



REPUBLIC OF KENYA



**Koinet v Telkom Kenya Limited & another (Environment and Land Case  
531 of 2017) [2025] KEELC 6883 (KLR) (9 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 6883 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAROK  
ENVIRONMENT AND LAND CASE 531 OF 2017  
MN KULLOW, J  
OCTOBER 9, 2025**

**BETWEEN**

**NELSON KESHEI KOINET ..... PLAINTIFF**

**AND**

**TELKOM KENYA LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**COUNTY COUNCIL OF NAROK ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

**A. Introduction**

1. This judgment arises from a dispute over ownership and occupation of land known as Plot No. 24, Enengetia Trading Centre, Narok (hereinafter referred to as “the suit property”). The Plaintiff, Nelson Keshei Koinet, claims that he is the rightful and legal owner of the said property by virtue of allotment by the defunct County Council of Narok, and seeks orders for permanent injunction, eviction, general damages for trespass, mesne profits, and costs of the suit. His case is grounded on what he claims to be lawful and procedural allocation of the plot to him in 1991, with subsequent confirmatory allotments in 2000 and 2007.
2. The suit was initially filed in 2010, registered as ELC No. 81 of 2012 in Nakuru, and was later transferred to Narok ELC as ELC No. 531 of 2017, where it proceeded to full hearing and was concluded. Both parties filed their final written submissions as directed by the court.
3. The 1<sup>st</sup> Defendant, Telkom Kenya Limited, entered appearance, filed a defence and counterclaim asserting that its occupation of the suit land dates back to 1991, when it lawfully erected a telecommunication mast on the land with the express consent and approval of the 2<sup>nd</sup> Defendant, and that it has remained in exclusive, uninterrupted, and peaceful possession for over 18 years prior to the filing of the suit. The 1<sup>st</sup> Defendant claims ownership of the land by virtue of the doctrine of



adverse possession and, in the alternative, asserts that it was granted a license coupled with a proprietary interest, which is irrevocable.

4. With regard to the main suit, the 2<sup>nd</sup> Defendant filed a Statement of Defence dated 13<sup>th</sup> March 2012, together with a Witness Statement, List of Witnesses, and List of Documents all dated 13<sup>th</sup> April 2012. However, despite being the alleged allocating authority and central to both parties' claims, the 2<sup>nd</sup> Defendant did not appear in court or present any witness to assist in determining the legality or validity of either allotment or occupation.

## **B. The Plaintiff's Case**

5. The Plaintiff, Nelson Keshei Koinet, instituted the suit through a Complaint dated 22<sup>nd</sup> September 2010 and filed on 28<sup>th</sup> September 2010. He pleads that in 1991, he applied for and was allocated Plot No. 24, Enengetia Trading Centre by the defunct County Council of Narok during a meeting of the Council held on 18<sup>th</sup> December 1991. The Plaintiff asserts that upon allocation, he became the legal and absolute proprietor of the suit property, with exclusive and indefeasible rights, interest, and title vested in him by virtue of that allocation.
6. The Plaintiff travelled abroad for studies shortly after the allocation, and upon his return to Kenya in 1997, he discovered that the 1<sup>st</sup> Defendant had unlawfully encroached on the land and erected a telecommunication mast and boosters. He claims that despite initiating negotiations with the 1<sup>st</sup> Defendant from 1999 to 2010, the issue of ownership remained unresolved, leading him to file this suit.
7. To support his claim, the Plaintiff produced several documents. These include the original letter of allotment issued on 31<sup>st</sup> August 2000, and a further replacement issued on 11<sup>th</sup> January 2007 following a system overhaul by the 2<sup>nd</sup> Defendant.
8. These letters were admitted in evidence as Pw Exh-1, Pw Exh-2, and Pw Exh-3, respectively. He also presented receipts of payment of land rent and rates, marked as Pw Exh-4(a-c), and letters from the County Council dated 16<sup>th</sup> August 1994, 2<sup>nd</sup> March 2009, and 28<sup>th</sup> October 2010, all affirming his alleged rights to the property, produced as Pw Exh-5 and Pw Exh-6(a-b).
9. The Plaintiff strongly relies on the principle of indefeasibility of title, as codified under Section 26(1) of the *Land Registration Act*, 2012, to assert that once a person is allotted land by a competent authority, they acquire proprietary rights that cannot be arbitrarily revoked. He submits that while he does not hold a certificate of lease or title, the letters of allotment, duly issued and re-issued by the 2<sup>nd</sup> Defendant, suffice to confer legal ownership.
10. Moreover, the Plaintiff responds to the 1<sup>st</sup> Defendant's counterclaim for adverse possession on procedural grounds, arguing that claims under adverse possession must be brought by originating summons, in compliance with Order 37 Rule 7 of the Civil Procedure Rules, and accompanied by a certified extract of title. He asserts that the counterclaim was improperly brought by way of defence and is, therefore, fatally defective and must be struck out.
11. The Plaintiff maintains that he has satisfied all legal requirements to demonstrate ownership, and that the 1<sup>st</sup> Defendant is a trespasser, having failed to produce any allocation letter, title, or formal authorization from the 2<sup>nd</sup> Defendant. He prays for judgment in his favour, including rent arrears from 1991, general damages, permanent injunction, vacant possession, and costs of the suit.



