REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT AT KERICHO

ELC SUIT NO. 99 OF 2017

JOSHUA NGENO.....PLAINTIFF

VERSUS

KENYA POWER & LIGHTING COMPANY LIMITED.....1st DEFENDANT

COUNTY GOVERNMENT OF KERICHO.....2nd DEFENDANT

JUDGMENT

1. Vide a Plaint dated the 23rd August 2017, the Plaintiff herein sought for the following orders;

   i. That the Defendants be compelled to remove the electricity poles and water pipes from the suit property.

   ii. Mesne profits

   iii. General damages

   iv. Cost of this suit and any other relief that this honorable court may deem fit and just to grant.

2. In response to the said Plaint, both the Defendants filed their respective defences on the 9th October 2017 and whereas the 1st Defendant in their statement of defence stated that the installation of the electricity supply lines and poles was a right in the nature of an overriding interest and denied having infringed on the Plaintiff's suit property, the 2nd Defendant on the other hand denied the allegations contained in the Plaintiff's Plaint stating that the water points were within a public utility land as part of a community water project and not within the Plaintiff's parcel of land.

3. Subsequently after both parties complied with the provisions of Order 11 of the Civil Procedure Rules, the matter was set down for hearing for the 20th March 2019 wherein the Plaintiff testified as follows;

The Plaintiff's case

4. The Plaintiff testified as PW1 and adopted his witness statement was as recorded before he proceeded to testify that he had sued Kenya Power and Lighting Co. Ltd and the County Government of Kericho, the Defendants herein because they had trespassed on his land parcel No. Kericho/Londiani/Joubert/Kedowa Block 6 (Baration)/165 which property was registered in his name. He produced the title deed to the said property as Pf exh 1 and proceeded to testify that the 1st Defendant cut down 14 trees on his land wherein it then fixed some electricity poles right across the middle of the entire 5 acres of his land without his consent.

5. That initially, he used to cultivate on the land but after the poles had been installed, he could not make proper use of his land wherein he used to plant maize since 2010. That he used to harvest 120 bags of maize from the 5 acres yearly wherein in the year 2010, a bag of maize used to cost Kshs. 1,500/=.

6. That the County Government of Kericho also installed water pipes on his land without consent, which pipes followed the same line as the electricityity poles, across his farm. It was his evidence that before filing suit, that he had visited the Defendants' offices to complain wherein they had promised to remove the electricity poles and water pipes but did not do so. That he subsequently wrote complaint letters to both the 1st Defendant on 12th July 2010 and to the 2nd Defendant on the 8th May 2017 which letters he produced as Pf' exh 2 and 3 respectively, but the same elicited no response.

7. That via a letter dated the 26th January 2017, herein marked as PMFI 4, the District Water Officer had promised to compensate him and had asked that in the meantime he allows the school children to use the water on his land. That to date, he had not been compensated.

8. That he subsequently served a demand notice dated 12th June 2017 to Kericho County Government herein produced as Pf exh 5, before filing suit. He sought for general damages, mesne profits and for the Defendants to be ordered to remove their electricity poles and pipes from his land, as well as for costs of this suit.

9. In cross examination by Counsel for the 1st Defendant, he responded that he did issue a demand letter to Kenya Power & Lighting Co. Ltd wherein he had delivered the letter personally to the office of the regional manager KPLC but that he had not produced the said demand letter as evidence. That the 1st Defendant had cut down his trees and installed electricity poles after their officers had insulted him. The witness confirmed that he did not have a letter to show that he had been prevented from using his land.

10. He also confirmed that in the letter dated the 12th July 2010 (Pf exh 2), he had asked the 1st Defendant to relocate the electricity poles to enable him maximize the use of his land and that he had no quarrel with the power line that supplied power to his house, which installation he had allowed, but what he had an issue with were the poles that passed across his land to supply electricity to the water pump. He emphasized that there were 7 electricity poles across the 5 acres and that only his cows could graze thereon but he couldn't cultivate the land because of the water pipes.

