

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ELC NO. 8 OF 2023

LAPANA

LIMITED-----

PLAINTIFF

VERSUS

THE COUNTY GOVERNMENT OF TRANS-NZOIA----

DEFENDANT

JUDGMENT

1. Through an amended plaint dated **17/3/2023**, the plaintiff seeks:
 - (a) **Declaration that it is the sole registered proprietor of land title No. Kitale Municipality Block IV/443, hereinafter the suit property.**
 - (b) **Declaration that the defendant has trespassed onto the suit property, yet it has no legal interest whatsoever.**
 - (c) **General and exemplary damages for trespass.**
 - (d) **Temporary and permanent injunctions.**
 - (e) **Kshs.6,850,000/= being the value of the demolished improvements on the suit property.**
2. The contention by the plaintiff is that it became registered proprietor of the suit property measuring

0.1120 Ha after purchase and taking possession through a sale agreement dated **27/9/2018** for **Kshs.42, 000,000/=**, from **1/2/2019**. The plaintiff avers that on **15/2/2023**, the defendant, through its governor, agents, or servants, entered into the suit property and demolished the gate and part of the perimeter wall securing the suit property, claiming that it belonged to the defendant.

- 3.** The plaintiff avers that the defendant's agents or servants continued harassing or hindering its entry into the suit property and also refused to accept rent payments for the. The plaintiff avers that it had no option but to move to court for temporary injunctive orders, which were granted on **27/2/2023**, and were extracted and served upon the defendant on **28/2/2023**.
- 4.** Further, the plaintiff avers that, notwithstanding service of the order, the defendant's agents or servants, in flagrant and deliberate disobedience of the orders, made entry into the suit property on the night of **7/3/2023**, demolished all the buildings thereon, and also took away all the construction material thereon valued at **Kshs.6,850,000/=**, leaving the suit property empty and flattened.

5. The defendant opposed the suit through a statement of defence dated **6/11/2024**, terming it as inept, fatally defective, incompetent, ambiguous, and not sufficiently disclosing any cause of action against the defendant. The defendant avers that the suit property measuring **0.1120 Ha** is public land, where the plaintiff has no proprietary interest.
6. The defendant averred that the plaintiff had not disclosed that it had been issued with an enforcement notice before the suit, as it does not have any claim to the suit property, since it forms part of the Kitale Stadium land. The defendant avers that the plaintiff merely resorted to court prematurely, to seek orders which are an abuse of the court's process, by misleading the court, as its recollection of the events is not a true reflection of reality.
7. The defendant avers that it is the legal, lawful, and beneficial owner of the suit property, which forms part of the government land, where the County Government of Trans Nzoia has an interest, and possession of the same, as it was reserved for the government to put up public utilities. The defendant prays that the court declare it as the legal owner of

land title No. **Kitale Municipality Block IV/443**, measuring **0.1120 Ha**, and an order for a permanent injunction, restraining the plaintiff, its servants, agents, or employees, or any other person, from entering, dealing with, and or interfering with the defendant's interests on the suit property.

8. Through a reply to defence dated **15/1/2025**, the plaintiff denied that the suit property is public land, forming part of the Kenyatta Stadium, or that the defendant had issued any enforcement notice to it.
9. At the hearing, **Francis Kariuki Njagi** testified as **PW1**. He told the court that he was a registered valuer, employed by the government and practicing privately. PW1 told the court that in **2023**, the plaintiff, through Mr. Fredrick Masinde, instructed him to undertake a valuation of the suit property, which had been demolished by the defendant. Pursuant to the instructions, PW1 said that he started the assignment by first establishing the registration status of **Kitale Municipality Block IV/443**, and found out that the plaintiff had been the registered owner with effect from **February 2019**, as per the certificate of lease. PW1 said that the suit property was situated opposite the defendant county

headquarters, approximately **150** meters from the courts.

