



REPUBLIC OF KENYA



**Lekeriyo v Telkom Kenya & 2 others (Environment & Land Case
110 of 2023) [2025] KEELC 711 (KLR) (20 February 2025) (Judgment)**

Neutral citation: [2025] KEELC 711 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA
ENVIRONMENT & LAND CASE 110 OF 2023
YM ANGIMA, J
FEBRUARY 20, 2025**

BETWEEN

CHARLES LEKERIYO PLAINTIFF

AND

TELKOM KENYA 1ST DEFENDANT

SAFARICOM PUBLIC LIMITED COMPANY 2ND DEFENDANT

COUNTY GOVERNMENT OF SAMBURU 3RD DEFENDANT

JUDGMENT

A. Plaintiff's claim

1. By a plaint dated 12.09.2018 the Plaintiff sued the Defendants claiming the following reliefs against them;
 - a. Mesne profits from 1993 to date and November 2016 to date in the sums of Kshs. 105,458,200/= and Kshs. 6,467,300/= respectively as set out in paragraph 18.
 - b. Damages for permanent wastage of one acre of land.
 - c. General damages for trespass from 1993 to date and November 2016 to date.
 - d. In the alternative and without prejudice to paragraph (c) above general damages for trespass;
 - e. Costs of this suit;
 - f. Any such or other or further relief as this Honourable Court may deem fit and just to grant.
2. The Plaintiff pleaded that at all material times, he was the owner of TITLE NO. SAMBURU/ PORO B/60 (Plot 160) measuring about 8.6 Ha. He pleaded that sometime in 1993 the 1st Defendant's agents unlawfully entered plot 160, constructed an access road thereon and set up its telecommunication



equipment on a portion of about 2 acres of the land. It was the Plaintiff's case that such entry and occupation of his land constituted trespass and had rendered his once fertile land unusable as a result of which he has suffered loss and damage.

3. The Plaintiff further pleaded that sometime in November 2016 the 2nd Defendant's agents also entered part of plot 160 and commenced installation of telecommunication equipment thereon without his consent or authority. It was the Plaintiff's case that following his objection the 2nd Defendant eventually abandoned its activities on plot 160 and relocated to an adjacent parcel of land known as TITLE NO. SAMBURU/PORO B/159. He however, contended that the 2nd Defendant has continued to wrongfully make use of the access road which was constructed on plot 160 by the 1st Defendant.
4. It was the Plaintiff's case that as a result of the 1st and 2nd Defendants' actions he had suffered loss and damage including loss of user and mesne profits. The Plaintiff enumerated particulars of mesne profits in the plaint in which he sought at least Kshs 111,925,500/= as mesne profits at time of filing suit.

B. 1st Defendant's defence

5. The 1st Defendant filed a defence and counterclaim dated 18.12.2018 and an amended counter claim dated 28.7.2021. By its defence, the 1st Defendant pleaded its predecessor Kenya Posts and Telecommunications Corporation (KPTC) had acquired a legal interest in 1.08 acres of what was previously known as Plot No. 12 Poro B in 1984 from its owner, Phillip Reguton (Phillip) for the purpose of establishing a telecommunication facility and an access road thereon.
6. The 1st Defendant pleaded that it paid Kshs. 4,000 to the then County Council of Samburu (the council) which received the same on behalf of Philip. It was the 1st Defendant's case that it was a legitimate owner of the said portion of 1.08 acres and that it was later on registered as part of Plot 160 due to the negligence of the council which had failed to excise and exclude the said portion during the land adjudication process.
7. The 1st Defendant further pleaded that it had been in open, continuous and uninterrupted possession of the said portion of 1.08 acres since 1985 hence the Plaintiff had no right to use, cultivate or occupy the said portion of land. It denied the Plaintiff's claim for mesne profits, general damages and other reliefs sought in the suit.
8. By its counter claim, the 1st Defendant reiterated the contents of the defence and pleaded that it was the legitimate owner of the disputed portion of 1.08 acres out of plot 160 since KPTC acquired the same for valuable consideration and that it was only registered in the Plaintiff's name due to the negligence of the council. In the alternative, the 1st Defendant pleaded that it had acquired adverse possession of the disputed portion of land on account of the doctrine of adverse possession due to its occupation thereof for a period exceeding 33 years.
9. As a result of the foregoing, the 1st Defendant sought the following reliefs against the Plaintiff and the County Government of Samburu in its counter claim;
 - a. A declaration that the 1st Defendant is lawfully entitled to a portion of the Suit Property being plot No 12 PORO 'B' measuring about 1.08 acres to be excised from the Suit property having acquired the same for valuable consideration.
 - b. A declaration that by virtue of the doctrine of adverse possession the 1st Defendant has acquired an indefeasible legal interest in the suit property and in particular the 1.08 acres and on which the 1st Defendant erected a Radio Repeater Station



