

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELC NO. 719 OF 2016

PAUL THUO NJAMBI
PLAINTIFF

VERSUS

JAMES WAWERU MUTURI
DEFENDANT

JUDGMENT

1. Through a Plaint dated 27th June 2016, the Plaintiff sought judgment against the Defendant for the following orders:

- a) *An order of mandatory injunction compelling the defendant by himself, his agents, servants, employees, family and or any person claiming through the defendant to forthwith vacate the parcel of land known as Plot No. 675 in Kayole Spring Valley Resettlement Scheme.*
- b) *A permanent order of injunction to restrain the defendant by himself, his agents, servants, employees, family and or any person claiming through the defendant from entering, trespassing, occupying, operating a carwash or any other business, fencing, constructing or in any other way interfering with the plaintiffs quiet and peaceful occupation or ownership of*

the parcel of land known as Plot No. 675 in Kayole Spring Valley Resettlement Scheme.

c) General damages for trespass and loss of use of parcel of land known as Plot No. 675 in Kayole Spring Valley Resettlement Scheme.

d) Costs of this suit and Nairobi CMCC No. 1996 of 2016.

e) Any other relief that the court deems fit.

2. The Plaintiff's case is that he is the lawful and rightful owner of Plot No. 675 in Kayole Spring Valley Resettlement Scheme, having purchased the same from the then registered owner, Kangiria Self Help Group. It was his contention that upon acquisition, he took possession and commenced construction thereon, having deposited building materials on site for that purpose.
3. The Plaintiff averred that the Defendant, whom he described as a trespasser and/or land grabber, unlawfully entered upon and occupied the suit property without any justifiable cause or colour of right. He contended that the Defendant proceeded to operate a car wash business thereon without his consent or authority.
4. As a consequence of the Defendant's said actions, the Plaintiff averred that he has suffered immense loss and damage. He stated that the Defendant's entry and continued

occupation of the suit property was unlawful, having neither purchased nor acquired the same through any known legal process. It was his case that the Defendant not only operated a car wash business thereon, but also sought to restrain and evict the Plaintiff from his own land, and has since refused to vacate despite repeated demands.

5. The Plaintiff further averred that he sought the intervention of the local administrative authorities to enforce his rights over the suit property. However, despite several demands and directives by the said authorities requiring the Defendant to vacate peacefully, the Defendant had remained defiant and continued in occupation.
6. It was the Plaintiff's further averment that apart from **Nairobi CMCC No. 1996 of 2016**, which was stood over generally on account of jurisdictional issues, there exists no other suit pending between the parties in respect of the same subject matter, nor has there ever been any previous proceedings touching on the said parcel of land.
7. The Defendant, through an Amended Statement of Defence and Counterclaim dated 2nd October 2023, the Defendant opposed the Plaintiff's claim and denied the allegations set out in the Plaint. It was his case that the purported Plot No. 675, Kayole Springs Valley Resettlement Scheme, does not exist, the same being located on riparian land. The Defendant contended that officials of the said scheme had

created fictitious plot numbers with the intention of defrauding unsuspecting members of the public.

- 8.** The Defendant averred that he holds a valid permit to operate a car wash business on the said riparian land and that he has rightfully erected and operated his business thereon.
- 9.** The Defendant denied the particulars of loss and damages pleaded by the Plaintiff and contended instead that he is the one who has suffered loss as a result of the Plaintiff's unlawful actions. He averred that the Plaintiff wrongfully evicted him from the premises despite his possession of a valid business permit issued by the Nairobi City Council, and that the Plaintiff's conduct disrupted his business operations on the riparian land where sewer lines pass.
- 10.** It was further contended that the Plaintiff had on various occasions intimidated him and his employees, and sent goons to attack and eject them from the premises, thereby depriving him of quiet possession. The Defendant maintained that as a result of the Plaintiff's constant interference, he has suffered substantial business losses, notwithstanding his continued annual renewal and payment of the requisite business permits.
- 11.** The Defendant denied ever being served with any demand notice and asserted that the local administration authorities

lack jurisdiction or lawful power to evict him from the suit property.

- 12.** The Defendant further averred that the Plaintiff does not disclose any reasonable cause of action against him. He insisted that he lawfully operated a car wash business on the riverbank, being riparian land, under a valid permit issued by the Nairobi City Council. It was his contention that it is the Plaintiff, acting in collusion with others, who has illegally encroached upon and trespassed on the said riparian area.
- 13.** In his Counterclaim, the Defendant reiterated that he was granted a permit to operate a car wash business on the suit premises, only to later discover that the same forms part of a riverbank, and is therefore riparian land. He asserted that the area in question fronts his own parcel, Plot No. 381, Kayole Springs Valley Settlement Scheme, and does not constitute private land capable of individual ownership.
- 14.** The Defendant contended that the Plaintiff has on numerous occasions unlawfully encroached upon the area where he operates his business, dug trenches, and blocked access to the car wash, thereby interfering with his lawful use and quiet possession of the site. He maintained that as a result of the Plaintiff's disruptions, he has suffered business losses.
- 15.** In his Counterclaim, the Defendant sought judgment against the Plaintiff for the following orders:

- a) A declaration that the suit land parcel is a riparian land which is the front of the defendant's plot number 381 Kayole Springs Valley Settlement Scheme.***
- b) A declaration that the defendant is legally running his car wash business in the suit premises being a riparian land under the permit of the Nairobi City Council.***
- c) A perpetual injunction restraining the Plaintiff either by himself, his servants and/or agents or otherwise howsoever from further encroaching, occupying, developing, erecting any structures or in any other way dealing the suit premises that is to say the suit property.***
- d) General damages for trespass and loss of business.***
- e) Any other order that this Honourable Court deems just and fit to grant.***
- f) Costs of this suit.***
- g) Interests on (d) and (f) above at court rates.***

16. The Plaintiff, in his Defence to Counterclaim, denied the Defendant's averments in their entirety and reaffirmed his ownership and lawful possession of Plot No. 675, Kayole Spring Valley Resettlement Scheme. He maintained that he

cannot, in law or in fact, be deemed a trespasser on his own property.

