



**Wairimu v Gachoki (Environment and Planning Petition
700 of 2012) [2025] KEELC 5701 (KLR) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5701 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND PLANNING PETITION 700 OF 2012**

AA OMOLLO, J

JULY 24, 2025

BETWEEN

BENARD MBUGUA WAIRIMU PLAINTIFF

AND

CHARLES MWANGI GACHOKI DEFENDANT

JUDGMENT

1. Vide a plaint dated 20th September 2012, the plaintiff sued the Defendant claiming ownership of L.R No. Ruiru/Ruiru East Block 2/958. He pleaded that his mother died intestate on 23rd July, 2006 and so he took out succession Cause administer her estate.
2. The Plaintiff states that in February 2006, the Defendant unlawfully, illegally and without any colour of right invaded the said land and erected a building and continues to trespass. The plaintiff now wants an order directed at the Defendant to vacate the land and remove all the illegal structures he has erected on the suit land.
3. Wherefore he prays for judgment as follows;
 - i. An eviction Order to remove the defendant and all the building and all the illegal structures on the land parcel No. Ruiru East Block 2/958.
 - ii. General damages for trespass and mense profit.
 - iii. Any other relief that this Honourable court deems fit and proper so to grant.
 - iv. Costs of the suit and interest thereon.
4. The Defendant filed a statement of defence dated 28th February, 2024 after moving the court to set aside the *exparte* judgment. He denied the plaintiff's claim.
5. The Defendant pleaded on the history of the land as follows;



- a. Parcel No. Ruiru/Ruiru East Block 2/958 (“the suit property”) was initially owned by the late Susan Wairimu Mbugua, the Plaintiff’s mother, who later sold the whole of the suit property to Salome Njoki Nyoro on or about 1st September, 2004.
 - b. Consequently, Salome Njoki Nyoro through her company Wa-Carol Investments, undertook subdivision of the suit property into smaller plots which she then advertised for sale. The titles for the subdivided plots were to be processed at a later date.
 - c. The transfer of title of the suit property from Susan Wairimu Mbugua to Salome Njoki Nyoro was to be effected at a later date.
 - d. Upon becoming aware that the subdivided plots in the suit property were being offered for sale, the Defendant engaged Salome Njoki Nyoro for the purchase of two plots on the suit property. It was agreed that the purchase price for plots 1 and 2 on the suit property would be Kshs.70,00.00
 - e. Between November, 2004 and December, 2004, the Defendant made three (3) cash payments to Salome Njoki Nyoro totaling to Kshs.70,00.00, in respect of the purchase price for the two plots on the suit property. The Defendant was thereafter issued with share certificates and cash payments receipts which guaranteed his payment of the purchase price for plot 1 and 2 on the suit property.
 - f. Thereafter, the Defendant acquired possession of the said plots 1 and 2 on the suit property in December, 2004 after which he began construction of rental units in the year 2006.
 - g. At all material times during the Defendant’s possession and ownership of the two plots on the suit property, he enjoyed quiet and exclusive possession until February, 2023 when he was served with execution proceedings seeking his eviction from the suit property.
6. The Defendant pleaded that upon paying the price in full, he acquired an impeachable title to the suit property. He contends that he has been in peaceful occupation since 2006. He averred that the plaintiff had in a previous suit filed a case against Esther Nyathira. He urged the court to dismiss the plaintiff suit.
 7. After pleadings closed, each party called the evidence of a single witness. The plaintiff in his testimony said he has sued the Defendant because he never sold him the land. He relied on his witness statement dated 19th September, 2012 and also produced the documents contained in the list dated 20th September, 2012.
 8. In the written statement, the Plaintiff avers that he was the only child to Susanah Wairimu Mbugua who died on 23rd July, 2006. That he took out letter of grant vide Thika Succession Cause No. 515 of 2009 which was confirmed on 24th November, 2012.
 9. The witness said the land in dispute measures one (1) acre and it is at Murera Estate opposite Kenyatta road. He reiterated that the Defendant entered the land in the year 2006. He was served with a demand letter but he refused to move out hence this case.
 10. In cross-examination, the witness said the land belonged to his mother and upon her death, he changed the title to his name. That there were no people living on the land before his mother died. He denied that a portion of this land had been sold.
 11. He later admitted currently there are many people who have settled on this land. That he has agreed to sell to some of this people. He affirmed this is the only case he has brought against the Defendant.



