



**Loyor v Eloo (Environment and Land Case E016 of 2023)
[2025] KEELC 4714 (KLR) (22 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 4714 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND CASE E016 OF 2023**

**CK NZILI, J
JULY 22, 2025**

BETWEEN

RHODA ARUPE LOYOR PLAINTIFF

AND

SELINA ELOO DEFENDANT

JUDGMENT

1. The plaintiff came to court through a plaint dated 27/11/2023. She seeks: -
 - (a) Permanent injunction barring and restraining the defendant, her agents, servants, or employees from trespassing, subdividing, leasing, selling, threatening, or in any manner interfering with Land No. LDW/Nakwamekwi Block 2/ (Lokipetot)/136, (hereinafter the suit land), measuring approximately 1.2240 Ha.
 - (b) Declaration that the suit land belongs to her.
 - (c) General and aggravated damages for trespass.
 - (d) OCS Lodwar Police Station ensures compliance with the order.
 - (e) Costs.
 - (f) Any other relief the court may deem just and fair to issue.
2. The plaintiff avers that she owns the suit land as confirmed by the official records, held by the Ministry of Lands, Housing and Urban Area Management of the County Government of Turkana, whose beacons were also surveyed, authenticated, and installed by the County Land Surveyor on 12/7/2018. The plaintiff avers that she intends to construct a commercial building on the land and has already deposited on the site building materials, which moves unfortunately have been interfered with by the



- defendant, who has sent a group of invaders to trespass, deny her access, use and peaceful enjoyment of the suit land.
3. The plaintiff avers that the acts of the defendant amount to illegalities, fraud and disregard of the rule of law and have subjected her to threats, intimidation, suffering, loss and damage, due to the denial to use, occupy, enjoy and develop the suit land.
 4. Whereas the defendant was duly served with a summons to enter an appearance on 5/12/2023 and an affidavit of service sworn by Emmanuel Ekai Nabeny, filed on 6/12/2023, there has been no memorandum of appearance filed or participation at the hearing.
 5. At the trial, the plaintiff relied on a witness statement dated 27/11/2023, as her evidence-in-chief. PW1 told the court that she is the bona fide owner of the suit land measuring approximately 1.2240 Ha, as confirmed by the land records held by the County Government of Turkana and surveyed by its officer on 12/7/2018, with which she has complied with all the requirements including payment of survey fees.
 6. PW1 produced an income receipt dated 27/8/2018, demarcation map dated 12/7/2018, a planning and survey confirmation letter dated 19/9/2018 as P. Exhibit Nos. (1), (2) and (3). PW1 told the court that she is desirous of developing a commercial premise on the suit land and has deposited building materials on the site, so as to earn income therefrom. However, the plaintiff told the court that she was shocked to learn from members of the public that the defendant had trespassed onto her land and attempted to dispose it off, without her knowledge, to third parties.
 7. Despite reports to the Turkana County Government, the plaintiff told the court that the defendant continues to perpetrate her illegal actions unperturbed, for she enjoys protection from some quarters, hence subjecting her to suffering, prejudice, loss and damage, yet she has proprietary rights to use, access, occupy and develop her land. Equally, PW1 told the court that she had been subjected to threats and intimidation by the defendant.
 8. Charles Namus testified as PW2. As a villager elder, PW2 confirmed that the land belongs to the plaintiff, which during the tribal clashes some people led by the defendant attempted to invade and or grab. PW2 told the court that a village baraza was convened in 2013/2014, in which everyone was shown his or her land and its boundaries, the plaintiff being one of the attendees.
 9. PW2 told the court that over 30 persons were shown the land, took vacant possession and regularized the same as per P. Exhibit Nos. (1), (2) and (3). PW2 said that the intention was to avoid further interference with neighbors' parcels of land. PW2 said that the process was also in line with the traditional norm known as "Ngikaria" "Ngirereree" and "Ngi Mankoria". PW2 said that when the defendant attempted to fence off the land five years ago, he intervened and was ejected from the land by the villagers. Despite that, the defendant came back and a report was made to the police who instead referred the matter to court. PW2 said that the defendant does not hail from the locality, nor does she have any claim on the land.
 10. The plaintiff pleaded and testified that her plot was lawfully allocated, surveyed and beaconed by the Turkana County Government in 2018. She relied on P. Exhibit Nos. (1), (2) and (3). The documents produced by the plaintiff especially the map, a public document with the provision of Sections 119(1) and 80 of the *Evidence Act*, are admissible in law. The documents corroborate the claim on ownership of the suit land by the plaintiff. See Stanley N. Muriithi & Another -vs- Bernard Munene Ithiga [2016] KECA 821 [KLR].
 11. The plaintiff seeks a permanent injunction. She has to demonstrate the proprietary interests or rights over the suit land. Trespass refers to unjustified entry into private land owned by another under Section



3(3) of the *Trespass Act*. The defendant has not refuted the ownership documents produced by the plaintiff. Trespass is actionable per se. In *Jamal Salim -vs- Yusuf Abdulahi Abdi & Another* [2018] KECA 14 [KLR], the court guided by Clerk and Lindell on *Torts Sweep & Maxwell* 19th Edition Page 923, observed that one does not need to establish ownership of land to sustain a claim for trespass, as long as one is in possession of the land. The court cited *Charles Ogejo Ochieng -vs- Geoffrey Okumu* [1995] eKLR, that trespass is an injury to possessory right and the person deemed to be in possession could be a proper plaintiff.

12. The plaintiff has testified that there was an intrusion into the land by the defendant. The defendant has not refuted those facts of both possession and ownership. Encroachment of the plot by trying to fence, or interfere with the plaintiff's use, occupation and development has not been denied either in 2013/2014 and up to the filing of this suit. In *Kenya Power & Lighting Company Limited -vs- Fleetwood Enterprises Ltd* [2017] eKLR, the court held that in a claim of trespass, a party need not prove suffering any damages or loss, so as to be awarded damages.
13. In *Caroget Investment Ltd -vs- Aster Holdings Ltd & Others* [2019] eKLR, the court in considering the damages payable, looked at the size, value and location of the property. I think the plaintiff is entitled to the reliefs sought. General damages of Kshs. 1,000,000/= are granted as an adequate remedy.

JUDGMENT DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 18TH DAY OF JUNE 2025.

In the presence of:

Court Assistant - Dennis

Mr. Nabenyo for the plaintiff present

Defendant absent

JUDGMENT AMENDED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 22ND DAY OF JULY 2025.

HON. C.K. NZILI

JUDGE, ELC KITALE.

