



REPUBLIC OF KENYA



**KENYA LAW**  
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**Loyelei v Ekeno & 5 others (Environment & Land Case E031 of 2022)  
[2025] KEELC 4923 (KLR) (25 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4923 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT & LAND CASE E031 OF 2022**

**CK NZILI, J  
JUNE 25, 2025**

**BETWEEN**

**JAMES IKENY LOYELEI ..... PLAINTIFF**

**AND**

**JOSEPH EKENO ..... 1<sup>ST</sup> DEFENDANT**

**DIDMUS LOKOMWA EKAL ..... 2<sup>ND</sup> DEFENDANT**

**EREMON EKIRU ..... 3<sup>RD</sup> DEFENDANT**

**MICHAEL NAMUS ..... 4<sup>TH</sup> DEFENDANT**

**PETER ETIIR KAABEI ..... 5<sup>TH</sup> DEFENDANT**

**LOKARU LANGA ..... 6<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. The plaintiff approached this court through a plaint dated 9/11/2022. He seeks:
  - (a) An order of permanent injunction to restrain the defendants from trespassing, fencing, constructing, depositing building materials or interfering with the re-installation of authenticated beacons or subdividing, leasing, selling, threatening or intimidating the plaintiff or in any manner from interfering with land known as LDW/Kanamkemer Block 3(Mt Kenya)/050, herein after the suit land.
  - (b) An order of mandatory injunction compelling the defendants to demolish the illegal structures and fences erected on the suit land and to remove all the building materials/debris from the suit land at their costs in default, an order of eviction to issue against the defendants, their agents or servants.



- (c) General and aggravated damages for trespass, encroachment, construction of illegal structures, fencing, installation of illegal beacons, removal of authenticated beacons, and denial of the plaintiff's access, use, development and enjoyment of the suit land, including the expected rental income.
2. The plaintiff avers that he is the bona fide owner of LDW/Kanamkemer Block 3(Mt Kenya)/050 as confirmed from the documents or records at the Ministry of Lands, Energy, Housing and Urban Development and a surveyed on 14/7/2019 by the County Surveyor, Turkana County and as per authenticated beacons installed, measuring approximately 2.5705 Ha. The plaintiff avers that he was planning to develop the suit land by constructing residential and commercial premises, and as a first step, he has deposited building materials on the land. The plaintiff avers that in the process, the defendants have jointly and severally perpetrated illegal, fraudulent and patent criminal acts in a surreptitious scheme to defraud and or deprive him his property, trespassed into, uprooted the authenticated beacons, erected illegal fences on it, deposited building materials thereon, commenced illegal structures, hired armed goons to perpetrate the illegal activities and have effectively violated his proprietary right by unlawfully denying him access, use and occupation of his property.
  3. As a result, the plaintiff avers that he has made several reports/complaints to the relevant government agencies, but all concerted efforts to remove the defendants and the illegal building materials therefrom have been frustrated.
  4. Additionally, the plaintiff avers that the interested party, by a letter dated 26/11/2021, ordered the defendants to cease any further construction on his property and also to remove the illegal structures and buildings. Further, the plaintiff avers that by a letter dated 14/12/2021, the interested party wrote to the OCS Lodwar Police Station to take action against the defendants for encroachment in vain. Additionally, the plaintiff avers that the interested party, by a letter dated 14/12/2021 confirmed the deliberation and or resolutions of a meeting attended by the top leadership of the County Government of Turkana, the chairman of the Council of Elders, and the security team to take action against the defendants for the alleged illegal actions or encroachment.
  5. Equally, the plaintiff avers that he also wrote to the interested party vide a letter dated 31/1/2022 regarding the illegal acts of the defendants while at the same time seeking enforcement officers to remove the offensive materials and structures on the suit land, to enable him to develop the property. Despite all the above interventions, the plaintiff avers that the defendants have continued with their illegal and fraudulent acts, leading to a report at Lodwar Police Station OB No. 38/28/01/22, which has not helped much, hence this suit.
  6. In addition, the plaintiff avers that due to the foregoing, he has and continues to be subjected to immense suffering, prejudice, loss, and damage. The plaintiff contends that he has been denied proprietary rights to use and enjoy his land, he is unable to develop it or derive rental income from its developments; his life and safety on the suit land is at risk due to the threats perpetrated by the defendants, their hired goons and that his investments on the suit land are being wasted.
  7. The defendants opposed the suit by a statement of defence and counterclaim dated 17/11/2022. While denying the contents of the plaint, the defendants aver that it was the plaintiff who was perpetuating fraudulent activities and illegalities against the members of a Self-Help Group to which he was a member and whose objective was to safeguard pasture land for the benefit of the current and future generation, otherwise they were strangers to the contents of paragraphs 6, 7, and 8 of the plaint. The defendants termed the plaint as a means of seeking orders to rubberstamp the plaintiff's perpetuation of insatiable appetite for community land grabbing efforts or impunity, which efforts or acts amount to abuse of the court process.



