



**Wetangula v County Government of Nakuru (Environment & Land Case
155 of 2019) [2023] KEELC 17790 (KLR) (29 May 2023) (Judgment)**

Neutral citation: [2023] KEELC 17790 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 155 OF 2019
FM NJOROGE, J
MAY 29, 2023**

BETWEEN

GABRIEL NYONGESA WETANGULA PLAINTIFF

AND

COUNTY GOVERNMENT OF NAKURU DEFENDANT

JUDGMENT

1. By the plaint dated 6/12/2019 and filed on the same date the plaintiff seeks the following prayers as against the defendant:
 - a. A declaration that plot No. 606 situated at industrial area Naivasha measuring 14 meters by 30 meters rightfully belongs to the plaintiff to the exclusion of all or any other party.
 - b. A temporary order in the interim and a permanent injunction in the long term to restrain the defendant by itself, its agents, servants, employees or others whatsoever from entering into, taking possession of, acquiring, allocating, leasing out, charging, demolishing or dealing in any other manner with Plot No. 606 Industrial area in Naivasha.
 - c. Or in the alternative compensation in the form allocation of alternative land of similar size and value in the locality and damages in regard to the developments accomplished upon the property.
 - d. Costs of this case.
 - e. Any other order deemed appropriate by this court to grant.
2. The plaintiffs case is that he is the proprietor of plot No. 606 Industrial Area in Naivasha Sub-county; that in the year 1991 one Irene N. Mathenge made an application to the Naivasha Town Council seeking to be allocated the suit property; that her application was successful and she paid the requisite fees and was allocated the suit property; that in the year 2006, the plaintiff purchased



the suit property from the said Irene N. Mathenge and paid the transfer fee, the clearance certificate fee and the property was transferred to him with the approval of the Town Clerk of the Municipal Council of Naivasha; that on 7/09/2006 he was issued with a letter of confirmation of transfer of Plot No. 606 Industrial Area and was shown his plot and the beacons confirmed; that he was also issued with a certificate of plot dated 7/09/2006 and obtained the map indicating the location of the plot; that he immediately took possession and has remained thereon to date; that on 13/11/2006 he submitted building plans to the Municipal Council of Naivasha, paid the requisite fees and was given the green light to start construction of commercial units on the suit property; that on 4/10/2019 the Ministry of Lands, Housing and Physical Planning Nakuru County issued a notice alleging that 4.6 meters of the suit property stands on land preserved for a public road; that the said notice was issued with the knowledge, permission and consent of the Municipal Council of Naivasha now the County Government of Nakuru; that the defendant intended to demolish his property without any color of right; that he lodged an appeal to the Chief Officer, Ministry of Lands and Physical Planning and County Physical and Land Use Liaison Committee against the decision contained in the said notice within the provisions of the *Physical and Land Use Planning Act* No. 13 2019; that the defendant refused to respond to the appeal which led to the filing of the present suit; that he engaged the services of a surveyor who visited the suit property and confirmed that there was no encroachment and so he is seeking for orders of temporary and permanent injunction to preserve and protect the suit property from compulsory acquisition by the defendant.

3. The defendant filed its statement of defence dated 20/01/2021 on the same date. It averred that it does not have any interest in the ownership of the suit property herein; that plot No. 606 Industrial Area abuts 4.6 meters into the 15 meters area reserved for Stadium Road as indicated in the approved Part Development plan Reference No. R59/95/15; that the said encroachment was identified after establishment of the building line that was carried out on the basis of the approved Part Development Plan Reference No. R59/95/15; that during the construction of the said Stadium Road, it was observed that there were encroachments and therefore notices were issued to all owners of the parcels that had developments erected on the road reserve; that save for the plaintiff, the other owners of the parcels of land that had developments on the said road reserve complied with the Notice to remove encroachments; that the plaintiff may have been issued with permission and consent to put up a permanent structure but denies that the same was for erecting a permanent structure on a road reserve; that the said encroachment of the road reserve cannot be subject of an appeal; that the Defendant denies all the other allegations in the plaint and prays for the suit to be dismissed with costs.

