



**Galot Industries Limited & another v Wane & another (Environment & Land Case 188 of 2011) [2023] KEELC 15795 (KLR) (28 February 2023) (Judgment)**

Neutral citation: [2023] KEELC 15795 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT & LAND CASE 188 OF 2011  
CA OCHIENG, J  
FEBRUARY 28, 2023**

**BETWEEN**

**GALOT INDUSTRIES LIMITED ..... 1<sup>ST</sup> PLAINTIFF**

**M.G. PARK LIMITED ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**PETER WANE ..... 1<sup>ST</sup> DEFENDANT**

**PAUL MUNGUTI ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. By a Plaint dated the 27<sup>th</sup> July 2011, the Plaintiffs pray for Judgment against Defendants jointly and severally for:-
  - 1) A permanent order on injunction restraining the Defendants and/or their servants, agents, employees and any other person acting on their authority from interfering, sub-dividing, constructing and/or in any manner dealing with the Plaintiffs' parcel of land L.R.No. 12867 /6, L.R.No. 12867 /7, L.R.No. 12867 /14 and L.R.No. 12867 /15.
  - 2) An order of eviction do issue against the Defendants to evict them from all those pieces of land namely L.R.No. L.R.No. 12867/6, L.R.No. 12867/7, L.R.No. 12867/14 and L.R.No. 12867/15.
  - 3) Costs and interests of this suit.
2. The Defendants filed their Statement of Defence on 12<sup>th</sup> September, 2011 where they denied the averments in the Plaint except the descriptive and jurisdiction of the court. They denied ever trespassing on the Plaintiffs' land and contend that they were the elected representatives of City Cartons Welfare Association that is the registered owners of parcel No. L.R.No. 14949 on which they have been residing. They also denied the existence of any notice of intention to sue from the Plaintiffs.



3. The suit proceeded to hearing where the Plaintiffs called one (1) witness while the Defendants had none.

### **Evidence by the Plaintiffs**

4. PW1 Peterson Gatende who is a Legal Assistant at the 1<sup>st</sup> Plaintiff's company testified that the Company had bought two parcels of land in 1980, being L.R No. 1337 and 1338/2 which were later consolidated to form one parcel of land, being L.R No. 12867 that was later subdivided into various parcels including L.R No. 12867/6, L.R No.12867 /7, L.R No. 12867/14 and L.R No. 12867/15 hereinafter referred to as the '*suit properties*'. He explained that the title annexed to the Defendants' List of Documents and Deed Plan were not genuine as the Deed Plan referred to a property in Naivasha Township. In cross-examination he explained the relationship between the two Plaintiffs and stated that the 1<sup>st</sup> Plaintiff owned the suit properties. He was emphatic that the Defendants had encroached on the Plaintiffs' land and put up beacons thereon. He explained that upon undertaking a search at the Survey Office, on LR No. 14949 it confirmed that the said Land Reference Number is not for land in Athi River. Further, Deed Plan No. 146879, IR No. 46817 Folio No. 195/61 are for a parcel of land in Naivasha. He clarified that the parcel number indicated on the Deed Plan is LR No. 1144/984. The Plaintiffs produced the following documents as exhibits: Statement by Mohan Galot Chairman and Governing Director of Galot Industries Limited and MG Park Limited; Certificate of Incorporation for Galot Industries Limited; Certificate of Title for the property known as L.R. No. 1338/2, Athi River, Machakos District; Certificate of Title for the property known as L.R. No. 1337, Athi River, Machakos District; Deed Plan No. 111408 for the consolidated parcels resulting in property known as L.R. 12867; Area survey map Folio number 159, Register No. 73 for Plot No. 12867/3-31 in Athi River; Certificate of Title for the property known as L.R. No. 12867/6, Athi River, Machakos District; Certificate of Title for the property known as L.R. No. 12867/7, Athi River, Machakos District; Certificates of Title for the property known as L.R. No.12867/14, Athi River, Machakos District; Certificate of Title for the property known as L..R No. 12867/15, Athi River, Machakos District; Survey Plan No. Folio No. 207. Register No. 50 for Plot No. L.R. No. 14948-14949 in City of Nairobi; Survey Plan No. Folio No. 195, Register No. 61 for Plot No. L.R. No. 1144/942-1020 in Naivasha Township.

