



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ELC CIVIL SUIT NO. 252 OF 2010

BETWEEN

NUMERICAL MACHINING COMPLEX LTD.....
.....PLAINTIFF

VERSUS

GEOFFREY MUSANGO NZWILI
JAMES KISILU,
STEPHEN KIMUNDI KYAMA
JOSEPH MUTISYA
(Sued as members and office bearers of
Athi Mlolongo Development Co. Ltd).....1ST

DEFENDANT

FRANCIS KIVUVA
JOSEPH MWALILI MUINDI
SHADRACK NZIOKA
MUTETEU MUSOMBA
JEREMIAH NZIOKI MUINDI
MORRIS MULUMBA
JOHN MUTUMU MUINDE

(Sued as members and office bearers of

Jet Members Association).....2ND

DEFENDANT

JULIUS WATUKA WAMBUA

RICHARD WAMBUA MUSYIMI

NICHOLAS MUSYOKA SAMMY

THOMAS MAITHYA KIVINDYO

JOHN MUTUKU KIOKO

PETER KIOKO KAINDI

LILIAN MUSENGYANGALI

BENJAMIN NZIOKI NDOONI

STEPHEN MULI KILAI

(Sued as members and office bearers of

TUPENDANE SELF GROUP).....3RD

DEFENDANT

MAVEMBA MEMBERS ASSOCIATION.....4TH

DEFENDANT

NARETOI AGENCIES.....5TH

DEFENDANT

CHIEF LAND REGISTRAR.....6TH

DEFENDANT

DIRECTOR OF SURVEYS.....7TH

DEFENDANT

THE HON. ATTORNEY GENERAL.....8TH

DEFENDANT

THE COUNTY COMMANDER,

MACHAKOS COUNTY.....9TH

DEFENDANT

AND BY COUNTERCLAIM

BONIFACE KIIO MUTUNE

ANN KIMENZU WAYUA

GERALD MUTUKU MBYUKI

JOHN MUTUKU

(Suing as members representatives of

MAVEMBA

MEMBERS

ASSOCIATION)

.....**PLAINTIFF**

VERSUS

NUMERICAL

MACHINING

COMPLEX

LTD.....

.....**DEFENDANT**

JUDGMENT

Background of the case

1. In a plaint dated 1st December 2010 and amended on 23rd October 2014, the plaintiff, which is a government corporation, sued the defendants over land parcels no **L.R. Nos. 26699/30** and **26700/2 (“suit properties”)** that were subdivisions of **L.R. No. 11895/20 (“mother parcel”)**. It stated that at all relevant times, it was and remains the registered owner of these parcels of land and has never transferred them to any person.
2. These parcels had been allocated for industrial purposes, including the manufacturing of automotive parts and computer-aided designs. However, recently, the 1st to 5th defendants

forcefully invaded the suit properties, erected fences and structures, and are even selling portions thereof to unsuspecting members of the public using fake documents allegedly issued to them by the 6th defendant, namely, bogus documents on **Grant no. 100058** for **L.R. No. 11895/21** (“1st defendant’s land”), **Grant no. 95675** for **L.R. No. 27711** (“2nd defendant’s land”), **Grant no. 90944** for **L.R. No. 11895/23** (“3rd defendant’s land”), **Grant no. 100053** for **L.R. No. 11895/20** (“4th defendant’s land”), and **Grant no. 88041** for **L.R. No. 26700/3** (“5th defendant’s land”).

3. All records with the relevant government entities have confirmed that the only certificates of title over the suit properties are those of the plaintiff.
4. Following a formal complaint, the 9th defendant detained the members of the 1st to 5th defendants while they were committing acts of trespass. Still, they were released under unclear circumstances without being charged with criminal offences. Furthermore, these particular defendants have now leased the suit properties to hundreds of people from the Maasai community, who have since erected *manyattas* and are grazing their cattle there. Consequently, it sought the following orders from this court: -

a) A permanent injunction directed at the defendants, their servants, agents, members or

any person claiming through them, jointly or severally, from trespassing, encroaching upon, selling or in any way whatsoever interfering with the plaintiff's proprietorship over L.R. Nos. 26699/30 and 26700/2 situated in the North West of Mavoko Municipality in Machakos County.

b) A mandatory injunction directed at the director of surveys to immediately resurvey L.R. Nos. 26699/30 and 26700/2 and affix or set up permanent boundaries over these suit properties.

c) A mandatory injunction directed at the 1st to 5th defendants, their servants, agents, members, or any person claiming through them, jointly and severally, to vacate, demolish and or remove all structures and developments erected by them on L.R. Nos. 26699/30 and 26700/2.

d) A declaration that Grant No. 1000858 for L.R. No. 11895/21, grant no. 95675 for L.R. No. 2771, grant no. 90944 for L.R. No. 11895/23, grant no. 95675 for L.R. No. 11895/20, and grant no. 88041 for L.R. No. 26700/3 held by the defendants are forgeries and are not in respect of L.R. Nos. 26699/30 and 26700/2, which the plaintiff owns.

e) The 9th defendant to ensure compliance with orders (a), (b) and (c) above and to provide the necessary security required to enforce these orders.

f) Any other order that this honourable court may deem just and fair to grant.

g) Costs of the suit.

