

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC CASE NO. 180 OF 2017

KENYA

BROADCASTING

CORPORATION:.....PLAINTIFF

VERSUS

KOMAROCK RANCHING AND FARMING

CO-OPERATIVE SOCIETY LIMITED *alias*

KOMAROCK HOUSING AND COOPERATIVE

SOCIETY LIMITED:.....1ST DEFENDANT

KOMAROCK RANCHING COMPANY LIMITED:.....2ND

DEFENDANT

THE PERMANENT/PRINCIPAL SECRETARY

TO THE TREASURY:.....3RD DEFENDANT

THE PERMANENT/PRINCIPAL SECRETARY MINISTRY

OF INFORMATION AND COMMUNICATION:.....4TH

DEFENDANT

THE PERMANENT/PRINCIPAL SECRETARY, MINISTRY OF

LANDS, HOUSING AND URBAN DEVELOPMENT:.....5TH

DEFENDANT

NATIONAL LAND COMMISSION:.....6TH DEFENDANT

JUDGEMENT

The Plaintiff avers that it is the beneficial owner and in possession of L.R No. Donyo Sabuk/Komarock Block 1/9218 measuring 503.44 hectares situated along Kangundo Road wherein it has erected a transmission station. The said property is registered in the name of The Permanent Secretary, To the Treasury as a trustee of Ministry of Information and Communication, for use by the Plaintiff which is one of the State Corporations in the said Ministry.

That on diverse dates between 19th and 20th June 2013 the Defendants by themselves and/or agents and/or servants and/or persons claiming under them, entered into the said land and commenced the process of sub-division with the intention to allocate it to themselves and/or their members and the plaintiff had to seek the assistance of the Provincial Administration and Police, but the Defendants still threatens to illegally occupy the said land. If the Defendants carry out their said threats, the Plaintiff's broadcasting facilities and assets will be interfered with and/or disabled and the land will be alienated and the Plaintiff stands to suffer losses and damages.

The Plaintiff prays for Judgment against the Defendants jointly and severally for;

- a) A declaration that the Plaintiff is the beneficial owner and a trustee of the Government of Kenya in respect of LR No. Donyo Sabuk/Komarock Block 1/9218 and the Defendants have no right to claim the same.
- b) A mandatory injunction do issue restraining and prohibiting the Defendants whether by themselves, through agents and/or servants and/or all claiming under them from dealing in any manner whatsoever, including entering into, disposing of and/or transferring and/or interfering with the Plaintiff's occupation of LR No. Donyo Sabuk/Komarock Block 1/9218.
- c) General damages for trespass.
- d) Costs of the suit.
- e) Such further and/or other relief this Honourable Court deems fit and just to grant.

The 1st Defendant avers that it acquired all that parcel of land known as L.R No. 8825 in the year 1963 through purchase from William Crawford then comprising 27195 acres and the purchase price was financed by the members of the Society's through contribution of Kshs. 8,000/= each and 10 heads of cattle. That upon acquisition the Society did pass a resolution for the subdivision of the suit land as amongst its duly paid up members and each member was allocated 102 acres and there was a balance about 1244 acres which the Society reserved

as a nuclear estate for purposes of grazing its cattle. That sometime in the year 2012-2013 it did pass a resolution to subdivide the aforementioned parcel of land and allocate it to its members. That, upon embarking on the demarcation exercise the Society members were confronted by Provincial Administration thereafter resulting to this case. That upon making inquiries and investigations it came to the notice of the 1st Defendant that the parcel of land herein was actually registered in name of the 3rd Defendant who held the same parcel in trust for the 4th Defendant.

That the 1st Defendant also learnt that sometime in the year 1979 the Government through the 5th Defendant and the Commissioner of Lands, whose functions have since been taken over by the 6th Defendant had purported to acquire compulsorily all that land then known as LR. No. 8825. That, the same government through the then Commissioner of Lands and now 6th Defendant had already published a notice of intention to compulsorily acquire the portion of the land through a gazette notice dated 3rd August, 1979 and thereafter proceeded to acquire a total of 1,250 acres and the same would be later registered as L.R. No. Donyo Sabuk/Komarock Block 1/9218. That upon acquiring the said parcel of land, the said bodies of government proceeded to give the Plaintiff this parcel of land to put up broadcasting equipment but no consultation was done neither did the government value the property for the purposes of compensating the 1st Defendant, so the 1st Defendant was not

compensated for their land that was compulsorily acquired making the acquisition illegal and unlawful. That, the Plaintiff only used 23 acres to put up the equipment and that the balance was to be used for public utilities as it was alleged or that the remainder reverts back to the 1st Defendant as provided by law, however the same was illegally leased to the 2nd Defendant.

