



Omondi v Onduru t/a Monao Education Centre (Environment and Land Case E004 of 2023 & Environmental and Land Originating Summons E10 of 2020 (Consolidated)) [2025] KEELC 18558 (KLR) (18 December 2025) (Judgment)

Neutral citation: [2025] KEELC 18558 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND CASE E004 OF 2023 & ENVIRONMENTAL
AND LAND ORIGINATING SUMMONS E10 OF 2020 (CONSOLIDATED)**

E ASATI, J

DECEMBER 18, 2025

BETWEEN

JUDITH AKINYI OMONDI PLAINTIFF

AND

**MAURICE ODAWO ONDURU T/A MONAO EDUCATION
CENTRE DEFENDANT**

JUDGMENT

Background

1. Maurice Odawo Onduru (t/a Monao Education Centre) filed a suit in the Chief Magistrate’s Court at Kisumu, namely; KSM CM ELC NO. 60 OF 2018 against Judith Akinyi Omondi. Vide the plaint dated 26th January 2018 he sought for orders that:
 - a. An order of permanent injunction restraining the Defendant, whether acting by herself, her servants, agents or any other person from entering, remaining upon, constructing any structures, ploughing, scooping murrum or from generally using or dealing with the suit parcel herein being L. R. No. 29978 registered under title No. IR 176752 situate in Kibos in any way detrimental to the plaintiff’s interests herein.
 - b. An order of eviction of the Defendant from the suit property.
 - c. Costs of the suit.
 - d. Any further relief that the court may deem just to grant.
2. Before the suit could be heard and disposed of, Judith Akinyi Omondi also filed a suit in the Environment and Land Court at Kisumu namely; KSM ELC (OS) NO E10 OF 2020. Vide the



Originating Summons dated 23rd March 2020 she sought for relief principally a declaration that she had acquired an overriding interest in the land comprised in L. R. NO. 29978 or part thereof situate at Kisumu County by reason of having occupation, user and possession of the land with the knowledge of the owner for a period stretching over 12 years.

3. Judith Akinyi Omondi subsequently initiated Kisumu Elc Misc. Application No. 4 OF 2020 vide which she sought for transfer of KSM CMC ELC Case No. 60 OF 2018 from the Magistrate's court to the Environment and Land Court at Kisumu for hearing and determination.
4. The record of KSM ELC MISC APPL. NO. 4 OF 2020 shows that the application was allowed and vide an order made on 19/4/2021 KSM CMC ELC CASE NO 60 of 2018 was transferred to the ELC for hearing and determination. The suit was upon transfer, registered as KSM ELC NO 4 OF 2023.
5. On 18/1/2023 KSM ELC NO. 4 OF 2023 was consolidated with KSM ELC (OS) NO. E10 OF 2020 with ELC NO 4 OF 2023 being the lead file. Upon consolidation Judith Akinyi Omondi became the Plaintiff and Maurice Odawo Onduru and NLC the Defendants, the pleadings filed by Judith Akinyi Omondi were deemed to be the plaint and the pleadings by Maurice Odawo Onduru deemed to be his defence and Counterclaim.

The evidence

6. The Plaintiff failed to adduce evidence and disowned her own pleadings in the case. On 17th February, 2025, Counsel for the Plaintiff made an application to have the Plaintiff's claim discontinued with no orders as to costs.
7. The application for discontinuance of the suit was unopposed hence the court made an order for withdrawal of the Plaintiff's suit. The matter proceeded to hearing of the counterclaim as contained in plaint in Kisumu CMC Case No.60 of 2018 which had been transferred from the Chief Magistrate's court.
8. On behalf of the Defendant, one witness testified as DW1. She testified that Maurice Odawo Okumu, the Defendant though present in court, was sick, diagnosed with dementia hence unable to testify. DW1 relied on the contents of her witness statement dated 21st March, 2024.
9. She produced the statement recorded by Maurice Odawo Okumu dated 26th January, 2018 and produced as exhibits as exhibit D1 to D 19
10. She stated that the Plaintiff entered the suit land in the year 2016. That they reported to the police, whereupon she was charged with offence of forcible detainer and convicted of the offence.
11. On cross-examination by the Plaintiff, DW1 stated that before the land was allocated to the Defendant there was a committee that was set and which brought a report that nobody was in occupation of the land. That it was the time they went to fence when the Plaintiff was constructing the house. That the Defendant got the land in the year 2006 from the government.
12. After the close of the defence case on the counterclaim, the matter was adjourned twice to enable the Plaintiff time to adduce her evidence in response to the counterclaim to no avail. On 18th June, 2025 Counsel for the Plaintiff informed court that he had had lengthy discussions with his client and agreed that the Plaintiff was not offering any evidence and proceeded to close the case of the Plaintiff in regard to the counterclaim.