11. On cross examination by Counsel for the 2nd Defendant, PW1 stated that he had sued the 2nd Defendant for trespass because they had placed water pipes on his land without his consent. He also confirmed that there was a community dam on his land and that the same was owned by the shareholders of Baration Farm. That the dam, which had been dug by the white settlers, had been there since the 1930's before he acquired the land. He also confirmed that there was no access road to the dam except through his land.

12. His evidence was that he was a member of Baration Farm. That the old water pipes had been placed about 1½ feet below the surface at the time he acquired the land but after the 2nd Defendant placed new pipes thereafter, they had prevented him from using his land.

13. He confirmed that PMFI 4 was not on a letter head and neither did it bear the stamp of the water officer. He further stated that the dam was used by Baration Primary School whereby the children usually passed through his land to reach the water point. That the land had been acquired by the Society in the year 1966 wherein his father, who was one of the directors of Baration Farmers Society, had got a share of it. That by then, the dam was in place.

14. He further confirmed that he had subsequently acquired the land in the year 1992 and that his main issue was over the pipes that had been installed in the year 2010 by the 2nd Defendant and not the ones that had been installed in the 1920's because they were derelict. He confirmed that he had not been consulted on where the pipes were to be placed.

15. The plaintiff further confirmed that he had no documents to prove how much he was earning from his maize crops but emphasized that the total acreage of his land was about 9.1 acres out of which he was not able to use approximately 5 acres.

16. In re-examination, the Plaintiff reiterated that he had intended to plant blue gum trees on his land but was unable to do so because of the water pipes on his land. That he was unable to plough the land using a tractor because the pipes were close to the surface. That further, Baration Farm measured 210 acres. He also confirmed that the dam could be accessed through other parts of the farm other than his and that by the time he acquired the land, the old pipes were rusty and dysfunctional.

17. The 1st Defendant did not offer any evidence and its case was closed.

18. The 2nd Defendant's case was through DW1, John Kipngetich Bii the Chairman of Baration Water project who adopted his statement of 7th January 2019 as his evidence and proceeded to testify that he had been the Chairman of Baration Water project from the year 2016 to date. That the Plaintiff had also been a Chairman of the public institution within Baration from 1993 up to when he took over the Chairmanship.

19. He confirmed that the water pipes from a dam in plot No. 75, which was a public utility land, had been laid down by the white settlers in 1950's. That there was a water pump too and the coverage of the water was about 26 acres. That the land had been bought by 49 members who did not remove the pipes but left them there and the same now supplied water to the surrounding villages.

20. That the pipes, which were"G1" "4" inches pipes, had not been place there by the County Government and further that the pump house was the only place that was fenced. That in the year 1990, a new pump house was built at the same place since the white settlers pump had aged.

21. He refuted the allegation that fencing had been done on the Plaintiff's land but confirmed that the land once belonged to the Plaintiff's father Mr. Philip Arap Tegutwa wherein later, the Plaintiff and his brothers had inherited it and the Plaintiff took possession around the year 1993.

22. The defence witness further testified that the Plaintiff's father had also been a director and after he aged, the Plaintiff took his place. That at the time, the Plaintiff was the Chairman, he did not complain but utilized the water as well. That the Plaintiff's complaint was not genuine and that was the reason for which he had even written letters to the County Government to conduct a survey, so that the truth could be established.

23. His evidence was that although the Plaintiff had been asking them to move the pump house, they did not know where to move it because the land was a public utility land.

24. He added that at the time when the water project had gone down, they had sought for help from the County Government who had

supplied them with 2'' inch pipes and 1" inch pipes which were used to supply the water from the tanks to the people. That whereas one tank was built in 1990, the other tank was built by the white settler and there was nowhere that the pipes had interfered with the Plaintiff's land

25. At this juncture the court noted that the witness appeared truthful.

26. On cross-examination, the 2nd Defendant's witness started that he was born in the year 1961 after the pipes had already been put in the 1950's and were still in place. He confirmed that they had asked the County Government to renovate the pipes which run from the river to the tank.

