



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**ELC CASE NO. 119 OF 2016**

**(ORIGINAL ELC NO. 272 OF 2014 MOMBASA)**

**KALUME KARISA MBITHA.....PLAINTIFF**

**VERSUS**

**BROMINE INVESTMENT LIMITED.....DEFENDANT**

**AS CONSOLIDATED WITH ELC NO. 51 OF 2015**

**(ORIGINAL CROSS- PETITION NO. 57 OF 2011)**

**BETWEEN**

**BROMINE INVESTMENT LIMITED.....PLAINTIFF**

**BY WAY OF CROSS PETITION**

**1. THE DIRECTOR OF LAND ADJUDICATION & SETTLEMENT**

**2. DISTRICT LAND ADJUDICATION & SETTLEMENT OFFICER-KILIFI**

**3. DIRECTOR OF SURVEY**

**4. DIRECTOR SURVEYOR-KILIFI**

**5. THE DISTRICT LAND REGISTRAR-KILIFI**

**6. KALUME KARISA MBITHA.....DEFENDANTS**

**JUDGMENT**

**BACKGROUND**

1. This suit was initially filed at Mombasa on 31<sup>st</sup> October 2014 as *ELC Civil Suit No. 272 of 2014*.

2. By his Plaint dated 31<sup>st</sup> October 2014, Kalume Karisa Mbitha (the Plaintiff) sought Judgment against the then sole Defendant-Bromine Investment Ltd for:-

*a. A declaration that the Plaintiff is not in occupation of Plot No. Kilifi/Mtondia/61;*

*b. A declaration that the Plaintiff is in occupation of Plot No. Kilifi/Mtondia/48;*

*c. An injunction restraining the Defendant by itself, agents or his authorized persons from evicting the Plaintiff from Plot No. Kilifi/Mtondia/48; and*

***d. Costs of this suit.***

3. These prayers by the Plaintiff arise from his contention that he is the registered proprietor of all that parcel of land known as Kilifi/Mtondia/48. It is his case that the Defendant has obtained eviction orders for a Plot No. Kilifi/Mtondia/61 in ***Mombasa HCCC No. 606 of 2001; Bromine Investment Ltd –vs- Kalume Karisa Mbitha and Another***, and that the Defendant is threatening to wrongfully evict him from his property using the said Orders. He asserts that while the said case involved himself and the Defendant, the same was in regard to a different subject matter.

4. As it turned out, the Plaintiff had earlier on 13<sup>th</sup> September 2011 filed ***Mombasa High Court Constitutional Petition No. 57 of 2011*** against the Director of Land Adjudication and the Kilifi County Adjudication Officer(the 1<sup>st</sup> and 2<sup>nd</sup> Respondents) seeking:-

***a. A declaration that the Petitioner's rights under the Constitution have been breached;***

***b. A declaration that the Petitioner is the rightful owner of Plot No. 61 Mtondia Settlement Scheme;***

***c. An order of Judicial Review by way of mandamus to compel the 1<sup>st</sup> and 2<sup>nd</sup> Respondents jointly and severally to register the Petitioner in the records as the rightful owner of Plot No. 61 Mtondia;***

***d. An order of compensation;***

***e. Costs of the Petition.***

5. Upon being served with the Plaintiff's suit herein, the Defendant entered appearance and proceeded to file a Notice of Motion application dated 9<sup>th</sup> December 2014 in ***Constitutional Petition No. 57 of 2011***. That application as amended on 19<sup>th</sup> December 2014 sought orders to have the Defendant enjoined in the Petition as the 3<sup>rd</sup> Respondent/Cross-Petitioner and that its Cross-Petition and Affidavit filed therein be deemed to have been filed with the Court's leave.

6. The Amended Notice of Motion further urged the Court to refer the Petition to be considered alongside ***Mombasa-ELC No. 272 of 2014***.

7. When the parties appeared before the Honourable Justice Anyara-Emukule on 16<sup>th</sup> March 2015 in regard to ***Constitutional Petition No. 57 of 2011***, the Court was informed that the Petitioner did not intend to proceed with the Petition as the matter had been settled when the Petitioner was granted orders compelling the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to register the Petitioner as the rightful owner of Plot No. 61 Mtondia. In the circumstances, the Learned Judge marked the Petition as withdrawn and ordered that the Cross-Petition be marked as a civil suit and that it be heard and determined with ***Mombasa ELC No. 272 of 2014***.

