

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELC CASE NO. E232 OF 2023

BRYAN
RICKS.....PLAINTIFF

MICHAEL

-VERSUS-

JAMES CHEPKOIYWA CHEBET.....1ST
DEFENDANT

ARNOLD MASWAL 2ND
DEFENDANT

JUDGEMENT

1. The Plaintiff has approached the court *vide* Plaint dated the 20th June, 2023; and wherein the Plaintiff has sought the following reliefs [*verbatim*]:
 - a) *A declaration that the Defendants have no legal right, title, or interest in the property now known as Title Nairobi Block 148/2036 but previously known as Title No. 21984/52, situated along Fana Road, off Fair Acres Road within Karen Estate in the City of Nairobi.*
 - b) *An Order of eviction directed at the Defendants, their caretakers, agents, tenants, representatives, and such other persons claiming title or interest under them from the property now known as Title Nairobi Block 148/2036 but previously known as Title No. 21984/52, situated along Fana Road, off Fair Acres Road within Karen Estate in the City of Nairobi*
 - c) *An Order of prohibitory injunction restraining the Defendants either by themselves, their agents, employees, representatives, or otherwise howsoever from remaining on the suit property and from interfering with the Plaintiff's quiet and peaceful possession of the property now known as Title Nairobi Block 148/2036 but previously known as Title No. 21984/52, situated along Fana Road, off Fair Acres Road within Karen Estate in the City of Nairobi.*
 - d) *Damages due to trespass and unlawful interference with the Plaintiff's quiet and peaceful possession and occupation of the suit property.*

e) Special Damages in the sum of Kshs 1,185,500/- with interest thereon until payment in full

f) Costs of the suit.

2. The Defendants duly entered appearance and filed a statement of defence dated 26th of September 2023, and wherein the Defendants denied and/or disputed the claims by the Plaintiff. Furthermore, the Defendants contended that the suit property was sold unto them by one Jane Too who thereafter allowed same [Defendants] to enter upon and take possession of the suit property. To this end, the Defendants posited that same therefore have lawful rights to and in respect of the suit property.
3. Additionally, the Defendants averred from arising out of the sale agreement entered into on the 24th June 2005, same have acquired contractual rights to the property. In any event, the Defendants contended that same proceeded to and filed civil proceedings vide ELC No. 291 of 2012 against Jane Too, which matter has not [sic] been fully disposed of.
4. The Plaintiff herein filed a reply to the statement of defence dated the 17th October 2023 and wherein the Plaintiff contended that the claims by and on behalf of the Defendants arising from sic the contract entered into on the 24th of January 2005, stood extinguished on the basis of Limitation of Actions Act. Moreover, the Plaintiff averred that the Defendants have no lawful rights to and/or interest over the suit property.
5. The subject matter came up for case conference on various dates including the 28th of May 2024 whereupon the advocates for the Plaintiff confirmed that same had filed and served the list and bundle of documents, list of witnesses and witness statement. To this end, the advocate for the Plaintiff posited that same was ready to fix a date for hearing.
6. On the other hand learned counsel for the Defendants intimated to the court that same had not filed all the requisite list and bundle of documents, list of witnesses and witness statement. In this regard learned counsel for the Defendants sought further accommodation to enable same to file the requisite documents.
7. Arising from the foregoing, the court proceeded to and issued directions pertaining to the filing and service of further documents by and on behalf of the parties. Furthermore, the court also circumscribed the timelines.
8. The instant matter ultimately came up for hearing on the 5th of November, 2024 when the Plaintiff testified and called one witness. On the other hand, the Defendants did not call any witness. For good measure, it is instructive to highlight that the Defendants [namely, the Parties] did not attend and/or participate in the scheduled hearing, despite having participated in the fixing of the hearing date.