5. On service and from the record, the 1st to 5th defendants participated in these proceedings either by entering an appearance or filing a defence. Some of these defendants filed a defence, and others did not.
6. Regarding the 1st defendant, it opposed the claim with its amended defence dated 25th July 2022, which was primarily composed of denials and required the plaintiff to prove its case to strict proof. According to it, upon the issuance of a grant to it by the 6th defendant, it took actual, physical possession of its land legally. It held legitimate documents over its land. That there was no basis for criminal charges to be levied against it for alleged trespass, and that it had paid land rent and rates over its land.
7. As for the 4th defendant, it filed a defence and counterclaim dated 15th July 2022, which was similarly composed of denials, and it put the plaintiff to strict proof. It contended that the 6th defendant issued a grant over its land and that it has since maintained a peaceful, rightful, and legal, actual and physical occupation. It held legitimate title documents.
8. In the counterclaim, it maintained that it followed due process in acquiring its title documents. A grant was issued to it by His

Excellency the President in 1995, who had the authority to do so under the retired **Constitution**. It accepted the grant, paid land rents to the Ministry of Lands, and received the grant and the allotment letter in 1998. It has been paying land rent and rates ever since, and certificates of official searches have consistently confirmed its ownership status.

9. It also indicated that in around 2010, its records with the 6th defendant mysteriously disappeared, which it believed was as a result of a collusion between the plaintiff and the 6th to 9th defendants. It had been in occupation since 1961 and claimed adverse possession. Ultimately, it sought the following prayers:

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a) A declaration that the 4th defendants' members are the bona fide owners of all parcels of land known as L.R. No. 11895/20, as per the copy grant I.R. No. 100053, hence the 6th and 7th defendants be ordered to promptly update and reinstate the registry records to reflect the 4th defendant's ownership status.

b) In the alternative, orders of adverse possession be and is hereby granted to the 4th defendants.

c) After the issuance of order (c) above, an order be issued to the 5th and 6th defendants to, with immediate effect, enter the names of the 4th defendant in the land register as the owners of L.R. No. 11895/20 measuring 310 acres, and to

issue a title deed, a certified copy of the title, a copy of the green card, a current search certificate, and a survey map.

d) A permanent injunction does issue against the plaintiff, its successors, agents, beneficiaries, shareholders, beneficial owners, and employees from entering, interfering, trespassing, or dealing with L.R. No. 11895/20.

e) Costs of the suit and counterclaim, interest thereon at such rate and for such period as this honourable court may deem fit to grant, and such further or other reliefs as may be appropriate in the circumstances.

Issues for determination

10. Having considered the pleadings and the evidence presented by the parties during the hearing on the merits, and issues as framed in the filed submissions and the 1st defendant's statement of issues dated 25th July 2022, the following issues for determination arise:

a) Whether the plaintiff's suit is incompetent against the 4th defendant.

b) Whether the plaintiff had authority to institute suit.

c) Whether the 4th defendant's counterclaim pleaded and proved fraud to the required standards.

- d) Whether the plaintiff proved its claim of trespass.***
e) Whether the 4th defendant's claim of adverse met the legal threshold.

11. Having outlined the issues to be decided, this court will now summarise the parties' evidence related to these issues as identified.

Hearing and evidence

12. The hearing of this matter commenced on 21st September 2022, during which Michael Thubi, a retired employee of the plaintiff (**PW1**), Priscilla Njeriu Wangu, a principal surveyor with the 7th defendant (**PW2**), Gildine Gatwiri Karani, principal land registration officer with the 6th defendant (**PW3**), Geoffrey Musau Nzili, an official of the 1st defendant (**DW1**), Boniface Kiiro Mutune, an official of the 4th defendant (**DW2**), and John Mutuku Muinde, an official of the 4th defendant (**DW3**) testified.

13. Their evidence consisted of witness statements (except for **PW2** and **PW3**, who the court summoned), oral testimonies, and various documents produced. The evidence from **PW1**, **DW1**, **DW2**, and **DW3** was a reiteration of their pleadings, and it is unnecessary to repeat them.

14. Amongst several documents, **PW1** produced the certificates of title that allegedly belonged to the 1st to 5th defendants,

correspondence by the 6th defendant to the plaintiff and the Directorate of Criminal Investigation ("**DCI**") confirming that the title documents held by the 1st to 5th defendants were forgeries and that the owner of the suit properties was the plaintiff. Additional documents including caveat emptor, a task force report, a court order dated 29th May 2019 permitting the 7th defendant to comply with **prayer (b)** of the plaint (this relief as sought in the amended plaint is spent), which resulted in the submission of a report (**Pex 23**), and a gazette notice dated 24th January 2020 for the issuance of a certificate of title over the mother parcel after the 6th defendant established it was lost.

