



Ali Bitacha ‘alias Ali Butacha Tora v Sori & 68 others (Environment and Land Case E004 of 2024) [2026] KEELC 342 (KLR) (22 January 2026) (Judgment)

Neutral citation: [2026] KEELC 342 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO
ENVIRONMENT AND LAND CASE E004 OF 2024**

**JO MBOYA, J
JANUARY 22, 2026**

BETWEEN

ALI BITACHA ‘ALIAS ALI BUTACHA TORA PLAINTIFF

AND

- HUQA SORI 1ST DEFENDANT**
- GALGALLO DIDO 2ND DEFENDANT**
- SHALLO DIDO 3RD DEFENDANT**
- GUYO SHALLU 4TH DEFENDANT**
- DOTI WAKO 5TH DEFENDANT**
- KATELO WAKO RACHA 6TH DEFENDANT**
- SORA HALAKE 7TH DEFENDANT**
- HALKANO HALAKE 8TH DEFENDANT**
- GURR MALICHA 9TH DEFENDANT**
- GOLICHA JARSO 10TH DEFENDANT**
- SHAMA JARSAO ABUDO 11TH DEFENDANT**
- WAKO HALAKE 12TH DEFENDANT**
- ROGE BORU GUYO 13TH DEFENDANT**
- SHEDO BOYA GALGALLO 14TH DEFENDANT**
- DOKOLE BOYA 15TH DEFENDANT**
- GALGALLO BORU 16TH DEFENDANT**
- KAME BORU GUYO 17TH DEFENDANT**



CHUKULIS ROBA UMURO	18 TH DEFENDANT
ADHI HUKA	19 TH DEFENDANT
MALU RACHO	20 TH DEFENDANT
KANCHORA BORRA	21 ST DEFENDANT
BOKU BORR HUKA	22 ND DEFENDANT
BORU GALGALLO ISACKO	23 RD DEFENDANT
GALGALLO ISACKO	24 TH DEFENDANT
HARO MALICHA	25 TH DEFENDANT
KABALA MALICHA	26 TH DEFENDANT
ROBA DUBA ADANO	27 TH DEFENDANT
VDENGE DUKE	28 TH DEFENDANT
DABASO DUKE	29 TH DEFENDANT
VABDUBA ELEMA AMBALLO	30 TH DEFENDANT
WATO GUYO GALGALLO	31 ST DEFENDANT
ABDUBA GALGALLO DOKO	32 ND DEFENDANT
HALKANO WARIO	33 RD DEFENDANT
GUYO WARIO DERTU	34 TH DEFENDANT
GUYO GALGALLO ABUDO	35 TH DEFENDANT
DIBA GALGALLO KURO	36 TH DEFENDANT
ABDUBA KOSI	37 TH DEFENDANT
DAKU JARSO BAQATA	38 TH DEFENDANT
DIKO WAKO TUYE	39 TH DEFENDANT
MUMINA HUKA BONSA	40 TH DEFENDANT
FATUMA ABDI HUKA	41 ST DEFENDANT
DENGE BILA	42 ND DEFENDANT
KURFA ELEMA	43 RD DEFENDANT
ELEMA AMBALO	44 TH DEFENDANT
JILLO DAKURA	45 TH DEFENDANT
KOSI BANCHALE	46 TH DEFENDANT
ELEMA DABASSO	47 TH DEFENDANT
ISACKO ORTO	48 TH DEFENDANT
GALGALLO KURO	49 TH DEFENDANT



BURJI GORAI	50TH DEFENDANT
KULLO GODANA DUBA	51ST DEFENDANT
ADANO ELEMA AMBALLO	52ND DEFENDANT
GABABA KIDO	53RD DEFENDANT
WATO MARIQO	54TH DEFENDANT
GUYO GALGALLO KURO	55TH DEFENDANT
GABALLE ADANO TUYE	56TH DEFENDANT
GODANA BORU THOROBA	57TH DEFENDANT
IBRAHIM TACHE	58TH DEFENDANT
ISACKO BOYA GALGALLO	59TH DEFENDANT
CHUKULIS UMORO WAKO	60TH DEFENDANT
GUYO WARIO DERTU	61ST DEFENDANT
MAMA WAKO RACHA	62ND DEFENDANT
JIRMO GALGALLO KURO	63RD DEFENDANT
DENGE GALGALLO KURO	64TH DEFENDANT
DENGE DUKE THUGA	65TH DEFENDANT
QABALE MALICH GODANA	66TH DEFENDANT
GALGALLO KUR	67TH DEFENDANT
KAME BORU THORUBA	68TH DEFENDANT
ROB DUBA	69TH DEFENDANT

