



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KABARNET

ELC CASE NO. E002 OF 2023

BRISTOL PRINTERS & AGENCIES 1ST

PLAINTIFF

KOBINO LIMITED 2ND

PLAINTIFF

JOSEPH CHESIRE 3RD

PLAINTIFF

EVERLYN WANGANYA 4TH

PLAINTIFF

AVENUE AGENCIES 5TH

PLAINTIFF

ROBERT PUKOSE 6TH

PLAINTIFF

ZABLON KIPKOECH 7TH

PLAINTIFF

KEVIN KIPTOO 8TH

PLAINTIFF

KETES AGENCIES 9TH

PLAINTIFF

= VERSUS =

COUNTY GOVERNMENT OF BARINGO

DEFENDANT

J U D G M E N T

Introduction

1. By a plaint dated 3rd August 2023, the plaintiffs instituted the instant suit seeking judgment against the defendant for:-

- a) **Permanent injunction restraining the defendant whether by itself, its employees, agents or authorized personnel from taking possession, putting structures or in any other way yielding up land parcels known as unsurveyed commercial plots numbers A1, A2, A3, A4, A5, A6, A7, A8 and A9 (the suit properties).**
- b) **In the alternative the defendant be directed to compulsorily acquire the suit properties from the plaintiffs under the supervision of the court.**
- c) **Costs of the suit.**

d) Any other relief that the court may deem fit and just to grant.

2. The suit is premised on the ground/contention that the plaintiffs are the owners of the suit properties. The particulars of ownership are provided in paragraph 12 of the plaint as follows:-

NAME OF OWNER	LAND PARCEL	DATE OF ALLOTMENT
BRISTOL PRINTERS & AGENCIES	UNS. COMMERCIAL PLOT NO. A1	31/12/1998
KOBINO LIMITED	UNS. COMMERCIAL PLOT NO. A2	31/12/1998
JOSEPH CHESIRE	UNS. COMMERCIAL PLOT NO. A3	31/12/1998
EVERLYN WANGANYA	UNS. COMMERCIAL PLOT NO. A4	31/12/1998
AVENUE AGENCIES	UNS. COMMERCIAL PLOT NO. A5	31/12/1998
ROBERT PUKOSE	UNS. COMMERCIAL PLOT NO. A6	31/12/1998
ZABLON KIPKOECH	UNS. COMMERCIAL PLOT NO.A7	31/12/1998
KELVIN KIPTOO	UNS. COMMERCIAL PLOT NO.A8	31/12/1998
KETES AGENCIES	UNS. COMMERCIAL PLOT NO. A9	31/12/1998

3. It is the plaintiffs' pleaded case that they enjoyed possession of the suit properties/plots until the defendant

expressed intention of merging them with the aim of establishing a recreational facility within the municipality; that on 25th July 2023, they wrote to the defendant seeking compensation for compulsorily delineating their parcels of land but the defendant refused and/or failed to respond to their letter and instead of heeding to their plea for compensation, the defendant forcefully evicted them from the suit properties/plots, took possession of the suit properties and started putting up structures thereon.

4. Terming the actions and/or omissions of the defendant complained of irregular and illegal for failure to follow due process in acquisition of private land, the plaintiffs instituted the instant suit seeking the reliefs listed herein above.
5. The defendant filed a statement of defence, dated 4th October, 2023 in which he denies the plaintiffs' claim/allegations against it and contends that the plaintiffs' ownership documents are fake/were fraudulently

obtained. The defendant gives the particulars of fraud urged against the defendant as follows:-

- a) The defendant's allotments are not genuine since there were no plots for allocation to the plaintiffs;
- b) The part development plan (PDP) by the plaintiffs was not approved by the relevant authorities (R/B/238/01/22) and is fake;
- c) The plots were not available since the same had been allocated to the National Museums of Kenya (Ref. No.328/95/6).

6. The defendant denies the plaintiffs' claim that they had been in occupation of the suit plots and avers that the suit plots are owned by the National Museums of Kenya and that the owner (National Museums of Kenya) has fenced and fully developed the plots.

7. It is the defendant's case that it has been wrongly sued as it is not the owner of the suit properties/plots and that the suit plots are none existent on the ground.

EVIDENCE

The plaintiff's case

8. When the case came up for hearing, Joseph Chesire, who testified as PW1, informed the court that after allotment, they never took possession of the suit plots; that the allegation in paragraph 15 of their plaint that they were forcefully evicted from the suit plots is not correct and that he is not aware that the suit properties/plots are registered in the name of the National Museums of Kenya.
9. On why they have sued the County Government of Baringo, he stated that they sued it because it is the one in occupation of the suit plots.
10. PW1 produced several documents in support of the plaintiffs' case.
11. Upon being referred to a letter of allotment dated 7th July, 1996; the PDP attached thereto, PW1 stated as follows:-

“It is true that the land belonged to National Museums of Kenya. In a meeting held at the

County Council for housing planning, it was resolved that a portion facing the road be excised and 9 plots be created and be allocated to persons who had made applications.”