Hearing and Evidence

- 17.** PW1, Paul Thuo Njambi, the Plaintiff in this suit, relied on his witness statement dated 29th June 2016 as his evidence-in-chief, and adopted the documents filed on the same date, which he produced as Plaintiff's Exhibit 1 (PEXH 1).
- 18.** He testified that he is the rightful and registered owner of the suit property, having purchased it from Kangiria Self Help Group for Kshs. 800,000. He produced a sale agreement to that effect. It was his evidence that following the institution of this suit, the Court granted an order that allowed him access to the property, and that consequently, the Defendant vacated the land pursuant to the said order.
- 19.** PW1 denied that the land was riparian and asserted that the plot exists as part of the Kayole Spring Valley Resettlement Scheme. He maintained that the Defendant is the owner of Plot No. 381, which lies opposite the suit property, and not Plot No. 675.
- 20.** PW1 further testified that before purchasing the property, he confirmed the ownership of the land to Kangiria Self Help Group through a letter dated 16th April 2015 written by Senior Chief Alice K. Adhola to the DCIO, Kayole Police Station. He produced a copy of the said letter, stating that it was the procedure for conducting a search.

- 21.** He stated that upon execution of the transfer documents by Kangiria Self Help Group, the land was transferred to him, and that he was subsequently issued with a Plot Formalization Card by the Nairobi City Council's Housing Development Department (HDD), which serves as the ownership document within the scheme.
- 22.** PW1 testified that he took immediate possession and commenced construction on the suit property. However, the Defendant raised a dispute that was referred to the Office of the Chief, Kayole, and that when requested to produce ownership documents, the Defendant failed to do so. PW1 produced a letter dated 17th February 2016 from the Chief to the DCIO, Kayole Police Station.
- 23.** He averred that the Defendant has made several unsuccessful attempts to unlawfully evict him from the suit property; that on one occasion, the Defendant deployed hooligans who attacked his workers at the construction site, prompting the Plaintiff to report the incident to the police.
- 24.** It was further his evidence that the Defendant, in an attempt to unlawfully acquire the land, secretly filed a case before the subordinate court; that the Defendant was ordered to serve him but failed to do so, instead misleading the court and obtaining orders irregularly and that the orders were later vacated, and the matter was stood over generally due to

jurisdictional issues, after which the Plaintiff was advised to move to this Court.

- 25.** PW1 testified that the officials of the Kayole Spring Valley Resettlement Scheme, namely, Mr. Francis Mutuku Munyai (Chairman), Mr. Patrick Okal Owalo (Secretary), and Mr. George Thairu Mburu (Chairman of Kangiria Self Help Group), have each sworn affidavits confirming him as the lawful owner of the suit property.
- 26.** In cross-examination, PW1 reiterated that he bought the land from Kangiria Self Help Group but admitted that he did not have a receipt for the purchase or registration documents for the group. He stated that upon purchase, the Defendant restrained him from depositing building materials on the site.
- 27.** He acknowledged that there was a car wash on the land when he bought it on 16th April 2015 and that he presented both the sale agreement and confirmation letter from the Chief. He stated that he never dealt with the Kayole Settlement Scheme directly but with Kangiria Self Help Group, whose allocation had been verified by the Chief.
- 28.** PW1 stated that although the land abuts a river, it has never been declared riparian by any government authority. He maintained that it was part of the Kayole Scheme and that he lawfully obtained ownership documents, including a plot formalization card.

- 29.** When referred to business permits dated 2013 and 2016 issued to James Waweru for a car wash business on Plot No. 675, PW1 denied any knowledge of them. He was also shown a Plot Identification Card issued in 2001 in the name of the same James Waweru, similar to his own, signed by the Chairman. PW1 insisted that he occupies Plot No. 675 and that the Defendant relocated his car wash business to the adjoining plot after being served with the court order.
- 30.** In re-examination, PW1 stated that the issuance of business permits to the Defendant only confirmed that the plot exists, as no permit would be issued for non-existent land. He stated that the Chief wrote gave him a letter after verifying his ownership documents. He maintained that the Defendant never produced any documents before the Chief as had been directed.
- 31.** PW1 further stated that there was no complaint from Kangiria Self Help Group regarding his ownership, and that the sale and transfer of the land on the same day was done for convenience since the group intended to conclude its transactions promptly.
- 32.** PW2, Patrick Okal Owalo, testified that he knew the Plaintiff as the lawful owner of the suit property and adopted his witness statement dated 29th June 2016. He stated that he is the Secretary of the Kayole Spring Valley Resettlement Scheme and resides on Plot No. 279 within the Scheme, and

that he is one of the pioneer members of the Scheme and served as Secretary since its inception.

