



Nyamai & 6 others v Kenya Aviation Authority & 2 others (Environment and Land Case 24 of 2023) [2026] KEELC 286 (KLR) (27 January 2026) (Judgment)

Neutral citation: [2026] KEELC 286 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND CASE 24 OF 2023
NA MATHEKA, J
JANUARY 27, 2026**

BETWEEN

**LAWRENCE MUTUKU NYAMAI 1ST PLAINTIFF
ELIJAH NDAVI SAMMY 2ND PLAINTIFF
CHARLES KYALO MWANZIA 3RD PLAINTIFF
KINYILI KALANZA 4TH PLAINTIFF
SYOMANE MUI MI LEWIS 5TH PLAINTIFF
ALPHONCE MBATHA KISYULA 6TH PLAINTIFF
SAMMY NDAMBUKI 7TH PLAINTIFF**

AND

**KENYA AVIATION AUTHORITY 1ST DEFENDANT
NATIONAL LAND COMMISSION 2ND DEFENDANT
HON. ATTORNEY GENERAL 3RD DEFENDANT**

JUDGMENT

1. The Plaintiffs aver that at all material time they were and are in occupation of the suit land since 2010. That the Plaintiff and other members are about 200,000 members. That the Defendant is the registered owner of the suit land. That the Defendant has never occupied nor used the said (put to use) despite possessing the title. That the title by the Defendant was unprocedurally, illegally and fraudulently allocated and registered in the names of the Defendant particulars thereof shall be adduced at the trial. That the Defendant has been using wildlife rangers to harass its members including detaining their motor cycle at Kyumbi Police Station. That initial reports prepared by the Land Commission on



historical land injustices addressed itself to the suit land in question. That several meetings to solve this matter amicably have failed.

2. The Plaintiffs prays for Judgment as against the Defendants jointly for orders;
 - a. A declaration that the Plaintiffs are entitled to all that parcel of land known as L.R. 2316/2/2 situate at Lukenya Machakos measuring about 372 acres.
 - b. A permanent injunction to issue against the Defendants and his servants/agents from interfering with Plaintiffs possession of Parcel No. L.R. 2316/2/2 situate at Lukenya in any manner whatsoever.
 - c. Costs of the suit.
3. The 1st Defendant avers that it has been in occupation of the suit property from the year 1984 by installing equipment over the said piece of land after its acquisition. The 1st Defendant admits that it owns parcel number L.R. No. 12649/1, measuring 5.118 hectares which was excised from the larger Land Reference No. 2316/2/2. The 1st Defendant avers that the Plaintiffs have erroneously based their claim on the entire parcel of known as L.R. No. 2316/2/2, which measures approximately 4,912 acres. The 1st Defendant asserts that it does not have an interest in the entirety of the land but only in a portion thereof, specifically L.R. No. 12649/1, which measures 5.118 hectares. This portion was lawfully excised from L.R. No. 2316/2/2 and granted to the 1st Defendant by the Government through a proper process of compulsory acquisition for public use in accordance with the Land Acquisition Act (Cap 295). The 1st Defendant avers it has been in possession of L.R. No. 12649/1 since 1984, following the acquisition and subsequent issuance of a title deed dated 1st June 2009. The 1st Defendant has consistently used this parcel of land for aviation purposes, including the installation and operation of critical air navigation equipment, making it an essential site for ensuring aviation safety. As such, any claim of adverse possession over L.R. No. 12649/1 is not tenable, as the 1st Defendant has neither been dispossessed of the land nor discontinued its possession.
4. The 1st Defendant avers that L.R. No. 12649/1 is distinct and separate from the larger L.R. No. 2316/2/2, and therefore, the Applicants' claim for adverse possession over the entire 4,912 acres cannot extend to the 1st Defendant's excised portion of 5.2 hectares. which has been continuously occupied and utilized by the 1st Defendant for its statutory purposes. The 1st Defendant further avers that the Plaintiff unlawfully entered the said land as the 1st Defendant is the legal owner of the same. The 1st Defendant further avers that the Plaintiffs have not acquired a right over the suit property and/or the purported legitimate expectation of quiet possession and peaceful use and enjoyment of the land as the 1st Defendant was already in possession. The 1st Defendant avers that it has been in occupation of parcel number L.R. No. 12649/1 measuring 5.118 hectares which hosts air navigation equipment and is home to Stoni Athi Radar Station.
5. The 1st Defendant prays for;
 - a. A declaration that the parcel of land known as L.R. No. 12649/1 having been excised from Land Reference No. 2316/2/2 lawfully belongs to the 1st Defendant.
 - b. An order of rectification of the land register in respect of the suit property to reflect the 1st Defendant as the registered proprietor.
 - c. A permanent injunction restraining the Plaintiff's by themselves, their agents or servants from trespassing, constructing in or in any other way whatsoever interfering with the 1st Defendant's possession use, occupation and quiet possession over L.R. No. 12649/1.



