



**Green Vine Heights Limited & others v Kazungu & 63 others (Environment and Land Case E069 of 2014) [2026] KEELC 656 (KLR) (12 February 2026) (Judgment)**

Neutral citation: [2026] KEELC 656 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT AND LAND CASE E069 OF 2014  
YM ANGIMA, J  
FEBRUARY 12, 2026**

**BETWEEN  
GREEN VINE HEIGHTS LIMITED AND OTHERS ..... PLAINTIFF  
AND  
KAHINDI KITSAO KAZUNGU & 63 OTHERS & 63 OTHERS ..... DEFENDANT**

**JUDGMENT**

1. By a plaint dated 29.07.2024 the plaintiff sued the defendants seeking the following reliefs;
  - a. A declaration be and is hereby made that the 1<sup>st</sup> plaintiff Green Vine Heights Limited is the absolute owner of Plot No. 20953/I/MN and 20959/I/MN.
  - b. A declaration be and is hereby made that Maimuna Mzee Khamis, Khamis Mzee Khamis, Salama Khamis Mzee and Rehema Haji Iddi are absolute owners of Plot No. 20960/I/MN.
  - c. A permanent injunction restraining the defendants, jointly and severally, whether by themselves, servants, agents, employees, relatives, or any other person from entering into, remaining on, continuing in occupation of, interfering with the plaintiffs' ingress into or egress out of or in any manner whatsoever interfering with the plaintiffs peaceful and quiet possession, occupation, use and enjoyment of Plot Nos. 20953/I/MN, 20959/I/MN and 20960/I/MN.
  - d. Vacant possession of plot Nos. 20953/I/MN, 20959/I/MN and 20960/I/MN.
  - e. Damages and/or mesne profits.
  - f. Costs of the suit.
2. The plaintiffs pleaded that at all material times they were the legal owners of plot Nos 20953/I/MN, 20959/I/MN and 209960/I/MN (the suit properties) all located within Mombasa County. They



- pleaded that sometime in June 2024 the defendants forcibly entered and trespassed upon the suit properties and erected some semi-permanent structures thereon without lawful justification or excuse.
3. The plaintiffs pleaded that although the defendants were evicted from the suit properties in July 2024 with the assistance of police officers they had again forcibly entered and re-occupied the suit properties thereby denying them their right to use and enjoy the properties.
  4. It was the plaintiffs' case that despite issuance of a demand and notice of intention to sue the defendants had failed to vacate the suit properties thereby rendering the suit necessary.
  5. The material on record shows that the defendants were served through the substituted service pursuant to leave of the court. The record shows that although service of summons was effected through publication of a notice in the Daily Nation newspaper, the defendants neither entered appearance nor filed any defences to the action.
  6. At the trial hereof, the plaintiffs called 2 witnesses and closed their case. The first witness was Hassan Mzee Khamis who was a director of the 1<sup>st</sup> plaintiff. He adopted the contents of his witness statement dated 29.07.2024 as his evidence in chief. He also adopted the contents of his supporting affidavits sworn on 29.07.2024 and 27.08.2025 as part of his evidence in chief. He also produced the documents in the plaintiffs' list of documents as exhibits P1-P6.
  7. The second witness was Rehema Haji Iddi who is the 5<sup>th</sup> plaintiff herein. She adopted the contents of her witness statement dated 29.07.2024 as her evidence in chief. The evidence of the plaintiffs essentially mirrored the contents of their plaint. They asserted their ownership of the suit properties and contended that the defendants had forcibly entered and occupied the same without their consent and without any lawful justification or excuse.
  8. The court is of the view that the main issue for determination is whether or not the plaintiffs have proved their claim against the defendants to the required standard. The certificates of official search produced by the plaintiffs show that the 1<sup>st</sup> plaintiff is the registered proprietor of Plot Nos. 2 0953/I/MN and 20959/I/MN whereas the 2<sup>nd</sup> – 5<sup>th</sup> plaintiffs are the joint proprietors of Plot No. 20960/I/MN. The defendants did not tender any evidence at the trial to demonstrate their right, claim, or interest over the suit properties. The plaintiffs also produced photographs of the temporary structures the defendants had erected on the suit properties. The defendants did not attend court to dispute the plaintiffs' evidence and photographs on the invasion and occupation of the suit properties.
  9. The court is thus satisfied on a balance of probabilities that the plaintiffs are the registered proprietors of the suit properties hence entitled to immediate possession and enjoyment thereof. The court is also satisfied that the defendants have wrongfully entered and occupied the suit properties without the consent of the plaintiffs and without any lawful justification or excuse. The court is satisfied that the defendants are trespassers and law breakers in the eyes of the law who ought to be evicted through a judicial process.
  10. It is evident from the plaint that apart from the declarations, permanent injunction, and order for vacant possession, the plaintiffs have also sought general damages for trespass against the defendants. The plaintiffs have sought general damages in the sum of Kshs. 500,000. They have cited the cases of Kamoye vs Tipango & 2 Others (Environment & Land Case E011 of 2023) (2024)KEELC 4227 (KLR) (14 May 2024) (Judgment) and Hebron Orucho Gisebe & 2 Others vs Joseph Ombura Gisebe & Another [2022] KEELC 1348 (KLR) in support of their claim.



