



**Ng'ong'a v Lake Basin Development Authority; Ethics Anti-Corruption Commission (Interested Party) (Environment & Land Case 31 of 2013) [2025] KEELC 387 (KLR) (30 January 2025) (Judgment)**

Neutral citation: [2025] KEELC 387 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
ENVIRONMENT & LAND CASE 31 OF 2013**

**E ASATI, J**

**JANUARY 30, 2025**

**BETWEEN**

**ALFRED BUORE NG'ONG'A ..... PLAINTIFF**

**AND**

**LAKE BASIN DEVELOPMENT AUTHORITY ..... DEFENDANT**

**AND**

**ETHICS ANTI-CORRUPTION COMMISSION ..... INTERESTED PARTY**

**JUDGMENT**

**Introduction**

1. Alfred Buore Ng'ong'a sued the defendant herein vide the plaint dated 1<sup>st</sup> February 2012. His case as contained in the plaint is that he is at all material times the registered absolute proprietor and entitled to possession of a piece of land known as Kisumu/Tonde /58 measuring approximately 1.2 hectares having been issued with allotment letter by the Ministry of Lands Director of Land Adjudication and Settlement on 22<sup>nd</sup> May 1996, a Discharge of Charge certificate on 14<sup>th</sup> March 2006 and title deed on 17<sup>th</sup> December 2009.
2. The plaintiff's complainant is that sometime in the year 2006 the defendant by itself or agents unlawfully entered onto the suit land, took possession of it, commenced cultivating on it and continued to illegally occupy and cultivate the land. That the Defendant caused to be published a Caveat Emptor Notice for general public information, the purpose, intent and effect whereof has caused and continue to cause personal financial loss to the plaintiff and his estate and which acts amount to trespass by the defendants which trespass is continuing to date. That the plaintiff has been deprived of the use and enjoyment of the suit property and that the fair letting value of the property is Kshs.20,000/- per day. The plaintiff sought for orders of-



- a. Possession and eviction of the defendant, its agents or servants, representatives, employees or assign from the property.
  - b. Special damage for trespass at a rate of Kshs.20,000/- per day from the day of trespass until possession is delivered.
  - c. General damage for trespass.
  - d. Interest on (b) above at 16% per annum until payment in full.
  - e. Permanent injunction restraining the defendant its agents and/or servants, representatives, employees and assigns from entering occupying and committing act of trespass and waste on the land.
  - f. Defendant be ordered to replace at their costs all damaged and/or interfered with in the cause of their illegal cultivation and/or activities on the piece of land the boundary beacons.
  - g. Defendant be ordered to unconditionally public repudiate the caveat Emptor notice they published in the daily newspaper and unreserved apology to the plaintiff at a state to be determined by the honourable court.
  - h. Cost of the suit.
  - i. Any other or further relief this honourable court deems fit and just to grant.
3. In response to the plaintiff's claim the defendant filed a Statement of Defence dated 28<sup>th</sup> March 2013 denying the claim. The defendant's case is that it is the owner of what was initially L.R No 42331 known as Muhoroni Holdings Grounds and has always been in possession of the land inclusive of the portion claimed by the plaintiff. That the other portion of land that the defendant consented to be hived out of its land was meant to settle 123 squatters and that the plaintiff was not among them. That if the plaintiff's averment as to how he acquired the parcel is true then the same was illegal and a matter that should be referred to the National Land Commission. That the plaintiff has no cause of action.
  4. Although the EACC was joined in the suit as an Interested Party, the EACC opted not to participate in the matter. On 28/9/2023 Counsel appearing on behalf of EACC informed court that the EACC does not wish to participate in the matter.

### **The evidence**

5. Five witnesses testified on behalf of the plaintiff. PW1 was the plaintiff. He adopted the contents of his witness statement to the effect that he was allocated the suit land by government for resettlement on 2<sup>nd</sup> May 1996. That the land was subsequently registered as plot No Kisumu/Tonde/58, Green Card opened on 2<sup>nd</sup> November 2004 Discharge of Charge processed and released to him on 14<sup>th</sup> March 2006 and Certificate of Title issued to him by Nyando District Land Registrar on 17<sup>th</sup> December 2009.
6. That efforts to gain access to the suit land have been futile because of the trespass by the defendant into the suit land. That the defendant does cultivation of sugar cane crop on the land. That the defendant owns adjacent and much larger plot No. Kisumu/Tonde/113 and also plot No.s 114, 115, 116 and 117.
7. That on 14<sup>th</sup> January 2006 he took an architectural draughtsman to the land do for him design for his construction of a three bedroomed family residential house for his residential purposes. That on the same date he also took a horticultural consultant to undertake for him a funding proposal for financial institution (Agricultural Finance Corporation) funding for his implementation of Horticultural Farming Commercial cultivation or irrigated high value horticultural cash crops projects.



