



**Kariuki v Wachira & another (Environment & Land Case  
159 of 2018) [2023] KEELC 213 (KLR) (25 January 2023) (Judgment)**

Neutral citation: [2023] KEELC 213 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE 159 OF 2018  
MN GICHERU, J  
JANUARY 25, 2023**

**BETWEEN**

**WILLIAM MWANGI KARIUKI ..... PLAINTIFF**

**AND**

**KATHLEEN WANJIKU WACHIRA ..... 1<sup>ST</sup> DEFENDANT**

**DISTRICT LAND REGISTRAR, KAJIADO ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. William Mwangi Kariuki, the Plaintiff seeks the following reliefs against Kathleen Wanjiku Wachira, first Defendant, and the District Land Registrar Kajiado, second Defendant.
  - (a) A permanent injunction restraining the first Defendant, her agents, servants, employed, assigns or otherwise howsoever from trespassing into or interfering, in any way, with the Plaintiff's ownership, quiet enjoyment, possession and use of the suit property and/or the developments thereon and/or from interfering with validly placed beacons, offering for sale, allocation or in any way disposing of the Plaintiff's suit property known as Title Number Kajiado/Kitengela/33713 (subdivided from Kajiado/Kitengela/8009 measuring 2.60 Hectares), suit land.
  - (b) General damages for trespass
  - (c) Costs
  - (d) Interest on (b) and (c) at court rates.
2. The Plaintiff's case is follows. He is the registered owner of the suit land. The first Defendant owns an abutting parcel No. Kajiado/Kitengela/1977. The Plaintiff's and the Defendants' land parcels have a common boundary.



In the year 2010, the first Defendant began trespassing and encroaching onto the suit land by extending her boundary by doing the following;

- (a) Removing validly placed beacons demarcating the Plaintiff's land.
  - (b) Placing illegal beacons on the Plaintiff's land.
3. The Plaintiff reported the matter to the second Defendant who visited the land and demarcated the boundary between the two parcels. Even though the second Defendant was very reluctant to file the report or supply the Plaintiff with a copy thereof, he eventually filed the report dated 20/5/2011 which is accompanied by a surveyor's report dated 11/2/2019. The report confirms that there is indeed encroachment by the first Defendant onto the Plaintiff's land as follows.
  4. On the western side, the southern side and on the eastern side. The first Defendant encroached onto the suit land when he failed to involve the owners of the neighboring parcels so that they could identify their boundaries.
  5. The first Defendant did not file anything in this case to controvert the Plaintiff's case. She was served through substituted service pursuant to a court order dated 3/4/2017. The second Defendant filed a written statement of defense through the Attorney General. It is dated 28/7/2017 and it is a general denial. It is not accompanied by any witness statement or document.
  6. At the trial 4/10/2022, only the Plaintiff and his witness, one Erick Gitau appeared and testified. The second Defendant's counsel did not appear even though they had been duly served. The Plaintiff and his witness testified on oath and produced all the exhibits on record.
  7. The Plaintiff's counsel filed written submissions on 20<sup>th</sup> November 2022, in which he urges for the order prayed for in the plaint to be allowed. Regarding prayer (b) for general damages for trespass, counsel urges for KShs. 3 Million in such damages. He says that since trespass is actionable per se, that is to say, without proof of special damage, then such damages should be awarded as per the written submissions.
  8. I have carefully considered the evidence adduced by the Plaintiff as well as the written submissions by learned counsel for the plaintiff and I agree that there are only two issues to be decided.
    - (i) Whether the Plaintiff proved his case against the Defendants on a balance of probabilities?
    - (ii) Whether the Plaintiff is entitled to damages and at how much?
  9. On the first issue, I find that there is sufficient evidence to prove trespass. The said evidence is two fold.

Firstly, there is the Plaintiff's uncontroverted evidence that the first Defendant moved the original beacons deep into his land. I believe this evidence which is not challenged at all.

Secondly, there is the evidence by the surveyors and the Land Registrar confirming this trespass. Again this evidence is unchallenged by any evidence from the Defendants. It is also corroborates the Plaintiff's evidence in all the material particulars.
  10. On the second issue, I find that it is trite law that trespass is actionable per se. This means that the Plaintiff need not prove any actual damage to be awarded damages. I find however that the sum of KShs. 3 million claimed by the Plaintiff to be on the higher side because the trespass has not occasioned serious non user of the land trespassed upon.



11. The Plaintiff has not proved that he has been making use of the land trespassed upon land that would amount to Kshs. 3 million. I find that an award of damages of Kshs. 250,000/- (Two hundred and fifty thousand only) would be sufficient damages for the trespass.

In summary therefore;

(i) I enter judgment for the Plaintiff against the first Defendant as prayed for in paragraph 30 (a) of the plaint.

(ii) General damages of Kshs. 250,000/-.

(iii) Costs

(iv) Interest on (b) and (c) at court rates from the date of judgement until payment in full.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 25TH DAY OF  
JANUARY, 2023.**

**M.N. GICHERU**

**JUDGE**

