



**Kassim v Kiende & 3 others; Kiende (Plaintiff); Kassim (Defendant) (Environment and Land Case Civil Suit 4 of 2022) [2025] KEELC 8308 (KLR) (24 November 2025) (Judgment)**

Neutral citation: [2025] KEELC 8308 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO  
ENVIRONMENT AND LAND CASE CIVIL SUIT 4 OF 2022  
JO MBOYA, J  
NOVEMBER 24, 2025**

**BETWEEN**

**ADAN KULOW KASSIM ..... PLAINTIFF**

**AND**

**JENIFFER KLENDE ..... 1<sup>ST</sup> DEFENDANT**

**MINISTRY OF LANDS AND PHYSICAL PLANNING ..... 2<sup>ND</sup> DEFENDANT**

**ISIOLO LAND REGISTRAR ..... 3<sup>RD</sup> DEFENDANT**

**ISIOLO NATIONAL LAND COMMISSION OFFICE ..... 4<sup>TH</sup> DEFENDANT**

**AND**

**JENIFFER KLENDE ..... PLAINTIFF**

**AND**

**ADAN KULOW KASSIM ..... DEFENDANT**

**JUDGMENT**

1. The Plaintiff herein approached the court vide Plaintiff dated 4<sup>th</sup> July 2022; and wherein same sought various reliefs. The reliefs sought vide Plaintiff under reference are as hereunder;
  - i. A declaration that the Plaintiff is the legal owner of all that property known as Plot number 105, Kiwanjani, Isiolo.
  - ii. An order of permanent injunction restraining the 1<sup>st</sup> defendant, whether by himself, his agents, employees or otherwise, howsoever, from interfering with the plaintiffs' quiet possession of all that property known as Plot No. 105 Kiwanjani, Isiolo.



2. The 1<sup>st</sup> Defendant duly entered an appearance, filed a statement of defence and counterclaim dated 8<sup>th</sup> April 2024. The 1<sup>st</sup> defendant's counterclaim has highlighted the following reliefs:
  - i. A declaration that the plaintiff in the counterclaim is the legal and bona fide owner of parcel Kiwanjani A/106.
  - ii. An order of permanent injunction restraining the defendant, his agents, servants or anyone acting on his behalf from entering, cultivating, developing, utilizing, fencing, alienating, selling, constructing or in any other way interfering with the plaintiff's parcel Kiwanjani A/106.
  - iii. Costs of the counterclaim.
3. The 2<sup>nd</sup> and 3<sup>rd</sup> defendants, [represented by the Hon. Attorney General], duly entered an appearance and filed a statement of defence. The named defendants disputed the claim by the Plaintiff. In addition, it was contended that the suit property has never been subjected to registration in accordance with the Land Registration Act 2012; and thus the inclusion of the 2<sup>nd</sup> and 3<sup>rd</sup> defendants in the matter is premature and misconceived.
4. The 4<sup>th</sup> defendant neither entered an appearance nor filed any statement of defence.
5. The instant matter was subjected to the usual pre-trial directions in an endeavor to discern compliance by the respective parties. Suffice it to state that the Plaintiff intimated to the court that same had duly filed and served the requisite list and bundle of documents; list of witnesses; and the witness statements. On the other hand, the 1<sup>st</sup> defendant also confirmed having filed and served the requisite bundle of documents; list of witnesses; and the witness statements. To this end, the parties intimated to the court that the suit was ready for hearing.
6. The Plaintiff's case is premised on the evidence of one witness, namely; Adan Kulo Kassim. Same testified as PW 1.
7. It was the testimony of the witness [PW1] that same is the plaintiff in respect of the subject matter. Furthermore, the witness averred that by virtue of being the Plaintiff, same is thus familiar/conversant with the facts of the case. In addition, the witness testified that same has since recorded and filed a witness statement dated 4<sup>th</sup> July 2022. The witness thereafter sought to adopt and rely on the contents of the witness statement as his evidence in chief. Suffice it to state that the witness statement dated 4<sup>th</sup> July 2022; was thereafter adopted and constituted as the evidence in chief of the witness.
8. Additionally, the witness referenced a list and bundle of documents dated 4<sup>th</sup> July 2022 and which document[s] the witness sought to adopt and produce before the court as exhibit. There being no objection to the production of the documents, same were tendered and admitted as exhibits P1 – P7, respectively.
9. Furthermore, the witness adverted to the Plaint dated 4<sup>th</sup> July 2022; and the annexed verifying affidavit sworn on even date. The witness thereafter sought to adopt and rely on the contents of the Plaint. In addition, the witness also sought the reliefs sought at the foot of the Plaint.
10. On cross-examination by the learned counsel for the 1<sup>st</sup> defendant, the witness testified that same bought/purchased the suit property in the year 2011. In particular, the witness testified that before he purchased the suit property, same visited the land in question. Moreover, it was the testimony of the witness that the suit property shares a common boundary with plot number 106 Kiwanjani. Furthermore, the witness testified that it is not true that there is another plot that lies between his plot [suit property] and the plot belonging to the 1<sup>st</sup> defendant.