JUDGMENT

1. The Plaintiff has approached the court vide plaint dated 27/11/2024 and wherein the Plaintiff has sought various reliefs. The reliefs sought are namely:
 - i. A declaration that the Defendants are the unlawfully settled, in occupation and unlawful use of the plaintiff's land.
 - ii. An eviction order to forcefully evict the Defendants from L. R No. MARSABIT/JIRME/520.
 - iii. An order of the mandatory and permanent injunction restraining the Defendants, their family members, agents, assignees from re-entering L. R NO. MARSABIT/JIREME/520.
 - iv. Costs of the suit and interest at court rates.
2. The Plaintiff contends that the same is the lawful and registered owner of L.R NO.MARSABIT / JIRME/520 [herein after referred to as the suit property]. In particular, the Plaintiff avers that the suit property was duly adjudicated and thereafter registered in his name on or about the year 2013. Additionally, the Plaintiff has contended that despite being the registered owner of the suit property,



the Defendants herein have since entered upon and trespassed onto various portions of the suit property.

3. Furthermore, the Plaintiff has posited that the offensive activities took place on or about the year 2007 and that despite his efforts to regain possession of the suit property, the Defendants have refused or neglected to vacate. To this end, the Plaintiff avers that the impugned actions by the Defendants constitutes trespass.
4. The Defendants duly entered appearance and thereafter filed a statement of defence dated 20.01.2025. Subsequently, the statement of defence was amended resting with the amended statement of defence dated 19.03.2025 and wherein the Defendants have stated inter-alia: the suit property was lawfully sold to the Defendants by the Plaintiff; the Defendants paid to and in favour of the Plaintiff or his agents the entire consideration; the Defendants duly entered upon the suit property in the year 2012; the Defendants have lawful rights to and in respect of the suit property; the Plaintiff's suit is devoid of merits; and thus ought to be dismissed.
5. The subject matter came up for the usual pre-trial directions, whereupon the advocates for the parties intimated to the court that same had duly filed and exchanged the requisite documents. In particular, the advocates averred that the parties had filed the list and bundle of documents; list of witnesses; and witness statements. Additionally, the advocates for the parties confirmed that the matter was ready/ripe for hearing.
6. The Plaintiff's case is premised on the evidence of one witness, namely: Ali Bitacha Tora alias Ali Bitacha Tura. The same testified as PW1.
7. It was the testimony of the witness that same is the Plaintiff in respect of the instant matter. Moreover, the witness averred that by virtue of being the Plaintiff, same is therefore conversant with the facts of the case. In addition, the witness testified that same has since recorded a witness statement dated the 27.11.2024 and which witness statement, the witness sought to adopt and rely on as his evidence in chief. Suffice it to state that the witness statement was thereafter adopted and constituted as the evidence in chief of the witness.
8. Furthermore, the witness averred that same has also filed an additional witness statement dated the 26.02.2025 and which statement the witness sought to rely on. Instructively, the additional witness statement was adopted and constituted as evidence in chief on behalf of the witness.
9. The witness thereafter adverted to the list and bundle of documents dated 27/11/2024, containing five [5] documents and which documents, the witness sought to produce before the court as exhibits. There being no objection to the production of the documents, same were produced and admitted as exhibits P1 to P5, respectively. Besides, the witness also referenced the list of documents date 26/02/2025, containing three [3] documents and which documents the witness sought to produce as exhibits. For good measure, the named documents were duly admitted as exhibits P6 – P8, respectively.
10. Other than the foregoing, the witness averred that same is the owner of the suit property. Moreover, the witness testified that same has never sold the suit property to the Defendants or any agents of the Defendants. To this end, the witness contended that the Defendants have no rights over and in respect of the suit property.
11. On cross examination by learned counsel for the Defendants, the witness averred that his name as contained in his national identity card is Ali Bitacha. Nevertheless, the witness testified that the certificate of title contains the name of Ali Bitacha Tora. The witness admitted that there is a variance between the name captured in his Identity Card vis a viz the name in the title.