That, on 16th July, 2014, 1st Defendant wrote to the Registrar of Titles requesting for a search on the said parcel of land and it was confirmed that the parcel of land had been surrendered to the Government but did not give an explanation on whose behalf it was surrendered or who surrendered the same. That, the 1st Defendant further wrote to the Chief Lands Registrar requesting for a copy of the Green Card and the 7th Defendant acting on the directions of the Chief Lands Registrar gave a certified copy of the Green Card which showed that as at 17th February, 2012, LR. No. Ndonyo Sabuk/Komarock Block 1/9218 was registered in the name of the Government of Kenya. That, correspondence acquired through the 1st Defendant's investigations confirmed that the Plaintiff had only used a small portion of the land leased to them and that the 6th Defendant on 11th September 2001 directed that the excess be surrendered to the government and this position was supported by the 4th Defendant through a letter dated 28th March, 2002. That, the 1st Defendant also learnt that this remainder of the parcel of land was illegally registered in the name of the 2nd

Defendant herein which is a completely different entity from the 1st Defendant and has no affiliation whatsoever to the 1st Defendant.

That the purported notice to acquire was never brought to the 1st Defendant's notice and/or served upon the attention of the 1st Defendant and they only learnt of it when this matter came to court. That the parcel of land No. LR. 9218 arising from subdivision of L.R. No. 8825 is the property of the 1st Defendant save for the 23 acres that it voluntarily gave to the Plaintiff herein to put up its transmission station. That the acquisition and/or registration of LR No. 9218 to the Plaintiff herein is unprocedural illegal and unlawful and is a violation of the rights of the 1st Defendant to own property.

That the 1st Defendant therefore prays for the cancellation of the title issued to the Plaintiff and the same be registered in the name of the 1st Defendant and/or in the alternative the Government do fully compensate the 1st Defendant for the loss occasioned to its members. The 1st Defendant prays that the Plaintiff's suit be dismissed and Judgment be entered for the 1st Defendant for orders:

- a) Cancellation of the title No. LR. 9218 in the name of the Permanent Secretary to the Treasury as trustees of the government and all other subsequent leases and/or allotments.

- b) That the Land Registrar, Machakos be ordered to register the suit land LR. No. 9218 in the names of the 1st Defendant and/or in the alternative.
- c) That full compensation be paid to the 1st Defendant for the wrongful acquisition of the suit land by the government.
- d) Costs of the suit be paid by the Plaintiff.

During the pendency of this suit, one Hon. Senator Johnson Muthama made an application to be enjoined and was enjoined as an Interested Party to these proceedings. The Interested Party later on 21st May 2019 filed Machakos ELC No. 57 of 2019 vide a Plaint dated the same date. In the said Plaint, the Plaintiff therein sought the following reliefs;

- a) A Declaration that the Ministry of Information and Communication is beneficial owner of land known as LR NO DONYO SABUK/KOMAROCK BLOCK 1/9218 and the 4th and 5th Defendants in particular have no rights to claim the same.
- b) A mandatory injunction do issue restraining and prohibiting the 4th and 5th Defendants whether by themselves, through agents and or servants and/or all claiming under them dealing in any manner whatsoever, including entering into, disposing of and/or transferring and/or interfering with the Ministry of information and communication's occupation of LR NO DONYO SABUK/KOMAROCK BLOCK 1/9218.

- c) Orders nullifying the Letter of Allotment dated 1/7/1993 in the name of the 5th Defendant.
- d) Costs of the suit.
- e) Such further and/or other relief this Honourable Court deems fit and just to grant.

Again, during the pendency of the present suit, the 1st Defendant filed Machakos Petition No. 15 of 2015.