27. He also reiterated that the old pipes used to pass though the land that once belonged to the Plaintiff's father Mr. Philip since 1950, land that used to be ploughed with no difficulty because the pipes were underground and the Plaintiff's father did not complain. His evidence was that the County Government had only extended the pipes from the tank but that he did not know on how many acres the pipes were laid through the Plaintiff's land. That nobody was interested in taking the Plaintiff's land.

28. He was categorical that the pump house was in plot No. 75 which was a public utility land and not on the Plaintiff's land. He further conceded that they had put barbed wire round the pump house without consulting any surveyor.

29. That the Plaintiff also used the water for his cattle and therefore he did not know why the Plaintiff wanted them to remove the pump house and pipes which had been placed there by the white settler and not the community or the county.

30. Upon being re-examined, the witness reaffirmed that they had sought for help from the County Government because the pump had gotten spoilt. That the County Government had then supplied them with the pipes measuring "2" inch and 1 inch respectively, but that the said pipes did not interfere with the Plaintiff's land. That they had in fact been placed from where the tank had been put up, which was on a public utility land.

31. The 2nd Defendant closed his case wherein parties filed their respective submissions.

Plaintiff's submissions.

32. After analyzing the parties case, the Plaintiff framed their issues for determination as follows;

i. Whether the Defendants trespassed the on the suit property without the Plaintiff's consent.

ii. Whether the Plaintiff is entitled to the reliefs sought.

33. On the first issue for determination, the Plaintiff relied on the provisions of Section 3 of the Trespass Act as well as on the definition in the Blacks Law Dictionary 8th edition to submit to that the Plaintiff had proved that he was the owner of the suit property. The Defendants had not refuted the presence of the same and whereas the 1st Defendant had installed electricity poles across 5 acres of the suit property, the 2nd Defendant had laid water pipes on the said property. Both the Defendant's actions had not been sanctioned by the Plaintiff which actions thus amounted to trespass, and therefore they were both liable to compensate the Plaintiff for both general and mesne profits.

34. On the second issue for determination, it was the Plaintiff's submission that they had established and proved their case against the Defendants on a balance of probability and therefore they were entitled to the reliefs sought in their Plaint.

35. That trespass to land was actionable without proof of the damage and therefore the Plaintiff was entitled to general damages for trespass on his parcel of land measuring 5 acres. This was because the 2nd Defendant had assumed ownership of use of the same since 1990 as well as ownership and use of the pump house even after acknowledging that the Plaintiff was the owner of the suit land and particularly where the pump house was situated.

36. That despite numerous letters and complaint to the Defendants, the same was in vain. The Plaintiff submitted that the court had inherent powers to grant any reliefs as it may deem fit and just and prayed that their prayers be allowed. The Plaintiff then acknowledged that on the claim of mesne profit, the suit property was yet to be valued.

2nd Defendant's submissions.

37. After the second defendant brought made an introduction of the brief facts of the case, he considered the definition of trespass as defined in the Trespass Act to submit that it was an illegal interference with a person's land without his consent. That the Plaintiff had to prove that entry upon the land was without reasonable excuse and that the Defendant had undertaken the activities outlined in the said provision of the law without his consent.

38. That the evidence on record did not suggest that the 2nd Defendant unlawfully entered on the Plaintiff's parcel of land act did any of the activities underlined in Section 3(1) of the Trespass Act. That it was evidential that the impugned pipes had been made on the plaintiffs are under way back in the 1950s by the white settlers when the land was the property of the Plaintiff's father.

39. There was no evidence that the Plaintiff's father had objected to the laying of the pipes on the land, further the 2nd Defendant did not lay any new pipes but rather renovated the old pipes at the request of the area water project management. The plaintiff could not now turn around and allege trespass when the project had been in existence since the colonial era.

40. The 2nd Defendant further submitted that the alleged water pump was on plot No. 75 which was a public utility land and for which the plaintiff did not denounce but laid unsubstantiated claim of encroachment.