8. Again, the defendants aver that due to the foregoing, they have experienced mental torture together with the rest of the group members and the larger nomadic community, through loss of pasture land as a result of the land grabbing escapades by the plaintiff, yet he is supposed to be the guardian of the aforesaid grazing land, but was now misrepresenting facts.
9. The defendants aver that for some time, the plaintiff had failed in his sustained threats to grab the community grazing land, by finding no one to sue but unfortunately landed on them, since they had campaigned against him in the August 2022 general elections, otherwise the suit is brought to harass them and as an abuse of his office as a member of the County Assembly of Turkana, otherwise he was not entitled to the reliefs sought.
10. By way of a purported counterclaim, the defendants aver that the alleged ownership of the suit land by the plaintiff is null and void, illegal and fraudulent and as an attempt against an existing classification of the land by the county government for community grazing purposes, without the knowledge and the consent of all the group members. The defendants aver that the suit property remains community grazing land, which the plaintiff is not and cannot be its legal owner, to be capable of or be entitled to exclusive legal ownership, or to enjoy sole enjoyment of its proprietary rights.
11. The defendants aver that the plaintiff was perpetrating fraud or illegality, by knowingly attempting to grab the land set aside as community grazing land, and has no title to the land, has colluded with others to defraud the members of Ngiongora Ngimuchurus Self-Help Group of their grazing land, held in a customary trust arrangement for the rest of Turkana pastoralists communities, for the present and future generation; was using his office to perpetuate the illegality and was sabotaging the acts of the Self-Help Group.
12. The defendants blame the plaintiff for championing a registration of a splinter group to dilute the original objective of the Self-Help Group, of protecting community grazing land and to protect incessant attacks by armed person out to take away community grazing land; dumping building materials on the land without the consent of pastoralists, purporting to register the land as private, without the consent of the group members of the Self-Help Group, the local pastoralists and trying to convert community land to private land. The defendants prayed for:
  - (a) Declaration that they are the legal owners of the suit land to hold in customary trust on behalf of the current and future Turkana nomadic pastoralists.
  - (b) Declaration that the setting aside of the land by the Turkana County Government as a community grazing land is encumbered by customary trust and that any subsequent registration of the plaintiff as the proprietor of the suit land did not in any way affect or dissolve the trust.
13. The counterclaim had neither a titular heading nor authority to plead, sue, or present the suit on behalf of the defendants or the community at large, given to the 2<sup>nd</sup> defendant authorising him to swear the verifying affidavit or plead to the suit.
14. By a reply to defence and defence to the counterclaim dated 15/12/2022, the plaintiff maintained that he was duly registered owner of the suit land, while the alleged acquisition or possession by the defendants is vehemently denied, as belonging to them as community grazing land, to which they have had uninterrupted peaceful possession, based on a non-existent customary arrangement, which allegation he was not aware of. The plaintiff denies any alleged fraud or illegality in the manner in which he became the registered owner of the suit land. The plaintiff avers that he had no obligation to involve or notify the defendants or anyone else that he was applying for the registration of his interest in the land, which enjoys protection under Article 40 of *the Constitution*.



15. Whereas the plaintiff admits that he is a paid-up member of Ngiongora Self-Help Group with entitlement to all rights and privileges, including but not limited to being apportioned a piece of land such as the suit property, he denies the attachments in paragraph 1 of the counterclaim. The plaintiff reiterates that as a member of the Self-Help Group, which he joined in good faith and stands believing in every agenda and the spirit of the group, hence as a loyal member, he has never colluded with anyone against the group. On the contrary, the plaintiff avers that he has always promoted the best interests of the group and the pastoralists' welfare.
16. Equally, the plaintiff avers that he has been an asset to the group in instantly promoting the best interests without any sabotage to its mission. The plaintiff terms the contents of paragraph 4 of the counterclaim as criminal in nature, which any right-thinking individual having them ought to direct to the relevant investigative agencies; otherwise, he condemns every part of the allegations. The plaintiff denies dumping any building materials on anyone's land including the defendants grazing land and that being a bona fide member of the the Self-Help Group, he was only answerable to the Rules and Regulations of the group and denies any allusion that he needed someone's consent to conduct himself as he did with his suit land. He contends that he remains the bona fide owner of the suit land, which has never been part of the grazing land having been apportioned under the group membership, following vetting and regularization by the Turkana County Lands office. The plaintiff denies that the suit land was community grazing land, subject to any pre-acquisition consent from third parties before he was registered as the owner.
17. During the hearing, James Ikeny Loyelei testified as PW1. He relied on a witness statement dated 9/11/2022 as his evidence-in-chief. PW1 told the court that he was Member of County Assembly, elected to represent Kanamkemer Ward of Turkana County, and a bona fide owner of Parcel No. LDW/Kanamkemer Block 3 (Mt. Kenya)/050, measuring approximately 2.505 Ha, as per the records held by the lands office, Turkana County Government, which was also surveyed and beacons fixed by the County Surveyor on 14/7/2019.
18. PW1 told the court that though he was desirous of developing the plot by erecting residential and commercial buildings after depositing building materials therein, it has not been possible for the defendants have jointly and individually invaded his land and proceeded to erect fences, uproot the authenticated beacons, constructed illegal structures therein, installed illegal and authenticated beacons, denied him access, occupation and use of the land and affectively violated his right to enjoyment of his property under *the Constitution*.
19. PW1 testified that due to the acts of the defendants, letters dated 26/11/2021 and the resolution of the county communicated through a letter dated 14/12/2021 to them and the OCS Lodwar Police Station have been unsuccessful. Further, PW1 told the court that he also wrote to the interested Party, to specify the illegal activities of the defendants. Further, PW1 told the court that the defendants' illegal activities were also reported to the police vide OB No. 38/28/01/22, but were unshaken by all those interventions, hence the demand letter dated 26/7/2022, from his advocates on record before he filed the suit.
20. PW1 told the court that despite the court summons, the illegal acts of the defendants continue unabated, which are likely to alter the face of the suit land to his detriment. PW1 told the court that the defendants has also stationed armed goons on the land to stop, threaten and intimidate him from accessing the suit property. AS a result, PW1 told the court that he has been subjected to substantial suffering, prejudice, loss and damage, for he is unable to access, use, or enjoy, let alone develop the suit premises and his investments thereon are getting wasted.



