

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND COURT AT NAIROBI**

**ELC NO. E077 OF 2024**

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**GEORGE MWAURA NDUNGU** - **PLAINTIFF**  
**VS**  
**PETER NGUGI KARANJA** - **1ST DEFENDANT**  
**PETER NDUNGU** - **2ND**  
**DEFENDANT**

**JUDGMENT**

**Introduction and Pleadings**

1. The Plaintiff asserts to be the registered proprietor of Plot Numbers 2539/1058 and 2530/1059, which he acquired through allocation from the Kamae Resettlement Project. However, in December 2013, the 2nd Defendant trespassed on the properties without the 1st Defendant's authority and consent, and fenced off and built a motor vehicle garage, causing him loss and damage. Consequently, he sought orders THAT;
  - a. A permanent injunction do issue restraining the 1st and 2nd Defendants whether by themselves or their agents from trespassing entering or interfering with plot Numbers 2539/1058 and 2539/1059 [suit lands] located at Kahawa West Nairobi County and or interfering with the Plaintiffs titles and interest to the said properties and disrupting or in any other manner whatsoever depriving the Plaintiff's quiet peaceful possession and right to enjoyment of the suit property.
  - b. An order do issue to the 2nd Defendant to demolish the constructed perimeter wall and or structures build on the suit

lands located at Kahawa West within Nairobi County belonging to the Plaintiff

- c. A declaration that the Plaintiff is a bona fide and legitimate owner of the suit lands.
  - d. General damages for trespass
  - e. Costs of the suit and interest.
2. Denying the Plaintiffs' claims, the 1st Defendant, in his defence dated 28/3/2024, contended that he has not trespassed onto the suit lands at all and sought to put the Plaintiff to strict proof.
  3. George Mwaura Ndungu testified as PW1. He relied on his witness statement dated 27/2/24 in evidence in chief and produced documents marked as PEX No 1-9 in support of his claim. He stated that he is the treasurer of Kamae Settlement Project and that he purchased the suit lands from the project committee in 2006 and took possession. He refuted claims that the suit lands are on a road reserve. He stated that he holds the share certificates for the suit lands.
  4. Francis Nganga testified as PW2 and relied on his witness statement dated 27/2/24 and stated that he is the Chairman of Kamae Settlement Scheme since 2006. He confirmed that the Plaintiff is a bonafide member of the scheme and that the ballots and share certificate of ownership are genuine. He stated that the land does not belong to Kenya Urban Roads Authority [KURA].
  5. Francis Ngugi Kamau stated that he is the Secretary of the project and he too confirmed that the Plaintiff was a member of the project and that he is the owner of the suit lands.
  6. Peter Ngugi Karanja stated that he was allocated plot No 926 though he did not pay for the stand premium. He mentioned that the suit lands are located on a 70-metre road reserve and that he has erected structures for a car wash and a water vending machine on the said road reserve since 2012. If the Plaintiff has acquired any of the suit

lands, then it is fraudulent, as the plots in question are on a road reserve.

7. In cross- examination he stated that he does not have a membership certificate to the scheme, nor does he have a beacon certificate to show that KURA had beacons the land as a road reserve.
8. The 2nd Defendant did not enter an appearance nor file any defence.

#### **The written submissions**

9. The Plaintiff filed written submissions dated 14/10/25, while the 1st Defendant filed dated 19/11/25. I have read and considered the submissions, which now form part of the Court's record.

#### **Analysis and determination**

10. Having considered the pleadings, the evidence adduced at the trial and the written submissions I find the following issues falling for determination;
  - a. Whether the Plaintiff is the owner of the suit lands
  - b. Whether the suit lands form part of a road reserve
  - c. Whether there is trespass by the 1st Defendant
  - d. Who meets the costs of the suit

#### **Whether the Plaintiff is the owner of the suit lands**

11. The Plaintiff, in asserting ownership to the suit lands, produced the following documents: the ownership certificates Nos 294 and 296 for plot Nos 2530/1059 and 2539/1058, respectively, issued by Kama Resettlement Project and certified by its officials. He also annexed ballots for the two parcels of land. Next is the evidence of payment for the plots in the form of a receipt No 1350 dated 31/5/2005.
12. Unchallenged evidence was presented by PW1-PW3 that the Plaintiff is a member of the Resettlement Project, supported by the membership register certified by its officials and dated 17/12/2023, in which the Plaintiff's name appears against plot No 2530 and 2539. Furthermore, a letter dated 11/10/2016, authored by the chairman and secretary of

the project respectively, confirmed that the Plaintiff is the owner of the two parcels.