- 33.** PW2 stated that Plot No. 675 was initially allocated to Kangiria Self Help Group, represented by its Chairman, Mr. George Thairu Mburu. He produced documents including the Plot Identification Certificate and a Nairobi City Council Plot Card bearing the name of Kangiria Self Help Group.
- 34.** PW2 recalled that in 2013, one James Waweru Muturi approached their office seeking permission to operate a car wash on the said plot. As the plot had already been allocated to Kangiria Self Help Group, the officials sought consent from the group to allow James Waweru temporary use of the land for his business on condition that he would vacate when they wanted to sell it.
- 35.** With their assistance, it was averred, James Waweru Muturi obtained a single business permit from the Nairobi City Council under the business name Spring Car Wash Area Service Bay. PW2 testified that in April 2015, Kangiria Self Help Group sold the said plot to the Plaintiff, Paul Thuo Njambi, with the approval of the Scheme officials. However, when the Plaintiff commenced development, James Waweru refused to vacate as agreed and began claiming ownership of the land.
- 36.** PW2 confirmed that the Plaintiff possesses original documents from the Nairobi City Council in respect of the

suit property, and that the Defendant owns Plot No. 381, which lies behind Plot No. 675, separated by a storm-water drainage.

- 37.** In cross-examination, PW2 confirmed his signature on the Plot Identification Certificate issued to James Waweru but clarified that it was not a document of ownership; that the same was issued solely to enable him to obtain a business permit for the car wash and that while they generally issue plot identification certificates to members, an exception was made in this case for the Defendant's business operations.
- 38.** He further stated that although the certificate issued to James Waweru was dated earlier on 17th June 2001 and the one issued to Kangiria Self Help Group is dated 17th June, the dates on the certificates do not confirm the dates of allocation. He confirmed signing both but reiterated that ownership of the land was vested in Kangiria Self Help Group.
- 39.** PW2 denied that the land is riparian, stating that the Scheme possesses a Part Development Plan (PDP) delineating all plots. He conceded that he did not bring the members' register or lease documents to court but maintained that the Defendant was only permitted to operate on the land temporarily.
- 40.** In re-examination, PW2 clarified that the Plot Identification Card issued to James Waweru contained alterations and was

meant only for business authorization purposes. He reaffirmed that the Plaintiff holds the legitimate ownership documents, including the Plot Formalization Card and transfer forms from the Nairobi City Council, whereas the Defendant holds none.

- 41.** PW3, George Thairu Mburu, testified that he resides in Kayole Spring Valley and is the Chairman of Kangiria Self Help Group. He adopted his statement dated 29th June 2016 as his evidence-in-chief.
- 42.** PW3 testified that Plot No. 675 exists and was allocated to Kangiria Self Help Group through the Kayole Spring Valley Resettlement Scheme. He stated that although the Defendant had requested to use the land for a car wash, it was on the understanding that he would vacate once the group decided to sell it.
- 43.** It was his evidence that the group later sold the plot to the Plaintiff for Kshs. 800,000, executed all transfer documents, and facilitated the issuance of the Plot Formalization Card from the Nairobi City Council. PW3 stated that he was present during the transfer; that the group consisted of five members, and that the group decided to sell the land as it lacked funds to develop it, and after receiving full payment, they transferred all documents to the Plaintiff.
- 44.** He testified that when the Plaintiff attempted to develop the land, the Defendant, who had been allowed temporary use,

refused to vacate and began claiming ownership and that the matter was referred to the Chief, who issued letters dated 16th April 2015 and 17th February 2016 addressed to the Director, Housing Development (Dandora) and the DCIO, Kayole, respectively.

- 45.** PW3 affirmed that the Plaintiff is the lawful owner of the plot, having purchased it for valuable consideration. He maintained that the Defendant was only allowed to operate a car wash temporarily, without any ownership rights.
- 46.** In cross-examination, PW3 confirmed that he was the Chairman of the group in 2001 and that the group received allocation of the plot in 2002. He admitted that there was a car wash operating on the plot at the time of sale but stated that it consisted only of washing activities and not permanent structures.
- 47.** He denied any knowledge of the Defendant's plot identification certificate, asserting that the land was properly transferred to the Plaintiff. He reiterated that the existence of a drainage behind the plot did not make the land riparian. In re-examination, PW3 maintained that Kangiria Self Help Group was lawfully allocated the land, and that no other person had been allocated the same prior to them. He reiterated that the Defendant was merely a temporary user and that the group had full authority to sell the plot to the Plaintiff.

- 48.** DW1, James Waweru Muturi, the Defendant in this suit, adopted his witness statement as his evidence-in-chief and relied on the documents dated 2nd October 2023, which he produced as DEXH 1. He testified that in 2001, he was allocated Plot No. 675 by the Kayole Spring Valley Resettlement Scheme, the same being adjacent to the riverbank. He stated that he was issued with a plot allocation certificate and planted trees on the site.
- 49.** It was his evidence that upon discovering the ground conditions to be wet due to an aquifer, and following a World Bank project in the area, he came to learn that the land fell within a riparian reserve. He further stated that he has operated a car wash business on the land since 2001 and has paid for annual business permits issued by the City Council.
- 50.** DW1 stated that the area was uninhabited in 2001; that the Plaintiff later commenced fencing, demolished the car wash shed, and chased away persons working at the site. He produced photographs of his structures.
- 51.** DW1 testified that he was supplied with a map by the Kayole Settlement office, although the map did not reflect the suit property. He maintained that the site is riparian and that he subsequently moved from the area due to violence.
- 52.** DW1 averred that he holds a valid business permit authorizing him to run a car wash on the riparian land in front of his Plot No. 381, Kayole Spring Valley Settlement

Scheme, the area referred to as the “purported Plot No. 675” and that Plot No. 675 is non-existent, the area being a riverbank and riparian corridor through which a sewer line passes, and that the officials of the scheme created the number with the intention of defrauding unsuspecting persons.

