



**Ndunda v Sammy & 4 others (Environment and Land Case
E071 of 2023) [2025] KEELC 5672 (KLR) (29 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5672 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND CASE E071 OF 2023**

NA MATHEKA, J

JULY 29, 2025

BETWEEN

MICHAEL MUASYA NDUNDA PLAINTIFF

AND

NICHOLAS SAMMY 1ST DEFENDANT

JIMMY MUTAVA 2ND DEFENDANT

BENSON NZOMO 3RD DEFENDANT

ALBERT MUOKI MASAI 4TH DEFENDANT

DAVID MAITHA 5TH DEFENDANT

JUDGMENT

SUBPARA 1.

Plaintiff herein states that he is the registered owner of all that Land Reference Numbers 8784/109, 8784/110, 8784/111 and 8784/112 each parcel measuring five (5) acres situated in Mavoko Municipality in Machakos County. On various dates in October 2022 the Defendants, their agents and or employees have without lawful justification encroached onto the suit properties and have refused to move away therefrom, and are now constructing structures and casually subdividing other portions and advertising for sale to unsuspecting members of the Society. The Plaintiff avers that he is currently in possession of the original title documents of the suit properties and has not sold the suit properties to the Defendants or any third party. The Plaintiff asserts that he recently visited the land parcel to try and reason with the Defendants but the Defendants particularly the 1st Defendant in company of other goons warned him of dire consequences if he ever set foot again on the land. That the actions of the Defendants smack of illegalities, unlawfulness and are adverse thus impacting the Plaintiff's constitutional rights to acquire and own property. The Plaintiff asserts that the Defendants are not entitled in law neither do they have legal basis to trespass and/or interference, intermeddle, encroach, disturb the Plaintiff's quiet possession of the suit properties. As a result of the Defendants' unlawful and illegal



actions, behavior the Plaintiff has been denied and/deprived of his rights to peaceful occupation, possession, enjoyment and development of the suit properties. Consequently, the Plaintiff is in the verge of losing his rights over the suit properties to the Defendants and if not cautioned by the order of this Honourable Court may culminate into serious consequences and subject the Plaintiff to suffer irreparable loss and damage. The Plaintiff is aggrieved by the actions of the Defendants and seeks intervention of this Honourable Court that the 1st, 2nd, 3rd, 4th and 5th Defendants purge, stop any further trespass, encroachment, intermeddling and vacate the suit properties in the interest of justice and fairness.

2. The Plaintiff prays for Judgment against the Defendants for the following orders:

- a. A declaration that the Plaintiff is the legally registered owner with all indefeasible title, interest and rights vested in the Plaintiff as the owner of all that parcels of Land Reference Numbers 8784/109, 8784/110, 8784/111, and 8784/112 each measuring five (5) acres and are situated in Mavoko Municipality in Machakos County.
- b. A declaration that the 1st, 2nd, 3rd, 4th and 5th Defendants are trespassers, encroachers, intermeddlers on the parcels of Land Reference Numbers 8784/109, 8784/110, 8784/111, and 8784/112 each measuring five (5) acres and are situated in Mavoko Municipality in Machakos County.
- c. An eviction order evicting the Defendants, their agents, servants, and or employees from all that parcel of Land Reference Numbers 8784/109, 8784/110, 8784/111 and 8784/112 each measuring five (5) acres and are situated in Mavoko Municipality in Machakos County.
- d. An order for demolition and clearing the debris thereof out of the illegal structures on the suit properties at the costs of the Defendants.
- e. That upon the Defendants vacating the suit property an order of permanent injunction to issue restraining the Defendants by themselves, their servants, agents and/or employees from trespassing, encroaching, intermeddling into the Plaintiff's land parcels Land Reference Numbers 8784/109, 8784/110, 8784/111 and 8784/112 each measuring five (5) acres and are situated in Mavoko Municipality in Machakos County and or in any other way interfering therewith.
- f. Mesne profits from October, 2022 when the Defendants encroached, trespassed into the suit properties until Judgment is delivered.
- g. General damages for trespass, unlawfully encroaching and keeping the Plaintiff away from use and enjoyment of the suit properties.
- h. Any other relief this Honourable Court may deem just and expedient to grant.
- i. The Officer Commanding Station Athi River to enforce orders (c) (d) and (e) above.
- j. Costs of the suit.

