



**Nderitu v Gatiro & 3 others (Environment & Land Case
823 of 2013) [2022] KEELC 2436 (KLR) (27 April 2022) (Judgment)**

Neutral citation: [2022] KEELC 2436 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 823 OF 2013**

**JA MOGENI, J
APRIL 27, 2022**

BETWEEN

JANE MUTHONI NDERITU PLAINTIFF

AND

GODFREY HINGA GATIRO 1ST DEFENDANT

GEOFFREY KARIUKI MURIITHI 2ND DEFENDANT

JOYCE NYAMBURA MACHARIA 3RD DEFENDANT

NAIROBI COUNTY GOVERNMENT 4TH DEFENDANT

JUDGMENT

1. By a Plaint dated 8/07/2013 and amended on 10/03/2014 the plaintiff filed suit against the Defendants seeking the following reliefs:
 - a. A declaration that the Plaintiff Jane Muthoni Nderitu is the legal owner of the parcel of land known as Plot Number A/102 Komarock Estate Market.
 - b. An order of permanent injunction do issue restraining the 1st, 2nd and 3rd Defendants whether by themselves, their authorized agents, servant, employees, workers or otherwise howsoever from trespassing on, wasting, alienating, selling, transferring, and /or in any other manner whatsoever dealing with or interfering or staking any claim to the property known as Plot Number A/102 Komarock Estate Market.
 - c. An order compelling the Defendants to compensate the Plaintiff the cost of replacement of the demolished two storey building erected on Plot Number A/102 Komarock Estate Market and whose replacement cost was valued at the sum of Kshs. 7,644,000/= as per the Valuation Report of M/s Cog



Consultants Limited dated the 20th February, 2014 together with the loss of anticipated monthly rental income in the sum of Kshs. 92,000/= which the Plaintiff would have been earning by now computed from the date of the filing suit until final determination of this matter.

- d. General and exemplary damages.
 - e. That the Defendants be condemned to pay the Costs of the Suit and all incidentals thereto.
 - f. Any other or further relief that this Honorable Court may deem fit to grant.
2. The plaintiff avers that at all material times she is the legal and bona-fid owner of the property known as Plot No. A1/02 Komarock Estate Market having been allocated the same by the City Council of Nairobi vide a letter of Allotment dated 17/07/2003 and Beacon Certificate issued on 20/02/2013. Further that upon obtaining approvals for development of the property from the 4th defendant, the plaintiff caused to be developed on the subject property a two storey commercial building at the cost of Kshs. 10,000,000 which she had rented out to tenants earning a monthly rent. The plaintiff avers that she had paid all the statutory charges and had been issued with a Clearance Certificate on 30/01/2013 and was awaiting the processing of the title to the suit property.
 3. The Plaintiff contends that on 5/07/2013 the defendants wrongfully and illegally entered onto the suit property without the knowledge and/or consent of the plaintiff and demolished using a bull dozer the two storey commercial building erected on the subject property and in the process carried out an illegal eviction exercise of the plaintiff's tenants. The Plaintiff contends that unless the 1st, 2nd and 3rd defendants are restrained the suit property is in danger of being further wasted, damaged, alienated, or being illegally disposed of by the defendants who commit acts of trespass and waste of the suit property and the plaintiff has been deprived of its use and enjoyment she cannot exercise her proprietary rights and has therefore suffered loss and damage as a result of the illegal demolition of her two storey building by the 4th defendant.
 4. The plaintiff has particularized the loss or damage as follows: Illegal demolition of a two storey building erected on the suit property with the cost of replacement of the demolished buildings being assessed at the sum of Kshs. 7,644,000/= as per the Valuation Report of M/s Cog consultants limited dated 20/02/2014. Loss of income