41. The letter dated 26th January 2017 allegedly acknowledged by the 2nd Defendant on the promise compensation was not part of evidence adduced and the court cannot therefore benefit from its contents.

42. On the reliefs sought, the 2nd Defendant submitted that there was no evidence led to prove mesne profits as required and therefore this prayer should fail. It was further their submission that the Plaintiff having not proved trespass the issue of the general damages could not come into consideration.

43. The 2nd Defendant also submitted that since the cause of action arose in the 1950s when the alleged pipes were placed on the Plaintiff's parcel of land, and the present case having been instituted in the year 2017 without leave of court, the suit was statutorily time barred. They sought for its dismissal with costs.

Determination.

44. I have carefully considered the Plaintiff's claim against Defendant, the Defendants defence, the evidence adduced, the submissions, as well as the law applicable and the authorities herein cited.

45. I find the issues arising herein as being:

i. Whether the Plaintiff is the owner of the suit land.

ii. Whether the Defendants trespassed on the Plaintiff's land.

iii. Whether the Plaintiff is entitled to compensation of Mesne profits and General damages from the Defendants.

46. The Plaintiff's case is that being the proprietor of parcel of land No. Kericho/Londini/Joubert/Kedowa Block 6 (Baraton) /165, his claim was thus against the 1st Defendant to the effect that sometime in the year 2012, the 1st Defendant trespassed on his land, and without his consent, cut down 14 trees before erecting power poles across 5 acres of his land. His claim against the 2nd Defendant was that sometime in the year 2010, the 2nd Defendant also trespassed on his land and laid down water pipes therein without his consent. That the 2nd Defendant then fenced off part of his land. That the Defendants' actions had deprived him the maximum use of his land to the effect that whereas he used to harvest 120 bags of maize from the 5 acres yearly wherein in the year 2010, a bag of maize used to cost Kshs. 1,500/=, he now could not harvest from the said portion of Land.

47. He was categorical that there was a community dam on his land that was dug by the white settlers in the 1930's before he acquired the land for which he had no problem with the water pipes that had initially been laid by the white settlers. His issue was with the subsequent pipes laid on the said land by the 2nd Defendant

48. His evidence was supported by documentary evidence including a copy of the title deed to the said property produced as Pf exh1, a letter dated the 12th July 2010 to the 1st Defendant to relocate the electricity poles to enable him maximize the use of his land, produced as Pf exh 2, a letter of complaint to both the 1st and 2nd Defendants dated the 8th May 2017 produced as Pf exh 3 and a demand notice dated 12th June 2017 to the Kericho County Government herein produced as Pf exh 5,

49. Wherein the 1st Defendant did not defend his case, the 2nd Defendant's defence was that the water pipes had been put in place by the white settlers long before the Plaintiff acquired the land, as part of the community water project for which the Plaintiff was also a consumer, and were only renovated by themselves. That aside that the water pump was not within the Plaintiff's parcel of land but within a public utility land.

50. On the first issue for determination therefore, I find that it is not in contention that the Plaintiff is the proprietor of the suit land, him having produced a copy of his title deed as Pf exh 1 in support. This issue shall rest.

51. On the second issue as to whether the Defendants trespassed on the Plaintiff's land, it is indeed not disputed that the Plaintiff is the proprietor of the suit land known as No. Kericho/Londini/Joubert/Kedowa Block 6 (Baraton) /165, I find that the Plaintiff's evidence was cognate to the effect that the 1st Defendant's employees had gone on his land wherein they had proceeded to erect electricity poles across 5 acres of the same. His letter of complaint herein produced as Pf exh 2 to the 1st Defendant bore no fruits. The 1st Defendant adduced no evidence in his defence. I therefore find that the 1st Defendant did trespass onto the Plaintiff's land and therein carried out the unlawful activity to wit the installation of the electricity poles.

