



Agalo v County Government of Trans Nzoia & 9 others (Environment & Land Case 35 of 2017) [2025] KEELC 4482 (KLR) (11 June 2025) (Judgment)

Neutral citation: [2025] KEELC 4482 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE 35 OF 2017**

**CK NZILI, J
JUNE 11, 2025**

BETWEEN

PETER MIDIMO AGALO PLAINTIFF

AND

COUNTY GOVERNMENT OF TRANS NZOIA 1ST DEFENDANT

COUNTY LAND REGISTRAR TRANS NZOIA 2ND DEFENDANT

ATTORNEY GENERAL 3RD DEFENDANT

CABINET SECRETARY LANDS & PHYSICAL PLANNING 4TH DEFENDANT

CHIEF LAND REGISTRAR 5TH DEFENDANT

DIRECTOR PHYSICAL PLANNING 6TH DEFENDANT

COUNTY SURVEYOR TRANS NZOIA 7TH DEFENDANT

DIRECTOR SURVEYOR 8TH DEFENDANT

PHYSICAL PLANNER TRANS NZOIA 9TH DEFENDANT

INSPECTOR GENERAL OF POLICE 10TH DEFENDANT

JUDGMENT

1. The plaintiff came to court by an amended plaint dated 12/2/2024. He seeks: -
 - a. A permanent injunction barring and restraining the defendants from interfering with his quiet possession of Parcel No. Kitale Municipality Block 4/413.
 - b. A declaration that he is a bona fide proprietor of the suit land.



- d. In the alternative and without prejudice to the foregoing, he be given an alternative plot or compensation at the current market value of the suit property.
2. The plaintiff averred that he is the registered lessor of all that piece of land known as Kitale Municipality Block 4/413 measuring 0.0178 Ha or thereabout, out of a duly registered lease which he obtained on 2/5/1995, following a letter of allotment dated 14/1/1993, and has all along been paying requisite land rates to the 1st defendant. The plaintiff averred that for no reasonable cause or excuse, the 1st defendant has prevented him from lawfully carrying out any affairs or developing the suit land. Further, the plaintiff avers that the 1st defendant in conjunction with the 4th - 10th defendants created a public road through his land namely; the police lane, in an illegal and irregular manner and hence created an illegally non-existent police lane, yet since the issuance of an allotment letter followed by a certificate of lease, he became an absolute owner of the private land that has now been converted into a public road by the defendants.
3. Again, the plaintiff avers that the road designed as police lane has never been in existence, his allocation of the land was regular and lawful. The defendants have jointly and severally purported to compulsorily acquire it, the purported compulsorily acquisition is illegal and unconstitutional and that he was not monetarily compensated or allocated alternative land in lieu of his land.
4. The 1st defendant opposed the suit through an amended statement of defence dated 26/2/2024. It averred that the suit land has for over three decades been in continuous utilization by members of public as an access road running from Moi Street through Police Headquarters and Trans National Times Sacco. That it serves both private and public entities, hence treating a public interest that deserves recognition. The 1st defendant averred that the plaintiff has therefore, never had actual possession of the land from the time it was purportedly allocated to him
5. In addition, the 1st defendant averred that it has a direct interest in the suit property and has never assigned any officer to take any action against the plaintiff. Further, the 1st defendant averred that the plaintiff was a land fraudster who colluded with some unscrupulous land officials to manufacture and confer ownership to him through documents that were unusually processed on the same day on 2/5/1995, to lay claim on a public road. The 1st defendant averred that the access lane is known as Police Lane and the plaintiff has had long standing dispute with the police and other members of public who are regular users of the road. The 1st defendant averred that the suit discloses no cause of action against it and is frivolous and vexatious.
6. The 2nd - 10th defendants opposed the suit through a statement of defence and counterclaim dated 12/7/2017. They averred that the parcel known as Kitale Municipality Block 4/413 was illegally created out of a public road reserve, otherwise known as Police Lane – Kitale. The plaintiff's registration thereof was obtained illegally and fraudulently, without due regard to public interests, in collusion with corrupt officers, without conducting due diligence and by accepting a letter of allotment and a lease to the suit land while aware that they were irregularly prepared and related to public land already in use. The 2nd-10th defendants averred that the plaintiff accepted the ownership documents due to conspiracy, collusion, dishonesty and without exercising due diligence, hence could not be entitled to the reliefs sought.
7. By way of a counterclaim, the 2nd - 10th defendants pleaded that the registration of the plaintiff as owner of the suit land was through illegalities and fraud as particularized in paragraph 3 of the defence and counterclaim and prayed for its cancellation in public interest.



