Board of Management PAG Lodwar Secondary School v Elim & 9 others (Environment & Land Case 39 of 2021) [2024] KEELC 5872 (KLR) (15 August 2024) (Judgment)

Neutral citation: [2024] KEELC 5872 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ENVIRONMENT & LAND CASE 39 OF 2021

FO NYAGAKA, J

AUGUST 15, 2024

BETWEEN

BOARD OF MANAGEMENT PAG LODWAR SECONDARY SCHOOL ..... PLAINTIFF

AND

LOWOYA ELIM ..... 1ST DEFENDANT

JOSEPH ALANY EMURIA ..... 2ND DEFENDANT

SILVESTER ZULU EKUNOT ..... 3RD DEFENDANT

JOHN EMONI AKA BABA LAMBART ..... 4TH DEFENDANT

JOSHUA LOSURU ..... 5TH DEFENDANT

MARK LOKUI ..... 6TH DEFENDANT

JOHN EROT AKA MBAE AURU ..... 7TH DEFENDANT

CHRISTINE AKAPELIMEN ..... 8TH DEFENDANT

GABRIEL LOPEIYO ..... 9TH DEFENDANT

DANIEL EKOMWA AKA LOKAJELE ..... 10TH DEFENDANT

JUDGMENT

1. By a Plaint dated 06/07/2021, the Plaintiff herein, a public school duly registered by the Ministry of Education of Kenya, brought this suit against all the Defendants. It claimed that it was the bona fide allottee or beneficial owner of all that parcel of land measuring approximately 12.671 hectares located at Kanamkemer (Loborot), Plot No. 625, having been allocated the same through an allotment letter dated the 20/12/2010. It was its claim that prior to the allocation, the land was reserved as a relief

centre housing the Pentecostal Assemblies of God Church, and the purpose of the allocation was to provide room for expansion of the Plaintiff school. It claimed that immediately after the allocation it took possession of the parcel of land and constructed on it a classroom and a two-door latrine at a cost of Kshs. 1,571,943. That was in 2013. Its further claim was that at the time of allocation there were no claims over the parcel of land and neither was it occupied by anyone since it was public land.

2. It averred that sometime in 2015 the 1st Defendant, at the instigation of the 2nd defendant, and without any colour or right or permission or consent, violently trespassed onto and encroached the said parcel of land and forcefully invaded the Plaintiff's classroom and the other structures thereon and 'detained' them for personal use and continue with their acts of trespass. It further claimed that the 1st and 2nd Defendants, in furtherance of their trespass and illegal actions, purported to subdivide and sell the parcel of land to third parties who included the 3rd, 4th, 5th, 6th, 7th, 8th, 9th and 10th Defendants herein when they knew or ought to have known that the parcel of land was public land. It contended that the defendants were trespassers on the suit land for they had purported to establish residences their own and continue with such acts of trespass against the interests of the Plaintiff. It gave the particulars of trespass as follows: -

    i. Violently encroaching onto the suit premises without the plaintiff's consent.

    ii. Denying the Plaintiff, the right of accessing the suit parcel of land .

    iii. Occupying and utilizing the said classrooms and latrines without consent.

    iv. Purporting to convert public land to private use unlawfully and unprocedurally.

    v. Menacingly threatening the plaintiff with actual violence.

    vi. Forcefully detaining public utility.

    vii. Threatening the plaintiff with actual violence.

    viii. Purporting to subdivide public land without lawful authority.

    ix. Purporting to establish residences on the suit land.

    x. Purporting to dispose of public land to third parties without lawful authority.

    xi. Purporting to change the character of the Suitland, which is public land.

3. It claimed further that the Defendants had unlawfully, procedurally and illegally denied it the right of user, threatened its officers and had been disposing of or selling some portions of the suit land to third parties, including the Defendants. It claimed that the Defendants' acts were illegal, null and void. It particularized the illegality as follows:

    i. Purporting to violently detain public utility.

    ii. Usurping the powers of the National Land Commission.

    iii. Unlawfully dealing with public land.

    iv. Engaging in illegal and criminal activities.

    v. Unlawfully obtaining benefit from public land.

    vi. Purporting to deal with land reserved for public use only.

4. It pleaded that unless the Defendants' actions were restrained they would result in untold, unimagined irreparable loss to the general public. The Defendants' actions were illegal and unlawful since the

Defendants had no recognizable proprietary interest or rights on the suit land. Further, despite demand that the Defendants vacate the suit land they did not stop their trespass, they remained on the land and continued with their illegal activities on it. It pleaded further that it intended to expand the School and develop the parcel of land in order to decongest the current site since the school population grew by the day, but the Defendants' actions had rendered the expansion futile.

5. It prayed for the following reliefs:

    a. A declaration that the Plaintiff is the rightful allottee and or the beneficial owner or and proprietor of all that parcel of land located in Kanamkemer (Loborot) Plot 625 measuring approximately 12.671 hectares, having been allocated vide Plot Allotment Letter No. 0411 of 20/12/2010.

    b. A declaration that the Defendants' actions to detain public land is illegal, unlawful, unconstitutional, null and void ab initio and any document of ownership held by the Defendant in respect of the suit land be cancelled forthwith.

    c. An order that the Defendants and all their servants and agents and all any other person howsoever occupying the suit land herein with the consent of the Defendants, be evicted from the suit property forthwith and all the defendants' structured erected thereon be demolished forthwith at the defendants' expense.

    d. A permanent injunction be issued restraining the Defendants and their either by themselves, their agents, employees, or servants, or otherwise from trespassing or remaining o the suit land or interfering with the Plaintiffs quiet and peaceful procession and occupation of the suit property.

    e. The orders issued in (c) and (d) above being forced by the Officer Commanding Station (OCS) Lodwar Police Station

    f. An order be issued for payment of general damages on account of trespass, forcible detainer of the improvements on the suit land and loss of user since 2015 to date.

    g. Costs of the suit.

6. The Defendants entered appearance on 26/07/2021 and on 27/02/2023 filed their Statement of Defence dated 04/10/2021. By the defence, they denied that the Plaintiff was the bona fide allottee or beneficial owner of all that parcel of land known as Kanamkemer (Loborot) Plot 625 measuring approximately 12.67 Ha, vide the allotment letter No. 411 Ref: PA/1/4/92 dated 20/12/2010 and put the Plaintiff to strict proof thereof. They also denied that the parcel of land had ever been reserved as a relief centre for the PAG Church and averred that the relief centre had been set up by the Turkana Rehabilitation Project on a parcel adjacent to the suit land and had no nexus to it. Further, the Plaintiff had never taken occupation of the suit land nor constructed any classroom thereon as alleged, except that it forcefully erected a small structure and a toilet at distance away, which it left for the locals to utilize.

7. The Defendants further denied all the other paragraphs of their Plaint being, that there was no one who claimed the suit land and it was not in occupation by the Defendants, that the invaded the suit land some time in 2015, trespassed onto it and without any colour of right continued to occupy and use it, that their actions were illegal and they purported to subdivide and sell the same parcel of land which was public land. They denied that they were trespassers on the suit land and denied the particulars of the trespass. Further, they also denied ever denying the Plaintiff the right of use or threatening to dispose of any part of the suit land to third parties or any other party and put the plaintiff to strict proof

thereof. They also denied the rest of the claim as pleaded in the Plaint and averred that no demand had ever been made to them. They prayed that the suit be dismissed with costs.

8. PW1, James Ali Ome, testified that he was a teacher and the immediate former Principal P.A.G. Lodwar Secondary School where he used to be the Secretary of the Board of Management before transferred to Uswo Secondary School in Uasin Gishu on 30/1/2023. He was replaced by one, Alfred Aremani. He adopted his written witness statement as his evidence in-chief. He instructed the School to file the case.

9. He stated that together with the Plaintiff the School filed a list of documents dated 06/07/2021 to which was attached copies of 13 documents. He had the originals in Court and produced them in evidence as P. Exhibits 1 - 13 in accordance with how they were in the List. The Court compared the originals with copies, retained the copies and handed the originals back to the witness.

10. He stated further that the school was allocated the suit land, being plot No. 625, by the Lodwar Municipal Council on 20/12/2010 as per the letter of allotment produced as P. Exhibit 2. The plot was then surveyed by the District Surveyor Turkana District, as shown by P. Exhibit 3 which was a letter confirming allocation and demarcation. He produced as P. Exhibit 4 the Plan of the Plot.

11. His further testimony was that upon the allocation the Board of Management (BOM) constructed a classroom and a two-door toilet unit on it, as per the approved development plan produced as P. Exhibit 13. Initially, the land was unoccupied. After constructing the structures, the school never made use of the structures because towards the end of 2015, one Lowoya, the 1st Plaintiff started claiming ownership. Afterwards, he sold the land to the 2nd - 10th Defendants.

12. PW1 testified further how the School got to know of the person who sold the land to the other Defendants. He stated that on going to the ground they found a semi-permanent house constructed on it. They inquired from the occupants who gave him the land and they informed them that it was the 1st Defendant. Other defendants also showed up claiming the 1st defendant sold the land to them. The 2nd - 10th Defendants since resided on the land without permission from the School. The School demanded that they vacate, especially, the one who was in the classroom but he did not. The other Defendants too did not vacate even when asked through the area chief to dos so. Also, although the 1st Defendant never resided on the land he admitted to selling the land to the Defendants but he did not have title to it.

13. The School reported the dispute to the National Lands Office in Turkana, namely, the County Land Management Board of Turkana County and the Assistant County Commissioner Turkana Central but it was not resolved. He produced as P. Exhibits 5, 6, 7, 8, 9 and 10 correspondences over the attempt to resolve the dispute. He stated further that local leaders attempted to resolve the dispute vide a meeting held on 06/04/2018 whose minutes he produced as P. Exhibit 11, but the meeting did not bear fruits. The School issued a demand notice which he produced as P. Exhibit 12. He prayed for all the reliefs sought in the plaint to be granted.

