



Kemama & another (Suing as personal representative of the Estate of Amadeo Raymond Kemama - Deceased) v Guangxi Hydroelectric Construction Bureau Kenya Limited (Environment and Planning Civil Case E001 of 2025) [2025] KEELC 7641 (KLR) (6 November 2025) (Judgment)

Neutral citation: [2025] KEELC 7641 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND PLANNING CIVIL CASE E001 OF 2025
JO MBOYA, J
NOVEMBER 6, 2025

BETWEEN

KENNETH MURIUKI KEMAMA 1ST PLAINTIFF

ANTHONY ROY KEMAMA 2ND PLAINTIFF

SUING AS PERSONAL REPRESENTATIVE OF THE ESTATE OF AMADEO RAYMOND KEMAMA - DECEASED

AND

GUANGXI HYDROELECTRIC CONSTRUCTION BUREAU KENYA LIMITED DEFENDANT

JUDGMENT

1. The Plaintiffs approached the court vide Plaint dated 4th June 2024; and wherein same sought various reliefs. The reliefs at the foot of the Plaint are as hereunder;
 - I. An order that the Defendants' acts of dumping/depositing waste material including soil, stones and rocks onto and diverting storm water into the parcel of land known as plot 90 Timau, Meru County, were wrongful, unlawful and illegal.
 - II. A permanent injunction restraining the defendant, whether by itself, its servants and/or agents, from further trespassing, dumping/depositing any further waste materials onto and/or diverting storm water or any other water into the parcel of land known as plot 90 Timau, Meru County.
 - III. Damages for trespass and the numerous unlawful permanent environmental and land damages to the plaintiffs' suit property.
 - IV. Costs of the suit and interests at court rate until full payment for (c) and (d) respectfully.



- V. Such other or further relief that the honourable court may deem fit to grant the plaintiffs.
2. The Defendant was duly served with the Plaint and summons to enter an appearance. However, the defendant neither entered an appearance nor filed a statement of defence. To this end, the plaintiff sought and obtained directions of the court to proceed with the hearing on the basis of formal proof. Suffice it to state that upon confirming that the defendant was duly served with the Plaint and summons to enter appearance, the court issued directions and confirmed the matter for hearing on the basis of formal proof.
 3. The Plaintiff's case is premised on the evidence of two [2] witnesses, namely; Kenneth Muriuki Kemama and Humphrey Munene, respectively. Same testified as PW 1 and PW 2.
 4. It was the testimony of PW 1 that same is a civil servant, currently working as a senior administrator with the National Government. In addition, the witness averred that same also engages in commercial agricultural farming. Moreover, the witness testified that by virtue of being one of the Plaintiffs, same is conversant with the facts of the case. Furthermore, the witness averred that he has since recorded and filed a witness statement dated 4th June 2024; which witness statement the witness sought to adopt and rely on as his evidence in chief.
 5. It was the further testimony of the witness that other than the witness statement, same has also filed a list and bundle of documents dated 7th June 2024. To this end, the witness sought to tender and produce the various documents as exhibits. There being no objection the documents under reference were admitted as exhibits P1 – P5, respectively.
 6. Additionally, the witness testified that same has also filed the Plaint dated 4th June 2024, together with a verifying affidavit. The witness thereafter invited the court to adopt the content[s] of the Plaint and thereafter to grant the reliefs sought thereunder.
 7. The 2nd witness who testified on behalf of the Plaintiffs' was Humphrey Munene. Same testified as PW 2.
 8. It was the testimony of the witness that same is a consultant agronomist. In particular, the witness averred that same is a consultant in the field of horticulture and irrigation. Moreover, the witness averred that same has been an agronomist since 1969.
 9. The witness further testified that same is conversant with the facts of this matter. In particular, the witness averred that same was retained and instructed by the plaintiffs to assess the scope of damages that were occasioned to the Plaintiffs' farm at Timau – Meru County. To this end, the witness testified that he proceeded to and visited the locus in quo and thereafter prepared a report dated 10/1/2024. In this regard, the witness sought to tender the report as an exhibit. Instructively, the report under reference was admitted and marked as exhibit P 6 on behalf of the Plaintiffs.
 10. Following the close of the hearing, learned counsel for the Plaintiffs' sought and obtained liberty to file written submissions. Thereafter, Learned Counsel filed written submissions dated 25th October 2025; and wherein learned counsel has highlighted two [2] key issues. Firstly, learned counsel has submitted that the evidence tendered by and on behalf of the plaintiffs has neither been controverted nor impeached. To this end, counsel contended that the evidence is thus credible and believable. Consequently, the court was implored to adopt and rely on the evidence.
 11. Secondly, learned counsel for the Plaintiffs has submitted that the trespass complained of has occasioned substantial injury, harm and or prejudice to the Plaintiffs. In this regard, learned counsel



has referenced the report by the agronomist and thereafter invited the court to award the sum of Kshs. 75,209,974.06/= only.