### **Evidence by the Defendant**

5. The Defendants did not tender any evidence to support their assertions.

### **Submissions**

#### **Submissions by the Plaintiffs**

6. The Plaintiffs in their submissions contend that they are the registered, legal and beneficial owners of the suit properties. They explained that they obtained the said parcels of land as L.R No. 1337 and 1338/2 which were later consolidated to form L.R No. 12867 and subdivided into various parcels. They submitted that the land has never been sold or offered for sale to anyone else hence it still belonged to them. They argued that a search at the Survey Office had revealed that the copy of title No. L.R 14949 presented by the Defendants was a property located in Nairobi area and the Deed Plan No. 146879 related to a property located in Naivasha township. They contend that the Defendants have trespassed on the suit properties. They argued that the Defendants had not countered their case. To support their arguments, they relied on the following decisions: *Linus Nganga Kiongo & 3 others v Town Council of Kikuyu* [2012] eKLR wherein he cited the case of *Motex Knitwear Limited vs Gopitex Knitwear Mills Limited* Nairobi HCCC No. 834 of 2002; *Yuvinalis Mangira Rwenyo v Boniface Isaac*



### Defendants' Submission

7. The Defendants opted not to file written submissions.

### Analysis and Determination

8. Upon consideration of the Plaintiff, Defence, Witness Testimonies, Exhibits and submissions, the following are the issues for determination: Whether the Plaintiffs are proprietors of all those parcels of land being L.R No. 12867/6, L.R No. 12867/7, L.R No. 12867/14 and L.R No. 12867/15 within Athi River Township. Whether the Defendants have trespassed on L.R No. 12867/6, L.R No. 12867/7, L.R No. 12867/14 and L.R No. 12867/15 and should be restrained and evicted therefrom.
9. In this instance, I note the Defendants filed a Statement of Defence and their Advocates participated in the hearing but opted not to present any witnesses nor file submissions. Section 107 of the Evidence Act provides that:

“Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.”
10. In the case of *CMC Aviation Ltd v Crusair Ltd (No. 1)* [1987] KLR 103 it was held as follows:-

“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.”(Emphasis mine)
11. While in the case of *Motex Knitwear Limited vs. Gopitex Knitwear Mills Limited Nairobi (Milimani)* HCCC No. 834 of 2002, Lesiit, J. favourably cited the case of *Autar Singh Bahra and Another v Raju Govindji*, HCCC No. 548 of 1998 where it was held that:

“Although the Defendant has denied liability in an amended Defence and Counter-claim, no witness was called to give evidence on his behalf. That means that not only does the evidence rendered by the 1<sup>st</sup> plaintiff's case stand unchallenged but also that the claims made by the Defendant in his Defence and Counter-claim are unsubstantiated. In the circumstances, the Counter-claim must fail.”
12. In the circumstances, while associating myself with the decisions cited above, I find that since the Defendants never tendered any evidence to challenge the Plaintiffs and their witness assertions, the Plaintiffs' claim remains uncontroverted.
13. As to whether the Plaintiffs are proprietors of all those parcels of land being L.R No. 12867/6, L.R No. 12867/7, L.R No. 12867/14 and L.R No. 12867/15 within Athi River Township.
14. The Plaintiffs claim to be owners of the suit properties. PW1 in his testimony explained the history of the parcels of land and produced the Certificates of Title and Deed Plans to prove ownership. The Defendants filed a copy of a title to the property L.R. No. 14949. PW1 explained that upon undertaking a search at the Survey Office, on L.R No. 14949 it confirmed that the said Land Reference Number is not for land in Athi River. Further, Deed Plan No. 146879, IR No. 46817 Folio No. 195/61



are for a parcel of land in Naivasha. He further stated that parcel number indicated on the Deed Plan produced by the Defendants' is L.R No. 1144/984.

15. On proof of ownership to land as well as rights of an absolute proprietor, Sections 24, 25 and 26 of the [Land Registration Act](#) stipulates thus:

“Section 24 of the [Land Registration Act](#) states inter alia:

The registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.”

16. While Section 25(1) of the [Land Registration Act](#) states that:

“The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of the court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject to any lawful encumbrances, set out in this section.”

17. Further, Section 26(1) of the [Land Registration Act](#) provides thus:

“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, and the title of that proprietor shall not be subject to challenge, except –

- (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
- (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

18. Still on ownership of land, the Court of Appeal in the case of [Joseph N.K. Arap Ng'ok v Moiyo Ole Keiwua & 4 Others](#) [1997] eKLR, held that:

“Once one is registered as an owner of land, he has absolute and indefeasible title which can only be challenged on grounds of fraud or misrepresentation and such is the sanctity of the title bestowed upon the title holder.”

