



REPUBLIC OF KENYA



**KENYA LAW**  
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**Odhiambo v Mwangi (Environment and Land Case 473 of 2015)  
[2026] KEELC 224 (KLR) (20 January 2026) (Judgment)**

Neutral citation: [2026] KEELC 224 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE 473 OF 2015**

**JG KEMEI, J**

**JANUARY 20, 2026**

**BETWEEN**

**LUKE OUKO ODHIAMBO ..... PLAINTIFF**

**AND**

**WAITHAKA MWANGI ..... DEFENDANT**

**JUDGMENT**

1. Vide a Plaint dated the 29/5/2015 the Plaintiff sued the Defendant seeking the following orders;
  - a. A permanent injunction restraining the defendants by themselves and or through their agents, servants, employees, or other persons purporting to have been permitted to act on their behalf from interfering with the Plaintiffs' quiet possession of LR No 8285/1125, Nairobi, Kariobangi Light Industries [ suit land].
  - b. A declaration that the defendant's act of trespassing is illegal and that the Plaintiff be entitled to damages, with the same to be assessed by the Honourable Court
  - c. The defendant do give vacant possession of the suit land to the Plaintiff unconditionally
  - d. Costs of the suit.
2. The Plaintiff avers that he is the registered owner of the suit land, having acquired it from the City County of Nairobi in 2012. The Defendant has trespassed onto the land without his knowledge or consent and is committing acts of waste on the suit land by commencing illegal construction thereon.
3. According to the statement of defence dated 26/10/2015, the defendant denied the Plaintiff's claim and contended that he is the lawful owner of the suit land, having purchased it from one Chris Muriuki Waithaka. He denied any trespass onto his own land and contended that any construction on the suit land is being undertaken by him as of right as a land owner. He stated that he is the owner of plot No



- 386 and has nothing to do with the suit land as alleged by the Plaintiff. He refuted that the Plaintiff is entitled to any of the orders sought.
4. At the hearing, the Plaintiffs' evidence was led by Luke Ouko Odhaimbo, who relied on his witness statements dated 29/5/2025 and 11/2/25, and produced documents marked as PEX No 1-12.
  5. He indicated that he observed an advertisement in the Daily Nation dated 3rd February 2012 regarding the settlement of plot dues. Subsequently, he contacted the Chief Valuer, Mr. Ayiecho, who allocated the subject land to him. After fulfilling the necessary payments, the allocation was approved by the Chief Revenue Officer, of the then City Council of Nairobi. On 6th June 2012, he entered into a lease agreement with the then City Council of Nairobi concerning the said land. Despite fulfilling his obligations to pay rates in a timely manner, the defendant encroached upon the land, claimed it, and refused to vacate the premises. During this period, he instructed Mr. Stephen Otieno to oversee the land in his absence.
  6. When shown the title deed for Nbi Block 251/263 in the defendant's name, PW1 stated that he was a stranger to the deed. He stated that his land is Parcel 8285/1125 and therefore differs from the defendant's land.
  7. In cross-examination, he stated that the advert leading to the allocation of the suit land to him was issued in 2012, and that before 2012 he was unaware of the suit land and had no interest in it. Commenting on the letter dated 16/4/2009, the survey bill and ground rent demand, both dated 28/4/2011, he stated that these correspondences were issued before he developed any interest in the suit land. On Ardhisasa Platform, he stated that he was not aware whether the suit land had been converted to the new system.
  8. Stephen Opondo Otieno, PW2, led evidence and stated that he introduced PW1 to the advert issued by the then City Council of Nairobi. Without adducing any evidence in support, he stated that the gazette notice advertising the plots was issued in 2009. He was emphatic that he was not involved in the transaction that led to the issuance of the Plaintiff's title.
  9. DW1, Waithaka Mwangi, testified and relied on his witness statement dated 26/10/15, and produced documents in support of his defence, marked as DEX Nos 1-14.
  10. He stated that he acquired plot No 386 from Chris Muriuki Waithaka, who had acquired it from Isaac G Githuku, the original allottee of the land. He further stated that the City Council has approved the developments he is undertaking on the land and that he has exhibited the approved building plans in support. He was emphatic that his plot is No 386 and not LR No 8285/1125, as alleged by the Plaintiff, and that he has nothing to do with the latter. He has paid all rates due to the local authority, and his ownership status was confirmed by the officials of Kariobangi Light Industries Jua kali Association in a letter addressed to the City Council of Nairobi. He stated that he had commenced construction of the foundation before he was removed from the suit land by the Plaintiff. He obtained the title for plot No 386, being Nbi/Block 251/264.
  11. Both parties have filed their respective written submissions, which I have read and considered.

### **Analysis and determination.**

12. Having considered the pleadings, the evidence adduced at the hearing and the respective written submissions, the key issues for determination are as follows.
  - a. Whether the suit land differs from plot No. 386 held by the Defendant.
  - b. Whether the Plaintiff has proven title to the suit land



- c. Whether the Plaintiff has proven trespass on the part of the Defendant.
- d. Who meets the costs of the suit.

