

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO
ELC CASE NO. E001 OF 2023

SHIBAWA GENERAL ENTERPRISES LIMITED..... PLAINTIFF

VERSUS

**CHINA STATE CONSTRUCTION ENGINEERING
CORPORATION [KENYA] LTD.....1ST DEFENDANT
KENYA NATIONAL HIGHWAY AUTHORITY.....2ND DEFENDANT**

AND

**LAND REGISTRAR ISIOLO COUNTY.....1ST INTERESTED PARTY
THE ATTORNEY GENERAL.....2ND INTERESTED PARTY**

JUDGMENT

1. The Plaintiff, which is a Limited Liability Company incorporated on the **12th June 2013**, has approached the court *vide* Further Amended Plaintiff dated 20th March 2025. The Plaintiff seek[s] various reliefs.

2. The reliefs sought are:
 - i. ***General damages for Trespass***
 - ii. ***Exemplary damages***
 - iii. ***Geneal damages for loss of future use.***
 - iv. ***Compensation of parcel [Plot] Number GARBATULA/307 at the current market value as per paragraph 4 of the Further Amended Plaintiff above.***
 - v. ***Any other reliefs that the court deems fit in the circumstances.***
 - vi. ***Costs and interests.***

3. The Plaintiff contends that same is the registered owner/ proprietor of plot No. 307/Garbatulla. The Plaintiff further posits that the suit plot was identified by the plaintiff in 1996. Moreover, the plaintiff has averred that: the Plaintiff applied to be allocated the plot in 2008; the County council of Isiolo [*now defunct*] approved the plaintiff's application; the County council allocated the land to the Plaintiff; the allocation was reflected at the foot of the minutes of the works, town planning and market committee; the minutes were duly certified; the plaintiff has been paying rates to the county council of Isiolo and now to the county Government of Isiolo; the plaintiff was issued with the requisite part development plan and the county government of Isiolo has confirmed the plaintiff's ownership of the suit plot.

4. Furthermore, the Plaintiff has averred that: the 1st Defendant entered upon and trespassed onto the suit plot in 2022; the 1st defendant has excavated the suit plot; the 1st defendant has since erected a camp site and constructed staff houses/ Permanent Building[s] on the suit property; the actions by the 1st defendant has rendered the suit property economically unviable; the actions complained of have deprived the plaintiff of its proprietary rights to the suit land; the actions complained of constitute trespass; and the plaintiff is thus entitled to recompense/ compensation.

5. Flowing from the foregoing, the Plaintiff has therefore sought the intervention of the court to protect its proprietary right. In addition, the plaintiff has also sought *inter- alia* compensation in the sum of Kshs. Twenty million Two hundred and forty thousands [Kes 20,240,000] only being the value of the suit land.

6. The 1st Defendant duly entered appearance and thereafter filed a statement of defence. The statement of defence is dated 25th March 2024. However, the statement of defence under reference was thereafter amended resting with the amended statement of defence dated 25th April 2025. The 1st Defendant has denied the claims on behalf of the plaintiff.

7. Pertinently, the 1st defendant has posited that same has since been engaged/ contracted by the 2nd defendant to undertake the construction of Kula Mawe- Mogadashe – Merti/ Garbatulla road. Moreover, it has been contended that the 2nd defendant as the employer covenanted to avail land/ sites for the erection of camp sites and related infrastructure to facilitate the construction of the road project. To this end, the 1st defendant has averred that the 2nd defendant is the one who availed the land in question for purposes of erecting the camp site.

8. Additionally, the 1st defendant has posited that the portion of land which is being claimed by the Plaintiff was availed by the 2nd defendant after due consultation involving the county government of Isiolo; the local community and the provincial administration. In any event, it has been posited that the land in question forms part of the community land and same does not belong to the Plaintiff.

9. Premised on the foregoing, the 1st defendant has contended that the plaintiff's claim to the suit land is misconceived and legally untenable. Furthermore, it has been contended that the claims against the 1st defendant are misdirected. The 1st defendant has sought to have the suit dismissed with costs.

10. The 2nd Defendant duly entered appearance and filed a statement of defence and counterclaim. The statement of defence is dated 12th May 2025. The 2nd defendant has denied the claims by the plaintiff. In addition, the 2nd defendant has posited that what is claimed by the plaintiff forms/ constitutes part of the community land. Moreover, it has been contended that the said community land/ suit Property, is unregistered and thus same is held by the county government of Isiolo, albeit on trust for the Community.
11. Furthermore, the 2nd Defendant has posited that same applied to be allocated the portion of the community land and that after due consultation with various stake holders including the county government of Isiolo, a part development plan was duly prepared; approved; and thereafter published in the local dailies.
12. The 2nd Defendant has further averred that though the part development plan was published, no objection was raised by the plaintiff herein. Moreover, the 2nd defendant has contended that same is in the process of acquiring title to or ownership rights in respect of the suit property.
13. The 2nd Defendant has also contended that the portion of land which is now being claimed by the plaintiff falls within the corridor relating to the Horn of Africa gate way development project. It is posited that the project covers Isiolo- Modogashe-wajir-Elwak-Rhamu-Mandera road.

14. As a result of the forgoing, the 2nd Defendant has contended that the plaintiff has no lawful rights to and in respect of the disputed land. Moreover, the 2nd Defendant had sought the following reliefs;

a. A declaration that the Plaintiff in the counterclaim is the lawful allottee of land parcel LR No. Garbatulla/307 for public purpose.

b. A declaration that the Plaintiff in the counterclaim is the lawful and beneficial owner of land parcel LR No. Garbatulla/307.

c. An order of Permanent injunction restraining the 1st defendant in the counterclaim from interfering with the plaintiff's possession of the suit property.

15. The Interested party entered appearance, but did not file any pleadings. Nevertheless, the interested parties [through the Honourable Attorney General] participated in the proceedings of the court.

16. The matter proceeded for hearing. The plaintiff's case was/ is premised on the evidence of two [2] witnesses. The witnesses are Halakhe Osman Dadacha and Ture Tepo. Same testified as PW1 and PW2, respectively.

