



REPUBLIC OF KENYA



KENYA LAW
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Karani v Shunem Academy Limited & another (Environment and Land Case 70B of 2021) [2025] KEELC 6113 (KLR) (19 September 2025) (Judgment)

Neutral citation: [2025] KEELC 6113 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND CASE 70B OF 2021
A OMBWAYO, J
SEPTEMBER 19, 2025

BETWEEN

LAWRENCE KARANI PLAINTIFF

AND

SHUNEM ACADEMY LIMITED 1ST DEFENDANT

GRACE MUKAMI MWANIKI 2ND DEFENDANT

JUDGMENT

Plaintiff's case

1. Lawrence Karani (hereinafter referred to as the plaintiff) has come to this court Vide a Further Amended Plaint dated 30th November 2023, filed on 4th December, 2023, against Shunem Academy and Grace Mukami Mwaniki hereinafter referred to as the defendants seeking the following reliefs: -
 - a. A declaration that the Plaintiff was unlawfully and/or wrongfully evicted from the subject premises.
 - b. General and exemplary damages for unlawful and/or wrongful eviction. In the alternative, payment of one year's rent and goodwill in lieu of notice. c) General damages for loss of business opportunity and/or investment.
 - c. General damages for detinue.
 - d. Special damages of KShs 9,877,000/=.
 - e. Costs of the suit.
 - f. Interest on the awards made.
 - g. Any other or further relief which the Court deems just to grant.



2. The Plaintiff's suit is premised on the Lease between the 1st Defendant and himself. The plaintiff claims that in late 2017, the Plaintiff and the 2nd Defendant had various discussions and engagements concerning the leasing out to the Plaintiff of the school known as Shunem Girls' Boarding High School.
3. The 2nd Defendant carried and presented herself, and was well known to the Plaintiff, as the Manager of the School. She indicated to the Plaintiff that she was also the Managing Director of the 1st company which owned the said School. Upon striking an agreement, the Plaintiff commenced rigorous marketing of the School ahead of a formal drawing up of a Lease and in-order to enhance student enrolment and intake in January 2018. On 30th December, 2017 the Plaintiff entered into a Lease with the 1st Defendant over and regarding the School. The Plaintiff was the Lessee whereas the 1st Defendant was the Lessor. The 2nd Defendant, being the 1st Defendant's Managing Director, executed the Lease on behalf of the 1st Defendant. According to the plaintiff, the terms of the Lease were as follows:-
 - a. Rent of KShs 1,500,000/= and goodwill of KShs 600,000/= would be payable by the Plaintiff on the 15th day following the beginning of every school term with effect from January 2018;
 - (b) The 2nd Defendant would operate the then existing bank accounts of the School held at National Bank of Kenya and Standard Chartered Bank for the first term only commencing January, 2018 to enable her deduct KShs 2.1 Million being the initial rent and goodwill.
 - (c) The two Bank Accounts mentioned above would remain open for only two terms after which they would be closed; thereafter, the Plaintiff would open new bank accounts for the School;
 - (d) The Plaintiff would peacefully and quietly enjoy the demised premises without interruption from or by the 1st Defendant or any person rightfully claiming under it;
 - e. Any party wishing to terminate the Lease shall give One (1) Year notice in writing.
4. The lease further contained an agreement for the outright purchase by the Plaintiff of school equipment and other assets. An inventory of the assets was annexed to the Lease. The agreed purchase price was KShs 3,000,000/=. As at the time of signing the Lease, the Plaintiff had paid the agreed deposit of KShs 1,000,000/= leaving a balance of KShs 2,000,000/= which was to be paid before the end of 2019.
5. The plaintiff claims that pursuant to the Lease, on 1st January, 2018, the Plaintiff took possession of the School and hit the ground running. He launched and financed various projects aimed at marketing the School, improving its image and infrastructure and promoting the welfare of students and staff.
6. On its part, the 1st Defendant, through the 2nd Defendant as one of only two signatories to the school bank accounts at National Bank of Kenya and Standard Chartered Bank, deducted the initial rent of KShs 1,500,000/= and goodwill of KShs 600,000/= as stipulated in the Lease. However, the 1st Defendant, did not close the said bank accounts after the second school term of 2018 as provided in the Lease but continued operating them, by inter alia, deducting rent and goodwill up to and including the first school term of the year 2019.
7. According to the Plaintiff, owing to the refusal by the 1st Defendant to close the bank accounts and since the Plaintiff was not a signatory thereto, in order to run the School, the Plaintiff would request the 2nd Defendant for funds from the accounts. That meant that the Plaintiff had to ask for funds, deposited into the accounts as school fees, to run the very school business he had leased. Nonetheless, the Plaintiff continued investing in the school business and with that came an increment in student enrollment, intake and retention, improved welfare and performance and obviously, increased profits.



8. The Plaintiff's wish, as embodied in the Lease, was not to be. On 26th February, 2019, without cause, justification, notice or due process, the Plaintiff was forcefully ejected out of the School by the 1st Defendant through its agents, including the 2nd Defendant's co-director, Humprey Mwaniki Ngibuini. The Plaintiff was not even accorded time to gather and take personal belongings and other items and, in the process, his three motor vehicles were left in the School. Not even the Order of injunction dated 26th February 2019 could deter the 1st Defendant from the illegal trajectory it elected to take. With that forceful eviction, the Lease between the Plaintiff and the 1st Defendant terminated. The Plaintiff was kept out of the School by the guards installed by the 1st Defendant. His belongings including three motor vehicles, financial and other records, were left at the School and he did not access or retrieve them until on or around 9th September, 2019 on the strength of a Court Order and under the protection of the Police.

The 1st Defendants Case

9. The 1st Defendant entered an appearance and eventually filed an Amended Statement of Defence and Counterclaim dated 15th February 2024. The 1st Defendant challenged the validity of the Lease on various grounds including the 2nd Defendant's perceived want of authority; lack of registration of the Lease; alleged vagueness and contradiction thereof; alleged non-compliance with execution requirements and lack of or inadequate consideration.

10. In its Counterclaim, the 1st Defendant states that the plaintiff without consent of both directors of the company, illegally entered the subject premises and irregularly took over the running of the school which was a trickery and fraud. The 1st defendant regained the possession of the property in February, 2019 on the strength of a court order dated 11th September, 2019.

11. The 1st defendant in the counter claim avers that during the period that the plaintiff illegally occupied the premises and fraudulently purported to run the school, the 1st defendant was unfairly denied his benefits of investments, suffered a substantial loss and damage. The defendant company consequently holds the plaintiff liable for the said damages and loss particularized as follows:-

- (a). Money received by the plaintiff and converted to his own
- b. Use..... Ksh13,118,494.00
- c. Missing Stolen Assets..... Ksh 1,715,410.00
- d. Security fees.....Kshs 452,305.00
- e. Unpaid debts.....Kshs 600,000.00
- f. School fees diverted to Shunem Talanta
- g. Girls Account.....Kshs 219,700.00
- h. Loss of business..... Ksh 15,000,000.00
- i. Valuation fees paid to Hill Creak Valuers ...
.....Kshs 50,000.00
- b. Penalty accrued on unpaid statutory deductionKsh 74,400.00
- b. TotalKSH 31,230,309.00

The defendant seeks the following reliefs: -



- I. General damages for trespass;
- II. Special damages of KShs 31,230,309/=
- III. Costs and interest.

2Nd Defendants Defence

12. The 2nd Defendant filed statement of defence on the 11th October 2023 dated 6th of October 2023 in which she did not contest the Lease, its validity or enforceability. She admitted that she represented the 1st Defendant and executed the Lease between it and the Plaintiff. She also admitted having received KShs 1,000,000/= as deposit of the purchase price for the inventoried assets. Her contention was that she did not deduct rent and goodwill from the School bank accounts and so, according to her, the Plaintiff breached the Lease by failing to pay rent and goodwill. She avers that the plaintiff breached the lease by his failure to pay the ksh 9,000,000 that was to be paid at the execution of the lease and the 2,100,000 that was to be paid the 15 of the first month of the term. The plaintiff breached the agreement by failing to pay the workers and to repair the movable and immovable per the inventory. He failed to pay the taxes and the utilities.
13. The 2nd defendant avers that no monies were deducted from the school account as the plaintiff diverted the money to another account and that once the lease was signed, the plaintiff diverted the money to another account. The 2nd defendant states that no improvement was done by the plaintiff to the school but instead it was run down by the plaintiff. The allegations that the plaintiff's motor vehicles were detained is denied by the 2nd plaintiff as there is no proof of ownership. The 2nd plaintiff prays that the suit be dismissed with costs and that the 1st defendants counter-claim to succeed.

