



**Bomet Technical Institute Limited t/a Lomu Investments v Ruto & 22 others;
County Government of Bomet (Interested Party) (Environment & Land Case
78 of 2012) [2024] KEELC 6164 (KLR) (26 September 2024) (Judgment)**

Neutral citation: [2024] KEELC 6164 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT & LAND CASE 78 OF 2012
MC OUNDO, J
SEPTEMBER 26, 2024**

BETWEEN

**BOMET TECHNICAL INSTITUTE LIMITED T/A LOMU
INVESTMENTS PLAINTIFF**

AND

JOEL RUTO 1ST DEFENDANT
ZAKAYO MARITIM 2ND DEFENDANT
ZAKAYO RUTOH 3RD DEFENDANT
JOSEAH SITONIK 4TH DEFENDANT
PHILIMONA SOI 5TH DEFENDANT
JOHN KORGOREN 6TH DEFENDANT
PETER MARITIM 7TH DEFENDANT
STEPHEN RONO ALIAS SEINO 8TH DEFENDANT
ANDREW MARITIM 9TH DEFENDANT
ANTONY BETT 10TH DEFENDANT
BENARD SANG 11TH DEFENDANT
JOHN CHEPKWONY 12TH DEFENDANT
JOLIUS TOWETT 13TH DEFENDANT
RICHARD CHELULE 14TH DEFENDANT
JOSEA MUTAI 15TH DEFENDANT
EDWIN NGENO 16TH DEFENDANT



WILSON SANG 17TH DEFENDANT
JOHN RUTOH 18TH DEFENDANT
BERNARD SANG ALIAS KOLONGE 19TH DEFENDANT
KIBET RUTO 20TH DEFENDANT
GILBERT RONO 21ST DEFENDANT
JOHN KORGOREN ALIAS TALIBAN 22ND DEFENDANT
**THE BOARD OF MANAGEMENT, ST MICHAELS PRIMARY SCHOOL,
BOMET 23RD DEFENDANT**

AND

THE COUNTY GOVERNMENT OF BOMET INTERESTED PARTY

JUDGMENT

1. Vide a Further Further Amended Plaintiff of 18th May, 2021, the Plaintiff herein sought for the following orders:
 - i. A declaration that the Plaintiff is entitled to exclusive and unimpeded right of possession and occupation of the suit property.
 - ii. A temporary injunction restraining the Defendants, whether by themselves, agents, servants or anybody claiming under them howsoever, from further entering, occupying, building, cultivating, leasing, selling, transferring or in any way dealing with the suit property to wit plot No. Bomet Township/270 situated in Bomet Municipality.
 - iii. A permanent injunction restraining the Defendants, whether by themselves, agents, servants or anybody claiming under them howsoever, from further entering, occupying, building, cultivating, leasing, selling, transferring or in any way dealing with the suit property to wit plot No. Bomet Township/270 situated in Bomet Municipality.
 - iv. Vacant Possession of the Suit Property.
 - v. General damages for trespass.
 - vi. An order of eviction of the 23rd Defendant from the suit property.
 - vii. Costs of the suit together with interest thereon as such rates and for such period of time as the court may deem fit to grant.
 - viii. Any such other or further relief as the court may deem appropriate.
2. The Interested Party filed its Statement of Defence and Counterclaim dated 15th May, 2019 in which it denied the contents of the Further Amended Plaintiff putting the Plaintiff to strict Proof. It refuted the allegation that the Plaintiff was at all material time to this suit the registered and lawful allottee of the alleged suit property stating that the Plaintiff had never been in actual possession and occupation. That at no particular time did the Government of Kenya nor the defunct Bomet Municipal Council ever allocate the parcel of land known as Plot No. Bomet Township/270 to the Plaintiff. That the suit property, which was a public property had never been bare had been occupied by a public school



known as St. Michael's Primary School which school had been established way before 10th September, 2012. That the Plaintiff's suit was incompetent, frivolous, vexatious, malicious and an abuse of the process of court hence should be struck out. That further, the court did not have the jurisdiction to entertain the instant suit.

3. In its counterclaim, the Interested Party (now Plaintiff) argued that it was the lawful trustee and the lessor of all public land in Bomet County and the Plaintiff (now Defendant) had no right over the suit property as claimed. That the Plaintiff (now Defendant) had never utilized any part of the suit property since as per the records in the Interested parties (now Plaintiff) custody, the suit property had been allocated for purposes of establishing a public primary school which had been built therein. That subsequently, the Plaintiff (now Defendant) had illegally and fraudulently obtained the title deed to the suit property Plot No. Bomet Township/270 which it had never occupied, possessed nor used,
4. The Interested Party (now Plaintiff) particularized fraud on the part of the Plaintiff (now Defendant) as causing a public body land to be registered as a private land, fraudulently registering a name of an institution and alluding to be the registered owner of the land, attempting to evict a public school that had been allocated land by the then defunct Municipal Council of Bomet and which had been in actual possession, occupation and use, colluding with Municipal County Officials to evict an existing public institution in order to obtain a title deed in its name, colluding with Municipal County Officials in order to be allocated land that was not at that time nor currently available for allocation and colluding with the Ministry of Land officials to prepare and issue title deed of a Government Institution knowing very well that a public school was the bona fide legal owner and occupant.
5. The Interested Party (now Plaintiff) thus sought that the Plaintiff's suit be dismissed with costs and judgement be entered in favour of the Interested Party (now Plaintiff) in terms of its Counter-Claim for the following orders:
 - i. An order for the cancellation of the title deed for Plot No. Bomet Township/270 registered in the name of the Plaintiff (sic) Bomet Technical Institute Limited T/a Lomu Investments.
 - ii. A declaration that the Board of Management, St. Michael's Primary School is the absolute, sole and legal proprietor of the parcel of land known as Plot No. Bomet Township/270 situated in Bomet Municipality.
 - iii. A permanent Order of injunction restraining the Plaintiff (now Defendant), his servants, agents, representatives, assigns and heirs from putting up any structures, both temporary and permanent, transferring, planting, grazing or doing any activities on Plot No. Bomet Township/270 to the detriment of St. Michael's Primary School
 - iv. Cost of this suit.
6. In response, and vide is reply, dated the 28th June 2019, the Plaintiff denied the allegations set out in the said Statement of Defence and Counterclaim in toto reiterating the averments in its Further Amended Plaintiff and putting the Interested Party to strict proof therein. That the only occupation that the 23rd Defendant had ever enjoyed in respect to the Suit Property was the occupation arising out of their actions of trespass complained of by the Plaintiff (now Defendant) and for which damages had been claimed. That the Interested Party's Statement of Defence and Counterclaim ought to be struck out as it did not have the locus standi to file a Statement of Defence and Counterclaim in absence of express leave of court. The Plaintiff thus sought for judgement be entered in its favour as prayed in the Further Amended Plaintiff.



