



**Nyeri Chemists Limited v Kihungi (Sued as the Legal Representative of the Estate of Jane Wanjiku Muriithi alias Jane Wanjiku Gichu) & 3 others (Environment & Land Case 9 of 2016) [2025] KEELC 3951 (KLR) (23 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 3951 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENT & LAND CASE 9 OF 2016**

**JO OLOLA, J**

**MAY 23, 2025**

**BETWEEN**

**NYERI CHEMISTS LIMITED ..... PLAINTIFF**

**AND**

**BONIFACE MURIITHI KIHUNGI (SUED AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF JANE WANJIKU MURIITHI ALIAS JANE WANJIKU GICHU) ..... 1<sup>ST</sup> DEFENDANT**

**NYALI BEACH CYCADS LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**THE DIRECTOR OF LANDS, HOUSING & PHYSICAL PLANNING THE COUNTY GOVERNMENT OF NYERI ..... 3<sup>RD</sup> DEFENDANT**

**THE HONOURABLE ATTORNEY GENERAL ..... 4<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. In its Plaint initially dated 2<sup>nd</sup> February, 2016 as amended and Further Amended on 17<sup>th</sup> January, 2024, Nyeri Chemists Limited (hereinafter the Plaintiff) prays for the following:
  - i. A declaration that the Certificate of Lease held by the deceased 1<sup>st</sup> Defendant and the 2<sup>nd</sup> Defendant respectively are null and void ab initio, the Plaintiff is the bonafide, legal actual or otherwise the owner of the Title Number Nyeri Municipality Block 1/7X8;
  - ii. An order directed at the 4<sup>th</sup> Defendant for an unconditional cancellation/ revocation of the Certificate of Lease issued to the deceased 1<sup>st</sup> Defendant and the 2<sup>nd</sup> Defendant and re-issue of the same to the Plaintiff upon payment of the requisite registration fees;



- iii. That a permanent injunction be issued against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants by themselves, their servants and /or agents from dealing in disposing off, resurveying, interfering with the Plaintiff's possession ownership and /or user of the Title Number Municipality Block 1/7X8;
  - iv. Special damages on demolished premises at Kshs. 17,100,000/=;
  - v. Loss of rental income @ Kshs. 75,000/= per month from 2016 till full payment of the sum in (iv) above;
  - vi. Interest on iv and v above at Court rates from, the date of Judgment till payment in full;
  - vii. The costs of this suit be met by the Defendants jointly and /or severally; and
  - viii. Any other or further reliefs as this Court may deem fit, just and reasonable in the circumstances.
2. These prayers arise from the Plaintiff's contention that at all material times as at 11<sup>th</sup> March, 1983, the Plaintiff was the legal actual owner as allottee and in possession of the said Nyeri Municipality Block 1/7X8 under a Letter of Allotment issued and dated 11<sup>th</sup> March, 1983. The Plaintiff avers that upon allotment and payment of all requisite dues, it proceeded to develop and lease out the suit property to Kenya Power and Lighting Company Ltd. (KPLC) from the year 1983 until the year 2015 when the 1<sup>st</sup> Defendant transferred the property to the 2<sup>nd</sup> Defendant.
  3. The Plaintiff further avers that it has erected a permanent hotel – Central Hotel Limited, after obtaining approval from the 3<sup>rd</sup> Defendant on Nyeri Municipality Block/1/455 and Nyeri Municipality Block 1/542 which hotel extends to the suit property. The Plaintiff asserts that neither the deceased 1<sup>st</sup> Defendant nor the 2<sup>nd</sup> Defendant holds any valid title as the lease issued was un-procedural, irregular and unlawful.
  4. It is the Plaintiff's case that it has suffered loss as the 2<sup>nd</sup> Defendant has demolished all the Plaintiff's buildings erected on the suit property. The Plaintiff avers that the Defendants are estopped by the doctrine of adverse possession from laying claim to the suit property where the Plaintiff has undertaken massive development since the year 1983.
  5. Boniface Muriithi Kihungi sued as the Legal Representative of the Estate of Jane Wanjiku Muriithi (the 1<sup>st</sup> Defendant) is opposed to the Plaintiff's claim. In his Further Amended Statement of Defence and Counterclaim dated 5<sup>th</sup> December, 2023, the 1<sup>st</sup> Defendant denies that the Plaintiff is in possession or was ever allocated or has any proprietary or other interest in the suit property. The 1<sup>st</sup> Defendant avers that the Plaintiff failed to take the basic steps of paying levies as outlined in the allotment letter and to process the title in his favour.
  6. In addition, the Defendant avers that the allotment letter the Plaintiff holds is for a totally different parcel of land. It is his case that the deceased Jane Wanjiku Muriithi had always paid annual rent for the suit property until the time when it was transferred to the 2<sup>nd</sup> Defendant. The 1<sup>st</sup> Defendant further asserts that by claiming to be the registered owner by virtue of allotment, the Plaintiff is stopped from invoking the doctrine of adverse possession.
  7. By way of the Counterclaim, the 1<sup>st</sup> Defendant avers that the deceased was the bonafide allottee of the suit property before she transferred the same to the 2<sup>nd</sup> Defendant for valuable consideration. The 1<sup>st</sup> Defendant accuses the Plaintiff of misrepresenting itself to third parties as the owner of the suit property and entering into lease arrangements with them when it did not have the capacity to do so.