8. That he later learnt that the defendant who had trespassed onto the suit land had also published a Caveat Emptor Notice for general public information in the standard Newspaper of 27<sup>th</sup> April 2006. That he had been actively banned from accessing and using the land by the defendant.
9. He produced documents contained in list of documents number 2-6 as exhibit P1 to 5 (bundle). He also produced documents contained in the list of documents filed on 21/1/2021 titled volume 1 as a bundle exhibit p 6 and volume 2 as exhibit P7.
10. PW2 was Erick Omondi Otieno. He adopted the contents of his witness statement dated 28/11/2012 as his evidence in chief. He had stated in the said witness statement that in January 2006 he had accompanied the plaintiff, the architectural draughtsman and the horticultural consultant to the suit land. That they found that the suit land was cultivated and planted with sugarcane crop.
11. In court he stated that he was the caretaker of the land. That it was land parcel Number Kisumu/Tonde/58 belonging to the plaintiff.
12. PW3 was Harun Omondi Okal Akeyo. He also adopted the contents of his witness statement dated 28/11/2012 as his evidence in chief, He testified that the plaintiff was his neighbor. That he owns land parcel numbers Kisumu/Tonde/91, 92 and 128. That they were given the plots after they applied and that the defendant does not own the suit land.
13. PW4 was Patrick Opiyo Adero. He testified that he was a licensed land surveyor No. 174. That the plaintiff asked him to establish the limits of the suit land and its status. That he visited the land on 29<sup>th</sup> and 30<sup>th</sup> June 2020. That upon carrying out the survey, he confirmed that the defendant owns land parcel No Kisumu/Tonde/113. That he prepared a report dated 30<sup>th</sup> June 2020. He produced the report, google map, copy of his practicing certificate, payment receipt, sketch map and photos as exhibits. He testified further that he confirmed that the defendant included the plaintiff's land as well as land parcel numbers 59, 91 to 101 in its fencing.
14. On cross examination he stated, inter alia, that he was not aware that the plaintiff's allotment had been cancelled.
15. PW5 was Jotham Ooko Ouko. He testified that he was contracted to do a feasibility study for horticulture on the land that the plaintiff owns. He produced the documents he prepared as exhibits. He testified that the report he prepared shows what the plaintiff would have earned if there had been no interference by the defendant. That the cumulative loss of user was calculated at Kshs 18,042,640/-. That horticulture is high income business and that if the plaintiff had done it he could have earned the money.
16. On cross examination, PW5 stated that he was a horticultural consultant. That the proposal was done in the year 2006 and that there may have been other factors leading to the project not taking off.
17. On behalf of the defendant one witness, DW1, testified. He adopted his witness statement dated 17/11/2020 as his evidence in chief. He stated in the witness statement that he was the acting Manager Legal Services of the defendant. That the defendant was the bona fide owner of the parcel that was originally known as LR No. 42331 known as Muhoroni Livestock Holding Grounds which comprised of 330acres. That the land was registered in the names of the department of Livestock Development which has been in the actual possession and use thereof through the defendant. That 106 acres of the defendant's land was hived off to settle squatters from Tonde area and that the parcel was registered under Settlement Fund Trustees. That thereafter part of the original acreage was acquired by land grabbers specifically in the years 2001 to 2002 when 106acres was illegally hived off by squatters and 30 acres by politically correct squatters to which category the plaintiff belongs. That the defendant has



been making efforts to recover the land to enable it undertake its mandate and that it needed at least 224 acres.

18. That the Public Accounts Committee Reports of 1995 recommended revocation of all the allotments made under Muhoroni Holdings Grounds as some allotments had been made to people who appeared not to be genuine landless persons. That the plaintiff was one of the illegal beneficiaries and that the allocation to him was not carried out through the normal government procedures. That the land is a public land pursuant to article 62 of *the Constitution* of Kenya and could only be hived off for public purpose.
19. That the squatters through their association have raised several concerns of the vices of the illegal allocations and the continued land grabbing of the suit land for instance they wrote a letter dated 23<sup>rd</sup> September 2011 addressed to the Secretary Truth Justice and Reconciliation Commission and other letters.
20. That the plaintiff was not one of the squatters included for resettlement. That the intended use of the suit land parcel by the plaintiff for commercial farming is contrary to the intended purpose of hiving off the land and that this confirms that the plaintiff was an illegal beneficiary and that he has no proper title of the land.
21. That the defendant applied for a Part Development Plan in the year 2017 and that the suit land was one of the intended parcels. That the same was advertised and that the 60 day have expired and there has been no complaint filed.
22. DW1 prayed that the plaintiff's claim be dismissed. He produced the documents contained in the list of documents dated 17<sup>th</sup> November 2020. He prayed that the plaintiff's title be cancelled.
23. On cross examination, DW1 stated that the suit land which had been given to the defendant was not available for allotment. That the defendant owns land parcel No. 113. That the defendant fenced off all the land belonging to it since the 80s and that the portion given to the squatters has also been fenced off.

