



THE JUDICIARY



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LANDS COURT AT NAROK
ELC CAUSE NO. 181 OF 2017

MAU **RESORT**
LTD.....PLAINTIFF

VERSUS

COUNTY GOVERNMENT OF NAROK.....1ST
DEFENDANT

JOHN MARK OLE NAMIRY.....2ND
DEFENDANT

JUDGMENT

1. This suit was filed way back on **3rd November 2016**, at **Milimani ELC**, wherein the **Plaintiff, Mau Resort Ltd** sought for Judgment against the then Defendant **Narok County Government**, specifically for an order for permanent injunction in respect of **Plot No 300/7** Narok Township, among other prayers.

2. The suit was transferred to **Nakuru ELC** on the same date, and on **15th December 2016**, the matter was fixed for mention on **5th September 2017**. However, upon establishment of **Narok ELC**, this suit was transferred to this court.

3. In its ***Plaint*** dated ***2nd November 2016***, the Plaintiff (Mau Resort) sought for Judgment against the then sole Defendant; ***Narok County Government*** for the following orders;

- i) Permanent injunction to issue against the Defendant whether by itself, servants, and/ or agents or whomsoever in acting on its own behalf from trespassing, alienating, demolishing or in any way from dealing with Plot No 300/7 NAROK TOWNSHIP, in any manner whatsoever;***
- ii) General damages for illegal and unlawful trespass arising as a result of loss of opportunity;***
- iii) Special damages of ksh 70,000/= ;***
- iv) Costs of the suit.***

4. It was the Plaintiff's claim as contained in its ***Plaint*** that it is the registered proprietor of the suit land; ***Plot No 300/7 Narok Township*** from the year ***2010***, to date and has a valid ***Plot Allotment letter***, and has been in occupation since then, and carries hotel business.

5. Further, that it receives rates demand from the Defendant for payment of rates for the suit land ***Plot No 300/7, Narok Township***. Therefore, by virtue of the said Demand

Notices, the Defendant is full aware of the Plaintiff's proprietary rights over **Plot No 300/7**, Narok Township.

6. It was the Plaintiff's further claim that on **19th September 2016**, the Defendant agents and/ or servants without any colour of right **trespassed** upon the Plaintiff's property, **vandalised** and **demolished** the erected perimeter fence on the said **Plot No 300/7**, Narok Township and carried away without any lawful justification, notices nor valid reasons whatsoever.
7. He claimed that even after inquiry, the Defendant has not given it the reasons for the **illegal actions**, carried out in total disregard of the law, but the Defendant did not offer any response or explanation.
8. Therefore, the actions of the Defendant **violates** their right to **quiet possession** of **Plot No 300/7**, Narok Township, and that the same amounts to trespass without justifiable cause.
9. Further, that as a consequence of the **illegal actions** of the Defendant, the Plaintiff has suffered loss and damages from lost business opportunities and damages amounting to **Ksh 70,000/=**, which loss is wholly attributable to the Defendant's action.

10. The suit is opposed by the Defendant, **Narok County Government** vide its Statement of Defence dated **3rd May 2024**, wherein the Defendant denied in total all the allegations contained in the Plaintiff.
11. The Defendant further averred that though the Plaintiff alleged that it was allocated the suit land and produced a **letter of allotment**, the said letter did not indicate when the **Town Committee** met and allocated the suit land to the Plaintiff.
12. Further, that the Plaintiff was allegedly issued with the allotment letter in **2010**, but its **CR-12** reveals that the Plaintiff was registered on **30th October 2012**, under **CPR/2012/87497**, which was over two years since the suit property was allegedly allocated to the Plaintiff.
13. The Defendant also claimed that the Plaintiff managed to register its name as the proprietor of the suit land as the majority of the Plaintiff's shareholders were members of the Council Planning Committee, Markets and Public Health Committee for the year **2010**, or were officials of the County Council.
14. Further, that since the Plaintiff's shareholders were in office and had control of Council's system, they proceeded to register their Company in the Council's **Local Authorities Integrated Financial Operations Management**

Systems(LAIFOMS), and the said **LAIFOMS** was manipulated by the said officials, and the this **LAIFOMS** has continued to generate automatic demands for rates from the Plaintiff, due to the **fraud perpetuated** by the Plaintiff and the said officials.

15. The Defendant also alleged that the architectural drawings and plans produced by the Plaintiff are not prove of ownership of the suit property, and they were approved in violation of procedure. Therefore, the Plaintiff is not entitled to any of the reliefs sought in the Plaint.
16. **Consequently**, the Defendant prayed for **dismissal** of the Plaintiff's suit for being **scandalous, frivolous, vexatious**, but also an abuse of the court process, and waste of judicial time. It urged the court to dismiss the Plaintiff's suit with costs.
17. Vide an Application dated **13th May 2024, John Mark Ole Namiry** applied to be joined in the suit as an **Interested Party** on allegation that he is the legitimate allottee of the suit **Plot No. 300 Block 7**, which was formerly **Plot No.1 Block 7; Narok Township**, which was duly allocated to it by the defunct Narok County Council.
18. After inter-parties hearing of the said Application, this court (constituted differently) allowed the said prayer for joinder

and allowed the said **John Mark ole Namiry** to join the suit as 2nd Defendant.