12. The claim for Kshs.75,209,974.06/= has thereafter been broken down into various sub-heads.
13. The various sub-heads are as hereunder;
 - i. Damages for immense, severe, irreversible and permanent soil degradation25,800,000/=.
 - ii. Payment of Kshs.429,999.57 only per month being damages for illegal and unlawful denial of economic access to the 8 acres land with effect from 1st July 2023 till payment in full.....12,469,987.53/=.
 - iii. Payment of Kshs.429,999.57 per month being damages for illegal and unlawful denial of economic use of the 8 acres land with effect from 1st July 2023 till payment in full.....12,469,987.53.
 - iv. Payment of Kshs.8,599,999 being damages for the remover, haul out and dispose the huge of quantities of rocks and other assorted waste material still laying/occupying the 8 acre suit property8,599,999/=.
 - v. Payment of Kshs.3,870,000/= being damages for illegal/unlawful trespass and dumping of voluminous tonnes of assorted waste materials by the defendant's machinery and workers without the Plaintiffs prior consent/permission since July 2023.....3,870,000/=.
14. Premised on the foregoing, learned counsel for the plaintiffs has invited the court to award the total sum of Kshs.75,209,974.06/= only as compensation for the trespass perpetrated by the defendant.
15. I have reviewed the plaint filed on behalf of the plaintiffs; the evidence tendered [both and documentary] and upon consideration of the written submissions, I come to the conclusion that the determination of the subject matter turns on two [2] key issues, namely; whether the plaintiffs have established/proven trespass as against the defendants; and what compensation [if at all] ought to be awarded.
16. Regarding the first issue, it is instructive to note that the plaintiffs have placed before the court evidence demonstrating that the suit property belonged to and is registered in the name of Amadeo Raymond Kemama [deceased]. Furthermore, the plaintiffs have also tendered and produced before the court evidence of the grant of the letters of administration confirming that same are the duly constituted legal administrators of the estate of the deceased.
17. Additionally, the plaintiffs tendered and produced before the court evidence to show that the defendant herein entered upon the suit property and thereafter deposited assorted debris; wastes and other assorted materials, albeit without the consent/permission of the estate of the deceased. Furthermore, the plaintiffs also tendered evidence to show that the defendant also laid culverts against the suit property and thereby exposed the suit property to storm-water discharge. In this regard, evidence was tendered to demonstrate the effects of the storm-water discharge on the suit property.
18. Having considered the evidence on record, I come to the conclusion that the plaintiffs have demonstrated that same have the requisite legal capacity to mount the suit on behalf of the estate of the deceased. Moreover, I have also established that the plaintiffs have the requisite legal and equitable rights over the suit property, which lawfully forms part of the estate of the deceased. In addition, the



plaintiffs have also demonstrated unlawful and offensive entry onto a portion of the suit property which constitutes and amounts to trespass.

19. It is also imperative to observe that the evidence tendered by the plaintiffs was neither controverted nor impeached. To this end, it is my finding and holding that the plaintiffs have established and proven trespass, which essentially constitutes unlawful entry onto land/property belonging to a party without lawful authority. [See the provisions of Section 3 of the *Trespass Act*, Chapter 294, Laws of Kenya].
20. What constitutes trespass was expounded in the case of *Doshi v Chemutut & 7 others* (Civil Appeal E020 of 2023) [2025] KECA 776 (KLR) (9 May 2025) (Judgment) where the court stated as hereunder;

Trespass, as stated by this Court in the case of *Charles Ogejo Ochieng v Geoffrey Okumu* [1995] KECA 169 (KLR), is an injury to a possessory right, and therefore the proper plaintiff in an action of trespass to land is the person who has title to it, or a person who is deemed to have been in possession at the time of the trespass. As for the ingredients of trespass, the Court in *William Kamunge Gakui v Eustace Gitonga Gakui* (Civil Appeal 16 of 2013) [2014] KECA 39 (KLR) stated that trespass is a violation of the right to possession, and that a plaintiff must prove that he has the right to immediate and exclusive possession of the land. Justice Chemutut did not name Mr. Doshi as a defendant in the suit.

21. Turning to the second issue, namely; the quantum of compensation [if any], I beg to highlight that trespass is actionable per se. In this regard, once the claimant proves or demonstrates trespass, it behooves the court to make an award in favour of the claimant. Suffice it to underscore that the claimant is not obliged to prove that same has suffered loss; harm or damages.
22. Nevertheless, where the trespass occasioned some injury to the designated property and evidence is tendered before the court demonstrating such injury, then the court is enjoined to take into account the nature of the injury occasioned in determining the quantum of damages. For good measure, the quantum of damages awarded are computed on the basis of the cost of restoration of the land to the status ante; or the diminution in the value of the property, whichever is less.
23. The parameters to be taken into account in assessing the Quantum of damage[s] payable were highlighted in the case of *Park Towers Ltd V John Mithamo Njika and 7 Others*, 2014 eKLR, where the court [Mutungi J] stated as follows:

“I agree with the learned judges that where trespass is proved a party need not prove that he suffered any specific damage or loss to be awarded general damages. The court in such circumstances is under a duty to assess the damages awardable depending on the unique circumstances of each case”.

24. Furthermore, the principles underpinning the assessment and award of general damages in matters pertaining to trespass were re-visited by the Court of Appeal in the case of *Kenya Power & Lighting Company Ltd v Ringera & 2 others* [2022] KECA 104 (KLR). The court ventured forward and highlighted the principle in the following manner:

38. The principles both parties have relied upon in their invitation for the Court to decide either way are those enunciated by the predecessor of this Court and either crystallized or restated by this Court which we find prudent to distil and replicate as hereunder:

- i) Halsbury’s Laws of England 4th Edition Vol. 45 at para 26 pg 1503, namely, the owner of the land is entitled to nominal damages where there is no actual damage occasioned



to the owner by the trespass, such amounts as will compensate the owner for loss of use resulting from the damage caused by the trespass, reasonable damages are payable where the trespasser has made use of the owner's land, exemplary damages are payable where the trespassers conduct towards the owner is not only oppressive but also cynical and carried out in deliberate disregard of the right of the owner of the land with the object of making a gain by his/her unlawful conduct, general damages may be increased where the trespass is accompanied by aggravating circumstances to the detriment of the owner of the land.

- ii) Duncan Nderitu Ndegwa vs. Kenya Pipeline Company Limited & Another [2013] eKLR - damages payable for trespass are the amount of diminution in value or the loss of reinstatement of the land with the overriding principle being to put the claimant in the position he was in prior to the infliction of harm.
- iii) Philip Ayaya Aluchio vs. Crispinus Ngayo [2014] eKLR, - the measure of damages for trespass is the difference in the value of the plaintiffs' property immediately before and immediately after the trespass or the cost of restoration whichever is less.
- iv) Ephantus Mwangi & Another vs. Duncan Mwangi [1981 – 1988] I KAR 278, - an appellate court is not bound to accept and act on the trial court's findings of fact if it appears clearly that the trial court failed to take account of particular circumstances or probabilities material to an estimate of evidence.
- b) a Court of Appeal will not normally interfere with a finding of fact by the trial court, unless it is based on no evidence or on a misapprehension of the evidence or the Judge is shown demonstrably to have acted on wrong principles in reaching the findings he did.
- v) Kiambu Dairy, Farmers Co-operative Society Limited vs. Rhoda Njeri & 30 Others [2018] eKLR, - the extent of an award of compensatory damages lies in the discretion of the trial court and interference therewith on appeal must be approached with a measure of circumspection and well-settled principles.
- vi) Kemfro Africa Limited vs. Lubia & Another [No. 2] [1987] KLR 30 as approved in Peter M. Kariuki vs. Attorney General [2014] eKLR, - before interference with the quantum of damages awarded by a trial court the appellate court must be satisfied that either the judge in assessing the damages took into account an irrelevant factor, or left out of account a relevant one or short of the above, the award is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damages payable.
- vii) Johnson Evans Gicheru vs. Andrew Martin & Another [2005] eKLR, - this Court on appeal will be disinclined to disturb the finding of the trial Judge as to the amount of damages awarded by the trial court merely because if it had tried the case itself in the first instance, it would have awarded either a higher or lesser sum
 - b) justification for reversing a trial Judge on an award of damages only applies where the court is convinced either that the Judge acted upon some wrong principle of law or that the amount awarded was so extremely high or so very low as to make it an entirely erroneous estimate of the damage to which the aggrieved party is entitled.
- viii) Sumaria & Another vs. Allied Industries Limited [2007] 2 KLR I, - an appellate court should be slow in moving to interfere with a finding of fact by a trial court unless it



was based on no evidence or based on a misapprehension of the evidence or that the Judge had been seen demonstrably to have acted on a wrong principle in reaching the finding he/she did.

- ix) Butt vs. Khan [1981] KLR 349, - an appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate
- x) it must be shown that the Judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived at a figure which was either inordinately high or low.
- vii. Total (Kenya) Limited formerly Caltex Oil (Kenya) Limited vs. Janevans Limited [2015] eKLR, - whether the claim is in contract or tort, the only damages to which an aggrieved party is entitled to is the pecuniary loss;
 - (b) the accruing awardable damages is aimed at putting the aggrieved party into as good a position as if there had been no such breach or interference. In other words, in the position it/he/she was in with regard to the object trespassed upon before the onset of such a trespass;
 - (c) it is meant to cushion the aggrieved party against the expenses caused as a result of the trespass and loss of benefit over the period of the duration of the trespass.

[Underlining/ Emphasis supplied]

- 25. With the foregoing in mind, I am now well disposed to engage with the quantum of damages payable to the Plaintiffs. It is important to recall and reiterate that the Plaintiffs tendered and placed before the court evidence showing extensive damages arising from the offensive trespass. Moreover, the plaintiffs also tendered before the court evidence by an expert showing the impact the trespass has had on the economic viability and usage of the suit property. In this regard, there is no gainsaying that the trespass complained of has resulted into substantial damage; and injury to the suit property.
- 26. Moreover, it is not lost on me that the plaintiffs procured an expert report, which documents the effects in question as well as tabulated the costs of the remedial measures to be taken in respect of the suit property. In this regard, I am persuaded that the plaintiffs have a basis to warrant the grant of damages in the sum of Kshs.25,000,800/= only on account of the immense; severe; irreversible and permanent soil degradation.
- 27. Additionally, I am satisfied that the Plaintiffs have also laid a basis to warrant payment of the sum of Kshs.3,870,000/= only being damages for unlawful trespass and dumping of assorted waste materials.
- 28. Nevertheless, I beg to underscore that the plaintiffs are not entitled to the sum of Kshs.12,469,987.57; 12,469,987.53 and Kshs.8,599,999/= only, alluded to in the body of the submissions dated 28th October 2025. For good measure, the monies under reference fall within the province of special/ liquidated damages and hence it was incumbent upon the plaintiffs to plead and particularize same in the Plaint. Moreover, the plaintiffs were also obliged to tender and place before the court plausible evidence to prove the claims. [See the decision in the case of Superior Homes (Kenya) PLC v Water Resources Authority & 9 others (Civil Appeal E330 of 2020) [2024] KECA 1102 (KLR) (19 August 2024) (Judgment)].
- 29. In a nutshell, I come to the conclusion that the Plaintiffs have indeed proven their claim on a balance of probabilities. Consequently, and in this regard, the plaintiffs are therefore entitled to recompense.



Final Disposition.

30. For the reasons which have been adverted to in the body of the Judgment, it is apparent that the Plaintiffs' claim is meritorious. In this regard, the Plaintiffs are entitled to Judgment.
31. Consequently, Judgment be and is hereby entered in favour of the Plaintiffs in the following terms;
- i. A declaration be and is hereby issued that the Defendants acts of dumping/depositing waste materials, including soil, stones and rocks onto and diverting storm water into the parcel of land known as plot 90 Timau-Meru County, was wrongful, unlawful and illegal.
 - ii. An order of permanent injunction be and is hereby issued restraining the defendant, whether by itself, its servants and/or agents, from further trespassing, dumping/depositing any further waste materials onto and/or diverting storm water or any other water into the parcel of land known as plot 90 Timau, Meru County.
 - iii. General damages for trespass be and is hereby awarded in the sum of Kshs.30,000,000/= only.
 - iv. The award of general damages in terms of clause [iii] above shall attract interests at court rates [14% per annum] from the date of Judgment until payment in full.
 - v. Costs of the suit be and are hereby awarded to the Plaintiffs.
 - vi. Costs in terms of clause [iv] shall be agreed upon; and in default same to be taxed in the conventional manner.
32. It is so ordered.

DATED, SIGNED AND DELIVERED AT MERU THIS 6TH DAY OF NOVEMBER 2025.

OGUTTU MBOYA, FCI Arb; CPM [MTI-EA].

JUDGE

In the presence of:

Hussein -Court Assistant

Mr. Kiplagat for the Plaintiffs

No appearance for the Defendant