#### **Submissions.**

24. At the close of the evidence parties filed written submissions on the case. It was submitted on behalf of the plaintiff vide the written submissions dated 20<sup>th</sup> June 2024 filed by the firm of Mwamu & co Advocates that the issues that emerge for determination are-
  - a. whether the plaintiff is a bona fide owner of the suit parcel.
  - b. Whether the special damages for trespass at the rate of Kshs 20,000/- per day from the date of trespass until possession is delivered.
  - c. General damage for trespass.
  - d. Who should bear cost of the suit.
25. Counsel submitted that the plaintiff had proved that his ownership of the suit land was acquired through the Settlement Fund Trustees. That the plaintiff made an application for allotment of land. That vide the letter dated 13<sup>th</sup> October 1995 the names of the allottees and allotted parcels were given and found to be satisfactory. That the settlement plan was approved vide settlement approval dated 13/9/1995. That as per the approval the land was meant to be agricultural land.
26. That the plaintiff was issued with a Letter of Offer by the Ministry of Lands dated 2/5/2996. That the plaintiff made the required payments and was given Certificate of Outright Purchase dated 4<sup>th</sup>



December 1996 from the Ministry of Lands after payment of Kshs 3654/- being the full purchase price of the plot.

27. That also the National Assembly vide the reports dated 6/6/2012 and 23/5/2012 confirmed that the plaintiff was the owner of the suit land.
28. That the plaintiff later obtained Certificate of title bearing his name. Counsel relied on the provisions of section 26 of the [Land Registration Act](#) to submit that the certificate of title is evidence of ownership.
29. On damages for trespass, Counsel relied on the documents produced by PW5 and submitted that the plaintiff had proved the claim at Kshs 75,346,063/-. Counsel further submitted that the total quantum of financial loss suffered over 18 years period calculated at Kshs 20,000 (fair rating value) per day x 365 days x 18 years = 131,400,000/-

On costs of the suit, Counsel submitted that costs follow the event.

No submissions were filed on behalf of the defendant.

### **Issues for determination.**

30. From the pleadings, the evidence adduced and the submissions made the following emerge on the issue of determination:
  - a. Whether or not the suit land is part of the defendant's land.
  - b. Whether or not allocation of the suit land to the plaintiff was lawful.
  - c. Whether or not the defendant trespassed onto the suit land.
  - d. Whether or not the plaintiff is entitled to the relief sought.
  - e. What orders to make on costs of the suit.

### **Analysis and determination.**

31. The first issue for determination is whether or not the suit land was part of the defendant's parcel of land.
32. While the plaintiff's case was that he was allotted the land by the government through the Settlement Fund Trustee, the defendant's case is that it is the bona fide owner of a parcel of land known as No 42331 also known as Muhoroni Holding Grounds measuring 330 acres. That while 106 acres of the said land was hived off and set apart for settlement of squatters, parts of its land were illegally grabbed by politically correct land grabbers and that the current plaintiff was one of such land grabbers.

That the suit land was therefore part of the defendant's land.
33. I have considered the evidence placed before court by the parties. Under the provisions of sections 107 to 109 of the [Evidence Act](#), the burden of proof is with the defendant to prove the claim that the suit land is part of its land.
34. I have carefully considered the documentary evidence placed before court by the defendant, exhibit D1 which was listed as a copy of Public Accounts Committed Report of 1995 was incomplete and unsigned. Its author is unknown as it was incomplete. None the less it showed that the authors thereof found that L R No 42331/R Muhoroni Holding Grounds 150 acres 180 acres were set aside for livestock activities under Lake Basin Development authority and the balance of 180 acres set aside for human settlement.



