



Langa & another (Suing as officials and trustees of St Michael Legion Maria of African Church Mission Highrise Kibera) v Musau (Environment & Land Case E013 of 2023) [2024] KEELC 6044 (KLR) (19 September 2024) (Judgment)

Neutral citation: [2024] KEELC 6044 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E013 OF 2023
AA OMOLLO, J
SEPTEMBER 19, 2024**

BETWEEN

SAMWEL LANGA 1ST PLAINTIFF

WILLIAM OLOO 2ND PLAINTIFF

**SUING AS OFFICIALS AND TRUSTEES OF ST MICHAEL LEGION MARIA OF
AFRICAN CHURCH MISSION HIGHRISE KIBERA**

AND

CHARLES MUSAU DEFENDANT

JUDGMENT

1. The plaintiffs brought this suit vide a plaint dated 18th January, 2023. They pleaded that on or about 3rd September, 2023, the defendant and his agents encroached on their suit property LR 209/13627/1 infill situated at Highrise Kibera despite the Defendants not being the legal owner.
2. The plaintiffs averred that they suffered loss as a result of the encroachment and they listed the particulars of loss thus;
 - a. Loss of the building materials already on site.
 - b. Destruction of plaintiff building structures thereon
 - c. Loss of source of livelihood
 - d. Blocking the plaintiffs from accessing or entering the plot
 - e. Disrupting prayers and worship by church members.
3. The plaintiffs pray for judgment against the defendant wholly for;



- a. A permanent injunction restraining the defendant, his agents, servants, representative and/or assigns and or any other persons, body or corporate from trespassing, encroaching, evicting or interfering in any way with the plaintiffs quiet and peaceful occupation and enjoyment of suit premises known as Residential Plot – LR 209/13627/1 INFILL situated at Highrise Kibera within Nairobi, the property of Nairobi City County Government and the Officer in Charge, Capitol Hill Police Station and the Langata Sub County Commissioner, to enforce and or supervise the enforcement of the orders herein if there is need.
 - b. An order for eviction of the defendant, his agents, servants, employees and/or representative or any person claiming under them upon the demolition of the illegal structures already constructed inside tor part thereof on the plaintiffs parcels of land known as Residential Plot – LR 209/13627/1 Infill situated at Highrise Kibera within Nairobi, the property of Nairobi City County Government and the Officer in Charge, Capitol Hill Police Station and the Langata Sub County Commissioner, to enforce and or supervise the enforcement of the orders herein if there is need.
 - c. An order that any illegal structures erected thereon be demolished and the threats of eviction and encroachment thereof be declared illegal, unlawful and the plaintiffs be and are hereby declared the rightful, legal and lawful allottee and or owner of Residential Plot – LR 209/13627/1 Infill situated at Highrise Kibera within Nairobi, the property of Nairobi City County Government and the Officer in Charge, Capitol Hill Police Station and the Langata Sub County Commissioner, Residential Plot – LR 209/13627/1 INFILL situated at Highrise Kibera within Nairobi, the property of Nairobi City County Government and the Officer in Charge, Capitol Hill Police Station and the Langata Sub County Commissioner, Residential Plot – LR 209/13627/1 INFILL situated at Highrise Kibera within Nairobi, the property of Nairobi City County Government and the Officer in Charge, Capitol Hill Police Station and the Langata Sub County Commissioner to enforce and or supervise the enforcement of the orders herein if there is need.
 - d. An order that the illegal structures erected thereon be demolished and the defendant or his agents, servants, employees and/or representative or any person, body, corporate and or institution who illegally entered, trespassed onto, encroached thereto be evicted forthwith and the Officer in Charge, Capitol Hill Police Station and the Langata Sub County Commissioner to enforce and or supervise the enforcement of the orders herein if there is need.
 - e. Costs and interest of this suit.
4. The Defendant filed a statement of defence opposing the claim vide a statement dated 6th September, 2023. He denied the claim and averred that it is the plaintiff who is trying to acquire the land and the structures thereon illegally.
 5. The Defendant pleads that the land where the plaintiffs’ church sits i.e Residential Plot LR 209/13627/1 INFILL is riparian land and that they were accommodated by the defendant’s deceased father. He denied trespassing on to the suit land or hiring goons as alleged by the plaintiffs. Instead he blames the plaintiffs of hiring goons to fight and evict him from the subject plot. He prayed for the dismissal of the suit with costs.
 6. At the hearing the parties adduced oral evidence in support of their case and their defence with each calling the evidence of one witness. The plaintiff called Samwel Langa as its witness. Mr. Langa said that he is one of trustees of the St. Michael Legion Maria of African Church Mission Kibera Branch. That the church is the licenced and or allottee of suit land described as plot L.R 209/13627/1 Infill.