Rival Evidence

14. The Plaintiff testified as PW1 and called two witnesses, Sandra Wanda Ochieng'(PW2) and Moses Lutsinga Obimbo (PW3). The plaintiff adopted his statement as evidence in chief. The gist of the plaintiff's evidence was that he entered into a written lease agreement with the defendants on the 30th of December 2017. The lessor was the 1st defendant whereas the plaintiff was the lessee. The plaintiff went further to state that he was a tenant of the 1st defendant. The leased property was known as plots no 15, 16 and 17 Kiamunyi. The rent payable was 1.5 million per term on every 15th of every beginning of the term thus on 15th January, 15th May and 15th September of every year and Ksh 600,000 goodwill was to be paid per term. The 9,000,000 good will was to be paid in instalments and the 1st instalment was to be deducted from the 1st term school fees. He entered the school as agreed and took possession and did repairs, connected water, repaired the sewerage planted trees, did poultry and bought some grade cows. However, the 1st defendant refused to close the school accounts to enable him open new accounts as agreed. His occupation was not peaceful, quiet and enjoyable. His net profit was Ksh 4,000,000 in a term as the school enrolment jumped to 400 students each paying school fees of Ksh 60,000 totalling to Ksh 24,000,000. Unfortunately, he was evicted on 26th February 2019 having operated for one year. He was not issued with one year's notice for termination despite the lease provided for the same. The plaintiff claims loss of business of one year of Ksh 15, 000,000. The plaintiff further claims loss of user of his vehicles. In addition to crucial financial and other documentation in respect of the School, the Plaintiff testified and showed that his three motor vehicle, that is, registration numbers KBP 597K (bus), KBY 852D (saloon) and KAW 805K (van) were left at the School during his eviction on 26th February, 2019 and that efforts to recover them were thwarted by the 1st Defendant. As a result, he lost the income he used to get by hiring out the bus and van and had to hire an alternative vehicle in place of the saloon. He produced the relevant receipts



- (P.Exhibit 15a-15f;19a-19c;22a-22d);The Plaintiff also produced evidence of his beneficial ownership of the threemotor vehicles (P. Exhibit 13, 13, 14, 16, 17, 18, 20 and 21)
15. On cross examination by Mburu, learned counsel for the 1st defendant, he states that the 1st defendant had two directors but the lease agreement was signed by one director and that there was no resolution to lease the property. The lease does not describe the property as per the register. The lease was to run for 4 years from 1/1/2018 to 1/1/2022. He admitted that there was an error as the lease indicated that the term was 5 years and that there was no company seal. Though it was signed by a lawyer, the certificate was not dated and that the lease was not registered. He admitted to opening another account for the school in the name of Shunem Talanta Girls academy which he controlled. This account was exclusive to him for the running of the school.
 16. On cross –examination by M/s Matasi, he admitted that the good will was to be paid at Ksh 9,000,000 at Ksh 600,000 per term hence it meant it was for 5 years. He added that it was an error.He states that the profit he made was deposited in the school accounts and that the 2nd defendant used to write him cheques.
 17. PW2, Edna Wanda Ochieng a legal assistant relied on her statement dated 20th January 2024 and filed on 31st January 2024.The gist of her evidence is that when Mr Lawrence Karanja took over the management of the school, there was a positive change on the status of the school which previously was horrible as the beds were infested with bedbugs and the diet was poor. The new management introduced extra curriculum activities such as drama. The new management also introduced entertainment facilities.
 18. On cross examination by Mr Mburu for the 1st defendant, she states that they used to complain to the previous administration about bedbugs but no action had been taken. The school was never shut down.
 19. On cross –examination by M/s Matasi she stated that she was a student between 2015 to 2018 which was her dream school. She admitted that there was no evidence that the status was deplorable.
 20. PW3, Morris Lutsinga Obimbo testified that he worked at Shunem Academy from January 2018 to January 2019. Before that he had marketed the school on behalf of the plaintiff in December, 2017. Later in January 2018, the plaintiff took over the school and engaged him as a store keeper and running operations and logistics. According to this witness the school was run down, the walls needed painting. No cctv cameras, poor diet for students, no feeding program for staff, no lighting in the washrooms. The plaintiffs did massive renovations and improvements that caused increased improvement in enrolment of students. Unfortunately, the improvements were all watered down when they were evicted.
 21. On cross examination by Mr Mburu, he states that he has no qualifications of a store keeper but he has done journalism. He had no contract with the school and was not aware of any contract between the school and the plaintiff. He had no evidence that he marketed the school and that the school was in a deplorable state
 22. On cross examination by M/s Matasi, he stated that he could not qualify the developments by the plaintiff because they were violently evicted. That was the close of the plaintiffs case
 23. The 1st defendant called Humphrey Mwaniki Ngibuini as DW1 who introduced himself and relied on his statement dated 15th August, 2022 which was adopted as evidence in chief. He is one of the two directors of the 1st Defendant himself and the 2nd Defendant and that the latter was running the school as Managing Director. A lease was purportedly signed in 2018 which he was not aware of and was not a



- party to as a director. There were no minutes to authorize the lease agreement. The land on which the school is built is in his name and the family home is on the said property which at some point he was denied access to by the Plaintiff. He got orders on 13th September, 2019 reinstating him and directors to the school. That the school auditor Mr. Nderitu was not allowed access to the audit books.
24. According to DW1, the Plaintiff was operating parallel accounts in the name of Shunem Talanta Academy where he was channeling funds from and these funds were not accounted for. That the vehicles he claimed had been detained at the school were released. Mediation failed. A substantial amount of money was used to repair the school. The reputation of the school went down thus affecting the school directly by loss of income due to loss of students. He relies on his counter-claim and seeks the sum of Kshs.31,000,000 as stated therein.
 25. On cross examination by M/s Matasi counsel for the 2nd defendant, he states that in 1996, he established the school as a limited liability company. He went to Tanzania in 2003 and left the school to the 2nd defendant who ran the school until 2018. The school is not in Kiamunyi but in Kiamunyeki. The plaintiff described himself as the director Shunem Girls Academy but the bank account is Shunem Talanta Girls Academy. He was not a signatory to the account. The plaintiff never submitted the bank statements. He did not pay N.S.S.F and N.H.I.F. The application to access the school by the plaintiff was made before September 2018 and that he was given an order on 9th September 2018. The plaintiff was receiving payments in cash and that there were no records of payment.
 26. On cross –examination by Mr Mburu , he states that he was not involved in the running of the school but the 2nd defendant who is his wife was running the school. He learnt of the lease in February 2019. The 2nd defendant signed the lease without the authority of the 1st defendant. The plaintiff was leasing the school on property no Kiamunyeki Plots Nos 15,16 and 17. He states that tge lease agreement was not favorable because the money was to be paid from their resources. The terms of lease were not favorable as the rent was too low and that the plaintiff never paid any money. The plaintiff took over the school on 1/1/2018 and was removed in February 2019.
 27. DW2 James Asuka also relied on his statement dated 28th September, 2024 that was adopted as evidence in chief by this court. The import of the statement was he was the principal at the school Shunem Girls High School from 2008 to 2019. The school had two directors only, Humphrey Mwaniki Ngibuini and Grace Mukami Mwaniki, the 2nd Defendant. That the Plaintiff was not a director at the school and no handing over of the school to him was done. That the Plaintiff fired teachers as he pleased and replaced them with unqualified students from a local university. That there was a drop-in collection of school fees as the Plaintiff started siphoning money to another account, Shunem Talanta Girls and the Plaintiff personally operated this account. That the diversion of funds led to suppliers not being paid, salaries delayed and none remittance of statutory deductions. That the school fell into a deplorable state when the Plaintiff was at the school as renovations and repairs were not done to keep the school in a good state of repair. That when the school uniform changed the payments for the uniform was made personally to the Plaintiff, while before the uniforms were purchased from specific shops chosen by the school's management. That Humphrey Mwaniki Ngibuini paid the sums owed to the suppliers and the statutory dues that were pending.
 28. On cross examination by M/s Matasi, he states that Mr Lawrence Karani the plaintiff came in the school in 2018 as a new person and nobody introduced him to the witness. He did not consult the witness in the running of the school. He employed unqualified teachers and this led to the poor performance of the school. Moreover, he never paid utility bills. There was need to resolve the schools financial problems.



