



**Wema Foundation Trust Company Limited v County Government of Nairobi & another
(Environment & Land Case 356 of 2017) [2024] KEELC 3259 (KLR) (9 April 2024) (Judgment)**

Neutral citation: [2024] KEELC 3259 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 356 OF 2017**

**JA MOGENI, J
APRIL 9, 2024**

BETWEEN

WEMA FOUNDATION TRUST COMPANY LIMITED PLAINTIFF

AND

COUNTY GOVERNMENT OF NAIROBI 1ST DEFENDANT

THE HONOURABLE ATTORNEY GENERAL 2ND DEFENDANT

JUDGMENT

1. By a Plaint dated 30/05/2017, the Plaintiff herein sought for Judgment against the Defendants for the following orders: -
 - a. A permanent injunction restraining the 1st Defendant whether by itself or its servants' agents and/or otherwise howsoever from signing, executing or concluding any agreement or contract with any party, individual and/or company regarding the construction of a market on Land Reference Number 209/20170 (the Suit Property).
 - b. General Damages for breach of contract.
 - c. Costs of this suit.
 - d. Interest on b) and c) above.
 - e. Such other or further relief as this Honourable court may deem just to grant.
2. The suit is opposed. The 2nd Defendant entered appearance and filed a defence dated 2/10/2018. The 1st Defendant entered appearance and filed a defence and counterclaim dated 21/11/2018. The 1st Defendant sought for the following prayers:
 - a. A declaration do issue that the contract purportedly dated 17/08/2011 asserted by the 1st Respondent Wema Foundation Trust Company Ltd, with Nairobi City Council is void and



of no legal effect ab initio, and the Counterclaimant Nairobi City County Government as the successor in title to the Nairobi City Council is not bound by such contract at all.

- b. A declaration do issue that the contract purportedly dated 11/08/2011 asserted by the 1st Respondent Wema Foundation Trust Company Ltd, with Nairobi City Council, being void and of no legal effect ab initio, could not form the basis of any Lease in favor of Wema Foundation Trust Company Ltd over and in respect of L.R. No. 209/20170.
 - c. A declaration do issue that L.R. No. 209/20170 being public land for which a Grant subsists in favor of Nairobi City County Government, the said parcel is not available for alienation to Wema Foundation Trust Company Ltd, and any Lease asserted thereto by Wema Foundation Trust Company Ltd is null and void.
 - d. An order do forthwith issue to the 2nd Respondent to cancel the Lease registered in favor of Wema Foundation Trust Company Ltd over and in respect of L.R. No. 209/ 20170.
 - e. A permanent injunction do issue, to restrain the 1st Respondent by itself, its servants, agents, and/ or otherwise howsoever from entering, remaining upon, trespassing, delivering materials of whatever nature, erecting any structure of whatever nature, charging, leasing, or otherwise howsoever dealing in L.R. No. 209/20170 Nairobi.
 - f. Costs of this suit
 - g. Interest on e) above.
3. Upon pleadings being closed, the suit proceeded by way of viva voce evidence. The Plaintiff called two witnesses who testified on 1/11/2023. The 1st Defendant did not call any witness or produce any documents. The 2nd Defendant called one witness who testified on 19/02/2024.

Plaintiff's case

4. The Plaintiff asserts that it was at all material times the lawful proprietor as lessee of all that piece or parcel of land known as LR No. 209/20170 situated in Nairobi having been contracted by the 1st Defendant's predecessor, the Nairobi City Council to build and operate a market (known as 'Mwariro Market') for a period of 45 years pursuant to a public private partnership agreement dated 17/08/2011. He contended that the Defendants have purported to invite bids for construction of the said Mwariro Market vide an advertisement published in the local dailies on 26/05/2017, despite there being a subsisting agreement between the Plaintiff and the 1st Defendant. The Plaintiff contended that the Defendants' action is unjustified and amounts to breach of contract by the 1st Defendant.

