



REPUBLIC OF KENYA



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Samedy Trading Company Limited v Kigwor Company Limited (Civil Case 295 of 2017) [2022] KEELC 15545 (KLR) (20 December 2022) (Judgment)

Neutral citation: [2022] KEELC 15545 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
CIVIL CASE 295 OF 2017
JO MBOYA, J
DECEMBER 20, 2022**

BETWEEN

SAMEDY TRADING COMPANY LIMITED PLAINTIFF

AND

KIGWOR COMPANY LIMITED DEFENDANT

JUDGMENT

Introduction & Background

1. Vide Plaintiff dated 27th April 2017, the Plaintiff herein has approached the Honourable court seeking the following Reliefs/ Orders;
 - i. A Declaration that Parcels of land known as L.R. No.4144/1 and L.R No. 4144/2 belong to the Plaintiff.
 - ii. A Permanent Injunction restraining the Defendant either by itself, its workers, its employees, its agents or its servants from taking possession, trespassing or in any other way whatsoever interfering with the Plaintiff's quiet enjoyment of the parcels of land known as L.R No.4144/1 and L.R.No.4144/2.
 - iii. Damages for Trespass.
 - iv. Mesne Profits.
 - v. Any other or further relief that this Honourable Court may grant in the circumstances.
2. Upon the filing and service of the Plaintiff, the Defendant duly entered appearance and thereafter same filed a Statement of Defense and counterclaim. For clarity, the statement of defense and counterclaim is dated the 26th May 2017.



3. Vide the counterclaim dated the 26th May 2017, the Defendant have sought for the following Reliefs;
 - a. A Declaration that the Defendant is the bona-fide owner of parcel L.R No.4144,I.R No. 69479.
 - b. A Declaration that the Defendant is entitled to the exclusive and unimpeded right of possession and occupation of all that parcel of land known as wit L.R No. 4144,I.R No. 69479.
 - c. A Declaration that the Plaintiff's purported title for parcel of land L.R No.4144 and the subsequent subdivisions to wit L.R. No.4144/1 and L.R. No. 4144/2 were fraudulent, forgeries, irregular, null and void and should be expunged from the Land Registry.
 - d. A Permanent injunction restraining the Plaintiff whether by itself or its servants or agents or otherwise from entering, remaining on, trespassing, selling, alienating charging, leasing and/or any other dealing with the suit property.
 - e. Costs of the suit and counterclaim.
 - f. Interest in(e)above.
4. Suffice it to point out that upon being served with the statement of defense and counterclaim, the Plaintiff herein responded thereto by filing a Response to defense and defense to counterclaim dated the 18th June 2017. For clarity, the Plaintiff denied the allegations at the foot of the statement of defense and counterclaim.
5. Subsequently, the pleadings in respect of the subject matter closed and the suit was thereafter, ready and ripe for hearing. Indeed, the matter thereafter proceeded for hearing whereupon either side called one witness apiece.

Evidence by the parties

a.Plaintiff's Case:

6. The Plaintiff's case gravitates and revolves around the Evidence of one, namely, Eddy Peter Ndungu Kimemia, who testified as PW1.
7. It was the evidence of the witness that on the 20th July 1988 one Sam Kairu Njonde and himself registered a business name by the name of Samedy Trading Company. In this regard, the witness pointed out that same were thereafter issued with a Certificate of registration dated the 20th July 1988.
8. Besides, the witness testified that in the year 1993 the business entity, which same had registered alongside Sam Kairu Njonde, applied and was allocated a parcel of land known as L.R No. 4144, situated in Kitusuru Estate in the County of Nairobi.
9. Further, the witness added that upon being allocated the named parcel of land, the entity which was duly registered by Sam Kairu Njonde and himself proceeded to and paid the requisite charges, inter-alia the stand premium and the ground rents to the office of the Commissioner of Land.
10. For clarity, the witness added that upon the payment of the various charges alluded to and enumerated under the letter of allotment, the office of the commissioner of land acknowledged receipt of the payment and issued a revenue receipt to that effect.



11. On the other hand, the witness also testified that immediately upon the allocation of the named parcel of land, Sam Kairu Njonde and himself entered upon and took possession of the suit Property. In this regard, the witness added that same proceeded to and fenced the suit Property using wooden Poles and barbed wire.
12. Other than the foregoing, the witness stated that on or about the 8th October 1988, the Business entity, which had hitherto been registered on the 20th July 1988 was changed and incorporated into a limited liability company. In this regard, the witness pointed out that the limited liability company was known as Samedy Trading Company Ltd.
13. On the other hand, the witness further testified that on the 31st December 2012 the Company, now the Plaintiff herein, was duly issued with a Grant in respect of L.R No. 4144 with the accompanying Deed Plan Number 195023.
14. It was the further evidence of the witness that in the year 2014, the Plaintiff herein applied for permission to the office of the Commissioner of Land to subdivide the suit property into two portion and that the application for such subdivision was dully approved.
15. Further, the witness added that upon the approval of the request for the subdivision, the suit property was subdivided into two portion, culminating into the creation of L.R No. 4144/1 and L.R. No.4144/2, respectively.
16. Be that as it may, the witness further testified that on or about the 30th December 2014, a group of people invaded the suit property and commenced to destroy the wooden/barbed wire fence, which had been erected by the Plaintiff on the suit property.
17. Besides, the witness added that the said group of people also commenced to and constructed a Mabati/ Temporary structure on the suit property.
18. In any event, the witness testified that upon realizing the offensive invasion of the suit property, same proceeded to and lodged a complaint with the National Police Service, Spring valley Police Station. For completeness, the witness stated the Complaint was filed vide OB No. 34/30/12/2014.
19. Further, the witness averred that upon the lodgment of the criminal complaint, the invaders of the suit property were duly arrested and placed in police custody. However, the witness added that the invaders were thereafter released after same pleaded with the witness for mercy and upon promising that same would not revert to the suit Property again.
20. Other than the foregoing, the witness testified that same was advised to report the Complaint pertaining to the interference with the suit Property to the Criminal Investigation Department along Kiambu Road, which request same complied with and duly reported the complaint.
21. Notwithstanding the foregoing, the witness added that on or about May 2015, same was summoned to the CID Headquarters and upon reporting to the CID Headquarters, he (witness) was informed that the Defendant herein was also laying a claim to the suit Property.
22. Other than the foregoing, the witness testified that subsequently he was arrested together with another Director of the Plaintiff company and same were thereafter charged and arraigned in court with various charges, inter-alia, obtaining registration of land by False pretenses contrary to Section 320 of the Penal Code.
23. Besides, the witness added that on or about the 17th February 2017 the Defendant herein entered upon and took possession of the suit property purporting that same is the lawful and legitimate owner



