



**Jotham v Kaburu (Environmental and Land Originating Summons  
E001 of 2023) [2026] KEELC 1136 (KLR) (23 February 2026) (Judgment)**

Neutral citation: [2026] KEELC 1136 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT CHUKA  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E001 OF 2023  
BM EBOSO, J  
FEBRUARY 23, 2026**

**BETWEEN**

**FRANCIS IRERI JOTHAM ..... APPLICANT**

**AND**

**PATRICIA MUTHONI KABURU ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. Some of the key issues to be determined in this judgment are: (i) Whether Francis Ireri Jotham (the plaintiff) has acquired ownership of a portion measuring 1.85 acres out of land parcel number Kiera/East Magutuni/144 (referred to in this judgment as “the suit land”) through adverse possession; and (ii) Whether the plaintiff is a trespasser on the said portion of land, who forcefully annexed the portion by erecting a masonry wall around it in 2021.
2. The suit land measures approximately 3.7 acres (1.5 hectares) and is part of a bigger parcel of land that belonged to the plaintiff’s grandfather, the late Jotham Murianki. The plaintiff is a nephew to the defendant in the context that the plaintiff’s mother (the late Charity Cirindi Jotham) and the defendant’s deceased husband (the late Victor D.P Muuru Kaburu Jotham) were siblings. The two siblings were children of the late Jotham Murianki.
3. Both land parcel number Kiera/East Magutuni/144 (the suit land) and land parcel number Kiera/East Magutuni/2173 (an abutting parcel) were sub-divisions out of the bigger parcel that belonged to the late Jotham Murianki. It was contended in this suit that the two parcels devolved to two sons of the late Murianki (the late Victor Kaburu and the late Richard Meme) through the same grant under the *Law of Succession Act*. The late Meme subsequently conveyed his portion, land parcel number Kiera/East Magutuni/2173, to their nephew, the plaintiff herein. Before I analyse and dispose the issues that fall for determination, I will outline the parties’ respective cases, evidence and submissions.



### **Plaintiff's Case and Evidence**

4. The plaintiff initiated his claim through an originating summons dated 21/8/2023. The originating summons was supported by his affidavit of even date. In addition, the plaintiff signed and filed a witness statement dated 20/3/2024, which he adopted as part of his sworn evidence-in-chief during trial. He led evidence by five witnesses. In summary, the plaintiff's case was that he was born on the suit land in 1965. He had lived on the suit land since then. He became an adverse possessor of the suit land in 1980.
5. The plaintiff stated that the defendant was a widow of his maternal uncle, the late Victor Muuru Kaburu Jotham, who previously owned the suit land. Victor Kaburu was registered as proprietor of the suit land in 1996. He stated in his affidavit that he built a permanent dwelling house on the suit land in 1990. In 2021, there was a clan elder's meeting during which it was agreed that he was to take 1.85 acres out of the suit land. He thereafter erected a masonry perimeter wall annexing the 1.85 acre portion.
6. During cross-examination, he stated that he initially lived in his late grandfather's house on the suit land. He got married while living in his grandfather's house. He demolished his grandfather's house in 2021. His grandfather lived on the land and died on the land in 1989 while his grandmother who also lived on the suit land died in 2011. Victor Kaburu built a house on the suit land in 2009.
7. The plaintiff further stated during cross-examination that there was a succession dispute between him and the defendant over the suit land. He added that he purchased Kiera/East Magutuni/2173 from his uncle, the late Richard Meme Jotham in 1998 at KShs 550,000. The late Richard Meme died in 2020. He erected a perimeter wall on the 1.85 acre portion after the defendant uprooted his tobacco in 2021.

