Munyu (Shauri Moyo Estate Block No 114) & 12 others (All above Suing as the Head Tenants for Houses/Shops Detailed Above) v Nairobi City County & 3 others (Environment & Land Case E376 of 2021) [2024] KEELC 13514 (KLR) (2 December 2024) (Judgment)

Neutral citation: [2024] KEELC 13514 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ENVIRONMENT & LAND CASE E376 OF 2021

JO MBOYA, J

DECEMBER 2, 2024

BETWEEN

MOHAMED SULEIMAN MUNYU (SHAURI MOYO ESTATE BLOCK NO 114) ..... 1ST PLAINTIFF

RAMADHANI RAJAB RITHO (ADMINISTRATOR OF THE ESTATE OF NAOMI WANGUI RAJAB BLOCK NO 102 SHAURI MOYO) ..... 2ND PLAINTIFF

FAUZIA MUTHONI WANJIKU (ADMINISTRATOR OF THE ESTATE OF NAOMI WANGUI BLOCK NO 89 SHAURI MOYO) ..... 3RD PLAINTIFF

MICHAEL CHARO (ADMINISTRATOR OF THE ESTATE OF NJERI THANDE BLOCK NO 63 SHAURI MOYO) ..... 4TH PLAINTIFF

MARGARET WANGARI GITHINJI (ADMINISTRATOR OF THE ESTATE OF MARGARET WANGARI BLOCK NO 144 SHAURI MOYO) ..... 5TH PLAINTIFF

ABUBAKAR HASSAN KIMINDA (ADMINISTRATOR OF THE ESTATE OF BINTI BAKARI BLOCK NO 138 SHAURI MOYO) ..... 6TH PLAINTIFF

SULEIMAN K. JUMA (DONEE OF POWER OF ATTORNEY FOR BLOCK NO 151) ..... 7TH PLAINTIFF

MICHAEL KIMANGA AKOKO OUYA (DONEE OF POWER OF ATTORNEY FOR BLOCK NO 154) ..... 8TH PLAINTIFF

ESTHER WANJIKU (BLOCK NO 18 SHAURI MOYO) ..... 9TH PLAINTIFF

CHARLES NJOGU LOFTY (BLOCK NO 119 SHAURI MOYO) . 10TH PLAINTIFF

MOHAMED HAJI (SHOP NO 3 SHAURI MOYO) ..... 11TH PLAINTIFF

RONALD AURA (BLOCK NO 90 SHAURI MOYO) ..... 12TH PLAINTIFF

MARGARET ACHOLA (BLOCK NO 6 SHAURI MOYO) ..... 13TH PLAINTIFF

ALL ABOVE SUING AS THE HEAD TENANTS FOR HOUSES/SHOPS DETAILED ABOVE

AND

NAIROBI CITY COUNTY ..... 1ST DEFENDANT

THE CHIEF LAND REGISTRAR ..... 2ND DEFENDANT

NATIONAL LAND COMMISION ..... 3RD DEFENDANT

THE HON ATTORNEY GENERAL ..... 4TH DEFENDANT

JUDGMENT

1. The Plaintiffs herein commenced the instant suit vide Plaint dated the 29th October 2021. Subsequently, the original Plaint was amended on the 21st June 2022. Nevertheless, the amended Plaint was further amended resting with the further amended Plaint dated the 29th November 2022 and in respect of which the Plaintiffs have sought for the following reliefs[verbatim]:

    i. A declaration that the conduct of the Defendants is a breach/denial/violation of the Plaintiff/ Head Tenant's fundamental rights: to a clean and healthy environment;/ fair administrative action;/ economic and social;/ security;/property;/equality and discriminatory;/ human dignity

    ii. A declaration that the conduct of the Defendants is contrary to national values and principles of governance

    iii. The Defendants do issue individual titles to the Plaintiff Head Tenants within a period of 6 months

    iv. The Defendants do evict the inhabitants/trespassers of and demolish the illegal/irregularly built structures on the suit properties

    v. Special, General, punitive and exemplary damages

    vi. The Plaintiffs be granted leave to prosecute on contempt court orders; and the

    vii. Any other relief and/or order this Honourable court may deem fit and just to grant.

    viii. Costs of this suit and interest on the above.

2. Upon being served with the original Plaint, the 1st Defendant herein duly entered appearance and thereafter filed a statement of defence. Furthermore, the statement of defence was subsequently amended and thereafter re-amended. Notably, the 1st Defendant denied the claims mounted by and on behalf of the Plaintiffs.

3. In addition, the 1st Defendant contended that the Plaintiffs' suit was not only statute barred, but same was similarly prohibited by the doctrine of res-judicata. In this regard, the 1st Defendant invited the court to find and hold that the Plaintiffs case does not disclose any reasonable cause of action or at all.

4. On the other hand, the 2nd and 4th Defendants also entered appearance and filed a statement of defence. Instructively, the 2nd and 4th Defendants contended that same [2nd and 4th Defendants] have been mis-joined in the suit. In any event, the 2nd and 4th Defendants contended that same [2nd Defendant] can

only undertake the process of registration of leases once same [leases] have been generated by the 1st Defendant and not otherwise.

5. The 3rd Defendant did neither entered appearance nor filed a statement of defence. Furthermore, the 3rd Defendant also did not participate in the proceedings.

6. Be that as it may, upon being served with the various statement[s] of defence filed on behalf of the 1st, 2nd and 4th Defendants, the Plaintiffs herein proceeded to and filed a Reply to the statement of defence by the 1st Defendant; as well as a Reply to the statement of defence filed on behalf of the 2nd and 4th Defendants, respectively.

7. Upon the close of pleadings, the subject matter came up for case conference on the 5th July 2023, whereupon the advocates for the respective parties duly confirmed that same had filed and exchanged the requisite pleadings; list and bundle of documents and witness statements. In addition, the advocates for the parties also confirmed that the matter was ready for hearing.

Evidence By The Parties:

Plaintiffs' Case:

8. The Plaintiffs' case is anchored on the evidence of three [3] witnesses, namely, Michael Kimanga Akoko Ouya, Suleiman Juma and Martin Cheboror. Same testified as PW1, PW2 and PW3, respectively.

9. It was the evidence of the witness [PW1] that same is a retired civil servant. Furthermore, the witness averred that same is also a member of Shauri Moyo Ex-Pangani Residents Association. In this regard, the witness averred that by virtue of being a member of Shauri Moyo Ex-Pangani Residents Association, same [PW1] is therefore conversant with the facts of the instant matter.

10. Additionally, the witness averred that same has since recorded a witness statement dated the 13th March 2023. To this end, the witness sought to adopt and rely on the witness statement under reference. Suffice it to state that the witness statement dated the 13th March 2023 was thereafter adopted and constituted as the evidence in chief of the witness.

11. On the other hand, the witness adverted to the list and bundle of documents dated the 29th October 2021. Thereafter the witness sought to adopt and produce the various documents at the foot of the list dated the 20th October 2021. Nevertheless, an objection was taken to the production of various documents culminating into the delivery of a ruling whereupon documents number[s] 11 and 14 were marked for identification. However, the rest of the documents were produced as exhibits P1 to P10; P13, P15 and P16, respectively.

12. Furthermore, the witness also adverted to the list and bundle of documents dated the 13th March 2023 and thereafter sought to tender and produce the various documents as exhibits before the court. Suffice it to state that an objection was taken to the production of various documents culminating into the delivery of a ruling whereupon documents numbers P22 and P23 were marked as PMFI 38 and 39, respectively.

13. Other than the foregoing, the rest of the documents were duly admitted as exhibits on behalf of the Plaintiff. For coherence, documents numbers 1 to 21 were duly admitted as exhibit[s] P17 to P37 whereas documents numbers 24 and 25 were admitted as exhibits P40 and P41, respectively.