7. The 23rd Defendant Statement of Defence dated the 30th June, 2021 was a denial of the contents of the Further Further Amended Plaintiff. That the Plaintiff was not the registered owner of Plot No. Bomet Township/270 since the said piece of land was non-existent, hence the Plaintiff lacked the locus standi to institute the instant suit. That the 23rd Defendant had at all times been in occupation of its legally registered land and had never trespassed into any one's land. Further, that it was legally allotted and registered to a piece of land known as "proposed site for St. Michael's Primary School". It thus stated that the instant suit was frivolous, misconceived and an abuse of the court process. That the suit offended the provisions of Section 18 of the [Land Registration Act](#) because the dispute could be resolved by the Land Registrar and surveyor visiting the disputed site and making a report on the same. The 23rd Defendant denied jurisdiction and liability and prayed for the dismissal of the Plaintiff's suit with costs.
8. The proceeded for hearing on the 28th November, 2019 wherein Benard Mutai Chepkwony testified as PW1 to the effect that he came from Bomet and was the Plaintiff's director. That he had filed the instant case against the Defendants who had invaded their property in Bomet Township/270 formerly known as unsurveyed plot No. A (the suit land).
9. That they had applied for the allocation of the suit land in the year 1995 as per the Letter of Application herein produced as Pf Exh 1. That in the year 1997, he received a letter of allotment from the Commissioner of Lands allocating them the suit land which letter he produced as Pf Exh 2, and which letter, he explained, had been made to Lomu Investments. That they had transferred the suit land to the Plaintiff upon incorporating it. He marked the Certificate of Change of Particulars as PMF1-3 after which he produced the Plaintiff's Registration Certificate as Pf Exh 4. His testimony was that they had made all the required payments after which they had been issued with a clearance certificate which he produced as Pf Exh 5.
10. He also produced the Lease Certificate to the suit land issued on 15th May, 2017 as Pf Exh 6 and explained that the County Government of Bomet, the Interested Party herein was the Lessor. He testified that they knew the exact location of the suit land and proceeded to produce a copy of the Registry Index Map (RIM) for the suit land as Pf Exh 7.
11. He testified that he had come to court to have the Defendants, who had invaded the suit land in June 2012, evicted. That upon their trespass, the Defendants had removed the fence, deposited construction materials, started construction wherein they had refused to vacate from the suit land despite the Plaintiff asking them to do so. He produced 30 photographs showing what had been on the ground including some of the Defendant's activities, as Pf Exh 8 and explained that at the time they had been allocated the suit land, St. Michael's Primary School (the school) had been their neighbour wherein the Defendants had proceeded to construct school buildings and after the said construction, St. Michael's Primary school had relocated to the suit land and subsequently filed case No. 408/2013 against them in Kisii, which case had been dismissed by the Court. He produced the Court's order dismissing the said suit as Pf Exh 9. He admitted that he was aware that the Interested Party had filed a counter-claim.
12. When he was referred to a letter dated 25th July, 2012 he confirmed that the same was from the Municipal Council of Bomet which was now the County Government of Bomet and which letter was to the effect that the letter of allotment which had been given to them by the Commissioner of Lands had not yet been revoked. He produced the said Letter as Pf Exh 10 and proceeded to testify that whereas the said Letter had not mentioned the suit land, he had challenged the same in a Judicial Review case No. 14/2012 wherein judgement had been delivered quashing the allotment. He produced the judgement and decree as Pf Exh 11 and then proceeded to testify that none of his documents on ownership had been cancelled on appeal against the Judicial Review Judgement and Order.



13. On being cross-examined, the witness confirmed the presence of the Plaintiff school on the suit land stating that the Defendants had neither been in occupation nor had they been registered as the owners of the school. He further clarified that the 14th Defendant one Mr. Chelule and the village elders could be seen in one of the photographs produced as Pf exh 8 and that they had been the ones who had deposited the materials on the suit land. That whereas the Defendants were not currently on the suit land, he had filed the suit against them because they had been the invaders.
14. In response to the cross-examination by the Counsel for the Interested Party, the witness admitted that although he had not produced in evidence the registration certificate for Lomu Investments, yet the Plaintiff was a training institution which was part of Bomet Teachers College. That both institutions were private wherein he and his son, Franklin Rono, were the directors.
15. He confirmed that the County Government had leased to them the suit land upon which stood structures. That whereas his allotment letter had been for an un-surveyed land, the land had later been surveyed wherein it had been allocated a number and the survey documents had been given to the Ministry of Lands. That the certificate of lease had been registered in the name of Lomu Investments wherein the Plaintiff was trading as such.
16. He denied the allegation that the Plaintiff had acquired the suit Land illegally or that it had conspired with the District Bomet Municipal Council to grab the same and went on to confirm that the suit filed at Kisii High Court had been dismissed for want of prosecution wherein subsequently the Plaintiff had been violently evicted from the suit land by the Defendants in the year 2012. He also confirmed that whereas the public school had been in occupation of the suit land, he had neither sued it or the state.
17. In re-examination, the witness confirmed that his case was directed at the Defendants because they were the ones who had violently evicted the Plaintiff from the suit land. That his complaint was not against the school. He maintained that whereas there had been a criminal case against them, the same had been dismissed. That all they sought was vacant possession of the suit land since the school was occupying the entire property.
18. Marcelle Cherotich Chirchir who testified as PW2 stated that she was the currently the head teacher at Ngasumin Primary school within Kericho County and the former first head teacher of St. Michael's Primary School when it started in the year 2004, to the year. That the first pupils had been taken in on 13th October, 2004 from the mother school Bomet County Primary School.
19. That in January 2012, the then Mayor Joyce Korir and the former Mayor, the contractor from the County, the Councilor Mr. Koskei and the District Surveyor Samwel Langat had visited the school and informed her that the land the school had occupied belonged to a technical institute owned by the Government. That they had then pointed out a parcel of land on the west of the school that belonged to the Plaintiff and asked that the school shifts thereon. That she had informed the school management committee Chairman (SMC) Mr. Phillimon Rotich, who had convened a SMC meeting wherein it had been resolved that there be a visit paid to the Mayor. She did not participate in the visit.
20. That they had also agreed to meet the then area Member of Parliament (MP) one Mr. Isaac Ruto who had informed them that he had allocated Kshs. 200,000/= for demolishing the structures where the school stood and would allocate a sum of Kshs. 300,000/= for construction of the school on the suit land. That she had objected to the said proposal in the pendency of the hearing since by so demolishing the structures, they would had accepted to move into somebody's land. That pursuant to her defiance, the said area MP had used other persons sidelining them, to enter the suit land wherein they constructed permanent structures. That the school subsequently used the money which had not been wired into its accounts.