19. Further, in Civil Appeal No. 246 of 2013 [Arthi Highway Developers Limited v West End Butchery Limited and Others](#), the Court of Appeal expressly stated thus:

“Section 23(1) of the then Registration of Titles Act (now reproduced substantially as Sections 25 and 26 of the [Land Registration Act](#) set out below) gives an absolute and indefeasible title to the owner of the property. The title of such an owner can only be subject to challenge on grounds of fraud or misrepresentation to which the owner is proved to be a party. Such is the sanctity of title bestowed upon the title holder under the Act. It is our law and law takes precedence over all other alleged equitable rights of title. In fact the Act is meant to give such sanctity of title, otherwise the whole process of registration of Titles



and the entire system in relation to ownership of property in Kenya would be placed in jeopardy.”

20. Based on my analysis above while relying on the legal provisions quoted above as well associating myself with the cited decisions, I find that since the Plaintiffs are the registered proprietors of the suit properties and have produced their respective Certificates of Title and Deed Plans and there is no evidence indicating that they obtained the same through fraud or misrepresentation, I have no recourse but to uphold the said Certificates of Title.
21. As to whether the Defendants have trespassed on L.R No. 12867/6, L.R No. 12867/7, L.R No. 12867/14 and L.R No. 12867/15 within Athi River Township should be restrained and evicted therefrom.
22. The Plaintiffs claim the Defendants trespassed on the suit properties, proceeded to erect beacons thereon. The Defendants in their Defence claimed ownership of the suit properties but never tendered evidence to prove this position. The Plaintiffs evidence was not controverted by any evidence from the Defendants save for the mere denials in their statement of defence.
23. On the issue of trespass, Clerk & Lindsell on Torts 18<sup>th</sup> Edition at paragraph 18-01 defines the same as follows:

“Any unjustifiable intrusion by one person upon land in possession of another.” ... Trespass is actionable at the instance of the person in possession and that proof of ownership is prima facie proof of possession”

Section 3 of the *Trespass Act* further provides that:-

“(1)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.”

24. In the case of *Municipal Council of Eldoret v Titus Gatitu Njau* [2020] eKLR, the Court of Appeal favourably cited the case of *M’Mukanya v M’Mbijiwe* [1984] KLR 761, wherein the ingredients of the tort of trespass were stated as follows:-

“Trespass is a violation of the right to possession and a plaintiff must prove that he has the right to immediate and exclusive possession of the land which is different from ownership (See *Thomson v Ward*, [1953] 2QB 153.”
25. In this instance, the Plaintiffs through PW1 confirmed that the Defendants had entered on the suit properties and placed beacons thereon. The Defendants in their Defence insisted they owned the suit properties but the Plaintiffs discovered that the Certificate of Title which they presented was actually fake.
26. From the evidence before court which was uncontroverted, it is evident, the Defendants trespassed on the Plaintiffs’ land and commenced interfering with it. On the prayer for a permanent injunction and in line with the principles established in the case of *Giella v Cassman Brown* [1973] EA 358, I find that the Plaintiffs as proprietors of the suit properties have indeed established a prima facie case as against the Defendants to warrant the orders of a permanent injunction as sought.
27. On the prayer for costs, since the Plaintiffs are the inconvenienced parties, I will award them costs of the suit.



28. It is against the foregoing that I find the Plaintiffs have proved their case on a balance of probability and will proceed to make the following final orders:

- a) A permanent order of injunction be and is hereby issued restraining the Defendants and/or their servants, agents, employees and any other person acting on their authority from interfering, sub-dividing, constructing and/or in any manner dealing with the Plaintiffs' parcel of land L.R No. 12867 /6, L.R No. 12867 /7, L.R No. 12867 /14 and L.R No. 12867 /15.
- b) An order of eviction be and is hereby issued against the Defendants including their agents, employees or assigns after Ninety (90) days from the date hereof from all those pieces of land namely L.R No. 12867/6, L.R No. 12867/7, L.R No. 12867/14 and L.R No. 12867/15
- c) Costs of the suit is awarded to the Plaintiffs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 28<sup>TH</sup> DAY OF FEBRUARY, 2023**

**CHRISTINE OCHIENG**

**JUDGE**

