



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ELC CIVIL SUIT NO. E036 OF 2022

CHUHI NYOIKE1ST

PLAINTIFF

NDUHIU NYOIKE2ND

PLAINTIFF

***(Both suing as the legal representatives of the estate of
Kimani Wa Nyoike (deceased))***

KIMAMO KURIA3RD

PLAINTIFF

***(suing as trustee for Kuria Kimamo, Wambui Kimamo &
Wairimu Kimamo)***

JOAQUIM PAUL MWANGI GITICHE4TH

PLAINTIFF

EDWIN MURIUKI NJIRU5TH

PLAINTIFF

MAJOR DEDAN NJIRU MURIUKI6TH

PLAINTIFF

JOHN WARUI MWANGI7TH

PLAINTIFF

MOSES NJOROGE.....8TH

PLAINTIFF

JULIUS KAIRIANJA MUREITHI	9TH
PLAINTIFF	
RODHA WAGAKI MURIUKI... ..	10TH
PLAINTIFF	
IRENE WAMBUI KAMAU.....	11TH
PLAINTIFF	
SOPHIE WANGARI MACHARIA.....	12TH
PLAINTIFF	
ALICE WANJA GICHURA.....	13TH
PLAINTIFF	
CHRISTINA WAMBUI MWANGI.....	14TH
PLAINTIFF	
JOYCE KATANU MUCHAI	15TH
PLAINTIFF	
ANNE MUENI MUTISO.....	16TH
PLAINTIFF	
PAULINE WANJIRA KURIA.....	17TH
PLAINTIFF	
ROSEMARY NJERI KIUNA.....	18TH
PLAINTIFF	
MARGARET WANJIKU KIUNA.....	19TH
PLAINTIFF	
STELLA AWINO OCHOLA.....	20TH
PLAINTIFF	
MARIGI NGUITUI MBOTE (<i>Suing as one of the legal representatives of the estate of Mbote Githinji Solomon</i>)	21ST
PLAINTIFF	

DAYSTAR UNIVERSITY.....22ND
PLAINTIFF

VERSUS

MILLITONIC KIMANZI MWENDWA KITUTE.....1ST
DEFENDANT

JOSHUA KYALO2ND
DEFENDANT

KIRSTEEN HOLDINGS LIMITED3RD
DEFENDANT

THE NATIONAL LAND COMMISSION.....4TH
DEFENDANT

JUDGMENT

1. This case involves an undefended suit filed by the plaintiffs in their plaint dated 23rd May 2022, which was amended on 14th September 2023, who are allegedly registered owners of various parcels of land within Kinanie Ward, Mavoko Sub-County, in the area surrounding the 22nd plaintiff, a well-known private university. The 1st to 3rd defendants have legal representation, while the 4th defendant chose not to participate in the case.
2. In their amended plaint, they explained that Kimani Wa Nyoike (“deceased 1st and 2nd plaintiff”) was the registered owner of land parcel nos. L.R. Nos. 8783/4, 5, 6, 7, 165, 171, and 172, as well as L.R. Nos. 8784/40, 46, and 59. They stated that

some of these parcels had been sold to different parties, with some already registered in the names of some of the plaintiffs, while Wamuyu Manyara, PCEA Macedonia Athi River, John Warui Mwangi, Irene Wambui Kamau, PCEA Athi River, Dr Steven Muchiri Warui, Kenya Youth For Christ, Muthoni Kimani, and Rose Wamunyu Njeri, who are among the purchasers, were yet to be issued with title documents.

3. They also asserted that the other plaintiffs are the registered owners of several different parcels of land, *inter alia*: 3rd plaintiff, **L.R. Nos. 8784/45, 62 and 114**; 4th plaintiff, **Mavoko Town Block 82/118 and 119**; 5th plaintiff, **L.R. No. 8784/60**; 6th and 10th plaintiffs, **L.R. No. 8784/61**; 7th and 11th plaintiffs, **L.R. No. 8783/168**; 8th and 9th plaintiffs, **L.R. No. 8784/44**; 12th plaintiff, **L.R. No. 8784/53**; 13th plaintiff, **L.R. No. 8784/43**; 14th plaintiff, **L.R. No. 8784/56**; 15th plaintiff, **Mavoko Town Block 82/268**; 16th plaintiff, **Mavoko Town Block 82/294**; 17th plaintiff, **Mavoko Town Block 82/350**; 18th and 19th plaintiff, **Mavoko Town Block 82/528 and 529**; 20th plaintiff, **L.R. Nos. 8784/579, 580, and 610**; 21st plaintiff, **L.R. Nos. 8784/42**; and lastly, the 22nd plaintiff, **L.R. Nos. 8784/107 and 108**. All these parcels of land, allegedly belonging to the plaintiffs, shall collectively be referred to as **“suit properties”**.
4. They informed the court that the plaintiffs and/or purchasers had been occupying their respective suit properties from the dates of purchase or registration until January 2022, when the