19. Consequent to that Ruling, **John Mark Ole Namiry** filed his **Defence** and **Counter- Claim** dated **11th December 2024**.
20. The 2nd Defendant denied all the allegations made in the Plaintiff, and denied that the Plaintiff is in possession of the suit land and that it runs a hotel business thereon. He alleged that conversely, he is the one who runs a timber yard, car wash business and tree nurseries on the suit land from **1991**, when the suit land was allocated to him.
21. He alleged that the suit land belongs to him according to the **Physical and Land Use Development plan**, for Narok township as approved by **Minutes No 5/91**. He claimed the letter of allotment produced by the Plaintiff in support of its case is **irregular, fraudulent, null** and **void** instrument of land disposition.
22. He denied having encroached on , and/ or trespassed on the suit land, which he is in occupation of, and has been in occupation long before the Plaintiff was allocated the suit land.
23. It was his contention that he is a stranger to the Plaintiff's allegations that he has encroached on land parcel **No.**

300/7 Narok Township, and reiterated that the said suit property belongs to him. He urged the court to dismiss the Plaintiff's suit.

24. In his Counter- Claim, the 2nd Defendant alleged that he is the owner of the suit property, which was allocated to him by the **Defunct County Council** of Narok vide an **Allotment letter** dated **26th February 1991**.
25. He claimed that after the allocation of the suit land to him, he took **exclusive** and **uninterrupted possession** of the suit land, in an open manner, and without secrecy or any resistance from anyone. He claimed that he has been in actual and physical possession of the suit land.
26. Further, he alleged that the suit land if allocated to the Plaintiff was allocated **illegally** or through **fraud**, and he particularized the said **illegality** and **fraud** in Para 30 of his Counter- Claim.
27. He also alleged that the 1st Defendant **illegally demolished** his buildings erected on the suit property without serving the him with the **Enforcement Notice** and repossession as required by the law. He particularised the loss suffered by himself due to the demolition in Para 31 of the Counter-Claim.

28. Consequently, the 2nd Defendant urged the court to enter Judgement in his favour as prayed in his Counter-claim in the following terms;

a) A declaration that the 2nd Defendant/Plaintiff in counterclaim is the lawful registered allottee of the parcel of land known as Plot No.300, Block 7 Narok Town formerly Plot No.1, Block 7(the suit plot)

b) An order directing and/or compelling the 2nd Defendant in Counterclaim Narok County government herein alienate the parcel of land known as Plot No.300, Block 7 Narok Town formerly Plot No. 1, Block 7 (the suit plot) as belonging to the 2nd Defendant/Plaintiff in the Counterclaim;

c) A declaration that the re-allocation of the parcel of land known as Plot No.300, Block 7 Narok Town formerly Plot No.1 Block 7 (the suit plot) was illegal, unlawful and contrary to the law.

d) A declaration that the demolition of the 2nd Defendant/Plaintiff in the Counter-claim's buildings erected on the parcel of land known as plot No.300, Block 7 Narok Town formerly Plot No.1, Block 7

was illegal unlawful and void of the force of law;

e) A permanent injunction restraining the Defendants in the Counterclaim, their agents, servants and/or anyone claiming under them/any other person from interfering with the Plaintiff's (2nd Defendant/Plaintiff in Counterclaim) allotment letter or otherwise from quiet enjoyment and possession of the suit plot.

f) In the alternative, an order directing the 2nd Defendant in Counterclaim; Narok County Government to indemnify or otherwise to facilitate the indemnification of the 2nd Defendant/Plaintiff in counterclaim in respect of the loss of the suit plot at the current market value thereof;

g) Costs for lodging this suit including incidental costs plus interests thereon

h) Any further order or alternative as the court may deem fit to grant for the ends of justice.

29. The matter proceeded for hearing by way of oral evidence. The Plaintiff gave evidence for himself and called no witness. The 1st Defendant; Narok County Government

called two witnesses to support its case. On his party, the 2nd Defendant gave evidence for himself and called no witness.

PLAINTIFF'S CASE

30. In support of the Plaintiff's claim, **PW1, Doyopai Ole Kudate**, adopted his witness statement dated **13th Feb 2025**, and produced his list of documents as **PEXHIBIT1**. It was his further evidence that he is the Director of the Plaintiff's Company, and he claimed that the suit land is owned by the Plaintiff.

31. While being cross examined by **Mr. Musyoka** for the 1st Defendant, he reiterated that the suit land was allocated to the Plaintiff in **2010**, but its Certificate of incorporation was issued on **30th October 2012**. However, it was his evidence that initially, the Plaintiff had been registered as **Community Based Organisation(CBO)** known as **Mau Resort**, but it was later changed to a Company, retaining the same name.

32. He also confirmed that the Plaintiff had built a hotel on the suit land, and also had been paying land rent and rates. It was his evidence that the Plaintiff was issued with a title deed in the name of **MAU Resort** which was a **CBO**. He denied that the suit land was ever allocated to **National Museum of Kenya**.

33. The witness testified that even if they as shareholders of **Mau Resort** were Councillors when the land was allocated to the Plaintiff, they did not **collude** to have the said land allocated to the Plaintiff by the County Council.
34. On being cross examined by **Ms. Bosibori** for the 2nd Defendant, the witness confirmed that the suit land was allocated to **Mau Resort Limited** when it was still a Self-help Group, and what was demolished was the fence, and the car wash. He confirmed existence of minutes that allocated the land to Mau Resort Limited, the Plaintiff herein and the Letter of Allotment was dated **22nd July 2010**.
35. In re-exams, he confirmed that the Plaintiff has been paying rent and the **National Museum of Kenya** has never disputed their ownership of the suit land.