Plaintiff's Evidence

4. Gabriel Nyongesa Wetangula testified as PW1. He adopted his witness statement dated 6/12/2019 and a further witness dated 8/2/2021 as part of his evidence. He testified that he owns plot No. 606, a commercial plot measuring 14 by 30 meters in Industrial Area, Naivasha. He also testified that he acquired the property in the year 2006 from one Irene N. Mathenge who gave him an allotment letter dated 17/5/1991. He produced the documents attached to the list dated 6/12/2019 as PExh.1 – 11 save for document No. 5 that was marked for identification. PW1 also produced the copies of documents attached to the further list of documents dated 8/2/2021 as PExh.12 and 13. He further produced the map that was annexed to the allotment letter as PExh.7. He testified that the surveyor to the Council showed him the beacons and so he took possession of the suit property. He further testified that he engaged the services of an architect who made a plan and submitted the plan to the Council which approved it. The approval was produced as PExh.9. He also testified that he cleared all the pending land rates as evidenced by the receipts produced as PExh.6(a) – PExh.6(f). It was his evidence that on 4/10/2019 the defendant gave him a notice dated 02/10/2019 (PExh.1) requiring him to remove an encroachment.



5. His further evidence was that he lodged an appeal with the Physical Planning Liaison Committee who never responded within the requisite 30 days and so he filed the present suit together with an application for an injunction. It was further his evidence that interim orders were issued on 17/12/2019 and despite service of the said orders, the defendant demolished his properties on 06/03/2020. He testified that he got a valuer to value the property which was done and the valuer's report dated 14/02/2020 was produced as PExh.12.
6. PW1's witness statement dated 6/12/2019 reiterated the contents of the Plaintiff. In his statement dated 8/02/2021, PW1 stated that in January and February 2020, the defendant maliciously constructed a road around his property making the property dangerous for habitation as it was in the middle of a tarmacked road. He further stated that later the defendant illegally demolished his property occasioning him great loss and damage and so he sought for compensation at the current market value.
7. On cross-examination, he reiterated that he bought the suit property from Irene N. Mathenge. He also stated that he had the transfer form but he did not have anything to show how much he had purchased the suit property for. He stated that Irene N. Mathenge had applied for allocation of the suit property evidence of which he admitted that he did not have in court. He admitted that he did not know if the said Irene N. Mathenge had complied with the terms of the allotment; that the Surveyor of the Municipal Council of Nakuru, a Mr. Okemo, showed him the property in the year 2006 and that Irene had been shown the land before but it was the mandate of the County Council to show the plot through a surveyor. When he was referred to the transfer of plots produced as PExh.3, he admitted that the approval date of transfer and minute number were not indicated and neither was a reference number indicated at the top. He also admitted that he started paying for rates in the year 2006 but he did not have the receipts in court showing payments of land rates for the years 2006 – 2012. When he was referred to DMFI-1 he confirmed that it is a revised map and so the numbers of the original allotment could not appear. He also confirmed that he could not see his plot on the map and that it was made after the allotment had been done.
8. On further cross-examination, he stated that the map formed part of the allotment letter and was prepared by the Physical Planning Department. He observed that the map is not certified by the Director and lacked a PDP number, that the approved map was not issued to him and that the allotment was done on 17/5/1991 while the map that he produced appeared to have been made in 1995.
9. Upon re-examination, he was referred to the certificate of plot and he stated that it indicates that the plot is 14 meters by 30 meters; that it was issued by the Municipal Council of Naivasha and was signed by the Town Clerk and the Municipal Engineer; that it is dated 7/9/2006; that he met all the legal requirements and that his tenants who were staying on the plot moved due to fear of destruction of property. He also stated that he paid the rates before transfer was approved. The plaintiff's case was then marked as closed.

Defendant's Evidence

10. Reuben Macharia a Physical Planner working with the defendant testified as DW1. He adopted his witness statement filed on 20/1/2021 as part of his evidence. He testified that the dispute arose when Stadium Road was under construction. He also testified that the County issued nine notices when it discovered that there was encroachment on the road reserve which notices were produced as DExh.2(a) – (h). He further testified that the plaintiff did not comply and so it demolished the offending structure. It was his evidence that the timelines for construction of the road required that the developments on the suit property be demolished in order to finish the project in time, that the KUSAP (Kenya Urban



Support Program) is a program by the Government funded by the World Bank to improve Urban roads under which program the Stadium Road was being constructed. It was also his evidence that where delay in implementation occurs, funding is normally withdrawn and so time was of the essence in this case. It was further his evidence that they established a building line which is the distance from the center of the road up to where the buildings are supposed to be built under the Physical Planning Act. He produced as DExh.1 a certified copy of the approved PDP. He testified that it was approved in the year 1986 and has a Development Plan, No. 105. He testified that the plan was prepared and reviewed on 14/11/1985 by the Director of Physical Planning and approved by the Commissioner of Lands on 22/10/1986. Regarding the PDP produced by the plaintiff, PExh.7, he testified that it did not have approval and neither was it reviewed by the Director. He further testified that it has no approval number and has no authority and cannot be used as evidence. It was his evidence that Plots Nos. 605, 604 and 606 do not exist as they were a part of the group of plots that they issued notices to. It was also his evidence that they only demolished part of the building and left part of it intact and that the situation would mean the plot was illegally allocated and developed.

