



REPUBLIC OF KENYA



KENYA LAW
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**Shah v M & M Science Limited (Environment & Land Case
396 of 2014) [2022] KEELC 3420 (KLR) (14 July 2022) (Judgment)**

Neutral citation: [2022] KEELC 3420 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 396 OF 2014**

JO MBOYA, J

JULY 14, 2022

BETWEEN

MAHESH KUMAR MAGANLAL MEGJI SHAH PLAINTIFF

AND

M & M SCIENCE LIMITED DEFENDANT

JUDGMENT

Introduction and Background:

1. Vide the Further Amended Plaintiff dated the 12th November 2018, the Plaintiff has sought for the following Reliefs;
 - a. Vacant possession of Shop number 2 on L.R 209/4360/4.
 - b. Mesne profits of Kshs.197, 423/= only, per Month from the 19th April 2013 until delivery of vacant Possession of the suit Premises/Settlement in Full.
 - c. Court fees in the Lower court in the sum of kes.70, 935/= only.
 - d. Auctioneers costs for Evicting the Defendant Kshs.431, 302/= only.
 - e. Interests on b and c at Court Rates from 19th April 2013 until payment in full.
 - f. An order for Eviction of the Defendant.
 - g. Any further relief that the court may deem fit to grant.
 - h. Costs of the suit.



2. Upon being served with the Further Amended Plaintiff, the Defendant herein reacted by filing an Amended Statement of Defense and Counter-claim dated the 19th July 2019, whereby the Defendant denied the claims enumerated at the foot of the Further Amended Plaintiff.
3. On the other hand, the Defendant sought for the following Reliefs at the foot of the Counter-claim;
 - a. A Declaration that the Distress for Rent was illegal and unlawful.
 - b. Costs of the suit.
4. The Plaintiff herein thereafter filed a Reply to Defense and Defense to the Counter-claim dated the 30th October 2019 and which was lodged in court on even date.
5. Be that as it may, thereafter the Pleadings closed.

Evidence By The Parties:

Plaintiff's Case:

6. The Plaintiff's case is anchored on the testimony of Three witnesses, including the Plaintiff himself, who testified as PW1.
7. It was the testimony of PW1, that same was a Partner in the Partnership known as Maganlal Megji Shah & Partners, who were the owners of the Building/Development standing on L.R No. 209/4360/04, hereinafter referred to as the suit property.
8. Further, the witness testified that the suit property had been leased and/or rented out to various Tenants, including the One, who was occupying Shop number 2, prior to and before the current Defendant entered upon the Demised premises in Question.
9. However, the witness proceeded and testified that on or about October 2007, the Tenant who had previously been occupying shop number 2 moved out of the premises and the Defendant herein entered upon and took possession of Shop number 2, albeit without knowledge and permission of the Plaintiff herein.
10. Nevertheless, the witness further testified that sometime in the year 2010, a formal Agreement was entered into between the Plaintiff and the Defendant, whereupon the Plaintiff/Landlord demised the suit premises, namely, Shop Number 2, to and in favor of the Defendant for a duration of 5 years 2 month, commencing the 1st October 2007.
11. It was the witness' Further evidence that the Lease under reference was duly registered and that same continued to and governed the relationship between the Plaintiff and the Defendant up to and including January 2013.
12. Be that as it may, the witness testified that prior to and/or before the expiry of the term of the lease, the Defendant herein expressed a desire to renew the Lease ,but same was advised that the Plaintiff would not be keen to renew the lease.
13. Further, it was the testimony of the witness that same informed the Defendant that at the determination of the lease, the landlord intended to carry out certain renovations and thereafter to carry out own business and/or activities.
14. Be that as it may, the witness further testified that later on same received a Letter from the Defendant's advocate, which forwarded a Draft Lease and which called upon the Plaintiff to consider same and



- where appropriate, to execute the said lease, with a view to granting unto the Defendant further lease over and in respect of the demised premises.
15. However, the witness stated that same instructed his advocates to write back to the Defendant's Advocates and to clarify that indeed the Plaintiff was not keen and/or desirous to grant to and or in favor of the Defendant a renewal of the lease term over the suit premises.
 16. On the other hand, the witness testified that when the lease term ended, the Defendant herein declined to vacate and hand over vacant possession to the Plaintiff. For clarity, the witness indicated that the Defendant remained in situ, even though the term of the Lease had lapsed and extinguished.
 17. It was the witness' Statement that as a result of the conduct of the Defendant herein, that is, refusing to vacate and hand over vacant possession, same was constrained to and indeed filed a Notice to Terminate Tenancy.
 18. It was the witness' further testimony that though the Notice to Terminate Tenancy was filed and served, the Defendant failed to object thereto and/or file a Reference, either in accordance with the Provisions of the Law or at all.
 19. In the premises, the witness testified that the Notice to Terminate Tenancy matured and thereafter same sought for and obtained confirmation from the chairperson of the Business Premises Rent Tribunal that the Notice to Terminate had matured and that the tenant was no longer a protected tenant under the law.
 20. Further, the witness testified that in May 2013, same proceeded to and filed a suit before the Chief Magistrate's Court, whereby same sought to procure orders of Eviction as against the Defendant.
 21. Nevertheless, the witness further testified that the said suit abated on account of want of service of summons to enter appearance.
 22. Other than the foregoing, the witness testified that same was constrained to and indeed filed the subject suit with a view to procure and obtained vacant possession.
 23. It was the witness' Further testimony that after filing the subject suit, same also lodged an application for Mandatory Injunction, whose purport and/or import was to recover vacant possession and that the said Application was heard and granted in 27th February 2015.
 24. Notwithstanding the foregoing, the witness herein sought to adopt and rely on the Witness statement dated the 12th November 2018. Consequently, the Witness statement herein was duly adopted as the Further Evidence- in- Chief of the witness.
 25. Besides, the witness also alluded to the List and Bundle of Documents dated the 28th March 2014 and same sought to have the documents contained thereunder produced and admitted in evidence.
 26. Pursuant to the foregoing, the documents at the foot of the List dated the 28th March 2014 were admitted in Evidence and produced as exhibit P1 to P12, respectively.
 27. Further, the witness also referred to another List of Documents dated the 20th July 2016, containing 6 Documents and same sought to have the said Documents produced as Further Exhibits.
 28. Owing to the foregoing, the Documents at the foot of the List dated the 20th July 2016 were admitted in Evidence and marked as Exhibits P12 to P18, respectively.



