



REPUBLIC OF KENYA



KENYA LAW
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**Daniel v Meru County & 2 others (Environment and Land Case
E022 of 2024) [2025] KEELC 8304 (KLR) (27 November 2025) (Judgment)**

Neutral citation: [2025] KEELC 8304 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND CASE E022 OF 2024**

**JO MBOYA, J
NOVEMBER 27, 2025**

BETWEEN

MARGARET AKREGI DANIEL PLAINTIFF

AND

MERU COUNTY 1ST DEFENDANT

THE DISTRICT LAND REGISTRAR, MERU CENTRAL 2ND DEFENDANT

THE HON ATTORNEY GENERAL 3RD DEFENDANT

JUDGMENT

1. The Plaintiff approached the court vide Plaintiff dated 22nd August 2024; and wherein same has sought various reliefs. The reliefs at the foot of the Plaintiff are as hereunder;
 - i. An order of declaration that the plaintiff is the registered owner of L.R. No. Nyaki/Murathankari/275 measuring 1.43 ha on the ground and is entitled to be issued with a title deed for 1.31 ha and the 1st defendant is entitled to be issued with a title deed for the compulsorily acquired 0.12 ha.
 - ii. An order for the completion of subdivision schemes of L.R. No. Nyaki/Murathankari/275 to excise 0.12 ha in favour of the 1st defendant and leave the balance in the name of the plaintiff.
 - iii. An order directing the 2nd defendant to rectify the register to reflect the correct acreage of L.R. No. Nyaki/Murathankari/275 as 1.43 ha and issue the plaintiff with a title deed for 1.31 ha and the 1st defendant with a title deed for 0.12 ha.
 - iv. An order requiring the 1st defendant at its cost to demolish its structures on the plaintiff's balance of L.R. No. Nyaki/Murathankari/275 and in default the 1st defendant be forcefully evicted with the assistance of the officer commanding station Meru.



- v. Payment of loss user of the property at Kshs.1,350,000/= per month since the 4.6.2018 to date.
 - vi. An order of permanent injunction do issue restraining the 1st defendant, its employees, agents, servants or anybody else claiming at the defendant's behest or instructions from entering into, remaining, occupying, trespassing or in other way whatsoever interfering with the plaintiff's peaceful possession, user and enjoyment of L.R No. Nyaki/Murathankari/275.
 - vii. Costs and interests.
2. The 1st defendant duly entered appearance and filed a statement of defence and wherein same denied and disputed the claims by the plaintiff. In addition, the 1st defendant posited that the plaintiff shall be invited to strict proof on the claims/assertions contained in the body of the plaint.
 3. The 2nd and 3rd defendants entered appearance and filed a statement of defence disputing the allegations by the plaintiff. Moreover, the 2nd and 3rd defendants contended that the claims beforehand, touch on and concern the 1st defendant. To this end the 2nd and 3rd defendant contended that the suit beforehand does not disclose any reasonable cause of action against them.
 4. The instant matter was set down for pre-trial directions on 18th June 2025; whereupon the parties intimated to the court that same had filed and exchanged the relevant pleadings. Additionally, the plaintiff intimated that same had filed the list and bundle of documents, list of witness statements. On the other hand, the 1st defendant indicated that same shall not be calling any witness. Similarly, the 2nd and 3rd defendants also indicated that same shall not be calling any witness.
 5. The Plaintiff's case is premised on the evidence of three witnesses namely; Margaret Karegi Daniel; Newton Muthembia Daniel and Peter Kimani. Same testified as PW 1, PW 2 and PW 3, respectively.
 6. It was the testimony of the witness [Margaret Karegi Daniel] that same is the plaintiff in respect of the instant matter. Furthermore, the witness averred that by virtue of being the plaintiff, same is therefore conversant with the facts of the case. Moreover, the witness testified that same has since recorded and filed a witness statement dated 22nd August 2024 and which witness statement the witness sought to adopt and rely on as her evidence in chief. The witness statement was thereafter adopted and constituted as the evidence in chief of the witness.
 7. Furthermore, the witness adverted to the list and bundle of documents dated 22nd August 2024 containing 17 documents and which documents the witness sought to tender and produce before the court. Save for document No. 12, namely; the survey report, which was objected to and was thereafter marked as MFI P12, the rest of the documents were tendered and produced in evidence as exhibits P1 – 11; 13 – 17.
 8. It was the further testimony of the witness that same has also filed a Plaint dated 22nd August 2024 and a verifying affidavit to that effect. Moreover, the witness sought to adopt and rely on the contents of the Plaint and thereafter implored the court to grant the reliefs sought at the foot of the plaint.
 9. On cross-examination by learned counsel for the 1st defendants, the witness averred that same is currently registered as the owner of the suit property. Besides, the witness testified that the suit property was previously registered in the name of her late husband but was subsequently transferred and registered in her name after succession proceedings.
 10. It was the further testimony of the witness that the 1st defendant is in occupation of a portion of the suit property. Moreover, the witness testified that there is a barbed wire fence that separates the portion of the suit property that is occupied and used by the county government. In particular, the witness averred that the portion used by the county government has a slaughterhouse.