- 10.** PW1 said that upon a visit to the site on **11/3/2023**, he only found debris, since all the buildings had been demolished. PW1 said that the plaintiff provided photographs of the building that had been erected on the land before the demolition. PW1 said that he eventually compiled a valuation report dated **11/3/2023**, showing that the suit property had five distinct single-storey buildings, a garage, a bar with an inspection pit, and an ablution block, to which he returned a value of the developments at **Kshs. 6,850,000/=**.
- 11.** PW1 said that the suit property was approximately **2½** kilometers from Kitale Stadium, which falls under **Block No. 111**, and therefore, the two properties have no relationship. He produced the report as **P.Exhibit No. (1)**. In cross-examination, PW1 told the court that the methodology he used was the replacement costs method to arrive at the actual value for a structure that had been in existence for close to **30 years**.
- 12. Fredrick Masinde** testified as **PW2**. He relied on a witness statement dated **7/2/2023** and **15/1/2025**

as his evidence-in-chief. As a director of the plaintiff, PW1 told the court that his company, as a nominee of Realist Limited, became the registered owner of the suit property, which Realist Limited had bought from Prasita Priyesh Shah, vide a sale agreement dated **27/9/2018** at **Kshs.42,000,000/=**, and took vacant possession.

13. PW2 said that on **15/2/2023**, the defendant, through its governor and other agents or servants, trespassed into the suit property, demolished both the gate and the perimeter wall, leaving the plot exposed and unsecured, while claiming that the land belongs to the County. PW2 said that the defendant has never had any proprietary rights or interests in the suit property, as a result of the threats, harassment and trespass, PW2 said that the company moved to the court and obtained temporary orders of injunction on **27/2/2023**, restraining the defendant through its agents, or servants from entering, or committing acts of wastage or interfering with the plaintiff's entry and user of the subject land.

14. Despite service with the order, PW2 said that on the night of **7/3/2023**, the defendant, through its agents or servants, using a bulldozer, made entry into the

suit property and demolished all the buildings standing on the said land and carried away all the materials valued at **Kshs. 6,850,000/=**, as **per P. Exhibit No. (1)**.

- 15.** PW2 said that a contempt of court application was filed against the officers of the defendant, and vide a ruling dated **18/1/2024**, the County Secretary of the defendant was found guilty of contempt and fined **Kshs.100,000/=**, in default to serve one month imprisonment term, which the fine was paid.
- 16.** Further, PW2 said that the acts of the defendant and its officers were high-handed and illegal, hence claims special, general, and exemplary damages. PW2 produced as exhibits a certificate of corporation of the company issued on **29/10/2018**, **CR 12** issued on **29/10/2018**, board resolution to file the suit dated **20/2/2023**, sale agreement dated **27/9/2018**, deed of nomination dated **13/2/2018**, transfer form dated **23/1/2019**, certificate of lease dated **1/2/2019**, extract of the green card, court order, and ruling dated **18/1/2024** as **P. Exhibits No. (1) - (10)**.
- 17.** PW2 said that the demolition occurred after the defendant was served with a court order, hence the

fine for contempt of court against the County Secretary. PW2 denied the allegations in the statement of the defendant that the land was public or that he had been served with a prior demolition notice. PW2 denied that he supplied unauthorized building approvals and permits to the defendant. PW2 denied that the suit was anywhere near the Kenyatta Stadium, Kitale. PW2 said that other than the certificate of lease, he had the PDP, or an approved survey plan for the plot, which was issued to the original allottee of the suit property.

- 18.** Asked about the letter dated **24/5/2024** in the defendant's list of documents. PW2 said that he was unable to confirm if the original allottee of the suit property had followed due process to acquire the plot. PW2 said that the validity of ownership of the plot, since allocation to his predecessor in title had not been challenged.
- 19.** PW2 insisted that he conducted due diligence before purchasing the land, going by the copy of records and the official search that he undertook, showing the history of the suit property. PW2 said that the green card entries were clear on the history of the suit property and that the county government had

approved the transfer of the suit property to him in **2018**.

- 20.** PW2 said that the fact that the letter dated **24/5/2024** talks of missing documents does not mean such documents do not exist in reality. PW2 said that the letter dated **24/5/2024** was written to the defendant long after the demolition occurred and the filing of this suit. PW2 said that he was not aware that the defendant had lodged a complaint regarding the ownership status of the suit property before demolition.
- 21.** PW2 said that all the land records were clear that the suit property was regularly allocated, transferred, and registered to both his predecessors in title and to himself since **1997**. For **26** years since alienation, PW2 said that he had not come across any successful challenge from the defendant that the suit property belonged to the public.
- 22.** The court record shows that after the plaintiff closed their case on **10/11/2025**, the defendant sought an adjournment to call their witnesses. For the second time, the defendant did not avail their witnesses. The defence was therefore marked as closed.