11. In the case of Kamoye vs Tipango & 2 Others (supra) the award of general damages was considered as follows;

“ 17. On the issue of general damages for trespass, the issue that arises is the measure of it. In the case of Philip Ayaya Aluchio v Crispinus Ngayo [2014] eKLR, it was held as follows:

“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 after the trespass or the costs of restoration, whichever is less See Hostler – VS – Green Park Development Co. 986 S. W 2d 500 (No. App. 1999).”

18. In the case of Duncan Nderitu Ndegwa v KP & LC Limited & Another (2013) eKLR, P. Nyamweya, J held that: -

“...once a trespass to land is established it is actionable per se, and indeed no proof of damage is necessary for the court to award general damages. This court accordingly awards an amount of Kshs 100,000/= as compensation of the infringement of the Plaintiff’s right to use and enjoy the suit property occasioned by the 1st and 2nd Defendants trespass”

19. From the evidence on record, there is nothing that can be used to enable this court determine the actual damage and/or measure of the damage or loss that the plaintiff suffered for him to be compensated for the loss. However, in relying on the above authorities, I find the plaintiff has suffered damages as a result of the defendants’ unlawful acts of trespass and award him Kshs. 200,000/= as general damages.”

12. The court agrees that trespass to land is a tort which is actionable per se. The claimant does not have to demonstrate that he has suffered any particular damage in order to be awarded damages. In this case, the plaintiffs did not tender any evidence to demonstrate any particular damage or injury they had suffered other than a violation of their property rights. The court is thus of the view that an award of Kshs. 200,000/= as general damages for trespass would be sufficient compensation to the plaintiffs for violation of their property rights.

13. The upshot of the foregoing is that the court is satisfied that the plaintiffs have proved their claim against the defendants on a balance of probabilities. As a consequence, judgment is hereby entered for the plaintiffs against the defendants in the following terms;

- a. A declaration be and is hereby made that the 1<sup>st</sup> plaintiff Green Vine Heights Limited is the absolute owner of Plot No. 20953/I/MN and 20959/I/MN.
- b. A declaration be and is hereby made that Maimuna Mzee Khamis, Khamis Mzee Khamis, Salama Khamis Mzee and Rehema Haji Iddi are absolute owners of Plot No. 20960/I/MN.
- c. An order be and is hereby made for the eviction of the defendants from Plot Nos. 20953/I/MN, 20959/I/MN and 20960/I/MN.



- d. A permanent injunction to issue restraining the defendants upon their eviction from re-entering, occupying or in any manner interfering with the plaintiffs' peaceful use and enjoyment of the suit properties.
- e. The plaintiffs are hereby awarded general damages of Kshs. 200,000/= for trespass against the defendants jointly and severally.
- f. The plaintiffs are hereby awarded costs of the suit.

It is so ordered.

**JUDGMENT DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 12<sup>TH</sup> DAY OF FEBRUARY, 2026.**

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**Y. M. ANGIMA**

**JUDGE**

In the presence of:

Gillian - Court assistant

Mr. Maundu for plaintiffs

No appearance for defendants