9. The Plaintiff's case is essentially premised on the evidence of two (2) witnesses, namely, Bryan Michael Ricks and Kennedy Otieno John. Same testified as PW1 and PW2, respectively.
10. It was the testimony of PW1 [Bryan Michael Ricks] that same is the Plaintiff in respect of the instant matter. Furthermore, the witness averred that by virtue of being the Plaintiff, same is therefore conversant with the facts of this case. Besides, the witness averred that same has since recorded two (2) sets of witness statements, pertaining to the subject matter.
11. The witness referenced the witness statement dated the 17th of June 2023 and thereafter sought to adopt and rely on the said witness statement. To this end, the witness statement under reference was adopted and constituted as the evidence in chief of the witness.
12. Additionally, the witness adverted to the witness statement dated 21st November, 2023 and similarly sought to adopt and rely on the contents of the said witness statement. In this regard, the witness statement dated the 21st of November 2023 was constituted and adopted as further evidence in chief of the witness.
13. Moreover, the witness referenced the list and bundle of documents dated the 20th of June 2023 containing fifteen (15) documents and thereafter sought to tender and produce the documents as exhibits before the court. There being no objection, the documents were produced and marked as exhibits P1 to P15, respectively.
14. It was the further testimony of the witness that same has also filed an additional list and bundle of documents dated the 19th of August 2024, containing four (4) documents and thereafter same sought to tender and produce the documents as exhibits. Suffice to state that the documents under reference were produced and marked as exhibits P16 to P19, respectively.
15. On the other hand, the witness referenced the plaint dated the 20th of June, 2023 and the verifying affidavit sworn on even date and thereafter same sought to adopt the contents thereof. Furthermore, the witness also implored the court to grant the reliefs sought at the foot of the Plaintiff.
16. The second witness who testified on behalf of the Plaintiff was Kennedy Otieno John. Same testified as PW2.
17. It was the testimony of the witness that same is a Civil Engineer by profession. Furthermore, the witness averred that same undertakes civil engineering works under the name and style of KENELY CONTRACTORS LIMITED.
18. It was the further testimony of the witness that same is conversant with the facts of the instant matter. In any event, the witness averred that same was contracted and/or

engaged by the Plaintiff herein to construct a masonry perimeter wall in respect of the suit property.

19. Arising from the foregoing, the witness averred that same therefore became acquainted with the issues at the foot of this matter. Moreover, the witness averred that same has since recorded a witness statement dated the 20th of June 2023 and which witness statement, same sought to adopt and rely on as his evidence in chief. Instructively, the witness statement under reference was duly adopted and constituted as the evidence in chief of the witness.
20. With the foregoing testimony, the Plaintiff's case was closed.
21. Though the Defendants had duly entered appearance and filed a statement of defence, same [Defendants] did not attend court on the 5th of November 2024. Furthermore, it is instructive to highlight that the Defendants' advocate who attended court on even date sought for adjournment which application was however declined.
22. Following the delivery of the Ruling declining the application for adjournment, learned counsel for the Defendants, chose to walk out of the proceedings. In this regard, the Defendants did not tender any evidence or at all.
23. At the conclusion of the hearing, and upon closure of the defence case, learned counsel for the Plaintiffs sought for time to file and serve written submissions. To this end, the court proceeded to and circumscribed the timelines for the filing and service of written submissions. In addition, the court also granted liberty to the Defendants to file and serve written submissions, if any.
24. The Plaintiff proceeded to and filed written submissions dated the 11th of November 2024 and wherein the Plaintiff has highlighted two (2) issues namely, that the Plaintiff is the lawful and legitimate proprietor of the suit property and thus same is entitled to exclusive possession thereof; and the Plaintiff is entitled to the reliefs sought at the foot of the Plaintiff.
25. Regarding the first issue, learned counsel for the plaintiff has submitted that the Plaintiff entered into a lawful sale agreement with one Jane Too, who was hitherto the registered proprietor of the suit property. Furthermore, it was contended that the sale agreement was duly reduced into writing and thereafter the Plaintiff paid the agreed consideration in the sum of Kshs.45,000,000/= only.
26. Moreover, it was submitted that following the payment of the purchase price, the suit property was transferred to and registered in the name of the Plaintiff. To the end, it has been posited that the Plaintiff is therefore the lawful and legitimate proprietor of the suit property. In this regard, learned counsel for the Plaintiff has cited and referenced the provisions of Sections 24 and 25 of the Land Registration Act, 2012.