- 53.** DW1 contended that the Plaintiff filed this suit to evict him and commenced demolishing his structures under the guise of ownership, despite the land being riparian according to the records he relies upon and that the officials of Kayole Spring Valley Resettlement Scheme have been defrauding members of the public by selling non-existent riparian plots and that the Plaintiff is a victim of such dealings.
- 54.** DW1 further alleged that the Plaintiff has repeatedly encroached upon the site, dug trenches without cause, interfered with his quiet possession, blocked access, and demolished portions of his structures, notwithstanding his possession of a valid business permit. He stated that he has suffered loss as a result.
- 55.** In cross-examination, DW1 stated that in 2016, he filed **Milimani CMCC No. 1996 of 2016**, wherein he claimed Plot No. 676 as his plot and obtained an eviction order, which was later set aside. He stated that the Plaintiff filed the present suit after the lower court case was dismissed for want of jurisdiction.

- 56.** He conceded that in his initial defence, he claimed ownership of the suit plot. He acknowledged a prior ruling of this Court granting a mandatory injunction and declaring him a trespasser, and confirmed that his appeal was struck out for being filed out of time.
- 57.** DW1 maintained that he had documents to show the allocation of the suit property to him in 2001. He stated that the ballot paper used in the allocation process was surrendered in exchange for a certificate, and did not have a copy and that he does not hold a plot formalization card but has a plot identification card issued by the officials, who, he noted, admit issuing it to facilitate a business permit. He asserted that those who sold the land to the Plaintiff used a similar document.
- 58.** He testified that he realized the property was riparian in or about 2016/2017, and that he amended his pleadings in 2023 to reflect that position. He confirmed that his initial Defence, filed on 7th February 2018, sought a declaration that he is the sole owner of the land.
- 59.** He stated that following the court's directions to vacate, he and his workers vacated the land. He maintained that the car wash business was his, and that the Plaintiff fenced the plot and demolished structures immediately after the order.
- 60.** DW1 reiterated that the suit property does not exist as a plot because it is riparian land. He confirmed that his residence is

on another plot but that his car wash continues to operate. He contended that the Plaintiff fenced off part of the area used for his car wash, and that the business now lies to the side of the fenced area.

- 61.** He referred to a letter dated November 2010 from the Water Resources Authority (WRA), which was not addressed to him. He stated that while the letter mentions Plot No. 381 and delineates a 10-metre riparian setback on both sides of the river, it does not refer to Plot No. 675, which, he argued, is because Plot No. 675 does not exist.
- 62.** DW1 acknowledged that business permits for 2015 and 2016 reflect Plot No. 675, while a permit for 2023 reflects Plot No. 381. He did not produce permits for the period 2017–2022 in respect of the suit location. DW1 produced in evidence a copy of Kayole Settlement Scheme register which he claimed had been used to defraud people and bore the stamp of Kayole Spring Valley, although the officials' names had been removed. He also produced in evidence a judgment in No. 446 of 2010 concerning a neighbouring plot.
- 63.** DW1 also produced in evidence an agreement referencing "675" dated 2011, an uncertified map allegedly from the Survey of Kenya lacking an official stamp, and the WRA letter. He testified that Plot No. 381, where he resides, abuts the river and the riparian area and that the judgment he presented referred to a 10-metre riparian setback.

- 64.** DW1 stated that he obtained the list of members of the Kayole Settlement Scheme from the scheme's office; that he attempted to have the map certified but was informed that certification would not be done due to disputes in the area and that the map only applied up to 2018.
- 65.** DW2, George Maina Muthoni, a resident of Kayole Spring Valley and a local artisan, adopted his statement dated 2nd October 2023 as his evidence-in-chief. He stated that the Defendant is his friend and neighbour.
- 66.** DW2 testified that the Defendant commenced a car wash business on the riparian land in 2001 under permits issued by the Nairobi City Council. He stated that the Defendant owns Plot No. 381, and that the disputed area lies in front of that plot.
- 67.** He added that since 2001, the Defendant planted trees to prevent erosion along the riverbank and operated thereon peacefully until 2016, when the Plaintiff allegedly began disrupting the business, trespassing upon the area, and, with police assistance, interfering with operations.
- 68.** In cross-examination, DW2 stated that the car wash was along the riverside and that the 2015 business permit reflected Plot No. 675 without reference to the riparian land. He confirmed that the Defendant's house stands on Plot No. 381 and that the car wash lies in front of and across the river from it, on riparian land. He stated that the Defendant

planted the trees and that the Plaintiff, accompanied by police, interfered with the business, whereupon the Defendant vacated the area.

69. DW3, Pauline Wairimu Njuguna, a resident of Kayole Spring Valley, testified that she has a plot in the area, although she did not produce documents to that effect. She stated that the Defendant operated a car wash on the site since 2001 under the permits from the City Council, and that the land was not indicated as riparian on the permits. She stated that the Defendant planted trees on the land.

Submissions

70. Counsel for the Plaintiff submitted that the Plaintiff is the rightful and lawful owner of Plot No. 675 within the Kayole Spring Valley Resettlement Scheme; that the suit property lies on unregistered land and that courts have consistently held that ownership of unregistered land is established through the parcel's documentary history, including a sale agreement and scheme plot documents. Reliance was placed on **Hebron Orucho Gisebe & 2 Others vs Joseph Ombura Gisebe & Another [2022] eKLR**.
71. Counsel submitted that the Plaintiff produced a sale agreement dated 16th April 2015 for the purchase of the suit property; that the Plaintiff has demonstrated compliance with the requirement that dispositions in land be in writing and that the Plaintiff conducted due diligence prior to

purchase and confirmed that Kangiria Self Help Group owned the plot.