As a result, the 1<sup>st</sup> Defendant avers that he has suffered pecuniary loss and damages and prays for orders as follows:

- i. Special damages of Kshs 21,555,000/= against the plaintiff for all rent collected from Kenya Power & Lighting Company Limited from 1983 to 2015 and interest thereon at Court rates from 1<sup>st</sup> June, 1983;
  - ii. General damages for mesne profits against the Plaintiff for trespass;
  - iii. General damages for loss of use of the suit property.
8. Nyali Beach Cycads Limited (the 2<sup>nd</sup> Defendant) is equally opposed to the Plaintiff's claim. In its Further Amended Statement of Defence and Counterclaim dated 31<sup>st</sup> January, 2024, the 2<sup>nd</sup> Defendant denies that the Plaintiff is in possession of the suit land or was ever allotted the same. It is the 2<sup>nd</sup> Defendant's case that it is the registered proprietor of the suit property having purchased the same bona fide from the deceased 1<sup>st</sup> Defendant on 10<sup>th</sup> June 2015 at a consideration of Kshs. 17,500,000/=.
9. By way of Counterclaim the 2<sup>nd</sup> Defendant avers that it has suffered prejudice as it had commenced construction of an office complex on the suit property in the year 2016 which was to be completed in the year 2017 but was stopped following an order of injunction granted by the Court of Appeal.
10. As a result, the 2<sup>nd</sup> Defendant avers that it has suffered loss and damages and prays for the following:
- a. The Plaintiff's suit be dismissed with costs;
  - b. Judgment be entered in favour of the 2<sup>nd</sup> Defendant for the Counterclaim in the sum of Kshs 171,650,000/= and interest thereon at Court rates from the date of the injunction;
  - c. General damages for mesne profits against the plaintiff for trespass and loss of use of the suit property;
  - d. An order that the Plaintiff demolishes the part of its building that has encroached on the boundaries of the suit property;
  - e. A permanent injunction restraining the Plaintiff either by itself, its agents or servants from interfering with the 2<sup>nd</sup> Defendant's possession and enjoyment of the suit property; and
  - f. Costs of this suit and Counterclaim and interest thereon.
11. At the trial herein, the Plaintiff called three (3) witnesses in support of its case whilst the 1<sup>st</sup> and 2<sup>nd</sup> Defendants called two (2) witnesses. The County Government of Nyeri and the Honorable Attorney General sued as the 3<sup>rd</sup> and 4<sup>th</sup> Defendants herein respectively neither filed pleadings nor did they participate at the trial.

### **Analysis and Determination.**

12. I have carefully perused and considered the pleadings filed herein, the testimonies of the witnesses as well as the evidence adduced at the trial. I have similarly perused and considered the submissions and authorities placed before the court by the Learned Advocates representing the parties herein.
13. By this suit, the Plaintiff Nyeri Chemists Ltd. has urged the court to declare that the Certificate of Lease held by the deceased 1<sup>st</sup> Defendant and that now held by the 2<sup>nd</sup> Defendant are null and void ab initio as the Plaintiff is the bona fide legal owner of the parcel of land known as Nyeri Municipality Block 1/7X8 (the suit Property). Upon that declaration, the Plaintiff prays for an order directing the Land Registrar Nyeri (the 4<sup>th</sup> Defendant) to cancel and/or revoke the Certificate of Lease issued to both the