15. Moreover, there was correspondence between the plaintiff, its legal representative, and the National Land Commission ("**NLC**") concerning the issuance of certificates of title for the suit properties, which are claimed to be subdivisions of the mother parcel. Deed plans of the suit properties were also presented, along with internal memoranda from the plaintiff regarding invasions by the 1st to 5th defendants on the suit properties. **PW2** produced a report (**Pex 23**). Their evidence in chief was not displaced during cross-examination.

16. **PW3** also produced her report (**Pex 24**), in which she testified that, in response to a court summons, she compiled her report concerning LR Nos. 11895/20 and 11895/22. She further stated that LR No. 11895/22 was originally numbered 11895/20/2 and was delineated from survey plan 245632.

Additionally, she testified that she was unaware whether the plaintiff owns 11895/21, but that the 6th defendant never held any records regarding the land of the 1st to 5th defendants.

17. **DW1** testified that the 1st defendant was the owner of its land and had maintained possession of it consistently, having acquired it through a lawful process and fulfilling the obligations of land rent and rates. Among the documents presented in support of the 1st defendant's case was a certificate of title over the 1st defendant's land, which shows it was allegedly registered on 25th February 2002, as well as evidence of payment of stamp duty for the transfer of the land dated 22nd January 2010 and payment of land rents.
18. During cross-examination, he testified that the 1st defendant obtained its title documents in 2010; however, its members commenced residing there in 2009. Although he stated that the 1st defendant paid Kshs 4,216,500/- as a stand premium for the land allotment, he was unable to provide the corresponding payment receipt. Prior to the allocation, the land belonging to the 1st defendant was classified as public land, and the 6th defendant held all relevant land documents.
19. **DW2** testified that the families associated with the 4th defendant have inhabited the land since 1961, following settlement by the Machakos Kanu Branch officials and the Colonial District Commissioner of Machakos. Despite fulfilling their obligations by paying land rent and all related dues, the

4th defendant has not yet been issued a certificate of title by the 6th defendant. Yet again, he testified that a gentleman named Ndambo held the certificate of title.

20. He submitted multiple documents supporting the case of the 4th defendant. These included the 4th defendant's certificate of title, allegedly registered on 4th December 2006, a deed plan dated 4th January 2000, an allotment letter dated 21st January 1998, and receipts for various payments made to the 6th defendant. Additionally, he presented various correspondence demonstrating the displacement of Kamba people from Kyulu Hills, requests for government assistance regarding a water project, and, notably, a letter from the Office of the President. This letter, purportedly authored by the Commissioner of Lands, stated that if the offer for unsurveyed plot number 20 was not received by 10th April 1980, the offer would be withdrawn.

21. This contradiction was relayed during his cross-examination, but this time he described the person holding the 4th defendant's title document as Ndambuki, while again maintaining that the original certificate of title was lost. Furthermore, during cross-examination, he testified he was born in 1960; however, his original ID card, shown to the court, indicates he was born in 1972.

22. **DW3** testified that the 4th defendant's land encompassed 341 acres, which was separate from the plaintiff's property. He

also asserted that the 6th defendant had misplaced the original map as a result of fraudulent alterations of the maps to incorporate the 4th defendant's unallocated land. Furthermore, he indicated that the 4th defendant had subdivided its land and sold portions to third parties. Just as DW4, he testified that he had never seen the 4th defendant's certificate of title.

Submissions

23. Following the conclusion of the hearing, and upon the parties' request, each party submitted written arguments which were duly received from the law firms of **Mss Prof. Tom Ojienda & Associates**, representing the plaintiff, dated 1st September 2025; **J.A. Makau & Co Advocates** for the 1st defendant, dated 31st October 2025; and **OG Makowade Advocates** for the 4th defendant, also dated 31st October 2025. Consequently, in its analysis and determination, the judgment will meticulously consider the arguments articulated in these submissions, in conjunction with the pertinent law and judicial precedents cited. The issues previously identified shall be addressed sequentially.

Analysis and determination

a) Whether the plaintiff's suit is incompetent against the 4th defendant

24. Regarding this issue, the 4th defendant submitted that this court lacks jurisdiction to entertain suits against

unincorporated associations. The 4th defendant contends that, under Kenyan law, unincorporated associations lack the legal personality to initiate or be subject to legal proceedings in their own name, as they are not recognised as juristic persons capable of incurring legal obligations. It cited the cases of **Trustees Kenya Redeemed Church & Anor v Samuel M’Obiya & 5 others [2011] eKLR** and **John Otteyo Amwayi & 2 Others v Rev. George Abura & 2 Others [Civil Appeal No. 6339 of 1990]**. In this regard, this court aligns with the position of the 4th defendant. The decision of **Kipsiwo Community Self Help Group v Attorney General & 6 others [2013] KEELC 63 (KLR)** stated thus on this issue: -

“Unincorporated entities have no legal capacity and cannot therefore sue in their own names. They can however sue through an entity with legal capacity. Just because the Constitution allows unincorporated bodies to sue, does not vest such bodies with legal capacity, and such bodies do not become persons in law, and cannot be the litigants or sue in their own standing. They still have to use the agency of a person recognized in law as having capacity to sue and to be sued.”

