



**Kenya Agriculture and Livestock Research Organization (KALRO)
v County Government of Trans Nzoia (Environment and Land Case
26 of 2022) [2025] KEELC 18362 (KLR) (10 December 2025) (Judgment)**

Neutral citation: [2025] KEELC 18362 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND CASE 26 OF 2022
CK NZILI, J
DECEMBER 10, 2025**

BETWEEN

**KENYA AGRICULTURE AND LIVESTOCK RESEARCH ORGANIZATION
(KALRO) PLAINTIFF**

AND

COUNTY GOVERNMENT OF TRANS NZOIA DEFENDANT

JUDGMENT

1. The plaintiff approached this court through an amended plaint dated 8/11/2023. It seeks:
 - a. Declaration that it is entitled to exclusive and unimpeded right of possession and occupation of land comprising KALRO Food Crops Research Institute, Kitale, measuring approximately five acres and developed with staff houses Nos. L987, L988, L989, and L990, hereinafter the suit property.
 - b. Declaration that the defendant, whether by itself, servants or agents, or otherwise howsoever, has no right, interest, or title to the suit property, and is wrongfully in occupation, if at all, and is a trespasser on the same.
 - c. Declaration that the defendants, whether by themselves, servants, agents, or otherwise, are not entitled to remain on the suit property.
 - d. An order directing the Land Registrar, Nairobi Land Registry, to rectify the certificate of title and deed plan of all that parcel of land situated South West of Kitale Municipality in Trans Nzoia, being L.R. No. 27194 -IR 96987, dated 4/2/2005, to include the suit property.



- e. Permanent injunction restraining the defendant, whether by itself, assignees, servants, agents, or otherwise, howsoever, from entering, accessing, occupying, remaining on, or continuing in occupation of the suit property, or erecting any structures thereon.
 - f. Vacant possession.
 - g. General damages for trespass.
2. The plaintiff contends that at all material times it has been the owner, possessor, user, and developer of a parcel of land comprised of Kitale Research Institute land being L.R. No. 27194 (IR 96987), situated in S.W. of Kitale Municipality in Trans Nzoia, wrongly indicating the size as measuring 416.3 Ha, leaving out approximately 2 Ha, comprised in the suit property.
 3. The plaintiff avers that part of the suit property measuring 5 acres has 4 developed staff houses, which extend across all the parcel of land registered as L.R. No. 27194, which have at all material times been occupied or reserved for its use, or used with no boundary or fence between the two parcels of land, in furtherance of its public agricultural research mandate.
 4. Further, the plaintiff avers that in the period since 21/09/2022, the defendant, together with its agents, employees, servants, contractors, and labourers, wrongly entered and took possession of the suit property and have thereafter threatened to be in occupation thereof and continue to trespass thereon.
 5. The plaintiff avers that the acts of the defendant comprised:
 - a. Erecting beacons on the suit property.
 - b. Wasting the suit property by grading it with construction machinery and constructing and developing structures for a public market thereon.
 - c. Forcefully occupying the suit property and depriving it of its use and quiet enjoyment without any lawful authority or right.
 6. The plaintiff avers that by virtue of the acts of trespass, invasion, destruction, and wrongful occupation, the defendant has misused, damaged, wasted, destroyed, polluted, and or degraded the suit property and deprived it of its use and enjoyment. The plaintiff avers that unless restrained, the defendant intends to continue to wrongly deny it the use and dispossess it of its occupation and access to the suit premises, hence the suit.
 7. Again, the plaintiff avers that as a consequence, it has incurred loss and damage by being deprived of the use and quiet enjoyment of the suit property, by the defendant's construction of a public market with its institution, yet it is a gazetted quarantine centre, hence exposing its property staff and research processes to risks of insecurity and the corruption of research results.
 8. The defendant opposed the suit through a statement of defence and counterclaim dated 28/2/2023, denying that the suit property is located on the North West side of Kitale Business District (CBD), next to Kitale Polytechnic, off Kisawai Road, and stating that the land is unsurveyed.
 9. The defendant denies that the certificate of title issued in 2005 left out 2 Ha of land that was supposed to be part of the initial 416.3 Ha. The defendant avers that the plaintiff's alleged construction of staff houses on the suit parcel of land constituted an admission of trespass, since the parcel in question is within the boundaries of Kitale Municipality, and therefore outside the plaintiff's land.
 10. Equally, the defendant avers that by a letter dated 22/4/2022 to the County Commissioner, it reiterated its ownership of the disputed land, and its intention to enter the same and relocate 2000 traders from



- the town, to pave the way for the construction of Kitale - Suam Road. Upon the issuance of the notice, the defendant avers that it relocated the traders who ply their trade on the suit property until 20/11/2022, when the court issued a temporary injunction pending a survey, and that the Kitale-Suam Road construction was underway.
11. The defendant avers that it owns the suit property and that it remains public land, currently being used by traders who consist of members of the public. The defendant termed the suit an afterthought, calculated to vex it, since the plaintiff does not deserve the prayers sought.
 12. The defendant avers that the representative visited the suit property in preparation for it to be used as a public utility. By way of a counterclaim, the defendant avers that the plaintiff is a trespasser on the suit property and has built thereon staff houses Nos. L987, L988, L989, and L990, which it has continuously used to benefit its staff, to the exclusion of the defendant.
 13. Again, the defendant avers that the said staff houses are built on its piece of land and were illegally being occupied by the plaintiff's staff. The defendant avers that it is the legal owner of the suit property as public property, within Kitale Municipality, measuring approximately 5 acres, and that the plaintiff, its agents, servants, or employees should be evicted from it.
 14. The defendant counterclaims for:
 - a. Declaration that it is the lawful owner of the suit property.
 - b. Eviction order.
 - c. Damages for trespass.
 - (d) Dismissal of the plaintiff's suit with costs.
 15. The counterclaim had no verifying affidavit accompanying it.
 16. By a reply to defence and defence to counterclaim dated 6/3/2023, the plaintiff stated that the buildings and or the staff houses on the suit property were built by the Government of Kenya, for and on behalf of the Ministry of Agriculture and Livestock, and were transferred and or assigned to the possession and use of the plaintiff's predecessors in title.
 17. The plaintiff states that the parcel comprised in L.R. No. 27194 is registered under its name together with the suit property measuring approximately 5 acres and has been public land alienated and reserved for its use and its predecessors in title for agricultural research, which is the plaintiff's public statutory mandate.
 18. The plaintiff denies that its suit is statute-barred as alleged or at all; otherwise, the defence comprised of mere denials. As to the counterclaim, the plaintiff denies the alleged acts of trespass; otherwise, it was at all material times, the legal owner of all the parcel of land comprised in L.R. No. 27194, together with the suit property measuring approximately 5 acres or thereabout, developed with the plaintiff's staff houses and or buildings No. L987, L988, L989, and L990; hence, the counterclaim is unmerited, an afterthought, and raises no reasonable claim.
 19. At the trial, Patricia Ogotu, the corporation secretary of the plaintiff, testified as PW1. She relied on a witness statement dated 11/10/2022 and her averment in an affidavit sworn on 11/10/2022 as evidence-in-chief. PW1 told the court that the plaintiff is the national premises on agriculture and livestock public research organization established under the *Kenya Agricultural and Livestock Research Act* No. 17 of 2012, with a statutory mandate to promote, streamline, coordinate, and regulate research in crops, livestock, genetic resources, and biotechnology in Kenya.