- thereof. In this regard, the witness contended that same became apprehensive that the Defendant was keen to use violence and force to take away the suit property from the Plaintiff company.
24. Other than the foregoing, the witness alluded to the witness statement which same had filed in court on the 28th April 2017. For clarity, the named Witness statement was duly admitted and adopted as the Evidence in Chief of the Witness.
 25. On the other hand, the witness referred to the List and Bundle of Documents dated the 27th April 2017. In this regard, the Witness applied to have the named documents admitted and produced in evidence as exhibits.
 26. Suffice it to point out that the named documents were thereafter produced and marked as Exhibits P1 to 14, respectively. However, exhibits P1 and P2 had hitherto been objected to, but were ultimately admitted as exhibits upon production of the original copies thereof.
 27. Other than the foregoing, the witness also alluded to a copy of a Ruling which was issued vide Milimani CMCR No. 714 of 2015 and invited the Honourable court to admit same as an exhibit. In this regard, the impugned ruling was duly admitted as exhibit P15.
 28. Besides, the witness also pointed out that the Defendant herein had previously lodged an Appeal to the Court of Appeal, arising out of an Interlocutory matter/issue and that the Appeal has since been heard and determined.
 29. To this end, the witness applied for permission to adopt and produce a copy of the Judgment of the Court of Appeal issued vide Court of Appeal Civil Appeal number 109 of 2018. For completeness, the Judgment of the Court of Appeal was admitted as Exhibits P16.
 30. On cross examination, the witness pointed out that the Application for allotment in respect of the suit property was dated/made on the 21st November 1992 and not the year 1993, as stated in the witness statement.
 31. On the other hand, the witness added that same could not recall or remember whether the 21st November 1992 was a Saturday or otherwise. Nevertheless, the witness stated that same was aware that there was a point in time when the Government Offices used to work on half-days on Saturday.
 32. Other than the foregoing, the witness further added that the application for allocation of land was physically delivered by himself to the Office of the Commissioner of Land and same was received on even date and acted upon on the same date.
 33. It was the witness further testimony that upon the physical delivery of the letter to the commissioner of land, same was received by one Mr. Wilson Gachanja, the Commissioner of Lands personally and thereafter same was advised to take the letter to a designated officer in the same building, but on a lower floor.
 34. At any rate the witness added that upon the application for allocation of the suit property being received, same was informed to arrange and collect the letter of allotment thereafter.
 35. In this regard, the witness pointed out that a letter of allotment was subsequently issued to and in favor of the business entity which had been registered by himself and another. For clarity, the Witness stated that the Letter of Allotment, was issued in favour of Samedy Trading Company.
 36. Other than the foregoing, the witness testified that the Plaintiff company was thereafter issued with a Grant over and in respect of the suit Property. For clarity, the witness added that the Grant was issued in the year 2012.



37. Further, the witness stated that the parcel of land which the Plaintiff company is claiming is separate and distinct from the land belonging to the Defendant. However, the witness added that the reason as to why the Plaintiff has filed the suit is because the Defendant is seeking to interfere with the Plaintiff's rights and interests over the suit property.
38. In any event, the witness added that the Defendant herein had been allocated a completely different parcel of land. For coherence, the witness contended that the Defendant had applied for and been allocated L.R No 130/1/1/1.
39. Further, the witness testified that despite the fact that the Defendant applied for and was allocated L.R No. 130/1/1/1, the Defendant has since procured a Grant over and in respect of the suit Property.
40. Besides, the witness stated that the Grant over and in respect of the suit property was issued to an Entity known Smedy Trading Company and not Samedy Trading Company Ltd which is the Plaintiff herein.
41. Nevertheless, the witness clarified that the difference arose as a result of an error whereby the name of the company was misspelled using letter "E" as opposed to Letter "A".
42. Finally, the witness further stated that the suit property has since been subdivided culminating into the creation of L.R No's 4144/1 and 4144/2, respectively.
43. Subsequently, the Plaintiff's case was thereafter closed and the Defendant's case was commenced.

b. Defendant's Case:

44. The Defendant's case is premised and anchored on the testimony of one namely, Stephen Gathogo Njuguna who testified as DW1.
45. For clarity, the witness herein pointed out that he is the Managing Director of the Defendant company and that by virtue of being the said Managing Director, same has been duly authorized to make the statement and testify on behalf of the Defendant company.
46. On the other hand, the witness added that in the year 1994, the Defendant company applied and was allocated with a parcel of land namely, L.R No. 4144 (I.R No. 69479). In this regard, the witness added that the allotment was carried out and made in line with the Provisions of the Registration of Title Act, chapter 281 Laws of Kenya.
47. Further, the witness testified that the Defendant herein was lawfully and duly issued with a Grant over and in respect of L.R No. 4144 (I.R No 69479).
48. Be that as it may, the witness added that upon the suit property being duly allocated and thereafter registered in the name of the Defendant, the Defendant company entered upon and took possession of the suit property. For clarity, the witness testified that the Defendant company has been in occupation of the suit property for more than 21 years.
49. Other than the foregoing, the witness also testified that during the entire duration, same has been paying rates to the City Council of Nairobi (now defunct) and to the Nairobi City County Government. In this regard, the witness pointed out that the payment of the rates is confirmation that the suit property belongs to the Defendant.
50. Other than the foregoing, the witness further testified that Nairobi City Council, now defunct, sued the Defendant company vide Civil Suit No. 5 of 2011, wherein same was demanding unpaid rates over and in respect of the suit property.