Eventually, all the suits mentioned above were consolidated and the ELC No. 180 of 2017 Kenya Broadcasting Corporation vs Komarock Ranching and Farming Cooperative Society Limited and Another became the leading file. On the 5th June 2025 a notice of withdrawal was filed by the Advocates of the Interested Party, Hon. Senator Johnson Muthama withdrawing his interest from participation in the instant suit. The witness statement dated 20th April 2021, list of witnesses and list of documents dated 6th April 2021 were also withdrawn. The notice was allowed by the Court on the 9th June 2025.

The court has considered the pleadings, evidence presented before it, submissions made as well as the authorities relied upon by the parties. The issues for determination are:

- a) *Who is the lawful proprietor of the land parcel known as LR No. Donyo Sabuk/Komarock Block 1/9218?*
- b) *What orders should this court issue?*

The Land Registration Act is very clear on issues of ownership of land and Section 24(a) of the Land Registration Act provides as follows;

“Subject to this Act, the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.”

Section 26 (1) of the Land Registration Act states as follows;

“The Certificate of Title issued by the Registrar upon registration ... shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner... and the title of that proprietor shall not be subject to challenge except –

- a. On the ground of fraud or misrepresentation to which the person is proved to be a party; or*
- b. Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”*

PW2, Paul B. Jilani testified that he is the Corporation Secretary of the Plaintiff Corporation and he is conversant with the facts of this matter and he is duly authorized and competent to make this statement. He had been an employee of the Plaintiff herein since the year 2011. One of the transmitting stations wherein the Plaintiff carries its functions is at LR. No. Ndonyo Sabuk/Komarock Block 1/9218 situated along Kangundo Road measuring about 503.44 hectares. That

The title documents to LR. No. Ndonyo Sabuk/Komarock Block 1/9218 is in the name of the Government of Kenya as a trustee of the Ministry of Information and Communications wherein the Plaintiff is one of the State Corporations. PW2, further informed the Court that the said property was lawfully acquired by the Government. He emphasized that the Government followed the law during the compulsory acquisition. I have carefully perused the documents produced as exhibits and find that the Government is the registered owner of the suit property. The Court of Appeal in *Munyu Maina vs Hiram Gathiha Maina* (2013) eKLR held that;

“We state that when a registered proprietor’s root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which need not be noted on the register. It is our considered view that the respondent did not go this extra mile that is required of him and no evidence was led to rebut the appellant’s testimony.”

Section 26 of the Land Registration Act which guarantees the concept of indefeasibility of title does not extend to any property that has been found to have been unlawfully acquired. The Court of Appeal in *Attorney General vs*

Torino Enterprises Limited (Civil Application 84 of 2012) (2022) KECA 78 (KLR) (4 February 2022) (Judgment) held that;

“We have considered the provisions of section 26 of the Land Registration Act (repealed) in light of the provisions of Article 40 of the Constitution which guarantees protection of right to property and it is our considered view that the concept of indefeasibility of title is subject to Article 40 (6) of the Constitution which states that: “The rights under this Article do not extend to any property that has been found to have been unlawfully acquired.” Guided by the provisions of Article 40 (6) of the Constitution, we hold that the concept of indefeasibility or conclusive nature of title is inapplicable to the extent that title to the suit land was unlawfully acquired. See Denis Noel Mukhulo & Another v. Elizabeth Murungari & Another [2018] eKLR.”

The Benard Maembe (DWI) testified that he is the Chairman of Komarock Ranching and Farming Co-operative Society Ltd. The aforesaid Society was duly registered on the 12th day of February, 1963, The Societies main aim was to acquire land and distribute its members and empower them economically. That in the year 1963, the Society bought, 27,195 acres of land from William Grawford. The land was known as Land Reference Number 8825. The land was converted from lease to freehold and members were given 20 acres of land each and the remainder retained by the Society. In 1979, the government through the

Commissioner of Land published a Notice of Intention to compulsory acquire a portion of LR Number 8825 via Gazette Notice Number 2173. Before this notice, the then Voice of Kenya had entered into the Society's land and built transmission masts and houses on a 23 acre portion of LR Number 8825.