20. PW1 told the court that the Act also mandates the plaintiff to expedite equitable access to research information, resources, and technology to the public and promote the application of research findings and technology in the field of agriculture in Kenya.
21. PW1 said that as a state corporation, KALRO has perpetual succession and a commission sent under the Act, hence it is a public legal entity with the capacity to own movable and immovable property.
22. PW1 told the court that the plaintiff is a successor of Kenya Agricultural Research Institute (KARI) and under Section 54 of the act, it acquires all finds, assets and other property, movable or immovable, which were vested in the former institution, such as KARI and also acquired all rights, powers, liabilities and duties which were vested in the former research institution, immediately before the Act came into force in 2013.
23. Further, PW1 said that KARI was established under the Science and Technology Act Cap 250 (repealed), as a State Corporation, and it owned, ran, and operated the KALRO Food Crop, Research Institute, Kitale, under the name and style of KARI National Food Crops Research Centre Kitale.
24. PW1 said that as a public institution, KARI was statutorily mandated to carry out research in agriculture and veterinary science, and for these purposes, it owned, possessed, and or occupied 75 parcels of land throughout Kenya, including the land occupied by KALRO Food, Crops and Research Institute Kitale being L.R. No. 27194 (IR 76987), leaving out approximately 2 Ha comprised in the suit property developed with staff houses No. L987, L988, L989, and L990, with no boundary or fence in between, and as material times have been in the custody, possession, use, and occupation of the plaintiff's staff, as shown in the certificate of title and deed plan.
25. PW1 contended that the suit property, as shown in the referenced documents, and the survey map borders L.R. No. 2116/713, registered in the name of Kitale National Polytechnic, and is not registered in the name of anyone or claimed by any third party, save for the action of the defendant giving rise to this suit.
26. PW1 told the court that on 21/1/2022, four defendant's servants and a representative one Hon. Boniface Wanyonyi County Executive Committee Member land, Hon. Simon Kisage County Executive Committee Member trade, Mr. Linakar Nzola, Chief Officer Lands, and Miss Christine Kapsilolo, a County Surveyor, visited the suit property situated in Kipsongo area, alleging that they had instructions from the defendant to survey the suit property, for purposes of developments, to which the acting institute director informed them that the land belongs to the plaintiff and that they had no right or authority to enter into and survey the same.
27. PW1 told the court that by a letter dated 31/7/2022, the defendant wrote to the plaintiff informing it that it intended to relocate approximately 200 traders from the town centre to the suit property and that on 11/2/2022, it would survey the suit property to determine the boundaries between the plaintiff's land and the said property.
28. Further, PW1 told the court that by a letter dated 7/4/2022, it wrote to the County Commissioner, Trans Nzoia, copied to the County Secretary of the defendant, objecting to the proposed relocation of the traders to its property, which letter was responded to by a letter dated 22/4/2022 by the defendant, copied to the Commissioner, alleging ownership of the suit property, earmarked for development and indicating that it will enter and relocate the 200 traders thereon, pending resolution of the issue with the plaintiff through the County Commissioner's office.
29. In addition, PW1 said that on 21/9/2022, the defendant invaded the suit property, occupied, and started developing or constructing a market thereon, and vowed to continue with the trespass and