72. On the Defendant's assertion that the area is riparian land and that Plot 675 is non-existent, Counsel submitted that the claim is unsubstantiated and inconsistent with the Defendant's own prior litigation conduct. It was noted that the Defendant first moved the court in **Milimani CMCC No. 1996 of 2016**, asserting ownership of the same plot and obtained ex parte injunctive orders which were later discharged and that the suit was eventually struck out for want of jurisdiction.
73. Counsel referred to the definition of riparian land under the **Water Resources Management Rules, 2006**, and to **Regulation 116(2)** of the **Water Resources Management Rules, 2007**, which delineates riparian reserves as a minimum of six metres or equal to the full width of the watercourse up to a maximum of thirty metres on either side, unless otherwise determined by a Water Resources Inspector.
74. Reliance was further placed on **Regulation 118** of the **2007 Rules**, which restricts activities within riparian reserves, including tillage, clearing of indigenous vegetation, construction of permanent structures, excavation, and planting of harmful exotic specie.
75. While the Defendant claimed to hold permits from the Nairobi City Council to operate a car wash on riparian land,

Counsel submitted that such permits would be inconsistent with the above regulatory framework. It was argued that it was unlikely that a public authority would lawfully license a car-wash operation within a riparian reserve.

- 76.** As regards the WRA letter dated 3rd November 2010 produced by the Defendant, Counsel noted it references Plot 381 and a ten-metre riparian setback but does not mention Plot 675. Counsel submitted that the photographs in the Defendant's bundle are not tied to the suit property and, being electronic evidence, were not properly produced.
- 77.** On the map produced by the Defendant, Counsel submitted that it bears the description Nairobi Block 190 (Kayole Matopeni) with no indication that Kayole Spring Valley Resettlement Scheme or Plot 675 falls within it and that the map lacks Survey of Kenya certification or a forwarding letter, thereby undermining its authenticity and probative value.
- 78.** Counsel maintained that Plot 381 (Defendant) and Plot 675 (Plaintiff) lie on opposite sides of a shallow stream, separated by the watercourse, a position supported by the Plaintiff's witnesses (including Scheme officials and the Kangiria Chair) and not seriously rebutted. It was denied that Plot 675 is riparian land.
- 79.** According to Counsel, the Defendant was granted only temporary permission by Kangiria Self Help Group to

operate a car wash on the site, conditional upon vacating when the group opted to develop or sell it and that the subsequent sale of the land to the Plaintiff and the issuance of permits to the Defendant are not inconsistent with that temporary arrangement.

- 80.** Counsel for the Defendant submitted that although the Plaintiff claims ownership of Plot 675, he failed to produce clearance certificates for transfer, any document trail confirming the vendor's legal existence (such as registration documents), or receipts evidencing payments to the Group or the Scheme.
- 81.** It was further submitted that the Plaintiff conceded finding the Defendant already running a car wash on the land at the time of the purported purchase, and that inconsistencies exist regarding whether the Defendant attended the Chief's summons, suggesting the Plaintiff's evidence is contradictory and manufactured.
- 82.** Counsel contended that the Plaintiff acquired irregular documents notwithstanding the Defendant's earlier allocation (2001); that close scrutiny of the Plaintiff's Plot Identification Card reveals inconsistent L.R. numbers (183014-18315, 18317-18318), raising doubt as to whether a single plot can be situated in two distinct land blocks and that by contrast, the Defendant's card contains the correct L.R. numbers (18304-18315).

- 83.** Counsel argued that PW2, the supposed Kangiria official, produced no registration documents for the Group, no prior purchase trail, and no minutes or resolution authorizing the sale, contrary to legal requirements for dispositions by associations.
- 84.** It was further submitted that the Defendant's occupation did not stem from any agreement with Kangiria; rather, the Defendant was allocated the plot by the Kayole Settlement Scheme, demonstrating that Kangiria had no capacity to transact over the land.
- 85.** It was further submitted that the Defendant proved allocation in 2001 and long-standing occupation. Counsel stated that a Survey of Kenya map for Nairobi Block 190 demonstrates that the suit area is non-existent as a plot and forms part of a riverbank, a position allegedly affirmed by a WRA letter referencing a 10-metre riparian reserve between Plot 381 and Kangundo Road. Counsel also referred to DEX 7, a judgment said to confirm riparian status in the area.
- 86.** Counsel argued that the Defendant, as owner of the adjacent Plot 381, is entitled to limited riparian rights for environmentally sustainable use of the riverbank area, citing definitions in EMCA and constitutional provisions on public land **Article 62**, and emphasizing that riparian land is public and inalienable.

87. It was submitted that the Defendant had proved that he was allocated the parcel before the Plaintiff and that he had been in occupation of the land parcel since 2001. It was urged that this court should dismiss the Plaintiff's case as he who alleges must prove.

Analysis and Determination

88. Having considered the pleadings, the oral and documentary evidence tendered by the parties, and the written submissions on record, the following issues arise for determination:

- i. Whether Plot No. 675 within the Kayole Spring Valley Resettlement Scheme exists as a distinct and identifiable parcel of land.*
- ii. Whether the Plaintiff has established lawful ownership and entitlement to possession thereof.*
- iii. Whether the Defendant's continued occupation of the suit property amounts to trespass.*
- iv. Orders of the court*

89. This dispute turns on the existence and ownership of Plot No. 675 within the Kayole Spring Valley Resettlement Scheme. The Plaintiff maintains that he lawfully acquired the plot from Kangiria Self Help Group, which held a prior allocation under the Scheme.

90. The 1st Defendant, who initially laid claim to the same parcel, subsequently shifted position in his Amended Defence and

Counterclaim to assert that the locus is riparian land which the scheme officials allegedly purported to sell to multiple persons, thereby defrauding the public.