Plaintiff's Evidence

5. PW1 – Abdi Kadir Sheikh Mumin testified that he is the director of the Plaintiff Company. He adopted his witness statement dated 30/05/2017 together with a list of documents dated 30/05/2017 as his evidence in chief. PW1 testified that there is construction on the suit property by the ministry and that the market is fully constructed.
6. During cross-examination, PW1 testified that he is a director and there are two other directors of the plaintiff company. He did not have any documents before the court. He entered into a contract with the 1st defendant. He cannot remember the names of the mayor and town clerk of Nairobi City Council in 2011. At page 16 of the list document there are only signatures and no names. He also did not have any consent documents from the Ministry of local government. He got to know about the Suit property through the newspaper where they advertise for construction. He entered into a contract. They sent the



- agreement in 2011. They never got a consent from Ministry of local government. He did not also have minutes from the City Council which made a resolution to have them be allocated the suit property. The letter at page 28 does confirm the contract between county government of Nairobi and Wema Foundation Trust Ltd yet the company is Wema Foundation Trust Company Limited. The letter at page 25 addressed to the commissioner of land is produced to them but it is not copied to the AG. The same for the letter at page 26 and the one at page 27. Agreement was signed in 2011 and registration was done in 2016 on 23/03/2016 but there was no mayor in Nairobi in the year 2016. They want to construct once they go to position. They got position in 2015. He has no claim against the AG.
7. In re-examination, it was his testimony that in 2011 there was a mayor in office. There is no document filed that contests his directorship. Registration of the lease was in 2016. They City Council delayed the registration. The letter at page 28 refers to the agreement of 17/08/2011 which is the day they signed the contract. Now the letters at pages 25 to 27 are not copied to them but neither are the letters marked as private and confidential. He has no original agreement and he did not have the resolution or CR12.
 8. PW2 – Nicholas Muinde Kimathi testified that he is a registered valuer. He added that he would like the report to be admitted in evidence. It was his testimony that he was instructed orally and the terms of reference was to inspect LR 209/20170 to assess damages. They proceeded to the site and inspected the property. Before going to the site, they obtained a survey map. They relied on architectural drawings and bills of quantities and expected rental income. They never factored in a land value since it was a build, operate and transfer (BOT). For damages, they considered a period of 40 years. They considered the fact that construction would take three years. The approach they adopted was income approach. Valuation workings are at page 12. The other approach used was cost approach which give an estimation of Kshs. 1,223,000,000. They concluded that a compensation amount of Kshs. 2 billion would be sufficient.
 9. During cross examination, it was his testimony that he is not a surveyor but a valuer. He is not the one who drew the architectural designs. He has not attached his documents that support his claim. He relied on survey maps and BQs which however he did not repair. The client gave him oral instructions. They said they had put up a fence, they never showed him a picture. They said they would benefit from the rental income. He understood that the benefits were for both the plaintiff and the city council of Nairobi. He never visited the Mwariro market to inspect the premises. He just did a drive past. He never attached an electronic certificate to the photos. He was instructed orally on 13/10/2023. He has not indicated that he drove past the property.
 10. With that evidence, the Plaintiff closed his case.

Defendants' case.

1st Defendant

11. In summary, the 1st defendant denies all allegations made in the plaintiff's claim. They refute the plaintiff's assertion of being the lawful owner of LR No. 209/20170, arguing that the title granted to the plaintiff is null and void. The 1st defendant claims to hold the original grant for the property, making it unavailable to the plaintiff. They argue that any agreement between them and the plaintiff is illegal from the outset due to irregularities in the acquisition of the lease, including lack of consent from the Minister for Local Government and violation of statutory provisions. The 1st defendant invokes public policy, stating that any transaction tainted by illegality is void, and asserts that the plaintiff has never been in possession of the property or met the terms of the agreement. They also contend that the issues raised should have been subject to arbitration and request the dismissal of the plaintiff's claim with costs.



Counter-claim

12. In a nutshell, the Counterclaimant asserts that the suit property, initially designated for a public market called “Mwariro Market”, was never available for private use by the plaintiff. They argue that the plaintiff’s claim to the property is unfounded, as the property had been alienated to the Counterclaimant, the Nairobi City County Government, for public use. The Counterclaimant states that the purported lease agreement asserted by the plaintiff is invalid due to irregularities in its execution and lack of government consent. Additionally, they contend that the plaintiff did not fulfill the conditions precedent outlined in the agreement, rendering it void. The Counterclaimant asserts that the plaintiff never commenced construction on the property and therefore has no right to claim a lease. They request the court to cancel the purported lease granted to the plaintiff and dismiss the plaintiff’s claim with costs.