- unlawful actions with impunity and to the detriment, loss, and injury to the plaintiff as per the photographs before the court.
30. PW1 told the court that the acts of the defendant were unlawful, on an already alienated public land held, used, and occupied by its servants or employees, and reserved for use for public agricultural research purposes, which is a public good, which acts have put the said research facilities, activities, programmes, and personnel at the risk of adulteration and interference by an authorised human access, thereby occasioning the plaintiff and its staff living and working thereon to possible loss and damage.
 31. PW1 relied on documents in the initial and supplementary list dated 10/10/2022 and 14/9/2023. PW1 said it had taken the plaintiff close to 17 years to seek the rectification of the title; otherwise, it has, at all material times, enjoyed peaceful quiet possession without any interruption of the disputed portion. PW1 said that the defendant knew of the possession throughout the period until 2021, with the developments captured in the joint survey report commissioned by this court.
 32. PW1 said that the cause of action arose after the defendant allegedly erected beacons on the property, committed acts of trespass, and illegal construction on the suit property with effect from 21/9/2022. PW1, at this juncture, was stood down to produce original documents.
 33. PW1 produced a copy of title No. 27194 dated 14/2/2005, accompanied by a deed plan as P. Exhibits. No. (1) and (2), letter dated 7/4/2022 as P. Exhibit. No. (3), letter dated 22/4/2022 as P. Exhibit. No. (4), letter dated 22/4/2022 as P. Exhibit. No. (5), deed plan for L.R. No. 2116/713 as P. Exhibit. No. (6), land sketch on deed plan No. 257934 for L.R. No. 27194 as P. Exhibit. No. (7), bundle of photographs as P. Exhibit. No. 8(a)-(f), House allocation for LG91, 88, and 90, as P. Exhibits. No. (9), (10), and (11), letter dated 18/12/2012 as P. Exhibit. No. (12) and a letter dated 16/6/21015 by the area chief as P. Exhibit No. (13). PW1 told the court that the disputed land is yet to be surveyed or allocated to anyone by the National Land Commission, but neighbours its P. Exhibit. No. (1).
 34. PW2 was Dr. Japheth Masuma Wanyama. He relied on a witness statement dated 4/9/2023 as his evidence-in-chief. PW2 to the court that he is the director, lives and works within the institute in Kitale. PW2 associated himself with the history of the plaintiff and its mandate as narrated by PW1.
 35. Further, PW2 emphasized that the suit property is not trust land, does not belong to the defendant, and neither was it owned nor claimed by the defendant's predecessor in title, even if it falls within Kitale Municipality Block 6; otherwise, L.R. Nos. 27194 and 2116/713 all fall within Kitale Municipality Block 6. PW2 confirmed that correspondences as of 31/1/2022, 7/4/2022 and 22/4/2022, and the invasion itself of 21/8/2022, when the defendant misused, damaged, wasted, destroyed, occupied, converted, polluted, and or degraded the disputed parcel of land, hence depriving it of its use and enjoyment as shown in the photographs.
 36. PW2 said that he joined the defendant research institution in 1985 and moved to Kitale Institute in 1995, then known as National Agricultural Research Centre under KARI, under the Ministry of Agriculture. PW2 said that the staff houses, housing over 40 staff members of different grades of the Centre, were occupying those house by 1995, as per DMFI-(a) and P. Exhibit. No. 11.
 37. According to PW2, the houses, as per the deed plan, are off Kitale Kisawai Road. PW2 denied that the staff houses were ever condemned by the Ministry of Public Works. PW2 said that the houses are listed as part of the assets belonging to the plaintiff, hence the reason that the annexures P. Exhibits. No. (4), (5), (9), and (14), and in his affidavit sworn on 3/11/2022, he insisted on the ownership when the defendant's personnel invaded the land as per the photographs attached to the affidavit, showing maize grown on the parcel at the time, belonging to KALRO.



38. Again, PW2 said that the invasion was forceful and unlawful despite objection from the plaintiff. PW2 said that the houses are public or government properties belonging to the plaintiff as part of its assets. PW2 said that the traders were not relocated to the suit property, and that it was only after a temporary order of injunction was issued that the defendant was stopped from relocating them. PW2 said that the plaintiff's institute is designated as a gazetted quarantine center, which has its own regulations.
39. David Wambia Lumbase testified as DW1. He told the court that he was a Land Surveyor who participated in the joint survey exercise of the suit property, leading to a report dated 10/7/2023, which he produced as D. Exhibit. No. (1). Similarly, DW1 told the court that the plaintiff's main parcel of land is L.R. No. 27194. DW1 said that relying on the survey plan FR 154/67 FR. 122/43 and FR 287/75, they were able, during the site visit, to identify and locate the corner beacons on the ground and compare the GPS coordinates, as pointed out by the people on the ground.
40. DW1 said that the key findings of the joint team were that the disputed plot measures 1.72 Ha, equivalent to 4.2 acres, is unsurveyed and not allocated to anyone by the National Land Commission. DW1 said that the disputed portion accommodates 4 old houses as per the photographs attached therein, which, according to him, are temporary in nature, one of which is under the use of the area chief Kipsongo location. DW1 said that all the structures thereon were erected by the predecessor to the plaintiff.
41. DW1 said that the disputed portion is sandwiched between L.R. No. 2116/13, belonging to the Kitale National Polytechnic, and L.R. No. 27194, belonging to the plaintiff. DW1 said that the disputed plot falls within Kitale Municipality Block 2116. DW1 said that the joint survey exercise was conducted pursuant to a court order dated 11/11/2022. DW1 said that unsurveyed land means it is not allocated to anyone by the National Land Commission. According to him, the disputed land falls within the defendant's custody.
42. DW1 in cross-examination admitted that he was not a licensed surveyor, though he is a member of the Institute of Surveyors of Kenya. DW1 said that the surveyor's report was, however, countersigned by B. Okama, a licensed surveyor.
43. DW1 said that during the site visit on 7/7/2023, they found no traders on the site, but found all the houses fully occupied by the plaintiff's staff. DW1 confirmed that both L.R. No. 27194 and L.R. No. 2116/713 fall within Kitale Municipality. DW1 could not confirm if the plaintiff had applied for allocation of the plot from the National Land Commission.
44. Truphosa Amere testified as DW2. As the County Secretary of the defendant, she relied on a witness statement dated 27/2/2023 as her evidence-in-chief. DW2 told the court that the County plan was to establish a market and relocate traders from the streets.
45. In cross-examination, DW2 told the court that any land occupied by a public body, according to her, could qualify as public land. DW2 said that she was not aware that both the plaintiff's land and that of Kitale Polytechnic fall within Kitale Municipality. Though the Kitale - Suam Bitumen Road had been completed. DW2 said that the traders they wanted to relocate are still on the sidelines of the road, and, nevertheless, the case had occasioned a delay in the completion of the construction works.
46. DW2 admitted that neither the plaintiff nor the defendant were in possession of a certificate of title for the disputed land. DW2 said that she had the Kitale integrated revised development plan or map before the court, referencing the extent of the so-called Kitale Municipality before the court. DW2 said that the integrated map was the one being implemented by the defendant, but could not remember the date it was validated or lodged for use.



