



**Kaigera (Suing As A Legal Representative of the Estate of M'Nabea Baituru
Alias Nabea Baituru (Deceased)) v Ruiru Rwarera Secondary School Sued
through the Board of Management & another (Environment & Land Case
E010 of 2022) [2023] KEELC 22381 (KLR) (13 December 2023) (Judgment)**

Neutral citation: [2023] KEELC 22381 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE E010 OF 2022**

CK NZILI, J

DECEMBER 13, 2023

BETWEEN

MURIKI BONFACE KAIGERA PLAINTIFF

**SUING AS A LEGAL REPRESENTATIVE OF THE ESTATE OF M'NABEA
BAITURU ALIAS NABEA BAITURU (DECEASED)**

AND

**RUIRI RWARERA SECONDARY SCHOOL SUED THROUGH THE BOARD OF
MANAGEMENT 1ST DEFENDANT**

**AFRICA INDEPENDENT PENTECOSTAL CHURCH OF KENYA – RUIRI
RWARERA 2ND DEFENDANT**

JUDGMENT

1. The plaintiff, as the legal representative of the estate of M'Nabea Baituru alias Nabea Baituru through a plaint dated 6.6.2022, sued the Board of Management Ruiru Rwarera Secondary School and the Registered Trustees of Africa Independent Pentecostal Church of Kenya Ruiru Rwarera (hereinafter the school and church, respectively), for trespass on to L.R No. Meru Central Ruiru/Rwarera/182, (the suit land herein).
2. He averred that the suit land was gathered, demarcated, and registered as 15 acres in his grandfather's name, who passed on in 2021. Being mindful of the community's needs, the plaintiff averred that the deceased donated 5 acres to set up the school in exchange for an equivalent parcel of land elsewhere. He averred that the promised land failed to materialize, and he made a report to the area district officer, who okayed him to resume occupation of his land. He averred the school, without any color of right, illegally overstepped and encroached onto 3.00 acres of the suit land. It was averred that the school planted trees and built toilets, occasioning loss and damage.



3. Further, the plaintiff averred that the church, without justification, encroached and grabbed 1.00 acres of his land and erected church premises. He also averred that the local, provincial administration, members of the community, and the defendants had denied him access and use of the suit land, to the extent of threatening him and his family with death.
4. The plaintiff prayed for;
 - a. A declaration that he is the registered owner of L.R. No. Meru/Central/Ruiriri/Rwarera/182, measuring 3.66 Ha as surveyed.
 - b. A permanent injunction restraining the defendants from interfering with proprietary rights over the suit land.
 - c. Mesne profits and damages for trespass and costs.
5. The 1st defendant opposed the suit through a statement of defense dated 22.6.2023, a paginated bundle of documents dated 22.5.2023, comprised of a list and bundle of documents, a list of witnesses, witness statements, issues for determination, and a case summary. It averred that the suit was time-barred, the plaintiff had failed to exhaust the internal dispute mechanisms under the Land Adjudication Act, it raised no reasonable cause of action against the 1st defendant, and that the mandatory notice of intention to sue under Section 13A of the Government Act was not issued.
6. Further, responding to paragraphs 4 -7 of the plaint, the 1st defendant, though admitting that the suit land was initially adjudicated to the deceased name, voluntarily surrendered it to the local development committee, whose proposals approved a school to be started in 1985. It was averred that the deceased supported the idea by surrendering the suit land to the committee to start a school and moving to the alternative land Marere area. Similarly, it was averred that the alternative land retained the same parcel number, while the 1st defendant acquired parcels No. 2404 and 2406 measuring 1 acre and 7 acres, respectively.
7. The 1st defendant averred that the plaintiff's allegations were baseless as the deceased did not lay any claim during the school's existence, which has been in operation since 1995. In addition, the 1st defendant, while refuting the contents of paragraphs 7-12 and 14 of the plaint, stated that the plaintiff was interfering with public property. The 1st defendant termed the claim for eviction and injunctive orders against public interest.
8. On the other hand, 2nd defendant opposed the suit with a statement of defense dated 10.11.2022, a list of witnesses, witness statements, a list of documents dated 27.3.2023, a case summary, issues for determination, and a pre-trial questionnaire all dated 20.7.2023, all these documents in paginated bundle filed on 25.7.2023. The church admitted the contents of paragraphs 4, 5, and 14 of the plaint to the extent that the deceased was compensated when the school and a water spring took away his land but denied the contents of paragraphs 6 - 10 and 12 - 13.
9. At the hearing, the plaintiff testified as PW1 and adopted his witness statement dated 6.6.2022 as evidence-in-chief. He produced exhibits per his list of documents: the letters of a grant, a copy of the title deed for the suit land, a search certificate, a letter dated 3.8.1994, objection proceedings, and a letter dated 25.1.2022 as P. Exh. No. 's 1 - 6, respectively. He testified that the church building covers half an acre but has fenced off 2 acres. He said the school's principal was tilling his land, alleging it belonged to the school. PW1 said the school's toilets and some trees were also on the suit land. PW 1 said there was also a borehole on his land, which serves the community, and he had no issues with it. PW1 stated that his family used to till the suit land since he was young, and there never used to be a church other than the E.A.P.C. church, which was on P.No.181.