8. The claim was opposed by the 2nd - 4th interested parties through a joint statement of defence dated 19/4/2017. They averred that they have been using and utilizing the suit land, as an access road to their business premises for over 16 years, otherwise the suit lacked merits.
9. In a reply to the 1st defendant's amended defence dated 10/7/2024, the plaintiff termed the same as bad in law for uncertainty. He said that no members of the public were in this suit claiming a right of way, the alleged right of way is not relevant to this suit, such a right of way offends the *Limitation of Actions Act*, no particulars of fraud against the 2nd - 7th defendants have been set out, the 2nd defendant is estopped in law from denying the allocation, its approval, demand and payment of land rates to it and the approval of the development plan for the suit land.
10. In a reply to defence and defence to the counterclaim dated 30/7/2018, the plaintiff averred that the Police Lane Kitale was a totally different creature and did not form part of the suit land. It denied the alleged fraud, illegalities or collusion to register and acquire title to the suit land stating that the process of acquisition of the lease was honest, procedural and in compliance with the due process of law, otherwise Block 4 consisted a series of plots issued at the same time, hence he cannot be victimized in isolation.
11. The plaintiff denied the contents of the counterclaim and averred that there was no justification to cancel his title that the 2nd - 10th defendants have been aware of its existence for over 20 years, their claim was time-barred and the cancellation will amount to breach of his constitutional rights to own property.
12. At the trial, Peter Midimo Agola, testified as PW1. He relied on witness statements dated 24/2/2017, 18/2/2022 and 12/2/2024 as his evidence-in-chief. PW1 told the court that he was a registered lease holder of Title No. Kitale Municipality Block 4/413 with effect from 2/5/1995, following an allotment letter dated 14/1/1993, whereof he duly paid for the same, the suit land was surveyed and registered as per the relevant map. Since obtaining registration, PW1 said that he has been paying the requisite statutory fees and land rates to the 1st defendant and its predecessor in title who also received and approved his development plan. Unfortunately, PW1 said that the defendants have frustrated and prevented him from developing his land. Further, PW1 said that the defendants have threatened to and indeed forcefully constructed a road through the suit land without his consent or approval.
13. PW1 insisted that this is a plot he has occupied since 26/11/1987, after the 1st defendant issued him with a temporary occupation licence, until 3/7/1996 when a police officer from the 10th defendant invaded and evicted him from the land, leading to Kitale SPMCC No. 2 of 1997, what was determined in his favour, but the police kept him out of the land, only for the 1st defendant to come in, convert and redesign the plot as a police lane, tarmacked it and opened it up for use by members of the public.
14. Again, PW1 stated that the acts of the defendants amount to compulsory acquisition of his plot and converting it to a tarmacked road, now renamed Police Lane, without any compensation, reparation or provision with an alternative land. As a seasoned businessman within Kitale town operating a mechanical, welding and fabrication shop, he has no other land in Kitale to practice his business, his rights to ownership of the plot have been violated and the land compulsorily acquired did not comply with the Land Acquisition Act (repealed). PW1 said that he has overriding interest on the land under Section 28(b) of the *Land Registration Act* and despite directives by a physical planner to allocate him an alternative land, the defendants have declined to do so, yet they continue receiving land rents and rates from him. PW1 said that the business which is his source of livelihood has ground to a halt.
15. PW1 relied on documents in the list of documents dated 24/2/2017 and 16/10/2024, namely; a temporary occupation licence dated 3/11/1987, P. Exhibit No. (1), an allotment letter dated