- 23.** The plaintiff relies on written submissions dated **26/1/2026**, isolating three issues for determination. On whether the suit property is public or private land, the plaintiff submitted that public and private land are defined by **Articles 62** and **64** of the Constitution.
- 24.** In this case, it is submitted that the suit property was originally alienated as per the copy of record on **29/1/1997**, the lessor being the Government of Kenya, to Tom Kilalya Werunga, and as private land as per entry No. **12** of **1/2/2019**, transferred to the plaintiff.
- 25.** The plaintiff submits that in all these entries until entry No. **11**, the alienation of the suit property to private land has not been challenged at all by the defendant, on account of illegality, and in these circumstances, the defendant has not raised any counterclaim for the land. Reliance is placed on **Kambanga Ranching (DA) Co. Ltd -vs- Komboza Ndoro & Others [2024] KEELC 333 [KLR]**.
- 26.** On trespass, the plaintiff submits that under **Section 3(1)** of the Trespass Act Cap **294**, it refers to entry into private land without lawful excuse, justification, or consent of the owner. In this case, the acts of the

defendant amounted to trespass and the commission of illegal acts of demolition. Reliance is placed on **Monica Wamuhu Macharia -vs- Kenya Railways [2003] KEELC 20676 [KLR]**.

27. The plaintiff submits that the defendant's entry and demolition were without any court order, hence a breach of **Article 40(1)** of the Constitution as held in **Kenya Railways Corporation -vs- Omboto & Another [2025] KECA 537 [KLR]**.
28. The plaintiff submits that the defendant did not comply with **Section 152A(1)** of the Land Act but instead took the law into its own hands and demolished the buildings on private land.
29. On the reliefs sought, the plaintiff submitted that it is entitled to special and general damages for trespass of **Kshs. 5,000,000/=**, exemplary damages of **Kshs.15,000,000/=**, due to the high-handedness of the defendant, when there was a court order in existence, and special damages of **Kshs. 6,850,000/=**. Reliance was placed on **Monica Wamuhu Macharia -vs- Kenya Railways Corporation (supra)** and **Titus Gatitu Njau -vs- Municipal Council of Eldoret [2015] eKLR**.

30. The court has carefully gone through the pleadings, the evidence tendered, and the written submissions. The issues calling for my determination are:

(1) If the plaintiff holds a valid title to the suit property.

(2) If the defendant has succeeded in challenging the suit property as public land, illegally registered, occupied, and developed by the plaintiff.

(3) If the defendant trespassed into plaintiff's suit property and demolished the developments therein.

(4) If the defendant's acts were justified.

(5) Whether the plaintiff is entitled to the reliefs sought.

31. The plaintiff pleaded that it is a *bona fide* owner of the suit property, which the defendant, on **7/3/2023**, trespassed into and demolished its development despite a valid court order issued on **27/2/2023**, rendering it to incurred special damages of **Kshs.6,850,000/=**.

32. The plaintiff, in support of ownership of the suit property, produced a sale agreement dated **27/9/2018**, certificate of incorporation, **CR 12**, board resolutions, deed of nomination, copy of transfer form, valuation for stamp duty, certificate of

lease, extract of title, court order and ruling, valuation report, and photographs of the development thereon. In the copy of records, the title register for the parcel was opened on **29/1/1997**. The lessor is the Government of Kenya. The 1st lessee was Tom Kilalya Werunga, who obtained a certificate of lease on **29/1/1997**. The plaintiff became the registered owner on **1/12/2019** as per entry No. **12** in the copy of records produced as **P. Exhibit No. (9)**.

- 33.** In ***Kithaka -vs- Wangari & Others Civil Appeal No. 155 of 2020 [2026] KECA 255 [KLR] (13th January 2026) (Judgment)***, the issue before the court was whether the appellant had any right in the suit property capable of being protected by the Constitution under the Irrigation Act, where he was a statutory licensee.
- 34.** The Court of Appeal held that the Constitution protects property, or a right, or an interest in property in the broadest terms possible, so as to extend to “property of any description” and therefore, a licensee of a rice holding in Mwea, with the terms of the Irrigation Act, enjoys the same

constitutional protection as a property owner in Muthaiga.