10. Further, PW 1 said that his grandfather declined to surrender the suit land after the exchange with the other land was aborted. PW1 also testified that L.R No. 's. 2404, 2406, and 2407 were never plotted on the demarcation map and could not be the suit land as reported by Mr. Levu. In addition, PW1 stated that the community had turned hostile, making it impossible to utilize the suit land. He told the court that his grandfather had been demarcated 15 acres. However, one Sarah Njeri acquired 5 acres as parcel No. 1473, which should be the land the school was occupying. PW1 also stated that according to the report by the District Land Adjudication and Settlement Officer, parcel No. 1473 did not exist on the area demarcation map.
11. Further, P W 1 told the court that a succession cause for the deceased's estate had been stayed to pave the way for the hearing and determination of this suit. PW 1 termed his title deed as genuine and legally obtained for land measuring 10 acres illegally occupied by the defendants. PW 1 said that he went to the school principal armed with the title deed and ready to till the land, only for the principal to incite members of the public led by the area M.P., M.C.A., and the DCC Buuri to demonstrate against the attempts to take over the land. PW1 further stated that there had been unsuccessful meetings with the defendants to settle the matter amicably.
12. On cross-examination by Ms. Mbaikytta for the 1st defendant, PW1 stated that though his father was still alive, due to sickness and illiteracy, he was not in a position to follow up on the matter. Further, PW 1 said he acquired a grant of letters of administration, though he had no authority to act on behalf or take over the matter from his father. In addition, PW1 stated that he was partly brought up on the suit land. He said the defendants allegedly destroyed the only structure on the suit land after his father went to live in the Munithu area. PW 1 said that his late grandfather had six children by the time he died in 2021. PW 1 said the church initially occupied a small portion of the land but started demanding more, as with the school, which demanded the entire portion.
13. PW1 also confirmed that he had sued the school because the principal hid behind it to allegedly occupy his land. PW 1 confirmed that he received his title on 30.7.2021, following the death of his late grandfather. He said that he had been threatened with death by the defendants, though he had not reported the matter to the police. Cross-examined by Ms. Gikundi, counsel for the 2nd defendant PW 1, confirmed that the church occupied 1 ½ acres of his land. Additionally, PW1 stated that the lands office genuinely and validly issued his title deed.
14. PW 1 added that the District Land Adjudication and Settlement Officer's recommendations to revoke his title deed were irregular and unjustified since no compensation was given to his late grandfather, hence the reason he had filed objection proceedings. PW 1 said P. Nos 2407 - 2406 and 2404's cumulative acreage was approximately 9.5 acres, roughly the suit land's acreage.
15. PW2 was Geoffrey Kinyua. He adopted his witness statement dated 28.3.202. As a second born of the deceased, he told the court the family had authorized the plaintiff to institute the suit as the administrator of the deceased's estate. PW 2 told the court the suit land was recorded as P. No. 182 in the 1960s when land adjudication began in the name of his deceased father. PW 2 said the school and the church had blocked his family from utilizing the suit land after they allegedly encroached on it with the school tilling and erecting toilets therein.
16. On cross-examination by Ms. Mbaikyatta, PW2 told the court that his late father had initially surrendered 5 acres of his land to the school, and he was never compensated with an alternative land. He told the court that he reported the matter to the authorities when the deceased was stopped from utilizing the alternative land. He could not recall the year but was confident that they later reported the matter to the lands office and were advised to file an objection or an appeal. PW2 confirmed that he was the objector in the objection proceedings on behalf of his late father.



