



Criticos & another v Third Engineering Bureau of China City Construction Group Company Limited; Masamo (Third party) (Environment and Land Case 8 of 2024) [2026] KEELC 1120 (KLR) (Environment and Land) (26 February 2026) (Judgment)

Neutral citation: [2026] KEELC 1120 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
ENVIRONMENT AND LAND
ENVIRONMENT AND LAND CASE 8 OF 2024
EK WABWOTO, J
FEBRUARY 26, 2026**

BETWEEN

HON BASIL CRITICOS 1ST PLAINTIFF

KENYA TRADE AND DEVELOPMENT COMPANY LIMITED .. 2ND PLAINTIFF

AND

THE THIRD ENGINEERING BUREAU OF CHINA CITY CONSTRUCTION GROUP COMPANY LIMITED DEFENDANT

AND

ANDREW JUMAMOSI MASAMO THIRD PARTY

JUDGMENT

1. The Plaintiffs seeks the following reliefs in their amended plaint dated 8th February 2024:-
 1. A permanent injunction restraining the Defendant from occupying, mining or otherwise interfering with the property known as Land Reference Number 10287/4.
 2. A permanent injunction do issue restraining the Defendant from blocking, fettering or interfering with the free and unconditional access by the Plaintiff to his property known as Land Reference Number 10287/4.
 3. A declaration that the Defendant has trespassed on the Plaintiffs' property Land Reference Number 10287/4.
 4. An order that the Defendant should hand over vacant possession of Land Reference Number 10287/4 to the Plaintiff with immediate effect.



5.
 - (a) General damages for trespass.
 - (b) Special damages of Kshs. 19,320,000.
6. Costs of the suit.
7. Interest on 5(a) and 5(b) at Court rates from the date of filing suit until payment in full.
2. The suit was contested by the Defendant and the Third Party who filed their respective pleadings.

The Plaintiffs' case

3. It was the Plaintiffs' case that the 1st Plaintiff was at all times the registered owner of the property known as L.R Number 10287/4, measuring approximately 410.6 ha and situated within Taita Taveta County.
4. The 2nd Plaintiff became the duly registered owner of the suit property L.R No. 10287/4 on 13th October 2020 or thereabouts following a transfer of the suit property by the 1st Plaintiff, who is a director of the 2nd Plaintiff, to the 2nd Plaintiff, the current registered owner of the suit property.
5. On or about 16th December 2013, the Defendant was awarded a tender to upgrade the Mwatate Taveta Road (100 kilometres) over a construction period of 36 months. The Defendant signed the Tender on 31st December 2014.
6. It was averred that on 25th April 2014, the 1st Plaintiff while visiting the suit property found that the Defendant had trespassed on a portion of the suit property. Particulars of trespass against the Defendant were pleaded at paragraph 5 of the amended plaint.
7. It was further averred that the arbitrary and unauthorized occupation of the said portion of the suit property by the Defendant and the mining of ballast and murrum from the said portion of the suit property without compensation was illegal. Particulars of which were pleaded at paragraph 6 of the amended plaint.
8. It was also averred that the illegal trespass and occupation and use of the said portion of the Plaintiffs suit property by the Defendant is wrongful and the Plaintiffs continue to suffer extreme prejudice, loss and damage by reason of the illegal and/or wrongful actions of trespass by the Defendant particulars which were pleaded at paragraph 7 of the Amended Plaint.
9. It was also the Plaintiffs case that the Defendant has since vacated the suit property but the consequences, injury and or damage to the suit property resulting from the Defendant's trespass and extensive excavators of road construction materials therefrom remain to date and have immensely scarred the suit property.
10. During trial two witnesses testified in support of the Plaintiffs case. Geoffrey Kiprotich Koros testified as PW1 and Basil Criticos testified as PW2.
11. Geoffrey Kiprotich Koros a Valuer relied on his report dated 21st March 2023 which was produced in his evidence in chief. It was his testimony that he received instructions from Kennedy Kebasu and was expected to advice on the market value for L.R No. 10287/4 on the portion that was excavated. The extend of excavation was about 20 acres. The volume of excavated material was equivalent to 24,000 tonnes. The value was estimated as Kshs. 19,320,000/=.