### **Defendant's Defence, Counterclaim and Evidence**

8. The defendant filed a defence dated 20/12/2023 and a counterclaim of even date. She filed a witness statement dated 20/12/2023, which she adopted as part of her sworn evidence-in-chief. She led evidence by:
  - (i) Hilton Boori Karani (DW2);
  - (ii) Elias Kimathi (DW3); and Benson Gitonga Ncoroi (DW4). In summary, the defendant's case was that she was a widow of the late Victor DP Kaburu Jotham. She inherited the suit land in 2020 through Public Trustee Administration Cause No. 727 of 2016 – Estate of the Late Victor Dudley Periseus Muuru Kaburu Jotham alias Victor D.P Muuru Kaburu Jotham. The suit land was registered in her name on 31/8/2021.
9. It was the defendant's case that her late husband inherited the suit land from his father, Jotham Murianki, in 1996. The late Murianki was a maternal grandfather to the plaintiff. The late Murianki together with his late wife lived on the suit land. The plaintiff lived on the suit land with his two grandparents from childhood and continued to live on the suit land with his grandmother after the death of his grandfather. He lived on the suit land during his adulthood as a grandson and a nephew who was taking care of his grandmother. Upon the death of his grandmother in 2011, the plaintiff fully moved onto his abutting parcel of land, Kiera/East Magutuni/2173, which had been conveyed to him by his uncle, Richard Meme.
10. The defendant added that upon the death of the family matriarch in 2011, because she (the defendant) resided in Nairobi, the estate of the late Kaburu leased the suit land to several individuals, among them, one Elias Kimathi. On 28/1/2021, the plaintiff invaded the suit land in the company of hired goons and forcefully erected a masonry perimeter wall over a portion of the suit land. She reported the incident



- to the Area Chief who convened a meeting of village and clan elders. The meeting resolved that the plaintiff was a trespasser and directed him to vacate the suit land.
11. Following the plaintiff's failure to honour the elder's directive, she lodged a complaint at the DCI Headquarters and the DCI Chogoria was directed to conduct investigations. At that point, the plaintiff filed Chuka CMC Succession Cause No. E234 of 2021 seeking a revocation of the grant that had vested the suit land in the defendant. The DCI were unable to progress the matter because of the succession application which the plaintiff had filed at the Chuka Chief Magistrate Court. The said succession cause was struck out on 24/7/2023 for being incompetent.
  12. The defendant added that this originating summons was taken out solely to justify the plaintiff's illegal actions of invading her land in 2021. She stated that the plaintiff's stay on the suit land during the lifetime of her grandparents was that of a licensee because he was taking care of the family matriarch (his grandmother) who lived on the land up to the time of her demise in 2011. She urged the court to dismiss the plaintiff's claim.
  13. By way of counterclaim, the defendant faulted the plaintiff for forcefully invading the suit land in 2021, cutting down her trees and fencing off part of the suit land by erecting a masonry wall. She prayed for:
    - (i) an injunction restraining the plaintiff against trespassing onto the suit land;
    - (ii) an order decreeing eviction of the plaintiff from the suit land and destruction of any buildings or structures built on the suit land by the plaintiff;
    - (iii) general damages for trespass;
    - (iv) punitive and exemplary damages;
    - (v) compensation for destroyed crops, trees, houses and pipes;
    - (vi) costs of the suit and;
    - (vii) interest.
  14. In her evidence during trial, the defendant stated that the plaintiff had never been in adverse possession of the suit land, adding that the plaintiff's presence on the suit land was as a licensee because the plaintiff was taking care of his grandmother who was a mother to her late husband and a grandmother to the plaintiff and who resided on the suit land. She added that the only issue between them related to the boundary of the two abutting parcels which were surveyed under the same succession cause, adding that the plaintiff's house had encroached onto the suit land by about 2 metres.

#### **Plaintiff's Submissions.**

15. The plaintiff filed written submissions dated 25/7/2025 through M/s IC Mugo & Co Advocates. Counsel for the plaintiff identified the following as the six issues that fell for determination in the suit:
  - (i) Whether the plaintiff had met the threshold for acquiring land under the doctrine of adverse possession;
  - (ii) Whether on expiry of 12 years after the suit land was registered in the name of Victor Kaburu, the said Victor Kaburu held the suit land in trust for the benefit of the plaintiff;
  - (iii) Whether registration of the defendant as proprietor of the suit land on 31/8/2021 extinguished the plaintiff's overriding interest in the suit land in the nature of adverse possession;