- 35.** In **Kiragu & Another -vs- Kenya National Highway Authority Civil Appeal No. 83 of 2019 [2026] KECA 65 [KLR] (30th January 2026) (Judgment)**, at issue in the trial court was the lawfulness or otherwise of an action to demolish buildings on the ground that encroached on the road reserve. The respondent had alleged that the appellant held illegally obtained title deeds. There was a counterclaim for declaration of encroachment, an order to demolish and remove the structures, a mandatory and permanent injunction from encroachment, and *mesne* profits.
- 36.** The trial court had dismissed the appellant's case and allowed the counterclaim. The court said that the appellant was in contravention of the law, and no claim on a breach of right can be based on an illegality. The court held that the appellants were authors of their own misfortune, for they should have consulted the respondent before embarking on a construction exercise when purchasing the properties.

- 37. Article 40** of the Constitution guarantees the protection of the property owner from deprivation of the same, unless for a public purpose and in accordance with Chapter **5 of the Constitution. Article 40(6) thereof** provides that such protection does not extend to property illegally obtained.
- 38.** In *John Entick -vs- Nathan Carrington [1765] EWHC KB J98*, the court held that there was unlawful trespass and government interference with property rights. The court established the principle of individual freedom and privacy as the cornerstone of modern democratic societies, and the judicial power to declare government actions illegal if they are not authorised by law. The court said that no one is above the law, laying the groundwork for the principle of the tort of trespass and the importance of the rule of law.
- 39.** In *Benja Properties Ltd -vs- Syedna Mohamed B. Sahed & Others [2015] KECA 457 [KLR]*, the court said that the legal effect of registration was to convert the suit property from unalienated government land to alienated land, with the consequence that the suit land became private property, away from public or government land.

40. In **Dina Management Ltd -vs- County Government of Mombasa [2023] KESC 30 [KLR]**, the court observed that the sanctity of title is contingent upon the legality of the process that created it, and that a registered owner cannot merely dangle the instrument of title as proof of ownership when the root is challenged, since a title is an end product, which if the same is a product of a flawed process, becomes defeasible.
41. In this suit, the plaintiff has tendered, before the court, a paper trail of how the suit property was alienated from government land to private land in **1997**, as per **P. Exhibit No. (9)**, upto when it became its registered owner. In **Sehmi & Another vs Tarabana Co. Ltd, Petition No. E033 OF 2023 [2025] KESC 21 [KLR]**, the court defined a *bona fide* purchaser for value as one who has bought a legal estate, for value, or money's worth, in good faith and, where he had undertaken due diligence. The plaintiff has produced evidence that it undertook due diligence to establish the root of the title, paid consideration for the property, and paid stamp duty for its registration.

- 42.** The defendant, on the other hand, has alleged that the suit property is public land forming part of Kitale Stadium, hence it gave notice of intended enforcement to the plaintiff. The powers, functions, and obligations of the defendant are governed by **Articles 6, 174, 175, 176, 184, 185, 186, 187,** and **Part 2** of the Fourth Schedule of the Constitution, the Physical and Land Use Planning Act (PLUPA), Urban Areas and Cities Act, and the County Governments Act. Under **Sections 40, 46, and 55** of the PLUPA, the defendant has a mandate on local physical and land use development plans.
- 43.** Public land is defined under **Article 62** of the Constitution as land which, on the effective date, was unalienated government land as defined by an Act of Parliament in force at the time, and or land in respect of which no individual or community ownership can be established by any legal process.
- 44.** As of **27/8/2010**, the suit property was already alienated land with effect from **29/1/1997**. Therefore, the land did not fall under the mandate of the defendant, by dint of **Article 62(2)** of the Constitution. The defendant pleaded that the suit property forms part of Kitale Stadium land. PW1 told

the court that Kitale Stadium falls under Block **111**. The burden was on the defendant to prove that the suit property is part of Kitale Stadium land by producing documentary evidence to that effect. The list of documents dated **6/11/2024**, accompanying the statement of defence, was not produced by the defendant to counter the certificate of lease issued to the plaintiff.