12. On cross-examination by Counsel for the Defendant, he stated that they conducted an official search from the Land Registry and it was confirmed that the property belongs to the 2nd Plaintiff. He also stated that the property is in Cessi area.
13. On cross-examination by Counsel for the Third Party, he stated that his instructions did not emanate from the Plaintiffs. he also stated that he visited the property on 17th March 2023. The quantity of the murrum that was excavated was about 24,000 tonnes. He did not have a weighing scale. He is not a quantity surveyor and that the value was quantified as Kshs. 19,320,000/=
14. When re-examined, he stated that the excavated portion fell on portion 10287/4 and he had visited the site. He also stated that he was not given any evidence of the purported sale to Settlement Fund Trustee.
15. Basil Criticos who testified as PW2 adopted and relied on his witness statement dated 14th February 2025 in his evidence in chief together with the Plaintiffs bundle of documents save for the photos therein. He also relied on the Plaintiffs supplementary list of documents dated 17th February 2025.
16. It was his testimony that Kennedy Kebasu who was their surveyor was instructed to engage a Valuer. He also stated that excavation was indeed undertaken and the excavated portion of the land does not belong to the 3rd Party.
17. When cross-examined by Counsel for the Defendant, he stated that the Defendant excavated on his land. He had not seen the title of the Third party herein. There were Chinese who were excavated the land. There is no court order cancelling the Third Party's title. He did not sell the land to anybody.
18. He also stated that he was the initial owner of the property before the same was transferred to the 2nd Plaintiff. He had not produced any evidence of payment of duty. He also stated that he had not produced any surveyor's report because it was not necessary.
19. When re-examined, he stated that the Third Party is only claiming the excavated portion. The leases by the Third Party does not relate to the suit property. They refer to a property located at Timbila and the suit property is not in Timbila. The excavated area is not the area claimed by the Third Party. His land ceased to exist even through he has a copy of the original title. He also stated that the existence of the Third Party's title does not nullify his ownership to the property.

The Defendant's case

20. The Defendant filed a Statement of Defence dated 13th May 2024. It was the Defendant's case that contrary to the Plaintiffs averments, the suit property L.R No. 10287/4 had been sold or transferred to the Settlement Fund Trustee by the 1st Plaintiff herein in 1990 alongside property 10287/1 as was confirmed by the Land Adjudication and Settlement Officer, Taveta Sub County.
21. It was averred that the property L.R No. 10287/4 was amalgamated with L.R No. 10287/1 to form Lake Jipe Settlement Scheme. In exchange of the suit property the 1st Plaintiff was compensated with a portion of L.R No. 24890 measuring 365.335Ha.
22. The Defendant denied any trespass to the suit property and averred that it was awarded a tender for the upgrade of Mwatate Taveta Road A23 which works were undertaken and completed. The Defendant also denied excavating the portion of the Plaintiffs property.
23. It was further stated that following the award of tender the Defendant scouted for and identified a suitable quarry site at Kidongo Hill adjacent to Ziwani road, Timbila Location, Ndilidau Sub-Location, Timbila "B" Village: engaged the occupants of the land and further attempted to undertake a search over the same.



