



**Wanyonyi v Nyongesa & 6 others (Environment and Land Case
2 of 2023) [2025] KEELC 5328 (KLR) (16 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5328 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND CASE 2 OF 2023**

**CK NZILI, J
JULY 16, 2025**

BETWEEN

HENRY MWASAME WANYONYI PLAINTIFF

AND

PETER NYONGESA 1ST DEFENDANT

JOHN WAFULA 2ND DEFENDANT

MARY WANJALA 3RD DEFENDANT

MOSES WEKESA ALIAS ACRE NANE 4TH DEFENDANT

MANYASI WEKESA 5TH DEFENDANT

SAMUEL BUNYASI 6TH DEFENDANT

DAVID KISEMBE NYONGESA 7TH DEFENDANT

JUDGMENT

1. Before the court is a plaint dated 23/1/2023. The plaintiff, as the registered owner of L.R No. 8XX4/13 situated at Kiminini Sub-County, has sued the defendants for trespass and the erection of illegal structures thereon. He seeks:
 - (a) A permanent injunction.
 - (b) An eviction order.
 - (c) The OCS Kiminini Police Station, OCS Sikhendu Police Station and the OCS Kapchonge Police Station, to ensure that the orders are complied with.
2. Despite service by way of substituted service, the defendants have not filed any memorandum of appearance or a defence.



3. At the trial, Henry Mwasame Wanyonyi testified as PW1. He relied on a witness statement dated 23/1/2023 as his evidence-in-chief. His testimony was that he purchased the suit land at a public auction following a default of loan payments by the initial allottees. PW1 said that the sellers of the suit land were the Agricultural Finance Corporation, who executed the transfer documents into his name on 23/12/2011. He blames the defendants for trespassing on the land and infringing on his right to property, as provided under Article 40 of *the Constitution*. PW1 relied on a copy of his ID Card, certified copies of a certificate of title for L.R No. 8XX4/13 and demand notices dated 10/3/2021 and 18/9/2022 as P. Exhibit Nos. 1, 2, 3, and 4, respectively.
4. Trespass refers to the intrusion into the private property of another, without any justification and the commission of acts of wastage. See Section 3(3) of the *Trespass Act*. In order to prove trespass, a claimant must prove immediate exclusive occupation of the suit land. A certificate of title issued by the Registrar upon registration under Section 26(1) of the *Land Registration Act* is to be taken as prima facie proof that the proprietor of the land has an indefeasible title that is not subject to challenge except on account of fraud, misrepresentation or issuance of title through a corrupt scheme.
5. In *M'Ikiara M'Mukanya & another -vs- Gilbert Kabere M'Mbijiwe* [1983] KECA 121 (KLR), the court held that the respondent had to prove, on a balance of probabilities, that the appellants entered into the plot when it was in his possession and that he had a right to immediate possession. The court said that trespass was a tort of violation of the right to possession.
6. In this suit, the plaintiff has to prove that, he and not the defendants, have the right to immediate and exclusive possession. Trespass is actionable per se. A party need not prove any damage. A claimant has to prove that the defendants intentionally entered his plot with no right of entry. The plaintiff has produced a certificate of title issued to him on 23/12/2011. He has produced letters as P. Exhibit 3(a) and (b). The court is satisfied that the plaintiff has proved his case to the required standards. Prayers No. (a) and (b) are allowed. An eviction order shall issue against the defendants to be enforced by a Court Bailiff in compliance with the law. Costs and expenses of the eviction are to be borne by the defendants. Costs of the suit to the plaintiff.
7. Orders accordingly.

JUDGMENT DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 16TH DAY OF JULY 2025.

In the presence of:

Court Assistant - Dennis

Kulowa for Were for the plaintiff present

Plaintiff present

Defendants absent

HON. C.K. NZILI

JUDGE, ELC KITALE.