The plaintiff avers that she has a prima-facie absolute claim to the suit property and that despite demand notice being issued to the 1st, 2nd and 3rd defendants they continue to perpetuate the acts of trespass. Further that the 4th defendant has declined to admit liability of demolition despite having been served with a demand notice and intention to sue.
 5. Though served with summons to enter appearance and the plaint, amended plaint and hearing notice by way of substituted service by advertisement in the Daily Nation of 2/04/2017 and Daily Nation of 10/04/2017 pursuant to leave granted by the court on the 15/02/2017, the defendants did not enter appearance or file defence and the suit came up for hearing on 18/11/2021 when the plaintiff testified and called five witnesses. The advocate for the 4th defendant participated in the hearing cross-examined the plaintiff's witnesses.
 6. PW1- Jane Muthoni Nderitu - In her testimony, the plaintiff testified that she is the owner of Plot No. A1/02 Komarock market. She testified that she wants to be paid for the demolition of the building. She stated that she even did a valuation which she produced in court (exhibit 1). The plaintiff informed the court that the 4th defendant approved here building plans. She averred that she had the Certificate of



Confirmation of Ownership issued by the City Council of Nairobi on 17/07/2013 confirming that the City Council records held in Dandora Housing Development Department the suit property belonged to her. The plaintiff also produced a Beacon certificate issued on 20/02/2013(exhibit 2), Clearance Certificate issued on 30/01/2013 and copies of official receipts of statutory payments (exhibit 3), approved building plans (exhibit 5), photographs evidencing the extent of the demolition exercise conducted on 5/7/2013(exhibit 6), copy of demand letter (exhibit 7) and Valuation Report by M/s Cog Consultants Limited (exhibit 8). The plaintiff stated that on the morning of 5/7/2013 the defendants illegally using a bull dozer demolished the two storey commercial building she had erected on the suit property in the process causing destruction on private property.

7. The plaintiff avers that at the time of the demolition, the ground floor was complete and ready for occupation and construction works on the 1st floor were ongoing with walls having been done up to lintel level. That the ground floor accommodated and comprised of eight (8) shops and one (1) bedroom unit and the same had been advertised for letting to monthly tenants at a sum of Kshs. 10,000 per shop and Kshs. 12,000 for the one-bedroom unit and that she anticipated to get a total of Kshs. 92,000.
8. She testified that despite there being a court order the defendants still demolished the remaining structures erected on the suit property on 28/03/2014 and that now the defendants threaten to take over the suit property denying the plaintiff her proprietary rights. Further she testifies that she has suffered loss amounting to Kshs. 7,644,000 as per the Valuation Report dated 20/02/2014. She avers that she has been denied opportunity to earn a rental income.
9. During cross-examination PW1 stated that she went to the city council as it then was and she was given all the documents relating to the land. She states that she has other properties and that she is conversant with the procedure of obtaining property from the Council. She stated that the land in Komarock was hers and she gave out letters of allotment plus beacon certificate. She testified that the allotment letter gave her the property. She avers that she paid the consideration within two days but she did not produce it before the court. She testified that she paid within 5 days of allotment and she was given approval for construction. Further that they had filled out the forms for title deeds but the same had not been given. She testified that it is the Nairobi County that issues the titles by the Ministry of Lands further that she has never written a letter to follow up on the title deed but she keeps calling to ask when the title will be ready. She noted that she made reference to Order issued on 24/05/2014 which according to her refers to 1st, 2nd and 3rd defendants She testified that Nairobi County was not stopped from demolishing in the Order. Further that the Nairobi County owns all the land and own the lease for some time.
10. In re-examination she stated that she paid all the money that was required for the approvals and she got an approval certificate dated 29/05/2011 to allow her to construct. She stated that she took all pictures and she reported the matter to the police.
11. PW2- PC Alfred Kutola SN 93595. The second witness was a Police Constable, who is currently based at DCI Kayole as a crimes expert. He testified that he was familiar with matters before court. His role as a crimes expert was gazetted on 28/02/2020. He testified that he was gazetted to produce evidence of photography in nature. That in the current suit on 14/07/2021 at about 11:00 a.m while at the DCI Kayole he received soft copies of photographs from one Solomon Rukaria Bundi which he had to peruse and had to prepare as part of the report in connection with unlawful demolition to property Plot A1/02 at Komarock Market, the property of one Jane Muthoni Nderitu. He testified



that incidence happened on diverse dates between 2013 to 2018. Pursuant to the said request to process the photos I noted the following photographs:

- i. Photo number 1 -General view of M/V Reg KAW 824 Z belonging to Nairobi City Council at sight of demolition
- ii. Photo number 2 - General view of demolished building
- iii. Photo number 3 - General view of M/V belonging to Nairobi City Council
- iv. Photo number 4 - General view of Komarock market signpost and M/V registration number KAH 039 Y belonging to Nairobi City Council
- v. Photo number 5 - General view of M/V KAV 349 E belonging to Nairobi City Council
- vi. Photo number 6 - General view of the demolished building from a different angel
- vii. Photos number 7 - 12 General and closer view of the site to Nairobi City Council offices Komarock ward
- viii. Photo number 13 – Midrange view of demolished building
- ix. Photos 14 -23 shows the general midrange and closer view of demolished building
- x. Photos 24- 26 show both general and closer view of the demolished building land car wash.

He went ahead and produced his forensic report as evidence in support of plaintiff's case. In cross-examination by Ms. Achola the advocate for the 4th defendant, he testified that he was gazetted through Gazette Notice number 12 of 2017. That his duties were for processing. He stated that he did not take the photos, he never visited the site, Mr. Solomon Rukaria Bundi took the photos. Further that no videos were taken and the photos were taken between 2013-2018. There was no re-examination.

12. PW3- Mr. Solomon Rukaria Bundi – He testified that he witnessed the demolition, that he is the area chairman of security. That plot A1/02 belonged to the plaintiff. He testified that he took pictures on the site, and then he took them to the officer to advise on verification. Further that only the plaintiff's house was demolished and the car wash and that it was the Nairobi City Council people who did it because according to him, he engaged them and they told him that they were instructed to come and demolish the building. He testified that once he was told about the demolition, he called the plaintiff and they went to Kayole Police station to report. He testified that the demolition was caused by a land disagreement. He stated that the Nairobi City Council team informed him that they demolished because the 1st, 2nd and 3rd defendants had gone to complain. He also stated that he also had a plot in the same area at the front, he was allotted just like the plaintiff and they are still awaiting the titles and that no one has a title deed.
13. During cross-examination by the advocate of the 4th defendant, he stated that he is the security chairman and he owns property in the same area and it is near the plaintiff's property. He stated that the two plots are different because each has its own owner. The plaintiff's property has never been his. He also testified that they agreed as property owners in the same area that when one wants to



construct they had to produce approved plans plus clearance certificate. He stated they all those who wanted to construct have had to produce allotment letters, approved plans and clearance certificates. He also testified that when they receive the documents, they do not make any inquiries or verify the authenticity of the documents. He testified that he was called by one resident and when he went, he found the house being demolished by a bull dozer KAW 824Z and the lorry KAH 039Y had carried the City Council askaris, there was another vehicle KAV 349E pick up also and the number plates for all these vehicles were green. He testified that when he talked to the City Council team they told him that the 1st, 2nd and 3rd defendants were claiming that the property was theirs. He stated that he has never met the 1st, 2nd and 3rd defendants. He also testified that he asked the City Council team why they were demolishing the house for the plaintiff. He testified that he did not know that the 1st, 2nd and 3rd defendant had property titles. The car wash was also demolished to give way for tractor to get to plaintiff's property at the market.