- (iv) Whether the status of occupation and use of the suit land was compromised by the (alleged) meeting of elders chaired by a local chief where it was (allegedly) agreed that the plaintiff was to take 1.85 acres and the defendant was to take 2.15 acres;
  - (v) Whether the plaintiff should be registered as proprietor of the entire suit land or 1.85 acres as per the (alleged) compromise; and
  - (vi) Who should bear costs of this suit.
16. Citing Sections 7, 37 and 38 of the *Limitation of Actions Act*, counsel for the plaintiff submitted that it was the plaintiff's case that he was in occupation of the suit land even before the land was demarcated, adding that after demarcation, the plaintiff "fell on what was registered as LR Kiera/East Magutuni/144." Counsel argued that the plaintiff first built a small mud house which "graduated" into an "iron sheet roofed house". Counsel submitted that the plaintiff got married in 1996 while in the small house, adding that in the same year, Victor Kaburu was registered as proprietor of the suit land. Counsel further argued that subsequent to that, the plaintiff constructed a three-bedroomed stone and mortar house on the suit land, adding that the plaintiff raised his family on the suit land and had lived on the land for over 29 years.
17. Counsel further submitted that besides the dwelling house, the plaintiff constructed the following on the suit land:
- (i) chicken pen;
  - (ii) zero grazing cowshed;
  - (iii) pig pen;
  - (iv) outside kitchen; and
  - (v) pit latrine. Counsel added that the plaintiff carried out livestock farming and planted trees on the suit land for the period he occupied the land.
18. Counsel argued that there was no evidence on record to suggest that the plaintiff was given permission by the "original registered proprietor" to enter, occupy and use the suit land. Counsel submitted that the plaintiff was not a licensee. Counsel argued that time started running from 1996 when Victor Kaburu was registered as proprietor of the suit land, adding that Victor Kaburu's title to the suit land got extinguished in 2008 upon expiry of 12 years. Counsel contended that the defendant's counterclaim was the first attempt to stop or interrupt the plaintiff's occupation of the suit land, adding that Victor Kaburu's title got extinguished in 2008.
19. Counsel argued that the defendant's counterclaim was a demonstration that the defendant was on the suit land, adding that the plea for eviction and destruction orders and the plea for damages would not arise if the plaintiff wasn't on the suit land.
20. Terming the evidence of DW3 as contradictory, counsel submitted that even if DW3 was employed by the defendant as a caretaker of the suit land in 2011, the title of the late Victor Kaburu had already been extinguished way back in 2008 by operation of the law of adverse possession.
21. Citing the pronouncements of the Court of Appeal in *Mtana Lewa v Kahindi Ngala Mwangandi* (2015) eKLR and in *Wambugu v Njuguna* (1982) KLR 173, counsel argued that the plaintiff had satisfied the threshold of acquisition of title to land under the doctrine of adverse possession.



22. Reiterating his preceding observations about occupation of the suit land by the plaintiff, counsel submitted that Victor Kaburu's title to the suit land stood extinguished 12 years after he got registered as proprietor of the land in 1996, adding that he thereafter held the suit land in trust for the plaintiff.
23. Counsel added that the defendant's registration as proprietor of the suit land in 2021 did not extinguish the plaintiff's overriding interest in the land. Citing Section 7 of the *Limitation of Actions Act*, counsel submitted that the registration of the defendant as proprietor of the suit land was subject to a trust that crystalized when Victor Kaburu was still the proprietor of the suit land, adding that Victor Kaburu's title had already been extinguished by operation of the law of adverse possession. Counsel added that by the time the succession cause relating to the estate of the late Victor Kaburu was initiated, the said Victor Kaburu had already lost the suit land to the plaintiff under the doctrine of adverse possession. Counsel contended that change of the registered owner of the suit land did not extinguish the plaintiff's overriding interest in the suit land.
24. On whether the alleged 2021 meeting of the elder's compromised the status of the plaintiff's occupation and use of the suit land, counsel submitted that the alleged elder's determination was a win-win situation that took into account the fact that the plaintiff had occupied the suit land and was claiming ownership under adverse possession while the defendant was the widow of the deceased registered proprietor. Counsel argued that the perimeter wall followed the elder's determination, adding that a surveyor by the name Kinegeni Chabari shared out the suit land between the plaintiff and the defendant.
25. Counsel urged the court to grant the plaintiff orders of adverse possession and decree registration of the plaintiff as proprietor of 1.85 acres out of the suit land. Counsel further urged the court to award the plaintiff costs of the suit.

