



Mungai & 10 others v Gachuhi (Environment and Land Case Civil Suit 50 of 2011) [2023] KEELC 16872 (KLR) (13 April 2023) (Judgment)

Neutral citation: [2023] KEELC 16872 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT 50 OF 2011**

AA OMOLLO, J

APRIL 13, 2023

BETWEEN

JULIUS MURIGI MUNGAI & 10 OTHERS PLAINTIFF

AND

JOSEPH GACHUHI DEFENDANT

JUDGMENT

1. The Plaintiffs instituted this suit against the Defendant vide Plaint dated 10th February 2011 seeking for the following orders;
 - a. A permanent injunction against the Defendant, his servants, employees and or agents restraining them from evicting, demolishing, alienating the Plaintiffs from the suit parcel and further restraining them from constructing and further developing on the suit parcel of land.
 - b. A declaration that the Plaintiffs are not the legal owners and counterparts of the suit parcel of land.
 - c. General damages
 - d. Any other remedy that this honorable Court may deem fit and just to grant.
2. The Plaintiffs stated that at all material times they were the lawful owners and occupants of the parcels of land located in Kangundo Road, Kayole known as L.R Nos.18302-18318 (formerly part of LR No.11344 F/R No. 241/58) herein after referred to as “the suit land” having occupied the same since 1996 as squatters. That, in the year 2000, the city council of Nairobi pursuant to a meeting held by the Town Planning Committee on 15/9/2000 resolved to nullify any earlier commitments on the said suit land and re-plan it for their resettlement.
3. Further, the Plaintiffs averred that the City Council of Nairobi through the District Officer, the Area Chief Njiru Location and the Kayole Spring Valley Squatters Board, the suit land was demarcated



and divided among the squatters who included the Plaintiffs herein and a list dated 11th March 2009 was forwarded for the approval of allotment letters through the area Councillor, Kayole North ward. The Plaintiffs continued to state that they were issued with plot identification certificates by Kayole Spring Valley Squatters Board and each individual squatter was to pursue allotment letters from the City Council of Nairobi for their respective plots upon payment of the prescribed fees.

4. The Plaintiffs pleaded that in November 2010 the Defendant acting on the strength of a court order allegedly issued on September 24, 2010 that was denounced by the court, moved into a section of the suit land accompanied by police officers from Kayole Police Station, demolished the Plaintiffs houses and evicted them. The Plaintiffs contend that as a result they suffered great loss, damages, prejudice and injustice. They particularized the illegalities to include; falsifying a court order, unlawfully demolishing the Plaintiffs' homes and houses and evicting them. The Plaintiffs further stated that despite having knowledge that the court order was not genuine, the Defendant continued to demolish their houses and persisted on constructing on the suit land.
5. The Defendant filed a statement of defence dated 8th December 2011 and filed on 11th Jan 2012 denying the allegations in the claim that the Plaintiffs were the owners and occupants of the suit land, and therefore the injunctive orders sought do not lie. He stated that he is the legal owner of the parcel of land L.R. No.18302, the suit land for which he has a valid title and which has not been cancelled or nullified. That the intended eviction of the Plaintiffs from his land was at the behest of the City Council of Nairobi who issued him with valid enforcement notices dated 17th August 2010 to remove illegal structures that had been put up on the suit land.
6. The Plaintiffs filed a reply to the defence dated 17th January 2012 and filed on 19th January 2012 reiterating their earlier pleading and contending that the Defendant is not the owner of the suit land and that the injunctive orders are merited and deserved.

