

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT SIAYA**

**ELC SUIT NO. E001 OF 2023**

**KENTICE LIBUTSULI TIKOLO .....1<sup>ST</sup>**  
**PLAINTIFF**

**FREDRICK ODHIAMBO.....2<sup>ND</sup>**  
**PLAINTIFF**

**VERSUS**

**AGGREY OWINO.....DEFENDANT**

**JUDGEMENT**

1 Vide the plaint dated 21<sup>st</sup> March 2023 the Plaintiffs herein sued the Defendant for *inter alia* the following reliefs: -

- 1 AN ORDER of eviction compelling the defendant, his servants, agents, employees, personal representatives, assigns or anyone claiming to be on the suit property by the defendant's authority to vacate the plaintiffs' property being L.R. No. North Sakwa/Abom/3935 with immediate effect.
- 2 AN ORDER compelling the defendant to remove any personal belongings or items of property which he has brought onto L.R. No. North Sakwa/Abom/3935 or crops which he has planted thereon with immediate effect failing which the plaintiffs should remove the same at defendant's cost.

- 3 A PERMANENT INJUNCTION restraining the defendant, his servants, agents, employees, personal representatives, assigns or anyone claiming to be on the suit property by defendant's authority from occupying, being in occupation, trespassing on the plaintiffs' L.R. No. North Sakwa/Abom/3935 and/or interfering, in any way, with the plaintiffs' quiet enjoyment, possession and full use and benefit of the property and/or from offering for sale, selling, transferring alienating or in any way disposing of the property being L.R. No. North Sakwa/Abom/3935.
  - 4 Special damages of Kshs. 53,570,000.
  - 5 General damages for trespass.
- 2 The defendant upon service filed Notice of Appointment of Advocates dated 19<sup>th</sup> June 2023 and Statement of Defence dated 19<sup>th</sup> June 2023 through the firm of Suyianka Lempaa & Co. Advocates. The plaintiff vide a Notice of Motion dated 4<sup>th</sup> October 2024 moved the court to strike out both pleadings and expunge the same from the record as the same were not properly on record as the purported author disowned them saying that he had no instructions to act in the matter and his firm had never acted for the Respondent. In my ruling rendered on **9<sup>th</sup> Day of October 2025**
  - 3 I declined to sustain a pleading that had been filed fraudulently and proceeded to strike out the pleadings.

4 However, to avoid shutting out the defendant from the seat of justice I allowed the defendant who had expressed desire to defend the suit to regularize the record by filing proper pleadings. The record bears a defence and counterclaim but the defendant did not participate in the proceedings thereafter as evidenced by various Affidavit of Service on Record.

### **HEARING AND EVIDENCE**

5 The suit therefore proceeded for formal proof on 17<sup>th</sup> November 2025.

6 The plaintiff **KENTICE LIBUTSULI TIKOLO** testified as PW1. She adopted her witness statement dated 21/3/2025 as her evidence in chief and with authority of the 2<sup>nd</sup> plaintiff.

7 It was her evidence accordance to the witness statement that together with the 2nd plaintiff they are registered absolute proprietors of the land known as L.R. No. North Sakwa/Abom/3935 measuring approximately 1.92 HA and situate within Bondo in Siaya County [hereinafter "suit property"].

8 That in the month of April, 2022, she discovered that the defendant has trespassed onto our suit property L.R. No. North Sakwa/Abom/3935 and has unlawfully constructed a temporary mabati structure and planted crops such as maize and mangoes in the holes that we ourselves dug on the suit property and also stationed menacing guards

without our consent as the true and registered owners of the suit property.

- 9 That she reported the defendant's actions to the DCIO Bondo and was issued me with Occurrence Book No. OB/04/25/04/2022. The police have meanwhile not taken any action on the defendant.
- 10 That on 18th May, 2022, together with the 2nd plaintiff served the defendant with the statutory Notice to Vacate the suit property dated 18th May, 2022 instructing the defendant to vacate the suit property within three (3) months from the date of service of the Notice which was on 18th May 2022. The Notice was served on the defendant through his work/office email address being [aggrey.owino@kra.go.ke](mailto:aggrey.owino@kra.go.ke).
- 11 That subsequently, on 25th May, 2022, the defendant was again served with the said statutory Notice to Vacate Land dated 18th May, 2022. However, this time the defendant was served through his personal email address being [owino.aggrey@gmail.com](mailto:owino.aggrey@gmail.com).
- 12 That on 24th June 2022 and the defendant was served with the physical hardcopy of the said Notice to Vacate Land, a copy of which was affixed on the mabati structure that the defendant has unlawfully erected on the suit property.