1st to 3rd defendants systematically invaded the suit properties, subdivided them into smaller portions, installed beacons, and sold them to unsuspecting third parties who had begun construction.

5. They expressed concern that the suit properties might be wasted or lose their value. They also mentioned that they had been denied access and that their representatives had faced bodily harm. They told the court that the 1st to 3rd defendants felt more confident because of court orders obtained in the lower court, even though they were strangers to the case. The subject in one of these cases was allegedly **L.R. No. 8784/146 (“the 1st to 3rd defendants’ land”)**, which was said to be a subdivision of **L.R. Nos. 8783 and 8784/1 and 8784/2**, the original parcels from which the plaintiffs’ parcels were divided. These original parcels are collectively called **“mother parcels.”**

6. They informed the court that these mother parcels, particularly **L.R. Nos. 8784/1 and 8784/2** were registered in the names of the deceased 1st and 2nd plaintiffs on 26th May 1983, and were subdivided and sold to the plaintiffs and their predecessors in title long before 10/06/2014. Hence, they urged the court to grant them the following reliefs: -

a. A declaration that the plaintiffs are the registered owners and or beneficial owners of their respective parcels of land.

- b. A declaration that the 1st to 3rd defendants, by themselves, their servants and or agents or any other parties claiming under or through them, including any third parties illegally on the suit properties without the express authority of the respective plaintiffs or their lawful successors in law, are trespassers.***
- c. An order that the 1st to 3rd defendants, by themselves, their servants and or agents or any other parties claiming under or through them, including any third parties illegally on the suit properties, do vacate the suit properties and at their own cost demolish all/any structures erected thereon and cart away all the debris of such demolition.***
- d. An order that the cost of removal of the illegally placed beacons and resurveying, demarcating and replacing beacons and all attendant costs be paid by the 1st to 3rd defendants.***
- e. A permanent injunction against the 1st to 3rd defendants restraining them by themselves, their servants and or agents or any other parties claiming under or through them including any third parties illegally on the suit properties from trespassing onto, purporting to survey or demarcate the suit properties or removing or replacing the beacons thereon or damaging, utilizing, wasting, leasing, renting,***

offering for rent or dealing in any manner whatsoever with the whole or any portion of the suit properties.

f. The Officer Commanding Station (OCS) Athi River Police Station, together with all such necessary and sufficient reinforcement as the Inspector General National Police Service may direct, do supervise the enforcement of the above orders.

g. General, punitive and exemplary damages for trespass.

h. Costs of this suit.

i. Interest on (g) and (h) above at court rates.

j. Such further or other orders as the court may deem fit to grant.

7. The matter was heard on 7th May 2025, and Chuhi Wanyoike, who is the legal administrator of the 1st and 2nd deceased plaintiff, testified as **PW1**. He testified not only on his own behalf but also on behalf of the other twenty-one plaintiffs, all of whom had authorised him in writing to testify on their behalf according to their respective written authorities dated 6th May 2025. His evidence included written witness statements, oral testimony, and several documents that were marked and produced as **PExh. 1-91**. His testimony reaffirmed the allegations contained in the plaint, as previously summarised, and this court need not repeat them.

