



**Muge (Suing as Administrator of the Estate of John Kimuge Kessei) v Kipkabus & 6 others
(Environment and Land Case 888 of 2012) [2025] KEELC 5772 (KLR) (29 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5772 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT AND LAND CASE 888 OF 2012**

**JM ONYANGO, J
JULY 29, 2025**

BETWEEN

**BEATRICE JELAGAT MUGE (SUING AS ADMINISTRATOR OF THE ESTATE
OF JOHN KIMUGE KESSEI) PLAINTIFF**

AND

**RICHARD SITIENEI KIPKABUS 1ST DEFENDANT
JAPHET SEREM 2ND DEFENDANT
MUSA KOMEN 3RD DEFENDANT
GRACE KOMEN 4TH DEFENDANT
PETER KIPNGETICH 5TH DEFENDANT
SAMUEL BARNO 6TH DEFENDANT
KIPCHUMPA KOSGEI 7TH DEFENDANT**

JUDGMENT

Introduction

1. This dispute arises from competing claims to the same parcel of land; each party asserting purchaser’s rights, yet neither holding registered title. The vendor whom the parties purport to derive their rights, remains absent from these proceedings.
2. The Plaintiff, relying on longstanding possession and improvements, alleges trespass by the Defendants onto a portion of the land he claims to have acquired and occupied. The Defendants, for their part, assert an entitlement to that very portion by virtue of their own alleged purchase.



3. In these circumstances, the Court must determine whether a claim for trespass may stand on the strength of occupation alone, and whether relief may be granted within the strict confines of the parties' pleadings and the law as it stands.

Background

4. This suit was instituted vide a Plaint dated 20th June 2012 by the Plaintiff, one John Kimuge Kessei (deceased) which was later amended on 7th August 2023 to substitute the Plaintiff after his demise.
5. The Plaintiff asserts rightful ownership of a parcel of land measuring 35 acres within land parcel LR No. 7558 situated in Kipkabus generally known as Gitau farm (suit land).
6. The Plaintiff contends that around the year 2000, the Defendants acting jointly and severally and with neither lawful justification nor semblance of right, unlawfully invaded and trespassed upon the said property thus denying the Plaintiff quiet possession.
7. The Plaintiff further avers that the Defendants actions are not only unlawful but have subjected him to immense financial loss.
8. Accordingly, the Plaintiff approaches the Court seeking the following reliefs:
 - a. A mandatory injunction directing the Defendants to immediately vacate the Plaintiff's parcel or in the alternative an order for their eviction from the Plaintiff's land.
 - b. General damages for trespass and damages for loss of user/ mense profit.
 - c. Costs and interest of the suit.
9. The suit was opposed by a Statement of Defence dated 10th July 2012 and later amended on 14th August 2023. The Defendants essentially contend that the Plaintiff is not the sole owner of the parcel of land known as L.R No. 7558 situated at Kipkabus.
10. The Defendants assert that they are jointly and severally bona fide purchasers of various parcels situated on the suit land. It is the Defendants position that they purchased their diverse portions from one Tabitha Wamboi Gitau (vendor) and were allocated 35 acres from the suit land.
11. Further the Defendants claim that there was an agreement in which the Plaintiff was obligated to service an outstanding loan to Agricultural Finance Corporation (AFC) amounting to Ksh. 757,000/-.
12. It is the Defendants' contention that the Plaintiff's failure or neglect to offset this loan necessitated that the Defendants, acting jointly and severally, take responsibility for its repayment.
13. The Defendants aver that the Plaintiff subsequently authorized the Defendants to dispose of 10 acres from his 35-acre parcel of land situated in the suit land to settle the loan with AFC.
14. Accordingly, it is the Defendants' position that the Plaintiff's claim ought to be dismissed with costs and pray that judgment be entered declaring them bona fide purchasers of the 10 acres in contention.
15. The matter proceeded for hearing and John Kimuge Kessei(deceased) testified as PW1 before his untimely demise on 7th July 2017. The matter was marked as having abated on 11th November 2019 and the file closed. The suit was later revived on 26th July 2023 and amended to indicate that the deceased Plaintiff was substituted by one Beatrice Jelagat Muge (Administrator of the Estate of John Kimuge Kessei).