- 13 That on 23rd June 2022, they also served the said Notice to Vacate Land dated 18th May, 2022 on the Deputy County Commissioner, Bondo Sub-County and on the Officer, Commanding Police Division, Bondo Division, as by law required who received the copy of the Notice to Vacate but refused to acknowledge service by signing on the copy stating that they would only sign service with court orders.
- 14 That the said Notice to Vacate Land was issued under Sections 152A, 152B & 152E of the Land Act, 2012, and Regulations 65 & 67 of the Land Regulations, 2017. That pursuant to Section 152F of the Land Act No. 6 of 2012, as read together with Section 152E (1) of the Act, the defendant had three (3) months within which to apply to Court for relief against the Notice to Vacate Land which the defendant failed to do.
- 15 That upon the lapse of the statutory notice to vacate we filed ELC Suit No E073/2022 against the Defendant but the Registry of its own motion gave it Case No. MCELC/E073/2022 and placed it before the Chief Magistrate who administratively struck it out for want of territorial jurisdiction before summons to enter appearance had been issued to the Defendant.
- 16 That the defendant's neglect or failure to comply with the Notice to Vacate Land dated 18th May 2022, and his failure to vacate the plaintiffs' suit property constitute wrongful and unlawful trespass and interference with our

right to full use, quiet enjoyment and benefit of their suit property.

- 17 That before the illegal trespass by the defendant on the suit property, the plaintiffs had made plans of using the suit property for agricultural commercial farming of avocado and had engaged an agronomist who visited the farm for a feasibility study, soil testing and confirmation of suitability of the suit property for avocado farming.
- 18 The plaintiffs had also engaged a surveyor, an irrigation engineer and avocado farming specialists for their respective expertise and other workers and had expended huge sums of money into making the suit property ready for avocado farming including buying at least 1000 avocado seedlings ready to plant with the onset of rain. By reason of the defendant's illegal trespass, the plaintiffs have suffered special damages of Kshs.53,570,000 [Kenya Shillings Fifty-Three Million Five Hundred and Seventy Thousand].
- 19 That the plaintiffs had complied with all the legal steps that as owner of private land ought to meet to be able to evict a trespasser from our land.
- 20 She prayed that the court do confirm her as the registered proprietor of the suit parcel, an order for eviction and compensation for the loss she suffered as tabulated in the reports.

21 PW1 produced the documents contained in the List of Documents and Supplementary list dated 21/3/2023 and 7/6/2024 respectively. These were produced as PEx 1 - 10.

1. *Title Deed for L.R. No. North Sakwa/Abom/3935. Page 1 - 4*
2. *Certificate of official search dated 21st April 2022. Page 5*
3. *Notice to Vacate Land dated 18th May, 2022. Page 6*
4. *Email correspondences of 18th May, 2022 and 25th May, 2022 respectively. Page 7 - 8*
5. *Copies of photos showing defendant's trespass on the suit property. Page 9 - 12*
6. *Affidavit of Service of Notice to Vacate land. Page 13 - 21*
7. *Cost of Damages Report dated 4th October 2022. Page 1 - 17*
8. *Cost of Opportunity Lost. Page 18*

22 PW2 was DOMINIC ODONDI OUMA a valuer by profession. He took the court through the report dated 4/10/2024 which he informed the court was prepared by one of the Directors of Adomag Valuers & Associates. That his instructions from the plaintiffs was to carry establish the open market value of the land and the value of the improvements which were demolished. The witness explained to the court at length the contents of the report

which he also produced and adopted as his evidence in court.

- 23 PW3 was Dr. Denis Maina Gatahi an Agronomist who presented the report dated 6/6/2024 which he prepared on behalf of the Plaintiffs and called it A Business Case Report. He told the court it was the economic potential of the farm depicting the opportunity cost of some of the activities the plaintiffs had planned to do on the suit property as informed by the plaintiff. It was his evidence that he did not visit the farm. He explained to the court the rationale for the figures totaling Kshs. 20,621,500 and how they were arrived at.
- 24 The court sought clarification from the witness as to how he arrived at the report when he had testified that he did not visit the land. He told the court that he sought for basic information from the client that would help him do the report- suitability report from KEPHIS, Agronomic report and photos from the neighbors. That with his exposure as consultant agronomist he was able to tell what can grow in many areas.
- 25 Asked by the court what risk factors he took into consideration in coming up with the report, PW3 told the court that he was very modest with the figures since he did not use the market value otherwise the figures would be higher. That the fact that the client was engaging agronomist was a risk mitigation factor.
- 26 With the above the plaintiff's case was marked as closed.

