

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU

ELC SUIT NO. E015 OF 2023

PROF PETER MUNGAI

.....**PLAINTIFF**

VERSUS

JEPSERGON CHEBON.....1ST

DEFENDANT

KIBET CHEBON.....2ND

DEFENDANT

ALEX BAYANI CHEBON.....3RD

DEFENDANT

NAFTALY NGETICH.....4TH

DEFENDANT

MRS. JEPSERGON CHEBON.....5TH

DEFENDANT

JOSEPH LOTRENG.....6TH

DEFENDANT

MURAGE MUTHONI.....7TH

DEFENDANT

JUDGMENT

1. Vide a plaint dated 26.6.2023, the plaintiff sued the defendants claiming that he is the registered owner of parcel L.R.NO. Laikipia/Ol'Arabel/1211 and 1212 measuring 134.43 acres (the suit parcel). However, the defendants have been interfering with the said parcel by damaging electric fence, illegally grazing on the suit land and planting, unlawfully cutting trees and threatening the employees of the plaintiff. The plaintiff therefore seeks judgment against the defendants in the following terms;

“a) A permanent injunction do issue restraining the defendants by themselves, their servants, agents, children and/or servants from entering, remaining, erecting structures, cutting trees, damaging structures and fences, destroying crops and/or in any other way interfering with the plaintiff’s quiet occupation.

b) That the O.C.S Ngarua Police Station to enforce the orders issued herein.

c) General damages for trespass to land.

d) Punitive damages.

e) Costs of this suit plus interest”.

2. The suit was opposed by the 1st and 7th defendants through their statement of defence dated 17.11.2023 where they aver that plaintiff has fenced off his land outside his alleged entitlement whereby his land has crossed over from Laikipia County into Baringo County, thereby encroaching on Community land of the defendants. They deny interfering with the land of the plaintiff.

3. The other defendants did not file any pleadings even though they were served with the suit documents. The court did refer the matter for mediation, but this move was not fruitful.

4. The matter was scheduled for hearing on 29.9.2025, but there was no appearance for the defendants including

the 1st and 7th defendants even though service had been effected. Thus, the matter proceeded exparte.

5. At the trial, the plaintiff (PW1) was the sole witness for his case. He adopted his witness statement dated 26.6.2023 as his evidence. He also produced the documents in his bundle as exhibits which includes the titles to the two suit parcels. His case is that he was issued with the two titles on 23.12.2013, of which the suit parcels are located in Ngarua Sub County of Laikipia County. The defendants have embarked on wanton destruction of the suit property by cutting down trees, destroying crops like maize and millet, grazing on the suit land and damaging the fence. That efforts to have the matter resolved at the local administration level have been futile.

DETERMINATION

6. I have considered the pleadings, the evidence and the submissions filed by the plaintiff. The issue falling for determination is whether the plaintiff has proved his

case to the required standard, that is on a balance of probabilities. It is noted that the defendants did not defend the suit, although the 1st and 7th defendants had filed a statement of defence. Nevertheless, the burden of proof still lies upon the plaintiff to prove his case in terms of the provisions of Section 107 of the Evidence Act. To this end, I make reference to the case of **Gichinga Kibutha v Caroline Nduku [2018] eKLR**, where the Court held that;

“It is not automatic that in instances where the evidence is not controverted, the claimant’s claim shall have his way in Court. He must discharge the burden of proof. He must prove his case however much the opponent has not made a presence in the contest.”

7. While in **Daniel Toroitich Arap Moi v Mwangi**

Stephen Muriithi & another [2014] eKLR, the court held:

“... The claimant lays on the table evidence of facts contended against the defendant. And the trial court has a duty to examine that evidence to satisfy itself that indeed the claim has been proved. If the evidence falls short of the required standard of proof, the claim is and must be dismissed. The standard of proof in a civil case, on a balance of probabilities, does not change even in the absence of a rebuttal by the other side...”

8. The plaintiff has availed the two titles in respect of the subject parcels indicating that he is the registered owner of the said parcels. The protection of right to property is enshrined under Article 40 (1) of the Constitution. Further, the provisions of **Section 25 of the Land Registration Act** provides that;

“(1) The rights of a proprietor, whether acquired on first registration or

subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject—(a)to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and(b)to such liabilities, rights and interests as affect the same and are declared by [section 28](#) not to require noting on the register, unless the contrary is expressed in the register”.

9. This far, it is apparent that the plaintiff is entitled to protection of his right to the suit parcels. However, no evidence was led to buttress the claim for damages for trespass and punitive damages. A valuation or assessment report could have assisted the court to

gauge the nature and extent of the damages caused by the defendants. In absence of such evidence, the court declines to award any damages.

10. In the end, I find that the plaintiff has proved his case on a balance of probabilities and his claim is allowed in terms of prayer 1, 2 and 5 in the plaint.

**DATED, SIGNED AND DELIVERED AT NYAHURURU
THIS 16TH DAY OF APRIL 2026 THROUGH MICROSOFT
TEAMS.**

LUCY N. MBUGUA

JUDGE

In the presence of:

Bedan/Vanessa - Court Assistants

Waichungo for the Plaintiff

No appearance for Defendants