17. On cross-examination by Ms. Gikundi, PW 2 stated that the church trespassed into the suit land in the 1990s. He said the church was occupying approximately 2 acres, according to the report by the District Land Adjudication and Settlement Officer. PW 2 said they had made several efforts through meetings to recover the suit land, though he had no copies of the said minutes. PW 2 said that in some of those meetings, the Land Adjudication Committee, the Land Adjudication Committee chairman, and the District area officer were in attendance. Re-examination PW 2 told the court that in one of the meetings before the D.L.A.S.O. at Tutua offices, the defendants were ably represented while the family advocate, Mr. Julius Kariri, and the pastor for the 2nd defendant were also in attendance. During the meeting, he said they were asked to cede 2 acres and 7 acres to the defendants, respectively. PW2 confirmed that a demand letter was written to the defendants on 8. 3.2022.
18. Mr. Levu testified as PW3. As the Land Adjudication Officer, Tigania West was previously in charge of Meru Central District. He told the court that the deceased was the registered owner of the suit land measuring about 3.66 Ha. PW 3 told the court that though a title deed for the suit land existed, he wrote a report dated 11.7.2022 following a request by the D.C.I.O. to visit the suit land. PW3 stated that according to the adjudication records, P. No. 2404, 2406, and 2407 were issued in the 1990s over parcel no 182, created in 1983 under the Land Adjudication Act (Cap 284) and not the Land Consolidation Act (Cap 283).
19. On cross-examination by Ms. Mbaikyatta, PW3 told the court that the school occupied P. Nos 2404 and 2406, measuring approximately 1 acre and 7 acres, respectively. Further, PW 3 told the court that according to the demarcation records, titles for public utilities were still pending issuance. PW3 added that the land occupied by the school initially belonged to the deceased. Further, PW 3 said that parcel number 2406 had a shamba and a borehole belonging to the school, while the church was on parcel No.2407. Additionally, PW3 told the court that several meetings that were unsuccessfully convened were aimed at resolving the dispute.
20. Cross-examined by Ms. Gikundi, PW3 confirmed that a title deed is said to be procedurally issued if the demarcation maps and the adjudications proceedings tally. PW3, in re-examination, said the suit land would have been removed from the demarcation map if there was an agreement with the deceased family.
21. DW1 was Robert Kanyuru, the retired area assistant chief of Ruiru Rwarera area between 1978 and June 2000. He adopted his witness statement dated 1.4.2022 as his evidence-in-chief. He told the court that the deceased used to own land, which he surrendered to the school after being compensated with alternative land in the Marere area.
22. In cross-examination by Mr. Mokuu advocate, DW1 told the court that the school was registered on 22.3.2011 as occupying P. No.182 bordering a cattle dip, water catchment area, a primary school, a borehole, and an A.I.P.C church. Further, DW1 told the court that he was the one whom the members of the public had sent to talk to the deceased, with a view of surrendering his land since they wanted to put up a public school. DW1 also stated that though his land was 15 acres, he did not surrender the same for the school since the clan had made a recommendation.
23. Cross-examined by Ms. Gikundi, DW1 told the court that no surrender agreement was signed between him for the school land. D.W. 1, however, admitted that he was not a witness before the Land Adjudication Committee during the land transfer to the school but was confident the deceased had agreed to be compensated with an alternative land in exchange for the suit land. In cross-examination by Ms. Mbaikyatta, DW 1 said that the school's certificate was prepared by someone else. He could not tell why the parcel number for the school and was missing. He denied that the school land was obtained illegally or unprocedurally.



