

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ELC NO. 36 [E032] OF 2021

JAMES TAPOYO-----**MUSA**
PLAINTIFF

VERSUS

SAMSON TAPOYO-----
1ST DEFENDANT
FREDRICK PKEMOI ANDIEMA-----**2ND**
DEFENDANT

JUDGMENT

1. The plaintiff, who is the registered owner of Land Title **No. West Pokot/Keringet "A"/3943**, hereinafter the suit property, filed this suit through a plaint dated **17/6/2021**. He seeks:
 - (a) **Eviction of the defendants from the suit property.**
 - (b) **Permanent injunction barring and restraining the defendants, their agents, servants, or employees from trespassing upon and or remaining on or continuing in occupation or ever re-entering the suit property.**
 - (c) **Kshs. 200,000/= for malicious property damage.**

(d) General and exemplary damages for trespass.

- 2.** The plaintiff contends that on or about **7/3/2018**, the 1st defendant intentionally, unlawfully and wrongfully entered and took possession of part of the suit land measuring approximately a quarter an acre, destroyed a barbed wire fence, he had put up on his property, replaced it without his own fence thereby breaching the boundaries of his land after which he annexed part of the land as if it belongs to him.
- 3.** The plaintiff avers that before this episode, the 1st and 2nd defendants had severally threatened to and or unlawfully entered into and took possession of part of his land measuring **1.27 acres**, and have since remained therein. Further, the plaintiff avers that on **7/6/2021**, the 2nd defendant again trespassed into his land, destroyed a fence, and also cut fifty kei apple trees without his consent or authority.
- 4.** The plaintiff avers that by virtue of the foregoing wrongful acts of trespass by the defendants, his right to own, use, possess, and enjoy the suit property has been interfered with and continues to be interfered with. The plaintiff avers that despite reports made of

the invasion and attempt to resolve the issue by the Kapenguria Police Station, and the Land Registrar, West Pokot, the defendants have been adamant, hence this suit.

5. The 1st defendant opposed the suit by an undated statement of defence filed on **24/6/2021**. He admitted that the plaintiff is the registered owner of the suit land, a resultant subdivision of Land Title **No. West Pokot/Keringet "A"/2428**, owned by the late Tapoyo Arimuk Silaure, hereinafter the mother title.
6. The 1st defendant averred that after the succession proceedings were completed, he was awarded **six** acres, the plaintiff six acres, and their grandmother, Sarah Chepokamuk Tapoyo, **1** acre, as Titles No. **West Pokot/Keringet "A"/3398** and **3396**.
7. The 1st defendant averred that the plaintiff's portion was inclusive of the parcel belonging to the grandmother. The 1st defendant averred that after the grandmother passed on, the plaintiff himself was entitled to share the land, but unfortunately, the plaintiff amalgamated **1** acre of it as part of **West Pokot/Keringet "A"/3943**.
8. The 1st defendant avers that he has only been occupying his own piece of land, **West**

Pokot/Keringet "A"/3397 and **3398**, after the plaintiff denied him permission to cultivate the portion belonging to his late grandmother, now combined in the disputed piece of land. The 1st defendant denied that there are structures on the disputed piece of land as alleged by the plaintiff; otherwise, the portion was only being used for grazing and cultivation. The 1st defendant denies the alleged trespass, loss, or damage, given that it is the plaintiff who has built his home on the suit land, thereby denying him use or occupation of the land.

9. The 2nd defendant opposed the suit through a statement of defence and counterclaim dated **21/10/2021**. While admitting that the plaintiff owns Land Title **No. West Pokot/Keringet "A"/3943**, he averred that he was the one in its actual peaceful, uninterrupted, and exclusive use and possession thereof, hence he was not a trespasser as alleged or at all.
10. The 2nd defendant avers that his land was initially No. **West Pokot/Keringet "A"/66**, while the plaintiff's land was part of land parcel **No. West Pokot/Keringet "A"/65**, but the boundaries have been altered and various parcels of land created. The

2nd defendant blames the plaintiff for unprocedurally, unlawfully, and illegally causing the alteration to conceal their portion of land.