24. The Defendant was however informed by the Taveta District Lands Registry that the parcels it had identified were unadjudicated Trust land. This prompted the Defendant to seek clarification from the Land Officer, Taveta Sub-County and from the Chief for Timbila Location as to the lawful occupants of the said parcels. Vide a letter dated 19th March 2014, the Deputy County Commissioner, Taveta Sub County duly confirmed that the said land was indeed unadjudicated trust land and that the lawful occupants thereof were:-
- i. Josephat Mwaka Kithokoi – ID No. XXXX.
 - ii. John Wambua Matheka – ID No. XXXX.
 - iii. Mary Wanza Makulu – ID No. 7053256.
25. Upon further enquiry, the Land Adjudication and Settlement Office for Taveta Sub County vide their letter dated 19th March 2014 did confirm the portion, location and ownership of property occupied by the aforementioned individuals and further confirmed that the Defendant could engage with the said lawful occupants directly for the purposes of any commercial engagements such as the leasing of the land for quarrying purposes.
26. Further vide a letter dated 26th April 2014, the Assistant Chief, Ndilidau Sub-Location also confirmed that the parcel of land scouted by the Defendant was unregistered trust land under lawful occupation by the aforementioned individuals.
27. Having confirmed the ownership and occupation of the portion of the property to be utilized as a quarry site, the Defendant herein engaged the confirmed owners and entered into lease agreements for their respective portions, which agreements authorized the Defendant to utilize the premises as quarry, crusher, asphalt and mixing plants, with the Defendant having the right to collect unlimited materials throughout the term of the lease. The Defendant further averred that the Lessors were duly compensated as provided in the Lease Agreements.
28. Thereafter, the Ministry of Lands through the Land Adjudication office, via a Notice dated 24th March 2015 and issued to all relevant offices, declared the Challa/Njukini Adjudication Section as provided under Section 5 of the *Land Adjudication Act*, with the boundaries thereof being outlined. The declaration further invited any persons asserting any rights or interests on the said property to register the same with the recording officer at Taveta District headquarters on or before 25th July 2015.
29. Following the declaration, the Land Adjudication and Settlement Office in Taveta issued a Notice of Completion of Adjudication dated 8th March 2017, which further invited objections to the register within the statutory sixty (60) days. Upon the resolution of all disputes arising from the adjudication process, the Director of Land Adjudication & Settlement issued a Certificate of Finality dated 7th June 2017, in compliance with Section 26(A) of the *Land Adjudication Act*. In further compliance with Section 28 of the *Land Adjudication Act*, the Land Registrar caused registrations to be effected in accordance with the adjudication register. Consequently, Title Deeds for the portions of property utilized as a quarry site, were issued to their respective owners.
30. It was pleaded that pursuant to a lease agreement between the Defendant and Andrew Jumamosi Masamo, the Third Party herein, the Third Party offered and the Defendant accepted to lease property known as Title No. Taveta/Lake Jipe/780 for a period of 5 years. The purpose of the lease was to use the property as a construction yard.
31. It was stated that if the Defendant had any presence in the general area then such presence was lawful and was pursuant to the aforementioned lease agreements over Title Number Taveta/Lake Jipe/780



dated 15th February 2014 and the Lease Agreement executed between the Defendant and Josphat Mwaka Kithoki, John Wambua Mateka and Mary Wanza Makulu.

32. It was the Defendant's case that before it occupied Title Number TAVETA LAKE JIPE/780 it conducted necessary due diligence and there was confirmation vide a letter dated 15th May 2014 to the effect that Taveta/Lake JIPE/780 was initially part of Land Reference Number 10287/4 which initially belonged to the 1st Plaintiff who had since sold the same to the Settlement Fund Trustee in 1990 alongside another parcel of land known as Land Reference Number 10287/7. The two parcels were then joined together to make the Lake Jipe Settlement Scheme which was adjudicated and allocated to numerous persons.
33. The Defendant reiterated that it did not and has never trespassed on the Plaintiff's property as alleged and that its entry into and any activities thereon was with the authorization and consent of all legal owners of the properties.
34. The Defendant denied ever being in occupation of the Plaintiffs property as alleged. It was stated that upon execution of the tender awarded by KeNHA, it proceeded to exit/vacate the leased premises with the properties being handed to their legal owners.
35. It was averred that upon completion of the tender works, it prepared and submitted the decommissioning plans to NEMA and was thereafter cleared as having been compliant with statutory Environmental Requirements on 21st April 2017.
36. During trial, Rose Wanjiru testifying as DW1. She adopted and relied on her written statement dated 16th February 2023 and also the Defendant's bundle of documents in her evidence in chief.
37. It was her testimony that the Defendant was contracted to do Mwatate Holili Road. They did due diligence to confirm ownership of the property and it was confirmed that the land belongs to the Third Party. A lease agreement was done upon which a copy of the title was also provided. Subsequently thereafter excavation of murrum was undertaken.
38. It was also her testimony that when undertaking due diligence, they got a letter from the Ministry of Lands who confirmed that the land belonged to the Third Party Jumamosi Masamo. The Ministry had also stated that the land was sold to the Settlement Fund Trustee by the 1st Plaintiff and hence the Plaintiffs referenced property did not exist.
39. When cross-examined by Counsel for the Plaintiffs, she stated that she knows Hamisi Mike Banton from 2014 but has never worked with him. She also stated that she was the one who scouted for the property. The same was also identified by the area Chief and the Defendant never excavated murrum from the Plaintiffs land. The property referred to by the Plaintiffs in the other valuation report was unknown to her.
40. On further cross-examination, she stated that they had lease agreement for the harvesting of the soil but could not remember the specific parcel number. She also stated that the area was in Cessi Area and that the 1st Plaintiff complained to them that the land was his.
41. When re-examined, she stated that the 1st Plaintiff never complained of harvesting of soil. The lease agreement for back filling was not applicable on all the sites. The valuation report does not clearly show the excavated portion. The Third Party came with an original title to prove his ownership.
42. Josphat Mwaka Kithokoi testified as DW2. He adopted and relied on his witness statement dated 25th May 2024 in his evidence in chief.