29. On cross examination by Mr Gatonye, he states that the school was initially being managed by Mr and Mrs Mwaniki and not the plaintiff. That when the form one class joined in 2018, the plaintiff was already in the school and that there was an increase in the number of students in form one when Mr Karani was running the school. The 2nd defendant informed him that Mr Karani was to market the school but Mr Karani was running the school as he employed and sacked teachers. When he left the school, there was no posho mill or bakery. The person running the school was Mr Karani.
30. DW3 Joseph Njungu Nderitu adopted his statement dated 15th August, 2022. He is an accountant and the auditor of the school. The import of his testimony was that he was not allowed by the Plaintiff to see the books of the school. That the Plaintiff wrote a cheque that bounced, this was payment to Kenya Power for the sum of Kshs.306,000/= . That the cheque book for the school was with the Plaintiff and that it was cancelled because it ought not to have been in the Plaintiff's hands. That the reason the plaintiff was liable for the statutory dues was because he was the one receiving the letters. The sums were diverted by the plaintiff by using the school's cheque book and diverting school fees to other accounts. Mrs Mwaniki told him that Mr Karanja was a marketer who had prolonged his stay but not a director. Mr Mwaniki was not aware of this arrangement which was entered into while he was away in Tanzania.
31. On cross-examination by M/s Matasi, he states that he called Mrs Mwaniki in 2018 and that she went to his office. He did not know that Mrs Mwaniki was unwell and left the country in 2018 for treatment. He admitted that Mr Karani was in the school by virtue of the lease. He continues to state that Mr Karani was in possession of the cheque book and was running the school account.
32. On cross examination by Mr Gatonye , he states that the expected income in 2018 was 28,000,000 at an average fee of Ksh 60,000 per student per term. He did not have the figure for the expenditure for the year 2018. He states that 2018 was a bad year as the economy was poor and free education elsewhere affected enrolment. Mr Karani was running the school in 2018 because he was in office and had a cheque book. Mrs Mwaniki was not on the ground according to the witness. Mr Mwaniki was in Tanzania and was not aware of what was happening at the school. Mr Karani left the school in February 2019. He saw neither the bakery nor the posho mill.
33. The 2nd Defendant testified as DW4. She did not call any witness or produce any document. She closed her case on 24th March, 2025. The gist of her testimony was that Shunem Academy Ltd was the founder of the school and is the holding company of Shunem Girls High School. She was one of the two directors of Shunem Company Ltd between 2017 and 2019. The other director was DW1 and that their shareholding was 50% each. The company was incorporated in 1996 and that she has been running it since then. The school is registered under the Education Act. The plaintiff approached her to lease the school and since she was feeling unwell and wanted to take a break, she agreed. They engaged a lawyer who prepared the lease agreement that was signed by the plaintiff and the 2nd defendant willingly. The plaintiff was to pay goodwill of Ksh 9,000,000 for five years and a termly rent of Ksh 1,500,000. The plaintiff was to pay Ksh 3,000,000 for the assets. He was to pay Ksh 2,100,000 termly for the goodwill and the rent goodwill having been reduced to 600,000 termly instead of 9,000,000 for five years to be paid at the execution of the agreement. The 2nd defendant testified that she received Ksh 1,000,000 only, from the plaintiff and no other amounts. That at the time of payment, the plaintiff had taken over the accounts and that the 2nd defendant could not access the accounts to deduct the rent of Ksh 1,500,000 and goodwill of Ksh 600,000.
34. On cross examination by Mr Mburu for the 1st defendant, she states that she was the managing director of the school. The other director was DW1, her husband. The deal did not allow the opening of parallel accounts. She agreed that the plaintiff leased the school and purchased the assets for a period of five years. The other director was not informed because their lawyer intimated that it was not necessary.



The property where the school is situated belonged to DW1 who is the husband to the 2nd defendant. She states that the lease had nothing to do with the land. The plaintiff was allowed to utilize the fixtures on the land but not to touch the land. She left the school in the hands of the plaintiff in January 2018 and left the country and has not returned to-date. The plaintiff never paid rent and never paid goodwill which was to be paid at the signing of the lease agreement.

35. On cross examination by Mr Gatonye, learned counsel for the plaintiff, she stated that she ran the school as the only registered manager. The plaintiff was not a marketer of the school but a lessee, paying rent of ksh 1,500,000 and good will of 600,000 per term which he never paid. The plaintiff was to pay for the assets of the school in an outright purchase deal at Ksh 3,000,000 but he paid Ksh 1,000,000 leaving a balance of ksh 2,000,000. The 2nd defendant handed over to the plaintiff all documents of the school, including the mail box. The plaintiff was to collect the school fees and pay the company rent and goodwill and was to keep the profit as his benefit.

Submissions By The Plaintiff

36. According to the plaintiff the issues for analysis and determination, as can be gleaned from the pleadings and evidence adduced, are:-
- a. Whether the Lease dated 30th January 2017 between the Plaintiff and the 1st Defendant is valid and enforceable.
 - b. Whether there was a breach of the Lease and/or illegality, if so, in what manner and by whom?
 - c. Whether the eviction of the Plaintiff was unlawful and/or wrongful. iv. What are the appropriate orders or reliefs to issue?
 - d. Who should bear the costs of the suit and the counterclaim?

On whether the Lease dated 30th January, 2017 between the Plaintiff and the 1st Defendant is valid and enforceable and whether the 2nd defendant had the capacity to enter into the lease agreement, the plaintiff submits that at the time of executing the Lease, the 2nd Defendant was the Managing Director of the 1st Defendant. He cites Section 33 of the *Companies Act*, Cap. 486 of the Laws of Kenya which provides that the validity of an act or omission of a company may not be called into question on the ground of lack of capacity because of a provision in *the constitution* of the company and 34 which provides that, "In favour of a person dealing with a company in good faith, the power of the directors to bind the company, or authorize others to do so, is free of any is limitation contained in the company's constitution."

37. According to the plaintiff, there was no suggestion, let alone evidence, that *the constitution* of the 1st Defendant required a Resolution to be passed to render a director's act valid or that in the absence of such a Resolution, any act done by a director was rendered invalid. The 1st Defendant did not even produce its constitution (Memorandum of Association) in evidence. The Articles of Association produced as D. Exhibit 5 do not contain any provision to that effect neither do they provide that every act by a director must be ratified by the other director. Even if that were the case, the above-stated statutory provisions would come to the Plaintiff's aid.
38. The plaintiff relied on the TurquandRule, to protect the Plaintiff, who acted in good faith, from the 1st Defendant's attempted renunciation of the Lease. The plaintiff submits that in Kenya, the TurquandRule, also known as the doctrine of "Indoor Management", is codified at section 34(2)(b) of the *Companies Act* which provides that:-



- a. [A] person dealing with a company is not bound to enquire as to any limitation on the powers of the directors to bind the company or to authorize others to do so and is presumed to have acted in good faith unless the contrary is proved
39. The plaintiff cites the decision in *Kimani Kabucho Karuga & Co Advocates vs Sundowner Lodge Limited* (2011) eKLR as cited with approval by the Court in *Nagieb Omar Ali & Another vs APA Homes (K) Ltd* (2024) eKLR where it was held that the doctrine of "Indoor Management" operates to protect outsiders against a company's internal operations and arrangements. The rule is to the effect that outsiders who have no notice as to how the company's internal machinery is handled by its officers should not be prejudiced by any irregularities that may beset the indoor working of the company.
40. Counsel for the plaintiff further relied on the decision of the Court of Appeal in *Standard Chartered Bank of Kenya Ltd vs Habiba Mohamed Al-Amin & 9 Others* (2023) eKLR:-
- a. "While persons dealing with a company are assumed to have read the public documents of the company and to have ascertained that the proposed transaction is not inconsistent therewith, they are not required to do more; they need not inquire into the regularity of the internal proceedings-what Lord Hatherley called "the indoor management" and may assume that all is being done regularly. This rule, which is based on the general presumption of law, is eminently practical, for business could not be carried on if a person dealing with the apparent agents of a company was compelled to call for evidence that all internal regulations had been duly observed."

