Director of Surveys and Chief Land Registrar, Chairman National Land Commission, No objections from the County Surveyor and Chief Land Registrar, Notification of development approval, plaintiff's affidavit dated 24th July 2020 OB extract dated

17/1/2021, Grant of representation, certificate of registration of Mbugamu Enterprises, letter of allotment to Mbugamu Enterprises, Defendant's National Identity card and Gazette Notice No. 1240.

14. On cross examination he stated that the plaintiff was registered in 2015. That the witness had the deed plan for the property. That the letter of allotment was accepted by payment made on 27th January 2016. That although the allottees of the mother title had entered into a land sale agreement with Royal Cooperative Society limited, the latter failed to raise the purchase price. That being one of the partners who was allocated the mother title, he was one of the people who signed the transfer documents to transfer the suit property to the plaintiff. That on the subdivision of the mother titles several parcels were created and transferred to different persons including the plaintiff but that it is only the plaintiff's title that is contested. He stated that he complained before the National Land Commission but had not produced the letter of complaint. That marked the close of the plaintiffs case.

## **Defendant's evidence**

15. DW1 was James Odhiambo Ouko who adopted his witness statement dated 7<sup>th</sup> October 2022 as his evidence in chief. His testimony was that he was the registered proprietor of parcel No. L.R Mavoko 2358/9 measuring 7.728 Hectares and is in possession of the original title deed. He denied having been summoned at KBC Police station or at the NLC. He stated that together with the late Edward Mugunyi Mburu, they were the registered proprietors of parcel No. L.R Mavoko 2358/9 (IR 87 291) measuring 7.27 Hectares. That the two proprietors applied for allocation and were issued with allotment letter which they accepted and paid the required levies. That the defendant is the surviving owner. That the said parcel was surveyed on 14<sup>th</sup> April 2000 and the survey approved by the director of surveys on 2<sup>nd</sup> August 2000. That thereafter the grant IR No. 87292/1 was issued to the defendant on 3rd April 2003.

16. That in 2018 he surveyed and subdivided the land and began putting up structures , put up an office to handle prospective buyers. That he later learnt that some

cartels including the plaintiff had acquired forged documents with intention of dispossessing him of the land. That the report from NLC is not factual or authentic. That the NLC has no power to investigate private property. That the property investigated by the NLC has a different registration number hence not the same property as the defendant's.

17. That on 22<sup>nd</sup> February 2017, the plaintiff attempted to transfer L R 2358/9 to Royal Housing Cooperative Society Limited at a consideration of Kshs. 66, 500, 000/= but that the same was unsuccessful as the accompanying Deed plan was not authentic. That he has suffered loss of mesne profits due to unlawful possession of the suit property by the plaintiff .

18. He produced 17 exhibits being title deed, deed plans and search for L.R 2358/9, birth certificate and notification, letters to Director of Surveys, B.M Okumu Land Surveyor and Chief Land Registrar, survey plans, records from Highland Surveyors, No objection letter, plaintiff's CR 12, application for land allocation, letter of

acceptance, approval letter, Occurrence Book reports and documents showing attempted sale of parcel L.R 2358/9.

19. On cross examination, he stated that he lost his national identity card, reported the loss at Embakasi police station but had no police abstract to demonstrate having made the report. He stated that he was born on 14<sup>th</sup> September 1978 and that his identity card number was 24680172, which is the same number on the identity card produced by the plaintiff. That he became owner of the mother title in 2003 when he was 18 years old. That Edward Mugonyi Mburu was his partner. That he partnered with him in 1998. He denied being a partner in Mbugami Enterprises and stated that Edward Mugonyi and James Gichuhi were Mbugamu's only partners. That his partner died in 2018.

