



**Analo & another v Matuiya (Environment & Land Case  
E103 of 2022) [2024] KEELC 5535 (KLR) (25 July 2024) (Judgment)**

Neutral citation: [2024] KEELC 5535 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE E103 OF 2022  
LC KOMINGOI, J  
JULY 25, 2024**

**BETWEEN**

**PATRICK OSEDE ANALO ..... 1<sup>ST</sup> PLAINTIFF**

**TRUPHENA MAKUNGU OSEDE ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**MARK MAKUI MATUIYA ..... DEFENDANT**

**JUDGMENT**

1. The Plaintiffs through the Plaint dated 5<sup>th</sup> December 2022, claim that they are the registered owners of property Kajiado/Kitengela/38020 measuring approximately 4.8 acres having purchased from the Defendant on 2<sup>nd</sup> May 2012 and title issued on 28<sup>th</sup> September 2012. Due to financial constraints, they did not develop the property but kept visiting it from time to time. In 2017 during these visits, they noticed that someone had put a house on part of the land. When they questioned the Defendant about it, he acknowledged that the house belonged to him and had constructed it with the belief that it was on his adjoining parcel of land. He promised to move, but never did.
2. It is also their case, on 9<sup>th</sup> January 2019 the 1<sup>st</sup> Plaintiff entered into another sale agreement with the Defendant for the sale of an additional 1 acre for parcel Kajiado/Kitengela/97235 which had already been subdivided. To avoid a fresh conveyance process, the Defendant promised to cause title to the subdivided land to be registered in the 1<sup>st</sup> plaintiff's name. Kshs. 1,500,000 was paid for that parcel. Unfortunately, the Plaintiff later discovered that the said parcel had been sold off to another person. The Defendant promised to give them an alternative parcel but failed to. The Plaintiffs therefore sought orders that;
  - i. The court do issue an order compelling the Defendant to immediately but in any event within 30 days of the court's order to vacate from the plaintiffs' parcel of land being LR No. Kajiado/Kitengela/38020.



- ii. The court do order that in the event of the defendant's failure to voluntarily vacate within 30 days of order 1 above, an eviction order be issued and signed to be effected and the defendant be forcefully evicted by the plaintiffs from LR No. Kajiado/Kitengela/38020 be demolished at the Defendant's costs.
  - iii. That the OCPD Kajiado and OCS Kitengela Police Station be and hereby ordered to grant police assistance to the Plaintiffs in offering security and ensuring that peace prevails during the eviction and demolition process as ordered in order number 2 above.
  - iv. That the defendant do meet all the eviction and demolition costs as shall be computed and filed in court by the Plaintiffs.
  - v. The defendant be ordered to pay and refund to the Plaintiff's the total sum of Kshs. 5,000,000 being the current equivalent value of a 1 acre parcel of land within the Kajiado/Kitengela section in which the Defendant sold to the plaintiff the false 1 acre parcel of land falsely titled as LR No. Kajiado/Kitengela/97235 which never was to the plaintiffs' loss and detriment.
  - vi. The defendant do pay general damages to the Plaintiffs to be assessed by the court for the emotional trauma, stress and mental anguish attendant to the defendants breaches as pleaded herein and for the attendant trauma and costs in follow up of the defendant, the numerous lies and promises which never materialised and the time wasted and resources spent on waiting on the use of their lands from purchase to date.
  - vii. The Defendant do pay the Plaintiffs' costs of this case.
3. The Defendant neither entered appearance nor filed a defence.

### **Evidence of the Plaintiff**

4. PW1, Patrick Analo a humanitarian worker based in Sierra Leone adopted his witness statement as his part of evidence in chief and produced his bundle of documents as his exhibits. He stated that he got to know the defendant in 2011 before purchased his parcel of land from him and had not been able to contact him from the year 2021. He testified that they took a surveyor to the suit property who confirmed that the Defendant's house had been constructed on their parcel of land. They asked him to vacate but that request was yet to be heeded to. That had made them not put the property to use. He also testified that in 2019, the Defendant approached him with an offer for another parcel of land Kajiado/Kitengela/97235 for Kshs. 1,500,000 which he paid in full. The defendant however became evasive and never relinquished the title to them. When they asked a surveyor to conduct a search on the property, they discovered that it was registered in someone else and had thus acquired the said amount deceitfully and was entitled to compensation of Kshs. 5,000,000 which was the current value of the property.
5. This marked the close of the Plaintiffs' case.
6. At the close of the oral testimonies, the Plaintiffs tendered final written submissions.

### **The Plaintiffs' Submissions**

7. They are dated 19<sup>th</sup> April 2024. Counsel submitted that the Plaintiffs had not enjoyed the suit land they purchased in 2012 due to the Defendants trespass and they were entitled to general damages of Kshs. 10,000,000 for loss of user, together with interest and costs of the suit.



