REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ELC NO. 24 'B' OF 2021
(FORMERLY CIVIL CASE NO: 275 OF 1998)

DHANJI JADRA RANJI.....PLAINTIFF
VERSUS

COMMISSIONER OF PRISONS.....1ST DEFENDANT
ATTORNEY GENERAL…….2ND DEFENDANT

JUDGMENT

1. By Plaint dated 7th July, 1998, the Plaintiff herein sued the Defendants seeking the following orders:

    a) ***A declaration that the Plaintiff is the lawful owner of Title Number Nakuru Municipality Block 21/514.***
    b) ***A declaration that the 1st Defendant through its officers at Nakuru G.K Prison has unlawfully trespassed on the Plaintiff's Title No. Nakuru Municipality Block 21/514 and an order of eviction and demolition of all the unlawful structures built thereon and the removal of trespassers.***
    c) ***A perpetual injunction to restrain the 1st Defendant, his agents and/or servants from Nakuru G.K Prison from trespassing on the Plaintiff's title number Nakuru Municipality Block 21/514.***
    d) ***General damages, mesne profits and costs of this suit.***

2. The 2nd Defendant filed an Amended Statement of Defence and Counterclaim dated 7th July, 1999, where it denied the contents of the Plaint and sought the following orders:

a) ***That the Plaintiff, his servants and or agents be permanently injuncted from trespassing into the suit land.***
b) ***That the Plaintiff's suit be dismissed with costs.***
c) ***Costs of the Counterclaim.***
d) ***Any other or further relief this honourable court may deem fit to grant to the defendants in this suit.***

PLAINTIFF'S CASE

3. PW1, Gibson Wahome Werugia, a licensed Land Surveyor, trading as Wahome Werugia Licensed Land Surveyors testified that he used to be a Government Surveyor and had been instructed by the plaintiff to identify LR No. 452/1/4 as compared to parcel No. 514 in Block 21, whereby he discharged his mandate.

4. He further testified that Plot No. 452/1 was more than 300 acres and that it had been subdivided into 4 portions. It was his testimony that he got the Registry Index Map (RIM) for Block 21 and stated that the two plots 452/1/4 and 514 were separated by a road. Further that plot No. 514 had never been part of LR No. 452/1/4.

5. According to PW1 Parcel No. IR (Block 21) was created a result of the subdivision of 451/1/4 and that FR No. 110/118 referred to parcel No. 112 as Government land which was as a result of the conversion from RTA to RLA. Mr. Werugia told the court that he had established the extent of prison land, and that there was no connection between LR No. 514 and 112. It was his evidence that FR 26/146 was referred to as part

of Nakuru Township Reserve and that the parcels only converged upon conversion into Block 21. PW1 testified that 452/2/15, 452/2/14, 452/2/23 are parcels that surrounded the land formerly known as LR.452/1/4 and produced the maps from Survey of Kenya as PExh.1A, 1B and 1C and the Report as PExh.1(D).

6. Upon cross-examination by Ms. Shirika, PW1 confirmed that he visited the land but that there was no physical road in between the parcels on the ground. He stated that the road was encroached upon and that LR. No. 452/1/4 was subdivided and the Gazette was published in 1961.

7. He was referred to page 91 of the RIM in the plaintiff's bundle, and confirmed that there was a road between 514 and 112. He stated that his job was to establish whether LR No. 514 fell into 452/1/4 and confirmed that the land fell on parcel No. 514 on the right side of Kirinyaga Road. He further stated that Parcel No. 514 has never been part of LR No. 452/1/4 and that he did not know the owner.

8. PW1 was referred to the original map, PExh.1A where he confirmed that the area of 452/1/4 was authorized and that Nakuru Township Reserve bordered LR. No. 452/1/4 and Menengai Estate whereby the reserve was LR. No. 451 and that LR. No. 452/1/4 measured 628 acres.