17. It was the testimony of PW1 [Halakhe Osman Dadacha] that same is a Director of the plaintiff's company. The witness averred that he has been authorized/ mandated to act and attend court on behalf of the plaintiff. The witness thereafter referenced the resolution of the plaintiff dated 19th September 2023.

18. Furthermore, the witness averred that by virtue of being a director of the plaintiff's company, same is conversant with the facts of the case. The witness thereafter intimated to the court that same has recorded and filed a witness statement dated 19th March 2023; and which witness statement the witness sought to adopt as his evidence in chief. Suffice it to state that the witness statement was duly adopted and constituted as the evidence in chief of the witness.

19. The witness also adverted to the Further Amended Plaint dated 20th March 2025; and verifying affidavit attached thereto. Thereafter, the witness sought to adopt and rely on the contents of the further amended Plaint. The Witness equally sought the prayer[s] captured at the foot thereof.

20. Other than the foregoing, the witness also referenced the list and bundle of documents dated 19th September 2025; containing 7 documents. The witness sought to tender and produce the documents as exhibits. However, an objection was taken to the production of document one and thereafter, the same document [Letter Written by One Ture Tepo on behalf of the Chief Officer, Lands and Physical Planning] was marked for Identification as PMF11

21. Nevertheless, the rest of the documents were tendered and admitted before the court. The Documents were admitted as Exhibits P2-P7, respectively.

22. Additionally, the witness testified that the suit property lawfully belongs to the Plaintiff. The witness averred that the suit property does not form/ constitute part of community land. On the contrary, the witness testified that the land in question is private land.
23. On cross examination by learned counsel for the 1st Defendant, the witness averred that the land in question belonged to the Plaintiff. In addition, the witness posited that he has tendered and produced before the court a copy of the certificate of incorporation of the Plaintiff.
24. It was the further testimony of the witness that same has also tendered and produced before the court a copy of the part development plan [PDP] in respect of the suit property. The witness added that the part development plan confirms that the suit property is private land.
25. While still under cross examination, the witness averred that same has only produced the part development plan before the court. However, the witness clarified that he does not have any survey records or registry index map in respect of the suit property.
26. The witness further testified that the 1st defendant entered onto the suit land without the consent/ permission of the plaintiff. It has been contended that the actions by / on behalf of the 1st defendant constitute trespass. Moreover, it was the testimony of the witness that arising from the actions of the 1st defendant same [witness] was obliged to and engaged a valuer to visit the sit property for proposes of preparing a valuation report. To this end, the witness referenced the valuation report tendered before the court.

27. On cross examination by learned counsel for the 2nd defendant, the witness testified that the plaintiff was duly incorporated. In addition, the witness averred that same has tendered and produced before the court a copy of the certificate of incorporation. The certificate is shown to have been issued on 12th June 2013.
28. Upon being referred to the minutes of the county council of Isiolo [page 21 of the bundle], the witness testified that the works, town planning and market committee is indicated to have sat on 7th August 2008.
29. It was the further testimony of the witness that the plaintiff's company applied for allotment of land. Nevertheless, the witness conceded that same has not produced before the court a copy of the application for allotment of land. However, the witness clarified that the application was made in 2008.
30. While still under cross examination, the witness testified that he has availed the minutes before the court. The witness posited that the minutes before the court were signed on 7th August 2018. In particular, the witness acknowledged that the minutes were being signed after more than ten years from the date when [minutes] were made.
31. Upon being referred to page 34 of the plaintiff's bundle of documents, the witness intimated that the document is a letter from the plaintiff's

advocate. Moreover, the witness posited that the letter indicates that the plaintiff acquired the land in 1996.

32. It was the further testimony by the witness that same has tendered before the court various documents to demonstrate ownership of the land. In particular, the witness has referenced the approved part development plan. Nevertheless, the witness admitted that the plaintiff has never been issued with a letter of allotment. In particular, the witness conceded that he has not tendered; or produced any letter of allotment before the court.

33. While still under cross examination, the witness testified that it is the 1st defendant who is currently in occupation of the suit property. Nevertheless, the witness stated that the plaintiff did not authorize / sanction the 1st defendant's entry into the suit property. The witness reiterated that the activities by the 1st defendant constitute trespass.

34. It was the further testimony of the witness that it is him who retained and instructed the valuer to inspect the suit property and to prepare a valuation report. The witness clarified that the valuation report has since been produced before the court. However, the witness admitted that he has not produced any receipt to show/ demonstrate that the valuer was paid. Be that as it may, the witness posited that the receipt for payment is contained in the plaintiff's company file.

35. On cross examination by learned counsel for the interested party, the witness testified that the plaintiff was issued with a part development

plan. The witness averred that the Plaintiff thereafter proceeded to and paid standard premium in the year 2016.

36. It was the further testimony of the witness that the land in question was identified in 1996. However, the witness posited that the plaintiff applied to be allocated the land in 2008. In addition, the witness averred that there are minutes confirming the allotment of the suit property.

37. It was the further testimony of the witness that the minutes before the court were approved in 2018. However, the witness conceded that in 2018, there was no clerk to the county council of Isiolo. The witness also confirms that there is no office as the clerk to the county government of Isiolo. For good measure, the witness averred that the only clerk is the one to the county assembly of Isiolo.

38. While still under cross examination, the witness testified that the minutes before the court are shown to have been certified by the clerk of the county council of Isiolo. In addition, the witness conceded that the minutes are shown to have been certified in 2018.

39. The witness further testified that same has availed documents to show the location of the plaintiff's land. Moreover, the witness posited that the plaintiff engaged a surveyor to survey the suit property. However, the witness added that he has not availed any survey plan; cadastral plan; survey map; or beacon certificate before the court.

40. Additionally, the witness testified that same has only availed a copy of the part development plan. In particular, the witness reiterated that the disputed land belongs to the plaintiff.

