



**Corporate and Pension Trust Services Limited v New Kivae Ngwatanio Welfare Society & 3 others
(Environment & Land Case 32 of 2020) [2025] KEELC 2901 (KLR) (26 March 2025) (Judgment)**

Neutral citation: [2025] KEELC 2901 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE 32 OF 2020**

**A NYUKURI, J
MARCH 26, 2025**

BETWEEN

CORPORATE AND PENSION TRUST SERVICES LIMITED PLAINTIFF

AND

NEW KIVAE NGWATANIO WELFARE SOCIETY 1ST DEFENDANT

GIKANG HARDWARE ENTERPRISES 2ND DEFENDANT

SIMON KAMAU 3RD DEFENDANT

PATRICIA NGUI 4TH DEFENDANT

JUDGMENT

1. By a plaint dated 23rd April, 2020, the plaintiff sought the following orders against the defendants.
 - a. A permanent injunction be issued restraining the Defendants, its employees, servants and agents and any other person acting or purporting to act on behalf of the defendant from trespassing, occupying, alienating, dealing in any manner or otherwise interfering with the plaintiff's property being L.R No. 12648/67.
 - b. A declaration that all that property located on L.R No. 12648/67 belongs to the plaintiff.
 - c. A revocation of any documents of ownership held by the Defendants with regards to L.R No. 12648/67.
 - d. A declaration that the Defendants attempted invasion of the suit on 6th April, 2020 onto L.R No. 12648/67 was unlawful.
 - e. General damages in lieu by the Defendants invasion on the plaintiff's property on 6th April, 2020.



- f. Costs of this suit and interests.
 - g. Any other reliefs this Honourable court deems fit.
2. It was the plaintiff's case that it is the registered proprietor of the parcel of land known as LR No. 12648/67, IR NO. 133445 situated at Daystar University- Mombasa Road Junction within Athi River in Machakos County, measuring 20 hectares (suit property). It stated that on 6th April, 2020, the defendants through their agents and without notice, unlawfully entered on the suit property, commenced clearing and leveling the same and also intimidated and evicted the plaintiff's security guards from the suit property.
 3. Despite service, the defendants neither entered appearance nor filed defence. The suit proceeded to hearing by way of viva voce evidence. The plaintiff presented two witnesses.

Plaintiffs evidence

4. PW1 was Anthony Kilavi a director of the plaintiff. He adopted his witness statement dated 23rd April, 2020 as his evidence in chief and produced documents attached to the list of documents dated even date as P. Exhibits No. 1 to 12. His testimony was that the plaintiff became the registered proprietor of the suit property upon registration on 1st October, 2013 having purchased same after conducting due diligence. Further that the plaintiff has enjoyed quiet and uninterrupted possession thereof since 2013.
5. He further stated that the plaintiff has placed a caretaker and security guards to guard the suit property which is worth Kshs. 950 Million. That on 6th April, 2020, the defendants through their agents/servants while armed, illegally and without notice attempted to invade the suit property, intimidated and attempted to chase away the plaintiff's security guards and that they were repulsed through the intervention of the police and the County Commissioner. He stated that while at the Mavoko Sub-county Police Commander, one of the defendant's servants produced a copy of an alleged lease dated 27th September, 2019 allegedly claiming ownership on that basis.
6. He produced a certificate of title; due diligence report; search certificates dated 12th July, 2013 and 17th April 2020; sale agreement; CR 12; valuation report; transfer deed; deed plan; survey map; defendants alleged lease and photographs.
7. PW2 was Michael Nthunge Wambua, the plaintiff's caretaker of the suit property. He adopted his witness statement dated 23rd April, 2020 as his evidence in chief. His testimony was that the suit property belongs to the plaintiff and that on 6th April, 2020, the defendants' agents and servants while armed, attempted to invade the suit property and tried to chase the plaintiff's guards thereon but that they were repulsed by the Mavoko Deputy County Commissioner and Athi River OCPD. He produced the photographs taken during the alleged invasion. That marked the close of the plaintiff's case.