9. On re-examination, he stated that there was a relationship since LR No. 514 sat on the side where 451 was on the map. He further stated that

there was a grid line on the map which was not a boundary but for drawing the map. PW1 was shown the Gazette Notice at page 49 of the plaintiff's bundle where he confirmed that the same had nothing to do with the land but only the buildings.

10. PW2, Charles Muigai Kariuki, a Valuer/Building Surveyor since 1983, and produced the original Report as PExh.1E.

11. Upon cross-examination, PW2 stated that he could not tell the origin of the parcel of land, admitted having not seen the boundaries but was shown around by the caretaker. It was his evidence that the property was adjacent to the prison but there was no road between the parcel and the prison. PW2 clarified to the court that there was a road between plot No. 882 and No. 112 but that the road was not indicated on the map. He stated that the land above plot No. 514 should be prison land since it had a prison fence.

12. PW3 Dhanja Jadra Ranji adopted his witness statement dated 4th August, 2021, together with his list of documents dated 30th January, 2021 which he produced as Pex. No. 1 to 13. It was his testimony that he had applied for allocation of the suit land and was issued with allotment letter. He also stated that he paid the requisite fees and was issued with a Certificate of Lease and took possession but the Defendant trespassed in 1988. It was his testimony that the allotment letter was in the name of Prudential Construction Company Ltd but the lease was in his name.

13. He further testified that the prison authorities got onto his land and claimed the same as the plot was 600 meters from the prison land. It was his evidence that he built go-downs which the 1st Defendant never complained of and that the 1st Defendant wrote a letter at page 73 where they had proposed an extension of the prison and suggested that he be given an alternative land, of which he did not agree to the proposal.

14. According to PW3, he engaged a surveyor who did a report stating that the plots were different and distinct. He further testified that the gazette notice dated 22nd June, 2016 was for the establishment of the prison, and not for his parcel of land.

15. On cross-examination, PW3 confirmed that he had been issued with an allotment letter together with a lease certificate for land measuring 2.006 hectares. He confirmed that his plot was No. 451 having been excised from Plot No. 452/1/4. PW3 denied that the land was prison land and added that there was a 6-meter road between his plot and prison land. He also stated that the 1st Defendant built a timber house after he had taken possession and that the Regional Commander's house was outside his plot.

16. Upon re-examination, PW3 stated that the allotment letter stated the approximate area and that the difference was 006 hectares and that the surveyor's map gave the history of the land.

DEFENDANTS' CASE

17. DW1, Peter Wanyama the Regional Surveyor Rift Valley, produced documents in respect of parcel No. Nakuru Municipality Block 21/514 contained in Survey Plan Folio No. 234 registration No. 37. He further produced the documents for the parcel of land known as LR No. 452/1/4 survey plan, Folio No. 26 register No. 146, and the RIM for Nakuru Municipality Block 21 as Exhibits Nos. 14a, b & c.

18. Upon cross-examination by Mr. Kahiga, he confirmed that for the survey plan Folio No. 234, Register No. 37. (14 'a') the acreage was 2.006 Hectares, which plot existed in the survey department records. He further stated that every plan folio No. 26 Register No. 146 (14 'b') related to LR No. 482/1/4 which measured 628 acres which was land from Nakuru GK Prison.

19. DW1 admitted that from the maps he could not tell whether Plot No. 514 formed part of the Prison land, and from its presentation, it did not appear to be part of the Prison Land. He confirmed that the RIM for Block 21 showed the existence of plot No. 514, and there was an access road that separated plot No. 514 and the parcels of land.

20. DW1 was referred to the Survey Report by Mr. Werugia, PW1, and stated that parcel No. Nakuru Municipality Block 21/514 has neither been part of LR No. 452 nor 452/1/4 as described in the Gazette Notice.

21. On cross-examination by Ms. Shirika, he stated that the Director of Land Administration was well placed to discuss the origin of the parcel.