11. Upon cross-examination, he admitted that he is a development planner and currently a Development Control Officer for the last 7 years. He also admitted that his work mandate includes Development Control Surveillance, enforcing compliance and approval of buildings. He further admitted that the plaintiff would have to seek for approval for building and that the construction could not proceed without their approval. He admitted to approving the plan produced as PExh.4 as it was approved by the Naivasha office. He testified that they notified 9 individuals to demolish sections of their developments that encroached on the road reserve. He admitted that 4.6 meters was the distance of the plaintiff's encroachment into the road and that he was not aware if the plaintiff and others were invited to give their views before the notices were issued. He also admitted that he had no gazette notice showing that the PDP was gazetted even though gazette is a requirement. He averred that the plaintiff must have been informed that the PDP was approved in the year 1995. He confirmed that the notices served as proof that there was encroachment even though they did not indicate the distance encroached. He also averred that the map indicates that the reserve is 15 meters from where it starts to where it ends; he however could not explain why the construction of the building of the plaintiff was approved while the map was a 1985 map and it did not exist on the map but existed on the ground. He admitted that the other properties do not exist on the map but they exist on the ground and that the Plaintiff was paying rent with their approval and he was not aware of any notices issued to him before the year 2019. He does not know of any ownership dispute about the property.
12. On re-examination, he stated that he became aware of the encroachment only during construction of the road. He also stated that from the approved map plot No. 606 is not there and nothing shows that it exists on the ground. He further stated that the road referred to in PExh.8 is Industrial Area road while he was speaking of Stadium Road. He stated that he was not aware of any ownership document indicating that plot 606 was owned by the plaintiff. The defendant's case was then marked as closed.

Submissions

13. The plaintiff filed his submissions dated 19/02/2023 on 28/02/2023 while the defendant filed its submissions dated 15/03/2023 on the same date.
14. The plaintiff in his submissions identified the following issues for determination:
 - i. Whether the plaintiff is the legal owner of plot No. 606 Industrial Area situate in Naivasha Municipality within Nakuru County;



- ii. Whether the plaintiff met all the legal procedures and approvals from the defendant to put up construction on the suit property;
 - iii. Whether the defendant issued an enforcement notice to the plaintiff and the effect thereof;
 - iv. Whether the Plaintiff had encroached on a road reserve;
 - v. Whether the defendant interfered and/or illegally demolished the plaintiff's permanent structures;
 - vi. Whether the plaintiff has suffered loss as a result of the illegal demolition and if so, the extent thereof;
 - vii. Whether the plaintiff is entitled to the orders sought.
15. On the first issue, the plaintiff submitted that he is the owner of the suit property having bought it from Irene N. Mathenge who was allotted the land on 17/05/1991. He also submitted that the defendant did not produce any evidence to show that Irene N. Mathenge acquired the suit property fraudulently and, apart from alleging that it was reserved as a road reserve, no evidence in support of the same was produced. He concluded his submissions on this issue by stating that his ownership of the suit property is not disputed.
 16. On the second issue, the plaintiff submitted that he obtained the relevant approvals before he constructed a commercial complex and has been in peaceful occupation for over thirteen (13) years. He also submitted that he paid rates and was issued with rates receipts and the defendant's witness on cross-examination confirmed that he was granted permission to develop the suit property.
 17. Coming to the third issue, the plaintiff reiterated that he was issued with a notice to cease encroachment on 02/10/2019 and being aggrieved by the said notice he appealed to the County Executive Committee, Ministry of Lands Housing and Physical Planning who did not respond to his appeal. So he filed the present suit together with an application for injunction that was granted on 17/12/2019 and served upon the defendant on 09/01/2020. He submitted that the notice to remove encroachment threatened his right to own property and did not comply with the provisions of Article 40.
 18. Regarding the fourth issue, the plaintiff submitted that since the defendant alleged that the suit property encroached on a road reserve, the onus was on the defendant to prove the said encroachment as required under Section 107 of the *Evidence Act*. The plaintiff further submitted that the defendant did not prove that 4.3 meters of the suit property encroached onto a road reserve as it did not prepare a Surveyor's Report in support of the said claim.
 19. In respect of the fifth issue, the plaintiff submitted that that the defendant in disobedience to a court order, demolished his developments in March 2020 and claimed that the demolition was in conformity to the Approved Part Development Plan Ref No. R59/95/15 which the defendant's witness confirmed that it did not reflect what was actually on the ground. The plaintiff relied on the case of *Nelson Kazungu Chai & 9 Others vs Pwani University College* [2014] eKLR and submitted that considering he had been issued with a letter of allotment together with an approved Part Development Plan, the inference is that due process was followed. The plaintiff further submitted that the PDP produced by the defendant is an amendment to the original PDP attached to the allotment letter which was made in an attempt to unfairly alienate the plaintiff's property without any color of right. It was the plaintiff's submissions that the defendant's witness confirmed that the PDP did not reflect what was on the ground. The plaintiff then relied on the cases of *Keroche Industries Ltd vs Kenya Revenue Authorities & 5 others* [2017] eKLR and *Republic vs Kenya Revenue Authority ex-parte Shake Distributors Limited* HC Misc Civil Application No. 359 of 2012 in support of his arguments.