- 14/1/1993, P. Exhibit No (2), receipt for payment to the Commissioner of Lands dated 10/2/1995, P. Exhibit No. (3), certificate of lease issued on 2/5/1995, P. Exhibit No. (4), certificate of grant of lease dated 10/4/1995 and registered on 2/5/1995, P. Exhibit No. (5), a copy of green card, P. Exhibit No. (6), demand notice dated 28/9/2015, P. Exhibit No. (7), rate payment receipts dated 26/7/2016 and 16/2/2017, P. Exhibit No. 8(a) and (b), rate clearance certificate dated 25/7/2016 as P. Exhibit No. (9), certificate of official search dated 22/11/2022 as P. Exhibit No. (10), approved plan dated 2/3/1999 P. Exhibit No. (11), rate payments for approval of development plan dated 5/3/1999 and 2/3/1999, P. Exhibit No. 12(a) and (b), notice of assessment dated 4/3/1999, P. Exhibit No. (13), demand note dated 7/8/2012, P. Exhibit No. (14), Letter from Commissioner of Land dated 15/3/1996, P. Exhibit No. (15), letter from NLC dated 4/4/2017, P. Exhibit No. (16), judgment, ruling and decree in Kitale SPMCC No. 27 of 1997, P. Exhibit No. 17(a), (b) and (c), letter from the Hon. A.G., dated 25/10/2001, P. Exhibit No. (18), Development plan No. 2080 approved on 16/3/1999, P. Exhibit No. (19), photographs MFI-P(20), Billboard MFI-P(21) and valuation report dated 28/3/2015 as MFI-P No. (22).
16. In cross-examination by Mr. Karanigrey for the 1st defendant, PW1 told the court that the temporary occupation license had authorized him to undertake welding business on the plot, on temporary basis. According to the plaintiff, the plot was not then designated as a road reserve. PW1 said that after acquiring the letter of allotment, he fully complied with its terms and conditions and paid the requisite amount as per P. Exhibit No. (3). He admitted that he never wrote an acceptance letter for the allotment offer, but instead paid the required amounts after which he took vacant possession of the plot in 1997, with no objection from the defendants. PW1 said that the earlier suit was filed after the police encroached onto his plot by erecting a road. PW1 said that the police lane was constructed two years after the land was allocated to him and after he had taken possession. PW1 said that the police demolished his structures and blocked him from accessing the plot.
17. PW1 said that between 1983 and 1997, it took him time to take possession of the land and even after taking possession the police evicted him, only to return to the land in 2016. Since removal in 1997, PW1 said that after issuance of title in 1995, he was unable to access the land for the next 2 years, yet its registration has not been revoked or cancelled. PW1 denied breaching any of the terms and conditions of the certificate of lease. PW1 insisted that whereas his building materials were on the land, the defendants demolished his structures and destroyed the said materials.
18. After the close of plaintiff's case the 1st defendant opted to close its case.
19. Following none appearance of the 2nd - 10th defendants, their defence and counterclaim was marked as closed.
20. The court has carefully gone through the pleadings, evidence tendered by the parties, and written submissions. The issues calling for my determination are:
1. If the plaintiff is bona fide proprietor of Parcel No. Kitale Municipality Block 4/413, measuring 0.778 Ha to be entitled to protection of the law.
 2. If the plaintiff has pleaded and proved encroachment, trespass, acquisition and conversion of the suit land into a public access road by the defendants.
 3. If the defendants were justified in law, and under *the constitution* to acquire, convert, develop and utilize the suit land.
 4. Whether the plaintiff is entitled to the reliefs sought.
 5. Whether the 2nd - 10th defendants are entitled to the reliefs sought in the counterclaim.