Reply to the 1st Defendant’s Defence and Counterclaim

13. The plaintiff denies each and every allegation of fact made and contained in the defence and counterclaim. They aver that no leave has been granted by court to enjoin the 2nd defendant in the counterclaim. The Plaintiff avers that the agreement entered into with the 1st Defendant/Counter Claimant was for the Plaintiff to finance the construction of the market on behalf of the 1st Defendant/Counter Claimant and upon recovering its investment within the time set out in the agreement, return the management of the market to the 1st Defendant/Counter Claimant. Ownership of the market was at all times to remain in the 1st Defendant/Counter Claimant.
14. The Plaintiff avers that it could not commence construction of the market due to the delay by the 1st Defendant/Counterclaimant in handing over the site to the Plaintiff. It is the Plaintiff’s further contention that the 1st Defendant’s Counter-claim does not disclose any or any reasonable cause of action as against the Plaintiff and that the 1st Defendant is therefore not entitled to any of the prayers sought in the Counter-claim. The Plaintiff sought for the 1st Defendant’s Counter-claim be dismissed with costs together with interest thereon at court rates and judgment be entered in favour of the Plaintiff against the Defendants as prayed in the Plaintiff.

1st Defendant’s reply to the Plaintiff’s defence to the 1st Defendant’s counterclaim

15. The 1st Defendant in reply to the Plaintiff’s Defence to the Counterclaim dated 21/11/2018 reiterates the contents of its Defence and Counterclaim as pleaded and states that the Defence to the Counterclaim has no merit, is an abuse of the Court process and frivolous. The 1st Defendant/Counterclaimant avers that the 2nd Defendant (Chief Land Registrar) to the Counterclaim is indeed a necessary party, and the provisions of Rule 10 Order 1 apply to have their involvement to be necessary for the court to ‘effectually and completely adjudicate upon and settle all questions involved in the suit’. Further to the foregoing the Counterclaimant avers that the Plaintiff/Respondent has not demonstrated any prejudice it is likely to suffer by the joinder of the Chief Land Registrar as such necessary party to the Counterclaim. The 1st defendant avers that the Plaintiff has no legitimate, lawful, or valid contract with it for invocation as alleged or at all, by reason of which its Defence to the 1st Defendant’s Counterclaim is a sham. the 1st Defendant/Counterclaimant vehemently denies the allegation that it failed "to hand over the site to the Plaintiff. the Counterclaimant states that the Plaintiff has no Defence to its Counterclaim in respect of the averments pointing to the Plaintiff’s illegal claim to the suit property.
16. The 1st defendant claims that the plaintiffs herein be dismissed with costs to the 1st defendant and the counterclaim herein be allowed with costs and interest to the 1st defendant.



2nd Defendant

17. The 2nd defendant denies each and every allegation set out in the plaint. The 2nd defendant avers that it was not privy to the contract between the Plaintiff and the 1st Defendant herein. They admit that there was an advertisement for bids for construction of Mwariro Market. That it advertised for bids for construction of the market which was accepted and tender awarded to the lowest bidder.
18. The 2nd Defendant further avers that there is a memorandum of understanding duly signed between the Ministry of Transport, Infrastructure, Housing and Urban Development and the County Government of Nairobi for implementation of Nairobi Metropolitan Services Improvement Project (hereinafter referred to as “NaMSIP”). The construction of the Market forms part of the NaMSIP Projects and the 2nd Defendant is stranger to the Public Private Agreement entered into between the Plaintiff and the 1st Defendant for construction of the said market. The 2nd Defendant avers that the Plaint as drawn does not disclose any reasonable cause of action against them. The 2nd Defendant prays that the plaintiff's suit be struck out with costs to the defendants.

Defendants' evidence

19. The 1st Defendant did not call any witness.
20. DW1 – Eng. Benjamin K. Njenga testified that he is the secretary in charge of Urban Development in the State Department of Housing, Ministry of Lands and Physical, Public Works, Housing and Urban Development. He adopted his witness statement dated 9/11/2018 together with a list of documents dated 9/11/2018 as his evidence in chief.
21. In cross-examination, DW1 testified that he saw that at page 2 of the document it talks about a fire station and not about Mwariro market. The MOU is about the fire station. His due diligence entails verification of documents. This was based on documents given to them by the county. They did not conduct their own due diligence. At paragraph 9, if they had known there was a PP, they would not have proceeded. They placed adverts on 1/02/2018 though it was a long time ago. The date of the advert here 26/05/2017 but he needs to confirm. The plaint was filed on 30/05/2017. The plaint was received at the AG on 9/06/2017. This suit was filed within a month of placing the advert on the newspaper. The contractor took over the site on February 2018 and this is because the filing of the suit in June 2017 was not brought to their attention although their department was a party. From the plaint, the State Department of housing has not been sued. The AG however attends such cases on their behalf and so they have to adduce evidence. They did background checks and that is why they positioned Mwariro market at the site. They did not do any due diligence. The 1st defendant never disclosed the existence of a PP.
22. During re-examination, it was his testimony that the ministry is not a party to the PP. After receiving funds from the World Bank, the county council approached them to do the market. The 1st defendant applied to the ministry with the documents mentioned at paragraph 7 of the witness statement. No one stopped the construction and there was no development on the ground.
23. With that evidence, the 2nd Defendants closed their case.

Written submissions

24. At the close of hearing on 19/02/2024, the Court gave directions on filing of written submissions. By the time of writing this Judgment, only the Plaintiff and the 2nd Defendant duly submitted. I have considered them and will refer to them in the resolution of the issues raised. The Plaintiff filed his



submissions dated 15/03/2024 on 19/03/2024 and the 2nd Defendant filed their submissions dated 18/03/2024 on 19/03/2024.

Issues for determination

25. I have considered the pleadings, written submissions, the evidence and the exhibits thereto. The following issues arise as the issues for determination before this Court:
- a. Whether there was a valid lease agreement for LR No. 209/20170 by the 1st Defendant and the Plaintiff.
 - b. Whether the Plaintiff is entitled to prayers sought in the Plaintiff.
 - c. Whether the 1st Defendant is entitled to prayers sought in the counterclaim.
 - d. Who shall bear the costs of the suit and the counterclaim?

Analysis and determination

Whether there was a valid lease agreement for LR No. 209/20170 by the 1st Defendant and the Plaintiff.

26. Before outlining my findings on the above submissions by the parties, it is important to state that the applicable law as to the burden of proof is found in Section 107, 108 and 109 of the *Evidence Act*. The duty of proving averments contained in the plaint lay squarely on the Plaintiff. In *Karugi & Another V. Kabiya & 3 Others* [1987] KLR 347 the Court of Appeal stated 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.... The plaintiff must adduce evidence which, in the absence of rebuttal evidence by the defendant convinces the court that on a balance of probabilities it proves the claim.”

27. It is the Plaintiff's case that he is the register proprietor of the suit property by virtue of a Public Private Partnership lease agreement dated 17/0/2011 between the Plaintiff and the Nairobi City Council for a period of 45 years. The contract was for the construction of the Mwariri Market on LR No. 209/20170, Nairobi. PW1 testified that he got to know about the Suit property through the newspaper where they advertised for construction. He entered into a contract. They sent the agreement in 2011. He admitted that they never got consent from Ministry of local government. He did not also have minutes from the City Council which made a resolution to have them be allocated the suit property.
28. The Plaintiff submitted that the PPPA created a binding commercial relationship between the Plaintiff and the 1st Defendant's predecessor, setting out in very clear terms the obligations of and benefits to each party. They agree that as at the date of the agreement, the operational law was the Local Government Act (now repealed). They submitted that Section 143 (1) of the Local Government Act (now repealed) gave the local authorities powers to enter into contracts that were necessary for the discharge of their functions. Counsel added that the Letters produced by the Plaintiff dated 24/07/2012, 26/07/2012, 13/12/2012, 4/06/2015, 17/11/2015 and 27/07/2016 offer incontrovertible evidence that upon execution of the PPPA dated 17/08/2011, the 1st Defendant's embarked on the process of having the subject agreement registered at the Ministry of Lands office. However, the Plaintiff's failure to commence the construction of Market within the timelines set out



in the PPPA was wholly occasioned by the 1st Defendant’s delay in handing over possession of the site to the Plaintiff.

29. Section 144 (5) of the Local Government Act (now repealed) provided as follows:

“

“(5) A local authority may let, or grant to any person a licence to occupy, any land which it may possess—

- a. with the consent of the Minister for any term;
- b. without the consent of the Minister, unless such consent is required by section 177 or by any other written law, for a term not exceeding seven years, and may, in respect thereof, charge rents, stand premium or fees.”

30. Section 144 (8) of the Local Government Act (now repealed) provided as follows:

“(8) Nothing in this section shall authorize the disposal of land by a local authority, whether by sale, lease or exchange, in breach of any trust, covenant or agreement binding upon the local authority;”

31. Section 177 (2) of the Local Government Act (now repealed) provided as follows:

“(2) Nothing in subsection (1) shall authorize the disposal of land by a local authority, whether by sale, lease or otherwise, in breach of any trust, covenant or agreement binding upon the local authority”

32. Article 61 of *the Constitution* affirms that all land belongs to the people of Kenya collectively, as a nation, as communities, and as individuals. Article 62 of *the Constitution* specifies the manner in which public land vests, as well as the institution responsible for its administration. Article 62(2) of *the Constitution* provides that public land shall vest in and be held by a County Government, in trust for the people resident in the county, and shall in some specified instances be administered on their behalf by the National Land Commission, whilst in other specified instances, shall be vested in and held by the National Government in trust for the people of Kenya, and administered on their behalf by the National Land Commission.

33. Article 62 (4) of *the Constitution* provides that:

“[P]ublic land shall not be disposed of or otherwise used except in terms of an Act of Parliament specifying the nature and terms of that disposal or use.”

34. Section 13 of the Trust *Land Act* provides as follows:

“13. Setting apart by council

1. In pursuance of section 117(1) of *the Constitution*, a council may set apart an area of Trust land vested in it for use and occupation—
 - a. by any public body or authority for public purposes; or



- b. for the purpose of the extraction of minerals or mineral oils; or
 - c. by any person or persons for purposes which in the opinion of the council are likely to benefit the persons ordinarily resident in that area or any other area of Trust land vested in the council, either by reason of the use to which the area set apart is to be put or by reason of the revenue to be derived from rent therefrom.
- (2) The following procedure shall be followed before land is set apart under sub section (1) of this section –
- a. The council shall notify the Chairman of the relative Divisional Board of the proposal to set apart the land, and the Chairman shall fix a day, not less than one and not more than three months from the date of receipt of the notification, when the Board shall meet to consider the proposals, and the chairman shall forthwith inform the council of the day and time of the meeting;
 - b. The council shall bring the proposal to set apart the land to the notice of the people of the area concerned, and shall inform them of the day and time of the meeting of the Divisional Board at which the proposal is to be considered;
 - c. the Divisional Board shall hear and record in writing the representation of all persons concerned who are present at the meeting and shall submit to the council its written recommendation concerning the proposal to set apart land, together with a record of representations made at the meeting;
 - d. The recommendations of the Divisional Board shall be considered by the council and the proposal to set apart the land shall not be taken to have been approved by the council except by a majority of all members of the council'

Provided that where the setting apart is not recommended by the Divisional Board concerned, the resolution shall require to be passed by three quarters of all members of the council”

Provided that where the setting apart is not recommended by the Divisional Board concerned, the resolution shall require to be passed by three-quarters of all the members of the council.

- (3) Where the council approves a proposal to set apart land in accordance with subsection (2)(d) of this section, the council



shall cause a notice of the setting apart to be published in the Gazette.

