



**Gakio v Kurgat & 2 others (Environment & Land Case 155 of 2016)
[2024] KEELC 6231 (KLR) (30 September 2024) (Judgment)**

Neutral citation: [2024] KEELC 6231 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 155 OF 2016
EO OBAGA, J
SEPTEMBER 30, 2024**

BETWEEN

GRACE WAIRIMU GAKIO PLAINTIFF

AND

EMILY CHELAGAT KURGAT 1ST DEFENDANT

FRANCIS MWANGI NDIRANGU 2ND DEFENDANT

NJOROGE MUGO 3RD DEFENDANT

JUDGMENT

1. In the Amended Complaint filed on 19th August, 2015 the Plaintiff averred that being a member of Jijenge Self Help Group (hereinafter “the Group”), she was allocated land known as Chemalmal 62A (2) and Chemalmal 62A (3) (the suit property herein) which were purchased by the Group vide agreement dated 21st July, 1998. She averred that she enjoyed peaceful ownership until January, 2014 when she visited the property and found ongoing construction, and on inquiry, was informed that the Defendants were in occupation. The Plaintiff alleged that she found the Defendants and upon showing them her documents, they promised to stop construction. The Plaintiff contended that in August, 2015 her Daughter-in-Law visited the land and noted that the 1st Defendant had proceeded to construct her house, while the 2nd and 3rd Defendants had fenced off their portions.
2. The Plaintiff averred that she reported the matter on 24th August, 2015 to the Baharini Police Post under occurrence book number OB 34/24/08/2015, and to the area chief who summoned the Defendants to attend on 25th August, 2015. That the Defendants turned up without documents, informing the chief that they would avail their documents to him. That only the 1st Defendant submitted documents indicating that she had purchased Plot Nos. 212(A & B) which are different from the Plaintiff's land. The Plaintiff alleged that the Defendants are yet to avail the said documents but the 1st Defendant has completed her house and moved in, while the other two are continuing



with construction and fencing the land. Apprehensive that the Defendants would deprive her of her proprietary rights, the Plaintiff sought an eviction order against the Defendants and that she be allowed to have peaceful enjoyment of the property. The prayers as set out in the Plaint are for:

- a. An order as per paragraph 10(a) of the plaint.
 - b. Costs and interest.
 - c. Any other relief the court may deem fit to grant in the circumstances.
3. I have noted that neither Paragraph 10 of Original Plaint nor the Amended Plaint have a sub-paragraph (a), and only paragraph 12 has one. Further, being the only prayer made in the Plaint, I am constrained to believe that the same is an error and the drafter meant to state the prayer at Paragraph 12(a) of the Amended Plaint.
 4. On 5th July, 2016 the firm of Ngala & Company entered appearance for the 1st and 2nd Defendants. However, the Statement of Defence dated 24th August, 2015 was titled “1st Defendant Statement of Defence”. It was Amended on 23rd March, 2017 but is titled “Amended 1st Defendant’s Statement of Defence”. In the said, defence, the 1st Defendant denied every averment in the Plaint and denied the Plaintiff’s ownership of the two parcels of land. She further denied the existence of the Jijenge Self Help Group as a legal entity or at all. The 1st Defendant accused the Plaintiff of lapses for not filing the suit in 2014 when construction was still underway. She averred that she is in possession of a ¼ portion as a bonafide purchaser for value having bought the suit property for KShs. 450,000/- and that she has the requisite documents to prove that she owns a parcel of land that is different from the Plaintiff’s land. The 1st Defendant averred that as the legal owner, she had no obligation to present ownership documents to the Plaintiff who had in turn not furnished her own. She added that membership to the Group was not proof of ownership and that the prayers sought in the Plaint were not legally tenable. She prayed that the suit be dismissed with costs.
 5. In response, the Plaintiff filed a Reply to the 1st Defendant’s Amended Statement of Defence, denying its contents and reiterating the averments in the Amended Plaint. She denied the averment that the 1st Defendant was a bona fide purchaser of the land. The Plaintiff asserted that the suit was not fatally defective therefore there was no reason for the same to be dismissed. She prayed that the 1st Defendant’s Amended Defence be dismissed and judgment be entered as prayed in the Amended Plaint.
 6. On 15th April, 2019 the 3rd Defendant filed a Statement of Defence of the same date denying the averments in the Amended Plaint. The 3rd Defendant further averred that he bought the property known as Chemala/Baharini Provisional Plot No. 212(c) measuring 1/8 of an Acre from one David K. Keter. That he paid the full purchase price for the property, took possession and ownership thereof, developed it and put up a fence. He acknowledged that the 1st and 2nd Defendant are his neighbours that he found on the property, but denied any knowledge of the Plaintiff or of any discussion with her over the suit property. He claimed to have acquired the property for valuable consideration without any notice of defect. The 3rd Defendant averred that the Plaintiff is not entitled to the orders sought as she had no proprietary rights thereof. He added that the Plaintiff’s claim was time barred, further claiming that the Plaintiff’s suit is fatally defective, an abuse of court process and that it ought to be dismissed with costs.
 7. A Reply to the 3rd Defendant’s Statement of Defence dated 6th May, 2019 was filed. In this Reply, the Plaintiff denied every allegation in the 3rd Defendant’s Statement of Defence. Reiterating the contents of his Plaint, the Plaintiff claimed ignorance of the alleged purchase and invited strict proof thereof. She averred that her suit is neither time barred nor fatally defective and ought not be dismissed. She