Analysis and Determination

8. The court has carefully considered the pleadings and evidence in this matter. Two issues arise for this court's determination, namely;
 - a. Whether the plaintiff is the lawful proprietor of the suit property; and
 - b. Whether the defendants trespassed on the suit property.
9. Section 26 of the [Land Registration Act](#) provides for conclusiveness of title as follows;
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, 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.
10. Therefore, registration vests in a proprietor of land, absolute and indefeasible rights, unless it is proved that the acquisition of such registration was by fraud, misrepresentation, illegality, without proper procedure or corruption, whether or not the registered proprietor was party thereto.
11. In the instant case, the plaintiff presented title and search certificate together with sale agreement and transfer which demonstrated that it lawfully purchased the suit property at a consideration, and since 2013, it remains the registered proprietor of the suit property. This evidence was not rebutted or challenged in any manner as the defendants never appeared nor filed defence in this matter despite service. I am therefore satisfied that the plaintiff has proved that it is the lawful proprietor of the suit property.
12. Sections 24 and 25 of the [Land Registration Act](#) provides for interests conferred by registration and rights of a registered proprietor respectively as follows;
 24. Interest conferred by registration Subject to this Act—
 - a. 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; and
 - b. The registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.
 25. Rights of a proprietor
 1. The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of 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—
 - a. To the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and
 - b. To such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.
13. Therefore, a registered proprietor of land has absolute ownership thereof and is entitled to enjoy quiet possession and use of such land without interference from third parties. In this case, the plaintiff has



shown by photographs produced in evidence that on 6th April 2020, the defendants' agents invaded the suit property. As the defendants have no proprietary interest in the suit property, they have no right to interfere with or invade the same. Therefore, I find and hold that the defendants' acts of invasion of the suit property are unlawful, without lawful justification and the same amount to trespass. Hence, being the lawful registered proprietor of the suit property, the plaintiff is entitled to a permanent injunction to restrain the defendants from interfering with the suit property and any documents held by the defendants purporting ownership of the suit property are null and void and of no legal effect.

14. Regarding damages for invasion sought by the plaintiff, it is trite that trespass is actionable per se without proof of actual damage. In the case of *Duncan Nderitu Ndegwa v KP&LC Limited & Another* [2013]e KLR the court held that once trespass to land is established, it is actionable per se and no proof of damage is necessary for the court to award damages for trespass.
15. In the instant matter, and from the plaintiff's evidence on record, it is clear that the defendants through their agents invaded the suit property measuring 20 hectares and chased away the plaintiff's guards. This happened on 6th April, 2020. The plaintiff did not suggest that the defendants persisted in their trespass, hence I find and hold that the same was only for one day. In the circumstances, I make an award of Kshs. 300,000/= as damages for trespass as against the defendants.
16. In the end, I find and hold that the plaintiff has proved its case on the required standard and I therefore enter judgment for the plaintiff against the defendants jointly and severally for
 - a. A permanent injunction is hereby issued restraining the Defendants, their employees, servants and agents and any other person acting or purporting to act on behalf of the defendants from trespassing, occupying, alienating, dealing in any manner or otherwise interfering with the plaintiff's property being L.R. No. 12648/67.
 - b. A declaration is hereby made that all that property located on L.R No. 12648/67 belongs to the plaintiff.
 - c. All documents of purported ownership held by the Defendants with regard to L.R No. 12648/67 are declared null and void.
 - d. A declaration is hereby made that the defendants attempted invasion of L.R No. 12648/67 on 6th April, 2020 was unlawful.
 - e. General damages for trespass are awarded to the plaintiff in the sum of Kshs. 300, 000/= . Interest thereon shall run from the date of this judgment.
 - f. The costs of this suit are hereby awarded to the plaintiff and shall be borne by the defendants.
17. It is so ordered.

DATED, SIGNED AND DELIVERED AT KAKAMEGA VIRTUALLY THIS 26TH DAY OF MARCH, 2025 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM

A. NYUKURI

JUDGE

In the presence of;

No appearance for the plaintiff

No appearance for the defendants

Court assistant – M. Nguyai