24. Kamunde Kawira testified as DW2. He adopted his witness statement dated 21.4. 2021 as his evidence in chief. He said he was a land adjudication committee member when the deceased allegedly surrendered his land and was compensated with an alternative land. Cross-examined by Mr. Mokua advocate, DW2 confirmed that no minutes or agreement between the land adjudication committee and the deceased showed he had surrendered his land for public use. DW2 further said that the deceased had offered his land, which was eventually reserved for public utilities under the [Land Adjudication Act](#). D.W. 1 insisted that he was sure the deceased was compensated with an alternative parcel after surrendering his land.
25. DW3 was Silas M'Ikiao. He adopted his witness statement dated 1.4.2022 as his evidence in chief. He told the court that the school was duly registered as per the registration certificate produced as defense D. Exh. No. 1. Upon cross-examination by Mr. Mokua advocate, DW3 confirmed that his land was P. No. 276 was demarcated to him in the 1980s by the land adjudication committee. In addition, D.W. 3 told the court that the land adjudication committee and the community at large requested the deceased surrender his land for public use in exchange for another piece of land in the Marere area. D.W. 3 said the owner of P. No 181 was also requested to surrender his land for the primary school. D.W. 3, however, could not confirm if the suit land after the surrender was given a new parcel number in the new location. DW3 confirmed that he used to be the chairman of the nursery school by 1974, but the secondary school came into existence much later. In re-examination, DW3 confirmed that the land adjudication committee took the deceased to the new site but could not recall the parcel number of the new site that the deceased acquired.
26. DW4 was Mr. Levu, the District Land Adjudication Officer Tigania East. He produced a letter dated 1.2.2019 as D. Exh. No. (2). In cross-examination, he confirmed that P. No. 2404 was 7 acres, though the sketch map indicated 3.82 acres. Similarly, he said P. No. 2406 was 1 acre, though it was 6.8 acres on the sketch map.
27. Julius Kariiri was DW5. He adopted his witness statement dated 27.3.2023 as his evidence in chief and produced exhibits, namely a report by the land adjudication officer, as D. Exh. No. (3), minutes dated 12.6.2022 as D. Exh. No. (4). In cross-examination, DW5 told the court that he was the former chairman of A.I.P.C.A. church. He said the church moved into P. No 2407 in 1983 after the deceased agreed with the land committee members to surrender the suit land for public use. DW5 also said that the school compound was 1acre, and the school principal, Dorcas Mbijiwe, utilized the land next to his church for tilling.
28. Upon closing the defense case, parties were directed to file written submissions. Through submissions dated 5.12.2023, the plaintiff set out six issues for determination. On whether the suit was time-barred, the plaintiff submitted that his title deed was issued on 30.7.2021. Further, the plaintiff submitted that the suit was not time-barred since there had been continuous trespass on his land.
29. On whether he had failed to exhaust all the internal mechanisms, the plaintiff submitted that title deeds were issued by the government, and the defendants had not alleged that the title deed to the suit land was illegally procured.
30. In addition, the plaintiff submitted that the defense of land surrender and compensation could not hold any water; otherwise, it would illegally deprive him of his land. Further, the plaintiff submitted that though not interested in P. No. 2404, he opposed the alleged creation of P. No.2406 on the suit land and extension beyond the 3.82 acres. The plaintiff further submitted that no evidence was produced to show that compensation by way of alternative land took place. Additionally, it was submitted that the defendants did not also explain whether they bought the public land and, therefore, show justification for occupying the land.