43. It was his testimony that he had a lease agreement with the Defendant. He has stayed in the land from 1971. He had allowed the Defendant to excavate his land for about 4 years. Initially he did not have title to the same but the same was acquired late. He was not aware if the same had been sold to the Settlement Fund Trustees.
44. Philomen Kibet Mutai, Assistant Director Land Adjudication and Settlement testified as DW3.
45. It was his testimony that the letter dated 19th March 2014 came from his office. The suit property falls in an area which was adjudicated and titled. According to him suit Parcel No. 10287/4 does not exist in their records. The same is not visible in the map that was produced in court.
46. When cross-examined, he stated that he had not seen any documents relating to swapping of the land. The Third Party is not known to him. He could not confirm whether the 1st Plaintiff was the previous owner of the suit parcel. Property number 10287/4 does not exist. He has not seen the original titles from the Plaintiffs.

The Third Party's case

47. The Third Party filed a Statement of Defence dated 3rd February 2020.
48. It was pleaded that the 1st Plaintiff ceased to be the owner of Land Parcel known as L.R No. 10287 in 1990 when he sold off his interest to the said land to the Settlement Fund Trustee.
49. Land Parcel No. 10287/1 and 10287/4 were joined together by the Ministry of Lands through the adjudication and settlement office to form Lake Jipe Settlement Scheme.
50. it was averred that Land Parcel No. 10287/4 was given out as compensation by the 1st Plaintiff for a portion of L.R No. 24890 measuring 365.335Ha which was set aside as a Wild Life corridor passing through Lake Jipe Settlement Scheme and this was done after a request by the Kenya Wildlife Services was agreed upon with the stakeholders being the 1st Plaintiff and the Settlement Fund Trustee.
51. It was further averred that he was moved from the area meant for the wildlife passage corridor and allocated with Title Deed No. Taveta/Lake Jipe/780 from the former L.R No. 10287/4.
52. Land Parcels No. 10287/4 ceased to exist in the year 1990 and the Defendant had been duly authorized to use his property known as Taveta/Lake Jipe/780.
53. During trial, Andrew Jumamosi Masomo testified as the sole witness on behalf of the Third Party. He adopted and relied on his witness statement together with the Third Party bundle of documents in his evidence in chief.
54. When cross-examined, he stated that the Plaintiffs are aware that he has title to the land. His title is not fake. He had allowed the Defendant to come to his land. He is not currently staying on property 780 but there are other people on the said land.

The Plaintiffs submissions

55. The Plaintiffs filed written submissions dated 28th September 2025. The Plaintiff submitted on the singular issue being whether they have established a case of trespass by the Defendant on their suit property to the required degree of proof as a foundation of the reliefs sought.
56. It was submitted that the Defendant trespassed on their land without their permission and illegally harvested ballast/murram soil therefrom. L.R No. 10287/4 was originally owned by the 1st Plaintiff then transferred to the 2nd Plaintiff a Certificate of Title dated 21st September 2017 was produced in



- evidence and that neither the Defendant nor the Third Party had produced any documentary evidence to prove ownership to L.R No. 10287/4 and also no evidence was produced to show that the 1st Plaintiff sold the land to the Settlement Fund Trustees or exchanged the same with another parcel.
57. It was also submitted that Philemon Kibet Mutai, Assistant Director Land Adjudication and Settlement failed to produce any instrument of surrender of the suit property nor sale of the same to the Settlement Fund Trustees.
58. It was also submitted that the issue as to whether the said property was sold to the Settlement Fund Trustee is also a live matter in VOI ELC Case No. 3 of 2024 Basil Criticos =Versus= AIC Makutano & Others.
59. It was further submitted that the Plaintiffs witness Mr. Geoffrey Koros produced a valuation report showing the ruinous state of the suit property with ballast (murrum) soil lang gone after excavators by the Defendant in 2014. The said excavations on the suit property was quantified at Kshs. 19,320,000/=
60. It was further submitted that this property is within Cessi area and not Kedong, Timbila or Challa. The Defendant had admitted being on the suit property courtesy of the permission of the Third Party to construct a site office on one portion thereof.
61. Citing the cases of David Kimuyun Koskei =Versus= Benjamin Tuwei & Another (2019) eKLR and Rhoda S. Kiilu =Versus= Jiayi Water and Hudropower Construction Kenya Limited (2019) eKLR, it was submitted that the court should award the sum of Kshs. 10,000,000/= as general damages and a further sum of Kshs. 19,320,000/= as special damages, together with a declaratory order on the Defendant's trespass to land, orders of permanent injunction and costs of the suit.