8. To support these claims, he produced several documents, including copies of title documents and/or certificates of all official searches of the suit properties, except those of **L.R. Nos. 8784/46**. He also submitted copies of occurrence book records from Athi River Police Station for various dates in 2022, court orders issued by the lower court in **Mavoko Law Court MC ELC E006 of 2022** relating to the 1st to 3rd defendants' land, photographs showing beacons, structures under construction, a grader, a seemingly new road, persons with injuries, groups of people, hospital treatment notes, various correspondence to government departments, a public notice warning of illegal invasion published in the Daily Nation on 14th April 2022, a media statement dated 20th April 2022, and the CR12 certificate of the 3rd defendant.
9. Additionally, he testified that by a transfer registered on 2nd June 1983, the deceased 1st and 2nd plaintiff was recorded as the owner of the mother parcels, and he produced the transfer instrument to support this.
10. Despite service of the hearing notice on the defendants, they did not attend court; consequently, the parties' cases were closed, and the court directed the parties to file written submissions. Nevertheless, the defendants did not comply.
11. Therefore, after considering the amended plaint, the plaintiffs' unchallenged evidence, and the issues outlined in

the plaintiffs' submissions dated 12th May 2025 filed by **Ms Kimamo Kuria Advocates**, the sole issue for determination is **whether the plaintiffs proved their claim of trespass against the 1st to 3rd defendants**. Further, since no cause of action was disclosed against the 4th defendant, the suit against it is struck out. Consequently, in its analysis and determination, the judgment will carefully consider the arguments in the submissions, along with the relevant law and judicial precedents relied upon.

12. We will now proceed with the analysis and determination of the substance of the issue before us, and it is vital to highlight the relevant legal and jurisprudential framework that deals with this issue. **Article 40** of the **Constitution** recognises that every person has the right to acquire and own property of any kind and in any location within Kenya. The protections and limitations related to such land rights are governed by **Sections 24, 25, and 26** of the **Land Registration Act**, which delineate land rights, privileges, appurtenances, liabilities, and interests. The other germane provisions of the law are contained in the **Land Act** and the **Trespass Act**, which specifically stipulate: -

Section 152A of the **Land Act 2016** states as follows: -

“A person shall not unlawfully occupy Private, Community or Public Land.”

Section 3 (1) of the **Trespass Act** defines trespass as: -

“any person who without unreasonable 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.”

13. As for the writings of eminent scholars, the text of **Clerk & Lindsell on Torts, Sweet & Maxwell, 18th Edition, at page 923**, defines trespass to land as follows: -

“Trespass to land consists of any unjustifiable intrusion by one person upon land in the possession of another.”

Page 927 of the same text discourses as to who may sue for trespass, and it states as follows: -

“Trespass is actionable at the suit of the person in possession of land, who can claim damages or injunction, or both... Similarly, a person in possession can sue although he is neither owner nor derives title from the owner, and indeed may be in possession adverse to the owner.”

14. In the book of **Winfield & Jolowicz on Tort, Sweet & Maxwell, 19th Edition, page 428**, trespass is discussed as follows:

“Trespass to land, like the tort of trespass to goods, consists of interference with possession. Mere physical presence on the land does not necessarily amount to possession sufficient to bring an action for trespass. It is not necessary that the claimant should have some lawful interest in the land. This is not to say that legal title is irrelevant, for where the facts leave it uncertain which of several competing claimants has possession, it is in him who can prove title that can prove he has the right to possession. More generally, in the absence of evidence to the contrary, the owner of land with the paper title is deemed to be in possession of the land.”

15. Having made claims of trespass and notwithstanding their claim was unopposed, the burden was on the plaintiffs, as required by **Section 107** of the **Evidence Act**, to prove their claim either by demonstrating that these properties were registered in their name and/or that they had taken possession of them before the defendants’ entry, as trespass claims are usually based on possession. They were also required to show that the defendants occupied the suit properties without their permission. So, what did they tender?

16. PW1 submitted copies of various title documents and certificates of official searches indicating that the plaintiffs were the registered owners of some of the suit properties in question. Although he testified that **L.R. No. 8784/46** was registered in the name of the deceased 1st and 2nd plaintiff, he failed to provide documents to substantiate this line of evidence or to prove its existence.

17. Respecting the various incidents of trespass, the photographs produced showed cemented beacons on parcels of land with painted markings on them, some of which appeared to have been recently placed. The OB records show that the plaintiffs visited the Athi River police station several times to lodge complaints. This court presumes that, considering the sensitivity of land matters and the intricate nature of land ownership-where a certificate of title does not necessarily serve as proof of ownership, the police were hesitant to intervene. This hesitance necessitated the filing of this suit, whereby the plaintiffs now seek police assistance in this matter. To this court, such acts of reporting were not in vain, as the plaintiffs must have suffered harm to the suit properties to warrant intervention.