11. While still under cross-examination, the witness testified that the county government entered upon the portion of the suit property in 1999. Nevertheless, the witness clarified that the county government officially occupied and commenced her activities on the portion of the suit property in the year 2018. Moreover, the witness posited that the county government acquired a portion of the land when her [witness] husband was the owner of the land.
12. Additionally, the witness averred that there are mutation forms that have since been prepared over and in respect of the suit property. Nevertheless, the witness conceded that same has neither tendered nor produced the mutation forms. Moreover, the witness averred that same has tendered a copy of the certificate of title showing the subdivisions.
13. On further cross-examination, the witness testified that same has tendered and produced before the court a document referenced as the proposed budget for dairy farming. To this end, the witness pointed out and adverted to exhibit P16. Moreover, the witness conceded that the said document has neither been signed by anyone. Besides, the witness also averred that the document has photographs that have been attached/annexed thereto.
14. It was the further testimony of the witness that the county government has constructed a slaughterhouse on a portion of the suit property and other structures on portions of the suit property and which structures have blocked her [witness] from undertaking commercial activities on the suit property. For good measure, the witnesses clarified that the slaughterhouse is built on a portion of the suit property.
15. Furthermore, it was the testimony of the witness that the suit property was previously registered in the name of her deceased husband. In any event, the witness testified that the green card of the suit property shows/demonstrates that the suit property measures 1.2 ha. In addition, the witness testified that a portion of the suit property measuring 0.12 ha was compulsorily acquired for the county government. Nevertheless, the witness testified that the county government has taken and or entered upon a portion of land which exceeds what was compulsorily acquired.
16. On cross-examination by the learned counsel for 2nd and 3rd defendants, the witness testified that the green card of the suit property confirms that the land in question measures 1.2 ha. For good measure, the witness conceded that the acreage is not 1.43 ha. Moreover, the witness acknowledged that a portion of the suit property measuring 0.12 ha was compulsorily acquired and the acquisition has been duly registered in the green card.
17. While still under cross-examination, the witness testified that the suit land should measure 1.08 ha, after deduction of the portion that was compulsorily acquired. In particular, the witness confirmed that the portion that was compulsorily acquired measures 0.12 ha.
18. It was the further testimony of the witness that same had intended to keep/own 30 dairy cows. However, the witness conceded that it was a mere intention.
19. For good measure, the witness clarified that same has never acquired the cows.
20. The 2nd witness who testified on behalf of the plaintiff was Newton Muthembia Daniel. Same testified as PW 2.
21. It was the testimony of the witness that same is a son of the Plaintiff. Moreover, the witness intimated to the court that by virtue of being a son of the plaintiff, same is familiar with the facts of the case. Additionally, the witness referenced the statement dated 22nd August 2024 and thereafter sought to