12. It was the further testimony of the witness that the variance between the national identity card and the certificate of title was occasioned by a spelling mistake. However, the witness reiterated that he is the lawful owner of the suit property.
13. Upon being referred to the land adjudication register, the witness testified that the register was prepared by the land adjudication officers. Besides, it was the testimony of the witness that the officers are the once who surveyed the land and thereafter entered the information into the adjudication record. In addition, the witness testified that same was subsequently issued with a certificate of title.
14. While still under cross examination, the witness averred that he was not paid any money by the Defendants. Furthermore, it was the testimony of the witness that he did not sell his land [the suit property] to the Defendants.
15. Additionally, the witness testified that though same is familiar with on Kuni Ene, however, he clarified that he did not instruct the same Kuni Ene to sell the suit property or to receive any monies on his behalf. Besides, the witness averred that Kuni Ene did not remit any monies to him on the basis of the sale of the suit property.
16. Regarding, the minutes which were produced as exhibits P4, the witness testified that the said minutes were given to him by the Defendants. In particular, the witness averred that he did not attend the meeting, which birthed the said minutes. In any event, the witness averred that he has only produced the minutes because the same were given to him by the Defendants.
17. It was the further testimony of the witness that the Defendants herein have trespassed onto the suit property and have thereby deprived him [witness] of the suit property.
18. On re-examination, the witness clarified that the variance in the name between the national identity card and the certificate of title was caused by spelling mistake. Nevertheless, the witness reiterated that he is the owner of the suit property. Moreover, the witness posited that he did not sell the suit property to the Defendants.
19. With the foregoing testimony, the Plaintiff's case was closed.
20. The Defendants' case is premised on the evidence of four [4] witnesses, namely: Joseph Bayo ; Saled Jarso Abdho ; Bibo Boya and Galgallo Sorio. Same testified as DW1, Dw2, DW3, and DW4, respectively.
21. It was the testimony of DW1 [Joseph BayO] that same is a pastoralist and a church missionary at Garba Area, within Marsabit County. Furthermore, the witness averred that he is familiar with the facts of this case. Besides, the witness posited that same has since recorded and filed a witness statements dated 21/01/2025 and which witness statement the witness sought to adopt and rely on as his evidence in chief. Suffice it to state that the witness statement was duly adopted and constituted as the evidence in chief of the witness.
22. The witness further referenced the list and bundle of documents dated 20.01.2025, containing three [3] documents and which documents, the witness sought to produce before the court. There being no objection to the production of the documents, same were admitted and marked as exhibits D1 – D3, respectively.
23. Other than the foregoing, the witness referenced the amended statement of defence dated 19.03.2025 and which statement of defence the witness adopted. In addition, the witness implored the court to dismiss the plaintiff's suit with costs.