That on the 31st July, 1983, the society passed a resolution that the society's land would be subdivided and each member given 100 acres and approximately 1,244 acres set for a nuclear dairy estate. The 1,244 acres is now registered as LR Number Donyo Sabuk/Komarock 1/9218. The cattle bought for the dairy estate died and it remained vacant apart from 23 acres used by Republic of Kenya Broadcasting Co-operation. On the 8th October, 2011, KBC caused to be published on the Daily Nation a Caveat Emptor on Donyo Sabuk/Komarock 1/9218. The Society instructed its advocate, to write to KBC demanding proof of ownership but the same went unanswered. When the society sought to subdivide the land Donyo Sabuk/Komarock Block 1/9218 amongst its members, its members were accosted by the OCS Kangundo Police Station who informed them that the parcel of land had been leased to the Permanent Secretary, Treasury.

The 1st Defendant, then wrote to the Registrar of Titles on 16th July, 2014 to supply them with a search for the land parcel LR 8825 (L.R 3285) who in turn responded that the same had been surrendered to Government of Kenya but he

could not explain to them on whose behalf or who surrendered it. When they embarked on further investigations, they came across a document written by the Director of Surveys, one Anne Alula to Commissioner of Lands on 22nd June, 2011, forwarding an alleged amended Registry Index Map for LR Number 8825 indicating that it had a new number 9218. The 1st Defendant, then wrote to the Chief Land Registrar, requesting for a copy of the Green Card. They were then referred to the District Land Registrar, Machakos who was directed to deal accordingly on 4th August, 2014. On the 4th September, 2014, the District Land Registrar gave the society a certified copy of the Green Card which showed that on 17th February, 2012 Donyo Sabuk/Komarock Block 1/9218 was registered in the name of the Government of Kenya which was the alleged standard of registering Co-operative Society's Land on behalf of Cooperative Societies.

DW1, further stated that the Society has not grabbed any land nor has it threatened to enter or damage property belonging to KBC on the 23 Acres. The contentious issue is how the land, LR Number Donyo Sabuk/Komarock 1/9218 was compulsory acquired by the Government. The Society, alleges that the Government did not follow the laid procedure as provided by the law at the time of the alleged acquisition by the Government of Kenya on behalf of the Plaintiff. He stated that when he took over Chairmanship, his predecessor did not handover documents to him and he took over from scratch. That he had no business with any previous documents as they had changed the objectives. As

far as he was concerned the land was theirs and the Society had not been compensated. The 1st Defendant, maintains that their constitutional rights were violated and they should be given back their land or be compensated.

Article 40 (3) of the Constitution of Kenya 2010 provides that;

The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation-

(a) results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or

(b) is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that-

(i) requires prompt payment in full, of just compensation to the person; and

(ii) allows any person who has an interest in, or right over, that property a right of access to a court of law.

I have perused the court records and have come across the following relevant documents to wit;

1. Copy of a letter, Ref No. VAL.513/43 dated 18th February 1980 from the Commissioner of Lands to the PS, Ministry of Information and Broadcasting - Land Acquisition Act (Cap 295),(page 44 in the trial

bundle) confirming that the payment cheque was received and forwarded to the 1st Defendant.

2. Copy of a Letter, Ref No. MIB.9/28/34 dated 16th February 1980 from the PS, Ministry of Information and Broadcasting to the Commissioner of Lands, (page 45 in the trial bundle) forwarding the compensation payment cheque.
3. Copy of a Letter, Ref No. Val.513/40 dated 7th February, 1980 from the Commissioner of Lands to the Chairman, Komarock Ranching & Farming Cooperative Society Limited - Land Acquisition Act (Cap 295) LR 8825 (Part) 500 hectares, Komarock Transmission Station. (page 47 in the trial bundle) enclosing the said payment cheque.
4. Copy of a letter, Ref No. KRR/4/6/234 dated 15th January, 1980 from the Chairman Henry Muli, Komarock Ranching & Farming Cooperative Society Limited to the Commissioner of Lands referring to the Gazette Notice Nos. 2173 and 2174 of 1979 published on 3rd August, 1979 - Award. (page 48 in the trial bundle) and withdrawing any intention to appeal to the High Court against the award.
5. Copy of Payment Voucher dated 3rd January, 1980 to Komarock Transmitting Station LR No.8825 for a sum of Kshs. 408,500/= for the Land. (page 49 in the trial bundle)