21. That what followed was an injunction from the court wherein the Chairman had been issued with a letter by the public prosecution officers advising them not to move into suit land or to construct thereon until finalization of the matter before the court. That she had then handed over the school to a new teacher one Ali Bariwas while it was still on the original site. She produced the said letter dated 30th July, 2012 which had been copied to the school as Pf Exh 12.
22. She reiterated that the school was formally registered on 15th October, 2013 as per a letter herein produced as Pf Exh 13 wherein the management had protested its transfer to the proposed site. That subsequently, they had held a parents meeting in February, 2012 whereby the minutes dated 10th February, 2012 herein marked as PMFI 14 had been taken.
23. In cross-examined, PW2 confirmed the non-production of a protest letter they had written a letter to the Ministry of Education protesting the moving of the school from its former site. She explained that Bomet University was currently in possession of the former St. Michael's Primary School land wherein the school was on the land which they had protested against. That after she had left the school in May, 2013, the head teacher who had taken over had given in to political pressure from the community wherein they had demolished the structures in the former school's site and moved the school to the suit land. She confirmed not having seen any documents of title when she had been asked to move and neither had she conducted due diligence to find out who the land had belonged to.
24. Her response to cross-examination by the Counsel for the 23rd Defendant was that the whole land was owned by the Municipal and that the school had been where the university was currently bordering the school to the east and the Plaintiff on the other side. That the land that the Plaintiff had previously occupied was currently occupied by the school after the area MP had sent private individuals to take over the school. She confirmed that the Plaintiff had served her with a court injunction wherein they had been ordered not to move onto the suit land
25. On being cross-examined by the Counsel for the Interested Party, she confirmed that she was a teacher by profession employed by the Teachers Service Commission (TSC) and that it had been the TSC that had sent her to be the school's headteacher. She explained that TSC was a Government institution dealing with teachers teaching in both Government and private institutions and that the school was a Government school.
26. That the school had been allocated to them by the then Ministry of Education who had sent her to teach therein being a Government school which was sitting on a Government land. That she sat in the PTA and was the secretary to the school management committee and was a custodian of all the school documents. That the school had been registered in 2013 which was the same year she had left. That before then, the school had been legal although it had not been registered with the Ministry of Education as it used to receive Government funding and together with the other teachers, the Government used to pay their salaries.
27. That she was aware that there was controversy between the school and the Plaintiff thus to protect the interest of the children and the school she had informed the Ministry of Education through a letter directed to the Permanent Secretary. She maintained that she was not aware when the school moved to the new site since it had done so after she had left. Her evidence was that the school had been built where Bomet University was currently located and that it had bordered the Technical Institute. That when she visited the school after she had left, the boundaries had not been moved.
28. That the school construction had begun while she was still the head teacher wherein everybody had been aware as the same had been done politically. That the money for the said construction had not been wired through the school's account. That granted that the same had been Constituency



- Development Fund (CDF) it ought to have come through the school's account and not through individual accounts. She confirmed that the structures had been constructed towards the end of the year 2012 and that she had become aware that the school had no title to the suit land after she had received the injunction orders.
29. In re-examination, she confirmed that by the time she was leaving the school, it had no title in its name although structures had already started being constructed on the suit land. She maintained that no CDF money, to fund the structures, had passed through the school's account.
 30. PW3, Philemon Rotich, a farmer living in Chepngeno village within Bomet County testified that he was the Chairman of the school having been elected in the year 2009. He confirmed that there had been a dispute between the school and the Plaintiff. That he had been shown the boundary of the school which was boarding the land owned by one Mzee Arap Maiga on the west, on the South side, it boarded land belonging to the prison while on the east side was St. Michael's Secondary School and to the north was the Plaintiff's land.
 31. That within the suit land, there had been built a girls' toilet and six classrooms, one of which was permanent. That in the year 2012, they had requested for the CDF money in Chepalungu Constituency wherein they had been given a sum of Kshs. 200,000/= to build boys' toilets near the girls' toilets within the school.
 32. That in the same year, the then area MP, Hon. Isaac Ruto had visited the school on a Monday wherein he had asked them to call for a parents meeting to be held on a Thursday. That during the said meeting, the said area MP had announced to parents that a Government Technical Institute would be constructed on the land occupied by the school. That was when he had decided to inform the Ministry of Education and because there having been different views, together with the school's committee they had visited the District Education Officer (DEO) who had advised them to call a proper parent meeting. That the said meeting was called for and minutes were taken and handed over to the DEO's office who promised to forward the same to the District Commissioner's (DC) office since at the time the DC was the Chairman of District Education Board (DEB). That in the said meeting, parents totaling to 169 had refused to take up the area MP's proposal.
 33. He produced the minutes dated 22nd February, 2012 as Pf Exh.15 and proceeded to testify that as they were fighting for their rights, constructors had descended on the site with many people thus disrupting the pupils wherein he had reported the matter to the OCS at Bomet Police Station and the Director of Public Prosecutions (DPP's) office in Kericho whereby the DPP had given him a letter dated 30th July, 2012 which letter he had forwarded to the OCS Bomet whereby the contractor had been arrested but later released on the orders of Hon. Isaac Ruto who had visited the police station.
 34. His evidence was that members of their committee had sought for an election wherein he had been removed as the Chairman on a date that he could not remember. That there had been allegations that some of the committee members had been given the CDF money. That he had also written a letter dated 15th October, 2012 to the Ministry of Education and DO's office Bomet which letter he produced as Pf Exh.16.
 35. On being cross-examined by Counsel for the 1st -22nd Defendants, he confirmed that the school had been located on land parcel No. 12/11 but he did not know the title of the parcel of land they had moved to. That he had been in the process of writing a complaint letter to the Ministry of Education when he was removed as Chair. He also confirmed that the DC had promised to process the issue and that he did not know the name of the contractor who had been arrested. That he did not know who was currently in possession of the suit land.



36. His response on cross-examination by the Counsel for the 23rd Defendant was that he was the Chairman of the school from the year 2009 to end of the year 2012 and that he had seen the constructions on the suit land. That St. Michaels Secondary School had donated the land to the school. He confirmed that the construction that taken place from the year 2011 to the year 2012 on the Plaintiff's land. That he had been seeking the protection of the children on their former land. He confirmed that the school was a public school.
37. When he was cross-examined by the Counsel for the Interested Party, he responded that the school, which was a public school had operated for 6 years while he was the Chairman and that it had been the County Council which had donated the land although he did not know about its subdivisions. That whereas he had not seen the beacons, the former Chairman had showed him the boundaries. Further, that whereas the school had started construction on the suit land in the year 2010, he did not approve of the said construction.
38. He also confirmed that the construction of the toilets started by one madam Chirchir did not cross the boundaries and whilst he had been shown the boundary, he did not know the acreage of the school land.
39. That he had received information that both the secondary school and the primary schools shared one title deed although he did not know when the Secondary school started. That whereas the Plaintiff had put up a house and building material on the land where the school had relocated to, he did not know whether the school had taken over the Plaintiff's house, but that it had built its structure on the suit land.
40. PW4, Franklin Mutai Rono, a businessman who lived in Bomet County testified that he was one of the Plaintiff's Directors. That the suit land was plot No. 270 located in Bomet County and that the Plaintiff was trading as Lomu Investments as per the Certificate of change of particulars dated 26th March, 2012 produced as Pf Exh 17. That the suit land belonged to the Plaintiff as per the certificate of lease and an allotment letter earlier produced in evidence. He also produced a copy of the Certificate of Search and payment receipt both dated 4th October 2017 as Pf Exh 18 (a-b).
41. It was his evidence that the interested party knew of their existence and ownership of the land as it had been issuing them with the clearance certificate for payment of rates and that they had even been sued for the late payments. Further, that the interested party had been demanding for payments of and receiving money for payment of rates. He produced a Notice of rates dated 3rd December, 2003 issued by the interested party as Pf Exh 19 wherein the Plaintiff had been listed as one of the defaulters. He also produced copies of receipts issued by Municipal Council of Bomet and a demand document as Pf Exh 20 (a-j) and Pf Exh 21 respectively.
42. His evidence was that they had also received a demand notice dated 26th September, 2011 from Orina & Co. Advocates suing them for delayed payments of the land rate in RMCC at Bomet No. 90/2004. He produced it Pf Exh 22 as and the pleadings and summons as Pf Exh 23 (a-b) wherein he proceeded to testify that upon being informed of the defaulted rent, they had written a letter dated 6th October, 2004 addressed to E.K Mutua & Co. Advocates informing the interested party how they were going to pay the rates. He produced the letter as Pf Exh. 24.
43. His testimony was that they had subsequently made a report and filed the instant suit when the land was invaded. That whereas the suit land was currently adjacent to Bomet University, it was initially adjacent to the school. He marked the RIM showing where the suit land stood as Pf MF1-25 and produced the Bomet Development plan dated 20th May, 2001 as Pf Exh. 26. His evidence was that whereas Bomet