18. Regarding injuries sustained by various individuals or damage to a vehicle belonging to Charles Lwande Omondi, PW1 merely indicated that such incidents occurred during a meeting convened by Chuna Housing Co-operative Society

Limited, without providing further details on the relationship between this society to the plaintiffs or the suit properties, or specifying which particular suit property was the subject of the meeting. Additionally, there was no elaboration on the connection between the injured persons, the damaged vehicle, and the suit properties. Consequently, the court is not persuaded that these acts of violence took place on the suit properties on 9th April 2022, as alleged by the plaintiffs.

19. Moreover, it was unchallenged that some structures had been put up on some of the suit properties by the 1st to 3rd defendants or their agents. It was also unchallenged that prior to the acts of encroachment, the plaintiffs or those who had their permissions by purchase were in occupation of various suit properties. It was also unchallenged that the trespassers did not have the consent of the plaintiffs for them to occupy the suit properties. Thus, it is clear to this court's mind that, except for **L.R. Nos. 8784/46**, the plaintiffs proved their claim of trespass on a balance of probabilities and are deserving of protection by this court.

20. It is worth noting that the plaintiffs, in their submissions, have requested this court to consider certain documents on record. However, this court respectfully declines to entertain such documents, as the defendants neither adduced evidence nor filed a defence.

21. In presenting the claim, the plaintiffs sought various forms of reliefs from this honourable court, including general, punitive, and exemplary damages for trespass. It is well-established that trespass is actionable *per se* without the necessity of demonstrating actual damage. Considering the duration of the trespass, the size of the affected properties, their location, plaintiffs' submissions and the nature of the trespass, the court hereby awards the plaintiffs Kshs 5,000,000/- as general damages. As for exemplary and punitive damages, several court decisions have pronounced guiding principles. In **Mworia & another v Githinji & another [2024] KECA 6 (KLR)**, the Court of Appeal held: -

“The locus classicus in this regard is the decision of this Court in Obongo & Another vs Municipal Council of Kisumu [1971] EA 91 in which the Court followed the House of Lords decision in Rookes vs Bernard and others [1964] AC 1129, and accepted the law to be as laid out in Rookes vs Bernard (supra) that:“...exemplary damages for tort may only be awarded in two classes, of case (apart from any case where it is authorized by statute): these are first, where there is oppressive, arbitrary or unconstitutional action by the servants of the government and secondly, where the defendant’s conduct was calculated to procure him some benefit, not necessarily financial, at the expense of the plaintiff. As

regards the actual award, the plaintiff must have suffered as a result of the punishable behaviour, the punishment imposed must not exceed what would be likely to have been imposed in criminal proceedings if the conduct were criminal: and the means of the parties and everything which aggravates or mitigates the defendant's conduct is to be taken into account. It will be seen that the House took the firm view that exemplary damages are penal, not consolatory as had sometime been suggested."

Further, in **PN Mashru Ltd v Ojenge [2023] KECA 473 (KLR)**, the appellate court similarly stated: -

"On the award of punitive damages, in Bank of Baroda (Kenya) Limited vs. Timwood Products Ltd Civil Appeal No. 132 of 2001, this Court citing Obongo & Another vs. Municipal Council of Kisumu [1971] EA 91 and Rookes v Banard & Others [1964] AC 1129 held that in Kenya punitive or exemplary damages are awardable only under two circumstances, namely (i) where there is oppressive, arbitrary or unconstitutional action by the servants of the government; and (ii) where the defendant's action was calculated to procure him some benefit, not necessarily

financial, at the expense of the plaintiff. The third scenario is, of course, where such damages are authorised by statute.”

22. In this case, the 1st to 3rd defendants are not government servants, or was there any evidence of oppressive, arbitrary, or unconstitutional actions by government employees or agents that would justify an additional punitive award. Although the acts of the 1st to 3rd defendants were unlawful, and as held in **Njoroge v Wambua & 2 others [2023] KEELC 15887 (KLR)**, which has been relied upon by the plaintiffs, from tendered evidence, the 1st to 3rd defendants had some court orders concerning their alleged land, which allegedly allowed them to enter the suit properties. In this court’s humble view, their actions cannot be said to warrant punitive measures. Therefore, this court finds that the plaintiffs are not deserving of this award and considers that an award of general damages is sufficient.