29. Having tendered his evidence in chief and after the production of the Documentary Exhibits, the Plaintiff relied on the Further Amended Plaintiff and invited the court to grant the reliefs sought at the foot thereof.
30. On cross examination, the witness confirmed that indeed the Court delivered a Ruling in respect of the Application for Mandatory injunction on the 27th February 2015 and whereby an order for delivery of vacant possession was granted.
31. Further, the witness also testified that after the delivery of the ruling on the 27th February 2015, the Plaintiff herein sought to be granted two (2) Months within which to vacate and hand over vacant possession of the Demised premises.
32. Besides, the witness confirmed that the two (2) Months period was to commence in March and terminate in April 2015.
33. Be that as it may, the witness conceded that on the 14th April 2015, same generated a Letter addressed to the Plaintiff's nominated Auctioneers, who were instructed to Evict the Defendant from the demised premises.
34. However, the witness further testified that even though the letter was issued on the 14th April 2015, same was not aware whether the Auctioneers was meant to Evict the Defendant from the premises as at the 14th April 2015.
35. It was the further testimony of the Witness that the Building which had been demised to the Defendant herein had two Floors, namely, the Ground Floor and the 1st floor as well as the basement.
36. Besides, the witness also confirmed and admitted that the Defendant had a written lease with the Plaintiff and that the lease was for a period of 5 years 3 months, commencing on the 17st October 2007.
37. Other than the foregoing, the Witness stated that the Lease under reference terminated in January 2013.
38. Further, the Witness herein confirmed that at the onset of the Lease, the Monthly rent was Kshs. 30, 000/= Only, but at the time of termination of the Lease, the Monthly rent stood at Kshs.62, 700/= only.
39. On the other hand, the witness herein stated that same was obliged to and indeed instructed auctioneers to evict the Defendant from the demised premises and that the Nominated Auctioneers charged the sum of Kshs.216, 502/= Only, for purposes of levying the Eviction.
40. Despite confirming that the Auctioneer was retained to levy Eviction, the witness herein admitted and acknowledged that the Letter which was produced in court related to levying of Distress and not Eviction.
41. Besides, the witness pointed out that from the 27th February 2015, the Defendant herein was a Trespasser and not a Tenant.
42. Other than the foregoing, the witness stated that he is not aware why Distress for rent was being levied as against the Defendant. However, the witness pointed out that the Auctioneer was paid a total of Kshs.431, 000/= Only.
43. On re-examination, the witness stated that at 27th February 2015 the Defendant was a Tenant, albeit quite contrary to what was stated during Cross examination. For clarity, the Witness had pointed out that the Defendant was not a Tenant.



44. Further, the witness also stated that the two months period and/or duration was granted to the Defendant to facilitate vacation and removal of goods from the premises and was therefore consensual.
45. However, having indicated during cross examination that same was not aware why Distress for rent was being levied during Cross examination, the witness now stated during re-examination that the distress for rent was being levied in respect of the Rents for Two (2) Months.
46. At any rate, the Witness further stated that during the two months period, which had been to the Defendant, same was obliged to pay Rents in the sum of Kshs.90, 000/= Only, plus Valued Added Tax (VAT) which was however not paid.
47. The other witness that was called by the Plaintiff was Muganda Wasulwa Otieno, who testified as PW2.
48. It was the testimony of the said witness that same is a Licenced Auctioneer, Class B Trading under the name and Style of Keysian Auctioneers, based within the City of Nairobi.
49. Further, the Witness testified that same received Instructions from the Plaintiff to carryout and/or undertake Eviction of the Defendant herein from the Demised premises.
50. On the other hand, the Witness testified that same was indeed paid for the work. For clarity, the witness confirmed that he was paid the sum of Kshs.400, 000/= Only.
51. Other than the foregoing, the Witness further stated that same was also instructed to levy Distress against the Defendant and that the Distress was for the Months of March and April 2015, respectively.
52. It was the further Evidence of the witness that upon receipt of the Instructions to levy Distress, same proceeded to and indeed levied Distress against the Defendant and thereafter issued the Return to the Plaintiff herein vide Letter dated the 4th august 2015.
53. Besides, the witness also testified that other than the Return pertaining to the levying Distress, same also forwarded a Schedule of Charges, vide another Letter albeit bearing the same date, namely, the 4th August 2015.
54. Further, the Witness herein stated that same did not received any Complaints from the Defendant or the Defendant's advocates, concerning and/ or pertaining to the Levying of Distress or otherwise.
55. On cross examination, the Witness stated that same had instructions to levy Distress but acknowledged that indeed no Letter of Instruction to levy Distress had been produced before the Honourable Court.
56. Besides, the Witness also stated that though he levied Distress, he neither recalls the date of the Distress nor the amounts of rents which were stated to be in arrears and for which Distress was being levied.
57. Other than the foregoing, the witness stated that same issued and served a proclamation but conceded that no copy of the Proclamation, if any, was tendered and adduced in court as evidence.
58. Besides, the witness stated that prior to levying the Distress, same proceeded to court and procured a breaking order and sought orders to breaking into the demised property.
59. While under further Cross examination, the witness herein testified that same issued and served a Notification of Sale, but yet again, same conceded that no such Notification of sale was produced and/ or tendered in evidence.
60. Further, the witness testified that after levying of the Distress, the demised premises were left under the protection and care of Guards and that the purpose of the Guards was to ensure that the Defendant did not re-take possession of the Demised premises.