25. Although the certificate of registration for the 4th defendant was never produced before this court, court records indicate, as evidenced by the affidavit of Joseph Musyoki Mutisya, who served as the chairman of the 4th defendant and was sworn on

2nd February 2011, that the 4th defendant was duly registered under the **Societies Act** on 1st July 2009. This signifies that the officers of the defendant are identifiable pursuant to **Section 9** and **Schedule 6** of the **Societies Act**; the plaintiff should have sued the office holders, which it did not.

26. To this court, proper identification of parties is essential for classifying individuals seeking legal redress, ensuring that orders are enforceable in favour of or against correctly identified persons. Although it may seem minor, it is actually very significant because, in litigation, rights and duties are assigned to the involved parties. If the court does not know who the litigants are, it cannot effectively enforce its orders, as it will not be clear who benefits from the order or who has the obligation to obey or uphold it.
27. Capacity to sue or be sued in legal proceedings constitutes a significant issue that fundamentally affects the validity of these proceedings. It is the considered opinion of this court that such a matter is not rectifiable under **Article 159** of the Constitution. In the absence of initiating legal action against the office bearers of the 4th defendant, this court is compelled to conclude and find that the plaintiff's claim against the fourth defendant is incompetent.
28. As this court concludes on this issue, it is imperative to point out that the header of the 4th defendant's defence and counterclaim shows that the 4th defendant did not title the

defence and counterclaim in the usual manner as required by **Order 7, Rule 8** of the **Civil Procedure Rules (“CPR”)**. Be that as it may, this court considers this a technical error.

b) Whether the plaintiff had authority to institute suit

29. This issue was raised by the 4th defendant by invoking **Order 4 rule 1(4)** of the **CPR** provides as follows:

“Where the plaintiff is a corporation, the verifying affidavit shall be sworn by an officer of the company duly authorized under the seal of the company to do so.”

30. The 4th defendant contended that no board resolution, authority, or verifying affidavit under the company seal was produced to substantiate that the deponent or the advocate on record was duly authorised to initiate or continue these proceedings on behalf of the plaintiff.

31. However, after review of the verifying affidavit of John Lesso, sworn on 1st December 2010, it is the court’s considered view that the aforementioned Corporate and Legal Manager of the plaintiff affirmed that he had been duly authorised to depose the affidavit. When faced with similar circumstances as the case herein, the Court of Appeal, in its decisions, expressed itself as follows: -

In Spire Bank Limited v Land Registrar & 2 others [2019] KECA 530 (KLR), it stated: -

***“So that it was sufficient for the authorized person to depone that he or she was duly authorized, but in the event of a complaint that such person was unauthorized, it was up to the disputing party to demonstrate with evidence that the deponent did not have the requisite authority, the onus being on the party making the allegation to prove it. A bare statement that the plaintiff or applicant was not authorized would not be sufficient.*”**

As to the essence of this provision, this decision went further and stated: -

***“It is essential to appreciate that the intention behind order 4 rule 1 (4) was to safeguard the corporate entity by ensuring that only an authorized officer could institute proceedings on its behalf. This was to address the mischief of unauthorized persons instituting proceedings on behalf of corporations, and obtaining fraudulent or unwarranted orders from the court. The company’s seal that is affixed under the hand of the directors ensured that they were aware of, and had authorized such proceedings together with the persons enlisted to conduct them. And where evidence was produced to demonstrate*”**

that a person was unauthorized, the burden shifted to such officer to demonstrate that they were authorized under the company seal. With this in mind, we dare say that the provision was not intended to be utilized as a procedural technicality to strike out suits, particularly where no evidence was produced to demonstrate that the officer was unauthorized.”

Further, in **Makupa Transit Shade Limited & another v Kenya Ports Authority & another [2015] KECA 721 (KLR)**, it held: -

“In our view, the Authority, as with other corporate bodies, has its affidavits deponed on its behalf by persons with knowledge of the issues at hand who have been so authorised by it. It was therefore sufficient for the deponents to state that “they were duly authorised.” It was then upto the appellants to demonstrate by evidence that they were not so authorised.”

32. Guided by these binding decisions, it suffices to state that the verifying affidavit is adequate, as the officer has declared that he possessed the authority of the plaintiff. Since the 4th defendant was the party that raised the issue of lack of authority, it was incumbent upon it to demonstrate with evidence that the deponent lacked the necessary authority.