20. That his certificate of title showed that Edward Mugonyi and the witness owned property being IR No. 87291 and that he was not aware that the said IR number referred to property in Nairobi. That when he was registered as owner of the suit property in 2003, he had attained the age of majority and that then, the

Commissioner of Lands was one Sammy Mwaita. He confirmed having been aware that the appointment of Sammy Mwaita was revoked on 20/02/2003. That in his search certificate, the tenure is not indicated. That when entry No. 2 in his title was made on 26th October 2020, Mr. Edward Mugonyi was deceased. That there is no entry for 26/10/2020 in his search. That he had a birth certificate showing that he was born on 14<sup>th</sup> September 1978 and that he got smallpox vaccination on 19/08/1978, way before he was born. He conceded that his parent's names in the birth certificate and in the clinic notes were at variance. That based on the age in his identity card, in 1999 he was 13 years old. That he had no evidence of payment for the letter of allocation. That his letter dated 5/5/1999 was received in the lands office on 5/5/1998. That he subdivided the suit property but had no evidence of approvals for subdivision. That he received money from some members of the public who purchased the suit property, but he did not have a list of those purchasers. That he was aware that there was another suit over

property that abuts the suit property being Machakos ELC Case No. 444 of 2018.

21. DW2 was Benson Meshack Okumu, a licensed land surveyor and director at Boma Surveys Company Limited, who adopted his witness statement dated 11<sup>th</sup> October 2022 as his evidence in chief. His testimony was that on 01/11/2021 they received a letter dated 14<sup>th</sup> October 2021 from the Director of Surveys seeking to know if they had conducted survey on parcel No. L.R 2358/9 in respect of Deed Plan Nos. 422056 - 422081 as the said subdivisions had not been registered. That having checked their office records, he confirmed that they had not conducted the said subdivision. That he therefore wrote a letter dated 2<sup>nd</sup> November 2021 showing that he had no objection to cancellation of the subdivision as it did not emanate from his office. On cross examination, he stated that he was the only licensed surveyor at Boma Surveys Ltd. That he did not conduct subdivision on the suit property and that he has never complained that he was impersonated. That he had no documents to show that the deed plans of the

suit property were not registered. That marked the close of the defence case.

22. The parties were directed to file written submissions in support of their respective cases. On record are the plaintiff's submissions dated 22<sup>nd</sup> April 2024.

### **Plaintiff's submissions**

23. Counsel for the plaintiff submitted that the suit property was registered in the plaintiff's name on 7<sup>th</sup> March 2018 as per the copy of certificate of title produced by the plaintiff. Counsel submitted that the suit property was a subdivision of parcel No. 2358/9 IR No. 1777873 measuring 7.727 hectares. Counsel argued that although the defendant and interested party claimed that the mother title belonged to Edward Mugunyi Mburu having been registered in his name on 3<sup>rd</sup> April 2003, no stand premium payment receipts and letter of allotment were produced by the defendant to support that claim.
24. Counsel pointed out that the defendant's search certificate did not correspond with the title as the

search showed registration was done on 26/10/2020 when the title shows that registration was done on 3/4/2003. Counsel submitted that the interested party filed a letter of allotment showing that Mbugamu Enterprise was the allottee of the mother title on 1/1/1999 and no payment of stand premium was exhibited.

25. Counsel argued that the clarity on title was made by the authentication letter dated 22/9/2022 by the Chief Land Registrar who confirmed that the mother title being LR No. 2358/9 IR No. 1777873 measuring 7.727 hectares was prior to its subdivision registered in the names of Kipruto Kandie, Daniel Kianda Muthui, Pamela Bwari Onyambu and Florence Mauncho Nyamoko (four partners) and that upon subdivision, the suit property was transferred to the plaintiff. Counsel also submitted that evidence of authenticity of the deed plan and certificate of title was demonstrated from the Director of surveys and Chief Land Registrar. Further that the subdivision was duly approved as demonstrated by

the no objections by the county surveyor and chief land Administration officer.

26. Counsel also submitted that as Mbugamu Enterprises was registered on 6<sup>th</sup> May 2002, it could not have been issued with an allotment letter on 1/1/1999, hence the purported allocation was fraudulent. Counsel also argued that as Edward Mburu Mugunyi died on 21/02/2018, he could not have been registered as joint owner on 26/10/2020. Counsel submitted that there were many inconsistencies in the defendant's evidence. Counsel pointed out that while the defendant's title was allegedly issued by a Commissioner of Lands one Sammy Mwaita on 3/4/2003, the evidence on record shows that his appointment was cancelled by the President of the Republic of Kenya on 12/2/2003 as per the Gazette Notice No. 1240.