24. On cross examination by the learned counsel for the plaintiff, the witness averred that same has recorded and filed a witness statement. Furthermore, the witness testified that the same is privy to the contents of the witness statement. Besides, the witness testified that he is the chairman of the group which represented the Defendants during the purchase of the suit property.
25. It was the further testimony of the witness that initiative to organize the Defendants into a group was taken by Dr. Bonaya Godana [now deceased]. In addition, the witness averred that the group held several meetings and minutes were generated.
26. While still under cross examination, the witness testified that the Constituency Development Fund [CDF] donated the sum of Kshs. 1,000,000/= only and which monies were deposited into the IDP account. Besides, the witness averred that the said account was opened and operationalized at Kenya Commercial Bank limited.
27. Additionally, the witness testified that the cheque for kshs. 1,000,000/= only, was never written /drawn in the name of the Plaintiff. Besides, the Witness admitted that the monies which were deposited into the IDP account were never withdrawn and paid out to the Plaintiff. On the contrary, the witness averred that the monies were withdrawn and paid to Kuni Ene.
28. It was the further testimony of the witness that Kuni Ene was paid the sum of Kshs. 1,564,000/= only on behalf of the Plaintiff. Moreover, the witness testified that the Plaintiff had left the suit property in the custody of the Kuni Ene. To this end, the witness testified that Kuni Ene transacted on behalf of the Plaintiff.
29. It was the further evidence of the witness that the Plaintiff herein owned the suit property, while Kuni Ene owned L.R No. Marsabit/Jirme/521. The witness further testified that though Kuni Ene was paid the money, he [witness] does not have any evidence to confirm that the money was handed over to the Plaintiff. In particular, the witness conceded that he did not have any acknowledgement from the Plaintiff, showing receipt of the money from Kuni Ene.
30. The witness further testified that though same has tendered and produced a copy of the sale agreement, the said agreement is a photo copy. In any event, the witness added that the original of the sale agreement was lost. Additionally, the witness testified that the total purchase price for the suit property was agreed at Kshs. 1,200,000/= only.
31. Upon being referred to the sale agreement produced on behalf of the defence, the witness testified that the sale agreement does not refer to the purchase price that was payable. Furthermore, the witness admitted that the sale agreement does not show how and when the purchase price was to be paid.
32. It was the further testimony of the witness that the sale agreement also does not have the identity card number of the Plaintiff. In particular, the witness conceded that the Plaintiff's identity card number was omitted.
33. On further cross examination, the witness testified that there is no acknowledgement by the Plaintiff herein to show that the same ever received the sum of Kshs. 200,000 only or the sum of Kshs. 1,000,000/= only. Nevertheless, the witness reiterated that the Plaintiff was paid the sum of Kshs. 200,000/= only.
34. The second witness who testified on behalf of the Defendants was Saled Jarso. Same testified as DW2.
35. It was the testimony of the witness that the same is a business person, residing at Marsabit. Furthermore, the witness testified that the same is conversant with the facts of these matter. Besides,



- the witness averred that same has since recorded and filed a witness statement dated 20/01/2025 and which witness statement the witness sought to adopt as his evidence in chief.
36. On cross examination by the learned counsel for the Plaintiff, the witness testified that he was the treasurer of the IDP's group. To this end, the witness posited that by virtue of being the treasurer, same was/is familiar with the facts of the case.
 37. It was the further testimony of the witness that the money towards purchase of the suit property was transferred vide EFT to one Kuni Ene. Nevertheless, the witness conceded that he has not produced before the court a copy/record of the Electronic fund transfer [EFT].
 38. While still under cross examination, the witness confirmed that the IDPs [Defendants] have been in occupation of the land since the year 2005. In particular, the witness admitted that the Defendants are indeed in occupation of the suit property.
 39. The 3rd witness who testified on behalf of the Defendants was Bibo Boya. The witness testified as DW3.
 40. It was the testimony of the witness [DW3] that same is a livestock farmer. Moreover, the witness averred that same is privy to and conversant with the facts of the case. To this end, the witness referenced the witness statement dated 20/01/2025; and which witness statement the witness sought to adopt as his evidence in chief. For good measure, the witness statement was duly adopted as the evidence in chief of the witness.
 41. On cross examination, the witness testified that he was constituted as the treasurer of the IDP group. In this regard, the witness averred that he was tasked with the obligation of collecting the sum of Kshs. 9,000/= only from each household. The witness added that he collected the said sum from approximately 100 households. Nevertheless, the witness admitted that he did not produce before the court a copy of the register of the names of the IDP's or the households, who had contributed the designated monies.
 42. While still under cross examination, the witness conceded that same does not have any evidence to show that the purchase price or any monies, were ever paid to the Plaintiff. However, it was the testimony of the witness that the monies were paid to Kuni Ene on behalf of the Plaintiff.
 43. When pressed further, the witness admitted that same does have any documents or evidence to show that the monies were ever transmitted to or released in favour of the Plaintiff.
 44. The 4th witness who testified on behalf of the Defendants was Galgallo Sorio. Same testified as DW4.
 45. It was the testimony of the witness that same is a Chaplain with the Prison Service. Furthermore, the witness averred that he is the 2nd defendant in the matter. In this regard, the witness testified that he is therefore conversant with facts of the case. Moreover, the witness alluded to the witness statement 21/01/2025; and which statement the witness sought to adopt and rely on as his evidence in chief. Instructively, the witness statement was duly adopted and constituted as the evidence in chief of the witness.
 46. On cross examination by learned counsel for the Plaintiff, the witness admitted that he is settled on the land belonging Ali Bitacha [the Plaintiff]. Besides, the witness averred that he settled on the land on or about the year 2005/2006.
 47. It was further testimony of the witness that he is conversant with the rest of Defendants. In addition, the witness confirmed that the rest of the defendants have also settled on the suit property.