## **SUBMISSIONS**

27 I gave directions on filing of submissions which counsel on record for the plaintiff complied with. The submissions are dated 13<sup>th</sup> March 2026. Counsel identified two issues for determination namely a) Whether a case of trespass by the Defendant has been established to the required degree and standard of proof and b) Whether the Plaintiffs are entitled to the orders sought in the Plaint.

## **ANALYSIS AND DETERMINATION**

28 I have perused and considered the pleadings, the oral testimonies of the witnesses who testified and the documentary evidence adduced herein. I have equally perused and considered the written submissions and authorities filed by the Learned Advocate for the plaintiffs.

29 The court agrees with the issues as identified above and will adopt them as the issues for determination.

30 My understanding of the plaintiffs' case based on the Plaint which are reiterated in the plaintiff's witness statement is that this suit was necessitated by the defendant's invasion into the suit property without the consent of the plaintiffs. He took over the land, constructed a structure and chased away the Plaintiffs workers from the suit property which the plaintiffs claim they are the registered proprietors. At the time the plaintiffs had made plans to undertake avocado fruit growing and had prepared the land for the same. Upon

entry the defendant instead planted mangoe trees chased away the plaintiffs' workers and stationed guards at the property denying anyone entry. Efforts to have him vacate through statutory notices duly served several times did not yield fruit.

- 31 That as a result the plaintiffs could not undertake the planned venture causing her loses including opportunity costs which she computed through her expert witnesses at Kshs. Kshs. 53,570,000.

**Whether a case of trespass by the Defendant has been established to the required degree and standard of proof.**

- 32 This is substantively a claim for trespass and I will first discuss the legal frame work applicable.

- 33 Section 3(1) of the Trespass Act Cap 294 defines trespass as:

**"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."**

- 34 Section 152A of the Land Act 2016 states as follows: -

**"A person shall not unlawfully occupy Private, Community or Public Land."**

35 Clerk & Lindsell on Torts, Sweet & Maxwell, 18th Edition, at page 923, defines trespass to land as follows: -

**"Trespass to land consists of any unjustifiable intrusion by one person upon land in the possession of another."**

36 Counsel on Record for the plaintiff cited the definition in **Salmond on the Law of Trespass Fourteenth Edition at page 67 thus; -**

**"THE wrong of trespass to land (trespass quare clausum fregit) consists in the act of (1) entering upon land in the possession of the plaintiff, or (2) remaining upon such land, or (3) placing or projecting any material object upon it - in each case without lawful justification."**

37 The authors of **Winfield & Jolowicz on Tort, Sweet & Maxwell, 19th Edition, page 428**, discussed as follows:

**"Trespass to land, like the tort of trespass to goods, consists of interference with possession. Mere physical presence on the land does not necessarily amount to possession sufficient to bring an action for trespass. It is not necessary that the claimant should have some lawful interest in the land. This is not to say that legal title is irrelevant, for where the facts leave it uncertain which of several competing claimants has possession, it is in him who can prove title that can prove he has the right**

**to possession. More generally, in the absence of evidence to the contrary, the owner of land with the paper title is deemed to be in possession of the land."**

38 Arising from the foregoing, three key requirements must be proved by the person pleading trespass namely ownership or possession of the property, absence of permission of the owner of the land or person in possession and continuing to remain therein.

39 The fundamental principle of the law of evidence is that he who alleges must prove his claim see the case of **Koinange and 13 others v Koinange [1986] KLR 23.** The provisions of section **107, 109 and 112** of the Evidence Act is the guiding law.

40 Section 107 provides as follows:

**“(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.”**

41 Sections 109 states as follows:

**“109. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.**

42 Section 112 states as follows; -

**112. In civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving that fact is upon him.”**

43 In the case of ***Kirugi and Another v Kabiya & 3 others [1987] KLR 347*** the Court of Appeal held that; “The burden was always on the Plaintiff to prove his case on a balance of probabilities even if the case was heard as formal proof”.