- d. General damages.
 - e. Costs of the suit,
 - f. Costs of the Counter-claim
 - g. Interest on (e) and (f) above.
6. The court has considered the pleadings, evidence presented before it, submissions made as well as the authorities relied upon. The Plaintiffs were served with the hearing notice but they failed to attend court on the hearing date. Their case was dismissed for nonattendance and the matter proceeded with the 1st Defendant's counterclaim. The issues for determination are:
- a. Who is the lawful proprietor of the land parcel known as LR No 2316/2/2?
 - b. What orders should this court issue?
7. The *Land Registration Act* is very clear on issues of ownership of land and Section 24(a) of the *Land Registration Act* provides as follows;
- “Subject to this Act, the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.”
8. Section 26 (1) of the *Land Registration Act* states as follows;
- “The Certificate of Title issued by the Registrar upon registration ... shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner... and the title of that proprietor shall not be subject to challenge except –
- a. On the ground of fraud or misrepresentation to which the person is proved to be a party; or
 - b. Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”
9. The Plaintiffs in their pleadings state that they were and are in occupation of the suit land since 2010. That the Plaintiff and other members are about 200,000 members. That the Defendant is the registered owner of the suit land and that the title by the Defendant was unprocedurally, illegally and fraudulently allocated and registered in the name of the Defendant. No evidence has been adduced to prove this.
10. DW1, George Mogaka the Co-operation Secretary of the 1st Defendant stated that the suit property being Land Reference No. 2316/2/2 was initially owned by Game Ranching Limited and a part of it was compulsorily acquired by the them. The 1st Defendant initially, Directorate of Civil Aviation now Kenya Civil Aviation Authority, was desirous to install a radar station equipment to enhance air safety and the Minister notified the Commissioner of Lands to proceed and acquire part of the suit property being Land Reference No. 2316/2/2 measuring about 2.4 hectares. The Commissioner caused a notice to be published in the Gazette that the Government intends to acquire part of Land Reference No. 2316/2/2. The particular portion was marked out. Subsequently, vide a notice dated 14th February 1984, an inquiry was scheduled for 16th March 1984 to be held at Kencom House, Room 417 at 10:00am for hearing of the claims for compensation by persons interested in the portion of land measuring about 2.4 hectares under Land Reference No. 2316/2/2. The purpose of the inquiry was to



determine the persons interested in intended portion Land Reference No. 2316/2/2 to be acquired, the value of the land to be acquired and the compensation due to interested persons. Prior to the Inquiry, the 1st Defendant wrote to the Commissioner of Lands on 5th April 1984 requesting for increase of the area of land to be acquired from 2.4 hectares to 5.2 hectares which request was granted and notified on 10th May 1984. Following the public inquiry held on 16th March 1984, the Commissioner for Lands, prepared a written award in favor of Game Ranching Limited. The award dated 12th June 1984 was for the area of Land acquired in 5.2 hectares and the total amount of compensation payable is Kshs. 22,425/= . The compensation is payable to Game Ranching Ltd. That the notice of award and offer of compensation was served upon Game Ranching Limited and the compensation duly paid. That the Commissioner of Lands notified Game Ranching Limited vide Notice dated 5th July 1984 that it has taken possession of L.R. 2316/2 (part) 5.2 hectares and that the land was accordingly vested in the Government free from all encumbrances. Game Ranching Limited was instructed to surrender documents of title for the Registrar of Titles for rectification once the survey is completed. That sometime in October 2008, the 1st Defendant through its surveyors applied for approval of the excision and development in favour of the 1st Defendant to the Municipal Council of Mavoko for comments. The same was duly approved by the District Physical Planning Officer and the District Lands Officer. That the Director of Survey at the Ministry of Lands approved the plan for the excision of L.R. 2316/2 (part) 5.2 hectares. The Deed Plan was submitted for signature and upon payment of requisite fees the same were issued vide letter dated 7th May 2009. Consequently, a Title dated 1st June 2009 was issued to the Respondent being L.R. No. 12649/1. That the process of compulsory acquisition was lawful and beyond reproach. The 1st Defendant avers that it has been in continuous and uninterrupted occupation over L.R No. 12649/1 which hosts its Stoni Athi Radar Station from the year 1984 when it was compulsorily acquired. There is installed air navigation equipment used to aid both terminal and enroute aircraft to determine their flight position, direction and distance and a claim over L.R. No. 12649/1 is a National threat to air safety.

