



**Leparleen (Suing as the Administrator of the Estate of Patrick Kitamonge Leparleen)
v Board of Management The Apostolic Revival Centre School (Environment &
Land Case 44B of 2019) [2023] KEELC 16556 (KLR) (29 March 2023) (Judgment)**

Neutral citation: [2023] KEELC 16556 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU
ENVIRONMENT & LAND CASE 44B OF 2019
YM ANGIMA, J
MARCH 29, 2023**

BETWEEN

**ALICE CHERONO LEPARLEEN (SUING AS THE ADMINISTRATOR OF THE
ESTATE OF PATRICK KITAMONGE LEPARLEEN) PLAINTIFF**

AND

**THE BOARD OF MANAGEMENT THE APOSTOLIC REVIVAL CENTRE
SCHOOL DEFENDANT**

JUDGMENT

1. By a plaint dated 05.09.2019 and amended on 19.10.2021 the Plaintiff sought the following reliefs against the Defendant:
 - a. An order that the Defendant delivers vacant possession of the parcel of land known as Samburu/Ng'aari/10 and in default, an eviction order be issued forthwith.
 - b. Damages for the trespass upon the Plaintiff's parcel of land known as Samburu/Ng'aari/10.
 - c. Costs of the suit.
2. The Plaintiff pleaded that she was the personal representative of the state of her late husband Patrick Kitamonge Leparleen (the deceased) who was the registered proprietor of Title No Samburu/Ng'aari/10 (the suit property) located in Maralal Town. It was further pleaded that the Defendant had invaded and occupied the suit property on which it erected and operated an educational institution without the consent of the owner.



3. The Plaintiff further pleaded that upon making inquiry from the Defendant on the reason for its entry into the suit property it was discovered that the Defendant had purported to purchase the same from a stranger known as Lekerpees who was not the owner of the suit property and who had no authority from the owner to sell it.
4. The Plaintiff's case was that she had suffered loss and damage by reason of the Defendant's occupation and operations on the suit property hence the suit.
5. The Defendant did not enter appearance to the suit and neither did it file any defence to the action despite service.
6. At the trial hereof, the Plaintiff testified as the sole witness and closed her case. Her evidence simply mirrored the contents of the amended plaint. She produced copies of the deceased's certificate, letters of administration, and title deed for the suit property as exhibits in support of her claim. She also produced a copy of a letter dated 20.01.2020 from the Defendant in which the Defendant stated that it was misled by one Mohamed Lekerpees into buying the suit property from him. The Plaintiff consequently sought the prayers as per the amended plaint.
7. The main question for determination in this suit is whether or not the Plaintiff has proved her claim against the Defendant to the required standard. It is evident from the record that the Defendant did not file any defence to the action and it did not tender any evidence at the trial. The Plaintiff's evidence on record therefore remains unchallenged and uncontroverted.
8. The court is satisfied on the basis of the material on record that the deceased was at all material times the registered proprietor of the suit property. The court is satisfied that the Plaintiff is one of the appointed legal representatives of the deceased with authority to pursue the claim on behalf of his estate. The court is further satisfied that the Defendant has no lawful justification to continue with its occupation of the suit property since it obtained the property from someone who had no authority to sell it. Consequently, the court is satisfied that the Plaintiff has proved her claim against the Defendant on a balance of probabilities.
9. The court has considered the Plaintiff's claim for general damages for trespass to land. There is very scanty material on record on when the Defendant entered the suit property. The Defendant's letter acknowledging that it was misled into buying the suit property from the wrong person was dated 2020. The court is aware that trespass to land is actionable per se and the Plaintiff does not have to demonstrate having suffered any particular loss or damage in order to recover damages.
10. The court is alive to the fact that the suit property measures about 43.00 ha and that the Defendant has been operating an educational institution thereon. However, the value of the suit property was not disclosed by the plaintiff. In the case of *Duncan Nderitu Ndegwa v Kenya Pipeline Company Ltd & another* [2013] eKLR it was held, *inter alia*, that:

“On the issue of quantum of general damages once a trespass to land is established it is actionable per se, and indeed no proof of damage is necessary for the court to award general damages. This court accordingly awards an amount of Kshs 100,000/= as compensation of the Plaintiff's right to use and enjoy the suit property occasioned by the 1st and 2nd Defendants' trespass.”
11. The court is of the opinion that an award of Kshs 100,000/= as general damages for trespass would be sufficient in the circumstances of this case. Accordingly, the Plaintiff shall be awarded the said amount.



12. The upshot of the foregoing is that the court finds and holds that the Plaintiff has proved her case to the required standard. Consequently, judgment is hereby entered for the Plaintiff against the Defendant in the following terms:

- a. The Defendant shall deliver vacant possession of Title No Samburu/Ng'aari/10 to the Plaintiff within 60 days from the date hereof in default of which it shall be forcibly evicted therefrom.
- b. The Plaintiff is hereby awarded general damages of Kshs 100,000/= for trespass to land.
- c. The Plaintiff shall bear costs of the suit on the lower scale.

13 It is so decided.

JUDGMENT DATED AND SIGNED AT NYAHURURU THIS 29TH DAY OF MARCH, 2023 AND DELIVERED VIA MICROSOFT TEAMS PLATFORM.

Y. M. ANGIMA

JUDGE

In the presence of:

Ms. Alwala holding brief for Mr. Githui for the Plaintiff

N/A for the Defendant

C/A - Carol