- deceased 1<sup>st</sup> Defendant and the 2<sup>nd</sup> Defendant herein and to have the same re-issued to the Plaintiff upon the Plaintiff's payment of the requisite registration fees.
14. In addition, the Plaintiff prays for an order of injunction restraining the 1<sup>st</sup> and 2<sup>nd</sup> Defendants from dealing in, disposing off or interfering in any manner whatsoever with the Plaintiff's possession, ownership and use of the suit property. The Plaintiff also prays for special damages in the sum of Kshs. 17,100,000/- as well as loss of rental income in the sum of Kshs. 75,000/= per month from the year 2016 until the date of this Judgement.
  15. In the alternative, the Plaintiff asserts that he is entitled to the suit property under the doctrine of adverse possession having enjoyed a quiet, continuous and uninterrupted possession thereof since the year 1983.
  16. It is the Plaintiff's case that it is the legal owner and that he has been in possession of the suit property since it was allotted the same on 11<sup>th</sup> March, 1983. The Plaintiff told the court that it is also the owner of adjoining premises to the suit property being LR. No. Nyeri Municipality Block 1/455 and Nyeri Municipality Block 1/542. It was the Plaintiff's case that it had constructed a hotel known as Central Hotel Limited Nyeri on the said adjoining parcels of land and that the hotel extends into the suit property.
  17. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants had initially filed a joint Statement of Defence. The Statement of Defence was subsequently amended with both parties filing their own separate statements. In her Amended Statement of Defence dated 20<sup>th</sup> February, 2023, Jane Wanjiku Muriithi (the Original 1<sup>st</sup> Defendant herein) denied the Plaintiff's claim in totality.
  18. The 1<sup>st</sup> Defendant told the court that she is the one who was allotted the suit property in March 1985. She told the court she had complied with all the conditions set out in the Letter of Allotment following which she was issued with a Certificate of Lease therefor on 19<sup>th</sup> December 1992. Subsequently, on 10<sup>th</sup> June, 2015, she had sold the suit property to Nyali Beach Cycads Limited (the 2<sup>nd</sup> Defendant herein).
  19. As it turned out, Jane Wanjiku Muriithi passed away before the conclusion of the trial. She was substituted in these proceedings by her Legal Representative Boniface Muriithi Kihungi.
  20. The 2<sup>nd</sup> Defendant equally contests the Plaintiff's claim to the suit property. It is the 2<sup>nd</sup> Defendant's case that it is the registered proprietor of the property having purchased the same in good faith from the deceased 1<sup>st</sup> Defendant at a consideration of Kshs. 17,500,000/=.
  21. In support of its case, the Plaintiff called three (3) witnesses at the trial. Patrick Gitea Wanjohi (PW1) a director of the Plaintiff relied on a statement he recorded and that was filed herein dated 2<sup>nd</sup> February, 2016 as his evidence-in-chief. He told the court that on 11<sup>th</sup> March, 1983, he had been together with his co-directors, allotted Plot No. Nyeri Municipality Block 1/7X8. PW1 further told the Court that prior to the allotment, they had developed the adjoining plots being Nyeri Municipality Block 1/ 455 and 1/542. He told the court that they had constructed a hotel known as Central Hotel Limited on Nyeri Municipality Block 1/542 and that part of the hotel extends to the suit premises as it was built before allotment and approval of plans for the suit property.
  22. PW1 told the Court that the allotment of the suit premises was approved by the Commissioner of Lands on 11<sup>th</sup> March, 1983 and that they thereafter embarked on the development of the same after getting approval from the Ministry of Lands and Housing. It was his case that after completion of construction, they leased out the building to Kenya Power and Lighting Company Ltd until the year 2015 when the 1<sup>st</sup> and 2<sup>nd</sup> Defendants started claiming to be the proprietor of the suit property.