61. For the second time, the witness herein repeated that same issued and served a Proclamation on the Defendant, but the said proclamation was not produced before the Honourable Court.
62. Given the conflicting nature of Evidence that was tendered by PW2, the Honourable court sought to understand the correct position from the witness. Consequently, the Honourable Court put some Questions to the Witness.
63. For coherence, the Witness herein was cross examined by the Court to clarify certain conflicting statements made by Self. In this regard, the witness stated that same did not get any Instruction to Evict the Defendant.
64. Other than the foregoing, the Witness further stated that he did not evict the Defendant from the demised premises, save that he levied Distress.
65. Further, the witness herein stated that the sum of Kshs.400, 000/= Only, which was paid to him by the Plaintiff had nothing to do with the distress and nothing to do with the Eviction.
66. The third witness who testified herein was Antony Gande Nzuga, who testified as PW3. On his part, the witness herein stated that he is a Registered valuer and/or also a Member of the Institute of Surveyors of Kenya.
67. Further, the witness testified that as at the 2014, same was not a Registered valuer. For clarity, the witness stated that same became a registered as a Valuer in the year 2019.
68. Nevertheless, the witness further testified that same is Employee of Cephas Valuers limited who were instructed to carry out and/or undertake the valuation in respect of the Demised Premises.
69. Further, the witness stated that the valuer who carried the valuation exercise, was one, namely, Lily Kithinji and that he (Witness) merely worked under the said valuer.
70. On the other hand, the Witness stated that he was conversant with the signature of Lily Githinji and that the same was engaged elsewhere on the Hearing date and hence same, that is, the Witness herein was requested to attend court and produce the valuation report, albeit on behalf of the Maker thereof.
71. Based on the foregoing, the valuation report dated the 11th February 2014 was produced and admitted as an exhibit.
72. On cross examination, the witness acknowledged and admitted that the Valuation Report, which was produced in Evidence, was not prepared by himself.
73. Besides, the witness confirmed that he was merely part of the team, but that the Valuation Report was done by Lily Githinji.
74. Further, the witness stated that the premises, which was subject of valuation were visited on the 11th February 2014 and thereafter the valuation report was generated, prepared and signed.
75. Nevertheless, the witness herein was at pains to explain how the valuation report relating to a Valuation exercise carried out on the 11th February 2014, could have been available for signature on the 4th February 2014.
76. With the foregoing testimony, the Plaintiffs' case was closed.



Defendant's Case:

77. The Defendant's case is premised on the Evidence of One witness, namely, Stephen Njoroge Ng'anga, who testified as DW1.
78. According to the witness herein, same was initially the Head of Finance in the Defendant Company and by virtue of being the Head of Finance the witness stated that he was therefore conversant with the facts pertaining to and/or concerning the subject dispute.
79. Further, the witness stated that sometime in the year 2007, a tenant of the Plaintiff herein informed same (read the Defendant's Representatives) that she (Tenant) was closing her cosmetic business in the Demised premises and moving to Canada. In this regard, the outgoing tenant enquired from the Defendant's Representatives whether same would be keen in taking up the premises.
80. It was the witness' testimony, that based on the discussion between the outgoing Tenant and the Representative of the Defendant herein, the Defendant entered upon and took possession of the demised premises.
81. Nevertheless, the witness went on and testified that on the 29th March 2010 the Defendant and the Plaintiff herein entered into a Formal Lease Agreement whereby the Plaintiff demised to and/or in favor of the Defendant the premises in question for a duration of 5 years 3 months, commencing on the 1st October 2007.
82. It was the witness' further testimony that the rents in respect of the demised premises amounted to Kshs.30, 000/= Only, per month, at the onset of the tenancy but same amounted to Kshs.62, 700/= Only, as at the termination of the lease, namely, December 2012.
83. On the other hand, the witness testified that prior to and or before the termination of the lease, the Defendant expressed an intention to renew the lease and even though the Plaintiff had initially agreed to renew the Lease, same thereafter turned back and declined the request for renewal.
84. Further, the witness herein stated that thereafter the Plaintiff herein filed and/or lodged a suit in the Lower Court, namely, Milimani RMC No. 387 of 2013, whereby the Plaintiff sought to evict and recover vacant possession of the suit premises.
85. Be that as it may, the witness stated that the said suit was however dismissed with costs on account of abatement.
86. Other than the foregoing, the witness herein testified that the suit in the lower court commenced in May 2013 and lasted to and including March 2014, when same was dismissed.
87. Notwithstanding the foregoing, the witness herein further testified that prior to the filing of the subject suit, the Defendant was in constant communication with the Plaintiff, pertaining to and/or concerning of renewal of the lease.
88. Nevertheless, the Witness also testified that the Defendant herein even sent a cheque on account of payment of Rents in the sum of Kshs.903, 040/= only, but that the payment under reference was declined by the Plaintiff.
89. It was the witness' further testimony that the payment of the sum of Kshs.903, 040/= only was on account of Rent arrears for a period of 14 months, which the Plaintiff had previously declined to receive.



90. Other than the foregoing, the witness testified that following of the delivery of the Ruling, which was rendered on the 27th February 2015, the Defendant herein engaged the plaintiff and same agreed to accord the Defendant a Two (2) Months duration to allow the Defendant procure alternative rental place.
91. For clarity, the witness confirmed that the request was duly granted and the Defendant was allowed the 2 months duration.
92. Nevertheless, the witness further stated that while the Defendant was arranging herself to vacate the Demised premises and hand over vacant possession, same were confronted by M/s Keysian Auctioneers, duly engaged by the Plaintiff and who proceeded to and broke in to the Demised premises.
93. It was the witness' further testimony that the named Auctioneer indeed proceeded to and levied Distress, whereby same carted away Office Properties valued at more than Kshs.2, 478, 173/= only.
94. On the other hand, the Witness' further testified that after the levying of Distress, the Plaintiff locked the premises and employed guards and thereby barred and/of prohibited the Plaintiff from accessing and/or regaining possession of the Demised premises. In this regard, the witness testified that the Defendant henceforth stood evicted from the demised premises.
95. Other than the foregoing, the Witness further stated that the Defendant herein was never served with any court order extracted on the 24th April 2015 and which (sic) allowed the Plaintiff to levy Distress.
96. Nevertheless, the witness stated that following the rendition and/or delivery of the ruling of the court on the 27th February 2015, the Defendant herein was no longer a tenant and hence no Distress could be levied and/or carried out as against the Defendant at all.
97. In the premises, the witness testified that the Distress which was levied by the Plaintiff's Nominated Auctioneer was therefore irregular, unlawful and illegal.
98. Be that as it may, the witness herein also sought to adopt and rely on the witness statement dated the 8th July 2019 and same was thereafter admitted and treated as the witness's further Evidence-in- Chief.
99. Besides, the witness herein also referred to the List and Bundle of Documents dated the 18th July 2019 and sought to have the Documents therein produced and admitted as Exhibits.
100. Consequently, the Documents at the foot of the List dated the 18th July 2019 were admitted and produced in evidence as Exhibits D1 to D6, respectively.
101. On cross examination, the witness admitted that the ruling of the court confirmed and stated that the Defendant was no longer a Tenant in the Demised Premises.
102. Besides, the witness also acknowledged that the Defendant's stay and occupation of the demised premises after the delivery of the ruling was illegal.
103. Be that as it may, the witness herein admitted that after the delivery of the ruling by the court, the Defendant engaged and thereafter the Plaintiff granted to the Defendant a two months period within which to vacate and hand over vacant possession.
104. On the other hand, the witness herein pointed out that the Two (2) Months period which was granted to the Defendant to enable same to look for alternative premises were in respect of the month of March and April 2015.
105. Further, the Witness herein testified that the last rents that were payable in respect of the Demised premises was Kshs.62, 700/= Only, and that the said rents were never reviewed and/or varied.