47. DW2 admitted that the defendant's first attempt to enter the disputed land on 31/3/2022 was resisted by the plaintiff. DW2 said that she was not aware of the Deputy Registrar report following a site visit on 7/11/2022.
48. The plaintiff relies on written submissions dated 14/11/2025, isolating two issues for determination. On whether the plaintiff is entitled to an exclusive and unimpeded right of possession and occupation of the suit property, it is submitted that the land in dispute is public as defined by Article 62(1)(b) of *the Constitution*, given it is occupied by a public entity undertaking public obligations on research in agriculture and veterinary services of which was reserved for that use, since 1960s, and has erected and or developed staff houses by the government of Kenya, on behalf of the Kenyan public.
49. The plaintiff submits that land acquired and or reserved for a public purpose cannot be alienated, transferred, or used in any other way than for the public purpose, as demanded by the defendant, since it was not originally reserved for a market. Reliance is placed on Niaz Mohamed Jan Mohamed -vs- The Commissioner of Lands & Others [1996] eKLR.
50. The plaintiff submits that the only basis upon which the defendant lays claim to ownership of the suit property is "unsurveyed" and that it lies within its administrative boundaries, which is a misconception as there is no law that provides that any unsurveyed public land within the administrative boundaries of the defendant belongs to it, to the exclusion of all other public bodies, institutions, and or departments by the national government that may be in occupation and in use thereof.
51. Again, the plaintiff submits that the suit property is not trust land and does not belong to the defendant, nor was it owned by the defendant's predecessors in title. The plaintiff urges the court to take judicial notice that there are other privately and publicly owned parcels of land, including L.R. Nos. 27194, 2116/713, falling under Kitale Municipality Block 6, which the defendant has not claimed.
52. The plaintiff submits that under the law, use and or occupation of land by a state corporation or government entity or body, establishes ownership rights thereon and reservation for use by such government or public body, in the land records combined with actual occupation and use, thereby renders such land alienated public land and available for allocation to and acquisition by any third party, including public bodies such as the defendant. Reliance is placed on Kenya Agricultural and Livestock Research Organization (KALRO) -vs- County Government of Kitui [2019] eKLR
53. Further, the plaintiff submits that Section 10 of the *Land Act* 2012 prescribed guidelines for the management of public land by all public agencies, while Article 260 of *the Constitution* defines what a state organ is. In this case, the custodian of all public land is the National Land Commission; therefore, the defendant cannot claim ownership of the unsurveyed suit property without the consent and authority of the National Land Commission, which, from the evidence of the defendant's witnesses, has not made an application to the National Land Commission for the allocation of the same. Reliance is placed on Kenya Industrial Estates Ltd -vs- Anne Chepsiror & Others [2015].
54. On whether the plaintiff is entitled to the reliefs sought, it is submitted that the evidence tendered shows that the plaintiff has had a long and uninterrupted occupation, use, and possession of the suit property, to the exclusion of all other public bodies, including the defendant, to establish the grant of prayers (a), (b), (c), (d), (e), (f), and (g) of the amended plaint.
55. The plaintiff submits that the trespass and invasion of the suit property by the defendant on 21/9/2022 and the construction of makeshift structures thereon, as demonstrated by P. Exhibit. No. 8(a)-(e) was without its consent, permission, or justification to entitle it to general damages for trespass. Reliance is placed on Rosemary Wanjiru Njiraini -vs- Officer in Charge of Station Molo Police Station & Another



- [2017] eKLR, and Prishar Wambui Kaguura -vs- Peter Waithaka Kaguura & Others ELC Case No. 278 of 2014.
56. Similarly, the plaintiff submits that no evidence was placed before this court by the defendant establishing any of the claims in the statement of defence and counterclaim on a balance of probabilities.
 57. The defendant relies on written submissions dated 11/11/2025, isolating five issues for the court's determination. On jurisdiction, it is submitted that the court lacks jurisdiction to entertain the suit as set out in the preliminary objection dated 1/11/2022. Going by the cause of action in paragraph 10 of the plaint, the suit for recovery of land is time-barred under Sections 7 and 17 of the Limitation of Action Act Cap 22. Reliance is placed on Owners of Motor Vessel Lillian "S" -vs- Caltex Oil (K) Ltd [1989] KLR 1 and Koros -vs- Masanya [2025] eKLR,
 58. On whether the plaintiff has proved its claim, it is submitted that the evidence tendered falls short on a balance of probabilities to prove the claim. To the contrary, the defendant submits that the suit property falls within the boundaries of Kitale Municipality and not as part of L.R. No. 27194 (IR 96987), otherwise the plaintiff is maliciously, covertly in slathering a claim on land falling outside its land and management, as shown by the joint survey exercised on 7/7/2023, a report dated 10/7/2023, based on survey maps and plans which is not surveyed or allocated by the National Land Commission to the plaintiff. Reliance is placed on Article 62(1)(b) and 2(a) of *the Constitution*, that an unsurveyed parcel of land remains public land to be managed by the County Government in trust for its residents.
 59. The defendant submits that the evidence led by the plaintiff is contradictory in the manner in which it alleges that the suit land form part of L.R. No. 27194, otherwise the structures belonging to the plaintiff on the disputed land amount to acts of trespass to the municipality land, moreso when the plaintiff has been unable to prove its rights to own and claim that its rights were violated, yet adequate notices by letters dated 22/4/2022 and 31/1/2022.
 60. Regarding trespass, the defendant submits that it is the plaintiff who unlawfully built staff houses in the suit premises which constitute acts of trespass and was using this court to perpetuate an illegality of illegal construction, use of un approved structures and occupation by its staff as an expansion mission to grab the defendant's land, without following any due legal process to acquire the land. Reliance is placed on the doctrine of ex turpi causa non oritur action, Section 29 of the Physical Planning Act (repealed), and *Rassul N Mwadzaya -vs- Secretary, County Government of Kilifi & another* [2019] KEELC 4328 (KLR).
 61. Regarding the counterclaim, the defendant submits that the plaintiff is the one who has trespassed into, illegally erected, constructed, and continued to use houses No. L987, L988, L989, and L990, on land falling under its mandate as per Article 62 1(b) and 2(b) of *the Constitution*, going by a joint survey report. Therefore, the defendant submits that the plaintiff is guilty of trespass as defined in Black's Law Dictionary, 10th Ed. and *John Kirangu Kimani -vs- Rural Electrification Authority* [2018] eKLR.
 62. The defendant submits that the plaintiff lacks any requisite legal approval and or authority to be in occupation of the said suit property to be entitled to the reliefs sought under *Giella -vs- Cassman Brown C. Ltd* [1973] EAS 358 and *Nguruman Ltd -vs- Jan Bonde Nielsen & Others* [2014] eKLR.
 63. To the contrary, the defendant submits that its counterclaim stands proved and should be allowed by awarding the reliefs sought, including general damages of Kshs. 7,000,000/= for trespass, plus costs and interests.
 64. The court has carefully gone through the pleadings, evidence tendered, and written submissions. The issues calling for my determination are:



- i. If the plaintiff's suit is statute-barred.
 - ii. If the plaintiff has proved a claim to the suit property.
 - iii. If the plaintiff is entitled to the reliefs sought.
 - iv. If the defendant was justified in entering, claiming, erecting, and constructing market structures on the suit property.
 - v. If the defendant's counterclaim is competent and merited.
 - vi. What is the order as to costs?
65. A cause of action, as defined in *David Ngugi Waweru -vs- Attorney General & Others* [2017] eKLR and in *Attorney General & Another -vs- Andrew Maina Githinji & Another* [2016] eKLR, is an act on the part of the defendant, which gives the plaintiff his cause of complaint. The court cited *Read -vs- Brown* [1888] 22 Q.B.D 128, that a cause of action is every fact which would be necessary for the plaintiff to prove, if traversed, to support his right to the judgment of the court. Furthermore, the court cited *Letang -vs- Cooper* [1964] 2 All ER 929, which states that a cause of action is simply a factual situation, the existence of which entitles one person to obtain a remedy from the court against another person.
66. The cause of action before this court is captured in the plaintiff's amended plaint dated 8/11/2023 at paragraphs 8-12. It is averred that on 21/9/2022, the defendant wrongfully entered and took possession of a portion of land measuring approximately 5 acres, sandwiched by its L.R. No. 27194 and L.R. No. 2116/713, comprised of its houses Nos. L987, L988, L989, and L990, which spread from L.R. No. 27194, and form part of its reserved land as public entity, undertaking public duties on agricultural and research sciences and purported to erect beacons and makeshift market structures to relocate traders from the town, claiming that the land falls under Kitale Municipality Block 6, hence was within its jurisdiction of management and utilization for public use.
67. The plaintiff terms the plaintiff's acts as amounting to conversion, trespass, and invasion of already reserved public land under public use, belonging to its predecessor in title, and which neither the defendant nor its predecessor in title had laid claim on, prior to 31/1/2021, when it threatened to enter into the land and construct market for relocation of the traders. As a result of the defendant's acts, the plaintiff prayed for declaratory relief, permanent injunctions, and general damages for trespass, loss, and damages.
68. The defendant, through an amended defence and counterclaim dated 28/2/2023 and preliminary objection dated 1/11/2022, termed the suit as statute-barred by dint of Sections 7 and 17 of the [Limitation of Actions Act](#).
69. A preliminary objection refers to a pure point of law, which is argued on the assumption that all the facts pleaded by the other side are correct. To discern a pure point of law, the court is to be satisfied that there is no contest as to the facts. In *Mukisa Biscuits Manufacturing Co. Ltd -vs- West End Distributors Ltd* [1996] EA 696, a preliminary objection, as a point of law, was defined as including a plea of limitation and or jurisdiction.
70. In this suit, what the plaintiff is alleging is trespass, invasion, and commission of acts of construction on land allegedly owned, occupied, used, and possessed by a state organ. On the other hand, the defendant terms the acts of the plaintiff in entering, erecting staff structures, utilizing them, occupying and claiming for damages for alleged trespass as untenable, since the land as unsurveyed, falls within its



custody, in trust for the residents of the county and is public land under Section 10 of the *Land Act* and Articles 62 1(b) and 2(b) of *the Constitution*.

71. Both parties in this suit allege a continuing wrong, constituting a continuing injury to property. The defendant, however, terms the claim for the suit property by the plaintiff as part of the certificate of lease issued to it for L.R. No. 27194, as time-barred and an unjustified attempt to acquire land under its administrative boundaries. In *Vaz -vs- Oyatsi & Others Civil Appeal E035 of 2022 [2025] KECA 271 [KLR]* (21st February 2025) (Judgment), the court cited *Isaack Ben Mulwa -vs- Jonathan Mutunga Mweke [2016] eKLR*, that such an action of trespass constitutes a fresh and distinct cause of action, and that continuing injuries to land caused by the maintenance of tortious acts create separate causes of action, barred only by the running of the statute of limitations against each successive act.
72. The court cited *Muthiora -vs- Marion Muthama Kiara (Suing on behalf of the Estate of Erastus Muthamai Kiara (Deceased)) [2022] KECA 22 KLR*, that trespass, as per Section 3(3) of the *Trespass Act* Cap 294, Jowitt's Dictionary of English Law 2nd Ed, and Black's Law Dictionary, 8th Edition, as where there is entry, remaining and or erecting structures, without reasonable excuse, and the latter as where there is permanency in nature, and as acts of permanent invasion on another's rights.
73. The undisputed facts in this suit are that the plaintiff's predecessor in title was the first in time to enter, occupy, possess, use, and own the staff quarters on the disputed land, before the alleged entry into and commission of acts of construction thereon by the defendant, alleging superior rights of ownership on 31/1/2023 and 21/9/2023. The defendant terms the acts to reclaim the disputed land as statute-barred; otherwise, when the plaintiff was issued with a title to 416.94 Ha in 2005, it did not assert its rights or seek rectification of the title before the expiry of 12 years.
74. What the plaintiff is claiming is land in its view, reserved and or legally occupied by a state organ. The plaintiff asserts and has testified that its continued occupation of the suit property, since the inception of its predecessor in title and thereafter under its mandate, is in public interest or furtherance of public goods to the exclusion of other public entities, including the defendant, who has no better claim or title over the land.
75. In *Ismael -vs- Mandera County Government [2025] KEELE 5797 [KLR]* (31st July 2025) (Ruling), the court observed that any unauthorized entry, whether present or continuing, is trespass, and that in a continued trespass, a claim cannot be time-barred under Section 4 of the *Limitation of Actions Act*. The court relied on *Nguruman Ltd -vs- Shompole Group Ranch & Others Civil Appeal No. 73 of 2004*, that every continuance of trespass amounts to fresh trespass, in respect of which, a new cause of action arises from day to day as the trespass continues.
76. In this suit, I find the plea of limitation of actions and jurisdiction is applicable as the suit before the court, as set in the amended plaint and the amended counterclaim, is on the alleged assertion of the right to ownership of the suit property.
77. The next issue is whether the plaintiff has proved trespass to or invasion of the suit property by the defendant. For trespass, a party has to establish exclusive and immediate possession of the suit property and prove acts of trespass. See *M'Ikiara M'Rukunga & Another -vs- Gilbert Kabeere M'Mbijiwe (2007) eKLR*. Both parties herein assert that the suit property is public land. The plaintiff avers that the suit property was reserved for its use and was erroneously omitted when it was issued with a title deed to the mother parcel, L.R. No. 27194. On the other hand, the defendant asserts that the suit property is unsurveyed and unalienated, hence falls under its administrative boundaries.
78. In *Torino Enterprises Ltd -vs- Hon. Attorney General Petition 5 (E006) of 2022*, that court held that public land under Article 62(1)(a) of *the Constitution* is land which, by the effective date, was defined by