21. PW1 relied on a copy of survey form PPA-1 and PPA-2 issued by the Ministry of Land, Energy, Housing and Urban area management Turkana County, a survey confirmation letter dated 29/10/2020, official payment receipt dated 2/10/2020, bundle of photographs, letters dated 26/1/2021, 4/12/2021, 31/1/2022 and a demand letter dated 26/7/2022 as P. Exhibit Nos. 1(a) and (b), 2, 3, 4,(a)-(e), 5, 6, 7, and 8. Further, PW1 relied on a certificate of registration of the Self-Help Group as P. Exhibit No. 9, minutes and or resolution dated 17/5/2015 as P. Exhibit No. 10, letter confirming ownership of the plot dated 20/2/2023 as P. Exhibit No. 11, letter dated 31/1/2023 from his advocates on record as P. Exhibit No. 12 and a bundle of photographs as P. Exhibit No. 13(a), (b), (c) and (d) and the report dated 4/11/2024 and 11/2/2024 as P. Exhibit No. 14 and 15.
22. In cross-examination, PW1 told the court that the defendants are residents of Kanamkemer ward, where he has been a Member of County Assembly for 15 years. PW1 told the court that they acquired a land measuring 231 acres as a group and that the suit land was part of the larger portion. PW1 added that other than the letters of registration and survey, he had no minutes or records on how the larger parcel of land was acquired by the group, otherwise they had followed due process to acquire the land, following which he paid for the survey fees to be registered as owner of his portion, as per the exhibits he had produced before the court. PW1 stated that the 231 acres were subdivided among the three Self-Help Groups. PW1 denied that he used his influence as a Member of County Assembly to acquire the land, otherwise, he followed due process to acquire the suit land as shown in his exhibits after the subdivision of the land among the three groups, into four blocks each block belonging to the individual members of the designated group with defined boundaries and sign posts.
23. PW1 contended that the members of each group gave the mandate to survey the suit land among individual group members through the executive committee of the group. PW1 told the court that among the 21 members of his group, each one of them was allocated a parcel of the block and had taken possession of their respective parcels of land.
24. Again, PW1 confirmed that the issue of encroachment on the land was captured and noted during the court scene visit exercise and the report. PW1 told the court that P. Exhibit Nos. 14 and 15 had defined both the size and coordinates of the suit land.
25. Shadrack Aposte Rocho, as PW2, relied on a witness statement dated 7/5/2023 as his evidence-in-chief. PW2 told the court that as he was a representative of the Rogo family, who were also members of Ngoingora Self-Help Group, whose patron was the plaintiff herein. PW2 confirmed to the court that the plaintiff was lawfully subdivided and allocated the suit land, which he took possession of before a dispute arose on ownership. PW2 said that the dispute was later resolved at the Turkana County headquarters' lands offices.
26. Similarly, PW2 told the court that the county government officials were involved in the subdivision of over 231 Ha of land to the groups and their members to avoid inter-clan skirmishes. PW1 told the court that after the subdivision, beacons were also executed to show boundaries of each portion by the Ministry of Lands officials. The same version of events was confirmed by a PW3 employed as a watchman of PW1 based at the suit land.
27. PW3 told the court that after the four blocks were subdivided among the individual group members, some of them, including the plaintiff, embarked on developing their parcels of land as per the buildings on the photographs produced before the court.
28. Mukulo Lotoiton testified as PW4. He relied on a witness statement dated 7/5/2023 as his evidence-in-chief. As a chairman representative of the Nakulot family, PW4 told the court that PW1 was the patron



of Ngiongora Self-Help Group and member No. 21. PW<sup>4</sup> stated that out of the block belonging to the group, PW<sup>1</sup> was able to acquire 6 acres of land on which he put up some buildings.

29. Didymus Lokomwa Ekal testified as DW<sup>1</sup>. He relied on a witness statement dated 17/12/2022 as his evidence-in-chief. DW<sup>1</sup> told the court that sometime in 2015, some members formed Ngiongora Self-Help Group, intending to protect community grazing land that was under threat from private entities and political elites. He said that the plaintiff was one of the members, all of whom pledged to act in the best interests of all local Turkana pastoralists. As a third-term Member of County Assembly, representing Kanamkemmer Ward, it was stated by DW<sup>1</sup> that the plaintiff used his connection and was a powerful and notorious figure in land grabbing to acquire the suit land, since it was unoccupied and belonged to illiterate nomadic Turkana pastoralists, who own the land through the Turkana traditional land tenure system.
30. DW<sup>1</sup> insisted that the suit land falls within land identified and set aside as community grazing land, as was confirmed by the Ministry of Lands, Turkana County government, the area chief, and the community village elders. DW<sup>1</sup> told the court that the plaintiff colluded with some officials of the County Government of Turkana to irregularly acquire the suit land for selfish interest. DW<sup>1</sup> stated that attempts by the aggrieved parties to write various letters to the County Commissioner, OCS Lodwar Police Station, and the offices of the Governor have been in vain.
31. Equally, DW<sup>1</sup> told the court that the former Governor of the county had advised the plaintiff to amicably settle the matter, but he ignored or neglected the advice to stop land grabbing and instead resorted to violence by bringing armed persons on the suit land to beat up innocent pastoralists and also to beat and kill their animals. DW<sup>1</sup> told the court that the plaintiff at one incidence mobilized armed persons to disrupt a meeting organized by the Self-Help Group to discuss his conduct in the land grabbing and in the process, a retired area chief was almost beaten up to death, leading to an OB report and after which a criminal case was filed in Lodwar Law Courts. The plaintiff as the main culprit was yet to be apprehended or arrested for perpetrating violence, due to his immense influence and or collusion with big offices in the county.
32. DW<sup>1</sup> told the court that the plaintiff has no moral or legal capacity to convert community grazing land to his private use or ownership, without the knowledge, consent, or approval of the group. DW<sup>1</sup> termed the alleged commercial development or conversion of the registration of the suit land, already vested in the community, as void, illegal and unlawful.
33. Additionally, DW<sup>1</sup> told the court that the plaintiff was using his influence as a politician to commit acts of illegality to disinherit the locals of their grazing land. DW<sup>1</sup> relied on a copy of the minutes of Ngiongora Self-Help Group for meetings held on 3/10/2020 and 17/5/2015, a copy of land ownership, confirmation letter dated 21/6/2021, a copy of minutes for a meeting of the executive committee of Ngiongora, Atapar, Angakoyo, and Lokitela Akaal Self-Help Groups held on 4/2/2020, letter dated 28/11/2020 to the County Commander, Turkana, certificate of registration Ngiongora Self-Help Group, Self-Help Group members and a copy of the Director of Physical Planning letter on land earmarked for grazing purpose dated 21/7/2020 as D. Exhibit Nos. 1 – 9, respectively.
34. DW<sup>1</sup> told the court that he was elected secretary and a signatory of the bank account for Ngiongora Self-Help Group. DW<sup>1</sup> said that he was not aware of the sharing among the group members of the large portion among the four groups. DW<sup>1</sup> admitted that the large land was allocated among the Ngiongora, Lokitela Akaal, and Atapar Angakoyo.
35. DW<sup>1</sup> stated that he had no register of members before the court to show that he was a member of the group. DW<sup>1</sup> denied any subdivision of the suit land to individual members of the group; otherwise, the group remains the custodian of the public land.