14. PW4 – Joseph Kiyambi Chavari testified that he was a real estate valuer, with a current practicing certificate. He stated that he was aware of the factual issues to do with the plaintiff's property. Further that the plaintiff asked him to do undertake a valuation of the property that was demolished which is at Kayole. He stated that he went and found that the structure was knocked down. He stated that he undertook the valuation of the damage. He testified that his findings pointed to a loss of Kshs. 7,644,000 million. That there was a bills of quantities (BQ) but this was his own judgment as a valuer. He stated that he also took photos. He produced the expert report by the Cog consultants. There was no cross-examination nor re-examination for the witness.
15. PW5- Peter Mwangi Nderitu –testified as the 5th witness for the plaintiff and stated that he works in the transport sector. He testified that he witnessed the demolition and that he was told by his dad to go and find out what was happening, when he got there he saw a bull dozer, a pick up and a lorry which all had the label of the City Council on the number plates. He stated that he went and asked the leader to show him the letter that authorized the demolition but there was no document. He testified that after the demolition he called the security person and the car wash proprietor that he reported the demolition to the security on behalf of his mother. He testified that when they were constructing no one stopped them and that there is City Council offices nearby.
16. During cross-examination he testified that the property belongs to his mother. Further that he was not there but he knows that she was given an allotment letter plus the construction approvals. He stated that there was no letter of demolition that was sent to his mother or a letter stating that she should not construct. He contended that the City Council offices which are nearby where the mother had the property always alerted them if there was any problem but there was no such alert before the demolition.
17. He stated that he knew the 1st and 2nd defendants who went to the site the 2nd time on 20th to remove the things that were on the ground. He testified that he went and gave them the court papers and they said that those were only papers. He stated that then went to the PPO and he summoned them and when he tried to serve them with the court order but they refused. The Order was against the 1st, 2nd and 3rd defendants.
18. In re-examination he stated that he does not understand the law but he knows that the court had stopped the 1st, 2nd and 3rd defendants from demolishing the mother's building.
19. At this point the Plaintiff closed his case. The advocate for the 4th defendant Ms. Achola, stated that she did not have her witnesses in court, that she was unable to get witnesses and so she closed her case.



20. In order to prove ownership of the suit property the plaintiff produced an allotment letter issued by City Council of Nairobi (NCC) and dated 17/07/2003 plus a beacon certificate which was issued on 20.02.2013. The plaintiff also had a certificate of confirmation of ownership dated 25/02/2010. It is the plaintiff's testimony which was unrebutted that she paid full land rates and other statutory charges and this was produced in evidence in the bundle on pages 4 to 18.
21. Further the plaintiff in her testimony noted that she started construction only once she had obtained the necessary approvals from the City Council of Nairobi on 29/05/2011 and she was also given a confirmation letter dated 27/06/2011. The plaintiff produced these documents in her evidence and there was no objection to production of the bundle of documents on pages 19 to 21.
22. It is the plaintiff's testimony that the defendants, 1st, 2nd, 3rd and 4th defendants without notice demolished the plaintiff's building on 5/07/2013 and the plaintiff's evidence was corroborated by the 2nd, 3rd, 4th and 5th plaintiff's witnesses. Including the police officer. It was testified that the demolition was reported under OB NO.30/5/07/2013, OB NO.41/20/08/2013, OB NO.28/29/06/2017 and OB No. 25/03/07/2018 with the respective police abstracts which were issued by Kayole Police Station. These documents were also produced in court. being issued by Kayole Police Station and which were produced in court.
23. The plaintiff's case was supported by the documents produced by PC Alfred Kutol from DCI Kayole who in his evidence produced a photographic report dated 16/07/2021 and his evidence was also not controverted. The production of the report is supported by Section 78 of the *Evidence Act*.
24. At the same time the plaintiff also summoned expert evidence of the Valuer Joseph Chabari who quantified the loss of the plaintiff through the Valuation Report which was prepared on 20/02/2014 by M/S Cog consultants limited which quantified the loss through the quantity surveyor Mr. Simon Nyoike Mugure. The plaintiff produced this through her bundle 5 of the documents produced in court. Again the production of this evidence was not objected to.
25. The plaintiff contended that the 1st, 2nd and 3rd defendants continued to harass her and despite the huge capital investment she had made through the development of the property she was lawfully allocated the same and risks being wasted by the actions of the 1st, 2nd and 3rd defendants.
26. At the end of the Plaintiff's case, her advocates, Mr. Gikaria filed written submissions on 5/01/2022. It was submitted that the plaintiff has proved that she is the registered proprietor of the suit property since she remains in the defacto possession of the suit property though the 4th defendant has never issued her with the title deed. With regard to the claim for award of damages, the plaintiff relied on the case of *Livingstone vs Rawards Coal Co.*(1880) 5 App Cases 25 it was submitted that the plaintiff had proved that she was entitled to the damages in the above case the court found as follows on the issue of damages, "that sum of money which will put the injured party in the same position as he would have been if he had not sustained the wrong for which he is now getting his compensation or reparation".
27. The plaintiff in this suit has prayed for Kshs. 7,644,000 which was quantified through the valuation report presented by expert evidence of M/S Cog Consultants Limited which showed the cost of damage from the demolition. The plaintiff also sought the special damages being rent which was calculated to be Kshs. 9,384,000 from the date of filing the suit to this day being the rent she would have earned and lastly exemplary damages. Counsel submitted that the plaintiff had proved her case and should be granted orders sought in the amended plaint since the 1st, 2nd and 3rd defendants despite personal service and subsequent substituted service vide Daily Nation dated 10/04/2017 and 2/04/2021 never filed a defence.