6. Copy of a letter, Ref. No. Val 513/32 dated 8th November, 1979 to Chairman Komarock Ranching & Farming Cooperative Society Limited from the Commissioner of Lands. (page 50 in the trial bundle) confirming possession of the suit property. .
7. Copy of the Gazette Notice Nos. 2173 and 2174 - Land Acquisition Act (Cap 295) dated 3rd August, 1979 for LR No.8825 Komarock. (page 51 in the trial bundle)
8. Copy of Part Development Plan (PDP) No. 611 for LR No.8825 Thika and Machakos District (page 52 in the trial bundle)

PW2 testified that Kenya Broadcasting Corporation has been since that period in possession and occupies LR No. Donyo Sabuk/Komarock Block 1/9218 wherein it has been carrying on transmission and broadcasting through its transmitters which were erected thereon.

The current statutory framework for compulsory acquisition is founded under Part VIII of the Land Act No. 6 of 2012. Section 107(1) of the Land Act, provides that;

“Whenever the national or county government is satisfied that it may be necessary to acquire some particular land under section 110, the respective Cabinet Secretary or the County Executive Committee Member shall submit a request for acquisition of public land to the Commission to acquire the land on its behalf.”

In the instant case, the Government was acquiring land on behalf of the Kenya Broadcasting Corporation. Section 111 of the Land Act provides that;

(1) If land is acquired compulsorily under this Act, just compensation shall be paid promptly in full to all persons whose interests in the land have been determined.

(A) The acquiring body shall deposit with the Commission the compensation funds in addition to survey fees, registration fees and any other fees before acquisition.”

(2) The Commission shall make rules to regulate the assessment of just compensation.”

The Plaintiffs have produced several documents as proof of payment; Copy of a Letter, Ref No. MIB Copy of a letter, Ref No. KRR/4/6/234 dated 15th January, 1980 from the Chairman Komarock Ranching & Farming Cooperative Society Limited to the Commissioner of Lands - Gazette Notice Nos. 2173 and 2174 of 1979 published on 3rd August, 1979 - Award. (page 48 in the trial bundle); Copy of Payment Voucher dated 3rd January, 1980 to Komarock Transmitting Station LR No.8825 for a sum of Kshs. 408,500/= for the Land. (page 49 in the trial bundle); Copy of a letter, Ref. No. Val 513/32 dated 8th November, 1979 to Chairman Komarock Ranching & Farming Cooperative Society Limited from the Commissioner of Lands. (page 50 in the trial bundle).

I find that Henry Muli, the then Chairman of the said society served during the period of the compulsory acquisition was actively involved in the transaction and his letter dated 15th January, 1980 (page 48 in the trial bundle) confirmed having withdrawn their intention to appeal to the High Court and agreeing to the Award of Kshs. 408,500/= for the 500 Hectares of the land acquired. I am satisfied that after the said Gazette Notices and upon participation by the affected party, Komarock Ranching and Farming Co-operative Society Ltd was duly compensated and gave vacant possession of the land.

In the case of Patrick Musimbi vs National Land Commission & 4 Others Petition No. 613 of 2014 the court held that;

“As the taking of a person’s property is a serious invasion of his proprietary rights, the application of constitutional or statutory authority for the deprivation of those rights require to be most carefully scrutinized. In short, in our view, there must always exist a presumption against an intention to interfere with vested property rights as the legislative and constitutional intentions is always the protection rather than interference with the proprietary rights.....the power to expropriate private property as donated in the State by both the Constitution and statute law (the Land Act) leaves the private land owner with no alternative. The power involves the taking of a person’s land against his will. It is a serious invasion of his proprietary rights through

the use of statutory authority. The private land owner has no alternative but wait for compensation. It is consequently necessary that the court must remain vigilant to see to it that the State or any organ of the State does not abuse the constitutional and statutory authority to expropriate private property. It is on this basis that courts have consistently held that the use of statutory authority to destroy proprietary rights requires to be most carefully scrutinized. Just compensation is mandatory” ▶