The Defendant's submissions

62. The Defendant filed written submissions dated 21st January 2026. Counsel submitted on the following issues:-
- i. Whether the Plaintiffs proved ownership of the land allegedly trespassed upon.
 - ii. Whether the Defendant trespassed upon the Plaintiff's land.
63. It was submitted that a claim for trespass necessarily requires that the Plaintiff be in possession or have proprietary rights over the land. Placing reliance on the case of Mwangi =Versus= Njaria (Civil Suit E015 of 2021 (2022) KEELC 13567 (KLR) (19th October 2022) Judgment it was submitted that for a Plaintiff to sustain a trespass claim, they must establish legal ownership and possession of the suit land since the issue of trespass can only succeed if ownership of the land is proved.
64. It was submitted that the Defendant denied ownership of L.R No. 10287/4 by the Plaintiff and During trial evidence was tendered showing that land was sold to the Settlement Fund Trustee in 1990 and was thereafter amalgamated and adjudicated. Facts of which was confirmed by the Land Adjudication and Settlement Office whose letters were relied upon by the Defendant During due diligence and remain uncontroverted. The alleged transfer of LR No. 10287/4 to the 2nd Plaintiff is in capable of conferring title over land that had already vested in the Settlement Fund Trustee and subsequently adjudicated and in the absence of proof of ownership the Plaintiffs cannot sustain a trespass claim.
65. The Defendant urged the court to take note of the following facts; that the admission by the Plaintiffs and existence of proceedings in Voi ELCLC No. 3 of 2024 BASIL CRITICOS =v= AIC MAKUTANO & 66 OTHERS in which suit the Plaintiffs seek among others orders for cancellation of titles issued to the Defendants therein emanating from parcel L.R. No. 10287/4 or in the alternative



compensation in the sum of Kshs. 320,000,000/= and as such the existence of the subject suit buttresses the uncontroverted evidence of the non-existence of property L.R No. 10287/4 following its sale to the Settlement Fund Trustee as confirmed from the Land Adjudication office and that the filing of the suit Voi ELCLC No. 3 of 2024 is an irredeemable admission by the Plaintiff that a competing interest over whether the parcel previously known as L.R No. 10287/4 actually exist is pending judicial determination before this court and hence the filing of a claim of trespass which could only lie upon a judicial determination as to whether the very parcel exists and who owns it is untenable and further as at the time of filing the said suit, the Plaintiffs herein acknowledged the subdivision of the suit property L.R 10287/4 and the issuance of titles to other 3rd Parties.

66. The Defendant also invited the court to take note that the transfer of L.R No. 10287/4 to the 2nd Plaintiff on 13th October 2020 meant that the original parcel ceased to exist and the same is incapable of conferring any proprietary interest upon the 2nd Plaintiff.
67. Citing the case of Frank Logistics Limited =Versus= Golden Lion Real Estate Company & 6 Others (Civil Appeal E303 of 2024) (2025) KECA 1471 (KLR) (12 September 2025) and the doctrine of his pendens, it was submitted that the purported transfer from the 1st Plaintiff to 2nd Plaintiff offends the same and it goes to the root of the Plaintiffs' claim, disentitling them to any relief founded on ownership including the claim of trespass and compensation.
68. As to whether the Defendant trespassed upon the Plaintiffs' land. It was submitted that the Defendant never entered, occupied or interfered with the purported parcel of land known as L.R No. 10287/4 as alleged by the Plaintiffs.
69. The Defendant occupied Title No. Taveta/Lake JIPE/780 which is separate and distinct from 10287/4. According to the Defendant the same had been leased from the Third Party who was the registered proprietor.
70. The Court was urged to dismiss the suit with costs.