- 91.** The law on burden and standard of proof is settled. By **Sections 107, 109 and 112** of the **Evidence Act**, he who asserts must prove; the burden as to any particular fact lies on the party who wishes the Court to believe in its existence; and where a fact lies especially within a party's knowledge, that party bears the burden of proving or disproving it. **Section 107** of the **Act** provides as follows:

“(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”

- 92.** **Sections 109 and 112** of the same Act states as follows:

“109. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

“112. In civil proceedings, when any fact is especially within the knowledge of any party to

those proceedings, the burden of proving or disproving that fact is upon him.”

- 93.** The first issue is whether Plot No. 675 exists as a distinct, identifiable scheme parcel or whether the locus is, as alleged, riparian land incapable of private ownership.
- 94.** The Plaintiff’s evidence as to the existence of the suit property was a sale agreement dated 16th April 2025, a Chief’s letter confirming the vendor’s allocation, a Plot Identification Certificate for the vendor, transfer instruments and a Plot Formalization Card dated 23rd April 2015 issued by the Nairobi City Council/Housing Development Department (HDD).
- 95.** In disputes over unregistered land, such as in this case, courts routinely test title by reconstructing the documentary chain of allocation, transfer and formalization. This was held in **Caroline Awinja Ochieng vs Jane Anne Mbithe Gitau & Others [2012] eKLR.**
- 96.** The Defendant’s response is twofold: first, that Plot 675 does not exist and the area is riparian; second, that the officials of the Self Help Group fabricated the plot numbers to defraud the public.
- 97.** However, the Defendant’s own documents do not support his argument of non-existence of the plot, having produced City Council business permits issued in 2013, 2015 and 2016

explicitly tied to Plot 675 for a car wash. While a permit is not proof of ownership, its issuance referencing a plot number shows that the plot identifier exists in the scheme's administrative records.

- 98.** With respect to the assertion that the Plot is non-existent, DW1 testified that he was supplied with a map by the Kayole Settlement office, and that the map did not reflect the suit property. He also stated that he obtained the list of members of the Kayole Settlement Scheme from the scheme's office and produced an uncertified map allegedly from the Survey of Kenya which notably bore no official stamp.
- 99.** Regarding the uncertified map from the Survey of Kenya, **Section 81** of the **Evidence Act** provides that certified copies of public documents may be produced in proof of their contents. Under **Section 83** of the same Act, the court is entitled to presume as genuine a document purporting to be a certified copy executed in the manner directed by law. In the absence of such certification, the Court cannot attach to the map the presumption of regularity or authenticity contemplated under the Act. Its probative value, therefore, remains negligible.
- 100.** The list of members produced by the 1st Defendant purports to show that Plot No. 675 was allotted to five individuals. It is said to emanate from the Kayole Settlement Scheme, which from the evidence on record appears to be a private entity.

Accordingly, the requirement for certification under **Sections 80** and **81** of the **Evidence Act** does not strictly apply.

- 101.** Nevertheless, being a private document, its authenticity must be established in accordance with **Sections 65** and **66** of the Evidence Act which provide for proof of documents by primary and secondary evidence.
- 102.** No official of the Scheme was called to authenticate its origin, authorship, or purpose. The list itself is undated and bears only a stamp of the Resettlement Scheme, without explanation as to its custody or issuance. The mere presence of a stamp, without more, does not clothe the document with authenticity.
- 103.** In the absence of foundational evidence, the Court is unable to attach any probative value to the purported register. It remains unverified and cannot be relied upon to establish either the alleged membership or the alleged fraud.
- 104.** In the premises, the Court finds that the assertion that Plot No. 675 is non-existent, and the accompanying allegations of fraud by officials of the Kayole Spring Valley Resettlement Scheme, have not been proved to the requisite standard. As held in ***Kinyanjui Kamau vs George Kamau [2015] eKLR***, allegations of fraud must not only be specifically pleaded but must also be proved to a standard higher than

that required in ordinary civil cases. That standard has not been met in the present case.

105. On the claim that the land is riparian land, this court, in **Superior Homes (Kenya) PLC vs Water Resources Authority (WRA); Gems Management Limited & 9 others (Interested Parties) [2019] KEELC 819 (KLR)** considered the definition of riparian land as set out in the Article titled “*Riparian Areas: Functions and Strategies for Management,*” as follows:

“Riparian areas are transitional between terrestrial and aquatic ecosystems and are distinguished by gradients in biophysical conditions, ecological processes, and biota. They are areas through which surface and subsurface hydrology connect waterbodies with their adjacent uplands. They include those portions of terrestrial ecosystems that significantly influence exchanges of energy and matter with aquatic ecosystems (i.e., a zone of influence). Riparian areas are adjacent to perennial, intermittent, and ephemeral streams, lakes, and estuarine-marine shorelines.”

106. The question of what constitutes riparian land and the extent of a riparian reserve is governed by several statutory and regulatory instruments enacted for the protection of

watercourses and adjoining ecosystems. Collectively, these provisions underscore that riparian zones serve both environmental and public purposes and impose land-use controls rather than conferring private proprietary rights.

107. Part IX of the Water Resources Management Rules, 2007 provides the primary framework for determining the width of riparian land. **Rule 116(2)** stipulates that, unless otherwise determined by a Water Resources Inspector, the riparian land on each side of a watercourse is defined as a minimum of six metres or equal to the full width of the watercourse up to a maximum of thirty metres on either side of the bank.

108. Sub-rule (4) further directs that this width be measured from the top edge of the bank and applies to both seasonal and perennial watercourses. The Rule therefore establishes a measurable buffer from the natural limits of a water body within which development activities are restricted

109. The Environmental Management and Co-ordination (Wetlands, River Banks, Lake Shores and Sea Shores) Regulations, 2009, complement this framework by defining a river bank as the rising ground from the highest normal water mark bordering or adjacent to a river, whether rock, mud, gravel or sand, and, in cases of flood plains, extending to the point where the water surface touches the land, but excluding the bed of the river. This definition ties the

protection zone to the river's natural hydrological behavior and its historical flood limits.