Submissions

13. The Plaintiff opted not to file any submissions.



14. On behalf of the Defendant, written submissions dated 21st October, 2025 were filed by the firm of Olel, Onyango, Ingutiah Advocates LLP. Counsel submitted that the Plaintiff provided no evidence for her proposition that she lived on the suit property for over 30 years. That no evidence was produced to show that the suit land was ancestral land. That it was clear that vide WINAM PMC CR. CASE NO.561 OF 2016, the Plaintiff was charged upon the complaint of the Defendant with the offence of forcible detainer of the suit property herein wherein she was found guilty and convicted accordingly vide the judgement made on 25th January, 2018. That the judgement was never appealed against. That as it was clear from the said judgement, the Plaintiff entered the suit land in the year 2015 and by the time the Originating Summons was filed in 2020, she had only been on the land for 5 years and there was already a conviction against her over her entry into the land.
15. Relying on the case of Gatimu Kinguru -vs- Muya Gathangi [1976]KLC where it was held that the period of adverse possession must not be broken for 12 years and Wamui Gikwa -vs- Paul Kimani Muraba [2016]eKLR where it was held inter alia that time stops to run when the title holder asserts his title to the land in question, Counsel submitted that the Criminal case against the Plaintiff herein was an effective claim by the Defendant over the suit land and the fact that it ended in a conviction against the Plaintiff is a further demonstration that the Plaintiff never held the suit property peacefully.
16. Counsel urged the court to find that adverse possession had not been proved.
17. Relying on the provisions of section 24 of the [Land Registration Act](#), Counsel submitted that the Defendant's claim for permanent injunctive relief and for orders of eviction are well warranted because the Plaintiff is occupying land that legally belongs to the Defendant.
18. On sanctity of title to land, Counsel relied on the cases of Dr. Joseph Arap Ngok -vs- Justice Moiyo Ole Keiwa & 5 Others, Civil Appeal No.Nai 600 of 1997 and Hassan Mohammed Haji -vs- Mohammed Keynan & another [2019]eKLR and submitted that one ought not to lose his title except by following due process. That there is no fraud on the part of the Defendant when it came to acquisition of the suit property. Counsel urged the court to uphold the sanctity of the Defendant's title.

Issues for determination

19. The Plaintiff having withdrawn her claim as contained in the Originating Summons in case No. E10 of 2020, what was left for the court to determine was the Defendant's claim as contained in the plaint in CMC Case NO. 60 of 2018 which became the Defence and Counterclaim upon consolidation. The issue that arises for determination is whether or not the Defendant had proved that the Plaintiff had trespassed onto the suit land and whether the Defendant was entitled to the relief sought in the plaint dated 26th January, 2018.

Analysis and determination

20. The Defendant pleaded in paragraph 3 of the plaint that he was at all material times the registered proprietor of the parcel of land known as Land Reference No.29978 registered under title number I.R. NO.176752 measuring 1.338 hectares and situate within Kibos area of Kisumu County.
21. In paragraph 8, he pleaded that in the year 2015, the Plaintiff encroached upon the suit land and put up a temporary structure thereon and ploughed part of the suit land for planting. That efforts by the Defendant to negotiate with the Plaintiff to vacate from the suit land have been responded to by the Plaintiff by violence, threats and intimidation against the Defendant. That the Plaintiff's actions on the land have prevented the Defendant from carrying out intended developments on the land, a fact that has caused the Defendant loss.