31. As to whether the suit was bad in law for want of a mandatory notice of intention to sue, the plaintiff submitted that the said provision violated the provision of Article 48 of [the Constitution](#), as held in *Kenya Bus Society Ltd and another vs Minister of Transport & 2 others* (2012) eKLR.
32. As to the legality of P. No's 2406 and 2407, the plaintiff submitted that the land adjudication process was undertaken under the provisions of the [Land Adjudication Act](#), where the suit land was adjudicated and assigned to the deceased, and therefore, the alleged new parcels of land were illegal creations. Similarly, the plaintiff submitted that the defendants had trespassed on the suit land, yet he was the legal land owner with a valid title.
33. The 1st defendant, through written submissions filed on 6.12.2023, isolated two issues for determination. Whether the suit was statute-barred, it was submitted that the school came into being in 1994 after the deceased had surrendered 5 acres of land. Given that the suit was instituted on 7.7.2022 to reclaim the land, 24 years after the school was established, time started running from 1994 to 2018. Consequently, since no leave to file suit outside the 12-year period was sought and obtained, the 1st defendant submitted the suit contrary to Section 7 of the [Limitation of Actions Act](#).
34. Further, the 1st defendant submitted that according to the evidence of Mr. Levu, title deeds for the Ruiru Rwarera Adjudication Section were yet to be issued for public institutions. On whether the plaintiff is entitled to the reliefs sought, the 1st defendant submitted that public interest should override private interests since the 1st defendant is a public secondary school serving the local community. Reliance was placed on *Bosire Ongero vs. Royal Media Services* (2005), *Owners of Motor Vessel "Lilian S" vs. Caltext Oil Kenya Ltd* (1998) KLR1 and *Kenya Anti-Corruption Commission vs Deepak Chamanlal & 4 others* (2014).
35. The 2nd defendant isolated two issues through submissions dated 7.12, 2023. On whether the land was community land available for allocation, it was submitted that under Article 63 of [the Constitution](#), the County Government was the custodian of all unregistered community land and that the [Land Adjudication Act](#) only deals with the ascertainment of rights and interests in land, recording of such rights and interest held in a communal tenure system, for the rights and interests to transition to individual tenure system. Further, the 2nd defendant, relying on Sections 4, 6 & 8 of the [Community Land Act](#) and *Silverio Akubu and four others vs. Charles Baariu Selasio and three others* (2019) eKLR, submitted that the plaintiff did not affirm the suit land was not trust land.
36. As to costs, it was submitted under Section 27 of the [Civil Procedure Act](#); costs follow the event. The court has carefully reviewed the pleadings, evidence tendered, written submissions, and the law.
37. The issues calling for determination are:
 - i. If the suit land was allegedly surrendered by the deceased for public purposes.
 - ii. If the surrender was legally effected.
 - iii. If the deceased was compensated with an alternative parcel of land.
 - iv. If the alternative land or offer was effected or withdrawn.
 - v. If L.R. No. Meru Central Ruiru/Rwarera/182 is the same as parcels No. 2404, 2406, and 2407.
 - vi. If the suit is time-barred or contrary to the doctrine of exhaustion.
 - vii. If public interest should outweigh private interest