106. As pertains to whether or not the Plaintiff's Nominated Auctioneer issued and served a Proclamation Notice before the Distress, the witness testified that none was ever issued or served.
107. Other than the foregoing, the Witness similarly stated that the Defendant was equally not served with the Eviction Orders or Notice.
108. On re-examination, the Witness clarified that during the 2 months period, within which same was to vacate and grant vacant possession, the Defendant was obliged to Pay rents in respect of the premises.
109. Finally, the witness stated that the rents which were payable in respect of the Demised Premises, immediately at the lapse of the Lease Agreement dated the 29th March 2010, were never reviewed and/or varied.
110. The foregoing marked the close of the Defense Case.

Submissions By The Parties:

Plaintiff's Submissions:

111. The Plaintiff filed his written submissions dated the 22nd February 2022 and in respect of which the Plaintiff raised 5 pertinent issues.
112. First and foremost, the Plaintiff's counsel submitted that the Plaintiff herein was entitled to an award of Exemplary and Aggravated Damages, based on the fact that the Defendant herein had resisted a Lawful Court order and continued to remain in possession of the Demised premises, contrary to and in contravention of the court order.
113. Secondly, the Plaintiff's Counsel further submitted that during the period and/or duration when the Defendant remained in possession of the Demised premises, same denied and/or deprived the Plaintiff of a right to benefit from the Demised premises.
114. Consequently, it was the Plaintiff's Counsel's submission that as a result of the actions and/or omission by the Defendant to hand over vacant possession, the Plaintiff herein is therefore entitled to Compensation on the basis of Mesne Profits.
115. Thirdly, the Plaintiff submitted that in the calculation and/or computation of the Mesne Profits, the Court is obliged to take into account the reasonable compensation or reasonable rent that the Plaintiff would have extracted from the premises, were it not for the actions of the Defendant.
116. In the premises, it was the Counsel's submissions that the reasonable rent to be applied and used in the Computation of the Mesne Profits should therefore be the assessed rents, reflected at the foot of the valuation report dated the 11th February 2014.
117. Based on the foregoing, the Plaintiff's Counsel proceeded to suggest that the applicable Rents which was to be applied was Kshs.197, 423/= only, exclusive of Value Added Tax.
118. Fourthly, the Plaintiff's Counsel submitted that the Defendant's claim for illegal and unlawful Distress was neither established nor proven.
119. At any rate, the Plaintiff's Counsel further submitted that the allegation of the illegal and unlawful Distress cannot hold sway, when it was acknowledged and admitted that Rents were in arrears by the Defendant.
120. Further, it was submitted that in any event, a Claim for illegal and unlawful Distress can only be mounted and/ or commenced vide a separate and distinct suit, which suit has not been filed.



121. Finally, the Plaintiff's Counsel submitted that the allegation and/or contention that the Auctioneer failed to issue and serve the requisite notices, prior to and/or before levying the distress and eviction, ought to have been ventilated before the Auctioneer Licensing Board and not otherwise.
122. In the premises, it was the Plaintiff's Counsel's further submissions that the Defendant's claim pertaining to the illegality in the Distress and Eviction, are therefore misconceived, bad in law and contrary to the provisions of Section 24 of the Auctioneers Act, 1996.
123. In support of the foregoing submissions, the Plaintiff relied on several decisions inter-alia, Christine Nyanchama Obanda v Catholic Diocese of Homabay Registered Trustees [2020]eKLR, Godfrey Julius Ndumba Mbogori & Another v Nairobi City Council [2018]eKLR, The Honourable Attorney General v Halal Meat Products Limited [2016]eKLR, Mistry Valji v Janendre Raichand & 2 Others [2016]eKLR, Juliet Karisa versus Joseph Barawa & Another Civil Appeal No. 108 of 1988 (unreported) and Kenindia Assurance Company Limited v Njenga Muchiri t/a Njenga Muchiru & Company Advocates [2003]eKLR.

Defendant's Submission:

124. On her behalf, it was submitted that the claim for Recovery of Vacant Possession and/or better still Eviction of the Defendant herein is overtaken by events. For clarity, the Defendant submitted that the Plaintiff obtained and/or recovered vacant possession on the 8th May 2015, after the Defendants goods were illegally Distrained upon by M/s Keysian Auctioneers.
125. Secondly, the Defendant further contended that the claim for Kshs.431, 302/= only allegedly paid to the Nominated Auctioneers for Eviction, was neither proven nor established.
126. For clarity, the Defendant's Counsel submitted that the said sum of Kshs.431, 302/= only, which was allegedly paid for Eviction, was disputed by the Nominated Auctioneer.
127. Thirdly, it was the Defendant's submissions that the claim relating to the Filing fees, which was allegedly incurred by the Plaintiff in the lower court, was not payable and/or recoverable at all.
128. In any event, it was submitted on behalf of the Defendant that when the Plaintiff suit in the lower court was dismissed on account of abatement, the Defendant herein was awarded costs in the said suit.
129. Fourthly, the Defendant submitted that though the Plaintiff herein is entitled to Mesne Profits, same can only be computed and/or reckoned on the basis of the Last payable Rents, amount to Kshs.62, 700/= only, which was neither varied nor reviewed.
130. At any rate, the Defendant further submitted that the duration for the computation Of Mesne Profits would be between the 19th April 2013 to the 8th May 2015, the latter being the date when the Defendant was Evicted from the Demised premises by the Plaintiff's Nominated Auctioneers.
131. Fifthly, the Defendant has submitted that the Mesne Profits cannot be reckoned and/or computed on the basis of the Rent contained at the foot of the Valuation Report dated the 11th February 2014, insofar as the Valuation Report under reference was not produced by the author thereof.
132. Further, the Defendant also submitted that that the valuation report under reference was also legally untenable and therefore devoid of any probative value insofar as same appeared to have been prepared and signed long before the valuation exercise was carried out and/or undertaken.
133. For clarity, the Defendant pointed out that the Valuation Report was prepared and signed on the 4th February 2014, yet the valuation is purported to have been done on the 11th February 2014.