14. He discounted paragraph 5 of the Defence that the school did not construct a class on the land and repeated that it constructed the classroom and toilet. He denied the allegation that the School forcefully entered the land since it belonged to the institution. He denied further that the structures the School built were left for locals to utilize. He also denied in the testimony the averment that the construction was done away from the suit land but on it.

15. He denied further, contrary to paragraph 7 of the Defence, that the Defendants were entitled to use the land. He stated the Defendants had encroached the land. Further, contrary to the said paragraph, the Defendants had stopped the School from using the land, were rowdy and even threatened the witness,

an incident which he reported to the police. He stated that even after the Defendants were served with the order of injunction they continued to occupy the suit land although they were never allocated it.

16. On cross-examination PW1 stated that he had been in the School about 8 or 9 years and knew the 1st Sefendant in the 2nd half of 2015 because of the dispute. One of the properties handed over to him by his predecessor, Mr. Lochampa Emekwei Mark, was the suit land, although he did not know the events prior to when he took over the School but he believed due process had been done before acquisition was made. By the time he got there no person was residing on the land. He admitted that he had heard of the history of a Relief Centre having been on the piece of land before but could not know who was running it.

17. When referred to P. Exhibit 2, the allotment letter, he stated it referred to a Minute, No. PA/1/4/92, which was the basis of the allocation but he did not have a copy of the Minutes or know about it. He confirmed the school paid the necessary fees amounting to Kshs. 15,000/= for the allocation on 11/09/2009, as evidenced by the document attached to the letter of allotment. The fees was paid by the Pentecostal Assembles of God, Loborot which was the sponsor of the school. The allotment letter was addressed to the P.A.G. Lodwar Secondary School. The allotment was in 2010. As per the allotment the School was to develop the land within two (2) years of identification otherwise the County Council would repossess the land. The site was identified on 21/6/2011, when demarcation was done and by January, 2014 the class was already constructed. His stated further, both the allotment letter and Plot Number did not bear a plot number.

18. He stated that the procedure of a public school acquiring land was that the Board and sponsor would look for land to put up an institution. The School Board has three representatives from the sponsor and a member from the community. The construction of the classroom was done through authorization of the Board in accordance with the Board Minutes. He stated that before construction is done procurement processes are followed and the bill of quantities (BQs) and tendering process minutes although he did not bring them to Court. He stated the building was handed over but he did not have the Report. He did not take photos to show that the building was constructed by the School but it paid the contractor.

19. He stated, in 2015 the area chief called for a meeting between the School and members of the community. It was held at the ground but the School did not agree to compensate the members of the local community. In the meeting, the 1st Sefendant and others became rowdy and a shouting match, and the meeting ended without any conclusion. The School and church did not make any offer. Later the Assistant County Commissioner summoned the School to his office to discuss the issue of the land. The Plaintiff and other persons were present. The School had the documents to proving ownership.

20. He stated there were people not more than 200 people occupied that land as the time of suit. But they moved there after the initial people who encroached. He denied occupation of the suit land by anyone when the land was surveyed. By 2015 none of the Defendants occupied the land, although people would graze on it. He denied that the School was selective in filing the suit against only the ten (10) defendants. Regarding the user of the constructed classroom he stated that the school did not use it because of the hostility by the 1st Defendant and others around 2015. PW1 reported the incident to the police and he was issued with an Occurrence Book (O.B.) number. He also reported it to the Sub-County Director of Education, Turkana Central.

21. From 2018 to 2021 before filing the suit, the School engaged the National Land Commission, the Assistant County Commissioner of Turkana County Central, and the County Government Land officer, to try and mediate the dispute but it failed.

22. He repeated as written in his statement that the School took possession and built a classroom and toilet in 2013 and the Defendants invaded it in 2015. He stated the School used to access the property up to January, 2015 when the Defendants encroached.

23. At the time of suit, the school which was intended to be a boarding one had about 400 students did not have its own land hence operated from the compound of Lodwar P.A.G., about 10 kilometres from suit land. The land was meant to decongest the school and without possession thereof it incurred a big loss.

24. He stated that the school did not ask the National Land Commission (N.L.C.) to approve the allocation. It owned the suit land but did not have a lease yet. He admitted that from P. Exhibit 11 which were the Minutes containing the history of the suit land it showed people started living on the land from 2017 but in 2015 he went and asked the people who encroached to stop building on it but they did not stop.

25. In Re-examination, PW1 repeated his evidence that the allocation was done based on the decision of the County Council as per the Minute cited. He stated that the letter of allotment was signed by the person specified in Note 1, that is to say, the officer duly authorized to do so. The School complied with conditions of allotment in time, amongst which was the payment made by the P.A.G Church Lodwar which sponsored the P.A.G. Lodwar Secondary School and gave the School a space of about 3 acres. He repeated the evidence about site identification and demarcation as per P. Exhibit 3, and the construction as per the approved Plans (P. Exhibit 13) done with the help of Madome Enterprises and Archi Spectra Consult, and allotment conditions.

26. Further, he repeated the evidence on failure to take possession due to hostility from the 1st Defendant and others. He denied knowledge of the 1st Defendant acting on behalf of the community and that there was a petition from the community that the school does not pursue the interest on the land. He stated that as at the time of the suit only the 1st Defendant was in occupation but he continued to sell the land despite the pendency of the suit, and the people chose not to be enjoined in the suit. He clarified that the School took possession by way of construction of the two facilities mentioned earlier and it was intended that students move into the ground in 2016, then the 1st and 2nd Defendants started claiming it in 2015. Lastly, he stated that the School had not been issued with title deed because Turkana County is under trust land.

27. PW2, William Emase Ekoumwa, testified that he was a Pastor of Lodwar Pentecostal Church which was not the same as the Pentecostal Assemblies of God (PAG) Church. He knew the PAG Lodwar Secondary School as he was a parent in it and the Chairman of the Parents Teachers Association (PTA). The school is a public mixed-day secondary school. He had been a parent and leader of the PTA since 2014. He is a representative of parents, teachers and students in the School Board. He knew the 1st Defendant and the other the ten Defendants. He adopted as evidence in-chief his written witness statement dated 06/07/2021. He signed it.

28. He stated that the Defendants encroached the school land situate in an area which was relief centre in 1981 where relief food was distributed when drought hit the area. After that they (people) started a church known as P.A.G. Lodwar. It asked for a parcel of land from the village elders to start a church and a school. Then it sought an allocation from the Lodwar Town Council, through the elders. The Council permitted a church be built there and a school. The School was fully established in 1992. In 1997, the Church was given an allotment letter (P. Exhibit 2). It was in favour of P.A.G. Secondary School for plot No. 625 of Lodwar Town. The land was demarcated afterwards as shown by P. Exhibit 4. It was approximately 12.674 Ha in size, that is, over 30 acres. The School took possession of the land and built one class and two toilets but did not make use of the facilities because Lowoya, the 1st

Defendant, and other people took possession of the classroom which they used to the time of suit while others occupied the land and used the toilets. After the survey the School waited to be registered as owner.

29. He refuted the Defendants' claim that the land was community land.

30. PW3, Mary Lolung Ekutan, testified that she was a resident of Kanamker and the Public Relations Officer (PRO) with the County Assembly Turkana. He too knew the P.A.G Lodwar Secondary School of which he was a Board Member. He knew the 1st Defendant, Lowoya Elim, and the other Defendants. He too adopted his written witness statement dated 06/07/2021 which she amended to read Ekutan and not Okutan.

31. She stated that in 2009 the School was a private one but it was changed to a public one. The School was issued with documents to show it was now public. By then she was a teacher and was elected as a member of the Board of Governors (BOG). At the time, the head teacher was one, Mark Lochamba with whom she was sworn in as BOG members. The Chairman was Tobias Oguttu, now deceased. They were six (6) BOG members. The school was sponsored by the PAG Church which too was represented in the BOG.

32. The Church gave the School land about 500 metres away from the church. It indicated it had decided to allocate to the School. The School and the Mission (church) went to the Lodwar Municipality lands office which gave it surveyors. The land was surveyed in 2009 and the report came out in 2009. The surveyor, by name Joseph Egiron, subsequently made a report, produced as P. Exhibit 4 and 3 on 21/6/2011. The land was approximately 12.674 Ha in size, about 38.5 acres. It was owned by the P.A.G. Secondary School.

33. The surveyor drew the plan. PW3 was present on behalf of the School as its representative and of the teacher with Everlyn Kataboi and John Akolo both from the Church at the time of survey. The surveyor was with his assistant who had a GPS with him. The exercise began at 10 AM.

34. He stated that he, PW3, and the others had cut Y-10 metal rods to use as beacons. In putting the beacons, they were assisted with some boys who dug holes as PW1 and those who accompanied her laid the beacons upon the surveyor taking measurements from co-ordinates. Nobody occupied the land. Not even graves were on it. No person complained. They had a taxi stationed at the place. There was neither house nor structure on the land.

35. After the survey the School decided to develop the land within 2 years which duration it was given to do so. It built a class and toilets as shown by P. Exhibit 2. The allocation was in 2010 and verification in 2011. The Ministry of Education informed the school to build one class through PTA and the Ministry was to build 8 classes later. After the class was built the School did a two-door pit latrine. It never used the land because the Defendants encroached it in 2016. He denied the claim that the land was community land. He stated it belongs to the School. He refuted the claim that the Defendants had been on the land since 1970s.