### C. The 1<sup>st</sup> Defendant's Case

12. The 1<sup>st</sup> Defendant, Telkom Kenya Limited, filed a Statement of Defence and Counterclaim dated 4<sup>th</sup> February 2013. It denies the Plaintiff's claim and avers that it is the rightful occupant and user of the suit property by virtue of lawful entry, authorization, and longstanding possession.
13. The Defendant's case is that its predecessor, Kenya Posts and Telecommunications Corporation (KPTC), wrote to the Director of Kenya Wildlife Services on 17<sup>th</sup> June 1991, requesting approval to install communication equipment in various locations, including Enegetia Trading Centre, and copied the letter to the County Council of Narok.
14. In response, the 1<sup>st</sup> Defendant claims that the County Council of Narok, through a letter dated 16<sup>th</sup> August 1991, approved the allocation of the requested sites. The letter cited Minute No. 19/91 of the Game, Forestry and Veterinary Service Committee, which approved parcels of land for telecommunications infrastructure both within the Maasai Mara National Reserve and in nearby market centres, including Enegetia.
15. Following this approval, the 1<sup>st</sup> Defendant proceeded to erect a 50-metre telecommunication mast on the suit property in 1991, and has been in continuous, open, and exclusive possession ever since. The 1<sup>st</sup> Defendant points out that this occupation predates the Plaintiff's alleged 1991 allotment by at least six months, and that the Plaintiff's 2000 and 2007 allotment letters were backdated and not supported by documentary proof of compliance (such as acceptance slips, lease agreements, or development approvals).
16. The Defendant argues that a letter of allotment, by itself, does not confer ownership, especially where the conditions attached to it have not been fulfilled. The Plaintiff, they contend, did not construct any structure on the plot, did not pay rates consistently, and did not secure a title or lease. The Defendant relies on case law, including *Dr. Joseph Arap Ng'ok v Justice Moiyo Ole Keiwua*, to assert that title only arises upon compliance with allotment conditions and subsequent registration.
17. Further, the 1<sup>st</sup> Defendant submits that even if the Plaintiff were properly allotted the plot, such right has been extinguished by operation of law. The Defendant invokes Sections 7 and 13 of the *Limitation of Actions Act*, asserting that they have been in continuous, uninterrupted, exclusive, and hostile possession of the land for over 18 years before the suit was filed in 2010, thus entitling them to ownership through the doctrine of adverse possession.
18. Addressing the procedural objection raised by the Plaintiff, the Defendant submits that courts have consistently upheld counterclaims for adverse possession, even if not commenced via originating summons. They cite the Court of Appeal decision in *Chevron (K) Ltd v Harrison Charo Wa Shutu*, which affirmed that where adverse possession is raised in defence to an eviction suit, the procedure adopted is not fatal and does not defeat a substantive claim.
19. As an alternative to adverse possession, the Defendant also argues that the permission granted to them by the County Council in 1991 was not a mere license, but rather a license coupled with a grant, conferring a proprietary interest. Given the nature and scale of the telecommunication infrastructure erected being a permanent public utility the Defendant contends that the allocation constitutes a long-term, irrevocable interest in land under common law principles.
20. In light of the above, the 1<sup>st</sup> Defendant prays that the Plaintiff's suit be dismissed in its entirety, and that the counterclaim be allowed, with a declaration that the Defendant is the lawful owner of the suit property, and that the Plaintiff be permanently restrained from interfering with their possession.