6. What is the order as to costs.
21. It is trite law that parties are bound by their pleadings and issues for the court's determination flow from the pleadings. This suit begun hearing on 24/4/2018 and PW1 was stood down to allow the plaintiff to amend the initial plaint. By 1/2/2022, no amendment had been made. On 21/2/2022, plaintiff brought an originating summons which led to a ruling. By a consent dated 5/2/2024, the plaintiff was allowed to amend his plaint within 14 days from the said date. The 1st defendant filed an amended statement of defence dated 28/2/2024. The 2nd - 10th defendants were granted time to amend their statement of defence within 14 and 21 days, from 4/7/2024 and 7/11/2024. Due to the amendments the matter started de novo on 7/3/2025.
22. The plaintiff's claim is that he is a bona fide allottee and lease holder of the suit land having initially been issued with a temporary occupation license by the 1st defendant on 3/11/1987, later applied and was issued with a letter of allotment dated 14/1/1993 and subsequently obtained a certificate of lease dated 2/5/1995, grant of lease dated 10/4/1995. The plaintiff produced the same accompanied by copies of the register showing that the title register for Kitale Municipality Block 4/413 was opened on 2/5/1995 and both the lease and certificate of lease were registered on the same day in favour of the government as head lessor and the plaintiff as the lessee. The plaintiff pleads, testifies and submits that his title documents were lawfully, regularly, procedurally and formally issued, after compliance with due process and has paid all the statutory fees, rates and land rents to the relevant authorities as a result of which he submitted development plan to the 1st defendant, who approved them and received the requisite approval fees, when they were demanded for. Further, the plaintiff produced letters dated 15/3/1996 and 4/4/2017 from the 4th and 6th and the National Land Commission confirming the acquisition of the land was proper and in accordance with the law.
23. The 1st - 10th defendants attack the plaintiff's title documents for being public land used as an access road for over 30 years, that the same was fraudulently, unprocedurally and irregularly allocated and registered in the name of the plaintiff, while it was already a designated public road, had the plaintiff conducted due diligence, before acquisition, registration, he could have established that it was not available for registration or acquisition, that there was conspiracy, collusion and dishonesty in the process, the reliefs sought are untenable and that the 2nd - 10th defendants pray for the cancellation of title in public interest.
24. By way of a reply to defence and defence to counterclaim, the plaintiff raises the doctrine of estoppel against the 1st - 10th defendants, for the process of acquisition and registration was through the right channels and in compliance with the statutory requirements, he should not be victimized and his rights of ownership violated through denial of the reliefs sought, and that the defendants have always known for long the existence of the title to the land but took no action until now, seeking for cancellation, that the defendants forcefully took over the land and developed it without compensation, reparation or issuance of an alternative land.
25. The defendants take the view that the suit disclose no cause of action against them. A cause of action is an action on the part of the defendants that gives rise to the plaintiff to complain. The plaintiff in his pleadings and evidence that since issuance with a letter of allotment, lease and a certificate of lease, payment of requisite fees and an approval of his development plan by the 1st defendant, he has been unable to access, use, occupy and develop the land as an absolute owner of the same, with all the rights and privileges known in law under Sections 24, 25 and 26 of the *Land Registration Act* and Article 40 of *the Constitution*.