33. In the absence of such evidence, the ground of attack fails. Furthermore, this court considers that this issue is being raised too late in the proceedings. Noteworthy, the decision that the 4th defendant relied upon of [Ibacho Trading Company v Samuel Monda Nyongoki Ondora & 4 others \[2019\] KEHC 7833 \(KLR\)](#) to buttress its arguments is merely persuasive. This court therefore finds that John Lesso had the requisite authority as envisaged by **Order 4 rule 1(4)** of the **Civil Procedure Rules**.

c) Whether the 4th defendant's counterclaim pleaded and proved fraud to the required standards?

34. The 4th defendant's counterclaim was undefended. Nonetheless, the onus was on it to prove its case. As concerns the first limb, the pertinent legal framework for protection and impeachment of title documents over land is found in our **Article 40 (1) and (6)** of the **Constitution**.

35. These provisions restrict legal protection to property that has been lawfully acquired and owned. According to these **Sub-Articles**, every person has the right, whether individually or in association with others, to acquire and own property within Kenya. Statutorily, **Sections 24** and **25** of the **Land Registration Act** acknowledge the registered owner as the absolute owner of the land and provides protection under **Section 24**. However, a title document may be impeached on various grounds outlined in **Section 26** of the Act, including fraud. This **Section 26** specifically states that: -

“(1)The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor 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, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, 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.”

36. It is well-established law that fraudulent, illegal, and irregular conduct must be specifically pleaded as required by **Order 2 Rule 4** of the **Civil Procedure Rules**. With this in mind, this court has thoroughly scrutinised the 4th defendant’s counterclaim and concludes that although it did not specifically mention the word “*fraud*”, which is inconsequential, as affirmed in the Court of Appeal decision of **Arthi Highway Developers Limited v West End Butchery Limited & 6**

others [2015] KECA 816 (KLR), it did plead fraud to the required standards.

37. Paragraphs 7 and 8 of the counterclaim merely state that the 4th defendant's records disappeared at the 6th defendant's registry upon "*emergence of the plaintiff*," which, to it, implies fraud among the plaintiff and the 6th, 7th, 8th, and 9th defendants. It described their relationship as the "*figure of an octopus*" and alleged that they had an "*elaborate plan and collusion ... to acquire the property owned by the 4th defendant.*" With due respect, such generalised pleadings fail to meet the legal threshold.

38. Significantly, the 6th, 7th, 8th, and 9th defendants, who allegedly orchestrated a grand scheme to tamper with records purportedly belonging to the 4th defendant, were not joined as defendants to the counterclaim. Hence, this court finds that the claim of fraud was not specifically pleaded to the required standards. This finding renders a determination of the 2nd limb unnecessary. Hence, it finds that the 4th defendant's counterclaim under this head fails. In arriving at this conclusion, guidance is sought from **Arthi Highway (Supra)**, which held: -

"53. It is common ground that fraud is a serious accusation which procedurally has to be pleaded and proved to a standard above a balance of probabilities but not beyond reasonable doubt.

One of the authorities produced before us has this passage from Bullen & Leake & Jacobs, Precedent of pleadings 13th Edition at page 427:

“Where fraud is intended to be charged, there must be a clear and distinct allegation of fraud upon the pleadings, and though it is not necessary that the word fraud should be used, the facts must be so stated as to show distinctly that fraud is charged (Wallingford v Mutual Society (1880) 5 App. Cas. 685 at 697, 701, 709, Garden Neptune V Occident [1989] 1 Lloyd’s Rep. 305, 308).

The statement of claim must contain precise and full allegations of facts and circumstances leading to the reasonable inference that the fraud was the cause of the loss complained of (see Lawrence V Lord Norreys (1880) 15 App. Cas. 210 at 221). It is not allowable to leave fraud to be inferred from the facts pleaded and accordingly, fraudulent conduct must be distinctly alleged and as distinctly proved (Davy V Garrett (1878) 7 ch.D. 473 at 489). “General allegations, however strong may be the words in which they are stated, are insufficient to amount to an averment of

fraud of which any court ought to take notice”.

See *Insurance Company of East Africa vs. The Attorney General & 3 Others* Hccc135/1998.”

d) Whether the plaintiff proved its claim of trespass?

39. In dealing with this issue, it is essential to delineate the pertinent legal and jurisprudential framework governing it.

40. As previously underscored, **Article 40** of the **Constitution** recognises that every person has the right to acquire and own property of any kind and in any location within Kenya. The protections and limitations related to such land rights are governed by **Sections 24, 25, and 26** of the **Land Registration Act**, which demarcate land rights, privileges, appurtenances, liabilities, and interests. Other relevant provisions of the law are contained in the **Land Act** and the **Trespass Act**, which specifically stipulate:

Section 152A of the **Land Act 2016** states as follows: -

“A person shall not unlawfully occupy Private, Community or Public Land.”

Section 3 (1) of the **Trespass Act** defines trespass as: -

“any person who without unreasonable excuse enters, is or remains upon, or erects any structure on, or cultivates or tills, or grazes stock or permits stock to be on private land without the consent of the occupier thereof shall be guilty of an offence.”