#### **D. Issues For Determination**

21. It is established law that the issues for determination in a suit generally flow from either the parties' pleadings or as framed by them for the court's determination; see the Court of Appeal decision in the case of *Galaxy Paints Co. Ltd-vs-Falcon Grounds Ltd* (2000) 2 EA 385.
22. I have carefully and anxiously considered the parties' respective pleadings, evidence and the submissions including the issues framed therein. Order 15 Rules 1 and 2 of the Civil Procedure Rules, 2010 (The Rules herein) provide for framing of issues and materials from which issues may be framed in a suit respectively.
23. In the foregone, I am of the considered view that the issues for determination in this suit boil down to-
  - a. Whether the Plaintiff is the lawful and legal proprietor of Plot No. 24, Enegetia Trading Centre, Narok;
  - b. Whether the 1<sup>st</sup> Defendant's counterclaim is procedurally and substantively competent and whether it enjoys a proprietary interest arising from a licence coupled with a grant;
  - c. Whether the reliefs sought by the Plaintiff and the 1<sup>st</sup> Defendant should be granted
  - d. Who should bear the costs of the suit.

#### **E. Legal Analysis**

##### **Issue 1: Whether the Plaintiff is the lawful and legal proprietor of Plot No. 24, Enegetia Trading Centre, Narok**

24. The Plaintiff's claim to the suit property rests on two allotment letters which he says were issued by the then County Council of Narok. The first is said to have been issued on 31<sup>st</sup> August 2000, and the second on 11<sup>th</sup> January 2007. He contends that these allocations vested in him exclusive and indefeasible rights over Plot No. 24, Enegetia Trading Centre, Narok, and that the rights so conferred are protected under section 26(1) of the *Land Registration Act*.
25. It is his position that the letters, together with certain rent and rates receipts and correspondence from the County Council, prove his lawful proprietorship of the plot.
26. The starting point in assessing this claim is the settled principle of law on the effect of allotment letters. The Court of Appeal in *Dr. Joseph Arap Ng'ok v Justice Moiyo Ole Keiwua & Others* [Civil Application No. Nai. 60 of 1997], stated emphatically:

“It has been held severally that a letter of allotment per se is nothing but invitation to treat. It does not constitute a contract between the offerer and the offeree and does not confer interest in land at all. It cannot thus be used to defeat a title of a person who is the registered proprietor of the said parcel of land.”
27. This position has been reinforced in several decisions. *Mbau Saw Mills Ltd v Attorney General for and on behalf of the Commissioner of Lands) & 2 others* [2014] eKLR

“I have considered the evidence on record and the submission of the parties and do find that a letter of allotment was issued to Mr. Joseph K. Mugambi on 21/10/1971 with a condition to accept the offer within 30 days. He did not do so and thereafter the offer lapsed 30 days after it was made in accordance with the allotment letter. Having failed to accept the offer



as stipulated in the letter of allotment Mr. J.K. Mugambi did not acquire interest in the unsurveyed lorry depot and therefore had no interest to transfer to the plaintiff.

This court holds that a letter of allotment does not confer any property rights to a person unless there is acceptance and payment of the stand premium and ground rent. In the letter dated 17/6/1988 which was written about 17 years after the allotment letter was issued, the Commissioner of Lands confirmed that the plot was allocated to Joseph M. Mugambi in 1971 for lorry depot. However, the plot had neither been paid for nor an acceptance of the offer in the allotment letter made. The implication of this letter was that the allottee had not complied with the terms of the allotment letter and therefore the offer had lapsed. The offer having lapsed, the allottee Mr. Joseph M. Mugambi did not have any interest to transfer to the plaintiff and therefore all transactions between the allottee and the plaintiff were a nullity in law.”

28. Similarly In *Lagat v Kebut* (Environment and Land Appeal E021 of 2022) [2023] KEELC 18432 (KLR) (26 June 2023) (Judgment), the court distilled the minimum requirements for proving a proprietary claim based on allotment as:

Having evaluated in detail the necessary steps to be followed, it is emergent that a litigant basing their interest in land on the foundation of an allotment letter must provide the following proof: First, the allotment letter from the Commissioner of Lands; Secondly, and attached to the allotment letter, a part development plan; Thirdly, proof that they complied with the conditions set out in the allotment letter, primarily that the stand premium and ground rent were paid, within the specified timeline. It would also help a litigant’s case, although this may not be mandatory based on the stage of the transaction, to have a certified beacon certificate.