28. Further that the 4th defendant did not call any evidence to challenge or controvert the plaintiff's case he only filed a defence on 9/09/2015 and submissions on 13/01/2022. The 4th defendant contends in their submissions that the plaintiff has not proved their case on a balance of probability but there is no evidence adduced to support this allegation. The plaintiff's advocates contend that the 4th defendant's defence and submissions have no probative value since the defence is a mere denial since it is not supported by any witness statement. The plaintiff states that she had fulfilled the provisions of section 107 and 109 of the *Evidence Act* and they relied on the case of *Chase International Corporation & Anor vs Laxma Kshs.ra & Others*, (1978) KLR 143; (1976-80)1KLR Madan JA (as he then was) pronounced as follows:

“If the circumstances are such as to raise equity in favour of the Plaintiff and the extent of the equity is known, and in what way it should be satisfied, the Plaintiff is entitled to succeed....”.

Analysis and Determination

29. Plaintiff in her amended plaint ought to be granted, the main question is whether the Plaintiff has satisfied the court as to her ownership of the Suit Property.

30. The orders sought by the Plaintiff from this court are as follows:

- a. A declaration that the Plaintiff Jane Muthoni Nderitu is the legal owner of the parcel of land known as Plot Number A/102 Komarock Estate Market.
- b. An order of permanent injunction issued restraining the 1st, 2nd and 3rd Defendants whether by themselves, their authorized agents, servant, employees, workers or otherwise howsoever from trespassing on, wasting, alienating, selling, transferring, and /or in any other manner whatsoever dealing with or interfering or staking any claim to the property known as Plot Number A/102 Komarock Estate Market.
- c. An order compelling the Defendants to compensate the Plaintiff the cost of replacement of the demolished two storey building erected on Plot Number A/102 Komarock Estate Market and whose replacement cost was valued at the sum of Kshs. 7,644,000/= as per the Valuation Report of M/s Cog Consultants Limited dated the 20th February, 2014 together with the loss of anticipated monthly rental income in the sum of Kshs. 92,000/= which the Plaintiff would have been earning by now computed from the date of the filing suit until final determination of this matter.
- d. General and exemplary damages.
- e. That the Defendants be condemned to pay the Costs of the Suit and all incidentals thereto.
- f. Any other or further relief that this Honorable Court may deem fit to grant.

31. It is trite law that whoever asserts the existence of a legal right or liability is encumbered with the burden of proving the existence of that right or liability asserted.



32. Section 107 of the *Evidence Act* (Cap 80 Laws of Kenya) 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.”
33. And Section 108 of *Evidence Act* (Cap 80 Laws of Kenya) further states thus:
- “The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.”
34. I have carefully considered the plaintiff’s evidence, the documentary exhibits produced and the submissions filed. The plaintiff has sought for several orders but in my view the issues that need to be determined are:
- i. Who is the bona fide owner of the suit property
 - ii. Whether the plaintiff is entitled to the orders sought
 - iii. Who bears the costs of the suit?

