



**Kamoye v Tipango & 2 others (Environment & Land Case
E011 of 2023) [2024] KEELC 4227 (KLR) (14 May 2024) (Judgment)**

Neutral citation: [2024] KEELC 4227 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT & LAND CASE E011 OF 2023**

CG MBOGO, J

MAY 14, 2024

BETWEEN

MPATINGA OLE KAMOYE PLAINTIFF

AND

LEDAMA OLE TIPANGO 1ST DEFENDANT

SOINTANAE OLE TIPANGO 2ND DEFENDANT

YIAMET OLE KAMOYE 3RD DEFENDANT

JUDGMENT

1. On 18th May, 2023, the plaintiff filed the plaint dated 17th May, 2023 seeking judgment against the defendants for: -
 1. That this honourable court be pleased to order the eviction of the defendants from the premises known as Cis Mara/ Ololulunga/ 12507.
 2. A permanent order of injunction restraining the defendants, their servants, licensees, agents or any other person(s) acting on their own behalf from howsoever trespassing, occupying, or harassing or interfering with the ownership, quiet possession and occupation by the plaintiff of all that parcel of land known as CisMara/ Ololulunga/ 12507.
 3. A declaration that the plaintiff is the rightful owner and entitled to exclusive quiet and peaceful enjoyment of all that parcel of land known as CisMara/Ololulunga/12507.
 4. The defendants herein be directed to abate the nuisance by removing any structures that they may have erected on the suit property at their costs.
 5. Damages for trespass and destruction of vegetation.
 6. Costs of the suit and further or any other relied deemed just by this court.



2. The plaintiff averred that he is the registered proprietor of the parcel of land known as CisMara/Ololulunga/12507 since 1st November, 2007, and that the defendants without justification, invaded and interfered with his quiet possession and peaceful enjoyment of the suit property. Further, he averred that the defendants have encroached the suit property, and are in the process of commencing cultivation notwithstanding his opposition as the rightful owner of the same.
3. The plaintiff stated that his plans to plough his land have been impeded by the defendants, and he is thus deprived of his property and dispossessed of peaceful enjoyment, due to the unlawful conduct of the defendants who have since claimed a portion of the parcel that belongs to him. He averred that as a result, there is hostility and demonstration of all forms of confrontation towards him in attempts to grab his land.
4. The plaintiff pleaded particulars of interference and damage on the suit property by the defendants, and that his claim against the defendants is for eviction and permanent injunction restraining them from in any way dealing with the land.
5. On 7th August, 2023, the defendants filed their statement of defence dated 28th July, 2023. The defendants while denying the contents of the plaint, averred that the initial and original owner of the suit property was Tipango Kayoni who is deceased, and contended that there was an issue of fraud regarding the acquisition of the suit property by the plaintiff. They further averred that the plaintiff has concealed material facts and that he is misleading this court by failing to disclose that the suit property is a succession matter pending hearing and determination in Succession Cause No. 66 of 2003.
6. The defendants further averred that the plaintiff acquired the suit property fraudulently, thus denying the actual beneficiaries of the estate of the late Tipango Kuyion who died intestate to utilize and benefit from the same.
7. On 4th December, 2023, the plaintiff filed his reply to defence dated 1st November, 2023. He averred that the suit property has never been owned or registered in the name of Tipango Kuyioni, and that the acquisition was legal and procedural. Further, he averred that the succession matter was dismissed on 16th March, 2023.
8. The plaintiff's case proceeded for hearing on 19th March, 2024. The plaintiff adopted his witness statement dated 17th May, 2023 as his evidence in chief. The plaintiff testified that the suit property belongs to him and that he reported the issue of trespass to the police on two occasions i.e. 15th and 16th April, 2023 respectively. He went on to testify that in his reply to defence, he has shown that the succession cause no. 66 of 2003 was dismissed on 16th March, 2023. In support of his case, the plaintiff produced exhibits nos. P. Ex No. 1,2(a) to (l),3, 4(a) and (b) and 5 respectively.
9. For record purposes, the defendants did not participate in the hearing. The counsel on record for the defendants filed an application to cease acting for the defendants for the reason that he was unable to locate the defendants, but he did not prosecute the same. As it stood, the defence counsel was still on record for the defendants.
10. On 19th March, 2024, this court directed the plaintiff to file his written submissions. The plaintiff did not file his written submissions.
11. Be that as it may, I have considered the pleadings, the evidence tendered during trial, and in my view, the issue for determination is whether the plaintiff is entitled to the orders sought.