29. Turning to the Plaintiff’s evidence, he produced two key allotment letters one dated 31<sup>st</sup> August 2000 and another dated 11<sup>th</sup> January 2007 which he described as replacements of earlier allocations.
30. The letter of 31<sup>st</sup> August 2000 was explicit in its conditions. At paragraph 2, it required the Plaintiff: “to erect on it within twenty-four months of the date of this letter buildings specified in the plan to be approved by the authority” and prohibited any alterations without written authority. Condition 5 was equally categorical, stating that “if you are unwilling or unable to develop your plot within the period of twenty-four months it will automatically be forfeited to the council and become available for re-allocation”.
31. There is no evidence before this Court that these conditions were complied with. The Plaintiff has not produced any approved building plans, any evidence of actual construction on the plot within the stipulated twenty-four months, or any correspondence requesting approval of such plans. There is equally no indication that the forfeiture clause was avoided by either timely development or an extension granted by the County Council.
32. The allotment letter of 11<sup>th</sup> January 2007 contained similar development and compliance conditions. Again, the Plaintiff has not demonstrated that he accepted this offer in writing within the time stipulated, that he paid the required stand premium and annual rent promptly, or that he commenced development within the required twenty-four months.
33. The only financial record produced is a receipt dated 25<sup>th</sup> February 2009 showing a lump-sum payment of Kshs. 9,545 for rent and rates. This payment came almost nine years after the 2000 allotment and two years after the 2007 allotment, well outside the compliance periods in both letters. On the authorities cited, such delayed payment cannot cure earlier defaults or revive a lapsed offer.



34. It is also significant that none of the allotment letters produced by the Plaintiff was accompanied by a Part Development Plan. This omission is fatal under the principles set out in *African Line Transport Co. Ltd v The Hon AG, Mombasa HCCC No.276 of 2013* where Njagi J held as follows:

“... Secondly, all the defence witnesses were unanimous that in the normal course of events, planning comes first, then surveying follows. A letter of allotment is invariably accompanied by a PDP with a definite number.”

35. The Court of Appeal in *Nelson Kazungu Chai & 9 Others v Pwani University College [2014] eKLR* similarly stressed that absence of a PDP undermines proof that due process was followed.

36. The Plaintiff also referred to Minute No. 12/91 of the County Council of Narok as the authority for the original 1991 allocation, but the extract of this minute was not produced, and no officer from the Council was called to confirm either the allocation or the Plaintiff's compliance with its terms.

37. The re-issuance of allotment letters in 2000 and 2007, without proof of compliance in each case, strongly suggests that earlier offers had lapsed. Each new letter was a fresh offer subject to strict conditions, and each was left unperfected. The Plaintiff has therefore not shown that any of the allotments progressed beyond the offer stage into a subsisting, enforceable interest.

38. In light of these findings, the Court is satisfied that the Plaintiff has failed to prove that he met the conditions of the allotment letters within the prescribed periods. He did not produce a PDP, he did not prove timely acceptance, he did not prove timely payment of stand premium or rent, he did not prove development within the twenty-four-month window, and he did not obtain a registrable title. Under the authorities reviewed, the allotments lapsed by operation of their own terms, and the Plaintiff was left with no legally recognisable proprietary interest.

39. Accordingly, I find that the Plaintiff has not proved, on a balance of probabilities, that he is the lawful and legal proprietor of Plot No. 24, Enegetia Trading Centre, Narok. The allotment letters in his possession, without proof of timely compliance and unperfected by registration, do not confer indefeasible ownership. Having so found, I now turn to the question whether the 1<sup>st</sup> Defendant has acquired rights over the suit property by way of adverse possession or, in the alternative, by a licence coupled with a grant as pleaded in its counterclaim.

**Issue 2: Whether the 1<sup>st</sup> Defendant's counterclaim is procedurally and substantively competent and whether it enjoys a proprietary interest arising from a licence coupled with a grant**

40. The Plaintiff challenged the procedural propriety of the 1<sup>st</sup> Defendant's counterclaim for adverse possession, arguing that it was incompetent for not having been brought by way of an originating summons and for lacking a certified extract of title as required under Order 37 Rule 7 of the Civil Procedure Rules. It was his submission that these defects were fatal and rendered the counterclaim untenable in law.

41. While Order 37 Rule 7 contemplates that a claim for adverse possession is ordinarily commenced by originating summons, this Court must consider the evolving jurisprudence on the matter. In *Ngati Farmers Co-operative Society Ltd -v- John Ledidi & 15 Others C.a. Civil Appeal No 64 OF 2004*, the Court of Appeal addressed a similar objection where proceedings had begun by plaint and the defence introduced a counterclaim for adverse possession. The Court considered earlier authority and held:

“We have anxiously considered the authorities cited by Mr Kahiga in urging us to fault the procedure adopted by the respondents in mounting the counter-claim but we are satisfied



that it was not fatal to the claim. In reaching this conclusion, we are guided by the decision of the predecessor of this Court in *Boyes -v- Gathure* 1969 E.A 385 in which it was held that the issue of the wrong procedure did not invalidate the proceedings because it did not go to the jurisdiction of the Court and no prejudice was caused to the appellant.”