45. The failure to call witnesses to substantiate the contents of the defence left the defendant's defence as mere statements with no probative value. It is the defendant who is alleging that the title held by the plaintiff is illegally obtained. **Section 23(1)** of the Registration of Titles Act (repealed), embodied the doctrine of indefeasibility of title unless there is a challenge on account of fraud or misrepresentation. See **Dr. Joseph Arap Ng'ok -vs- Justice Moiijo ole Keiuwa Civil Appl. No. 6 of 1997.**

46. The plaintiff has tendered evidence that the allocation of the suit property was legal, proper, and regular. See **Funzi Island Development Ltd -vs- County Council of Kwale [2014] eKLR.** The defendant has not poked holes in the process that the certificate of lease held by the plaintiff was a

result of a flawed process, in line with **Sections 114-117** of the repealed Constitution and the Trust Land Act (repealed), especially after the plaintiff confirmed that its transfer and registration were also approved by the defendant. Irregularity, fraud, and illegality must be pleaded and proved to the required standards.

- 47.** The defendant failed in its statement of defence to plead the particulars of fraud, illegality, and irregularity in the manner in which the plaintiff acquired the title deed to the suit property, took vacant possession, and embarked on developing the suit property. See **Ndolo -vs- Ndolo [1996] KECA 201 [KLR]**. Evidence to prove the same was not tendered. See **Milan Kumar Shah & Others -vs- City Council of Nairobi & Another, Nairobi HCCC No. 1024 of 2005.**
- 48.** Where there are competing claims on ownership of land, the court decides the *bona fide* owner based on the law and by interrogating the quality of evidence tendered, on how ownership was conferred. Mere general allegations of illegality are not enough. See **Central (K) Ltd -vs- Trust Bank Ltd & Others**

**[1996] eKLR and R.G. Patel -vs- Lalji Makanji
[1957] EA 314.**

- 49.** The defendant alleges the suit property is public land. The defendant failed to call the Director of Land Administration, the Director of Surveys, and the Land Registrar to support its assertion that the suit property falls under public land in general and, in particular, comprises the Kitale Stadium land. No investigative report was tendered to show that the suit property was irregularly allocated and registered in the name of the plaintiff.
- 50.** The next issue is whether there was trespass to private land, and commission of acts of demolition, without justification or the consent or authority of the registered owner. Protection of title to land is guaranteed by **Article 40(2) (3) and (4)** of the Constitution. In **Rutongot Farm Ltd -vs- Kenya Forest Service & Another [2018] eKLR**, the court observed that once a proprietary interest has been lawfully acquired, the right to protect it is expressed in terms that no person should be arbitrarily deprived of their land.
- 51.** The law on eviction of illegal occupiers or encroachers of public, private, or community land is

Section 152A-I of the Land Act, and the Prevention, Protection, and Assistance of Internally Displaced Persons and Affected Communities Act. Eviction must be sanctioned by a court. **Section 152F** of the Land Act requires that once a **90-day** notice has been issued, an alleged illegal occupier may move to court for reprieve.

- 52.** The right to housing is guaranteed under **Articles 21(2)** and **43(1)(b)** of the Constitution, and was re-emphasized in **Mitu Bell Welfare Society -vs- Kenya Airport Authority & Others Petition 3 of 2018**. The court said that illegal occupants on public land with established residences have a protectable right to housing over the same. In **William Musembi & Others -vs- Moi Education Centre Co. Ltd & Others Petition No. 2 of 2018**, the court said that eviction of the petitioners, even without notice, ought to have been carried out in a manner that respected the dignity, right to life, and security of the affected persons, including being allowed to demolish or salvage their property. The court held that non-violation of the Bill of Rights applies both horizontally and vertically and binds all persons.