35. It is alleged that the Plaintiff and the now-defunct Nairobi City Council entered into a 45-year lease agreement for the construction of Mwariro Market on LR No. 209/20170. However, there is no evidence that the Nairobi City Council published a notice in the Kenya Gazette regarding the decision to allocate land for this purpose. Additionally, there is no evidence of approval of the proposal by the Nairobi City Council.
36. Upon careful review of the record, the Court found that the Plaintiff failed to produce any notice issued to the residents of Nairobi to this regard. PW1 admitted multiple times that he did not provide consent by the Minister to the Court. Furthermore, no minutes or council resolution were presented to establish the council's approval of the allocation of the property to the Plaintiff. Without these documents, the lease agreement is deemed void and unenforceable.
37. From both documentary and oral evidence, it is clear that there was no valid lease agreement for the construction of Mwariro Market on LR No. 209/20170 between the Plaintiff and the 1st Defendant. The same cannot be enforced by law.
38. This Court also finds that the impugned lease agreement is tainted with anomalies. The agreement states that "the Council is registered as proprietor of all that piece of land known as Land Reference Number L.R. NO. 209/20170 (209/12319/R) in the City of Nairobi, situated in Kariokor in the Nairobi Area of the said Republic (the "Property")."
39. Upon reviewing the record, it is noted that the 1st Defendant was registered as the proprietor of LR No. 209/20170 on 19/02/2016. A letter of allotment ref. 209163/xiii indicates that the Government allocated the property to the 1st Defendant on 4/01/2012. Subsequently, the 1st Defendant was issued with a grant on 16/01/2014. The allegation is that the Plaintiff entered into a PPPA with the 1st Defendant on 17/08/2011, which was registered on 6/03/2014. It is evident that the 1st Defendant did not have the capacity to enter into an agreement and lease property that it did not own. As it had no interest in the suit property as of 17/08/2011.
40. Even the agreement was deemed valid, the Court notes a significant breach of the conditions outlined in Clause 2.4 of the lease agreement dated 17/08/2021. This clause stipulates as follows:
 - “2. 4 Unless all the Conditions Precedent have been fulfilled or waived by agreement of the Parties in writing by the date stipulated in clause 2.1 above (or such later date or dates as may be agreed in writing between the Parties), the provisions of this Lease Agreement, will never become of any force or effect and the status quo ante will be restored as near as may be possible and neither of the Parties will have any claim against the other in terms hereof or arising from the failure of the Conditions Precedent.”
41. No written agreement confirming the fulfillment or waiver of these conditions was produced before the Court, indicating its non-existence. As a result, the provisions of the Lease Agreement never came into effect, and the status quo ante would have been restored.
42. The Plaintiff alleges that the delay in commencing the construction of the market was due to the 1st Defendant's delay in handing over possession of the site. However, the Plaintiff failed to provide evidence demonstrating that they gave notice to the 1st Defendant and required them to remedy the delay as agreed upon in Clause 3.11 of the agreement. I will say no more.



43. In the end, this Court finds that the plaintiff has not established its claim as required by law and therefore it must fail. Consequently, I hereby dismiss the Plaintiff's suit against both defendants with costs. Noting that the registration of the Plaintiff's lease was due to an illegality, it is my considered view that the same is ripe for cancellation. I shall therefore order that the lease registered in favor of the Plaintiff over and in respect of L.R. No. 209/ 20170 be cancelled forthwith.
44. On the 1st Defendant's counterclaim, the 1st Defendant did not call any witness or produce any documents to support his defence or counterclaim. A counterclaim is a case in its own right, completely different from the plaintiff's case and it will fall or succeed on its own merits. Once again, the applicable law as to the burden of proof is found in Section 107, 108 and 109 of the Evidence Act. The duty of proving averments contained in the counterclaim lay squarely on the 1st Defendant.
45. There is no evidence at all that the 1st Defendant is entitled to orders necessary. The Court cannot grant remedies as prayed in the counterclaim which are not supported by the pleadings. There was also no mention of the counterclaim during trial. It appears the 1st Defendant dropped its claim. The Plaintiff did not also acknowledge the counterclaim in his written submissions. He only mentioned that the 1st defendant filed a statement of defence dated 27/10/2021. I therefore dismiss the 1st defendant's counterclaim with no order as to costs.

Disposal Orders

46. From both documentary and oral evidence, it is clear that there was no valid lease agreement for the construction of Mwariro Market on LR No. 209/20170 between the Plaintiff and the 1st Defendant. The same cannot be enforced by law. This Court finds that the plaintiff has not established its claim as required by law and therefore it must fail. The registration of the Plaintiff's lease was due to an illegality and it is my considered view that the same is ripe for cancellation.
47. On the 1st Defendant's counterclaim, there is no evidence that the 1st Defendant is entitled to orders necessary. The Court cannot grant remedies as prayed in the counterclaim which are not supported by the pleadings.
48. The upshot of the foregoing is that the Plaintiff has failed to prove its case on a balance of probabilities. I therefore dismiss the Plaintiff's suit with costs. The 1st Defendant's counterclaim is also dismissed with no order as to costs. Further order, lease presentation no. 1125 registered on 23/03/2016 in favor of the Plaintiff in respect of L.R. No. 209/ 20170 be and is hereby cancelled forthwith.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 9TH DAY OF APRIL 2024

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MOGENI J

JUDGE

In the virtual presence of:-

Ms. Kerumba for the Plaintiff

Ms. Fatuma for the 2nd Defendant

None appearance for the 1st Defendant

Caroline Sagina: Court Assistant