48. Regarding ownership of the suit property, the witness testified that the suit property belongs to the Plaintiff. However, the witness clarified that the Plaintiff does not reside on the suit property.
49. As pertains to the payment of the purchase price to the plaintiff, the witness averred that same does not have any evidence to show that the Plaintiff was paid any monies. Nevertheless, it was testimony of the witness that the monies were paid out to Kuni Ene on trust that he [Kuni Ene] will pay the money to the Plaintiff.
50. Be that as it may, the witness stated that he does not know whether Kuni Ene ever paid/transmitted the money to the plaintiff.
51. With the foregoing testimony, the Defendants' case was closed.
52. Following the conclusion of the hearing, the advocates for the parties sought time to file and exchange written submissions. In this respect, the court proceeded to and issued directions pertaining to the filing and exchange of the written submissions. Moreover, the court also prescribed the timeline for the filing and exchange of the submissions.
53. The Plaintiff filed written submissions dated 21/10/2025; and wherein same has highlighted three [3] key issues. The issues highlighted by the Plaintiff are namely: Whether the Plaintiff is the sole registered owner of the suit property; Whether the Defendants are purchasers for value and therefore in occupation legally; and whether the Plaintiff is entitled to the reliefs sought.
54. The Defendants filed written submissions dated 7/11/2025; and wherein same have highlighted two [2] key issues, namely: Whether the Plaintiff has proved his case against the defendant on a balance of probability; Whether the Defendants are protected under [sic] Section 30g of The Registered Land Act or otherwise.
55. Having reviewed the pleadings; the evidence tendered [both oral and documentary] and upon taking into account the written submissions on record, four [4] key issues crystalize for determination. The issues are namely: Whether the Plaintiff is the lawful and registered owner of the suit property or otherwise; Whether the Plaintiff entered into a sale agreement with and thereafter sold the suit property to the Defendants or otherwise; Whether the actions by the Defendants amounts to or constitute trespass; and what reliefs [if any] ought to be granted.
56. Regarding the first issue, it is important to recall and reiterate that the Plaintiff filed the instant suit contending that same is the lawful and legitimate owner of the suit property. Furthermore, the Plaintiff ventured forward and tendered before the court, documents including a copy of the adjudication record; and the certificate of title in respect of the suit property. Notably, the certificate of title show[s] that the suit property belongs to and is registered in the name of the plaintiff.
57. Additionally, it is not lost on me that the Plaintiff also availed a copy the Green Card in respect of the suit property which confirms that the suit property is in the name of the plaintiff. It is worthy to point out that the suit property was birthed by the adjudication and demarcation process and this much is vindicated vide the adjudication record, which was produced before the court.
58. It is imperative to observe that the evidence that was tendered by and on behalf of the plaintiff, namely; pertaining to ownership of the suit property, was not controverted. It then means that the evidence by the Plaintiff is compelling, plausible and credible. Simply put, the Plaintiff has proven that same is the lawful and registered owner of the suit property. [See the holding of the court in Elizabeth Wambui Githinji and 29 others versus Kenya Urban Roads Authority [2019] eKLR; and Embakasi Properties Limited versus the Commission of Land [2019] eKLR.