51. Notwithstanding the foregoing, the witness testified that on or about December 2014, the Plaintiff herein purported to enter upon and take possession of the suit property, albeit without any color of right.
52. However, the witness added that the Defendant was able to repulse the attempts by the Plaintiff to enter upon and take possession of the suit property.
53. It was the further testimony of the witness that on or about January 2015, the Board of Directors of the Defendant company mandated and authorized him to lodge a Criminal Complaint with the Directorate of Criminal Investigation, pertaining to and concerning the claims by the Plaintiff over the suit property.
54. Premised on the mandate by the Defendant company, the witness testified that same duly lodged a Complaint with the Directorate of Criminal investigations, culminating into the arrest of one, Mr. Peter Ndungu Kimemia, a Director of the Plaintiff company and another.
55. Further, the witness testified that upon the arrest of Mr. Peter Ndungu Kimemia and the other, same were subsequently arraigned in court and charged with inter-alia, the offence of conspiracy to defraud contrary to the provisions of Section 317 of the Penal Code.
56. Be that as it may, the witness added that the criminal proceedings, are still pending before the Chief Magistrates' Court.
57. Finally, the witness testified that the Director of survey proceeded to and canceled the purported subdivision of L.R No. 4144, vide letter dated the 17th May 2017.
58. Other than the foregoing, the witness referred to the witness statement dated the 26th May 2017, whose contents have been reproduced herein before and thereafter sought to adopt and rely on the said witness statement.
59. In this regard, the witness statement was duly admitted as further evidence in chief of the witness.
60. Other than the foregoing, the witness also alluded to the List and Bundle of Documents dated the 26th May 2017 and same sought to adopt and rely on the said/ named documents.
61. Suffice it to point out that the named documents at the foot of the list of documents dated the 26th May 2017, were thereafter admitted and produced in evidence as Defense exhibits 1 to 17 respectively.
62. Besides, the witness also alluded to a supplementary List and Bundle of Documents the 2nd March 2022. In this regard, the witness pointed out that the documents are contained from pages 55 to 121 of the Supplementary Bundle of Documents.
63. For clarity, the documents at pages 80, 84 and 85 of the bundle were marked for identification as DMFI 18, 19 and 20, respectively.
64. On the other hand, the rest of the documents were duly produced. For coherence, the rest of the documents were marked as Defense exhibit 21 to 25 respectively.
65. On cross examination, the witness herein pointed out that the Defendant company has two Directors, namely, Mary Ann Njuguna and himself. For clarity, the witness added that the co-Director is his wife.
66. On the other hand, the witness pointed out that it is the Defendant company that applied to be allocated the land in question. In this regard, the witness clarified that the Application letter was signed by his co-Director.



67. In any event, the witness testified that the application letter was dated the 8th September 1994 and that same was addressed to the Commissioner of Lands.
68. Whilst still under cross examination, the witness testified that the Application letter referred to a specific parcel of land namely L.R No. 130/1/1/1.
69. At any rate, the witness added that it is the said piece of land, which same has alluded to in the body of his witness statement. For clarity, the witness added that at the time when the Company made the application for allotment of the specify land, same was aware that the land in question existed.
70. Other than the foregoing, the witness added that at the time the application for allotment was made, the application was accompanied with a sketch that was attached thereto.
71. Further, the witness herein testified that the Defendant company was incorporated in the year 1994. However, when pressed further, the witness admitted that the Defendant company was incorporated on the 3rd April 1995.
72. Besides, the witness admitted that by the time when the Defendant company applied to be allotted the named parcel of land, namely, L.R No. 130/1/1/1, the company had not been incorporated.
73. Other than the foregoing, the witness admitted that the letter of allotment which was issued to and in favor of the Defendant company referred to a specific and designated parcel of land. Besides, the witness also admitted that the letter of allotment also contained certain conditions, which the Defendant was obligated to comply with and satisfy.
74. On the other hand, the witness further testified that when the Defendant realized that the Plaintiff herein wanted to grab the Defendant's land, the Defendant lodged a criminal complaint with the Director of criminal investigation, culminating into the arrest of PW1 herein and another.
75. It was the further evidence of the witness that PW1 and another were later charged and arraigned in court vide criminal case number 714 of 2015.
76. Be that as it may, the witness conceded that the said criminal case has since been heard and concluded and that the court found and held that the complaints made against PW1 were not proved. For clarity, the witness pointed out that the ruling of the court found that the Defendant's land had not been grabbed.
77. Other than the foregoing, the witness also conceded that the court found and established that the Defendant company was non-existent at the time when same was purported to have been allocated the land in question.
78. Whilst still further cross examination, the witness admitted that in the body of his witness statement, same has referred to a specific parcel of land, namely, L.R No. 130/1/1/1 and not the Suit Property.
79. Finally, the witness stated that despite the fact that the Defendant company was issued with a letter of allotment in respect of L.R No. 130/1/1/1, the ultimate Grant is however in respect of L.R No. 4144 and not otherwise.

Submissions by the parties:

80. Following the conclusion of the hearing, the advocates for the respective Parties sought time to file and exchange written submissions. In this regard, the Honourable court proceeded to and stipulated the timeline for the filing and exchange of written submissions.



81. Pursuant to the foregoing directions, the Plaintiff proceeded to and filed written submissions dated the 13th October 2022, while on the other hand, the Defendant filed extensive and elaborate submissions dated the 31st October 2022.
82. It is appropriate and imperative to point out that the two sets of written submissions form part and parcel of the record of the Honourable court. In this regard, the respective written submissions shall be considered and taken into account while crafting the subject Judgment.
83. Similarly, I must also point out that both Parties have cited various decisions and case law in support of their respective arguments. For coherence, the Plaintiff has cited five decisions while the Defendant has cited and relied on a total of 27 decisions.

Issues for determination

84. Having reviewed the Plaint together with the incidental documents attached thereto and having similarly reviewed the Statement of Defense and Counterclaim, together with the incidental documents and having evaluated the oral evidence tendered by the respective Parties; and upon considering the written submissions filed on behalf of the Parties, the following issues are pertinent and thus worthy of Determination;
 - i. Whether the Defendant herein duly applied for allocation of L.R No. 4144 and if so, whether the Defendant was duly allocated L.R No. 4144.
 - ii. Whether the Defendant herein is the lawful and legitimate Proprietor of L.R No. 4144, either as claimed or otherwise.
 - iii. Whether the Plaintiff's predecessor duly applied for and was allocated L.R No.4144 and whether the said parcel of land was duly allocated to the Plaintiff's predecessor.
 - iv. Whether the Plaintiff is the lawful and legitimate Proprietor of L.R No 4144, either as claimed or otherwise.
 - v. What Reliefs ought to be granted.