22. DW2, Sammy Okwaro Miyeya adopted his witness statement dated 25th July, 2025, as his evidence in chief, and stated that he was an Assistant Director and a Physical Planner in Nakuru, South Rift Region. He was referred to page 18 of the Plaintiff's trial bundle, and testified that the PDP was not from their office since it did not have a PDP reference number. He further testified that it neither had the name of the person who prepared it nor the use or scale of the land.

23. He testified that they prepare PDPs when given authority to prepare by the National Land Commission, and an allotment letter could not be issued without a PDP from their office.

24. Upon cross-examination by Mr. Kahiga, he stated that he was transferred to Nakuru in 2012, and that he had not received any witness summons to give evidence. He stated that he had been instructed to give evidence on the process of preparing the PDP and that he was giving evidence on behalf of the Defendant and as an expert witness. He admitted that he had not attached his professional qualification or the status of his expertise. He told the court that there was communication between the department and the Commissioner of Lands when there was an allocation. When referred to page 18 of the documents, he stated that the

allotment letter had a reference number though faint, and that it had a correlation with the one on the PDP.

25. It was his evidence that there was no forensic report prepared on the PDP, and that he had not come across any correspondence that the PDP was irregular. Further, he had not written any letter or complaint that there was an error and that the issue was never escalated to the Commissioner of Lands.

26. He referred to page 108 – from the survey office where he stated that the conclusion was correct, as there was no correlation with parcel number 514 and that he had not visited the suit land.

PLAINTIFF'S SUBMISSIONS

27. Counsel for the Plaintiff filed submissions dated 7th November, 2025, and identified the following issues for determination:

a) ***Whether the Plaintiff is the legal proprietor of NAKURU/MUNICIPALITY BLOCK 21/514?***
b) ***Whether the 1st Defendant has trespassed into the suit land?***
c) ***Whether a permanent injunction ought to issue restraining the Defendants from encroaching into the suit land?***
d) ***Whether an order of eviction ought to issue against the 1st Defendant?***
e) ***Whether costs ought to issue?***

28. On the first issue, counsel submitted that the Plaintiff was allocated the suit property Nakuru/Municipality Block 21/514 by the Commissioner of Lands vide a letter of allotment dated 10th April 1991, after he had made an application for allotment. It was his submission that the suit land was located approximately 600m from the Nakuru G.K Prison, measuring approximately 2.006 Hectares for a term of 99 years.

29. Mr. Kahiga further submitted that the Plaintiff paid the requisite fees and was issued with a Certificate of Lease, took possession and constructed go-downs in 1998, but the 1st Defendant alleged that the said property belonged to Nakuru G.K Prisons and proceeded to encroach into the suit land. Counsel submitted that the RIM showed that the suit land was not located inside the prison but next to it with a boundary of about 600m separating the two parcels.

30. It was counsel's submission that the Defendants' witness Samuel Okwaro (DW2) brought up novel issues relating to the PDP which was not pleaded in their Amended Defence and Counterclaim. He relied on the case of **Independent Electoral and Boundaries Commission & Another V Stephen Mutinda Mule & 3 Others (2014) eKLR** which cited with approval the **Supreme Court case in Nigeria in Adetoun Oladeju (NIG) V Nigeria Breweries PLC SC 91/2002**.

31. He submitted that the witness never produced a PDP that was in the correct format despite alleging that the Plaintiff's allotment letter had a

PDP that did not emanate from their office and cited Section 107 and 109 of the Evidence Act.

32. Counsel submitted that the Defendants did not adduce any evidence to show that the Plaintiff's allotment of the suit land was obtained through fraud, misrepresentation or illegal unprocedural means. He further submits that the Plaintiff was a bonafide owner of the suit property and relied on **Section 24(a) and 26 of the Land Registration Act**. He also relied on the case of **Kamoye V Tipango & 2 Others (2024) KEELC 4227 (KLR)**