41. As for the writings of eminent scholars, the text of **Clerk & Lindsell on Torts, Sweet & Maxwell, 18th Edition, at page 923**, defines trespass to land as follows: -

“Trespass to land consists of any unjustifiable intrusion by one person upon land in the possession of another.”

Page 927 of the same text discourses as to 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.”

42. In the book of **Winfield & Jolowicz on Tort, Sweet & Maxwell, 19th Edition, page 428**, trespass is discussed as follows:

“Trespass to land, like the tort of trespass to goods, consists of interference with possession. Mere physical presence on the land does not necessarily amount to possession sufficient to bring an action for trespass. It is not necessary that the claimant should have some lawful interest in the land. This is not to say that legal title is irrelevant, for where the facts leave it uncertain which of several competing claimants has possession, it is in him who can prove title that can prove he has the right to possession. More generally, in the absence of evidence to the contrary, the owner of land with the paper title is deemed to be in possession of the land.”

43. The prevailing theme in the definition of trespass, as articulated by these esteemed scholars, is that ownership is not a prerequisite for such a claim. Nevertheless, the assertion of a person holding title to the land takes precedence in cases of competing claims of possession. In the instant case, the plaintiff’s claim of ownership was uncontested by all the other defendants except for the 1st and 4th defendants. Nonetheless, in light of the determination regarding the competence of the plaintiff’s suit against the 4th defendant, this court will confine its consideration to the claim of trespass against the remaining parties.

44. Accordingly, evidential burden is placed upon the plaintiff as the person alleging, to prove its claim as provided by **Sections 107 and 109** of the **Evidence Act**. The plaintiff needed to prove its claim either by demonstrating that the suit properties were registered in its name and/or that it had taken possession of them before the defendants' entry, as trespass claims are usually based on possession. It was also required to show that the defendants occupied the suit properties without its permission.

45. To prove its case, PW1 produced a copy of the certificate of title for the mother parcel. Correspondence shows that it surrendered the original to the NLC on 22nd July 2014 to facilitate its subdivision and the issuance of title documents for the suit properties. NLC, in a letter dated 2nd September 2014, confirmed that it received this title document. The deed plans of the suit properties were also released to NLC by the plaintiff. These deed plans were also produced. These documents were forwarded by NLC to the Registrar of Titles, in its letter dated 10th April 2014, which states:

“RE: Rent Apportionment for L.R. 26699/30, and L.R. 26700/2 Athi River

The annual land rent for the above plots after subdivision has now been assessed as follows;

L.R. 26699/30.....Sh, 62,500 per annum with effect from 1st April 2014

L.R. 26700/2.....Sh, 574,000 per annum with effect from 1st April 2011

Copies of deed plans and original Title are attached to facilitate preparation of Certificates of Titles.”

46. This ownership status of the suit properties was also confirmed by PW3, who maintains land records. Her report indicated that the suit properties were resultant subdivisions of the mother parcel; the mother parcel had been previously divided into two: L.R. No. 11895/22 (I.R. No. 91216) and L.R. No. 11895/23. Further subdivisions were made on L.R. No. 11895/22 to create 198 subplots (L.R. Nos. 26699/1-26699/198)- one of the suit properties being one of them. L.R. No. 11895/23 was subdivided into two plots, namely L.R. No. 26700/1 and 26700/2 (one of the suit properties).

47. Though the certificate of title of L.R. No. 11895/22 was produced, the certificates of the other title documents were not tendered as evidence. PW1 testified that the suit properties were direct subdivisions of the mother parcel. Nevertheless, what is certain of which the court is satisfied with, is that the suit properties are resultant subdivisions of the suit properties.

48. It was also established from the evidence that the records of the mother parcel held by the 6th defendant were lost and/or destroyed by the 6th defendant, prompting the plaintiff to seek reconstruction and register a deed of indemnity. This process culminated in the issuance of Gazette Notice No. 443 dated 24th January 2020, which recognised the plaintiff as the owner of the mother parcel.

49. This ownership of the plaintiff's mother parcel was confirmed by various government entities, including NLC, which, in its letter dated 3rd December 2013, informed the plaintiff that it had not reallocated the suit properties to any party. The evidence of the plaintiff's ownership of the suit properties, which was corroborated and substantiated by documentary evidence, was unshaken, and this court finds that it owns the suit properties, which are resultant subdivisions of the mother parcel. This court also finds that the 4th defendant's arguments on the production of documents are nonissues at this point in the proceedings. Moreover, the reports by PW2 and PW3 were made pursuant to court orders.

50. Turning to the 1st defendant, it produced several documents in support of its case as evidence of ownership. Some of the documents provided, such as land rates payment, rent clearance certificates, rates clearance certificates, and stamp duty declaration slips from the Kenya Revenue Authority (KRA), among others, cannot confirm ownership. Therefore,

this court will focus on the certificate of title produced to establish the 1st defendant's ownership.