8. On 9<sup>th</sup> July 2015, the parties appeared before the Honourable Justice Ann Omollo and agreed by consent to have the Cross-Petition consolidated with ***ELC No. 272 of 2014*** with the latter file as the lead file. Thereafter on 11<sup>th</sup> May 2016, the parties recorded consent before the Learned Judge transferring the Consolidated Suit to this Court for hearing and disposal.

9. In the Cross-Petition dated 9<sup>th</sup> December 2014, the Defendant enjoins the Director of Survey, the Kilifi District Surveyor and the District Land Registrar Kilifi as the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents and accuses them of colluding clandestinely to amend the map layout for Mtondia area to reflect and exchange the location of Plot No. 61 with Plot No. 48 to justify the unlawful allotment and registration of the same in favour of the Plaintiff.

10. The Defendant accordingly prays in the Cross-Petition for:-

***a. A declaration that the impugned actions of the Respondents are unconstitutional, null and void;***

***b. A declaration that the Respondents' actions of causing amendments to the private property Kilifi/Mtondia/61 so as to interchange/exchange the said Plot No. 61 with 48 are unlawful, unconstitutional, null and void for being in violation of Articles 10, 27, 40, 47 and 50 of the Constitution;***

***c. A declaration that the Respondents actions amounted to a step in violation of rule of law, High Court and Court of Appeal orders in HCCC 606/2001 and Civil Appeal No. 26 of 2013 respectively, hence an infringement of Article 10, 27, 40 and 47 of the Constitution;***

***d. An order nullifying the amendments of the Kilifi/Mtondia map and land records that interfered with the Cross-Petitioners' proprietary rights to Kilifi/Mtondia/61;***

***e. An order quashing, revoking and nullifying the 6<sup>th</sup> Respondents (Plaintiff's) allotment and the title to Kilifi/Mtondia/48 forthwith;***

***f. An order directing the reinstatement of records, including maps for Kilifi/Mtondia/61 and 48 to the same status as before the unlawful amendment of map and interchange/exchange of Plots No. 61 and 48 in the land records;***

***g. An order for compensation for damages for violation of fundamental rights and the Constitution;***

## *h. Costs*

### **THE PLAINTIFF'S CASE.**

11. The Plaintiff (PW1) testified as the sole witness in his case. He told the Court that he was allocated Plot No. Kilifi/Mtondia/48 through a Letter of Offer dated 27<sup>th</sup> November 2013. He then paid all the requisite charges on 10<sup>th</sup> December 2013. The Charge by the Settlement Fund Trustees (SFT) was discharged on 22<sup>nd</sup> July 2014 when the parcel of land was transferred to him. On 20<sup>th</sup> August 2014, the land was registered and a Title Deed issued in his name.

12. PW1 told the Court that he was aware sometime in the year 2008, the Land Registry commenced a process of re-parcellation of the parcels of land situated within the Mtondia Settlement Scheme following complaints by the Settlers therein. Sometime in July 2013, the District Land Adjudication and Settlement Officer made a ground visit to confirm the physical occupation of various parcels of land. That verification confirmed that PW1 was in occupation of Kilifi/Mtondia/48.

13. PW1 testified that before his title deed was issued to him, it was erroneously issued to one Donald Gambo Maktubu who in fact occupying part of Parcel No. Kilifi/Mtondia/47. The said Donald surrendered the Title Deed and was issued with a Title Deed for the land he was occupying.

14. PW1 told the Court that he was aware that Parcel No. Kilifi/Mtondia/61 is presently occupied by the family of the late Katana Kalama and that back in the year 2001, the Defendant had claimed that they had purchased Parcel No. 61/D Tezo/Roka Settlement Scheme from one Zakaria Orwa Ogoye. PW1 told the Court that Tezo/Roka Settlement Scheme is situated in a different location and is separate and distinct from Mtondia Settlement Scheme where PW1's land is situated.