3. This case has considered the evidence and exhibits adduced in this matter. The Defendants were served but failed to attend court or defend the matter hence it proceeded exparte. PW1, the Plaintiff herein states that he is the registered owner of all that Land Reference Numbers 8784/109, 8784/110, 8784/111 and 8784/112 each parcel measuring five (5) acres situated in Mavoko Municipality in Machakos County. He produced the title deeds as PEx1. He also produced the transfer documents together rates and rent certificates of the suit properties. That on various dates in October 2022 the Defendants, their agents and or employees have without lawful justification encroached onto the suit



properties and have refused to move away. The plaintiff produced a survey report confirming the encroachment together with photographs of the structures PEx12.

4. 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.”

5. Thus, trespass is an intrusion by a person into the land of another who is in possession and ownership. Through the Surveyor’s report dated August 2023 it has as been confirmed by the Surveyor that the Land Reference Numbers 8784/109, 8784/110, 8784/111 and 8784/112 has been encroached and subdivided into plots which most have been developed and permanent structures erected. Plaintiff never authorized the Defendants to enter his land and carry out works of creating a road. This evidence has not been controverted. I am therefore inclined to find that Defendants trespassed on the suit land belonging to the Plaintiff. I am also satisfied that the Defendants constructed structures on the suit land hence the trespass. Plaintiff has also sought for mesne profits and general damages for trespass.

6. On the issue of general damages for trespass, the case of Philip Ayaya Aluchio vs 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.”

7. In Nakuru Industries Limited vs S S Mehta & Sons (2016) eKLR the court faced held as follows;

“ A similar situation pertains in the present case. The exact value of the land before and after the trespass is not proved. However, I have found the defendants did trespass onto the plaintiff’s land and conduct some excavation. For this reason I award the defendant damages in the amount of Ksh 500,000/= (five hundred thousand only) plus interest and costs of this suit from the date of this judgment until payment in full.”

8. In the case of Willesden Investments Limited vs Kenya Hotel properties Limited NBI H.C.C. NO. 367 of 2000 the court stated that;

“ There is no mathematical or scientific formula in these types of cases and that the guiding factors are the circumstances in each case. It is my considered view that K.Sh. 10 000 000 is a reasonable award for general damages.”

9. I find that the Defendants trespassed onto his private land and constructed buildings. I have taken into account the fact that the trespass occurred in a rather large part of the land. I am of the view that an award of Kshs.1,000,000/- as general damages is sufficient. The prayer for mesne profits has not been proved and the same will not be awarded. I find that the Plaintiff has proved his case on a balance of probabilities and I grant the following orders;

1. A declaration that the Plaintiff is the legally registered owner with all indefeasible title, interest and rights vested in the Plaintiff as the owner of all that parcels of Land Reference Numbers 8784/109, 8784/110, 8784/111, and 8784/112 each measuring five (5) acres and are situated in Mavoko Municipality in Machakos County.



2. A declaration that the 1st, 2nd, 3rd, 4th and 5th Defendants are trespassers, encroachers, intermeddlers on the parcels of Land Reference Numbers 8784/109, 8784/110, 8784/111, and 8784/112 each measuring five (5) acres and are situated in Mavoko Municipality in Machakos County.
3. An order that the Defendants, their agents, servants, and or employees vacate from all that parcel of Land Reference Numbers 8784/109, 8784/110, 8784/111 and 8784/112 each measuring five (5) acres and are situated in Mavoko Municipality in Machakos County within the next 90 days after service of this order and in default eviction orders to issue.
4. That upon the Defendants vacating the suit property an order of permanent injunction to issue restraining the Defendants by themselves, their servants, agents and/or employees from trespassing, encroaching, intermeddling into the Plaintiff's land parcels Land Reference Numbers 8784/109, 8784/110, 8784/111 and 8784/112 each measuring five (5) acres and are situated in Mavoko Municipality in Machakos County and or in any other way interfering therewith.
5. Kshs. 1,000,000/= General damages for trespass.
6. No order as to costs as the suit was undefended.

It is so ordered.

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

N.A. MATHEKA

JUDGE