59. In the case of Embakasi Properties Limited versus the Commission of Land [2019] eKLR, the Court of Appeal highlighted the legal tenor of a certificate of title issued in accordance with provisions of the [land registration act](#), 2012.
60. For coherence the Court stated/observed as hereunder:
- “Although it has been held time without end that the certificate of title is; “...conclusive evidence that the person named therein as proprietor of the land is the absolute and indefeasible owner thereof”, it is equally true that ownership can only be challenged on the ground of fraud or misrepresentation to which the proprietor named is proved to be a party. See section 23 of the repealed Registration of Titles Act. Section 26 of the [Land Registration Act](#), 2012 though not as emphatic as section 23 aforesaid on the conclusive nature of ownership, confirms that the certificate is prima facie evidence that the person named as proprietor is the absolute and indefeasible owner.”
61. Before concluding on this issue, it is important to emphasise that the Defendants conceded and acknowledged that the suit property belonged to the plaintiff. In particular, it was the evidence of DW1 and DW4, that the Suit property belonged to the Plaintiff.
62. Pertinently, DW4 testified and stated as hereunder while under cross examination by the learned counsel for the Plaintiff;
- Parcel no. Marsabit/Jirme/520 belongs to the plaintiff. However, the Plaintiff does not reside on the land. I do confirm that parcel number 520 belongs to the Plaintiff.
63. The foregoing evidence suffices to demonstrate that the Plaintiff was and remains the registered owner of the suit property.
64. Turning to the second issue, namely; Whether the Defendants purchased the suit property, it is important to underscore that the claim pertaining to purchase of the suit property was/is being propagated by the Defendants.
65. Simply put, it is the Defendants herein who have contended that the suit property was sold by the Plaintiff. To this end, there is no gainsaying that the burden/obligation of proving the sale/purchase lies on the Defendants [See Section 108 and 109 of the [Evidence Act](#) Chapter 80 Laws of Kenya].
66. Have the Defendants proven the sale/purchase of the suit property? To start with, the Defendants tendered before the court a copy of sale agreement which was said to have been entered into and executed between the Plaintiff and the Defendants through their representatives. However, it is worthy to recall that the sale agreement was deficient and lacking in material particulars.
67. While under cross examination by the learned counsel for the Plaintiff, DW1 stated as hereunder:
- I have referred to the sale agreement and the same is before the court. I do confirm that we paid for both parcel number 520 and 521. I do wish to reiterate that the sale agreement relates to parcel number [not stated]. The sale agreement does not state the purchase price for the land. The sale agreement does not state how the payment were to be made. The sale agreement is silent on the scheme of payment. I do confirm that the sale agreement does not have the I. D number for Ali Bitacha.



68. From the foregoing, testimony it is apparent, or rather obvious that the document being relied on by and on behalf of the Defendants to anchor the claim of purchase does not meet/satisfy the threshold vide Section 3[3] of The Law of Contract Act, Chapter 23 Laws of Kenya.
69. Other than the deficiency highlighted above, it is also imperative to underscore that the Defendants failed to tender and produce before the court any evidence [if any] to demonstrate that the consideration was ever paid to or received by the Plaintiff. Instructively, a contract [sale agreement] can only be consummated when and where it is proven that consideration was duly paid.
70. Put differently, the passing of the consideration is a critical ingredient in determining the legality or otherwise of a contract.
71. In the case of *Moi University v Zaippeline & another* [2022] KESC 29 (KLR) the Supreme Court of Kenya [the Apex Court] highlighted the ingredients underpinning a lawful contract and held as hereunder:

It is trite that for any contract to be valid at law, it must meet certain elements commencing with offer and acceptance. The essential components of a contract as was observed by Harris JA in *Garvey v Richards* [2011] JMCA Civ 16 ought to ordinarily reflect the following principles: “[10] It is a well-settled rule that an agreement is not binding as a contract unless it shows an intention by the parties to create a legal relationship. Generally, three basic rules underpin the formation of a contract, namely, an agreement, an intention to enter into contractual relationships and consideration. For a contract to be valid and enforceable all essential terms governing the relationship of the parties must be incorporated therein. The subject matter must be certain. There must be positive evidence that a contractual obligation, born out of an oral or written agreement is in existence.”