23. Concerning the expense incurred for the removal of the unlawfully installed beacons, as well as re-surveying, demarcation, replacement of beacons, and all related costs and in associating with **Njoroge (Supra)**, this court determines that such constitutes a claim for special damages. As such, it was incumbent upon the plaintiffs to specifically plead and substantiate this claim, which they failed to do. In the present case, the court finds that the pleadings of the plaintiffs did not satisfy the requisite legal threshold under this

category. Furthermore, the plaintiffs did not provide substantial evidence to support this claim. Consequently, this prayer is hereby denied. This also finds that the prayer for seeking police assistance at this stage is premature.

24. In the end, guided by law and judicial precedents and based on the foregoing findings and reasons, this court finds that the plaintiffs were successful in their claim, and since it is trite law, costs follow the event; therefore, costs are awarded to them, to be borne by the 1st to 3rd defendants. The final disposal orders are hereby issued in the following terms:

a) The plaintiffs' suit is hereby struck out against the 4th defendant with no orders as to costs.

b) A declaration is hereby made that the following parcels of land are respectively registered in the names of the plaintiffs: Kimani Wa Nyoike, L.R. Nos. 8783/4, 5, 6, 7, 165, 171 and 172 and L.R. No. 8784/40; Kimamo Kuria as trustee for Kuria Kimamo, Wambui Kimamo and Wairimu Kimamo, L.R. Nos. 8784/45, 62 and 114; Joaquim Paul Mwangi Gitiche, Mavoko Town Block 82/118 and 119; Edwin Muriuki Njiru, L.R. No. 8784/60; Major Dedan Njiru Muriuki and Rodha Wagaki Muriuki, L.R. No. 8784/61; John Warui Mwangi and Irene Wambui Kamau, L.R. No. 8783/168; Moses Njoroge and Julius Kairianja Mureithi, L.R. No. 8784/44; Isaac Muthure Macharia and Sophie

Wangari Macharia, L.R. No. 8784/53; Alice Wanja Gichura, L.R. No. 8784/43; Christina Wambui Mwangi, L.R. No. 8784/56; Joyce Katanu Muchai, Mavoko Town Block 82/268; Anne Mueni Mutiso, Mavoko Town Block 82/294; Pauline Wanjira Kuria, Mavoko Town Block 82/350; Rosemary Njeri Kiuna and Margaret Wanjiku Kiuna, Mavoko Town Block 82/528 and 529; Stella Awino Ochola, L.R. Nos. 8784/579, 580 and 610; Mbote Githinji Solomon, L.R. Nos. 8784/42; and Daystar University, L.R. Nos. 8784/107 and 108.

c) A declaration is hereby made that the 1st to 3rd defendants, by themselves, their servants and/or agents, or any other parties claiming under or through them, including any third parties, are illegally on the parcels of land listed in order (b) above without the express authority of the respective plaintiffs or their lawful successors in law, and are trespassers.

d) An order is hereby made that the 1st to 3rd defendants, by themselves, their servants and/or agents or any other parties claiming under or through them, including any third parties illegally on parcels of land listed in order (b) above, do vacate them and, at their own cost, demolish all or any structures erected thereon and remove all debris of such demolition within 90 days hereof and give the plaintiffs vacant possession,

and in default, the plaintiffs shall forcefully evict them together with their servants or agents.

e) A permanent injunction is hereby issued against the 1st to 3rd defendants restraining them by themselves, their servants and or agents or any other parties claiming under or through them including any third parties illegally on the parcels of land listed in order (b) above from trespassing onto, purporting to survey or demarcate them or removing or replacing the beacons thereon or damaging, utilizing, wasting, leasing, renting, offering for sale or dealing in any manner whatsoever with the whole or any portion of these parcels of land.

f) General damages of Kshs. 5,000,000/- is awarded to the plaintiffs to be borne by the 1st to 3rd defendants.

g) Costs of the suit are awarded to the plaintiffs, which shall be borne by the 1st to 3rd defendants.

Judgment accordingly.

Delivered and Dated at Machakos this 16th day of December, 2025.

**HON. A. Y. KOROSS
JUDGE
16.12.2025**

**Judgment delivered virtually through Microsoft Teams
Video Conferencing Platform**

In the presence of;

Ms Kanja Court Assistant

Miss Kamau holding brief for Mr. Kamau Kuria for plaintiff.

N/A for defendants.

ORIGINAL