



**Irina v Muinde & 4 others (Environment and Land Case
45 of 2017) [2026] KEELC 2493 (KLR) (29 April 2026) (Judgment)**

Neutral citation: [2026] KEELC 2493 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND CASE 45 OF 2017**

NA MATHEKA, J

APRIL 29, 2026

BETWEEN

PROF JUSTIN IRINA PLAINTIFF

AND

JONATHAN MUTISYA MUINDE 1ST DEFENDANT

MUTHUI MALOMBE 2ND DEFENDANT

SAMMY MUTUA 3RD DEFENDANT

ALEX KYALO MUTEMU 4TH DEFENDANT

AMOS MUTINDA KILONZO 5TH DEFENDANT

JUDGMENT

1. The Plaintiff avers that he is the 1st registered proprietor of all that parcel of land measuring Three decimal four two nine (3.429) Hectares or thereabouts being L.R No. 20872 I.R No. 68186 (the suit land) situate in Mavoko Municipality having been issued with the grant on the 28th December 1995. The Plaintiff took vacant possession of the suit land upon the issuance of the said grant in his favour and secured the said parcel of land by fencing it and erecting a structure for the care taker. On diver's dates in the month of July 2010 or thereabouts the 5th Defendant by himself, his agents, servants, employee's belongings and/or otherwise trespassed upon the suit land and demolished part of the fence together with the care taker's dwelling house. The Plaintiff subsequently laid a formal complaint against the 5th Defendant for his acts of trespass and for the destruction of the said developments upon his said suit land to the Police whereupon the 5th Defendant was charged in Makadara Senior Principal Magistrates court criminal case No. 1094 of 2010. The Plaintiff states that as the complaint had not been properly investigated the complaint against the said 5th Defendant was formally withdrawn under the provisions of section 87 (a) of the Criminal Procedure Act. The Plaintiff thereafter reconstructed



the fence being upon the said suit land together with the caretaker's house and continued with his quiet and uninterrupted possession.

2. In the month of March 2011 the 1st, 2nd, 3rd, 4th and 5th Defendants by themselves, their agents, servants, employees and /or otherwise without any probable reasonable or lawful excuse and/or without any colour of right whatsoever trespassed upon the suit land and destroyed the Plaintiff's fence together with the care taker's house. The Plaintiff once again laid a formal complaint against the 1st, 2nd, 3rd, 4th and 5th Defendants with the Kenya Police for their acts of trespass and after due investigations were carried out the said 1st, 2nd, 3rd, 4th, and 5th Defendants were charged in Mavoko Senior Principal Magistrate's court criminal case number 934 of 2012 with the offences of forcible detainer, making false documents, forcible entry, forgery and uttering false documents and were released on bond upon their plea having been taken. The above case is scheduled for hearing on the 20th February 2014 but even before the case has been heard the 1st, 2nd, 3rd, 4th, and 5th Defendants without any colour of right whatsoever by themselves, their agents, employees and/or otherwise wrongfully and unlawfully trespassed upon the suit land on the 17th October 2013 and the 9th January 2014 and wrongfully destroyed both the fence and the caretaker's house. The Plaintiff states that 1st, 2nd, 3rd, 4th, and 5th Defendants are land grabbers who without any lawful and/or reasonable cause have illegally subdivided the Plaintiffs suit land and illegally sold the sub divided plots of land to unsuspecting members of the public whom they have issued with fake certificates of titles.
3. The Plaintiff states that by gazette Notice No. 8467 of the 22nd August 2011 the Government set up a task force to examine and enquire into allocations of land in the Mavoko area to private individuals or corporations of public land dedicated or reserved for public purpose and/or those parcels of land irregularly allocated or inhabited by squatters. The Plaintiff states that upon the task force having completed its mandate it made a determination that the suit land belonged to the Plaintiff and that it was not a public land or reserved for public purposes and nor was it being inhabited by any squatters. The Plaintiff states that unless restrained by orders of this Honourable Court the 1st, 2nd, 3rd, 4th and 5th Defendants will continue alienating, wasting and disposing off the suit land wrongfully and unlawfully by fraudulently purporting to sell the Plaintiff's said suit land to unsuspecting members of the public pretending that the suit land belongs to them.
4. Wherefore the Plaintiff prays judgment against the 1st, 2nd, 3rd, 4th and 5th Defendants for;
 - a. A permanent injunction restraining the 1st, 2nd, 3rd, 4th and 5th Defendants by themselves, their agents, representatives, employees, belongings and/or otherwise howsoever from entering upon, trespassing, fencing, disposing off, alienating, encumbering, developing, charging, interfering with, transferring and /or in any other manner dealing with the suit property being L.R No. 20879 in Mavoko Municipality.
 - b. General damages for trespass.
 - c. Costs of the suits on full indemnity basis.
 - d. Interest at court rates on b, c and d above.
 - e. Any other and/or relief further as this Honourable court may deem just and expedient to grant.
5. The 1st 2nd 3rd and 4th Defendants stated in their defence that they are on occupation of a public, utility land measuring 73.50 Ha with the permission granted by the defunct Mavoko Municipal Council known as Mavoko sub-county of Machakos county and the said permission has not been revoked and wonders how the public utility land turned to be private owned property by the Plaintiff. The Plaintiff is a land grabber to the public utility land measuring 73.50 Ha at Mavoko Athi-River and the



Defendants demand that the Plaintiff's title be investigated and revoked and the said public utility be maintained and protected. The Defendants aver and state that there are more than three hundred and fifty (350) people and that government is a trustee to the public utility. The Defendants further state that the task force formed prohibited grabbing of land including public utility land and the Plaintiff's purported title should be revoked if any. That at all material times since 1990 the Defendants are amongst the 350 squatters who have been staying on the said public utility land and wonders how this public utility was converted into private land.