36. In cross-examination, he stated he did not have a letter from the Ministry to show he was a Board member but he denied being an imposter. He stated it was available but did not carried it since it was not in issue. Further, he was present when the school made a resolution to ask for allocations from the Council. Minutes of the meeting were taken but he did not have them in court.

37. The suit land was initially owned by P.A.G. Loborot church which has been given it through a mzee known as Elim, the father of the 1st defendant. It used to be a relief centre known as Turkana Rehabilitation project (TRP) run by Norad. She denied knowing mzee Elim since she was born in

1975. Before, the community used the suit land as a T.R.P. centre in 1981 but she was not resident there. She moved into the area in 1997. She stated that the evidence about the local community giving the land she heard it from the people and what she wrote about acquisition was only from history. She added that in 2007 she not a board member. But survey was done in 2009 when she was a BOG member to represent the school.

38. She stated that since 2013 she had not gone back. The community brought a case before the District Commissioner and the National Land Commission in 2016.

39. In re-examination, she stated that the BOM gave her permission to testify. The allotment letter, P. Exhibit 2, was issued pursuant to Minute number PA/1/4/92. He stated that the there was no evidence that the Lodwar Municipal Council did not have such Minute. Further, there was no document to show that mzee Elim used to own the parcel of land or that it was community land. Further, there was no evidence to show Elim was buried on the land or that he was related to the 1st Defendant.

40. He reiterated that from 2011 up to 2013 when the school started to build no one raised a complaint or stopped the School from building the classroom or toilets. He added that one, Lokwar Lokale incited the community together with Lowoya, the 1st Defendant, and four other people to challenge why the land was given to the school for free.

41. He stated that he did not know who had built on the land, but there was one Sylvester who hailed from Lokori in Turkana East, the 3rd Defendant, who had done so after he bought the land from Lowoya.

42. PW4, Pauline Esinyan Akwam, testified that she was a Preacher of the P.A.G. Church. She adopted her written witness statement dated 06/07/2021. She added that she and her husband used to preach and they did so at Loporot. Both were approached in 1977 by elders of the area with a request to build a church. The elders gave the church land in 1981 and it built a mud house structure. Then they requested that we build a school and added the church more land so that both the church and school be built. The land was surveyed and measured approximately 38.5 acres of which the church retained 5 acres and the school 33.5 acres. The land was bare. On the 33.5 acres, the School built one class and a toilet of two doors in order to accommodate more students. Recently people invaded the school land. Students were still using the town site but they were supposed to be moved to Loporot. They did not.

43. On cross-examination, PW4 stated that she became a P.A.G. member in 1971, was baptized in 1972 and married in 1973. She was married to the preacher with whom she began preaching. Their ministry was permitted by the white man but without a written note. They opened a church in Kanamkerer in 1977 and built there. The church is there to date. She could not recall who of the villagers gave the church land. She neither knew nor saw the father of Lowoya Elim. In the recent past there had been started a place for food aid in the suit land. She was a founder of the place.

44. On re-examination she stated that she and the preacher used to reside in Loprenkipi before moving to Loporot, in Lodwar in 1977. She was a shepherdess and used to cook for her husband as he preached. They preached at Kanamkerer and later moved to Loporot after the Kanamkerer church bore the one at Loporot.

45. PW5, Peter Adir, testified that he was a Reverend and an Overseer of P.A.G. Turkana Central where the school was situate at the time of testimony. He adopted his written witness statement dated 06/07/2021.

46. He testified that the church was allocated the land in 1987. Initially the land was used as a relief centre. The community allotted the land to the church in Loporot and the church gave it to the school which then built on it. He was present when the allocation was made and the land was not occupied.

It had only trees under which the church used to conduct services. It was vacant up to the time of demarcation. No one complained about it even when the classrooms were built.

47. The school constructed a classroom and a latrine but before it would use the land when the encroachment started. Those encroached started threatening that they would kill students and even the witness. After the class was constructed, Mr. Lowoya Elim entered into it by force, claiming the land was his and his ancestors'.

48. On cross-examination he stated he was an Overseer of Turkana Central District since 2009 but did not bring to court documents to show he was one.

49. He was in primary school and an ordinary member of the church in 1981. He used to live with the pioneer pastor of the PAG Church then. There was a relief centre at the time in the place where the church was situate at the time of testimony. The members of the local community who requested that the School be built were the village elders who used to attend it. They pointed out where it would be built. They did so as the local elders and the chief was present. He said he knew Lowoya Elim when he raised a dispute over the land. He did not know Lowoya Elim's father but he used to live in Lokichogio until he raised the dispute.

50. Upon re-examination, he stated he knew PW4 in early 1980's. She used to live in Lorgwin and got married to a pastor of PAG and they moved to Lodwar to start a PAG church. He did not know where Lowoya Elim was born. That closed the Plaintiff's case.

51. DW1, Mark Elim Lowoya, testified that he was a resident of Kanamkemer Location. The suit land belonged to his father and the family of Lopirie which resided adjacent to theirs, the Elim family. The two families did not have any relationship. The Lopirie family and theirs had been on the suit land before he was born in 1969. The forefathers used to live on the land even before the country gained independence. He denied knowledge that the government gave suit land to the PAG Church. But he admitted that the Church had been given a small section of the land by the Elim family. He adopted his statement dated 11/10/2023.

52. In the statement he stated he was the son of Elim Isaya, an indigenous owner of an existing parcel of land in Loborot in Kanamkemer within Turkana Central. He and his siblings were born and raised on the land and have since grown up, gotten married and sired children while on the parcel of land. The family had been in uninterrupted occupation of the parcel of land since 1969 and had been thereon even after his father's death in 1985.

53. In the oral testimony, he stated further that the family had been using the land from time immemorial. The School had built a classroom and a toilet on it. However, it was the community that had since been using the toilet and structure. The church had been given a small portion of land through one Elizabeth Emojong, a member of the church, and when she left the area to another place she handed over the portion to the elders of the church. He denied using the classroom and the toilet or selling the suit land to the 2nd to 1Oth Defendants. He stated that some of the Defendants were part of the family members and others of the Lopirie family. He prayed that the court does not order that they vacate the suit land.

54. On cross-examination, he acknowledged that the 2nd to the 10th Defendants gave him authority to testify on their behalf, but it was not. Rather he testified on his own behalf while the other Defendants would testify for themselves. He repeated that the land belonged to his father and the Lopirie family and it was ancestral land. He admitted that the land was not registered in family name or that of Lopirie. Further, the two families did not have title to the suit land. He also admitted that he did not know the

size of the land they claimed, but for his family he knew it was about 2 acres. Further, before his father died the land had not been surveyed.

55. On further cross-examination, he said his father was a member of the council of elders and a cattle herder. He used to graze in the area but was not a pastoralist. He admitted there were several ways of owning land in Kenya. One was that if it was private land, one had to have title to it. Further, land could be public land and community land which he was communally owned. Again, he acknowledged that the community land ought to be used as agreed by the members, and it was for the entire community that was the custodian thereof.

56. He denied knowledge of the fact that the suit land was owned by the County Council or the County Government and it managed it. He admitted that it was the community to decide what use to put their land to and once it was so decided the Community would inform the County Council about the purpose, for it to be used that way. Upon being referred to the written witness statements of Nakadon Nakapol he admitted that the said witness stated that the community had agreed to start a church on the land, and the Church was the PAG church. Further, he noted that Nakapol stated that he went to the County Council and paid the land rates and started using the land as a Church.

57. However, he did not know if the school parcel was number 625. He denied that the community gave the land to the school. Again, the School did not seek permission to use the land. According to him the school ought to have asked for permission from his father, to use the land. But he admitted that his father was not there to be asked about that. He denied knowledge of the land having been surveyed after the school had been issued with allocation or that the Municipal Council gave the ownership (to the School). He denied the genuineness of that document. He admitted the school held a Plan of the suit land but to him that Plan did not exist in the Office of the Physical Planner. He stated that he checked in the offices but could not find one.

58. He admitted further that the defendants were challenging the title of the School to the land. However, he did not know of or have any letter from the County Government that the Plan the school had was nonexistent or that the document of ownership the school had was fake or fraudulent. He repeated and admitted that he knew the school built a toilet and a classroom on the land but it was evicted from it in broad daylight. He admitted he did not file a suit to stop the School from building on the land. He only complained to the Commissioners' Office and the Commissioner only indicated that Mr. Ali's documents were fake and he should stop using the land. He admitted that he did not have communication from the District Commissioner that the title held by the school was fake and that it was ordered to remove the structures from the land.

59. He admitted the school had ownership documents but he did not agree with them. He stated that his evidence represented that of the Community. He admitted that if the family was given its two acres of land he would have claim against the rest. He gave the names of the siblings who resided on the two acres of land. They were, one Mary Atabe Elim, Arunye Elim and Ayanai Elim all of whom were his sisters and they were with their husbands. He denied selling any part of the land to any other person except one. However, he stated that he did not know his name.

60. He denied knowing one Paul's Adome, Moses Emanisikol, Reuben Eseku, Kate Epat and Shadrack Ebocha. He admitted that the said Paul and Janet Bosibori resided on the suit land which he (DW1) claimed to be his father's. He admitted knowing one Philip Emoru and Janet Bosibori. He admitted that both Paul and Janet bought a part of the suit land. He denied subdividing the suit land or permitting the persons to move onto it or that they did during the pendency of the suit.

61. He admitted that Paul Eyanai Nchuka was his witness. On being referred to P. Exhibit 12, Minutes of a meeting held on 06/04/2018, he denied knowledge of the same and its contents that the land was of pastoralist community.