1ST DEFENDANT'S CASE

36. The 1st Defendant's case was advanced by two witnesses. **DW1 Vincent Osewe**, the registered Physical Planner, Narok County since **2022**, adopted his witness statement dated **22nd June 2024**, as his evidence in chief.
37. It was his evidence that the suit land is situated in **Block 7** next to the Stadium, and is about **2^{1/2} acres**, based on the **1985, Land Use Plan**, the land is reserved for **NATIONAL Museum of Kenya**, and is thus is a public utility land. He also testified that there was no change of user, and the

land is not available for allocation to anyone as it is a public land.

38. He further testified that there is no development on the suit land, and the County Government has not approved any development, and if there was any development thereon, then that is illegal.
39. On cross examination by **Miss Njeri** for the Plaintiff, he confirmed that he did not have documents to confirm that he started working for the County in **2020**. He also confirmed that this suit was filed in **2016**, but he is conversant with it. However, he did not have any evidence that the County **Government of Narok** had discussed the matter with the **National Museum of Kenya**.
40. On cross examination by **Ms. Bosibori**, for the 2nd Defendant, he stated that he was not aware that the 1st Defendant issued a letter to confirm that the 2nd Defendant was the owner of the suit land. He also confirmed having seen a letter addressed to the 2nd Defendant to remove the structures on the suit land.
41. The witness testified that some plots numbers changed in 2016, and some of those changes had happened before devolution.

42. Upon being Re- examined by **Mr. Musyoka**, he stated that when the plans come out, they notified the members of the public and it is also advertised in the Kenya Gazette. He further testified even if the Plots numbers changed before devolution, this did not change the use of the plot.
43. Further, that even if the Plaintiff alleged to have been allocated the suit land in **2010**, the said land was owned by **National Museum of Kenya**, and one could know that by visiting the County offices.
44. **DW2, Godfrey Kwena**, the administrator of Narok County Government adopted his witness statement dated **3rd May 2024**, as his evidence in chief. He testified that he deals with registration of interests in land as allocated by a County Government. Further, that he has been in the Committee since 2012.
45. He denied that the Plaintiff herein was ever allocated the suit land as there is no application that was placed before the Committee. Further, he alleged that the process of allotment of land was not followed, and the alleged allocated land was not available for allocation.
46. Further, he testified that there was no fees paid for allocation, and there was no approval, and there was no evidence of other process of allocation of the suit land. He

reiterated that the suit land is a public land and was not available for allocation.

47. He clarified that before the suit land was allocated to **National Museum of Kenya**, the proper procedure was followed. He claimed that the **LAIFOMS** was manipulated and the name of the plot owner was changed. It was his evidence that the Plaintiff has been barred from paying rates until the suit is heard and determined.
48. On cross examination but **Ms Njeri** for the Plaintiff, the witness confirmed that vide a letter dated **9th MAY 2017**, the **Director of Mau Resort Limited** had sought to pay land rates. He also confirmed that the County Government did not send any demand Notice before the demolition was carried out.
49. He also claimed that the suit land was allocated to the **National Museum of Kenya** in **2010**, and thus it is a public land. That though the Plaintiff has **a letter of allotment**, it was issued by Narok County Council then, and he claimed that the said letter of allotment to **MAU Resort** was not genuine.
50. Upon cross exam by **Ms. Bosibori** for 2nd Defendant, he confirmed writing a letter to 2nd Defendant to remove the structure on the suit land. He stated that the 2nd Defendant

was in occupation of the suit land, and it was his evidence that was a case of double allocation.

51. It was his evidence that rates cannot be paid by a person who does not own land, and though **LAIFOMS** was manipulated, he could not recall which year it was manipulated.
52. On re-exam, he testified that the 2nd Defendant has never been in occupation of the suit land. Further, that even if there was double allocation, the suit land was a public land belonging to the **National Museum of Kenya**, as it made application to the County Council for allocation of the said land to itself.

2ND DEFENDANT'S CASE

53. **DW3, Johnmark Ole Namiry** from Mosiro area adopted his witness statement not dated as his evidence in chief. He further testified that the suit land was allocated to him in **1991**, by the defunct County Government of Narok. He produced exhibits to confirm such allocation. He also claimed he paid all the charges required of him, and he built a timer yard.
54. He also testified that he has lived on the suit land with his wife, and later the National Museum of Kenya wanted to take his land, but they were allocated land next to his. He claimed that he was never issued with a title deed for the

suit land, and thus he could not have built a permanent building.

55. However, the Plaintiff **Mau Resort limited** claimed the land in **2017/2018**, and they fenced it. Later, the County Government of Narok demolished his temporary structures of the carwash and he left and subsequently, the Plaintiff filed this case. He produced a list of documents as **DEXHIBITS 2**.

56. He urged the court to dismiss the Plaintiff's case and allow his Counter-claim.

57. On cross examination by **Ms Njeri** for the Plaintiff, he confirmed that he was allocated **Plot No1** as per the **allotment letter** produced by him, and the Plaintiff is claiming **Plot No 300/7**. It was his evidence that **Plot No1** was changed to **Plot No 300/7**, although he did not have documents to show the said changes.

58. He also confirmed that he has waited for over **30 years** to raise his claim, although the plot is his. It was his further evidence that there was **demolition**, and he had no evidence that he had held any discussion with the Plaintiff.