27. As pertains to the second issue, learned counsel for the Plaintiff has submitted that by virtue of being the registered proprietor of the suit property, the Plaintiff herein is entitled to exclusive possession and occupation of the suit property. However, it has been submitted that despite the Plaintiff being the lawful owner of the suit property, the Defendants herein have remained in occupation of the suit property, albeit without any lawful cause and/or basis.
28. It has further been submitted that the actions by and on behalf of the Defendants constitute and/or amount to trespass. In this regard, learned counsel has posited that the Plaintiff is therefore entitled to the various reliefs sought at the foot of the Plaint. In particular learned counsel for the Plaintiff has implored the court to grant the orders of eviction, permanent injunction as well general damages for trespass.
29. The Defendants herein did not file any written submissions. Instructively, when the mater came up on the 28th of May, 2025, and following the delivery of two (2) rulings by the court, learned counsel for the Defendants intimated to the court that same shall not be filing any written submissions. In addition, learned counsel ventured forward and posited that the court could proceed and craft the Judgment.
30. In a *nutshell*, the Defendants herein did not file any written submissions or at all.
31. Having reviewed and appraised the pleadings, the documents and the evidence tendered [both oral and documentary] and upon consideration of the written submissions filed on behalf of the Plaintiff, I come to the conclusion that the determination of the subject disputes turns on three (3) key issues; *namely*; whether the Plaintiff is the lawful and registered proprietor of the suit property and if so, whether same is entitled to exclusive possession; whether the Defendants have any lawful rights to and in respect of the suit property or otherwise; and what reliefs, if any, ought to issue.
32. Regarding the first issue, *namely*; whether the Plaintiff is the lawful and registered proprietor of the suit property and if so, whether same is entitled to exclusive possession, it is imperative to state and highlight that the Plaintiff tendered evidence and thereafter produced assorted documentary exhibits before the court. The exhibits that were tendered and produced before the court included, a copy of the sale agreement dated the 8th of November, 2021, a copy of the transfer instrument as well as a copy of the certificate of title in respect of the suit property.
33. Suffice to state that the Plaintiff herein demonstrated that same is currently the registered proprietor of the suit property, having bought/purchased same from one Jane Too, who was hitherto the registered owner of the suit property. At any rate, it

is worthy pointing out that the transfer and registration of the suit property in the name of the Plaintiff has not been denied.

34. Owing to the fact that the Plaintiff is the registered owner of the suit property and coupled with the issuance of the certificate of title in his favour, there is no gainsaying that the Plaintiff herein is the lawful proprietor of the suit property. For good measure, the certificate of title in the name of the Plaintiff has neither been challenged and/or impeached.
35. To this extent I come to the conclusion that the Plaintiff herein is indeed the lawful and legitimate owner of the suit property. Furthermore, I come to the conclusion that by virtue of being the lawful owner of the suit property, the Plaintiff is indeed entitled to the statutory rights and privileges conferred by dint of Sections 24 and 25 of the Land Registration Act, 2012.
36. Additionally, it is important to underscore that by virtue of being the lawful owner of the suit property, the Plaintiff is therefore entitled to exclusive possession and occupation. For coherence, the exclusivity of possession and occupation of the designated land, constitute the fundamental features that inhere in the registered owner of the land, the Plaintiff not excepted.
37. The scope of the rights of a registered owner of landed property were highlighted and elaborated upon in the case of **Mohansons (Kenya) Limited v Registrar of Titles & 2 others [2017] Eklr**; where the court stated and observed thus;

[18] As held by the Court of Appeal for East Africa held in *Moya Drift Farm Ltd. v. Theuri* (1973) EA 114 a registered proprietor of land is the absolute and indefeasible owner of land and is entitled to take proceedings for trespass and eviction of a trespasser even if he did not have possession of the property. Spry, V-P at 116, considered the effect of section 23 of the Registration of Titles Act and held –

“I cannot see how a person could possibly be described as “the absolute and indefeasible owner” of land if he could not cause a trespasser to be evicted. The Act gives a registered proprietor his title on registration and, unless there is any other person lawfully in possession, such as a tenant, I think that title carries with it legal possession: there is nothing in the Act to say or even suggest that his title is imperfect until he has physical possession.”

Sir William Duffus, P. *ibid* at p.117 agreed with Spry, JA as follows:

“In any even I agree with the Vice-President that the fact that the appellant was the registered proprietor as owner in fee simple under the Registration of Titles Act, and as such vested with the absolute and indefeasible ownership of the land, was sufficient to vest legal possession of the land in the appellant and that this possession would be sufficient to support the action of trespass against a trespasser wrongly on the land.”

The third member of the Court, Lutta, JA agreed with the judgment prepared by the Spry, V-P.