12. The Defendant stated that he purchased the suit property in the year 2004. That he purchased two plots from Salome Njoki who was the proprietor of Wa Carol Investments. The Defendants produced receipts issued to him for paying for the two plots as D ex 1.
13. He added that he was also given sale agreement and share certificate to confirm he had purchased the plot as D ex 2. It is his contention that he proceeded to develop the plots by digging a borehole, putting up houses and living on it and the other part he rented. The photos of the developments were produced as D ex 3. He urged the court to grant him orders in his counter-claim.
14. In cross-examination, DW 1 said he knew Wa Caro had bought this land from Susan Mbugua. That he was given a copy of that sale agreement. He said that Susan signed the sale agreement via thumb print. That Salome Wa Caro is still alive. He denied that Salome Wa Caro defrauded him as he was on the land.
15. Parties were given time on 21st January, 2011. He also produced a demand letter dated 28th May, 2012 asking the Defendant to vacate the said land. further, the plaintiff produced a copy of certificate of grant of estate of Susan Mbugua showing the land Ruiru/Ruiru East Block 2/958 was given to him in the grant.
16. There is also no dispute that the Defendant has put up same to file respective submissions but it is only the plaintiff who filed. I have read and considered the submissions by the plaintiff and will make reference to them in the determination.

Analysis and determination:

17. There is no dispute that the plaintiff has produced a title in his name of LR. No. Ruiru/Ruiru East Block 2/958 issued to him structures on the land the plaintiff is claiming. The Defendant has narrated how he came into the suit premises. He even produced a sale agreement executed. Although the plaintiff through Counsel put a question that his mother did not sign the agreement. The Defendant answered that Susan signed and referred to the thumb print besides her name.
18. The Defendant also produced receipts paying for his plot and shares certificate issued to him. The plaintiff confirm that the Defendant entered the land in February, 2006 before his mother died in July 2006.
19. The Defendant is claiming interests on the land through a third party who he said was still alive. He did not apply to join this party nor did he show any evidence of any process of acquiring title to his land. from 2006, to the date he came to became aware of suit in 2023, he is still relying on the share certificates issued to him.
20. Further, the Defendant did not produce a sale agreement executed between him and Salome Wa Carol. He has also not challenged the plaintiff's title other than his presence on the land. The Plaintiff pleaded that his presence on the land is without his consent.
21. I agree with the plaintiff because the Defendant cannot enforce the agreement between Susan Mbugua and Salome Wa Carol Investments when he has no agreement signed with Wa Carol mentioning the previous agreement.
22. The law is in favour of the plaintiff in this case under section 27 of the *Registered Land Act* Cap 300 (repealed) now replicated under Section 25 of the *Land Registration Act* of 2012. Section 25 reads thus;
 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.
2. Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee.
23. I find no reason to stop the plaintiff from accessing and enjoying his land. Hence, I enter judgment to him for vacant possession. However, the Defendant is granted six (6) months to surrender vacant possession and remove any structures on the land. Further, I award him nominal damages for trespass in the sum of Kshs.50,000. This is premised on the principle set by the court of appeal in the case of *Wanyeki v Kerai & another* (Civil Appeal 65 of 2019) [2023] KECA 87 (KLR) (3 February 2023) (Judgment that:

“ 42. It is trite law that trespass to land is actionable per se. Once it is proved the appellant is under no duty to prove that he suffered any specific damage or loss. In other words, where trespass is proved as in this case, the affected party such as the appellant need not prove that he suffered any damage or loss as a result so as to be awarded damages. The court under the circumstances is bound to award damages depending on the facts of each case. See *Simiyu vs Sinino*. [1985] eKLR.

44This Court in *Christine Nyanchama Oanda v Catholic Diocese of Homa Bay Registered Trustees* [2020] eKLR stated as follows:“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* 4th 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.”
24. I award no mesne profits because he did not develop the structures on the suit land and did not lay evidence of intention to develop. The final orders made are:
- a. The Defendant shall surrender vacant possession of the suit premises within six (6) months of the date of this judgement, in default execution to issue.
 - b. Nominal damages for trespass of Kshs 50000 payable to the Plaintiff.
 - c. The costs of the suit to the Plaintiff.
 - d. Interest on b and c at court rates from the date of this judgement.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 24TH DAY OF JULY, 2025

A. OMOLLO