11. While still under cross-examination, the witness testified that same does not have a copy of the letter of allotment. Nevertheless, the witness pointed out that same has a copy of the part development plan. However, the witness conceded that the part development plan has not been tendered/availed before the court. Moreover, the witness conceded that the documents which same has produced before the court do not indicate/reference the size [acreage] of the suit property.
12. It was the further testimony that same entered into and executed a sale agreement in respect of the suit plot. However, the witness averred that same does not know whether the sale agreement referenced/captured the acreage of the suit plot. In addition, the witness stated that the land in question had already been surveyed and beacons.
13. The witness further testified that same has tendered and produced a copy of the sale agreement before the court. However, the witness quickly changed tune and acknowledged that the sale agreement had not been produced before the court. For good measure, the witness conceded that the sale agreement is not part of the document before the court.
14. Besides, it was the testimony of the witness that same has neither tendered nor produced the beacon certificate before the court.
15. Additionally, the witness acknowledged that same have also not produced a copy of the survey plan or the registry index map. In any event, the witness admitted that same does not have any document to attest to or confirm the acreage of the suit plot. Furthermore, the witness conceded that same has not availed any photographs to show the extent of encroachment by the 1<sup>st</sup> defendant.
16. On cross-examination by learned counsel for the 2<sup>nd</sup> & 3<sup>rd</sup> defendants, the witness testified that same has never dealt with Ministry of Lands – National Government. Moreover, the witness testified that the land in question has never been subjected to registration under the [Land Registration Act, 2012](#). In addition, the witness testified that the letters/documents which same has produced before the court did not emanate from the Ministry of land, National Government.
17. While still under cross-examination, the witness testified that the suit property does not have a certificate of title or lease. In addition, the witness conceded that there is no instrument which is capable of being registered as pertains to the suit property. Additionally, the witness confirmed that same has no claim against the 2<sup>nd</sup> and 3<sup>rd</sup> defendants.
18. It was the further testimony of the witness that same has never sought to have the suit property registered under the [Land Registration Act](#). Furthermore, the witness conceded that same has never paid stamp duty; survey fees or registration fees in respect of the suit property.
19. With the foregoing testimony, the Plaintiff's case was closed.
20. The 1<sup>st</sup> defendant's case is premised on the evidence of 3 witnesses, namely; Jeniffer Kiende, Francis Miriti Kiriinya and Stanley Mutea. Same testified as DW 1, DW 2 and DW 3 respectively.
21. It was the testimony of DW 1 [Jeniffer Kiende] that same is the 1<sup>st</sup> defendant in respect of the instant matter. Furthermore, the witness averred that same is familiar/conversant with the facts of the case. In addition, the witness referenced the witness statement dated 20<sup>th</sup> May 2025 and which witness statement, the witness sought to adopt as her evidence in chief. To this end, the witness statement was duly adopted and constituted as the evidence in chief of the witness.
22. It was the further testimony of the witness that same has also filed a list and bundle of documents dated 20<sup>th</sup> May 2025. In this regard, the witness sought to tender and produce the various documents