again prayed that the 3rd Defendant's defence be dismissed and that judgment be entered as prayed in the Amended Plaintiff.

Hearing and Evidence;

8. On 21st October, 2018 when hearing of the case commenced, the Plaintiff testified as PW1. She was sworn and opted to adopt her witness statement as her evidence-in-chief. She testified that she was a member of Jijenge Self Help Group, which was founded in 1996 and 1997 by teachers from a school where she was teaching. PW1 testified that the Group purchased land using members contributions. She had an Agreement for Sale between the Group and James Mwangi Wairagu & Aziza James Mwangi for sale of Chemalal B for Plot No. 62 that she marked as MFI1. The plot was then subdivided to the members and she got two shambas. That she was given 2 share certificates that she produced as PEX2 (a) and (b), shown the two parcels of land and given a sketch map that she marked as MFI4. She testified that in 2001, she was issued with a Certificates of Ownership and Provisional Nos. Chemalal 62A (2) and Chemalal 62A (3), which she produced as PEX3 (a) and (b).
9. PW1 testified that in 2014 when she visited the land, she saw that it was fenced and construction was ongoing. PW1 testified that obtained the contacts of the people responsible from the neighbours. She stated that she informed them of her interest over the land, they showed her agreements indicating that their parcels were different from hers. She added that one of the Defendants showed interest in purchasing the portion he had built on but they did not agree on the price. PW1 asserted that the construction was undertaken on her Plot. She explained that if any of the members wanted to sell, they had to notify the officials of the Group of the sale and this was not done as she has never sold her plots. PW1 testified that the 1st Defendant's construction has been completed and she moved in, while the 2nd Defendant was digging a latrine, hence she came to court. PW1 clarified that she instructed the Officials to give one of her parcels to her daughter-in-law, Esther Wanjiku Mwaniki. PW1 prayed for judgement in her favour, and in particular an eviction order and costs of the suit.
10. On cross-examination by Miss. Ruto, PW1 reiterated that the land was bought from James Mwangi Wairagu and Aziza James Mwangi, who also happened to be one of the members. She testified that she did not know David Keter, and that she had never sold her land. PW1 was also cross-examined by Mr. Tororei, and she testified that the sketch map was neither signed nor stamped and she could not tell when it was prepared. She testified that her plot was not Plot No. 212 and confirmed that she had no interest in that plot. She testified that when she left Eldoret the land was vacant. PW1 testified that she did not give one Gitau Kamau authority to sell her land, neither did she leave anyone in possession of her land. She testified that she did not know when people invaded her land. That she also did not know that the previous owners sold the land.
11. PW1 was re-examined by Ms. Karuga and added that the members gave the officials of the Group the authority to subdivide the land. She testified that the map was a sketch of the parcels that people had purchased. She reiterated that her plots were No. 62A (2) & (3). Further, that she did not know David Keter, and that Plot No. 212 did not belong to her.
12. PW2, William Gituko, was also sworn testified that he used to teach with the Plaintiff at Eldoret Union Primary School. That he and the Plaintiff are part of the founding members of the Group. PW2 testified that they bought land in 1996 from a fellow teacher, and that he was one of the officials who signed the Agreement for Sale, which he now produced as PEX1. PW2 testified that the members were given copies of the sketch plan and he produced it as PEX4. He added that the Plaintiff had purchased 2 plots intending to give one to her daughter-in-law. PW2 confirmed that every member was given a Certificate of Ownership and Share Certificate. He explained that the Group disbanded after the members had been allocated the land, having agreed that if a member wanted to sell, they had to notify