59. On cross examination by **Mr. Kivuva** for the 1st Defendant, it was his evidence that he was allocated the suit land in **1991** by the **Defunct County Council of Narok**.

However, he was told to move out of the suit land in **2019**. He claimed that he knew about this case in **2020**, but he joined the case in **2024**.

60. He claimed to be in possession of the minutes of the Planning Committee that allocated him the land in **1991**, and that he has been paying rates until **2019**, and he is still on the suit land.

61. On re exam, he confirmed having seen the letter dated **29th May 2017**, which was produced by **Mau Resort**, the Plaintiff herein, and he was asked to move out of the suit land. He confirmed that he was allocated **Plot No 1**, which was later changed to **Plot No 300/7**. He paid the required amount, and he confirmed that he had receipts to that effect.

62. After the close of viva voce evidence, the court directed the parties to file and exchange their written submissions. In compliance thereto, the Law Firm of **Koceyo & Co Advocates for the Plaintiff** filed the Plaintiff's written submissions dated **20th June 2025**, and set out the background of the case. The Plaintiff identified four issues for determination being;

i) Whether the plaintiff is the lawful owner of the suit land;

- ii) ***Whether the demolition of the plaintiff property was unlawful, arbitrary and unconstitutional;***
- iii) ***Whether the 2nd Defendant has a legitimate claim over the suit property;***
- iv) ***Whether the plaintiff is entitled to the reliefs sought.***

63. While analysing the above issues for determination, the Plaintiff relied on various decided cases among them; **Mutoko vs Hassan & 2 Others (ELC NO E063 OF 2021)**, where the court held;

“Once a letter of allotment is issued, and the allottee fulfils the conditions thereof, including payments of the requisite dues, and taking possession, the allottee acquires a registrable interest;”

Plaintiff also relied on the case of;

Mariachana vs Nairobi City Council & Another (ELC NO 565 OF 2002); where the court held;

“A party who is in peaceful occupation and has dutifully paid land rent and rates acquired proprietorship interest recognisable in law, especially where the planning or survey documents are produced to contradict the said interest.”

64. The Plaintiff further relied on the case of **Mitu-bell Welfare Society vs Kenya Airport Authority & Others (2021) eKlr**, where the Supreme Court held;

“No person shall be arbitrary evicted or deprived of property without due process. even where eviction is legally justifiable, the law mandates adherence to the procedural safeguards including adequate notice, opportunity to be heard and lawful authority”;

65. Further reliance was sought in the case of **Kimani & Another vs Gichui & Another (ELC 108 OF 2016(2022) EKLR**, where the court held;

“where a party sits on their right for an extended period and only asserts their claim when another has acted in reliance on their own interest, the court will not aid such indolence. Equity aids the vigilant, not those who sleep on their rights”

66. The Plaintiff also relied on various provisions of law and urged the court to allow its claim.

67. On the part of the 1st Defendant, the Law Firm of **Musyoka Shikumo & Associates Advocates**, filed its written submissions dated **16th July 2025**, set out the background of the case and identified various issues for determination. The issues identified are;

- i. Whether the 1st Defendant has mandate to protect and hold all public land in the county and whether levying of land rates is proof of ownership to property;***
- ii. Whether due procedure was followed in the alleged allotment of the suit property to the plaintiff and the 2nd Defendant and whether a good title was passed;***
- iii. Whether the Plaintiff was capable of owning property in 2010, before it was incorporated;***
- iv. whether there was a conflict of interest in the then township clerks action in approving the alleged allocation of then suit land to the plaintiff and being a director of the plaintiff;***
- v. Whether the Plaintiff and the 2nd Defendant have established a prima facie case and is entitled to prayers sought;***
- vi. Who is entitled to costs of the suit.***

68. The 1st Defendant relied on various decided cases being; ***Munyu Maina vs Hiram Gathiha Maina (2013) eklr; Caroline Awinja Ochieng & Another vs Jane Mbithe Gitau & Others (2015) eklr; kipsiwo Community Self Help Group vs Attorney General &6 Others(2013)***

eklr and Torino Enterprises Ltd vs Attorney General(Petition5 (E006 OF 2022(2023) KES 79 KLR; where the court held;

“we have already declared that allotment letter even if perfected cannot by and is itself confer transfer title to the allottee, unless the latter completes the process by registration. Therefore, the grim reality is that all transactions between Renton Company Ltd and the appellant were a nullity in law. This is further affirmed by the failure to observe due process and the procedure in acquiring the allotment letter”

69. The 2nd Defendant filed his written submissions through **Bosibori Oganga & Co Adocates**, who set out three issues for determination being;

- i) Whether the 2nd Defendant herein is the registered owner of the suit land, parcel No 300/7 Narok Town formerly Plot No1 block 7, and whether the same was acquired fraudulently;***
- ii) Whether the 2nd Defendant has proved his case on the balance of probability;***
- iii) Who should bear costs of the suit.***

70. In analysing the above issues, the 2nd Defendant relied on various decided case among them; **Ahmed Ibrahim**

Suleiman & another vs Noor Khamisi Surur [2013] eklr, Matende & Another vs Ogendo Civil Appeal 509 of 2019[2022] KECA 124 (KLR) (February 2022), and Supermarine Handling Services Ltd vs Kenya Revenue Authority Civil Appeal No.85 of 2006 [2010] eklr.