In the case of Horn vs Sunderland Corporation (1941) 2KB 2640 the court held that;

“The word “Compensation” is almost of itself carried the corollary that the loss to the seller must be completely made up to him, on the ground that unless he receives a price that fully equated his pecuniary detriment, the compensation would not be equivalent to the compulsory”

It is therefore clear that where land has been acquired compulsory from an owner that just compensation is to be paid in full to the said affected person(s). This is in line with the Constitutional requirement under Article 40 (3) of the Constitution of Kenya and that person should not be deprived of their property of any description unless the acquisition is for a public purpose and subjected to prompt payment in full of just compensation. In the Compulsory acquisition of land the law imposes an obligation on the full payment upon National Land Commission. Section 117 (1) of the Land Act 2015 provides;

“If the amount of any Compensation awarded is not paid, the commission shall on or before the taking of possession of the land open a special account into which the commission shall pay interest on amount awarded”

The 1st Defendant submitted that, a gazette note seems to have been published on 30th July 1979 however, the 1st Defendant who was the owner of the parcel of land known as LR. No. 8825 came to know about this notice sometimes in the year 2013 when this suit was filed. That they were never served in accordance with Section 33(c) of the Land Acquisition Act Cap 295 Laws of Kenya. That there is also no evidence to demonstrate what transpired after the alleged failure publication of notice of intention to compulsorily acquire a part of the 1st defendants land. There is no evidence of service by any of the other methods of service provided for under Section 33 (d) of the said Act. The 1st Defendant is estopped from denying any knowledge of the compulsory acquisition of the said suit property as it is clearly demonstrated by the correspondence on record that the then Chairman Henry Muli fully participated in the process. The 1st Defendant stated that this entire case is based on fraud but I find that no evidence of fraud on the part of the Plaintiff has been adduced.

Section 109 of the Evidence Act Cap 80 is clear that;

"The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person."

The well-known mantra *"he who asserts must prove."* Was well pointed out by the Court of Appeal in *Jennifer Nyambura Kamau vs Humphrey Mbaka Nandi* (2013) eKLR as follows;

"We have considered the rival submissions on this point and state that Section 107 and 109 of the Evidence Act places the evidential burden upon the appellant to prove that the signature on these forms belong to the respondent. Section 107 of the Evidence Act provides that "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." Section 109 stipulates that the burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence. If an expert witness was necessary, the evidential burden of proof was on the appellant to call the expert witness. The appellant did not discharge the burden and as Section 108 of the Evidence Act provides, the burden lies on that person who would fail if no evidence at all were given on either side."

In *James Muigai Thungu vs County Government of Trans-Nzoia & 2 others* (2022) eKLR it was held that;

“It is now settled law that whosoever asserts the existence of a legal right or liability is vested with the burden to prove it except in so far as the law may expressly exempt him or her. Section 107 of the Evidence Act Chapter 80 Laws of Kenya succinctly states:

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.

Also, further, Section 108 of the Act states thus:

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Again Section 109 of Act refers to the burden of proof of a particular fact. It states that:

The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

Indeed by a letter dated 27th June 2012 from J. M, Mativo & Co. Advocates for the 1st Defendant which letter has already been produced as exhibit (pages 31 to 33 of the trial bundle), the 1st Defendant’s Advocate states that;

“that sometimes in the 1970s or thereabouts, our aforesaid client, the above Society surrendered to the Government of Kenya a parcel of land measuring approximately one thousand ,two thousand and fifty acres or

thereabouts out of which approximately thirty acres or thereabouts were to be utilized for construction of transmission equipment by the Ministry of Information and Communication.”

The only concern the 1st Defendant had is that the same had been illegally allocated to a third party and was not for public use as envisaged. That there was an allotment letter in the name of Komarock Ranching Company dated 1st July 1993. The Plaintiff denied any knowledge of the same.

The contents of the said letter which was authored by the 1st Defendant's Advocate, confirms the land was surrendered and hence the lawful acquisition of the suit land by the Government. Therefore, DW1's evidence to the effect that there was no compulsory acquisition cannot stand. I find that the compulsory acquisition of the suit property by the Government was lawful and regular in the circumstances of this case. I find the 1st Defendant's Counter Claim and Petition unmerited and I dismiss them with costs.