The Court of Appeal went on to quote the following passage:-

This rule was manifestly based on business convenience, for business could not be carried out if everybody who had dealings with a company had meticulously to examine its internal machinery in order to ensure that the officers with whom he dealt with had actual authority. Not only is it convenient, it is also just.

41. The plaintiff submits that the 2nd Defendant's involvement in and execution of the Lease binds the 1st Defendant. The latter cannot wish away the Lease as easily as it desires, or at all and that the lease was of the school but not the land on which it stands. During cross-examination by the Counsel for the 1st Defendant, the 2nd Defendant stated clearly, categorically and in no uncertain terms that the Lease was with respect to the School not the land. The events culminating in execution of the Lease showed that the Plaintiff was engaged with the registered manager of the School and contracted with the owner of the School. No Consent of DW1 was required.
42. On the issue of the subject parcels of land being matrimonial property, the plaintiff relies on section 93 of the [Land Registration Act](#), 2012 which provides that:-

Subject to any written law to the contrary, if a spouse obtains an interest in land during the subsistence of a marriage for the co-ownership and use of both spouses and all spouses, such property shall be deemed to be matrimonial property and shall be dealt with under the [Matrimonial Property Act](#) (Cap. 152).

The plaintiff contends that section 14(a) of the [Matrimonial Property Act](#), Cap. 152 of the Laws of Kenya provides that:-

Where matrimonial property is acquired during marriage...in the name of one spouse, there shall be a rebuttable presumption that the property is held in trust for the other spouse



43. The 1st Defendant, through the acts and declarations of its Managing Director, represented itself as the owner and proprietor of the School, having the requisite authority to lease the same to the Plaintiff. The Plaintiff believed the said representations, and, acting upon them, entered into the Lease dated 30th December, 2017. Believing and acting on the said representations, the Plaintiff was able to lease the School from 1st January, 2018 to 26th February, 2019 before his illegal eviction. Consequently, the 1st Defendant should not be allowed to claim, either through one of its directors, that is DW1, or at all, that it did not have the authority to lease the School to the Plaintiff.
44. The allegation that the Lease did not comply with the execution requirements set out in law where a company is involved were not substantive according to the plaintiff. The plaintiff refers to Section 37(2) of the Companies Act which provides that:-
- a. A document is validly executed by a company if it is signed on behalf of the company-
 - i. by two authorized signatories; or
 - ii. by a director of the company in the presence of a witness who attests the signature.
45. The plaintiff contends that the Lease was signed by a director of the 1st Defendant -a Managing Director for that matter. The signature of the said Managing Director was attested by not just an Advocate but, in the words of DW1, the Company Lawyer. As regards execution of a deed by a company, section 39 of the Companies Act stipulates that a document is validly executed by a company as a deed only if it is executed by the company and delivered as a deed. It proceeds to provide that a document is deemed to be delivered when it is executed. Both the foregoing conditions were sufficiently met in the present case.
46. On whether failure to register the lease as required by law was fatal, the plaintiff submits that the Lease was of the School, not the land on which it stands. There is no requirement in law for a lease of a school business or of any other business for that matter to be registered. Moreover, even assuming the Lease was in respect of the subject parcels of land, which is not the case, it was not for a period of more than 5 years. He refers to Section 61 of the Land Act, 2012 provides that for the avoidance of doubt, a lease of land may be made for a term to begin on a future date, not being later than twenty-one years after the date on which the lease is executed. A future lease, which is expressed to be for a period of more than five years, shall be of no effect unless and until it is, registered.
47. The plaintiff contends further that assuming further that the Lease was in respect of the subject parcels of land and/or that it required to be registered, which, again, is not the case, non-registration thereof would not render it void as it still constitutes an agreement between the Plaintiff and the 1st Defendant. The plaintiff relies on decision of the Court of Appeal in *Mega Garment Ltd vs Mistry Jadva Parbat & Co. (EPZ) Ltd* (2016) eKLR where it was held:-
- “The time-honoured decision of this Court in *Bachelor's Bakery Ltd v Westlands Securities Ltd* (1982) KLR 366 which has been followed in a long line of subsequent decisions elucidates the status of an unregistered lease...that such an agreement is valid inter partes even in the absence of registration, but gives no protection against the rights of third parties.
- “
48. The plaintiff submits that the court should apply the *Contra Proferentem* Rule. In *Dr. Mwangi Ngumo vs Kenya Institute of Management* (2012) eKLR the Court made the following remarks:-
- “The contract itself, it appears was drawn by the Respondent. And if it was not drawn by the Respondent it has not been shown or argued that the Respondent entered into it under duress or coercion. I do agree with the Claimant that any ambiguities in the contract should



be construed against the party who drew the contract and that party is the Respondent. This is what has been referred to as the *contra proferentem* rule and which was applied in the case of *Horne Coupar v Velletta & Co.* 2010 BCSC 483, relied on by the Claimant.”

49. The plaintiff contends that the perceived ambiguity would not invalidate the entire Lease. The question is whether the Lease was for a period of 4 or 5 years, not whether there was a lease at all. The other terms of the Lease, in would still be valid by virtue of the Doctrine of Severability. The following passage of the Learned Judge in *Trans Mara Sugar Co Ltd & another v Ben Kangwaya Ayiamba & another* (2020) eKLR, is quite instructive:-

“The starting point when dealing with the doctrine of severability is the contract itself. If the contract provides a severability clause, then that is the binding position. If the contract is silent then reference may be made to extrinsic evidence on the intention of the parties.”

The position was affirmed by the Court of Appeal in Nairobi Civil Appeal No. 224 of 2017 *Independent Electoral and Boundaries Commission (IEBC) vs. National Super Alliance (NASA) Kenya & 6 Others* (2017) eKLR where a Five-Judge Bench had the following to say:-

“If the contract makes provision for severability, then it is severable; however, if the contract has no provision for severability, a court will determine if the contract is indivisible or severable. Such determination by the court will take into account amongst other things the nature of goods, services or works to be performed.”

50. The plaintiff submits that the court is faced with a Lease that was already partly performed. The only issue is the period of the Lease -whether 4 or 5 years. Both the Plaintiff and the 1st Defendant, through the 2nd Defendant, testified on various other aspects of the Lease taking effect and being discharged, or breached, as from 1st January 2018. Surely, the uncertainty as to the period cannot render the Lease void.
51. On the issue of consideration, the plaintiff submits that the Lease is quite clear on the consideration due to the 1st Defendant. As per Clause (b) and Clause (i) of the Lease, the Plaintiff was to pay rent of KShs 1,500,000/= and goodwill of KShs 600,000/= per term. The allegation that there was no consideration is outrightly baseless. DW1's misconception stems from the misplaced conception that the Plaintiff had leased the land on which the School is built and that the 1st Defendant was involved in income generation from the school business from 1st January, 2018 onwards. The correct position was/is that, effective 1st January, 2018, the Plaintiff leased the school business and was involved in income generation through it. The 1st Defendant had agreed to receive rent and goodwill assessed at KShs 2,100,000/= per term in exchange of leasing the School. In essence, the school fees paid into the two bank accounts on and after the said date belonged to the Plaintiff, not the 1st Defendant. The latter was only entitled to retain the rent and goodwill due. That is why the two accounts were to be closed to enable the Plaintiff open new accounts through which he would receive the income from the school business he had leased.
52. On the allegation that the consideration was inadequate the plaintiff submits that the same was utterly unsubstantiated. There was no suggestion, let alone evidence, of the minimum rent and goodwill that the School should fetch upon being leased out.
53. The plaintiff submits that the defendants interfered with the Plaintiff's quiet possession, divesting him of possession, taking possession and terminating the Lease in a manner not provided. The fact that the Plaintiff's quiet possession of the School was disturbed by the 1st Defendant is not in dispute. The Plaintiff on his part and both DW1 and DW3 on their part, confirmed that the Plaintiff was evicted



from the School on 26th February, 2019. It is also not disputed that upon divesting the Plaintiff of possession, the 1st Defendant took possession of the School. The foregoing uncontested facts alone suffice to show the 1st Defendant's breach of the Lease on the issue of quiet possession.