- adopt and rely on the contents of the said witness as his evidence in chief. To this end, the witness statement was duly adopted and constituted as the evidence in chief of the witness.
22. Regarding the green card [exhibit P4], the witness testified that there was a case that had been filed pertaining to and concerning the size of the land that had been acquired by the county government of Meru. In particular, the witness averred that the case was disposed of. In this regard, the witness sought to tender and produce a copy of the ruling issued vide Meru HCC No. 93 of 2012 and which ruling was produced as exhibit P 18.
 23. It was the further testimony of the witness that the suit property measures 1.43 ha. Nevertheless, the witnesses acknowledged that the acreage shown on the green card is 1.2 ha.
 24. The 3rd witness who testified on behalf of the plaintiff was Peter Kimani. Same testified as PW 3.
 25. It was the testimony of the witness that same is a surveyor by profession. Furthermore, the witness testified that currently, he is the surveyor in charge of Embu county. Moreover, the witness averred that previously same was a surveyor in Meru county. In this regard, the witness averred that during his tenure as a surveyor in Meru, same visited the suit property and thereafter prepared a surveyor's report dated 4th September 2020. To this end, the witness sought to tender and produce the survey report under reference as an exhibit. There being no objection to the production of the survey report, same was produced and marked as exhibits P 12.
 26. On cross-examination by learned counsel for the 1st defendant, the witness averred that it is him [witness] who prepared the surveyor's report. In addition, the witness testified that before preparing the surveyor's report, same visited the suit property. Additionally, the witness averred that a portion had been compulsorily acquired. However, the witness clarified that the portion of the suit property which had been compulsorily acquired had not been demarcated on the ground.
 27. While still under cross-examination by learned counsel for the 1st defendant, the witness posited that because the portion which was compulsorily acquired had not been demarcated on the ground, it was not possible to discern/isolate the said portion[s] on the ground. Nevertheless, the witness conceded that the portion which was compulsorily acquired has a slaughterhouse developed thereon.
 28. It was the further testimony of the witness that the portion of land where the slaughterhouse is sitting has not been demarcated on the ground. Furthermore, the witness averred that the county government is not occupying the entire of the suit property. For good measure, the witness clarified that the county government is only occupying a portion of the suit property.
 29. Regarding the question as to whether the portion where the slaughterhouse is situated is capable of being excised from the suit property, the witness confirmed that it is possible to demarcate and subdivide the suit property and thereafter excise the portion that was compulsorily acquired.
 30. With the foregoing testimony, the plaintiff's case was closed.
 31. The 1st defendant neither filed a list of witnesses, list of bundles of documents; or a witness statement. Furthermore, learned counsel for the 1st defendant intimated that the 1st defendant was not calling any witness. In this regard, counsel proposed to close the 1st defendant's case without calling/adducing any evidence.
 32. Similarly, the 2nd & 3rd defendants also did not file any list and bundle of documents, list of witnesses nor witness statement. To this end, the case for the 2nd and 3rd defendants was closed without any evidence being adduced.



