

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LANDCOURT
AT ELDORET

ELC CASE No. 58 OF 2021

DANIEL KIPKOSGEI RONO	1ST
PLAINTIFF	
RODHA JERUTO BETT	2ND
PLAINTIFF	
VERSUS	
WILLIAM NYAMBANE	1ST
DEFENDANT	
RICHARD KETER	2ND
DEFENDANT	
CORNELIUS KETER	3RD
DEFENDANT	
WILFRED OMBUI NYAMBOGA	4TH
DEFENDANT	
NELSON RUTO	5TH
DEFENDANT	
SILVANO KOGO	6TH
DEFENDANT	
JANET JEPTOO	7TH
DEFENDANT	

JUDGMENT:

1. This suit was commenced vide a plaint dated 24th November, 2021 seeking the following reliefs:-
 - (a) A declaration that the 1st - 7th Defendants have trespassed into the Plaintiff's parcel of land being Parcel No. ELDORET MUNICIPALITY BLOCK 15/1889
 - (b) An order of eviction be issued against the 1st - 7th Defendants from the suit land.

- (c) An order of permanent injunction be issued barring the 1st - 7th Defendants, their agents, servants or any other person claiming through them from trespassing or encroaching onto Parcel No. ELDORET MUNICIPALITY BLOCK 15/1889.
 - (d) Costs and interest of the suit at court rates.
 - (e) Any other relief that the court may deem fit to grant.
2. The Plaintiffs' case is that they are the registered owners of Parcel no. ELDORET MUNICIPALITY BLOCK 15/1889 (the suit property herein). The Plaintiffs aver that the 1st - 7th Defendants have without any lawful justification encroached and or trespassed on the suit property. The Plaintiffs further aver that the 1st - 7th Defendants have erected structures and are utilising the suit land without their consent and continue to do so despite the Plaintiffs' protests, warning and intention to sue having been issued. The Plaintiffs claim that the Defendants have refused to vacate the suit land or demolish their structures necessitating this suit.
 3. The suit was opposed through the Defendants Statement of Defence filed on 17th January, 2022. They denied all the allegations set out in the Plaint, and claimed that they have been in peaceful occupation of the suit land. They averred that the title documents obtained are tainted with illegality and fraud. The Defendants alleged that they have lawfully acquired ownership of the suit property through adverse possession having resided on the land for over 20 years and done massive developments thereon.
 4. According to the Defendants, they have acquired proprietary rights over the land and the suit filed herein is bad in law, a

sham and does not raise any cause of action against them. They further averred that the suit is defective for non-joinder of several other individuals who are in occupation of the suit property. They denied service of any demand or notice of intention to sue, and asked that the Plaintiff's suit be dismissed with costs.

Hearing and Evidence:

The Plaintiff's Case;

5. The Plaintiffs' case herein was heard on 1st February, 2023. The 2nd plaintiff, Rodah Jeruto Bett, a business woman residing in Nairobi and Uasin Gishu, testified under Oath as PW1. She adopted her witness statement filed herein as part of her evidence-in-chief. She then testified that she purchased the suit property with Daniel Kipkosgei Rono and she produced a sale agreement as PEXb1. PW1 testified that she also has a title which she produced as PEXb2.
6. PW1 testified that the Defendants encroached into the suit property in 2021, and have refused to vacate despite notice to that effect. The 2nd plaintiff produced a demand letter as PEXb3. PW1 informed the court that the Defendants had built mud-walled and mabati structures. PW1 asked the court for orders of eviction as well as the other prayers in the Plaint. She confirmed that she had authority from the 1st Plaintiff to testify and produced the letter of authority as PEXB4.

7. On cross-examination, PW1 testified that they purchased the suit property for KShs. 2,500,000/- from Francis Serem in 2015. PW1 testified that she did not have the certificate of lease from Francis Serem. She explained that the land was vacant at the time of purchase and they put up a structure for their worker. PW1 testified that the property was encroached in 2015. She reiterated that there are mud-walled and mabati structures. PW1 was referred to PEXB3 and testified that the demand letter was not signed.
8. PW1 was re-examined and she reiterated that the land was vacant when they purchased it. She testified that their title has not been challenged on grounds of fraud. She testified that the land was encroached in 2021. This marked the end of her testimony, as well as the close of the Plaintiffs' case.