27. Counsel further submitted that as the defendant's identity card showed that he was born in 1986, being a minor in 1999, he had no capacity to get allotment of land. Counsel pointed out that although

the defendant produced a birth certificate showing that he was born on 14/09/1978, his clinic notes showed that his smallpox immunization was done on 19/08/1978; that is before he was born. That his clinic notes show that he was enrolled in the programme on 3/7/1979, but was vaccinated for smallpox on 19/8/1978 which could not have been possible. Counsel also pointed out that while the defendant's birth certificate bore the name James Odhiambo, Ouko, the clinic notes had the name Joshua Awco and Josua Auka. Further that his parent's names in the birth certificate differed from the names in the clinic notes.

28. The court was referred to section 27 of the Land Act and section 47 of the Land Registration Act for the proposition that land held by children is to be held through a trustee, which was not the case for the defendant. Counsel also argued that there was inconsistency from the defendant's letter allegedly by the Commissioner of Lands dated 5/5/1999 which refers to a letter dated 16<sup>th</sup> August 1999, meaning

that it was referring to a letter that was yet to be written. That the letter dated 5/5/1999 was allegedly received by the lands department on 5/5/1998, which could not have been possible.

29. Counsel argued that Benson Meshack Okumu who gave evidence of on behalf of the defendant confirmed that he never undertook subdivision in respect of the mother title of the four partners and that his testimony cannot determine who is the true owner of the suit property. Counsel relied on the cases of **Maguta v Mugo [2024] KEELC 961** and **Munyu Maina v Hiram Gathiha Maina (2013) e KLR** and submitted that the glaring inconsistencies , irregularities and fraud on the part of the defendant demonstrate that he was not owner of the suit property.

### **Analysis and determination**

30. The court has carefully considered the pleadings, evidence and submissions. The following issues arise for the court's determination;

**a) Whether the disputed property is LR No. 2358/18 original No. 2358/9/6 Grant IR No. 195230 or LR No. 2358/9 Grant No IR No. 87292; and**

**b) Who between the plaintiff and defendant is the owner of the suit property.**

31. In the instant suit, both parties presented documents to support their respective claim over the suit property.

32. The plaintiff presented among other documents; a certificate of title for parcel LR No. 2358/18 (Original No. 2358/9/6) IR No. 195230, authentications from the department of land, an investigation report from NLC, charge sheet against the defendant, letter of allotment to Mbugamu Enterprises for parcel 2358/9 and copy of identity card for the defendant showing that the defendant holder of National Identity card Number 24680172 was born in 1986 and was issued with the National identity card on 10<sup>th</sup> May 2013.

33. On the other hand, the defendant produced title, a search, several letters, birth certificate and clinic notes, application for allotment among other documents.
34. The process of land allocation of public land under the repealed Government Land Act was fairly straight forward. The Commissioner of lands, on behalf of the President of Kenya allocated unalienated government land to a selected candidate. Thus the Commissioner had no power to allocate alienated land.
35. In the case of **Bahola Mkalindi vs. Michael Seth Kaseme & 2 Others [2013] eKLR**, the court held as follows;

**“Under Section 3 of the Government Land Act, it is only the President who was allowed to make grants or disposition over alienated Government land. It is the Commissioner of Lands, on behalf of the President, who used to allocate unalienated Government land to the person whose application for the allocation of such would have been approved by the President. Once the approved candidate for the land had been selected, and an approved Part Development Plan (PDP) by the Director of Physical Planning is issued, an offer was made to the person by the Government. The offer is what came to be known**

**as a letter of allotment which used to be signed by the Commissioner of Lands”.**

36. The procedure for the allocation of unalienated land is laid out by the Environment and Land Court in **Nelson Kazungu Chai & 9 others v Pwani University [2014] eKLR** as follows:

**“...It is trite law that under the repealed Government Lands Act, a Part Development Plan must be drawn and approved by the Commissioner of Lands or the Minister for lands before any un-alienated Government land could be allocated. After a Part Development Plan (PDP) has been drawn, a letter of allotment based on the approved PDP is then issued to the allottees.**

**131.It is only after the issuance of the letter of allotment, and the compliance of the terms therein, that a cadastral survey can be conducted for the purpose of issuance of a certificate of lease. This procedural requirement was confirmed by the surveyor, PW3. The process was also reinstated in the case of *African Line Transport Co Ltd v Attorney General*, Mombasa HCCC No 276 of 2013 where Njagi J held as follows: “Secondly, all the defence witnesses were unanimous that in**