- the Act of Parliament in place. The court held that the repealed Government Land Act and the Physical Planning Act at Sections 2 and 3 defined unalienated land as government land, which is not leased, or to which no allotment letter has been issued. The court cited with approval *Kiluwa Ltd & Another -vs- Business Liaison Co. Ltd & Others* [2021] KESC 37 [KLR], that the term public land came with the new Constitution to clearly delimit the frontiers of public land by identifying and considering all areas of land that are regarded as falling under the province of public tenure.
79. The court cited *Benja Properties Ltd -vs- Syedna Mohamed B. Sahed & Others* [2015] eKLR, that the legal effect of registration converted the suit land from unalienated government land to alienated land, moving out of the ambit of the Government Land Act (repealed).
 80. There is no dispute among the parties that the suit property is not defined under any instrument of surrender under this constitution. In this suit, it is not disputed that as of the effective date in 2010, the suit property was under the use and occupation of the plaintiff, and not the defendant. In *Republic -vs- Minister of Transport & Communication & Others Ex parte Waa Ship Garbage Collector & 15 Others* [2006] eKLR, the court held that public land reserved for public purposes cannot be otherwise allocated unless the purpose is lawfully changed and due process is followed.
 81. The court held that any alienation of such land without compliance with the procedural and substantive safeguards is ultra vires and invalid. In *James Joram Nyaga & another -vs- Attorney General & another* [2019] eKLR, the court held that the Commissioner of Lands had no authority to alienate land that had already been set aside for public purposes. Further in *Munyu Maina -vs- Hiram Gathiha Maina* [2013] eKLR, the court observed that a party must demonstrate that the acquisition of title was legal, formal, and free of any encumbrance. Additionally, in *Funzi Island Development Ltd & Others -vs- County Council of Kwale & Others* [2017] eKLR, the court held that any title that results from an unlawful allocation of public land is a nullity. Moreover, in *Kenya Anti-Corruption Commission -vs- Online Enterprises Ltd & Others* [2019] eKLR, the court held that public property that has been unlawfully acquired or irregularly alienated cannot enjoy the shield under Article 40(6) of the Constitution.
 82. In this suit, the defendant is alleging that it has a superior claim over the suit property, and that was the justification leading to the events of 30/1/2021 and 30/9/2022. The burden is on he who alleges that a certain fact exists on a balance of probabilities as held in *William Kabogo Gitau -vs- George Thuo & Others* [2010] eKLR.
 83. In *Mugenyu -vs- County Government of Nyeri & Others Civil Appeal E067 of 2023* [2025] KECA 593 KLR (21st March 2025) (Judgment), the court observed that as at 1996, when the Temporary Occupation Licence was issued, the land constituted alienated public land vested in the Ministry of Agriculture, Veterinary Department, a fact the deceased was aware of. The court looked at the correspondence letters and the principle of trust and held that the Commissioner, as the trustee of the public, could not use the President's powers delegated to him to allocate land for any use other than for the public good.
 84. The court cited *Henry Muthee Kathurima -vs- The Commissioner of Lands & Another* [2015] eKLR, that an action taken by the Commissioner of Lands without legal authority is a nullity. The court held that the doctrine of estoppel can only apply if the process was sanctioned by the law.
 85. In *Nyamu & Others -vs- Attorney General & Others* [2025] KEELC 5261 KLR (10th February 2025) (Judgment), the court cited *Evelyn College of Design Ltd -vs- Director of Children's Department & Attorney General & Another* [2013] eKLR, that the state must use due process to recover illegally obtained public land.