Who is the bonafide owner of the suit property?

35. To support her claim, the Plaintiff produced in evidence, a copy of a letter of allocation, beacon certificate, approval plans for development and copy of receipts for payment of rates from 2013 to date. Further PW3, PW4 and PW5 all testified that the plaintiff has always been in possession of the suit property. To support her claim, the plaintiff produced in evidence a beacon Certificate which is a document anchored in the *Survey Act*, declaring that the surveyor has placed beacons. That he has full knowledge of the positions of the said beacons and that he is satisfied that such define the boundaries of the parcel in question. Possession of a Beacon Certificate could only mean that the Surveyor visited the physical land and placed the beacons. Thus the Court finds that the available evidence supports the plaintiff’s claim that the suit property is hers and it is indeed Plot No.A/102 Komarock Market. From the elaborate documentation produced in Court as exhibits and without any evidence to Controvert the same, the Court is satisfied that the Plaintiff is the owner of Plot No. A/102 Komarock Market.
36. In the case of *Republic versus City Council of Nairobi & 3 Others* (2014) eKLR, the Court held that;
- “once allotment letter is issued and the allottee meets the conditions therein, the land in question is no longer available for allotment since a letter of allotment confers absolute right of ownership unless it is challenged by the allotting authority or is acquired through fraud, mistake or misrepresentation or that the allotment was out rightly illegal or it was against public interest. In other words, where land has been allocated, the same land cannot be reallocated unless the first allocation is validly and lawfully cancelled.”
37. In this instant the plaintiff has been able to prove that she was allotted the suit property and she has further met the conditions. There is no evidence adduced that allotment was ever cancelled and or issued to another party and it is not in doubt that only the allotting authority can cancel the allocation. The above coupled with the fact that the defendants did not file any defence except the 4th defendant who however did not adduce any evidence, the Court finds and holds that the plaintiff has satisfactorily proved her root of title and therefore she is the absolute and indefeasible owner of the suit property. Being the rightful owner of the suit property, the plaintiff cannot be evicted nor enjoined from her own property.



Whether the plaintiff is entitled to the orders sought?

38. All the evidence point towards the plaintiff being the owner of the suit property. The plaintiff has tendered photographic evidence that show structures allegedly demolished by the defendants. The plaintiff's evidence was not rebutted as the 1st, 2nd and 3rd defendants did not file any defence. The 4th defendants filed a defence but no witness statement and therefore they did not produce any evidence in court. The plaintiff's evidence remains uncontroverted. I find the evidence on record sufficient to prove that the defendants have jointly and severally trespassed unto the plaintiff's property and illegally demolished the building that was constructed upon the property. Therefore, the plaintiff is therefore entitled to the orders sought in the plaint. With regard to damages, the plaintiff is entitled to a reasonable sum to compensate her. In this regard, I concur with the sentiments of Olao, J in *Ephantus Gathua Muiyuro –v- Kenya Power Company Ltd* (2016)eKLR in which he stated as follows: -

“There is no mathematical formula to guide the court in assessing the quantum payable and each case has to be considered on its own peculiar circumstances remembering always that no two cases can ever be the same. However, in assessing the damages payable, the court will consider among other factors the size and location of the property and the length of time that the trespass has taken. If there is damage to the property, then that would have a bearing on the amount of damages.”

39. The plaintiff has not tendered documentary evidence that shows how she arrived at the anticipated rent of Kshs. 92,000 per month and translated to Kshs. 9,384,000 per year. There is no evidence to support the plaintiff's contention. I am aware that the plaintiff does not need to prove damage or loss before she can be awarded general damages for trespass to land. However, such evidence could have given the court a guide on the amount of damages that can be awarded in the circumstances of this case. The plaintiff has however provided proof of special damages and loss with regard to the demolished building. She called for and filed a valuation report from M/S Cog Valuers which showed the particulars of loss and resources required to restore the building to be Kshs. 7,644,000. Since from the evidence on record, I have found that the Plaintiff was a bona fide owner of the suit property. I also find that, against the rules of Natural Justice, the illegal demolition of the plaintiff's building on the suit properties was done without affording the Plaintiff a hearing.