7. PW said that as officials they have paid the requisite charges as expected of the church and took immediate possession and occupation of the suit plot. That they were later issued with a beacon certificate and they have also developed the property by building a church and auxiliary buildings that they have been in peaceful use and occupation and that their peaceful occupation was disrupted when the defendant and his people/agents encroached in September. They urged the court to issue the orders prayed for in the plaint.
8. In cross-examination PW said that the plot was vacant when the church was allotted. He insisted that the defendant had links with goons who invaded the land. He added that he has produced the photo of the fence which was destroyed. The witness insisted that the offending structures on the suit property were put up by the Defendant. They reported the incident to Capital Hill Police Station although he did not produce a copy of the O.B. He also denied the plot forms part of the riparian land. He produced documents in the lists dated 19th January, 2023 as P ex 1 – 7 and supplementary list dated 30th November, 2023 produced as Pex 8 and 9. This marked close of the plaintiff's case.
9. The Defendant gave his testimony on 9th April, 2024. He said the claim brought against him was false. According to him, the plaintiff was initially at the plot owned by Kimani Rugendo. When Kimani fenced his land, the village elder requested his father to allow the plaintiff to put up a church. He contended that his father used to farm the land from 1986.
10. The Defendant asserted that the plaintiffs wanted to grab their land after the demise of his father. Further, it is his evidence that the plaintiff came to the suit land in 2011 and not 1987 as alleged. That since his family was the owner of the land, he cannot be regarded as a trespasser. He accused the plaintiff of hiring "Undugu" boys to evict him.
11. In cross-examination, DW said that his father David Musau was a village elder in the area and a friend of Kimani Rugendo. That his father died in 2020 but they have not filed any succession proceedings in regard to his estate. He had no letter to confirm the land is riparian or that it belonged to his father. According to him, the letter produced by the plaintiffs refers to a plot which is located 5 kms from the suit plot.
12. The parties filed respective submissions with the plaintiffs' submissions dated 24th May, 2024. The plaintiff submitted that it relied on the documents produced. Further that the defendant has admitted the plaintiffs were in occupation that he invaded the suit land by building structures where he now receives/collects rents.
13. The plaintiff relief inter alia on the case of *Hellen Muthoni Njagi v Chairman Board of Management Kaaga Primary School* [2017] eKLR which held;

“I have carefully considered the Plaint, the Witness statements and the written submissions by the Learned Counsel and the material placed before this Court. I find that the Plaintiff has proved her case on a balance of probability and judgment is entered in her favour.”
14. The Defendant filed written submissions dated 24th June, 2024. The Defendant cited regulation 116(2) of the *Water Act* 2016 which provides thus;

“(2) The provisions of subsection (1) (g) shall only apply to water service providers, counties and registered community schemes, that can afford the repayment of the funds advanced, and profits thereof used to finance water services and



water resources management projects for the underserved areas and urban poor.”

15. That Regulation 118 prohibits any activities on riparian land which activities include no tillage, cultivation or clearing of indigenous trees/vegetation. The Defendant urged the court to take judicial notice that the plaintiffs; church structure got demolished by the government during its recent drive to demolish structures erected on riparian land.
16. The Defendant submitted that since the land is riparian, it could not have been allocated to the plaintiffs. He relied on the case of *Aloys Mataya Mosei v NEMA & Another* [2020] eKLR which quoted *Milimani Splendor Management Ltd v NEMA & 4 Others* [2019] eKLR that observed thus;

“In the premises, granting an injunction against the 1st Respondent would go against the spirit of the preamble to the *Constitution* which enjoins the people of Kenya to protect the environment not just for the current but also for future generations.