11. Section 26 of the [Land Registration Act](#) which guarantees the concept of indefeasibility of title does not extend to any property that has been found to have been unlawfully acquired. The Court of Appeal in Attorney General vs Torino Enterprises Limited (Civil Application 84 of 2012) (2022) KECA 78 (KLR) (4 February 2022) (Judgment) held that;

“We have considered the provisions of section 26 of the [Land Registration Act](#) (repealed) in light of the provisions of Article 40 of the [Constitution](#) which guarantees protection of right to property and it is our considered view that the concept of indefeasibility of title is subject to Article 40 (6) of the [Constitution](#) which states that: “The rights under this Article do not extend to any property that has been found to have been unlawfully acquired.” Guided by the provisions of Article 40 (6) of the [Constitution](#), we hold that the concept of indefeasibility or conclusive nature of title is inapplicable to the extent that title to the suit land was unlawfully acquired. See Denis Noel Mukhulo & Another v. Elizabeth Murungari & Another [2018] eKLR.”

12. The 4th Defendant, director of Game Ranching Limited/Swara testified that the subject property known as LR. No. 2316/2/2 is owned by Game Ranching Limited having acquired the same in the year 1975 and began utilization of the same in the year 1980 supplying game meat to establishments such as Carnivore Restaurant and he personally resides on the said property. That the subject property is along a wildlife corridor and forms part of Swara Plains Wildlife Conservancy registered under registration number KE/WC/16/005/2020 which is protected by Kenya Wildlife Service and has wild animals including zebras, gazelles, giraffes, Guinea fowls as well as cattle. That Kenya Wildlife Service does not own the suit property at all as alleged by the Plaintiffs. That on or about 4th February, 2023, Kenya



Wildlife Service received a report that there were poachers on the subject property and in execution of their mandate responded immediately by patrolling the Swara Plains Wildlife Conservancy in a bid to verify the information they had received. That upon conducting a patrol, they came across persons who were cutting down trees and recovered fresh hare skin. That unknown people fled the scene and left behind their motorcycles and a bicycle. That on or about 14th June, 2023 he was notified of the presence of a large crowd of young men on the subject property armed with pangas intending to clear the suit property.

13. That he notified the OCS Athi River Police Station who dispatched officers to the suit property and upon their arrival, the young men fled but the police nabbed one of them who was arrested and arraigned at Mavoko Law Courts on 15th June, 2023. That the Plaintiffs have never been in occupation of the suit property at any time and have never put up any structures on the property as alleged. That the court visited the site on 14th July, 2023 and confirmed that none of the Plaintiffs lives or has been living on the property and there are no structures thereon as alleged by the Plaintiffs. That the Plaintiffs approached this court with unclean hands and do not deserve any prayers sought and their case should be dismissed. He corroborated the 1st Defendant's case that part of it was compulsorily acquired by the 1st Defendant and they took possession and he had no objection to the same being given them.
14. It is not in dispute that the subject property known as LR. No. 2316/2/2 is owned by Game Ranching Limited having acquired the same in the year 1975. I find that a portion was lawfully excised from L.R. No. 2316/2/2 and granted to the 1st Defendant by the Government through a proper process of compulsory acquisition for public use in accordance with the Land Acquisition Act (Cap 295). I find that the 1st Defendant has been in possession of L.R. No. 12649/1 since 1984 to date. The 1st Defendant produced in evidence, a sketch map of the entire parcel of land LR. No. 2316/2/2 and their excised portion LR. No. 12649/1, Gazette Notice dated 14th February 1984, Notice of Inquiry dated 14th February 1984, Notice of award of compensation dated 12th June 1984 and Notice of taking possession dated 5th July 1984. As per the court records a site visit was carried out by the Deputy Registrar on the 14th July 2023 which confirmed that there was an airstrip within the ranch and an aircraft beacon was located within the 1st Defendants portion of the land. I find that the 1st Defendant has established that they are the legitimate proprietor of a portion of the suit property by compulsorily acquiring it and hence entitled to the orders in the counter claim.
15. Section 80 of the [Land Registration Act](#) provides as follows;

“ 80.