54. As for the 1st Defendant's illegal acts of eviction, the plaintiff submits that 1st Defendant's eviction of the Plaintiff can still not be excused or justified. The plaintiff refers to section 152E of the Land Act, 2012 which provides that:-

“If, with respect to private land the owner or the person in charge is of the opinion that a person is in occupation of his or her land without consent, the owner or the person in charge may serve on that person a notice, of not less than three months before the date of the intended eviction”.

55. He cites Regulation 65 of the Land Regulations, 2017, which provides that:-

“Upon establishing that a particular parcel of private land is unlawfully occupied, the owner of the land shall issue a notice in Form LA 57 set out in the Third Schedule to the unlawful occupiers to vacate the land.”

56. According to the plaintiff, the above protection and safeguards are accorded to illegal occupants. Having taken possession of the School on the strength of a Lease, the Plaintiff surely deserved more than the foregoing yet was not even accorded the bare minimum. In evicting the Plaintiff in the manner it did, the 1st Defendant through DW1 and other agents, contravened mandatory provisions of the law and in the process perpetrated an illegality. Section 77 of the *Land Act* provides

“A lessee who is evicted from the whole or a part of the leased land or buildings, contrary to the express or implied terms and conditions of a lease, shall be immediately relieved of all obligation to pay any rent or other monies due under the lease or perform any of the covenants and conditions on the part of the lessee expressed or implied in the lease in respect of the land or buildings or part thereof from which the lessee has been so evicted. For purposes of this section, a lessee shall be considered as having been evicted from the whole or part of the leased land or buildings, if on the commencement of the lease, the lessee is unable to obtain possession of the land or buildings or part thereof, as a result of any action or non-action of the lessor or any of the lessor's agents or employees, contrary to the express or implied terms of the lease:

The plaintiff relies on the case of *Quick Lubes E.A. Ltd vs Kenya Railways Corporation* (2012] eKLR, where the Court held as follows:-

“To the Defendant, since the Plaintiff was in breach of the lease, it was entitled to re-enter the demised premises as it did. I do not think so, re-entry does not mean forceable entry. Re-entry must be in accordance with the law. For protected tenancies, re-entry must be through the relevant tribunals whilst for all other tenancies, re-entry must be through a court order directing vacant possession. The actions of the Defendant were deplorable, illegal and unacceptable. This country is under rule of law. If every citizen was to be allowed to enforce his/her perceived rights through self help, we shall be in a state of anarchy which is unacceptable in a democracy such as ours. Rights are and must be enforced through known legal channels but definitely not through self help.”



57. The plaintiff submits that having been evicted from the School in a manner contrary to the terms of the Lease and the law, the Plaintiff's eviction by the 1st Defendant was definitely unlawful. It was also wrongful as there was no valid reason for the said eviction.

58. On the issue of compensation, the Learned Judge in the above-mentioned case stated as follows:-

“I fully agree with that statement and fully apply the same in this case. Accordingly, the Defendant acted illegally in evicting the Plaintiff from the demised premises on 16th May 2009. Of course, there is no wrong without a remedy

As regards general damages for wrongful eviction and loss of goodwill, I have already held that the eviction was illegal. It is no doubt that the Plaintiff suffered loss of opportunity as well as damage. The goodwill in the business went up in smoke. I am satisfied that the Plaintiff is entitled to compensation for the said loss and damage. In the case of *Rev. Simon Ndunqu Munqai & Anor vs Municipal Council of Kiambu (2011) e KLR*, Hon. Musinga J awarded KShs 2 million for unlawful eviction. Considering the circumstances of this case and considering that I have already awarded the Plaintiff loss of profits for three (3) years an award of KShs 2 million will be adequate under this head. “

59. The plaintiff prays for an award of KShs 8 million that would be reasonable recompense as general damages herein. The plaintiff further submits that the instant case is one deserving of an award of exemplary damages. The 1st Defendant's conduct was actuated by malice, the plaintiff prays for a sum of KShs 2 million as exemplary damages.

60. The plaintiff submitted that the 2nd defendant admitted that school business was very profitable but without primary documents he could only rely on secondary documents.

61. On the claim for loss of business, the plaintiff submits that the defendants should not be allowed to benefit from their wrong as the plaintiff was evicted without notice and left the financial records at the school which have not been produced to show the profit the school was making profit. The defendants refused to produce the document despite notice to produce.

62. The plaintiff submits that the damages for loss of business should be calculated at 12,000,000 per year multiplied by four years resulting to Ksh 48,000,000. The plaintiff prays for Ksh 1,000,000 for as general damages for detinue for the detained vehicles. On special damages, the plaintiff submits that he is entitled to an amount of Ksh 9,877,000 being purchase of various items.

Submissions By The 1st Defendant

63. The 1st defendant has identified the following issues for determination namely:-

- a. Whether the Plaintiff was unlawfully and/or wrongfully evicted from the subject premises
- b. Whether the Plaintiff is entitled to the reliefs sought
- c. Whether the 1st Defendant is entitled to the reliefs set out in its Counter Claim
- a. On the first issue, the 1st defendant submits that the purported lease has several issues that render it invalid and unenforceable namely that the description of the properties, the subject matter of the purported lease, is unclear and contradictory in that the title reads 'Kiamunyi Plot Numbers 15, 16 and 17' while later in the document it is described as 'Kiamunyeki Plots Numbers 15, 16 and 17. On the face of the lease the term is 5 years, yet from the contents of the purported lease, it runs from 1st January, 2018 to 1st January, 2022, that is to say, a



period of Four (4) years. From the testimony of both the Plaintiff and Humphrey Mwaniki Ngibuini, Mr. Mwaniki was not at all involved in the leasing of the school to the Plaintiff. As a director of the 1st Defendant and the registered owner of the parcels of land on which the school is operated, that he ought to have been involved in this. He testified that he was not consulted on the issue and therefore did not accord his consent to the purported transaction. This, notwithstanding that the school is on the land under his licence.

64. The 1st defendant cites WAKF Commissioners of Kenya v Farida Almasi Mukira & 2 others [2020] eKLR, Munyao Sila J held as follows:-

“The issue of consent by a lessor, is therefore one that cannot be taken lightly. Any person purchasing an interest in a lease must be very sure, that consent of the lessor has been given, before entering into any disposition over such property.”

65. The 1st defendant argues that the purported lease was not competently executed as required under sections 37, 39 and 40 of the Companies Act. It is clear that the purported lease is signed by only one of the 1st Defendant's directors that is the 2nd Defendant (Grace Mukami Mwaniki). The other director Humphrey Mwaniki Ngibuini was not involved in the transaction at all and was not made aware of the same. Page 10 of the Plaintiff's List of Documents and that the purported Lease does not bear the company seal and is not properly attested. The identity of the person signing on behalf of the lessor is unclear and the certificate that would have afforded clarity is incomplete. It shows the person appearing before the Advocate as 'Shunem Academy Limited', not its director. There is no competent attestation. In short, the lease document is shoddy and cannot be relied upon. Further, at hearing the Plaintiff conceded that there was no resolution from the 1st Defendant with regard to this purported lease. The Companies Act is clear in so far as this is concerned:-

37. (1) A document is executed by a company- Execution of document, (a) by the affixing of its common seal (if any) and witnessed by a director;

66. On the import of Section 37(2b) of the said Act, the 1st defendant submits that a document may be validly executed if it is signed on behalf of the company “by a director of the company in the presence of a witness who attests the signature.” However, the above is grounded on the logical assumption that the director has authority of the company and is acting in the company's best interests. The 2nd Defendant had no authority and possessed no resolution of the company permitting her to engage in the transaction. There is no contention that the 2nd Defendant was charged with the responsibility of the day to day running of the school. It is nevertheless trite that such major matters as a decision to cede physical possession and the running of the 1st Defendant's investment to a third party without the requisite company resolution or authority, is highly irregular, legally void and a breach of her duty as a director.