62. In re-examination, he stated that his father's land was not registered and that he did not know that the School parcel number 625. Further, he went to the Land's office and was informed that there was no map relating to that land. He stated that his father and the community gave the portion of land that the Church occupied. He did not know whether his father's land was surveyed. He did not know whether the school's land had been surveyed either. He denied ever seeing beacons on the land. He also denied knowledge of the school having a certificate of ownership of the land. Further, when the school started building on the land he went to the County Commissioner to complain about it and the County Commissioner called the school principal to inform him that the papers he had were not genuine.

63. He admitted having sold land to only two people. But denied ever unlawfully taking hold of the school property. About P. Exhibit 12, the Minutes, he stated that the land was not pastoral and he was not in the meeting that passed such a resolution.

64. He added that his father died in 1985. His claim was only two acres of the suit land. He admitted that his sisters had sold as section of their father's land to some people.

65. DW2, Paul Eyanai Njuka, testified that he knew the land in question, although he did not reside on it. He was a neighbour to the Elim family. He adopted his statement dated 11/10/2023.

66. Further, he was a member of the Loporot PAG Assembly. The suit land had no relationship as between the School and the PAG Loporot Assembly. The School's claim was untrue because the owners of the land were the Defendants and other people who were not in court.

67. In cross-examination he admitted he was born in 1973 although his identity card showed he was born in 1968. He admitted he lied on that point. He stated further he was born in Meisori in Salabani Location in Marigat of Baringo County, at a place called Kapedo. He moved to Loporot in 1999. That the evidence he gave in court about the suit land was what he had heard of the area since 1999. He knew Loporot and Kanamker were about two kilometers from Lodwar.

68. About the suit land he stated it was ancestral and according to the information he got when he moved to Loporot, the Elim family owned it. He could not tell the size of the land that belonged to the said family. He stated it was his father-in-law who had since died who informed him of the same.

69. Further, when he moved to Loporot he found the PAG Church on the plot it occupied but as to how it was given the land he did not know. He admitted the people who lived in the area generally were pastoralists or nomads who moved from one place to another in search of pasture and water. The land in question was part of community land of which no specific individual owned. Further, it was about the period of testimony that titles were being issued. But before then each person used to occupy where they wished.

70. His further testimony was that the County Council was the one responsible for holding trust land. Before a community would plant a church or a school it would meet and decide on it. The decision would be forwarded to the County Council for ratification. The County Council would give permission for the establishment of the school or church. Further, before the school or church would use the land the County Council would issue a letter of allotment which could not be given before a community gave its views. He stated that he did not know in regard instant case if the school had a letter of allotment or if the community agreed that the school be given the suit land.

71. He admitted he was the Secretary of the Church Committee of Loporot since 2015 and pastor, Reverend Evelyne Katabwon was the Chairperson. He admitted to knowing Pastor Abraham Lokwom who the pastor of Kanamkemer Assembly and retired three years before the testimony. About P. Exhibit 12, he said they were minutes of a meeting he did not attend. But according to the minutes it was indicated he attended although he did not.

72. He stated that it was untrue that he said the parcels in question were community land. Rather, he knew they were community land at the time in issue. He refuted a relationship between the PAG Church Loporot and the PAC Secondary School Lodwar. He stated that the School was sponsored by the PAG Church Lopdwar Township within whose compound the School was situate.

73. In re-examination he stated that the PAG Secondary school sponsored itself. He repeated he did not attend the meeting which gave rise to minutes produced as P. Exhibit 12. He repeated that the land was community land. But he did not know that the school had a letter of allotment. He denied ever hearing of any community meeting held to give land to the school and if the Loporot Church was involved he could have sat in the meeting and minutes taken. He admitted that the School was situate within the PAG Lodwar Township soil. But he did not know how it related to the PAG Church. Lastly, he stated that nomads of Lodwar never moved away to other places for residence.

74. DW3, Sarah Kokoi, testified that she was not related to the families of Elim and Lopirie but she knew the suit land. It used to belong to the community, but the community gave a small section of it to the church. The community had never given land to the school. She adopted her statement which was written on 11/10/2023.

75. She continued to testify that the school had built a class and a toilet, but it did so when the owners of the suit land were not present. The Defendants were not using the facilities. Further, the allotment the school had was forged. The School should have been given the land by the community. Her further evidence was that when the community wished to allocate land or give it to someone, it had to sit and decide about it.

76. On cross-examination she stated that the land was community land. Her residence was near Loporot and her parents used to reside in that area. Further, she was widowed. She was aware the church had been given some part of the land by the community but she did not attend the community meeting that did so. But she was unaware that the School had been given the suit land by the community. She said she was only informed by those who attended the meeting and had she attended she would have known it. She insisted the school was not given the land but the church was given by mzee Elim in 1982. At the time she was 17 years old. That it was Elizabeth Emojong who asked for it.

77. She admitted she did not know the size of the suit land but it was big. Also, the land Elim gave to the church was small but she could not tell its size.

78. DW4, Beatrice Apetet Echuikule, testified that she resided in Loporot Village of Kanamkemer Location. She was an Assistant Chief of the Kanamkemer sub-location since 2012. She knew the Defendants and where the PAG Secondary School was situate in Lodwar Town. She was born in the place and schooled there. She adopted her written witness statement dated 11/10/2023.

79. She knew the land in Loporot was for the PAG Church. The Township PAG Church was the mother church. She did not know whether the school had been given an allotment letter but she was aware that the Principal, Mr. Ome was at one time called to the District Commissioner's Office (the DC) about the land. She did not know with him he reported there. The DC did not decide about it. Later, the community went back after summons were issued but the school did not turn up. The community indicated in the meeting that it only knew of the land given to the church, and not the school. The

school should have asked for land from it. Lastly, whenever the community decided to give out land ordinarily it documented it by way of minutes

80. On cross-examination DW4 admitted that the parcels of land in Kanamkemer Location did not have title deeds. They were Community Land, which meant that they belonged either to the community or to private persons when they had them surveyed. Further, anyone who did not possess their ownership documents lived on the lands as community land occupiers. The people who had documents of ownership or survey privately owned their lands.

81. Her further evidence on cross-examination was that when she was appointed as chief, she asked the community to give the Chief's office land. Further, when the PAG church wanted to land in Kanamkemer it asked the chief and the community to give it that they did it. That was in 1992, when she was still in school and aged 15. After school she ventured into the business of selling mats which she conducted up to 2011 when she quit because it was very involving. Further, at the time of her business there were many events that could happen in Kanamkemer and she could only get to know of them later when she got home. But that was only for those who informed her. In case none did she would not know. She admitted that if the community has a meeting in which it gave land to the school she was not told and could not know of it. She admitted further that when the community decided to use land for a certain purpose, it would write down minutes and take the information to the County Council which would act accordingly. The Council would not permit any use of community land for any project without permission or decision of the Community. The County Council would first consider what the community agreed on and then authorize use that way.

82. The witness could not tell whether the Municipal Council of Lodwar authorized or gave the letter of allotment the school land. She had never seen the letter of allotment. But she believed the letter was not issued by the Municipal Council. She admitted she had never heard any report from the Municipal Council that the survey which was conducted on the suit land was not done by it. She had never heard of Mr. Omer, the Principal of the School or any official as having been arrested and charged with forgery.

83. She was aware that the land was surveyed in 2009 and beacon erected. She was not present when that was done. Later, she heard people say the land belonged to the school. She only learnt in court that the beacons were removed. It was illegal to remove beacons. Her office was responsible for maintenance of boundaries.

84. On further cross-examination about her relationship with one of the Defendants, she denied it. But she admitted knowing one Joseph Alanyi Emuria, the 2nd Defendant. She stated that he was her friend, she and him used to be love birds before. They had a love affair between 2014 and 2015. She admitted he was a Defendant in the case. Further, she stated that the 2nd Defendant and her tried to assist the community when the instant case started. She was called by the community to a meeting in which Mr. Alanyi (2nd Defendant) was present and Mr. Alanyi advised her that rather than prolong the case they would look for alternative land to give their PAG church. She even approached one old man (mzee) and told him about that plan to assist the school. He hailed from Nawoting village. They proposed the school be moved to Nawoting but the proposed land was not in Nawoting. She denied the 2nd Defendant having resided on the suit land, but he hailed from her place. At the time of her testimony, the 2nd Defendant was working as an assistant in the town chief's office. About the movement of the school from the suit land, she stated that it was the school that refused the offer and instead sued. She did not know whether the school had a title.

85. In re-examination, she said they wanted to move the school to another place because the community was harsh against it. She stated she did not have any ill motive. That she had only heard the school and the church had a dispute.

86. DW5, Nakadoli Nakopor, testified that he was a pastor of Pentecostal Revival Ministry. He had been a pastor of the church since 1983. He used to work in Kerio Valley as a minister of the Pentecostal Assembly of God Church. In 1992 he moved to Lodwar Town as a pastor of the Loporot Curch. He met one Elizabeth, who was that committee member of the church. The witness adopted his written witnesses statement dated 11/10/2023.

87. He stated he did not know the school but he knew it had moved to Loporot.

88. Upon cross-examination he stated he was born in 1958 in a place 50 kilometers from Loporot. He moved to Loporot later. At first, he moved to Eldoret to start working in 1978. As a security guard. In 1983, he went back to Kerio where he became and was a pastor until 1992 when he was transferred to Loporot. He met the late mzee Isaiah Elim in 1992. He admitted though that he knew mzee Elim died in 1985, way before he (DW5) moved to Loporot. He met the deceased's son, Lowoya Elim, the first Defendant.