38. The plaintiff's claim is based on the plaint dated 6.6.2022, while the 1st and 2nd defendants' defense statements are dated 22.6.2022 and 10.11.2022, respectively. The plaintiff averred that the deceased gathered 15 acres of the suit land recorded as parcel No. 182 and donated 5 acres of his land to start the 1st defendant in exchange for an alternative land he had been offered.
39. The plaintiff averred that the defendants trespassed into L.R No without any color of right or justification. Meru central Ruiru/Rwarera/182 measuring approximately 3.66 ha. Further, he averred that the 3 acres and one acre of his land had been annexed or encroached out by the 1st and 2nd defendants. He termed the encroachment and annexation as unjustified, illegal, and an infringement of his rights to land since he was unable to access, utilize, and use the land. The plaintiff prayed for a declaration that the titled land belongs to him, permanent injunction, mesne profits, and damages for trespass. PW 1 called two witnesses to support his claim and produced a copy of the limited grant title deed, certificate of official search, letter dated 3.8.1994, copies of objection proceedings, receipt, and a demand letter as P. Exh No's six, respectively.
40. The 1st defendant averred that the school was proposed in 1985, following the surrender of land parcel No. 182, initially owned by M'Nabea Baituru, who was relocated to the Marere area and compensated with an alternative land bearing the same parcel number. It was averred that the school commenced construction in 1995 on the newly created parcels No 2404, 2406, and 2407, measuring one acre and 7 acres, respectively, with no objection from the deceased. It was averred that the plaintiff suddenly raised a claim in 2021 that the land belonged to his late grandfather. In support of the defense, the 1st defendant produced a copy of letters dated 1.2.2019 and 4.3.2021 as D. Exh No. 1, 2, 3 & 4, respectively.
41. The 2nd defendant, on its part, admitted that the deceased was initially demarcated and adjudicated as the owner of L.R No. Meru Central/Ruiru-Rwarera/182, measuring approximately 15 acres. It, however, denied the alleged donations, the aborted compensation, and encroachment by it of one acre of the suit land where it had erected the church premises. The 2nd defendant, in support of the defense, relied on D. Exh no. 3 a report dated 11.7.2022 and minutes dated 12.6.2022 produced as D. Exh No. 4.
42. Sections 24, 25, and 26 of the [Land Registration Act](#) provide that a certificate of title issued by the registrar upon registration to a purchaser of land or upon 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 an absolute and indefeasible owner, subject to the encumbrances, easements, restrictions, and conditions contained or endorsed in the certificate; further, the sections provides that the title shall not be subject to challenge except on account of fraud, misrepresentation, illegality, unprocedural or acquisition through the corrupt scheme.
43. The defendants did not challenge or impeach the title held by the plaintiff for L.R No. Meru Central/Ruiru-Rwarera/182 dated 30.7.2021 on account of the provisions of Section 26 of the [Land Registration Act](#) in their pleadings. Even 1st and 2nd defendants were served with demand letters dated 8.3.2022 and 26.1.2022, respectively; they did not raise complaints on the manner of issuance and the legality of the title. Similarly, after the suit was filed against them by way of pleadings on account of fraud, illegality, misrepresentation, or acquisition through corrupt schemes or unprocedural means. Among the rights to be enjoyed by a title holder is the right to peaceful and quiet enjoyment, possession, occupation, and land use. All these rights are guaranteed under Article 40 of [the Constitution](#).
44. The only justification by the 1st and 2nd defendants to trespass, as pleaded, was that the deceased had surrendered the suit land for a public purpose and had acquired an alternative land of 15 acres using the