33. Upon the close of the hearing, the advocates for the parties sought time to file and exchange written submissions. To this end, the court ventured forward and issued directions as pertains to filing and exchange of the written submissions. Additionally, the court circumscribed the timeline[s] for the filing of the submissions.
34. The plaintiff filed written submissions dated 13th November 2025 and wherein same has highlighted two key issues, namely; whether the plaintiff is the lawful proprietor of the suit property and if so whether the plaintiff is entitled to the reliefs sought at the foot of the plicant or otherwise.
35. On the other hand, the 1st defendant filed written submission dated 24th November 2025 and wherein same has highlighted and canvassed one singular issue, namely; whether the plaintiff is entitled to the reliefs sought.
36. The 2nd and 3rd defendants did not file any written submissions. For good measure, the only sets of written submissions in respect of the subject matter are the written submissions filed by the plaintiff on one hand and the 1st defendant on the other hand. [See the details highlighted elsewhere in the preceding paragraphs.
37. I have reviewed the pleadings filed by/on behalf of the parties; the evidence tendered [both oral and documentary] and upon consideration of the written submissions filed, I come to the conclusion that two issues do crystallize and are worthy of determination. The two issues are namely; whether the plaintiff has established/prove her claim before the court or otherwise and what reliefs [if any] ought to be issued.
38. Regarding the first issue, it is important to recall and reiterate that the suit property was previously registered in the name of one Daniel Maingi now deceased. Suffice it to state that the suit property was registered in the name of the said deceased on 25th October 1967. Additionally, it is apparent that the suit property measured 1.2 ha at the onset namely during the 1st registration.
39. It is also worthy to reiterate that the commissioner of lands [now defunct] published a notice of intention to acquire a portion of the suit property for and on behalf of the county council of Meru [now defunct]. The notice of intention to acquire a portion of the suit property was duly gazetted and the gazette notice confirmed that the portion that was being acquired measured 0.12 ha.
40. Subsequently, the process of compulsory acquisition was undertaken and concluded. The acquisition of the designated portions was thereafter reflected in the green card of the suit property. However, during the process of endorsing the portion that was acquired in the green card, the 2nd respondent erroneously indicated that the portion acquired measured 1.2 ha. For good measure, the said indication suggested that the entirety of the suit property had been acquired, which was not the case.
41. The plaintiff herein lodged a complaint with the chief land registrar vide letter dated 8th November 2017 and wherein the plaintiff annexed a copy of the Kenya gazette dated/published on 9th June 1978 and which clarified that the portion that had been compulsorily acquired measured 0.12 ha. In this regard, the office of the chief land registrar proceeded to and endorsed a correction on the register showing/confirming the acreage which was compulsorily acquired as [to be] 0.12 ha.
42. Be that as it may, evidence was tendered that despite the fact that the county council of Meru, [now defunct], and which has been replaced by the county government of Meru, only acquired 0.12 ha, same has entered upon and taken possession of a substantial portion of the suit property. Moreover, the plaintiff tendered evidence that the portion that has been occupied by the 1st defendant exceeds/surpasses the portion that was compulsorily acquired.



43. Arising from the foregoing, the plaintiff has sought a declaration that the portion that was compulsorily acquired and which lawfully belongs to the 1st defendant measures 0.12 ha. Furthermore, the plaintiff has posited that the remainder of the suit property lawfully belongs to her and thus the 1st defendant ought to vacate and grant vacant possession in respect of the portion falling outside the 0.12 ha.
44. Having considered the evidence tendered by the plaintiff; and taking into account that neither of the defendants offered any evidence in rebuttal, I come to the conclusion that the plaintiff has duly established the following;
- a. That the suit property measured 1.2 ha at the onset, namely during the 1st registration.
 - b. That the portion which was compulsorily acquired measures 0.12 ha and not otherwise.
 - c. The 1st defendant is only entitled to utilize the portion that was lawfully acquired on her behalf and not any portion outside the 0.12 ha.
 - d. The suit land has never been subdivided in an endeavor to excise and demarcate the 0.12 ha belonging to the county government of Meru.
 - e. The county government of Meru has encroached upon and taken possession of a portion of land exceeding what was lawfully acquired.
 - f. That the plaintiff is entitled to exclusive possession of the suit property, less the portion that was compulsorily acquired for the 1st defendant and which portion ought to be excised and thereafter be registered in the name of the county government of Meru.
45. Flowing from the foregoing, it is my finding and holding that the plaintiff herein is indeed entitled to a declaration that same is the lawful and registered proprietor of the suit property, which measures 1.2 ha, [less the 0.12 ha] which was compulsorily acquired; and which is therefore public land belonging to the 1st defendant. [See the holding of the Supreme Court in the case of *Town Council of Awendo v Onyango & 13 others; Mohamed & 178 others (Interested Parties) (Petition 37 of 2014) [2019] KESC 38 (KLR) (Civ) (30 April 2019) (Judgment) Reported and Kenya Urban roads authority vs Belgo Holdings Ltd (2025) KECA*], respectively.
46. Before concluding on this issue, I beg to underscore that the testimony that was given by and on behalf of the plaintiff was never controverted. In this regard, there is no gainsaying that the assertions by the plaintiff [which were duly proven vide the evidence on record] remain[s] unchallenged and thus tilt the pendulum in favour of the plaintiff. Instructively, proof on a balance of probability only requires the claimant or the person chargeable with the burden of proof to demonstrate that it is more probable that the event under reference occurred.
47. In the case of *Jamal Salim vs Yusuf Abdullahi Abdi & another (2018) KECA*, the Hon. Court of Appeal espoused the manner of discharging the burden of proof.
48. For coherence, the court cited with approval a decision of the House of Lords and stated thus;

