



**Harambee Children Therapy Centre Kinderhilfsprojekte v Kenya  
Railways Corporation & 3 others (Environment & Land Case  
1391 of 2016) [2023] KEELC 738 (KLR) (9 February 2023) (Judgment)**

Neutral citation: [2023] KEELC 738 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 1391 OF 2016  
EK WABWOTO, J  
FEBRUARY 9, 2023**

**BETWEEN**

**HARAMBEE CHILDREN THERAPY CENTRE  
KINDERHILFSPROJEKTE ..... PLAINTIFF**

**AND**

**KENYA RAILWAYS CORPORATION ..... 1<sup>ST</sup> DEFENDANT  
ATTORNEY GENERAL ..... 2<sup>ND</sup> DEFENDANT  
NAIROBI CITY COUNTY GOVERNMENT ..... 3<sup>RD</sup> DEFENDANT  
ELIZABETH WAMBUI ..... 4<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. In the Amended Plaintiff dated June 15, 2021, the Plaintiff sought for the following orders against the Defendants jointly and severally: -
  - a. A declaration that the Plaintiff is the bonafide owner of plot No. 107- Dandora Phase II Extension.
  - b. A permanent injunction to restrain the 1<sup>st</sup> Defendant from entering, trespassing, developing or utilizing that property known as Plot No 107- Dandora, Phase II
  - c. General, exemplary and punitive damages for demolishing the suit property.
  - d. Special damages of Kshs 20,639,600 for the amount incurred as future rent, plus interest at commercial rates.
  - e. In the alternative, where the court finds that the suit property was not available for allotment:



- i. Judgment to refund the purchase price of Kshs 2,600,000/- and interest at commercial rates.
  - ii. Judgment for a refund of all sums paid by the Plaintiff as land rates and interest at commercial rates.
  - iii. General damages for the injury and harm suffered by the Plaintiff and those affected by the acts of commission and omission.
- f. An expeditious determination of this matter to avoid delay and prejudice to the Plaintiff and all those affected.
  - g. Any other relief that this Honourable deems fit and just to grant.
  - h. Costs of the suit.
2. The suit was contested by the Defendants, the 1<sup>st</sup> Defendant filed an Amended Statement of Defence dated December 7, 2021 together with the witness statement of Bernadatte Ndege dated December 7, 2021.
  3. The suit against the 2<sup>nd</sup> Defendant was withdrawn before the matter could be set down for hearing.
  4. The 3<sup>rd</sup> Defendant did not file any defence neither did they call any witness but participated during the trial herein.
  5. The 4<sup>th</sup> Defendant filed an amended defence and counterclaim dated June 29, 2021. She also filed witness statement dated May 20, 2021 and bundle of documents dated May 29, 2021.

**The Plaintiff's Case.**

6. The Plaintiff's case is that it purchased property known as Plot No 107 Dandora Phase Ii Extension for a sum of Ksh 2,600,000/- from the 4<sup>th</sup> Defendant vide an agreement dated January 25, 2016. The purpose of acquisition of the property was for running a disabled children's center.
7. It was averred that prior to the signing of the Sale agreement, parties engaged in negotiations which involved the 4<sup>th</sup> Defendant's husband who was a District Officer of the Dandora area.
8. It was also averred that the 3<sup>rd</sup> Defendant issued documents of the search and effected the transfer of the suit property from the 4<sup>th</sup> Defendant to the Plaintiff.
9. It was further stated that on or about the September 29, 2016, the Plaintiff was alarmed to find the 1<sup>st</sup> Defendant's bulldozer on the said parcel of land, intending to possess the said parcel of land and demolish their structures in order to construct a new modern railway station.
10. The Plaintiff pleaded that on or about October 4, 2016, the 1<sup>st</sup> Defendant gave notice of intention to take possession of the Plaintiff's land and on August 16, 2018, their building was demolished causing a lot of damage, loss and suffering to the children. This also caused the donors who used to support the children to stop doing so.
11. It was also pleaded that the Defendant's acted fraudulently, negligently and illegally in the transaction particulars of which were pleaded at paragraph 19, 20 and 21 of the Amended Plaint dated June 15, 2021.
12. During trial, two witnesses testified on behalf of the Plaintiff. Nicholas Omondi Ndiso testified as PW1. He adopted his witness statements dated November 10, 2016, March 8, 2021, May 3, 2021 and



January 17, 2022, list of documents dated October 14, 2018, June 18, 2019, April 23, 2021 and May 4, 2021 as his evidence in chief.

