



**Owuor (Suing as the Administrator of the Estate of Yuda Odundo Owuor, Deceased) v Okoth & 13 others (Environment and Land Case Civil Suit E033 of 2022) [2024] KEELC 203 (KLR) (25 January 2024) (Judgment)**

Neutral citation: [2024] KEELC 203 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
ENVIRONMENT AND LAND CASE CIVIL SUIT E033 OF 2022  
SO OKONG'O, J  
JANUARY 25, 2024**

**BETWEEN**

**VICTOR ANTONY OTIENO OWUOR (SUING AS THE ADMINISTRATOR OF THE ESTATE OF YUDA ODUNDO OWUOR, DECEASED) ..... PLAINTIFF**

**AND**

- EVANS OKOTH ..... 1<sup>ST</sup> DEFENDANT**
- JANE CHEPKEMOI ..... 2<sup>ND</sup> DEFENDANT**
- JOSEPH OTIENO NYAOKE ..... 3<sup>RD</sup> DEFENDANT**
- PATRICIA OBEWA ..... 4<sup>TH</sup> DEFENDANT**
- PETER OMONDI ..... 5<sup>TH</sup> DEFENDANT**
- ROSA PAUL ..... 6<sup>TH</sup> DEFENDANT**
- SABINA CHEROBON ..... 7<sup>TH</sup> DEFENDANT**
- SAMUEL MUTAI ..... 8<sup>TH</sup> DEFENDANT**
- KENETH TUM ..... 9<sup>TH</sup> DEFENDANT**
- CAROLYNE ATIENO ..... 10<sup>TH</sup> DEFENDANT**
- GEORGE OCHIENG ..... 11<sup>TH</sup> DEFENDANT**
- DORIS ADHIAMBO ..... 12<sup>TH</sup> DEFENDANT**
- EUNICE AUMA ..... 13<sup>TH</sup> DEFENDANT**
- ODORO AUMA ..... 14<sup>TH</sup> DEFENDANT**



## JUDGMENT

1. The Plaintiff is the administrator of the estate of Yuda Odundo Owuor, deceased. The deceased was at all material times to this suit the registered owner of all that parcel of land known as Title No. Kisumu/Songhor/487 measuring approximately 52.0 hectares (hereinafter referred to only as “the suit property”). The Plaintiff brought this suit against the Defendants through a plaint dated 5<sup>th</sup> December 2022. In the plaint, the Plaintiff sought judgment against the Defendants for; an order of a permanent injunction restraining the Defendants by themselves or through their agents and/or servants from trespassing, encroaching and/or interfering with the suit property or otherwise committing other acts of waste on the property, an order of eviction from the suit property, damages for trespass, costs of the suit and interest thereon.
2. The Plaintiff averred that sometime in August 2019, the Defendants trespassed on and remained on the suit property without any lawful justification. The particulars of trespass were set out as; wrongfully entering upon the suit property without reasonable excuse, remaining thereon, cultivating and/or growing crops on the property without the consent of the Plaintiff, illegally harvesting murrum from the property and supplying the same to road construction contractors without the consent of the Plaintiff or his co-administrator and denying the Plaintiff entry, usage and peaceful enjoyment of the suit property.
3. The Plaintiff averred that as a result of the Defendants’ acts complained of, the Plaintiff had been denied the use of the suit property thereby suffering loss and damage. The Plaintiff averred that the Defendants had persisted in the said acts of trespass and intended to repeat the same acts complained of.
4. The Defendants were served with summons to enter appearance but failed to enter appearance or file a defence. The suit came up for formal proof on 14<sup>th</sup> November 2023. The Plaintiff adopted his witness statement dated 12<sup>th</sup> April 2023 as his evidence in chief and produced the documents attached to his list of documents of the same date as exhibits. The Plaintiff stated that the suit property belonged to his deceased father, Yuda Odundo Owuor in respect of whose estate he was a co-administrator. He stated that the Defendants had encroached on the suit property and had prevented the estate of the deceased from using the suit property. He urged the court to grant the reliefs sought in the plaint. On examination by the court, the Plaintiff stated that the Defendants did not have buildings or structures on the suit property. He stated that some of the Defendants were excavating and mining murrum from the suit property while others had planted crops thereon. He stated that the Defendants’ activities on the suit property were scattered. He stated that about 3 or 4 of the Defendants had temporary structures on the suit property.
5. After the close of evidence, the Plaintiff’s advocate made oral submissions. He submitted that the Defendants had been mining murrum from the suit property and selling the same to road contractors without the Plaintiff’s permission. He submitted further that some of the Defendants had been using the suit property for cultivation. He urged the court to restrain the Defendants’ illegal activities on the suit property and to award the Plaintiff damages for trespass. The Plaintiff’s advocate submitted that once trespass is established, damages is payable even if no loss is proved. He submitted that the court should award damages of Kshs. 100,000/- against each Defendant.