In the end, we find that the respondents had not established their claim. In *Re B(children) (FC) UKHL 35* Lord Hoffman observed that:

“If a legal rule requires a fact to be proved (a ‘fact in issue’), a judge or jury must decide whether or not it happened. There is no room for a finding that it might have happened. The law operates a binary system in which the only values are



0 and 1. The fact either happened or it did not. If the tribunal is left in doubt, the doubt is resolved by a rule than one party or the other carries the burden of proof. If the party who bears the burden of proof fails to discharge it, a value of 0 is returned and the fact is treated as not having happened. If he does discharge it, a value of 1 is returned and the fact is treated as having happened.” [See also the holding of the court of appeal in [See also James Muniu Mucheru vs National Bank of Kenya Ltd (2019) eKLR; and Daniel Toroitich Arap Moi versus Mwangi Stephen MUREITHI [2014] EKLR].

49. Turning to the second issue, namely; what reliefs if any ought to be granted. I have indicated that the plaintiff herein has tendered and adduced evidence to demonstrate that the suit property lawfully belongs to and is registered in her name.
50. By virtue of being the lawful and registered proprietor of the suit property [less 0.12 ha which was compulsorily acquired], the plaintiff is entitled to exclusive occupation, possession and use. [see the holding in the case of Ocean View Plaza vs The Attorney General (2002) eKLR; Mohanson (K) Ltd vs The Land Registrar – Kajando (2017) eKLR; Moya Drift Farm Ltd vs Theuri (1973) E.A and Attorney General vs Zinj Ltd (2021) eKLR, respectively].
51. It is also important to highlight that the registered owner of a landed property, in this case the suit property, is entitled to partake of and benefit from the ownership right[s] without interruption/interference from third parties. In this regard, there is no gainsaying that the 1st defendant cannot be allowed to enter upon and undertake activities on the portion exceeding 0.12 ha [being the only portion that was compulsorily acquired].
52. To vindicate the rights of a title holder and to mitigate offensive entry/intrusion by third parties, the 1st defendants not excepted, an order of permanent injunction is merited. [See the holding of the court in the case of Kenya Power & Lighting Co. vs Sharrif Molana Habib (2018) eKLR and Waas Enterprises Ltd vs Nairobi City Council (2014) eKLR.
53. Other than the prayer for declaration, excision of the portion that was compulsorily acquired and a permanent injunction, the plaintiff herein has also sought for mesne profits [loss of user of the property] at the sum of Kshs.1,350,000/= only per month since 4th June 2018. I beg to state that the claim under reference is underpinned by a document known as proposed budget for dairy farming. [See exhibit P. 16].
54. Nevertheless, it is not lost on me that the said document which underpins the claim for mesne profits, was neither signed nor executed by the maker. To this end, it is instructive to reproduce the evidence of PW 1 while cross-examination by learned counsel for the 1st defendant.
55. The witness stated thus;

“I have availed the document called the proposed budget for dairy farming. The document [exhibit P 16] has not been signed. The document does not have any name thereon. I do confirm that the document has not been signed by anyone”.
56. Additionally, PW 1 is on record stating as hereunder while under cross-examination by learned counsel for the 2nd and 3rd defendants.