- as exhibits before the court. There being no objection to the production of the documents, the same were duly admitted and constituted as exhibits D1 – D3, respectively.
23. Furthermore, the witness adverted to the statement of defence and counterclaim dated 8<sup>th</sup> April 2024, together with verifying affidavit attached thereto. Instructively, the witness sought to adopt and rely on the contents of the said statement of defence and counterclaim.
  24. On cross-examination by learned counsel for the Plaintiff, the witness testified that same is the owner/ proprietor of plot No. 106 – Kiwanjani. Moreover, the witness averred that same bought/purchased plot No. 106 Kiwanjani from Mzee M’Iguta. For coherence, the witness reiterated that it is the said vendor who gave the land unto her.
  25. It was the further testimony of the witness that the transaction between herself and the vendor was reduced into writing. Nevertheless, the witness shortly changed tune and stated that the transaction pertaining to the sale/acquisition of plot No. 106 Kiwanjani was not reduced into writing.
  26. While still under cross-examination, the witness averred that same has copies of the minutes of the county council of Isiolo [now defunct] concerning the allotment of plot 106. However, the witness averred that the said minutes are with her advocates. In particular, the witness averred that the minutes have not been produced before the court.
  27. It was the further testimony of the witness that same has neither produced nor brought before the court a copy of the letter of allotment. Nevertheless, the witness averred that the letter of allotment was dated 22<sup>nd</sup> February 1999. Moreover, it was the testimony of the witness that the letter of allotment was issued by the county council of Isiolo.
  28. Additionally, the witness testified that other than the letter of allotment, same was also issued with other documents by the county council of Isiolo. Be that as it may, the witness admitted that the documents which same was given by the County Council of Isiolo [now defunct] have not been tendered before the court.
  29. On further cross-examination, the witness averred that same paid the standard premium and other statutory levies shown at the foot of the letter of allotment. In particular, the witness added that same has since produced copies of the revenue receipt which were issued upon payment of the standard premium. To this end, the witness referenced the receipt dated 10<sup>th</sup> November 2011.
  30. It was the further testimony of the witness that same paid the entire standard premium to the commissioner of lands. However, the witness admitted that he does not know whether the payment was made within the statutory 30 days or otherwise. In addition, the witness considered that the payment of the standard premium was not undertaken within the 30-day period stipulated at the foot of the letter of allotment.
  31. The witness further testified that same has neither produced nor availed to court any registry index map [RIM] or certificate of title in respect of her plot. In any event, the witness confirmed that no certificate of title has ever been issued in respect in plot No. 106.
  32. It was the further testimony of the witness that same is familiar with one Zipporah Muthoni. For good measure, the witness testified that it is the said Zipporah Muthoni who sold her plot to the plaintiff.
  33. Additionally, the witness testified that same has constructed/built on her plot. Furthermore, the witness testified that same had built on her plot by the time the process of survey was being undertaken on the land. Nevertheless, the witness conceded that same has neither tendered nor produced a copy of the beacon certificate.



34. Moreover, it was the testimony of the witness that the Plaintiff herein has built on his plot and is now seeking to interfere with her plot. In particular, the witness averred that the Plaintiff is not claiming plot No. 106 Kiwanjani.
35. It was the further testimony of the witness that same has tendered and produced before the court a copy of the list of allottees of plot. In particular, the witness averred that the list in question was given to her by the county council of Isiolo. Nevertheless, it was the testimony of the witness that the List produced before the court does not show/capture the owner of plot No. 105 Kiwanjani.
36. On re-examination, the witness testified that same has since constructed on her plot. Moreover, the witness averred that before constructing on her plot, same sought and obtained the approvals from survey. Nevertheless, the witness conceded that she has not tendered in evidence any survey records or at all.
37. While still under re-examination, the witness averred that the survey exercise was undertaken long after she had entered upon; took possession and constructed on the land.
38. The 2<sup>nd</sup> witness who testified on behalf of the 1<sup>st</sup> defendant was Francis Miriti Kiriinya. Same testified as DW 2.
39. It was the testimony of the witness that same is conversant with the facts pertaining to and concerning the subject matter. Moreover, the witness averred that same has since recorded and filed a witness statement dated 20<sup>th</sup> May 2025; and which witness statement the witness sought to adopt and rely on. To this end, the witness statement was duly adopted and constituted as the evidence in chief of the witness.
40. On cross-examination, the witness testified that same is familiar with the facts of the matter before the court. Moreover, the witness averred that same has known the 1<sup>st</sup> defendant since the year 1989/1990. For good measure, the witness averred that the 1<sup>st</sup> defendant acquired a plot in his neighbourhood.
41. It was the further testimony of the witness that same owns a plot in the neighbourhood of the 1<sup>st</sup> defendant. Moreover, the witness testified that even though he owns a plot in the neighbourhood of the 1<sup>st</sup> Defendant's plot, same has not brought any evidence before the court to demonstrate ownership of such a plot.
42. While still under cross-examination, the witness averred that same is conversant with one Zipporah Muthoni. It was the testimony of the witness that it is the said Zipporah Muthoni who sold the plot in question. Nevertheless, the witness clarified that he does not know the identity/details of the person to whom Zipporah Muthoni sold her plot to. However, the witness clarified that what he knows is that the plot that was sold by Zipporah Muthoni has since been developed.
43. Regarding the acreage of the plaintiff's plot, the witness averred that same is not familiar with the acreage. Similarly, the witness averred that same is not familiar with the acreage of the Plaintiff's plot.
44. On cross-examination by learned counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> defendants, the witness testified that it was the county council of Isiolo which was giving out the plot[s]. Furthermore, the witness testified that the plots were given to those who were in occupation. In particular, the witness clarified that the plots were given to the squatters.
45. While still under cross-examination, the witness averred that the allottees of the plots were issued/given letters of allotment. Moreover, the witness clarified that the letters of allotment would be under the custody/possession of the allottee. [owner of the plot].