40. Legitimate coercive force is donated to both central and county governments Statutorily and Constitutionally. This being the case, I opine that the Plaintiff had no choice but to watch her property being destroyed by the defendants with the support of the county government. This coercive power, which should be used legitimately, was used illegitimately. It is sad that the from the evidence adduced by the plaintiff the defendants had egregiously ignored Court Orders.

41. I also find that the Plaintiff has suffered damages /losses and that her Constitutional right to own property had been savaged by the defendants. I find that the Plaintiff has proved her claim for special damages. The Plaintiff produced a Valuation Report prepared by recognized valuers. The report has not been controverted by the defendants. I do accept Plaintiff's exhibits as proof of the damage she suffered through the illegitimate demolition of her property.

42. Regarding Plaintiffs Exhibit 29, I do note that the valuers, M/S Cog, in arriving at their valuation for compensation for demolished building and the income that was expected from the building made several assumptions. Among them was that the Plaintiff would have been able to rebuild and complete the building. Another one was that their projections regarding the income to be generated over time would be achieved mechanically. However, business is always fraught with uncertainties, including vagaries such as earthquakes, war and the changing faces of all business environments. This is not



a matter that can be established with precision or divine exactitude. Whereas, I do not doubt that the Plaintiff was in a position to complete the developments she had intended to put up in the suit properties, I find myself unable to agree with the figure proffered by the Valuers. I will discount it appropriately.

Who should bear the cost of the suit?

43. It is trite that costs usually follow the event unless special circumstances present themselves. However, Section 27 of the *Civil Procedure Act* gives court discretion to grant or not to grant costs of the suit. This Court finds no reasons to depart from the holding that cost follow the event.
44. Having carefully read and considered the Pleadings by the parties herein, the evidence adduced, the written submission and the provisions of law, the Court finds and holds that the Plaintiff has proved her claim against the Defendants herein on the required standard of balance of probabilities. For the above reasons, the Court finds that the Plaintiff's claim as contained in the amended Plaint dated 10/03/204 is merited.
45. I therefore find that the Plaintiff has proved her case. I enter judgment for the plaintiff against the defendants jointly and severally as follows:-
 - i. A declaration be and is hereby issued that the Plaintiff Jane Muthoni Nderitu is the legal owner of the parcel of land known as Plot Number A/102 Komarock Estate Market.
 - ii. An order of permanent injunction be and is hereby issued restraining the 1st, 2nd and 3rd Defendants whether by themselves, their authorized agents, servant, employees, workers or otherwise howsoever from trespassing on, wasting, alienating, selling, transferring, and /or in any other manner whatsoever dealing with or interfering or staking any claim to the property known as Plot Number A/102 Komarock Estate Market.
 - iii. Kshs. Five Million (Ksh.5,000,000) being the value of the demolished and destroyed building/property.
 - iv. General damages in the sum of Kshs. One Million (Kshs. 1,000,000/=)
 - v. Exemplary and aggravated damages in the sum of Kshs. Two Million (Kshs. 2,000,000/=).
 - vi. Costs of this suit.
 - vii. Interest on iii, iv, and v above from the date of delivery of this Judgment.

It is so ordered.

DATED, SIGNED AND DELIVERED IN NAIROBI ON THIS 27TH DAY OF APRIL 2022.

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MOGENI J

JUDGE

In the presence of

Mr. Gikaria for the Plaintiff

N/A for the 1st Defendant

N/A for the 2nd Defendant

N/A for the 3rd Defendant



Ms. Achola h/b for Mr. Kithi for the 4th Defendant