71. The 2nd Defendant submitted that he is the owner of the suit property, which was procedurally allocated to him. He urged the court to dismiss the Plaintiff's case and allow his Counter-claim.
72. The court has considered the pleadings herein, the evidence adduced in court and exhibits produced thereon, the rival written submissions, cited authorities and relevant provisions of law, and renders itself as follows;
73. From the available evidence, there are few facts that can be discerned herein. The Plaintiff has claimed that it is the rightful owner of the suit property **PLOT 300/7** Narok Township, having been allotted the same by the County Council of Narok on **22nd July 2010**, first as a Self-help Group, before it converted to a Company. It produced a letter of **allotment** dated **22nd July 2010**, and alleged that it took possession of the suit land, where it has been running a hotel, business until when the County Government of Narok demolished its structure without notice on **19th September 2016**.

74. The other claim is laid by the 1st Defendant who has claimed that the suit property is a public land, having been allotted to the **National Museum of Kenya** vide a letter of allotment dated **26th February 2010**, and therefore, the said land was not available to any private individual, the Plaintiff and 2nd Defendant included. The 1st Defendant alleged that if the said land was allocated to the Plaintiff, it was done **illegally** and **irregularly** given that the Plaintiff's shareholders were all Officials of the **County Council of Narok** at the time of alleged allocation of the suit land. The 1st Defendant urged the court to dismiss the Plaintiff's case and the 2nd Defendant counter-claim.

75. The 2nd Defendant claim through his **Counter-claim** is that he was allocated **Plot No1 Block 7**, within **Narok township**, wherein he occupied it by putting up a **timber yard**, and **carwash**. Later, the **National Museum of Kenya** claimed the said land, and he was eventually evicted by the County Government agents who demolished the structure thereon, being his **carwash**, and **timber yard**.

76. The above are the contested and competing claims of each of the parties herein. The Plaintiff is claiming to own the **Plot No 300/7**, through its **Letter of allotment** dated 22nd July 2010. The 1st Defendant claim the land in question is a public land, which was allocated to National Museum of

Kenya, vide a **letter of allotment** dated **26th February 2010**.

77. It is trite the he who alleges must prove, and **Section 107** of the **Evidence Act**, is very clear on this. It states

“Burden of proof.

(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”

78. **Halsbury’s Law of England 4th Volume 17** states as follows;

“The legal burden of proof is the burden of proof which remains constantly throughout a trial, it is the burden of establishing the fact and contention which will support a party’s case. if at the conclusion of trial, he has failed to establish these to the appropriate standard, he will lose. The legal burden of proof normally rests upon the party desiring the court to take action; thus claiming a must satisfy the court or tribunal that the conditions which entitle him to an award have been satisfied. in respect as a particular allegation, the burden lies upon the party for whom substantiation of particular allegation is an essential of his case”

79. This burden is discharged by way of evidence, and the parties herein since they each claimed ownership of the suit land, had the onerous duty of calling evidence to prove their claim. See the case of ***Mbuthia Macharia vs Annah Mutua & Another [2017]eklr.***

80. With the above background in mind, the court finds the issues for determination are;

- i. Is there evidence that the land in dispute PLOT 300/7 is also Plot NO1 BLOCK 7, and who owns Plot No 300/7?***
- ii. Which parcel of land was allocated to the National Museum of Kenya?***
- iii. Is the Plaintiff entitled to the prayers sought in its claim?***
- iv. Is there evidence that the suit land was allocated to the National Museum of Kenya?***
- v. Is the 2nd Defendant entitled to his claim contained in the Counter-claim?***
- vi. Who is entitled to costs of this suit and the Counter-claim.***

I. Is there evidence that the land in dispute PLOT 300/7 is also Plot NO1 BLOCK 7, and who owns Plot No 300/7?

81. The Plaintiff alleged that it was allocated the suit property, being **Plot 300/7** Narok Township, and it produced a **letter of allotment** dated **22nd July 2010**, which was addressed to **Mau resort**. The Plot is identified as **Plot No 300 Block 7**.
82. The Plaintiff also produced **Demand Notices** addressed to **Mau Resort**, demanding payment of rates. These Demand Notices are dated, **27th May 2013**; **5th May 2014**; **19th March 2015**, and **11th May 2016**. The Plaintiff alleged that after being allocated the suit land, it took **possession**, and established a hotel business thereon.
83. However, the 2nd Defendant alleged that he was the one who was allocated the suit land. He produced his letter of allotment issued in 1991, and the Plot referred there to was **Plot No1 Block 7**, Narok Township. The 2nd Defendant alleged that his **Plot No.1** was changed to **Plot No 300/7** without his knowledge, and it was initially grabbed by National Museum of Kenya and later by the Plaintiff.
84. On its part, the 1st Defendant alleged that the suit plot was allocated to the **National Museum of Kenya**, and it was indicated as **Narok Township/ 35**, approximately **16 acres**. This certainly is not **Plot 300/7**, which was indicated to be approximately 2^{1/2} acres.