Technical Training Institute appeared on the educational section of the plan, St. Michael's Primary School (the school) was not on the plan.

44. That the dispute between them and the other parties was that the Defendants had invaded the suit land and constructed a school therein. That the said invasion had started in late June, 2012 wherein the Defendants had put a fence alongside the Plaintiff's fence and thereafter started a foundation for a new school. That upon the said invasion, the Plaintiff had sought injunctive orders from court but the Defendants did not comply with the said orders. That the Defendants had completely destroyed the old school when they invaded the suit land. He testified that they had been having issues until the County Government was joined to the instant suit as the interested parties.
45. His contention was that the school had altered an allotment letter upon which it claimed ownership of the suit land and which allotment letter had been quashed in another proceeding. That the said allotment letter dated 2nd April, 2012 had no plan number nor a signature on it. He produced the Defence filed in the Bomet case as Pf Exh. 28 before testifying that they had intended to construct a technical institute and had even put building materials on the ground wherein the Defendants had destroyed the same. He produced the building plans as Pf exh. 29.
46. He reiterated his evidence when cross examined by the Counsel for the 1st -22nd Defendants on how their land had been invaded and proceeded to clarify that in civil suit No. 90/2004, the Plaintiff had been Bomet Municipality while they had been Defendants having been sued for rent. He confirmed that it was the School which was in possession of the suit land and not the 1st to 22nd Defendants.
47. On being cross-examined by the Counsel for the 23rd Defendant, he confirmed that the Plaintiff had acquired the suit land from the Government in the year 1997 which land had initially been a Government land under the Bomet Municipality. That the Plaintiff had followed the due process and paid for the suit land wherein it had received the allotment letter in the year 1997.
48. When he was cross-examined by the Counsel for the interested party, he confirmed that he was a Director with the Plaintiff, a private training institution whose objective was to provide training among other objectives. That the Plaintiff was formerly referred to as LOMU but its particulars had been changed although it was still trading as LOMU. He explained that they had registered the Plaintiff as per the *Companies Act*. He confirmed that they had been given an allotment letter dated 17th January, 1997 reference No. 55178/III/27 for the un-surveyed education plot under their business name LOMU which had been a training institute at that time. That whereas he was aware of the investigations that had been done in relation to the said allotment letter, he was not aware that the said allotment letter existed with the Ministry of Lands Survey and Planning. He confirmed that a letter dated 14th March 2019 in the Interested Party's list of documents, was an allotment letter and marked the same as DMFI 1 and emphasized that the Government had not come to court to refute their claim.
49. He explained that initially, the Plaintiff had a primary school which it later diverted into a training college currently in existence. He maintained that they had put construction materials on the suit land before it was invaded. He admitted that they had neither produced any documents from NEMA nor did they have any physical approvals for the technical institute. However, he explained that pouring the materials on the suit land did not stop them from seeking the approval. He also admitted that they did not file any environmental assessment report.
50. He confirmed that the suit land measured about 4.3 hectares which was almost 11 acres and that the school had relocated to the suit land around October of 2013. That at the time, they already had an order from the Judicial Review case which had been filed in the year 2012 stopping the Interested Party from re-surveying the suit land. That whereas the allotment letter that they had relied on had been in



- relation to the un-surveyed educational land, the said land was later surveyed by the interested party who then gave their allotment letter to the school.
51. That it had been improper for the interested party to re-survey their land then give it to the school. That there had not been change of ownership of the title when it was registered to LOMU investment. That from the year 2004, the school was in occupation of the property next to the suit land. He confirmed that it was the twenty one (21) Defendants who had invaded the suit land and not the school. He also confirmed that in the year 2010, there had been two permanent toilets constructed on the boundaries. That when they filed the instant suit, everyone was on their respective parcels of land.
 52. He reiterated that the school had come into the suit land in October, 2013 wherein it had occupied the entire 3 hectares and despite there being an injunctive order in place the school had proceeded to construct permanent classes and toilets. He confirmed that the initial land where the school used to be had been taken over by Bomet University.
 53. In re-examination by the Counsel for the Plaintiff, he confirmed that at the time they filed the instant suit, the school had not been in occupation of the suit land hence they had sued the people who had been on the suit land. That whereas the PDP had listed their property, they did not get approvals for constructing the institute.
 54. In the pendency of the matter, the suit against the 3rd and 6th Defendants an abated and was marked as such pursuant to the provisions of Order 24 Rule 4(3) of the Civil Procedure Rule. Subsequently pursuant to an application dated 29th November, 2021 and vide a Ruling dated 23rd March, 2023, the 1st to 22nd Defendants (save for 3rd and 6th Defendants) were struck off the instant suit for misjoinder.
 55. On 29th September, 2023, by consent the Registry Index Map (RIM) contained in the Plaintiff's further supplementary list of documents dated 24th January, 2022 was produced as Pf Exh 30 and the Plaintiff closed its case.
 56. The Defence case opened with the testimony of the 23rd Defendant's witness one Nicholas Bariwos, who testified as DW1 to the effect that he was the head teacher at St. Michael Junior Secondary in Bomet and was familiar with the dispute between the Plaintiff and the school. That the school was handed over to him in the year 2013 after which it had been served with a court order despite it not being party to the suit. That it was later joined to the suit in the year 2021.
 57. That he had not been informed of any claim when he joined the school since during the handing over he had been given an allotment letter. He maintained that there had been no other dispute apart from the liability of the watchman's salary. That he had been given a handing over report dated 5th May, 2013 which he produced as Df Exh 1.
 58. He produced as Df Exh 2, an allotment letter dated 2nd April, 2012 as a document of ownership of the school and proceeded to testify that the school was a public school being sponsored by the Permanent Secretary Treasury. That he was not aware of Parcel No. Bomet Municipality No. 270 since no records of the same existed as per the letter by the Land Administrator of the District Surveyor dated 14th March 2019. He marked the said letter as Df MFI 3.
 59. He testified that the school was a registered Government School with a provisional certificate of registration dated 25th October, 2013 issued by the Ministry of Education. He produced the provisional certificate he produced as Df Exhibit 4.
 60. He produced photographs as Df Exh 5 stating that whereas Bomet University was next to their school, the Plaintiff's institution could not be seen in the photographs. That it was normal that public schools