38. Furthermore, the nature of the rights that inhere and/or belong to the registered owner of land were also elaborated in the case of **Waas Enterprises Limited v City Council Of Nairobi & another** [2014] eKLR, where the court stated as hereunder;-

To my understanding since the 2nd defendant has been in the suit property illegally, she is a trespasser. As a registered proprietor, the plaintiff is entitled to enjoy all proprietary rights to the exclusion of all others. This includes the right to exclusive possession of the suit land. The rights of a proprietor of land are set out in Sections 24 and 25 of the Land Registration Act which provide as follows :-

“24. Subject to this Act—

- (a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and*
- (b) the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.*

25. (1) The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject—

- 1. to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and*
- 2. to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on*

the register, unless the contrary is expressed in the register.

(2) Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee.”

It therefore follows from the above that only the plaintiff is entitled to enjoy proprietary rights over the suit land. The 2nd defendant had no right to the suit land.

39. Other than foregoing, the Court of Appeal in the case of **Embakasi Properties Limited & another v Commissioner of Lands & another** [2019] eKLR, highlighted the scope of the rights in the following manner;-

The three main principles of the Torrens system were aptly summarized by the Canadian Court of Appeal in the case of Regal Constellation Hotel Ltd Re 2004 Can LII 2006 Ontario C.A.) Page 13 para 42 as follows:

“42. The philosophy of land titles system embodies three principles, namely, the mirror principle, where the register is a perfect mirror of the state of title; the curtain principle, which holds that a purchaser need not investigate the history of past dealings with the land, or search behind the title as depicted on the register; and the insurance principle, where the state guarantees the accuracy of the register and compensates any person who suffers loss as the result of an inaccuracy.”

We reiterate that under the insurance principle the State guarantees the accuracy of all registered titles through the register; and that there would be indemnity in case a registered proprietor is deprived of his title or is prejudiced by a correction of any mistake in the register. The mirror principle is a guarantee that the register is a perfect mirror of the state of title while the curtain principle holds that a purchaser need not worry about the history of the title so long as from the register it is clear that whoever is transferring the property to him has the capacity.

40. Moreover, the significance of a certificate of title and the rights that inhere in the title owner [unless it is proven that the title was procured illegally] were also highlighted in the case of **Elizabeth Wambui Githinji & 29 others v Kenya Urban Roads Authority & 4 others** [2019] eKLR, where the court of appeal stated thus:-

If a certificate of lease duly issued by the Registrar is prima facie evidence of ownership and if the owner is proved to have exercised due diligence at the point of acquisition, on what basis could the appellants' petition for protection under Article 40 be defeated"

It has long been accepted beyond debate that the land registration process in Kenya is a product of the Torrens system. This was acknowledged in, among a long line of decided cases, this Court's judgments in Dr. Joseph Arap Ngok V. Justice Moiyo ole Keiwua & 5 others, Civil Appeal No. Nai. 60 of 1997 and Charles Karathe Kiarie & 2 Others V Administrators of Estate of John Wallance Muthare (deceased) & 5 others, Civil Appeal 225 of 2006.

Under that system, the title of a bona fide purchaser for value without notice of fraud cannot be impeached; that the land register must mirror all currently active registrable interests that affect a particular parcel of land; that the Government, as the keeper of the master record of all land in Kenya and their owners, guarantees indefeasibility of all rights and interests shown in the land register against the entire world; and that in case of loss arising from an error in registration, the Government guarantees the person affected of compensation. Finally, the statutory presumption of indefeasibility and conclusiveness of title based on the register can be rebutted only by proof of fraud or misrepresentation which the buyer is himself shown to have been involved.

The object of the Torrens system was, in very compelling language, explained in the decision of the Privy Council in Gibbs V. Messer [1891] AC 247 P.C. at page 254 as follows:-

"The main object of the Act, and the legislative scheme for the attainment of that object, appear to them to be equally plain. The object is to save persons dealing with registered proprietors from the trouble and expense of going behind the register, in order to investigate the history of their author's title, and to satisfy

themselves of its validly. That end is accomplished by providing that everyone who purchases, in bona fide and for value, from a registered proprietor, and enters his deed of transfer or mortgage on the register, shall thereby acquire an indefeasible right, notwithstanding the infirmity of his author's title.”. (Emphasis supplied).