14. The witness further adverted to the further list and bundle of documents dated the 17th November 2023. Thereafter the witness sought to tender and produce the various documents at the foot of the list and Bundle of documents under reference.

15. Be that as it may, an objection was taken to the production of various documents culminating into the rendition of a ruling. Suffice it to underscore that documents number[s] 4 and 11 were thereafter marked for identification as PMFI 45 and 52, respectively. Additionally, the rest of the documents were admitted and marked as exhibits Pl42 to P44; P46 to P51 and P53 to P62, respectively.

16. Other than the foregoing, the witness adverted to the further amended Plaint dated the 29th December 2022; and thereafter sought to adopt the contents thereof. In addition, the witness also referenced the verifying affidavit sworn together with two [2] sets of authorities to plead filed on behalf of the rest of the Plaintiffs.

17. In particular, the witness intimated to the court that the Plaintiff[s] herein are members of Shauri Moyo Ex-Pangani Residents Association and that the 1st Defendant had hitherto covenanted to sub-divide the suit property and to issue individual titles to the Plaintiff[s].

18. Nevertheless, the witness averred that the 1st Defendant failed to undertake the sub-divisions and issue the said individual title[s].

19. Arising from the foregoing, the wetness implored the court to find and hold that the Plaintiffs herein are entitled to the reliefs sought at the foot of the further amended Plaint. For good measure, the witness invited the court to find and hold that the Plaintiffs' have proved their case.

20. On cross examination by learned counsel for the 1st Defendant, the witness testified that same [PW1] is a member of Shauri Moyo Ex-Pangani Residents Association. Furthermore, the witness added that the society is duly registered. Nevertheless, the witness admitted that same [witness] has not produced a copy of the registration Certificate of the society before the court.

21. It was the further testimony of the witness that same [witness] is before the court to represent the other plaintiffs herein. In any event, the witness averred that the other Plaintiffs have executed authority to plead and which authority to plead has been filed before court.

22. Whilst still under cross examination, the witness averred that the issue of ownership of the suit property has previously been determined by the High court and the Court of Appeal. In particular, the witness referenced the decree that was issued vide Nairobi HCC No. 42 of 1980.

23. It was the further testimony of the witness that vide Nairobi HCC 422 of 1980, the Plaintiffs thereunder had sought for various orders against the City Council of Nairobi [now defunct].

24. It was the further testimony of the witness that the dispute between the parties herein was also escalated to the Court of Appeal. At any rate, the witness averred that the Court of Appeal issued an order dated the 10th June 1996.

25. Upon being referred to the documents at page 109 of the Plaintiffs bundle of documents, the witness averred that the documents under reference are the minutes of a special meeting of the city council of Nairobi [now defunct]. In particular, the witness referenced minute 11 and same posited that the said minutes relates to ownership of the houses which form the basis of the instant suit.

26. Whilst still under cross examination, the witness averred that same has similarly filed before the court copies of the Tenancy agreement[s] between the City Council of Nairobi[now defunct] and the Plaintiffs. Furthermore, the witness averred that the Tenancy Agreement[s] which same [Witness] has tendered before the court contained clauses indicating that the tenancy agreements are capable of being terminated.

27. It was the further testimony of the witness that the city council of Nairobi attempted to terminate the tenancies and as a result of the attempt, the Resident[s] proceeded to and filed a suit, namely, Nairobi HCC No. 422 of 1980. In any event, the witness averred that the suit under referenced was heard and determined.

28. Additionally, the witness testified that despite the order by the court, the city council of Nairobi [now defunct] failed to hand over the title of the suit properties to the Plaintiffs. Furthermore, the witness averred that the court granted ownership of the suit premises to the Plaintiffs.

29. It was the further testimony of the witness that the Plaintiffs herein have filed the instant case seeking compliance with the orders of the court hitherto issued vide Nairobi HCC No. 422 of 1980.

30. Whilst still under cross examination by learned counsel for the 1st Defendant, the witness averred that same [witness] is aware of another suit that was filed in the year 2016. In any event, the witness added that the suit under reference was dismissed by the Court.

31. On cross examination by learned counsel for the 2nd and 4th Defendants, the witness averred that the Plaintiffs have sued the 2nd and 4th Defendants because the 2nd and 4th Defendants have acted contrary to the advice by the city council of Nairobi [now defunct]. In particular, it was contended that the city council of Nairobi had directed the Chief Land Registrar to issue the grant/certificate of title in the name of Shauri Moyo Ex-Pangani Residents Association.

32. Nevertheless, the witness averred that despite the directives by the city council of Nairobi [now defunct], the Chief Land Registrar failed to issue the certificate of title.

33. Whilst under further cross examination, the witness averred that even though same [witness] has adverted to a directive by the city council of Nairobi to the Chief Land Registrar, same [witness] has not produced before the court the directive under reference.

34. It was the further testimony of the witness [PW1] that same [witness] has also not produced any evidence before the court or any lease instrument generated the city council of Nairobi,[now defunct].

35. On re-examination, by learned counsel for the Plaintiff, the witness averred that same [witness] has since tendered and produced before the court the minutes of the city council of Nairobi. Furthermore, the Witness averred that the minute[s] of the city council of Nairobi which had been tendered demonstrates the history attendant to the dispute before the Court.

36. Whilst under further re-examination, the witness averred that the members of Shauri Moyo Ex-Pangani Residents Association were entitled to be issued with individuals titles. In any event, the witness added that the members of Shauri Moyo Ex-Pangani Residents Association even proceeded to and paid monies to facilitate the sub-division of the Suit Property and ultimate issuance of individual certificate of title[s].

37. It was the further testimony of the witness that the claim by and on behalf of the Plaintiffs herein is lawful. In any event, the witness added that the suit beforehand is separate and distinct from the issues that were determined in the previous suit[s].

38. On the other hand, it was the testimony of the witness that the parties to the previous suit[s] were/are also different from the parties in respect of the instant suit.'

39. It was the further testimony of the witness that minute number 228 which has been tendered before the court confirms that the Plaintiffs herein are the owners of the suit property. In any event, the witness

averred that the city council of Nairobi [now defunct] had requested that the grant be issued in favour of the Plaintiff.

40. Additionally, it was the testimony of the witness [PW1] that if the Chief Land Registrar had complied with the directive of city council of Nairobi [now defunct], the Plaintiffs would not have filed and/or commenced the instant suit.

41. The second witness who testified on behalf of the Plaintiffs is Suleiman Juma. Same testified as PW2.

42. It was the testimony of the witness [PW2] that same is the 7th Plaintiff herein. Furthermore, the witness averred that by virtue of being the 7th Plaintiff, same [witness] is privy to and knowledgeable of the facts of this matter.

43. It was the further testimony y of the witness that same [witness] has since recorded a witness statement dated the 29th October 2021. In this regard, the witness sought to adopt and rely on the contents of the witness statement under reference.

44. Suffice to state that the witness statement dated the 29th October 2021 was thereafter adopted and constituted as the evidence in chief of the witness.

45. On the other hand, the witness also adverted to a Further witness statement dated the 13th March 2023 and thereafter sought to adopt the witness statement as further evidence in chief. Instructively, the further witness statement was admitted and adopted as further evidence in chief of the witness.

46. Additionally, it was the testimony of the witness that same [PW2] is aware of a report that was lodged with the police. In this regard, the witness averred that same [PW2] was issued with an occurrence book number [OB NO.] and which OB Number the witness sought to tender and produce before the court. For coherence, the OB Number and which was contained on a sheet of paper was produced and admitted as exhibit P12.

47. Other than the foregoing, the witness averred that the Plaintiffs herein are the true and lawful owners of the suit houses. In this regard, the witness implored the court to grant the reliefs sought at the foot of the further amended Plaint.

48. On cross examination by learned counsel for the 1st Defendant, the witness averred that same [PW2] is privy to and conversant with the orders issued by the court vide Nairobi HCC No. 422 of 1980. In particular, the witness averred that the judgment issued in respect of Nairobi HCC No. 422 of 1980 directed that the block of houses should not be taken away from the Plaintiffs.

49. It was the further testimony of the witness that the dispute between the Plaintiffs and the city council of Nairobi [now defunct] was escalated to the Court of Appeal. In particular, the witness testified that the Court of Appeal ordered/directed that the Plaintiffs be given the houses.

50. Whilst under cross examination, the witness averred that same [PW2] has availed evidence of the order by the Court of Appeal. In any event, the witness stated that the decree of the Court of Appeal is contained at page 10A of the Plaintiffs' original bundle of documents.

51. It was the further testimony of the witness that after the judgment which was issued vide Nairobi HCC No. 422 of 1980, the parties herein also engaged in negotiations. However, the witness testified that despite the negotiations, the city council of Nairobi [now defunct] failed to transfer the suit property to the Plaintiffs.

52. On the other hand, it was the testimony of the witness that same also filed Judicial review and wherein same sought to enforce the previous decisions of the High court and the Court of Appeal. Nevertheless, the witness clarified that the Judicial review proceedings were dismissed.

53. Whilst under further cross examination, the witness averred that the dispute before the court touches on and concerns the question of ownership of the suit property.

54. Other than the foregoing, the witness testified that same [PW2] has since tendered and produced before the court a copy of the OB Number. Nevertheless, the witness averred that the OB Number which have been tendered and adduced before the court is not the correct one.

55. On cross examination by learned counsel for the 2nd and 4th Defendants, the witness averred that his [witness] plot measures 40 foot by 80 foot. In any event, the witness testified that the Plaintiffs should be issued with individual Certificates of titles.

56. Whilst still under cross examination, the witness averred that same has neither tendered nor produced a copy of the approved sub-divisions scheme before the court. Furthermore, the witness added that same [witness] is not aware whether the suit property has since been sub-divided.

57. It was the further testimony of the witness that same [witness] is aware that the city council of Nairobi [now defunct] has not generated any lease instrument in favour of the Plaintiffs. Furthermore, the witness added that in the absence of a lease instrument the Chief Land Registrar cannot be called upon to undertake any registration or to issue any certificate of title.

58. It was the further testimony of the witness that the Chief Land Registrar cannot be called upon to issue individual Certificates of title to the Plaintiffs prior to the sub-divisions of the suit plot and preparation of the requisite sub-division scheme.

59. On re-examination, by learned counsel for the Plaintiffs the witness averred that it is the city council of Nairobi [now defunct] who has failed to generate the leases in favour of the Plaintiffs. In any event, the witness admitted that without the lease instrument, the Chief Land Registrar cannot proceed to register and issue individual titles.

60. It was the further testimony of the witness that the Plaintiffs herein have brought the case before the court seeking to be issued with certificates of titles.

61. Other than the foregoing, it was the testimony of the witness that the case before the court touches on and concerns the question of ownership of the suit houses.

62. The third witness who testified on behalf of the Plaintiffs was one Martin Cheboror. Same testified as PW3.

63. It was the testimony of the witness [PW3] that same is a registered and licensed valuer. Furthermore, the witness averred that his registration number is 614.

64. It was the further testimony of the witness that same [witness] was instructed by the Plaintiffs to undertake valuation of the suit property. In this regard, the witness added that same proceeded to and undertook the requisite valuation and thereafter same prepared a valuation report which has been filed with the court.

65. On the other hand, the witness averred that same has also recorded a witness statement dated the 17th October 2023. In this regard, the witness sought to adopt and rely on the witness statement under reference.

66. Suffice it to state that the witness statement dated the 17th October 2023 was thereafter adopted and admitted as the evidence in chief of the witness. Additionally, the witness adverted to the valuation report dated the 28th November 2022 and thereafter sought to produce same [valuation report] as an exhibit before the court. Instructively, the valuation report was adduced as exhibit P39.

67. On cross examination by learned counsel for the 1st Defendant, the witness averred that same is indeed qualified and licensed to operate as a valuer. In addition, the witness averred that same [PW3] is also a member of the institution of surveyors of Kenya.

68. Whilst under further cross examination, the witness averred that same proceeded to and undertook valuation over and in respect of one plot. Furthermore, the witness averred that the plot in question is developed.

69. It was the further testimony of the witness that the developments on the plot[s] are not uniform. Nevertheless, the witness added that after valuing one plot same [witness] came out with a figure pertaining to the loss of use. Other than the foregoing, the witness averred that same came up with a figure of Kes 19,000,000 only, reflecting the loss of use/income.

70. Whilst still under cross examination, the witness averred that the valuation report before the court was based on an assumption. In particular, the witness stated that the assumption was/is a special one.

71. Other than the foregoing, the witness averred that same [PW3] was not issued with any documents of ownership or title in favour of the Plaintiffs. Furthermore, the witness also averred that same did not endeavour to ascertain the ownership status of the suit property.

72. It was the further testimony of the witness that same [witness] did not have any bill of quantities[BQ] relative to the houses that the Plaintiffs intended to erect.

73. Whilst still under cross examination, the witness averred that same [witness] also did not ascertain whether the Plaintiffs herein had the financial ability or capability to undertake the intended developments. In any event, the witness added that same [witness] proceeded on the basis of assumption.

74. On re-examination by learned counsel for the Plaintiffs, the witness stated that the Plaintiffs herein would have been able to finance the development. In particular, the witness averred that same [PW3] proceeded on the basis of assumption that the Plaintiffs suffered loss of income.

75. It was the further testimony of the witness that even though same [witness] has not tendered/produced a copy of his license as a valuer, such license is available online and can be accessed by anyone. Nevertheless, the witness reiterated that same [witness] is a licensed and registered valuer.

76. With the foregoing testimony, the Plaintiffs'case was closed.

1st defendant's case:

77. Though the 1st Defendant duly entered appearance and filed a statement of defence, same [1st Defendant] neither filed a list and bundle of documents nor witness statement. In this regard, the 1st Defendant called no witness.

78. Furthermore, learned counsel for the First Defendant proceeded to and closed the 1st Defendant's case without calling any evidence or tendering any documents.

2Nd And 4Th Defendants Case:

79. Similarly, the 2nd and 4th Defendants did not call any witness. Furthermore, the 2nd and 4th Defendants also did not tender or produce any document or at all.

80. Suffice it to underscore, that learned counsel for the 2nd and 4th Defendants also ventured forward and closed the 2nd and 4th Defendants' case without calling any witness.

3Rd Defendant's Case:

81. The 3rd Defendant neither entered appearance nor filed any statement of defence. Furthermore, the 3rd Defendant did not participate in the proceedings.

Parties Submissions:

82. Upon the close of the hearing, the advocates for the respective parties covenanted to file and exchange written submissions. In this regard, the court proceeded to and circumscribed the timeline[s] for the filing and exchange of written submissions.

83. Suffice it to state that the Plaintiffs proceeded to and filed written submissions dated the 11th June 2024. For coherence, the submissions by and on behalf of the Plaintiff has highlighted and canvassed a total of sixteen [16] issues for consideration and determination by the Honourable Court.

84. On the other hand, the 1st Defendant herein filed written submissions dated the 30th July 2024 and wherein same [1st Defendant] has adverted to and canvassed the issue of limitation of actions as well as the doctrine of res-judicata. Instructively, the 1st Defendant has contended that the Plaintiffs' suit does not disclose any reasonable cause of action or at all.

85. The 2nd and 4th Defendants filed written submissions dated the 2nd October 2024 and wherein same have canvassed one[1] salient issue for determination. Instructively, the 2nd and 4th Defendants have contended that the Plaintiffs herein have neither established nor demonstrated a basis to warrant the issuance of any order[s] against the 2nd Defendant.

86. In particular, the 2nd and 4th Defendants have contended that the 2nd Defendant cannot be compelled to issue a certificate of title until and unless the requisite lease instrument has been generated by the City County Government of Nairobi. In any event, it has been contended that the suit against the 2nd and 4th Defendants is premature and misconceived.

87. Suffice it to state that even though the court has neither rehashed nor reproduced the salient features of the written submissions filed by and on behalf of the respective parties, the court however underscores that the contents of the submissions have been taken into account and shall be deployed in determining the issues in dispute beforehand.

88. Additionally, it is imperative to underscore that the court is indeed grateful to the advocates for the respective parties for the comprehensive submissions filed. For good measure, the failure to rehash and reproduce the salient feature[s] of the written submissions is not borne out of contempt.

Issues for determination:

89. Having reviewed the further amended Plaint dated the 29th November 2022; and the defences thereto and having taken into account the evidence tendered [both oral and documentary] and upon considering the written submissions filed, the following issues do crystalize[emerge] and are thus worthy of determination;

i. Whether the suit/claim by the Plaintiffs is statute barred.

ii. Whether the suit by and on behalf of the Plaintiff is prohibited by the doctrine of res-judicata and by extension Section 7 of the *Civil Procedure Act*, Chapter 21, Laws of Kenya?

iii. Whether the Plaintiffs' claim premised on Legitimate Expectation is legally tenable or otherwise.

iv. What reliefs/remedies, if any, ought to be granted.

Analysis And Determination:

Issue Number 1 Whether the suit/claim by the Plaintiffs is statute barred.

90. The Plaintiffs' suit is premised and anchored on the contention that the suit property was meant for compensation in favour of the Plaintiffs. In particular, it has been contended that the suit property was intended to compensate the Plaintiffs for the Plaintiffs' land which was compulsorily acquired in Pangani in the year 1932.

91. Additionally, the Plaintiffs have contended that the compensation in favour of the Plaintiffs is predicated on the basis of the 1932 Carter Land Commission Recommendations. Besides, it has been contended that the Plaintiffs claim is also anchored on minutes number 2 of 10th August 1971; and which was made by the City Council of Nairobi [now defunct].

92. Other than the foregoing, the Plaintiffs have also contended that the City Council of Nairobi [now defunct] also resolved that the original Ex-Pangani Residents or their kinsmen/successors would be traced and allocated their shares of the suit property. In particular, the Plaintiffs have cited and referenced resolution of 6th June 1979.

93. Furthermore, the Plaintiffs' suit before the court is also premised on minute number 2 which was issued on the 24th January 1980 by the City Council of Nairobi [now defunct].

94. It is also instructive to note that the Plaintiffs suit is also predicated on [sic] various resolution[s] which are said to have been made and communicated inter-alia the letter dated the 16th November 2011, which is said to have been written by the 1st Defendant to the 2nd Defendant herein. Notably, it has been contended that vide the letter dated the 26th November 2011, the 1st Defendant instructed the 2nd Defendant to process and issue individual titles to Ex-Pangani residents, namely, the Plaintiffs herein.

95. It has been imperative to reproduce the foregoing background because the Plaintiffs' claim stems or arises from the factual matrix adverted to.

96. To my mind, the Plaintiffs' claim before hand arises from the various minutes which have been adverted to and highlighted at the foot of paragraphs 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30 of the further amended Plaint.

97. Be that as it may, it is imperative to underscore that the cause of action which is being canvassed by the Plaintiffs herein [if any] arose way back in the year 1971 when it is contended that the City Council of Nairobi made recommendations to compensate [sic] ex-pangani residents. For ease of appreciation, it suffices to reproduce the contents of 23, 24 and 26 of the further amended Plaint.

98. Same are reproduced as hereunder;

23. To cure the historical injustices and in conformity with the 1932 Carter Commission recommendation; the 1st Defendant's General Purposes Committee Tenants, their next

of kin of would take over their interests in the suit property and in conformity of the recommendations of the Carter Commission to compensate Ex-Pangani residents.

24. pursuant to a resolution of the council housing and social services committee passed on 27th November 1973 the initial batch of original 20 Ex-Pangani residents had been allocated part of the suit property.

25. That it was further resolved that the rest of the original Ex Pangani and or their next of kin/successors would be traced and allocated their share of the suit property as per the recommendations of the foresaid Cater Land Commission and which resolution preceded the resolution of 06/06/1979

25. That upon investigations and verifications the list of 118 further batch of original Ex Pangani Head Tenants was established by the 1st Defendant.

26. That pursuant to a resolution of the Council's Housing and Social Services Committee passed on 6th June 1979 the 118 further batch of original Ex-Pangani residents were allocated the suit property.

27. The above gave rise to execution of agreements between the Head tenants and the City Council; whereby the said Head tenants were to acquire ownership of the suit property, individually as regards the respective units, which ownership would entitle the Head tenants to acquire title deeds and receive rents from sub-tenants for their respective allocated house units.

99. From the contents of the paragraphs of the further amended Plaint, [which have been reproduced herein before], there is no gainsaying that the grievances that underpin the subject suit arose/accrued in 1971/73 or thereabout. In this regard, if the Plaintiffs were keen to commence and mount the claim beforehand then it behoved same [Plaintiffs] to file a suit within the prescribed timeline.

100. Further and at any rate, it is not lost on this court that the Plaintiffs' claim before the court primarily touches on and concerns the City Council of Nairobi, now defunct. To this end, it was incumbent upon the Plaintiff and/or their predecessors to file the suit within three[3] years from the date of accrual of the cause of action.

101. Pertinently, the relevant statute that governs the limitation of actions as against the City Council of Nairobi [now defunct] and by extension the City County Government of Nairobi is the Public Authorities *Limitation of Actions Act*, Chapter 39 Laws of Kenya.

102. In particular, Section 3 of the said Act [supra] stipulates as hereunder;

3. Limitation of proceedings

(1) No proceedings founded on tort shall be brought against the Government or a local authority after the end of twelve months from the date on which the cause of action accrued.

(2) No proceedings founded on contract shall be brought against the Government or a local authority after the end of three years from the date on which the cause of action accrued.

(3) Where the defence to any proceedings is that the defendant was at the material time acting in the course of his employment by the Government or a local authority and the proceedings were brought after the end of—

(a) twelve months, in the case of proceedings founded on tort; or

(b) three years, in the case of proceedings founded on contract, from the date on which the cause of action accrued, the court, at any stage of the proceedings, if satisfied that such defendant was at the material time so acting, shall enter judgment for that defendant.

103. In my humble view, the suit beforehand and which essentially seeks to enforce the various resolutions which are said to have been made by the city council of Nairobi [now defunct] is statute barred. In this regard, the Plaintiffs herein cannot be heard to approach the court in an endeavour to enforce resolutions which are now stale and well beyond their sell by date.

104. Notwithstanding the foregoing, it is also apposite to state and underscore that the issue being canvassed by the Plaintiffs herein had also been addressed and ventilated by the Plaintiffs and or their predecessors vide a previous suit, namely, Nairobi HCC No. 422 of 1980. Pertinently, the Plaintiffs predecessor were privy to and knowledgeable of the facts that underpin the claim beforehand.

105. To my mind, the Plaintiffs herein cannot contend that same [Plaintiffs] were not privy to or knowledgeable of the facts beforehand. In any event, it is imperative to underscore that in matters pertaining to claims against Public authorities, the Defendants herein not excepted, the provisions of the *Limitation of Actions Act*, Chapter 22 Laws of Kenya and in particular Sections 27 and 28 thereof, do not apply.

106. In a nutshell, it is my finding and holding that the claim beforehand and which is being propagated by and on behalf of the Plaintiffs is statute barred. In this case, the Plaintiffs are non-suited.

107. Before departing from the issue of Limitation of Actions, it is imperative to underscore that a cause of action that is barred by statute is rendered redundant and stale. Such a cause of action cannot be canvassed and/or propagated before a court of law. In any event, when such a cause of action is canvassed before a court of law, the court is obliged to decline to take cognizance thereof.

108. To this end, it suffices to cite and reference the decision in the case of IGA VS Makerere University [1972] EA 65 where the Court of Appeal foe E astern Africa considered the limitation on a cause of action.

109. Instructively, the court stated and held thus;

> " A Plaint which is barred by limitation is a Plaint "barred by law". Reading these provisions together it seems clear to me that unless the appellant in this case had put himself within the limitation period by showing grounds upon which he could claim exemption the Court "shall reject" his claim. The appellant was clearly out of time, and despite opportunity afforded by the Judge he did not show what grounds of exemption he relied on, presumably because none existed. The limitation Act does not extinguish a suit or action itself but operates to bar the claim or remedy sought for, and when a suit is time barred, the Court cannot grant the remedy or relief sought."
>
> Law, Ag. V. P. in the same case inter alia stated thus:
>
> > " ... The effect then is that if a suit is brought after the expiration of the period of limitation, and this is apparent from the Plaint, the Plaintiff must be rejected."

110. The effect[s] of the statute of limitation on a cause of action was also highlighted in the case of Dhanesvar V Mehta vs. Manilal M Shah [1965] EA 321 where it was stated:

> " The object of any limitation enactment is to prevent a plaintiff from prosecuting stale claims on the one hand, and on the other hand to protect a defendant after he had lost the evidence for his defence from being disturbed after a long lapse of time. The effect of a limitation enactment is to remove remedies irrespective of the merits of the particular case".

111. Other than the foregoing decisions, the implication of the law of limitation on a cause of action was also adverted to and elaborated by the Court of Appeal in the case of Gathoni vs Kenya Cooperative Creameries Limited (Civil Application No. 122 of 1981)[1982] eklr:

> " The law on limitation is intended to protect defendants against unreasonable delay in bringing of suits against them. The statute expects the intending plaintiff to exercise reasonable diligence and to take reasonable steps in his own interest."

112. Arising from the foregoing, my answer to issue number one [1] is to the effect that the cause of action being propagated by and on behalf of the Plaintiffs herein is statute barred. In particular, the cause of action being propagated by the Plaintiffs is/was extinguished by the provisions of Section 3 of the Public Authorities *Limitation of Actions Act*, Chapter 39 Laws of Kenya.

Issue Number 2 Whether the suit by and on behalf of the Plaintiff is prohibited by the doctrine of res-judicata and by extension Section 7 of the *Civil Procedure Act*.

113. Other than the question of limitation of actions [which has been highlighted elsewhere herein before] there is also the question pertaining to the doctrine of Res-judicata.

114. To start with, the Plaintiffs herein contended that despite the existence of the resolution made by the City Council of Nairobi [now defunct] vide minute number 2 of 10th August 1971, the City Council of Nairobi purported to rescind the said resolution on the 24th January 1980. In this regard, it was contended that the Plaintiffs herein and/or their predecessors thereafter felt aggrieved and filed civil proceedings vide Nairobi HCC No. 422 of 1980.

115. Additionally, it was contended that the said suit, namely, Nairobi HCC No. 422 of 1980 was heard and determined. In particular, it was contended that the court proceeded to and issued an order of perpetual injunction as against the City Council of Nairobi [now defunct] and by extension the 1st Defendant herein.

116. Additionally, the Plaintiffs herein also highlighted another suit, namely, Nairobi HCC No. 66 of 1997. Similarly, it was contended that the said suit was also heard and determined and that the court reaffirmed the judgment hitherto issued vide Nairobi HCC No. 422 of 1980.

117. For ease of appreciation and contextualization, it is imperative to take cognizance of the contents of paragraphs 31, 32, 33, 34 and 35 of the further amended Plaint.

118. For coherence, the contents of the said paragraphs are reproduced as hereunder;

> 30. However ironically, by the same said special meeting of 24th January 1980 the June 1979, subsequently issuing Notices dated 29th February 1980 to terminate the Plaintiffs' leases and collect rents from the sub-tenants.

31. The said high handedness of the 1st Defendant prompted the head tenants to file Civil Case No. 422 of 1980 of Margaret Nyambura and 117 others-vs-City Council of Nairobi seeking to injunct the 1st Defendant herein forthwith.

32. That by a judgment in Civil Case No. 422 of 1980 issued on 28th February 1991and decree dated 3rd July 1991 the Honourable Court issued orders giving the Head Tenants a perpetual injunction which bars the 1st Defendant from demanding and or receiving rents from the sub-tenants.

33. Those following initiatives to settle the disputes: on diverse dates in 1982, it was further agreed/resolved that the Head tenants would pay a survey fee of Kes.1060/-to facilitate issue of individual titles.

34. That indeed the Head Tenants complied and paying the agreed sum of Kes.1060/-toward the survey fee for individual title.

35. In confirmation, a subsequent suit HCCC 66 of 1997, Ali Soitara Korir &others V Josephine Nyambura, Kaiga Macharia & Others [2007] eKLR in which the Head Tenants herein brought a suit to recover rents and evict the Sub-Tenants for default, the Court in her decision of 30/11/2007 held that: both the Sub-Tenants and the City Council were in contempt of the Judgment in the said Nairobi HCCC 422/80 for paying rents to the City Council instead of to the Head Tenants because the said HCCC 422/80robbed the 1st Defendant not only the ownership of the suit premises but the right to receive rents from the sub-tenants.

    That the said judgment also established that the judgment in HCCC 422/80:

    a. . established a perpetual injunction in favour of the Ex Pangani against the 1st Defendant and their agents/principles.

    b. robbed the 1st Defendant the ownership of the suit premises.

    c. robbed the 1st Defendant of the right to receive rents from the sub-tenants

    d. any party aware of the said judgment and breaches spirit of the judgment is in contempt

    e. . the 1st Defendant and the Sub-Tenants were in contempt of court

    f. . that the 1st Defendant vide correspondences dated 28/03/85 and 29/06/89committed to issue individual titles to Head Tenants

    g. judgment is granted/extends in favour of all the Ex Pangani Residents Association(Head Tenants) and in reference to the Shauri Moyo Estate

    h. That in the absence of proof of two Shauri Moyo Estates in Nairobi City, County, the orders are in reference to all the Ex Pangani Residents Association(Head Tenants) and in reference to the Shauri Moyo Estate,

    i. That the subsequent correspondence and negotiation/ADR by the Defendants refers to all Ex Pangani Residents Association(Head Tenants) and they are. estopped from asserting otherwise

119. From the contents of the paragraphs [supra], it is evident that the Plaintiffs herein are acknowledging and confirming that the issue of ownership of the suit property and by extension the houses sitting thereon, have previously been canvassed before courts of competent jurisdictions.

120. Additionally, what is discernible from the various paragraphs which have been reproduced is to the effect that courts of competent jurisdiction have [sic], held that the Plaintiffs are the owners of the suit property.

121. Other than the contents of the further amended Plaint [which have been highlighted in the preceding paragraphs], it is also important to take cognizance of the evidence of PW1 whilst under cross examination by learned counsel for the 1st Defendant.

122. Same [PW1] stated as hereunder;

> "I do repeat that the issue of ownership of the suit property has previously been determined by the high court and the court of appeal. The decree was made in Nairobi HCC No. 422 of 1980. There was an appeal and the court order was given on the 10th June 1996. The high court case was 422 of 1980. The parties to the previous suit had sought for orders against the city council of Nairobi".

123. Whilst still under cross examination by learned counsel for the 1st Defendant PW1 stated thus;

> "I also wish to state that the city council of Nairobi have partially complied and we are collecting rents. However, the city council of Nairobi failed to hand over the titles of the suit properties. The court case granted to us [Plaintiffs] ownership of the premises. We have filed the case seeking for compliance with the orders of the court which were issued in the previous suit".

124. To my mind, PW1 is confirming that the issues pertaining to and concerning [sic] ownership of the suit property were canvassed and determined in the previous suit. Furthermore, the same witness [PW1] has also confirmed that the instant suit has been filed in an endeavour to enforce the orders that were hitherto issued vide Nairobi HCC No. 422 of 1980.

125. Suffice it to underscore that both the further amended Plaint and the testimony tendered before the court, demonstrate that the issues being agitated before the court are issues that coloured the proceedings vide Nairobi HCC No. 422 of 1980.

126. To my mind, all the issues being raised beforehand were either dealt with and determined via Nairobi HCC No. 422 of 1980; or better still, same could have been dealt with in the said case. Either way, the issues beforehand are barred by the doctrine of res-judicata.

127. Notably, the doctrine of res-judicata addresses the issues that were canvassed and determined in the previous suit as well as the issue which ought to have been canvassed in the said suit. Suffice it to posit, that the latter situation [perspective] is underpinned by the doctrine of constructive res-judicata.

128. Simply put, I come to the conclusion that the issues that are being canvassed and agitated by the Plaintiffs herein are barred by the doctrine of Res-judicata. In any event, Section 7 [4] of the *Civil Procedure Act*, Chapter 21, Laws of Kenya; impacts upon issues/matters which ought to have been canvassed in the previous suit but for one reason or another were left out.

129. To buttress the exposition of the law touching on and concerning the implication of Res-judicata, it suffices to cite and reference the holding in the case of *Kenya Commercial Bank Limited v Benjoh*

Amalgamated Limited (Civil Appeal 107 of 2010) [2017] KECA 98 (KLR) (Civ) (15 December 2017) (Judgment), where the court held as hereunder;

> Cognizant of the above principles, the courts called upon to decide suits or issues previously canvassed or which ought to have been raised and canvassed in the previous suits have not shied away from invoking the doctrine as a bar to further suits. As was stated in Henderson v Henderson (1843) 67 ER 313, res judicata applies not only to points upon which the court was actually required by parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time. In the case of Mburu Kinyua v Gachini Tutu (1978) KLR 69 Madan, J. Quoting with approval Wilgram V.C. in Henderson v Henderson (supra) stated:
>
> "Where a given matter becomes the subject of litigation in, and of adjudication by a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case and will not (except in special circumstances) permit the same parties to open the same subject of ligation in respect of a matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have from negligence, inadvertence, or even accident omitted part of their case. The plea of res judicata applies except in special cases, not only to points upon which the court was actually required by the parties to form an opinion and pronounce judgment but to every point which properly belonged to the subject of litigation, and which parties exercising reasonable diligence, might have brought forward at the time" (emphasis added).

130. The import and tenor of the doctrine of Res-judicata was revisited and elaborated upon in the case of Independent Electoral & Boundaries Commission v Maina Kiai & 5 Others (2017) Eklr, where the Court of Appeal stated thus:

> " The rule or doctrine of res judicata serves the salutary aim of bringing finality to litigation and affords parties closure and respite from the spectre of being vexed, haunted and hounded by issues and suits that have already been determined by a competent court. It is designed as a pragmatic and common-sensical protection against wastage of time and resources in an endless round of litigation at the behest of intrepid pleaders hoping, by a multiplicity of suits and fora, to obtain at last, outcomes favourable to themselves. Without it, there would be no end to litigation, and the judicial process would be rendered a noisome nuisance and brought to disrepute and calumny. The foundations of res judicata thus rest in the public interest for swift, sure and certain justice."

131. Furthermore, the doctrine of Res-judicata was expounded and elaborated upon by the Supreme Court of Kenya in the case John Florence Maritime Services Limited & another v Cabinet Secretary Transport & Infrastructure & 3 others (Petition 17 of 2015) [2021] KESC 39 (KLR) (Civ) (6 August 2021) (Judgment), where the court stated as hereunder;

> The learned authors of Mulla, Code of Civil Procedure, 18th Ed 2012 have observed that the principle of res judicata, as a judicial device on the finality of court decisions, is subject only to the special scenarios of fraud, mistake or lack of jurisdiction (p 293):
>
> The principle of finality or res judicata is a matter of public policy and is one of the pillars on which a judicial system is founded. Once a Judgment becomes conclusive, the matters in issue covered thereby cannot be reopened unless fraud or mistake or lack of jurisdiction is cited to challenge it directly at a later stage. The principle is rooted to the rationale that issues

decided may not be reopened and has little to do with the merit of the decision."57.The essence of the res judicata doctrine is further explicated by Wigram, V-C in Henderson v Henderson (1843) 67 ER 313, as follows:... where a given matter becomes the subject of litigation in, and adjudication by, a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward, as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the court was actually required by the parties to form an opinion and pronounce a Judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time" [emphasis supplied].

58. Hence, whenever the question of res judicata is raised, a court will look at the decision claimed to have settled the issues in question; the entire pleadings and record of that previous case; and the instant case to ascertain the issues determined in the previous case, and whether these are the same in the subsequent case. The court should ascertain whether the parties are the same, or are litigating under the same title; and whether the previous case was determined by a court of competent jurisdiction. This test is summarized in Bernard Mugo Ndegwa v James Nderitu Githae & 2 others, [2010] eKLR, under five distinct heads:

    i. the matter in issue is identical in both suits;

    ii. the parties in the suit are the same;

    iii. sameness of the title/claim;

    iv. concurrence of jurisdiction; and

    v. finality of the previous decision.

59. That courts have to be vigilant against the drafting of pleadings in such manner as to obviate the res judicata principle was judicially remarked in ET v Attorney-General & another, [2012] eKLR, thus:

    The courts must always be vigilant to guard litigants evading the doctrine of res judicata by introducing new causes of action so as to seek the same remedy before the court. The test is whether the plaintiff in the second suit is trying to bring before the court in another way and in a form of a new cause of action which has been resolved by a court of competent jurisdiction.

    In the case of Omondi v National Bank of Kenya Limited and others, [2001] EA 177 the court held that, 'parties cannot evade the doctrine of res judicata by merely adding other parties or causes of action in a subsequent suit.' In that case the court quoted Kuloba J, in the case of Njangu v Wambugu and another Nairobi HCCC No 2340 of 1991 (unreported) where he stated, 'If parties were allowed to go on litigating forever over the same issue with the same opponent before courts of competent jurisdiction merely because he gives his

case some cosmetic face-lift on every occasion he comes to court, then I do not see the use of the doctrine of res judicata....."

132. Furthermore, the court ventured forward and stated as hereunder;

> 81. We reaffirm our position as in the Muiri Coffee case that the doctrine of res judicata is based on the principle of finality which is a matter of public policy. The principle of finality is one of the pillars upon which our judicial system is founded and the doctrine of res judicata prevents a multiplicity of suits, which would ordinarily clog the courts, apart from occasioning unnecessary costs to the parties; and it ensures that litigation comes to an end, and the verdict duly translates into fruit for one party, and liability for another party, conclusively. To further bolster our position we borrow from the decision from India in Karam Chand another v Union Of India and others on 24 April, 2014 where it was restated the principles upon which the doctrine of res judicata is founded as follows:
>
> 29. .....it is clear that the rule of res judicata is mandatory in its application and should be invoked in the interest of public policy and finality. The matter which have actually been decided would also apply to the matters which have been impliedly and constructively decided by the court. These principles are to be applied to preserve the doctrine of finality rather than frustrate the same. The doctrine of res judicata is the combined result of public policy so as to prevent repeated taxing of a person to litigation. It is primarily founded on the following three maxims:
>
> (1) nemo debet bis vexari pro una et eadem causa: no man should be vexed twice for the same cause.
>
> (2) interest republicae ut sit finis litium: it is in the interest of the State that there should be an end to a litigation; and
>
> (3) res judicata pro veritate occipitur: a judicial decision must be accepted as correct.....The doctrine of res judicata is conceived not only in the larger public interest which requires that all litigation must sooner than later come to an end but is also founded on equity, justice and good conscience."

133. Without belabouring the point, it is my finding and holding that the issues being canvassed and ventilated by the Plaintiffs herein are barred by the doctrine of Res-judicata. Pertinently, the Plaintiffs herein cannot be allowed to revert back to court and to continue litigating the same issues which had hitherto been canvassed and determined via Nairobi HCC No. 422 of 1980.

134. Suffice it to point out that if the Plaintiffs predecessors and by extension the Plaintiffs herein did not pursue the enforcement of the judgment issued vide Nairobi HCC No. 422 of 1980; with the statutory duration, namely, 12 years from the date of issuance, then the Plaintiffs can only blame themselves and not otherwise.

135. In short, my answer to issue number two [2] is explicit. The suit beforehand is prohibited by the doctrine of Res-judicata and by extension the provisions of Section 7 of the *Civil Procedure Act*, Chapter 21 Laws of Kenya.

Issue Number 3 Whether the Plaintiffs' claim premised on legitimate expectation is legally tenable or otherwise.

136. The Plaintiffs beforehand have also contended that the 1st Defendant herein generated a letter dated the 16th November 2011 and which was addressed to the 2nd Defendant herein. For good measure, it

has been contended that the letter under reference directed the 2nd Defendant to issue individual titles to [sic] ex-Pangani residents, including the Plaintiffs herein.

137. Furthermore, it has been contended that despite the contents of the letter dated the 16th November 2011, the 2nd Defendant herein proceeded to and issued an allotment letter to the 1st Defendant and not the Plaintiffs.

138. Other than the foregoing, the Plaintiffs have also contended that another letter dated the 23rd March 2012 was issued whereupon it was confirmed that the 1st Defendant had been directed to issue individual titles to [sic] ex-Pangani residents.

139. To be able to appreciate the contention premised on the basis of the letter dated the 16th November 2011, it suffices to reproduce the contents of paragraph 40, 41 and 42 of the further amended Plaint.

140. Same are reproduced as hereunder;

> 40. .the 1st Defendant vide a letter dated 16/11/2011 wrote to the 2nd Defendant asking that the 2nd Defendant does issue individual titles to the Ex Pangani Residents.
>
> 41. .That however in mal fides the 2nd Defendant derailed the progress to a screeching halt by issuing an allotment to the 1st Defendant instead; and vide a Jetter dated 23/03/2012 confirmed that they had Directed the 1st Defendant to in turn issue individual titles to the Ex Pangani.
>
> 42. the suit property was therefore alienated to the 1st Defendant via allotment Ref No. 73039/27 dated 06/03/2012 on the understanding that 1st Defendant issuance of individual titles to the Head Tenants.

141. Premised on the contents of the letters dated the 16th November 2011 and 23rd March 2012, the Plaintiffs herein have contended that same [Plaintiffs] have a legitimate claim to the suit property. Furthermore, it has been contended that in failing to sub-divide the suit property and to issue individual titles in favour of the Plaintiffs, the 1st Defendant is guilty of breach of legitimate expectation and trust in favour of the Plaintiffs.

142. Despite the contention by and on behalf of the Plaintiffs based on legitimate expectation and breach of trust, it is important to underscore that the letters being referenced by the Plaintiff herein were neither sanctioned by the City Council of Nairobi or at all. For good measure, the City Council of Nairobi could only communicate a resolution in terms of the minutes duly approved by the relevant committee and not otherwise.

143. On the contrary, it is worthy to point out that the letter dated the 16th November 2011, was generated and signed by a chief valuer. For good measure, a chief valuer did not have the requisite authority and/or mandate to commit or bind the city council of Nairobi [now defunct] in matters pertaining to Land allocation or at all.

144. As pertains to the letter dated the 23rd March 2012, it is imperative to underscore that same was a mere communication from the office of the commissioner of lands. Pertinently, the Letter under reference did not constitute and/or amount to a letter of allotment. At any rate, the contents of the letter dated the 23rd March 2012 cannot supersede the provisions of Sections 3, 7, 12 and 13 of the Government *Land Act*, Chapter 280 Laws of Kenya [now repealed].

145. Other than the fact that the impugned letters did not have the force of law, it is also important to underscore that the suit property stood allocated and registered in the name of the City Council of Nairobi [now defunct] as at 2011.

146. To the extent that the suit property stood registered in the name of the City Council of Nairobi [now defunct] as at 2011, same [suit property] could not be alienated and/or disposed of in any manner contrary to the provisions of Section 35 of The *Transition To Devolved Government Act*, 2012.

147. Same state as hereunder;

Moratorium on Minster of assets.

35. (1) A State organ, public office, public entity or local authority shall not transfer assets and liabilities during the transition period.

(2) Despite subsection (1), a State organ, public office, public entity or local authority shall—

(a) during Phase One, transfer assets or liabilities with the approval of the Authority, in consultation with the National Treasury, the Commission on Revenue Allocation, the Ministry of Local Government and the Ministry of Lands; or

(b) during Phase Two, transfer assets or liabilities with the approval of the Authority, in consultation with the National Treasury, the Commission on Revenue Allocation and the Cabinet Secretary responsible for matters relating to intergovernmental relations; and

(c) transfer immovable property, with the approval of the Authority, in consultation with the National Treasury, the Commission on Revenue Allocation and the Cabinet Secretary responsible for matters relating to intergovernmental relations and lands.

(3) The Authority may, on its own motion or on a petition by any person, review or reverse any irregular transfer of assets or liabilities in contravention of subsection (1).

(4) Any transfer of assets or liabilities made in contravention of subsection (1) shall be invalid.

148. The *Transition to Devolved Government Act* [supra] concerned itself with transfer and alienation of assets during the transitional period. For coherence, the transitional period has been defined vide Section 2 of the Act [supra].

149. For ease of appreciation, Section 2 is reproduced as hereunder;

> " Transition period" means the period between commencement of this Act and three years after the first elections under *the Constitution*".

150. Other than the foregoing, it is imperative to underscore that the *transition to devolved government act*, entered into force on the 9th March 2012. Instructively, upon the entry into force of the said Act, no assets and/or property of the Local authority could be alienated and/or disposed of without regard to the provisions of Section 35 [supra].

151. To my mind, the letter dated the 23rd March 2012 which is being relied upon by the Plaintiffs herein to underpin the claim founded on legitimate expectation and breach of trust, is incapable of anchoring such a claim. In short, the contents of the letter dated the 23rd March 2012 flies on the face of The *Transition to Devolved Government Act*.

152. Finally, it is also important to point out that before one, the Plaintiffs not excepted, can anchor their claim on the basis of Legitimate expectation, it is incumbent upon such a claimant to demonstrate that the promises and or representations being made were lawful and legitimate.

153. Furthermore, it must also be demonstrated that the promises and representation[s], if any, fell within the mandate of [sic] the public body making same.

154. Be that as it may, I beg to point out that the letters dated the 16th November 2011 and 23rd March 2012, respectively, cannot found a claim for breach of trust and breach of legitimate expectation. In any event, the contents thereof are contrary to law.

155. Before departing from the issue of Legitimate expectation and whether the letter dated the 16th November 2011 would suffice, it is imperative to take cognizance of the decision in the case of *Kenya Revenue Authority v Export Trading Company Limited (Petition 20 of 2020)* [2022] KESC 31 (KLR) (17 June 2022) (Judgment), where the Supreme Court discussed the import, tenor and scope of the principle of legitimate expectation.

156. For coherence, the Supreme Court [the Apex Court] stated thus;

> 50. In the 4th Edition, Vol 1 (1) At page 151, paragraph 81 of the Halsbury's Laws of England, legitimate expectation is described as follows: "A person may have a legitimate expectation of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise either from a representation or promise made by authority, including an implied representation, or from consistent past practice".
>
> 51. Further according to De Smith Woolf & Jowell, "Judicial Review of Administrative Action" 6th Edn Sweet & Maxwell page 609; "A legitimate expectation arises where a person responsible for taking a decision has induced in someone a reasonable expectation that he will receive or retain a benefit of advantage."
>
> 52. As can be discerned from these two definitions, legitimate expectation may take many forms. It may take the form of an expectation to succeed in a request placed before the decision maker or it may take the objective form that a party may legitimately expect that, before a decision that may be prejudicial is taken, one shall be afforded a hearing.
>
> 53. Respectfully, we take the view that the question of whether a legitimate expectation arose is more than a factual question. It is not merely confined to whether an expectation exists in the mind of an aggrieved party, but whether viewed objectively, such expectation is in a legal sense, legitimate.
>
> 54. This is the position taken by this court in the CCK Case where it was held that legitimate expectation would arise when a body, by representation or by past practice, has aroused an expectation that is within its power to fulfil. For an expectation to be legitimate therefore, it must be founded upon a promise or practice by a public authority that is expected to fulfil the expectation. We then went on to find the emerging principles on legitimate expectation to be that;
>
> > "a. there must be an express, clear and unambiguous promise given by a public authority;
> >
> > b. the expectation itself must be reasonable;
> >
> > c. the representation must be one which it was competent and lawful for the decision-maker to make; and
> >
> > e. there cannot be a legitimate expectation against clear provisions of the law or *the Constitution*."

157. Arising from the foregoing analysis, my answer to issue number three [3] is threefold. Firstly, the letter dated the 16th November 2011 was generated by a person devoid and divested of the requisite authority to commit the city council of Nairobi [now defunct] to any position under the law and in particular, as pertains to the question of allocation of Land.

158. Secondly, the letter dated the 23rd March 2012 cannot be deployed by the Plaintiffs or at all to anchor a claim based on legitimate expectation or breach of trust.

159. Thirdly, it is important to underscore that by the time the commissioner of lands was generating the letter dated the 23rd March 2012, the *Transition to Devolved Government Act* 2012 had entered into force and hence no alienation, transfer and disposition of the assets of the city council of Nairobi [now defunct] could be undertaken without due regard to the provisions of Section 35 of the said Act.

Issue Number 4 What reliefs/remedies, if any, ought to be granted.

160. The Plaintiff herein has sought for a plethora of reliefs at the foot of the further amended Plaint. Notably, one of the reliefs that has been sought for relates to breach of the Plaintiffs Fundamental Rights to a Clean and Healthy Environment; Fair Administration Action; Economic and Social Rights; Equality and Discrimination and Human Dignity.

161. To my mind, the reliefs [details in terms of the preceding paragraphs] touch on and concern the Human rights and fundamental freedoms. Such reliefs, if any, can only be procured and partaken of by way of a Constitutional petition. Suffices it to underscore, that the provisions of Article 23 of *the Constitution* can only be invoked and accessed vide a constitutional petition and not otherwise.

162. The second prayer that has been sought for by the Plaintiffs touches on and concerns violation of the National Values and principles of governance. Instructively, the prayer herein highlights the provisions of Article 10 of *the Constitution* 2010.

163. Similarly, and without belabouring the point, if the Plaintiffs are convinced that the impugned actions amount to and constitute violation of Article 10 of *the Constitution* 2010 [which I doubt] same [Plaintiffs] ought to have filed a constitutional petition. Furthermore, such a petition, if any, could only be determined by the High court in line with Article 165 [3] of *the Constitution* 2010.

164. The third prayer which has been sought for by the Plaintiffs relates to issuance of individual titles to the Plaintiffs. Despite the prayer for issuance of individual titles, there is no gainsaying that the Plaintiffs herein have neither procured nor obtained any letter of allotment from the National Land Commission. See Section 13 of *Land Act* 2012] [See also Article 67[2] of *the Constitution* 2010].

165. The fourth prayer that has been sought for relates to the demolition of [sic] illegal and irregularly built structures on the suit properties. To my mind, the Plaintiffs herein do not own the suit property. In the absence of title to and in respect of the suit property, the prayer for demolition is not only inconceivable, but also unfathomable.

166. Other than the foregoing, the Plaintiffs herein have also sought for special, general, punitive and exemplary damages. However, it is difficult to comprehend the foundation upon which the Plaintiffs seek to partake of the named damages. Nevertheless, it is my humble position that the claim for damages is founded on quick- sand.

167. Finally, the Plaintiffs have sought for leave to prosecute contempt of court orders. Additionally, the Plaintiffs have also sought to have the Defendants cited for contempt of court orders.

168. Nevertheless and in my humble view, if the Plaintiffs are privy to or knowledgeable of any court order which has been disobeyed, then it behoves the Plaintiffs to have recourse to the provisions of Section 5 of the *Judicature Act*, Chapter 8 Laws of Kenya.

169. Other than the foregoing position, it is also instructive to invite the Plaintiffs and their legal counsel to the decision of the Court of Appeal in Christine Wangari Gachege v Elizabeth Wanjiru Evans, Peter Gachege Njogu, Mary Wanjiku Gachigi, Elizabeth Wambui, Mary Nyambura, Margret Wanjiru,Salome Njoki, Anthony Gachigi, Zainabu Wanjiru Gachigi, Joseph Gachigi Zambetakis, Jeniffer Wanjiru Zambetakis & John Irungu Zambetakis (Civil Application 233 of 2007) [2014] KECA 840 (KLR) (Civ) (14 February 2014) (Ruling), where the Court of Appeal elaborated upon the manner for commencing/instituting contempt proceedings. Suffice it to posit that contempt proceedings cannot be sought for at the foot of a Plaint.

Final Disposition:

170. Flowing from the discussion [details enumerated in the body of the judgment], it must have become evident that the Plaintiffs' suit is not only statute barred, but also caught by the doctrine of Res-judicata.

171. Further and at any rate, even assuming that the court was to proceed and determine the matter on merit, it is evident that the Plaintiffs claim is not tenable. For coherence, the Plaintiffs claim was caught up by the provisions of Section 35 of the *Transition to Devolved Government Act*.

172. In the premises, the final orders that commend themselves to the court are as hereunder;

    i. The Plaintiffs' suit be and is hereby dismissed.

    ii. Costs of the suit be and are hereby awarded to the 1st, 2nd and 4th Defendants only. For coherence, the costs shall be agreed upon and in default, same to be taxed by the Deputy Registrar of the court.

173. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 2ND DAY OF DECEMBER 2024

OGUTTU MBOYA,

JUDGE.

In the presence of:

Benson – court Assistant.

Mr. Akech for the Plaintiffs

Mr. Kariuki h/b for Ms. Munene for the 1st Defendant

Ms. Nyawira[Senior Litigation Counsel] for the 2nd and 4th Defendants

N/A for the 3rd Defendant

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