15. PW1 testified that in both *Mombasa HCCC 606 of 2001* and *Kilifi SRMCR No. 1371/2000* he had told the Court that he bought Parcel No. Kilifi/Mtondia/61 from one Charo Randu Nzai and that they had a Sale Agreement to that effect. PW1 told the Court that it is true that the said Charo had been allocated the said parcel of land and had partly paid for it although the land was yet to be transferred to him.

16. PW1 told the Court that the Defendant obtained eviction orders in *HCCC 606 of 2001* and now intends to use the same to evict him from Parcel No. Kilifi/Mtondia/48. He testified that the Defendant does not own and has no interest in his land. He denied colluding with the land officers to change the layout of his parcel of land in the Registry Index Map so as to defeat the Judgment in *HCCC 606 of 2001*.

17. During cross-examination, PW1 told the Court that the Defendant filed *Mombasa HCCC No. 606 of 2001* in regard to Parcel No. Kilifi/Mtondia/61 against him. He had proceeded to occupy the land and lives thereon to-date. PW1 told the Court that he had bought the land from Charo Nzai in 1991. PW1 filed a Counterclaim to the Defendant's case claiming the same parcel of land.

18. PW1 told the Court that he lost the case to the Defendant on 11<sup>th</sup> December 2012 when Judgment was delivered. He then filed *Civil Appeal No. 26 of 2013* before the Court of Appeal at Malindi. He similarly lost the case in the Court of Appeal and that is when the Defendant moved to evict him from the land. At the time PW1 had no title for the land. Later he was issued with a Title Deed indicating the parcel of land he occupied was Kilifi/Mtondia/48 following the re-parcellation and not Kilifi/Mtondia/61.

### **THE DEFENCE CASE**

19. The Defence equally called one witness in support of its case at the trial.

20. DW1-Shreenal Bharat Narandas is a Director of the Defendant. She testified that the Plaintiff herein and the Respondents in the Defendant's Cross-Petition have in collusion acted unlawfully to defeat the course of justice while fully aware that the land ownership dispute over Kilifi/Mtondia/61 was the subject of now concluded litigation in *Mombasa HCCC No. 606 of 2001*.

21. DW1 told the Court that the Defendant sued the Plaintiff in the said case over the same subject matter and that the Plaintiff filed a Defence and a Counterclaim therein. The said matter proceeded to full trial and on 11<sup>th</sup> December 2012, the Honourable Justice John Mwera delivered Judgment in favour of the Defendant herein.

22. DW1 told the Court that the Plaintiff was dissatisfied with the said Judgment and filed *Civil Appeal No. 26 of 2013* at the Court of Appeal at Malindi. After reviewing and analyzing the evidence adduced in the High Court, the Court of Appeal upheld the decision of the High Court in a Judgment rendered on 17<sup>th</sup> July 2014.

23. DW1 testified that upon conclusion of the Appeal, the Defendant moved to execute its Judgment by way of an eviction order issued in the said *Mombasa HCCC No. 606 of 2001*. It was then that it came to the Defendant's knowledge that the Plaintiff had colluded with officers at the Land Registry and purportedly got allocated the suitland after unlawfully interchanging the Map layout for Kilifi/Mtondia Adjudication Section to reflect Plot No. 61 as 48 without notice or involvement of the Defendant.

24. DW1 told the Court that the allocation followed the filing of *Petition No. 57 of 2011* by the Plaintiff herein. When the Defendant learnt of the Petition, it lodged a Cross-Petition to challenge the orders sought by the Plaintiff. Having succeeded in having the title registered in his name, the Plaintiff withdrew his Petition. The Cross-Petition was subsequently consolidated with this suit.

25. During Cross-examination, DW1 told the Court that the Defendant acquired the property by way of purchase. She was however not yet a director when the property was acquired. She told the Court that she was not aware where the Sale Agreement was and that she was also not aware if a search was done by the Defendant company prior to the acquisition.

## THE RESPONDENTS IN THE CROSS-PETITION

26. The five (5) Respondents named in the Defendant's Cross-Petition as the 1<sup>st</sup> to 5<sup>th</sup> Respondents were represented in these proceedings by the Honourable the Attorney General. They did not however call any witness at the trial.

## ANALYSIS AND DETERMINATION

27. I have perused and considered the pleadings filed herein, the oral testimonies of the witnesses and the evidence adduced at the trial. I have equally considered the written and oral submissions as well as the authorities that were placed before me by the Learned Counsels for the parties.