- c. A declaration that the 3rd Defendant is liable for negligence and breach of its mandate in the land adjudication process by failing to excise the 1st Defendant's property being Plot No. 12 PORO 'B' measuring 1.08 acres from the suit property.
- d. A declaration that any loss or damage suffered by the Plaintiff is solely as a result of the 3rd Defendant's negligence
- e. An order directing the Chief Land Registrar to register the 1st Defendant as the owner of all the porting being plot No 12 PORO measuring 1.08 acres being the portion to be excised from the suit property.
- f. Costs of this suit.
- g. Any other relief that this Honourable Court may deem fit to grant.

C. 2nd Defendant's defence

- 10. The record shows that the 2nd Defendant filed a statement of defence dated 1.11.2018 denying the Plaintiff's claim in its entirety. It denied the Plaintiff's ownership of plot 160 and pleaded that it has never had any dealings with him over the property. It denied having undertaken any construction or having utilized any access road on plot 160 at any given time and put the Plaintiff to strict proof thereof.
- 11. The 2nd Defendant pleaded that when it sought to upgrade its telecommunication facilities it leased a portion of land from the owner of Plot 159, one Peter Lenarokie and confined its activities exclusively to the said land. It denied liability for the loss and damage pleaded by Plaintiff and denied the particulars of loss and mesne profits pleaded by the Plaintiff and put him to strict proof thereof. As a result, it sought the dismissal of the Plaintiff's claim against it with costs.

D. 3rd Defendant's response

- 12. The record shows that the 3rd Defendant did not enter appearance and did not file any defence to the action despite service.

E. Plaintiff's rejoinder

- 13. The material on record shows that the Plaintiff filed a reply to defence and defence to counter claim dated 22.0.2019. By his reply to defence, he joined issued with the 1st Defendant's defence and reiterated the contents of his plaint. He pleaded that he was the absolute owner of plot 160 and denied that KPTC had acquired any legal or equitable interest in it. He thus maintained that the 1st Defendant was a trespasser upon Plot 160 and denied that KPTC had acquired any legal or equitable interest in it. He thus maintained that the 1st Defendant was a trespasser upon plot 160.
- 14. In his defence to counter claim, the Plaintiff denied the 1st Defendant's counter claim in its entirety and reiterated the contents of the plaint. He denied that the 1st Defendant had enjoyed exclusive and uninterrupted possession of the disputed portion of plot 160 since 1985. He further disputed that that 1st Defendant had acquired adverse possession of he said portion of land under the Limitation of Action Act (Cap 22). As a consequence, he prayed for dismissal of the 1st Defendant's defence and counter claim.



F. Trial of the action

15. At the trial hereof, the Plaintiff testified on his own behalf and called 2 additional witnesses in support of his claim. On other hand, the 1st Defendant and 2nd Defendant called one witness each before closing their respective cases.

G. Directions on submissions

16. Upon conclusion of the trial, the parties were given timelines within which to file and exchange their respective submissions. The record shows that 1st Defendant filed its submissions on 13.12.2024 whereas the 2nd Defendant's submissions were filed on 07.010.2025. However, the Plaintiff's submissions were not on record by the time of preparation of the judgment.

H. Issues for determination

17. The court has noted that the parties did not file an agreed statement of issues but they filed separate statements. As a consequence, the court shall frame the issues for determination as provided for under Order 15 rule 2 of the Civil Procedure Rules. Under the said rule, the court may figure issues from any of the following;
- a. The allegations contained in pleadings or answers to interrogatories.
 - b. The allegations made on oath by or on behalf of the parties.
 - c. The contents of documents produced by the parties.
18. The court has perused the pleadings, evidence and documents on record on this matter. The court is of the view that the following are the key issues which arise for determination in this suit;
- a. Whether the Plaintiff is the owner of plot 160.
 - b. Whether the 1st Defendant has any legal or equitable interest over a portion of plot 160.
 - c. Whether the 1st Defendant has acquired adverse possession of a portion of 1.08 acres out of plot 160.
 - d. Whether the Plaintiff has proved his claim against the 1st Defendant.
 - e. Whether the Plaintiff has proved his claim against the 2nd Defendant
 - f. Whether the 1st Defendant has proved its counter claim against the 3rd Defendant.
 - g. Whether the Plaintiff is entitled to the reliefs sought in the suit.
 - h. Whether the 1st Defendant is entitled to the reliefs sought in the counter claim.
 - i. Who shall bear costs of the suit.