89. He stated that the parcels of land in Loporot were community land and no individual had title to them. The elders or the chief were the ones who used to own the parcels of land. They were the ones who gave him (DW5) the parcel of land that he occupied. Upon giving him the land, he surveyed it paid the Surveyor sum of 4000/= shillings. He was neither given a receipt nor letter of location. The County Council of Lodwar was supposed to allocate him the land. He knew all parcels of land in Lodwar were managed by the County Council.

90. He stated that the suit land used to belong to Elim Isaiah and after his death it belonged to his son Lowoya Elim but the County Council had never issued a letter of allocation to Elim or his son. Further, the 1st Defendant had never informed him the size of the parcel his family claimed.

91. The land given to the church was 50ft by 100ft but he did not know the land parcel number for Elim. The church was given the land by the community and the Area Chief and sub-Chief. He denied the land he occupied was given to him by Lowoya Elim himself. Further, he did not know if this school was given land by the community. He did not know if the school land was surveyed. The County Council had never surveyed the land. He did not know if the school had an allocation letter for its land or if the allocation was issued by the County Council of Lodwar.

92. He admitted that for one to be allocated land in the area the County Council had to be involved. But he did not know if the school had built a classroom and toilet on the suit land. Neither did he know if people had invaded the structure built by the school. He had never heard that the school set to occupy the land but was prevented by people.

93. He knew PAG Lodwar Secondary School. It was established around 1992 by the PAG Church and put up in its compound. He was a committee member of the School when he was still a member of the Church. He admitted that he was no longer a member of the PAG Church. He denied having left the church because of having lost an elective post. He stated, he instead left the church because of corruption. That the church accused him of not hailing from Loima where the church originated. Therefore, he resolved to quit it in 2021, two years before the testimony. He denied having left the church in 2009.

94. He denied the area elders' involvement in the location of land to the school. But he admitted he had never been a member of the area elders, even those of the Chief. He stated further that if the elders sat

and allocated the land he could not know. He denied testifying because the first defendant promised him land and money.

95. In re-examination he stated he met Isaiah Elim him before he died. The land was his way before he gave part to the church. He also met mzee Elim at one time with his son. When mzee Elim died his son remained on the land. Further, according to the Turkana Community, where the clans or community resided, people did not have documents. They only lived on such an area knowing it belonged this or that person. The elders and chief protected the land on behalf of the community.

96. On the procedure about the allocation of land his current church claimed, measuring 150ft by 150ft, he stated the Church approached the community who then went to the chief and latter advised them to go to the County lands office to ask for beacons to be erected. To him it was the community and the chief that gave him the land. He paid the survey fees to one Eglon and remained with a balance of Kshs. 6000/=. He was not issued with a document of ownership. He stated that of the elders who gave the land Lowoya, the first Defendant, was one since the land belonged to his father.

97. About his cessation to be a member of the PAG Church, he stated that he was misunderstood hence he quit, sic, "walinivuruga nikatoka" (translated, "they mixed me up and I quit"). He left the PAG Church with its issues. He no longer had nothing to do with them. He admitted he was a founder of the Loporot PAG Church which if it had a vision to start a school it would have indicated so. But of the PAG Church Lodwar Township he was part of the Committee that founded the School. He ceased to be a committee member when he moved to establish other branches of the church. The Lodwar Township church had its own Assembly but it was the mother church. He left the Chairman, Treasurer and Secretary of the Township Assembly to continue with the School in town.

98. Lastly, he admitted he quit the Church in 2008 when it had only the structure. He denied having been paid in order to testify in the matter. Rather he stated that the evidence he adduced was important for both the community and the church.

99. At the close of the parties' cases, they filed written submissions. The Plaintiffs filed theirs dated 20/02/2024 on 07/03/2024 and the Defendants filed theirs dated 11/03/2024 on the same date.

Issue, Analysis And Determination

100. This Court has considered the pleadings, the evidence, the law and the submissions by the rival parties. The Plaintiff filed its submissions dated 20/02/2024 on 07/03/2024 and the Defendants filed theirs dated 11/03/2024 on the same date. This Court has carefully considered the submissions and will apply and infuse them as it makes a determination on each of the issues considers below. Suffice it to say that the Plaintiff, having summarized the pleadings and evidence adduced proposed that the Court considers five (5) issues while the Defendants opined that only one issue lay for determination. On the part of the Plaintiff the issues were, in summary, whether the suit land was at all material times a property of the 1st Defendant's deceased's father or other person; whether the allocation of the land to the Plaintiff was lawful; whether the Plaintiff was the lawful allottee of the suit land; whether the Defendants and or their servants and agents and third parties are trespassers; and whether the Plaintiff is entitled to the orders sought. On their part, the Defendants posed the question whether the Plaintiff was the lawful and registered owner of the suit property as to be entitled to the reliefs sought.

101. Having considered the entire matter and the proposed issues for determination this Court is of the view that the following issues commend to me for determination.

    a. Whether a party may adduce evidence that goes beyond or outside of its pleadings.

    b. Whether the suit land is community land.

c. Whether any sale or leasing of part of the suit land by to or by the Defendants to third parties is legal.

d. Whether the Defendants have a claim to the suit land as individuals.

e. If the answer to issue No. (b) is negative, whether the Plaintiff owns the suit land.

f. Whether the Defendants and or their servants and agents and third parties are trespassers.

g. Who to bear the costs of the suit.

102. This Court now proceeds to determine the issues sequentially. The first one is,

a. Whether a party may adduce evidence that goes beyond or outside of its pleadings

103. This Court begins with the determination on this issue on the basis of both the pleadings of the Defendants and the evidence they adduced. It is important to start with this issue because it is a fundamental legal principle that applies in every matter in dispute before a court.

104. The legal rule is that a party is always bound by its pleadings. Pleadings play an important role as the backbone of every claim, suit, petition or defence to such claim, suit or petition. They form the skeleton upon which the entire body of the claim or defence lies. They give the adverse party an opportunity to know what and basis for a cause of action against them is or the appropriate defence or response in the eyes of the adverse party is. A party can only build his case upon and around pleadings and not outside them. Any evidence that goes beyond pleadings is irrelevant and inadmissible.

105. In Arikala Narasa Reddy v Venkata Ram Reddy Reddygari and Another Civil Appeal Nos. 5710-5711 of 2012[2014] 2 SCR the Supreme Court of India stated that;

> " In absence of pleadings, evidence if any, produced by the parties, cannot be considered. It is also a settled legal proposition that no party should be permitted to travel beyond its pleadings and parties are bound to take all necessary and material facts in support of the case set up by them. Pleadings ensure that each side is fully alive to the questions that are likely to be raised and they may have an opportunity of placing the relevant evidence before the court for its consideration. The issues arise only when a material proposition of fact or law is affirmed by one party and denied by the other party. Therefore, it is neither desirable nor permissible for a court to frame an issue not arising on the pleadings."

106. In Independent Electoral and Boundaries Commission & another v Stephen Mutinda Mule & 3 others [2014] eKLR the Court of Appeal cited the decision of the Malawi Supreme Court of Appeal in Malawi Railways Ltd Vs. Nyasulu [1998] MWSC 3, wherein the learned judges quoted Sir Jack Jacob's work titled "The Present Importance of Pleadings" published in [1960] Current Legal problems, at P.174 where he opined thus;

> " As the parties are adversaries, it is left to each one of them to formulate his case in his own way, subject to the basic rules of pleadings...for the sake of certainty and finality, each party is bound by his own pleadings and cannot be allowed to raise a different or fresh case without due amendment properly made. Each party thus knows the case he has to meet and cannot be taken by surprise at the trial. The court itself is as bound by the pleadings of the parties as they are themselves. It is no part of the duty of the court to enter upon any inquiry into the case before it other than to adjudicate upon the specific matters in dispute which the parties themselves have raised by the pleadings. Indeed, the court would be acting contrary to its own character and nature if it were to pronounce any claim or defence not made by the

parties. To do so would be to enter upon the realm of speculation. Moreover, in such event, the parties themselves, or at any rate one of them might well feel aggrieved; for a decision given on a claim or defence not made or raised by or against a party is equivalent to not hearing him at all and thus be a denial of justice....

In the adversarial system of litigation therefore, it is the parties themselves who set the agenda for the trial by their pleadings and neither party can complain if the agenda is strictly adhered to. In such an agenda, there is no room for an item called "Any Other Business" in the sense that points other than those specific may be raised without notice."

107. This similar view has been echoed by our Supreme Court in Raila Amolo Odinga and another v Independent Electoral and Boundaries Commission and 4 others & Attorney General and Another Petition *No. 1 of 2017* [2017] eKLR where it held as follows:

> " Having addressed our minds to the above issues, it is our view that first, we note that as correctly argued by counsel for the 3rd respondent, a party must be bound by its own pleadings and secondly, any scrutiny of either the forms or the technology must be made for a sufficient reason. Any prayer in the application that would seem to be an extension of the case for the petitioners or which would in effect a fishing exercise to procure fresh evidence not already contained in the petition would and must be rejected."

108. Also, in Bullen and Leake and Jacob's Precedents of Pleadings, 12th Edition, London, Sweet & Maxwell (The Common Law Library No. 5) the learned authors write as follows: -

> " The system of pleadings operates to define and delimit with clarity and precision the real matters in controversy between the parties upon which they can prepare and present their respective cases and upon which the court will be called upon to adjudicate between them. It thus serves the two-fold purposes of informing each party what is the case of the opposite party which he will have to meet before and at the trial, and at the same time informing the court what are the issues between the parties which will govern the interlocutory proceedings before the trial and which the court will have to determine at the trial."