36. DW1 said that the lands were given to the groups as custodians due to threats of inheritance. DW1 denied that individual members of the group, such as the plaintiff, had fenced off, subdivided and developed their respective portions. DW1 said that there were signposts on the land showing the specific portions that were issued to the four groups. Regarding the letter from the Ministry stating that the land belongs to the plaintiff, DW1 told the court that he denied the same. Equally, DW1 told the court that it was true that on the ground, the suit land has been subdivided and there are structures thereon. DW1 denied inciting the members of the public to encroach on the plaintiff's parcel of land.
37. Again, DW1 denied being aware of any correspondence from the Ministry of Lands ordering that the defendant vacate the suit land, since it belongs to the defendant. DW1 said that he was not aware of any developments of the suit land by the plaintiff as per P. Exhibit Nos. 14 and 15. DW1 said that the four groups came together to safeguard the grazing land.
38. At the close of the defense, parties were directed to file written submissions.
39. The plaintiff relies on a written submission dated 14/5/2025. It was submitted that the plaintiff has tendered documentary evidence, which has also been confirmed by the site visit report, that his parcel of that measuring 2.6Ha is right on the ground is distinct, his distinct boundaries and is ascertainable on the ground. The plaintiff submitted that having proved that he is having proved that he is the proprietor of the suit land now trespassed into by the defendants, who have also unlawfully erected structures thereon, despite the formal and legal allocation, he is entitled to protection of his right to property under Article 40 of *the Constitution*. The plaintiff submitted that the suit land is neither grazing land nor county land.
40. Subsequently, the plaintiff submitted that the defendants were contradicting themselves by stating that the land belonged to the Self-Help Group, while at the same time conceding that they own the land, constructed structures and erected fences. The plaintiff submitted that the evidence by DW1 was not a logical or plausible explanation as to why they were alleging that the 6 Ha out of the 231 Ha was for community grazing land. The plaintiff submitted that DW1 was not only the inciter but also a busybody who was not a member of any of the Self-Help Groups or an official thereof.
41. The plaintiff submitted that the 4<sup>th</sup> defendant cannot speak for and on behalf of the four groups or their membership, both under the *Societies Act* and as Public Benefit Organization Act 2013. Reliance was placed on *Andu Akuru A Twiga CBO -vs- Chief Land Registrar NLC (IP) ELC E013 of 2023 [2023] KEELC [20415] [KLR] (4<sup>th</sup> October 2023) (Ruling)*. The plaintiff submitted that he was neither invited nor a photograph in the minutes produced as D. Exhibit Nos. 1, 2, 3 and 4, yet he was the subject of the discussion and therefore the so called minutes from the kangaroo court are baseless, untenable and not bidding over his interests or rights over the subject suit land, hence lack legal basis to challenge his rightful land.
42. Accordingly, the plaintiff submitted that since he has proved the claim on a balance of probabilities as regards trespass, Kshs.5,000,000/= as general damages would be appropriate. Reliance was placed on *Park Towers Ltd -vs- Moses Chege & Others [2014] eKLR* and *Githinji -vs- Hared (Environment & Land Case E222 of 2023) [2024] KEELC 639 (KLR) (25 January 2024) (Ruling)*.
43. The defendants relied on written submissions dated 5/5/2025. It is submitted that a court of law cannot on a basis of indefeasibility of title, sanction an illegality or give its seal of approval to an illegal or irregularly obtained title as held in *Funzi Island Development Limited & 2 others -vs- County Council of Kwale & 2 others [2014] eKLR*, *Republic -vs- Minister for Transport & Communication & Others Exparte Warship Garbage Collector & Others [2006] 1 KLR 563* and *Dina Management Ltd -vs- County Government of Mombasa & Others (2023) eKLR*.