134. Finally, the Defendant submitted that the Distress which was carried out and/or levied at the instance of the Plaintiff, was illegal and unlawful.
135. As pertains to the Distress, the Defendant contended that same was carried out and/or conducted without the issuance and service of the Statutory Proclamation and Notification of Sale in line of the Provisions of Rule 12 of the Auctioneers Rules 1997.
136. Other than the foregoing, the Defendant also contended that by the time the Plaintiff was levying Distress, the Defendant had paid to and in favor of the Plaintiff of the sum of Kshs.903, 040/= Only, on account of all the rents which were in arrears, but the payment was declined by the Plaintiff.
137. In any event, it has been contended that even if, the Distress for rent was in respect of the Rents for March and April 2015, same was still illegal and in contravention of the *Distress for Rent Act*, Chapter 296, Laws of Kenya.
138. Finally, the Defendant also submitted that the Plaintiff herein could not purport to levy and/or carryout Distress yet same was aware of the fact that the Defendant was no longer a Tenant.
139. For the avoidance of doubt, the Defendant submitted that the Common Law right for Levying for Distress only avails as against a Tenant and not otherwise.

Issues For Determination:

140. Having reviewed the Pleadings filed by and/or on behalf of the Parties herein together with the Witness Statements and the Bundle of Documents, as well as the Oral Evidence tendered; and having similarly considered the written submissions filed by the Parties, the following issues are pertinent and therefore germane for Determination;
 - a. Whether the Plaintiff herein is entitled to Mesne Profits and if so, the Quantum thereof and the duration of recovery of such Mesne Profits.
 - b. Whether the Distress that was levied against the Defendant on the 8th May 2015 was Lawful or otherwise.
 - c. What Reliefs Ought to be Granted.

Analysis and determination :

Issue Number 1

Whether the Plaintiff herein is entitled to Mesne Profits and if so, the Quantum thereof and the duration of recovery of such Mesne Profits.

141. It is common ground that the Plaintiff and the Defendant herein entered into and executed a Formal Lease Agreement, over and in respect of a portion of the suit property, namely, L.R No. 209/4360/04, which Lease was for a duration of 5 years and 3 months.
142. On the other hand, it is appropriate to state that though the Lease Agreement was entered into and signed on the 29th March 2010, same was however to commence and indeed took effect of the 1st October 2007.
143. Further, it is not in dispute that the Lease under reference terminated and/or determined in January 2013 and hence the Defendant herein was obliged to vacate and hand over vacant possession of the Demised premises to and in favor of the Plaintiff subject to same being renewed.



144. Nevertheless, it is worthy to recall that the lease under reference was never renewed and despite the fact the same was never renewed, the Defendant remained in occupation of the Demised premises up to and including the 8th May 2015, when same were evicted there from.
145. Notwithstanding the foregoing, it is also appropriate to observe that following the determination of the Lease vide effluxion of time, the Plaintiff herein filed and/or lodged a Notice to Terminate Tenancy with the Business Premises Tent tribunal, which Notice matured and/or materialized on or about the 19th April 2013.
146. Be that as it may, it is common ground and beyond dispute that the Lease herein, not having been renewed, the Tenancy relationship between the Plaintiff and the Defendant stood extinguished in January 2013.
147. Consequently, the Defendant's occupation and/or retention of the Demised premises between January 2013 to 8th May 2015, when same was Evicted was therefore hostile to the Plaintiff's title and indeed constituted Wrongful Occupation of the Demised premises.
148. To the extent that the Defendant herein remained in wrongful occupation of the suit property, same therefore denied and/or deprived the Plaintiff of lawful entitlement and benefit that the Plaintiff ought to have received from the subject premises.
149. Consequently and in the premises, the Plaintiff herein is lawfully entitled to lay a claim for Mesne Profits as against the Defendant for the entire duration when the Defendant remained in unlawful and wrongful occupation of the Suit premises.
150. To buttress the foregoing position, it is appropriate to take cognizance of the holding of the Court of Appeal vide the case of [Attorney General v Halal Meat Products Ltd \[2016\]eKLR](#), where the Court observed as hereunder;

“It follows therefore that where a person is wrongfully deprived of his property he/she is entitled to damages known as mesne profits for loss suffered as a result of the wrongful period of occupation of his/her property by another. See McGregor on Damages, 18th Ed. para 34-42.

151. Other than the foregoing Decision, it is also imperative to take cognizance of the Provisions of Section 2 of the [Civil Procedure Act](#), which defines Mesne Profits as hereunder;

“Profits”, in relation to property, means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but does not include profits due to improvements made by the person in wrongful possession;

152. Based on the foregoing, it is therefore my finding and holding that the Plaintiff herein is entitled to recover compensation on account of Mesne Profits, arising from the wrongful occupation and unlawful retention of the Demised premises by the Defendant long after the lapse of the Lease Agreement.
153. The second aspect of this matter relates to the duration for which the Mesne Profits ought to be recovered and/or paid for by the Defendant. In this regard, it is imperative to note that Mesne Profits only ensues and becomes payable in respect of the duration of wrongful occupation and/or possession.