44 Likewise, failure by the Defendant to contest the case does not absolve a Plaintiff of the duty to prove the case to the required standard. Similarly, in the case of ***Gichinga Kibutha v Caroline Nduku [2018] ekLR*** the Court held that;

***“It is not automatic that instances where the evidence is not controverted the Claimants shall have his way in Court. He must discharge the burden of proof. He must proof his case however***

***much the opponent has not made a presence in the contest.”***

45 With regards to proof of ownership the Plaintiffs adduced in evidence a copy of Title Deed for L.R. No. North Sakwa/Abom/3935 and Certificate of official search dated 21st April 2022. My review of the title shows that Fredrick Odhiambo Ochieng & Kentice Libutsuli Tikolo and who are the 2<sup>nd</sup> and 1<sup>st</sup> Plaintiffs respectively as registered proprietors of the suit property which registration is confirmed by the Certificate of official search as per entry 6 & 7 of 30/10/2020.

46 I am satisfied from the evidence on record that the Plaintiffs are the registered proprietors of the suit property.

47 Section 26 (1) of the Land Registration Act provides that: -  
**“The certificate of title issued by the Registrar upon registration or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all Courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except-**  
**a) On the ground of fraud or misrepresentation to which the person is proved to be a party; or**

**b) Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”**

- 48 In view of the above provisions, the title produced is to be taken by all courts as prima facie evidence that the Plaintiffs are the absolute and indefeasible owner of the Suit Property. Moreover, the evidence was not controverted nor has the title been challenged by the defendant.
- 49 It is the finding of this court that the suit property the subject of the alleged illegal entry or intrusion belongs to the Plaintiffs and as their private property.
- 50 The plaintiffs must also prove to the required standard of a balance of probabilities that there was an intrusion and which was not authorized by the plaintiffs or the person who was in possession with authority of the Plaintiff. According to PW1 the entry was discovered sometime in April, 2022, when the defendant constructed a temporary mabati structure and planted crops and mangoes in the holes that had been prepared by the plaintiffs and also stationed guards at the suit property. PW1 adduced a bundle of photos duly accompanied by the requisite statutory certificate of electronic evidence. The photos depict the holes the young trees planted therein, a maize crop and a structure made from material that looked like

iron sheets to me. The photos also showed one man holding a panga.

51 To further support the allegation that this was an entry without the owner's permission the PW1 produced copies of emails serving notice to the defendant to vacate from the land. The emails are dated 18th May, 2022, 25th May, 2022. Evidence of physical service of the Notice to Vacate affixed to the Mabati structure that the defendant unlawfully erected (see bundle of photos) and Affidavit of Service of the Notice to the Deputy County Commissioner, Bondo Sub-County and on the Officer, Commanding Police Division, Bondo Division.

52 The relevant parts of the Notice to vacate reads; -

***Under Sections 152A, 152B, 152E, and 152F of the Land Act, No. 6 of 2012 and Regulations 65 & 67(1) (c) of Land Regulations, 2017***

TAKE NOTICE that you are in unlawful occupation of our land Title Number NORTH SAKWA/ABOM/3935 without express/lawful authority or without any right or license under any law.

By this notice, you are required to-

- (a) Immediately stop any further activities on the land;
- (b) Remove any buildings and other improvements which you may have erected thereon;
- (c) Remove any growing crops you may have planted and livestock kept thereon; and

(d) Vacate the land within three (3) months from the date of this notice and in any case not later than 18th August 2022.

53 It is clear that the said notice accuses the defendant of unlawful entry into the plaintiff's private property - the suit property herein.

54 It is PW1 evidence that the defendant has not vacated the suit property despite such service. Moreover, the court had no evidence to show that the said notices did not reach the defendant.

55 While the defendant initially responded to the suit the documents were expunged from record. Subsequent pleadings appear to have been filed but since the defendant never participated in the hearings the same remain mere pieces of paper with no evidentiary value to buttress the defendant's case.

56 It is therefore the finding of this court that the plaintiffs have established on a balance of probabilities a case of trespass against the defendant.

### **Whether the plaintiffs are entitled to the reliefs sought**

57 Having arrived at the finding that trespass has been established against the defendant then I see no bar to allowing the prayer for eviction to vacate the premises by removal of the mabati structure that was erected, the

crops and trees planted by the defendant and the agents guarding the premises.

58 An order of permanent injunction has also been sought including restraining the defendant, his servants, agents, employees, personal representatives, assigns or anyone claiming to be on the suit property by defendant's authority from occupying, being in occupation, trespassing on the suit property and/or interfering, in any way, with the plaintiffs' quiet enjoyment, possession.