33. On the second issue as to whether the 1st Defendant trespassed on the suit land, counsel submitted that the Plaintiff has adduced evidence to show that he was allocated the suit land which does not form part of prison land hence the 1st Defendant is a trespasser as they entered the suit land without the Plaintiff's permission. Counsel relied on the cases of **Kenya Power & Lighting Company Limited V Fleetwood Enterprises Limited [2017] eKLR** and **Chief Land Registrar & 4 Others V Nathan Tirop Koech & 4 Others [2018] eKLR, John Kiragu Kimani Vs. Rural Electrification Authority [2018]eKLR,**

34. On the third issue, counsel relied on Section 16 of the Government Proceedings Act and submitted that the Plaintiff is the legal owner of the suit land and that the Defendants have infringed upon his rights. He submitted that the Plaintiff was therefore entitled to an order of

permanent injunction restraining the Defendants from use and occupation of the suit parcel.

35. On the fourth issue, counsel submitted that the Defendants being trespassers, an order of eviction ought to issue to protect the Plaintiff's rights, and relied on the case of **Mariko Ndwiga V Edith Muthanje [2020] eKLR.**

36. On the final issue of costs, counsel relied on the case of **Orix Oil Limited V Paul Kabeu (2014) eKLR** and submitted that the Plaintiff having proved that he is entitled to the reliefs sought, is equally entitled to the costs of the suit.

37. The Defendants were given an opportunity to file their submissions but they never did.

ANALYSIS AND DETERMINATION

38. I have considered the pleadings, the evidence on record and find that the issues for determination that emanate from the above are as follows:

a) ***Whether the Plaintiff is the legal owner of the suit land known as NAKURU/MUNICIPALITY BLOCK 21/514?***

b) ***Whether the suit land falls within Nakuru G. K. Prison land.***

c) ***Whether the 1st Defendant has trespassed into the suit land and whether eviction order should issue.***

d) ***Whether a permanent injunction ought to issue restraining the Defendants from encroaching into the suit land.***

e) ***Whether the Defendants have proved their counterclaim and who should bear the costs of the suit.***

39. It is unfortunate that this case has been in court for more than 27 years. The court also notes that it has had a checkered history which shows that it had proceeded ex-parte in 2001 and a Judgment delivered in favour of the Plaintiff which was later set aside by the Court of Appeal who had ordered that the matter be heard afresh. The same was heard and a Judgment delivered on 13th October 2011, where the Judge dismissed the Plaintiff's case. The Plaintiff being aggrieved filed an appeal to the Court of Appeal. The Court of Appeal heard the Appeal and issued orders on 13th May 2020 directing that the matter be heard afresh.

40. From the pleadings, the documentary and the oral evidence, the Plaintiff laid down how he acquired the suit land through an application for allotment of a plot. The Plaintiff further told the court that he was allotted the suit plot parcel No. Nakuru/Municipality Block 21/514, vide Allotment letter dated 10th April, 1991. It was his case that he was issued with an allotment letter and later with a Certificate of Lease on 20th September, 1995. It is the Plaintiff's case that he met the requirements stipulated in the allotment letter and followed the due process in acquiring the suit land. The Plaintiff produced the documents as exhibits before the court.

41. The 1st Defendant claimed that the suit land belonged to Nakuru G K Prison as it had been gazetted as such vide Legal Notice No 371 of 1961. This led to the Plaintiff instructing his lawyers to write a demand letter dated 2nd May 1998, on the encroachment on the suit land. It is on record that the Provincial Prisons Commander Rift Valley Province responded to the Plaintiff's letter vide a letter dated 18th May, 1998, as follows:

> "***That the Prison department had proposed an extension site next to Nakuru prison to the Forest Department. On 21st December 1972, the Provincial Physical Planning Officer Rift valley Province, wrote to the Commissioner of Lands Nairobi vide his letter Ref. No. R/7/5A/42 dated 21sts December, 1972, and copied to this office. The purpose of the letter was for the Commissioner of Lands to sanction the proposed extension site….. I strongly believe that this gentleman was allocated land in the middle of the prison a mistake which the Commissioner of Lands should immediately correct."***

42. The RIM, the Survey Report and the evidence from the Plaintiff and the Defence witnesses debunked this notion that the suit land was part of the prison land. The evidence from the maps and the Surveyor and DW2 show that the Prison land and the suit land are distinct and separate from each other, ostensibly 600 meters apart. There was no evidence to suggest that the land fell within the prison land. The letter by the Provincial Prison Commander suggested that the prison needed an extension of the prison land but did not confirm that the land belonged to

the Nakuru G K prison. They only had a desire to extend the land as it was near their land. There was no evidence of any response from the Commissioner of Lands to actualize the correction of the supposed error as per the Provincial Prison Commander.