85. He who alleges must prove. The 2nd Defendant had alleged that his **Plot No1 block 7** was allocated to him, and later changed to **300/7 Narok Township**. However, the 2nd Defendant did not produce any evidence to confirm that indeed **Plot No1 block 7** that was allegedly allocated to him, was later changed to Plot No300/7. It is evident that the burden of proof lies on the person who would lose if no sufficient evidence is available. See the case of **Evans Nyakwara vs Cleophas Bwana Ongaro [2015]eklr**.
86. The court has seen a letter dated **8th September 2016** produced by the 2nd Defendant, which was authored by **M.E.O Ositima**, for Director Physical Planning department, alleging that **Plot No. 1** was registered as **Plot No. 300/7** and belongs to **Johnmark Ole Namiry**.
87. However, vide a letter dated **29th May 2017**, addressed to the 2nd Defendant, and signed by **Godfrey N. Kwena** for County Executive Member, Land, Housing, Physical Planning and urban Development, the author informed the 2nd Defendant that **Plot No. 300/7** was owned by **Mau Resort Ltd**, and the letter dated **8th September 2016**, was established to be fraud, and which was disowned by the said **Ositima**, vide his letter dated **15th May 2017**.
88. The Plaintiff did produce Demand Notices for rates for **Plot No 300/7**, and not **Plot 1 block 7**. From the available evidence, it is clear that the suit property in dispute today

is **Plot 300/7** and not Plot No 1 block 7 Narok Township. There is no evidence to link the two plots as one.

89. Further, from documents produced in court being the **Allotment letter, Demand Notice**, and the letter dated **29th May 2017**, it is evident that this **Plot No 300/7** belong to the Plaintiff herein Mau Resort Limited. There is no evidence that **Plot No 300/7** is the same as **Plot No 1**, which was allegedly allocated to the 2nd Defendant.

II. Which parcel of land was allocated to National Museum of Kenya.

90. The 1st Defendant alleged that the land in dispute **Plot 300/7**, was allocated to the **National Museum of Kenya**. Through its witnesses the 1st Defendant alleged that the Plaintiff was **illegally** allocated the suit land. Further, it was testified that LAIFOMS of the County Council was manipulated, and that was the reasons, why the Plaintiff has been receiving Demand Notices for land rates. However, there were no evidence that any complaint was ever made about the alleged manipulation of LAIFOMS.
91. The allotment letter produced by the 1st Defendant as exhibits addressed to the **National Museum of Kenya**, the Plot that was allocated to the National Museum was **Narok Township/35**, measuring approx. **16 acres**. The Plot allocated to National Museum of Kenya was not **Plot**

300/7, which plot was allocated to the Plaintiff herein, and is the dispute in dispute herein and not **Narok Township/35**.

92. The 1st Defendant alleged that the Plot in dispute was not allocated to the Plaintiff, but the National Museum of Kenya. The 1st Defendant had a duty to call sufficient evidence and prove that the suit land was allocated to National Museum of Kenya, but not the Plaintiff. However, the allotment letter produced by the 1st Defendant showed the allocated land was different from plot 300/7. Therefore, the court finds and holds that the land allegedly allocated to the **National Museum of Kenya**, was Narok Township/ 35, approx. 16 acres, and not **Plot No. 300/7**, that is owned by the Plaintiff.

III. Is there evidence that the suit land PLOT 300/7 was allocated to National Museum of Kenya?

93. From above findings of this court, it is clear that from the **letter of allotment** dated **26th February 2010**, produced by the 1st Defendant, **The National Museum of Kenya** was allocated Land Parcel No. **Narok Township/35**, measuring approx. 16 Acres. The said National Museum of Kenya did not appear in court to clarify whether it had any claim over **Plot No. 300/7**.

94. This Plot No **Narok Township/35**, certainly is not **Plot No 300/7** claimed by the Plaintiff. If it is the same, the 1st Defendant did not avail any evidence to link this parcel of land with Plot No 300/7. As usual, '**he who alleges must proof**', and the 1st Defendant was supposed to call sufficient evidence to prove that **Plot No 300/7**, was indeed the same as **Plot NO Narok Township/35**, which was allocated to the **National Museum of Kenya**.

95. Even if the 1st Defendant alleged that the suit land was allocated to the **National Museum of Kenya** in 2010, the said **National Museum of Kenya**, was not joined as an Interested party herein. There was no evidence that the said National Museum has laid any claim on this **Plot 300/7**, and the 1st Defendant did not call any witness from **National Museum of Kenya** to support its allegations. Therefore, this allegations contained in the Defence without prove by calling evidence to support it, remained mere allegations, which allegations do not meet the required of prove of a claim.

96. In the case of **Adembesa & another v Gweno (Civil Appeal E192 of 2023) [2024] KEHC 5379 (KLR) (17 May 2024)**, the court stated as follows

"It is trite that where a plaintiff gives evidence in support of her case but the defendant fails to call any witness in support of its allegations then the

plaintiff's evidence is uncontroverted and the statement of defence remains mere allegations. In Janet Kaphiphe Ouma & Another v Marie Stopes International (Kenya) Kisumu HCCC No. 68 of 2007 Ali-Aroni, J. citing the decision in Edward Muriga Through Stanley Muriga v Nathaniel D. Schulter Civil Appeal No. 23 of 1997 held that: "In this matter, apart from filing its statement of defence the defendant did not adduce any evidence in support of assertions made therein. The evidence of the 1st plaintiff and that of the witness remain uncontroverted and the statement in the defence therefore remains mere allegations...Sections 107 and 108 of the Evidence Act are clear that he who asserts or pleads must support the same by way of evidence"

97. It is also clear from the Defence of 1st Defendant, it alleged that the Plaintiff's shareholders who were officials of the County Council of Narok, colluded with the town clerk then **Charles Zakayo Letuya**, and then they registered their company in the **Local Authority Integrated Financial Operations Management Systems (LAIFOMS)**, wherein they manipulated the said **LAIFOMS**,

and the Plaintiff has continually received automatic Demand Notices for rates, thus perpetuating fraud.