41. The 2nd witness who testified on behalf of the plaintiff was Ture Tepo. The witness testified as PW2.

42. It was the testimony of the witness that he is a records officer at Isiolo County Government. The witness testified that he [Witness] assumed the portfolio in 2018.

43. It was the further testimony of the witness that same has attended court pursuant to witness summons issued by the court. In addition, the witness averred that his attendance before the court is because of the letter dated 26th October 2023; and which letter the witness sought to tender before the court.

44. There being no objection to the production of the letter dated 26th October 2023, the same was produced and admitted as exhibit P1.

45. On cross examination by learned counsel for the 1st defendant, the witness testified that he is the records officer- Isiolo county government. Nevertheless, the witness conceded that he did not carry any document to show/ confirm that he works with the County Government of Isiolo.

46. It was the further testimony of the witness that the land in question is private land. However, the witness admitted that though the land is private land, no certificate of title has since been issued.

47. Furthermore, the witness testified that same has not produced any record to show ownership of the land. The witness added that the records held by the county government of Isiolo in respect of the suit land are part development plan; and the number in the register.

48. On further cross examination, the witness testified that exhibit P1 [letter confirming ownership] was requisitioned by the plaintiff. Besides, the witness posited that it was requisitioned for verbally.

49. On cross examination by learned counsel for the 2nd defendant, the witness averred that he is an employee of the county government of Isiolo. Furthermore, the witness testified that he was given the authority to write the letter [exhibit P1]. However, the witness conceded that he has not produced or tendered before the court a copy of the authority which was given to him.

50. The witness further testified that he is the one who certified the minutes before the court. In addition, the witness averred that he is the one who signed the minutes. In particular, the witness confirmed that the minutes before the court were signed by him.

51. It was the further testimony of the witness that even though he posits that the suit land belongs to the plaintiff, he [witness] has never seen the part development plan in respect of the suit property.

52. With the foregoing testimony, the Plaintiff's case was closed.

53. The 1st Defendant's case is anchored on the evidence of one [1] witness. The witness was Isaac Doti Garbiti. The witness testified as DW1.

54. It was the testimony of the witness that same works for the 1st defendant. In addition, the witness averred that by virtue of his portfolio/ employment with the 1st defendant, same is therefore conversant with the facts of the case. Moreover, the witness posited that he has since recorded a witness statement dated 25th April 2025.

55. Thereafter the witness sought to adopt the statement dated 25th April 2025; as his evidence in chief. Suffice it to state that the witness statement was thereafter adopted and constituted as the evidence in chief of the witness.

56. Furthermore, the witness adverted to the list and bundle of documents dated 25th April 2025 and thereafter sought to produce the evidence as exhibit before the court. There being no objection, the documents were tendered and admitted as DEX1 and DEX2 on behalf of the 1st defendant.

57. It was the further testimony of the witness that the 1st defendant also filed an amended statement of defence dated 25th April 2025 and which statement of defence the witness sought to adopt and rely on.

58. On cross examination by learned counsel for the 2nd defendant, the witness testified that same is conversant with the land in question. The witness averred that the land in question is approximately 4km from Garbatulla town.

59. It was the further testimony of the witness that the land in question forms part of the community land. Moreover, the witness testified that the land is currently occupied by the 1st defendant. In addition, the witness averred that the 1st defendant has established a Laboratory for testing of materials for road construction. Besides, the witness posited that the land also has staff houses; garage; and a police station build thereon.

60. The witness further averred that the 1st defendant is currently engaged in the construction of the road forming part of the Horn of Africa Gate Way Project.

61. On cross examination by learned counsel for the plaintiff, the witness testified that he is the community liaison officer. Moreover, the witness averred that he is also an employee of the 1st defendant. In addition, the witness posited that it is the 1st defendant who is responsible for paying/meeting his monthly salary.

62.It was the testimony of the witness that what is claimed by the plaintiff constitute[s] community land. The witness added that the community land belongs to the residents of Garbatulla area.

63.While still under cross examination, the witness testified that the community land in question has not been registered. Moreover, the witness clarified that the community land is currently under the custody of the County Government of Isiolo. Nevertheless, the witness posited that the county government of Isiolo holds the land on behalf of the community.

64.It was the further testimony of the witness that the community already has a community land representative committee. However, the witness admitted that he has not produced any document to show that the land is under the community land representatives.

65.Additionally, the witness testified that the land in question was leased to the 1st defendant. However, the witness conceded that he has not produced any document/ lease agreement between the community and the 1st defendant.

66.It was the further testimony of the witness that even though same has not produced a copy of the lease agreement between the community and the 1st defendant, the community was involved in the process leading to the lease of the land. In particular, the witness averred that he has produced a copy of the minutes between the community and the 1st defendant. In any

event, the witness posited that the meeting that birthed the minute[s] was attended by various community leaders and elders.

67. Furthermore, the witness averred that the county government of Isiolo also attended and participated in the meeting.

68. On re-examination by learned counsel for the 1st defendant, the witness reiterated that the land in question belongs to the community. To this end, the witness posited that no one was entitled to compensation.

69. With the foregoing testimony, the 1st Defendant's case was closed.

70. The 2nd defendant's case is premised on the evidence of one [1] witness. The witness was Milka Muendo. The witness testified as DW2.

71. It was the testimony of the witness [DW2] that same is a qualified; and a registered surveyor. In addition, the witness posited that same works with/ for Kenya National High Way Authority [KENHA].

72. Moreover, the witness posited that by virtue of her port folio / employment with the 2nd defendant, same is familiar/ conversant with the facts of this case. To this end, the witness intimated to the Court that she has since recorded and filed a witness statement dated 12th May 2025. Thereafter, the witness sought to adopt and rely on the witness statement as her evidence in chief.

73. Needless to point out that the witness statement was thereafter adopted and constituted as the evidence in chief of the witness.

74. In addition, the witness alluded to the list and bundle of documents dated 12th May 2025, containing nine [9] documents and thereafter sought to produce the documents before the court. However, an objection was taken to the production of documents number[s] 4, 5 and 9 respectively. Suffice it to state that the objection under reference was conceded by learned counsel for the 2nd defendant. Consequently, documents number[s] 4, 5 and 9 were marked for identification.