- sit on public land hence the school was sitting in its rightful place but the private institution did not have permission to sit on a public land.
61. His response on cross-examination by the Counsel for the Plaintiff was that he was not aware that there had been a title deed issued to the Plaintiff for property No.270 and therefore he could not seek cancellation of a non-existent title deed. That whereas the school was registered in the year 2019, it had relocated to the suit land in the year 2012 which land it had been before it was formally formed. That Bomet Technical School stood on the land when he took over the school.
 62. That it had been after he had taken over the school that it moved from its parcel of land onto the suit land in the year 2013. That although beacons been placed on the land and a certificate issued, he had not been present when the said beacons were placed but that they had been placed there before he took over the school. He also confirmed that he had not been present when the survey was conducted, however, there was a Part Development Plan (PDP) showing where the school was supposed to be. That it had been after the survey that they had been issued with the letter of allotment for the school in the year 2012.
 63. When he was referred to Df Exh 2, he confirmed that the same was blank and that neither the County Council nor the parcel number had been indicated thereon. He however went on to state that the school had been in occupation of the suit land before issuance of the allotment letter. He also confirmed that whereas he had not seen an acceptance letter to the allotment letter by the school, the standard charges had been paid in the year 2022 on a date that he could not remember although he had not seen the provision that spoke of lapse of allotment if payment was not done within 30 days.
 64. That they had attached the allotment letter during the registration process of the school but efforts to get a certificate of lease had not been easy recourse it was expensive. He also confirmed that whereas he did not have a letter of authority, the school had requested the interested party to represent them.
 65. On being cross-examined by the Counsel for the interested party, he confirmed that St. Michael School was a Government school and that normally, Government schools were built on the Government land. That the school was recognized by the Government wherein the Kenya National Examination Council (KNEC) conducted the examination therein and the Competency Based Curriculum (CBC) had been introduced in the school. Further that the Government had been sending money to the school.
 66. That were the school not recognized as a public school, the Government would not have allocated it the suit land for its construction when the community sought for a school. That the Government had never written to them to nullify the allotment letter neither had it asked them to move from the suit land for being a private land. The he was sure that the land belonged to the school.
 67. In re-examination by his Counsel, he confirmed that he took over the school as the head teacher in May 2013 when the school was still situate in the old location. That registration of the school had been in the year 2013 when the school moved into the suit land. He opined that the Land Registry could still issue a certificate of lease in the pendency of the case.
 68. The 23rd Defendant thus closed its case.
 69. The Interested Party having failed to procure the attendance of its expert witness in defence, by consent the allotment letter dated 12th April, 2012 and its confirmation dated 15th August, 2012 were produced as then Interested Party's Df Exh 1(a and b) after which the Interested Party closed its case.
 70. Despite parties having been directed to file and exchange their written submissions, only the Plaintiff complied wherein it summarized the factual background of the matter as well as the evidence adduced in court. It then proceeded to place reliance on the provisions of Article 40 and 240 of *the Constitution*.



- Sections 24 (a) and 26 (1) of the *Land Registration Act* as well as the decided case in *Athi Highway Developers Limited v West End Butchery Limited & 6 others* [2015] to submit that the actions of the Defendants herein were aimed at depriving it of its lawful interest and rights in the suit property thereby denying it the benefit of using the subject property for its survival, dwelling and economic gain.
71. That through the Certificate of Lease, it had confirmed ownership of the suit property, having applied for, paid and officially having been allocated the same way back in the year 1997 a period of about 17 years before the creation of the 23rd Defendant. That the process before issuance of lease had been well documented as witnessed from the documents herein produced in evidence. That since the Plaintiff's title remained unchallenged, it was a prima facie evidence that it was the proprietor of the suit land hence the absolute and indefeasible owner.
 72. That the 23rd Defendant's witness had not adduced any document and/or evidence from the Registrar of land's office to prove any fraudulent or illegal scheme by the Plaintiff in as far as procurement of title to the suit property was concerned. Further, that there was existence even remotely of evidence conferring any right over the suit property to the 23rd Defendant.
 73. Reliance was placed in the decided case of *Kamau Mucuha v Ripples Ltd* [1993] eKLR, to submit that the 23rd Defendant herein through its agents had forcefully and without the authority of the Plaintiff entered into its property and wherein it had illegally continued to be in occupation and had further incited the school children, the parents and the local community to bar the Plaintiff from occupying the property thereby denying the Plaintiff access of its property.
 74. That it was to this effect that the court orders the said 23rd Defendant to vacate from the suit premises to prevent further unlawful acts. That further, the 23rd Defendant's possession of the suit property was illegal and un-procedural, they having taken occupation of the same 15 years after the Plaintiff had lawfully acquired the property.
 75. Reliance was also placed in the combination of the decisions in the case of *Kibusia Arap Konga v Evans Obonyo Obiero & another* [2017] eKLR and *Elijah Makeri Nyangwa'ra v Stephen Mungai Njuguna & Another* [2013] eKLR to submit that no evidence had been presented before the court to connote any fraud, misrepresentation and/or corrupt scheme through which the Plaintiff had acquired the certificate of lease. That the Plaintiff had produced a Certificate of Lease together with all the documents that had been used in the allocation and subsequent registration of the said Certificate of Lease in its name. That no fraud and/or misdeed had been blamed on it in its acquisition of the suit property. The Certificate of Lease issued to the Plaintiff had not been challenged on account of any evidence by the 23rd Defendant, that conversely, what the 23rd Defendant had been enjoying was unlawful occupation of the Plaintiff's property without any documentation.
 76. In placing reliance on the provisions of Sections 24, 25 and 26 of the *Land Registration Act*, the Plaintiff submitted that the court ought to protect its Certificate of Lease that had been issued to it as its proprietorship of the suit property remained sacred. That further, there had not been an explanation justifying the 23rd Defendant's claim over the suit property or the process through which it had gained access to the same to warrant the protection of their occupation of the same. The Plaintiff thus submitted that the Defendants be ordered to compensate it for the duration that they had enjoyed beneficial use of the suit property while denying the Plaintiff access.
 77. That the 23rd Defendant could not cause anarchy on the ground on the basis that it was a public school since even the private individuals like the Plaintiff enjoyed the protection of the law. That further, there existed a clear procedure through which the Government could acquire a private property but no such evidence had been adduced to demonstrate that the suit property had been compulsorily acquired