98. The above allegations are serious allegations of fraud, and the 1st Defendant did not plead any particulars of fraud in its Defence against the Plaintiff's officials or any County Councils officials. There is no evidence that any report of fraud or collusion has been made against the said **Charles Zakayo Letuya**. It would be difficult for this court to find and hold that indeed **LAIFOMS** was manipulated by anyone in collusion with the Plaintiff's officials.

99. Courts have severally held that allegations of fraud are serious allegations, which must be pleaded and proved. See the case of **Vijay Morjaria vs Nansign Madhisign Darbar & Another (2000) ekr**, where the court held:

“It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must, of course, be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and distinctly proved, and it is not allowable to leave fraud to be inferred from facts.”

100. The 1st Defendant did not plead any allegations of fraud against the Plaintiff's Officials or against the alleged County Council's employees who manipulated the **LAIFOMS**. Without any evidence of **fraud** or **collusion** to prove that any person from the County Government manipulated **LAIFOMS** or the land records to change the Land allocated to the National Museum of Kenya and allocate it to the Plaintiff, this court finds and holds that there is no evidence adduced to prove that **PLOT NO.300/7 Narok Township** was allocated to the National Museum of Kenya. The court holds and finds that **Plot 300/7** was allocated to **Mau Resort Ltd** as indicated in the letter dated **27th May 2017**, written by **Godfrey Kwena**, who was DW2 in this case.

IV. Is the Plaintiff entitled to the prayers sought in its claim

101. Having found that there is no evidence to link Plot No 1 block 7 allegedly allocated to the 2nd Defendant, and there is no evidence that the **National Museum of Kenya** was allocated **Plot No 300/7**, Narok Township, the plot in dispute herein, has the Plaintiff proved that he is entitled to the prayers sought in its claim?

102. As observed by this court in the previous paragraph, Godfrey Kwena, who was DW2, in his Letter dated **27th May 2017** stated that the **Plot 300/7**, was allocated to Mau Resort Ltd. As a holder of the allotment letter, and having

taken **possession**, and occupation, the Plaintiff had legitimate expectation of enjoying a quiet possession of the suit land. See the case of **Rukaya Ali Mohammed vs David Gikonyo Nambacha & Another (Kisumu HCCC NO 9 of 2009)**, where the court held; -

“Once (an) allotment letter is issued and the allottee meets the conditions therein, the land in question is no longer available for allotment since a letter of offer confers (an) absolute right of ownership or proprietorship unless it is challenged by the allotting authority or it is acquired through fraud, mistake or misrepresentation, or that the allotment was out rightly illegal or it was against the public interest.”

103. The Plaintiff as the owner and occupier of **Plot 300/7** alleged in his claim that on **19th September 2016**, the 1st Defendant without any colour of right or notice trespassed upon the Plaintiff property **Plot 300/7**, and vandalised and demolished the Plaintiff erected structures and carried away some of its items.

104. The 1st Defendant did not deny carrying out the said demolition, but only alleged that the Plaintiff did not acquire the suit land legally. However, this court has found and held that there is no evidence that the suit land was allocated to the **National Museum of Kenya**, and that the Plaintiff’s

shareholders manipulated **LAIFOMS**, and thus **fraudulently** allocated the suit land to the Plaintiff.

105. Further, the 1st Defendant had no court order or any justification to evict the Plaintiff from the suit land, demolish their structures and carry away the material. The law is very clear on the issue of eviction, wherein sufficient notice has to be issued, and the laid down procedure followed. See the case of **Mitu-bell Welfare Society vs Kenya Airports Authority & others(2021) eklr.**

106. Given that the 1st Defendant had no court order to evict and or demolish the Plaintiff's structures on the suit land, then the action of the 1st Defendant was illegal, and the Plaintiff is entitled to an order of permanent injunction as prayed.

107. It is trite that a permanent injunction is issued after a full hearing of a case on the merits, and when the court determines that financial compensation is insufficient to remedy the harm. This case has gone through a full hearing, and it is this court findings that having found that the Plaintiff was allotted the suit land, then monetary compensation may not be sufficient compensation. See the case of **Kenya power & Lighting Co. Ltd vs Sheriff Molana Habib [2018]eklr** where the court held that;

A permanent injunction which is also known as perpetual injunction is granted

upon the hearing of the suit. It fully determines the rights of the parties before the court and is thus a decree of the court. The injunction is granted upon the merits of the case after evidence in support of and against the claim has been tendered. A permanent injunction perpetually restrains the commission of an act by the defendant in order for the rights of the plaintiff to be protected. A permanent injunction is different from a temporary/interim injunction since a temporary injunction is only meant to be in force for a specified time or until the issuance of further orders from the court. Interim injunctions are normally meant to protect the subject matter of the suit as the court hears the parties.”

108. The Plaintiff has sought for **General damages** for illegal and unlawful trespass on its parcel of land. The court has found and held that the 1st Defendant had no justification in invading the Plaintiff's **Plot 300/7** and demolishing the structures. Even if the Plaintiff could have occupied the suit land illegally, then the 1st Defendant needed to issue the proper Notice and follow the right procedure of evicting the Plaintiff from the suit land. The 1st Defendant failed to do so, and its action was unlawful and the said illegal action

caused the Plaintiff to suffer damages., and thus it is entitled to compensation in form of general damages,

109. It is trite that **General damages** for **illegal** and **unlawful** trespass are issued when a person's legal right to possession and peaceful enjoyment of property has been infringed upon by trespass. Courts grant these damages to compensate for the harm caused, which includes the intrusion itself and any harassment or interference with the property owner's rights, even if the exact monetary value of the harm is not precisely quantifiable.