The Defendants' Case:

9. On 11th November, 2025 when the matter came up for defence hearing, Counsel for the Defendants sought an adjournment which was denied by the court. The hearing was slated to proceed that same day at 11.00am. However, come the appointed time, neither the Defendants nor their advocates on record were present. The court therefore marked the Defendants' case as closed.

Submissions:

10. The court directed the parties to file their final written submissions on the case. The Plaintiffs complied and filed their

submissions dated 24th November, 2025. None of the Defendants filed any submissions in this case.

The Plaintiffs' Submissions;

11. Counsel submitted that the Plaintiffs were issued with a Certificate of Lease on 19th November, 2019. That they thus have absolute ownership of the suit land together with all rights, which cannot be defeated except as provided for in the Land Registration Act. Counsel submitted that the Defendants have trespassed on the land, depriving the Plaintiffs the use and enjoyment of the land.
12. In addition, Counsel also submitted that that the Defendants have admitted to trespassing on the land, but sought to justify their occupation of the land. Counsel cited Section 3(1) of the Trespass Act and submitted that the Defendants trespassed in 2021 and have now been occupation for 4 years. Counsel submitted that the Plaintiffs are entitled to protection under Section 24, 25 and 26 of the Land Registration Act and cited the case of **Samco Holding Ltd t/a Eka Hotel vs Patrick Nyamweya (2022) KEELC 724(KLR)**.
13. As to whether the Plaintiffs are entitled to the orders sought, Counsel submitted that there is uncontroverted evidence that the Plaintiffs are the registered owners of the suit land. That the Certificate of Title is conclusive evidence of ownership unless obtained through fraud or misrepresentation, which has not been alleged or proved in this case. Counsel argued that the Plaintiffs have established that the Defendants trespassed on the Plaintiff's property, thus infringing on their property rights,

which are protected under Article 40 of the Constitution. Counsel relied on **Kamau Mahcaria vs Mwangi Kigundu & 2 Others, HCCC No. 4067 of 1986.**

14. Counsel further submitted that the Plaintiffs have proved their case and are entitled to the orders sought as well as damages for compensation for the loss suffered as a result of the Defendants' trespass. Counsel asked that in determining damages, the court should consider the circumstances of this case, including the value of the land, the anticipated use, financial projections and the duration they have been kept away from the land.

Analysis and Determination:

15. I have considered the pleadings, the witness testimony and the evidence adduced alongside filed and the written submissions. The issues for determination before this court are:-
- (i) *Whether the Defendants have trespassed into the suit property; and*
 - (ii) *Whether the Plaintiffs are entitled to the reliefs sought in the Plaint.*
 - (iii) *Who bears the costs of this suit?*

(a) Whether the Defendants have trespassed into the suit property;

16. The Plaintiffs' claim is that the Defendants trespassed into their land and have built on it without their consent. Arising out of this, the Plaintiffs not only seek an order of eviction, but a

permanent injunction barring the Defendants from entering the suit property herein, as well as costs of the suit.

17. The Defendants on their part filed a defence denying the allegation that they are trespassers. The Defendants claimed that they purchased the land legally, and have been on the land for over 20 years. They alleged that they had acquired an interest in the suit land by way of adverse possession. The Defendants further claimed that the title documents obtained by the Plaintiffs were tainted with fraud and illegality.
18. For starters, it is a cardinal principle of the law that a party cannot claim adverse possession when they are simultaneously challenging the validity of the registered owners title. This is because an adverse possession claim inherently acknowledges the existence of a true, valid paper title that the claimant seeks to extinguish through their occupation over time.
19. The position that one cannot advance a claim for fraud and adverse possession in the same cause was discussed in the case of **Haro Yonda Juaje vs Sadaka Dzenzo Mbauro & Kenya Commercial Bank (2014) eKLR**, where the Court stated:-

“29. One cannot succeed in a claim for adverse possession before conceding that indeed the registered proprietor of the land is the true owner of the said land. It does not lie in the mouth of a claimant to aver that the title held by the registered proprietor was fraudulently acquired and then claim the same parcel of land under the doctrine of adverse possession. If the Plaintiff's averment is that the title

which was issued to the Defendant was fraudulently acquired, then his cause of action would be for the rectification of title by cancellation pursuant to the provisions of Section 143 of the Registered Land Act and not adverse possession. He cannot use the doctrine of adverse possession to go around the decision of the Minister.”