67. He refers to Section 143(1) of the Companies Act states as follows in relation to the duties of a director states:-

“A director of a company shall act in the way in which the director considers, in good faith, would promote the success of the company for the benefit of its members as a whole”

68. He concludes that the 2nd Defendant acted clandestinely against the company's interests. According to her testimony she did not find it necessary to involve the other director/shareholder. Further as mentioned herein above, there was no competent attestation of the director's signature, necessary to satisfy the provisions of Section 37 (2b). He contends that the purported lease was not registered



as is evident from Page 11 of the Plaintiff's List of Documents. This therefore renders it invalid. Its registration is a requirement under Section 4 of the [Registration of Documents Act](#) where it reads:-

- (i) All documents conferring, or purporting to confer, declare, limit or extinguish any right, title or interest, whether vested or contingent to, in or over immovable property (other than such documents as may be of a testamentary nature) shall be registered.....

In addition, he refers to Section 43 of the Lands Registration Act provides that:

- a. Every instrument effecting a disposition of land under this Act shall be in the form prescribed in relation to that disposition under this Act or any other written law.
- b. No instrument effecting any disposition of an interest in land under this Act shall operate to sell or assign land or create, transfer or otherwise affect any land, lease or charge until it has been registered in accordance with the laws relating to the registration of instruments affecting the land in respect of which the disposition has been made.

69. The 1st defendant further contends that the purported lease was also not properly attested as shown on the same page 11 of the Plaintiff's List of Documents and therefore the Plaintiff claim that he was illegally evicted from the premises is not merited. The 1st defendant contends that the plaintiff entered the said premises through an invalid lease agreement and through deception whose details are set out in the Particulars of Fraud in the 1st Defendant's Defence and Counter-Claim. Despite knowing that there were two directors of the purported lessor, being Shunem Academy Limited, he went ahead and only engaged one director (the 2nd Defendant) and did not seek consent from the other (Humphrey Mwaniki Ngibuini).

70. The 1st defendant submits that he cannot be in breach of a lease which is patently not legally valid and cannot be faulted for mitigating its losses by taking back its school. Indeed the court vindicated the 1st Defendant when it reinstated it to its premises. The 1st defendant contends that the plaintiff's claims are solely based on the alleged unlawful eviction. From the above, it is clear that there was no unlawful eviction. In *Godfrey Julius Ndumba Mbogori & another v Nairobi City County* [2018] eKL R, the Court of Appeal held:-

“Exemplary damages are essentially different from ordinary damages. The object of damages in the usual sense of the term is to compensate. The object of exemplary damages is to punish and deter. We are guided by the case of *Rookes V Barnard* [1964] AC 1129 where Lord Devlin set out the categories of case in which exemplary damages may be awarded which are: i) in cases of oppressive, arbitrary or unconstitutional action by the servants of the government, ii) cases in which the defendant's conduct has been calculated to make a profit for himself which may well exceed the compensation payable to the plaintiff and iii) where exemplary damages are expressly authorized by statute. Lord Devlin also gave expression to 3 considerations which must be borne in mind in any case in which an award of exemplary damages is being claimed. The first category is that the plaintiff himself must be the victim of the punishable behaviour.”

71. According to the 1st defendant, the plaintiff is not entitled to exemplary damages because it is the plaintiff who has benefited from the illegal occupation of the school premises. Not only did the Plaintiff take over the school under unclear circumstances, but he ended up diverting funds from the school for his own benefit and at cross examination he admitted that he used the funds as he pleased. Therefore, in the circumstances the Plaintiff is not entitled to either General or Exemplary



Damages. The 1st Defendant further contends that the Plaintiff is not entitled to a declaration that he was unlawfully or wrongfully evicted from the subject premises.

72. On receipts produced to prove special damages, the 1st defendant argues that these said receipts also bear no ETR or KRA PIN. Not even one receipt has this and in this day and age these are items that are mandatory for business owners. At the hearing the Plaintiff tried to claim that that is the duty of the seller. In this instance, the Plaintiff is asking the court to believe that out of over ten businesses, that the Plaintiff transacted dealt with that none of them observed these requirements that are prescribed by law! That is highly improbable, but if so, then the Plaintiff is clearly dealing with unscrupulous business persons. In addition, all these receipts read the name Lawrence Karani (the Plaintiff) and not the school. With regard to the hiring of vehicles by the Plaintiff, the 1st defendant submits that during cross examination he stated that he did not have any evidence that he did not have use of his motor vehicle from 26th February, 2019 to 9th September, 2019 as alleged in the Plaint. Further he does not show what type of motor vehicle he claims he hired.
73. He submits that special damages must be proved and the Plaintiff has not does this and therefore has not met the threshold for special damages to be awarded. He cites the case of *Kosgei v Mutisya (Civil Appeal 4 of 2023) [2024] KEHC 156 (KLR)* where Wananda,] stated as follows on the issue of summary judgment:-

“On this point, it is trite law that special damages must be both pleaded and proved before they can be awarded. In the case of *Hahn v. Singh*, Civil Appeal No. 42 Of 1983 [1985] KLR 716, the Court of Appeal held as follows: “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.”

74. Ultimately, the 1st defendant submits that the Plaintiff has not proved his case to the required standard and the Defendant prays that the Plaintiff's suit be dismissed with costs. On the other hand, the 1st Defendant submits that it has effectively proved its claim to the required standard and therefore prays that this Honourable Court grants the prayers set out in the 1st Defendant's Counter-Claim as prayed, to include costs and interest.

Submissions By The 2nd Defendant

75. The 2nd defendant submits that there are 3 issues for determination thus:-
- Whether there was breach of the lease Agreement
- a. Whether the Plaintiff has proven his case on a balance of probabilities
 - b. Who should bear the costs of the suit
76. On the first issue, the 2nd Defendant submits that the Lease Agreement dated 30th December 2017 was entered into between the Plaintiff and Shunem Academy Limited, a duly registered limited liability company. The 2nd Defendant executed the agreement strictly in her capacity as a director of the 1st Defendant, and not in her personal capacity. The decision to enjoin her individually in these proceedings, without any attempt to pierce the corporate veil or demonstrate personal liability, is a clear affront to the well-established doctrine of separate legal personality. Such a move is not only legally untenable but also reveals a premeditated intent to maliciously drag the 2nd Defendant into litigation where she bears no direct obligation. It is a misuse of judicial process that ought to be condemned with



- costs. The 2nd Defendant testified that she informed the Plaintiff that the school was owned by the 1st Defendant and that the 1st Defendant had 2 directors who owned 50% shareholding each. The Plaintiff during cross-examination confirmed that he was, as at the time of executing the lease Agreement, that the company had 2 directors.
77. The 2nd defendant further submits that the Plaintiff failed to honour his obligations by paying the rent and goodwill of Kshs. 1.5 M per term as and when it fell due. The Plaintiff continued to benefit from the running of the school and even confirmed that he was making a profit of Kshs. 4,000,000 a term as per the evidence given during examination in chief. That, by the Plaintiff's own admission, the school was generating a profit during his tenure. It is a well-established commercial principle that profit is realized only after all operational expenses, obligations, and statutory outgoings have been settled. The Plaintiff's acknowledgement of profitability therefore implies that the school was not only financially viable but thriving under his management. Despite this, the Plaintiff failed to remit the agreed rent and goodwill payments as and when they fell due under the Lease Agreement. This underscores a deliberate and sustained breach of contractual obligations, all while he continued to reap the financial benefits of the arrangement to the detriment of the Defendants.
78. The 2nd defendant relies on the treatise of the Black's Law Dictionary, 9th Edition, at Page 213, defines a breach of Contract as:
- a. "a violation of a contractual obligation by failing to perform one's own promise, by repudiating it, or by interfering with another party's performance. A breach may be one by non-performance or by repudiation or by both. Every breach gives rise to a claim for damages and may give rise to other remedies. Even if the injured party sustains no pecuniary loss, or is unable to show such loss, with sufficient certainty, he has at least a claim for nominal damages."
79. She submits that the Plaintiff has breached the lease agreement and cannot claim damages when he was the one in breach. Moreover that one of the obligations of the Plaintiff was to ensure that the school grounds and fixtures were in good condition The Plaintiff failed to keep the school premises in good condition and the same deteriorated which led to the number of students to drop as parents removed the students from school despite the Plaintiff. These actions not only violated the lease terms but also caused reputational and operational damage to the 1st Defendant. On further breach of the lease, the 2nd defendant submits that the Plaintiff misrepresented the scope of the Lease by attempting to assume ownership and control of the school, contrary to the clear terms of the agreement. The Plaintiff changed the name of the school without consent, misrepresented himself as a director/owner of the school despite being aware that he was only a lessor, The Plaintiff further attempted to bypass the authority of the registered directors and even changed the school uniform without authority of the 1st Defendant and specifically the 2nd Defendant which were contrary to the Lease Agreement between the parties.
80. On the issue of unlawful and/or wrongfully eviction, the 2nd defendant submits that the 2nd Defendant did not evict the Plaintiff and no evidence has been tabled before this court to demonstrate that the 2nd Defendant in her own personal capacity evicted the Plaintiff.
81. On the general and exemplary damages for eviction and in addition payment of one year's rent and goodwill in lieu of notice, the 2nd defendant submits that the Plaintiff's prayer for a year's rent and good will has been actuated by malice considering that the Plaintiff has not demonstrated that he even paid the said rent and good will for the whole year of 2018 that he made profits from the school especially when he was given a fully functioning school with students.
82. On the claim for General damages for loss of business opportunity and/or investment we submit that the Plaintiff has failed to prove this prayer and neither is he entitled to the same.



