

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KITALE**  
**ELC NO. 19 OF 2023**

**GEORGE ATAMBO**-----**AMENYA**  
**PLAINTIFF**

**VERSUS**

**BWIRE OJIAMBO**-----

**1<sup>ST</sup> DEFENDANT**

**JANET WAMOTO**-----**2<sup>ND</sup>**

**DEFENDANT**

**JUDGMENT**

1. By a plaint dated **14/12/2023**, the plaintiff seeks:
  - (a) **Declaration that he is a lawful owner of land title No. Kapkoi/Mabonde Block 1/Ex-Prison/114, hereinafter the suit land.**
  - (b) **Eviction of the defendants from the suit land.**
  - (c) **General damages for trespass.**
2. The plaintiff contends that he is the registered owner of the suit land measuring **6.35 Ha** or thereabout, which the defendants, without any consent or authority, trespassed into and planted sugarcane, thus depriving him of possession to date. The plaintiff terms the acts as oppressive, arbitrary, unjustified, and unconstitutional.

3. The defendants opposed the suit through a statement of defence dated **6/1/2024**, denying in *toto* the contents of the plaint.
4. The 1<sup>st</sup> defendant averred that he was in continuous and uninterrupted actual possession of the suit land for the past thirteen years, and hence reserves the right to assert adverse possession over the land in question, leasing the same from the 2<sup>nd</sup> defendant since **2017**.
5. The defendants averred that the plaintiff was under investigation for offences including threatening to kill, malicious damage to property, assault, and misuse of state agencies, hence was not entitled to the reliefs sought. The defendants termed the suit as made in bad faith, a waste of the court's time, and filed to settle the score.
6. At the trial, **George Amenity Atambo** testified as **PW1**. He relied on a witness statement dated **14/12/2023** as his evidence-in-chief. PW1 told the court that he was the registered owner of the suit land. In **2022**, PW1 said that the defendants jointly and severally, without any consent or authority, trespassed into his land and planted sugarcane, to which, despite notice and intention to sue, they have declined to vacate, hence this suit.

7. PW1 relied on copies of a demand letter dated **26/9/2023**, reply dated **3/10/2024**, photographs, and a copy of the title for **Kapkoi/Mabonde Block 1/Ex-Prison/114** as **P. Exhibit Nos. 1, 2, 3(a), (b), and (c)**, and **4**, respectively.
8. PW1 told the court that he obtained the title on **14/6/2022** and took possession of the land, which was vacant at the time. PW1 said that he was surprised later to find a sugarcane plantation on the land, as per the photographs before the court.
9. PW1 said that he then approached the defendant, who promised to vacate the land, and he gave the notice to vacate, which he declined to adhere to. PW1 said that the defendants are still on his land, which he bought to plant maize, but has now been unable to do so. PW1 said that the suit land is about **15 acres** in size, with an estimated income per acre of **30** bags. PW1 said that since **2022** to date, he has been unable to utilise his land, resulting in a loss of estimated income of **Kshs. 3,700.=** per bag.
10. Regarding the 1<sup>st</sup> defendant's witness statement dated **14/1/2024**, attaching two lease agreements, PW1 said that he was not privy to the same, and that

it was not true that the title was under joint ownership when he bought the land.

- 11.** PW1 said that the alleged lease agreements do not reflect the parcel number of the suit land; they relate to a land measuring **40** acres, as opposed to the suit land, which is **6.35 Ha**. PW1 asked the court to grant him the reliefs sought by the plaintiff, in terms of general damages and mesne profits.
- 12. Jared Sharon** was called as **PW2**. Her testimony was that, from the custodian of land records, as per **Section 4** of the Land Registration Act, L.R. No. **Kapkoi/Mabonde Block 1/Ex-Prison/114** belongs to the plaintiffs with effect from **14/6/2022**, as per entries **No. 6** and **7**. PW2 told the court that the subject block was closed for investigation at the instance of the Ethics and Anti-Corruption Commission as per the Principal Secretary's letters dated **14/9/2022** and **27/2/2023**, seeking the maintenance of the status *quo*.
- 13.** PW2 produced the letters as **P. Exhibit Nos. 5, 6,** and **7**. PW2 said that the current status is that there can be no transaction on the title in view of the restriction, though the plaintiff's title remains valid or intact.