Evidence

7. In support of their case, the Plaintiffs called a total of 10 witnesses while the Defendant relied on his sole evidence.
8. The 7th Plaintiff testified as PW1 by adopting his witness statement signed on 3/7/2018 as evidence in chief. He stated that he owns Plot No.237 situated in Kayole having taken possession in the year 2000 and constructed a temporary structure of 4 rooms and permanent structures of 4 rooms. PW1 testified that they used to live in Spring valley where their houses were burnt and the government moved them to Kayole, Pw1 stated he is currently not living on his plot as the Defendant demolished his houses on 8/11/2010 using a fake court order allegedly issued on 24/9/2011. He produced the list of documents dated 10/2/2011 as a bundle as PEXh1, documents attached to the Plaintiff's supplementary bundle of documents dated 7/11/2013 filed in court on 19/11/2013 as PEXh 2, the documents attached to the Plaintiff's list of documents filed on 21/8/2013 as PEXh 3. PW1 also stated that despite obtaining an injunction against the Defendant, the Defendant continued to construct on the suit land.
9. On cross examination, PW1 stated that he used to live in Spring valley Westlands with about 500 other people and in 1996 their houses burnt down. Consequently, they were ferried in Government lorries to Kayole, Njiru where with the permission of the area chief he set up a temporary house and was later in 2000 allocated Plot No.237 by Nairobi City council but does not remember particulars of the larger plot from which it came from. PW1 acknowledged the Lease dated 21/7//1993 between City Council of Nairobi and Joseph Gachuhi, the Defendant and another lease in which there was a deed plan in respect to LR. No. 18302 but stated that the Defendant's title was canceled by the Government. He was not aware if the Plot No.237 forms a portion of LR No.18302 and denied that they were allocated



land within title number 18302. That their houses were demolished without notice despite having the plot cards issued after allocated their respective plots on the suit land and each is still paying rates and ground rent to the City Council of Nairobi every year.

10. The evidence of the 9th Plaintiff who testified as PW2 was expunged from the court record. The 1st Plaintiff who testified as PW3 adopted his recorded witness statement dated 3/7/2018 as evidence in chief and stated that he is the owner of plot No.238 after it was allocated to him in the year 2000. That his plot comprises a portion of a larger parcel L.R. No 18304/15/17/18 according to the City Council of Nairobi statement. PW3 avers that they did not initially follow any formalities in putting up their houses but subsequently they formalized it and that the City Council of Nairobi was processing titles for the plots as they were issued with plot cards. PW3 acknowledged the letter dated 24/2/2011 from the City Council of Nairobi which stated that Plot No.18302 belonged to the Defendant; and the letter dated 4/3/2011 addressed to Patrick Owalla as secretary of Kayole Spring Valley Resettlement scheme which stated that the scheme encroached on Plot No.18302. On re-examination, PW3 further testified that they were allocated the plots by the City Council of Nairobi following a resolution by the council. He affirmed that the said parcels according to the minutes of the resolution, came from L.R No.11344/12 which also bore LR No.18302.
11. PW4 testified representing his mother, who is the 9th Plaintiff and adopted her recorded statement filed in court on 10/7/2013 as evidence in chief. He stated that the mother was allocated plot no 4 by the city Council of Nairobi and a plot Id issued but they were chased in 2010 and her house demolished. He stated that the mother came back to the plot in 2015 and is currently in occupation and making payments to Nairobi City Council for the plot.PW4 confirmed that on the Plot formalization card issued to them bore a disclaimer that City Council of Nairobi shall not accept any liability in the event of prior commitment of the plot.
12. The witness confirmed that the letter dated 4/3/2011 addressed to the Defendant by J.W Ndonga of City Council of Nairobi concerned Plot No.18302 Njiru and which letter stated that some of the plots to be formalized for members of Spring Valley fell within Plot 18302 belonging to the Defendant. He asserted that the Defendant's title had been recalled for cancellation and also referred to the letter dated 30/8/2013 to C.M Ngingi Advocates from City Council which stated that Plot Identification cards for plots encroaching on LR.18302 had been nullified.
13. PW5, the 3rd Plaintiff testified and adopted his statement filed on 18/4/2017 as evidence in chief and stated that he owns plot No.7. That he was issued with its card to ensure that they get the allotment letter and they each paid Kshs.3,000 for administration to Kayole Spring Valley Residents Board. He said that his house was demolished and after eviction he did not go back to the plot.
14. The 8th Plaintiff testified and adopted her witness statement filed on 27/3/2019 as evidence in chief stating that she owns Plot No.193 and was issued with plot identification certificate which is at page 20 of the Plaintiff's bundle filed in court on 27/3/2019 produced as PExh7. PW6 stated that she was further issued with a plot formalization card dated 28/9/2009 which she produced as PExh8. On cross examination, PW6 stated that she had bought the plot but cannot remember the name of the seller. That it was the leaders they elected who issued them with plot identification card, and prepared a list which was forwarded to the City Council for the issuance of plot formalization card as they await the allotment letters.
15. The 5th Plaintiff gave evidence as PW7, adopting his written statement as his evidence in chief and stated that he owns Plot No 240 which was allocated to him in 1996. The witness stated that the plot is in Kayole and produced plot identification card and plot formalization card as at page 14 and 87 of the Plaintiffs' bundle of documents filed on 27/3/2019 as PExh9 and PExh10 respectively. He also