- 11.** Further, the 2nd defendant avers that upon the demise of his father, the plaintiff caused subdivision of the land formally, **West Pokot/Keringet "A"/3396** to land parcels **Nos. West Pokot/Keringet "A"/3943, 3944, 3946, 3947, 3948,** and **3950**, registered some of them under his name and others to purchasers.
- 12.** The 2nd defendant avers that it is not disputed that the Land Registrar, West Pokot, visited the site to determine a boundary dispute, during which it came out clearly that there has been a long-ranging land dispute between the plaintiff's family and the 2nd defendant's family and that their boundaries had been altered.
- 13.** By way of a counterclaim, the 2nd defendant reiterated the contents of the defence generally and in particular regarding the illegal, unprocedural alteration of their portions of land and its boundaries caused by the plaintiff's subdivision of land title **No. West Pokot/Keringet "A"/3396** into seven portions and their resultant registration.

- 14.** The 2nd defendant prays for:
- (a) Declaration that the plaintiff obtained Land Title No. West Pokot/Keringet “A”/3943, both unprocedurally and unlawfully, which parcel the 2nd defendant is entitled to.**
 - (b) Declaration that the subdivision of Land Tile No. West Pokot/Keringet “A”/3396 into parcels Nos. 3943, 3944, 3945, 3946, 3947, 3948, and 3950 were unprocedural, unlawful, and illegal.**
 - (c) Permanent injunction to stop the plaintiff, his agents, servants, or employees from interfering with the 2nd defendant’s quiet possession of Land Title No. West Pokot/Keringet “A”/3943.**
- 15.** By a reply to the defence of the 1st defendant dated **30/9/2021**, the plaintiff denied amalgamation of land Title No. **West Pokot/Keringet “A”/3950**, belonging to his late mother, with his land as alleged, otherwise the same remained un-subdivided.
- 16.** At the trial, **Romad Rutto** testified as **PW1**. As the County Surveyor, West Pokot County, PW1, produced before the court a surveyor’s report dated **14/12/2023** relating to the boundary between Land Title **No. West Pokot/Keringet “A”/3943** and **661**. PW1 told the court that he visited the two parcels of land on **23/11/2023** and drew a sketch

attached to the report produced as **P. Exhibit No. (1)**.

17. PW1 told the court that both the plaintiff and the defendants were present during the site visits. PW1 told the court that after comparing the RIM with what was on the ground as well as taking into considering other previous reports made by the Land Registrar, he made a finding that the sketch by the 1st defendant was not within Parcel **No. 66**. On the contrary he told the court that the 2nd defendant was the one encroaching out the land currently registered in the name of the plaintiff. PW1 said that he attended the site visit pursuant to an order made in **ELC No. E036 [E032] of 2021**.

18. PW2 was **James Musa Topoyo**. He relied on a witness statement dated **17/6/2021** as his evidence-in-chief. PW2 produced a copy of a title deed for **West Pokot/Keringet "A"/3943**, a copy of the official search certificate, surveyor's report dated **3/2/2021**, official map, ruling dated **28/4/2020**, Land Registrar's report, bundle of photographs, letter dated **19/5/2020**. Certificate of confirmation of grant dated **29/9/2011**, court order dated **20/8/2019**, certificate of electronic record dated **30/9/2021**,

grant of letters of administration dated **3/11/2005**, an amendment grant of letter of administration dated **7/10/2020**, rectified certificate of grant of letters of administration dated **23/7/2020**, official search certificate, map, OB report, assessment report dated **14/6/2021**, and photographs as **P. Exhibit No. (2) - (21)**.

19. PW1 denied that there was any boundary dispute between him and the defendant; the correct boundaries were ascertained and verified on the ground by the County Surveyor and the Land Registrar during their site visits and the reports before the court. PW2 told the court that after going through successful succession proceedings, he obtained his share of the estate, measuring **1.96 Ha**, which does not in any way encroach onto the defendants' land. PW2 said that it is the defendants who were found to have trespassed onto his land as per the case prosecuted against the defendants in Kapenguria Law Courts.

20. Kenndy Chetuimot testified as **PW3**. He told the court that as a Forest Manager at West Pokot County Government, he visited the suit land in **2020**, and

prepared a report dated **14/6/2021**, which he produced as **P. Exhibit No. (20)**.

21. Rebecca Chepkot testified as **PW4**. She relied on a witness statement dated **2/9/2021** as her evidence-in-chief. PW4 confirmed that the defendants had trespassed on her husband's land and caused destruction therein. She denied that the defendants were entitled to trespass on account of an order issued in the Kapenguria Law Court on **19/2/2019**, over the same land on **28/4/2020**.