- the officials. PW2 clarified that the Plaintiff never sold her parcel. PW2 testified that he noticed the construction on the suit property and informed the Plaintiff, but on inquiry, they were told that the land had been sold by David Keter. He also clarified that when they purchased the parcel it was No. 62 but later changed to Provisional No. 62A.
13. PW2 was cross-examined by Miss Ruto. He testified that the Defendant's vendor, David Keter, is an agent. PW2 was also cross-examined by Mr. Tororei and he testified that the Group was dissolved. He testified that the titles have not been issued. PW2 added that the subdivision has never been questioned for the last 24 years. On re-examination, he stated that David Keter was not a member of the Group.
 14. The Plaintiff then called her third witness Esther Wanjiku Mwaniki (PW3) who also testified under oath, and adopted her witness statement as her evidence-in-chief. PW3 explained that the Plaintiff is her mother-in-law. She testified that when she went to the plot in 2015, she found that the Defendants were continuing with the construction. That she reported the matter to the Chief of Kiplombe Location, who summoned them but the 2nd Defendant did not appear. PW3 added that they went to the land with the Assistant Chief of Kiplombe, a Surveyor came with a map of the whole area, and informed them that the Defendants' plot was 212 thus the one they were currently occupying did not belong to them. PW3 testified that the plots have new numbers, being 964 and 957 and she produced the map, which she marked as PMFI5 and a list of the members of the Group as PMFI6. She also testified that she has never sold her plot.
 15. Miss Ruto cross-examined PW3, who clarified that she was given a share by the Plaintiff; that she went to the suit land in 2015 and that she did not know David Keter. There was no re-examination for PW3.
 16. One Nelson Wafula Munjoja, a surveyor, testified under oath as PW4. He stated that according to his records, Plot No. 957 belongs to Grace Wairimu Gakio, the Plaintiff herein, and Plot no. 964 to Esther Wanjiku Mwaniki, her daughter-in-law. He explained that the initial number was No. 62 and later changed to the current numbers. He testified that he prepared the maps and produced it as PEX 5 and the area list as PEX 6 respectively. PW4 clarified that Plot No. 212 belonged to a different person entirely who was not any of the Defendant. P4 testified that he had not seen the Defendants' names on the list. He added that he had identified Plot No. 957 and 964 and confirmed that they belonged to the Plaintiff and her daughter-in-law, who will be issued with titles in their names as the rightful owners.
 17. On cross-examination by Miss Yabei, PW4 testified that titles have not been issued. He confirmed that he had visited the land before he drew the map. He was also cross-examined by Mr. Tororei and he confirmed that he is the one who drew the map. PW4 further confirmed that he was the one who prepared PEX 6 the area list for the subdivision although, it was not signed by the Director. He testified that he had never prepared a subdivision plan for Jijenge Self Help Group
 18. The witness was re-examined and testified that at the time of submissions of the Plans, the Director had not signed the area list. PW4 clarified that his role is to identify the parcel and size on the ground and advise the Director. He reiterated that the Plaintiff owns Plot No. 957 and Esther Wanjiku Plot No. 964. He testified that they were in the process of preparing the titles on behalf of the members. PW4 testified that Plot No. 212 belongs to Collin Suge measuring 12 Acres. This marked the close of the Plaintiff's case. The Defence case was also closed and parties were directed to file written submissions.