- same parcel number as Parcel No. 182. The 1st defendant averred that the suit land changed to parcel numbers 2404, 2406, and 2407, measuring one acre and 6 acres, respectively, where they erected the school in 1995 without opposition from the plaintiff. The 1st defendant relied on D. Exh No. 2 & 3 dated 1.2.2019 and 4.3.2011 to confirm ownership of the suit land.
45. In *Fanikiwa Ltd vs. Sirikwa Squatters Group & 17 others* C.A 45 & 44 of 2017 (consolidated) (2022) KECA 1286 (K.L.R.) 18th November 2022 (judgment), the court considered the law on surrender of land. The court cited with approval *C.C.K. & 5 others vs Royal Media Services & 5 others* (2014) eKLR on legitimate expectation. It held that given the many letters taken singularly, together, and in totality, all projected to an express and unambiguous promise made repeatedly to the claimants by government officers coupled with presidential approval. The court said such representations and promises were not contrary to constitutional and statutory provisions; hence, they were lawful and could be enforceable through formalization and regularization.
 46. The court held that the mere fact that the officers had not taken or completed the promises or representations did not make the promises or representations illegal or unconstitutional. The court said it was unambiguous or untenable for the government to recede from the promises or representations because of some formal or procedural steps that the relevant officers should have taken but had failed to actualize the promises and meet the legitimate expectations of the claimants. The court said the various representations were within the government officers' actual or ostensible authority binding on the government. The court further said a land surrender was a process, not an event.
 47. In *Chief Land Registrar & 4 others vs. Nathan Tirop Koech & 4 others* (2018) eKLR, the court observed a presumption that all acts done by a public officer were lawfully done and all the legal procedures had been duly followed.
 48. In this suit, the onus was on the defendants to show that the title deed held by the plaintiff was irregular, illegal, and subject to D. Exh No. 2 & 3. Section 97 of the *Evidence Act* provides that where a disposition of property is reduced into a document, no parole evidence shall be given over it except the document itself. In *Mwinyi Hamisi vs. Attorney General* C.A No. 125 of 1997, the court held that the registration of a surrender was the evidence of the surrender and that oral evidence could not contradict or vary documentary evidence under Section 100 of the *Evidence Act*.
 49. The defendants have insisted that the deceased had surrendered his Parcel No. 182 for public use, which they later acquired and was demarcated as Parcel No. 2404, 2406, and 2407. Other than oral evidence, the defendants failed to call and produce any documentary evidence of the surrender by the deceased or compensation of parcel No. 182 for public use with an alternative land. A simple duly executed transfer form by the donor or donee at the land adjudication offices would have sufficed. The defendants produced no minutes or an agreement by the deceased offering private land by surrender to the public, duly effected by the parties at the land adjudication office in 1985. D. Exh No. 1 & 2 were dated 2011 and 2019, long after 1985 and 1995, when the school and church are alleged to have been started.
 50. Before the title deed was issued to the plaintiff, the defendants produced nothing to show that they had effected transfers of parcel 182 into parcels No.2404, 2406, and 2407. The title deed issued to the plaintiff bears a registry index map created under the law. See *Pankajkumar Hemraj Shah & another vs Abbas Lali Ahmed & others* (2019) eKLR. A registry index map supersedes any demarcation maps or sketch maps by D.W. 4.
 51. On conversion of private property into public property, the burden was on the defendants to provide evidence that they lawfully acquired the suit land and extinguished the rights of the deceased in 1985



- or 1995. Section 7 of the [Land Act](#) provides various ways of acquiring land. The defendants did not produce any records of existing rights in the year 1985 or 1995 as proof that the suit land was surrendered to them for public purpose during the adjudication process or before the register for the area of adjudication was declared final and the adjudication records forwarded to the Chief Land Registrar for titling. Equally, there was no evidence of a valid transfer between the deceased and the 1st defendant.
52. In *Simon Natal Ntoitha vs Subcounty Land Adjudication and Settlement Officer Igembe North & 20 others* (2022) eKLR, the court cited with approval *Attorney General vs Zinja Ltd* (2021) K.E.S.C. 23 (K.L.R.) (Civ) 3rd December 2021) Judgment, the court said the re-allocation, retaking and re-adjudication of the petitioner's land for a public institution without notice, compensation and contrary to the right to fair administrative action was unjustified and contrary to the law on compulsory acquisition.
 53. In this suit, the defendants failed to plead and prove that the deceased duly lawfully surrendered parcel No.182 and was compensated with an alternative land of the exact acreage and settled therein. The easiest thing for the defendants was to avail records bearing the names of the deceased issued to him by the land adjudication office for Marere before he passed on in 2021. Minutes for the surrender, transfer form, and compensation modalities were unavailable from PW3 regarding how L.R No. 182 became parcel Nos 2404, 2406, and 2407. The evidence of Mr. Levu was unreliable, disjointed, and illogical. He could not tell, for instance, explain on what basis the title deed held by the plaintiff should be canceled. He failed to produce any paper trail showing that L.R. Parcel No. 182 was canceled or replaced with parcels 2404, 2406, and 2407 in favor of the defendants. PW3 could not tell if land allegedly demarcated to the deceased in exchange for his land existed in law and if it was demarcated in favor of the deceased.
 54. The 1st defendant has invoked the concept of public interest to defeat the rights of the deceased since the school has been developed on the land with no objection from the plaintiff until 2021. In *Medline Wanjeri Njuguna vs. Fredrick Njuguna Ndoro & others* (2014) eKLR, the issue at hand was a failure by the school to keep its word on the alternative property in exchange and the adamancy of the appellant for a return of ten acres he had surrendered at the request of the former President Moi to the school. The trial court found that due to the failure to be offered an alternative land, the appellant was entitled to the ten acres. The appellate court held that after possessing ten acres, the school and the provincial administration had abandoned the appellant and failed to keep the gentleman's bargain. The court termed the respondent's acquisition of the appellant's parcel of land as an arbitrary acquisition of private property outside the legal framework of compulsory acquisition. The court said that since there was no consideration from the respondents to the appellant, they could not be allowed to have their cake and eat it simultaneously.
 55. The 1st defendant gave the plaintiff in this suit a raw deal. The letter from the district officer confirmed that the alternative land offered in exchange for parcel No. 182 was unavailable. On that account, the district officer allowed to revert to his land. A representation by such an officer as held in *Fanikiwa* (supra) has legal implications. The defendants are estopped from denying apparent facts. See *McLikenny vs Chief Constable of West Midland* (1980) ALL ER 227, Section 107 – 133 of the [Land Act](#) on compulsory acquisition was not complied with. The 1st defendant has not controverted that evidence. If at all there was alternative land available and taken up by the plaintiff or the deceased, the easiest thing would have been to produce documents showing that the alternative land was registered in the name of the deceased at the time of the surrender or in the alternative that it has all been available for deceased's occupation by the time the suit was filed.
 56. Given the preceding, I find that the plaintiff has proved that he owns L.R No. Meru Central/Ruiri/Rwarera/182 is, therefore, entitled to peaceful and quiet possession of the same to the exclusion of