Plaintiff's Case

16. The hearing of the suit commenced on 25th May 2016 with John Kimuge Kessei(deceased) testifying as PW1. PW1 adopted his witness statement dated 6th July 2015 as his evidence in chief. PW1 asserted that he had an agreement dated 13th April 1994 between himself and one Tabitha Wamboi (Vendor) for the purchase of land 35 acres from the suit land for a consideration of Ksh. 1,325,000. PW1 stated that he paid Ksh. 965,225 upon execution of the agreement (PMFI 1a) and the balance was to be paid upon the registration of a title in favour of John Kimuge Kessei (deceased).
17. PW1 further testified that upon acquiring consent from the Land Control Board (PMFI 2a), he was given consent to occupy the 35-acre parcel. PW1 stated that he fenced, cultivated, put up a building and planted trees on the 35acre land, trees which he claimed were destroyed by the Defendants.
18. It was PW1's testimony that he reported the Defendants' trespass and invasion of his parcel to the police at Kipkabus police station. He produced several letters PEX 3, PEX 4 and PEX 5, which are demand letters, directing the Defendants to vacate his parcel of land which they failed to comply with.
19. PW1 stated that he has never taken a loan from anyone and he never had any other agreement with the Vendor in regards to the suit land. PW 1 stated that 10 acres of the suit land is occupied by strangers. He stated that the balance of the consideration is ready to be released to the Vendor to conclude the transaction.
20. In cross examination PW1 admitted that the Vendor had not received the entire purchase price for the 35 acres but reiterated that he had the balance of the consideration and was ready to finalize the transaction. He also stated that there were trees on his parcel which were cut down without his consent. PW1 admitted that he was not sure how many people occupied his 10-acre parcel of land. He further stated that he was unaware that title to the parcel of land known as L.R No. 7558 was charged to AFC nor was he aware of any discharge of the charge.
21. In re-examination PW1 stated that he paid cash of Ksh. 100,000/- and gave a cheque of Ksh. 865,225/- towards the consideration of the suit land. He stated that he obtained the consent of the Land Control Board on 15th April 1994 and the application to the board was determined on 12th April 1994. He reiterated not being aware of any loan by AFC and not knowing when the same was obtained. PW 1 stated that he could not recall whether a search was conducted on the title.
22. On 28th June 2016, one Cornelius Kibichy was called as PW 2 and stated that he was an Advocated by profession. PW 2 confirmed that he knew PW1 as a result of a transaction (addendum to the agreement) he prepared on 9th November 1994. PW 2 stated by 13th April 1994 the vendor had received Ksh. 100,000/- and similarly Ksh. 865,225/- was also acknowledged as received. PW 2 stated that he interrogated the signatures in the agreement dated 13th April 1994 between PW1 and the Vendor.
23. In cross examination, PW 2 stated that he did not participate in signing the agreement dated 13th April 1994. PW 2 stated that the title was supposed to be produced after payment and the cheque returned. PW 2 admitted that he did not conduct a search on the title and would not know whether the land had any encumbrances. He also stated that he did not know whether the cheque had been deposited. PW 2 denied knowing whether there was a charge on the title.

Defendant's Case

24. Sammy Rutto Bano testified as DW1 on 11th November 2024 and adopted his witness statement dated 24th August 2012 as his evidence in chief. He stated that the parcel of land measuring over 400 acres



known as LR No. UG/PLATEAU 7558 was registered in the name of Tabitha Wamboi Gitau. He stated that the suit land in dispute measures 35 acres.