20. Regarding the sixth issue, the plaintiff submitted that as a result of the demolition, he suffered loss and damage and as per the valuation report dated 15/11/2019, the value of the developments thereon was Kshs.5,300,000/= with the value of the land alone standing at Kshs.2,200,000/= and that due to inflation, the value could be probably higher.
21. The plaintiff finally submitted that he is entitled to the award of the reliefs sought in the Plaint.
22. The defendant in its submissions submitted on whether there has been a violation of the plaintiff's right to property and whether the prayers sought are merited. The defendant submitted that it has no interest on the suit property and that its only concern is the preservation of the road reserve area encroached upon by the plaintiff. The defendant also submitted that the said encroachment was identified after establishment of the building line which was carried out on the basis of the approved Part Development Plan Reference No. R59/95/15. It was the defendant's submissions that after the discovery of the encroachment, notices to remove encroachment were issued and all the owners of the parcels of land that had developments encroaching on the said road reserve complied except the plaintiff.
23. The defendant also submitted that by removing the encroachments to allow for the construction of the Stadium Road, it was discharging its constitutional mandate of developing and enhancing county transport for the benefit of the general public. The defendant relied on the cases of *Republic v District Land Registrar Ex Parte Stanley Kiptanui Rop* [2013] eKLR and Section 91(1) of the *Traffic Act* and submitted that the plaintiff did not deserve the orders sought given that it had issued valid and lawful notices. The defendant also submitted that it is clothed with an exclusive constitutional mandate which cannot be interfered with save in exceptional circumstances which were not pleaded in the instant case. The defendant relied on the case of *Metropolitan PSV Saccos Limited Union & 25 others vs County of Nairobi Government & 3 Others* [2013] eKLR and submitted that it has acted reasonably within the law and that the plaintiff has not demonstrated otherwise.
24. The defendant relied on Article 40(6) of the *Constitution of Kenya*, Section 26 of the *Land Registration Act*, the cases of *Pharis Ndung'u Chege & 4 Others v Attorney General & 4 Others* [2018] eKLR, *Henry Muthee Kathurima v Commissioner of Lands & another* [2015] eKLR and submitted that ownership of property can be interfered with when it is demonstrated that such property was acquired unlawfully. The defendant submitted that the suit property does not exist as it does not appear on the approved Part Development Plan Reference No. R59/95/15 and that neither did the plaintiff demonstrate how he acquired the suit property. The defendant also submitted that the plaintiff cannot rely on payment of rates as they do not confer ownership and that the only proof of payment of rates for the suit property is for January 2012, May 2015, June 2014, March 2018 and February 2019.
25. The defendant further relied on the cases of *Adan Abdirabani Hassan & 2 others v Registrar of Titles, Ministry of Lands & 2 Others* [2013] eKLR, *Five Forty Aviation Limited v Erwan Lanoe* [2019] eKLR, *Vivian Muia v Mzoori Limited* [2017] eKLR, *Republic v National Employment Authority & 3 Others Ex Parte Middle East Consultancy Services Limited* [2018] eKLR and sought that the plaintiff's suit be dismissed with costs.