154. In respect of the instant matter, the duration of wrongful possession runs from January 2013, when the Lease Agreement terminated upto and including the 8th May 2015, the latter being the date of Recovery of Vacant possession vide Eviction.
155. Consequently, the entire duration for which the Mesne Profits is recoverable amounts to an aggregate of 28 Months and not otherwise.
156. To vindicate the foregoing assessment in terms of the duration for which Mesne Profits are recoverable, it is worthy to adopt the holding of the Court of Appeal in the case of *Kenya Hotel Properties Ltd v Willesden Investments Ltd*, Civil Appeal No.149 of 2007, where the Court of Appeal held as follows;
- “In a claim for Mesne Profits the first task is to determine the days the occupation was wrongful and the correct rate (rent) for the period in question.”
157. The third aspect of the issue herein relates to the computation and/or measure of Mesne Profits that ought to be paid to and in favor of the Plaintiff.
158. In respect of the yardstick and/or benchmark to be applied for the purposes of computing Mesne Profits, it is imperative to adopt and restate the Principle of law that was underscored vide the decision in the case of *Mistry Valji versus Janendra Raichand & 2 others* [2016] eKLR, where it was observed as hereunder;
- ‘Measure for mesne profits was described in the Privy Council decision in *Invergue Investments v Hackett* [1995] 3 All ER 842 cited with approval in the Kenya Hotel Property Ltd case (supra) as follows:
- “This is form of an ordinary claim for mesne profit, that is to say, a claim for damages for trespass to land...The question for decision is the appropriate measure of damages.
- The privy council observed that that measure of damages must be reasonable rent. The usual practice is to assess mesne profits down to the date when possession is given.”
159. Having appreciated the applicable principle, to be applied to the computation of Mesne Profits, the next question for determination is what then is the reasonable rent to be applied as against the duration for which the Defendant was in wrongful occupation.
160. On his part, the Plaintiff has contended that the reasonable rent to be applied should be the Rents at the foot of the Valuation which was carried out and/or undertaken by the Plaintiff and which valuation report was dated the 11th February 2014.
161. Pursuant to the Valuation Report which was produced herein, the Plaintiff has contended that the assessed rents in respect of the premises, which was rented to the Defendant ought to be Kshs.197, 423/= only, excluding Value added Tax.
162. It is equally important to note that the Valuation Report being relied on by the Plaintiff has indeed computed Rents for two spaces, namely, a portion obtaining on the Ground Floor and the other portion on the Mezzanine Floor.
163. For clarity, the portion on the Ground Floor is shown to attract rents in the sum of Kshs.115, 258/= only, while the portion on the Mezzanine Floor is said to attract the sum of Kshs.82, 165.50/= only.



164. However, even though the Plaintiff is seeking to compute Mesne Profits at the rate of Kshs.197, 423/= only, it is important to note that the valuation speaks to two segments/portions of the suit property, which are alleged to have been occupied by the Defendant, yet the Lease Agreement executed on the 29th March 2010 only speaks to one single space described as Shop Number 2.
165. Other than the foregoing observation, there is yet another issue with the Valuation report that is being relied upon by the Plaintiff to ascertain and/or compute Mesne Profits.
166. For the avoidance of doubt, the valuation report which was produced by PW3 indicates that the valuation exercise was carried out and/or undertaken on the 11th February 2014 and thereafter the report was prepared and same is dated the 11th February 2014.
167. However, it is curious and puzzling as to how the valuation report which was ultimately submitted before the court could have been available, prepared and signed by the Valuer (sic) on the 4th February 2014, long before the valuation exercise was undertaken on the 11th February 2014.
168. To my mind, the contents of the Valuation report, which was produced before the court and which in any event, purports to have valued two segments of a portion of the property, yet what was demised to the Defendant was a single Shop, is therefore suspect and incapable of anchoring the measure for Mesne Profits.
169. Notwithstanding the foregoing, it is also important to note that the valuation report which the Plaintiff is relying on, was never tendered before the court by the Maker thereof, who is the one who (sic) prophetically signed the report long before undertaking the Valuation.
170. Premised on the foregoing, I am afraid that the figures reflected and/or contained in the impugned Valuation report, are not legitimate and are thus not reflective of the reasonable rents, derivable from the Demised premises.
171. On the other hand, the Defendant herein invited the court to compute Mesne Profits on the basis of the last payable rents, amounting to Kshs.67, 200/= only. For clarity, the Defendant contended that at the conclusion of the Lease Agreement, the Monthly Rents payable were neither reviewed nor varied.
172. Contrasting the two proposals, which have been placed before the court, I am more inclined to adopt and rely on the aspect predicated on the Last payable rents, in the sum of Kshs.67, 200/= only.
173. Based on the foregoing, the computation towards and on account of Mesne Profits therefore works out as hereunder:
$$28 \text{ months} \times 67, 200 = 1, 881, 600/= \text{ only}$$
174. In a nutshell, I would be inclined to award compensation on account of Mesne Profits in the sum of Kshs.1, 881, 600/= Only.

Issue Number 2

Whether the Distress that was levied against the Defendant on the 8th May 2015 was Lawful or Otherwise.

175. The Second issue herein relates to the legality or otherwise of the Distress for Rents, which was commissioned and/or carried out by and/or on behalf of the Plaintiff.



176. It is worthy to recall, that the Plaintiff herein retained and/or engaged the services of one, namely, Muganda Wasulwa Otieno, PW2 to carryout and/or undertake Distress as against the Defendant herein.
177. Besides, PW2, who was the nominated auctioneer attended court and testified that upon receipt of Instructions from the Plaintiff, same proceeded to and levied Distress as against the Defendant.
178. Perhaps, it is also appropriate to state that PW2 admitted that after receipt of instruction to levy Distress, same procured a break- in order from the Chief Magistrate's Court and thereafter same proceeded to and broke into the Demised premises.
179. Further, PW2 stated that after taking possession of the Movable Properties that were housed within the Demised premises, same thereafter locked the premises and engaged Guards to protect the property, (read the Demised premises).
180. While under cross examination, PW2 conceded that the Guards were retained to ensure that the Defendant did not regain access to and/or re-take possession of the hitherto demised premises.
181. My understanding of the actions taken by PW2 is that same not only levied Distress but also Evicted the Defendant, by ensuring that the Defendant could not retake and/or regain possession of the Demised premises.
182. Be that as it may, what remains puzzling, was the concession by PW2 that same was neither instructed nor retained to Evict the Defendant from the hitherto Demised premises.
183. Notwithstanding the foregoing, it is also worthy to recall that PW2 stated that even though he was retained to levy Distress and indeed proceeded to and levied distress, same however did not found it fit to avail to the court copies of Letter of Instructions, proclamation Notice and the notification of sale, if any, that were issued and served upon the Defendant in line with the Provisions of Rule 12 of the Auctioneers Rules 1997.
184. Other than the foregoing lapse and/or neglect, it is also on record that PW2 admitted that though he levied distress, he could not recollect what was the Rent arrears, upon which the Distress was being levied.
185. To my mind, even where rent is admitted to be in arrears, (which was not the case herein), the Party undertaking the Distress, must nevertheless, comply with and/or adhere to the prescribed law, before levying Distress.
186. In respect of the subject matter, it cannot be gainsaid that the Plaintiff and the Plaintiff's Nominated Auctioneer's breached and violated the Provisions of Rule 12 of the Auctioneers Rules 1997 and in this regard, it is evident that the Distress which was levied was not only illegal but unlawful.
187. For convenience, it is appropriate to reproduce the provisions of Rule 12 of the Auctioneers Rules, 1997, which underscore the process that must be complied with before levying Distress/attachment of Movable Properties.
188. The provisions of Rule 12 (supra) are re-produced as hereunder;