13. In the absence of any evidence to the contrary and on the face of the unbroken chain of documents presented to the Court, the Court finds that the Plaintiff is the owner of the suit lands.

**Whether the suit lands form part of a road reserve**

14. The 1st Defendant asserts that the suit lands are situated on a 70-metre road reserve managed by the KURA. It is also stated that the beacons marking this road reserve remain unchanged. The Defendant admits to having constructed temporary structures used for operating a car wash and a water vending business. However, the 1st Defendant has not provided evidence of a beacon or documentation confirming that the land is designated as a road reserve. Such evidence would usually include a survey plan showing the position of the Northern Bypass and the road reserve in relation to the suit lands. In the absence of supporting evidence, the Court finds his assertion unsupported in evidence.
15. The 1st Defendant presented evidence that he holds a letter of allotment from the Commissioner of Lands dated 29/7/2002 for unsurveyed plot No 926 in Kamae Settlement Scheme Phase Two, measuring 0.020 ha, for a period of 99 years from 1/8/2002. However, he informed the Court that he did not pay the stand premium for the said plot. This admission indicates that the 1st Defendant did not acquire any interest in parcel 926 at all. It is unclear what relevance this plot has to the suit lands. In the absence of any counterclaim, the Court finds the assertions of the 1st Defendant unsubstantiated. Although the 1st Defendant annexed a receipt dated 13/8/2001 from Savannah Surveyors, it does not state the land for which the survey was conducted.

**Whether there is trespass by the 1st Defendant**

16. Section 3 (1) of the Trespass Act, Cap 294 stipulates 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."

17. The Court of Appeal decision in the case of **Kenya Power & Lightig Company Limited vs Fleetwood Enterprises Limited [2007] eKLR** affirmed inter alia that where trespass is proven the affected party need not prove that it suffered damages or loss as a result of the trespass so as to be awarded damages because once the trespass is proved, the Court is bound to assess and award damages on a case to case basis. Additionally, the case of **Duncan Nderitu Ndegwa vs. KP& LC Limited & Another (2013) eKLR** for the holding, inter alia, that once a trespass to land is established it is actionable per se and indeed no proof of damage is necessary for the Court to award damages.

18. I have already held that the suit lands belong to the Plaintiff, and on the face of the admission by the 1st Defendant that he has entered into the suit lands and erected structures without the consent of the Plaintiff, the Court adjudges him a trespasser.

19. Trespass is actionable per se, and the Court fines the 1st Defendant the sum of Kenya Shillings Five Hundred Thousand Only [Kshs 500,000/-], being general damages for the unlawful trespass.

20. **Final order for disposal**

In the end, I enter Judgment in favour of the Plaintiff against the 1st and 2nd Defendants as follows;

- a. A declaration that the Plaintiff is a bona fide and legitimate owner of the suit lands.
- b. An order is issued to the 1<sup>st</sup> and 2<sup>nd</sup> Defendant to demolish the constructed perimeter wall and all structures built on the suit lands located at Kahawa West within Nairobi County, which belong to the Plaintiff, and to vacate the suit premises within a period of **120 days** from the date of the judgment.
- c. A permanent injunction do issue restraining the 1<sup>st</sup> and 2<sup>nd</sup> Defendants whether by themselves or their agents from trespassing entering or interfering with plot Numbers 2539/1058 and 2539/1059 [suit lands] located at Kahawa West Nairobi County and or interfering with the Plaintiffs titles and interest to the said properties and disrupting or in any other manner whatsoever depriving the Plaintiff's quiet peaceful possession and right to enjoyment of the suit property.
- d. General damages for trespass in the sum of Kenya Shillings Five Hundred Thousand Only [Kshs 500,000/-] payable by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants with interest at Court rates until payment in full in favour of the Plaintiff
- e. Costs of the suit shall be in favour of the Plaintiff.

21. Orders accordingly

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 10<sup>TH</sup> DAY OF APRIL 2026 VIA MICROSOFT TEAMS.**

**J. G. KEMEI**  
**JUDGE**

**Delivered Online in the presence of:**

1. Mr. Kuria for the Plaintiff
2. Ms. Cherono for 1st Defendant

3. N/A for 2nd Defendant
4. CA- Mr Duncan Muusya

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