### **Defendant's Submissions**

26. The defendant filed written submissions dated 22/9/2025 through M/s Choka, Chelule Advocates. Counsel for the defendant identified the following as the three issues that fell for determination in the suit:
  - (i) Whether the plaintiff had proved his case to the required standard to entitle him to the orders of adverse possession over the defendant's property;
  - (ii) Whether the plaintiff trespassed onto the defendant's property on 28/1/2021 and whether orders of eviction should be issued; and
  - (iii) Whether the defendant should be awarded damages for the illegal occupation of the defendant's property from 28/1/2021.
27. Making reference to the plaintiff's affidavit sworn on 21/8/2023 in support of the originating summons and to the plaintiff's evidence during cross-examination, counsel submitted that the plaintiff deposed in his affidavit that he was born on the suit land and that he had lived on the suit land since birth. Counsel added that the defendant also stated in his evidence that he lived on the suit together with his grandmother and his maternal uncle (Victor Kaburu - the late husband to the defendant).
28. Counsel added that whereas the plaintiff deposed in his affidavit that he built a 3-bedroomed house on the suit land, during cross-examination, he admitted that he owned an abutting parcel of land, Kiera/ East Magutuni/2123 (sic). Counsel added that both the defendant and his wife (PW4 – Martha Karimi Ileri) admitted in their testimonies during cross-examination that, their 3-bedroom house stood on



parcel number 2123 (sic) and that the developments which the plaintiff had alluded to were all on parcel number 2123 (sic).

29. Citing the Court of Appeal pronouncement in *Wines & Spirits Kenya Limited & another v George Mwachiru Mwango* (2018) eKLR, counsel submitted that the plaintiff failed to establish a case of adverse possession. Counsel faulted the plaintiff for initially concealing the fact that he owned an abutting parcel of land and for failing to show the clear demarcation between his property and the suit land. Counsel argued that the photographs which the plaintiff relied on related to developments that were on his parcel of land, 2123 (sic).
30. Counsel added that in her evidence, the defendant only conceded that the plaintiff's house had encroached onto her land by 1 metre (sic), adding that this was an issue that could be "rectified through survey work" and that the defendant was willing to overlook this because parties owning the abutting parcels were relatives. Counsel argued that the encroachment did not entitle the plaintiff to orders of adverse possession over the defendant's land.
31. Counsel argued that the plaintiff's stay on the suit land from the date of birth up to the time he moved to his land was by consent because he was a son to the late Victor Kaburu's sister and he was taking care of his grandmother. Counsel added that the defendant and her late husband built a permanent house on the suit land, adding that the plaintiff assisted in the supervision of the construction works. Counsel submitted that the defendant led evidence to demonstrate that, at all material times, she leased the suit land to third parties.
32. On whether the plaintiff trespassed on the suit land, counsel submitted that the defendant enjoyed quiet possession of the suit land until 28/1/2021 when the plaintiff illegally invaded the suit land and illegally occupied part of it. Counsel added that the plaintiff admitted in his evidence that he erected a perimeter wall carving off 1.8 acres out of the defendant's land, adding that this happened after a surveyor established that the plaintiff's house had encroached onto the defendant's land by one metre.
33. Citing the decision of the High Court in *Duncan Nderitu Ndegwa v KPLC Ltd & another* (2013) eKLR, counsel submitted that as long as trespass has been proved, general damages are awardable. Counsel urged the court to assess and award general damages for trespass at Kshs 1,000,000/=.