- produced a beacon certificate at page 145 of the bundle of documents filed on 27/3/2019 and produced as PExh11. PW7 averred that his plot is on LR No.18304/15/17/18 and not the Defendant's land. PW7 stated that he is in occupation of the plot which has a permanent house and that the Defendant wanted to demolish it which made for seeking of the court's intervention to remain in the plot. He also produced account statements with regard to the plot as PExh 12.
16. PW8 who is the 2nd Plaintiff adopted her statement dated 3/7/2018 as evidence in chief, stating that she is the owner of plot No.242 and paid Kshs.5,000 for it. She produced the receipt dated 6/4/2017 as PExh14 for payment of Kshs.3,000 to the City Council found at page 80 of the bundle produced as PExh 15. PW8 stated further that she also paid Ksh.5,040 and produced the receipt dated 14/2/2013 at page 113 of the bundle as PExh16, statement of account at page 125 of the bundle produced as PExh 17, beacon certificate issued on 20/12/2002 at page 144 of the bundle as PExh18 and receipt for Kshs.3,840 payment on 20/12/2017 at page 134 of the bundle as PExh19.
 17. According to PW8, although she was evicted from the plot she went back noting that the Defendant used a fake court order which is produced as PExh 20. That their lawyer Christine Oraro & Co. complained on their behalf about the said order vide a letter produced as PExh21 and the response from the Deputy Registrar of the court in a letter dated 8/12/2010 as PExh22 disowned the court order. The witness also produced the minutes of the City Council of Nairobi Planning Committee meetings held on 21st January and 15th September 2000 respectively, which minutes are found at page 3 and 4 of the bundle and is produced as PExh23 and PExh24.
 18. In his testimony as PW9, the 6th Plaintiff adopted her written statement dated 3/7/2018 as evidence and stated that she owns plot No.195 and had a plot card to prove ownership and a receipt for the Kshs3,200 paid, receipt for Kshs.1280 all found at page 89, now produced as PExh25, PExh26 and PExh27. She also produced her beacon certificate at page 146 as PEXh28, statement of accounts with regard to her plot as PExh29, receipts for the payments she made as PExh 30(a)and(b), receipt dated 20/12/2017 for Kshs.13,760 as PExh31, letter dated 11/3/2009 from Kayole Spring Valley Residents to the D.O Embakasi with a list of the plot owners as PExh32.
 19. PW10 testified and adopted her written statement dated 3/7/2018 as evidence in chief and stated that she owns plot 196 proving ownership with a beacon certificate, a plot card at page 32 and 33 produced as PExh33 and 34 respectively, payment receipt at page 84 for Kshs 2,500 as PExh35, a public notice at page 147 stating that the titles to the plots would be issued as PExh36. On cross examination, PW10 confirmed that her name does not appear on PExh36 and that the people to be settled were about 300 and only 11 have brought the suit. This brought to a close the Plaintiffs' case.
 20. The Defendant relied on his sole evidence when he testified on 21st November 2022 and adopted his written statement filed in court as evidence in chief and produced the filed documents on the list dated 31/7/2013 as DExh1 save for document number 1 which was later produced as DExh2.He stated that he is the registered owner of the suit land measuring 2 ½ acres having been leased to him for a period of 99 years by the City Council of Nairobi in 1993. That he is in physical occupation of 1 ½ acres and his title has not been cancelled therefore the same was not available to the City Council to settle anyone. DW1 testified that he had instructed an Advocate who obtained the eviction order and so he was not aware that the order obtained was fake.