44. The defendants further submitted that there exists a report published by the Ministry of Lands and Government in 2019 observed that almost 95% of land in Turkana County has been irregularly acquired by private investors and the politically connected individuals. The defendants submitted that the repealed urbanization of Lodwar Town in the administrative capital has intensified the encroachment on traditional community grazing land, hence fueling land grabs on unoccupied and idle community land.
45. More so, the defendant submitted that due to the security of pasture land in the township where the suit land is, due for privatization of county land. The court is asked to take judicial notice of the systematic land grabbing across Kenya in general and in particular in Turkana County regarding county land, public utilities, which is now a not only matter of national concern, but also a threat to the constitutional guarantee of equitable access to land and the protection of customary land rights under Article 63 of *the Constitution*.
46. The defendants submitted that in 2017, the National Media Group, NTV carried stories of a Member of County Assembly, which is a matter in the public domain, whose conduct is notorious, in the involvement in questionable land dealings in Turkana County. The defendants submitted that such an exposé or video clip is both relevant and material in evaluating the credibility of the plaintiff's claim and the merits of the defendants' and counterclaim. Further, the defendants submitted that the suit land cannot belong to the plaintiff since it is community land under Article 63 of *the Constitution*, which is ancestral land used by the Turkana County for grazing, habitation and other county activities.
47. The defendants submitted that the plaintiff is a member of Ngiongora Ngimuchurus Self-Help Group, registered in August 2018, solely to hold county land in the outskirts of Lodwar Town in trust for communal use as grazing land, now occupied by the defendants and other members of the community.
48. Again, the defendants submitted that the plaintiff while aware of their engineered, he split the group into two Lokitela Akaal and Atapar Angakoyo but the three groups have now formed a joint executive committee whose executive secretary is now the 2<sup>nd</sup> defendant (DW1), sued for being a local pastoralist community learned person capable of confronting head on the plaintiff, as a fearless defender of community land rights and a member of Ngiongora.
49. The defendants submit that the purported self-allocation of the land by the plaintiff resulted from the joint executive committee as per D. Exhibit No. (4) leading to this suit. The defendants submit that the plaintiff has failed to produce credible documentary evidence of how he acquired the suit land, such as a chief letter and allotment letter, other than a survey document which cannot, in law, confer land ownership.
50. The defendants termed the exhibits produced by the plaintiff as contradictory, illegitimate and lacking veracity. For instance, the defences submitted that P. Exhibit No. (5) is dated 14/7/2019, while the accompanying receipt for payment is dated 2/11/2020, casting doubts on why payments came too late. The defendants submitted that, as held in *Munyu Maina -vs- Hiram Gathiha Maina* [2013] eKLR, the plaintiff should have gone beyond the instrument and proved the legality of the title as acquired legally, formally, not free of any encumbrances. The defendants submitted that the survey application form lacks crucial approval by the county government officials, has a different stamp and has inconsistencies.
51. In addition, the defendants submitted that customary trust is an overriding interest which supersedes the registration of the land in favour of the plaintiff, as acknowledged in D. Exhibit No. (9) by the vounty, the defendants also submitted that the attempts to register the suit land were selfish egocentrism, fraudulent and violated the principles, customary trust by the plaintiff.



52. The defendants submitted that the site visit report was definitive on the status of the land in support of the defendants' case; otherwise, the plaintiff had no proper documentation and the verification for ownership to sustain his claim and the protection of right to property under Article 40 of *the Constitution*. Reliance is placed on *Mwaja & Others -vs- National Land Commission & Another* [2023] KEELC 16458 [KLR].
53. The defendants submitted that while land may be converted under Section 9 of the *Land Act* from one legal regime to another. The plaintiff has not shown how community land ended up being private land, when the group has confirmed it owned the land. Reliance was placed on *Caroline Awinja Ochieng & Another -vs- Jane Anne Mbithe Gitau & Others* [2015] eKLR, otherwise, the plaintiff has no legal or equitable right over the suit land.
54. On customary trust, relying on Section 2 of the *Community Land Act*, the defendants submitted that they fit the description and, in this case, have met the ingredients of customary trust, going by the letter from the County. Reliance is placed on *Mukangu -vs- Mbui CA No. 281 of 2000*, *Kiebia -vs- M'Lintari & Another* [2018] KESC 212 [KLR], *Mbui Mukangu -vs- Gerald Mitwiri Mbui(2004)* eKLR, *Peter Gitonga -vs- Francis Maingi Mburia* [2007] eKLR and *Janister Ndugu Kiarie -vs- Geoffrey Mwangi Kinuthia & Another* [2012] [KLR].
55. The defendants submitted that the plaintiff is not entitled to the reliefs sought since he has not proved the alleged trespass, given that community members have the right to occupy the community grazing land, which they hold in trust as recognized by the Ministry of Lands letter. Reliance is placed on *Sisto Wambugu -vs- Kamau Njuguna* [1983] eKLR 172. The defendants submitted that they are also entitled to costs once the suit is dismissed for being an abuse of the court process, given that the suit land is held in trust for the present and future generations.
56. The court has carefully perused the pleadings, evidence tendered and the written submissions. The issues calling for determination are:
- a. If the plaintiff has proved ownership of 6 Ha of land known as LDW/Kanamkemer Block 3 (Mt Kenya)/050.
  - b. If the plaintiff has proved trespass to the land by the defendants, to be entitled to the permanent and mandatory injunctions and general damages.
  - c. If the defendants have justified entry into and occupation of the suit land based on community land and or customary trust.
  - d. If the defendants can agitate for and represent the community in advancing customary trust and or community land.
  - e. If the defendants have a valid counterclaim.
  - f. Whether the defendants have met the ingredients of customary trust or county land right to be entitled to the reliefs sought.
  - g. What is the order of costs?
57. It is trite law that parties are bound by their pleadings, and issues for determination flow from the pleadings. The plaintiff has pleaded that he is the registered owner of 6 Ha of land described as LDW/Kanamkemer Block 3(Mt Kenya)/050, which is duly recognized, registered, surveyed and beacons as per P. Exhibit Nos. 1, 2, 3, 4, 5, and 6, which the defendants without any colour of right have trespassed on, encroached into, forcefully taken possession of, started erecting illegal structures and buildings to



his detriment without notice, consent or approval and who have effectively forced him out or denied him the right to use, occupy, possess, develop and enjoy his property rights.