20. That aside, the Defendants did not plead or prove any particulars of the alleged fraud and illegality. Due to the fact that they did not testify and adduce evidence in support of their assertions, then the matters raised in their Statement of Defence remain mere unsubstantiated allegations. Nevertheless, the fact that the Defendants did not testify or adduce evidence does not mean that the Plaintiffs’ suit automatically succeeds. This court is bound to consider the matters raised herein on merit and reach a just and fair determination. See the case of **Nyoike & 21 others vs Kitute & 3 others (2025) KEELC 18262 (KLR)**, where the court held that:-

“15. Having made claims of trespass and notwithstanding their claim was unopposed, the burden was on the plaintiffs, as required by Section 107 of the Evidence Act, to prove their claim either by demonstrating that these properties were registered in their name and/or that they had taken possession of them before the defendants’ entry, as trespass claims are usually based on possession. They were also

required to show that the defendants occupied the suit properties without their permission.”

21. Turning now to the issue at hand, the term trespass to land is defined at Section 3(1) of the Trespass Act as follows:-

3. Trespass upon private land

(1) 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.

22. The text of **Clerk & Lindsell on Torts, Sweet & Maxwell, 18th Edition, at page 923**, ventured the following definition of trespass:-

“Trespass to land consists of any unjustifiable intrusion by one person upon land in the possession of another.”

23. Thus, trespass is an intrusion by a person into the land of another who is in possession and/or ownership. To prove trespass, the Plaintiffs must first prove ownership or that they have an interest in the land entitling them to immediate possession thereof.

24. In a bid to prove their ownership of the land, the Plaintiffs produced an Agreement for Sale dated 2nd October, 2015 showing that they purchased the suit property from Francis Kibet Serem for KShs. 2,500,000/-. The Plaintiffs thereafter became the registered proprietors by way of lease upon

obtaining a Certificate of Lease in their favour on 19th November, 2019. This Certificate of Lease, going by the provisions of Section 26 of the Land Registration Act, is conclusive proof that they are the registered proprietors of the suit land.

25. Despite this, the Defendants are the ones currently in possession and physical occupation of the suit land. The Defendants very openly admitted to being in possession of the land in their Statement of Defence. They claim that they have been on the land for over 20 years, and that they have lawfully acquired it through adverse possession. Although the Defendants did raise a defence of adverse possession, there was no counter-claim filed or evidence adduced to proof the same, and they have clearly admitted to being on the land even though they are not the registered owners thereof.
26. The Plaintiffs evidently did not consent to the Defendants' occupation of the suit property. The Demand Letter dated 17th September, 2020 is proof enough that the Defendants' presence on the suit land is unwanted, as is this instant suit. Furthermore, a claim of adverse possession must be premised on the premise that the claimant is on the land without the permission of the registered owner. Accordingly, I find and hold the Defendants liable for trespass having entered and occupied the Plaintiffs' property without the consent of the registered proprietors, and without any lawful justification for doing so.

(b) Whether the Plaintiffs are entitled to the reliefs sought in the Plaint;

27. Having determined the nature of the Defendants' intrusion into the Plaintiffs' property, the next step is to determine whether the Plaintiffs are entitled to the reliefs sought in the Plaint. The first prayer was for a declaration that the 1st - 7th Defendants have trespassed into the suit property. Per the determination of the issue above, this court has indeed found that the Defendants trespassed into the suit land.
28. Arising out of this declaration, the Plaintiffs sought an order of eviction against the 1st - 7th Defendants from the suit land. Section 24 of the Land Registration Act is clear that a proprietor of land is entitled to all the rights and privileges appertaining thereto. Such rights include the right to ownership, vacant possession of the property and peaceful enjoyment of the land, as was held in the case of **Anthony Ndun'gu Maina vs Faith Wanjiku Maina (2020) eKLR**, where the court expressed its sentiments in the following words:-

“The Plaintiff has sought for eviction orders against the Defendant. It is evident that the Plaintiff is the owner of the suit property. From the above, the Court has upheld Plaintiff's ownership and affirmed it. Therefore, the Plaintiff as the owner of the suit property is entitled to all the rights and privileges that appertain to the suit property as provided by Sections 24 and 25 of the Land Registration Act.

The said rights include the right to peaceful and quiet occupation and possession of the suit property; the

right to utilize his property as he deems fit and thus the orders of eviction of the Defendant is merited so that the Plaintiff can quietly and peacefully utilize his property. The Plaintiff must have possession of the suit land in order to attain enjoyment of his rights.”

29. Additionally, on issuance of eviction orders, Order 22 Rule 29 (1) of the Civil Procedure Rules provides that:-

“Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.”