Submissions:

19. The Plaintiff filed submissions dated 29th November, 2023, where Counsel started by recounting the testimonies of the witnesses. With regards to ownership of the suit property, Counsel submitted that the Plaintiff had enjoyed peaceful, uninterrupted use and exclusive possession of the suit property since 1998. Counsel submitted that the rights of a person in possession or occupation of land are equitable



rights that are binding on the land. She cited *Mwangi & Another v VRS Mwangi* (1986) KLR. Counsel submitted that the property could only be sold upon notification to the Group, yet from the evidence and testimonies, the Plaintiff never disposed of her properties save for giving one to her daughter-in-law, who also testified that she had not disposed the plot given to her. She asserted that the property was therefore not available for disposal as she had intentions to develop it before the Defendants' trespass. Counsel for the Plaintiff submitted that Article 40 of the *Constitution* of Kenya protects proprietary rights acquired legally, and that the Plaintiff acquired the suit properties regularly and lawfully.

20. Counsel submitted that he who comes to equity must come with clean hands. She asserted that the Defendants ought to prove that they acquired their title regularly as the Plaintiff had already done so, she cited Section 26(1) and Section 25(1) of the *Land Registration Act*. Counsel referred the court to *Joel Kipchirchir Kitur v David Kimutai Langat & Another* (2006) eKLR and *Gladys Wanjiru Kirubi v John Kangethe Kibe* (2005) eKLR, where the courts issued eviction orders to Defendants who were unlawfully occupying land and were therefore trespassers. She opined that the Defendants should be treated as fraudsters and trespassers and evicted from the suit property. Counsel submitted that the Plaintiff be granted quiet possession/occupation and be declared legal owner of the suit property. On costs, Counsel submitted that the Plaintiff had proved her case thus the Defendants should bear the costs of this suit. Counsel further cited Nairobi High Court ELC Civil Suit no. 501 of 2013, *Abmed Ibrahim Suleiman & Another v Noor Khamisi Surur* and submitted that the Defendants vacate the parcel within 30 days.

Analysis and Determination:

21. I have considered the pleadings, the testimonies given and the evidence placed before this court as well as the submissions. What the Plaintiff primarily seeks in this suit is eviction orders against the Defendants and for costs of this suit. In order to determine the Plaintiff's entitlement to the orders sought, this court needs to determine whether the suit property belongs to the Plaintiff. The issues that lend themselves for determination by this court therefore are:
- a. Who is the legal owner of the suit property herein
 - b. Whether the Plaintiff is entitled to the eviction orders against the Defendants
 - c. Who should bear the costs of this suit
22. The 1st and 3rd Defendants in this case filed their Defence to the suit whereas the 2nd Defendant only entered appearance, they however failed to testify or call any witness to testify on their behalf. As a result, although their Advocates on record had the opportunity to cross-examine the witnesses, no evidence was produced to support their case. It is trite that pleadings are not evidence and the legal position has always been that in the absence of evidence, the pleadings of a party remain mere allegations. This position was affirmed by the Court of Appeal in the case of *Charterhouse Bank Limited (Under Statutory Management) v Frank N. Kamau* (2016) eKLR where the court held that:-

“First and foremost, there can be no quarrel with the statements in the above judgments that averments by the parties do not constitute evidence. Madan, JA (as he then was) made this abundantly clear in *CMC Aviation Ltd v. Crusair Ltd* (No1) [1987] KLR 103 when he stated:

‘The pleadings contain the averments of the three parties concerned. Until they are proved or disproved, or there is admission of them or any of them by the



parties, they are not evidence and no decision could be founded on them. Proof is the foundation of evidence.

As stated in the definition of “evidence” in section 3 of the *Evidence Act*, evidence denotes the means by which an alleged matter of fact, the truth of which is submitted for investigation, is proved or disproved. Averments are matters the truth of which is submitted for investigation. Until their truth has been established or otherwise they remain unproven... The pleadings in a suit are not normally evidence. They may become evidence if they are expressly or impliedly admitted as then the admission itself is evidence. Evidence is usually given on oath. Averments are not made on oath. Averments depend upon evidence for proof of their contents’.”