13. Upon cross-examination by Counsel for the 1<sup>st</sup> Defendant, he stated that the 1<sup>st</sup> Defendant was not a party to the sale agreement and neither can the Plaintiff blame the 1<sup>st</sup> Defendant for their predicament. He also stated that a public notice was issued by Kenya Railways requiring them to vacate. He also stated that their building was demolished on October 16, 2016. It was demolished in the pendency of this suit.
14. It was also stated in cross-examination that they incurred expenses in developing the property and that Kenya Railways never warned them in the course of construction and developing of the same. In his statement it was stated that expenses in excess of Kshs 20,000,000/- was incurred in the developments undertaken in the property.
15. On cross-examination by Counsel for the 4<sup>th</sup> Defendant, he stated that they engaged Mr. Kimani who was involved in the negotiations before purchasing the property and that he initially requested for Kshs 3,000,000/- before finally settling for Kshs 2,600,000/-
16. He also stated that the property was initially under the City Council, they visited the City Council Office at Dandora where it was confirmed that it belonged to the 4<sup>th</sup> Defendant. They later visited the site and they met a lady called Hellen and that they also did due diligence before purchase as they had lawyers who were guiding them in every transaction.
17. Upon cross-examination by Counsel for the 3<sup>rd</sup> Defendant, he stated that the sale agreement was between the Plaintiff and the 4<sup>th</sup> Defendant.
18. On re-examination, he stated that the Plaintiff took possession of the property on 26<sup>th</sup> January 2016 and Hellen was paid some money to cater for her relocation expenses. He also stated that the property was about 150 metres from the Railway line.
19. Martina Richter testified as PW2. She relied on the three witness statements that she had filed, witness statements dated 9<sup>th</sup> March 2021, January 20, 2022 and May 3, 2021 as her evidence in chief.
20. On cross-examination, she stated that she was not aware of the exact plot card number. She also stated that there were some activities that were being undertaken on the plot when it was purchased by the Plaintiff.
21. She also stated that due diligence was done by their lawyers though she was not sure as to the nature and extend of the due diligence and they did not have any reason to doubt the information that they had been given.
22. She also stated that their property was demolished by Kenya Railways and they had not obtained any prohibitory orders against the demolition. She was also not aware whether Kenya Railways had any interest in the land.
23. On further cross-examination by Counsel for the 4<sup>th</sup> Defendant, she stated that the offer price was made to the 4<sup>th</sup> Defendant and that after purchase they were able to take possession and use the property.
24. It was stated that she was informed of the notice from Kenya Railways in 2016 and which promoted them to file the current case. She further stated that the 4<sup>th</sup> Defendant was involved in the demolition of the property since she was deemed to have known about the property and any of its future outcome.
25. On cross-examination by Counsel for the 3<sup>rd</sup> Defendant, she stated that all Defendants are liable for the misfortunes that the Plaintiff encountered.