51. The plaintiff characterised the 1st defendant's certificate of title as a forgery; however, the 1st defendant asserts that the claim of fraud was neither pleaded nor proved against this document. In this court's opinion, after considering the plaintiff's case, **Section 26** of the **Land Registration Act** could not be invoked, given that the plaintiff contended that the first defendant's title document was nonexistent.

52. Documents were obtained from various government agencies, which declared that this certificate of title was forged. Remarkably, PW3, who was summoned to testify and prepare a report on the numerous certificates of title held by the 1st to 5th defendants, stated in part within this report:-

"...I wish to comment on the same that they are all forgeries on the face of them all and do not constitute part of our records. Attached please find what was found in our records as relates to the following property registration numbers that is I.R No. 100058; I.R No. 100053; I.R No. 95675; I.R No. 88041;... The lands office in conjunction with police officers from Athi River Police Station then launched investigations into the legality or otherwise of the purported titles Grant Nos. 100058; Grant Nos. 95675; Grant Nos. 100053; Grant Nos. 90944 and Grant Nos. 88041. On 4th May, 2010

and 11th May 2010 the then Chief Land Registrar and the Commissioner of Lands respectively verified the documents and found out that they were forgeries which did not originate from our office.”

53. The report presented various official searches conducted on the parcels of land belonging to the 1st through the 5th defendants. These searches show that **Grant I.R. No. 100058**, associated with the 1st defendant's property, was not documented in the records of the 6th defendant. Furthermore, the L.R. numbers corresponding to the various grants held by the 2nd to the 5th defendants exhibited inconsistencies when compared with the records of the 6th defendant.
54. Furthermore, upon search, **Grant I.R. No. 95675**, which is purportedly associated with the 2nd defendant, is a property registered in the name of Job Micheu Njiru. **Grant I.R. No. 90944**, allegedly linked to the 3rd defendant, pertains to an apartment registered as a sectional property. **LR. No. 11895/20**, purportedly corresponding to the 4th defendant, is recorded in respect of **Grant I.R. No. 63767** in the name of Sparkles Limited. Lastly, **Grant I.R. No. 88041**, which is claimed to belong to the 5th defendant, concerns an apartment registered as a sectional property.
55. This evidence was not rebutted. Being the custodian of records that deal with land, the evidence of PW3 as submitted by the plaintiff and 1st defendant is very weighty, as

pronounced by various court decisions, which this court concurs. Particularly in **Onyancha v Republic [2024] KEHC 7671 (KLR)**, the court stated: -

“Registered proprietors do not issue title deeds to themselves. One cannot begin to talk about issuance of a title deed being fraudulent, without involving the lands registry, which is the custodians of land registration documents, and the entity responsible for issuance of title deeds. It is the lands registry that ought to denounce or renounce a registration process, or the issuance of a title deed. It is that lands registry that declares that a certain title deed did not emanate from the said registry, or, if it did emanate from the said registry, that it was not procured properly.”

56. Though the 1st defendant asserts that this report is questionable due to the loss of certain records, which ultimately led to gazette, this court takes judicial notice that verification of title documents prior to gazette involves the submission of the original title document by the registered owner. In this case, NLC surrendered one such document to the Registrar of Titles. Further, a review of the black book containing various entries is conducted, and a procurement of the deed file is also undertaken. It is noteworthy that the gazette notice was never challenged in

the 1st defendant's defence through the raising of a counterclaim citing illegality or irregularity.

57. DW1 admitted during his testimony that the suit properties were allegedly formerly public land; however, even if he stated that the 1st defendant paid the stand premium, he was unable to account for the receipt of such payment.

58. He did not elaborate on whether due process was followed for the allocation of public land. Accordingly, this court is satisfied with the evidence provided by PW3, which was substantiated, and concludes that the 1st, 2nd, 3rd, and 5th defendants do not possess title documents to the suit properties. Various pieces of evidence demonstrate that these defendants are in occupation of the suit properties without the plaintiff's permission. They are in unlawful occupation, and the court accordingly finds them to be trespassers. Had this court not struck out the plaintiff's claim against the 4th defendant, a similar conclusion would have been reached regarding it.

e) Whether the 4th defendant's claim of adverse met the legal threshold

59. According to the amended plaint, as well as the defence and counterclaim of the 4th defendant, it is apparent that the plaintiff is a government corporation operating under the Ministry of Industrialisation. In other words, it functions as a government entity, and the arguments presented by the 4th defendant's submissions on treating the plaintiff as a private

entity are dead on arrival. As a public body and supported by the submissions of the plaintiff, **Section 41** of the **Limitation of Actions Act** protects government entities against claims of adverse possession. This proviso explicitly states:

“This Act does not—

(a) enable a person to acquire any title to, or any easement over—

(i) Government land or land otherwise enjoyed by the Government;

(ii) mines or minerals as defined in the Mining Act (Cap. 306);

(iii) mineral oil as defined in the Mineral Oil Act (Cap. 307);

(iv) water vested in the Government by the Water Act (Cap. 372);

(v) land vested in the county council (other than land vested in it by section 120(8) of the Registered Land Act (Cap. 300)); or (vi)

land vested in the trustees of the National Parks of Kenya; or

(b) affect the right of Government to any rent, principal, interest or other money due under any lease, licence or agreement under the Government Lands Act (Cap. 280) or any Act repealed by that Act. “

60. Guided by this proviso, this court finds that the claim of adverse possession cannot accrue against the plaintiff. On this basis, the 4th defendant's claim fails. Notwithstanding this settles the issue; it is worth mentioning that had the 4th defendant's claim under this head not been dismissed, the court would have struck it out, as it is settled law that claims of fraud and adverse possession cannot coexist in one suit.