43. There are elaborate procedures laid down for the acquisition of private land for a public purpose through compulsory acquisition. If the prison desired to acquire this land to be part of the prison land for a public purpose, then why did they not engage the relevant institutions to trigger the process of compulsory acquisition with compensation to the owner of the private land. By the time of allocation of the land by the Commissioner of Lands, this land was vacant and that is why the Plaintiff took possession and built go- downs as was shown in the photographs produced by PW1. The 1st Defendant was not in occupation of the suit land.

44. The Defendants also claimed that the land had been reserved as prison land vide a Legal Notice No 371 of 1961 which was produced by the Plaintiff which stated as follows:

> ***"In exercise of the powers conferred by section 3 of the Prison's Ordinance and delegated to the Permanent Secretary for defence, the Permanent Secretary for Defence hereby declares:***
>
> ***a) The Prison camp buildings situate on plot No. L R No. 452/1/4 on Kampi Ya Moto Road in the Nakuru District of the Rift Valley Province and***

b) The prison camp buildings situated off the Sergoit Road in the Eldoret Municipality in the Rift Valley Province

To be prisons under the provisions of this Ordinance.

45. The legal Notice No. 371 of 1961 which the Defendant hinged its counterclaim on specifically declares that the prison camp buildings situate on Plot No L R. No. 452/1/4 to be prisons which is indicative of what was declared as prisons. As earlier stated and admitted by the defence witness that L R No 452/1/4 is distinct from the suit land plot No 514. The legal Notice also declared prison camp buildings on Plot No L R No 452/1/4 as prisons and it should be noted that plot No. 514 was vacant when the plaintiff took possession therefore no buildings could have been declared to be a prison camp.

46. It is instructive to look at the Survey Report produced in court as Pex No. 1 D, which gave an elaborate description and history of the suit land together with the prison land attaching the maps and survey plans. The conclusion was as follows:

i) Parcel No. Nakuru Municipality Block 21/514has never been part of L.R No. 452 or 452/1/4 as described on the Kenya Gazette dated 22nd June 1961.

ii) Parcel No. 514 was most likely part of L R No. 451 and belonged to Nakuru Municipality in 1966 the time L R No. 452/2 was subdivided.

iii) The Gazette Notice refers to L R No 452/1/4. This is a much bigger piece of land covering over seven hundred

acres. This land does not have any connection with parcel No. 514.

47. The Regional Surveyor gave evidence on behalf of the Defendant and stated that the suit land has never been part of LR No 452 or 452/1/4 as described in the Gazette Notice.

48. The Defendants' witness Samuel Okwaro's testimony was on the issuance of PDPs and stated that the Plaintiff's PDP did not originate from their office which issue had neither been raised in the pleadings nor structured in the examination in chief. He later admitted that there was a reference number that was similar to the one on the allotment letter Ref. no. 30884/XXX1/11 and therefore was in compliance with the legal and procedural requirements of acquisition of land.

49. In the case of **ROSEMARY WANJIRU NJIRANI vs. OFFICER IN CHARGE OF STATION, MOLO POLICE STATION & ANOTHER (2017) eKLR** the court held that:

> ***"The position of the respondents is that the suit land forms part of Molo Police Station. They state that Molo Police Station was gazetted in the year 1951 as having 8 Hectares. It is claimed that there was an illegal allocation of part of this land. Unfortunately, apart from the mere oral statement that Molo Police Station was gazetted as being land measuring 8 Hectare, I have no documentary evidence of such. One would expect that there be a Part Development Plan (PDP) for the police station which would have clearly demarcated the area***

assigned to the police station, but no such PDP was produced either in the affidavit or oral evidence of SSP Lesikinwa. In his replying affidavit, SSP Lesikinwa annexed a copy of a map said to be of the police station but the said map is no legible and one cannot tell what it is meant to demonstrate. It would not have been too hard to call the Director of Surveys or District Surveyor or other appropriate officer, to produce a map showing the dimensions of the police station, and explain, if indeed that is the position, that the suit land is within the police station land".