86. In Kenya Agricultural and Livestock Research Organization -vs- Ngoka & 15 others [2024] KEELC 14132 (KLR), the court held that the plaintiff was a state corporation as per the Kenya Agriculture Reforms & Innovations Act 2013, which had been allocated, designated, and given an unalienated parcel of land in various parts of the country, among them an animal research and laboratory subcenter in Kilifi and Kwale Counties. The court held that under Section 52 of the Kenya Agriculture Reforms & Innovations and Fourth Schedule of the Act, the land belonged to the plaintiff and was not available for alienation to a private person or other government agents without the plaintiff's consent.
87. In Kenya Agriculture Reforms & Innovations -vs- Kisii County & Another [2019] eKLR, the court said that the land, having been reserved for research, a function of the plaintiff since 1963, the occupation fell under Article 62 of *the Constitution* to grant the petitioners proprietary rights over it, incapable of being dwelt with otherwise without its consent, consultation, or approval.
88. In Kenya Agricultural and Livestock Research Organization -vs- County Government of Kitui [2019] eKLR, the court held that under Article 62(1)(b), just like in the retired Constitution, a public body or state organ does not require a predecessor in title who was in occupation of the suit land and its staff houses on the ground. From the deed plan, it is apparent that the staff houses cut across the primary title and the suit property.
89. There is no dispute that the suit property is between L.R. No. 2116/713 and L.R. No. 27914. The letter dated 31/1/2022 did not indicate the manner in which the defendant acquired or was laying claim to the suit property. The defendant did not involve the National Land Commission in seeking to acquire or lay claim to the suit property.
90. In the letter dated 7/4/2022, the plaintiff was clear that the land belonged to it under the law and *the Constitution*, designated as a research land, a quarantine zone, and on how the traders would pose a danger to the statutory obligation of the plaintiff to the country.
91. Again, in the letter dated 22/4/2022, the defendant did not justify the ownership, other than citing administrative boundaries as per the revised Kitale Integrated Development Plan and or Kitale Municipality Block 6.
92. Before this court, the defendant has not substantiated its justification and the contents of the amended statement and counterclaim with tangible and cogent documentary evidence. Alleging that the suit property is public land in the letter dated 22/4/2022, to the County Commissioner, without more and especially in light of Article 62 1(b) of *the Constitution*, makes the defendant's defence and counterclaim incompetent, misconceived, and lacking merit.
93. There is no evidence that the defendant followed due process to stake its claim or resolve the issue as indicated in its letter dated 22/4/2022, before engaging in self-help and taking the law into its own hands to invade the land on 21/9/2022.
94. In Commissioner of Land -vs- Kunste Hotel Ltd [1997] eKLR, the court emphasized the need for a fair hearing. In Kenya Anti-Corruption Commission -vs- Frann Investments & others [2020] eKLR, the court held that where government land is specifically assigned for a specific public purpose, as long as that purpose remains, the land ought to be considered as part of government land.
95. In the letter dated 22/4/2022, the defendant alleged that the land was not utilized for research, but rather as an administrative chief's office and three old residential houses that had been rented out. Clearly, the defendant knew that the suit property had developments belonging to third parties and was in active occupation, use, and possession.



96. The defendant chose not to use the services of the National Land Commission to establish the status of the suit property and or request an allocation, if at all there was an impending public use to relocate the traders. The defendant did not seek the services of the land registrar and the government land surveyor to undertake due diligence before using illegal, irregular, and unconstitutional means to take over the disputed land.
97. In *Kenya Anti-Corruption Commission -vs- Frann Investments & 6 other* (supra), the court took notice that historically, not all government land has been titled because, probably, such land assigned a public use is easy to identify or is viable on the ground.
98. In *Chemey Investment Limited -vs- Attorney General & 2 others* [2018] KECA 863 (KLR) (supra), the land was being actively used as a hospital. In this suit, the defendant was aware of the staff houses belonging to the plaintiff. Section 12(2) of the *Land Act* refers to land reserved for security, education, research, and other strategic public uses. Under the Section, the National Land Commission is mandated to ensure that such public land is not allocated.
99. In this case, if land for research was not available for allocation by the National Land Commission which manages it on behalf of the national and county governments, there could not have been any legal or constitutional justification for the defendant to bypass the National Land Commission and arrogate to itself the mandate of storming into, trespassing and undertaking acts on research land on 27/9/2022, and thereafter turn to this court through the statement of defence and counterclaim for its acts to be sanitized.
100. The defendant did not comply with Section 5(2)(a) of the *National Land Commission Act* and Sections 12 and 14 of the *Land Act*. Section 12 is clear that public land should not be allocated unless it has been planned, surveyed, serviced, and guidelines for development prepared in accordance with Section 16 of the Act. There is no evidence that, in undertaking development on the suit property after the illegal entry, the defendant was armed or in possession of any part development plan or survey plan specific to the subject land. See *Nelson Kazungu Chai & Others -vs- Pwani University College* [2014] eKLR.
101. Two wrongs cannot make a right. If the defendant argued that the suit property was unsurveyed and unalienated land, before allocation of unalienated government land, there ought to have been processes to be followed prior to. Courts, as held in *Dina Management Ltd -vs- County Government of Mombasa & Others* [2023] KESC 30 [KLR] (21st April 2023) (Judgment), cannot sanction irregularities and illegalities in the allocation of public land. It is not enough for a party to state that they have a lease or title to the property without proof.
102. A court, as held in *Funzi Development Ltd & Others -vs- County Council of Kwale* [2014] eKLR, cannot, based on indefeasibility of title, sanction an illegality or give its seal of approval to an illegal or irregularly obtained title. The documentary evidence availed by the plaintiff sustains a finding that the land was already reserved or set apart for public use.
103. Public purpose under the *Land Act* includes public buildings, public housing, and any other use analogous to public purposes. A state corporation means one under the State Corporation Act.
104. A County Government, under the Land (Allocation of Public Land) Regulations (Legal Notice 284 of 2017), has to file an application form to the National Land Commission under Form Nos. LA 9&10, for land for public purposes if not alienated. There is no evidence that the defendant applied for the unsurveyed land with the National Land Commission before 30/1/2022, which confirmed that the land was unsurveyed or unalienated. In *Pati Ltd -vs- Funzi Island Development Ltd & Others* Petition No. 370 of 2019, the court held that the status of a suit property was, first and foremost, as a matter of