8. Counsel also added that the Plaintiffs were entitled to refund of the Kshs. 5,000,000 paid to the Defendant for purchase of another piece of land which was yet to be delivered.

### **Analysis and Determination**

9. I have considered the pleadings, the evidence tendered, the written submissions and the authorities cited. The issues for determination are:
- i. Whether an order of eviction should issue against the Defendant for property Kajiado/Kitengela/38020;
  - ii. Whether the Plaintiffs are entitled to refund and compensation of Kshs. 5,000,000 for property Kajiado/Kitengela/97235;
  - iii. Whether the Plaintiffs are entitled to general damages against the Defendant;
  - iv. Who should bear costs of the suit?
10. The Plaintiffs' case is that the Defendant unlawfully constructed a house on their property, known as Kajiado/Kitengela/38020, and has subsequently refused to vacate despite repeated requests and demands to do so.
11. From the documentary evidence produced, it is unequivocal that property Kajiado/Kitengela/38020 is registered in the 1<sup>st</sup> Plaintiff's name. The Plaintiffs submitted a sale agreement dated 2<sup>nd</sup> May 2012, along with evidence of a charge in favour of Cooperative Bank of Kenya, which was discharged on 26<sup>th</sup> September 2012. Subsequently, a title deed was issued in the Plaintiffs' names on 28<sup>th</sup> September 2012, further solidifying their legal ownership of the property.
12. The Defendant did not contest the allegation that he had trespassed on the Plaintiffs property and put up a house. Section 3 (1) of the Trespass Act provides that: Any person who without reasonable excuse enters, is or remains upon, or erects any structure on, or cultivates or tills, or grazes stock or permits stock to be on, private land without the consent of the occupier thereof shall be guilty of an offence. The Plaintiffs' case has not been controverted. If there is a house erected on the Plaintiffs' property without their consent, such an act unequivocally constitutes trespass. The unauthorized occupation and use of another's land infringe upon the owner's property rights, necessitating legal redress.
13. I find that the Plaintiffs have suffered loss and damages. It is trite law that trespass is actionable per se (without proof of any damage). In the case of *Park Towers Ltd Vs. John Mithamo Njuka & 7 others* (2014) eKLR Mutungi J stated thus;
- “I agree with the learned Judges that where trespass is proved a party need not prove that he suffered any specific damage or loss to be awarded damages. The court in such circumstances is under a duty to assess the damages awardable depending on the unique facts and circumstances of each case.”
- I therefore award Kshs. 300,000/= which I think is reasonable.
14. The 1<sup>st</sup> Plaintiff further stated that in 2019 he entered into another agreement with the Defendant for the purchase of another acre of land being LR No. Kajiado/Kitengela/97235 for Kshs. 1,500,000. His case is that the Defendant represented to him that the land had already been subdivided and that parcel numbers had been obtained. The Defendant purportedly promised to facilitate the issuance of



the title directly to the Plaintiff to expedite the conveyancing process. This representation is explicitly quoted in the Plaintiff

“... he had already subdivided and obtained parcel numbers and he promised to cause the title to be issued directly to the Plaintiff to obviate the need for an entire fresh conveyance process...”

15. The Plaintiff produced the sale agreement for the second parcel of land, though he did not provide any evidence of payment for the purchase. He stated that he

“consequently discovered that the stated parcel has long been sold and titled to a different company...”

16. PW1 stated that he paid Kshs.1,500,000/= for the said parcel Kajiado/Kitengela/97235. He seeks a refund of Kshs.5,000,000/= being the current market price. He however produced no valuation report to show that the land is now worth Kshs.5,000,000/=. In the absence of a valuation Report, he is only entitled to a refund of the purchase price.

17. In conclusion I find that the Plaintiffs have proved their case against the defendant on a balance of probabilities.

18. Accordingly judgment is entered in their favour as against the defendant as follows;

- a. That the Defendant is hereby directed to vacate this suit property within sixty (60) days.
- b. The defendant is hereby directed to pull down, and or demolish and remove the structures together with parcel as rubbles, sand and other offending materials from LR No. Kajiado/Kitengela/38020, within sixty (60) days from the date of this judgement.  
In default, the plaintiffs are at liberty to demolish the same at the defendant's expense.
- c. General Damages for trespass Kshs.300, 000/= .
- d. A refund of Kshs.1,500,000/=
- e. Costs of the suit and interest.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 25<sup>TH</sup> DAY OF JULY 2024.**

**L. KOMINGOI**

**JUDGE.**

In the presence of:

N/A for the Plaintiffs.

N/A for the Defendant.

Court Assistant – Mutisya.

