



**Macharia v Ayusa & another (Environment & Land Case
882 of 2015) [2024] KEELC 4011 (KLR) (6 May 2024) (Judgment)**

Neutral citation: [2024] KEELC 4011 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 882 OF 2015**

JO MBOYA, J

MAY 6, 2024

BETWEEN

JOHN MWANGI MACHARIA PLAINTIFF

AND

RICHARD ODIEK AYUSA 1ST DEFENDANT

NAIROBI CITY COUNCIL 2ND DEFENDANT

JUDGMENT

1. The Plaintiff filed and commenced the suit vide Plaint dated the 15th September 2015 and in respect of which same [Plaintiff] sought for various reliefs as against the Defendants. Nevertheless, the Plaint under reference was thereafter amended with leave of the court.
2. For coherence, the current suit is anchored and/or premised on the amended Plaint dated the 3rd October 2022; and in respect of which the Plaintiff has sought for the following reliefs, [verbatim]:
 - i. A permanent injunction to restrain the Defendants by themselves, servants and/or assigns from entering on, accessing or in any way interfering with the suit property, namely, plot number A3-270 Kayole, Nairobi.
 - ii. A declaration that the suit property Plot number A3-270 Kayole, Nairobi belongs to the Plaintiff and an order canceling any other title documents, howsoever issued, to the 1st Defendant with regard to the suit property.
 - iii. A permanent injunction be issued to restrain the 2nd Defendant from transferring, changing, issuing to or in any way altering the proprietorship details in its custody and for the suit property plot number A3-270 Kayole, Nairobi from the Plaintiff to the first Defendant or any other person.



- iv. A permanent mandatory injunction to compel the 1st Defendant to remove and demolish any structures, buildings, fixtures or any other offensive installation on the suit property plot number A3-270 Kayole, Nairobi.
 - v. An Eviction order be issued against the 1st Defendant by himself, his servant, his agents and or assigns from the suit property plot number A3-270 Kayole, Nairobi.
 - vi. In the alternative and without prejudice to the foregoing, the 2nd Defendant be ordered to compensate the Plaintiff equivalent to the current market value of the property.
 - vii. General damages.
 - viii. Interests of [vi] and [vii] herein above at court rates.
 - ix. Costs of the suit.
3. Suffice it to point out that upon being served with the original Plaint and summons to enter appearance, the 1st Defendant duly entered appearance and thereafter filed a statement of defense dated the 26th October 2015; and in respect of which, the 1st Defendant denied the averments contained at the foot of the original Plaint. In any event, the 1st Defendant contended that the suit property was duly and lawfully allocated unto him and that furthermore, same [1st Defendant] has since developed the suit property.
 4. On the other hand, the 2nd Defendant entered appearance and filed a statement of defense on the 5th November 2015; and in respect of which same [2nd Defendant] denied the claim by and on behalf of the Plaintiff.
 5. First forward, upon being served with the amended Plaint, the Defendants herein duly filed their respective amended Statement[s] of Defence and in respect of which same [Defendants] reiterated the denial of the claims at the foot of the amended Plaint. For good measure, the Defendants signaled that the Plaintiff shall be invited to strict proof, over and in respect of the averment[s] contained at the foot of the amended Plaint.
 6. Be that as it may, the subject matter ultimately came up for pretrial directions on the 16th September 2021; whereupon the advocates for the respective Parties confirmed that same [Parties] had complied with the pretrial directions, inter-alia filing the List and bundle of documents; as well as the witness statement.
 7. Consequently, the subject matter was confirmed to be ready for hearing.

Evidence By The Parties:

a. Plaintiff's Case:

8. The Plaintiff's case is premised and anchored on the evidence of two [2] witnesses, namely, John Mwangi Macharia and Cecilia Koigo who testified as PW1 and Pw2, respectively.
9. It was the testimony of the witness [PW1] that same is the Plaintiff in respect of the instant matter. Furthermore, the witness averred that by virtue of being the Plaintiff, same [PW1] is conversant with the facts of the instant matter.
10. On the other hand, it was the testimony [Evidence] of the Witness that because same [witness] resides in the United States of America [USA], same executed and donated a power of attorney to and in favor



of his brother, namely, Nahashon Gakuo Macharia. In this regard, the witness averred that it was the said Nahashon Gakuo, who was made [meant] to testify on his behalf.

11. Nevertheless, the witness averred that Nahashon Gakuo Macharia underwent a medical procedure and was thus not able to testify. Consequently and in this regard, the witness averred that same [witness] was therefore obliged to attend court and testify.
12. Additionally, the witness stated that same [witness] was aware that Nahashon Gakuo Macharia had recorded witness statement dated the 26th May 2022 and in this regard, same [witness] sought to adopt and rely on the witness statement under reference.
13. Instructively, the witness statement dated the 26th May 2022 by Nahashon Gakuo Macharia] was thereafter adopted and constituted as the evidence in chief of the witness.
14. Other than the foregoing, the witness adverted to the List and bundle of documents dated the 15th September 2015, containing 7 documents and thereafter sought to adopt and produce same [Documents] before the court as Exhibit[s].
15. Suffice it to point out that the documents at the foot of the List of Document[s] dated 15th September 2015; were thereafter tendered and admitted as Exhibits P1 to P7, respectively.’
16. On the other hand, the witness also alluded to the Supplementary List and bundle of documents dated the 25th May 2022, containing 10 documents and which documents the witness sought to adopt and rely on . Similarly, the documents at the foot of the Supplementary List of the document were thereafter adopted and marked as Exhibit[s] P17 to P18, respectively.
17. It was the further testimony of the witness that same [Witness] also filed another Supplementary List of documents dated the 27th October 2022. Consequently, the Witness also sought to adopt and to produce the Documents at the foot of the said List of Document[s] as further Exhibit[s].
18. There being no objection to the production of the document at the foot of the Further Supplementary List of documents, same [documents] was duly admitted and constituted as exhibit P18.
19. Be that as it may, it is imperative to point out that Exhibit P18, [the Document at the foot of the Further Supplementary Bundle of Documents] and which is a valuation report, had in any event, been produced by consent of the Parties on the 7th June 2023.
20. On the other hand, the witness averred that same has since filed an amended Complaint dated the 3rd October 2022; and thus implored the court to grant the reliefs [remedies] sought thereunder.
21. On cross examination by learned counsel for the 1st Defendant, the witness averred that same bought and/or purchased the suit property from one Charles Ndungu Wambugu, who had hitherto been allocated the suit property by the City council of Nairobi, [now defunct].
22. Furthermore, the witness added that the sale agreement was executed and signed in early 1999.
23. Whilst under further cross examination, the witness averred that at the time when the sale agreement was being executed same [witness] was already in the United State of America. In this regard, the witness stated that the sale agreement was therefore executed by one Samuel Macharia Karungu [now deceased] and whom the witness stated was his father.
24. At any rate, it was the testimony of the witness that the initial agreement was dated the 2nd March 1999. Besides, the witness averred that same made payments to and in favor of the vendor in good faith and that the payments were duly acknowledged.



25. On further cross examination, the witness averred that though payments were made to and in favor of the vendor, the vendor [Charles Ndungu Wambugu] did not give unto him [witness] any title documents at that point in time.
26. Additionally, it was the testimony of the witness that after payments of the purchase price, the vendor, [Charles Ndungu Wambugu], generated a power of attorney to and in his favor, which power of attorney was to facilitate the transfer of the suit property unto the witness.
27. In any event, the witness added that the power of attorney was executed on the 11th November 2009. On the other hand, it was the testimony of the witness that even though he [Witness] concluded/ completed payments of the purchase price in the year 1999, the power of attorney was not executed until the year 2009. However, the witness clarified that the delay in the execution of the power of attorney was because same [witness] was not ready to commence developments on the suit property.
28. On further cross examination, the witness averred that same [witness] is not aware whether the County Government of Nairobi repossessed the suit property on account of rates and/or rents. For good measure, the witness averred that there is no evidence of any such repossession.
29. Conversely, it was the testimony of the witness that same is aware that the suit property has never been repossessed by the City County Government of Nairobi. In this regard, the witness adverted to a letter issued by Nairobi Metropolitan Services, which Letter clarifies that the suit property had not been repossessed.
30. Furthermore, it was the testimony of the witness that same, [witness] bought the suit property. In this respect, the witness clarified that same was not the original allottee of the suit property.
31. Other than the foregoing, it was the testimony of the witness that same issued instructions to a valuer to proceed and value the suit property with a view to ascertaining the value thereof. In any event, the witness averred that pursuant to his instructions, a valuation report was prepared and same [Valuation Report] has been tendered and produced before the court.
32. Whilst under further cross examination, the witness averred that at the time when the suit property was being valued, same [suit property] was already developed with a permanent building. Besides, the witness averred that the permanent building which was standing on the suit property was constructed by the trespasser, namely, the 1st Defendant.
33. It was the further testimony of the witness that towards and in respect of the purchase of the suit property, same entered into various agreements. In this regard, the witness adverted to another agreement dated the 3rd March 1999. Nevertheless, it was the testimony of the witness that same indeed paid to and in favor of the vendor [Charles Ndungu Wambugu] the entire purchase price that was agreed upon.
34. On further cross examination, the witness averred that the sale agreement dated the 3rd March 1999 showed that it was his [witness] late father who was shown as the purchaser. However, the witness clarified that his late Father executed the sale agreement on his behalf.
35. Other than the foregoing, the witness averred that same subsequently issued a power of attorney in respect of the suit property. However, the witness admitted that the power of attorney was not signed by himself.
36. It was the further testimony of the witness that upon purchasing the suit property in 1999, same [witness] made various payments on account of rates and rents to the County Council of Nairobi



- [now defunct] and also to the County Government of Nairobi. Indeed, the witness averred that the rates were paid annually to the 2nd Defendant.
37. It was the further testimony of the witness that whenever same skipped [failed to pay the rates] any year without paying the rates, same [witness] would pay the entire outstanding arrears.
38. On further cross examination, the witness averred that the permanent structure standing on the suit property was constructed the 1st Defendant. However, the witness clarified that the 1st Defendant had no lawful rights and/ or Interest[s] to construct on the suit property.
39. Upon being referred to document at page 33 of the 1st Defendant bundle of documents, the witness identified same to be a beacon certificate dated the 10th February 2004. Furthermore, the witness added that from the face thereof, the beacon certificate was issued by the city council of Nairobi, [now defunct].
40. On the other hand, it was the testimony of the witness that the beacon certificate was signed by the Chief Land Surveyor of city council of Nairobi, [now defunct].
41. Whilst under further cross examination, the witness testified that even though same [witness] used to pay rates and rents to the city council of Nairobi, [now defunct], the receipts, would ordinarily be issued in the name of Charles Ndungu Wambugu. In this regard, the witness clarified that the issuance of the receipt[s] in the name of Charles Ndungu Wambugu was because same [Charles Ndungu Wambugu] was still registered as the Owner thereof.
42. However, the witness averred that the payments towards rents and rates were being made by himself.
43. On the other hand, it was the testimony of the witness that though same [Witness] lodged assorted documents, including a transfer, with a view to procuring the registration of the suit property in his name, same [suit property] has not been transferred and registered in his name. For clarity, the witness averred that same has not obtained the transfer in his name because there is a third party [1st Defendant], who is also claiming ownership of the suit property.
44. On cross examination by learned counsel for the 2nd Defendant, the witness averred that same [Witness] has impleaded particulars of fraud as against the 2nd Defendant. In any event, the witness added that he [Witness] has sued the 2nd Defendant because of double allocation.
45. Whilst under further cross examination, the witness has averred that same [witness] is privy to and knowledgeable of a witness statement filed on behalf of the 2nd Defendant. At any rate, the witness confirmed that the witness statement by and on behalf of the 2nd Defendant has disputed the documents filed by and on behalf of the 1st Defendant.
46. On re-examination, the witness has averred that it was the 2nd Defendant who was obligated to effect the transfer and registration of the suit property unto him. However, the witness added that the suit property has not been transferred to and in his favor because there is someone else laying a claim to same [suit Property].
47. Whilst under re-examination, the witness averred that despite the claim by the 1st Defendant, the suit property lawfully belongs to him [witness].
48. Furthermore, it was the testimony of the witness that same made all the requisite payments in favor of the 2nd Defendant with a view to facilitating the transfer and registration of the suit property unto him [witness] but to date the property has not been registered in his name.



49. At any rate, it was the testimony of the witness that the application for transfer was made in the year 2013, but the transfer has never been effected into his name.
50. Further and in any event, it was the testimony of the witness that the 2nd Defendant has never given unto him [witness] any reason for the failure to effect the transfer.
51. The second witness who testified on behalf of the Plaintiff was one Cecilia Koigu. Same testified as PW2.
52. It was the testimony of the witness [PW2] that same is the Chief officer Lands, with the City County Government of Nairobi. Furthermore, the witness averred that by virtue of her office [portfolio] same [witness] is in-charge of all matters/issues pertaining to title and record[s] affecting landed properties within the city of Nairobi.
53. Arising from the foregoing, the witness averred that same is thus conversant with and knowledgeable of the facts in respect of this matter. Besides, the witness averred that same has since recorded a witness statement dated the 21st September 2023 and which statement same [witness] sought to adopt as her evidence in chief.
54. Instructively, the witness statement dated the 20th September 2023 was thereafter adopted and constituted as the Evidence in chief of the witness.
55. Other than the foregoing, the witness averred that the suit property, which is the subject of dispute belongs to the Plaintiff. Nevertheless, the Witness clarified that the property [Suit Property], has however not been transferred to and in favor of the Plaintiff.
56. On cross examination by learned counsel for the 1st Defendant, the witness averred that same has worked with the city council of Nairobi [now defunct] and currently same [witness] is working for the County Government of Nairobi.
57. On further cross examination, the witness averred that the suit property belongs to the Plaintiff. At any rate, the witness added that the documents by the Plaintiff are the ones which are on record at the City county of Nairobi.
58. On the other hand, it was the testimony of the witness that the suit property was a market plot and by virtue of its description, same [suit plot] cannot be repossessed at all.
59. Whilst under further cross examination, the witness averred that same had [was in possession] of several payment receipt[s] from the Plaintiff herein. Instructively, the witness stated that the receipts issued in favor of the Plaintiff relates to the period between 2004 to 2015.
60. It was the further testimony of the witness that Ground rents are payable on annual basis. However, the witness averred that where the Ground rents have not been paid, the City County Government of Nairobi would advertise the details of the persons in default in the daily newspaper[s].
61. On further cross examination, it was the testimony of the witness that if the disputed plot is [was] not a market sale plot, then same [such plot] would be amenable to repossession. However, the witness clarified that such repossession can only be done on the basis of a resolution and not otherwise.
62. Nevertheless, it was the testimony of the witness that there can no be repossession of a market sale plot like the one beforehand, namely, the Suit Property.
63. Whilst under further cross examination, the witness averred that the suit plot was allocated to and in favor of Charles Ndungu Wambugu. At any rate, the witness added that the said Charles Ndungu



Wambugu, thereafter signed a power of attorney, a copy of which forms part of the record of the City county of Nairobi.

64. On the other hand, it was the testimony of the witness [PW2] that letters of allotment would ordinarily be signed by the Town clerk. However, the witness clarified that there were instances [occasion]s when the Town clerk would delegate his powers to other officers.
65. Additionally and while under further cross examination, the witness averred that the suit property was never allocated to the 1st Defendant. In any event, the witness added that the Plot in question was not available for allocation.
66. Furthermore, it was the testimony[Evidence] of the witness [PW2] that same [witness] has never come across any minute[s] for repossession for the suit plot or at all.
67. Suffice it to point out that the witness herein was not cross examined by learned counsel for the 2nd Defendant.
68. With the foregoing testimony, the Plaintiff's case was duly closed.

b. 1st Defendant's Case:

69. Though the 1st Defendant duly entered appearance, filed statement of defense as well as list and bundle of documents, same [1st Defendant] did not tender any evidence or at all. For coherence, it suffices to point out that the 1st Defendant's case was closed without any evidence, [whether oral or documentary] being tendered or at all.

c. 2nd Defendant's Case:

70. Similarly, though the 2nd Defendant also entered appearance and filed a statement of defense, same neither called any witness nor tendered any documents. For clarity, the 2nd Defendant's case was also closed without any evidence [whether oral or documentary] being tendered.

Parties' Submissions:

a. Plaintiff's Submissions:

71. The Plaintiff filed written submissions dated the 14th December 2023 and in respect of which same has raised, highlighted and amplified five [5] pertinent issues for due consideration by the court.
72. Firstly, learned counsel for the Plaintiff has submitted that the Plaintiff herein has tendered and adduced before the court plausible, cogent and credible evidence before the court that same is lawfully entitled to the suit property. in this regard, learned counsel has contended that the Plaintiff has produced before the court assorted coucemts that same [Plaintiff] bought the suit property from one Charles Ndungu Wambugu who was allocated the suit property by the city council of Nairobi, [now defunct].
73. Furthermore, learned counsel for the Plaintiff has submitted that the claim to and in respect of the suit property has further been supported and corroborated by the evidence of PW2, namely, Cecilia Koigo.
74. In any event, learned counsel for the Plaintiff has further submitted that the totality of the evidence that was tendered by and on behalf of the Plaintiff has neither been challenged nor uncontroverted. For good measure, learned counsel for the Plaintiff has drawn the attention of the court to the fact that neither the 1st and 2nd Defendants called any witness or otherwise.



75. In view of the foregoing, learned counsel for the Plaintiff has therefore invited the court to find and hold that the Plaintiff has duly established and proved his case to the requisite standard.
76. In support of the foregoing submissions, learned counsel for the Plaintiff has cited and relied on inter-alia the case of CMC Aviation Ltd v Cruise Air Ltd [1978]eKLR and Nyota Tissue Products vs Lawrence Lawi Kiboka & 4 Others [2020]eKLR, respectively.
77. Secondly, learned counsel for the Plaintiff has submitted that though the Plaintiff was entitled to the transfer and registration of the suit property, the intended transfer of the suit property to and in favor of the Plaintiff has not been undertaken because of their unlawful and fraudulent intervention by the 1st Defendant.
78. Furthermore, learned counsel for the Plaintiff has submitted that even though the 1st Defendant had propagated and filed assorted documents to claim ownership of the suit property, learned counsel has submitted that the said documents were disputed by the 2nd Defendant.
79. In any event, learned counsel for the Plaintiff has submitted that the 2nd Defendant has since stated and posited that the documents held by the 1st Defendant are forgeries.
80. Based on the foregoing, learned counsel for the Plaintiff has thus submitted that the Plaintiff has demonstrated that same is entitled to the various reliefs alluded to and enumerated at the foot of the amended plaint.
81. Thirdly, learned counsel for the Plaintiff has submitted that owing to the failure to transfer and register the suit property in the name of the Plaintiff and coupled with the trespass thereon by the 1st Defendant, the Plaintiff has suffered loss and damages.
82. Furthermore, learned counsel for the Plaintiff has submitted that the Plaintiff has denied and deprived of possession of the suit property since the year 2015 to date. In this regard, counsel for the Plaintiff has thus contended that the Plaintiff is entitled to recompense.
83. Fourthly, learned counsel for the Plaintiff has submitted that on the basis of the actions and/or omissions by the 1st Defendant, the Plaintiff herein was deprived of the opportunity to undertake the development that same Plaintiff had intended to undertake on the suit property.
84. Based on the foregoing, learned counsel for the Plaintiff has thus implored the court to find and hold that the Plaintiff is entitled to compensation on account of general damages for continuing trespass as well as exemplary damages.
85. As pertains to general damages, learned counsel for the Plaintiff has implored the court to award Kes.4, 000, 000/= only. Besides, learned counsel for the Plaintiff has also submitted for an award of damages on account of continuing trespass. In this regard, learned counsel has quoted the sum of Kes.3, 000, 000/= only.
86. Other than the foregoing, learned counsel for the foregoing has also contended that the Plaintiff is also entitled to compensation on account of loss of use and earning capacity and in this regard, learned counsel for the Plaintiff has implored the court to award the sum of Kes.6, 000, 000/= only.
87. In respect of the foregoing submissions, learned counsel for the Plaintiff has cited and relied on inter-alia the case of Fleetwoods Enterprises Ltd v Kenya Power & Lighting Company Ltd [2015]eKLR; Kenya Power & Lighting Company Ltd v Fleetwood Enterprises Ltd [2017]eKLR; Duncan nderitu Ndegwa v Kenya Power & Lighting Company Ltd & Another [2013]eKLR and Kenya Power &



Lighting Company Ltd v Ringera & 2 Others Civil Appeal No. 247 and 248 of 2020 [2022]eKLR, respectively.

88. Finally, learned counsel for the Plaintiff has submitted that the Plaintiff herein has duly proved and established his case as pertains to the suit property and hence same [suit] ought to be allowed with costs as against both Defendants.

b. 1st Defendant's Submissions

89. The 1st Defendant filed written submissions dated the 7th March 2024 and in respect of which same has raised and highlighted three salient issues for consideration by the court.
90. First and foremost, learned counsel for the 1st Defendant has submitted that the evidence tendered by and on behalf of the Plaintiff is wrought with contradictions and hence same [evidence] is neither credible nor believable.
91. In any event, learned counsel for the 1st Defendant has submitted that the Plaintiff herein was not able to explain the material contradictions attendant to his evidence and furthermore failed to bring forth before the court one, namely, Charles Ndungu Wambugu, who is alleged to have sold the suit property to and in favor of the Plaintiff.
92. Premised on the foregoing, learned counsel for the 1st Defendant has therefore contended that the Plaintiff herein failed to discharge the burden of proof which was cast upon him in accordance with the provisions of Section 107, 108 and 109 of the evidence Act, Chapter 80 Laws of Kenya.
93. Secondly, learned counsel for the 1st Defendant has submitted that one Cecilia Koigo, who testified as PW2, seem to have contradicted the statement of defense filed by the 2nd Defendant, who is her [PW2's] employer.
94. To the extent that the evidence of PW2 contradicts the statement of defense by the 2nd Defendant, learned counsel for the 1st Defendant has therefore implored the court to proceed and expunge the evidence by PW2.
95. Thirdly, learned counsel for the 1st Defendant has submitted that even though the 1st Defendant did not have the opportunity to attend court and to give evidence, it is apparent that the 1st Defendant filed before the court documents which indicate that same [1st Defendant] was duly allocated the suit property. in any event, learned counsel for the 1st Defendant has submitted that the 1st Defendant made various payments to and in favor of the 2nd Defendant, which payments were duly received and acknowledged.
96. In this respect, learned counsel for the 1st Defendant has submitted that the said payments, made by the 1st Defendant, would not have been receipted by the 2nd Defendant, if same were forgeries.
97. Based on the foregoing, learned counsel for the 1st Defendant has therefore submitted that the Plaintiff herein has not established his case on a balance of probalitis. In any event, learned counsel for the 1st Defendant that the evidence of PW2, which the Plaintiff intend to rely upon constitute hot air and thus is of no probative value.
98. In a nutshell, learned counsel for the 1st Defendant has implored the court to find and hold that the suit is devoid of merits and thus same ought to be dismissed with costs to the 1st Defendant.



d. 2nd Defendant's Submissions.

99. The 2nd Defendant filed written submissions dated the 11th September 2023 and in respect of which same has raised, highlighted and canvassed two pertinent issues for consideration by the court.
100. First and foremost, learned counsel for the 2nd Defendant has highlighted the evidence of PW2, [Cecilia Koigo], who is the chief officer – lands, Nairobi City County Government and thereafter counsel for the 2nd Defendant has posited that the suit property lawfully belongs to the Plaintiff herein.
101. Additionally, learned counsel for the 2nd Defendant has submitted that the suit property was hitherto allocated to one Charles Ndungu Wambugu who thereafter sold the suit property to and in favor of the Plaintiff.
102. At any rate, learned counsel for the 2nd Defendant has submitted that the suit property, which was allocated to Charles Ndungu Wambugu was a market sale plot and by virtue of being a market sale plot, same [suit property] was not amenable to repossession or at all.
103. Furthermore, learned counsel for the 2nd Defendant has submitted that though the 1st Defendant lays a claim to and in respect of the suit property, the documents, propagated by and relied upon on behalf of the 1st Defendant are forgeries. In this regard, learned counsel for the 2nd Defendant supported the Plaintiff's claim to and in respect of the suit property.
104. Other than the foregoing, learned counsel for the 2nd Defendant also submitted that even though the 1st Defendant was laid a claim to ownership of the suit property, then same [1st Defendant] has neither demonstrated the root of his [1st Defendant's titled] to the suit property.
105. To this end, learned counsel for the 2nd Defendant has cited and relied upon on inter-alia the holding in the case of Daudi Kiptugen v The Commissioner of Lands [2015]eKLR and Kipsigis Traders v Mwangi Muheria & Another; National Land Commission [2019]eKLR, respectively.
106. Secondly, learned counsel for the 2nd Defendant has submitted that the documents which were relied upon by and on behalf of the 1st Defendant, to lay a claim to ownership of the suit property did not emanate from the 2nd Defendant.
107. Further and in addition, learned counsel for the 2nd Defendant has submitted that the impugned documents which were highlighted by the 1st Defendants were found to be forgeries.
108. Premised on the fact that the documents which were being propagated by the 1st Defendant did not emanate from the 1st Defendant, learned counsel for the 2nd Defendant has invited the court to find and hold that the 2nd Defendant is not culpable in respect of the matter beforehand.
109. On the other hand, learned counsel for the 2nd Defendant has also submitted that the Plaintiff herein has neither established nor proved any fraud as against the 2nd Defendant. In this regard, it has been contended that the 2nd Defendant thus ought to be exempted from liability.
110. As pertains to the submissions, that fraud has not been proved as against the 2nd Defendant, learned counsel for the 2nd Defendant has cited and relied on inter-alia the holding in the case of Benson Wandera Okuku v Israel Wakho [2020]eKLR, John Elias Kirimi v Martin Maina Nderitu & 4 Others [2021]eKLR, Jennifer Nyambura Kamau v Humfrey Nandi [2013]eKLR and Vijay Morjaria v Nansingh Madhusingh Dabar & Another [2000]eKLR, respectively.
111. In a nutshell, learned counsel for the 2nd Defendant has invited the court to find and hold that the Plaintiff herein is entitled to the suit property; but to exempt the 2nd Defendant from liability.



Issues for Determination:

112. Having reviewed the pleadings by the Parties, the evidence [oral and documentary] that was tendered and upon consideration of the written submissions filed on behalf of the Parties, the following issues do crystalize [emerge] and are thus worthy of determination;
- i. Whether the Plaintiff herein has placed before the court cogent and plausible evidence to demonstrate that same is entitled to the suit property.
 - ii. Whether the 1st Defendant has any lawful rights to and in respect of the suit property or otherwise.
 - iii. What reliefs, if any ought to be granted.

Analysis And Determination

Issue Number 1. Whether the Plaintiff herein has placed before the court cogent and plausible evidence to demonstrate that same is entitled to the suit property.

113. The Plaintiff herein has contended that same [Plaintiff] entered into a lawful sale agreement towards the purchase and acquisition of the suit property from one Charles Ndungu Wambugu. In this regard, the Plaintiff tendered and produced assorted documents as testament to the sale/purchase of the suit property from Charles Ndungu Wambugu. [See exhibits P2, 3 and 6 respectively].
114. On the other hand, the Plaintiff also tendered Evidence before the court to show [or demonstrate] the Charles Ndungu Wambu, who was hitherto an employee of City Council of Nairobi, [now defunct] was duly allocated the suit property and thereafter same commenced payments towards and on account of the purchase price vide check-off system.
115. In this respect, the Plaintiff tendered and produced before the court exhibit P5, being the clearance certificate issued by the Assistant Director on behalf of the City Council of Nairobi, [now defunct].
116. Other than the foregoing, the Plaintiff herein, also tendered and produced before the court assorted documents including a letter from Nairobi Metropolitan Services, now defunct dated the 24th May 2022 and in respect of which same [NMS] confirmed that the suit property duly belonged to the Plaintiff herein. [See exhibit P9].
117. Notwithstanding the foregoing, it is also imperative to reiterate that the Plaintiff herein called one, namely, Cecilia Koigo, PW2.
118. According to PW2, who is the Chief officer- Lands, Nairobi city county Government, same [Witness] stated that the suit property was hitherto allocated to one Charles Ndungu Wambugu who thereafter sold the property to the Plaintiff. In any event, PW2 added that the suit property was allocated as a market sale plot and hence same was not amenable to repossession.
119. Furthermore, PW2 averred that the records that are obtaining at the Nairobi city County Government confirmed that the suit property has never been repossessed.
120. To this end, it is imperative to reproduce the salient features of the evidence of PW2 whilst under cross examination by learned counsel for the 1st Defendant.



121. Same testified thus;

“The documents by the Plaintiff are the ones which are in my records, I do confirm that the suit plot belongs to the Plaintiff. The plot is a market sale plot and by virtue of its description, same [plot] cannot be repossessed. I have several payments receipts by the Plaintiff. The Payment receipts relates to the period between 2004 to the year 2015”.

122. Whilst under further cross examination by learned counsel for the 1st Defendant, PW2 stated as hereunder;

“If the plot is not a market sale plot, then a resolution would be made for repossession. However, I wish to add that repossession cannot be done for and in respect of the market sale plot”.

123. Additionally, PW2 also ventured forward and stated thus;

“The property was never allocated to the 1st Defendant. I wish to add that the plot in question was not available for allocation. There have been no minutes for repossession of the suit plots”.

124. From the totality of the evidence tendered by PW2, it is evident and apparent that the suit property was hitherto allocated to Charles Ndungu Wambugu. Consequently, the said Charles Ndungu Wambugu became the lawful and legitimate allottee.

125. To my mind, to the extent that the suit plot had hitherto been allocated to and in favor of Charles Ndungu Wambugu, who even proceeded to and paid all the requisite payments, same [the said plot] ceased to be available for allocation and/or re-allocation to any other Third party, the 1st Defendant not excepted.

126. At any rate, there is no gainsaying that PW2 confirmed and reiterated that neither the City Council of Nairobi, [now defunct] nor the County Government of Nairobi, has ever allocated the suit property to the 1st Defendant. For coherence, evidence was tendered that the document[s] which have been propagated and or relied upon by the 1st Defendant to stake a claim, did not emanate from the 2nd Defendant.

127. Instructively, insofar as the suit property had been duly allocated to and in favor of Charles Ndungu Wambugu, same ceased to be available. In this regard, even if evidence was tendered that the suit property was allocated or re-allocated to the 1st Defendant [which is not the case], such allocation or re-allocation would have been a nullity and thus incapable of conveying any Legal or Equitable Interest[s] to and/ or in favour of the First Defendant herein.

128. To buttress the foregoing position of the law, it suffices to adopt, restate and reiterate the holding of the Court of Appeal in the case of *Benja Properties Ltd v Syedna Bhurhunadin Saheb & Another* [2015]eKLR, where the court stated and held thus;

25. In arriving at our decision, we note that an interest in land cannot be allotted, alienated or transferred when the specific parcel of land allotted is not in existence. Allotment of an interest in land is a transaction in rem attaching to and running with a specific parcel of land. In the instant case, the allotment by the Commissioner of Land to the original allottees did not attach in rem to any land since there was no parcel upon which the allotment could attach. What the 5th respondent, the appellant and the original allottees did was to engage in paper transactions



without a parcel of land upon which any interest in land would attach and vest – it was paper transactions without any parcel of land as its substratum.

129. Additionally, the same Legal position [namely, that once Land is allocated and the allottee complies with the terms thereof, same ceases to be available for re-allocation], was also highlighted by the Court of Appeal in the case of Philemon L Wambia versus Lusitsaa Guitano Mukofu and Another [2019] eKLR].
130. Secondly, to the extent that Charles Ndungu Wambugu was duly allocated the suit property and thereafter proceeded to and complied with and complied to the terms of the allocation, inter-alia payments of the requisite fees; same Charles Ndungu Wambugu, acquired lawful rights and Interes[s] to the suit property which could be disposed of to and in favor of the Plaintiff.
131. In any event, evidence abound that the said Charles ndungu Wambugu entered into a lawful sale agreement with the Plaintiff and thereafter sold the suit property [Interests thereof] to the Plaintiff.
132. Furthermore, the said Charles Ndungu Wambugu also proceeded to and handed over the various documents, including a power of attorney to the Plaintiff, to facilitate the transfer and registration of the suit property into his [Plaintiff's name].
133. Suffice it to point out that PW2 indeed conceded and admitted that the application for transfer of the suit property in favor of the Plaintiff had been duly lodged with the 2nd Defendant. However, PW2 averred that despite the lodgment thereof, the suit property has never been transferred to and in favor of the Plaintiff.
134. Be that as it may, it was the evidence of PW2 that the suit property lawfully belongs to the Plaintiff.
135. For brevity, it suffices to reproduce the pertinent aspect of PW2's evidence in examination in chief.
136. Same stated as hereunder;

“ The property has not been transferred to the Plaintiff. However, the plot [property] belongs to the Plaintiff”.
137. Similarly, whilst under cross examination by learned counsel for the 1st Defendant, PW2 stated as hereunder;

“ The documents by the Plaintiff are the ones which are my record. I do confirm that the suit plots belongs to the Paintiff”.
138. Arising from the foregoing testimony, I have no difficulty in finding and holding that the Plaintiff herein is the lawful and beneficial owner of the suit property.
139. Furthermore, by virtue of being the lawful and beneficial owner of the suit property, no doubt, the Plaintiff is entitled to exclusive occupation, possession and use of the suit property.
140. As concerns the scope and extent of the rights of a lawful owner [Proprietor] to a designated landed property, it suffices to reiterate the holding of the court in the case of Mohansons (Kenya) Limited v Registrar of Titles & 2 others [2017] eKLR.
141. For coherence, the court stated and held as hereunder:

(17) The petitioner as a registered proprietor of the suit property has established a strong prima facie case for the grant of the reliefs for the protection of his property rights sought in the petition. I do not agree that the petition is about ownership of the suit property which should



be determined by a civil suit rather than by petition for protection of property rights. Having perused petition, I do not accept that the petitioner has violated the rule of specificity of pleading constitutional claims as propounded by *Anerita Karimi Nejru v. A.G No. 1 (1979) KLR 154*. The petitioner as registered proprietor asserts his constitutional right to protection of property under Article 40 of *the Constitution*. If he 2nd Respondent contends that the title of the petition is vitiated by fraud, misrepresentation or the certificate of title is illegal, unprocedural or obtained through a corrupt scheme, it is for the said respondent to move the appropriate Court by suitable proceedings in that behalf for such determination. In the absence and prior to any such determination, the petitioner is entitled to protection of his undoubted property rights.

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

“I cannot see how a person could possibly be described as “the absolute and indefeasible owner” of land if he could not cause a trespasser to be evicted.

The Act gives a registered proprietor his title on registration and, unless there is any other person lawfully in possession, such as a tenant, I think that title carries with it legal possession: there is nothing in the Act to say or even suggest that his title is imperfect until he has physical possession.”

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

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

142. In a nutshell, my answer to issue number one is twofold. Firstly, the Plaintiff has tendered and produced before the court plausible evidence to demonstrate his entitlement to the suit property. In any event, it is not lost on the Court that the Evidence by the Plaintiff herein, was not controverted or at all.
143. Secondly, by virtue of being the lawful proprietor of the suit property, the Plaintiff is thus obligated to partake of and benefit from the rights arising from to the suit property.

Issue Number 2. Whether the 1st Defendant has any lawful rights to and in respect of the suit property or otherwise.

144. Other than the Plaintiff, who had laid a claim to and in respect of the suit property, it is also worthy to recall that the 1st Defendant was also contending that the suit property lawfully belongs to him [1st Defendant]. Furthermore, evidence has also been tendered that the 1st Defendant indeed entered upon the suit property on or about the year 2015 and thereafter proceeded to construct a permanent structure [building] thereon.



145. Be that as it may, even though the 1st Defendant had also laid a claim to ownership of the suit property, it is not lost on this court, that the 1st Defendant herein neither tendered nor produced any evidence or at all before the court.
146. For good measure, it is worth recalling that the 1st Defendant did not attend court and hence the averments that were contained at the foot of the statement of defense, remained mere averments [allegations], devoid and bereft of any probative value.
147. To underscore, the legal position that averments at the foot of a pleading, which have not been proven by evidence, are devoid of probative value, it suffices to adopt and reiterate the holding in the case of *Nyota Tissue Products vs Lawrence Lawi Kiboka & 4 Others* [2020]eKLR, where the court stated and held thus;
20. In addition the court has held in *CMC Aviation Ltd. v Cruisair Ltd No. 1* [1978] KLR 103, (per Madan, JA) to the same effect that-
- “The pleadings contain the averments of the three parties concerned. Until they are proved, or disproved, or there is admission of them or any of them by the parties, they are not evidence and no decision could be founded upon them. Proof is the foundation of evidence. as stated in the definition of “evidence” in section 3 of the *Evidence Act*, evidence denotes the means by which an alleged matter of fact, the truth of which is submitted to investigation, is proved or disproved. Averments are matters the truth of which is submitted for investigation. Until their truth has been established or otherwise they remain unproven. Averments in no way satisfy, for example, the following definition of “evidence” in Casell’s English Dictionary, p. 394:
- Anything that makes clear or obvious; ground for knowledge, indication or testimony; that which makes truth evident, or renders evident to the mind that it is truth.
- The pleading in a suit are not normally evidence. They may become evidence if they are expressly or impliedly admitted as then the admission itself is evidence. Evidence is usually given on oath. Averments are not made on oath. Averments depend upon evidence for proof of their contents.”
148. Without belaboring the point, it suffices to point out that the contents of the statement of defense and the documents which were filed by and on behalf of the Plaintiff [but which were never tendered in evidence], are incapable of proving the 1st Defendant’s case.
149. Simply put, the said statement of defense and List and bundle of documents, are devoid of probative value. [See Section 3 of the *Evidence Act*, Chapter 80 Laws of Kenya].
150. Notwithstanding the forgoing, it is also worth recalling that PW2 [Chief Officer-Lands, Nairobi City County] tendered evidence to the effect that the suit property was never allocated to and in favor of the 1st Defendant.
151. Consequently, if the suit property was never allocated to the 1st Defendant by the sole allocating authority, then how would the first Defendant purport to own and/or be entitled to the suit property.
152. Other than the foregoing, even though the 1st Defendant had also purported that the suit property was repossessed [which allegation was never proved], evidence abound that the suit property was never



repossessed. For ease of reference, the evidence of PW2 [chief officer- lands]; city county government of Nairobi, clarified that the suit property was never repossessed.

153. Barring repetition, it suffices to reproduce, the pertinent aspect of PW2's evidence whilst cross examination by learned counsel for the Plaintiff.

154. Same stated as hereunder;

“If the plot is not a market sale plot, then a resolution would be made for repossession. I wish to add that repossession cannot be done for and in respect of the market sale plot. There have been no minutes for repossession of the suit plot”.

155. In my humble view, the evidence on record is succinct and spot on. In short, the 1st Defendant was neither allocated the suit plot nor does same [1st Defendant] have any lawful rights thereto. Furthermore, the Document[s] which the First Defendant was propagating were declared to be fraudulent by PW2 [Thief Officer-Lands, Nairobi City County].

156. Arising from the foregoing, it is the finding and holding of this Court that the First Defendant's claim to and in respect of the suit Property are made in vacuum. At any rate, the Document[s] which were being relied upon by the said Defendant were not proven.

157. Owing to the foregoing, there is no gainsaying that the 1st Defendant is thus a trespasser to and in respect of the suit property and in this regard, same has no right to remain in occupation and or possession of the suit property.

158. To this end, I beg to adopt and endorse the ratio decidendi in the case of Waas Enterprises Ltd v City Council of Nairobi & Another (2014)eKLR, where the Honourable court stated and observed as hereunder;

As a registered proprietor, the plaintiff is entitled to enjoy all proprietary rights to the exclusion of all others. This includes the right to exclusive possession of the suit land.

The court further stated as follows;

It therefore follows from the above that only the plaintiff is entitled to enjoy proprietary rights over the suit land. The 2nd defendant had no right to the suit land. She must therefore vacate the suit land and hand over possession to the plaintiff.”

Issue Number 3. What reliefs if any, ought to be granted.

159. Whilst discussing issue number one [1] herein before, the court has found and held that the Plaintiff herein has placed before the court cogent and plausible evidence to vindicate his [Plaintiff's] entitlement to the suit property.

160. To the extent that the Plaintiff has ably demonstrated his entitlement to the suit property, it thus suffices to state and hold that the Plaintiff therefore has all the right[s] to enter upon and take possession of the suit property.

161. On the other hand, insofar as the 2nd Defendant has conceded and acknowledged that the Plaintiff is entitled to the suit property and in any event, had submitted the requisite application for transfer, which was pending registration, it is incumbent upon the 2nd Defendant to facilitate the registration and ultimate issuance of the requisite title to the Plaintiff.



162. Other than the foregoing, it is also imperative to point out that insofar as the 1st Defendant was neither allocated the suit property, same [1st Defendant] therefore has no rights to and in respect of the suit property.
163. Consequently and in the premises, it suffices to state and hold that the documents, if any, that are held by the 1st Defendant over and in respect of the suit property are illegal, unlawful and thus invalid.
164. Arising from the foregoing, it suffices to state that the 2nd Defendant should take appropriate and necessary actions [steps] to cancel and/or remove the impugned documents from her [2nd Defendant's records].
165. Additionally, insofar as the Plaintiff is the lawful and beneficial owner of the suit property, but same has been deprived of occupation and possession; same [Plaintiff] is thus entitled to recover recompense on account of deprivation.
166. To this end, I hold the view that the Plaintiff is therefore entitled to an award of General damages for trespass as against the 1st Defendant, who is only person who entered upon and remained in occupation of the suit property.
167. To the contrary, no award for General damages for trespass can issue and/or be granted as against the 2nd Defendant. Quiet clearly, the 2nd Defendant has not trespassed onto the suit property. [See Section 3 of the *Trespass Act*, Chapter 294 Laws of Kenya].
168. As pertains to quantum awardable to and in favor of the Plaintiff, I opine that the sum of Kes.5, 000, 000/- only will suffice. Notably, I have arrived at the said figure taking into account the size of the suit property, the location thereof; the duration of trespass[illegal occupation and use thereof], as well as the fact that the trespass was informed by the desire on the part of the First Defendant to accrue unjust enrichment.
169. Finally, it is imperative to underscore that while arriving at the aforesaid quantum, I have taken cognizance of the ratio decidendi in the case of *Kenya Power & Lighting Company Ltd v Ringera & 2 others (Civil Appeal E247 & E248 of 2020* (Consolidated)) [2022] KECA 104 (KLR) (4 February 2022) (Judgment), where the court of appeal distilled the parameters to be taken in account before arriving at an award in the following manner;

38.The principles both parties have relied upon in their invitation for the Court to decide either way are those enunciated by the predecessor of this Court and either crystallized or restated by this Court which we find prudent to distill and replicate as hereunder:

- i) Harlburys Laws of England 4th Edition Vol. 45 at para 26 pg 1503, namely, the owner of the land is entitled to nominal damages where there is no actual damage occasioned to the owner by the trespass, such amounts as will compensate the owner for loss of use resulting from the damage caused by the trespass, reasonable damages are payable where the trespasser has made use of the owner's land, exemplary damages are payable where the trespassers conduct towards the owner is not only oppressive but also cynical and carried out in deliberate disregard of the right of the owner of the land with the object of making a gain by his/her unlawful conduct, general damages may be increased where the trespass is accompanied by aggravating circumstances to the detriment of the owner of the land.
- ii) Duncan Nderitu Ndegwa v Kenya Pipeline Company limited & Another [2013] eKLR - damages payable for trespass are the amount of diminution in value or the loss of reinstatement



of the land with the overriding principle being to put the claimant in the position he was in prior to the infliction of harm.

- iii) Philip Ayaya Aluchio v Crispinus Ngayo [2014] eKLR, - the measure of damages for trespass is the difference in the value of the plaintiffs' property immediately before and immediately after the trespass or the cost of restoration whichever is less.
- iv) Ephantus Mwangi & Another vs. Duncan Mwangi [1981 – 1988] I KAR 278, - an appellate court is not bound to accept and act on the trial court's findings of fact if it appears clearly that the trial court failed to take account of particular circumstances or probabilities material to an estimate of evidence. b) a Court of Appeal will not normally interfere with a finding of fact by the trial court, unless it is based on no evidence or on a misapprehension of the evidence or the Judge is shown demonstrably to have acted on wrong principles in reaching the findings he did.
- v) Kiambu Dairy, Farmers Co-operative Society Limited vs. Rhoda Njeri & 30 Others [2018] eKLR, - the extend of an award of compensatory damages lies in the discretion of the trial court and interference therewith on appeal must be approached with a measure of circumspection and well settled principles.
- vi) Kemfro Africa Limited v Lubia & Another [No. 2] [1987] KLR 30 as approved in Peter M. Kariuki v Attorney General [2014] eKLR, - before interference with the quantum of damages awarded by a trial court the appellate court must be satisfied that either the judge in assessing the damages took into account an irrelevant factor, or left out of account a relevant one or short of the above, the award is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damages payable.
- vii) Johnson Evans Gicheru vs. Andrew Martin & Another [2005] eKLR, - this Court on appeal will be disinclined to disturb the finding of the trial Judge as to the amount of damages awarded by the trial court merely because if it had tried the case itself in the first instance, it would have awarded either a higher or lesser sum (b) justification for reversing a trial Judge on an award of damages only applies where the court is convinced either that the Judge acted upon some wrong principle of law or that the amount awarded was so extremely high or so very low as to make it an entirely erroneous estimate of the damage to which the aggrieved party is entitled.
- viii) Sumaria & Another v Allied Industries Limited [2007] 2 KLR I, - an appellate court should be slow in moving to interfere with a finding of fact by a trial court unless it was based on no evidence or based on a misapprehension of the evidence or that the Judge had been seen demonstrably to have acted on a wrong principle in reaching the finding he/she did.
- ix) Butt v Khan [1981] KLR 349, - an appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate.
- x) it must be shown that the Judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived at a figure which was either inordinately high or low.
- vii. Total (Kenya) Limited formerly Caltex Oil (Kenya) Limited v Janevans Limited [2015] eKLR, - whether the claim is in contract or tort, the only damages to which an aggrieved party is entitled to is the pecuniary loss;(b) the accruing awardable damages is aimed at putting the aggrieved party into as good a position as if there had been no such breach or interference. In other words, in the position it/he/she was in with regard to the object trespassed upon before the onset of such a trespass;(c) it is meant to cushion the aggrieved party against the expenses caused as a result of the trespass and loss of benefit over the period of the duration of the trespass.



Final Disposition:

170. Having analyzed and evaluated the thematic issues that were enumerated in the body of the Judgment, it must have become evident and apparent that the Plaintiff herein has duly proved and established his entitlement to and in respect of the suit property. [See the provisions of section 107,108 and 109of the Evidence Act, Chapter 80, Laws of Kenya].
171. Consequently and in the premises, I find and hold that the Plaintiff's claim is meritorious.
172. In this regard, I proceed to and do hereby enter Judgment in favor of the Plaintiff in the following terms;
- i. A declaration be and is hereby issued that the suit plot A3-270 Kayole, Nairobi belongs to and is the property of the Plaintiff.
 - ii. A declaration be and is hereby issued to the effect that the documents, if any pertaining to the suit property namely, bearing the name of the 1st Defendant are illegal, unlawful and invalid.
 - iii. Consequent to clause [ii] hereof, such documents if any bearing the name of the 1st Defendant and as pertains to the suit property, namely be and are hereby canceled, revoked and/or nullified.
 - iv. The 2nd Defendant be and is hereby ordered and/or directed to proceed and effect the registration of the suit plot, namely A3-270 Kayole, Nairobi, to and in favor of the Plaintiff, taking into account that the application for transfer and the requisite payments had been duly lodged with the 2nd Defendant.
 - v. For coherence, the transfer and registration of the suit property in favor of the Plaintiff and in compliance with clause [iv] herein above, shall be effected within 60 days hereof.
 - vi. The 1st Defendant be and is hereby ordered and directed to vacate and grant vacant possession of the suit property, namely A3-270 Kayole, Nairobi, within 120 days from the date hereof.
 - vii. That in default by the 1st Defendant to vacate and hand over vacant possession of the suit plot namely A3-270 Kayole, Nairobi, within 120 days, the Plaintiff shall be at liberty to levy eviction and demolition and in this regard, the requisite eviction and demolition order shall issue without further reference to the court.
 - viii. Furthermore, in the event that the eviction and demolition is undertaken by the Plaintiff, the costs [expenses] attendant to same shall be certified by the deputy registrar and thereafter shall be recoverable from the 1st Defendant.
 - ix. An order of permanent injunction be and is hereby issued to restrain the 1st Defendant either by himself, agents, employees and/or anyone claiming under him from re-entering, remaining on and in any other manner whatsoever dealing with the suit property contrary to the rights and interests of the Plaintiff.
 - x. General damages be and are hereby awarded in the sum of Kes.5, 000, 000/= Only, as against the 1st Defendant and same shall accrue interests at court rates [14% per annum] from the date hereof.
 - xi. Costs of the suit shall be borne by the Defendants jointly and/or severally.
 - xii. Any other relief [remedy] not expressly granted is hereby declined.



173. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 6TH DAY OF MAY 2024.

OGUTTU MBOYA,

JUDGE.

In the Presence of;

Benson - Court Assistant.

Mr. Kitulu for the Plaintiff

Mr. Osoro for the 1st Defendant

Ms. Clare Nyakundi for the 2nd Defendant/Respondent.