42. That reasoning is consistent with *Gulam Miriam Noordin v Julius Charo Karisa* [2013] eKLR, where the High Court, interpreting Order 37 Rule 7, observed that,

“Where a party like the respondent in this appeal is sued for vacant possession, he can raise a defence of statute of limitation by filing a defence or a defence and counter-claim.

43. It is only when the party applies to be registered as the proprietor of land by adverse possession that Order 37 Rule 7 requires such a claim to be brought by originating summons. It has also been held that the procedure of originating summons is not suitable for resolving complex and contentious questions of fact and law.

44. The appellate courts have severally applied this substantive-over-form approach in other decisions as well. In *Wabala v Okumu* [1997] LLR 609 (CAK), the claim for adverse possession was raised purely as a defence to an eviction suit and was upheld without objection to the procedure. Similarly, in *Bayete Co. Ltd v Kosgey* [1998] LLR 813 a plea of adverse possession succeeded although no formal counterclaim had been filed.

45. In *Teresa Wachika Gachira v Joseph Mwangi*, CA 325 of 2003 expressly stated that irrespective of the procedure adopted, the onus is on the person claiming adverse possession to prove that he has used the land he is claiming *nec vi, nec clam, nec precario*.

46. It is clear that the change in the court’s approach to this question has, by and by been dictated by the need to do substantive justice.

47. Applying these principles to the present case, the matter proceeded to a full hearing on the merits. The Plaintiff was afforded every opportunity to respond to the counterclaim, to cross-examine witnesses, and to adduce his own evidence. No prejudice has been demonstrated to have arisen merely because the claim was raised in a counterclaim rather than in an originating summons. Consistent with the above authorities, I therefore find that the counterclaim is procedurally competent and properly before this Court.

48. Turning to the second limb of this issue, the 1<sup>st</sup> Defendant contends, in the alternative, that it holds a proprietary interest in the suit property under the doctrine of a licence coupled with a grant. The evidence shows that in 1991, the 1<sup>st</sup> Defendant’s predecessor, Kenya Posts and Telecommunications Corporation, formally applied to the then County Council of Narok for permission to erect telecommunications masts in various locations, including Enenetia Trading Centre.

49. This was not an informal arrangement; it was approved in writing with reference to Minute No. 19/91 of the Game, Forestry and Veterinary Service Committee, which expressly authorised the use of the suit property for the project. Acting on that authority, the 1<sup>st</sup> Defendant constructed a substantial telecommunications mast and related installations, which have remained in situ ever since.

50. The doctrine of a licence coupled with a grant is well established. As stated in *Halsbury’s Laws of England* (4th Ed., Vol. 27(1), para. 13): “A licence coupled with a grant is not revocable. Where a person has entered on land with a licence and done work or incurred expenditure upon the land, he has a right in equity to remain.” The essence of this doctrine is that where permission is granted for a specific



purpose, and the licensee acts upon it by making substantial and often irreversible improvements, equity will protect that licence from arbitrary revocation.

51. This principle aligns with the persuasive English decision in *Yaxley v Gotts* [2000] Ch 162, where the Court of Appeal held that a party who acts to his detriment in reliance on an assurance relating to land may have that assurance enforced under the doctrine of proprietary estoppel, thereby creating an equitable interest.
52. In the present case, the 1<sup>st</sup> Defendant's permanent installations were erected in reliance on formal approval from the County Council, and the public utility nature of the infrastructure further reinforces the equitable claim to continued occupation.
53. In these circumstances, even if the 1<sup>st</sup> Defendant were not to succeed on its adverse possession claim, the Court would nonetheless hold that it has an enforceable proprietary interest in the suit property under the doctrine of a licence coupled with a grant. Such an interest, once established, is not revocable at the mere will of the grantor and is protected in equity.
54. Accordingly, I find that the 1<sup>st</sup> Defendant's counterclaim is both procedurally and substantively competent, and that, in the alternative, it has established a proprietary interest in the suit property by virtue of a licence coupled with a grant duly authorised by the County Council in 1991.