I. Analysis and determination

a. Whether the Plaintiff is the owner of the plot 160

19. The court has considered the material and submissions on record on this issue. The 2nd Defendant is the one who disputed the Plaintiff's ownership of plot 160. However, the 1st Defendant appeared to concede the Plaintiff's registration but contended that he was registered as proprietor of the entire land by mistake or through the negligence of the 3rd Defendant.



20. The court is satisfied on the basis of the documentary evidence on record that the Plaintiff is the current registered owner of plot 160. That much is evident from the copy of the title deed and certificate of official search he produced at the trial. The question as to whether the Plaintiff was wrongfully registered as proprietor shall be considered later in the judgment.

b. Whether the 1st Defendant has any legal or equitable interest over a portion of plot 160

21. his issue. The 1st Defendant contended that its predecessor (KPTC) bought a portion of 1.08 acres in 1985 or thereabouts for the purpose of constructing a telecommunication facility. It stated that the said portion of land was bought from Philip before the land adjudication process hence the purchase price of Kshs.4000 was paid to the council on his behalf. It was the 1st Defendant's case that the disputed land was at the time part of plot No. 12 Poro B.
22. On his part, the Plaintiff denied knowledge of any sale transaction and testified that even though he knew Philip his land was about 7 km away and that he had never owned plot 160 in the past. He disputed that his father had ever dealt with Plot 160 and contended that he obtained the land directly from a group ranch and not from his father. It is evident from the material on record that KPTC had identified some land for purchase for the purpose of constructing a telecommunication facility. It is evident that it was dealing with the council at the material time and that it paid Kshs. 4,000 to the council on behalf Philip for the purchase of a portion of 1.08 acres out of Plot No. 12. However, there is no credible evidence on record to show any connection between plot 12 PORO B which was allegedly owned by Phillip and Plot 160 belonging to the Plaintiff. The 1st Defendant did not call the relevant land adjudication officer to shed light on the matter. The court finds it particularly hard to find a connection between plot 12 and plot 160 because it transpired at the trial that the site of the telecommunication facility was shifted 30 meters north from the original site. The 1st Defendant's witness at the trial conceded that he had no evidence before court to demonstrated a connection between the two plots. He was not involved in the acquisition of the property and had never visited the site at any given time. Although the 1st Defendant's witness testified that he believed that the facility was built on the correct plot even after adjustment of the site, he conceded that there was a possibility that it could be lying on the wrong plot. As a result, the court finds that the 1st Defendant has failed to demonstrate that it has any legal or equitable interest on a portion of plot 160 as pleaded in its defence and counter claim.

c. Whether the 1st Defendant has acquired adverse possession of a portion of 1.08 acres out of plot 160

23. The 1st Defendant contended, in the alternative, that it had acquired adverse possession of the disputed portion of 1.08 acres since it had been in open, continuous, exclusive and uninterrupted possession thereof since 1985 or thereabouts. The evidence on record shows that KPTC constructed its facility at the current site between 1987 and 1990.
24. The Plaintiff's pleading and evidence shows that the 1st Defendant's occupation started in 1993 or thereabouts when it installed telecommunication equipment and constructed an access road over plot 160. The Plaintiff's case was that he was employed by the 1st Defendant as a security guard of the facility as far back as 1993.
25. The elements of adverse possession were summarized in the case of Kasuve –vs- Mwaani Investments Ltd & 4 Others [2004] 1KLR 184 as follows:

“....and in order to be entitled to land by adverse possession, the claimant must prove that he has been in exclusive possession of the land openly and as of right and without interruption



for a period of 12 years either after dispossession of the owner or by the discontinuation of possession by the owner on his own volition, *Wanja vs Sakwa No.2 [1984] KLR 284*. A title by adverse possession can be acquired under the *Limitation of Actions Act* for part of the land....”