- 14.** In the absence of attendance at the hearing, despite notice, together with an affidavit of service, the defendant's statement of defence dated **14/7/2024** was marked as closed. Mr. Onyancha, learned counsel for the plaintiff, submitted that the plaintiff has proved his suit on a balance of probabilities. Notwithstanding **P. Exhibit Nos. 5, 6, and 7**, the plaintiff submitted that he remains the sole legal proprietor of the suit land.
- 15.** It was submitted that there has been no valid court order cancelling the plaintiff's title. Further, the plaintiff submitted that the statement of defence on record remains unsubstantiated.
- 16.** Learned counsel for the plaintiff submitted that **P. Exhibit No. 3(a) and (b)** show the economic activities by the defendants on the land, which have denied the plaintiff's entry into and use of the land. Learned counsel submitted that the plaintiff is entitled to damages, guided by **Park Towers Ltd - vs- John Mithamo Njika & Others [2014] eKLR**, without proof of damage, since trespass is actionable *per se*.
- 17.** Learned counsel submitted that the circumstances of this case require that the denial of the use of the

land since **2022** to date for the plaintiff to be awarded **Kshs.500,000/=**.

- 18.** In **Kenya Power and Lighting Company -vs- Ringera & Others [2022] KECA 104 [KLR] (4<sup>th</sup> February 2022) (Judgment)**, the court said trespass to land is governed by **Section 3(1)** of the Trespass Act, which defines it as entry into, or upon private property in the possession or occupation of another without justification, and commission of acts inconsistent with his use of the land.
- 19.** In **M'Mukunya -vs- M'Mbijiwe (1984) eKLR**, trespass was defined as a violation of a right to possession, and the plaintiff must prove that he had a right to immediate and exclusive possession of the land.
- 20.** To prove trespass, the plaintiff herein has to show that there was wrongful entry and a violation of his right to possession. See **Margaret Iminza Luyayi -vs- Moses Opudo Mudaka [2014] eKLR**.
- 21.** In this suit, the plaintiff has discharged the burden that he is the owner of the suit land as per the title deed produced as **P. Exhibit No. 4**. See **Ochako Obinchi -vs- Zachary Oyoti Nyamongo [2018] eKLR**. The title deed has not been challenged as irregularly or unprocedurally obtained by the

defendants, through pleaded and proved particulars of the fraud, illegality, or issuance through corrupt means.

- 22.** In a case of trespass, the intruder must show justification for entry and occupation on the land without the consent or authority of the registered owner. Even though the 1<sup>st</sup> defendant alleges adverse possession on the land by way of a statement of defence, there was no counterclaim or proof that the plaintiff's title was subject to any overriding interest granted to the 1<sup>st</sup> defendant by the predecessor in title.
- 23.** Even if that was the case, the 1<sup>st</sup> defendant has attached to his reply to the demand notice lease agreements. Permissive entry or use of land cannot amount to adverse possession in law, as held in **M'Riria & Others -vs- Muthomi Civil Appeal No. 253 of 2019 [2025] KECA 951 [KLR]**. Moreover, the failure to attend the defence hearing and ventilate the contents of the statement of defence left the contents as mere statements, with no probative value to rebut the proprietary rights of the registered owner of the land.
- 24.** Trespass to land once proved is actionable *per se*. In **Park Towers Ltd** (*supra*), the court said that where

trespass is proved, a party need not prove that he suffered any specific damage or loss to be awarded damages, and that all that a court should do is to assess the damages awarded to the defendant on the unique circumstances of the case.

**25.** The plaintiff has submitted for **Kshs.500,000/=**, based on the expected income of **Kshs. 3,700/=** per bag, for an estimated **30** bags per acre, in the **15** acres of the suit land. In **Stanley Maore -vs- Geoffrey Mwenda [2004] eKLR**, the court held that damages should be assessed comparable to the injuries or loss, as far as possible, and to similar cases. See also **Municipal Council of Eldoret -vs- Titus Gatitu Njau [2021] KECA 782 [KLR]** and in **Attorney General -vs- Zinji Ltd [2021] KESC 23 [KLR] (30<sup>th</sup> December 2021) (Judgment)**. In the circumstances of this case, I find the figure of **Kshs. 500,000/=** for general damages, reasonable.

**26.** As to eviction, for the same to be sanctioned by the court, it has to comply with the law on execution of court decree or order as per Section **152(B), (C), and (F)** and **152(1)** of the Land Act, **Section 38** of the Civil Procedure Act, and **Order 22 of** the Civil Procedure Rules. Consequently, the defendants shall deliver the suit land to the plaintiff after **3 months**

from the **date hereof**, in default, to be evicted therefrom at their costs and expenses.

**27.** The general damages shall attract interest at court rates from the date of filing the suit to the date of delivery of vacant possession. Costs to the plaintiff.

**28.** Orders accordingly.

**Judgment dated, signed, and delivered** via **Microsoft Teams/Open Court** at **Kitale** on this **28<sup>th</sup>** day of **January 2026**.

**In the presence of:**

Court Assistant - Dennis  
Onyancha for plaintiff- present  
Sow for the defendants- absent



**HON. C.K. NZILI  
JUDGE, ELC KITALE.**