- law to have been available for allocation within the meaning of the retired Constitution or the repealed Trust *Land Act*.
105. On setting apart, the court held that Section 115 of the retired Constitution defined trust lands as land within the jurisdiction of any County Council for the benefit of persons, ordinary residents on the land, unless out of registration, it has ceased being trust land, or where it is vested in person or authorities for whose use and occupation the land had been set apart under Sections 117 and 118 thereof, for use and occupation by a public body or for purposes specified therein. The court held that Section 7(3) of the Trust *Land Act* (repealed) required a notice of an intended alienation to specify the purpose for which the land was being set apart.
 106. Rule 5 of the Land Regulation 2017 relates to the care, control, and management of reserved public land by statutory agencies vested with its control under Section 16 of the Act and the Schedule. It is only the Commission that can vary the care, control, and management of public land.
 107. The plaintiff has averred having an inventory of the suit property as part of its assets, which, under Rule 8 of the Rules, has to be shared with the National Land Commission. If the plaintiff was an authorised occupant on the suit property, the defendant did not seek a notice to quit to be issued under Rule 10 of the Rule L.N. No 131 of 2020. It is the National Land Commission under Rule 15, which can cause the land to be resurveyed, geo-referenced, and a cadastral map and plan produced.
 108. The defendant has not approved a building plan from the Cabinet Secretary and the National Land Commission for the suit land as per Rule 20 of the Rules. As to compulsory acquisition, Section 107(2) of the *Land Act* vests the powers in the National Land Commission. There is no evidence of compliance with Rules 22, 23, 24, 25, 26, 28, 29, 30, and Section 121 of the *Land Act*.
 109. Instead of following the foregoing laws and *the Constitution*, the defendant took possession and embarked on the construction of market structures on the suit property, contrary to the rights of property of the plaintiff, under Articles 40 and 47 of *the Constitution*.
 110. The plaintiff, in my view, has discharged the burden of proof that it was the owner of the suit property and that the defendant had invaded and occupied the same without any justifiable cause. See *Ochako Obincho -vs- Zachary Oyoti Nyamongo* [2018] eKLR and *Winfred & Jolowicz on Torts Sweet & Maxwell*, 19th Edition page 428.
 111. In *Bandi -vs- Dzomo & Others Civil Appeal 16 of 2020 [2022] KECA 854 [KLR]* (24th June 2022) (Judgment), the court emphasized that the appellant had a duty to show that he acquired the title to the land in a regular, law-compliant complaint and not in an opaque manner. A court of law is at liberty to rely on expert reports or opinions. Expert evidence as held in *Kagina -vs- Kagina & Others* [2021] KECA 242 [KLR] (3RD December 2021) and in *Stephen Kanini Wangonde -vs- The Ark Ltd* [2016] eKLR, must not be speculative, manifestly illogical, contradictory, unreliable, worthless, or based on no substantive facts.
 112. The defendant is asserting that the plaintiff, as a state organ, is not entitled to the suit property. In *Caroget Investments Ltd -vs- Aster Holdings Ltd & Others* [2019] eKLR, the court observed that where two parties assert competing proprietary interests over one parcel of land, each must produce evidence in support of the claim. In *James Henry Mundiari t/a Kabarak Development Services -vs- Tradewheel Kenya Ltd* (1987) eKLR, the court observed that the plaintiff could not attack the relative weakness of the defendant's title by pleading justifiably that "the council owns the land" without the strength of the title.



113. In this suit, the defendant resorted to self-help and, in the process, violated the plaintiff's right to ownership of land, under Articles 40, 47, and 62(b) of *the Constitution*. In *Keroche Industries Ltd -vs- Kenya Revenue Authority* [2007] KLR 240, the court held that a public authority may not act out of malice or a spirit of revenge, and that it has no heritage of legal rights which it enjoys for its own sake; otherwise, it has a responsibility which defines its purpose and justifies its existence.
114. Equally, the court held that public authorities must be consistently reminded that our government is limited by law. See *Satrose Ayuma & Others -vs- Registered Trustees of Kenya Railways Staff* Petition No. 65 of 2010.
115. Judicial oversight has been invoked by the plaintiff since the defendant resorted to self-help instead of the rule of law. In *Susan Waithera Kariuki & Others -vs- Town Clerk Nairobi City Council & Others* [2012] eKLR, the court observed that constitutional rights in evicting some people in informal settlements or road reserves had to be respected. Self-help is what the defendant resorted to. It cannot be tolerated regardless of the defendant's alleged justification, especially against a state organ that is a creature of the same Constitution as the defendant. Public land set apart or reserved for research purposes is not a lesser public good than the executive could deal with land reserved for state organs in any manner it deemed fit.
116. The defendant did not request the land from the plaintiff. Instead, it demanded to move into the land without permission or consent. When the plaintiff objected to the request, the defendant instead used self-help. As a result, there was trespass. Trespass is actionable per se without proof of any loss or damage. The plaintiff is seeking Kshs. 5,000,000/=, for the defendant's acts of trespass and or invasion. The defendant failed to tender any justification for the entry or invasion.
117. In *Kenya Power and Lighting Company -vs- Ringera & Others* [2022] KECA 104 [KLR], the parameters to consider for damages for trespass. What the defendant did was intentional and unjustified. I think the plaintiffs are entitled to general damages for trespass.
118. In assessing the damages, the court in *Park Towers Ltd -vs- John Mithamo Njika & Others* [2014] eKLR, held that the unique circumstances of each case have to be considered. See also *Halsbury Law of England* 4th Edition Vol. 45. A figure of Kshs. 3,500,000/=, would be adequate in the circumstances.
119. As to a permanent injunction, it is issued, as held in *Kenya Power and Lighting Company -vs- Sherif Molana Habib* [2018] eKLR, after hearing the parties, the court has fully determined that the plaintiff has the right to the suit property as a state organ, which is threatened or was violated by the defendant. equity and fairness entitle the plaintiff to such relief. See *Bandari Investments Co. Ltd -vs- Martin Chiponda & Others* [2022] eKLR and *Kenya Breweries Limited -vs- Washington Okeyo* [2002] EA 109.
120. The upshot is that I find the plaintiff's case proved to the required standards. The defence and counterclaim are found incompetent, lacking merit, and unsubstantiated.
121. Orders accordingly.

JUDGMENT DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 10TH DAY OF DECEMBER 2025.

In the presence of:

Court Assistant - Dennis

Oluoch for the plaintiff present



Tonje for the defendant present

HON. C.K. NZILI

JUDGE, ELC KITALE.