Submissions

21. The Plaintiffs and the Defendant filed submissions dated February 9, 2023 and March 4, 2023 respectively. The Plaintiff reiterated the facts of the case and submitted that they are the legal owners of the suit land having acquired the title to the plot of land via allocation and Government settlement



program and in support of their case they produced the following list of documents as evidence in court;

- i. Excerpts of Town Planning Committee meeting held on 21st January 2000 and 15th September 2000.
 - ii. Plot Identification Certificates for all the Plaintiffs
 - iii. Plot formalization cards from City Council of Nairobi
 - iv. Letter from Kayole spring Valley Residents dated 11th March 2009 to the District Officer, Embakasi through the Area Chief, Njiru
 - v. Letter Dated 24th November 2010 from Christine Oraro & Co. Advocates to the Deputy Registrar High Court of Kenya.
 - vi. Letter Dated 8th December 2010 from the Deputy Registrar, High Court of Kenya to Christine Oraro & Co. Advocates
 - vii. Copy of the Purported Court Order Dated September 24, 2010
 - viii. Letter dated 10th December 2010 from Christine Oraro & Co. Advocates to O.C.P.D Kayole Police Station copied to:
 - a. District Commissioner (Njiru)
 - b. Divisional Police Officer (Nairobi Area)
 - c. Kenya Ant-Corruption Commission
 - ix. Letter dated 17th December 2010 from Christine Oraro & Co. Advocates to the Chief, Njiru Location and Copied to the District Commissioner, Njiru District.
22. In support of their claim, the Plaintiffs cited the cases of *David Mubangi Kung'u v Attorney General & another* [2018] Eklr and *Chengo Katana Koi V Protus Evans Masinde* [2013] eKLR which outlined how settlement schemes, are supposed to settle the landless people in this country. They cited the provisions of section 134(2) of the *Land Act*, No. 6 of 2012 which provides thus; “settlement programmes shall include the provisions of access to land to squatters, persons displaced by natural causes, development projects, conversation, internal conflicts or such other causes that may lead to movement and displacements. Section 134(4) stipulates who identifies the beneficiaries of the people to access land in the shall reserve public land for the establishment of settlement programmes and where the public land is not available purchase private land subject to the Public Procurement and Disposal Act.”
- settlement schemes while section 134(c) states that the National Land Commission
23. The Plaintiffs submit further that the Defendant’s individual interest should not supersede their interest who as a result of public interest were resettled on the suit land by the Nairobi City Council. They stated that the Defendant merely alleged that the suit land was allocated to him by the City Council of Nairobi without providing any allotment letter or minutes of the Council allotting the land to him. The Plaintiffs also argued that they have established a prima facie case in that they have legal right over the suit land. That the Defendant demolished their houses and evicted them unlawfully without a lawful court order. As a result, they suffered significant losses that they have proven.



24. The Defendant reiterated the averments in his Replying Affidavit sworn on March 8, 2011 and the annexures therein which formed part of the list of Documents produced in court. The Defendant submitted that he has the title to the suit land registered in his name and the letter from the City Council of Nairobi, confirmed that the said title has never been cancelled or nullified by any authority. Therefore, though the City Council of Nairobi had intended to settle the Plaintiffs, it abandoned the project after realizing that the suit land was registered under his name. He argued that cards issued to the Plaintiffs had a disclaimer that it had approved the same on the condition that it had no prior commitment on the plot. Thus after the said nullification of the allotment, the Plaintiffs cannot purport to have any proprietary interest in the suit land.
25. In support of his case the Defendant relied on the case of Dr. *Joseph Arap Ngok vs Justice Moiwo Ole Keiwua & 5 others*, Civil Appeal No.60 of 1997 which stated that a title gives the owner of property absolute and indefeasible title and it can only be challenged on grounds of fraud or misrepresentation to which the owner is proved to be a party. He submitted that vide a letter dated March 4, 2011, the City Council of Nairobi confirmed that as at that date, there were no developments that had taken place on the suit land therefore no evictions and demolitions alleged by the Plaintiffs were occasioned. The Defendant cited the case of *Hahn vs Singh* Civil Appeal No. 42 of 1983 [185] KLR 716 which held that special damages must not only be specifically pleaded but also strictly proved.