**the normal course of events, planning comes first, then surveying follows. A letter of allotment is invariably accompanied by a PDP with a definite number. These are then taken to the department of survey, who undertake the surveying. Once the surveying is complete, it is then referred to the Director of Surveys for authentication and approval. Thereafter, a land reference number is issued in respect of the plot 132. A part development plan (PDP) can only be prepared in respect to Government land that has not been alienated or surveyed...”**

37. It therefore means that at the point of issuance of the letter of allotment, the land was yet to be surveyed although planned and therefore it could not have a registration number. Where a letter of allotment contains a registration number of the land to be allotted it means that that is not unalienated government land but an already alienated and registered land because it is already titled. In the instant case, the plaintiff produced a letter of allotment and title for the suit property being a subdivision of the mother title. The plaintiff's documents were authenticated by the Chief Land Registrar, the

County Surveyor and Director of Surveys. It also produced a report of the NLC made upon hearing the parties. That authentication was not challenged by the defendant. Besides, the plaintiff was the one in possession of the suit property.

38. On the other hand, the defendant did not produce a letter of allotment although he stated that he was allocated the land upon application to the Commissioner of Lands. The plaintiff was the one who produced the defendant's letter of allotment. From that letter of allotment, the land being allocated is described as LR No. 2358/9 measuring 7.727 Hectares. This clearly shows that the letter of allotment is fraudulent because the Commissioner of Lands could only allocate unalienated Government land but not a registered land which meant that the same had already been alienated. In addition to this anomaly, the defendant produced a letter dated 5<sup>th</sup> May 1999 where the defendant and one Edward Mugonyi allegedly applied for allocation of the suit property. That letter is purportedly endorsed by the department of lands showing that the same was received on 5<sup>th</sup> May 1998

which is a year before it was authored. The defendant and one Mugonyi purportedly wrote a letter dated 5<sup>th</sup> May 1999 where they made reference to a letter dated August 1999. This in my view was a forgery as a letter cannot logically refer to a letter written on a future date. In addition, the defendant's letter of acceptance which had the registration number of the land alleged to have been allocated, show that the application for allotment and acceptance of the letter of allotment were done on the same day, which in my view cannot be the case and therefore, the acceptance was also a forgery.

39. The defendant who appeared before court to testify, was at pains to explain when he was born. His his identity card issued in 2013 showed that he was born in 1986. He obtained a birth certificate in 2022 showing that he was born on 14/9/1978. In addition to the birth certificate, he produced treatment notes showing that he had been treated on 25<sup>th</sup> September 1985 and 17<sup>th</sup> June 1986 for headaches. He also availed immunization booklet for DPT, BCG, Polio and measles with clinical notes allegedly written from 1979 to 1982, a period of over 50 entries,

but which on a cursory look apparently are in one handwriting. And the fact that he was vaccinated before he was born, just shows the outright forgery and fraud committed by the defendant. I do not see how a birth certificate obtained two years after the defendant being sued in this matter would change the defendant's date of birth from 1986 to 1978. In any event, the transactions in this matter happened before the issuance of the birth certificate and therefore, the only identification document in possession of the defendant all this while was his national identity card. Therefore in 2003 when he was allegedly being registered as owner of the suit property, he had not attained the age of majority. It is therefore clear to me that the defendant fraudulently and by forgery obtained a birth certificate and clinical notes to deceive the court on when he was born, and to justify his fraudulent acquisition of the suit property. It does not however take indepth scrutiny to see the defendant's fraud.

40. While the allotment letter was allegedly issued to Mbugamu enterprises on 1<sup>st</sup> January 1999, the certificate

of registration for that entity indicate that the same was registered on 6<sup>th</sup> May 2002. Therefore an entity that was not in existence in 1999 could not have been lawfully allocated land in that year hence the allocation presented in favour of Mbugamu is fraudulent.

41. It is a matter of common knowledge that an official search mirrors the title, and the entries on both documents would ordinarily match. In this case however, the defendant's certificate of title and search speak a different story. The search produced by the defendant shows the tenure of the title as absolute, while the title show that it is a 99 year lease with effect from 1<sup>st</sup> August 1990. The official search certificate also indicates that there is apartment number on the title. These inconsistencies point to a fraudulent scheme on the part of the defendant.