109. This position was clearly stated by Kimaru J. in Mahamud Muhumed Sirat v Ali Hassan Abdirahman and 2 Others [2010] eKLR as follows;

> " From the outset, this court wishes to state that the petitioner adduced evidence, and even made submissions in respect of matters that he had not specifically pleaded in his petition. It is trite law that a decision rendered by a court of law shall only be on the basis of the pleadings that have been filed by the party moving the court for appropriate relief. In the present petition, this court declined the invitation offered by the petitioner that required of it to make decisions in respect of matters that were not specifically pleaded. This court will therefore not render any opinion in respect of aspects of the petitioner's case which he adduced evidence but which were not based on the pleadings that he had filed in court, and in particular, the petition".

110. As submitted by the Plaintiff, the Defendants merely denied each and every of the Plaintiff's averments and when they adduced evidence they went beyond their pleadings. The Court has considered this issue.

111. In their Defence, the Defendants denied the Plaintiff's averment as being the bona fide allottee or beneficial owner of the suit land; having taken occupation thereof or constructed any classroom; the

suit land being reserved for a relief centre for the PAG Church. They averred the relief centre was set up by the Turkana Rehabilitation Project on a parcel adjacent to the suit land and the Plaintiff forcefully erected a small structure and a toilet at distance away, which it left for the locals to utilize. At paragraph 7 of the Defence the Defendants pleaded that they were entitled to rights of occupation by virtue of being members of a community. As for the rest of the averments they merely denied them, including that they denied the Plaintiff the right of use or threatening to dispose of any part of the suit land to third parties or any other party and put the plaintiff to strict proof thereof.

112. In their evidence the Defendants, through DW1, DW2, DW3, DW4 and DW5 gave evidence that they owned the land by virtue of the same having belonged to the late mzee Isaiah Elim and the Lopirie family and that those were the persons who should have had a say in the allocation of the land, the documents evidencing ownership of the land by the Plaintiff were forged, and that the Municipal Council of Lodwar did not have authority to allocate the land.

113. In my view, and guided by the authorities quoted above, and the one relied on by the Plaintiffs in their submissions, being the decision in Associated Industries Ltd. v. William Otieno [2004] eKLR, the Defendants were and must be bound by their pleadings. Their evidence cannot trudge the path outside that charted by the said pleadings. Thus, the evidence summarized above fell outside of the Defendant's pleadings. It therefore cannot be regarded as a basis for the Defendants' defence: it must be disregarded.

Whether the suit land is community land

114. The Defendants pleaded, at paragraph 7 of their Defence, that they were entitled to rights of occupation by virtue of being members of the local community. They did not specify which community they were members of which was local. However, since land was situate at Loborot within Lodwar Town it implies the Loborot community. Be that as it may the Defendants' pleadings implied an important concept which this court ought to analyze. This is the concept of ownership of land in Kenya, and specifically the system under which they claimed occupation.

115. It is noteworthy, from the Defence, that the parties thereto did not lay claim of ownership of the land. Thus, first it should be clear that any evidence they led as to ownership by them of the parcel of suit land was irrelevant and unworthy of consideration, as already determined by this Court when making a finding on the first issue above.

116. The Defence claimed rights of occupation for the reason that the Defendants belonged to a community. But other than testifying that they were on the land because the families of Isaiah Elim and Lopirie owned the land, the Defendants did not lead evidence to prove the claim that they had rights of occupation specifically and only. Furthermore, in law, there does not exist any right of occupation to the exclusion of ownership by themselves or with the permission of the owner. Anything outside of that is trespass or illegal occupation.

117. Whereas the Defendants raise a defence of occupation of the suit land by virtue of being members of a local community, the Plaintiff's pleadings show that they were sued as individuals and not a community. The Defendants were not sued as officials or officer holders of any position in any specific community. They were sued as trespassers of a public property. They did not raise a defence of being officials of any given community. Thus, as the pleadings are, the Defendants were acting in their personal private capacities. This raises a contention as to whether the suit land is community land or not.

118. The Defendants' position (or defence) appeared to waver between the land being community land and private land. In any event, none of the Defence witnesses, starting with DW1 to DW5 produced any

evidence whatsoever of ownership of the land. This was contrary to the Section 107 of the Law of Evidence: on he who alleges proves.

119. By contrast, on its part the Plaintiff denied the allegation that the suit land was private. However, on its part it adduced evidence through PW1, PW2, PW3, PW4 and PW5 which was consistent on the fact, it stated that the land was initially community land which was subsequently allocated to it for use for putting up a School and it became public property.

120. To unravel the mystery relating to the suit land herein this Court must begin at the constitutional provisions on classification of land in Kenya. Article 61 of *the Constitution* 2010 provides: -

> "(1) All land in Kenya belongs to the people of Kenya collectively as a nation, as communities and as individuals.
>
> (2) Land in Kenya is classified as public, community or private."

121. In regard to community land, Article 63 gives the:

> "(1) Community land shall vest in and be held by communities identified on the basis of ethnicity, culture or similar community of interest.
>
> (2) Community land consists of-
>
> (a) land lawfully registered in the name of group representatives under the provisions of any law;
>
> (b) land lawfully transferred to a specific community by any process of law;
>
> (c) any other land declared to be community land by an Act of Parliament; and
>
> (d) land that is-
>
> (i) lawfully held, managed or used by specific communities as community forests, grazing areas or shrines;
>
> (ii) ancestral lands and lands traditionally occupied by hunter-gatherer communities; or
>
> (iii) lawfully held as trust land by the county governments, but not including any public land held in trust by the county government under Article 62(2).
>
> (3) Any unregistered community land shall be held in trust by county governments on behalf of the communities for which it is held."

122. The Defendants claimed that they were entitled to occupation of the suit land since they were members of the local community. It goes without saying that as at the time of the institution of suit the Defendants were neither registered as owners of the suit property or part thereof nor was there in existence of community registered as owner of the same and neither was evidence led by the said Defendants afterwards that they were members of a registered community in accordance with the law. However, none of the witnesses they called adduced evidence that the said land had ever been registered as community land in accordance with Section 11 of the *Community Land Act*, *Act No. 27 of 2016* and Section 8 of the *Land Registration Act*, No. 3 of 2012. It would thus be difficult for one to agree

with the Defendants that their claims over the land were legally protected under the two or even other statutes.

123. In any event, going by the Plaintiff's averment and evidence that the suit land was allocated to it by the then Municipal Council of Lodwar, it begs the question on the (legal) capacity of the Council to allocate the land. It was submitted by the Plaintiff that the land initially was community land which then was trust land. Further, that it was on that basis that the Council allocated it.

124. This Court considered the pleadings, the Plaintiff's evidence and the submissions summarized above. It is clear that from the P. Exhibit 2, the allocation of the suit land was done under and during the retired Constitution. The suit land was within the management of the Municipal Council as the Institution tasked to do so by virtue of the provisions of the retired Constitution governing trust land.

125. Under the previous Constitution, Section 114 (1) defined Trust land to include:

> "
>
> "(a) land which is in the Special Areas (meaning the areas of land the boundaries of which were specified in the First Schedule to the Trust *Land Act* as in force on 31st May, 1963,) and which on 31st May, 1963 vested in the Trust Land Board by virtue of any law or registered in the name of Trust land board;
>
> (b) the areas of land that were known before 1st June, 1963 as Special Reserves, Temporary Special Reserves, Special Leasehold Areas and Special Settlement Areas and the boundaries of which were described respectively in the Fourth, Fifth, Sixth and Seventh Schedules to the Crown Lands Ordinance as in force on 31st May, 1963, the areas of land that were on 31st May, 1963 communal reserves by virtue of a declaration under section 58 of that Ordinance, the areas of land referred to in section 59 of that Ordinance as in force on 31st May, 1963 and the areas of land in respect of which a permit to occupy was in force on 31st May, 1963 under section 62 of that Ordinance; and
>
> (c) land situated outside the Nairobi Area (as it was on 12th December,
>
> 1964) the freehold title to which is registered in the name of a county council or the freehold title to which is vested in a county council by virtue of an escheat:
>
> Provided that Trust land does not include any estates, interests or rights in or over land situated in the Nairobi Area (as it was on 12th December, 1964) that on 31st May, 1963 were registered in the name of the Trust Land Board under the former Land Registration (Special Areas) Ordinance."

126. Section 115 of the said (retired) Constitution vested all Trust land within the jurisdiction of any County Council, in the Council for the benefit of the persons ordinarily resident on that land. Furthermore, Sections 117 and 118 of the said Constitution gave power to a County Council to set apart an area of Trust land for use and occupation by a public body or for purposes specified therein. In particular, Section 117 (1)(c) provided that the Council could set apart an area of trust land for use and occupation by:

> "any person or persons for a purpose which in the opinion of that county council is likely to benefit the persons ordinarily resident in that area or any other area of Trust land vested in

that county council, either by reason of the use to which the area so set apart is to be put or by reason of the revenue to be derived from rent in respect thereof".

127. In Pati Limited v Funzi Island Development Limited & 4 others (Petition 37 of 2019) [2021] KESC 29 (KLR) (16 July 2021) (Judgment) the Supreme Court of Kenya held as follows: -

> " Even then, a county council could only set apart an area of Trust land pursuant to an enabling Act of Parliament, to wit, the Trust *Land Act*. In line with Sections 117 and 118 of the retired Constitution, the Trust *Land Act* Cap 288 (repealed) was enacted, as an Act of Parliament to make provision for Trust land. Part IV of the Act provided for setting apart of Trust land."