Analysis

26. After considering the pleadings filed by the parties, their evidence tendered and the submissions presented herein; I frame the following questions for determination of the dispute;
 - i. Whether or not the Defendant's title to land L.R no 18302 was cancelled pursuant to Nairobi City Council's minutes of 21.1. 2000
 - ii. Whether or not the Plaintiffs were lawful occupants of the suit land.
 - iii. Whether or not the eviction and demolition of the structures of the Plaintiffs was unlawful
 - iv. Whether the Plaintiffs are entitled to damages
 - v. Who bears the costs of this suit?
27. From the evidence presented by the Plaintiffs, prior to the year 1996, they lived in Spring valley where their homes burnt down causing their relocation by the government to Kayole with an intention of resettling them on parts of land LR No.11344/R. That they elected officials that formed the Kayole Spring Valley Squatters Committee/Board who upon payment of disparate fees, gave each of them Plot Identification Cards, and prepared a list of their members that was forwarded to City Council of Nairobi for issuance of Plot formalization cards pending issuance of allotment letters. It turns out that a portion of the plots "allocated" encroached on the suit land L.R No.18302 which is registered in the name of the Defendant.
28. The Defendant using a court order and with the assistance of the OCS Kayole Police Station, demolished the Plaintiffs' houses and evicted them from the plots they had been allocated. The Plaintiffs then filed this suit claiming ownership of the suit land and general damages for the unlawful eviction and demolition of their structures.
29. In proving their ownership of the suit land, the Plaintiffs produced the Plot identification cards, formalization certificates (from the Nairobi City Council), beacon certificates, payment receipts made, and Minutes of the City Council of Nairobi Planning Committee meetings which discussed the allocation of the plots. The Plaintiffs alluded that the minutes from the City Council revoked any



previous commitments that had been made with respect to the suit land and which according to them included the cancellation of the Defendant's title if any.

30. In countering the Plaintiffs' case, the Defendant produced a certified copy of certificate of lease stating that the original title was held by the Bank to his financial obligations to that bank. Time was given for the Plaintiffs counsel to authentic the document before it was finally produced as Dex2. The lease between the Defendant and the Nairobi City Council was entered into on 21st July 1993 and charged to Kenya Commercial Bank vide a charge registered on 10th May 1994. The Defendant stated that he was in occupation of 1 ½ acres and the remaining one- acre portion which has been encroached by the Plaintiffs.
31. The question for the court to answer is whether the lease given to the Defendant was cancelled by the Nairobi City Council as the Lessor. The Plaintiffs' exhibit 23 refers to minutes of a meeting held by the Nairobi City Council department of Planning and Architecture. Paragraph 23 of that document stated thus;

“The director of City Planning and Architecture reported that an application had been received from the residents of Kayole and Njiru Estates requesting to be considered for allocation of plot for construction of a police station in the area. A site which was partly occupied by squatters had been identified for that purpose and a PDP had been prepared”
32. In exhibit P.24 under minute 26, it stated that,

“under minute 23 of the meeting of this committee held on 21st January 2000, approval was given for a PDP to accommodate a police station, resettlement of squatters on plot 11344/R (Part), Block Z Kangundo road, Kayole. The Director of City Planning indicated that the plan had now been approved by the Commissioner of Lands and the survey plan had also been approved by the Director of Survey....

He therefore recommended; the nullification of any earlier commitments on the said land in form of the above referred PDP survey plans, the released deed plans as well as letters of allotment (underline mine for emphasis).
33. Pursuant to this meeting, the Director of City Planning and Architecture wrote to the commissioner of land (letter produced) requesting the Commissioner of Lands to initiate the cancellation of any earlier commitments on the land so that the area can be replanned for re-settling of squatters. I have perused the Plaintiffs documents and there was no communication/letter from the Commissioner of Lands to show that indeed he began the process of cancelling any previous allotments and or titles for the land in dispute. The Nairobi City Planning and Architecture seemed to have appreciated two facts; that they had committed portions of this land to third parties and that it was not within their powers to cancel the allotments or title deeds issued.
34. Section 26 of the [Land Registration Act](#) directs courts to take title as prima facie evidence of ownership. It provides as follows:

“(1) The certificate of title issued by the registrar upon registration, or 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 that 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; or
- b. Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