42. It is clear to me that every document that the defendant relied on to show his acquisition of the suit property was tainted with fraud.

43. As the defendant's documents are fraudulent and since he could not have been allocated an already alienated and registered land by the Commissioner of Lands, I find and hold that the suit property is parcel No. L.R 2358/18 (Original No. 2358/9/6) IR No. 195230 measuring 4.561 Hectares situate in Mavoko Municipality, Machakos County and not parcel No. 2358/9 Grant No. 87292. I further find that since the defendant's documents are forgeries they cannot form the legal basis for acquisition of the suit property. For those reasons, I find no merit in the defendant's counterclaim which I hereby dismiss with costs to the plaintiff.

44. Section 26 of the Land Registration Act vests indefeasible and absolute ownership of land in the registered owner. The plaintiff produced title to show ownership of the suit property. The plaintiff having proved lawful ownership and acquisition of the suit property, is entitled to quiet possession thereof and its interests and rights therein are protected under provisions of sections 24 and 25 of the Land Registration Act. Therefore, the defendant has no right to interfere

with the suit property. His interference amounts to trespass and is therefore unlawful. The plaintiff's evidence that the defendant trespassed on the suit property and demolished the fence was not rebutted at all. The defendant confirmed putting up an office to handle prospective purchasers on the suit property. I am therefore convinced that the defendant trespassed on the suit property.

45. It is trite that trespass is actionable per se without proof of actual damage. **(See Philip Ayaya Alucho v Chrispinus Ngayo (2014) e KLR)**. Having considered the evidence herein and the manner in which the defendant trespassed on the suit property in accessing it and chasing away the plaintiff's agents while he was armed with a fire arm and in the company of rowdy youth who were armed with crude weapons, and having demolished the plaintiff's fence and put up structures on the plaintiff's land, I am of the view that damages in the sum of Kshs. 2, 000, 000/= shall be reasonable compensation being damages for trespass.

46. In the premises, I am satisfied that the plaintiff has proved its case on the required standard and I therefore enter judgment for the plaintiff against the defendant as follows;

**a) A permanent injunction is hereby issued restraining the defendant whether in person, T/A Mbugamu Enterprises and or through agents, servants or employees and or any persons claiming under him from evicting, constructing structures, alienating, fencing, surveying, planting crops, moving onto, trespassing and or in any manner whatsoever from interfering with the plaintiff's peaceful ownership, occupation, possession and use of Land Reference No. 2358/18(Original number 2358/9/6), IR No. 195230 situate in Mavoko municipality, Machakos County.**

**b) A mandatory injunction is hereby issued compelling the defendant, within 60 days of this judgment, at his own expense, whether in person or through agents, servants and or employees, and or any person claiming under him, to forthwith remove all structures, debris, construction stones, steel rods, building sand and other materials he had deposited/stored, or placed upon the plaintiff's parcel of Land**

**Reference No. 2358/18 (Original number 2358/9/6, IR No. 195230 situate in Mavoko municipality Machakos County and to restore it to its original state. In default, the plaintiff shall remove the structures, debris, construction stones, steel rods, building sand and other materials deposited by the defendant on the suit property and the costs of such removal shall be borne by the defendant.**

**c) That the OCS KBC Police Station to assist and oversee compliance with the orders.**

**d) General damages as a result of trespass of the suit property are awarded to the plaintiff in the sum of Kshs. 2, 000, 000/=, with interest thereon at court rates from the date of this judgment till payment in full.**

**e) Costs of the suit are awarded to the plaintiff and shall be borne by the defendant.**

47. It is so ordered

**DATED, SIGNED AND DELIVERED AT KAKAMEGA  
IN OPEN COURT/VIRTUALLY THROUGH  
MICROSOFT TEAMS VIDEO CONFERENCING  
PLATFORM THIS 27<sup>TH</sup> DAY OF OCTOBER, 2025**

**A. NYUKURI**  
**JUDGE**

**In the presence of;**

Mr. Ngichabe for the plaintiff

Mr. Murunga for the defendant

No appearance for the interested party

Court Assistant- Delphine