#### **Whether the suit land differs from plot No. 386 held by the Defendant.**

13. It is the Plaintiff's case that he owns the suit land and that the Defendant has encroached on it by commencing construction thereon. The Defendant, on the other hand, contends that he owns Plot No 386, having acquired it from the previous owner, and has nothing to do with the suit land.
14. Clearly, the key issue arising from the pleadings is who, between the Plaintiff and the defendant, owns the suit land. Before delving into the issue, the court must first determine whether Plot No 386 (now Nbi Block 251/264) and IR No 8285/1125 are the same property.
15. According to the Plaintiff, his plot number is LR No 8285/1125, not plot No 386. However, according to the Defendant, his plot is No 386 or now NBI/Block 251/264.
16. To prove the root of the suit land, the Plaintiff annexed a letter dated 16/4/2009, addressed to him by the then City Council of Nairobi, in which the land is described as Kariobangi Light Industries Plot No 386. The Council referred to its recent allocation of the said plot and informed the Plaintiff that the land rent and stand premium had been computed, advising him to make payment to the Council with effect from 1/1/2004 to facilitate the processing of the title. A ground rent receipt dated 30/11/22 describes the plot as No 386. A similar rent receipt dated 16/3/2012, in the name of the Plaintiff, indicates that the plot paid for is No 386.
17. On the other hand, the Defendant adduced evidence relating to plot No 386, including a lease for NBI/Block 251/264, which clearly refers to the suit land as formerly plot No 386.
18. From the evidence adduced by the parties, the court therefore concludes that the suit land referred to is actually plot No 386 (now NBI/Block 251/264).

#### **Whether the Plaintiff has proven title to the suit land**

19. As previously stated, the Plaintiff asserts that he saw an advertisement in a daily newspaper which called upon landowners to remit plot dues within thirty days, failing which the allocations would be rescinded. The advertisement affected plots across numerous localities within the city, including Kariobangi Light Industries, Dandora, Tassia, and Mathare North, among others. Notably, the advertisement did not specify which plots were affected by the notice. Nonetheless, the Plaintiff maintains that he contacted the Chief Valuer, who subsequently allocated him land identified as LR No 8285/1125. Apart from the letter dated 16/4/2009, which demanded the payment of plot dues dating back to 1/1/2004, the Plaintiff was unable to present evidence supporting an allocation for LR No 8285/1125. Furthermore, there is no evidence that the Defendant's plot No. 386 was among those affected by the City Council's notice regarding rent defaults. In any event, the Defendant presented uncontroverted evidence that he promptly paid all plot outgoings.
20. Although PW2 explained that he advised the Plaintiff to acquire the plots that were being recalled by the council, he did not participate in the acquisition. Consequently, his testimony did not significantly enhance the credibility of the Plaintiff's case in the overall.
21. The second document submitted by the Plaintiff to the court is the Lease dated 6/6/2012 between the Plaintiff and the City Council of Nairobi. This lease pertains to the land identified as LR No 8285, encompassing 22.95 acres, owned by the City Council of Nairobi. The Council had subdivided this land into distinct plots, with the specific plot in question being LR No 8285/1125, measuring 0.0294



hectares. Notwithstanding clause (c), which stipulates that the Council has agreed to grant the Plaintiff a lease for five such plots on identical terms, there is no detailed description of the other properties encompassed within the same lease.

22. Conversely, the defendant has provided a detailed account of the process through which he acquired the parcel of land in question. Plot 386 was allocated to Isaac G Githuku via the letter of allotment dated 5/6/1979. This offer was duly accepted by the allottee on 6/6/1979. Subsequently, on 19/7/2009, the allottee transferred ownership of the plot to Chris Muriuki Waithaka through a sale agreement for the sum of Kshs 550,000. Additionally, the allottee granted a power of attorney to the purchaser on 21/7/2009. The purchaser's name was also recorded in the plot register maintained by the City Council, as evidenced by the plot details presented during the proceedings.
23. Pursuant to the agreement dated 25/10/2012, the Defendant acquired the plot from Mr. Chris Muriuki Waithaka for a consideration of Kshs 1.1 million. The officials of the Kariobangi Jua Kali Association verified the transfer of ownership into the Defendant's name. Furthermore, the Chief Valuer, through a letter dated 23/7/2013, confirmed that the plot is legally owned by the Defendant.
24. Based on the evidence presented, it is therefore evident that the interest in plot 386 was transferred to the Defendant in 2009. Furthermore, by 2012, the County Council of Nairobi no longer held any interest in the title, as such interest had been fully divested to the Defendant.
25. It is noteworthy that the Plaintiff did not submit any evidence to the court demonstrating that the plot in the name of the Defendant or his predecessor had been revoked.
26. To that end, therefore, the court answers the issue in the negative.

#### **Whether the Plaintiff has proven trespass on the part of the Defendant.**

27. Section 3 (1) of the *Trespass Act*, Cap 294 provides that:

“ 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 shall be guilty of an offence.”
28. Thus, trespass is an intrusion by a person into the land of another who is in possession and ownership. It is trite that trespass is actionable per se.
29. The Court of Appeal decision in the case of Kenya Power & Lighting Company Limited vs Fleetwood Enterprises Limited [2007] eKLR affirmed, among other things, that when trespass is proven, the affected party does not need to demonstrate that it suffered damages or loss resulting from the trespass in order to be awarded damages. Once trespass is established, the court is compelled to assess and award damages on a case-by-case basis. Additionally, the case of Duncan Nderitu Ndegwa vs. KPLC Limited & Another (2013) eKLR, cited for the holding, inter alia, that once trespass to land is proven, it is actionable per se, and no proof of damage is required for the court to award damages
30. Having held that the plot belongs to the Defendant, the court answers this issue in the negative.
31. Final orders for disposal
  - a. Having determined that the Plaintiff has not demonstrated ownership of the disputed land, the Plaintiff's claim is consequently devoid of merit.
  - b. It is dismissed with costs to the Defendant.
32. Orders accordingly



**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 20<sup>TH</sup> DAY OF JANUARY 2026 VIA MICROSOFT TEAMS.**

**J G KEMEI**

**JUDGE**

Delivered Online in the Presence of;

Ms Gulenywa for the Plaintiff

Mr Gachina for the Defendant

C/A – Ms. Yvette Njoroge