72. I am afraid that the Defendants herein neither tendered nor produced any credible evidence to demonstrate the purchase/sale/acquisition of the suit property. Absent evidence of sale, the contention by the Defendants falls flat on the ground; and dissipates into thin air.
73. I am also alive to the contention that the purchase price is said to have been paid to one Kuni Ene. Furthermore, it was posited that the said Kuni Ene, transacted for and on behalf of the plaintiff. However, there is no gainsaying that the said Kuni Ene was never called as witness by the Defendants. In this regard, the averments pertaining to the said Kuni Ene having received money on behalf of the Plaintiff were not authenticated.
74. Other than the foregoing, I also wish to state that no document [whether a statutory declaration ; Power of Attorney ; or any Written Memorandum] was tendered to show that the Plaintiff ever engaged/authorized the said Kuni Ene to deal /transact on his behalf.
75. It is the Defendants who brought forth the foregoing allegation. Surely, the Defendants could not purport to deal with and or pay monies [if at all] to Kuni Ene, without authenticating his capacity to act on behalf to the Plaintiff.
76. In my humble view, the Defendants adopted and deployed a casual approach while dealing with [sic] the purchase of the suit property [if at all]. The standard of diligence that was deployed by the Defendants does not meet the reasonable and objective standard required of a conscientious purchaser.
77. In the case of *Arthi Highway Developers Limited vs West End Butchery Limited & 6 Others*, Civil Appeal No.246 of 2013 [2015] eKLR, the Court of Appeal aptly described the risks of transacting in land, especially in Kenya without conducting due diligence.



78. It said;

“It was common knowledge, and well documented at the time, that the land market in Kenya was a minefield and only a foolhardy investor would purchase land with the alacrity of a potato dealer in Wakulima market. Perhaps the provisions of the new Constitution 2010 and the *Land Registration Act*, 2012 will have a positive impact for land investors in future.”

79. Next is the issue as to whether the actions or activities of the Defendants constitutes trespass or otherwise? The Plaintiff herein has contended that the Defendants entered upon the suit property and commenced occupation thereon without his permission, consent or authority. To this end, the Plaintiff has posited that the Defendants have no colour of right over and in respect of the suit property.

80. On the other hand, the Defendants have actually confirmed that same are in occupation of portions of the suit property. Additionally, the Defendants have posited that their occupation and possession of the suit property is underpinned by a sale agreement.

81. However, while dealing with issue number 2 this court has found and held that the Defendants did not establish sale/purchase of the suit property.

82. It is common ground that the Defendants are in occupation of the suit property, contrary to the wishes of the registered owner. The question that does arise is whether such actions and activities amount to trespass.

83. What constitute trespass has been the subject of various court pronouncements. In the case of *Doshi v Chemutut & 7 others* [2025] KECA 776 (KLR) 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.”

84. The occupation of portions of the suit property by /on behalf of the Defendants certainly, without the authority of the plaintiff, constitute[s] trespass. Such occupation violates the property rights of the Plaintiff, who by dint of the law, is mandated to enjoy exclusive rights thereto. [See the provisions of section 24 and 25 of the *Land Registration Act*, 2012]

85. In a nutshell, it is my finding and holding that the actions/activities by the Defendants constitutes trespass. It is immaterial that the Defendants have been in occupation under the mistaken belief that the suit property was purchased on their behalf. Further and in addition, I wish to add that the entire duration of occupation constitutes continuous trespass.

86. In the case of *Church Commissioners for Kenya of the Anglican Church of Kenya v Wayuga* [2024] KECA 1048 (KLR) , the Court of Appeal defined what amounts to continuous trespass in the following terms:

Trespass is described under the *Trespass Act* Cap 294 to mean “any person who without reasonable 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”.

On the other hand, a continuing trespass is defined in Jowitt’s Dictionary of English Law 2nd Edition (page or paragraph?) as follows:-

“A continuing trespass is one which is permanent in its nature; as where a person builds on his own land so that part of the building overhangs his neighbor’s land”. In Black’s Law Dictionary 8th Edition (page or paragraph?), a continuing trespass is defined as:-

“A trespass in the nature of a permanent invasion on another’s rights, such as a sign that overhangs another’s property. “Finally, in Clerk & Lindsell on Torts 16th Edition, paragraph 23 - 01, it is stated that:-

“Every continuance of a trespass is a fresh trespass of which a new cause of action arises from day to day as long as the trespass continues.”