- or otherwise lawfully acquired by the state to warrant the continued occupation of the same by the 23rd Defendant whose occupation therefore remained illegal and unlawful. Reliance was placed on the provisions of Article 40 (3) and 67 of *the Constitution* and Sections 107 and 111 (1) of the *Land Act*.
78. The Plaintiff placed reliance in the case of *Giella v Cassman Brown & Co. Ltd* [1973] E.A. 358 to submit that it was entitled to orders of injunction as against the 23rd Defendant as well as for damages for trespass. That it had established a prima facie case as was held in the case of *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] eKLR, to warrant the orders of injunction to issue as against the Defendant. That whereas it had produced in evidence the documents on the suit property as well as the development plan issued by the Interested Party which recognized the Plaintiff's institution. The Defendant held onto nothing other than unlawful occupation of the Plaintiff's property.
79. The Plaintiff further relied on the decided case of *Waithaka v Industrial and Commercial Development Corporation* [2001] eKLR to submit that damages could not remedy the injury inflicted on it and that it would suffer irreparably should the injunctive relief sought not issue because the 23rd Defendant would continue to deter it from peaceful occupation of the suit property until its lease period ran out. That it was in this effect of the balance of convenience lay in favour of the Plaintiff obtaining injunctive orders.
80. The Plaintiff further placed reliance on the provisions of Section 3(1) of *Trespass Act* to submit that it had produced all the requisite documents proving its claim to the suit property and therefore it was entitled to damages for trespass, a fact which was indisputable, the 23rd Defendant having confirmed that it had been in occupation of the Plaintiff's land since the year 2012 without any justification.
81. Reliance was hinged on a combination of decisions in the case of *Philip Ayaya Aluchio v Crispinus Ngayo* [2014] eKLR and *Godfrey Julius Ndumba Mbogori & another v Nairobi City County* [2018] eKLR to submit that it should be paid a sum of Kshs. 100,000,000/= as a way of deterring the 23rd Defendant from violating the rights of other citizens. That further, the 23rd Defendant should pay for the damages that they had caused to the Plaintiff's fences by replacing the stolen barbed wire, chain link and fencing posts. That the costs of the suit should also be granted to the Plaintiff as the same followed the event.

Determination.

82. I have considered the matter before me, the evidence as well as the submissions by the Plaintiff, the authorities and the applicable law. It must be remembered that in the pendency of the proceedings herein, the suit against the 3rd and 6th Defendants abated wherein subsequently pursuant to an application dated 29th November, 2021, vide a Ruling dated 23rd March, 2023, the 1st to 22nd Defendants (save for 3rd and 6th Defendants) were struck off the instant suit for misjoinder. In this regard thereof the decision of the court is in relation to the suit filed by the Plaintiff against the 23rd Defendant herein referred to as the school, and the interested party.
83. The Plaintiff's case is that previously it had traded under the business name of LOMU Investments which had been a training institute. That in the year 1995, it had applied for the allocation of the suit land wherein in the year 1997, it had received a letter of allotment from the Commissioner of Lands allocating it land being Bomet Township/270 formerly known as un-surveyed plot No. A which land measured about 4.3 hectares, almost 11 acres. That a certificate of lease for 99 years with effect from 1st January 1997 had subsequently been issued to LOMU Investments.
84. That there after it had incorporated the Plaintiff and a certificate of change of particulars had been issued wherein upon registration, the land had subsequently been transferred to the Plaintiff, also



a private training institution whose objective was to provide training among other objectives. That construction materials had been put on the land for development of the technical institute. That in the process of seeking the approval, sometime in June, 2012 the Defendants put a fence alongside the Plaintiff's fence and thereafter started a foundation for a new school. Despite there being interim orders in place, the Defendants went on to completely destroy the old school which was adjacent to the suit land wherein they then invaded the suit land.

85. The Plaintiff's case is that its existence on the ground and ownership of the land was known by the interested party who had been demanding for payments of and receiving money for payment of rates and even issuing them with the clearance certificate thereafter and who had at one time even sued them for late payments. In support of their case the Plaintiff produced the following exhibits;
- i. Letter of Application for allotment dated 5th September 1995 as Pf Exh 1.
 - ii. A letter of allotment from the Commissioner of Lands dated 17th January 1997 allocating them the suit land as Pf Exh 2.
 - iii. Registration Certificate upon incorporating Plaintiff as Pf Exh 4.
 - iv. Clearance certificate for payments dated 20th March 2012 as Pf Exh 5.
 - v. Lease Certificate to the suit land issued on 15th May, 2017 as Pf Exh 6.
 - vi. Registry Index Map (RIM) for the location of the suit land as Pf Exh 7.
 - vii. An order of Kisii HCC Suit No. 408/2013 dated 24th March 2017 dismissing a case filed against them by St. Michael's Primary school as Pf Exh 9.
 - viii. Judgement delivered on the 13th July 2018, and decree in Judicial Review case No. 14/2012 quashing the re-allotment of the suit land (Bomet Technical Institute and St. Michael's Primary School) and interfering with its proprietorship as Pf Exh 11.
 - ix. letter dated 30th July, 2012 copied to the school and voicing them on the interim orders obtained by the Plaintiff as Pf Exh 12.
 - x. A letter confirming registration of the 23rd Defendant on 15th October, 2013 as Pf Exh 13
 - xi. Certificate of change of particulars of Lomu Investments dated 26th March, 2012 as Pf Exh 17.
 - xii. Certificate of Search and payment receipt both dated 4th October 2017 as Pf Exh 18 (a-b).
 - xiii. Notice of rates dated 3rd December, 2003 issued by the interested party as Pf Exh 19.
 - xiv. Copies of receipts issued by Municipal Council of Bomet and a demand document as Pf Exh 20 (a-j) and Pf Exh 21 respectively.
 - xv. Demand notice dated 26th September, 2011 from Orina & Co. Advocates suing them for delayed payments of the land rate in RMCC at Bomet No. 90/2004 as Pf Exh 22.
 - xvi. Pleadings and summons thereto as Pf Exh 23 (a-b)
 - xvii. Letter dated 6th October, 2004 addressed to E.K Mutua & Co. Advocates informing the interested party on how they were going to pay the rate they had defaulted as Pf Exh. 24.
 - xviii. The Bomet Development plan dated 20th May, 2001 as Pf Exh. 26.
 - xix. Registry Index Map (RIM) Pf Exh 30.