26. In *Karugi & Another -vs- Kabiya & Others* Civil Appeal 80 of 1982 [1983] KECA 38 [KLR] (CIV) (16th November 1983) (Judgment), the court said that assertion made in the plaint must be followed by uncontroverted, reliable and credible evidence in their support even in a formal proof, otherwise no court will believe that the noon is actually the sun, however unchallenged that statement may be. In *Kuria Kiarie & Others -vs- Sammy Magera* [2018] KECA 467 [KLR], the court said that under Order 2 Rule 4 of the Civil Procedure Rules, fraud, misrepresentation and illegality must be pleaded and proved and cannot be inferred from the facts by the court.
27. The burden to proof ownership under Section 108 of the *Evidence Act* is he who alleges. Sections 79(1) and 80 of the *Evidence Act* relates to public document. Only certified copies of public documents are admissible before a court of law. In *Dina Management Ltd -vs- County Government of Mombasa & Others*, Petition 8 (E010) of 2021 [2023] KESC 30 [KLR] (21st April 2023) (Judgment), the court observed that when the registered property's root title is under challenge, it is not enough to dangle the instrument of title as proof ownership, since that instrument being the one under challenge, the registered owner must go beyond the instrument and prove the legality of the title deed and show that the acquisition was legal, formal and free from any encumbrances including interests which would not be noted in the register.
28. The court said that under the repealed Government *Land Act*, a Part Development Plan had to be drawn and approved by the Commissioner of Lands or the Minister for Lands, before any unalienated government land could be allocated, after which a letter of allotment based on the approval PDP would be issued to the allottee. After issuance of an allotment letter, the court said, if the terms and conditions therein are fully complied with, a cadastral survey could be conducted for the purpose of issuance of a certificate of lease. The court said that there was no letter seeking for the allocation of the plot to the Commissioner of Lands, and where the plot is within a municipality, Section 10 of the Government *Land Act* (repealed) could apply, for any lease beyond 100 years. The court said that a title or lease was an end product of a process and if the process is not followed prior to issuance of a title, such a title could not be termed as indefeasible, for it was irregularly issued. The court observed that Article 40(b) of *the Constitution*, limits the right not to extend to any property found to have been unprocedurally or unlawfully acquired.
29. Section 3 of the repealed Government *Land Act* was the applicable law to make grants and disposal in or over unalienated government land. Section 9 provided that the Commissioner of Lands could cause a portion of a township which is not required for public purposes to be divided into plots and be disposed of in the prescribed manner. Land reserved for public purpose cannot be allocated to individuals. In *African Line Transport Co. Ltd -vs- Attorney General Misc. HCC No. 276 of 2003*, the court held that having allocated government land, that was not available for allocation, the letter was worthless. In *James Joram Nyaga & Another -vs- Attorney General & & another* [2006] eKLR, the court held that land acquired for public purposes namely, construction of a road was held in trust for the public and could not have been allocated to private individuals for private use.
30. In *Kenya National Highway Authority -vs- Shalien Masood Mughal & Others* [2017] KECA 465 [KLR], the respondent had alleged trespass and breach of Article 40(1) and (3) of *the Constitution* and the Registration of Titles Act, to stop construction on the slip road or any other work on the disputed plot, general damages or in the alternative of compensation at market rates by the government, for the acquisition of the plot. The court said that there was scientific proof in the survey report filed with the court that the disputed plot had encroached on a road reserve. The court said that Section 26 of the *Land Registration Act* had included another reason to defeat title to land, that is where the certificate was acquired illegally, unprocedurally or through a corrupt scheme. The court said that proprietary rights under Article 40 of *the Constitution*, were not obsolete.