87. I now wish to turn to the final issue, namely; the reliefs [if at all] that ought to issue. It suffices to state that the Plaintiff herein has sought various reliefs including a declaration that the Defendants are unlawfully settled and in occupation of the suit property.
88. I have since found and held that the Defendants have no lawful rights or claim to the suit property. On the contrary, the suit property, lawfully belongs to the Plaintiff. In this regard, I encounter no difficulty in retuning a finding that the Defendants occupation of the suit property is indeed unlawful and illegal.
89. The Plaintiff has also sought for eviction of the Defendants. It is instructive to observe that by virtue of being the registered owner of the suit property, the Plaintiff is entitled to exclusive occupation and possession thereof. Any activity that interferes with the registered owner’s possessory rights, must be averted. [See the decision in the case of Moya Drift Farm Limited versus Theuri [1973] EA; and Mohanson [K] Limited versus the Land Registrar – Kajiado [2017] eKLR, respectively.
90. In my humble view, the Plaintiff is entitled to and has indeed established a basis for the grant of an order of eviction against the defendant[s] either by themselves, agents, servants or any other person deriving occupation therefrom.
91. In the case of Waas Enterprises Limited Versus Nairobi City Council [2014] Ekrl, the Court dealt with a situation pertaining to unlawful occupation of land belonging to another.
92. The court stated as hereunder:

“As a registered proprietor, the Plaintiff is entitled to enjoy all proprietary rights to the exclusion of all others. This includes the right to exclusive possession of the suit land. It therefore follows from the above that only the Plaintiff is entitled to enjoy proprietary rights over the suit land. The 2nd defendant had no right to the suit land. She must therefore vacate the suit land and hand over possession to the plaintiff. It is my opinion that the 1st defendant should ensure that the 2nd defendant has vacated the suit land and hands over vacant possession of the suit land to the Plaintiff within a period of 30 days from the date hereof”



93. The foregoing except applies with equal force to the matter beforehand. For good measure, the Defendants must vacate the suit land and allow the registered owner, whose title has not been impugned, to take possession and enjoy the statutory privileges attendant to such ownership.
94. On the issue of costs; I beg to state that costs follow the event. Even though the court has a discretion as to the award of costs and the proportion thereof, it is common ground that a successful party is entitled to costs, unless there exist special or peculiar grounds to warrant denial. [See Section 27 of the *Civil Procedure Act*, chapter 21 Laws of Kenya]. [See also the holding of the court in the case of *Farah Awad Gullet v CMC Motors Group Limited*. [2018] Eklr].

Final Disposition

95. Flowing from the foregoing analysis, it is my finding and holding that the Plaintiff has duly proved his case to requisite standard, namely; on a balance of probability. Consequently, and in this regard, the Plaintiff is therefore entitled to the intervention of the court.
96. In the upshot, and for the reason[s] alluded to; the final orders that commend themselves to the court are as hereunder:
- i. A declaration be and is hereby issued that the Defendants' occupation of and settlement on L.R. No. Marsabit/Jirme/520, are illegal, unlawful and constitute trespass.
 - ii. The Defendants be and hereby ordered to vacate the suit property and hand over vacant position to the Plaintiff within 180 days [six months] from the date hereof.
 - iii. In default to vacate and hand over vacant possession in terms of clause [ii] above, the Plaintiff shall be at liberty to levy eviction against the Defendants and in this regard, an eviction order shall issue.
 - iv. In the event of the Defendants being evicted, the expenses/costs of eviction shall be certified by the Deputy Registrar and the same shall be borne by the Defendants.
 - v. There be and is hereby issued an order of permanent injunction to restrain the Defendants either by themselves, agents, servants or anyone claiming under them from returning to, remaining on, trespassing onto or otherwise dealing with suit property in any manner adverse to the rights of the plaintiff
 - vi. Costs of the suit be and are hereby awarded to the plaintiff.
 - vii. Costs in terms of clause [vi] shall be agreed upon and in default, be taxed by the taxing officer.
97. It is so ordered.

DATED SIGNED AND DELIVERED AT ISIOLO ON THE 22ND DAY OF JANUARY, 2026.

OGUTTU MBOYA, FCIARB; CPM [MTI-EA].

JUDGE

In the presence of:

Hussein / Mukami – Court Assistant

Mr. Leonard Ondari for the Plaintiff

Mr. Lekoona for the Defendants.