6. The 5th Defendant in his defence stated that has never sold or purported to sell any land belonging to the Plaintiff. The 5th Defendant avers that the Plaintiff is undeserving of the orders sought in the Plaintiff in that the suit does not disclose any reasonable cause of action as against him.
7. This court has considered the evidence and the submissions therein. The Defendants failed to attend court or adduce any evidence. The Plaintiff testified that he is the 1st registered proprietor of all that parcel of land measuring Three decimal four two nine (3.429) Hectares or thereabouts being L.R No. 20872 I.R No. 68186 (the suit land) situate in Mavoko Municipality having been issued with the grant on the 28th December 1995 and he produced a copy of title deeds for the suit properties (PEx1). In the month of July 2010 or thereabouts the 5th Defendant by himself, his agents, servants, employee's belongings and/or otherwise trespassed upon the suit land and demolished part of the fence together with the care taker's dwelling house. The Plaintiff reported to the police and thereafter reconstructed the fence being upon the said suit land together with the caretaker's house and continued with his quiet and uninterrupted possession thereto. Again in the month of March 2011 the 1st, 2nd, 3rd, 4th and 5th Defendants by themselves, their agents, servants, employees and /or otherwise without any probable reasonable or lawful excuse and/or without any colour of right whatsoever trespassed upon the suit land and destroyed the Plaintiff's fence together with the care taker's house.
8. Section 26 of the *Land Registration Act* provides that a certificate of title is conclusive proof of ownership unless inter alia fraud is proven. The burden of proving that the title of the Plaintiffs is not valid lies on the Defendants as provided by section 107 of the *Evidence Act*:
 - “(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.”
9. It is not disputed that the Plaintiff is the registered owners of the suit properties. The 1st, 2nd, 3rd and 4th Defendants stated in their defence that they are on occupation of a public, utility land measuring 73.50 Ha with the permission granted by the defunct Mavoko Municipal Council known as Mavoko sub-county of Machakos county and the said permission has not been revoked and wonders how the public utility land turned to be private owned property by the Plaintiff. In the case of *Kuria Kiarie & 2 Others vs Sammy Magera* (2018) eKLR where the Court of Appeal stated that;
 - “It is trite law that any allegations of fraud must be pleaded and strictly proved. See *Ndolo vs Ndolo* (2008) 1 KLR (G & F) 742 wherein the Court stated that: "... We start by saying that it was the respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof



on the respondent was certainly not one beyond a reasonable doubt as in criminal cases..
"..In cases where fraud is alleged, it is not enough to simply infer fraud from the facts."

10. From the above facts of the case it is clear that from the evidence on record I find that the Plaintiff is the legally registered proprietor of the suit land. It is not in dispute that the 1st to 4th Defendants are on the said land as per their statement of defence. The 5th Defendant gave a mere denial. No evidence of fraud on the part of the Plaintiff has been adduced.

11. On the issue of trespass, the Court of Appeal was of this opinion in *Jamal Salim v Yusuf Abdulahi Abdi & another* (2018) eKLR and stated that;

"In the text *Clerk & Lindsell on Torts*, Sweet & Maxwell, 18th Edition, at page 923, trespass to land is defined as follows :- "Trespass to land consists of any unjustifiable intrusion by one person upon land in the possession of another.

At page 927 of the same text discusses who may sue for trespass and it states as follows:-
"Trespass is actionable at the suit of the person in possession of land, who can claim damages or injunction, or both... Similarly, a person in possession can sue although he is neither owner nor derives title from the owner, and indeed may be in possession adverse to the owner."

It is therefore not necessary for one to establish ownership of land to sustain a claim for trespass. It is enough that the person suing is in possession."

12. The Plaintiff averred that the Defendants have unlawfully encroached on the said land and destroyed his fence and the caretakers house. In *Philip Ayaya Aluchio vs Crispinus Ngayo* (2014) eKLR the court held that;

"The defendant has constructed on the plaintiff's land. This in itself is damage and wastage of the plaintiff's land. The plaintiff is entitled to general damages for trespass. The issue which arises is as to what is the measure of such damage?. It has been held that the measure of damages for trespass is the difference in the value of the plaintiff's property immediately before and immediately after the trespass or the cost of restoration, whichever is less. See *Hostler – VS – GreenPark Development Co.* 986 S. W 2d 500 (No. ct App. 1999).

13. The plaintiff herein did not adduce any evidence as to the state of his property before and after the trespass. It therefore becomes difficult to assess general damages for trespass. There was no evidence adduced on the nature of house which the defendant has constructed on the suit land. The court is at a disadvantaged position in reaching at a cost which might be reasonable for restoration of the property to its former state. However, as I have found that the plaintiff is entitled to general damages for trespass, I will award a nominal sum of Kshs. 100,000/= as general damages for trespass. This cost will go towards restoration of the suit land to its former state."

14. Similarly, in this case, the Plaintiff has not adduced evidence as to the status of his suit land before and after the trespass, however, he is are entitled to general damages for trespass and the court will award a nominal sum of Kshs 150,000/= as damages. I find that the Plaintiff has proved his case on a balance of probabilities and I grant the following orders;

1. A permanent injunction restraining the 1st, 2nd, 3rd, 4th and 5th Defendants by themselves, their agents, representatives, employees, belongings and/or otherwise howsoever from entering upon, trespassing, fencing, disposing off, alienating, encumbering, developing, charging,



interfering with, transferring and /or in any other manner dealing with the suit property being L.R No. 20872 in Mavoko Municipality.

2. Kshs. 150,000/= General damages for trespass.
3. Costs of the suit.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 29TH DAY OF APRIL 2026.

N.A. MATHEKA

JUDGE