59 The court in **Kenya Power & Lighting Co. Limited v Sheriff Molana Habib [2018] eKLR** pronounced itself as follows with regard to what constitutes a permanent injunction; -

***“A permanent injunction which is also known as perpetual injunction is granted upon the hearing of the suit. It fully determines the rights of the parties before the court and is thus a decree of the court. The injunction is granted upon the merits of the case after evidence in support of and against the claim has been tendered. A permanent injunction perpetually restrains the commission of an act by the defendant in order for the rights of the plaintiff to be protected”.***

60 Applying the above to the facts of this case and having heard the matter and found that the plaintiffs have proved

ownership of the suit property including the unlawful entry therein by the defendant then the orders of permanent injunction as prayed are warranted. Moreover, having established that the Plaintiffs are the registered owners of the suit property, I find that they are entitled to all the rights, interest and privileges that pertain to the land.

61 Further more I have seen the Notice to vacate issued under the provisions of section 152E of the Land Act and having duly complied to the said provisions and served and I'm persuaded by the decision in **Atik Mohamed Omar Atik & 3 Others Vs. Joseph Katana & Another (2019)eKLR.**

62 Is the plaintiff entitled to an award of General damages and special damages as prayed?

63 I will briefly discuss the above remedies and what they entail in law.

64 It is trite that trespass is actionable perse. This was explained in **Park Towers Ltd v. John Mithamo Njika & 7 others (2014) eKLR** where J.M Mutungi J., stated: - ***—'I agree with the learned Judges that where trespass is proved a party need not prove that he suffered any specific damage or loss to be awarded damages. The court in such circumstances is under a duty to assess the damages awardable depending***

**on the unique facts and circumstances of each case...'**

65 In **Christine Nyanchama Oanda v Catholic Diocese of Homa Bay Registered Trustees [2020] KECA 536 (KLR)** the Court of Appeal stated thus;

***'In tort damages are awarded as a way to compensate a party for the loss he or she had incurred due to a wrongful action on the part of the other party. The damages so awarded are intended to return the party back to the position he or she was in before the wrongful act was committed. Halsbury's Laws of England 4<sup>th</sup> Edition Volume 45 para 26 1503 provides as follows on computation of damages in an action for trespass:***

***a) If the Plaintiff proves the trespass, he is entitled to recover nominal damages even if he has not suffered any actual loss.***

***b) If the trespass has caused the Plaintiff actual damage, he is entitled to receive such amount as will compensate him for his loss.***

***c) Where the Defendant has made use of the Plaintiff's land, the Plaintiff is entitled to receive by way of damages such an amount as would reasonably be paid for that use.***

*d)Where there is an oppressive, arbitrary or unconstitutional trespass by a government official or where the Defendant cynically disregards the rights of the Plaintiff in the land with the object of making a gain by his unlawful conduct, exemplary damages may be awarded.*

*e) If the trespass is accompanied by aggravating circumstances which do not allow an award of exemplary damages, general damages may be increased.”*

66 The Court has been invited to award special damages of Kshs. 53,570.000. This is prayer d) in the plaint dated 21/3/2023. It is trite that special damages must be specifically pleaded particularized and proved. The Court of Appeal in **Hahn v Singh, Civil Appeal No 42 of 1983 [1985] KLR 716** held that;

***“Special damages must not only be specifically claimed (pleaded) but must also be strictly proved.... for they are not the direct natural or probable consequence of the act complained of and may not be inferred from the act. The degree of certainty and particularity of proof required depends on circumstances and nature of the act themselves’***

67 The plaintiffs plead at paragraph 10 of the plaint thus; -

**‘The plaintiffs had also engaged a surveyor, an irrigation engineer and avocado farming specialists**

**for their respective expertise and other workers and had expended huge sums of money into making the suit property ready for avocado farming including buying at least 1000 avocado seedlings ready to plant with the rain. By reason of the defendant's illegal trespass, the plaintiffs have suffered special damages of Kshs 53,570,000.'**

68 To me the above statement is too general and ought to have been broken down per subject and the expenditure incurred. I have in mind the costs of the experts, the workers assuming they are the ones who prepared the land, the cost of the 1000 avocado seedlings. The global figure ought to have been broken down further with specificity of the various components it entails. Indeed, the expert reports were presented and have been well summarized by counsel in the submissions filed but the particularization ought to have been within the pleadings and not the reports.

70 On the above basis alone I would decline the claim for special damages.

71 However, I must say something about the report produced by PW3 Dr. Denis Maina Gatahi an Agronomist who presented the report dated 6/6/2024 - A Business Case Report. He testified that his instructions were to carry out a cost benefit analysis. He calculated loss due to time lost due to inactivity and lost inputs for compensation. He

gave inputs cost for the plaintiff avocado project and loss thereof and even gave lost avocado revenue. Then there is contention that the project was intended to be done on 11 acres and not just on the suit property.