Analysis and Determination

26. After considering the plaint, the defence, the evidence and the submissions, the only issue that arises for determination is whether the plaintiff is entitled to the prayers sought in the plaint.
27. The plaintiff's case is that he is the owner of Plot No. 606 having bought it from Irene N. Mathenge. It is also the plaintiff's case that soon after he purchased the suit property, he sought approvals to put up commercial developments. It is further the plaintiff's case that he lived peacefully on the suit property



before he was issued with a notice to remove encroachment. Being aggrieved with the said notice he made an appeal to the Chief Officer, Ministry of Lands and Physical Planning and Land Use Liaison Committee. When he did not get a response, he filed the present suit together with an application for an injunction which was granted. Even though the injunction was granted, the defendant nonetheless went ahead and demolished his properties.

28. In support of his case the plaintiff produced a notice to remove encroachment dated 2/10/2019 issued to the plaintiff requiring him to demolish within a period of fourteen days sections of his development that were claimed to be encroaching on the road reserve. The notice to remove encroachment also indicated that it would take effect on the 16/10/2019 and if he was aggrieved with it he was at liberty to appeal to the County Physical and Land Use Planning Liaison Committee before the said date.
29. The plaintiff also produced a letter of allotment dated 17/05/1991 that was issued to Irene N. Mathenge for commercial plot No. 606- Industrial Area. The terms on the letter of allotment were that the offer was valid for a period of thirty days from the date thereof during which period the allottee would confirm in writing of acceptance of the said offer. The designation of the person who issued the letter of offer is not legible.
30. A transfer of plot dated 7/09/2006 was produced that showed that Irene N. Mathenge had transferred plot No. 606 - Industrial Area to the plaintiff Gabriel Nyongesa Wetangula. It indicates that the transfer of plot was effected on 7/08/2006 with rent of Kshs.1380/= per month and a transfer fee of Kshs.1800/=. It is apparently signed on behalf of the Town Clerk, Municipal Council of Naivasha.
31. A certificate of plot showing beacons was also produced dated 07/09/2006. Under Part A, the name of Irene N. Mathenge is indicated, the name on Part C of the said document is not legible while Part D is in the name of the plaintiff and indicates that he had been shown his plot No. 606 measuring 14m x 30m and all the entries on the said document are dated 07/09/2006. It is apparently signed by the Town Clerk, Municipal Engineer, the plaintiff and the person whose name is not legible under Part C.
32. The plaintiff then produced the area map to show the position of the plot and various receipts for payment of rates for the suit property. The dates on the receipts for payment of rates are as follows; 6/12/2019, 6/03/2019, 20/06/2014, 20/01/2012, 19/01/2012 and 20/01/2012. Proposed building plans were produced together with the notification of approval. The notification of approval is issued to the plaintiff and indicates that his application for permission to build commercial units on plot No. 606 situated in Industrial Area had been approved subject to the condition that permanent vents be provided above all doors and windows. It is issued on 20/11/2006 and signed by the Town Clerk Municipal Council of Naivasha. Photographs showing developments were also produced. The plaintiff produced a Part Development Plan for Naivasha Ref. R59/95/15A indicated to have been drawn by one J. N. Mbithi and which is dated 17/08/1995. It is not signed by the director and neither is it approved by the Commissioner of Lands and it does not have an approved development plan number. The original building plans were produced and they are indicated to have been approved by the Public Health Officer on 13/10/2006 and the Municipal Engineer Naivasha Municipality on 20/11/2006. The plaintiff further produced a valuation report prepared by Maritime Valuers Limited dated 14/02/2020. The valuer valued the land at Kshs. 2,200,000/=:, the value of the developments at Kshs. 5,300,000/= and the value of the purported portion to be demolished at Kshs. 3,750,000/=:.
33. The defendant's case on the other hand is that it was in the process of constructing the Stadium Road when it noticed that some developments had been erected on the road reserve. It was also the defendant's case that it issued nine notices to various owners of the plots whose developments were on the road reserve requiring them to demolish their properties. It was further the defendant's case that the other individuals who were issued notices demolished their properties except for the plaintiff. The



defendant then claims that because it was under strict deadlines to complete the construction of the said road in default of which it would suffer loss, it demolished the plaintiff's developments.