50. Further, at paragraph 20 of the above Judgment, further held that:

"Various cases were referred to me by counsel for the respondent and I have looked at them, but the same are clearly distinguishable from the circumstances of this case. In the case of Norbixin Kenya Limited vs Attorney General (supra), there was also a dispute as to whether the land in issue was police station land. In that case, the Attorney General produced a development plan No. 309, which recognized the existence of a police station on the suit property. There had also been two allotment letters, one issued to the police, and the other to the plaintiff's predecessors in title. The court held that there was evidence that the land had been planned and reserved for use as a police station. I do not have such evidence in this case, in that no PDP was produced, and no allotment letter or document of title in favour of the police station, was tendered. In the case of Nelson Kazungu Chai & 9 Others vs Pwani University (supra), the issue was whether certain land belonged to the

individual plaintiffs or to the defendant which is a public university. Evidence was tendered that the land had been reserved for public use and affirmed as such through a PDP. The same was the position in the case of Henry Muthee Kathurima vs Commissioner of Lands & Others where the question was whether certain land had been reserved for use by the National Youth Service. In the suit, there was produced a PDP No. 167 /89/8 to demonstrate that the land was indeed reserved for use by the Service. This is not what we have in this suit. There is no document whatsoever, whether in the form of a PDP, or survey map, or indeed anything, to show that the suit land was ever part of the land belonging to the Molo Police Station. In fact, I have no evidence to inform me of what the police station land is, or how big it measures. For a court to cancel a title, it must be fully convinced that such title is a bad title that cannot be protected. A court cannot cancel a title on the mere statement, without anything more, that the land comprised therein is public land".

51. I agree with the reasoning in the above case as it is similar to this case. No evidence was brought forth to demonstrate that the suit land was part of the land reserved for the prison or that the acquisition of the land fell short of the required standards hence tainted.

52. The court is cognizant of the provisions of the Government Lands Act Cap 280 which stipulates the procedures of acquisition or alienation of government land. The Act gave the Commissioner of Lands power to allocate ‘unalienated Government land and also provided the procedure

for the same. Unalienated Government land is defined in the Act as: 'Government land which is not for the time being leased to any other person, or in respect of which the Commissioner had not issued any letter of allotment.'

53. Section 7 of the Government Lands Act provided that:

> ***"The Commissioner or an officer of the Lands Department may, subject to any general or special directions from the President, execute for an on behalf of the President any conveyance, lease or licence of or for the occupation of Government lands, and do any act or thing, exercise any power and give any order or direction and sign or give any document, which may be done, exercised, given or signed by the president under this Act:***
> ***Provided that nothing in this section shall be deemed to authorize the Commissioner or such officer to exercise any of the powers conferred upon the President by sections 3, 12, 20 and 128."***

54. The foregoing Section clearly limited the power of the Commissioner of Lands to execute leases on behalf of the President and that it is the President who had sole discretion to alienate unalienated Government land under Section 3 of the Government Lands Act.

55. Having found that the suit land was not part of prison land, it follows that the Plaintiff is entitled to an order of eviction of the 1st Defendant from the suit land as it entered the same unlawfully.

56. On the issue whether the Plaintiff is entitled to an order of a permanent injunction, in the case of **Kenya Power & Lighting Co. Limited v Sheriff Molana Habib [2018] eKLR** where the court held as follows:

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

57. Section 24 of the Land Registration Act provides that subject thereto:

a) ***the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and***
b) ***the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges***

belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of lease.