### **Analysis and Determination**

34. I have considered the pleadings and the evidence tendered by the parties. I have also considered the relevant legal frameworks and the relevant jurisprudence. The following are the key issues that fall for determination in this suit:
  - (i) Whether the plaintiff (Francis Ireri Jotham) has acquired ownership of a portion measuring 1.85 acres out of land parcel number Kiera/East Magutuni/144 (the suit land) through adverse possession;
  - (ii) Whether the plaintiff is a trespasser on the suit land who forcefully annexed the said portion by erecting a masonry wall around it in 2021;
  - (iii) Whether the plaintiff is entitled to adverse possession orders as sought in the plaint;
  - (iv) Whether the defendant is entitled to the reliefs sought in the counterclaim; and
  - (v) What orders should be made regarding costs of the primary claim and the counterclaim? I will analyse and dispose the above issues sequentially in the above order.



35. Has the plaintiff acquired ownership of 1.85 acres out of the suit land through adverse possession? The common law doctrine of adverse possession has statutory underpinnings in Sections 7 and 17 of the Limitation of Actions Act which provide as follows:

“7. An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person”

“17. Subject to section 18 of this Act, at the expiration of the period prescribed by this Act for a person to bring an action to recover land (including a redemption action), the title of that person to the land is extinguished.”

36. The common law doctrine of adverse possession of land connotes possession which is inconsistent with and in denial of the title of the registered owner of the land. To establish adverse possession, the claimant must prove that he has had both the factual possession of the land and the requisite intention to possess the land [animus possidendi] for the prescribed and uninterrupted period of twelve years preceding the initiation of proceedings for the vesting order. He must also demonstrate that the registered proprietor had knowledge [or the actual or constructive means of knowing] that he [the claimant/adverse possessor] was in adverse possession of the land. Further, possession must be continuous; it must not be broken or interrupted.

37. The Rt Hon Sir Robert Megarry and Sir William Wade in their book “The Law of Real Property, Eighth Edition (Sweet & Maxwell), page 1465 – 1466 outline the essential elements of adverse possession as follows:

“For a squatter to prove that he had factual possession he must show that:

- i. He had an appropriate degree of physical control of the land;
- ii. His possession was a single possession: there can be a single possession by several squatters jointly, but not severally;
- iii. His possession was exclusive, a squatter cannot be in possession at the same time as a true owner; and
- iv. He dealt with the land in question as an occupying owner might have been expected to deal with it and no one else has done.”

38. The Court of Appeal defined adverse possession in *Mtana Lewa v Kahindi Ngala Mwangandi* [2015] eKLR as follows:

“adverse possession is essentially a situation where a person takes possession of land and asserts rights over it and the person having title to it omits or neglects to take action against such person in assertion of his title for a certain period, in Kenya is twelve (12) years. The process springs into action essentially by default or inaction of the owner. The essential prerequisites being that the possession of the adverse possessor is neither by force or stealth or under the licence of the owner. It must be adequate in continuity and in extent to show that possession is adverse to the title owner.”



39. The Court of Appeal outlined the following criteria for acquisition of title under the doctrine of adverse possession in *Wilson Kazungu Katana & 101 others v Salim Abdalla Bakshwein & another* [2015] eKLR:

“First, the parcel of land must be registered in the name of a person other than the applicant, the applicant must be in open and exclusive possession of that piece of land in an adverse manner to the title of the owner, lastly, he must have been in that occupation for a period in excess of twelve years having dispossessed the owner or there having been discontinuance of possession by the owner.”

40. In the present suit, the plaintiff contends that his title to the 1.85 acre portion of the suit land crystallized in 2008 and that the succession and the transmission relating to the estate of the late Victor Kaburu, which the Public Trustee carried out between 2016 and 2021, were subject to his title as an adverse possessor. While aware that the estate of the late Victor Kaburu was administered by the Public Trustee, and that the title he is challenging and alleging to have become extinguished was transmitted to the defendant by the Public Trustee in 2021, he elected not to sue the Public Trustee as a co-defendant in the suit. Having failed to challenge the title which the Public Trustee transmitted to the defendant, his challenge against the defendant’s title cannot succeed. To stand a chance of succeeding, he ought to have challenged the title which the Public Trustee transmitted to the defendant. By failing to sue the Public Trustee as a defendant, he failed to challenge the title which the Public Trustee transmitted to the defendant in 2021. I will now turn to the question as to whether the plaintiff established adverse possession in relation to the 1.85 acre portion.