### **The case of the 1<sup>st</sup> Defendant\_\_.**

26. The totality of the 1<sup>st</sup> Defendant's case is contained in its Amended statement of Defence dated December 7, 2021 together with the witness statement of Bernadette Ndege dated December 7, 2021 and the bundle of documents that was produced as exhibits during trial dated 2 November 1, 2022.
27. In summary, it was the 1<sup>st</sup> Defendant's case that whereas the Plaintiff had purchased the property known as Plot No. 107 Dandora, situated on L.R. 11344/ R, the Plaintiff was in illegal and unlawful occupation of the 1<sup>st</sup> Defendant's Railway Reserve by negligently constructing on property L.R. No. 3144 Dandora Railway station operational land.
28. During trial, Bernadette Ndege a G.I.S expert working at the 1<sup>st</sup> Defendant testified on its behalf. She adopted her witness statement and bundle of documents dated 7<sup>th</sup> December 2021 as her evidence in chief.
29. She also added that she was part of the team that marked properties due for demolition in the year 2014 and the Plaintiff's property was one of them. It was her testimony that the 1<sup>st</sup> Defendant issued a public notice upon which some parties complied and vacated but others stayed put and had their properties ultimately demolished.
30. She further added that the Plaintiff while purchasing the property never did a search, never engaged a Surveyor nor did they visit Kenya Railways to obtain more information on the property.
31. On cross-examination by Counsel for the 4<sup>th</sup> Defendant, she stated that the property was demolished because there was need to upgrade the railway line.
32. On cross-examination by Counsel for the Plaintiff, she stated that there are provisions that allow construction on Kenya Railway Land so long as the necessary approvals are obtained.
33. She also stated that there were several issues that informed the demolitions, the survey report being one of them.
34. When re-examined, she stated that the land was initially reserved as public land and that had not changed. She also stated that the Plaintiff constructed on the station reserve and that the land belonging to Dandora station had never been allocated since the land had always been Kenya Railways Land.

### **The case of the 4<sup>th</sup> Defendant.**

35. The 4<sup>th</sup> Defendant filed an amended defence and counterclaim dated June 29, 2021. The 4<sup>th</sup> Defendant prayed for dismissal of the Plaintiff's suit against her and judgment be entered as prayed in her counterclaim.
36. During hearing, two witnesses testified on behalf of the 4<sup>th</sup> Defendant, Hellen Omwenga and Elizabeth Njoroge the 4<sup>th</sup> Defendant.
37. Hellen Omwenga relied on her witness statement dated June 29, 2021 as her evidence in chief. She added that she used to do farming activities on the suit property which initially belonged to her. The said property was uninhabited and was allocated to her by the City Council. She later sold the same to the 4<sup>th</sup> Defendant for the purposes of raising funds to secure her husband's treatment.
38. She further stated that when the 4<sup>th</sup> Defendant bought the property she was requested to be a caretaker on her behalf until when it was later sold to the Plaintiff and she had to relocate.



39. Upon cross-examination by Counsel for the 3<sup>rd</sup> Defendant, she stated that she could not remember exactly when she started staying in the suit property and that when she sold the property to the 4<sup>th</sup> Defendant, she had not gotten the card of the plot though the same was issued later to the 4<sup>th</sup> Defendant.
40. On cross-examination by Counsel for the 4<sup>th</sup> Defendant, she stated that she stayed in the land from the 1980's without any papers and that the 1<sup>st</sup> Defendant never stopped anyone from constructing on their land.
41. When cross-examined by Counsel for the Plaintiff, she stated that she used to pay rates to City Council. That also water bills and electricity bills would be paid by the 4<sup>th</sup> Defendant and that according to her the house that was demolished was not on Kenya Railways land.
42. When re-examined, she reiterated that she sold plot 107 to the 4<sup>th</sup> Defendant.
43. Elizabeth Njoroge equally adopted her witness statement dated May 20, 2021 and bundle of documents dated May 29, 2021.
44. She added that she interacted with Hellen Omwenga before she offered to sale the property to her and she purchased the same for Kshs 350,000/- and she then committed as part of the agreement to deal with authorization of ownership since she was registered on the allotment.
45. It was her testimony that Hellen Omwenga was a caretaker on the property and she is the one who called and notified her that someone had expressed interest in its purchase.
46. It was also her testimony that the Plaintiff did due diligence and she never conspired or committed any fraud since the property was initially never for sale. It is the Plaintiff who came seeking to purchase it. She also stated that Nairobi City County should be held culpable in this case.
47. On cross-examination by Counsel for the Plaintiff, she stated that she had an agreement to purchase land from Hellen Omwenga and she did not know that the land was on Kenya Railways Reserve Land. She also stated that she was paid the entire purchase price and she did not find any fault on the title.
48. She also stated that she did due diligence when purchasing the property and that she did not sale the land merely because it had a faulty title.
49. Upon cross-examination by Counsel for the 1<sup>st</sup> Defendant, she stated that she was the first allottee of the property and she was issued with a plot card for Plot No. 107, L.R. No. 11344/R which was the same property obtained from Hellen.
50. She also stated that she was not aware of the procedure for undertaking developments close to a railway line though the structures on the property had County approvals. She also stated that her property did not sit on railway reserve land.
51. When re-examined, she confirmed having the approval plans but none was available in court.