110. Similarly, while the **Environmental Management and Co-ordination (Water Quality) Regulations, 2006** do not expressly define riparian land, they prohibit development within a minimum of six metres and a maximum of thirty metres from the highest ever recorded flood level on either side of a river or stream. This provision reinforces the same protective corridor envisaged under the 2007 Rules, thereby harmonizing water resource protection with environmental quality regulation.

111. **Section 12(2)(c)** of the **Land Act, 2012** places riparian zones within the category of public land held by the national government. The section expressly recognizes riparian reserves as lands that cannot be alienated for private ownership but may be subject to management controls for conservation and public use. In law, therefore, riparian land does not confer individual title; it remains public property over which only limited, regulated use may be permitted.

112. Had the Defendant placed before this Court credible technical or expert evidence demonstrating that Plot No. 675 lies within a delineated riparian reserve, such evidence would have materially impeached the Plaintiff's claim, for the law does not permit private ownership of land reserved for public use.

113.The material tendered, however, falls far short of that threshold. The Defendant relied on a letter from the Water Resources Management Authority dated 3rd November 2010, which referenced Plot No. 381 and noted a ten-metre setback from a sewer line situated on the opposite bank.

114.Notably, the letter makes no reference whatsoever to Plot No. 675. Similarly, the judgment in **CMCC No. 4665 of 2010**, which the Defendant cited as authority to show that the area constitutes riparian land, made no such finding. The learned magistrate merely observed that the dispute before that court related to a boundary disagreement concerning Plots Nos. 381 and 296 within Kayole.

115.No certified plan places Plot 675 within the statutorily measured riparian band. From the regulations, riparian status is a technical determination measured from the top edge of the bank and tied to the highest flood level; it must be plot-specific. The Defendant's materials do not undertake that analysis for Plot 675. Even if they had, at most they might have delimited a 6 - 30 metres strip out of the plot, which measures 20m by 50 metres.

116.In contrast, the Plaintiff's chain, which includes the vendor's allocation, Chief's verification, formalization paperwork, and the Plot Formalization Card is consistent and corroborated by scheme officials (PW2) and the vendor's Chair (PW3). The absence of group minutes and receipts goes to weight, not to

the existence of the parcel, particularly where issuance of the plot formalization card by Nairobi City Council's Housing Development Department is shown and not rebutted with cogent counter-proof.

117. On the totality of the evidence, this court is satisfied that Plot No. 675 exists as a distinct scheme parcel, and the Defendant has not proved that it lies within a riparian reserve as a matter of technical measurement and law.

118. The next issue to deal with is whether the Plaintiff has established lawful ownership and entitlement to possession thereof. It is trite that a party asserting ownership of unregistered land bears the burden of tracing, through credible evidence, an unbroken documentary chain leading to the root of title. As observed by Onguto J. in **Caroline Awinja Ochieng & another vs Jane Anne Mbithe Gitau & 2 others [2015] eKLR;**

“In determining the above issue, it would perhaps be appropriate to first state that tracing ownership of unregistered land is dependent on tracing the root of title. Unlike registered land where ownership is domiciled and founded in the register of titles, ownership of unregistered land and the ascertainment or confirmation thereof involves the intricate journey of wading through documentary history.....

It is the delivery of deeds or documents which assist in proving not only dominion of unregistered land but also ownership. The deeds must establish an unbroken chain that leads to a good root of title or title paramount. A good compilation of the documents or deeds relating to the property and concerning the claimant as well as any previous owners leading to the title certainly proves ownership. It is such documents which are basically ‘the essential indicia of title to unregistered land’’: per Nourse LJ in Sen v Headley [1991] Ch 425 at 437.

The documents in my view are limitless. It could be one, they could be several. They must however establish the claimant’s beneficial interest in the property. Examples of the deed or documents include, at least in the Kenyan context: sale agreements, Plot cards, Lease agreements, allotment letters, payment receipts for outgoings, confirmations by the title paramount, notices, et al.”

119.In the present case, the suit property forms part of the Kayole Spring Valley Resettlement Scheme. To establish ownership, the Plaintiff produced a sale agreement dated 16th April 2015 between himself and Kangiria Self Help Group, a letter from Senior Chief Alice Adhola dated 16th

April 2015 confirming that the property existed within the scheme and was owned by Kangiria Self Help Group, transfer documents executed by the said group in his favour, a Plot Formalization Data Collection Form completed by the Plaintiff, and a Plot Formalization Card issued by the Nairobi City Council, Housing Development Department.

120. The Plaintiff's evidence was further corroborated by the testimony of PW2, an official of the Kayole Spring Valley Resettlement Scheme, and PW3, the Chairman of Kangiria Self Help Group, both of whom confirmed that Kangiria was the original allottee of the plot and lawfully transferred it to the Plaintiff for value. Their evidence was consistent and unshaken under cross-examination.

121. The Defendant, on the other hand, produced only a Plot Identification Certificate and a clearance certificate purportedly issued by the same Scheme. PW2, who was an official of the Scheme, acknowledged issuing the identification certificate but explained that it was done solely to facilitate the Defendant's temporary use of the plot for a car wash business pending its sale.

122. The Defendant's long possession and operation of a car wash business on the site from 2001 was not disputed and was corroborated by his own witnesses, DW2 and DW3, as well as the business permits issued by the Nairobi City Council in 2013, 2015 and 2016.