- the defendants. The defendants have been unable to justify their rights or interests on L.R. No. 182. Therefore, the defendants' occupation of the suit land is illegal and amounts to trespass to private land.
57. As to mesne profits, the plaintiff did not produce any land registrar surveyor report on the nature and extent of the developments on his land. The claim is, therefore, rejected. As to general damages for trespass, a claim is actionable per se without proof of damages. The defendants have admitted that L.R. No. Meru Central/Ruiriri/Rwarera/182 is where they are occupying, though the exact land is parcels No. 2404, 2406, and 2407, according to them. As indicated above, a title deed supersedes any other document as proof of ownership. The defendants have not proved that L.R. No. 182 ceased to exist and was replaced by the parcel numbers they hold.
58. The defendants have been unable to produce the surrender documents or compensation with an alternative land. Entry into the land remains illegal in the eyes of the law on land acquisition. A wrong cannot justify another wrong. Acquiescence or time limitation cannot be a bar to the claim on the part of the defendants since any fresh trespass is actionable. See *Kenya Power and Lighting Company vs Ringera & 2 others* (2022) KECA 104 (K.L.R.). The 1st defendant has invoked public interest since the school serves the local community. In *Kenya Guard Allied Workers Union vs Security Services and 38 others* H.C Misc App No.11592 of 2003, the court said courts cannot stay away as land grabbers plead indefeasibility of title. In *MilanKumah Shah & others vs. City Council of N.R.B., N.R.B. H.C. No. 1024 of 2005 (O.S.)*, the court said a title was indefeasible unless impeached. The defendants do not hold a better title to the suit land. The defendants have invoked no law that justifies their actions. It was upon the defendants to normalize the public land acquisition or conversion process from the deceased.
59. I believe the defendants are liable to general damages for trespass, which has been going on since 1985. The same is assessed at Kshs. 4,00,000 guided by the case law of *Evelyn College of Design Ltd vs. Director of Children's Department & another* (2013) eKLR, *Timothy Macharia vs Silibwet Primary School* (2018) eKLR.
60. Consequently, prayers 1 and 2 of the plaint are hereby allowed. Any structures belonging to the 1st & 2nd defendants which may be on the plaintiff's land shall be removed from the suit land within three months from the date hereof in default, of which the plaintiff shall be at liberty to demolish them at the defendants' expense. Costs of the suit to the plaintiff.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 13TH DAY OF DECEMBER 2023

HON. CK NZILI

JUDGE

In presence of

Mr. Mokuu, for the plaintiff

Maina for the 1st defendant

Gikundi for 2nd defendant