128. This Court is of the view that the procedure as summarized in the above authority is what the Lodwar Municipal Council followed. Furthermore, the Plaintiff's witnesses, being, PW1, PW2, PW3 and PW5, testified in a consistent manner that the elders of the community approached the PAG Church to help build a school, gave (donated) the same the parcel of land in question, the School approached the Lodwar Municipal Council to allocate it the suit land, the Council allocated it the suit land the school then demarcated. Moreover, the Plaintiff's evidence as given by the five witnesses shows that the then Lodwar Municipal Council set aside the suit land, being Plot No. 625, measuring approximately 12.671 Ha, for a public purpose which was the setting up and development of the School known as PAG Lodwar Secondary School, the Plaintiff herein. This Court does not find difficulty in arriving at the conclusion that the Municipal Council acted within the law, the Trust *Land Act* (now repealed), Chapter 288 Laws of Kenya, and lawfully allocated the suit land to the Plaintiff. Therefore, this Court finds that the Plaintiff is the lawful owner of the suit land.

Whether any sale or leasing of part of the suit land by to or by the defendants to third parties was legal

129. The law regarding sale of land, other than by way of auctions is that it can only be carried out by a vendor who is either the owner or has express authority, usually by way of a duly registered power of attorney to that effect. In regard to transactions of sale of land, while their form is governed by Section 3(3) of the *Law of Contract Act*, must comply with the law on formation of contracts. A key feature of that is that the party entering into the same, that is to say, both the offeror and offeree, ought to have capacity to do so, unless the law permits them to fall into the exceptions it provides for. Thus, in terms of such a sale the capacity stems from, on the part of the vendor, to be the owner or being empowered by law to do so on behalf of the owner. One other important legal principle that flows from the contention on the alleged sale of the suit land is the "Nemo dat quod non habet" one which means "no one can give what they do not have". In essence, no one can sell what does not legally belong to him and pass good title thereof. In this sense, the question to be answered is, if the first Defendant or any other that has purportedly sold any part of the suit land, did he or she own it?

130. The Plaintiff averred that the Defendants unlawfully, procedurally and illegally denied the Plaintiffs the use of the suit land and had been engaged in disposing or selling of portions of the suit land to third parties, including the Defendants as between themselves. It gave the particulars of the illegality of the sale transactions at paragraph 10 of the Plaint. The particulars included violently act to "detain" (sic) public utility; usurping the powers of the NLC; dealing with public land; obtaining benefit from public land; purporting to deal with land reserved for public use.

131. To prove the particulars PW1, PW2, PW3 and PW5 testified on the issue. PW1 and PW2 gave evidence how the suit land was allocated to the School after the local elders were requested by the church they had permitted to build a structure to conduct worship services in it to build a school also. PW4 testified that the elders were the ones who requested the church she was assisting her husband who then was a

pastor to build a school. Thus, the local elders added the church more land to build the school. The church officials of whom included PW2 approached the Lodwar Municipal Council for the allocation, and it was done. Soon after the allocation the school conducted demarcation of the land. Then the 1st Defendant sold the portions of the suit land to and invited the 3rd to 10th Defendants and after the institution of the suit on to the suit land. That it was this act of the sale of the land by the 1st Defendant to the other Defendants and other third parties that occasioned the prevention of the Plaintiff from taking full possession and use of the suit land.

132. Indeed, during the proceedings, when the Court followed up with the enforcement and obedience of the order of injunction, the 1st and 5th Defendants indicated on oath that all of them except the 2nd resided on the land.

133. Furthermore, DW1 stated in his evidence in-chief that the suit land belonged to his late father and the family of Lopirie. He stated further that he had not sold the suit land to any person. But in cross-examination that apart from his siblings Mary Atabe, Arunye Elim and Ayamai Elim, there were individuals such as Paul Adome, one Philip Amoru, Reuben Eseku, Moses Emasikol, and Janet Bosibori who resided on the land at the time of suit. Of these he admitted in the cross examination that Janet and Paul had bought the portions of land occupied from him. Indeed, from that piece of evidence it is clear that persons other than the first Defendant and his sisters reside on the land and do so at the invitation of those who claim to be owners of the land. However, this Court has settled the fact that the first defendant, and indeed, the other defendants are not owners of the parcel of land.

134. It is this Court's finding then that any transaction of sale or attempt to dispose of the suit land or part thereof by the Defendants to third parties or as between themselves is illegal null and void as the sellers or vendors do not have any title thereto or ownership thereof. They cannot and could not pass any good title to anyone and even to themselves. Even the above finding notwithstanding, any such step even flies on the face the Defendants' claim and evidence that the suit land is community land. None of them can therefore lay specific claim to any part thereof to found a basis to pass title or at all to any of themselves or third parties.

Whether the Defendants have a claim to the suit land as individuals

135. The Defendants claimed that the land in issue was community land. As seen above, Article 63(2) of *the Constitution* 2010, defines community land as that which is lawfully registered in the name of groups representatives under the provisions of any law or that which is lawfully transferred to a specific community through any process of law or any declared to be community land by an Act of Parliament or that which is lawfully held, managed or used by specific communities, (i) community forests, grazing areas or Shrines (ii) ancestral lands and lands traditionally occupied by hunter gatherers communities or (iii) lawfully held as trust land by the county government.

136. The Defendants adduced evidence that the suit land fell under community land. They claimed possessory rights pursuant to the notion that they were part of the local Loborot community. DW1, DW2, DW3 and DW4 stated that the land belonged to them by virtue of the land having belonged to the late Isaiah Elim and the family of Lopirie.

137. It goes without saying that the Defendants cannot then, from their own evidence, assert any individual right to the suit land, as they purport to do herein.

138. On its part, the plaintiff denied the Defendants' claim and gave evidence of ownership through PW1 and which, as found above, was supported by that of PW2, PW3, PW4 and PW5, that it owned the suit land by virtue of allocation of the same by the Lodwar Municipal Council as evidenced by P. Exhibit

2, 3 and 4. This evidence dislodges the Defendants' claim to the as community land since it is allocated to an entity already.

139. Even if it would have been found to be community land, this Court finds that the Defendants' claim to the land as individuals or as private property cannot stand as Article 63(1) of *the Constitution* provides that community land shall vest in and be held by communities identified on the basis of their ethnicity, culture, or similar community interests. Further, it goes without saying that by virtue of Section 4(1) of the *Community Land Act*, 2016 such land shall vest in the community (not in any individual person). For these reasons, the Defendants' claim over the land as individuals cannot stand.

If the answer to issue No. (b) is negative, whether the Plaintiff owns the suit land

140. The central contention in this suit is the ownership of the suit land. In order for one to be adjudged owner of land, he/she/it has to bring himself within the provisions of Section 7 of the *Land Act* 2012 as amended in 2019. The Section which is titled "Methods of acquisition of title to land" provides that,

> " Title to land may be acquired through-
>
> (a) allocation;
>
> (b) land adjudication process;
>
> (c) compulsory acquisition;
>
> (d) prescription;
>
> (e) settlement programs;
>
> (f) transmissions;
>
> (g) transfers;
>
> (h) long term leases exceeding twenty-one years created out of private land; or
>
> (i) any other manner prescribed in an Act of Parliament."

141. In the instant suit, as summarized in paragraph *1* of this judgment, the Plaintiff pleaded that it was allocated the suit land on 20/12/2010 by the Municipal Council of Lodwar. It claimed that by virtue of the allocation it was the bona fide allottee of the said parcel of land known as Plot No 625, Lodwar Town. The Defendants denied this averment and put the Plaintiff to strict proof thereof.

142. This Court is aware that Section 107 of the *Evidence Act* requires that he who alleges the existence or otherwise of a fact proves it, unless the law specifically lays that burden on any other person than him. In civil matters, the party alleging a fact should prove it on a balance of probabilities. Thus, it concludes that the Plaintiff bore the burden of proof on a balance of probabilities that it was indeed the owner of the suit land by way of allotment as averred.

143. The Plaintiff's witnesses, PW1, PW2, PW3 and PW5 adduced evidence which this Court opines was cogent that the Plaintiff was allocated the suit land by the then Municipal Council of Lodwar. PW1 produced as P. Exhibit 1 (b) and 1(a) being the provisional and full registration certificates dated 13/09/2009 and 28/08/2013, respectively, of the PAG Lodwar Secondary School. These were to evidence that the School was not only registered but a public one.

144. PW1 produced further, P. Exhibit 2, 3 and 4 to show how the Plaintiff was allocated the suit land and it surveyed it and had development plans approved for the building of classes and other facilities

on the plot. P. Exhibit 2 was the Plot Allotment Letter, No. 0411 issued by the Lodwar Municipal Council to P.A.G. Lodwar Sec. School, the Plaintiff, on 20/12/2010. It showed that the Plot identified as No. 625 was located at Kanamkemer (Loborot). He produced P. Exhibit 3 which was a receipt No. 21306 issued by the Lodwar Municipal Council to the Pentecostal Assemblies of God on 11/09/2009 "on account of Allotment Letter". He produced P. Exhibit 4 which was a letter dated 21/06/2011 addressed by the District Surveyor to "The Clerk, Lodwar Municipal Council", stating that the Plot had been demarcated, its owner was P.A.G. Lodwar Secondary School, and it measured 12.671 Ha. P Exhibit 6, 7, were a series of letters touching on complaints over the suit land or the dispute herein. They were, one, P. Exhibit 6, dated 15/09/2015 which addressed to Lowoya Elim (the 1st Defendant herein). It was written by the District Land Administrator. It called him to appear in the County Land Administrator's Offices on 23/09/2015 for a resolution of the dispute. Two, P. Exhibit 7 being a letter dated 04/07/2016 written by PW1 to the County Land Management Board about the encroachment onto the land by the 1st Defendant in August/September, 2015. Three, P Exhibit 8 which was a letter by the Secretary to the County Land Management Board referring to the letter, P. Exhibit 7. It communicated the intention by the Board to carry out a site visit to the disputed land on 27/07/2016. P. Exhibit 9 was another complaint letter dated 08/08/2016 written by PW1 to the County Land Management Board asking it to resolve the dispute. P. Exhibit 10 was an earlier letter dated 16/08/2016 written by the Assistant County Commissioner Central Division addressed to among others PW1 as the Principal PAG Secondary School asking them to appear in his office, on the allegations that the community of Nabulon represented by 25 persons who were named therein had complained that the addressees had illegally acquired community land without public participation hence the School had grabbed the land in issue. P. Exhibit 11 was a letter dated 26/03/2018 written by PW1 as the School Principal of the Plaintiff addressed to the Land Administrator, asking about the conclusion of the dispute and occupancy status of the suit land to be given by the office. He produced P. Exhibit 12 which were Minutes of the meeting held on 06/04/2018 by the leaders of the church about the suit land. P. Exhibit 13 was the demand letter issued by the State Law Office to the 1st Defendant and others over the suit land.