46. The 3<sup>rd</sup> witness who testified on behalf of the 1<sup>st</sup> defendant was Stanley Mutea. Same testified as DW 3.
47. It was the testimony of the witness that same is a resident of the area known as Mwangaza – Isiolo county. Furthermore, the witness averred that same has since recorded and filed a witness statement dated 20<sup>th</sup> May 2025 and which witness statement the witness sought to adopt and rely on.
48. On cross-examination by learned counsel for the Plaintiff, the witness testified that same is conversant with the affairs and issues touching on Kiwanjani area. Moreover, the witness testified that previously same was a resident of Kiwanjani. However, the witness clarified that he sold his plot at Kiwanjani area to a Third party.
49. While still under cross-examination, the witness averred that his plot at Kiwanjani area was plot number 543. It is the said plot that the witness intimated to the Court that same sold and disposed of. Nevertheless, the witness conceded that same has neither tendered nor produced any document[s] to show that he owned plot number 543 before selling/disposing of same.
50. In addition, the witness testified that same knew Zipporah Muthoni. Furthermore, the witness clarified that Zipporah Muthoni sold her plot. The witness nevertheless, contended that he did not know the details of the person to whom the plot was sought.
51. With the foregoing testimony, the 1<sup>st</sup> defendant’s case was closed.
52. Though the 2<sup>nd</sup> and 3<sup>rd</sup> defendants duly entered appearance and filed a statement of defence, same however, did not file a list of witnesses; witness statements or list and bundle of documents. Moreover, the 2<sup>nd</sup> and 3<sup>rd</sup> defendants did not tender any evidence or at all. Suffice it to state that the 2<sup>nd</sup> and 3<sup>rd</sup> defendants’ case was closed without any evidence being called.
53. Upon the close of the hearing, the advocates for the parties sought time to file and exchange written submissions. In this regard, the court proceeded to and granted liberty to the parties to file and exchange written submissions. Moreover, the court also circumscribed the timelines for the filing and exchange of the written submissions.
54. The Plaintiff filed written submissions dated 21<sup>st</sup> October 2025; and wherein the Plaintiff highlighted four [4] issues for consideration by the court. The issues highlighted by the Plaintiff are namely; whether the Plaintiff is the lawful owner of plot No. 105/Kiwanjani – Isiolo; whether the 1<sup>st</sup> defendant has trespassed upon the Plaintiff’s property; whether there should be a permanent injunction issued against the defendants; and whether the Plaintiff is entitled to the reliefs sought. In addition, the Plaintiff has also canvassed an incidental issue relating to the counterclaim filed by/on behalf of the 1<sup>st</sup> defendant.
55. The 1<sup>st</sup> defendant filed written submissions dated 2<sup>nd</sup> November 2025 and wherein same has highlighted three [3] key issues. The issues highlighted by the 1<sup>st</sup> defendant are namely; whether the Plaintiff is the bona-fide owner of plot number 105 – Isiolo; whether the Plaintiff is entitled to the relief[s] sought; and whether the First defendant is entitled to the relief[s] sought at the foot of the counterclaim.
56. The 2<sup>nd</sup> and 3<sup>rd</sup> defendants did not file any written submissions. For good measure, the only submissions which are on record are the two [2] sets, which have been highlighted elsewhere herein before.
57. Having reviewed the pleadings filed by the parties; the evidence tendered [both oral and documentary] and upon consideration of the written submissions by the parties, I come to the conclusion that the determination of the subject dispute turns on two [2] key issues, namely; whether the Plaintiff has