26. Similarly, in the case of *Chevron (K) Limited –vs- Harrison Charo Wa Shutu [2016] eKLR* it was held, inter alia, that:

“At the expiration of the twelve-year period the proprietor’s title will be extinguished by operation of the law and section 38 of the Act permits the adverse possessor to apply to the High Court for an order that he be registered as the proprietor of the land. Therefore the critical period for the determination whether possession was adverse is 12 years and the burden is on the person claiming to be entitled to the land by adverse possession to prove, not only the period but also that his possession was without the true owner’s permission, that the owner was dispossessed or discontinued his possession of the land, that the adverse possessor has done acts on the land which are inconsistent with the owner’s enjoyment of the soil for the purpose for which he intended to use it. See *Littledale v Liverpool College (1900)1 Ch.19, 21.*”

27. According to the Plaintiff’s own pleading and evidence, the 1st Defendant entered plot 160 in 1993 and has continued with occupation to date. The evidence on record reveals that the Plaintiff was aware as far back as 1993 that the 1st Defendant was occupying part of his land. He was even employed as a security guard by the 1st Defendant at the telecommunication facility. The Plaintiff does not appear to have taken any legal steps to evict the 1st Defendant until 2018 when he filed the instant suit. The material on record shows that the Plaintiff was registered as proprietor of plot 160 on 28.2.1993, the same year he was employed there by the 1st Defendant.
28. The court is of the view that by the time the Plaintiff filed suit on 24.09.2018 about 25 years had lapsed since the accrual of his cause of action. The court is thus satisfied that the 1st Defendant has ably demonstrated its claim for adverse possession of at least 1.08 acres out of plot 160. By constructing a telecommunication facility and maintaining it there for over 25 years the 1st Defendant demonstrated animus possidendi to hold and use the land as its own.

d. Whether the Plaintiff has proved his claim against the 1st Defendant

29. Even though the court has found that the Plaintiff is the registered owner of plot 160 it has found that the Plaintiff’s right to recover the portion of 1.08 acres in the 1st Defendant’s possession has been extinguished by operation of law. The court has found that the 1st Defendant has become entitled to the disputed portion of land on account of the doctrine of adverse possession. As consequence, the court is of the opinion that the Plaintiff has not proved his claim against the 1st Defendant to the required standard. The court is further of the view that since the 1st Defendant is entitled to keep and utilize the portion of 1.08 acres on which it has installed a telecommunication facility, it is also entitled to a right of way to access its facility under the doctrine of necessity.

e. Whether the Plaintiff has proved his claim against the 2nd Defendant

30. The Plaintiff’s grievance against the 2nd Defendant was that sometime in November 2016 its agents had entered plot 160 and commenced installation of a telecommunication facility and that they later on stopped the works and relocated to an adjacent plot No. 159. It was his case that although the 2nd



Defendant vacated his land it continued to make use of the access road constructed by the 1st Defendant earlier on. He produced photographs of the access road which the 2nd Defendant was allegedly using.

31. The 2nd Defendant's evidence was to the effect that it had never had any dealings with the Plaintiff and had never had been to plot 160. Its evidence was that it had signed a lease with the owner of Plot No 159 where it had installed its telecommunication facility. The 2nd Defendant further testified that plot 159 had its own access road hence its agents had no reason to cross through plot 160. However, during cross examination by the Plaintiff's advocate, the 2nd Defendant's witness conceded that when he visited plot 159 he used what he considered to be a convenient access road and not the official route. It would appear that the official access road has not been graded and made motorable.
32. The court is inclined to believe the evidence of the Plaintiff and his witnesses that the 2nd Defendant indeed entered a portion of plot 160 in November 2016 and attempted to install a telecommunication facility thereon. It would appear that upon an acrimonious encounter with the Plaintiff the 2nd Defendant leased a portion of an adjacent plot No. 159 and relocated there. It is telling that the lease agreement with the owner of plot 159 is dated 26.03.2017. The court believes the evidence of PW3 on the issue of trespass since he was hired as a casual labourer by the 2nd Defendant's agents for the purpose of some construction works. The witness was the Plaintiff's neighbour and appeared to know the area well.
33. The court has also considered the evidence on record on the 2nd Defendant's alleged use of an access road through plot 160 for the purpose of accessing plot 159. The 2nd Defendant conceded that plot 159 has its own official access road but that there was also another "convenient" route which DW2 utilized when he visited plot 159 in the past. The photographs produced at the trial showed that this convenient route was a graded all weather road passing through the Plaintiff's land. The court is satisfied on a balance of probabilities that the 2nd Defendant has been utilizing the convenient access road rather than the official route as depicted in the survey maps. The court is thus satisfied that the Plaintiff has demonstrated his claim against the 2nd Defendant on a balance of probabilities.

f. Whether the 1st Defendant has proved its counter claim against the 3rd Defendant.