23. Despite this, the Plaintiff still has a duty to formally prove her case on a balance of probabilities as is required by law, because failure to testify and produce evidence does not mean that the Plaintiff’s case will automatically succeed. The burden on the Plaintiff to prove her case remains the same and that burden of proof is in no way lessened because the Defendant did not adduce any evidence, and the Court of Appeal held so in *Kirugi and Another v Kabiya & 3 others* (1987) KLR 347 the Court of Appeal held that;

“The burden was always on the Plaintiff to prove his case on a balance of probabilities even if the case was heard as formal proof. Likewise, failure by the Defendant to contest the case does not absolve a plaintiff of the duty to prove the case to the required standard.”

a. Who is the owner of the suit property herein

24. Under Kenyan law, a certificate of title is held as conclusive proof of ownership of land as provided under Section 26 of the *Land Registration Act* which reads:-

“26. Certificate of title to be held as conclusive evidence of proprietorship

- (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...
- (2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original.”

25. The two parcels of land comprising the suit property herein is unregistered land because there has been no title issued over the said parcels. For the avoidance of doubt, this is not because it is government land but because, from the Surveyor’s testimony, the land was initially part of a larger parcel belonging to a land buying Company and was subdivided and sold to members of the public. It would appear that this is how it came to James Mwangi Wairagu and Aziza James Mwangi, who later sold to Jijenge Self Help Group. The Surveyor testified that the process of subdivision is not complete, and this is why the titles to the suit property are yet to be issued. Although, the lack of a title presents a challenge in determination of ownership disputes, courts have resorted to use of document trails to determine



such disputes. In *Caroline Awinja Ochieng & another v Jane Anne Mbithe Gitau & 2 others* (2015) eKLR it was held that:-

“In determining the above issue it would perhaps be appropriate to first state that tracing ownership of unregistered land is dependent on tracing the root of title. Unlike registered land where ownership is domiciled and founded in the register of titles, ownership of unregistered land and the ascertainment or confirmation thereof involves the intricate journey of wading through documentary history. The simple reason is that unregistered titles exist only in the form of chains of documentary records. The court has to perform the delicate task of ascertaining that the documents availed by the parties are not only genuine but also lead to a good root of title minus any break in the chain. It is the delivery of deeds or documents which assist in proving not only dominion of unregistered land but also ownership. The deeds must establish an unbroken chain that leads to a good root of title or title paramount. A good compilation of the documents or deeds relating to the property and concerning the claimant as well as any previous owners leading to the title paramount certainly prove ownership. It is such documents which are basically “the essential indicia of title to unregistered land”: per Nourse LJ in *Sen v Headley* [1991] Ch 425 at 437.”

26. The documents presented as proof must however be complete and accurate to assist the court in tracing the ownership of the land. As to what documents a party may need to present to prove ownership, Onguto J. in the above case had this to say:

“The documents in my view are limitless. It could be one, they could be several. They must however establish the claimant’s beneficial interest in the property. Examples of the deed or documents include, at least in the Kenyan context: sale agreements, Plot cards, Lease agreements, allotment letters, payment receipts for outgoings, confirmations by the title paramount, notices, et al. The instant case is no exception. It is for the Court to interrogate the evidence, especially documentary evidence and ascertain who between the two antagonists that is to say the Plaintiffs on the one hand and the 1st Defendant on the other hand, is the true owner of the suit plot. For the court to conduct this rather wearisome and intricate task, it is proper that the documents unless otherwise agreed are produced in their original form or format.”

27. The documents must therefore show an unbroken chain of that points at the true owner. There is no doubt that such proof will be on a balance of probabilities but the court must be left in no doubt that the holder of the documents presented is the one entitled to the property. In this case, the Plaintiff furnished the court with the Agreement dated 21st July, 1998 made between James Mwangi Wairagu and Aziza James Mwangi as Vendors, and Jijenge Self Help Group as the Purchaser. It was for purchase of a parcel of land described in the Agreement as Chemalal B Farm plot No. 62, measuring 3.5 Acres with the Officials signing it on behalf of the Group.