23. PW1 testified that on 28<sup>th</sup> January, 2016, they were surprised to receive a letter from the County Government of Nyeri's Department of Land Housing and Physical Planning (the 3<sup>rd</sup> Defendant herein) confirming to them that they had approved building plans for the suit premises in favour of the 2<sup>nd</sup> Defendant. He told the court the decision had caused them irreparable harm and hence their decision to institute this suit.
24. The position taken by PW1 was the same one reiterated by the Company's other director Lucy Valerie Wanjiku Kangunga (PW2). The Plaintiff's 3<sup>rd</sup> witness was a Valuer who received instructions from the Plaintiff to prepare a report on the suit property.
25. From the material placed before the Court, the Plaintiff company was indeed issued with a Letter of Allotment by the Commissioner of Lands dated 11<sup>th</sup> March, 1983. While PW1 told the court that the same was plot No. Nyeri Municipality Block 1/7X8, there was no reference to that plot number in the document produced in court.
26. At the trial herein, PW1 was cross examined at length on the said Letter of Allotment and the court records capture his responses as follows:
- “It was true I was to accept the property subject to the formal written conditions.
- I do not remember if I have produced anything to show that I paid for the Stand Premium and other Charges.
- I have not produced anything to show that I formally accepted the conditions of allotment.
- There is no signature of the Commissioner of Lands on the Letter of Allotment.”
27. Upon being shown the Letter of Allotment and the Certificate of Lease for the Suit Property, PW1 further responded as follows:
- “The Letter of Allotment shows Annual Rent as Kshs. 1,400/=. The Certificate of Lease shows the Annual Rent as Kshs. 480/=.
- On the Letter of Allotment, the Lease Term starts running from 01/01/1983 for 99 years. The Certificate of Lease shows it runs from 01/03/1985.”
28. As it were a Letter of Allotment per se is nothing but an invitation to treat. It does not constitute a contract between the offerer and the offeree and does not confer an interest in land. Where a Letter of Allotment has been issued to an individual, the allottee has to comply with the conditions attached to his or her letter of allotment for issuance of a Certificate of Lease.
29. In the matter herein, PW1 did not produce anything to connect the Letter of Allotment they had been issued with to the suit property. As we have seen above, PW1 conceded during cross examination that the Lease term in his letter of allotment indicates that the term would run from 1<sup>st</sup> January, 1983 while the Certificate of Lease held by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants indicated that the term would run for 99 years from 1<sup>st</sup> March, 1985. He further conceded that the Annual Rent indicated in the two documents were different.
30. More fundamentally, even where one was to assume that the Letter of Allotment issued to the Plaintiffs was in reference to the suit property, it was evident that the Plaintiffs had neither accepted the offer nor did they comply with the conditions set therein. The Plaintiffs had nothing to show that they had formally accepted the offer and/or that they had paid the standard premium required therein. In the absence of any evidence of acceptance of the offer and/or evidence of payment of the requisite fees,



there was no basis upon which this court could find that the Plaintiff had demonstrated that it had any legal right or substantial interest in the suit property.

31. On the other hand, it was evident from the material before me that Jane Wanjiku Gicho (deceased) was issued with a Letter of Allotment for the suit property dated 28<sup>th</sup> March, 1985. On 30<sup>th</sup> July, 1985, the deceased wrote an acceptance letter and paid the requisite fee of Kshs. 3,278/=. She was issued with a receipt to that effect on 2<sup>nd</sup> August, 1985. On 28<sup>th</sup> April, 1986, the Commissioner of Lands wrote a Letter to the deceased 1<sup>st</sup> Defendant to present herself to the Land Registrar, Nyeri for purposes of executing the lease for the suit property. On 19<sup>th</sup> December, 1992, the deceased was issued with her Certificate of Lease.
32. In the premises, it was clear that the 1<sup>st</sup> Defendant had properly demonstrated the legal and procedural manner through which she had acquired title to the suit property. As the duly registered Lessee, the deceased 1<sup>st</sup> Defendant was at liberty to deal with the suit property in any manner that she wished, provided that the same was not in contravention with the terms of the Lease. On 10<sup>th</sup> June 2015 she entered into a Sale Agreement with Nyalı Beach Cycads Limited (the 2<sup>nd</sup> Defendant) for the sale of her unexpired leasehold interest in the suit property.
33. Nderitu Wachira (DW2), a director of the 2<sup>nd</sup> Defendant told the court that the Company had done due diligence before the purchase and that they did establish that the property was registered in the name of the deceased 1<sup>st</sup> Defendant and that it had no encumbrances. That fact is supported by a copy of the Official Search they produced in court dated 10<sup>th</sup> April, 2014. The 2<sup>nd</sup> Defendant was thereafter issued with its own Certificate of Lease on 21<sup>st</sup> October, 2015.
34. At paragraph 12 of the Further Amended Plaint dated the 17<sup>th</sup> January, 2024 the Plaintiff avers that the Defendants are estopped by the doctrine of adverse possession from laying claim to the suit premises as the Plaintiff has enjoyed quiet, continuous, uninterrupted possession of the suit premises and undertaken massive development of the same since the year 1983. It was the Plaintiff's case in this regard that upon the allotment of the land, they took up and submitted development plans to the Nyeri Municipal Council which plans were approved and that upon approval the Plaintiff subsequently erected permanent houses on the premises.
35. As was stated by the Court of Appeal in *Mtana Lewa –vs- Kahindi Ngala Mwangandi* (2015) eKLR:

“Adverse possession is essentially a situation where a person takes possession of land and asserts rights over it and the person having title to it omits or neglects to take action against such person in assertion of his title for a certain period, in Kenya is twelve (12) years. The process springs into action essentially by default or inaction of the owner, the essential prerequisites being that the possession of the adverse possessor is neither by force or stealth nor under the licence of the owner. It must be adequate in continuity, in publicity and in extent to show that possession is adverse to the title owner.”
36. In the circumstances of this case, the question that then arises is whether the Plaintiff can claim both ownership of the land as well as entitlement thereto by way of adverse possession. Considering such an issue in *Richard Wefwafwa Songoi –vs- Ben Munyifwa Songoi*; (2020) eKLR, the Court of Appeal held as follows:

“42. The appellant testified he started using the suit property when he was given by his father. In the same vein, the appellant claims title to the parcel by way of adverse possession. The appellant's claim is founded on title by way of gift from his father. He prevaricates and lays claim to the land parcel by way of



adverse possession against the respondent. The pleas of title and a claim for adverse possession are mutually inconsistent and exclusive.

43. Comparatively, the Supreme Court of India in Mohan Lal –v- Irza Abdul Gaffar, 1996, 1 SCC 639 faced with an inconsistent claim of title by agreement and adverse possession stated that since the appellant admitted he came into possession of land lawfully under an agreement and continued to remain in possession till date of the suit, the plea of adverse possession was not available to the appellant. That having come into possession by agreement, he must disclaim his right thereunder and plead and prove assertion of his independent hostile adverse possession to the knowledge of the transferor and that the latter had acquiesced to his illegal possession during the entire period of 12 years.

44. Persuaded by the merits of the legal principle enunciated by the India Supreme Court and which we hereby adopt, in the instant matter, the appellant cannot found his claim to possession of the suit property on a gift from his father then also assert a claim over the parcel founded on adverse possession. He either proves he had a gift or proves independently his claim for adverse possession.

37. Arising from the above, it follows that the Plaintiff herein cannot base its claim on ownership of the suit property as an allottee and at the same time claim to be entitled to it by virtue of adverse possession.

38. It was further clear to me that the claim for adverse possession is untenable as the Plaintiff disputes the validity of the Certificate of Lease issued to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. At paragraph 9 of the said Further Amended Plaintiff, the Plaintiff pleads as follows:

“9. The Plaintiff avers that neither the deceased 1<sup>st</sup> Defendant nor the 2<sup>nd</sup> Defendant holds any valid Title to the property and the Certificates of Lease issued unprocedurally, irregularly or otherwise unlawfully by the 4<sup>th</sup> Defendant are null and void ab initio.”

39. As Oguttu Mboya J. stated in Njue –vs- Matiabe & 3 Others (Environment and Land Case E050 & E010 of 2021 (Consolidated) [2023] KEELC 17361 (KLR):

“...the moment the person claiming adverse possession contests and impugns the validity of the registered proprietors’ title, the claim for adverse possession is defeated and thus becomes legally untenable. In such a situation, the claimant is at liberty to pursue a cause of action for fraud or better still, trust, which causes of action are antithetical to and cannot co-exist with a claim for adverse possession.”

40. In the Further Amended Defence and Counterclaim dated 5<sup>th</sup> December, 2023, the 1<sup>st</sup> Defendant prays for special damages in the sum of Kshs. 21,555,000/= being what they term as rent collected from Kenya Power and Lighting Company Limited from 1983 to 2015 and interest thereon. The 1<sup>st</sup> Defendant also prays for general damages against the Plaintiff for trespass as well as for loss of use of the suit property.

41. The 1<sup>st</sup> Defendant asserts at Paragraph 34 of the Further Amended Defence that it had been denied the use of its property and proceeds to particularize the alleged loss being rent said to have been paid to the Plaintiff. In their bundle of documents dated 20<sup>th</sup> February 2023, there is however no single proposition that the Plaintiff collected such amounts of rent from the said Kenya Power & Lighting Company Ltd. (KPLC).