The Third party's submissions

71. The Third party never filed any written submissions despite being granted time to comply. That notwithstanding this court is still bound to consider the Third party's pleadings and the oral and documentary evidence tendered in rendering its judgment.

Analysis and Determination

72. Having considered the pleadings filed herein, oral and documentary evidence tendered by all the parties herein together with the written submissions filed by the Plaintiffs and the Defendant, the following issues arise for determination: -
 - i. Whether the Plaintiffs have proved ownership of L.R No. 10287/4 to the required standard.
 - ii. Whether the Plaintiffs have proved trespass over the suit parcel by the Defendant to the required standard.
 - iii. Whether the Plaintiffs are entitled to the reliefs sought.
73. It is trite law that he who alleges must prove. This is set out under Section 107(1)(2) of the *Evidence Act*, which provides as follows:

“



“(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”

Sections 109 and 112 of the same Act states;

“109. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

“112. In civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving that fact is upon him.”

74. In discussing the standard of proof in civil liability claims in this jurisdiction, the Court of Appeal in *Mumbi M'Nabea v David M. Wachira* [2016] eKLR stated as follows:

“In our jurisdiction, the standard of proof in civil liability claims is that of the balance of probabilities. This means that the Court will assess the oral, documentary and real evidence advanced by each party and decide which case is more probable. To put it another way, on the evidence, which occurrence of the event was more likely to happen than not.

...The position was re-affirmed by the Court of Appeal in *Maria Ciabaitaru M'mairanyi & Others v Blue Shield Insurance Company Limited -Civil Appeal No. 101 of 2000* [2005] 1 EA 280 where it was held that:

“Whereas under section 107 of the *Evidence Act*, (which deals with the evidentiary burden of proof), the burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue, section 109 of the same Act recognizes that the burden of proof as to any particular fact may be cast on the person who wishes the Court to believe in its existence.”

75. With respect to the burden of proof, the learned Judges of Appeal in the case of *Palace Investments Limited v Geoffrey Kariuki Mwenda & another* [2015] eKLR, posited thus:

“Denning J, in *Miller v Minister of Pensions* [1947] 2 All ER 372 discussing the burden of proof had this to say; -

“That degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that a tribunal can say: we think it more probable than not; the burden is discharged, but, if the probabilities are equal it is not.

This, burden on a balance or preponderance of probabilities means a win however narrow. A draw is not enough. So, in any case in which the tribunal cannot decide one way or the other which evidence to accept where both parties...are equally (un) convincing, the party bearing the burden of proof will lose because the requisite standard will not have been attained.”

76. It was the Plaintiffs case that the 1st Plaintiff was initially the owner of LR No. 10287/4 measuring approximately 410.6Ha being the suit property as at time of filing suit. Later the same was transferred to the 2nd Plaintiff on 13th October 2020 who is its current owner.