## Analysis and determination

6. I have considered the Plaintiff's case as pleaded and the evidence tendered in proof thereof. The issues that arise for determination in this suit are; whether the Defendants have trespassed on the suit property, and whether the Plaintiff is entitled to the reliefs sought.
7. As I mentioned earlier in the judgment, this suit was not defended. The averments by the Plaintiff in the plaint and his testimony at the trial were not rebutted. The documents that he produced in evidence in proof of his case were not challenged. The Plaintiff produced in evidence a copy of a certificate of confirmation of grant showing that he was one of the administrators of the estate of the deceased, Yuda Odundo Owuor. The Plaintiff also produced copies of the title deed for the suit property and a certificate of official search showing that the suit property was registered in the name of the deceased on 3<sup>rd</sup> June 2010. The Plaintiff also produced in evidence photographs showing the illegal activities by the Defendants complained of and the demand letters before action that were served upon the Defendants.
8. Sections 24, 25 and 26 of the [Land Registration Act](#), 2012 provide as follows:

“ 24. Subject to this Act—

- (a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and
- (b) the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.

25.

- (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.

26.



- (1) 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.”

9. I am satisfied from the evidence on record that the Plaintiff has proved his case against the Defendants on a balance of probabilities. The Plaintiff has proved that the deceased is the registered owner of the suit property and that the Defendants have entered the suit property without the Plaintiff's permission and that they are committing waste on the property. The Plaintiff has therefore proved that the Defendants are trespassers on the suit property.

10. On the issue of damages for trespass, the court stated as follows in *Duncan Nderitu Ndegwa Kenya Power & Lighting Co. Limited & another [2013] eKLR*:

...once a trespass to land is established it is actionable per se, and indeed no proof of damage is necessary for the court to award general damages. This court accordingly awards an amount of Kshs 100,000 as compensation for the infringement of the plaintiff's right to use and enjoy the suit property occasioned by the 1st and 2nd defendants' trespass.”

Halsbury Laws of England 4th Edition, Vol 45 at para 26, 1503, provides as follows on the same issue:

- (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 sum as would reasonably be paid for that use.”

11. The Plaintiff proved that the Defendants are committing waste on the suit property. The Plaintiff did not however prove the actual loss if any that the estate of the deceased suffered as a result of the trespass. I will award the Plaintiff Kshs. 100,000/- as general damages for trespass against each Defendant. The Plaintiff shall also have the costs of the suit.

## Conclusion

12. In conclusion, I hereby enter judgment for the Plaintiff against the Defendants as follows;
  - a. A permanent injunction is issued against the Defendants jointly and severally restraining them, their agents and/or servants from trespassing, encroaching and/or interfering with all that parcel of land known as Title No. Kisumu/Songhor/487 or otherwise committing the property to other acts of waste.



- b. The Defendants who are in occupation of all that parcel of land known as Title No. Kisumu/Songhor/487 shall vacate the same within 60 days from the date when the Plaintiff shall serve them with a copy of this judgment and the decree extracted therefrom in default of which the Plaintiff shall be at liberty to apply to the court for warrants for their forceful eviction. An affidavit of service of the judgment and decree upon the Defendants shall be lodged in court together with an application for such warrant.
- c. Each Defendant shall pay to the Plaintiff a sum of Kshs. 100,000/- as general damages for trespass together with interest at court rates from the date hereof until payment in full.
- d. The Defendants jointly and severally shall pay the costs of the suit to Plaintiff.

**DELIVERED AND SIGNED AT KISUMU ON THIS 25TH DAY OF JANUARY 2024**

**S. OKONG'O**

**JUDGE**

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

**Mr. Tawo for the Plaintiff**

**N/A for the Defendants**

**Ms. J. Omondi-Court Assistant**