31. In the cited case, the court said that the whole work ought to have known that there was a road reserve of 80 metres and a buffer zone of 30 meters, which by law did not have to be noted in the title register since it is an overriding interest. The court cited *Niaz Mohammed Jan Mohamed -vs- Commissioner of Lands & Others* [2003] KEHC 646 (KLR), that it mattered not that land acquired for public road was not under use, for it remained a road reserve, or street and vested in the trial authority to hold in trust for the public, in accordance with the law, and was usually utilized for the tarmac of road and therefore neither the local authority nor the government could alienate the land under Government [*Land Act*](#) (repealed).
32. Applying the foregoing case law and principles to the instant case, the P. Exhibit No. (1) was Temporary Occupation Licence (TOL). It confers no ownership in law. See *Mugenyua -vs- County Government of Nyeri* [2025] KECA 593 [KLR] (21st May 2025) (Judgement). The allotment letter refers to an unsurveyed industrial Plot 1 Kitale Municipality. It has no attached PDP. The area is 0.100 ha. A PDP had to be processed for unalienated government land under Section 9 of the Government [*Land Act*](#) (repealed). The Minister in writing could have authorized the Director of Physical Planning to prepare the same for alienation of the land. Under Section 3 of the Physical Planning Act (repealed), a PDP would specify the precise sites for the immediate implementation of specific projects or for alienation purposes. After it is processed through consents, and the gazette, it will be forwarded to the Director of Physical Planning to assign an approved PDP number, register it, distribute a copy and then submit it to the Commissioner of Lands to issue a letter of allotment. It must therefore contain the designated land accurately as illustrated in an approved PDP.
33. After the letter of allotment and plan is done, next is a survey process, cadastral survey planning comes first, then is followed by surveying and once surveying is done the same is referred to the Director of Surveys for authentication and approval. A land reference number is then issued in respect of the plot. See *African Line Transport Co. Ltd* (supra).
34. In *Municipal Council of Kisumu -vs- Telepost Pension Scheme Registered Trustees & Others* Civil Appeal 33 of 2020 [2025] KECA 619 [KLR] (28th March 2025) (Judgment), the court observed that a party laying claim to a right must table evidence against a defendant or respondent in support of his case, that meets the required standard of proof on a balance of probabilities in civil matters, failure of which the claim cannot succeed.
35. The plaintiff has pleaded that his ownership, use, occupation and development of the suit land have been curtailed or frustrated by the defendants, who are estopped in law from denying the allocation. In *Henry Muthee Kathurima -vs- Commissioner of Lands & others* [2015] eKLR, the court observed that the doctrines of estoppel and legitimate expectation cannot be used to protect unlawfully acquired property, or oust the clear provisions of Sections 3, 7, 9 and 12 of the Government [*Land Act*](#) (repealed), for due process has to be followed to alienate public land.
36. The defendants on the other hand invoke the doctrine of public interest that the land which all along the plaintiff knew was public land under use by members of public was not available for alienation. In *Republic -vs- Minister for Transport & Communication & Others; Exparte Waa Ship Garbage Collector & Others* [2006] 1 KLR E&L 563, the court observed that the doctrine of public trust is recognized and provided for by the superior law of the land and applies to trust land. In *National Land Commission -vs- African Export Import Ltd & Others* [2019] eKLR, the court observed that had the applicant bothered to delve into the history of the title, he could have discovered its true status. In *Mureithi & Others -vs- Attorney General & Others* [2006] 1KLR 443, the court said that courts should ensure that those who have fattened themselves on public utility land disgorge the proceeds.