established and proved his claim to the requisite standard or otherwise; and whether the 1<sup>st</sup> defendant has proved her counterclaim and the reliefs thereunder.

58. Regarding the first issue; it is imperative to recall and reiterate that it is the plaintiff who approached the court contending that same is the lawful owner or proprietor of plot number 105 Kiwanjani – Isiolo. In addition, the plaintiff contended that the 1<sup>st</sup> defendant herein has illegally and unlawfully trespassed upon the suit property and thereby interfered with the plaintiff's lawful rights to or interests over the suit property.
59. Having made the foregoing assertions [averments], it is common ground that the plaintiff was obliged to tender and adduce before the court plausible, concrete; cogent; and credible evidence to demonstrate not only ownership of, but trespass to the suit property [if at all].
60. To start with, it is important to highlight that the plaintiff tendered evidence and averred that the suit property was previously owned by one Zipporah Muthoni. Additionally, the witness averred that same subsequently purchased/acquired the suit property by way of a sale agreement which was entered into and executed between himself [plaintiff] and the vendor.
61. Though the plaintiff contended/averred that the sale agreement was reduced into writing, the plaintiff herein did not produce the sale agreement as an exhibit before the court. For good measure, while under cross-examination by learned counsel for the 1<sup>st</sup> defendant, the plaintiff who testified as PW 1 stated thus;

“I do confirm that we entered into and executed a sale agreement at the time of the sale/purchase of the plot in question. However, I do confirm that the sale agreement is before the court. I have availed the sale agreement before the court. I now wish to confirm that the sale agreement is not part of the documents that I have filed before the court.

62. While still under cross-examination by learned counsel for the 1<sup>st</sup> defendant, the Plaintiff is on record stating thus;

“I don't have an allotment letter. I have a PDP. However, I have not availed the same to court. The documents that I have availed before the court do not reference the size/acreage of the plot.”

63. From the foregoing excerpts, what becomes apparent is that the plaintiff is confirming that same has neither tendered nor produced any document to confirm ownership of the suit plot. It is instructive to underscore that he who asserts must prove the assertion. Where the assertion is not proven, same remains at the level of allegations. [See Sections 107, 108 & 109 of the [Evidence Act](#) Cap 80 Laws of Kenya].
64. Be that as it may, it is also worthy to recall that the central question in respect of this dispute is not essentially whether the plaintiff owns the suit plot. On the contrary, the central question is whether the plaintiff has proven offensive encroachment/trespass upon the suit property or any portion thereof by the 1<sup>st</sup> defendant. Simply put, the critical issue is whether the plaintiff has proven trespass or otherwise.
65. To start with, trespass denotes offensive entry upon or intrusion onto the land of another without lawful authority, color of right, consent, or permission of the lawful owner thereof. In this regard, any person, the plaintiff not excepted, who is keen to prove trespass, must demonstrate the element[s] of offensive entry or intrusion onto his/her land. Suffice it to posit that trespass denotes interference with possessory rights of the owner of the land or the person who is entitled to the right to immediate and exclusive possession of the land.



66. In the case of *Doshi v Chemutut & 7 others* (Civil Appeal E020 of 2023) [2025] KECA 776 (KLR) (9 May 2025) (Judgment) the Court of Appeal stated as hereunder;

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

67. Has the Plaintiff proven/established the plea of trespass or otherwise? The plaintiff herein testified before the court and stated that even though he bought/purchased the suit property vide a sale agreement [which was never tendered before the court] the sale agreement did not capture/reflect the acreage/size of the land [plot] which was being bought. Additionally, the plaintiff testified that though the land had been surveyed and beacons, same did not adduce before the court any beacon certificate or registry/cadastral map to show the boundary locations/delineations of the suit plot.