83. The 2nd defendant cites the case of Securicor Courier (K) Ltd v Benson David Onyango & another [2008] eKLR, the Court of Appeal quoted in approval the case of Dharamshi vs. Karsan [1974] E.A. 41) and reiterated that general damages are not awardable for breach of contract.
84. On the Special Damages and Detinue Claims, the 2nd Defendant submits that these claims are fatally defective, vague, unsupported by credible documentation, and wholly unsubstantiated. The Plaintiff's assertion of ownership over the motor vehicles in question is particularly untenable, as none of the vehicles are registered in his name.
85. The law on special damages is very clear as was stated in the case of In Hahn V. Singh, Civil Appeal No. 42 Of 1983 [1985] KL 716, the Court of Appeal held that:
- a. "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."
86. The 2nd defendant submits that the Plaintiff has not proven his claim for special damages as highlighted on paragraph 14 (a) of the Further Amended Plaintiff dated 30th November, 2023. In the case of Total Kenya Limited v Janevams Limited [2015] eKLR, the court stated that a party claiming special damages must demonstrate that they actually made payments or suffered the specific injury before compensation will be permitted.
87. According to the 2nd defendant, the receipts tendered by the Plaintiff in support of his alleged expenditures do not correspond with the amounts claimed and, critically, are all issued in the name of the Plaintiff, Lawrence Karani, rather than in the name of Shunem Girls High School. This discrepancy undermines the assertion that the purchases were made for the benefit of the school. Moreover, as the Plaintiff admitted during cross-examination and in the absence of any documentation confirming the termination of the Lanet Teachers College lease, it is evident that he was concurrently operating Lanet Teachers College.
88. With respect to the damages in detinue, the 2nd defendant submits that the Plaintiff has failed to prove damages in detinue as against the 2nd Defendant in her individual capacity. The purported loss of use for the motor vehicles as pleaded under paragraph 18 of the further amended plaintiff have not been proven. The plaintiff relies on the case of Samwel Kariuki Nyangoti v Johaan Distelberger [2017] eKLR where the appellants had claimed loss of user of a matatu, the Court of Appeal stated:
- a. "The damages claimed by the appellants were in the nature of pecuniary loss which the law does not presume to be the direct, natural or probable consequence of the accident since it is subject of ascertainment by court through evidence and the application of the law relating to the measure of damages. In personal injury cases, the loss of business profits and loss of future earning capacity are usually in the nature of general damages. The loss of use of a profit making chattel such as a lorry or matatu through an accident is similarly a claim in general damages. The standard of proof in such claims is on balance of probabilities and the principle of restitution in integrum is applied in such cases."
89. According to the 2nd defendant, the Plaintiff has not proven his case on a balance of probabilities as required by law. The Plaintiff alleged in his examination in chief that as at the time of taking over the running of Shunem Girls High School he was not running Lanet teachers' college and thus there is no explanation as to why he was in possession of the same. The continued inconsistency as whether the Plaintiff was in possession and control of Lanet Teachers College or not goes directly to demonstrate that the receipts have been fabricated and the evidence of the Plaintiff should be taken with a pinch of salt.



90. The 2nd defendant submits further that the Plaintiff has further failed to account for periods when the vehicles may have been inactive, such as weekends, school holidays, or times when they were undergoing maintenance or repairs. The claim also lacks any supporting documentation such as hire agreements, logs, or service schedules to substantiate continuous usage or incurred costs. In the absence of such critical proof, the Plaintiff's prayer is speculative, unfounded, and incapable of sustaining a compensatory award by this Honorable Court. Ultimately, the 2nd defendant submits that it is trite law that costs follow the event. The Plaintiff has failed to prove his case as against the 2nd Defendant. The Plaintiff has wrongly enjoined the 2nd Defendant in her personal capacity. The Lease was a transaction between the Plaintiff and the 1st Defendant, a corporate and separate legal entity. This suit against the 2nd Defendant is therefore misconceived, malicious, and an abuse of the court process and should be dismissed with costs to the 2nd Defendant.

Analysis And Determination

91. The facts of this case can be discerned from the lease dated at Nakuru on the 30th December 2017. The lessor was Shunem Academy Limited whereas the lessee was Lawrence Karani. The leased property was the school in the building standing on plot numbers 15, 16 and 17 delineated and described as a block on a building plan registered in the registry of documents of Nairobi. The term of the lease was five years but from 1st January 2018 to 1st January 2022. The lessor and lessee further agreed that the lessee was to pay Ksh 9,000,000 as good will to the lessor and the lessor agreed receipt of the same upon execution of the lease agreement.
92. The rent of Ksh 1,500,000 and goodwill of 600,000 was payable at the beginning of every term every with effect from 1st 1st January, 2018. The assets of the company were valued at ksh 3,000,000 and Ksh 1,000,000 paid upon execution of the lease. The balance of Ksh 2,000,000 was to be paid at the end of 2019. It was agreed that the lessor was responsible for all pending labour disputes or claims upto 2017. The loose assets as per the inventory did not include the lessors living house.
93. The rentals were to be paid monthly in advance with effect from the 1st day of December 2017 exclusive of water electricity and conservancy charges. The parties to the agreement further agreed that a total of kSh 2.1 million was to be paid on the 15th day of every beginning of the 3 terms of the year.
94. It was further agreed that the school accounts at national bank and standard bank Nakuru branch to be operated by Grace Mwaniki for a period of one term so that she could deduct her 1st instalment of ksh 2,100,000 as Mr Karani plans to open school new accounts. Mr Karani was allowed to reconcile all monthly bank statements from the two accounts which were to remain open for two terms only and be closed.
95. The lessee was permitted to install and erect machinery and to build stores or such other equipment as may be required or its business and to re-arrange and alter the interior of the demised premises from time to time so as to provide more convenient portion shelves and counter accommodation as it may deem necessary or convenient provided that upon the determination of the lease the lessee was bound to remove any such machinery stores ,partitions, shelves and interior alterations and to make good any damage sustained by such removal.
96. Most important, the lessee was to repair and maintain the demised premises and to pay government rent and comply with the conditions in the certificate of title.
97. On the issue of termination of the lease. Parties agreed that the term of the lease was five years terminable with one year's notice. However, the lessee could give a 6 months' notice before the expiration of the lease for a further term of 5 years.