72 For me for the costs of the inputs lost I would have expected corresponding proof in this regard in terms of expenses incurred. No specific proof of the expenditure of the above was availed and specifically the 1000 seedlings. Maybe the court would have relented and awarded special damages actually incurred.

73 Further I pondered if the plaintiffs had intended to undertake the venture as pleaded and as costed should there have been a business case report before the project started let's say as early as 2019 before they purchased the land and which would convince this court that the land was bought with that specific intention. The business case would also be used to source for market/potential customers where they would supply the avocado and horticultural products. How then would the court be assured that PW1 already had market for the produce and thus assured of the income.

74 For me the reports presented on behalf of the Plaintiffs were merely speculative and I decline to grant any special damages based on speculation. Any damages awarded are

intended to return the party back to the position he or she was in before the wrongful act was committed.

- 75 In the meantime, I will go back to the prayer for general damages. I have already cited case law to the effect that trespass is actionable per se and does not require proof that someone suffered loss. PW2 presented the Cost of Damages Report dated 4/10/2024 where he tabulated the market value of the suit property at Kshs. 2, 372,200/- added a disturbance allowance of 15% including costs of damaged improvements on the suit property. The court was further referred to the case of **Willesden Investments Limited Vs Kenya Hotel Properties Limited NBI HCC No. 367 of 2000** where the court awarded Kshs. 10,000,000/-. Counsel for the Plaintiff has proposed a figure of Kshs 20,000,000/- for general damages for trespass.
- 76 The court will be guided by the damages report for the reason that I'm persuaded to restrict myself to the suit property measuring 4.7 acres and not other properties. I agree with the disturbance allowance deployed based on the value of the suit property. It is my considered view that in the circumstances of this case General damages of Kshs. 5,000,000.00/- (Kenya shillings Five Million) will suffice.

77 As to costs it is trite that the same follow the event. In **Attorney General v Halal Meat Products Limited (2016) eKLR**, the court held thus: -

***“Generally, costs ought to follow the event unless the court otherwise orders for good reasons.”***

78 The court will also be guided by the provisions of Section 27 of the Civil Procedure Act. In the instant case, the Plaintiffs have succeeded in prosecuting their case except for the special damages. It therefore follows that they are entitled to the costs of this litigation. The costs shall therefore be borne by the Defendant.

79 The upshot of the foregoing is that the Plaintiffs have proved their claim against the Defendant to the required standard and judgement is entered for the Plaintiffs against the defendant in the following terms; -

- 1) *An order of eviction compelling the defendant, his servants, agents, employees, personal representatives, assigns or anyone claiming to be on the suit property by the defendant's authority to vacate the plaintiffs' property being L.R. No. North Sakwa/Abom/3935 within 60 days of this judgement due to passage of time as regards the Notice to vacate.*
- 2) *An order compelling the defendant to remove any personal belongings or items of property which he has brought onto L.R. No. North Sakwa/Abom/3935 or crops*

*which he has planted thereon within the period of 60 days above from the date of this judgement failing which the plaintiffs will be at liberty to remove the same at the defendant's cost.*

- 3) An order of permanent injunction restraining the defendant, his servants, agents, employees, personal representatives, assigns or anyone claiming to be on the suit property by defendant's authority from occupying, being in occupation, trespassing on the plaintiffs' L.R. No. North Sakwa/Abom/3935 and/or interfering, in any way, with the plaintiffs' quiet enjoyment, possession and full use and benefit of the property and/or from offering for sale, selling, transferring alienating or in any way disposing of the property being L.R. No. North Sakwa/Abom/3935.*
- 4) The prayer for special damages of Kshs. 53,570,000 is declined*
- 5) General damages for trespass are awarded at Kshs. 5,000,000.00 with interest at court rates from the date of filing this suit.*
- 6) An order directed at the Officer Commanding Police Station, Bondo to provide security to ensure that peace prevails during the enforcement of these orders of eviction.*
- 7) Costs*

**Delivered and Dated at Siaya This 13<sup>th</sup> Day of May  
2026**

**HON. LADY JUSTICE A.E. DENA  
JUDGE**

**13/5/2026**

**Judgment delivered virtually through Microsoft  
teams Video Conferencing Platform in the  
presence of:**

Mr. Obok for the Plaintiffs

No appearance for the Defendant

Court Assistant: Abuid Wekesa