Analysis and Determination

Issue Number 1 and 2

1. Whether the Defendant herein duly applied for allocation of L.R No. 4144 and if so, whether the Defendant was duly allocated L.R No. 4144.
2. Whether the Defendant herein is the Lawful and Legitimate Proprietor of L.R No. 4144, either as claimed or otherwise.
85. The witness who was called by and who testified on behalf of the Defendant stated that the Defendant herein had applied to be allocated and was indeed allocated L.R No 4144 (I.R No. 69479). For clarity, the witness proceeded and testified that the allocation and the subsequent registration of the title in respect of L.R No. 4144 was carried out and undertaken under the Registration of Title Act, Chapter 281 Laws of Kenya.
86. To be able to understand the tenor and scope of the evidence tendered by DW1, it is appropriate to reproduce a specific segment of the witness statement, which was ultimately adopted and made the evidence in chief of the witness.



87. For convenience, the designated segment of the evidence in chief states as hereunder;

“Sometimes in the year 1994, the Defendant Company applied and was allotted with the parcel of L.R No. 4144 I.R No.69479 (the Suit Property) under the provisions of section 23 of the Registration of Titles Act, Cap 281 Laws of Kenya (Repealed) and was subsequently issued with a Title on 27th May 1996 after making all the requisite payments. (See Pages 1-6 of the List of Documents)”

88. From the foregoing testimony, what becomes apparent and evident is the aspect where DW1 states and contends that the Defendant company applied and was allotted L.R No 4144 (I.R No 69479).

89. My understanding of the said aspect or segment of the evidence tendered by DW1 is that indeed the application letter which was made by and on behalf of the Defendant company spoke to the suit property and not otherwise.

90. Similarly, what becomes apparent from the said segment of DW1’s testimony is that upon receipt of the Defendant’s application letter, which requested for allocation of land, the Office of the Commissioner of Land proceeded to and issued a letter of allotment alluding to the specific parcel of land, namely L.R No. 4144 (I.R No. 69479).

91. Notwithstanding the foregoing testimony, it is important to recall that the said witness was thereafter subjected to cross examination and during cross examination, the witness pointed out that indeed the Defendant company applied to be allotted L.R No. 130/1/1/1 and not L.R No 4144, in the manner alluded to in his Evidence in chief.

92. To be able to understand the nature of the answers/responses tendered by DW1 during cross examination, it is important to reproduce certain relevant portion thereof.

93. For coherence, the relevant excerpts are as hereunder;

“The letter of application to be allocated land is contained at page 96 of the Defendant’s bundle. The letter is dated the 8th September 1994. It is addressed to the commissioner of lands. It has been signed by my co-director. The heading of the letter relates to a residential plot.

The land in question is L.R No. 130/1/1/1. The details of the land that I have referred to in the witness statement are the same as the land which the company applied for. When we applied for the land we knew that the land existed. It was a specific land. At the time of the application there was a sketch that was attached.

The number of the sketch was L.R No. 130/1/1/1”.

94. It is apparent and evident from the foregoing testimony that indeed the land that the Defendant company had (sic) applied for was a specific and designated parcel of land.

95. Additionally, the land which was applied for was well delineated and identified. Clearly, the Defendant’s herein did not apply to be allocated L.R No 4144(I.R No.69479).

96. Secondly, it is also imperative to interrogate whether upon the application for allotment, the commissioner of land indeed allocated or allotted to the Defendant L.R No. 4144 (I.R No. 69479). To this end, it is imperative to take cognizance of the letter of allotment dated the 12th January 1995, which speaks to L.R No. 130/1/1/1.



97. In my humble view, the letter of allotment which the Defendants witness has produced before the Honourable court and which are contained at pages 85 to 94 of the bundle of documents, does not allude to L.R No. 4144 (I.R No. 69479).
98. In the premises, it is erroneous for the witness, namely, DW1 to purport and to contend that the Defendant herein, applied for and was allocated L.R No. 4144 (I.R No. 69479).
99. In my humble albeit considered view, the testimony and evidence of DW1, pertaining to the application and (sic) ultimate allocation of L.R No. 4144, to the Defendant was a lie and borne out of perjury.
100. Secondly, other than what has been discussed in the preceding paragraph, there is yet another intriguing and perplexing aspect/ nuance to this matter.
101. In this regard, it is important to consider who was the organization/ Entity who applied to the Commissioner of land to be allocated L.R No. 130/1/1/1. In this regard, the application letter dated the 8th September 1994 becomes poignant and imperative.
102. To be able to contextualize the details of the Applicant, it is imperative to reproduce the contents of the application Letter.
103. Given its importance/ significance, the Application Letter is reproduced as hereunder;
- Kigwor (K) Ltd.
14656,
Nairobi.
8th September 1994.
The Commissioner of Lands
Box 30089.
Nairobi.
Dear Sir
Re: ApplicationforResidential Plot:
L.R.No. 130/1/1/1 Nairobi
- We humbly apply to you Sir, for a residential plot L.R. No. 130/1/1/1.edged edged red on the attached sketch plan for developing' residential houses.
- We have confirmed that the vacant Government Land is suitable for residential development.
- Looking forward to your kind consideration.
- We remain,
Yours faithfully.
- For: Kigwor (k) Ltd.
104. Arising from the application letter, what becomes clear and beyond peradventure is that the applicant who sought to be allocated land was Kigwor (k) Ltd and not the Defendant. For clarity, the Defendant is known as Kigwor Company Ltd.



105. My understanding of the elementary principle of company law is that a company is separate and distinct from her shareholders, promoters and directors. Consequently, where a company is wronged, it is the company to sue and not otherwise.

106. To this end, I can do no better than to reproduce the holding of the Court in the case of *Omondi v National Bank of Kenya Ltd* [2001]eKLR, where the Honourable Court stated and observed as hereunder;

“It is a basic principle of company law that the company has a distinct and separate personality from its shareholders and directors even when the directors happen to be the sole shareholders (see *Salmon v a Salmon & Co Ltd* [1897] AC 22). The property of the company is distinct from that of its shareholders and the shareholders have no proprietary rights to the company’s property apart from the shares they own. From that basic consequence of incorporation flows another principle: only the company has capacity to take action to enforce its legal rights. The contention by counsel for the plaintiff that the investment in LVF is by the plaintiffs and they are accordingly the proper plaintiffs in this action is manifestly without legal foundation. And although it is true that the appointment of a receiver manager has the effect of rendering the board of directors functus officio, it does not destroy the corporate existence and personality of the company. That appointment makes the directors unable to act in the name of the company but, as I understand the law, it does not make them in their capacity as members equally disabled. On that view, it was open to the two plaintiffs in the name of the company, but only in the name of the company, to institute the present proceedings which relate to alleged wrongs against the company qua company. But they definitely lacked legal competence to institute the suit in their own names in their capacities as directors and shareholders of LVF”.