58. Section 25 of the Land Registration Act states as follows:

"(1) The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an Order of Court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject:—

(a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and

(b) to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.

(2) Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee".

59. Section 26 states as follows:

"(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.

(2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original."

60. The Plaintiff having proved that he is the legal owner of the suit land, is therefore entitled to partial orders sought in the Plaint together with costs. The Plaintiff has been in court for over 27 years seeking justice for a declaration that he is the rightful owner of the suit land. The Defendant made it difficult for him to enjoy peaceful occupation of the suit land by the act of trespass. The Plaintiff sought general damages and *mesne* profits.

61. Mesne profit is a special damage which must be specifically pleaded and specifically proved. Although the plaintiff pleaded mesne profits in the plaint, he neither specifically pleaded the amounts he was claiming nor led evidence to prove as required. The court cannot conjure figures from the blues to award the plaintiff.

62. In the case of **Luva v Kimbio & 3 others [2023] KEELC 16462 (KLR),** the court held **as** follows:

"The Court has considered the pleadings and the evidence on record. Mense profits are in the category of special damages. They

must be specifically pleaded and proved. The 1st Defendant did not set out the particulars of mense profits in her Counter Claim. She did not furnish the Court with any evidence on the period the Plaintiff has been on the suit property and the loss she has suffered. I therefore find that she is not entitled to mesne profits."

63. Similarly, in the case of K**aranja Mbugua & another v Marybin Holding Co. Ltd [2014] eKLR** Nyamweya J stated as follows with regard to mesne profits:

"This court is alive to the legal requirement that mesne profits, being special damages must not only be pleaded but also proved, as shown by the provisions of Order 21, Rule 13 of Civil Procedure Act.

64. As to the claim for general damages, it is trite law that trespass is the act of unauthorized and unjustifiable entry upon the land in another's possession. Trespass is actionable per se regardless of the extent of the incursion and without any necessary showing of injury or damage to the claimant. The moment trespass is proved then you do not need to show the injury or damage that has been caused to you. In the case of **Park Towers Ltd V John Mithamo Njika and 7 Others 2014 eKLR where Mutungi J** stated as follows:

"I agree with the learned judges that where trespass is proved a party need not prove that he suffered any specific damage or loss to be awarded general damages. The court in such

circumstances is under a duty to assess the damages awardable depending on the unique circumstances of each case"

65. Further in the case of **Duncan Nderitu Ndegwa V Kenya Power and Lighting Company Limited & Another (2013) eKLR Nyamweya J** held that once trespass to land is established, it is actionable per se and indeed no proof of damage is necessary. I therefore consider an award of Kshs. 10,000,000/ (Ten Million Shillings only) to be adequate compensation for the defendant's infringement of the plaintiff's right to use and enjoy his land for more than 27 years.

66. I have considered the pleadings, the evidence of the parties, the submissions by counsel and the relevant judicial authorities and find that the Plaintiff has proved his case on a balance of probabilities and give the following specific orders:

a) ***A declaration is hereby issued that the Plaintiff is the lawful owner of Title Number Nakuru Municipality Block 21/514.***

b) ***A declaration is hereby issued that the 1st Defendant through its officers at Nakuru G.K Prison has unlawfully trespassed on the Plaintiff's Title No. Nakuru Municipality Block 21/514 and an order is hereby granted that the 1st Defendant gives vacant possession of the suit land within a period of 90 days failure to which eviction and demolition of all the unlawful structures built thereon be issued.***

c) ***A perpetual injunction is hereby issued restraining the 1st Defendant, his agents and/or servants from Nakuru G.K***

Prison from trespassing on the Plaintiff's title number Nakuru Municipality Block 21/514.

d) ***The Defendant to pay General damages for Ksh. 10,000,000/ for trespass together with costs of the suit.***

e) The 1st Defendant's counterclaim is hereby dismissed with costs.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 20TH DAY OF JANUARY 2026.

M. A. ODENY
JUDGE