- 53.** Trespass, invasion, and demolition of the plaintiff's suit property occurred during the pendency of a valid court order, duly served upon and within the knowledge of the defendant. The ruling on contempt of court established the elements of contempt against the county secretary of the defendant. There is no evidence that the plaintiff had breached **Sections 59, 60, 61, 61(4), 62, 64, 65, 66, 67,** and **72** of the PLUPA as read together with Physical Land use Planning (Development Control Enforcement) Regulations **2021**.
- 54.** The defendant failed to tender evidence of compliance with **Rules 4, 5, 9,** and **14** of the cited Regulations **2021**. Form No. PLUPA -D-C-22 as set out in the Second Schedule of PLUPA, and the Rules were not availed before the court as regards the execution of an enforcement notice for the demolition.
- 55.** There is no evidence of a registered enforcement notice as per Form No. PLUPA-DC-23. Evidence of compliance with the above Regulations was not availed before the court. Due process of the law is the hallmark of a democratic society such as ours. There is no evidence that the defendant followed due

process, even as it ignored a pending court order on the night of **7/3/2023**, in trespassing and demolishing the buildings. See **Kental Enterprises Ltd -vs- Attorney General [2025] KEELC 1470 [KLR]**.

- 56.** In **Kenya Railways -vs- Birah & Others [2025] KECA 545 [KLR]**, the court emphasised the need for an evictee to be notified in writing, by notice in the gazette, or newspaper at least **3** months before eviction. The court termed the eviction without due process as both illegal and unconstitutional under **Articles 40** and **47** of the Constitution.
- 57.** The law is that court orders must be obeyed by all and sundry until set aside or vacated. See **Thuo -vs- Njeru, Nairobi CA No. 278 of 1998** and **Econet Wireless (K) Ltd -vs- Minister for Information and Communication (K) [2005] eKLR**. Self-help is what the defendant resorted to. Eviction, demolition, and trespass without warning or compensation are abhorred in law. See **Satrose Ayuma & Others -vs- Registered Trustees of Kenya Railways Petition No. 65 of 2010**.
- 58.** Trespass is actionable *per se*. The plaintiff has pleaded and proved that it is entitled to special

damages of **Kshs.6,850,000/=**, as per the valuation report. The defendant failed to tender a rival report or an inventory to show that what was on the site the night of the demolition was of lesser value than the pleaded amount. The claim is proved.

- 59.** As for general and aggravated damages, trespass constitutes interference with possession. Deprivation of use of the land is what the plaintiff is alleging. Courts are bound to consider what is reasonable to be awarded as damages, based on sound principles. See **Peter M. Kariuki -vs- Attorney General [2014] eKLR, Titus Gatitu Njau -vs- Municipal Council of Eldoret (Supra), Duncan Ndegwa -vs- Kenya Pipeline Ltd HCC No. 2577 of 1990,** and **Kenya Power & Lighting Company Limited -vs- Fleetwood Enterprises Limited (2014) eKLR.**
- 60.** In **Manyara -vs- Muchiri & Another [2025] KECA 1606 [KLR],** the court held that equity cannot override statutory requirements.
- 61.** Aggravated damages are awarded where a party acts out of malice. See **Hon. Attorney General -vs- Zinzi Ltd Petition No. 15 of 2020** and **Johnson Evan Gicheru -vs- Andrew Morton & Another [2005] eKLR.** In **Miguna Miguna -vs- The**

Standard Group Ltd & Others [2017] eKLR, the court cited with approval **John -vs- MG Limited [1997] QB 586**, that aggravated damages will be ordered against a defendant who acts out of improper motive, or on insistence on a flurry of defuse.

62. Exemplary damages, on the other hand, are aimed at deterring and punishing a defendant. In **Rookes -vs- Barnard [1964] AC 1129**, Lord Devlin said that exemplary damages may be granted in cases of oppressive, arbitrary, or unconstitutional action by servants of the government.

63. I think the defendant acted unjustifiably, oppressively, and maliciously in defying a lawful court order.

64. The upshot is that this court issues the following orders:-

a) A declaration that the plaintiff is the registered proprietor of land title No. Kitale Municipality Block IV/443.

b) A declaration that the defendant has trespassed onto the suit property

c) A permanent injunction restraining the defendant through its agents or servants

from interfering with the plaintiff's use and occupation of land title No. Kitale Municipality Block IV/443.

d) Special damages of Kshs.6,850,000/=.

e) General and exemplary damages of Kshs.7,500,000/=.

f) Costs to the plaintiff.

65. Orders accordingly.

Judgment dated, signed, and delivered via Microsoft Teams/Open Court at Kitale on this 25th day of February 2026.

In the presence of:

Court Assistant - Dennis Karani for the plaintiff present

Odongo for Akonde for the defendant present



**HON. C.K. NZILI
JUDGE, ELC KITALE.**