107. Recently, the Court of Appeal re-visited the same Elementary Principle of Company law in the course of their holding in the case of *Ardhi Highway Developers Ltd versus Westend Butchery Ltd & 6 Others* [2015]eKLR, where the court stated and observed as hereunder;

42. Lord Denning MR in his characteristic literary style summed up the law in *Moir v Wallersteiner*[1975] 1 ALL ER 849atp. 857, as follows:

“It is a fundamental principle of our law that a company is a legal person with its own corporate identity, separate from the directors or shareholders and with its own property rights and interests to which alone it is entitled. If it is defrauded by a wrong doer, the company itself is the one person to sue for the damage. Such is the rule in *Foss v Harbottle*[1843] 2 Hane 461. The rule is easy enough to apply when the company is defrauded by outsiders. The company itself is the only one who can sue. Likewise, when it is defrauded by insiders of the minor kind, once again the company is the only person who can sue”.

108. Premised on the foregoing, there is no gainsaying that a limited liability company is separate and distinct from her Directors, Promoters and Shareholders.

109. By parity of reasoning, it is also common ground that one limited liability company is also separate and distinct from another. Indeed, their distinction is borne out and underscored by the issuance of Certificates of Incorporation by the Registrar of Companies.



110. In this respect, it is not lost on the court that the Company or legal entity that applied to be allocated L.R No. 130/1/1/1, was not the Defendant herein. To the contrary, the Applicant was M/s Kigwor (K) Ltd.
111. In view of the foregoing, when DW1 testifies and states that the Defendant herein applied to be allocated (sic) L.R No. 4144 (I.R No. 69479) or better still L.R No. 130/1/1/1, such a statement is mistaken and outrightly misleading.
112. In any event, it is also not true that the commissioner of land thereafter allocated or issued a letter of allotment to the Defendant. For clarity, the entity that was issued with the Letter of Allotment dated the 12th January 1995 bore the following details:
- Kigwor (K) Ltd
Box 14656,
Nairobi.
113. Clearly, the person who was being allocated L.R No. 130/1/1/1-Nairobi was not the Defendant herein.
114. Further, it is erroneous for DW1 to contend and maintain that the Defendant herein was ultimately issued with a Grant over and in respect of the suit Property.
115. To my mind, the copy of the Grant which has been produced and tendered in evidence before the court and relating to L.R No. 4144 (I.R No. 69479), was issued to and in favor of Kigwor (K) Ltd. See pages 26 to 29 of the Defendant's bundle.
116. Other than the foregoing, it is also important to point out that upon the issuance of the letter of allotment, the named allottee generated a letter of acceptance. To this end, it is worthy to point out that the person who was accepting the allotment was similarly, M/s Kigwor (k) Ltd and not the Defendant.
117. For the avoidance of doubt and to put everything into perspective, it is worthy to reproduce the Letter of acceptance. Consequently, the Letter of acceptance dated the 8th January 1996 is reproduced as hereunder;
- RE: L.R No 130/1/1/1 Nairobi
- Thank you for your letter reference number 93663/128 dated the 12th January 1995 allocating the above plot to us.
- We wish to accept the offer and the attached conditions.
- Enclosed herewith please find a bankers cheque number 166193 for Kes.225, 000/= for payment for the charges.
- Yours faithfully,
For Kigwor (K) Ltd
Signed.
118. Without belaboring the point, the totality of the documents which have been tendered and produced in evidence by DW1 refer to a completely different company other than the Defendant.
119. Finally, it is common knowledge that title to land only arises and accrue upon the issuance of a valid letter of allotment, compliance/meeting the conditions thereto and ultimately the issuance of a Certificate of title under the relevant registration regime.



120. In this case, though the Defendant claims to have been issued with a Letter of allotment over and in respect of the suit property and thereafter making the requisite payments, there is no gainsaying that no letter of allotment which was issued to and in favor of the Defendant has been tendered or produced in evidence.
121. Additionally, despite the contention by the Defendant that same was ultimately issued with a certificate of Title/Grant, no such Grant in the name of the Defendant was ever produced or tendered in evidence.
122. In the premises, it is difficult, nay impossible to understand and appreciate the basis upon which the Defendant herein can and does lay a claim to ownership of the suit property.
123. To vindicate the foregoing analysis, it is imperative to take cognizance of the holding of the Court of Appeal in the case of *Dr Joseph N.K Arap Ngok v Justice Moiyo Ole Keiwua & 5 Others* CA No. 60 of 1997 where the court stated and observed as hereunder;

“It is trite that such title to landed property can only come into existence after issuance of letter of allotment, meeting the conditions stated in such letter and actual issuance thereafter of title document pursuant to provisions in the Act under which the property is held”.
124. In respect of the instant matter, the Defendant has not been able to establish and prove any of the named parameters delineated, underscored and bespoken to vide the forecited decision.
125. In view of the foregoing deliberation, I am unable to find and hold that the Defendant herein was duly and lawfully allocated the suit property or that same is the legitimate and lawful owner of the suit property, either as claimed or at all.

Issue Number 3 And 4

3. Whether the Plaintiff's predecessor duly applied for and was allocated L.R No.4144 and whether the said parcel of land was duly allocated to the Plaintiff's predecessor.
4. Whether the Plaintiff is the Lawful and Legitimate proprietor of L.R No 4144, either as claimed or otherwise.
126. On behalf of the Plaintiff herein, evidence was tendered and adduced before the court that the Plaintiff's predecessor, namely Samedy Trading Company, applied to be allocated L.R No. 4144 – Kitusuru Nairobi. For clarity, the application letter dated the 21st November 1992 was tendered and produced before the Honourable court as exhibit P3.
127. Additionally, evidence was also tendered before the Honourable court that the application letter, details in terms of the preceding paragraph, was thereafter approved by the commissioner of land in terms of the approval minuted on the face of the application letter.
128. Subsequently, the Plaintiff's predecessor was issued with a letter of allotment dated the 6th July 1993 relating to and in respect of the named parcel of land. For coherence, the letter of allotment spoke to and related to L.R No. 4144- Nairobi.
129. Be that as it may, evidence was also placed before the court that subsequent to the allotment of the named property, the Plaintiff's predecessor proceeded to and paid the statutory levies, inter-alia the stand premium, ground rent and others to the office of the commissioner of lands. In this regard, a copy of the revenue receipt was duly tendered and produced before the court.