On the issue of trespass, PW1, Lt. Col (Rtd) Ament Mutuku King'oo stated that, the Defendants and/or its agents and/or servants and/or persons claiming under it entered into the said land with the intention of sub-dividing and allocating the same to its members and the Plaintiff had to seek the assistance of the Provincial Administration and the local Komarock Police Station to safeguard the suit land. The Plaintiff herein, filed the Notice of Motion dated

21st June, 2013, seeking for a temporary injunction and it was granted. Again on 1st August, 2017, the said persons together with a Surveyor, entered into the said land and commenced the sub-division by placing beacons on the sub-divided portions. Thereafter the Court allowed the Plaintiff's temporary injunction.

The Court of Appeal was of this opinion in Jamal Salim vs Yusuf Abdulahi Abdi & another (2018) eKLR and stated that;

“In the text Clerk & Lindsell on Torts, Sweet & Maxwell, 18th Edition, at page 923, trespass to land is defined as follows:- “Trespass to land consists of any unjustifiable intrusion by one person upon land in the possession of another.

At page 927 of the same text discusses who may sue for trespass and it states as follows:- “Trespass is actionable at the suit of the person in possession of land, who can claim damages or injunction, or both... Similarly, a person in possession can sue although he is neither owner nor derives title from the owner, and indeed may be in possession adverse to the owner.”

It is therefore not necessary for one to establish ownership of land to sustain a claim for trespass. It is enough that the person suing is in possession.”

It has not been disputed that the 1st Defendant trespassed on the suit properties.

The 1st Defendant submitted that, sometime in the year 2012-2013 the 1st

Defendant did pass a resolution to subdivide the aforementioned parcel of land and allocate it to its members but immediately after embarking on the demarcation exercise the Society Members were confronted by Provincial Administration thereafter resulting to this case.

In Philip Ayaya Aluchio vs Crispinus Ngayo (2014) eKLR the court held that;

“The defendant has constructed on the plaintiff's land. This in itself is damage and wastage of the plaintiff's land. The plaintiff is entitled to general damages for trespass. The issue which arises is as to what is the measure of such damage?. It has been held that the measure of damages for trespass is the difference in the value of the plaintiff's property immediately before and immediately after the trespass or the cost of restoration, whichever is less. See Hostler – VS – GreenPark Development Co. 986 S. W 2d 500 (No. ct App. 1999).

The plaintiff herein did not adduce any evidence as to the state of his property before and after the trespass. It therefore becomes difficult to assess general damages for trespass. There was no evidence adduced on the nature of house which the defendant has constructed on the suit land. The court is at a disadvantaged position in reaching at a cost which might be reasonable for restoration of the property to its former state. However, as I have found that the plaintiff is entitled to general damages for trespass, I will award a nominal sum of Kshs. 100,000/= as general

damages for trespass. This cost will go towards restoration of the suit land to its former state.”

I find that at the time of compulsory acquisition by the Plaintiff the suit property was vacant. However, the Plaintiff has not adduced evidence as to the status of their suit land before and after the trespass and as they are entitled to general damages for trespass, the court will award a nominal sum of Kshs 1,000,000/= as damages. I find that the Plaintiff has proved its case on a balance of probabilities and I grant the following orders;

1. A declaration that the Plaintiff is the beneficial owner and a trustee of the Government of Kenya in respect of LR No. Donyo Sabuk/Komarock Block 1/9218 and the Defendants have no right to claim the same.
2. A mandatory injunction to issue restraining and prohibiting the Defendants whether by themselves, through agents and/or servants and/or all claiming under them from dealing in any manner whatsoever, including entering into, disposing of and/or transferring and/or interfering with the Plaintiff's occupation of LR No. Donyo Sabuk/Komarock Block 1/9218.
3. General damages of Kshs. 1,000,000/= for trespass.
4. Costs of the suit to the Plaintiff.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 17TH DAY
OF DECEMBER 2025.**

N.A. MATHEKA

JUDGE

ORIGINAL