28. In this suit as filed on 31<sup>st</sup> October 2014, Kalume Karisa Mbitha (the Plaintiff) prays for a number of orders against the sole Defendant named therein Messrs Bromine Investments Ltd (the Defendant). The orders sought by the Plaintiff are a declaration that he is not in occupation of Plot No. Kilifi/Mtondia/61 and that instead he is in occupation of Plot No. Kilifi/Mtondia/48. The Plaintiff accordingly craves an order of injunction to restrain the Defendant from evicting him from the said Plot No. Kilifi/Mtondia/48.

29. Those prayers by the Plaintiff arise from his contention that he is the registered proprietor of all that property known as Kilifi/Mtondia/48. He accuses the Defendant of obtaining orders over a different subject matter in **Mombasa HCCC No. 606 of 2001; Bromine Investments Ltd –vs- Kalume Karisa Mbitha & Another** and wrongfully trying to use the same to evict him from the suit premises.

30. As it turned out, the Defendant does not deny seeking to evict the Plaintiff from the suit land. It is its case that it is doing so in execution of a Valid Court decree arising from **Mombasa HCCC No. 606 of 2001** which it had filed against the Plaintiff and wherein Judgment was delivered in its favour.

31. From the material placed before me, it is evident that by a Plaint dated and filed on 4<sup>th</sup> December 2001 at the High Court at Mombasa, the Defendant herein sued the Plaintiff jointly with his wife one Nancy Khanjila Kalume (hereafter Nancy) accusing them of trespass upon its property being all that parcel of land known as Kilifi/Mtondia/61 measuring approximately 14 acres.

32. In the said matter, the Defendant herein accused the two of trespassing onto the land sometime in 1993 and proceeding to cultivate the same, erecting structures and mining coral bricks therefrom. The Defendant therefore sought an order of injunction directed at the Plaintiff and the said Nancy restraining them from any further dealings with the said property as well as an order directing them to pull down their structures and to remove the debris from the suitland.

33. The Plaintiff and Nancy filed a Defence and Counter-claim denying the Defendant's claim of ownership to the subject Plot. Instead, the two averred that the Plaintiff herein was in fact the lawful owner of Plot No. 61 (Old Plot No. 445 D) in Mtondia Settlement Scheme having purchased the same sometime in 1990 from one Charo Randu Nzai whom they stated was the allottee of the suit land from the Settlement Fund Trustees.

34. The Plaintiff and Nancy further pleaded that upon purchase of the suitland as aforesaid, they proceeded to occupy the land and developed the same lawfully, continuously and uninterrupted until the year 2000 when the Defendant herein came along with its claim. They further pleaded that the Defendant had instead bought Plot No. 61/D Tezo Roka Settlement Scheme, which they stated was a totally different property, from one Zakaria Orwa. The two accused the Defendant of employing fraudulent and mischievous methods to obtain registration over and transfer to itself of Plot No. 61.

35. In their Counter-Claim, the two urged the Court to issue an order for the relevant land register to be rectified to enable them to continue enjoying occupation of their plot as bona fide purchasers. They further prayed for a declaration that they were the lawful owners of Plot No. 61 Mtondia Settlement Scheme (Old Plot No. 445D), an injunction to bar the Defendant herein from interfering with their quiet enjoyment of the subject plot and an order to rectify the register accordingly.

36. Both parties to that suit called a number of witnesses who testified before the Honourable J.W. Mwera J. (as he then was). In his Judgment delivered on 11<sup>th</sup> December 2012, the Learned Judge allowed the Defendant's claim and dismissed the Defence and Counter-claim as filed by the Plaintiff and Nancy. In the penultimate paragraph of his 23 –page Judgment, Justice Mwera states as follows:-

***“So all in all the Plaintiff's suit succeeds with costs and the defendants' Counterclaim is dismissed with costs. The Defendants have no right to remain on the suit premises or using the same. They should consider pulling down the structures they erected there and remove the debris themselves or the Plaintiff does so at their expense after the next forty five (45) days....”***