28. The Plaintiff produced two Certificates of Membership in her name both dated 14th November, 2000 as PEX2 (a) and (b). She was therefore a member of the Jijenge Self help Group. She as well as PW2 testified that the land purchased by the Group under that Agreement was subdivided and allotted to the members of the Group. As proof of ownership, they were given Certificates of Ownership and copies of the Sketch Map showing their properties. She went ahead to produce two Sketch Map as PEX4 and two Certificates of Ownership both in her name. The first one is PEX3 (a), which indicates that she is the holder of a piece of land 0.086Ha referred to as Chemalal 62A (2). The second, PEX3 (b), is for ownership of land measuring 0.086Ha and known as Chemalal 62A (3).



29. The Plaintiff testified that her parcel now bears a new plot number being Plot No. 957 and her Daughter-in-Law's parcel is now Plot No. 964. She explained in her testimony and Further Written Statement dated 2nd October, 2017 that these new numbers were assigned after survey, which testimony the Surveyor corroborated. In the Area List produced by the Surveyor as PEX 6, the Plaintiff's appears against Plot No. 957 while that of her Daughter-in-Law appears against Plot. No. 964. Although the area list is not signed, the Surveyor who testified confirmed that he is the one who prepared it after visiting the land, and it shows the position on the ground.
30. In their Defences, the Defendants had claimed that the land they own is Plot No. 212, which they purchased from one David Keter. Since the documents they filed are part of the court record, I have had the benefit of perusing them with a view to gaining a proper context of the matters in this suit. This was necessary because of the allegation that the land purchased by the Defendant is different from the land owned by the Plaintiff herein. From the documents filed by the Defendants, they purchased L.R. No. Chemalal/Baharini Provision 212 A, B, C and D from David Keter, which parcels he had purchased on various dates in 2013 from various individuals, none of them being the Plaintiff herein or her Daughter-in-Law. From the numbers of the parcels bought by the Defendants, it is apparent that their land is different from the suit property herein. It is therefore not clear how they came to occupy and build on the suit property instead of building on the land they had purchased, which the Plaintiff claims is what they did.
31. The question then, is whether the plots the Defendants are now occupying are in fact the suit property herein or the portions they allegedly purchased from David Keter. PW2, who was the Chairman of the now disbanded Group testified that the land the Defendants are currently occupying is the land that the Group allotted to the Plaintiff herein. He testified that he is the one who saw the construction on the land and informed the Plaintiff. As the Chairman, he is well aware of the location of the land that the Group he chaired distributed to its members and specifically, which parcel belongs to which member. In addition, the Plaintiff never informed him as one of the officials of the Group of any intention to sell land. Moreover, PW1 and PW3 testified that they visited the land in 2014 and 2015 respectively and saw the ongoing construction, which they later determined belonged to the Defendants herein. since the Plaintiff knew where her land was as she had been visiting from time to time, I do not see the possibility of her possibly having forgotten her property and ventured into someone else's land. The Surveyor also confirmed that he prepared the map after visiting the ground, and he determined that the Plaintiff and her daughter-in-law own Plot Nos. 957 and 964. This court is thus positively convinced that the Defendants are indeed occupying the suit parcels of land subject of this suit.
32. On the claim of ownership over the suit property, per the Caroline Awinja Ochieng Case (Supra), the Defendants were required to exhibit a complete chain of documents showing how the land moved from the Plaintiff to the persons who sold to the said David Keter and finally to them. It will be noted that the Group acquired the land in 1998, and transferred it to the Plaintiff vide the Certificate of Ownership in 2000. David Keter who sold to the Defendants acquired the land in the year 2013, long after the Plaintiff had already acquired her interests over the suit property. The Defendants did not present an unbroken chain in the movement of the land from the Plaintiff to David Keter, their predecessor in title, and eventually to them. By failing to testify, they did not produce any documentary evidence to prove their interest in the land.
33. From the above analysis it is clear that the Plaintiff has provided sufficient evidence to prove ownership of the two parcels of land herein. The Plaintiff has discharged the burden of proving her case on a balance of probabilities as required by law. She is therefore the legal owner of the suit property.