86. The Plaintiff's contention was that the school had altered an allotment letter upon which it had proceeded to lay claim of ownership of their land. That in fact the said allotment letter dated 2nd April, 2012 had no plan number nor a signature on it wherein it had been quashed in another proceeding. That whereas Bomet Technical Training Institute appeared on the educational section of the plan, St. Michael's Primary School (the school herein) did not feature on the plan.
87. The 23rd Defendant's case on the other hand had been that the school was a registered Government School with a provisional certificate of registration dated 25th October, 2013 issued by the Ministry of Education. That being a public school, it was sponsored by the Permanent Secretary Treasury. That it had been issued with an allotment letter dated 2nd April, 2012.
88. That it was normal that public schools sit on public land hence the school was sitting in its rightful place and the private institution did not have permission to sit on a public land. That the school was recognized by the Government wherein the Kenya National Examination Council (KNEC) conducted the examination therein and the Competency Based Curriculum (CBC) had been introduced in the school. Further, that the Government had been sending money to the school. The defence admitted that the school had previously been on another land adjacent to the suit land but had moved to the suit land in the year 2012.
89. The 23rd Defendant relied on the following exhibits in evidence.
- i. Handing over report of the school dated 5th May, 2013 as Df Exh 1.
 - ii. An allotment letter dated 2nd April, 2012 as Df Exh 2,
 - iii. A letter by the Land Administrator of the District Surveyor dated 14th March 2019. He marked the said letter as Df MFI 3.
 - iv. A provisional certificate of registration dated 25th October, 2013 as Df Exhibit 4.
 - v. Photographs showing the position of Bomet University next to the school as Df Exh 5
90. There was no evidence tendered by the Interested Party.
91. Based on the evidence as herein above summarized, the issues that stand out for determination are;
- i. Whether Plaintiff has proved its case on a balance of probability that it holds a genuine title to the suit land.
 - ii. Whether the Plaintiff is entitled to vacant possession of the suit land.
 - iii. Whether there should issue an injunction restraining the Defendants from dealing with the suit parcel of land
92. Indeed there had been no dispute that the Plaintiff who had previously traded as LOMU Investments, had been vide an allotment letter dated 17th January, 1997 reference No. 55178/III/27 allotted an un-surveyed education plot under their business name LOMU which land was subsequently converted to No. Bomet Township/270 situated in Bomet Municipality and a lease document issued to the Plaintiff under their then business name LOMU.



93. The provision of Section 24(a) of the [Land Registration Act](#) No. 3 of 2012 outlines the interests and rights of a registered proprietor of land as follows;

‘the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.....’

94. Section 25(1) of the [Land Registration Act](#) also stipulates that ;

‘The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever...’

95. The law is very clear on the position of a holder of a title deed in respect of land. Indeed Section 26(1) of the [Land Registration Act](#) provides as follows:

“the Certificate of Title issued by the Registrar upon registration, to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of the proprietor shall not be subject to challenge, except –

- a. On the ground of fraud or misrepresentation to which the person is proved to be a party
- b. Where the Certificate of Title has been acquired illegally un-procedurally or through a corrupt scheme

96. It will be seen from the above, that title to land is protected, but the protection can be removed and title impeached, if it is procured through fraud or misrepresentation, to which the person is proved to be a party; or where it is procured illegally, un-procedurally, or through a corrupt scheme.

97. There was no evidence adduced to the effect that the Plaintiff acquired the suit land through fraud or misrepresentation or that its certificate of lease had been acquired illegally, un-procedurally or through a corrupt scheme.

98. Indeed based on the evidence adduced herein above, and while relying on Section 26(1) of the [Land Registration Act](#), we cannot run away from the fact that the Plaintiff has indeed satisfied the legal provision that it is the proprietor of the suit land No. Bomet Township/270 situated in Bomet Municipality hence has absolute ownership including all rights and privileges appurtenant to it.

30. On the other hand, the 23rd Defendant through its witness submitted evidence that the school had only been issued with an allotment letter dated 2nd April, 2012 as a document of ownership.

31. It is trite law that the mere possession of letters of allotment do not confer any registered proprietorship of land to the holder. Indeed in the case of *Evans Kafusi Mcharo v Permanent Secretary, Ministry of Roads, Public Works and Housing & another* [2013] eKLR the court looked at the legal position of a letter of allotment and stated that;

“In making a distinction between petitioners who held letters of allotment and those who were registered proprietors of the land in question, this Court in the



case of *John Mukora Wachibi & Others –vs- Minister For Lands & Others High Court Petition No. 82 of 2010* observed that the distinction is based on the fact that the right to property protected under the law and *the Constitution* is afforded to registered owners of land; that a letter of allotment is not proof of title (my Emphasis) as it is only a step in the process of allocation of land. The Court relied in that regard on the position enunciated by the Court of Appeal in the case of *Wreck Motors Enterprises –vs- The Commissioner of Lands and 3 Others Nairobi Civil Appeal No. 71 of 1997 (Unreported)*, where the Court of Appeal stated as follows:

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

32. A similar finding was made in the case of *Joseph Arap Ng’ok –vs- Justice Moiwo Ole Keiwua NAI Civil Application No. 60 of 1997* in which the Court of Appeal observed as follows:

‘It is trite that such title to landed property can only come into existence after issuance of letter of allotment, meeting the conditions stated in such letter and actual issuance thereafter of title document pursuant to provisions in the Act under which the property is held.’

99. Based on the superior court’s holding and there having been no evidence given to the contrary, more so pursuant to the provisions of Section 26(1) (b) *Land Registration Act* which stipulates that title can only be impugned where there has been evidence that it had been obtained/acquired illegally, un-procedurally or through a corrupt scheme, I find that the Plaintiff has established that it is the registered proprietor of parcel of land No. Bomet Township/270 situated in Bomet Municipality and they were entitled to the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto subject to the provisions of Section 25(1) of the *Land Registration Act*.
100. Having found as such, the answer to the second issue for determination as to whether the Plaintiff is entitled to vacant possession of the suit land would then be in the affirmative.
101. The evidence tendered by the Plaintiff’s witnesses was that in 1977, after the County Government of Bomet had leased to them the suit land upon which stood structures, it had taken possession of the same and had been running a training institute which was part of Bomet Teachers College. That some time in January 2012, the then Mayor Joyce Korir and a former Mayor, a contractor from the County, the Councilor Mr. Koskei and the District Surveyor Samwel Langat had visited the school and informed PW2, who was the headmistress at the time, that the land where the school was in occupation, belonged to a technical institute owned by the Government. That they had then pointed out at a parcel of land on the west side of the school which land belonged to the Plaintiff, wherein they had asked that the school shifts thereon.
102. The Chairman Mr. Phillimon Rotichof the school management committee (SMC) then held a consultative meeting wherein it had been resolved that they pay a visit to the Mayor. Meanwhile the area Member of Parliament (MP) one Mr. Isaac Ruto allocated the school a sum of Kshs. 200,000/= to demolish the structures where the school stood with a promise to allocate it (the school) a further sum of Kshs. 300,000/= for its construction on the suit land.
103. Soon, the school invaded the suit land which stood adjacent to it despite the fact that the Plaintiff had deposited some building material to expand its business, wherein it had proceeded to deposit its construction materials thereon and thereafter construct a new school therein.



104. Section 7 of the [Land Act](#) is explicit on the methods of acquisition of title to land and recognizes that title to land may be acquired through any manner prescribed by statute.
105. The process of compulsory acquisition was laid down in the decided case of Patrick Musimba v National Land Commission & 4 others [2016] eKLR where the court had held as follows;

“Under Section 107 of the [Land Act](#), the National Land Commission (the 1st Respondent herein) is ordinarily prompted by the national or county Government through the Cabinet Secretary or County Executive member respectively. The land must be acquired for a public purpose or in public interest as dictated by Article 40(3) of [the Constitution](#). In our view, the threshold must be met: the reason for the acquisition must not be remote or fanciful. The National Land Commission needs to be satisfied in these respects and this it can do by undertaking the necessary diligent inquiries including interviewing the body intending to acquire the property.