“I don’t have any cows. I had intended to have 30 cows. I only had an intention. I have not acquired the cows”.



57. From the testimony of the plaintiff, it is apparent that the plaintiff herein has neither placed before the court any plausible evidence to underpin the claim for mesne profit nor justified the rationale for an award of loss of user of the property.
58. It must be recalled that a claim for mesne profit[s] is akin to special damages and hence same must not only be pleaded and particularized but must also be specifically proved. The plaintiff has not met/satisfied the threshold. [see *Karanja Mbugua vs Marybin Holdings Ltd* (2014) eKLR; *Attorney General vs Halai Meat Factory Ltd* (2016) eKLR; and *Christine Nyanchama Oanda v Catholic Diocese of Homa Bay Registered Trustees* [2020] KECA 536 (KLR)].
59. In a nutshell, I am afraid that the plaintiff herein has not proven the claim on account of mesne profits. The said claim must of necessity, fail.

FINAL DISPOSITION.

60. Flowing from the analysis in the body of the Judgment, it is apparent that the Plaintiff herein has substantially proved/established her claims as against the defendants and especially, the 1st defendant [County Government of Meru].
61. In the premises and for the reasons alluded to; the final orders that commend themselves to the court are as hereunder;
- i. A declaration be and is hereby issued that the plaintiff is the lawful and registered proprietor of L.R No. Nyaki/Murathankari/275 measuring 1.2 ha [less 0.12 ha which was compulsorily acquired for the 1st defendant].
 - ii. An order be and is hereby issued directing the county land registrar and the county surveyor – Meru county to visit the suit property and to excise a portion measuring 0.12 ha from the suit property and thereafter register the portion measuring 0.12 ha in the name of the 1st defendant.
 - iii. The resultant portion, namely; the portion measuring 1.08 ha or thereabout shall be registered in the name of the Plaintiff.
 - iv. The portion measuring 0.12 ha in terms of clause (ii) hereof shall be excised from the portion wherein the slaughter house has been constructed/erected by the 1st defendant [county government of meru].
 - v. The County Government of Meru [1st defendant] shall thereafter vacate and grant vacant possession in respect of the suit property, namely; the portion falling outside the 0.12 ha which was compulsorily acquired.
 - vi. The vacation and handing over of vacant possession shall be undertaken within 120 days from the date hereof.
 - vii. In default by the 1st defendant to vacate the portion of land outside the 0.12 ha, the plaintiff shall be at liberty to levy eviction and remove the 1st defendant and its structures [if any] from the suit property and in this regard, an eviction and demolition order shall issue.
 - viii. In the event of the eviction and demolition being undertaken by the plaintiff, the costs/ expenses incurred shall be certified by the deputy registrar and same shall be borne by the 1st defendant.
 - ix. There be and is hereby issued an order of Permanent injunction restraining the 1st defendant either by itself, its agents, servants, employees or any one acting under her instructions from



entering upon, trespassing on, remaining on or in any other way interfering with plaintiffs right to property as pertains to the portion falling outside the 0.12 ha which was acquired for the 1st defendant.

- x. The claim for Mesne profits or loss of user of the property be is hereby declined.
- xi. Costs of the suit be and are hereby awarded to the plaintiff and same shall be borne by the 1st defendant [County Government of Meru].
- xii. Any other relief not expressly granted is hereby declined.

62. It is so ordered.

DATED, SIGNED AND DELIVERED AT MERU THIS

27TH DAY OF NOVEMBER 2025.

OGUTTU MBOYA, FCI Arb, CPM [MTI].

JUDGE.

In the presence of:

Hussein – Court Assistant

Mr. Thuraira Atheru for the Plaintiff

Ms. Matiri for the 1st Defendant

Ms. Miranda [Senior Litigation Counsel] for the 2nd & 3rd Defendants