61. Ultimately, based on the reasons and findings articulated hereinabove, this court finds that the plaintiff has demonstrated its case against the 1st, 2nd, 3rd and 5th defendants to the required standard of proof and is for allowance. It also finds that the plaintiff's claim against the 4th defendant is for striking out. It also finds that the 4th defendant's counterclaim is for dismissal.

62. Since costs abide by the outcome of the event, the 1st, 2nd, 3rd and 5th defendants shall bear the plaintiff's costs of this suit. The other defendants, except the 4th, are government bodies and have participated in these proceedings in support of the plaintiff's case; thus, no orders as to costs will be made against them. Since the plaintiff's claim against the 4th defendant was incompetent and the 4th defendant's counterclaim was unsuccessful, they shall each bear their respective costs in this respect.

63. It is well-established that trespass is actionable offence *per se*, without the necessity of demonstrating actual damage.

Considering the duration of the trespass, the size of the affected property, the location, and the nature of the trespass, the court hereby awards the plaintiff Kshs 10, 000,000/- as general damages. In the end, the following final disposal orders are hereby issued: -

a) The plaintiff's suit against the 4th defendant is hereby struck out, with the plaintiff and 4th defendant bearing their respective costs in that regard.

b) The 4th defendant's counterclaim against the plaintiff is hereby dismissed, with the plaintiff and 4th defendant bearing their respective costs in that regard.

c) Liberty applies to the plaintiff as against the 4th defendant.

d) A permanent injunction directed at the 1st, 2nd, 3rd and 5th defendants, their servants, agents, members or any person claiming through them, jointly or severally, from trespassing, encroaching upon, selling or in any way whatsoever interfering with the plaintiff's proprietorship over L.R. Nos. 26699/30 and 26700/2, being resultant subdivisions of L.R. No. 11895/20, situated in the North West of Mavoko Municipality in Machakos County.

e) A mandatory injunction is hereby issued directed at the 1st, 2nd, 3rd and 5th defendants, their servants, agents, members, or any person claiming through them, jointly and severally, to vacate, demolish and or remove all structures and developments erected by them on L.R. Nos. 26699/30 and 26700/2, being resultant subdivisions of L.R. No. 11895/20, situated in the North West of Mavoko Municipality in Machakos County.

f) A declaration that grant no. 1000858 for L.R. No. 11895/21, grant no. 95675 for L.R. No. 27711, grant no. 90944 for L.R. No. 11895/23 and grant no. 88041 for L.R. No. 26700/3 held by the 1st, 2nd, 3rd and 5th defendants are forgeries and are not in respect of L.R. Nos. 26699/30 and 26700/2, being resultant subdivisions of L.R. No. 11895/20, situated in the North West of Mavoko Municipality in Machakos County, which the plaintiff owns.

g) An order is hereby made that the 1st, 2nd, 3rd and 5th defendants, by themselves, their servants and/or agents or any other parties claiming under or through them, illegally L.R. Nos. 26699/30 and 26700/2, being resultant subdivisions of L.R. No. 11895/20, situated in the North West of Mavoko Municipality in Machakos County, do vacate it and, at their own cost,

remove any developments therein within 6 months hereof and give the plaintiff vacant possession, and in default, the plaintiff shall forcefully evict them together with their servants or agents.

h) The 9th defendant shall ensure compliance with orders (d), (e) and (g) above, and provide the necessary security required to enforce these orders.

i) The plaintiff is awarded general damages of Kshs. 10,000,000/, which shall be borne jointly and severally by the 1st, 2nd, 3rd and 5th defendants.

j) The 1st, 2nd, 3rd and 5th defendants shall bear the plaintiff's costs of the suit.

k) No orders as to costs in respect of the 6th, 7th, 8th and 9th defendants.

Judgment accordingly.

Delivered and Dated at Machakos this 20th day of January, 2026.

**HON. A. Y. KOROSS
JUDGE
20.01.2026**

Judgment delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

Ms Kanja Court Assistant.

Mr. Ochieng holding brief for Prof Ojienda state counsel for
Plaintiff.

Mr. Odongo holding brief for Mr. Makau for 1st Defendant.

Miss. Minayura holding brief for Mr. Makowade for 4th Defendant.

Miss. Ngira for 6th to 8th Defendants.