37. Aggrieved by that determination, the Plaintiff herein and Nancy lodged **Civil Appeal No. 26 of 2013** at the Court of Appeal at Malindi. In a Judgment delivered on 17<sup>th</sup> July 2014, the Learned Judges of Appeal (H.M. Okwengu, Asike-Makhandia and Fatuma Sichale JJAs) dismissed the Appeal observing as follows:-

***“Like the Learned Judge, we come to the conclusion that the respondent had a valid lease issued by the Ministry of Land and that its title is protected under Sections 27 and 28 of the former Registered Land Act (repealed). The appellants totally failed in their attempt to challenge the Respondent's title on grounds of fraud or misrepresentation. The Court therefore has the obligation to uphold the sanctity of the respondent's title. Accordingly we find no substance in this appeal and do therefore dismiss it....”***

38. It is apparent that the conclusion of the Appeal is what precipitated this suit before me. When the Defendant proceeded to execute the

Judgment delivered on 11<sup>th</sup> December 2012, the Plaintiff came to this Court seeking a declaration that the Plot he occupies is Kilifi/Mtondia/48 and not the Kilifi/Mtondia/61 that was the subject matter of **Mombasa HCCC No. 606 of 2001**.

39. The new classification arises from what the Plaintiff herein describes as a process of re-parcellation that was apparently commenced by the Respondents in the Defendant's Cross-Petition sometime in the year 2008. As it turned out, while **Mombasa HCCC No. 606 of 2001** was pending determination, the Plaintiff filed **Mombasa High Court Constitutional Petition No. 57 of 2011** on 13<sup>th</sup> September 2011.

40. The said Petition brought against the Director of Land Adjudication and the Kilifi County Adjudication Officer sought inter alia, a declaration that the Plaintiff herein is the rightful owner of Plot No. 61 Mtondia Settlement Scheme. It further sought an order of Judicial Review compelling the two named Respondents to register the Petitioner as the rightful owner of Plot No. 61 Mtondia.

41. In the Supporting Affidavit to the Petition sworn on 13<sup>th</sup> September 2011, the Plaintiff states at Paragraphs 2,3,8 and 9 on oath as follows:-

***"2. I have at all material times to this suit lived at Kilifi County on Plot No. 61 Mtondia Settlement Scheme.***

***3. That I did buy this Plot sometime in the year 1990 from Charo Randu Nzai and upon such payment he gave me the documents which relate to this Plot which is a receipt to confirm payment of the Plot upon allocation.***

***8. That upon seeing another title which was a grant issued by the Commissioner of Lands I got shocked and I made a visit to the Kilifi Adjudication Office to find out how come the space I was occupying had a leasehold title and yet it was a Settlement Scheme and the explanation I got shocked me.***

***9. That I did request the Kilifi Adjudication Office to give me details of Plot No. 61 and to my surprise it was in the name of another person and not even the one I had bought it from"***

42. From a perusal thereof the said Petition was clearly in respect of the parcel of land known as Kilifi/Mtondia/61 which land the Plaintiff claimed to have bought from Charo Randu Nzai in 1990. It is the very same suit property that was in contention in **Mombasa HCCC No. 606 of 2001** which was still then pending between the Plaintiff and Nancy on the one part and the Defendant on the other.

43. That Petition was in my view clearly filed in abuse of the Court Process as the Plaintiff filed the same fully cognisant of the dispute pending before another Court with the Defendant. That he was aware he was abusing the Court process can be discerned from the fact that despite his acknowledgment of the fact that there was a leasehold title in the name of the Defendant, he deliberately and mischievously excluded the Defendant from the Petition.

44. In his Amended Statement of Defence and Counter-claim dated 5<sup>th</sup> May 2005 as filed in **Mombasa HCCC No. 606 of 2001**, the Plaintiff had sought inter alia, an order for the rectification of the register directing that he be registered as the lawful owner of the suitland. That was the same order he was now seeking in the Petition to the exclusion of the Defendant.

45. As it turned out, while the Petition was pending for hearing, the Respondents in the Cross-Petition would proceed to change and amend the map for the Mtondia area as a result whereof Plot No. 61 was converted to become Plot No. 48. These changes were done without the involvement of the Defendant who was then the registered owner and in total disregard of the fact that there was a dispute over the subject parcel of land pending in Court.