58. The plaintiff seeks permanent and mandatory injunctions and general damages for trespass against the defendants in their capacities as trespassers to his land. Section 7 of the *Land Act* lists the methods one may use to acquire title to land. They include allocation, land adjudication process, compulsory acquisition, prescription, transaction, settlement programmes, transfers, long-term leases, or any other manner prescribed in an Act of Parliament. Any persons who has acquired land regularly is entitled to the protection of that right under Article 40 of *the Constitution*, Order 40 of the Civil Procedure Rules, Section 63 of the *Civil Procedure Act*.
59. The defendants, on the other hand, deny that the plaintiff has any individual registrable right to the suit land, since it forms part of community land held by the Ngiongora Self-Help Group in trust for the Turkana pastoralists. The defendants avers that the suit property was fraudulently and illegally registered in the name of the plaintiff against the wishes, views and without the consent, knowledge or approval of all the self-help groups to which he is a member now acting against the objective of the group in an attempt to grab community land reserved as community grazing land, where the registration was procured through misrepresentation of facts since, the land in question is community grazing land, as classified by the County Government. The particulars of fraud or illegality are set in paragraph 5,(1) (5) of the counterclaim.
60. The defendants aver that the land could not have been allocated or converted to private land without the consent, knowledge, and participation of all the Ngiongora Self-Help Group members or the nomadic pastoralists of the local community.
61. The defendants pray that:
- (a) They are the lawful owners of the suit land, being a section of the community grazing land held as a customary trust on behalf of the current and future nomadic pastoralists.
  - (b) Declaration that the setting aside of the land by the Turkana County government as a community grazing land is encumbered by customary trust, hence the registration of the same in the name of the plaintiff did not affect or dissolve the trust.
62. Order 2 Rule (4) of the Civil Procedure Rules provides that a defendant in an action for the recovery of land shall plead specifically every ground of defence on which he relies on and that a plea that he owns the land by himself or his tenant shall not be sufficient. Order 2 Rule 10 of the Civil Procedure Rules provides that particulars of misrepresentation, fraud, breach of trust, willful default, or undue influence on which a party relies must be specifically pleaded. The primary function of pleadings is to tell the defending party what claims it has to meet and inform the court of the exact issues before it for determination. See *Dakianga Distributions (K) Ltd -vs- Kenya Seed Co. Ltd* (2015] eKLR.
63. The power of the court is to determine issues that the parties have raised in their pleadings and which are on record. Written submissions are not pleadings or cannot amount to evidence. Submissions thereto concretize and point out each side's case to win the court's decision. See *Nganga & Another -vs- Owiti & Another* [2008] 1KLR EP 749.
64. In *D.T. Moi -vs- Mwangi Stephen Mureithi & Another* [2014] eKLR, the court said that submissions cannot take the place of evidence and that a party who has failed to prove their case cannot resort to written submissions as evidence or pleadings. In this suit, the defendants in their written submissions dated 15/5/2025 on paragraphs 1-15, submitted on issues or facts which were never pleaded in the body of the statement of defence and counterclaim, save for being perhaps included in D. Exhibit Nos. 4 and 6.



65. The defendants cannot expand their defence and counterclaim by way of written submissions, other than praying for a declaration of customary trust in prayer Nos. (1) and (2) of the counterclaim, which lacks a titular heading, the element of customary trust or community land as held in trusteeship by the Ngiongora Self-Help Group was never pleaded and particulars given in the body of the defence and counterclaim.
66. Accordingly, the defendants never pleaded that they were bringing the counterclaim in a representative manner on behalf of the Ngiongora Ngimuchurus Self-Help Group or on behalf of the Turkana pastoralists. The capacity to sue and be sued is critical to any suit. Pleadings are the bedrock upon which all the proceedings are derived.
67. Evidence at variance with pleadings, however strong, must be disregarded by a court of law. See Independent Electoral and Boundaries Commission & Another -vs- Stephen Mutinda Mule [2014] eKLR. The defendants never described themselves in the counterclaim as officials or representatives of any group, community, or a section of Turkana pastoralists. In Audu Akuru -vs- Chief Land Registrar (supra), the court cited Alfred Njau & Others -vs- City Council of Nairobi [1982] KAR 229, that locus standi means the right to appear in a court.
68. In Kipsiwo Community Self Help Group -vs- Attorney General & Others [2013] eKLR, the court said that self-help groups are not incorporated bodies. In Senti Kumi Community Self Help -vs- Kenya Maritimes Authority & Another [2019] eKLR, the court said that a self-help group cannot institute an action and can only sue in the name of the named members identified with procession and evidence of the permission to bring the action on behalf of the members of group.
69. Other than a verifying affidavit, sworn on 17/5/2022 by the 2<sup>nd</sup> defendant, there was no authority to sue, plead, or swear on behalf of the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, and 7<sup>th</sup> defendants, filed to give the 2<sup>nd</sup> defendant basis to represent the rest of the defendants. Authority must be in writing. Under Order 1 Rule 13(1) of the Civil Procedure Rules.
70. The counterclaim and the verifying affidavit offend Order 7 Rules 5, 6, 8, and 16 of the Civil Procedure Rules. The defendants did not seek to join the Self-Help Group as defendants under Order 1 Rule 3 of the Civil Procedure Rules. They did not seek leave to file the counterclaim in a representative capacity on behalf of the group or the Turkana pastoralists, or the County Government of Turkana, who, under the law, hold the unregistered community land in trust on behalf of the residents generally in the county. The basis upon which the Self-Help Group was mandated to hold the suit land or a large part of it was not pleaded at all.
71. Order 1 Rule 13 and Order 3(1) Rules 1 and 9 of the Civil Procedure Rules were not invoked at all by the defendants. D. Exhibit Nos. 3(1), (2), (3), and (4) were not certified as true copies of the originals by the makers of the documents. None of them gave the defendants any authority to plead on behalf of the group. The minutes are not certified under Sections 79 and 80 of the [Evidence Act](#) by the Sub-County Social Development Committee or officials. None of the defendants, especially the 2<sup>nd</sup> defendant, is certified as bona fide members and or officials of the Self-Help Group by the Subcounty Social Development committee or officers as the recognized and registered officials of the Self-Help Group.
72. The defendants were also not sued in a representative capacity or as officials of any group or community, under Order 1 Rule 8 of the Civil Procedure Rules. See Yiapas Ole Seese & 4 others -vs- Sakita Ole Narok & 2 others [2008] KECA 223 (KLR). The capacity to sue can be raised at any time, even on appeal. A party cannot arrogate a mandate it does not have in law. See Kahindi Katana Mwangi & Another -vs- Cannon Assurance (K) Ltd [2013] eKLR. The spirit of the law in requiring