41. Flowing the foregoing analysis, my answer to issue number one [1] is three fold. Firstly, the Plaintiff herein has tendered and produced before the court evidence demonstrating that same is currently the bearer of a certificate of title over and in respect of the suit property. To this end, the certificate of title demonstrate prima facie rights of the Plaintiff to and in respect of the suit property. Simply put, the certificate of title is prima facie evidence of ownership until same is legally impeached.
42. Secondly, by virtue of being the registered owner of the suit property, the plaintiff is bestowed with certain statutory rights and privileges which attach to ownership of land. Such rights are underpinned by the provisions of Sections 24 and 25 of the Lands Registration Act, 2012.
43. In this regard, the Plaintiff is entitled to the suit property to the exclusion of all and sundry. In any event, such rights exist until the Plaintiff is legally divested of the rights thereto. This is the import and tenor of Article 40 (3) of the Constitution, 2010.
44. Regarding the second issue, *namely*, whether the Defendants have any lawful rights to the suit property, it is worthy to recall and reiterate that the Defendants contended that same bought/purchased the suit property from one Jane Too *vide* sale agreement dated the 24th of January, 2005. However, it was posited that despite entering into and executing the said sale agreement, the Vendor failed to transfer the property unto the Defendants.
45. Furthermore, the Defendants contended that arising out of the failure by the Vendor to transfer the suit property to and in their favour, same [Defendants] filed civil proceedings vide ELC No. 291 of 2012. Nevertheless, it was posited that the said suit has never [sic] been fully resolved. To this end, the Defendants contended that same have lawful entitlement to the suit property sic arising out of the said contract.
46. Be that as it may, there is no gainsaying that the Defendants herein have neither accrued nor procured any decree as pertains to the suit property. Moreover, the Defendants herein have not accrued and/or acquired any certificate of title to the suit property.

47. The question that does arise is whether the Defendants herein can be heard to stake any lawful claim to and/or in respect of the suit property as against the lawful and registered owner of the property. To my mind, ownership to land is hinged on the issuance of certificate of title or lease, whichever is relevant. Absent certificate of lease and/or title, one the Defendants not excepted, cannot be heard to lay a claim to the property. **[See the decision of the Court of Appeal in the case of Wreck Motors Enterprises Limited versus The Commissioner of Lands [1997]eklr]**

48. If anything, the Defendants entitlement [subject to the law of Limitation and the doctrine of Res Judicata] can only be as against the Vendor. To this end, I am fortified by the decision of the Court of Appeal in the case of **Kenya Forest Service v Rutongo't Farm Limited [2015] KECA 160 (KLR)**, where the court stated as hereunder:-

Since Olsen opted to dispose of the suit land to the appellant, the question of deprivation of the suit land from the respondent cannot be said to arise. The respondent did not acquire any proprietary interest in the suit land which the Government either compulsorily acquired or confiscated or expropriated. As such, the application of Article 40 of the Constitution or even section 75 of the retired Constitution was inapplicable to the circumstances of this case.

49. The court ventured further and stated as hereunder:-

From the facts, it is undisputed that, the suit land was private land that belonged to Olsen. Once the agreement was executed with Olsen, a contract to purchase the suit land came into existence. It is this contract that became the basis of the respondent's contractual relationship with Olsen. When Olsen subsequently transferred the suit land to the appellant, and not to the respondent, a claim for breach of the respondent's contract with Olsen arose. Such a claim would be contractual in nature, and not constitutional.[Emphasis supplied].

50. From the decision *supra*, it is evident that the moment Jane Too chose to sell and transfer the suit property to and in favour of the Plaintiff, who ultimately became the

registered owner thereof, the Defendants herein can only pursue [it at all] a claim based on breach of contract.