145. This evidence about the allocation of the suit land was consistent. The Defendants, though claiming that the documents by the Plaintiff were a forgery, did not avail any evidence to support their claim. Theirs were only mere words unsubstantiated either by expert witness evidence or testimony of officers from the offices where the letters were issued to discount them. The Court cannot therefore rely on inadmissible hearsay by the Defendants to find that the documents produced by the Plaintiff were not authentic.

146. The Plaintiff's witnesses, namely PW1, PW2, PW3, PW4 and PW5, testified how after being allocated the land the Plaintiff took steps to develop and possess it, in accordance with the terms of the allotment. This evidence was not discounted by the Defence. Even though the Defence tried to shake the evidence of the Plaintiff by taking issue in cross-examination of PW1 and about absence of Minute No. PA/1/4/92 of Lodwar Municipal Council which was the basis for allocating the suit land, this Court takes judicial notice of the fact that, based on evidence given previously in all suits touching on allocations of land in the then Lodwar Municipality, now Lodwar Town, ALL allocations, and up to this date, are made based on the said Minute.

147. It would be advisable going forward that allocations in relation to parcels of land in the Lodwar Town, which being based on the Minute PA/1/4/92 (the parent Minute) be accompanied by Minutes of subsequent meetings which make reference to the "parent Minute" but which are specific to the said subsequent allocations in order to avoid confusion or uncertainty or unscrupulous land dealers, speculators and/or con people taking advantage of the absence of subsequent minutes to deny bona

fide allottees their proper parcels of land. This Judgment would serve a good purpose if it is served on the relevant County Lands Office for such action to be taken.

148. In the circumstances I find that the Plaintiff is the lawful owner, by way of allotment of all that parcel of land known as plot No. 625 vide the letter of allotment dated 20/12/2010.

Whether the Defendants and or their servants and agents and third parties are trespassers

149. For trespass onto land to be proven, four elements which are key must be proven as conditions precedent. These are:

    i. That there is a specific portion of earth or territory in issue;

    ii. The territory should be that which is legally adjudged to belong to a person, whether natural or juristic;

    iii. There is occupation or entry onto the specific territory by another person, juristic or natural, but not the owner; and

    iv. The entry or occupation thereof is without justification or permission of the owner.

150. The onus is on the Plaintiff to prove that he/she/it is the owner of the suit property and the Defendant has invaded and/or occupied it without any justifiable cause. As Clerk & Lindsell on Torts, 18th Edition at page 923, define it, trespass is the unjustifiable intrusion by one person upon the land in the possession of another.

151. Land is so sacred that the law does not hesitate to frown at anyone who moves onto it without the owner's permission. Thus, in Entick v Carrington [1765] EWHC KB J98, Lord Camden stated that; "Our law holds the property of every man so sacred that no man can set his foot upon his neighbour's close without his leave."

152. Trespass is defined in Section 3(1) of the *Trespass Act* defines trespass as follows; "Any person who without reasonable excuse enters, is or remains upon, or erects any structure on, or cultivates or tills, or grazes stock or permits stock to be on, private land without the consent of the occupier thereof shall be guilty of an offence."

153. Further, Bryan A. Garner (2019): Black's Law Dictionary 11th Edition, Thompson Reuters, St. Paul MN, p. 1810 defines trespass as: "an unlawful act committed against the person or property of another; especially wrongful entry on another's real property."

154. In John Kiragu Kimani v Rural Electrification Authority [2018] eKLR the court adopted the meaning in Clark & Lindsell on Torts, 18th Edition at page 923 which defines trespass as; "Any unjustifiable intrusion by one person upon the land in possession of another. The onus is on the plaintiff to proof that the defendant invaded his land without any justifiable reason".

155. In the instant suit, this court has found that the Plaintiff has discharged the burden of showing that it is lawful allottee of the suit land and that none of the Defendants has a claim to it. Further, the Court has found that the evidence of PW1, PW2, PW3, PW4 and PW5, and that of DW1 and DW2 shows that the Defendants resided on the land, until the Court ordered that they keep away from it by virtue of the order of injunction that had been issued at the institution of the suit. All the Plaintiffs' witnesses were consistent that the Plaintiff did not permit any of the Defendants to occupy the land or make use of it. The Defendants pleaded that they had rights of occupation by virtue of being members of the local community. This claim has failed, as the court already found it to be flawed. Further, Plaintiff's witnesses stated that the School intended to use the land for running the school. This Court is satisfied

that the occupation of the suit land by the Defendants, their servants, agents, successors and assigns is unjustified and amounts to trespass, which should be remedied forthwith. Thus, the Plaintiff is entitled to an order for eviction of the said trespassers, being the Defendants and anyone claiming through them.

Whether the Plaintiff is entitled to payment of general damages and loss of use

156. The Plaintiff prayed for the relief of payment of general damages on account of trespass, forcible detainer of the improvements on the suit land and loss of user since 2015 to the time of filing suit.

157. In a claim for payment of general damages on account of trespass and loss of use this Court shall not depart from the laid down principles regarding how compensation should be awarded. In Philip Ayaya Aluchio v Crispinus Ngayo [2014] eKLR Obaga J. held as follows:

> " The plaintiff is entitled to general damages for trespass. The issue which arises is as to what is the measure of such damage? It has been held that the measure of damages for trespass is the difference in the value of the plaintiff's property immediately after the trespass or the costs of restoration, whichever is less See Hostler - VS - Green Park Development Co. 986 S. W 2d 500 (No. App. 1999)."

158. In Nakuru Industries Limited v S S Mehta & Sons [2016] eKLR the court held as follows:

> " A similar situation pertains in the present case. The exact value of the land before and after the trespass is not proved. However, I have found the defendants did trespass onto the plaintiff's land and conduct some excavation. For this reason I award the defendant damages in the amount of Ksh 500,000/= (five hundred thousand only) plus interest and costs of this suit from the date of this judgment until payment in full."

159. From the above two authorities it is clear that for the Court to determine the amount due on account of trespass the Plaintiff has to show that the land or developments in issue have deteriorated, and the extent of such deterioration be specified in order to account for the difference which would be attached in terms of the loss of value to the trespass. Herein the Plaintiff did not prove that. Again, loss of user should be specifically proven. Furthermore, the Plaintiff being a public institution is not a profit-making organization (although, strictu sensu, this is not an issue to consider in an award for damages, and has formed the basis of arriving at the conclusion I shall shortly below only herein as an isolated case).

160. Additionally, in order not to unnecessarily burden the Defendants who mistakenly believed that they could lay individual claim to community land by virtue of occupying it, it would not be in the interest of all parties herein to award general damages. It thus would be punitive to grant the prayer for payment of general damages and loss of user. It would be inappropriate to award the relief.

c. Who to bear the costs of the suit

161. The upshot is that the Plaintiff's claim succeeds in entirety. By virtue of Section 27 of the *Civil Procedure Act*, Chapter 21 of the Laws of Kenya, the costs of and incidental to a suit shall be in the discretion of the court or judge, provided that they follow the event unless the court or judge for good reason otherwise orders. This Court sees no good reason to order otherwise. Therefore, the Defendants shall bear the costs of this suit.

162. This Court thus enters judgment for the Plaintiff against the Defendants jointly and severally as follows:

a. A declaration be and is hereby made that the Plaintiff is the rightful allottee and/or the beneficial owner or and proprietor of all that parcel of land located in Kanamkemer (Loborot) Plot 625 measuring approximately 12.671 Hectares, having been allocated vide Plot Allotment Letter No. 0411 of 20th December, 2010.

b. A declaration that the Defendants' actions to occupy and remain on the suit land is illegal, unlawful, unconstitutional, null and void ab initio, document(s) of ownership, if any, held by the Defendants in respect of the suit land be null and void and is cancelled forthwith.

c. An order be and hereby issued that the Defendants and all their servants and agents and all other persons howsoever claiming through them and occupying the suit land herein with the consent of the defendants, be evicted from the suit property forthwith, and all the Defendants' structured erected thereon be demolished forthwith at the Defendants' expense, within 30 days.

d. A permanent injunction be and is hereby issued restraining the defendants and their either by themselves, their agents, employees, or servants, persons claiming through them, or otherwise from trespassing onto or remaining on the suit land or interfering with the plaintiff's quiet and peaceful possession and occupation of the suit property.

e. The Court bailiff to enforce the orders of eviction hereinabove granted, and the Officer Commanding Station (OCS) Lodwar Police Station to provide security for the process and enforce the order of injunction and other lawful orders hereinabove.

f. The costs of the suit, as stated above, are to the Plaintiff.

163. Orders accordingly.

JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAM PLATFORM THIS 15TH DAY OF AUGUST, 2024.

HON. DR. IUR F. NYAGAKA

JUDG, ELC KITALE

In the presence of:

M. Odongo SSC ----------for the Plaintiff

B.M. Onyango Advocate ------for the Defendants