12. The *Land Registration Act*, Cap 300 is very clear on issues of ownership of land, and Section 24(a) of the said Act provides as follows:

“Subject to this Act, 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.”

13. Section 26 (1) of the *same Act* states as follows:

“The Certificate of Title issued by the Registrar upon registration ... 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... 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.”

14. The law is clear that, the certificate of title issued by the Registrar upon registration 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 and the title of that proprietor shall not be subject to challenge except on the ground of fraud or misrepresentation to which the person is proved to be a party; or where the certificate of title has been acquired illegally, un-procedurally or through a corrupt scheme.

15. The plaintiff in this case, attached a copy of the title deed to the dispute land, clearly outlining the name of the registered owner. It has been said time and again that a Title Deed is an indefeasible evidence of the ownership of land. Whereas the defendants claim that the plaintiff acquired the suit property through fraud, the same was not proved through trial and only remains an allegation on paper as contained in their statement of defence. Having looked at the copy of the title deed, I am satisfied that the suit property indeed belongs to the plaintiff who is the registered proprietor. The registration and proprietorship of the plaintiff is, therefore, not in dispute and thus, the plaintiff remains the rightful, absolute and indefeasible owner of the property with all the rights and privileges accruing therefrom; including the right to possession, to a quiet and peaceful occupation and right to use the property.

16. The evidence that the defendants have encroached on the suit property has not been challenged, and this court having found that the plaintiff is the registered owner, it is my finding that the plaintiff is entitled to peaceful and quiet enjoyment of the suit property without any interference by the defendants.

17. On the issue of general damages for trespass, the issue that arises is the measure of it. In the case of *Philip Ayaya Aluchio v Crispinus Ngayo* [2014] eKLR, it was held as follows:

“The plaintiff is entitled to general damages for trespass. The issue which arises is as to what is the measure of such damage? It has been held that the measure of damages for trespass is the difference in the value of the plaintiff’s property immediately after the trespass or the costs of restoration, whichever is less See *Hostler – VS – Green Park Development Co.* 986 S. W 2d 500 (No. App. 1999).”



18. In the case of *Duncan Nderitu Ndegwa v KP & LC Limited & Another* (2013) eKLR, P. Nyamweya, J held that: -

“...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 of the infringement of the Plaintiff’s right to use and enjoy the suit property occasioned by the 1st and 2nd Defendants trespass”

19. From the evidence on record, there is nothing that can be used to enable this court determine the actual damage and/or measure of the damage or loss that the plaintiff suffered for him to be compensated for the loss. However, in relying on the above authorities, I find the plaintiff has suffered damages as a result of the defendants’ unlawful acts of trespass and award him Kshs. 200,000/= as general damages.

20. Arising from the above, the plaintiff has proved his case on a balance of probabilities, and I thus enter judgement for the plaintiff and against the defendants in the following terms: -

- i. That the defendants do vacate the suit property known as CisMara/Ololulunga/12507 within 90 days from the date hereof failure to which eviction shall issue.
 - ii. A permanent order of injunction is hereby issued restraining the defendants, their servants, licensees, agents or any other person (s) acting on their own behalf from howsoever trespassing, occupying, or harassing or interfering with the ownership, quiet possession and occupation by the plaintiff of all that parcel of land known as CisMara/Ololulunga/12507.
 - iii. A declaration is hereby issued that the plaintiff is the rightful owner and entitled to exclusive quiet and peaceful enjoyment of all that parcel of land known as CisMara/Ololulunga/12507.
 - iv. Kshs. 200,000/- being general damages for trespass.
 - v. Costs of the suit.
- Orders accordingly.

DATED, SIGNED & DELIVERED VIA EMAIL this 14TH day of MAY, 2024.

HON. MBOGO C.G.

JUDGE

14/5/2024.

In the presence of: -

Mr. Meyoki Pere – C.A