75. On the contrary, the rest of the documents were produced as exhibits number D1, -, 3; D6-8 respectively.

76. Furthermore, the witness pointed out that the 2nd defendant has also filed a statement of defence and counterclaim dated 12th May 2025. Thereafter, the witness sought to adopt and rely on the contents of the statement of defence and counterclaim.

77. On cross examination by learned counsel for the 1st defendant, the witness testified that the 2nd defendant is a state agency tasked with the mandate of constructing, managing and rehabilitating trunk roads within the Republic of Kenya. In addition, the witness averred that it is the 2nd defendant who engaged/ employed the 1st defendant to construct the designated road.

78.It was the further testimony of the witness that there was public participation over and in respect of the project. Moreover, the witness added that public notices were duly issued and published.

79.On cross examination by learned counsel for the plaintiff, the witness testified that the disputed property constitutes/ comprises of unregistered community land. Moreover, the witness averred that the 2nd defendant wrote to the county government of Isiolo to be allocated the suit land. Nevertheless, the witness conceded that same has not produced before the court any application letter seeking allotment of the land.

80.It was the further testimony of the witness that the 2nd defendant entered into a contract/ agreement of construction of road. The witness averred that the road is part of the Horn of Africa project. However, the witness testified that the contract document is not dated.

81.While still under cross examination, the witness testified that the land in question was given/ handed over to the 1st defendant by the community. In particular, the witness averred that there was a stakeholder engagement/ consultation involving the community; the local administration ; and the County Government of Isiolo.

82.Additionally, the witness testified that arising from the public engagement, minutes were recorded indicating the terms of the agreement. The witness thereafter referenced the minutes dated 6th November 2022. While still under cross examination, the witness testified that there were also minutes arising from the meeting held on 11th April

2022. In particular, the witness pointed out that the minutes have also been tendered before the court.

83. The witness thereafter indicated that the 2nd defendant has also counter claimed ownership of the suit property. The witness posited that the 2nd defendant applied to be allocated the suit property. However, the witness conceded that the 2nd defendant does not have any ownership document/ certificate of title to the suit property.

84. Regarding the attendance at the meeting which birthed the minutes before the court, the witness testified that the meeting was attended to by various members of the community. In particular, the witness averred that there were seven [7] elders who attended the meeting on behalf of the local community.

85. Regarding whether any compensation was ever made/ paid to the county government of Isiolo, the witness averred that no compensation was made.

86. As concerns the acreage of plot no. 307, the witness testified that she's not aware of the acreage [size] of the land.

87. On re-examination, the witness testified that there was indeed an engagement with the community; stakeholders and the county government of Isiolo. To this end, the witness referenced the minutes which have been tendered and produced before the court.

88.Regarding application for allotment of the land, the witness testified that same has not produced the application which was made by the 2nd defendant seeking to be allocated the disputed land.

89.Upon being referred to exhibit D1, the witness averred that the document is the contract agreement between the 2nd defendant and the 1st defendant. In particular, the witness posited that the contract contained terms including the aspect that the 1st defendant would be responsible for acquiring land for construction materials.

90.Regarding the minutes, the witness testified that the minutes relate to the acquisition of the camp site and the compensation that was to be paid. In any event, the witness testified that the compensation was to be made to the Project affected persons.

91.On further re-examination, the witness testified that the 2nd defendant has since engaged the designated offices for purposes of preparation and approval of the part development plan. Furthermore, the witness averred that the camp site] land occupied by the 1st defendant] measures approximately 16 Ha. [40 acres].

92.Following the conclusion of the evidence of DW2, learned counsel for the 2nd defendant sought and obtained an adjournment to certify the documents which were marked for identification. However, on the return date, learned counsel for the defendant intimated to the court that the 2nd defendant was no longer interested in the production of documents

numbers 4, 5 and 9. In addition, learned counsel sought to have the named documents withdrawn from the record.

93. The application by learned counsel for the 2nd defendant was not opposed by the Plaintiff and the 1st defendant. To this end, the court proceeded to and made an order withdrawing/ expunging DMFI 4,5 and 9 from the record of the court.

94. Additionally, learned counsel for the 2nd defendant also sought to withdraw the counterclaim on behalf of the 2nd defendant. The request to withdraw the counterclaim was not opposed by the adverse parties. Consequently, and in this regard, the counterclaim on behalf of the 2nd defendant was marked as withdrawn albeit with costs to the plaintiff/ 1st defendant to the counterclaim.

95. Thereafter, learned counsel for the 2nd defendant sought to close the 2nd defendant's case. To this end, the court proceeded to and endorsed an order closing the 2nd defendant's case.

96. The Interested parties duly entered appearance, but filed no pleadings. In addition, the Interested parties did not file any list and bundle of documents or witness statement.

97. Needless to state, that the Interested parties' case was closed without any evidence being tendered.

98. Following the conclusion of the hearing, the advocates for the parties sought time to file and exchange written submissions. The court proceeded to and granted indulgence to the advocates for the parties. Furthermore, the court issued directions circumscribing the timelines for the filing of the submissions. The directions were: the Plaintiff to file and serve written submissions within 14 days from the date of the directions; the Defendants and the Interested parties to file and serve written submissions within 14 days from the date of service; and the Plaintiff to file and serve rejoinder written submissions [if any] within 14 days of service of the submissions by the defendants.

99. The Plaintiff filed written submissions dated 5th February 2026 and wherein the Plaintiff has raised four [4] issues. The issues are; The suit property lawfully belongs to the plaintiff; the suit property does not comprise of community land; the defendants have trespassed onto the suit property; and the Plaintiff is entitled to compensation.