130. Notwithstanding the foregoing, PW1 proceeded to and added that himself and another thereafter incorporated a company which took over the activities of the M/S Samedy Trading Company, which was a business enterprise.
131. To this end, the Plaintiff's witness contended that the Plaintiff company was thereby duly incorporated. For clarity, the witness tendered and produced before the Honourable Court a copy of certificate of Incorporation.
132. Additionally, the Plaintiff's witness further testified that after due compliance with the requisite procedures, the Commissioner of Land generated and prepared the requisite certificate of title which was ultimately issued in favor of the Plaintiff company on the 31st December 2013. Suffice it to observe, that the certificate of title was duly produced and tendered in evidence before the court.
133. Other than the foregoing, evidence was also tendered that upon the issuance of the certificate of title in favor of the Plaintiff, the Plaintiff herein sought for and obtained the authority of the Commissioner of Land and the Director of Survey to subdivide LR No. 4144 – Nairobi into two portions.
134. Pursuant to and in line with the approval granted by the relevant officers, evidence was tendered that the suit property was thereafter subdivided into two portions, namely, L.R No's 4144/1 and 4144/2, respectively.
135. Despite the foregoing, the Defendant's witness contended that the Plaintiff was neither allocated the suit property or at all. In any event the Defendant witness added that it was not possible for the Plaintiff's predecessor to be allocated the suit property, yet same had been duly allocated and registered in favor of the Defendant.
136. Other than the foregoing, the Defendant's witness also contended that the Certificate of title which the Plaintiff was relying upon, was procured and obtained by False pretense.
137. In this regard, the Defendant's witness added that the Defendant was thereafter constrained to mount and lodge a criminal complaint with the Directorate of Criminal Investigations.
138. Further, the Defendant's witness also added that the Plaintiff's witness and another were thereafter charged and arraigned in Court with the offense of, inter-alia, obtaining registration by False pretense.
139. Nevertheless, even though the Defendant's witness contended that the criminal charge against the Plaintiff's witness was still pending before the criminal court, it is common knowledge that the said criminal case was heard and concluded vide Ruling rendered on the 10th May 2019. For ease of reference, a copy of the Ruling was tendered and produced before the court as exhibit P15.
140. Having rehashed the foregoing evidence, which was placed before the Honourable court, it is now appropriate to interrogate whether or not the Plaintiff's predecessor was duly and lawfully allocated L.R No. 4144 or otherwise.
141. From the application for allocation of land, which was addressed to the Commissioner of land, it is evident and apparent that the Plaintiff's predecessor applied to be allocated a specific and distinct parcel of land. For clarity, the land which the Plaintiff's predecessor applied to be allocated was known 4144-Kitusuru Nairobi.
142. Arising from the application for allocation of land, the commissioner of land duly issued a letter of allotment to and in favor of the Plaintiff's predecessor. For clarity, the Letter of allotment was reference number 93663/128 and dated the 6th July 1993.



143. It is also evident from the face of the Letter of allotment that the allotment was in respect of and related to L.R No. 4144 – Nairobi and not otherwise.
144. Subsequently, the Plaintiff's predecessor proceeded to and paid the requisite statutory levies which were indicated and enumerated at the foot of the letter of allotment. In this regard, the revenue receipt dated the 29th March 1994 was produced.
145. To my mind, upon the payments of the statutory levies contained and enumerated at the foot of the letter of allotment, the named property, that is L.R No 4144, stood alienated and was therefore no longer available for further alienation or allocation by the commissioner of land or otherwise.
146. For completeness, the named property at the foot of the letter of allotment dated the 6th July 1993, to and in favor of the Plaintiff's predecessor would only be available for re-allocation and re-alienation, if the previous letter of allotment had been rescinded, recalled and/or nullified, albeit on notice to the Plaintiff's predecessor.
147. To buttress the foregoing position, it is imperative to take cognizance of the holding of the Honourable Court in the case of *Republic versus City Counsel for Nairobi & 3 Others* [2014]eKLR, where the court stated and held as hereunder;

“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.”

148. Additionally, it is imperative to state and underscore that a letter of allotment attaches to and relates to a specific and distinct parcel of land. Consequently, when such specific parcel of land has been allocated, the allocation is Rem.
149. Premised on the foregoing, it is crystal clear that upon the allocation of the impugned property, either by the office of the commissioner of land, now defunct or any other Constitutional body, No other Person or Authority can purport to re-alienate the said property, subject to compliance with the Provisions of the Constitution or the applicable Law.
150. Recently, the Honourable Court of Appeal had an occasion to speak on the import, tenor and application of the letter of allotment and the fact that such an allotment attaches to land and is therefore an action in Rem.
151. In this regard, it is appropriate to restate and reiterate the observation and the statement of the Court in the case of *Benja Properties Limited versus Syedna Mohammed Burbannudin Sabed & 4 others* [2015] eKLR, where the Court of Appeal held as hereunder;

25. In arriving at our decision, we note that an interest in land cannot be allotted, alienated or transferred when the specific parcel of land allotted is not in existence. Allotment of an interest in land is a transaction in rem attaching to and running with a specific parcel of land. In the instant case, the allotment by the Commissioner of Land to the original allottees did not attach in rem to any land since there was no parcel upon which the allotment could attach. What the 5th respondent, the appellant and the original allottees did was to engage in paper transactions without a parcel of land upon which any interest in land



would attach and vest – it was paper transactions without any parcel of land as its substratum.