37. In *KURA & Another -vs- Belgo Holding Ltd Civil Appeal E011 of 2021 [2025] KECA 764 [KLR]* (9th May 20250 (Judgment), the court observed that the fact that a person is lawfully registered proprietor of land does not bar a claim based on overriding interest from being made and upheld and that in determining the proprietorship of land, the court cannot lock out any claims that may, be made for principle in trust what may not be discernable from the title.
38. In this suit, even though the defendants did not testify in support of their statements of defence and counterclaim, the 1st defendant extensively cross-examined the plaintiff and poked holes on the authenticity, veracity and the legality of the process of acquiring and having a title deed for the suit land. In *D.T. Moi -vs- Mwangi Stephen Muriithi & Another [2014] eKLR*, the court said where the plaintiff has a duty to satisfy the court that his claim has been proved and if the evidence falls short of the required standard, the claim is and must be dismissed and that the standard of proof, does not change even in the absence of a rebuttal by the other side. In *Charter House Bank Ltd -vs- Frank N. Kamau [2016] eKLR*, the court said that before it can conclude that the plaintiff's case is not controverted, by reason of the defendant's failure to call evidence, it must be satisfied that the plaintiff has adduced some credible and believable evidence which in absence of rebuttal evidence, the defence can stand. The court said that where evidence by the plaintiff is described through cross-examination, judgment cannot be entered merely because the defendant has not testified.
39. In *Munya Maina -vs- Hiram Gathiha Maina [2013] eKLR*, the court observed that a title holder must prove the legality of the title, that it was legally, formally obtained and free from any encumbrances, including overriding interests. The defendants have pleaded that the suit land was and remains public road. Creating a public road is governed by the *Land Act*, *Land Registration Act*, *Public Road and Road Access Act* as read together with Articles 62 of *the Constitution*. The first port of call for the plaintiff should have been bodies established therein.
40. Alienation or allocation of land that restricts public access must be carefully scrutinized to ensure that it is not an encumbrance to the public's constitutional rights. Article 66(1) of *the Constitution* provides that the state may regulate land use in the interest of the public. In *KACC -vs- Lima Ltd & Others [2019] eKLR*, the court said that public land could not be alienated in a manner that denies the public their right to use the land. Through the process set under Sections, 3, 7, 9 and 12 of the repealed Government *Land Act*, the defendants would get a chance on behalf of the public to air their concerns and views on whether the proposed allocation or alienation of the land was viable, without a valid survey plan or a PDP, the court finds that there was a break in the chain of acquisition of the suit land by the plaintiff, especially on the collective right of the public and more so, the 1st defendant who holds the land in trust of the local community under Article 62(1)(a) of *the Constitution*, regarding the right to access the public land, rooted on the principle of public interest and for free movement and access to public amenities, resources and spaces.
41. In *Republic -vs- Ministry of Lands & Others [2015] eKLR*, the court observed that any action that impedes public access to reserved land undermine the social contract between the state and the citizen, which are essential for good governance and the rule of law, which rights are provided under Articles 40 and 65 of *the Constitution*. See also *Republic -vs- Ministry of Finance & Another Exparte Nyongo [2007] KLR 299*, *Patrick Musumba -vs- National Land Commission & Others [2016] eKLR*, and *Ken Kasinga -vs- Daniel K. Kirui & Others [2015] eKLR*.
42. In this suit, whereas the plaintiff avers that the defendants are the ones who created an access road, constructed and developed it to completion, there is no single evidence on when the access road was established on the plaintiff's land after the issuance of allotment letter and the certificate of lease. The plaintiff did not avail any RIM map to show that indeed the access road cuts across his land, and or



avail survey maps and reports to support his claim on encroachment of private land and justification under Section 3 of the *Trespass Act*.

43. Equally, there is no evidence that the plaintiff protested to the Kenya Road Board, Kenya Urban Rural Authority or the National Land Commission on the alleged trespass, encroachment and conversion of his land for public use. In view of the foregoing I find that the plaintiff has failed to prove that his title to the land was procedurally, lawfully and regularly issued, to be entitled to the reliefs sought. Equally, defendants have been unable to bring tangible and cogent evidence to show that the access lane was in existence and or was created lawfully, regularly and procedurally as well as its delineated measurements, sizes, parcels of land it is serving and whether they protested, objected and sought for the recall, cancellation and revocation of the certificate, lease or title held by the plaintiff. Where a party fails to ventilate its defence or counterclaim, the assertion therein remains mere statements. See *Strat Pack Industries -vs- James Mbithi Munyao NRB HCCA No. 152 of 2013*.
44. It is the defendants who had been in possession of RIM map, survey maps, reports, development plans from the Kenya Urban Roads Authority, the Kenya Roads Board, Land Surveyor and Land Registrars. None of the officers wrote witness statements and attached documents in support of the statement of defence and counterclaim, other than approved development plan No. 117 and unverified photos in the list dated 12/7/2017. The 1st defendant's letter dated 28/9/2015, receipts for payments of rates and rents, National Land Commission letter dated 4/4/2017, Land Registrar's letters dated 7/4/2015 and 15/3/1996 were not challenged by the defendants.
45. The upshot is that both the plaintiff's suit and the 2nd - 10th defendants' counterclaim are dismissed with no order as to costs.

JUDGMENT DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 11TH DAY OF JUNE 2025.

In the presence of:

Court Assistant - Dennis

Mr. Kiarie for Karani for the Defendant present

Plaintiff in person present

HON. C.K. NZILI

JUDGE, ELC KITALE.