98. The plaintiff took over the running of the school as agreed, and invested in the school but the defendant did not close the school accounts to enable him open new account as agreed. The occupation of the school was not quiet and peaceful and enjoyable as agreed. His net profit was ksh 4,000,000 per term. Unfortunately, he was evicted on 26th January 2019.
99. I have considered the pleadings, evidence on record and do find the following issues ripe for determination:-
- a. –The import of the lease dated 30th December, 2017
 - b. –Whether there was breach of the lease agreement
 - c. –Whether the plaintiff has proved his case on a balance of probabilities.
 - d. –Whether the eviction of the plaintiff was lawful
 - e. –What are the appropriate orders or reliefs
 - f. –Who should bear the costs of the suit
100. On the first issue thus the import of the lease dated 30th December, 2017, this court finds that the same was an agreement between the 2nd defendant and the plaintiff to lease land described as Kiamunyeki plots number 15, 16 and 17 where the school was constructed. The parcel of land was clearly spelt in the agreement. A lease agreement is described as a contract between a landlord and a tenant that states what the tenant will pay monthly for rent and for how long. A lease agreement is a legal document that clearly defines the rights and obligations of all parties involved.
101. The treatise of the Black's Law Dictionary defines a lease as a contract granting exclusive possession of property (like land or tenements) for a set period in exchange for rent or other compensation. This agreement transfers an interest in the property to the lessee (the one receiving the lease), creating a more significant right than a simple rental, and requires specific terms like payment, duration, and conditions to be met.
102. According to Black's Law Dictionary, the tenant is given exclusive possession for a determinate Period. The use of the property is in exchange for rent or another form of payment, such as money, crops, services, or other value. There must be transfer of interest. A lease is more than a simple contract; it transfers a legal interest in the property to the lessee, creating a real right in rem. The person conveying the property is the lessor, and the person receiving it is the lessee. In essence, a lease is a conveyance of property that provides temporary, exclusive use and possession to a lessee in return for a form of compensation.
103. In this case the lease agreement was signed by the 2nd defendant who was not the registered owner of the parcel of land on which the school was built. The lease was a nullity from the start as the 2nd defendant was not the registered owner of the land in dispute as the same was registered in the names of Humphrey Mwaniki. The plaintiff's argument that the lease was in respect of the school but not the land does not hold as the school as an entity though registered under the education Ac Cap----Laws of Kenya was a business of the 1st defendant being operated on the property registered in the names of Humphrey Mwaniki. I do agree with the 1st defendant that the 2nd defendant did not have the capacity to execute the lease without his consent.
104. The 1st defendant did not own the land and therefore could not lease the land as a corporate entity and therefore the only director who could sign the lease agreement was the one in whose name the land was registered. Though the 2nd defendant signed the agreement on behalf of the 1st defendant, the land



was not registered in the company's name and therefore the "Turquand rule" did not apply. Had the land been registered in the 1st defendant's name, the 2nd defendant actions of signing on behalf of the company could have been held as proper. This was held in the case of Gondho Enterprises Limited V Concord Insurance Company Limited [2008] eKLR where Warsame J stated as follows;

"...The internal dealings and requirement of the defendant company cannot be used to the detriment of outsiders who dealt with the company in, good faith. In my view that is the essence and/or import of what is known as the Turquand's rule in commercial practice. The basis of the Turquand's rule is that a party who relied on a document issued by another party cannot be made to forgo his rights simply because the issuing party thinks certain internal management procedures were not followed. In such instance the company would be assumed to have exercised the act in conformity with its constitution and that the powers have been properly and duly exercised. The rule is designed to protect those who are entitled to assume just because they cannot know the internal procedures of a particular company and whether the person who signed, had the authority which he claims to exercise."

105. Assuming the lease was valid, which the court has found that it was not, this court finds that the lease agreement was ambiguous and did not bring out clearly the term of lease. Though it was in black and white that the term of the lease was five years, the parties indicated that the period would run from 1/1/2018 to 1/1/2022 which calculated would lead to 4 years. However, the other conditions of the lease indicated that the term was five years. I have considered the provision for good will of ksh 9,000,000 for the whole term of the lease at Ksh 600,000 per school term and do find that the term of the lease was 5 years calculated at Ksh 600,000 x 3 x 5 = 9,000,000. Otherwise good will could have been Ksh 600,000 x 3 x 4 = 7,200,000. In the lease agreement, good will for the whole term was indicated to be Ksh 9,000,000. Moreover the lease agreement had a renewal period of 5 years and not 4 years, with a notice of 6 months prior to the expiration of the lease term. This court finds that the lease was not registered. However, there was no requirement for its registration because the lease was for a period of five years and not more than five years. Section 61 of the Land Act which is relevant provides as follows:-

Future leases

- (1) For the avoidance of doubt, a lease of land may be made for a term to begin on a future date, not being later than twenty-one years after the date on which the lease is executed. (2) A future lease, which is expressed to be for a period of more than five years, shall be of no effect unless and until it is, registered.

The upshot of the above is that the lease was not required by law to be registered.

106. On whether there was breach of the lease agreement, the court begins with the issue of consideration. The terms on consideration were ambiguous. One provided that the lessee paid ksh 9,000,000 as goodwill at the execution of the lease whereas in the same document it was stated that good will of Ksh 600,000 was to be paid at the beginning of every term. However, both parties did not pursue the assertion that good will was paid at the signing of the agreement. The assets were sold at Ksh 3,000,000 and out of these amount 1,000,000 was paid. The balance of 2,000,000 was to be paid at end year in 2019. There is no evidence that the plaintiff paid rent and the agreed goodwill. It is not clear who was running the school accounts. It cannot be assumed that good will was paid unless it is proved. The plaintiff had a duty under the Evidence Act Cap 80 Laws of Kenya to prove that rent and good will was paid on a balance of probabilities.



107. The Evidence Act is clear enough upon whom the burden of proof lies. Section 107 provides as follows:

“

“1. Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

2. When a person is bound to prove the existence of any facts, it is said that the burden of proof lies on that person.”

Section 109 of the same Act further provides:

“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 law that the proof of that fact lie on any particular person.”

108. In *Karugi & Another v Kabiya & 3 Others* [1987] KLR 347, the court of Appeal held that the burden on a plaintiff to prove his case remains the same throughout the case even though that burden may become easier to discharge where the matter is not validly defended and that the burden of proof is in no way lessened because the case is heard by way of formal proof.

109. The plaintiff did not produce evidence that he attempted to reconcile the monthly bank statements from the two accounts which were to remain open for two terms only. The upshot of the above is that the plaintiff has not proved on a balance of probabilities that good will was paid.

110. On whether the plaintiff was lawfully evicted, this court finds that the plaintiff was given permission by the 2nd defendant who was running the school to enter the land and paid the 2nd defendant ksh 1,000,000 for the assets of the school and therefore the entry was not unlawful as there was consent by the person who was in charge of the land. The remedy by the owner of the land, Mr Humphrey Mwaniki does not lie in Section 152e of the land Act 2012 which provides that if, with respect to private land the owner or the person in charge is of the opinion that a person is in occupation without consent, the owner or the person may serve on that person a notice, of not less than three months before the date of intended eviction. Therefore the argument by the plaintiff that the defendants should have complied with section 152E of the land Act does not apply.

111. The remedy to the owner of the land, Humphrey Mwaniki lay in the court for an order of eviction because the plaintiff had been in occupation of the land for one year with the permission of the 2nd defendant. The plaintiff testified that the defendants violently evicted him from the premises without a court order. I do find that violently evicting the plaintiff who had been in the land for approximately one year though pursuant to an unlawful lease without a court order was unlawful. However, this court finds that the plaintiff is not entitled to compensation for damages arising from an invalid lease.

112. However, the defendants should have allowed the plaintiff, to take away his motor vehicles which were detained from the 26th February 2019 to 25 September 2019. I do award the plaintiff general damages of Ksh 1,000,000 for unlawful eviction without a court order, and for the vehicles detained after eviction, I do award the plaintiff ksh 500,000. On loss of business, opportunity, investment and profit the same cannot be awarded on an invalid lease agreement and is therefore dismissed. On Special damages, having found that the plaintiff was in occupation of the leased property by virtue of an invalid lease agreement, I do find that the plaintiff is not entitled to the same.

113. On the 1st defendant’s counter claim, I do find that the plaintiff was given permission to run the school and the same handed over to him by the 2nd defendant by virtue of an invalid lease and no benefit can



be derived from an invalid lease. The counter claim is dismissed as the 2nd defendant through an invalid lease allowed the plaintiff to run the school. The 1st defendant has not produced the audited account of the school. Ultimately, the plaintiff's suit is allowed only in terms of damages for unlawful eviction and detinue of goods totaling to Ksh1, 500,000. The 1st defendant's counter-claim is dismissed. Each party to bear own costs.

JUDGMENT DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NAKURU THIS 19TH DAY OF SEPTEMBER 2025.

A.O. OMBWAYO

JUDGE