22. Fredrick Pkemoi Adiema testified as **DW1**. He relied on a witness statement dated **28/9/2023** as his evidence-in-chief in support of his statement of defence and counterclaim dated **21/10/2021**. DW1 told the court that whereas the plaintiff is the owner of Land Title No. **West Pokot/Keringet "A"/3943**, it was not true that he had trespassed onto or committed any acts of destruction on the land.

23. DW1 told the court that the plaintiff is the one who had unprocedurally, unlawfully, and illegally caused alteration to the boundaries that were in existence before the new subdivision of Land Titles **No. West Pokot/Keringet "A"/65** and **66**, after the succession proceedings.

- 24. DW1** relied on the certificate of official searches for Parcel **No. West Pokot/Keringet "A"/2508, 2507, 2505, 2504, and 2501**, mutation form for **West Pokot/Keringet "A"/66**, letters from the County Land Registrar, and copies of extract of title for **West Pokot/Keringet "A"/66 and 65**, as **D. Exhibit No. 1(a), (b), (c), (d), and (e), (2), (3), 4(a) and (b)**, respectively. DW2 admitted that the official searches show other persons as owners of the referenced land, who are purchasers thereof.
- 25.** The 1st defendant did not attend court to offer his testimony in support of his statement of defence.
- 26.** The issues calling for my determination are:
- (1) *If the plaintiff has proved encroachment or trespass to his land by the defendants.***
 - (2) *If the defendants are justified in the alleged encroachment onto the plaintiff's land.***
 - (3) *If the 2nd defendant has proved the content of his counterclaim to be entitled to the reliefs sought.***
 - (4) *Whether the plaintiff is entitled to the reliefs sought.***
 - (5) *What is the order as to costs?***

27. Trespass is a tort of an unlawful intrusion by a person on the land of another. It is governed by **Section 3(1)** of the Trespass Act Cap **294**. Private land is defined under that Act as land owned or occupied by any person by virtue of a freehold title, certificate of ownership, or lease. *Clerk & Lindsell on Torts 21st Edition page 1345*, says that trespass occurs where there is entry onto another land without the consent of the owner or without justification.
28. It is established by physical entry into the land, without the permission of the land owner or without any reasonable or lawful excuse. See **Church Commissioners for Kenya of the Anglican Church of Kenya -vs- Wayuga [2024] KECA 1048 [KLR]**.
29. In **Mohamed -vs- Board of Management Pentrose Community School & another (Civil Appeal E136 of 2023) [2026] KECA 501 (KLR) (13 March 2026) (Judgment)**, the court cited **Presbyterian Foundation vs Kibera SHG Nursery School [2023] KECA 37 1 KLR**, that root of title is the deed to which title to property is

ultimately traced to prove that the owner has a good title and that when there are two competing interests, the parties are required to give evidence of title, with an unbroken chain of origin of ownership, whether equitable or legal, with nothing casting doubts as to the title.

- 30.** The court emphasized that a party claiming ownership must not only demonstrate their proprietary interest, but also that their interest is founded on a good title; failure of which a court of law cannot, on the indefeasibility of title, ignore or disregard a title that was obtained illegally, unprocedurally, or irregularly. The court further emphasized that the existence of an access road constituted an overriding interest, which an innocent purchaser could not defeat, a pre-existing public right of way.
- 31.** On production of exhibits, the court said that courts are bound to bare their findings strictly on evidence properly tendered and tested during trial and that as held in **Mwige -vs- Kiguta & Others [2015] KECA 334 [KLR]**, that courts look into produced exhibits alongside all facts and evidence on record, and

applied its mind to determine their relevancy, veracity and authenticity.

- 32.** The court emphasized that even though a historical survey report was not produced as an exhibit, the existence of an access road and its historical usage, which the respondent had admitted, points definitely to its existence, raising sufficient doubt about the validity of the appellant's title. The court held that with these doubts, the appellant's claim for trespass could not be sustained.
- 33.** Trespass is proved by showing a right to immediate exclusive possession and wrongful entry onto the land. See **M'Ikiara M'Mukanya & Another -vs- Gilbert Kabeere M'Mbijiwe [1984] eKLR**. In **Philip Ayaya Aluchio -vs- Crispinus Ngayo [2014] eKLR**, the court held that the construction of a building by the defendant onto the plaintiff's land constituted damage and wastage of the land.
- 34.** Further, trespass is actionable *per se*. See **Kenya Power & Lighting Company Ltd -vs- Ringera & 2 others (2022) eKLR**. A claimant need not prove damages for trespass. Damages could be special or general, or both, as held in **Jogoo Kimakia Bus Services Ltd -vs- Electrocom International Ltd**