110. The Plaintiff has proved that the above happened to it through the actions of the 1st Defendant, and is thus entitled to award of general damages. For these reasons, the court awards the Plaintiff herein General Damages of **ksh 3000,000/=**, as compensation for loss of opportunity due to illegal and unlawful trespass by the 1st Defendant. See the case **of Kamoye v Tipango & 2 others [2024] KEELC 4227 (KLR)**.

111. The Plaintiff also sought for special damages of **ksh.70,000/=**. It is trite that special damages has to be pleaded and strictly proved. The Plaintiff herein did not call evidence to prove the special damages, and this court will not award it. **See the case of Mochama v Ogoti [2025] KEHC 1468 (KLR)**.

V. Is the 2nd Defendant entitled to his claim contained in the Counter-claim;

112. In his Counter- Claim dated **11th December 2024**, the 2nd Defendant sought for various declarations or prayers in its favour. Among the prayers sought was that he be declared to be the lawful and registered owner of the land parcel No plot 300/7 Narok Township, formerly known as **Plot No1 Block 7**.

113. The 2nd Defendant alleged that he was allocated **Plot No1 Block 7**, Narok Township in 1991, and he took possession of it until 2016, when he was evicted by the 1st Defendant. Further, he alleged that the Plaintiff claimed the Land in 2017/2018, and later the National Museum of Kenya.

114. The 2nd Defendant had alleged, and the burden of proof was upon him. he could have discharged this burden by calling to sufficient evidence to support his claim. It is evident that the 2nd Defendant was allocated **Plot No1 Block 7, Narok Township**. The Plaintiff was allocated **Plot 300/7 Narok Township**, which is the suit land.

115. Though the 2nd Defendant claimed his **Plot No1 block 7**, was illegally changed to **Plot No 300/7 Narok Township**, he did not call evidence to support his claim. The letter that he relied on from Narok County dated **8th September 2016**, was disowned by a letter dated written by DW2 on

27th May 2017, who alleged that letter was a forgery and the suit Land was owned by Mau Resort Limited.

116. Further, though the 2nd Defendant alleged that the 1st Defendant illegally demolished his car wash business in 2016, he did not raise any claim against the said County Government. He also claimed that the Plaintiff claimed the land in **2017/2018**, but it is clear that he did not complain against the Plaintiff, by filing a civil suit against it. The 2nd Defendant only joined the suit in **2024**, and this court cannot hold and find that his **Plot 1 Block 7**, is the same as **Plot 300/7 Narok Township**, which was allocated to **MAU Resort Limited**, the Plaintiff herein.

117. This court therefore finds and holds that the 2nd Defendant has failed to link **Plot No.1 block 7 Narok Township** with the suit land **Plot No. 300/7 Narok Township** which was allocated to the Plaintiff. Consequently, this court finds and holds that the 2nd Defendant has not proved his claim in the Counter-claim on the required standard of balance of probabilities.

118. For the above reasons, the court arrives at a finding that the 2nd Defendant is not entitled to any of his prayers as sought in the counter-claim.

VI. Who is entitled to costs of this suit and the Counter-claim

119. On the issue of costs, the court will be guided by section 27 of the Civil Procedure Act, which provides that costs are awarded at the discretion of the court. However, ordinarily costs are follow the event and are awarded to the successful litigant. See the case of ***R. vs Rosemary Wairimu Munene Ex-parte Applicant vs Ihururu Dairy Farmers Cooperative Society Ltd,***

“The issue of costs is at the discretion of the court as provided under the above section. The basic rule on the arbitration of costs follows the event... it is well recognised that the principle costs follow the event is not to be used to penalize the losing party; rather it is for compensating the successful party for the trouble taken in prosecuting or defending the case”

120. The Plaintiff is the successful litigant herein and is awarded costs of the suit and the Counter-claim.

121. Ultimately, after careful analysis of the evidence adduced by the parties herein, the exhibits produced, the written submissions and cited authorities, together with the relevant provisions of law, the court finds and holds that the Plaintiff herein has proved its case on the required standard as stated in the Plaint dated **2nd November 2016**. Consequently, judgement is entered for the Plaintiff

against the Defendants herein jointly and severally in terms of **prayers No a, b and c** of the said **Plaint**, dated **2nd November 2016**.

122. General Damages payable in terms of **prayer b** above, is **ksh 3000,000/=** and is against the 1st Defendant **only**, since it is its agents carried out the acts complained of by the Plaintiff.

123. Further, the court finds and holds that the 2nd Defendant had failed to prove his case on the required standard of balance of probabilities as stated in his **Counter-claim** dated **11th December 2024**. The said Counter-claim is dismissed entirely with costs to the Plaintiff.

Judgement accordingly.

Dated, signed and Delivered virtually at Narok this 16th day October 2025.

**L. Gacheru
Judge.**

Delivered online in the presence of.

Elijah Meyoki - Court Assistant

Ms Njeri Kariuki for the Plaintiff

Mr Musyoka for 1st Defendant

Ms Bosibori for 2nd Defendant.

**L. Gacheru
Judge.**