123. It is thus evident that the Defendant entered and occupied the property by leave or licence of the Scheme officials. His possession was permissive and not proprietary in nature. Moreover, by his own amended pleadings, the Defendant has since abandoned any claim of ownership, contending instead that the land is riparian. Having so elected, he cannot now assert a superior right to possession.

124. On the totality of the evidence, the Court is satisfied that the Plaintiff has traced a credible and unbroken documentary chain establishing his lawful acquisition of Plot No. 675 and his better and immediate right to possession as against the Defendant, whose occupation was merely temporary and derivative of a revocable licence.

125. Having found that the Plaintiff has demonstrated lawful ownership and the immediate right to possession of Plot No. 675, the next issue for determination is whether the Defendant's continued occupation of the suit property constitutes trespass. According to **Black's Law Dictionary 8th Edition**, trespass is defined as:

"An entry on another's ground, without a lawful authority, and doing some damage, however inconsiderable, to his real property."

126. A continuing trespass, on the other hand, is defined as:-

“A trespass in the nature of a permanent invasion on another’s rights, such as a sign that overhangs another’s property”

127.The statutory framework on trespass is encapsulated under **Section 3 (1)** of the **Trespass Act**, which provides that:

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

128.The combined effect of the above provisions is that once a person’s occupation or entry onto another’s land ceases to be sanctioned by law or consent, such continued presence becomes unlawful and constitutes trespass. It matters not whether the trespass causes actual damage; the mere unlawful interference with possession is sufficient to ground liability.

129.It is not disputed that the Defendant entered and occupied the suit property in 2001 with the consent of officials of the Kayole Spring Valley Resettlement Scheme to operate a car wash business. That consent amounted to a licence. The Plaintiff subsequently purchased the land in 2015 and thereby acquired both ownership and the immediate right to possession. Upon that transfer, the Defendant’s licence automatically lapsed.

130. From that moment, the Defendant's continued occupation and operation of his car wash business on the suit property ceased to have any legal basis. His possession became adverse to the rights of the new owner, rendering him a trespasser within the meaning of the **Trespass Act**.

131. The record confirms that despite several demands and interventions by the local administration, the Defendant remained in occupation until 2017, when Obaga J issued a mandatory injunction compelling his eviction. The Plaintiff's ownership, having been perfected in 2015, means that the Defendant's occupation between 2015 and 2017 was without consent and thus constituted a continuing trespass, for which the Plaintiff is entitled to appropriate relief, including a permanent injunction restraining any further interference and general damages for loss of use.

132. Having found that the Plaintiff has proved lawful ownership of the suit property, and that the Defendant's continued occupation thereof constitutes trespass, it follows that the Defendant's counterclaim fails. Accordingly, the Plaintiff's claim succeeds. The Court now turns to consider the appropriate reliefs.

133. The record demonstrates that pursuant to an earlier order issued by Obaga J. in 2017, the Defendant vacated the suit property following a mandatory injunction. Having found that the Defendant's continued occupation constituted unlawful

trespass, this Court affirms that order and grants a permanent injunction restraining the Defendant, his servants, or agents from any further interference with the Plaintiff's possession, occupation, or enjoyment of the suit property.

134. On the prayer for general damages for trespass, the principle is that trespass is actionable *per se*, and damages are recoverable without proof of actual loss. In ***Park Towers Ltd vs John Mithamo Njika & 7 Others [2014] eKLR***, the Court observed 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."

135. In the instant case, the Defendant's unlawful occupation extended from 2015, when the Plaintiff acquired ownership, to 2017, when he was compelled to vacate by an order of the Court. During this period, the Plaintiff was deprived of the full use and enjoyment of his property, while the Defendant derived commercial benefit from its continued occupation.

136. The interference was deliberate, persistent, and in disregard of the Plaintiff's proprietary rights. In the circumstances, an

award of Kshs. 500,000 is fair and reasonable compensation as general damages for trespass.

137. On the issue of costs, the general principle under **Section 27** of the **Civil Procedure Act** is that costs follow the event, and the successful party should ordinarily be awarded costs unless the Court, for good reason, orders otherwise. This court finds no reason to depart from that principle in this case. Accordingly, the Plaintiff shall have the costs of this suit.

138. While the Plaintiff has sought costs in relation to the Nairobi CMCC No. 1996 of 2016, this Court notes that, although arising from the same subject matter, this matter was clearly not before this Court. The costs of that matter are within the discretion of that court and therefore no order shall be made as to its costs.

139. In light of the foregoing analysis and findings, judgment is hereby entered for the Plaintiff against the Defendant as follows:

- i. It is hereby declared that the Plaintiff, Paul Thuo Njambi, is the lawful and rightful owner of Plot No. 675, Kayole Spring Valley Resettlement Scheme.**
- ii. A permanent injunction is hereby issued restraining the defendant, James Waweru Muturi, his agents, servants, employees, family**

and or any person claiming through the defendant from entering, trespassing, occupying, operating a carwash or any other business, fencing, constructing or in any other way interfering with the Plaintiff's quiet and peaceful occupation or ownership of the parcel of land known as Plot No. 675 in Kayole Spring Valley Resettlement Scheme.

- iii. The Defendant shall pay to the Plaintiff general damages of Kshs. 500,000 for trespass.
- iv. The Defendant shall pay interest on the above amount at court rates from the date of this judgment until payment in full.
- v. The Defendant shall bear the costs of this suit and Counterclaim.

Dated, signed and delivered in Nairobi virtually this 20th day of November, 2025.

O. A. Angote
Judge

In the presence of;

Mr. Ngugi for Plaintiff

Ms. Maina for Defendant

Court Assistant -Tracy