42. As the Court of Appeal stated in Hahn –vs- Singh, Civil Appeal No. 42 of 1983 (1985) KLR:
- “Special damages must not only be specifically claimed (pleaded) but also strictly proved .... for they are not the direct natural or probable consequence of the act complained of and may not be inferred from the act. The degree of certainty and particularity of proof required depends on the circumstances and nature of the acts themselves.”
43. As it were, it had always been the position of the 1<sup>st</sup> Defendant that the Plaintiff had not been in possession of the suit property. The substituted 1<sup>st</sup> Defendant repeats that position at paragraph 11 of his statement filed herein dated 5<sup>th</sup> December, 2023. The 1<sup>st</sup> Defendant had never constructed a house on the suit property from which it could claim rent. From a perusal of the deceased 1<sup>st</sup> Defendant’s statement and Affidavits sworn before her death, it was her position that as at the time of allotment, she did find an old structure in the Suitland which was being occupied by Kenya Tea Board and partly by KPLC.
44. Having transferred their rights and interests in the suit property to the 2<sup>nd</sup> Defendant in the year 2015, I did not think it was open for the 1<sup>st</sup> Defendant to come to court some eight (8) years later to make a claim for alleged mesne profits against the Plaintiff on account that they had since, unknown to them, been trespassing on the land before they sold the same.
45. On its part, the 2<sup>nd</sup> Defendant equally urged the court to enter Judgment in its favour in the sum of Kshs. 177,650,000/= and interest thereon at court rates from the date an order of injunction was issued by the Court of Appeal stopping them from continuing with construction of the suit property. It was the 2<sup>nd</sup> Defendant’s case that due to the acts of the Plaintiff, it has suffered prejudice by being deprived of income, ownership, use and possession of the suit property. Accordingly, the 2<sup>nd</sup> Defendant asserts that it pays for the security of the suit property at Kshs. 20,000/= per month; that it has sunk capital in finance costs of Kshs. 77,010,000/= and that it has lost earnings to the tune of Kshs. 93,000,000/= since December 2017 when the order of injunction came into effect.
46. The 2<sup>nd</sup> Defendant also prays for general damages against the Plaintiff for trespass and for an order that the Plaintiff demolishes the portion of its building that has encroached on the boundaries of the suit property. In addition, the 2<sup>nd</sup> Defendant prays for a permanent order of injunction restraining the Plaintiff from interfering with its possession and enjoyment of the suit property.
47. Having gone through the 2<sup>nd</sup> Defendant’s documents, I did not find much support for the claim for Kshs. 171,650,000/=. The 2<sup>nd</sup> Defendant has however exhibited a copy of an agreement between itself and an entity known as Arbedares Construction Limited which had been engaged to carry out the construction of a commercial building within the suit property. The agreement executed on 11<sup>th</sup> August, 2016 reveals that the 2<sup>nd</sup> Defendant was required to pay and had indeed paid the sum of Kshs. 14,600,000/= to that entity for the project which was to be completed within 11 months.
48. At the trial herein, the Plaintiff conceded that part of the wall for its Central Hotel had extended into the suit property. It has been held that the measure of damages for trespass is the difference in the value of the subject property immediately after the trespass or the costs of the restoration whichever is less. In the matter herein the 2<sup>nd</sup> Defendant did not adduce any evidence as to the state of the value of its property before and after the trespass. Having considered all the circumstances herein, it is my view that the sum of Kshs. 2,000,000/= would be adequate compensation for the 2<sup>nd</sup> Defendant for the trespass on its property.
49. In the premises, I hereby enter Judgment in favour of the 2<sup>nd</sup> Defendant and hereby order as follows:



- i. The Plaintiff's suit lacks merit and is hereby dismissed with costs.
- ii. The 1<sup>st</sup> Defendant's Counterclaim lacks merit and is hereby dismissed with no order as to costs.
- iii. The 2<sup>nd</sup> Defendant is hereby awarded special damages of Kshs. 14,600,000/= to be paid by the Plaintiff.
- iv. The 2<sup>nd</sup> Defendant is hereby awarded the sum of Kshs. 2,000,000/= as damages for trespass to be paid by the Plaintiff.
- v. An order is hereby issued that the Plaintiff demolishes the portion of its building that has encroached on the boundaries of the suit property within 45 days from today.
- vi. A permanent order of injunction is hereby issued restraining the Plaintiff either by itself, its agents or servants from interfering with the 2<sup>nd</sup> Defendants' possession and enjoyment of the suit property.
- vii. The costs of the 2<sup>nd</sup> Defendant's counter claim shall be borne by the Plaintiff.

50. Orders accordingly.

**JUDGEMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 23<sup>RD</sup> DAY OF MAY, 2025**

**J.O. OLOLA**

**JUDGE**