35. It is clear from the above section which has provisions similar to Section 23 of the Registration of Titles Act (repealed), that the title can only be impeached where it has been procured by fraud, misrepresentation, illegality, unprocedurally or through a corrupt scheme. However, until such vitiating factors are proved, the court is to assume that the title is a good title. In this case the Plaintiffs did not challenge the Defendant’s title on the grounds of fraud, misrepresentation or that the same was acquired illegally, unprocedurally or through a corrupt scheme. They only stated that the said title had been cancelled, a fact that was confirmed to be misleading from documents they produced and emanating from the City Council of Nairobi. Those documents on their face showed the Department of City Planning only made recommendations for recalling of the previous commitments and nothing more.
36. It is trite law that a title can only be cancelled by the Land Registrar with a Court Order as provided for under section 80 (1) of the *Land Registration Act*. Further, as was held by the Court of Appeal in the case of *Kinyanjui Kamau-vs-George Kamau* (2015) eKLR, any allegation of fraud must be pleaded and strictly proved in case where fraud is alleged. It is not enough to infer fraud from the facts. The Plaintiffs averred that the Defendant did not produce minutes of meeting that allocated him the plot, however from the documents produced as originating from the City Council, the Council did not deny the allocation nor the City Council sued for illegal allocation. In any event, the Plaintiffs only pleaded the particulars of illegalities in respect of the evictions.
37. Prayers (a) and (b) of the plaint fails on account that the Defendant’s title was never cancelled therefore the land was not available for re-allocation. The plot cards held by the Plaintiffs cannot override the rights of a title holder. Although the Plaintiffs asserted that the Defendant’s interests cannot supersede the public interest, the argument has no basis both in fact and in law. In fact, because the interests the Plaintiffs are fighting for are also private and have no public bearing. There is no basis in law because the suit title was and has not been compulsorily acquired.
38. The Court of Appeal in the case of *Moi Education Centre Co. Ltd v William Musembi & 16 others* [2017] eKLR, the Court of Appeal relied on its decision in the Mitu-Bell case, in which it faulted the High Court for not considering “the tension between socio-economic rights and the right to private property in the Kenyan context”. It reviewed several decisions of the High Court in which attempts had been made to reconcile the right to property under Article 40 and the right to human dignity article 28 and the right to adequate housing under article 43 of *the Constitution*. The High Court in those decisions held that notwithstanding that squatters may not have title over the property they occupy, they are entitled to be treated with dignity and after reviewing those decisions, the Court of Appeal concluded as follows:

“ 136. We have surveyed the emerging judicial decisions in Kenya in an attempt to discern the emerging principles to address the seeming tension between private property and realization of socio-economic rights. *The Constitution* in the Bill of Rights recognizes and protects the right to private property. Whereas socio-economic rights are recognized and are justiciable, the enforcement and



implementation of socio-economic rights cannot confer proprietary rights in the land of another. In Latin, socio-economic rights cannot confer rights in alieno solo. Under the law as it stands today, enforcement and realization of socio-economic rights does not override the provisions of the *Limitation of Actions Act* (Cap 22 of the Laws of Kenya). Prescriptive rights to land cannot be acquired in the name of enforcement of socio-economic rights. It is advisable to bear in mind that in interpretation of the Constitutional Articles on socio-economic right, it is not the role or function of courts to re-engineer and redistribute private property rights. Re-engineering of property relationship is an executive and legislative function with public participation. In the absence of a legal framework, courts have no role in the guise of constitutional interpretation to re-engineer, take away and re-distribute property rights. Subject to Article 25 of *the Constitution*, all provisions in the Bill of Right are to be treated as equal with no one provision overriding another.” [Emphasis]

39. The Plaintiffs argued the existence of their legal proprietary right on the suit land and have the burden to prove it as provided in section 107 of the *Evidence Act* Chapter 80 Laws of Kenya which succinctly states:

“Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.”