100. The learned counsel for the Plaintiff has thereafter cited and referenced various decisions. The decisions are: **Philip Ayaya Aluchio versus Crispinos Ngayo 2014 Eklr; Nakuru Industries limited versus S Meta and Sons 2016 eKLR; Willesden investment Limited versus Kenya Hotel Properties limited 2009 Eklr ; Rhoda S Kiilu versus Jianxi water and Hydro power construction company limited 2019 Eklr and Mukidadi versus Khaigan & Anor 2004 eKLR.**

101. The Plaintiff has thereafter imploded the court to find and hold that same has proven/ established its case on a balance of probability. In particular, it has been contended that the Plaintiff has established

ownership of the suit property; trespass by the defendants; entitlement to compensation; award of general and exemplary damages; and compensation for the value of the suit property.

102. In particular, the Plaintiff has sought an award of Kshs Five million on account of exemplary damages and Kshs. Twenty million two hundred and forty thousand only being the value of the suit property. The Plaintiff has also sought for costs.

103. The 1st Defendant filed written submissions dated 20th February 2026; and wherein same has highlighted and canvassed three [3] key issues. The issues canvassed are; Whether the plaintiff has established nexus with the suit property; Whether the suit property is community land or private land; and Whether the Plaintiff has proved their claim on a balance of probabilities of otherwise.

104. Learned counsel for the 1st Defendant has therefore referenced various decisions in an endeavour to demonstrate that the suit land is community land ; the Plaintiff has failed to prove his case; and that the Plaintiff is not entitled to compensation in the manner sought. The decisions cited are: **Gladys Wambui Kadiri versus Samwel Njoroge kamau & 2 others 2022 Eklr; Maina versus Waweru and 2 others 2025 KEELC 791; and Samwel Ambasa & 3 Others versus Stella Ingashia 2022 eKLR**, respectively.

105. Suffice it to state that learned counsel for the 1st defendant has submitted that the Plaintiff herein has not proven ownership to and title

with respect of the suit property. To this end, the court has been invited/ implored to dismiss the Plaintiff's suit. The court has also been implored to award cost to the 1st Defendant.

106. The 2nd Defendant filed written submissions dated 25th February 2026; and wherein same has highlighted three [3] issues. The issues highlighted are: Whether the plaintiff has proved ownership of the suit property; Whether the plaintiff has proved trespass as alleged; and Whether the Plaintiff is entitled to the orders sought or otherwise.

107. Learned counsel for the 2nd Defendant has submitted that despite claiming ownership to or in respect of the suit property, the Plaintiff herein did not tender or produce any credible documents to underpin its claim of ownership to the suit land. Moreover, learned counsel for the 2nd Defendant pointed out that the minutes of the works town planning and market committee dated 7th August 2008; are incapable of conferring title to the Plaintiff.

108. Thereafter, learned counsel for the 2nd Defendant has cited and referenced various decisions. The decisions are: **Kamais Pius and 2 others versus China State Construction Engineering and Kenya national high way authority 2025 Eklr; Jamal Salim versus Yusuf Abdulai Abdi and Another 2018 Eklr and Vesha Food Caterers versus National Land Commission and 2 Others 2024 KEELC 13310** , respectively.

109. Having reviewed the pleadings filed by/ on behalf of the parties; the evidence tendered [both oral and documentary], and upon consideration of the written submissions filed by the respective parties, three [3] issues crystalize for determination.
110. The issues are: Whether the plaintiff has established / proven ownership of or entitlement to the suit property or otherwise; Whether the plaintiff has established the element/ ingredients underpinning trespass or otherwise; and What relief [if at all] ought to issue.
111. Regarding the first issue, it is imperative to recall and reiterate that the Plaintiff approached this court contending that same is the lawful/ registered owner of plot No. 307 situated at Garbatulla area. Moreover, the Plaintiff contended that the suit plot measures approximately 9.1 acres.
112. In addition, it was the plaintiff's contention that on or about 2022, the 1st defendant entered upon or trespassed onto the suit property and commenced on excavation thereon, albeit without the permission/ consent of the Plaintiff. Furthermore, it has also been contended that the 1st defendant established offices; buildings and other permanent fixtures on the suit property. To this end, the Plaintiff posited that the impugned activities have interfered with its [Plaintiff's] proprietary rights over and in respect of the suit property.
113. Having approached the court contending that same is the lawful and registered proprietor of the suit property, it behooved the Plaintiff to

tender and produce before the court plausible, cogent; concrete and credible evidence to demonstrate ownership of; or entitlement to the suit property. Notably, the evidence underpinning ownership of or entitlement to the suit property must be those documents [instruments] that are known to and recognized by the law. Not just some piece[s] of papers/ Documents, by whatever name.

114. Put differently, it behoved the plaintiff to tender and produce legally acceptable documents as proof of ownership of the property. For good measure, proof of ownership of land, the suit property not exempted, cannot be based on any collection of documents; or mere pieces of papers; receipts; or [sic] request for payments of rates.

115. Has the plaintiff established ownership of the suit property? The Plaintiff's claim to ownership of the suit property is premised on a *plethora* of documents. In an endeavour to discern ownership to and in respect of the suit property, I shall address and consider the documents sequentially.

116. I beg to start with the minutes of the Works, Town Planning and Market Committee. The minutes under reference are said to have arisen from the meeting held on 7th August 2008. Nevertheless, even though the minutes are said to have arisen from the meeting held on the 7th August 2008, the minutes in question were never signed up to and including 7th August 2018. Moreover, the minutes in question do not indicate whether the secretary, who recorded same signed/ executed the same.

117. It is important to outline, and underscore that the minutes which were tendered before the court are departmental minutes. The minutes came out of a committee of the council. In this regard, there is no gain saying that the minutes by law were required to be escalated to the full council for purposes of ratification; adoption; and approval.
118. Instructively, it is only upon adoption by the full council that such minutes become authoritative and binding. However, in respect of the matter before hand, the plaintiff has tendered and produced before the court the minutes of the works, town planning and market committee, but same has not brought forth the minutes of the full council [if any] which adopted the departmental minutes.
119. In the absence of the minutes of the full council, the minutes which are being relied upon by the plaintiff remain *inchoate*. The impugned minutes do not hold; or suffice in the eyes of the law.
120. The second perspective that arises from the impugned minutes relates to whether or not same were signed by the Chairperson of the committee? It is important to underscore that the minutes of the committee are ordinarily required to be signed by both the secretary and the chair person. Importantly, the signature of the chairperson is what authenticates and gives authority to the minutes. Absent, the signature of the Chairperson of the Committee, the impugned minutes become unauthentic and invalid.