41. The suit land is part of land that belonged to the plaintiff’s maternal grandfather, the late Jotham Murianki. The plaintiff’s grandfather and grandmother lived on the suit land. The plaintiff’s mother (Charity Cirindi Jotham) and the plaintiff’s two maternal uncles (Victor Kaburu and Richard Meme) were born and raised on the suit land. The two grandparents of the plaintiff died in 1989 and 2011 respectively while residing on the suit land and were buried on it. The plaintiff’s mother gave birth to him in 1965 while residing on the suit land. When she eventually got married, she left the plaintiff with his grandparents and uncles on the suit land. The plaintiff was raised by his grandparents and maternal uncles on the suit land. They allowed the plaintiff to build a mud grass thatched house on the suit land. They further allowed the plaintiff, who was a grandson and a nephew, to marry on the suit land.

42. DW1 tendered evidence to the effect that the plaintiff lived on the suit land as a nephew and as a grandson to their family matriarch who also lived on the suit land which was part of her late husband’s land. She testified that the plaintiff lived on the suit land because he was taking care of the family matriarch who died in 2011 and was buried on the suit land.

43. What clearly emerges from the above evidence is that the plaintiff was a close family member who was permitted to live on the suit land by dint of the close kinship that existed between him and his grandparents and his uncles. He was never a trespasser. He did not become an adverse possessor in 1980 as pleaded in the originating summons. He did not become an adverse possessor in 1996 as submitted by his advocate. He was a grandson and a nephew who was born and raised on the suit land. He resided on the suit land with his maternal grandparents and maternal uncles by dint of that kinship. He was permitted by his grandparents and by his uncles to be on the suit land.



44. Claims of adverse possession by close African relatives are not new in Kenya's courts. In Samuel Kihamba v Mary Mbaisi (2015) eKLR, the Court of Appeal outlined the law relating to adverse possession claims by close relatives as follows:

“Could the doctrine of adverse possession apply against the parties to the suit before the learned judge who were related by being mother and step-son? We think not. We...must state that it would create havoc for families and the society of Kenya generally if the principle of adverse possession applied within families against close relatives.”

45. Not too long ago, the Court of Appeal reiterated the above law in Nkoroi v Nyaga & 2 others (2023) KECA 1601 (KLR) as follows:

“In a claim for adverse possession involving close relatives such as this one, the court is mindful and takes judicial notice of the fact that in the African culture, it is not uncommon for people to accommodate their relatives on their land for a long period of time. The court has to determine if the registered proprietor of the land gave consent to their relative to take possession of the suit property, and if so, whether such consent was withdrawn, and if withdrawn, when. The party claiming adverse possession in such an instance bears the burden of proof to establish that such consent was withdrawn, and that they continued to inhabit the suit property beyond the requisite statutory period that entitles them to ownership by adverse possession.”

46. The plaintiff having been permitted to be on the suit land by virtue of being a grandson and a nephew who was born on the land, he cannot be said to have been an adverse possessor.

47. Thirdly, it emerged from the evidence of the plaintiff's wife (PW4) that the plaintiff was not truthful when he insisted that his house and the developments which he had exhibited through photographs stood on the suit land (parcel number 144). It emerged from his wife's evidence during cross examination that the permanent house and the exhibited developments were on parcel number Kiera/ East Magutuni/2173 which the plaintiff acquired from his late uncle, Richard Meme. The plaintiff's spouse (PW4) stated thus:

“The house sits on both 144 and 2173. Our gate is on parcel number 2173. The cowshed is also on parcel number 2173. Majority of the developments are on 2173. The mud house was on 144. Our house sits on both 144 and 2173.”