22. The Defendant produced documents including certificate of title to show that the land belonged to him. The certificate of title dated 27th May, 2016 shows that the land NO.IR NO.176752 belonged to Maurice Odawo Onduru t/a Monao Education Centre holder of a 99 years lease running from 1st November, 2007.
23. It was common ground that the Plaintiff had entered and was on the suit land. Her justification for her presence on the suit land was that she had acquired overriding interest by way of adverse possession of the suit land. However, she withdrew the claim of adverse possession. The proceedings of the criminal case produced by the Defendant are evidence that her stay on the land was not peaceful and uninterrupted. Further the legality of her presence and occupation of the land was tested in the Winam PMC Criminal Case No 561 Of 2016 wherein the court found that her presence on the land was unlawful and convicted and sentenced her.
24. Trespass to land is constituted by an unjustified interference with the possession of land. In Black's Law Dictionary 11th Edition, it is defined as;
- “ a person's unlawful entry on another's land that is visibly enclosed. This tort consists of doing any of the following without lawful justification: (1) entering on to land in possession of another, (2) remaining on the land, or (3) placing or projecting any object on it.”
- Winfield and Jolowicz on Tort 12th edition at page 359 states that:
- “trespass to land is the name given to that form of trespass which is constituted by unjustifiable interference with possession of land.....it consists of interference with possession.”
- section 3 of the [Trespass Act](#), Cap 294 Laws of Kenya provides;
- “any person who without reasonable excuse enters or remains upon or erects any structure on or cultivates, tills or grazes or permits stock to be on private land without the consent of the occupier thereof shall be guilty of an offence.
25. The elements of the tort of trespass thus include; unauthorized entry onto another's land, remaining on another's land without permission, carrying out activities such as cultivating, tilling or even grazing animals, or construction on another's land without permission or placing /projecting an object over someone's land without permission.
26. Evidence produced herein show that the Defendant is the owner of the suit land, that the plaintiff entered the suit land unlawfully and while thereat constructed structures thereon, ploughed the land and remained thereon. The valuation report produced by the Defendant indicated that the developments on the suit land included a temporary residential house erected thereon. This corroborated the testimony of DW1 and the pleadings in the plaint. The court vide the criminal case found that her actions amount to an offence of forcible detainer. It is clear that the plaintiff trespassed onto the suit land and has persisted in the trespass.
27. On the basis of the evidence placed before court, I find that the Defendant has proved his claim against the Plaintiff on a balance of probabilities and that he is entitled to the relief sought. Judgement is hereby entered in favour of the Defendant, Maurice Odawo Onduru, against the Plaintiff, Judith Akinyi Omondi, on the Counterclaim for:



- a. An order of permanent injunction restraining the Plaintiff (Judith akinyi Akinyi Omondi), whether acting by herself, her servants, agents or any other person from entering, remaining upon, constructing any structures, ploughing, scooping murram or from generally using or dealing with the suit parcel herein being L. R. No. 29978 registered under title No. IR 176752 situate in Kibos in any way detrimental to the plaintiff's interests herein.
- b. An order of eviction of the Plaintiff (Judith Akinyi Omondi) from the suit property as follows: the plaintiff is hereby given sixty (60) days from the date hereof to vacate the suit land and hand over vacant possession thereof to the Defendant in default of which the plaintiff shall be evicted from the suit land as by law provided.
- c. Costs of the suit.

Orders accordingly.

JUDGMENT DATED AND SIGNED AT KISUMU, DELIVERED VIRTUALLY THIS 18TH DAY OF DECEMBER, 2025.

E. ASATI,

JUDGE.

In the presence of:

Maureen: Court Assistant.

N/A for the Plaintiff

Odhong for the Defendant