51. Having found and held that the Defendants have no lawful and/or equitable rights to the suit property, the issue that does arise is whether the Defendants have a basis to remain on and/or continue to occupy the suit property.
52. To my mind, the suit property lawfully belongs to the plaintiff and thus the plaintiff is entitled to exclusive possession. In addition, any third party the Defendants not excepted, can only remain in occupation and possession of the suit property, with the permission and/or consent of the plaintiff. Absent consent of the Plaintiff, any entry upon, possession and occupation of the suit property, amounts to trespass.
53. What constitutes trespass was elaborated by the Court of Appeal in the case of **Doshi v Chemutut & 7 others [2025] KECA 776 (KLR)**, where the court stated as hereunder;-

39. Trespass, as stated by this Court in the case of Charles Ogejo Ochieng v Geoffrey Okumu [1995] KECA 169 (KLR), is an injury to a possessory right, and therefore the proper plaintiff in an action of trespass to land is the person who has title to it, or a person who is deemed to have been in possession at the time of the trespass. As for the ingredients of trespass, the Court in William Kamunge Gakui v Eustace Gitonga Gakui (Civil Appeal 16 of 2013) [2014] KECA 39 (KLR) stated that trespass is a violation of the right to possession, and that a plaintiff must prove that he has the right to immediate and exclusive possession of the land. Justice Chemutut did not name Mr. Doshi as a defendant in the suit.

54. The ingredients that underpin a claim for trespass and by extension, damages for same, were also highlighted in the case of **Municipal Council of Eldoret v Titus Gatitu Njau [2020] eKLR**, where the court stated thus:-

35. In M'Mukanya v M'Mbijiwe (1984) KLR 761, the ingredients of the tort of trespass were revisited by this Court and restated as follows:

“trespass is a violation of the right to possession and a plaintiff must prove that he has the right to immediate and exclusive possession of the land which is different from ownership (See Thomson v Ward, (1953) 2QB 153.”

36. Further, in Winfield & Jolowicz on Tort, Sweet & Maxwell, 19th Edition at page 428 states as follows:

“Trespass to land, like the tort of trespass to goods, consists of interference with possession. Mere physical presence on the land does not necessarily amount to possession sufficient to bring an action for trespass. It is not necessary that the claimant should have some lawful interest in the land. This is not to say that legal title is irrelevant, for where the facts leave it uncertain which of several competing claimants has possession, it is in him who can prove title that can prove he has the right to possession. More generally, in the absence of evidence to the contrary, the owner of land with the paper title is deemed to be in possession of the land.” [Emphasis supplied].

55. Bearing in mind the holdings of the Court of Appeal in the decisions referenced in the preceding paragraphs, I come to the conclusion that the actions by and on behalf of the Defendants constitute and amounts to trespass.
56. As pertains to the third issue, it suffices to state that the Plaintiff has sought diverse reliefs. To start with the Plaintiff has sought for a declaratory order that the Defendants have no legal title, rights and or interest over the suit property. While discussing issues number one [1], I came to the conclusion that the Plaintiff herein is entitled to exclusive possession and occupation of the suit property.
57. Moreover while discussing issue number two [2], I found and held the Defendants have neither accrued nor acquired any title to and in respect of the suit property. In addition, I found and held that the occupation of the suit property by the Defendants constitutes trespass.
58. In the premises, there is no gainsaying that the Plaintiff has established and demonstrated that same is entitled to the declaratory orders sought. To this end, I find and hold that the prayer for declaration that the Defendants have no legal rights and/or title to the suit property is meritorious.
59. Regarding the prayer for eviction, there is no gainsaying that the right to absolute and exclusive possession of property by the title owner cannot be realized if there is a third party interfering with such rights. In this regard, it is imperative to observe that an eviction order would go a long way in ensuring that the title owner enjoys the exclusivity in possession and occupation of the designated property. In short, the Plaintiff is entitled to an order of eviction.
60. In respect of the prayer for permanent injunction, there is no gainsaying that an order of order of permanent injunction also goes along way in vindicating and protecting the statutory rights of the property owner. Absent an order of permanent injunction, the rights of the owner shall be exposed to violation, breach and/or infringement by third parties.