40. This limb of proof was necessary to support the claim for general damages for the unlawful evictions. It is my considered opinion that the Plaintiffs have demonstrated that their occupation was known to the relevant authorities who proceeded to issue each one of them plot cards upon payment of the requisite fee. The Plaintiffs proceeded to put up structures on the suit land which they said was done with the permission from local administration. These structures were demolished by the Defendant using a court order obtained in Nairobi High Court case no 356 of 2009 and issued on 24th September 2010. The Plaintiffs through their advocates on record wrote to the Deputy Registrar of the High Court on 24th November 2010 to ascertain the authenticity of that order. The Deputy Registrar responded vide its letter dated 8th December 2010 stating thus;

“The above file is immediately available but the order purported to have been issued by this court is not genuine. This file has never been presented to the judge. There is an application in the file for injunction which was brought by Ms E. N. Njue & Co advocates which application was not paid for”

41. The Defendant stated that he complained against the Plaintiffs invasion vide his letter to the Nairobi City Council dated 2nd February 2009, In response, the City Council wrote back on 25th February 2009 advising the Defendant to seek the necessary legal action to redress the referred trespass on private property. Upon receipt of the letter from the City Council, the Defendant did not produce any demand notice served on the Plaintiffs requiring them to vacate. Neither was there any evidence of service of the pleadings in HCC No. 356 of 2009.
42. Instead the Defendant chose to fake an order to evict and demolish the structures of the Plaintiffs. Although he held a valid title to the suit land, it was illegal to obtain vacant possession using unlawful mean. The Defendant contended that there were no demolitions of the Plaintiffs’ houses as pleaded and that he was not aware that the court order relied on to evict the Plaintiffs was fake. From this, it can be gleaned that the impugned demolitions and the evictions were carried out without a proper legal court order and without service on the Plaintiffs to surrender vacant possession.



43. The photographs provided in evidence show that the Plaintiffs had indeed constructed semi-permanent structures/houses on their “allocated” plots. The Defendant stated that the Plaintiffs had encroached on his land and that is why he complained to the City Council hence rebutting his denial that there were no structures on the suit portion. Forced evictions and demolition of their houses without a Court order is a violation of their right to human dignity and security of the person. Article 43 of the Kenyan Constitution, provides for economic and social rights whose interpretation in this particular circumstance is that no one may be evicted from their home, or have their home demolished, without notice or order of the court made after considering all the relevant circumstances.
44. It is obvious that the Plaintiffs were occasioned loss due to the said arbitral demolitions and evictions thus an order for compensation is deserved. The Defendant submitted that the Plaintiffs did not specifically plead and prove the damages they are claiming. However, under the head of general damages sought in the plaint, the discretion lies with the court to determine the sum of money to be awarded.
45. In the case of *Gitobu Imanyara & 2 Others vs Attorney General* (2016) eKLR, the Court of Appeal cited *Peters v. Marksman & Another* [2001] 1 LRC the Eastern Caribbean Supreme Court quoted with approval the words of Patterson JA in *Fuller v A-G of Jamaica* (Civil Appeal 91/1995, unreported), where the Court held that:
- “It is incumbent on the courts to develop appropriate principles and guidelines as to the quantum of awards of compensation where applicable... Where an award of monetary compensation is appropriate the crucial question must be what is a reasonable amount in the circumstances of the particular case. The infringement should be viewed in its true perspective as an infringement of the sacrosanct fundamental rights and freedoms of the individual and a breach of the supreme law of the land by the state itself. But that does not mean that the infringement should be blown out of all proportion to reality nor does it mean that it should be trivialized. In like manner the award should not be so large as to be a windfall nor should it be so small as to be nugatory.”
46. it is noteworthy that the material available or evidence tendered is not such as would enable the court to determine the crucial question as to what is a reasonable amount to be awarded in the circumstances of each Plaintiff’s particular case. Consequently, I will make a standard award of Kenya Shillings One Hundred and Fifty Thousand (Kshs 150000) only for each of the Plaintiffs broken down as follows; Kenya Shillings Fifty Thousand (Kshs 50000=) only for the demolished structures and Kenya Shillings one hundred thousand (Kshs 100000=) only for the unlawful evictions. Since the Plaintiffs claim partially succeeds, I award them half costs of the suit.
47. In conclusion, judgement is entered for the Plaintiffs under paragraph (c) of the plaint on general damages only. The Plaintiffs is also awarded interest on the sum from the date of this judgement until payment in full.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 13TH DAY OF APRIL 2023

A. OMOLLO

JUDGE