77. It was also the Plaintiffs case that on 25th April 2014 while visiting the suit property, the 1st Plaintiff discovered that the Defendant had trespassed on a portion thereof and was excavating ballast/murram/soil therefrom without permission of the 1st Plaintiff as the then registered owner of the suit property. The Defendant had erected a site office on another portion of the said suit property without permission of the Plaintiffs. As a result of the said action the Plaintiffs have suffered loss and damages. The quantified loss for Defendant's illegal excavations on the suit property was Kshs. 19,320,000.
78. The Defendant on the other hand denied the Plaintiffs ownership of the suit property by maintaining that it did carry out murram excavation from property known as Taveta/Lake JIPE/780 which was lawfully leased from the Third Party who was its registered owner.
79. The Third Party's case on the other hand was that he was the registered owner of Taveta/Lake JIPE/780 upon which he had entered into a lease agreement with the Defendant and permitted him to undertake the murram excavation.
80. While a certificate of title is prima facie proof of ownership, it is noteworthy that where it is challenged, then the burden lies on its owner to proof ownership of the same.
81. The Plaintiffs in proving ownership of LR No. 10287/4 During trial, produced a certificate of title dated 21st September 2017 while the Defendant and the Third Party produced a certificate of title dated 11th November 2011 in respect to Taveta/Lake JIPE/780 and a lease agreement for the extraction of the murram from the said parcel.
82. While the 1st Plaintiff Basil Criticos maintained that the suit property is currently in existence and the same belongs to the 2nd Plaintiff, the Defendant's witness Rose Wanjiku Ndururu and Josephat Mwaka Kithokoi together with the Third Party Andrew Jumamosi Masomo tendered evidence to the effect that the same is non-existent.
83. In the circumstances the testimony of DW3 Philemon Kibet Mutai the Assistant Director Land Adjudication and Settlement Officer, Taveta Subcounty is crucial as to ascertaining the current ownership of the same, considering that his office is deemed to have the previous records and dealings in respect to the suit parcel.
84. According to DW3, it was his testimony that LR No. 10287/4 does not exist according to the records in his office and he even doubted whether the Plaintiffs could still claim to have the original titles in respect to the same.
85. He also made reference to a series of letters including the letter dated 16th May 2014 from his predecessor which confirmed that parcel No. 10287/4 which initially belonged to the 1st Plaintiff ceased to exist as at 1990 when the same was sold to the Settlement Fund trustee even though he could not confirm whether any payment was indeed made to the 1st Plaintiff. He subsequently confirmed that property known as Taveta/Lake Jipe/780 belonged to Andrew Jumamosi Masomo the Third Party herein.
86. From the evidence that was tendered, it was clear that there was existence of suit Voi ELCLC No. 3 of 2024 Basil Criticos =Versus= AIC Makutano & 66 Others where the Plaintiffs have admitted the existence of other titles resulting from L.R No. 10287/4 which have been issued to other third parties upon which they are seeking cancellation of the same or in the alternative compensation in the sum of Kshs. 320,000,000/=
87. In the circumstances it is the finding of this court that the Plaintiffs have not proved ownership of L.R No. 10287/4 to the required standard.



88. As to whether the Defendant trespassed to the suit property known as L.R No. 10287/4, it is noteworthy that trespass refers to unjustified entry into the private land of another. See Section 3(3) of the *Trespass Act*. To prove trespass, one has to show he had immediate exclusive possession of the suit property before the acts by the defendants. Trespass is actionable per se. See *M'ikiara M'rinkanya & another -v- Gilbert Kabere M'mbijiwe & another* [2014] eKLR.
89. Trespass is a tort of violation or an act or omission that interferes with, disturbance a person's right, used or enjoyed in connection with the land. In Halsbury's Laws of England 4th Edition Vol. 45 para 26 1503, it is stated that if the plaintiff proves the trespass and actual damage, he is entitled to receive damages as well compensate him for his loss and when the defendant has made use of the plaintiff's land, the plaintiff should get damages reasonable for the use of that land and lastly, where there is an oppressive, arbitrary and unconstitutional trespass or the defendant cynically disregard the right of the plaintiff in the land with the object of making gain by his unlawful conduct, damages may be awarded.
90. In the instant case, the evidence tendered During trial, was to the effect that the Defendant operated on two parcels of land which were Taveta/Lake JIPE/780 that was leased from Andrew Jumamosi Masomo its registered proprietor and the same consent and access was granted vide a lease dated 15th February 2014 which was produced in evidence. The other land was leased from Josphat Mwaka Kithokoi who equally testified as DW2 and confirmed being its lawfully owner.
91. In view of the foregoing and considering that the court has already made a finding that the Plaintiffs have not proved their absolute ownership of the suit property to the required standard, the Plaintiffs claim of trespass by the Defendant cannot be sustained and the same fails.
92. As to whether the Plaintiffs are entitled to the reliefs sought, it is worth noting that the Plaintiffs sought for various reliefs as enumerated in their plaint, however the court has found that the Plaintiffs claim of trespass by the Defendant remains unproved and hence therefore they have failed to prove their case to the required standard and the court is unable to grant the reliefs sought.
93. In respect to costs, as a general rule, costs follow the event unless the court for good reasons orders otherwise. In the circumstances, the Plaintiffs shall bear costs of the suit.

Final orders

94. In conclusion, I have found as above that the Plaintiffs have not laid basis for the grant of the reliefs sought in their amended Plaint. Consequently, the Plaintiffs have failed to prove their case to the required standard and their suit is hereby dismissed with costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI THIS 26TH DAY OF FEBRUARY 2026.

E. K. WABWOTO

JUDGE

In the presence of:-

Mr. Obok for the Plaintiffs.

Ms. Kiiru for the Defendant.

N/A for the Third Party.

Court Assistant: Mary Ngoira.