121. The significance of the signature of the Chairperson is provided for in *Section 80(2) of the Local Government Act, Chapter 265 laws of Kenya [now repealed.]*.

122. **Section 80(2)** stipulates thus:-

80. (1) Minutes of the proceedings of every meeting of a local authority shall be regularly entered in books kept for that purpose, and such minutes shall be confirmed at the same or the next meeting.

(2) The minutes of the proceedings of a meeting of a local authority, when signed by a member describing himself as or appearing to have been chairman of the meeting at which the minutes are confirmed, shall, in the absence of proof of error, be deemed to be a correct record of the proceedings of the meeting of which they purport to be the minutes.

123. The preamble of the minutes which were produced before the court as exhibit P2 show that the chairperson of the committee was one councillor Elijah Mugambi. It is the said councillor Elijah Mugambi who ought to have signed the minutes and authenticated the same. However, the evidence on record show that the segment meant for the chairperson was curiously signed by Ture Tepo [PW2].

124. It is crystal clear that Ture Tepo[PW2] was not the chairperson of the works, town planning and market committee. In addition, it is not lost

on me that Ture Tepo was not himself a councillor with the County council Isiolo [*now defunct*]. Surely, how on earth could Ture Tepo [PW2] purport to constitute himself as the chairperson of the committee and thereafter [sic] sign on behalf of the chair person.

125. I am afraid that the acts of Ture Tepo [PW2] of purporting to sign the minutes on behalf of the chairperson of the committee constitute[s] a fraud. Something is not right with the impugned minutes. I say no more on this aspect.

126. Nevertheless, and to put the foregoing analysis into contexts, it is important to take cognisance of the evidence of Ture Tepo[PW2] while under cross examination by learned counsel of the 2nd defendant.

127. The Witness stated thus:

‘ I am the one who certified the documents before the court. I am also the one who certified the minutes. I obtained the minutes from the custodian of the minutes. I am the one who signed the minutes. I do confirm that the minutes were signed by myself.’

128. It bears repeating that PW2, was not a member of the Works, Town Planning and Market Committee; and could not sign the minutes. Least of all, PW2 could not purport to sign as the chairperson, yet the preamble of the Minutes clearly, show who was the Chairperson of same.

129. The third perspective arising from the minutes relates to the date of the purported signing. The minutes are indicated to have arisen from the meeting held on 7th August 2008. However, these minutes were purported to have been signed on 7th August 2018. For the avoidance of doubt, it is

not lost on me that the local authorities ceased to exist upon the conclusion of the general election held on 4th March 2013.

130. To this end, it is crystal clear that there could be no chairman of [sic] works town planning and marketing committee of the county council of Isiolo, as at the 7th day of August 2018, capable of [sic] signing the impugned Minutes.

131. There are two more aspects that merit consideration as pertains to the minutes in question. Firstly, there is the limb touching on the certification of the minutes. It is common ground that the minutes of the county council of Isiolo are public documents and therefore only certified copies thereof can be produced before a court of law. Moreover, there is no gain saying that the certification can only be undertaken by the designated officer [See **Section 80 of the Evidence Act, Chapter 80 Laws of Kenya**]. [See also the holding of the Supreme Court in the Case of **Torino Limited versus Attorney General and Others [2023] KESC- at paragraph 68 thereof**].

132. Regarding the minutes before the court, same were contended to have been certified by PW2. In particular, PW2 testified and intimated to the court that same is the one who certified the minutes. Despite the said contention, it is important to highlight that the minutes that were produced before the court were not certified in accordance with the law.

133. Needless to posit that what was done to the minutes was the affixation of the stamp of the clerk, county council of Isiolo. That is what is contended to amount to certification. Sadly, the affixation of the Stamp does not amount to certification. Period.

134. Notwithstanding the foregoing, there is a more serious issue that arises from the affixation of the stamp of the county council of Isiolo [now defunct] on the document. I beg to repeat that the office of the Clerk, County Council of Isiolo [now defunct] was non-existent on 7th august 2018.
135. In the premises, there is no way a non-existent office and a non-existent officer could wake up and affix [sic] the magical stamp, on the Minutes on the named Date.
136. To my mind, it is time to call out fraud by its name. It is unethical for certain public officers to manufacture stamps and thereafter proceed on a spree of affixing such stamp on [sic] public documents oblivious of the obtaining legal regime. That is exactly what happened herein.
137. The last aspect which merits deliberation and which equally arises from the minutes relate to the date of [sic] the application for allotment of land. The Plaintiff posit[s] that same applied to be allocated land by the County Council of Isiolo [*now defunct*]. In addition, it is contended that the application for allotment of land by the Plaintiff was duly considered and approved *vide* minutes of 7th August 2008.
138. Additionally, the Plaintiff has contended that arising from the said minutes, same was duly allocated 9 Ha of land at Garbatualla. On the face of it, the contention by the Plaintiff looks attractive. However, it is not lost on me that the Plaintiff tendered and produced before the court a

copy of the Certificate of incorporation showing that the Plaintiff's company was only incorporated on **12th June 2013**. [See exhibit P5]

139. The question that does arise is whether the Plaintiff [*Shibawa General Enterprise limited*] could have prophetically applied for land and been allocated land in 2008, long before its birth [incorporation]?

140. To my mind, several aspects of this minutes which have been referenced and relied upon by the Plaintiff to anchor its claim of ownership of or entitlement to the suit property are suspicious. Suffice it to state that the minutes have no probative value.

141. So much for the impugned Minutes.

142. The second document that has been relied upon by the Plaintiff to anchor the claim of ownership of ; or entitlement to the suit property is a letter dated 26th October 2022. The letter was produced as exhibit P1.]