b. Whether the Plaintiff is entitled to the eviction orders against the Defendants;

34. The Plaintiff's main prayer in this suit was for an eviction order against the Defendants so that she may have peaceful enjoyment of the property. This court has found that the Plaintiff is the rightful owner of the suit property. It is the law that an owner of property is entitled to all the rights and privileges appertaining to such ownership, which include vacant possession of the property and peaceful enjoyment as claimed. The Defendants are however still on the suit property without the Plaintiff's permission or license. To my mind comes the case of [*Anthony Ndun'gu Maina v Faith Wanjiku Maina*](#) (2020) eKLR, where the court expressed its sentiments in the following words:-

“The Plaintiff has sought for eviction orders against the Defendant. It is evident that the Plaintiff is the owner of the suit property. From the above, the Court has upheld Plaintiff's ownership and affirmed it. Therefore, the Plaintiff is as the owner of the suit property is entitled to all the rights and privileges that appertain to the suit property as provided by Sections 24 and 25 of the [*Land Registration Act*](#).

The said rights include the right to peaceful and quiet occupation and possession of the suit property; the right to utilize his property as he deems fit and thus the orders of eviction of the Defendant is merited so that the Plaintiff can quietly and peacefully utilize his property. The Plaintiff must have possession of the suit land in order to attain enjoyment of his rights.”

35. Further, on issuance of eviction orders, Order 22 Rule 29 (1) of the [*Civil Procedure Rules*](#) provides that:-

“Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.”

36. This court has found that the two plots comprising the suit property herein were purchased by the Plaintiff for herself and her daughter-in-law. This decision has been made against the 1st, 2nd and 3rd Defendants. Yet from the evidence presented by the Plaintiff in this suit, there is conclusive proof that it is the Defendants who are in possession of the said land. Having found that the Plaintiff has established her legal interest over the suit property to the required standard, she is entitled to quiet and peaceful enjoyment thereof, which she will not have if the Defendants continue to inhabit the land. The Plaintiff is therefore right to seek eviction orders in accordance against the Defendants, and she shall have the said orders.

37. However, due to the fact that the Defendants have put up structures on the land, they shall have thirty (30) days within which to vacate the suit property. If they do not do so within the stipulated time, the Plaintiff will be entitled to evict the Defendants without further reference to this court.

c. Who should bear the Costs of this Suit?

38. It is trite law that Costs follow the event. Section 27 of the [*Civil Procedure Act*](#) gives the Court discretion to grant costs. As the successful party is always entitled to costs except in exceptional circumstances. No such circumstance exists in this suit, to warrant the denial of costs to the successful party. The Court thus finds that the Plaintiff being the successful litigant is entitled to the costs of the suit and hereby awards her costs as prayed.



39. From the foregoing analysis, the Plaintiff has proved her case on a balance of probabilities and in this regard, this Court makes the following final orders;
- a. The 1st, 2nd and 3rd Defendants shall have 30 days to vacate the Plaintiff's parcels of land previously known as Chemalmal 62A (2) and Chemalmal 62A (3), now known as Plot No. 957 and Plot No. 964 respectively. Failure to abide by this order, the Plaintiff will be entitled to evict the Defendants from the said parcels of land without further reference to this court at the expense of the Defendants.
 - b. A permanent injunction be and is hereby issued restraining the Defendants from trespassing, encroaching, entering into, selling, developing, dealing, or in any other manner interfering with the Plaintiffs' quiet possession and ownership of the parcels of land previously known as Chemalmal 62A (2) and Chemalmal 62A (3), now known as Plot No. 957 and Plot No. 964 respectively.
 - c. The Plaintiff is awarded costs of the suit to be paid by the Defendants.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 30TH DAY OF SEPTEMBER, 2024.

E. O. OBAGA

JUDGE

In the virtual presence of;

Ms. Lusigi for M/s Karuga for Plaintiff.

Court Assistant –Laban

E. O. OBAGA

JUDGE

30th SEPTEMBER, 2024