30. This court has found that the suit property herein is wholly registered to the Plaintiffs herein. They are therefore entitled to ownership and possession of the property. The Defendants are however still on the suit property without the Plaintiffs' permission or license. There can be no doubt that if the Defendants are left to occupy the land as they currently do, the Plaintiffs will be prejudiced as they will be unable to possess, occupy and/or utilise the suit land as they wish, as is their constitutionally protected right. To purge the Defendants' trespass and protect the Plaintiffs' rights to their property, it is only fitting that this court issue the eviction orders sought.

31. To keep the Defendants out of the land, the Plaintiffs seek an order of permanent injunction barring the 1st - 7th Defendants and anyone claiming under them, from trespassing or encroaching into the suit property. With regards to the order of

permanent injunction, in **Nguruman Limited vs Jan Bonde Nielsen & 2 others, CA No. 77 of 2012; (2014) eKLR**, the Court of Appeal reiterated the conditions to be met by a litigant who seeks injunctive relief as follows:-

**“a. establish his case only at a *prima facie* case,
b. demonstrate irreparable injury if the injunction is not granted, and,
c. ally any doubts as to (b) by showing that the balance of convenience is in his favour.”**

32. The Plaintiffs have not only established a *prima facie* case, but have sufficiently proved that they are the current registered proprietors of the suit land. In addition, the efficacy of that eviction order will be diluted if the Defendants will be left free to encroach into the land at a later date even after they have been evicted from the property. Consequently, I am convinced that the permanent injunction sought is not only warranted but a necessity to safeguard the Plaintiffs' interests over the suit land.
33. The Defendants shall have thirty (30) days from the date hereof to vacate the suit property and demolish any of their structures thereon. Should the Defendants fail to comply, the Plaintiffs shall be at liberty to evict them with no further reference to this court and demolish any of the Defendants' structures standing on the suit property at the Defendants' costs.

(c) Who bears the costs of this suit?

34. On costs, Section 27 of the Civil Procedure Act expressly provides that costs follow the event, which means that they are

ordinarily granted to the successful litigant unless there are circumstances that would allow the court to depart from this general rule. Under Section 27 costs are granted at the discretion of the court, and in **Morgan Air Cargo Limited vs Everest Enterprises Limited (2014) eKLR**, the court noted that:-

“The exercise of the discretion, however, depends on the circumstances of each case. Therefore, the law in designing the legal phrase that “Costs follow the event” was driven by the fact that there could be no “one-size-fit- all” situation on the matter. That is why section 27(1) of the Civil Procedure Act is couched the way it appears in the statute; and even all literally works and judicial decisions on costs have recognized this fact and were guided by and decided on the facts of the case respectively. Needless to state, circumstances differ from case to case.”

35. The Plaintiffs have emerged successful in this suit, and going by the general rule on costs, they are thus entitled to the costs of the suit. This court finds that no circumstances exist in the instant suit that would justify the denial of costs. As a result, the court hereby awards the costs of the suit to the Plaintiffs.

Orders:-

36. Consequently therefore, the Plaintiffs’ suit as contained in the Plaint dated 24th November, 2021 succeeds, and the same is determined as follows:-

- (a) A declaration be and is hereby made that the 1st - 7th Defendants have trespassed into the Plaintiff's parcel of land being Parcel No. ELDORET MUNICIPALITY BLOCK 15/1889.
- (b) An order of eviction be and is hereby issued directing the 1st - 7th Defendants to vacate Parcel No. ELDORET MUNICIPALITY BLOCK 15/1889 and demolish any of their structures thereon within 30 days from the date hereof, failure to which, the Plaintiffs shall be at liberty to evict them with no further reference to this court and demolish any of the Defendants' structures standing on the suit property at the Defendants' costs.
- (c) An order of permanent injunction be and is hereby issued barring the 1st - 7th Defendants, their agents, servants or any other person claiming through them from trespassing or encroaching onto Parcel No. ELDORET MUNICIPALITY BLOCK 15/1889.
- (d) The Plaintiff is hereby awarded the costs and interest of the suit at court rates payable by the Defendants.

37. Orders accordingly.

DATED, SIGNED and DELIVERED virtually at **ELDORET** on this **5TH** day of **FEBRUARY, 2026** vide Microsoft Teams.

HON. C. K. YANO
ELC, JUDGE

In the virtual presence of;

Ms. Sielei for the Plaintiffs.

No appearance for Defendants.

Court Assistant - Laban.