143. It is important to highlight that the letter in question was written/ authored by Ture Tempo [PW2]. The said author states that according to records held and maintained in their office, plot no. 307 Garbatulla belongs to the plaintiff.

144. However, there is no gainsaying that the purported records, which are said to be held in [sic] the office of chief officer, land and physical planning were neither tendered nor produced before the court. The veracity of the said documents [if any] could not be authenticated.

145. In the case of *Frank Logistics Limited v Golden Lion Real Estate Company & 6 others [2025] KECA 1471 (KLR)*, the Court of Appeal underscored the necessity to avail/ produce before the court the records [if any] underpinning the testimony before the court. The Court of Appeal, frowned upon the bare statement, namely; that according to the records in the office/ registry.

146. The Court stated thus:-

“47. It was clear from the evidence that apart from bare statements in court by DW4, he did not present before the court the records held by the lands registry on which he based his testimony in order to support his evidence. Referred to the documents adduced, particularly the rates clearing certificate, he reluctantly conceded that the property referred to therein was registered under the GLA. No attempt was made by him to explain the circumstances under which the property was later registered under RTA.”

147. It is paramount to state that if such documents were ever available, then the easiest thing that the author could have done was to bring forth the purported records which demonstrated [sic] ownership of the land by the Plaintiff. It is/ was not enough to make an omnibus assertion and then throw same on the head of the court.

148. Nevertheless, it is worth recalling that during cross examination PW2; stated that the only records which are held by the county government and which are said to confirm ownership of the land by the

Plaintiff are : approved part development plan; and system generated number; and the number in the register.

149. In my humble view, a part development plan and the number in the register by and of themselves cannot demonstrate ownership of land. Quite clearly, the contents of exhibits P1 cannot be deployed to find and hold that the Plaintiff owns [sic] the suit land.

150. The third document that anchors the Plaintiff's claim to ownership of the suit land is a copy of application for part development plan. The same was produced as exhibit P4. I must state that an application for part development plan is different from a part development plan. The former is merely an application while the latter denotes the actual part development plan duly prepared; approved; and authenticated by the designated officer.

151. Be that as it may, what the Plaintiff tendered and produced before the court is a mere application for part development plan. However, it is common ground that even if the plaintiff had tendered a part development plan [which is not the case] , such a document by and of itself does not confer [bestow] title to; or ownership of land.

152. The legal position underpinning a part development plan and the role played by a part development plan was aptly; and succinctly illuminated in the case of **Dina Management Ltd v County Government of Mombasa & 5 others [2023] KESC 30 (KLR)**.

153. The Apex Court stated thus:

104. The procedure for the allocation of unalienated land is laid out by the Environment and Land Court in Nelson Kazungu Chai & 9 others v Pwani University [2014] eKLR as follows: “...It is trite law that under the repealed Government Lands Act, a Part Development Plan must be drawn and approved by the Commissioner of Lands or the Minister for lands before any un-alienated Government land could be allocated. After a Part Development Plan (PDP) has been drawn, a letter of allotment based on the approved PDP is then issued to the allottees.

131. It is only after the issuance of the letter of allotment, and the compliance of the terms therein, that a cadastral survey can be conducted for the purpose of issuance of a certificate of lease. This procedural requirement was confirmed by the surveyor, PW3. The process was also reinstated in the case of African Line Transport Co Ltd v Attorney General, Mombasa HCCC No 276 of 2013 where Njagi J held as follows: “Secondly, all the defence witnesses were unanimous that in the normal course of events, planning comes first, then surveying follows. A letter of allotment is invariably accompanied by a PDP with a definite number. These are then taken to the department of survey, who undertake the surveying. Once the surveying is complete, it is then referred to the Director of Surveys for authentication and approval. Thereafter, a land reference number is issued in respect of the plot. 132. A part development plan (PDP) can only be prepared in

respect to Government land that has not been alienated or surveyed...

105. This process is restated in African Line Transport Co Ltd v Attorney General, Mombasa, HCCC No 276 of 2003 [2007] eKLR where it was held that planning comes first, then surveying. A letter of allotment is invariably accompanied by a PDP with a definite number, which would then be taken to the Department of Survey for surveying. Thereafter, it is then referred to the Director of Surveys for authentication and approval. It is after that process that a land reference number is issued in respect of the plot.

154. Surely, no title to or ownership of land can be pegged on an application for part development plan. Such an application is preliminary in nature and constitute part of the initial [preliminary] steps toward allotment of land, subject to the applicable Legal Regime.

155. Moreover, it is important to point out that PW1 himself conceded that the plaintiff has never been issued with a letter of allotment. Nevertheless, I wish to add that even if the plaintiff had been issued with a letter of allotment [which is not the case], such a letter of allotment by and of itself would not confer the Plaintiff with any title to; or rights over the suit property.

156. In the case of **Wreck Motor Enterprises v Commissioner of Lands & 3 others [1997] KECA 391 (KLR)** the Court of Appeal stated as hereunder:

‘Title to landed property normally comes into existence after issuance of a letter of allotment, meeting the conditions stated in such a letter and actual issuance thereafter of title document pursuant to provisions held.’

157. The last set of documents which has also been referenced by the plaintiff to prove ownership are two [2] sets of demand note for rates [request for payment]. The documents were produced as exhibits P3 and P5, respectively. I wish to state; and reiterate that receipt for payment of [sic] rates or rents does not by itself constitute proof of ownership. Needless to add that a receipt can only suffice, if and only if, same is accompanying the Certificate of Title/ Certificate of Lease; or some known ownership Documents. A receipt alone cannot confer rights to Landed property.

158. However, I must clarify that the two sets of documents which were produced before the court are demand notes for rates, but which have been mischaracterized by the Plaintiff. However, it is common ground that demand note for rates [or for rents] cannot be relied upon to prove ownership of; or entitlement to land.

159. Flowing from the forgoing analysis, it is my finding and holding that the Plaintiff has neither tendered nor produced any credible document[s] recognized by law to underpin its ownership of or entitlement to the suit property.