- notice to be given to a person likely to be affected in the case in a representative capacity is a procedural requirement. A person must have sufficient interest to sustain their standing to sue in court.
73. Litigation is about enforcing or upholding the legal rights and duties of parties, as well as finding them liable. It was therefore important for the defendants to define the capacity and to show evidence that they had been clothed with that authority by the pastoralist community, to represent them and if found capable of being declared holders of the land in trust, then to have no doubt before court that they were ably capable of undertaking such a monumental duty on behalf of the community of pastoralists and the Self-Help Group.
74. Coming to who can enforce community land rights, Article 61(2) of *the Constitution* classifies three categories of land. Article 63 (2) (b) describes community land as land that is ancestral land and land traditionally occupied by hunter-gatherer communities. There is no evidence that the defendants petitioned the County Assembly of Turkana to pass a resolution for the ancestral land to be surveyed. Section 6(1) of the *Community Land Act* states that all unregistered land is to be held by the County Government on behalf of the communities from which it is held. Section 7(1) thereof provides that a community claims an interest in or right over community land shall be registered under the provisions of the Section. Section 23 of the *Community Land Act* provides that a registered community land may subject to approval of the registered community be converted to private land through transfer, allocation by the registered community subject to verification of the assembly as provided under Section 21 (2) upon obtaining an approval in a special meeting convened for that purposes.
75. A community is therefore given standing upon registration. The defendants have not placed before the court any material to show that the community they purport to represent had been registered under the Act in the first instance, and secondly, given them express mandate to bring the counterclaim.
76. In the absence of such registration, the defendants could not make a claim for ancestral land in the circumstances of this suit. In *Obo & Others vs National Land Commission & Others* civil Appeal E054 of 2021 [2024] KECA 232 [KLR] (8<sup>th</sup> March 2024) (Judgment), the court said that a claim for land based on ancestral requires more than just mere allegations and whereon documentary evidence may not be available to sustain such a claim, one is expected to adduce evidence that goes further than mere occupation of the land in question, for mere occupation without more does not necessarily convert the land in question to ancestral land. The court said that a person must prove the actions of the community, if considered cumulatively, satisfy the tribunal that the occupation was on ancestral land.
77. In this suit, the defendants rely heavily on D. Exhibit Nos. 8 and 9. The makers of those documents, who are government officials, were not called to testify. The plaintiff, on the other hand, has produced P. Exhibit No. 1(a) and (b), 2, 3, 5, 6, 7, 8, 11, 12, 13(a) and (b), 14 (a) and (b). Most of the documents emanate from the County Government of Turkana, who hold the land in trust for the residents.
78. The documents confirm that the land was subdivided, apportioned, surveyed, demarcated and recorded in the name of the plaintiff on 14/1/2019. With the consent of the group members, including the defendants, as part of his share of the larger community land. This is borne out in the report dated 14/11/2024 by the Land Registrar. The Land Surveyor report dated 11/11/2024 captures the coordinates of the plaintiff's suit land. All these exhibits were not objected to by the defendants. The burden of disproving ownership is on he who says that the alleged owner does not own the land under the *Evidence Act*.
79. The defendants have been aware of the exhibits showing the processes and the outcomes that were made by the County Government of Turkana in surveying, demarcating, and registering the suit land in the name of the plaintiff. Tangible and cogent evidence challenging that process as fraudulent and illegal is what the defendants were expected to provide. The evidence of fraud and illegality must



be above the ordinary standard of proof as held in *Arthi Highway Developers Limited -vs- West End Butchery Limited & 6 others* [2015] eKLR. Other than the production of the defence exhibits that have been found as lacking credibility, authenticity and or probative value, the defendants have not produced any tangible evidence to substantiate the allegations of fraud or illegality to which the plaintiff was privy.