68. Other than the foregoing, it is also worthy to recall that the plaintiff testified that all the documents which same has tendered before the court did not capture or reflect the size of his plot. Furthermore, the plaintiff is on record confirming that same has not produced before the court any photographs to show the extent of [sic] encroachment by the 1<sup>st</sup> defendant.

69. It is the plaintiff who had asserted that the 1<sup>st</sup> defendant had trespassed onto the suit property. To this end, the plaintiff was enjoined to demonstrate inter alia the acreage of his land; the existence of boundary beacons; production of a beacon certificate; and a surveyor's report showing the ground location of the plot in question and capturing, [if at all] the extent of encroachment.

70. However, in respect of the instant matter, the plaintiff adopted a carefree approach and was content with the written statement, which was adopted as his evidence in chief and the documentary exhibits tendered. Save for [sic] the survey report dated 23<sup>rd</sup> July 2019, whose contents are ambiguous and which was never produced by the maker, the plaintiff herein did not place before the court any credible evidence to denote trespass.

71. It is not lost on me that the plaintiff bore the burden of proof. The burden of proof could only be discharged by placing before the court credible documents upon which the court can assign weight and probative value. This was not the case.

72. In the case of *Moi, CGH v Muriithi & another* (Civil Appeal 240 of 2011) [2014] KECA 642 (KLR) (9 May 2014) (Judgment) the Court of Appeal discussed the incidence of balance of proof.

73. For coherence, the court stated as hereunder;

“It is a firmly settled procedure that even where a defendant has not denied the claim by filing of defence or an affidavit or even where the defendant did not appear, formal proof proceedings are conducted. The claimant lays on the table evidence of facts contended against the defendant. And the trial court has a duty to examine that evidence to satisfy itself that indeed the claim has been proved. If the evidence falls short of the required standard of



proof, the claim is and must be dismissed. The standard of proof in a civil case, on a balance of probabilities, does not change even in the absence of a rebuttal by the other side.

74. Before concluding on this issue, it is also instructive to reference the holding in the case of Jamal Salim v Yusuf Abdulahi Abdi & another [2018] KECA 14 (KLR) where the Court of Appeal stated thus;

27. 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.”

75. Flowing from the analysis herein before, my answer to issue number 1 is to the effect that the plaintiff herein has neither established nor proved his claims before the court. In particular, the plaintiff herein has failed to tender and adduce cogent evidence underpinning the elements that constitute trespass.

76. Turning to the second issue, namely; whether the 1<sup>st</sup> defendant has proved her counterclaim or otherwise. It is instructive to underscore that a counterclaim is a cross suit and thus the counterclaimant [in this case the 1<sup>st</sup> defendant] is equally charged with the burden of proving her assertions. Furthermore, the assertions must be proved by adduction of plausible and cogent evidence.

77. In respect of the instant matter, the counter-claimant contended that same is the lawful owner and proprietor of plot No. 106 Kiwanjani – Isiolo. Furthermore, the counter-claimant has posited that by virtue of being the lawful owner of plot No. 106 Kiwanjani – Isiolo, same is therefore entitled to an order of permanent injunction to bar/prohibit the defendant to the counterclaim [plaintiff in the main suit] from interfering with her proprietary rights to plot number 106 Kiwanjani.

78. It is important to recall that the plaintiff herein conceded and indeed confirmed that the 1<sup>st</sup> defendant [counter-claimant] is the registered proprietor of the plot known as 106 – Kiwanjani Isiolo. For ease of reference, it is imperative to reproduce paragraph 7 of the Plaintiff.

79. Same states thus;

“The 1<sup>st</sup> defendant herein is the registered proprietor of all that piece of land known as plot number 106 kiwanjani – Isiolo, a property adjacent to the suit property and has illegally encroached and continues to construct on the plaintiff’s property without his consent”.

80. To my mind, the Plaintiff to the main suit has admitted and conceded that the 1<sup>st</sup> defendant [counter-claimant] is the lawful owner of plot number 106 Kiwanjani – Isiolo. This admission and acknowledgment suffice. For good measure, the plaintiff in the main suit cannot now contend at the foot of his written submissions that the 1<sup>st</sup> defendant has not tendered any document to prove/establish ownership of plot No. 106 Kiwanjani – Isiolo.