61. To this end, I find and hold that a credible basis has been established to warrant the issuance of an order of permanent injunction. [See the decisions in the case of **Kenya Power & Lighting Co. Limited v Sheriff Molana Habib [2018] KEHC 5027 (KLR)**, at paragraph 12 thereof.
62. The Plaintiff has also sought for an order of damages for trespass and unlawful interference. It is instructive to state and observe that trespass is actionable per se. It then means that once the claimant demonstrates and establishes trespass, then the claimant is entitled to damages [See **Duncan Nderitu Ndegwa vs Kenya Power & Lighting Company Ltd & Another [2013] ekr**].
63. Regarding the quantum of damages, it is important to underscore that an award of damages for trespass is at large. Nevertheless, it is imperative to recall that even though the award of damages is at large and thus subject to the discretion of the court, the assessment of such an award must however be premised on known-principles. [See the decision of the Court of appeal in the case of **Kenya Power & Lighting Company Ltd v Ringera & 2 others [2022] KECA 104 (KLR)**].
64. Guided by the principles highlighted in the decision supra, and coupled with the *dictum* of the **Supreme Court in the case of Attorney General V Zinj Limited (Petition 1 Of 2020) [2021] KESC 23 (KLR) (Civ) (3 December 2021) (Judgment)**, I come to the conclusion that the Plaintiff is entitled to an award of general damages. In this regard, I proceed to and hereby awarded the sum of Kshs.5,000,000/= only.
65. Lastly, the Plaintiff sought for special damages in the sum of Kshs.1,185,500/= only. Notably, the claim of special damages is premised on the various receipts that have been tendered and produced. Suffice to underscore that the law on special damages is now settled and established.
66. Instructively, any claimant who desires to accrue a positive finding as pertain to special damages must not only plead and particularize the damages, but the same must also venture forward to strictly prove the damages. In this regard, the Plaintiff has not only pleaded and particularized the damages, but same has also specifically proved same. [See the decision of the court of appeal in **Superior Homes (Kenya) PLC v Water Resources Authority & 9 others [2024] KECA 1102 (KLR)**]. [See also the decision in the case of **Capital Fish Limited versus Kenya Power and Lighting Company Limited [2016]eklr**]
67. Simply put, the Plaintiff has proven the claim on account of special damages. In this regard, I award the sum of Kshs.1,185,500/= only, as prayed.

FINAL DISPOSITION:

68. Flowing from the analysis details highlighted in the body of the judgment, it must have become crystal clear that the Plaintiff herein has proved his claim to the

requisite standard. Suffice to state that the Plaintiff was obligated to prove his claim on a balance of probabilities or better still on a balance of preponderance. [See Section 107, 108 and 109 of the Evidence Act].

69. In the premises, the final order[s] that commend themselves, to me are as hereunder;-

- i. ***A declaration be and is hereby issued that the Defendants have no legal right, title, or interest in the property now known as Title Nairobi Block 148/2036 but previously known as Title No. 21984/52, situated along Fana Road, off Fair Acres Road within Karen Estate in the City of Nairobi.***
- ii. ***The Defendants be and are hereby ordered and/or directed to vacate and handover vacant possession of the suit property namely LR Title No. 21984/52, situated along Fana Road, off Fair Acres Road within Karen Estate in the City of Nairobi, to the Plaintiff within a duration of ninety (90) days from the date hereof.***
- iii. ***In default to vacate and hand over vacant possession in terms of clause (ii) above, the Plaintiff shall be at liberty to levy eviction against the Defendants from the property now known as Title Nairobi Block 148/2036 but previously known as Title No. 21984/52, situated along Fana Road, off Fair Acres Road within Karen Estate in the City of Nairobi, and in this regard an eviction order shall issue.***
- iv. ***In the event of eviction in terms of clause (iii), the costs and expenses incurred shall be certified by the deputy registrar and thereafter same shall be recoverable from the Defendants.***
- v. ***An Order of prohibitory and permanent injunction be and is hereby issued restraining the Defendants either by themselves, their agents, employees, representatives, or otherwise howsoever from remaining on the suit property and from interfering with the Plaintiff's quiet and peaceful possession of the property now known as Title Nairobi Block 148/2036 but previously known as Title No. 21984/52, situated along Fana Road, off Fair Acres Road within Karen Estate in the City of Nairobi.***
- vi. ***Kshs.5,000,000/= only be and is hereby awarded on account of general damages for trespass.***

- vii. *The award of clause (vi) shall accrue interest at court rates [14% per annum], from the date of Judgment.*
- viii. *Special Damages be and is hereby awarded in the sum of Ksh.1,185,500/- with interest thereon from the date of filing of the suit until payment in full*
- ix. *Costs of the suit be and are hereby awarded to the Plaintiff.*

70. It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS
3RD DAY OF JUNE 2025.**

**OGUTTU MBOYA, FCIArb, CPM [MTI].
JUDGE.**

In the presence of:

Brandy – court Assistant.

Mr. Ojiambo for the Plaintiff.

Mr. Rukwaro for the Defendants.