160. I must repeat, that ownership of or entitlement to a landed property must be based on a document recognized by the law. It is not any other collection of papers/ documents. It matters not how many documents are collected. If the documents are unknown to law, no rights; and no interest will flow therefrom.

161. The second issue for consideration relates to whether the Plaintiff has established/ proven the requisite elements of trespass or otherwise. Suffice it to state that any claimant, the plaintiff not excepted, who is desirous to prove trespass must first and foremost prove: ownership and title to the landed property; or the right to immediate and exclusive possession to the land in question.

162. Regarding the suit property, it was incumbent upon the Plaintiff to prove ownership of; or entitlement to the suit property; or at the very least, the right to immediate and exclusive possession thereto.

163. While discussing issue one, I have already found and held that the Plaintiff has not demonstrated ownership of or entitlement to the suit property. The only remaining issue is whether in the circumstances, the Plaintiff has a right to immediate and exclusive possession?

164. I have interrogated the totality of the documentation that were tendered [produced] before the court and I must say, that I have not come across any document or piece of evidence to show that the plaintiff is entitled to possession of the suit property.

165. Moreover, it is not lost on me that the land which hitherto constituted trust land under the **Trust Land Act, Chapter 288 Laws of Kenya** [now repealed], now falls under the purview of **Community Land act, 2016**.

166. In short, and without belabouring the point, it is my finding that the Plaintiff has not established the elements/ ingredients that underpin the plea of trespass. [See **section 3 of the Trespass Act chapter 294 laws of Kenya.**] [See also *Park Towers Limited v John Mithamo Njika & 7 others [2014] eKLR*

167. Before concluding on the question of trespass, it is apposite to reference the holding in the case of **Doshi v Chemutut & 7 others [2025] KECA 776 (KLR)**, where the Court of Appeal highlighted the ingredients to be established before the plea of trespass can be successfully proven.

168. The Court stated thus:-

Trespass, as stated by this Court in the case of Charles Ogejo Ochieng v Geoffrey Okumu [1995] KECA 169 (KLR), is an injury to a possessory right, and therefore the proper plaintiff in an action of trespass to land is the person who has title to it, or a person who is deemed to have been in possession at the time of the trespass. As for the ingredients of trespass, the Court in William Kamunge Gakui v Eustace Gitonga Gakui (Civil Appeal 16 of 2013) [2014] KECA 39 (KLR) stated that trespass is a violation of the right to possession, and that a plaintiff must prove that he has the right to immediate and

exclusive possession of the land. Justice Chemutut did not name Mr. Doshi as a defendant in the suit.

169. The next issue for consideration relates to the reliefs [if at all] that ought to issue. It is important to recall that even though the 2nd defendant had filed a counterclaim, the same was withdrawn.

170. In this regard, it suffices to underscore that the reliefs that were sought at the foot of the counterclaim dated 12th May 2025 are no longer available for consideration.

171. Be that as it may, it is common ground that the Plaintiff herein sought a plethora of relief[s]. The Plaintiff sought general damages for trespass; exemplary damages; general damages for loss of future use; and compensation at the current market value.

172. I wish to point out that the damages that were sought by the Plaintiff, subject to proof, could only be available to the registered owner of the landed property. Such damages do not avail or issue for the mere asking. The claimant must of necessity lay the foundation for their issuance. None was laid by the current Plaintiff.

173. The next prayer touched on and concerned compensation for the value of the land. It is instructive to point out that the claim referenced is special/ liquidated in nature. In so far as the claim is special/ liquidated in nature, the law requires such a claim to be pleaded and particularized. Thereafter, the claimant is obligation to specifically prove the claim.

174. In respect of the subject matter, I wish to acknowledge that the claim was indeed pleaded and particularized. However, as pertains to

proof thereof, I must state that it was not proven. Moreover, there is no gain saying that the mere production of valuation report without calling the maker does not amount to proving the content[s] of the documents.

175. For good measure, it behoved the Plaintiff to call the maker and to speak to the valuation report. Absent the maker, the content[s] of a valuation report remain cold on the document and cannot be deemed to constitute proof of special or liquidated damages.

176. In the circumstances, even if the Plaintiff had demonstrated entitlement to recompense [*which is not the case*], I would still not have returned an award on account of compensation.

CONCLUSION.

177. The Plaintiff approached the court contending to be the registered and lawful owner of the suit property. It was therefore incumbent upon the Plaintiff to place before the court the documentation underpinning the contention of being the registered owner. Sadly, no such documents were tendered before the court.

178. To my mind, the plea of being the registered owner of the suit property was raised in *vacuum*.

179. Other than the foregoing, it is trite that land ownership is premised/ anchored on documents known to and recognized under the law. It therefore means that a claimant seeking ownership of land must appreciate the applicable legal regime and the documents recognized thereunder.

180. In the absence of such documentation, or Instrument[s], the plea of land ownership remains a mirage; an illusion, *nay* a dream.

FINAL ORDERS.

181. Flowing from the discussion in the body of the Judgment, it must have become crystal clear that the Plaintiff has not proven his claim to the requisite standard. It suffices to reiterate that the burden of proof lay on the shoulders of the Plaintiff.

182. In the premises, the final orders of the Court are:

- i. The Plaintiff's suit be and is hereby Dismissed.*
- ii. Costs of the suit be and are hereby awarded to the Defendants.*
- iii. The Costs shall be agreed upon; and in default, same shall be taxed in the conventional manner.*

183. It is so ordered.

DATED, SIGNED AND DELIVERED AT ISIOLO THIS 24TH DAY OF MARCH, 2026.

OGUTTU MBOYA, FCI Arb; CPM[MTI-EA]

JUDGE

In the presence of:-

Ms Mukami – Court Assistant

Mr. Ken Muruki for the Plaintiff

Mr. T. Oduor for the 1st Defendant

Mr. Lawrence Maruti for the 2nd Defendant

Mr. B. Kimathi for the Interested Parties.