46. To crown their obviously illegal actions, the Respondents proceeded to allocate the purportedly new Plot No. 48 to the Plaintiff and issued him with a Title Deed in his name on 26<sup>th</sup> August 2014, one month after the Court of Appeal dismissed the Plaintiff's appeal in **Malindi Civil Appeal No. 26 of 2013**. When the Defendant herein sought to be enjoined in **Petition No. 57 of 2011** and filed his Cross-Petition, the Plaintiff withdrew his Petition confirming that the Respondents in his Petition had already complied and registered him as the proprietor of the land.

47. As it were, this was the very same parcel of land that had been the subject of the dispute that had gone all the way to the Court of Appeal. During his Cross-examination herein by Mr. Mogaka, Learned Counsel for the Defendant, the Plaintiff confirmed as much. He conceded that the subject matter of this suit is the same parcel of land he had said he bought from Charo Nzai in 1990 and for which the Defendant had sued him with his wife Nancy.

48. The Plaintiff told the Court that he still lives on the same parcel of land whose ownership dispute he had lost both in the High Court and in the Court of Appeal. He further confirmed during cross-examination that the same houses that the Court had directed he should demolish are the very same ones he occupies to-date and that the same parcel of land No. 61 is the one whose title he had now been given as No. 48.

49. In the premises, it was clear to me that the amendments to the area map and the accompanying re-numbering of the suitland were unlawful and aimed at assisting the Plaintiff herein to steal a march and defeat the Defendant's rights and interests over the subject property. The amendments were aimed at vesting the subject land upon the Plaintiff without due process and thereby render the Court process that was ongoing a mere academic exercise.

50. Unfortunately for the Plaintiff, that is the furthest that his mischief shall take him. His claim to the suitland had already been heard and determined in a trial in which he not only participated by filing pleadings but also called witnesses including representatives of the Respondents to the Cross Petition who purported to aid him in illegally acquiring title to the same. Those officers must have been aware that under Sections 142 and 143 of the Registered Land Act (now repealed) there could have been no such rectification of the register without the

involvement of the registered owner- the Defendant herein.

51. It was otherwise plain to me that the issues raised by the Plaintiff herein are the very same ones that were the subject matter of the dispute in **Mombasa HCCC No. 606 of 2001**. Section 7 of the Civil Procedure Act provides that:-

***“No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.”***

52. That Section embodies the legal doctrine of res judicata. As was stated by the Court of Appeal in the **Independent Electoral and Boundaries Commission –vs- Maina Kiai & 5 Others (2017)eKLR**:-

*“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 commonsensical protection against wastage of time and resources in an endless pleaders 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 be brought to disrepute or calumny. The foundations of res judicata thus rest in the public interest for swift, sure and certain justice.*

53. In the matter before me, it is clear beyond per-adventure that the Plaintiff herein has had his day litigating his case in a Court of competent jurisdiction. I will not grant him the luxury to continue vexing, haunting and hounding the Defendant with issues that have been properly and effectively determined by a Court of competent jurisdiction.

54. Accordingly I find and hold that the Plaintiff’s suit as pleaded in the Plaint dated 31<sup>st</sup> October 2014 is an abuse of the Court process. The same is dismissed with Costs.

55. On the other hand, I am persuaded that the Defendant’s Counterclaim as contained in the Cross-Petition dated 9<sup>th</sup> December 2014 has merit. In my considered view, when he filed this suit, the Plaintiff was aware that there was a Court Judgment decreeing that he vacates the suit property. This suit was clearly filed in abuse of the Court process and his continued stay in the suit property in my view amounts to an act of trespass and an unlawful deprivation of the Defendant of its property.

56. In the circumstances, I am in agreement with the Defendant that he is entitled to damages for breach of its right to property. In that respect, and considering the facts around this case, I am in of the view that an award of Kshs 1.5 Million should suffice to compensate the Defendant in this regard. The Defendant’s Counterclaim is accordingly allowed as prayed with general damages assessed at Kshs 1.5 million.

57. The Defendant shall have the costs of both the suit and the Cross-Petition.

58. Orders accordingly.

**Dated, signed and delivered at Malindi this 6<sup>th</sup> day of May, 2020.**

**J.O. OLOLA**

**JUDGE**