35. There is nothing in the said document to the effect that land parcel No 42331/R belonged to the defendant. There is also nothing in the said document that prevented the allocation of the suit land to the plaintiff or any other party.
36. The tenor and effect of the document is that the land could be allotted to people but priority be given to those who were squatters.
37. Some of the documents produced by the defendant are letters by the defendant complaining about illegal taking of parts of its land. Others are letters containing complaints on how some of the squatters missed out on the resettlement.
38. The evidence availed by the plaintiff on the other hand shows that the defendant has its own parcels of land including parcel No Kisumu/Tonde/113.
39. I find no evidence that the suit land is part of the defendant's land.
40. The second issue for determination is whether or not the allocation of the suit land to the plaintiff was lawful.
41. The plaintiff's case was that he was allotted the suit land by the Settlement Fund Trustee upon application. That he complied with the conditions in the Letter of Offer, paid the requisite charges, was given a discharge of charge and subsequently certificate of title in respect of the suit land. He produced documents to support his claim.
42. No evidence was produced to controvert the plaintiff's evidence. I find that the plaintiff was properly allotted the suit land and is lawfully registered as owner. The effect of registration of the land in his name gives him absolute rights over the land which rights are protected by article 40 of *the Constitution* of Kenya 2010.  
On whether or not the plaintiff is entitled to the relief sought.
43. The claim for eviction is justified. It is not denied that the defendant occupies the suit land to the exclusion of the plaintiff.
44. As a registered owner, the plaintiff is entitled under the provisions of article 40 of *the Constitution* of Kenya 2010 and section 24 to 26 of the *Land Registration Act* to exclusive use and possession thereof.  
As regards damages
45. The plaintiff claimed for special damages to be computed at Kshs.20,000 per day which was indicated in the plaint to be fair letting value for the property. No evidence was led on this.
46. The evidence by PW5 was speculative. PW5 admitted that there may have been other factors leading to the project not taking off.
47. On general damages, in the case of Nakuru Industries Limited -vs- S.S. Mehta & Sons [2016]eKLR the court observed that-  

“In tort, damages are awarded as a way to compensate a Plaintiff for loss he had incurred due to a wrongful action on the part of the Defendant.
48. The damages so awarded are intended to return the Plaintiff back to the position he was before the wrongful act was committed. In each case where trespass to land results in damages, then compensation of damages is on the basis of restitution of the land. The value of the soil (or trees or fruits) which have



been removed from the land are all factored as well as the cost of restoration of the land to the position it was before the wrongful act was committed.”

49. Further, in Halsbury’s 4<sup>th</sup> edition volume 45 at paragraph 26, 1503 it provides as follows on compensation of damages in an action for trespass;
- a. If the Plaintiff proves the trespass he is entitled to recover nominal damages even if he has not suffered any actual loss.
  - b. If the trespass has caused the Plaintiff actual damages, he is entitled to receive such amount as will compensate him for his loss.
  - c. Where the Defendant has made use of the Defendant’s land, the Plaintiff is entitled to receive by way of damages such sum as would reasonably be paid for such use.
  - d. Where there is an oppressive, arbitrary or unconstitutional trespass by government officials of or where the Defendant cynically disregards the rights of the Plaintiff in the land with the object of making a gain by his unlawful damages may be awarded.
  - e. If the trespass is accompanied by aggravating circumstances which do not allow an award of exemplary damages, the general damages may be increased.
50. In the case of Duncan Ndegwa -vs- Kenya Pipeline HCC No.2577 of 1990 (Nairobi) it was held that;
- “The general principles as regards the measure of damages to be awarded in cases of trespass to land where damage has been occasioned to the land is the amount of diminution in value or the cost of reimbursement of the land. The overriding principles is to put the claimant in the position he was prior to the infliction of the harm”.
51. On the basis of the evidence placed before court that the Defendant has kept the plaintiff out of the suit land for the last 18 years and that the Defendant has been utilizing the land to plant sugar cane crop for its own benefit, an award of Kshs.7,000,000 general damages is fair compensation.
52. On costs, section 27 of the [Civil Procedure Act](#) provides that costs follow the event.
53. I find that the plaintiff has proved his case on a balance of probabilities. Judgement is hereby entered in his favour against the Defendant for:
- i. An order that the Defendant vacates and hands over vacant possession of the suit land to the plaintiff within 60 days hereof failing which the defendant shall be evicted from the land as by law provided.
  - ii. Kshs.7,000,000 General damages for trespass.
  - iii. Interest on (b) above at 16% per annum until payment in full.
  - iv. An order of permanent injunction barring the defendant its agent and/or servants, representatives, employees and assigns from entering occupying and committing acts of trespass and waste on the suit land.
  - v. An order directing the Defendant to unconditionally publicly repudiate the Caveat Emptor Notice by way of publication in the Standard Newspaper.
  - vi. Costs of the suit.
54. Orders accordingly.



**JUDGEMENT DATED AND SIGNED AT Kisumu AND DELIVERED THIS 30<sup>TH</sup> DAY OF JANUARY 2025 VIRTUALLY THROUGH MICROSOFT TEAMS ONLINE APPLICATION.**

**E. ASATI,**

**JUDGE.**

In the presence of:

Maureen - Court Assistant.

Omondi T for the Plaintiff.

No appearance for the Defendant.