12.	<p>Movable other than perishable goods and livestock</p> <table border="1" data-bbox="507 344 644 2004"> <tr> <td data-bbox="507 344 576 2004">(1)</td> <td data-bbox="576 344 644 2004"> <p>Upon receipt of a court warrant or letter of instruction the auctioneer shall in case of movables other than goods of a perishable nature and livestock —</p> <p>(a) record the court warrant or letter of instruction in the register;</p> <p>(b) prepare a proclamation</p> </td> </tr> </table>	(1)	<p>Upon receipt of a court warrant or letter of instruction the auctioneer shall in case of movables other than goods of a perishable nature and livestock —</p> <p>(a) record the court warrant or letter of instruction in the register;</p> <p>(b) prepare a proclamation</p>
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the amount set forth in the court warrant or letter of instruction;

(d) on expiry of the period of notice without payment and if the goods are not to be sold in situ, remove the goods to safe premises for auction;

(e) ensure safe storage of the goods



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their
auction;

(f) arrange
advertisement
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		<p>the goods are attached or repossessed, and where any person refuses to sign such inventory the auctioneer shall sign a certificate to that effect;</p>	
	(c)	<p>in writing, give to the owner of the goods seven days notice in Sale Form 3 of the Schedule within which the owner may redeem the goods by payment of the amount set forth in the</p>	



		court warrant or letter of instruction;	
(d)		on expiry of the period of notice without payment and if the goods are not to be sold in situ, remove the goods to safe premises for auction;	
(e)		ensure safe storage of the goods pending their auction;	
(f)		arrange advertisement within seven days from the date of removal of the goods and arrange sale not earlier than seven days after the	



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Schedule indicating the value of specific items and the condition of each item, such inventory to be signed by the owner of the goods or an adult person residing or working at the premises where the goods are attached or repossessed, and where any person refuses to sign such inventory the auctioneer shall sign a certificate to that effect;



(c) in writing, give to the owner of the goods seven days notice in Sale Form 3 of the Schedule within which the owner may redeem the goods by payment of the amount set forth in the court warrant or letter of instruction;

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	remove the goods to safe premises for auction;
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189. Be that as it may, I must also point out that compliance with the Auctioneers Rules 1997 is peremptory and/or mandatory and hence same cannot be side stepped, circumvented and or breached with abandon, in the manner in which PW2 acted.

190. To buttress the foregoing statement, it is worthy to recall and restate the holding of the Court of Appeal in the case of *Lakeland Motors Limited Vs Harbhajan Singh Sembi*[1998]eKLR, where the Court stated as hereunder;

‘There does not appear to be any provision in the *Auctioneers Act*, 1996 nor in the Auctioneers Rules, 1997 for dispensing with the foregoing rule. Yet the respondent



proceeded to execute the decree and physically attach the applicant's movable goods without complying with the said rule. The flagrant disregard of the provisions of this rule smacks of gross irregularity in the respondent's execution process of the decree of the superior court in Civil Case No. 227 of 1997. It would be an abuse of the process of this Court if we were to countenance such an Execution'.

191. Whereas the Court of Appeal was dealing with flagrant disregard of Rule 12(b) of the Auctioneers Rules, 1997 in the course of execution of a court decree, it is worthy to state that the Rule under reference applies to the process of levying Distress.
192. Notwithstanding the foregoing breach of the law, it is also worthy to point out that Distress for rent can only be levied against a Tenant and not otherwise. In this regard, it is important to note the Plaintiff mounted a Notice to Terminate Tenancy before the Business Premises Rent Tribunal and same was (sic) not objected to.
193. On the other hand, the Plaintiff also tendered evidence that once the Notice to Terminate Tenancy was not objected to, same procured and/or obtained a Letter/Orders from the Tribunal which declared that the Defendant was no longer protected Tenant, but was a Trespasser.
194. Other than the foregoing, it is also common ground that upon filing the subject suit, same mounted an Application for Mandatory Injunction seeking to procure and/or obtain Vacant Possession.
195. Besides, evidence was tendered that the said Application for Recovery for vacant possession was indeed heard and determined vide Ruling rendered on the 27th February 2015, whereupon the Court declared that the Defendant was illegally in possession of the demised premises. For clarity, the Court underscored the fact that the Defendant was a trespasser in the demised premises.
196. Based on the foregoing, it is settled that as at the 8th May 2015, the Defendant was not a lawful Tenant of the Plaintiff herein. Consequently, not being a Tenant no Distress for Rent could be levied and/or executed against the Defendant, either in the manner carried out by the Plaintiff or at all.
197. To vindicate the foregoing observation, the holding of the Court of appeal in the case of *M/S Gusii Mwalimu Investment Co. Ltd & 2 Others V M/s Mwalimu Hotel Kisii Ltd* [1996] eKLR, is apt and succinct. For coherence, the Court stated as hereunder;

Section 5 of the *Distress For Rent Act* says:

"5. Any person having rent in arrear an due upon a demise, lease or contract after the ending or determination of the demise, lease or contract, may distrain for the arrears after the ending or determination in the same manner as he might have done if the demise, lease or contract had not been ended or determined:

Provided that distress under this section shall be made within the space of six months after the determination of the demise, lease or contract and during the continuance of the landlord's title or interest and during the possession of the tenant from whom the arrears became due."

This section clearly stipulates that no distress can be levied six months after the end of the demise, lease or contract. Yet the landlord proceeded to levy distress some one month and 22 days after the expiry of the aforesaid period of six months.



So if the landlord is correct in its stand it could not have lawfully levied distress. The landlord must stand or fall by its own averments and arguments. It cannot approbate and reprobate. On the landlord's own arguments I hold that the distress was illegally levied.