152. Guided by the decision cited in the preceding paragraph, I beg to state that by the time the commissioner of land was purporting to issue a certificate of title to and in favor of the M/s Kigwor (K) Ltd (not the Defendant), the land in question was non-existent.
153. In any event, it is imperative to note that though the commissioner of land purported to issue a certificate of title to and in favor of M/s Kigwor K Ltd over and in respect of the suit property, however the letter of allotment which had hitherto been issued to the said M/S Kigwor (K) Ltd related to L.R No. 130/1/1/1 and not the suit property.
154. Other than the foregoing, I also beg to add that despite the issuance of the certificate of title to M/S Kigwor (K) Ltd over and in respect of the suit property, no evidence was tendered to show that what had hitherto been allocated to M/s Kigwor (K) Ltd (and not the Defendant) had ever been converted to the suit property.
155. Notwithstanding the foregoing, it is also not lost on the Honourable court that the Defendant herein through her witness (DW1), lodged a criminal complaint against the Plaintiff's witness, who was thereafter arrested, charged and arraigned in court with inter-alia, the offense of Forgery of documents of title to land and obtaining registration by False pretense.
156. However, the Criminal charges which were mounted against PW1 pertaining to and concerning the manner in which the title in respect to the suit property was procured and obtained, were heard and determined vide Ruling rendered and delivered on the 10th May 2019. See exhibit P15.
157. Evidently, the Criminal court found and held that the title over and in respect of the suit property, which was issued in favor of the Plaintiff company, was neither procured by fraud nor by false pretense.
158. Contrarily, the criminal court also observed that purported documents which were being relied upon by the complainant, namely, DW1, on behalf of the Defendant company, related to a completely separate and distinct parcel of land.
159. Suffice it to point out that no appeal or revision, was ever taken and mounted against or in respect of the ruling by the criminal court.
160. Consequently, the observations by the criminal court as pertains to the regularity and validity of the Plaintiff's title are persuasive, albeit not binding. In this regard, same shall be taken into account in endeavoring to ascertain the authenticity of the Plaintiff's Certificate of Title.
161. Nevertheless, it is my considered view that the totality of the documents and evidence placed before the Honourable court by and on behalf of the Plaintiff, vindicate and confirm that indeed the suit property was lawfully and validly allocated to and thereafter registered in the name of the Plaintiff.
162. To my mind, the Plaintiff herein has placed before the Honourable court all the requisite documents to ground and anchor the ultimate certificate of title which was issued to and registered in her name.
163. Conversely, the Defendant herein, was unable to place before the Honourable court any evidence to anchor and ground her claim to the suit property. For clarity, I have hitherto pointed out that the documents which were placed before the Honourable court and upon which the Defendant lays a claim to the suit property, do not even relate to the Defendant herein.



164. Additionally, I found and held while dealing with issues number 1 and 2, herein before that the Defendant company and the Company known as, M/S Kigwor (K) Ltd, in whose favor the purported certificate of title was issued, did not apply to be allocated the Suit Property.
165. Notwithstanding the foregoing, it is now common knowledge, established and hackneyed position of the law that the possession of a Certificate of title per-se, does not denote ownership of land, particularly, where that Certificate of title is under challenged.
166. In such a situation, it behooves the holder of the impugned Certificate of Title, to justify its acquisition and essentially, to place before the Honourable court the requisite documentation speaking to the process underlying the issuance of the impugned certificate of title.
167. Without belaboring the point, it is appropriate to take cognizance of and reiterate the holding of the Court of Appeal in the case *Munyua Maina v Hiram Gathiba Maina* [2013] eKLR, where the Honourable Court Of Appeal stated and observed as hereunder;
- ” We state that when a registered proprietor’s root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which need not be noted on the register.
168. Having made the foregoing observation, I come to the conclusion that the Plaintiff herein is the lawful and legitimate proprietor of the suit property, namely, L.R No, 4144 (which has since subdivided into two portions), culminating into the creation of plot’s numbers 4144/1 and 4144-2.
169. By virtue of being the lawful and registered proprietor of the suit property and by extension L.R No’s 4144/1 and 4144/2, respectively, the Plaintiff is therefore entitled to the benefit and protection of the Law as envisaged vide the Provisions of Section 24 and 25 of the *Land Registration Act*, 2012.
170. For convenience, the named provisions of the *Land Registration Act*, 2012 are reproduced as hereunder;
24. In every grant, lease or licence for public land under this Act, there shall be implied covenants and conditions by the grantee, lessee or licensee that the grantee, lessee or licensee shall—
- (a) pay rent and royalties thereby reserved at the time and in the manner therein provided; and
- (b) pay all taxes, rates, charges, duties, assessments or outgoings of whatever description that may be imposed, charged or assessed upon the land or the buildings thereon, or upon the lessor or grantor or lessee or licensee in respect thereof. Buildings on leased public lands.
- 25.
- (1) Unless expressly stated to the contrary in a lease or license for public land under this Act, all buildings on public land leased or occupied under a license, whether erected by the lessee or licensee or not—



- (a) in the case of a lease for a term exceeding thirty years, shall pass to the national or county governments without payment of compensation, on the determination of the lease or license; or
 - (b) in the case of a lease for a term not exceeding thirty years, may be removed by the lessee within three months of the termination, otherwise than by forfeiture, of the lease unless the Commission elects to purchase those buildings.
- (2) If the Commission elects to purchase any buildings, as contemplated in subsection (1) (b), any disagreement as to the purchase price of the buildings, shall be resolved by arbitration.

Issue Number 5

What Reliefs ought to be granted.

171. Both the Plaintiff and the Defendant had sought for a plethora of reliefs at the foot of the Plaint and the Counter-claim, respectively.
172. Suffice it to point out that the Legal burden of proof laid at the door step of he/she who asserts. Consequently, the Plaintiff would be obliged to prove the assertion made at the foot of the Plaint.
173. Conversely, the Defendant would be obliged to bear the Legal burden of proof in respect of the assertions contained at the foot of the counterclaim.
174. To this end, the provisions of Section 107, 108 and 109 of the *Evidence Act*, Chapter 80 Laws of Kenya are apt, succinct and imperative.
175. In any event, the issue pertaining to the burden of proof and on whom same lies was authoritatively and elaborately deliberated upon by the Supreme Court of Kenya vide the holding in the case of *Samson Gwer & 5 others v Kenya Medical Research Institute & 3 others* [2020] eKLR, where the Supreme Court Of Kenya, held as hereunder;

[49] Section 108 of the *Evidence Act* provides that, “the burden of proof in a suit or procedure lies on that person who would fail if no evidence at all were given on either side;” and Section 109 of the Act declares that, “the burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”

[50] This Court in *Raila Odinga & Others v. Independent Electoral & Boundaries Commission & Others*, Petition No. 5 of 2013, restated the basic rule on the shifting of the evidential burden, in these terms:

“...a Petitioner should be under obligation to discharge the initial burden of proof before the Respondents are invited to bear the evidential burden....”