Under Sections 107 and 110 of the [Land Act](#), the National Land Commission must then publish in the gazette a notice of the intention to acquire the land. The notice is also to be delivered to the Registrar as well as every person who appears to have an interest in the land.

As part of the National Land Commission’s due diligence strategy, the National Land Commission must also ensure that the land to be acquired is authenticated by the survey department for the rather obvious reason that the owner be identified. In the course of such inquiries, the National Land Commission is also to inspect the land and do all things as may be necessary to ascertain whether the land is suitable for the intended purpose: see Section 108 of the [Land Act](#).

The foregoing process constitutes the preliminary or pre-inquiry stage of the acquisition.

The burden at this stage is then cast upon the National Land Commission and as can be apparent from a methodical reading of Sections 107 through 110 of the [Land Act](#), the landowner’s role is limited to that of a distant bystander with substantial interest.

Section 112 of the [Land Act](#) then involves the landowner directly for purposes of determining proprietary interest and compensation. The section has an elaborate procedure with the National Land Commission enjoined to gazette an intended inquiry and the service of the notice of inquiry on every person attached. The inquiry hearing determines the persons interested and who are to be compensated. The National Land Commission exercises quasi-judicial powers at this stage.

On completion of the inquiry the National Land Commission makes a separate award of compensation for every person determined to be interested in the land and then offers compensation. The compensation may take either of the two forms prescribed. It could be a monetary award. It could also be land in lieu of the monetary award, if land of equivalent value, is available. Once the award is accepted, it must be promptly paid by the National Land Commission. Where it is not accepted then the payment is to be made into a special compensation account held by the National Land Commission: see Sections 113- 119 of the [Land Act](#).

The process is completed by the possession of the land in question being taken by the National Land Commission once payment is made even though the possession may actually be taken before all the procedures are followed through and no compensation has been made. The property is then deemed to have vested in the National or County Government as the case may be with both the proprietor and the land registrar being duly notified: see Sections 120-122 of the [Land Act](#).

If land is so acquired the just compensation is to be paid promptly in full to persons whose interests in land have been determined: See Section 111 of the [Land Act](#). This is in line with the Constitutional



requirement under Article 40(3) of *the Constitution* that no person shall be deprived of his property of any description unless the acquisition is for a public purpose and subjected to prompt payment in full of just compensation.

The Constitution dictates that acquisition be in accordance with the provisions of *the Constitution* itself and any Act of Parliament. *The Constitution* itself only provides for just compensation being made promptly.

The current procedure for acquisition of land by the State is as outlined above. As can be seen parliament took very seriously its constitutional duty to legislate on the State's powers of deprivation or expropriation. Perhaps conscious of the emotive nature of land issues, the Legislature appeared scrupulous and contemplative.”

106. In the present case, I find that the 23rd Defendant and interested party herein did not annex any copy of a Gazette Notice on the impending acquisition nor was there evidence provided to show that the Plaintiff's parcel of land was due for compulsory acquisition by the Government or any other body for that matter.
107. I find that there being no evidence that the 23rd Defendant's action of entering into the Plaintiff's land and carrying out the impugned activities was unlawful or otherwise illegally sanctioned, the 23rd Defendant's action of forcefully invading the Plaintiff's parcel of land and creating a new school therein without the Plaintiff's authorization and/or consent, constituted forceful and/or trespass to land.
108. Trespass has been defined by the 10th Edition of Black's Law Dictionary as;

“an unlawful act committed against the person or property of another; especially wrongful entry on another's real property.”
109. Section 3 (1) of the *Trespass Act*, also 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.”
110. The Court in *John Kiragu Kimani vs Rural Electrification Authority* [2018] eKLR also in defining trespass relied on *Clark & Lindsell on Torts*, 18th Edition on 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 prove that the Defendant invaded his land without any justifiable reason’.
111. I find that by invading upon the Plaintiff's land and proceeding to remove the fence, depositing construction materials thereon and constructing a new school on the same, the 23rd Defendant, the school herein had trespassed on the suit property without any legal claim or title. Indeed it is trite that an act of trespass is actionable per se by an award of general damages once it is established. See the case of *Park Towers Ltd vs. John Mithamo Njika & 7 others* (2014) eKLR where J.M Mutungi J., stated:-

‘I agree with the learned Judges that where trespass is proved a party need not prove that he suffered any specific damage or loss to be awarded damages. The court in such circumstances is under a duty to assess the damages awardable depending on the unique facts and circumstances of each case...’



112. In the case of *Duncan Nderitu Ndegwa v. K P & LC Limited & Another* (2013) eKLR P. Nyamweya J. held:-

“...once a trespass to land is established it is actionable per se, and indeed no proof of damage is necessary for the court to award general damages. This court accordingly awards an amount of Kshs 100,000/= as compensation of the infringement of the Plaintiff’s right to use and enjoy the suit property occasioned by the 1st and 2nd Defendants’ trespass.’

113. In this case the Plaintiff has not adduced any evidence as to the state or the value of its property before and after the trespass. This makes it difficult to assess the general damages incurred from the year 2012 to date. This notwithstanding, the Plaintiff herein is entitled to vacant possession, occupation and use of the suit parcel of land upon affording the 23rd Defendant reasonable Notice to vacate and handover vacant possession.

114. On the last issue as to whether there ought to be a permanent order of injunction restraining the 23rd Defendant from dealing with the suit property to wit plot No. Bomet Township/270 situated in Bomet Municipality, the response would also be in the affirmative there having been established un rebutted ownership to that said parcel of land.

115. In the end I find that the Plaintiff’s suit had been proved on a balance of probabilities and proceed to issue the following order:

- i. It is herein declared that the Plaintiff is entitled to exclusive and unimpeded right of possession and occupation of the suit property to wit plot No. Bomet Township/270 situated in Bomet Municipality.
- ii. A permanent injunction is herein issued restraining the 23rd Defendant, whether by itself, agents, servants or anybody claiming under them howsoever, from further entering, occupying, building, cultivating, leasing, selling, transferring or in any way dealing with the suit property to wit plot No. Bomet Township/270 situated in Bomet Municipality.
- iii. Within 45 days of this judgement, the 23rd Defendant shall give Vacant Possession of the Suit Property to the Plaintiff herein.
- iv. General damages of Kshs.2,000,000/= (Two million shillings only) shall be paid by the 23rd Defendant to the Plaintiff to compensate it for the wrongful entry onto its Land.
- v. Costs of the suit and interests shall be at court rates.

It is ordered.

DATED AND DELIVERED VIA TEAMS MICROSOFT AT NAIVASHA THIS 26TH DAY OF SEPTEMBER 2024.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE

