



REPUBLIC OF KENYA



KENYA LAW
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**Tolimwo v Koikai & 4 others (Environment and Land Case
E141 of 2024) [2025] KEELC 5760 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5760 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE E141 OF 2024**

MD MWANGI, J

JULY 31, 2025

BETWEEN

LARASUNA OLE TOLIMWO PLAINTIFF

AND

MOTIYIA KOIKAI 1ST DEFENDANT

SAIMI KOIKAI 2ND DEFENDANT

KILETETO KOIKAI 3RD DEFENDANT

SAMATO MOTIYIA 4TH DEFENDANT

KITARO KOIKAI 5TH DEFENDANT

JUDGMENT

1. By way of a Complaint dated 2nd December 2024, the Plaintiff instituted this suit against the Defendants jointly and severally. The Plaintiff sought the following orders:
 - a. A declaration that he is entitled to exclusive and unimpeded right of possession, use and occupation of the suit property being Kajiado/Dalalalekutuk/902 measuring approximately 160.75 hectares;
 - b. A declaration that the Defendants, whether by themselves or their family members, children, servants or agents or otherwise howsoever, have wrongfully and unlawfully occupied the suit property and are accordingly trespassers;
 - c. A declaration that the Defendants, whether by themselves or their family members, children, servants or agents or otherwise howsoever, are not entitled to remain on or use the suit property;



- d. An order that the Defendants do forthwith deliver up vacant possession of the suit property and in default, eviction orders to issue;
 - e. A permanent injunction restraining the Defendants, their families, servants, agents or anyone claiming under them from remaining on or continuing in occupation of the suit property;
 - f. General damages for trespass;
 - g. Punitive damages; and
 - h. Costs of this suit together with interest thereon, and any other relief this Honourable Court may deem fit to grant.
2. It is the Plaintiff's case that he is the registered proprietor of land parcel Kajiado/Dalalalekutuk/902 measuring approximately 160.75 hectares, and as such entitled to exclusive possession and use thereof. He avers that in 1996, the father of the Defendants, one Koikai Ndonye alias Koikai Ole Ntoiyo [now deceased], trespassed onto the suit property, prompting the institution of Nairobi High Court Civil Suit No. 1338 of 1998, wherein judgment was entered in his favour and an eviction order issued in 1999. The decree was executed in 2001, and the deceased retreated to land allocated to him by Enkorika Group Ranch.
 3. The Plaintiff further avers that in 2018, the Defendants, being the family members of the said deceased, re-entered the suit property, forcefully occupying portions previously vacated. They have allegedly constructed temporary structures, destroyed gates and vegetation, and created an illegal access road across the property, acts which the Plaintiff terms as continuing trespass. Reports lodged with the Directorate of Criminal Investigations culminated in criminal charges for forceful detainer against the Defendants in Kajiado Chief Magistrate's Court Criminal Case No. 131 of 2018, which remains pending.
 4. Despite repeated demands to vacate, the Defendants have persisted in their occupation and use of the property. The Plaintiff maintains that no other suit involving the same parties and subject matter is pending before this Court and asserts that this Court has jurisdiction to hear and determine the matter.
 5. The Defendants, though duly served with summons to enter appearance, failed to do so within the prescribed period. Consequently, the matter proceeded undefended, with the Plaintiff being allowed to formally prove his claim, pursuant to the provisions of Order 10 rule 10 of the Civil Procedure Rules.

Plaintiff's Evidence

6. The Plaintiff, Larasuna Ole Tolimwa, testified as PW1. He adopted his witness statement as evidence-in-chief and produced the documents contained in his list of documents, which were collectively marked as Exhibits 1 to 10 in the order listed. He stated that he is the registered proprietor of all that parcel of land known as Kajiado/Dalalalekutuk/902, measuring approximately 160.75 hectares, having been allocated the same by Enkorika Group Ranch. He has since remained in occupation of the property and holds a valid title deed that entitles him to exclusive possession, use, and enjoyment thereof.
7. PW1 recounted that sometime in 1996, the father of the Defendants, one Koikai Ndonya alias Koikai Ole Ntoiyo [deceased], unlawfully entered and occupied part of the suit property, prompting him to file Nairobi High Court Civil Suit No. 1338 of 1998. That suit was heard and determined, culminating in a decree issued on 20th May 1999 ordering the said Koikai Ndonya to vacate the suit property, failure to which an eviction order was to issue. Following his continued refusal to vacate, the decree



was executed by court bailiffs in 2001, and Koikai Ndongya was evicted, retreating to his own parcel of land allocated to him by Enkorika Group Ranch.

8. The Plaintiff further testified that in 2018, the Defendants, being family members of the late Koikai Ndongya, trespassed onto and reoccupied the very portion of the property previously recovered through court orders. Despite not being parties to Nairobi HCCC No. 1338 of 1998, the Plaintiff asserted that the injunctive orders issued therein were orders in rem, binding not only on Koikai Ndongya but also on all persons claiming through him. He reported the Defendants' conduct to the Directorate of Criminal Investigations in Kajiado, leading to their being charged with forceful detainer in Kajiado Chief Magistrate's Criminal Case No. 131 of 2018, which is still pending determination.
9. PW1 described the Defendants' actions as forceful and unlawful, detailing that they broke and removed the existing fence, gained entry to the land, cut down bushes and trees, demolished habitable structures, and created an illegal road traversing the property. They also erected temporary structures and continued to occupy portions of the property without his consent. He asserted that their actions have deprived him of the quiet use and enjoyment of the land, occasioned damage, and led to repeated confrontations. The Plaintiff maintained that the Defendants have no legitimate claim or colour of right over the property, as they have their own land allocated to them by Enkorika Group Ranch. He thus prayed for the reliefs sought in the plaint, including orders of eviction and permanent injunction, to safeguard his proprietary rights.

Issues of Determination

10. Upon consideration of the pleadings, the evidence adduced, and the submissions before the Court, the following issues arise for determination:
 - i. Whether the Plaintiff is the lawful proprietor of Land Parcel No. Kajiado/Dalalalekutuk/902;
 - ii. Whether the Defendants, by their continued occupation and activities on the suit property, are trespassers;
 - iii. Whether the Plaintiff is entitled to the reliefs sought in the Plaint.

Analysis and Determination

i. Whether the Plaintiff is the lawful proprietor of Land Parcel No. Kajiado/Dalalalekutuk/902;

11. The Plaintiff asserts that he is the freehold proprietor and registered owner of Land Parcel No. Kajiado/Dalalalekutuk/902 measuring approximately 160.75 hectares, having been allocated the same by Enkorika Group Ranch. He testified that he has been in possession of the original title deed and produced it as part of his documentary evidence.
12. Section 26[1] of the *Land Registration Act*, 2012 provides that:

“The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except— [a] on the ground of fraud or misrepresentation to which the person is proved to be a party; or [b] where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”



13. In *Elijah Makeri Nyang'wara v Stephen Mungai Njuguna & Another* [2013] eKLR, the court emphasised that:

“A certificate of title issued by the Registrar is to be taken by all courts as prima facie evidence that the person named as proprietor is the absolute and indefeasible owner ... and such title shall not be subject to challenge except as provided under the Act.”

14. The Plaintiff's ownership has not been challenged by the Defendants through any counterclaim or evidence suggesting fraud, illegality, or procedural impropriety in the issuance of his title. The Defendants did not contest the Plaintiff's evidence nor tender any documents to show a superior or competing interest in the land.

15. Accordingly, the Court finds that the Plaintiff is the lawful proprietor of Land Parcel No. Kajiado/Dalalalekutuk/902, entitled to all the rights, privileges, and protections accorded under the law.

ii. Whether the Defendants, by their continued occupation and activities on the suit property, are trespassers;

16. The Defendants are alleged to have unlawfully entered onto and remained upon the suit land, having forcibly re-entered and occupied parts of it following a prior eviction of their father.

17. Section 3[1] of the *Trespass Act*, Cap. 294 states:

“Any person who without reasonable excuse enters, is or remains upon, or erects any structure on... private land without the consent of the occupier thereof shall be guilty of an offence.”

18. The Black's Law Dictionary [10th Edition] defines trespass as:

“An unlawful act committed against the person or property of another; especially wrongful entry on another's real property.”

Furthermore, Clerk & Lindsell on Torts [18th Ed] defines trespass as:

“Any unjustifiable intrusion by one person upon the land in possession of another.”

19. It is well established in Kenyan jurisprudence that: once legal title or lawful possession is established, any unauthorized entry or continued presence by another constitutes trespass which is actionable per se, without proof of actual damage. In *Duncan Nderitu Ndegwa vs KP&LC Limited & Another* [2013] eKLR, the court held:

“Once a trespass to land is established it is actionable per se, and indeed no proof of damage is necessary for the court to award general damages.”

20. The Plaintiff, Larasuna Ole Tolimwo, testified that he is the registered freehold proprietor of the suit property, Kajiado/Dalalalekutuk/902 and occupies it lawfully. He recounted that in 1996 the Defendants' father was evicted through a court decree [Civil Suit No. 1338 of 1998], and that following his eviction in 2001, the Defendants returned in 2018 to occupy portions of the same land without her consent. He produced a decree, shared her witness statement, and exhibits [marked Exhibit 1–10] to prove her ownership and occupancy.



21. The Defendants did not enter appearance and no contrary evidence was produced. There is no suggestion of consent, license, justification, or any lawful excuse. The Plaintiff's description of forced entry, destruction of her boundary fence, creation of an unauthorized road and erection of temporary structures demonstrates ongoing and unauthorized occupation.
22. Ownership of the land is prima facie proof of possession and extends to quiet possession under Section 24 & 25 of the *Land Registration Act*. Therefore, having shown title and possession, and with no defence put forward, the Defendants' continued occupation plainly constitutes trespass.

iii. Whether the Plaintiff is entitled to the reliefs as sought.

23. It is settled law that where trespass to land is proved, it is actionable per se, and damages may be awarded without proof of actual loss. In *Park Towers Ltd v John Mithamo Njika & 7 others* [2014] eKLR, J.M. Mutungi J., stated:

“Where trespass is proved a party need not prove that he suffered any specific damage or loss to be awarded damages. The court in such circumstances is under a duty to assess the damages awardable depending on the unique facts and circumstances of each case”

Similarly, in *Duncan Nderitu Ndegwa v Kenya Pipeline Company Limited & Another* [2013] eKLR:

“Once a trespass to land is established it is actionable per se, and indeed no proof of damage is necessary for the court to award general damages”

24. PW1's evidence clearly demonstrates that the Defendants entered the suit property, removed the fence, cut trees, erected structures, and created a road without consent. These acts, admitted in her witness statement, constituted an unjustifiable intrusion. The Defendants offered no evidence in rebuttal. Consequently trespass is clearly proved on the balance of probabilities.
25. With trespass established, the Plaintiff is entitled to a declaration that the Defendants, and those acting under them, are trespassers and are not entitled to occupy or use the property. Similarly, an order evicting them and delivering vacant possession is justified. The decree issued in Civil Suit No. 1338 of 1998 in rem supports the Plaintiff's continued right to exclusive possession.
26. The Plaintiff has also urged the court for a permanent injunction preventing further intrusion. A permanent injunction is appropriate only if the Plaintiff proves his case on the merits, and meets the equitable threshold. As laid down in *Kenya Power & Lighting Co. v Sheriff Molana Habib* [2018] KLR:

“...A permanent injunction which is also known as perpetual injunction is granted upon the hearing of the suit. It fully determines the rights of the parties before the court and is thus a decree of the court. The injunction is granted upon the merits of the case after evidence in support of and against the claim has been tendered. A permanent injunction perpetually restrains the commission of an act by the defendant in order for the rights of the plaintiff to be protected. A permanent injunction is different from a temporary/interim injunction since a temporary injunction is only meant to be in force for a specified time or until the issuance of further orders from the court. Interim injunctions are normally meant to protect the subject matter of the suit as the court hears the parties...”



27. In *Mulanga v Kisunza* [Environment and Land Appeal 7 of 2021] [2023] KEELC 15899 eKLR, the Court observed that:

“A permanent injunction fully determines the rights of the parties before the court and perpetually restrains the commission of an act by the defendant in order for the rights of the plaintiff to be protected.”

It thus requires that the Plaintiff’s right is clearly established and threatened unless restrained.

28. In the present case, the Plaintiff is the registered proprietor and in possession of the suit property. The persistent intrusion and creation of a roadway and structures without her consent raise risk of irreparable injury—loss of quiet enjoyment, destruction of boundary and value, and ongoing misuse. Monetary damages cannot restore her exclusive possession or prevent further encroachment. Those injuries are of a nature not readily quantifiable and inadequately efficacious remedies by damages alone.

29. Equally, balance of convenience favors the Plaintiff: if the injunction is granted and later the suit finds for the Defendants, they may rebuild or relocate; if withheld and the Plaintiff succeeds, the trespass may become entrenched and her enjoyment irreversibly impaired.

30. With regard to general damages, it is settled law that trespass to land is actionable per se, that is, without proof of any damage]. In *Park Towers Ltd v John Mithamo Njika & 7 others* [2014] eKLR where J.M Mutungi J. held that:

“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 damages. The court in such circumstances is under a duty to assess the damages awardable depending on the unique facts and circumstances of each case...”

In *Duncan Nderitu Ndegwa v Kenya Pipeline Company limited & Another* [2013] eKLR it was held that 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. It is therefore my considered opinion that the plaintiff in this case considering the circumstances of the case is entitled to general damages for trespass in the sum of Kshs. 100,000/=.

Exemplary [punitive] damages may be awarded where the trespass is oppressive, arbitrary or motivated by profit or malice. In *Abdulhamid Ebrahim Ahmed v Municipal Council of Mombasa* [2004] eKLR, Maraga J. stated

“Exemplary damages ... are awarded to punish the defendant and vindicate the strength of the law.”

31. In the present case I do not find the basis for the grant of exemplary damages.

32. Accordingly, the Plaintiff is entitled to the substantive relief sought in the Plaint, save that punitive damages may be moderate and interest is discretionary. The Court will grant declarations of trespass, eviction orders, permanent injunction, general damages, and costs.

33. Accordingly, the Court enters judgment in favour of the Plaintiffs against the Defendant as follows:

1. A declaration that the Plaintiff is entitled to exclusive, unimpeded possession, use and occupation of Land Parcel No. Kajiado/Dalalalekutuk/902 currently occupied by the Defendants.



2. A declaration that the Defendants, whether by themselves or acting through family, agents or any persons claiming under them, have wrongfully and unlawfully occupied the suit property and are trespassers therein.
3. A declaration that the Defendants have no right to remain on or use the suit property, and an order that they do vacate the same and deliver vacant possession in the next 45 days from the date of this judgment in default whereof they be forcefully evicted in strict compliance with the law and without further reference to this court.
4. In default of voluntary vacation within 14 days, eviction orders shall issue.
5. A permanent injunction restraining the Defendants, their agents, servants, or any persons claiming under them from entering, remaining on, or interfering with the suit property.
6. General damages to the Plaintiff in the sum of Ksh 100,000/= for trespass.
7. Costs of the suit to be borne by the Defendants.
8. Interest on the general damages at the courts' applicable rate from date of judgment until full payment.

34. It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 31ST DAY OF JULY 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Nairi for the plaintiff

No appearance for the defendants

Court assistant - Edwin