On the material placed before the court, I am satisfied that the Petitioner has established that his property rights have been or are about to be violated and that he is entitled to protection thereof. Accordingly, the petition lacks merit and it is hereby dismissed.”
17. On whether the plaintiffs are entitled to the Orders sought, it is his submissions that the plaintiff has not satisfied the requirements necessary for the orders to be granted. That the plaintiff only produced copies of documents without calling an official from the Nairobi City County Government to authenticate the said documents. The Defendant urged the court to dismiss the suit with costs.
18. Having reviewed the pleadings filed, the documentary and oral evidence adduced, I frame the following questions for determination;
 - a. Whether or not the plaintiff is the legal owner of the suit property.
 - b. Whether or not the Defendant invaded the said parcel of land
 - c. Whether or not the plaintiff is entitled to the reliefs sought
 - d. Who pays the costs.
19. The plaintiff averred that they sought to be given land through the village elder where they could put up a church. That they were shown the suit property which was in vacant possession and they took over immediately. In a bid to regularise their acquisition, they visited the offices of the Nairobi City County government. The City County issued them with a letter of allotment for residential plot No. LR 209/13627/1 INFILL measuring 0.02ha on 27th February, 1997.
20. That the plaintiff conducted a survey and was issued with a beacon certificate dated 14th March, 2008 by the Chief Land Surveyor. It is their further evidence that they paid stand premium and have been paying annual land rates for the property. They produced copies of the receipts to support their averment. The plaintiff added that the defendant together with the hired goons invaded their property, destroyed their fence and put up some illegal structures. This forced them to file this suit to obtain restraining orders against the defendant.
21. On its part, the defendant in his evidence stated that the land belonged to his father and secondly that it is riparian land. In his submissions, he seemed to have abandoned the ownership claims and submitted only on the assertion that the suit property is riparian. The defendant did not provide any document or call a witness to corroborate his defence that the subject land belongs to his father.



22. Secondly, the defendant has not provided any report/letter from the Government to support his assertion that the suit land falls on riparian land. He had also stated that the documents held by the plaintiff referred to some plot which was located 5 Kilometers away. He did not avail any survey report to confirm this line of evidence.
23. The defendant has thus not offered any sufficient evidence to contradict the documents produced by the plaintiff. Further, his argument that the plaintiffs' documents are not authentic because no witness was called from the Nairobi City County lacks basis. Once the plaintiffs produced/presented their documents to support their claim without any objection from the defendant, the court would take them on their face value. The burden of proof shifted to the party questioning the authenticity of the documents to provide such contrary evidence. The defendant did not present any iota of evidence to contradict the exhibits and is now questioning their authenticity through his submissions. It is trite law that submissions cannot be used to introduce any evidence although none has been presented. Thus, raising the genuineness of the documents has been made late in the proceedings and with nothing to support the allegations.
24. The Defendant admits in paragraph 4 of his defence that the plaintiffs church sits on the suit property but only with permission of his deceased father. He also pleads being in occupation but as the owner. He did not provide evidence of ownership as already discussed above. He has not proved that his father gave the plaintiffs permission to build and in the alternative of such permission was given the source of authority which his father used in granting the permission ought to have been explained by production of ownership documents.
25. The defendant although denies encroaching on the suit plot confirms that he is now living on the suit property with his family. The Defendant is thus breathing hot and cold. Why does he not want the plaintiffs to occupy the land because it is riparian yet it is okay if he is in occupation? Having analysed the evidence adduced, I am satisfied that the plaintiffs have proved their case as allottees of the suit land. To protect their peaceful use of the suit plot Residential L.R 209/13627/1 INFILL, the orders sought in the plaint ought to issue.
26. Consequently, I enter judgment for the plaintiff as prayed in the plaint.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 19TH DAY OF SEPTEMBER, 2024

A. OMOLLO

JUDGE