[1992] KLR 177. Special damages must be pleaded and proved with evidence. They must be quantified in precise terms. See **Jamal Salim -vs- Yusuf Abdullahi Abdi & Another [2018] eKLR.**

- 35.** In this suit, the question is whether trespass has been proved, as well as wrongful and unjustified occupation by the defendant on the land. In **Barmasai -vs- Rono & Others Civil Appeal No. E068 of 2023 [20225] KECA 1489 [KLR] (16th September 2025) (Judgment)**, the court said that a RIM is a crucial cadastral document used in land registrant system to visually represent the location and boundaries of land parcels, and with the official record maintained by the Survey of Kenya, which unlike a title deed, which certifies ownership, provides a geographical context, mapping out the physical existence and the precise location of a property, relative to its surrounding.
- 36.** The court said that a RIM is a comprehensive tool that complements other ownership documents like title deeds and green cards, offering a detailed layout of land parcels, their shapes, and their boundaries as

held in **Kitonga & Another -vs- Nzyoka [2024] KEELC 1667 [KLR]**.

- 37.** Applying the foregoing case law to the instant suit, the plaintiff has produced a paper trail of his root of title. The said root has been complemented by the evidence of PW1 and the Land Registrar and Land Surveyor's reports, which the defendants have not challenged with rival reports. When a land title is under challenge, it is not enough to waive the instrument of title without showing that its acquisition was formal, legal, regular, and procedural. See **Munyu Maina v Hiram Gathiha Maina [2013] eKLR**.
- 38.** The plaintiff, in my view, therefore has discharged that burden to prove both ownership and encroachment of his land by the defendants. The defendants, in their statement of defence and counterclaim at paragraphs **15** and **20**, have alleged that the plaintiff unprocedurally, irregularly, and unlawfully caused subdivision to **Parcel Nos. 66** and **65** to the resultant parcels of land, hence altering the then pre-existing boundaries.
- 39.** Fraud or illegality must be specifically pleaded and specifically proved with tangible and cogent

evidence. See **Morjaria -vs- Darbar & another (Civil Appeal 106 of 2000) [2000] KECA 5 (KLR) (1 December 2000) (Judgment)**. The particulars of fraud or illegality were not pleaded in paragraphs **15 and 10** of the 2nd defendant's defence and counterclaim. Evidence of the alleged illegal subdivision and alteration was not tendered by the defendants. Complaints and investigations reports by both the Land Registrar and Land Surveyor, pointing out any irregularities as alleged, were not produced.

40. There is no evidence that after the subdivision, registration, and alteration of the RIM, if any, the defendants lodged complaints and demanded the reversal of the entries due to the pre-existing rights or interests on the land. The court finds that the defendants have failed to substantiate the contents of their statements of defence and counterclaim as to any justification for encroaching on the plaintiff's land.

41. As to damage for trespass, as indicated above, trespass is actionable per se, without proof of damages. Photographs produced as **P. Exhibit No. (21)** show the extent of the unauthorized developments by the 2nd defendant on the disputed

land. **P. Exhibit No. (20)** shows the quantum of loss caused. Rival reports were not proved to challenge those exhibits.

42. The upshot is that this court grants orders in the following terms:

a)An order is hereby issued to the defendants to vacate Land Title No. West Pokot/Keringet “A”/3943, within 90 days, in default of which, they shall be evicted at their own costs and expenses.

b)Permanent injunction barring and restraining the defendants, their agents, servants, or employees from trespassing upon and or remaining on or continuing in occupation or ever re-entering Land Title No. West Pokot/Keringet “A”/3943.

c) Special damages of Kshs. 200,000/=.

d)General damages of Kshs. 500,000/=.

e)Costs.

43. Orders accordingly.

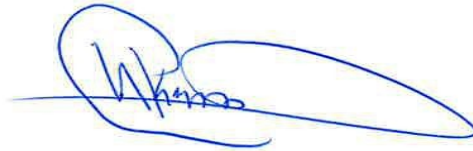
Judgment dated, signed, and delivered via Microsoft Teams/Open Court at Kitale on this 24th day of March 2026.

In the presence of:

Court Assistant - Dennis

Mwemeke for the plaintiff present

Defendant absent

A handwritten signature in blue ink, appearing to be 'C.K. Nzili', is written over a horizontal line.

**HON. C.K. NZILI
JUDGE, ELC KITALE.**

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