12. In cross examination (further cross examination), PW1 stated as follows:-

“Before the decision to excise a portion of the land, the land belonged to the Museums of Kenya. I am not aware whether change of user was done.”

13. In re-examination, PW 1 stated as follows:-

“Our allotment letters were issued in 1999. The Museum of Kenya had a big parcel of land. We excised the 9 plots from the land that had been allocated to Museum of Kenya.”

14. He maintained that they never took possession of the suit properties and stated that the defendant never issued

them with notice that it would take possession of the suit plots.

Defendant's case

15. Jonah Kiprono Korir the County Surveyor, Baringo County, who testified as DW1 relied on the witness statement of Franklin Kiche recorded on 25th July, 2025 after it was adopted as his evidence in chief.
16. He informed the court that the land in dispute is PDP Ref. No.328/95/6 plan No.R.B.328.95/6; that allocation of the land to the National Museums of Kenya was done on 7th July,1996; that the land measures 3.275 hectares (approximately 8 acres). He produced the allotment letter issued in favour of the National Museums of Kenya as Dexbt 1 and the PDP attached thereto as Dexbt 2.
17. He further informed the court that the PDP was approved and signed by the Director Physical Planning on 7th June 1996, the same date the letter of allotment was issued.

18. DW1 further stated that if land in the name of a Government entity (public land) is to be subdivided, excised and allocated to a different person, there is a procedure to be followed which he gave to be as follows:-

- a) Consent must be obtained from the owner of the land;
- b) PDP must be prepared for the portion to be excised and gazette notice published;
- c) Approval must be given by the office of the Director of Physical Planning and Commissioner of Lands;
- d) Allotment letters will thereafter be issued to the new allottees.

19. In cross examination, DW1 stated as follows:-

“The Ref. No. in the allotment letter is 149086/39. The allotment letter is in the name of Board of Governors National Museum of Kenya. The PDP plan No. is R. B.328.95/6.”

20. Upon being referred to the allotment letters produced by the plaintiffs, DW1 stated as follows:-

“The Ref. No. and PDP Nos. in the above allotment letters shown to me are different from the one in the name of National Museums of Kenya. Those allotment letters for the plaintiffs do not have PDPs attached to them. They could be allotment letters for land anywhere. Those letters are not in our records.”

21. In re-examination, DW1 stated as follows:-

“The Museums of Kenya was issued with an allotment letter for land measuring approximately 3.275 hectares and a PDP was attached to the allotment letter.

The letters of allotment produced by the plaintiffs are not for the same land owned by National Museums of Kenya. It is difficult to tell the location of the land when no PDP is attached.”

Analysis and determination

22. At close of hearing, parties filed submissions which I have read and considered.
23. I find the sole issue for the court's determination to be is whether the plaintiffs have proved their case on a balance of probabilities to warrant being granted the orders sought.
24. The allotment letters produced in evidence by the plaintiffs make reference to the attached plan No. RB.328.01.22. The plan referenced in the allotment letters was not produced in evidence by the plaintiffs. There was no evidence of compliance with the terms of offer in the allotment letters by any of the plaintiffs or proof of compliance with the applicable laws and procedures in allocation of Government land.
25. The plaintiffs' case appears to be based on payment of rates in respect of the allotment letters which is not proof of fulfilment of the conditions set out in the letter of offer

or applicable law and procedures in allocation of Government land.

26. It is noteworthy that the plaintiffs resiled from their pleaded case to the effect that they had been in use and possession of the suit plots and that they were forcefully evicted from the suit property by the defendant.

27. The plaintiffs acknowledged that the suit plots were created from land that had been set apart and allocated to a public entity, National Museums of Kenya, hence public land. Such land was by operation of law not available for allocation to the plaintiffs. If anybody purported to allocate the land to the plaintiffs, the allocation is incapable of conferring on the plaintiffs any legally protectable interest or a basis for granting the plaintiffs the reliefs sought in this suit.

28. The upshot of the foregoing is that the plaintiffs have not made up a case for being granted the orders sought.

Consequently, I find their suit to be lacking in merits and I dismiss it with costs to the defendant.

29. Orders accordingly.

Dated, signed and delivered virtually at Busia this

24th day of February, 2026

L. N. WAITHAKA

JUDGE

In the presence of;

Mr Collins Kigen for the Plaintiffs

N/A for the Defendant

Court Assistant; Tracy