81. Notably, facts can be proved by either admission or adduction of evidence. In this case, ownership of plot No. 106 Kiwanjani – Isiolo was conceded. [See the holding in the case of James Muniu Mucheru vs National Bank of Kenya (2019) Eklr].



82. From the foregoing, it is my finding and holding that the 1<sup>st</sup> defendant/counter-claimant has indeed proven that same is the owner of plot number 106 -Kiwanjani Isiolo.
83. In so far as the 1<sup>st</sup> defendant [counterclaim] is the admitted owner/proprietor of plot No. 106 – Kiwanjani Isiolo, it then means that same is entitled to partake of and benefit from the rights attendant to such ownership. Notably, the owner of a landed property, the 1<sup>st</sup> defendant not excepted, is entitled to exclusive possession, occupation and use. [See the decision in the case of Moya Drift Farm Ltd vs Theuri (1973) E.A, Mohanson (K) Ltd vs The Registrar of Lands – Kajiado (2017) eKLR; and Waas Enterprises Ltd vs Nairobi City Council (2014) eKLR, respectively.
84. Additionally, there is no gainsaying that the rights to absolute and exclusive possession of a landed property cannot be enjoined if there are interferences from third parties, in this case, the plaintiff. In this regard, and in an endeavor to protect the 1<sup>st</sup> defendant's rights to plot number 106 Kiwanjani – Isiolo, it suffices to decree and issue an order of permanent injunction. [See the decision in the case of Kenya Power & Lighting Co. Ltd vs Sheriff Molana Habib (2018) eKLR, where the learned judge discussed the legal import and tenor of an order of permanent injunction].
85. Simply put, the court underscored that an order of permanent injunction operates to vindicate the proprietary rights of the title owner and to avert further commission of offensive activities by the aggressor.
86. In a nutshell, I come to the conclusion that the 1<sup>st</sup> defendant/counter-claimant has indeed proven her entitlement to and rights over plot No. 106 Kiwanjani – Isiolo.
87. To this end, the 1<sup>st</sup> defendant is indeed entitled to the declaration of ownership; an order of permanent injunction; and the costs flowing from the prosecution of the counterclaim.

#### Final Disposition.

88. Flowing from the discussion highlighted in the body of the Judgment, there is no gainsaying that the Plaintiff herein has failed to prove his claim to the requisite standard. On the contrary, the 1<sup>st</sup> defendant/counter-claimant has proven her entitlement to plot number 106 Kiwanjani – Isiolo.
89. In the end, and for the reasons alluded to; the final orders that commend themselves to the court are as hereunder;
  - a. The Plaintiff's suit vide Plaintiff dated 4<sup>th</sup> July 2022 be and is hereby dismissed.
  - b. Costs of the suit be and are hereby awarded to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.
  - c. The 1<sup>st</sup> defendant's counterclaim be and is hereby allowed as hereunder;
    - i. A declaration be and is hereby issued that the counterclaim is the lawful and legal owner of plot No. 106 Kiwanjani A – Isiolo.
    - ii. An order of permanent injunction be and is hereby issued restraining the defendant to the counterclaim [plaintiff to the main suit] either by himself, agents, servants, employees and or any one acting under his instructions from entering upon, remaining on or otherwise interfering with the counter-claimers right to and in respect of plot number 106 Kiwanjani A – Isiolo.
    - iii. Costs of the counterclaim be and are hereby awarded to the counter-claimant only.
90. It is so ordered.



**DATED, SIGNED AND DELIVERED AT ISIOLO THIS 24<sup>TH</sup> DAY OF NOVEMBER 2025  
OGUTTU MBOYA, FCIArb;CPM [MTI-EA].**

**JUDGE**

In the presence of:

Hussein/Mukami – Court Assistants

Ms. Masibo holding brief for Mr. Duwane for the plaintiff

Mr. Caleb Mwiti for the 1<sup>st</sup> defendant/counterclaimant

Mr. Benjamin Kimathi [Principal Litigation Counsel] for the 2<sup>nd</sup> & 3<sup>rd</sup> defendants

No appearance for the 4<sup>th</sup> defendants