[51] In the foregoing context, it is clear to us that the petitioners, in the instant case, bore the overriding obligation to lay substantial material before the Court, in discharge of the evidential burden establishing their treatment at the hands of 1st respondent as unconstitutional. Only with this threshold transcended, would the burden fall to 1st respondent to prove the contrary. In the light of



the turn of events at both of the Superior Courts below, it is clear to us that, by no means, did the burden of proof shift to 1st respondent.

176. Having made the foregoing observation, I beg to reiterate that I have elsewhere herein before found and held that the Defendant herein neither applied for nor was same allocated the suit property.
177. Additionally, I have also found and held that the company that was purportedly registered and issued with a certificate of title over and in respect of the suit property, namely, M/s Kigwor (K) Ltd, is separate and distinct from the Defendant.
178. In a nutshell, the claim by and on behalf of the Defendant pertaining to and concerning ownership of the suit property vide the counterclaim, are not only pre-mature and misconceived, but also legally untenable.
179. Turning to the claims by and on behalf of the Plaintiff, I beg to point out that the Plaintiff has been able to prove her entitlement to the suit property and essentially the resultant subdivision thereof, namely, L.R No's 4144/1 and 4144/2, respectively.
180. Other than the prayers pertaining to ownership of the suit property, the Plaintiff had also sought for Mesne Profits, arising from the wrongful activities by the Defendant over the suit property.
181. Nevertheless, I beg to point out that despite laying a claim for Mesne Profits, the Plaintiff herein neither pleaded nor particularized the claim pertaining to Mesne Profits.
182. Similarly, it is also imperative to state that no evidence was tendered by the Plaintiff to prove the quantum and circumstance to warrant computation and award of Mesne Profits.
183. In my humble view, a claim for Mesne Profits is akin to a claim for Special Damages and therefore it behooves the claimant to not only plead and particularize Mesne Profits, but same must also specifically prove the claim.
184. In the absence of particular pleadings pertaining to Mesne Profits and specific proof thereof, a claim for Mesne Profits shall have been made in vacuum. Consequently, no award can ensue or better still, be granted in vacuo.
185. To buttress the foregoing statement, it is appropriate to adopt and reiterate the holding of the Court of Appeal in the case of *Christine Nyanchama Oanda v Catholic Diocese of Homa Bay Registered Trustees* [2020] eKLR.
186. For clarity, the Court of Appeal stated and stated as hereunder;

It is settled law that where a party claims for both mesne profits and damages for trespass, the court can only grant one and not both. Mesne Profits is defined as the profit of an estate received by a tenant in wrongful possession between the dates when he entered the suit property and when he leaves (See: Black's Law Dictionary 9th edition). Mesne Profits must be pleaded and proved.

In the case *Peter Mwangi Msuitia & Another v Samow Edin Osman* [2014] eKLR, this Court held as follows:

“As regards the payment of mesne profit, we think the applicant has an arguable appeal. No specific sum was claimed in the Plaint as mesne profit and it appears to us prima facie, that there was no evidence to support the actual figure awarded...”



187. As relates to the claim for Damages for trespass, I am in agreement with the Plaintiff that same is entitled to compensation arising from and attendant to the offensive activities perpetrated by the Defendant.
188. Simply put, a suitable award would suffice on account of damages for trespass, insofar as the impugned actions and omissions on the part of the Defendants were carried out without the consent and permission of the Plaintiff. See Section 3 of The *Trespass Act*, Chapter 294 Laws of Kenya.
189. In respect of the quantum, I beg to state that General Damages for trespass ought not to be proved. For clarity, trespass is actionable per-se.
190. In respect of the subject matter, I am minded to decree and award Damages for trespass as against the Defendant in the sum of kes.5, 000, 000/= only.
191. For clarity, the award herein is informed by the nature of the offensive activities, the location and size of the suit property and the fact that the impugned activities were deliberate and intended to defraud the Plaintiff of ownership rights over and in respect of the suit Property.
192. To vindicate the proposed award, I am minded to and Do hereby adopt the dictum in the case of *Willesden Investments Limited Versus Kenya Hotel Properties Limited* [2006] eKLR, where the honourable court stated and observed as hereunder;

“There is no mathematical or scientific formula in these types of cases and that the guiding factors are the circumstances in each case. It is my considered view that K.Sh. 10 000 000 is a reasonable award for general damages”.

Final Disposition

193. Having elaborately and exhaustively analyzed and evaluated the thematic issues that were enumerated in the body of the Judgment, it is now appropriate to make/render the final dispositive orders.
194. Be that as it may, I have found and held that the Plaintiff herein has proved and established her case as against the Defendant, on a Balance of Probabilities.
195. Conversely, I have found and held that the Defendant herein, which is separate and distinct from M/s Kigwor (K) Ltd, has neither established nor proved any claim to and in respect of the suit property.
196. Consequently, I Do enter Judgment in favor of the Plaintiff as hereunder;
- i. A Declaration be and is hereby issued that L.R. No.4144/1 and L.R No. 4144/2 belong to and are the Properties of the Plaintiff.
 - ii. An order of Permanent Injunction be and is hereby issued restraining the Defendant either by itself, its workers, its employees, its agents or its servants from taking possession, trespassing or in any other way whatsoever interfering with the Plaintiff's quiet enjoyment of the parcels of land known as L.R No.4144/1 and L.R.No.4144/2.
 - iii. General Damages be and is hereby awarded in the sum of Kshs.5, 000, 000/ = only.
 - iv. The prayer for Mesne profits be and is hereby Dismissed.
 - v. The Defendant's counterclaim be and is hereby Dismissed.



- vi. Costs of the suit and the Counter-claim be and are hereby awarded to the Plaintiff and same shall be taxed and certified by the taxing officer of the Honourable court.

197. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY OF DECEMBER 2022.

OGUTTU MBOYA,

JUDGE.

In the Presence of;

Benson - Court Assistant.

Ms Lenoya h/b for Mr. Karuga Maina for the Plaintiff.

Ms Gitau h/f for Mr. Njuguna for the Defendant.