### **Issue 3: Whether the reliefs sought by the Plaintiff and the 1<sup>st</sup> Defendant should be granted**

55. Having determined under Issue 1 that the Plaintiff has failed to prove lawful proprietorship of Plot No. 24, Enengetia Trading Centre, Narok, it follows that his claim for a permanent injunction, eviction of the 1<sup>st</sup> Defendant, and vacant possession cannot succeed. The Plaintiff's entire case rests on the premise that he holds an enforceable legal interest in the suit property.
56. The Court has found that the allotment letters in his possession were merely unperfected offers that lapsed for want of timely compliance with their conditions. No registrable title was ever issued in his favour, and his occupation if any was neither established nor shown to have ousted the 1<sup>st</sup> Defendant's long-standing possession. Without a proven proprietary interest, there is no legal foundation for the injunctive or eviction orders he seeks.
57. Turning to the 1<sup>st</sup> Defendant's counterclaim, the Court has in Issue 2 found it procedurally and substantively competent. On the merits, the 1<sup>st</sup> Defendant's evidence shows uninterrupted possession and use of the suit property since 1991, when it entered with the express authority of the then County Council. Over the decades, the 1<sup>st</sup> Defendant has maintained exclusive physical control, erected a permanent telecommunications mast, and used the land openly and without interference. The Plaintiff's inaction in the face of this occupation is telling, and the evidence supports the inference that any claim he may once have had was extinguished by operation of law.
58. Even if adverse possession were not established, the Court has found that the 1<sup>st</sup> Defendant's occupation is independently protected by the doctrine of a licence coupled with a grant. That interest, duly authorised by the County Council in 1991 and acted upon through substantial, permanent development for public utility purposes, is irrevocable and enforceable in equity. On either ground adverse possession or licence coupled with a grant the 1<sup>st</sup> Defendant's entitlement to remain on the suit property is well founded in law.
59. Given these findings, the Plaintiff's suit must be dismissed, and the 1<sup>st</sup> Defendant's counterclaim allowed to the extent necessary to recognise and protect its proprietary interest in the suit property.



#### **Issue 4: Who should bear the costs of the suit**

60. Section 27 of the *Civil Procedure Act* vests in the Court discretion to determine by whom and to what extent costs shall be paid, the general rule being that costs follow the event unless the Court, for good reason, orders otherwise. That discretion must be exercised judiciously, taking into account the circumstances of the case, the conduct of the parties, and the broader interests of justice.
61. In this matter, while the Plaintiff's claim has failed, it is evident that the dispute arose from overlapping claims and administrative actions by the former County Council stretching back over three decades. The evidence shows that multiple allotment letters were issued to the Plaintiff without proper follow-up, while at the same time the 1<sup>st</sup> Defendant was placed in possession under formal authority. This institutional overlap and lack of clear documentation were fertile ground for misunderstanding and conflict.
62. The Court is satisfied that the Plaintiff did not act in bad faith in bringing the suit; rather, he relied albeit unsuccessfully on official documents that appeared to him to support his claim. On the other hand, the 1<sup>st</sup> Defendant's defence and counterclaim were necessary to protect its long-standing occupation, but the origins of its occupation also lay in administrative arrangements that were not formalised through registration. Both parties, therefore, found themselves in litigation largely because of historical administrative shortcomings beyond their personal making.
63. In these circumstances, and in order not to visit a further financial burden on either side, the Court finds it just and equitable that each party shall bear its own costs of the suit and counterclaim.

#### **F. Final Orders**

64. In light of the findings on all issues, and for the reasons stated in this judgment, the Court makes the following final orders:
  - a. The Plaintiff's suit is dismissed.
  - b. It is hereby declared that the 1<sup>st</sup> Defendant has a valid and enforceable proprietary interest in Plot No. 24, Enegetia Trading Centre, Narok, acquired either:
    - I. through adverse possession, or in the alternative,
    - II. under the doctrine of a licence coupled with a grant duly authorised by the then County Council of Narok in 1991.
  - c. The Plaintiff, his agents, servants, or any other person claiming under him are hereby permanently restrained from interfering with the 1<sup>st</sup> Defendant's quiet possession, occupation, and use of the suit property.
  - d. Each party shall bear its own costs of the suit and the counterclaim.

It is so ordered!

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 9<sup>TH</sup> DAY OF OCTOBER, 2025.**

**MOHAMMED N. KULLOW**

**JUDGE**

Judgement delivered in the presence of: -



N/A for the Plaintiff

N/A for the Defendants

Philomena W Court Assistant