48. It emerged from the evidence on record that the defendant and her late husband were in possession of the suit land despite the fact that they worked and resided in Nairobi. The defendant's husband was buried on the suit land. The defendant and her late husband built a permanent house on the suit land and have been in possession of the land. The plaintiff's grandfather died and was buried on the suit land in 1989. The late Kaburu (the defendant's husband) died and was buried on the suit land in 2005. The plaintiff's grandmother died and was buried on the suit land in 2011. Clearly, there was no exclusive possession by the defendant.

49. The totality of the above evidence is that the plaintiff failed to prove that he was an adverse possessor who acquired ownership of the portion measuring 1.85 acres of the suit land through adverse possession. That is the finding of the court on the first issue.

50. Is the plaintiff a trespasser on the said portion? The evidence on record from both sides is that in 2021, the plaintiff erected a perimeter wall carving off a portion of the defendant's land. This attracted



protests from the defendant who sought assistance from the Area Chief and from the DCI. The plaintiff admitted erecting the wall in 2021 and contended that he did so pursuant to a resolution of the elder's meeting. No evidence of the alleged resolution was tendered. If the plaintiff had legitimate reasons to believe that he was entitled to the 1.85 acre portion, the proper thing to do was to ventilate his claim in a court of law. He elected to hire goons and forcibly annex the defendant's land by erecting a stone wall in 2021. That was trespass. That is the finding of the court.

51. In light of the court's findings on the first and second issues, it follows that the primary claim by the plaintiff fails. That is to say, the plaintiff is not entitled to the orders of adverse possession sought in the originating summons. For the same reasons, the defendant is entitled to prayers (a) and (b) of the counterclaim.
52. On the plea for general damages for trespass, no evidence was led to guide the court on proper quantum. The law on general damages relating to trespass to land is that, where trespass has been proved but no evidence has been tendered to guide the court on quantum, the court can properly award nominal damages. (See *Gitathiru Kariobangi Company Limited v James Gacheru Muriu & 9 Others HC Civil Suit No.1825 of 1999 (2014) eKLR*. Taking into account the size of the land which the plaintiff illegally annexed in 2021 and the locality of the suit land, the defendant will be awarded nominal damages assessed at Kshs 300,000.
53. No evidence was tendered to support the plea for punitive and exemplary damages. Similarly, no evidence was tendered to support the plea for compensatory damages, which in essence, are in the nature of special damages. Consequently, prayers (d) and (e) are rejected.
54. On costs, no special circumstances have been demonstrated to warrant a departure from the general principle in Section 27 of the *Civil Procedure Act*, to the effect that costs follow the event.

### **Disposal Orders**

55. In the end, the primary claim by the plaintiff and the counterclaim by the defendant are disposed as follows:
  - a. The primary claim by the plaintiff is dismissed for lack of merit.
  - b. The counterclaim by the defendant is allowed in the following terms:
    - i. An injunction is hereby issued restraining Francis Ileri Jotham against trespassing on land parcel number Kiera/East Magutuni/144.
    - ii. An order is hereby issued decreeing eviction of Francis Ileri Jotham and removal of his structures from land parcel number Kiera/East Magutuni/144.
    - iii. Francis Ileri Jotham is decreed to pay Patricia Muthoni Kaburu Kshs. 300,000 as nominal damages for trespass to land.
  - c. Francis Ileri Jotham shall bear costs of the primary suit and the counterclaim.
  - d. Interest shall accrue on general damages and on costs from the date of judgment and the date of taxation, respectively.
  - e. There shall be a stay of execution of order number (b) (ii) for 30 days to enable Francis Ileri Jotham to peacefully remove the stone wall and any other structures of his from the suit land.

**DATED, SIGNED AND DELIVERED AT CHUKA THIS 23RD DAY OF FEBRUARY, 2026.**

**B M EBOSO [MR]**



## **ELC JUDGE**

In the Presence of:

Mr. I.C Mugo for the Plaintiff

Mr. Chelule for the Defendant

Court Assistant – Nelly