25. DW1 stated that the 35-acre parcel was purchased by John Kimuge Kessei (deceased) from Tabitha Wamboi Gitau. He averred that John Kimuge Kessei (deceased) was unable to pay for 10 acres of the parcel he purchased as the land had been charged to AFC. DW 1 stated that he together with others paid off the loan to AFC and in turn John Kimuge Kessei (deceased) sold off the 10-acre portion to them. DW 1 produced a letter dated 22nd April 2000 (DEX 1) from the family of one Nahashon Gitau Kamanda (the son of the Vendor, Tabitha Wamboi Gitau) informing him that John Kimuge Kessei (deceased) had only paid for 25 acres and there was a balance in respect of 10 acres.
26. DW 1 further stated that he had a letter dated 6th March 2014 from J.K. Birir & Co. Advocates (DEX 2) indicating that John Kimuge Kessei (deceased) was unable to pay for 10.4 acres and the portion had been repossessed by the family of Nahashon Gitau Kamanda. DW 1 stated that he together with others paid the loan to AFC and produced the receipts as DEX 3 (a)-(k).
27. It was DW 1's testimony that once the loan was paid off to AFC, they were issued with a discharge of charge and the title subsequently surrendered to them. He further produced DEX 4, list of Lelkotet Farm (L.R Number 7558) containing 78 members and indicating the various parcel sizes each member was entitled to. DW 1 testified that DEX 4 indicated that John Kimuge Kessei (deceased) was entitled to 25 acres.
28. Additionally, DW 1 stated that they applied for consent from the Land Consent Board (DEX 5) to subdivide the land into 78 portions in accordance with DEX 4. The letter of consent dated 14th December 2000 was produced as DEX 6. DW 1 further stated that the grant obtained by the estate of John Kimuge Kessei (deceased) in Mombasa Succession Cause No. 339 of 2018 indicates that the deceased was entitled to 25 acres out of the suit land. DW 1 prayed that the Plaintiff's claim be dismissed to allow the Defendants' peaceful occupation of the land.
29. In cross-examination, DW 1 was referred to PEX 10 (addendum to the agreement for sale of 35 acres) which indicated that the vendor acknowledged receipt of the consideration less Ksh. 359,775/- which was due upon registration of title in the name of John Kimuge Kessei (deceased).
30. DW 1 admitted that John Kimuge Kessei (deceased) had no loan with AFC and the receipts issued in relation to the loan were issued by one Nahashon Gitau Kamanda. He further stated that 10 people are responsible for purchasing the 10-acre parcel but only 7 were sued in the present suit. DW 1 stated that Lelkotet Farm is not a registered entity and further that list indicating the members and their various parcels was not signed by the members. DW 1 refuted the contents of PEX 6 where Mr. Birir, Advocate, apologized to John Kimuge Kessei (deceased) and admitted to being misled by the Defendants in regards to the ownership and the parcel size that John Kimuge Kessei (deceased) was entitled to.
31. In re-examination, DW 1 reiterated that Nahashon Gitau Kamanda was the one who sold the 25-acre parcel of land to John Kimuge Kessei (deceased). DW 1 further states that John Kimuge Kessei (deceased) asked the Defendants to repay the AFC loan in exchange for 10 acres of his portion of land. DW 1 thereafter clarified that Nahashon Gitau Kamanda is the one who took a loan from AFC. He also stated that the AFC loan was paid through Nahashon Gitau Kamanda's account.

Issues for Determination

32. Having perused the pleadings, the evidence adduced at the hearing and considered the parties submissions, the following issues emerge for determination:



- i. Whether the Plaintiff has established a legally cognizable interest in the suit property capable of protection in law or equity.
- ii. Whether the Defendants unlawfully entered or occupied the portion of land claimed by the Plaintiff.
- iii. Whether the Plaintiff is entitled to the reliefs sought

Analysis and Determination

33. The law, in its wisdom, recognizes that property rights are not mere abstractions but fundamental entitlements deserving of the court's protection. It is well settled that where a party establishes a clear legal or equitable interest in land, the court is duty-bound to shield such interest from unlawful intrusion.
34. The Plaintiff, having invoked the jurisdiction of this Court, seeks relief in two primary respects: first, by way of a mandatory injunction compelling the Defendants to immediately vacate the suit property or, in the alternative, an order for their eviction; and second, an award of general damages for trespass, together with mesne profits to compensate for the loss of use and occupation.
35. A mandatory injunction is an extraordinary remedy, one not granted lightly, but only where the circumstances of the case demands decisive judicial intervention to prevent the continued perpetration of an unlawful act.
36. In *Kenya Breweries Limited & another v Washington O. Okeyo* [2002] eKLR the court stated:

“The test whether to grant a mandatory injunction or not is correctly stated in Vol. 24 Halsbury's Laws of England 4th Edn. para 948 which reads:

‘A mandatory injunction can be granted on an interlocutory application as well as at the hearing, but, in the absence of special circumstances, it will not normally be granted. However, if the case is clear and one which the court thinks it ought to be decided at once, or if the act done is a simple and summary one which can be easily remedied, or if the defendant attempted to steal a march on the plaintiff a mandatory injunction will be granted on an interlocutory application’.”
37. The Court must be satisfied that the Plaintiff has established a clear legal right to the property, that the Defendants' presence thereon is without lawful justification, and that, in the absence of such an order, the Plaintiff would suffer irreparable harm.
38. Equally, the law abhors the unjust enrichment of a trespasser at the rightful owner's expense, and where unauthorized occupation is proven, damages for trespass and mesne profits serve both a compensatory and deterrent function.
39. With these guiding principles in mind, the Court now turns to the crux of the matter; whether the Plaintiff has met the threshold for the reliefs sought and, if so, to what extent justice demands their enforcement.
40. I have considered the Plaintiff's case as pleaded; it is grounded on the tort of trespass of land. The 10th Edition of Black's Law Dictionary defines trespass in the following terms:

“an unlawful act committed against the person or property of another; especially wrongful entry on another's real property. Clark & Lindsell on Torts, 18th Edition on page 923 defines



trespass as any unjustifiable intrusion by one person upon the land in possession of another. The onus is on the Plaintiff to prove that the Defendant invaded his land without any justifiable reason.”

41. Essentially, trespass, is not merely the unwarranted presence of one upon another’s land but a direct affront to the sanctity of ownership; an intrusion that the law neither tolerates nor excuses.
42. Accordingly, the burden rests squarely upon the Plaintiff to demonstrate that the Defendants’ entry was neither sanctioned by law nor justified by any legal or equitable right.
43. It is noteworthy that neither the Plaintiff nor the Defendants have claimed to be the registered owner of the suit land; both their claims are anchored on having beneficial interest in the suit land as purchasers.
44. The Plaintiff claims that pursuant to an agreement dated 13th April 1994, he purchased 35 acres from one Tabitha Wamboi Gitau (vendor). The Defendants’ position is that the Plaintiff was only able to pay for 25 acres and they subsequently bought 10 acres off of the Plaintiff’s parcel from Nahashon Gitau Kamanda.
45. As was established during the hearing, and in accordance with the agreement for sale between John Kimunge Kessei (deceased) and Tabitha Wamboi Gitau, 35 acres was to be excised from land parcel LR No. 7558 situated in Kipkabus. The agreement and its addendum reveals that the vendor confirmed receipt of Ksh. 965,225/- as payment of consideration. The balance of Ksh. 359,775/- was to be paid by John Kimuge Kessei (deceased) once the title was registered in his name.
46. Learned counsel for the Plaintiff submits that John Kimuge Kessei (deceased) and Tabitha Wamboi Gitau both acting of their own volition and with full capacity, entered into a binding contractual relationship whose terms, once reduced into writing, lie beyond the province of this court to alter. He beseeches the court to adhere to the well-established principle that courts do not rewrite contracts for parties, invoking the holdings in: National Bank of Kenya Ltd v Pipe Plastic Samkolit (K) Ltd [2002] 2 E.A. 503 (2011) eKLR, and Pius Kimaiyo Langat v Co-operative Bank of Kenya Ltd [2017] eKLR.
47. It is counsel’s submission that the Defendants were at all material times, aware that the Plaintiff had purchased the suit land. In support of this position, the Plaintiff relied on the letter of apology from Birir & Co. Advocates dated 10th March 2014 admitting to have been misled by the Defendants. This admission, counsel contends, confirms the Defendant’s trespass which has deprived the Plaintiff’s estate of their legal proprietary rights.
48. Counsel maintains that the Plaintiff is entitled to injunctive reliefs and places reliance on *Giella vs. Cassman Brown Co. Ltd* (1973) EA 358. To succeed, the Plaintiff must first establish a prima facie case with a likelihood of success. Second, it must be demonstrated that absent the injunction, the Plaintiff would suffer irreparable harm not compensable by damages. Third, where doubt exists, the Court must resolve the matter on the balance of convenience, considering which party would bear greater prejudice from the grant or refusal of the relief sought.
49. Conversely, learned counsel for the Defendants argues that the Plaintiff failed to pay the full purchase price for the 35 acres purchased from Tabitha Wamboi Gitau. They contend that the 10 acres excised from the suit property was as a consequence of the Plaintiff’s failure to complete the payment.
50. Learned counsel for the Defendants contends that owing to the outstanding balance of Ksh. 359,775/-, an implied or constructive trust arose between the parties under which the Defendants were entitled to purchase the 10-acre portion from the suit land.



51. In sum, on the one hand the Plaintiff asserts that the suit property was rightfully obtained pursuant an agreement dated 13th April 1994 between himself and one Tabitha Wamboi. He conceded that there is a balance of Ksh. 359,775/- which he affirmed that he is ready and willing to pay once the title is processed and registered in his name. It is the Plaintiff's position that the Defendants have illegally trespassed on a portion of his property and thus violated his proprietary rights.
52. On the other hand, the Defendants deny the trespass. They maintain that they obtained the 10-acre parcel after the Plaintiff failed to clear the balance of the purchase price and assert their right to the portion of the suit property purchasers.
53. The first issue I must address is to determine whether the Plaintiff has established a legally cognizable interest in the suit property capable of protection in law or equity.
54. The Court is bound to determine disputes within the confines of the parties' pleadings. A party must succeed or fail on the strength of its pleaded case, not on unarticulated causes of action.
55. The facts disclosed by the Plaintiff particularly possession, substantial payment of the purchase price amounting to Ksh. 965,225/- and development of the suit land, invite the application of equitable principles.
56. In *Willy Kimutai Kitilit v Michael Kibet* [2018] eKLR, the Court of Appeal reaffirmed that equity, imported into our jurisprudence through the *Judicature Act* and now buttressed by Article 10(2)(b) of *the Constitution* of Kenya, permits the Courts to intervene where justice and good conscience demand it, even in the absence of a registered title.
57. However, principles of equity are not to be summoned on impulse; they must be firmly tethered to the pleadings. The original Plaintiff did not seek specific performance, nor did he plead for a declaration of a constructive trust, reliefs which, if properly invoked and supported by evidence, may have brought the claim within the protective reach of equitable jurisprudence.
58. Equity, though it delights to do justice, cannot grant remedy where none has been pleaded. As the Court reaffirmed in *Daniel Otieno Migore v South Nyanza Sugar Co. Ltd* [2018] eKLR, relying on precedent from the Court of Appeal and the Supreme Court of Nigeria, it stated thus:

“ a trite principle in law that parties are bound by their pleadings, and that any evidence led by any of the parties which does not support the averments in the pleadings... must be disregarded.”
59. A litigant cannot be permitted to sneak in an equitable doctrine through affidavit evidence or cross-examination when such a claim forms no part of the pleadings. The pleadings are the architecture of justice; they define the contours of the controversy and the permissible field of inquiry.
60. The Court cannot pretend that the Plaintiff's possession is a legal nullity. Possession, especially when long, continuous, and uncontested, can under certain conditions mature into a legally recognizable interest, particularly in the context of adverse possession or equitable estoppel. But no such doctrines have been properly pleaded or pursued in the present case.
61. The Plaintiff may have moral equities on his side, he paid the bulk of the purchase price, entered into possession, and improved the land. However without registration, without joinder of the vendor of land parcel LR No. 7558 situated in Kipkabus, and without a plea for specific performance or a declaration that he is entitled to be registered as the owner of the suit property, the Plaintiff's interest remains inchoate and incomplete.



62. I now turn to the issue on whether the Defendants unlawfully entered or occupied the portion of land claimed by the Plaintiff. The Court has already determined that the Plaintiff's interest rests on part-performance and possession, unperfected by registration or equitable pleadings. Yet even an occupier without registered title may maintain a trespass action. In *Trustees, Kenya Ports Authority Pension Scheme v Nairobi City Council & another* [2023] KEELC 17455 (KLR), the High Court held that:

“trespass is an action that can be brought by an occupier of land, not necessarily the owner thereof,”

63. The Court effectively reaffirmed that equitable or legal title is not a prerequisite for alleging wrongful entry.

64. That principle was earlier endorsed by the Court of Appeal in *Samuel Mwangi v Jeremiah M'itobu* [2012] eKLR, where Visram JA held that

“possession in fact confers no actual right of property, but a possessor may nevertheless maintain trespass against anyone who interferes who cannot himself show that he has the right to recover possession immediately”

65. Accordingly, the real question here is not whether the Plaintiff owns the land, but whether his possession was sufficiently exclusive and whether the Defendants entered without lawful authority.

66. The Defendants admit occupying 10 acres of the suit land. They assert that their entry was pursuant to a private arrangement in which they discharged a debt on behalf of the Plaintiff in exchange for the land. But that assertion collapses under section 3(3) of the *Law of Contract Act*, which bars suits founded on land transactions unless the contract is in writing, signed by the parties, and attested. The Defendants have produced no such document. Their occupation thus stands unmoored from the formal requirements of law.

67. Equity will not countenance the Defendants' attempt to enforce an unwritten, unattested agreement in land. Their admission of occupation, stripped of contractual substance, amounts to an actionable trespass upon the Plaintiff's established possessory right.

68. The remaining question is whether the Plaintiff, as established occupier, may lawfully invoke the remedies of permanent injunction, eviction, and damages for trespass. As the Court confirmed in *Trustees, Kenya Ports Authority Pension Scheme v Nairobi City Council & another* [2023] KEELC 17455 (KLR), an injury grounded in the tort of trespass does not necessarily require legal title. A person in actual possession may sue in trespass when another interferes with that possession.

69. The Court of Appeal in *Samuel Mwangi v Jeremiah M'itobu* [2012] eKLR stated as follows:

“There are, therefore, concurrent findings of facts by the two courts below that the appellant was in lawful occupation of the suit land. These facts are also accepted by the respondent. However, his argument simply is that mere occupation of land does not entitle the appellant to evict another person. That “other” person in this case is neither the owner of the suit land, nor anyone claiming the right to occupation. He is, in fact, the respondent, a trespasser for all intents and purposes. The learned Judge of the High Court erred in his conclusion that only an “owner” of land had the right to sue in trespass. That is clearly not so. As Winfield and Jolowicz state in their book “Tort” (12th Edition @ p. 361): “Possession in fact confers no actual right of property, but a possessor may nevertheless maintain trespass against anyone who interferes who cannot himself show that he has the right to recover



possession immediately. A stranger cannot rely in his defence upon another person's right to possess (the "jus tertii") unless he can prove that he acted with that person's authority. Even wrongful possession, such as that acquired by a squatter, will, in principle, be protected except against the owner of the land or someone acting lawfully on his behalf."

70. That is the law. And the law, when rightly understood, is a living instrument designed to protect human dignity from arbitrary violation. The man who has planted, fenced, cultivated, and made fruitful the land is not a mere squatter on morality's margins. He is, in truth, the steward of the soil, and the Court will not permit another, with neither colour of right nor lawful cause, to trample upon his labour and lay claim through force or familiarity.
71. The facts in this case can be distinguished from Trustees (supra), where the Plaintiff failed to demonstrate any traceable title or possession clearly within its own control, rendering injunctive relief unavailable. All the essential elements for the remedies sought are present. The Plaintiff's possession is exclusive and prior. The Defendants' entry onto the land is unsupported by any formal authority.
72. Applying the principles set out in Samuel Mwangi (supra) and Kenya Breweries Limited (supra) the Plaintiff meets the threshold for injunctive and trespass relief. The Plaintiff's possession demands protection, and the Defendants' presence cannot be justified.
73. The Defendants' occupation, unanchored in contract, title, or even decency, finds no refuge in the Court's conscience. The Plaintiff's claim, founded on a valid sale agreement coupled with payment and possession must prevail.
74. The Defendants have wrongfully interfered with the Plaintiff's possession and use of the suit property. The Plaintiff's proven occupation entitles him to damages for the deprivation of possession and loss of use and enjoyment occasioned by the Defendants' acts.
75. In Philip Ayaya Aluchio v Crispinus Ngayo [2014] eKLR the Court held:

"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...

... 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...

...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."
76. In the instant case, the Plaintiff similarly failed to lead evidence on the condition of the land prior to and after the alleged encroachment, or to quantify the loss occasioned. In the absence of such proof, and guided by the reasoning in Aluchio (supra), the Court is constrained to award only nominal general damages of Ksh. 300,000/- for trespass together with interest at court rates from the date of this judgment until payment in full.
77. In the end, I enter judgment for the Plaintiff against the Defendants in the following terms:
 - i. The defendants be and are hereby ordered to vacate and deliver vacant possession of the 10 acres within the Plaintiff's 35 acres of the parcel of land land known as LR No. 7558 to the plaintiff within 45 days from the date of service of the Judgment and decree herein upon them.



- ii. In default of compliance with (i) above as aforesaid the plaintiff shall be entitled to an order of eviction for the forcible removal of the defendants their agents and/or servants from the 10 acres within the Plaintiff's 35 acres of the parcel of land known as land parcel LR No. 7558
- iii. A permanent injunction be and is hereby issued restraining the Defendants whether by themselves or their servants or agents or otherwise howsoever, from remaining on or continuing in occupation of the suit property.
- iv. The plaintiff is awarded Kshs. 300,000/- general damages for trespass together with interest at court rates from the date of judgment until payment in full.
- v. The costs of the suit shall be borne by the defendants.

DATED, SIGNED AND DELIVERED, AT ELDORET THIS 29TH DAY OF JULY 2025

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J. M. ONYANGO

JUDGE

In the presence of:

Mr Chepkwony for the Plaintiff

Ms Ekisa for Mr Wanyonyi for the 2nd, 3rd, 4th 6th & 7th Defendants

Court Assistant: Hinga