34. It is evident from the record that the 3rd Defendant did not file any defence to the counter claim and did not participate at the hearing. The court is, however, not satisfied that the council was negligent as pleaded by the 1st Defendant. On the contrary, the court is of the view that it is either KPTC or the 1st Defendant which was negligent in failing to take steps to protect its perceived interest in the disputed property. There is no evidence on record to show that the 1st Defendant or KPTC ever took steps to engage the relevant land adjudication officer or officials of the group ranch which was allocated the land. There is no evidence of any follow up with the council or other land officials by the 1st Defendant. There was even no evidence of the 1st Defendant having caused any encumbrance to be registered against plot 160 or plot 12 claiming a purchaser's interest. As a result, the court is not satisfied that the 1st Defendant has proved its claim against the 3rd Defendant.

g. Whether the Plaintiff is entitled to the reliefs sought in the suit

35. The court has already found and held that the Plaintiff has failed to prove his claim against the 1st Defendant in view of the court's finding that the latter has demonstrated its claim for adverse possession. It would, therefore, follow that the Plaintiff is not entitled to any reliefs against the 1st Defendant. On the contrary, the 1st Defendant is entitled to 9 a right of way in order to access its facility currently standing on plot 160.



36. However, the court is of the view that the Plaintiff is entitled to general damages for trespass to land against the 2nd Defendant. The court has taken into account the fact that the 2nd Defendant's occupation of part of plot 160 was only short lived before relocating to plot 159. The court has further taken into account the fact that plot 159 has its separate, official access road even though it could be less convenient and cumbersome to use. In the case of *Njogu and Others vs Sino Hydro Corporation Ltd & Another* (Land Case No.92 of 2023) [2024] KEELC 6536 (KLR) (3 October 2024) (Judgment) this court awarded the Plaintiffs general damages of Kshs.200,000/=for trespass to land. In this particular case, the court is of the view that a figure of Kshs. 200,000 as general damages shall be adequate compensation to the Plaintiff.

h. Whether 1st Defendant is entitled to the reliefs sought in the counter claim

37. The court has considered the several reliefs sought by the 1st Defendant in its counterclaim. The court has already found that the 1st Defendant has proved its claim for adverse possession as against the Plaintiff. The court is of the view that the only relief to which the 1st Defendant is entitled is the one relating to adverse possession. As a result, the rest of the claims in the counter claim are not awardable.

i. Who shall bear costs of the suit

38. Although costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the *Civil Procedure Act* (Cap 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. See *Hussein Janmohamed & Sons -vs- Twentsche Overseas Trading Co. Ltd* [1967] EA 287. The court is of the view that as between the Plaintiff and the 1st Defendant there should be no order as to costs since the 1st Defendant or its predecessor was not diligent in securing the portion of 1.08 acres the subject of the purchase. The counter claim for adverse possession would not have been necessary were it not for the negligence of KPTEC and the 1st Defendant.

39. Regarding the Plaintiff's claim against the 2nd Defendant, the court is of the view that there is no good reason to depart from the general rule. As a result, the Plaintiff shall be awarded costs of the claim against the 2nd Defendant. As regards the 1st Defendant's counter claim against the 3rd Defendant, the court is of the view that the same ought to be dismissed with no order as to costs since it was not defended.

j. Conclusion and disposal orders

40. The upshot of the foregoing is that the court finds that whereas the Plaintiff has failed to prove his claim against the 1st Defendant, he has proved his claim for trespass against the 2nd Defendant. The court further finds that the 1st Defendant has proved its counterclaim for adverse possession against the Plaintiff but failed to prove its counter claim against the 3rd Defendant. As a consequence, the court makes the following orders for disposal of the suit and counter claim;

- a. The Plaintiff's suit against the 1st Defendant is hereby dismissed in its entirety with no order as to costs.
- b. The Plaintiff is hereby awarded Kshs. 200,000 as general damages for trespass against the 2nd Defendant only together with costs of the claim.
- c. The 1st Defendant's counter- claim against the 3rd Defendant is hereby dismissed with no order as to costs.



- d. A declaration is hereby made that the 1st Defendant has become entitled to be registered as proprietor of a portion of 1.08 acres in its possession out of Title No. Samburu/poro B/160 on account of the doctrine of adverse possession.
- e. For the avoidance of doubt, any relief sought which has not been specifically granted is deemed to have been denied.

It is so decided.

JUDGMENT DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY THIS 20TH DAY OF FEBRUARY 2025.

In the presence/absence of:

No appearance for the plaintiff

Mr. Karuti for the 1st Defendant

Mr. Luke Ong'wen for the 2nd Defendant

No appearance for the 3rd Defendant

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Y. M. ANGIMA

JUDGE