34. In support of its case it produced a part development plan which is referred to as reference No. R59/95/15. It is also indicated to have been approved by the Commissioner of Lands. The plot numbers are also not quite clear. The defendant also produced notices to remove encroachment that included the notice that was issued to the plaintiff on 2/10/2019.
35. From the evidence on record, the plaintiff is the registered owner of Plot No. 606 - Industrial Area measuring 14 metres by 30 metres. The defendant on one hand argues that the Irene N. Mathenge did not meet all the requirements in the allotment letter and therefore did not pass a proper title to the plaintiff and on the other hand it also argues that it does not dispute the ownership of the suit property.
36. The court in the case of *Nelson Kazungu Chai & 9 others v Pwani University* [2014] eKLR the court held as follows:

“130. It is trite law that under the repealed *Government Lands Act*, a Part Development Plan must be drawn and approved by the Commissioner of Lands or the Minister for Lands before any unalienated Government land could be allocated. After a Part Development Plan (PDP) has been drawn, a letter of allotment based on the approved PDP is then issued to the allottees.

131. It is only after the issuance of the letter of allotment, and the compliance of the terms therein, that a cadastral survey can be conducted for the purpose of issuance of a certificate of lease. This procedural requirement was confirmed by the surveyor, PW3. The process was also reinstated in the case of *African Line Transport Co. Ltd vs The Hon .AG*, Mombasa HCCC No.276 of 2013 where Njagi J held as follows:

“Secondly, all the defence witnesses were unanimous that in the normal course of events, planning comes first, then surveying follows. A letter of allotment is invariably accompanied by a PDP with a definite number. These are then taken to the department of survey, who undertake the surveying. Once the surveying is complete, it is then referred to the Director of Surveys for authentication and approval. Thereafter, a land reference number is issued in respect of the plot.”

132. A part development plan (PDP) can only be prepared in respect to Government land that has not been alienated or surveyed.” (Emphasis Mine)

37. As was held in the above case, a part development plan must be drawn and approved by the Commissioner of Lands before a letter of allotment is issued. In the present matter the part development plan relied upon by the plaintiff is not approved. The allotment letter issued to Irene N. Mathenge was clearly issued before the part development plan was approved which is against the order of things in matters of allocation of land. Without the support of a proper PDP all the purported ownership documents held in the name of Irene N. Mathenge lacked any validity ab initio. This would therefore mean that Irene N. Mathenge had no legal interest to pass to the plaintiff. As aforementioned, in the approved part development plan produced by the defendant, the suit property is non-existent. The plaintiff's PDP itself lacks departmental reference number, approval number, names of officers who could be said to have approved it, signatures and dates of approval as well as approved development



plan number. It is also not certified by the office that issued it. That document can not be called an approved part development plan because it never went through the entire process and comes after the date of the alleged letter of allotment. The defendant's certified copy of PDP Ref No. R59/95/15A on the other hand has all the necessary details. Besides these flaws in the defendant's PDP, the land it purported to affect was already alienated for a public road which upon construction cut through it yet the Commissioner of Lands had no power under the Government Lands Act to allocate land which has already been alienated. The other owners of the plots within the vicinity of the plaintiff's plot are said to have complied with the defendant's notice to vacate and bring down their structures without demur and only the plaintiff filed suit.

38. It is trite law that he who alleges must prove. Section 107(1) of the Evidence Act provides as follows:

“(1) 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.”

39. The plaintiff has failed to establish on a balance of probabilities that there was an approved PDP for his plot. Even though it is not disputed that the plaintiff developed a property referred to only as Plot No. 606 - Industrial Area with the necessary approvals from the defendant, it is my view the plaintiff has failed to prove that he properly acquired the suit property for the court to issue the prayers sought in the plaint. Granting the plaintiff's claim for damages for destruction of the structures on the suit land would set a bad precedent that may spawn collusion between unscrupulous developers and public officers within the defendant's office to procure approvals for development on land illegally acquired with the confidence that they would obtain compensation upon demolition of those developments. I think the plaintiff ought to be satisfied with the income that he has earned from his building over the years. The upshot of the foregoing is that the plaintiff's claim therefore fails and it is hereby dismissed with costs to the 1st defendant only.

DATED, SIGNED AND DELIVERED AT NAKURU VIA ELECTRONIC MAIL ON THIS 29TH DAY OF MAY 2023.

MWANGI NJOROGE

JUDGE, ELC, NAKURU