- (1) Subject to subsection (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.
- (2). The register shall not be rectified to affect the title of a proprietor who is in possession and had acquired the land, lease or charge for valuable consideration, unless the proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by any act, neglect or default.”



16. This section gives the court powers to order for rectification of a register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.

17. On the issue of trespass, the Court of Appeal was of this opinion in *Jamal Salim vs Yusuf Abdulahi Abdi & another* (2018) eKLR and stated that;

“In the text *Clerk & Lindsell on Torts*, Sweet & Maxwell, 18th Edition, at page 923, trespass to land is defined as follows :- “Trespass to land consists of any unjustifiable intrusion by one person upon land in the possession of another.

At page 927 of the same text discusses 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.”

It is therefore not necessary for one to establish ownership of land to sustain a claim for trespass. It is enough that the person suing is in possession.”

18. It has not been disputed that the Plaintiffs trespassed on the suit property as they claim adverse possession which has not been proved. Furthermore, I find that a portion was lawfully excised from L.R. No. 2316/2/2 and granted to the 1st Defendant by the Government through a proper process of compulsory acquisition for public use in accordance with the Land Acquisition Act (Cap 295) is not capable of being adversely possessed as it is public land.

19. In *Philip Ayaya Aluchio vs Crispinus Ngayo* (2014) eKLR the court held that;

“The defendant has constructed on the plaintiff’s land. This in itself is damage and wastage of the plaintiff’s land. The plaintiff is entitled to general damages for trespass. The issue which arises is as to what is the measure of such damage?. It has been held that the measure of damages for trespass is the difference in the value of the plaintiff’s property immediately before and immediately after the trespass or the cost of restoration, whichever is less. See *Hostler – VS – GreenPark Development Co.* 986 S. W 2d 500 (No. ct App. 1999).

The plaintiff herein did not adduce any evidence as to the state of his property before and after the trespass. It therefore becomes difficult to assess general damages for trespass. There was no evidence adduced on the nature of house which the defendant has constructed on the suit land. The court is at a disadvantaged position in reaching at a cost which might be reasonable for restoration of the property to its former state. However as I have found that the plaintiff is entitled to general damages for trespass, I will award a nominal sum of Kshs. 100,000/= as general damages for trespass. This cost will go towards restoration of the suit land to its former state.”

20. I find that at the time of compulsory acquisition by the 1st Defendant the suit property was vacant. However, the 1st Defendant has not adduced evidence as to the status of their suit land before and after the trespass and as they are entitled to general damages for trespass, the court will award a nominal sum of Kshs 1,000,000/= as damages. During the course of the hearing of this matter the Court ordered that this matter be heard alongside ELC No. 27 of 2022 *Charles Kyalo Mwanzia & 90 Others vs Kenya Civil Aviation Authority and Game Ranching Limited/Swara* in which the Applicants were claiming adverse possession. That in that suit the subject matter is the same and the parties are the same.



Consequently, I order that this judgement applies mutatis mutandi to ELC No. 27 of 2022 Charles Kyalo Mwanzia & 90 Others vs Kenya Civil Aviation Authority and Game Ranching Limited/Swara. I find that the 1st Defendant has proved their Counter Claim on a balance of probabilities and I grant the following orders;

1. A declaration that the parcel of land known as L.R. No. 12649/1 having been excised from Land Reference No. 2316/2/2 lawfully belongs to the 1st Defendant.
2. An order of rectification of the land register in respect of the suit property to reflect the 1st Defendant as the registered proprietor.
3. A permanent injunction restraining the Plaintiff's by themselves, their agents or servants from trespassing, constructing in or in any other way whatsoever interfering with the 1st Defendant's possession use, occupation and quite possession over L.R. No. 12649/1.
4. General damages of Kshs. 1,000,000/= for trespass is awarded to the 1st Defendant.
5. Costs of the suit and the counter claim to be borne by the Plaintiffs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 27TH DAY OF JANUARY 2026.

N.A. MATHEKA

JUDGE