#### **The Plaintiff's submissions\_\_.**

52. Upon close of the parties' respective cases, all the parties herein were directed to file and exchange their written submissions. The Plaintiff filed its written submissions dated August 31, 2022. The Plaintiff also filed further submissions dated November 28, 2022 through the law firm of Mwaure & Mwaure Wahiga Advocates.



53. It was submitted that all the Defendants were not able to shake or discount the evidence of the Plaintiff. It was further submitted that the 4<sup>th</sup> Defendant did not deny the existence of a sale agreement and payments made to her, to the City Council and that the property was legitimate, she could also not deny at all her role in the transaction as the previous owner.
54. It was also submitted that the husband to the 4<sup>th</sup> Defendant Mr. Kimani was the District Officer of the Dandora area and was a quiet owner of the said property and also that the 4<sup>th</sup> Defendant knew her way around the Dandora area City Council Offices and what needed to be done and where.
55. It was argued that the involvement of Mr. Kimani is of great significance mostly due to his capacity as the Dandora area District Officer and that he had information as appertaining to all impending national government projects in the area.
56. It was contended that Mr. Kimani and Hellen Omwengu being the initial owner of the property together with other government officials were running a cartel where they would seek out unsuspecting purchasers into buying properties seen to be demolished by the 1<sup>st</sup> Defendant.
57. The Plaintiff further submitted that they had proven purchase of the property and were entitled to a refund of the purchase price being Kshs 2,600,000/=
58. It was also argued that due to fraud and conspiracy, the cartels may have been involved where the City Council knew or was part of and hence the Plaintiff was entitled to interest of 20% of the purchase price from the date of the sale agreement.
59. On the special damages, it was contended that the claim of Kshs 20,639,600/- had been proved.
60. On general, exemplary and punitive damages, it was also submitted that the same ought to be imposed so as to stop such actions from being committed. Reliance was made to the case of *Stelco Properties Limited & Another – Vs- Njugi Ventures Limited & Another* (2021) eKLR where the court awarded damages as general and exemplary or punitive damages amounting to Kshs 20,000,000/- and Kshs 10,000,000/- respectively stating that objects of exemplary damages is to punish and deter. The case of *Isaiah M'Mugambi M'mukatha – Vs- Attorney General & 2 others* (2016) where the court awarded general and exemplary or punitive damages amounting to kshs 2,000,000/- and Kshs 1,000,000/- respectively was also cited in support. The Plaintiff also urged the court to grant costs of the suit.

#### **The 1<sup>st</sup> Defendant's Submissions \_\_\_.**

61. The 1<sup>st</sup> Defendant filed its written submissions dated November 21, 2022 through the firm of Mwaniki Gachoka & Co. Advocates. Six issues were outlined for determination: -
  - i. Whether the Plaintiff had constructed on and occupied plot No. 107 Dandora Phase II
  - ii. Whether the Plaintiff was negligent in the purchase and occupation of the suit premises?
  - iii. Whether the 1<sup>st</sup> Defendant has proven its ownership over and entitlement to the suit property.
  - iv. Whether the 1<sup>st</sup> Defendant's actions were procedural and lawful.
  - v. Whether the Plaintiff has established intention of fraud on the 1<sup>st</sup> Defendant part.
  - vi. Whether the Plaintiff is entitled to the reliefs sought
62. It was contended by the 1<sup>st</sup> Defendant that the Plaintiff was unable to explain to this court what extent of due diligence it undertook before taking possession of the property. That it was not clarified how the due diligence was done before taking possession of the same.



63. It was also argued that the Plaintiff failed to prove on a balance of probability that the physical location as it occupied was the exact location that was sold to it by the 4<sup>th</sup> Defendant and allotted to it by the 3<sup>rd</sup> Defendant. Both the Plaintiff and 4<sup>th</sup> Defendant relied on an undated plot formalization card which identifies the property owned by the Plaintiff as plot No. 107 on L.R. No. 11344/R. The Plaintiff failed to adduce any official maps from the Ministry of Lands or Survey of Kenya to affirm and ascertain its physical location on the ground to be the same property it purportedly owns.
64. On whether the Plaintiff was negligent in the purchase and occupation of the suit premises, it was submitted that the Plaintiff has not established that it undertook such exercise to establish the beacons of the property it was purchasing at the allotment as no Beacon Certificates have been produced in favour of the Plaintiff's due diligence and the Plaintiff has also not tendered any evidence of any interference with beacons by the 1<sup>st</sup> Defendant or any other Defendants herein.
65. Relying on the case of *Munyu Maina –Vs- Hiram Gathiba Maina* (2013) eKLR, the 1<sup>st</sup> Defendant submitted that holding of a title is not absolute as the same may be impeached under certain circumstances and in this case the Plaintiff had not tendered evidence of conclusive proof of ownership in a certificate of title.
66. It was argued that the 1<sup>st</sup> Defendant had produced before court proof of its ownership of the suit property having been reserved for Kenya Railways Corporation vide the first schedule of Legal Notice No. 440 of 1963 as issued under the *Kenya Railways Corporation Act*, which provides that;
- “All land which immediately before the 1<sup>st</sup> June 1963, either was unalienated own land or was vested in the Trust Land Board and which was then in use, or reserved for use, by the East African Railways and Harbours Administration for: -
- a. Premises used for the administration and control of services provided by the Administration.
  - b. Railway lines (including marshalling yards and sidings)
  - c. Railway stations.
  - d. ....”
67. It was contended that from the drawings, maps and plans, both from the Survey of Kenya and records held by the 1<sup>st</sup> Defendant Corporation, the subject land is clearly demarcated, surveyed and alienated as the Dandora Railways Station Reserve. This can be seen in: -
- a. Dandora Line sheet No 3 dated 28<sup>th</sup> May 1965 shows the extent of Railway boundaries and the Dandora station.
  - b. Survey plan of Dandora Railway Station registered on F.R. No. 117/6 of 1969 which shows the extent of reserve land.
  - c. Survey plan on F.R No. 113/29 dated 1988.
  - d. Survey plan on F.R. dated 2018 showing the station map on L.R. 31144
  - e. Dandora Part Development Plan (PDP) dated 1977 issued by the Ministry of Lands which shows the entire plan of the area and proposed developments.
68. According to the 1<sup>st</sup> Defendant, no evidence had been tendered by the Plaintiff challenging the authenticity of the 1<sup>st</sup> Defendant's ownership other than the mere allegation and assumptions pleaded.



69. It was also submitted that the Plaintiff has merely alleged fraud and failed to adduce any evidence in support of the allegation.
70. On whether the Plaintiff is entitled to the reliefs sought, it was submitted that the Plaintiff has failed to establish its proprietorship over the suit premises where the Plaintiff put up illegal structures within the 1<sup>st</sup> Defendant's Railway Reserve. No evidence has been tabled to ascertain the Plaintiff's location of construction in the form of approved maps or to rebut the evidence by the 1<sup>st</sup> Plaintiff. On the prayer for permanent injunction it was stated that the Plaintiff has failed to establish a meritable claim over the said property and as such is not entitled to an order of permanent injunction as the 1<sup>st</sup> Defendant had the legal mandate to be in the premises. On the general, exemplary and punitive damages, it was stated that in respect to demolitions, the court cannot award the same since they are special damages that they must be specifically pleaded and proved and since the same were not pleaded at all it ought to be disallowed and further no valuation report was filed to show the extent of damage. On special damages of Kshs 20,639,600/- it was submitted that the Plaintiff's list of documents as filed do not indicate proof of payment and no receipts were produced and hence the same cannot be granted.

#### **4<sup>th</sup> Defendant's submissions\_\_\_.**

71. The 4<sup>th</sup> Defendant filed her submissions dated September 26, 2022 and also Supplementary submissions dated November 28, 2022 through Wambui Kamau & Co. Advocates.
72. It was submitted that the Plaintiff did due diligence before purchasing the property. It was also submitted that the 4<sup>th</sup> Defendant had purchased the suit property for value in good faith and was unaware any adverse claims on the said property.
73. It was also submitted that the Plaintiff was not able to prove or show that there was any intent to defraud. Reference was made to the case of *Kuria Kiarie & 2 others -Vs- Sammy Magere* (2018) eKLR.
74. On the allegations made against Mr. Kimani, it was submitted that the Plaintiff ought to have sued him in his own right though in any event the said allegations had not been proven. The 4<sup>th</sup> Defendant urged the court to dismiss the suit against the 4<sup>th</sup> Defendant and enter Judgment as prayed in her counter claim.

#### **Issues, analysis and determination\_\_\_.**

75. The court has considered the cases put forward by the Plaintiff, the Defendants, the submissions of the parties and authorities cited together with the evidence adduced herein and is of the view that the following are the main issues for determination: -
- i. Who between the Plaintiff and 1<sup>st</sup> Defendant is the lawful proprietor of the suit property.
  - ii. Whether the 1<sup>st</sup> Defendant's action were procedural and lawful.
  - iii. Whether the Plaintiffs are entitled to the prayers sought.
  - iv. Whether the 4<sup>th</sup> Defendant is entitled to the orders sought in her counterclaim.
  - v. What orders should issue as to costs.

I will now proceed to analyze all the issues sequentially.

76. On the first issue for determination by this court, it was the Plaintiff's case that the Plaintiff purchased property known as Plot No 107 DANDORA PHASE II EXTENSION for a sum of Ksh 2,600,000/- from the 4<sup>th</sup> Defendant vide an agreement dated 25<sup>th</sup> January 2016. Indeed, the evidence on record



shows that the Plaintiff acquired the property from the 4<sup>th</sup> Defendant pursuant to a Sale Agreement dated 25<sup>th</sup> January 2016 between the Plaintiff and the 4<sup>th</sup> Defendant. Nicholas Omondi Ndiso and Martina Richter who testified as Plaintiff's witnesses both maintained that the Plaintiff did due diligence before the same was purchased for a consideration of Kshs 2,600,000/-. The 1<sup>st</sup> Defendant on the other hand maintained that the property belonged to the 1<sup>st</sup> Defendant having been reserved for use by Kenya Railways Corporation vide the first schedule of Legal Notice No. 440 of 1963 as issued under the *Kenya Railways Corporation Act* and this was way before the same was acquired by the 4<sup>th</sup> Defendant who later sold to the Plaintiff.

77. Having carefully considered the evidence adduced herein, it is evident that the suit property plot No. 107 Dandora Phase III extension as described by the Plaintiff herein had already been set aside for use as part of Kenya Railway Corporation reserve area. The 1<sup>st</sup> Defendant was able to produce evidence in form of drawings, maps and plans both from the Survey of Kenya and its own records confirming that indeed the subject land was clearly demarcated, surveyed and alienated as the Dandora Railways Station Reserve. The Plaintiff did not adduce any cogent evidence to controvert this position. As such the 4<sup>th</sup> Defendant being the vendor had no title to pass the same to the Plaintiff. The property was therefore not available for allocation or sale to any other person.
78. In view of the foregoing, this court finds that the Plaintiff could not have been the lawful owner of the subject property. The purchase of the said property started on a wrong footing as the 4<sup>th</sup> Defendant did not have a valid title to transfer the property to the Plaintiff. The said transaction was a nullity.
79. In view of the foregoing, it is the finding of this court that based on the applicable law and evidence adduced herein, only the 1<sup>st</sup> Defendant's claim to the subject property can be considered legitimate.
80. On whether the 1<sup>st</sup> Defendant's action were lawful and procedural, it was the 1<sup>st</sup> Defendant's case that the Plaintiff illegally occupied a railway reserve that was not available for allocation and that the 1<sup>st</sup> Defendant followed due process when undertaking the demolition exercises on the property.
81. During the cross-examination of the Plaintiff's witnesses, it was conceded that indeed a notice was issued by the 1<sup>st</sup> Defendant in respect to the parties who had encroached on its property to the extent that their buildings were marked for demolition.
82. The testimony of Ms. Bernadette Ndege also confirmed that indeed a Notice was issued, the first Notice to vacate dated October 4, 2016, the second notice dated 19<sup>th</sup> July 2018 and later the physical marking of the structures in August 2018.
83. The court has had the benefit to peruse the said notices that were issued and the court has also considered the testimony of the 1<sup>st</sup> Defendant's witnesses acknowledging the existence of the said notices and further considered that the structures on subject property were set up without the authority and approval of the 1<sup>st</sup> Defendant and hence arrives at the inevitable conclusion that indeed the 1<sup>st</sup> Defendant's action of demolishing the structures erected in the subject property was procedural and lawful.
84. On whether or not the Plaintiff is entitled to the reliefs sought, the Plaintiff sought for several reliefs including permanent injunction, general, punitive and exemplary damages together with costs of the suit. The Plaintiff also sought for an alternative relief which including refund of the purchase price of Kshs 2,600,000/- among other monies.

The Plaintiff also submitted on general, exemplary and punitive damages and argued that the same ought to be imposed so as to stop such actions from being committed. Reliance was made to the case of *Stelco Properties Limited & Another -Vs- Njugi Ventures Limited & Another* (2021) eKLR



where the court awarded damages as general and exemplary or punitive damages amounting to Kshs 20,000,000/- and Kshs 10,000,000/- respectively stating that objects of exemplary damages is to punish and deter. The case of *Isaiah M’Mugambi M’ukatha –Vs- Attorney General & 2 others (2016)* where the court awarded general and exemplary or punitive damages amounting to kshs 2,000,000/- and Kshs 1,000,000/- respectively was also cited in support. Having considered the foregoing, it is the finding of this court that the Plaintiff’s suit succeeds in the alternative prayers sought. The Plaintiff is entitled to refund of the purchase price and compensation of general damages from the 4<sup>th</sup> Defendant. Having considered the authorities cited by the parties and doing the best I can, I will proceed to award a figure of Kshs 2,000,000/- as general damages.

85. On where or not the 4<sup>th</sup> Defendant is entitled to the reliefs sought in the counterclaim, the 4<sup>th</sup> Defendant sought inter alia for the 3<sup>rd</sup> defendant to be held liable for the claim bought by the Plaintiff in respect to purchase of Plot No. 107 Dandora Phase II extension among others.
86. In respect to this issue, it is evident that from the evidence that was adduced, the 4<sup>th</sup> Defendant purchased the property from Hellen Omwenga. In the circumstances, the 4<sup>th</sup> Defendant’s counterclaim would have succeeded only if Hellen Omwenga was a party to this suit and further if only she would have sought those reliefs against her. In view of the foregoing, the reliefs sought in the 4<sup>th</sup> Defendant’s counter claim dated June 29, 2021 cannot be granted and the same are hereby declined.
87. On the issue of costs, the general rule is that costs follow the event. Having considered that the Plaintiff has succeeded in the alternative prayers that were pleaded, I direct that the costs of this suit shall be borne by the 4<sup>th</sup> Defendant.

#### **Final orders.**

88. In conclusion, the court makes the following final orders: -
- a. Refund of the Plaintiff’s purchase price of Kshs 2,600,000/-
  - b. General damages payable to the Plaintiff by the 4<sup>th</sup> Defendant of Kshs 2,000,000/-
  - c. The Plaintiff’s claim against 1<sup>st</sup> and 3<sup>rd</sup> Defendants is declined.
  - d. The 4<sup>th</sup> Defendant shall bear the costs of the suit.

Judgment accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 9<sup>TH</sup> DAY OF FEBRUARY 2023**

**E.K. WABWOTO**

**JUDGE**

**In the presence of:**

**Mr. Wahiga Mwaure for Plaintiff.**

**Ms. Alouch Akoth for 1<sup>st</sup> Defendant.**

**No appearance for 3<sup>rd</sup> Defendant**

**Ms. Kamau for 4<sup>th</sup> Defendant**

**Court Assistant – Caroline Nafuna**

**E.K. WABWOTO**



**JUDGE**