80. Calling the makers of the plaintiff's exhibits to come and disown them is what was required of the defendants. Section 12 of the [Community Land Act](#) provides for holding of community land as a family, clan, or by individuals. In *County Government of Tana River -vs- Mohamed Gore Balati & Others* [2021] eKLR, the court cited *Bahola Mkalindi Rhigo & Others -vs- Michael Seth Kaseme & Others* [2016] eKLR, that as long as trust land remains unadjudicated and unregistered, it belongs to local tribes, groups, families and individuals of the area.
81. There is undisputed evidence that the plaintiff belongs to the local community. There is also undisputed evidence from the plaintiff's exhibits that there were four blocks that belonged to several families who unanimously agreed to subdivide individual shares on the ground for each of the members of the groups. There is undisputed evidence that the suit land was demarcated, surveyed, beacons fixed to show boundaries, and was registered with the relevant department of the county government of Turkana with no objection from anybody, including the defendants.
82. What the plaintiff is seeking is a permanent, mandatory injunction and general damages for trespass to private property. Permanent injunction, as held in *Mburu -vs- Kibara & Others* [2022] KEELC 3226 [KLR] (28<sup>th</sup> July 2022) (Ruling), fully determines the right of the parties before the court.
83. It perpetually restrains the commission of an act by the defendant to protect the rights of the plaintiff. The court under Section 1A, 3, and 3A of the [Civil Procedure Act](#) can issue such reliefs where a right of a party has been violated or is threatened. The circumstances to grant such an order were set out in *Maher Nussa Karim -vs- Edward Olouch Odumbe* [2015] eKLR. The court said that the threshold of prohibitory injunctions is higher and is guided as held in *Kenya Breweries Ltd -vs- Washington Okeyo* [2002] EA 109, if the defendant attempts to steal a match on the plaintiff and to prevent future continuous or repetitive conduct of which the plaintiff complains. Mandatory injunction, on the other hand, is a means of undoing what has already been done, by dismantling or the destruction of something already erected or constructed. See *E. African Fine Spinners Ltd & Others -vs- Bedi Investment Ltd*, Civil Appl. No. 77 of 1994. In my considered view, the evidence tendered by the plaintiff has met the criteria set in *Kenya Power & Lighting Co. Limited -vs- Sheriff Molana Habib* [2018].
84. Trespass refers to unjustified entry into the private land of another. See Section 3(3) of the [Trespass Act](#). To prove trespass, one has to show it had immediate exclusive possession of the suit property before the acts by the defendants. Trespass is actionable per se. See *M'ikiara M'rinkanya & another -vs- Gilbert Kabere M'mbijiwe & another* [2014] eKLR.
85. Trespass is a tort of violation or an act or omission that interferes with, disturbance a person's right, used or enjoyed in connection with the land. In *Halsbury's Laws of England 4<sup>th</sup> Edition Vol. 45 para 26 1503*, it is stated that if the plaintiff proves the trespass and actual damage, he is entitled to receive damages as well compensate him for his loss and when the defendant has made use of the plaintiff's land, the plaintiff should get damages reasonable for the use of that land and lastly, where there is an oppressive, arbitrary and unconstitutional trespass or the defendant cynically disregard the right of the plaintiff in the land with the object of making gain by his unlawful conduct, damages may be awarded.
86. In *Stanley Maore -vs- Geoffrey Mwenda* [2004] eKLR, the court said that damages must be assessed comparable to the injuries, as far as possible and be compensated by a compensable award in similar



cases. See Kenya Power & Lighting Company Ltd -vs- Ringera & 2 others (Civil Appeal E247 & E248 of 2020(Consolidated)) [2022] KECA 104 (KLR) (4 February 2022) (Judgment). The plaintiff has produced letters on the many ways he has suffered and tried to seek an amicable settlement of this issue with the defendants through various channels, all in vain. The plaintiff urges the court to be guided by Municipal Council of Eldoret -vs- Titus Gatitu Njau [2021] KECA 782 [KLR] and Attorney General -vs- Zinja Ltd [2021] KESC 23 [KLR] (30<sup>th</sup> December 2021) (Judgment), as cited in Githinji -vs- Hared (supra).

87. From the pleadings and the evidence tendered, I have no doubts in my mind that the defendants have shown high-handedness and used armed force to remain and deny the plaintiff access, use, occupation and development of his land. Efforts to amicably settle the issue through the county government and other government agencies were ignored, neglected, or undermined by the defendants. The plaintiff expressed fear, apprehension and desperation in accessing or developing the land. The defendants have chosen illegal means to agitate for non-existent rights or interests in the suit land. The court cannot assist a party to perpetuate an illegality or take the law into its own hands. Therefore, Kshs.4,000,000/= would be enough as general damages. The costs of the suit are to be met by the defendants. The counterclaim by the defendants is both incompetent, lacking merit and basis in law. It is dismissed with costs. For avoidance of doubt, prayers (a), (b) and (c) are allowed as follows.
- a. An order of permanent injunction is hereby granted restraining the defendants by themselves, their agents, servants or employes from trespassing, fencing, constructing, depositing building materials or in anyway whatsoever, interfering with the re-installation of authenticated beacons or subdividing, leasing, selling, threatening or intimidating the plaintiff or in any manner from interfering with land known as LDW/Kanamkemer Block 3(Mt Kenya)/050.
  - b. An order of eviction is hereby issued against the defendants, their agents or servants to vacate the suit land within 90 days from the date hereof, in default the plaintiff shall demolish the illegal structures and fences erected on the suit land and to remove all the building materials/ debris thereon, at the defendant's costs or expenses.
  - c. General and aggravated damages for trespass, encroachment, construction of illegal structures, fencing, installation of illegal beacons, removal of authenticated beacons, and denial of the plaintiff's access, use, development and enjoyment of the suit land, including the expected rental income, for Kshs.4,000,000/=.

88. Orders accordingly.

**JUDGMENT DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT  
AT KITALE ON THIS 25<sup>TH</sup> DAY OF JUNE 2025.**

**HON. C.K. NZILI**

**JUDGE, ELC KITALE.**

In the presence of:

Court Assistant - Dennis

Plaintiff present

Defendants present

Njuguna for the plaintiff present

Nabenyo for the defendants present