198. To my mind, the Plaintiffs position was/is that the Lease Agreement terminated in January 2013. For clarity, the Plaintiff was not disposed to renew the lease and same was never renewed.
199. Founded with the foregoing factual position that was taken by the Plaintiff, it then means that Distress could only be levied as against the Defendant up to and including June 2013, same being 6 months from the termination of the lease. See Section 5 of the [Distress For Rent Act](#).
200. In view of the foregoing, I come to the inescapable and irresistible conclusion that the Distress that was commissioned by and/or on behalf of the Plaintiff herein was illegal and unlawful.
201. In any event, what constitutes illegal and unlawful Distress was also considered in the case of [C.y.o Owayo V George Hannington Zephania Aduda T/a Aduda Auctioneers & Another](#) [2007] eKLR, where the Court stated as hereunder;

“Thus, in looking into what constitutes illegality of distress for rent, we must not only consider our laws, but must also consider what in England would be considered an illegality in the levy of distress. In Halsbury's Laws of England, 4th Edition Volume 13 paragraph 368 it is stated:

“ 368. Circumstance in which distress is illegal

An illegal distress is one which is wrongful at the very outset, that is to say either where there was no right to distrain or where a wrongful act was committed at the beginning of the levy invalidating all subsequent proceedings.

The following are instances of illegal distress; a distress by a landlord after he has parted with his reversion; a distress by a person in whom the reversion is not vested; a distress when no rent is in arrear; or for a claim or debt which is not rent; as a payment for the hire of chartels; a distress made after a valid tender of rent has been made; a second distress for the same rent; a distress off the premises or on the highway; a distress in the night that is between sunset and sunrise a distress levied or proceeded with contrary to the law of Distress.....”

202. Simply put, the Impugned Distress was illegal and unlawful.

Issue Number 3

What Reliefs Ought to be Granted.

203. The Plaintiff herein had sought for various Reliefs at the foot of the Further Amended Plaintiff and hence it is imperative and/or appropriate to address same.
204. The first claim that was sought by the Plaintiff herein was an order for Vacant possession of Shop Number 2 on L.R No. 209/4360/04. However, it was admitted and conceded that vacant possession was recovered and achieved on the 8th May 2015, when PW2, levied and/ or effected the Eviction Order.
205. In the premises, it is obvious and evident that the claim for vacant possession is overtaken by events and thus same is legally untenable.
206. The second claim that was sought by the Plaintiff herein related to the Filing Fees in the Lower Court amounting to Kshs.70, 935/= only. In respect of this claim, the answer is too fold;



207. Firstly, it was stated in evidence by DW1 that upon the Dismissal of the said suit in the lower court, costs were awarded to and in favour of the Defendant.
208. Despite that explicit contention by and/or on behalf of the Defendant, the Plaintiff herein did not controvert and/or challenge that position and/or statement by the Defendant.
209. The other aspect/answer to the claim for Kshs.70, 935 Only, being costs in the Lower Court is provided for vide the Provisions of Section 34 of the *Civil Procedure Act*, Chapter 21, Laws of Kenya.
210. To my mind the Costs, if any, incurred in the Subordinate Court, are only recoverable in that suit wherein same were incurred and not in a Fresh, albeit separate suit. For clarity, such Costs, even if same were recoverable, (which is doubtful), could only be gone into in the Previous Suit.
211. The third claim that was mounted by the Plaintiff herein related to the Auctioneers costs, which were (sic) expended and/or incurred at the foot of Eviction amounting to Kshs.431, 302/= only.
212. In respect of this claim, all I can say is that PW2, being the nominated Auctioneer stated that the payments which were paid unto him had nothing to do with levying of Distress and Eviction.
213. From that statement of PW2, the amount claimed under the pretext of Auctioneers charges/ Fees, is therefore neither awardable nor tenable.
214. Finally, the Plaintiff herein has also made submissions for an award for Exemplary/Aggravated Damages. Nevertheless, it is important to point out that such Damages were neither pleaded nor prayed for in the Further Amended Plaintiff.
215. Besides, the Plaintiff herein did not tender any evidence pertaining Exemplary/Aggravated Damages, either in his Written Statement dated 12th November 2018 or in the Oral Testimony before the court.
216. To my mind, the claim for Exemplary/Aggravated Damages, having neither been pleaded nor proved same cannot be sneaked in vide submissions on behalf of Counsel for the Plaintiff.
217. Without belaboring the point, as to whether submissions can take the place of Evidence, it is appropriate to restate the holding of the Court Of Appeal vide the case of *Daniel Toroitich Arap Moi versus Mwangi Stephen Muriithi & another* [2014] eKLR, where the Court stated as hereunder;

“Submissions cannot take the place of evidence. The 1st respondent had failed to prove his claim by evidence. What appeared in submissions could not come to his aid. Such a course only militates against the law and we are unable to countenance it. Submissions are generally parties’ “marketing language”, each side endeavouring to convince the court that its case is the better one. Submissions, we reiterate, do not constitute evidence at all. Indeed, there are many cases decided without hearing submissions but based only on evidence presented.”

Final Disposition:

218. Having analyzed the issues for determination, which were highlighted in the body of the Judgment herein, it is now worthy to render and/or make the Final orders.
219. In the circumstances, I come to the conclusion that both the Plaintiff and the Defendant have succeeded in respect of their claims, albeit to a limited scope and/or extent.



220. In view of the foregoing, the Orders that commend themselves to me are as hereunder;
- a. Judgment be and is hereby entered in favor of the Plaintiff on account of Mesne Profits in the sum of Kshs.1, 881, 600/= only.
 - b. Interest at court rates (14% p. a) w. e. f 28th May 2014.
 - c. A declaration be and is hereby made that the Distress which was levied against the Defendant on the 8th May 2015 was illegal and unlawful.
221. It is important to point out, that though the Defendant had sought for a Declaration that the Distress was illegal and unlawful same however, neither sought nor prayed for any award and/or compensation. For clarity, the only other order that was sought for was an order for costs.
222. I must state that if the Defendant had sought for compensation and/or Damages for illegal Distress, I would have been disposed to consider same and make a suitable award, in accordance with established law.
223. Nevertheless, to the extent that no Prayer was made and/or mounted for compensation by and/or on behalf of the Defendant and based on the Doctrine of Departure, I make no award as to Damages.
224. Finally, it is evident that both the Plaintiff and the Defendant have partially succeeded in their respective claims. Consequently, it is my considered view that Either Party do bear own Costs.
225. In a nutshell, the Final Orders are;
- a. The Plaintiff be and is hereby awarded the sum Kshs.1, 881, 600/= only on account of Mesne Profits.
 - b. Interest at court rates (14% p. a) w. e. f 28th May 2014.

226. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 14TH DAY OF JULY 2022.

OGUTTU MBOYA,

JUDGE

In the Presence of;

Kevin Court Assistant

Mr. E Odhiambo for the Plaintiff

Mr. Chebii for the Defendant