52. The Provisions of Sections 46 of the Energy Act, CAP 314, Laws of Kenya provide as follows :-

(1) No person shall enter upon any land, other than his own—

(a) to lay or connect an electricity supply line; or

(b) to carry out a survey of the land for the purposes of paragraph (a), except with the prior permission of the owner of such land.

(2) The permission sought in subsection (1) shall be done by way of notice which shall be accompanied by a statement of particulars of entry.

53. From the above provisions of the law, it is clear that a person ought not to enter into another's land in order to lay electricity supply lines unless with the permission of the land owner. Such person needs to give notice accompanied by a statement giving the particulars of entry. I therefore find that the Defendant's action of entering into the Plaintiff's land without first notifying him and without his permission was indeed tantamount to trespass.

54. It is trite law that trespass to land is actionable *per se* (without proof of any damage). See the case of **Park Towers Ltd v. John Mithamo Njika & 7 others (2014) eKLR** where J.M Mutungi J., stated:-

'I agree with the learned Judges that where trespass is proved a party need not prove that he suffered any specific damage or loss to be awarded damages. The court in such circumstances is under a duty to assess the damages awardable depending on the unique facts and circumstances of each case. ..'

55. In the case of **Duncan Nderitu Ndegwa v. KP&LC Limited & Another (2013) eKLR** P. Nyamweya J. held:-

"...once a trespass to land is established it is actionable per se, and indeed no proof of damage is necessary for the court to award general damages''.

56. There was however no evidence adduced by the Plaintiff in form of a report from an Agricultural office, or photographs to support the claim that the 1st Defendant had cut down his trees and therefore his claim shall remain a mere allegation.

57. In relation to the claim against the 2nd Defendant, I find that indeed it is not disputed that during the colonial times, water pipes had been laid beneath the suit land to supply water to the community. That the land had subsequently been registered to the Plaintiff's father and later to the Plaintiff during which period of time the pipes remained underneath the suit land. After the departure of the white settlers the Baration water project for which the Plaintiff was once it's Chairman, took over the management of the dam from which the water pipes had been connected. It is further not disputed that as time went by, the 2nd Defendant was called upon by the community to help in repairing/renovating the water pumps, which had now become old, to which they responded and laid new pipes in the year 2010. This was the source of the Plaintiff's complaint. It is also not disputed that the Plaintiff herein enjoys use of the water alongside other community members.

58. It was further stated that the dam from which the water was drawn from was situated in plot No. 75, a public utility land, and not on the Plaintiffs land as alleged. No evidence in form of a surveyors report was however adduced by the Plaintiff to dispute this allegation and to show that indeed the dam was on his land and not on plot No. 75. The law is clear that he who claims must prove. Therefore the fact that the dam is either on plot No. 75 or the Plaintiff's parcel of land is neither here nor there. What was in dispute per se was whether or not the 2nd Defendant had trespassed on the Plaintiffs' land when they installed the new pipes.

59. I have anxiously considered the Plaintiff's claim against the 2nd Defendant. I find that although the 2nd Defendant has submitted that the Plaintiff's suit was time barred by the Limitation of Actions Act, I find that whereas it is not in dispute that the original pipes that supplied water to the community were placed underneath the Plaintiff's parcel of land by the white settlers in the year 1930s or thereabouts even before the Plaintiff was registered to the suit land, the said pipes had continued to be in place (continued trespass) and to supply water to the community and the Plaintiff until such a time when they were old and had to be replaced and/or renovated. This was done by the 2nd Defendant in the year 2010 wherein both the Plaintiff and the community continued to enjoy water until the year 2017 to be precise on the 8th May 2017 when the Plaintiff raised a complaint that the 2nd Defendant had trespassed on his land and subsequently filed suit claiming compensation from the 2nd Defendant for the acts done in the year 2010, seven years later.

60. Since the Plaintiff's suit was founded on trespass, we must ask ourselves whether the statute of limitation affects the 2nd Defendant's continuous trespass.

61. The **Black Law Dictionary has defined a continuous trespass as;**

"*A trespass in the nature of a permanent invasion on another's rights, such as a sign that overhangs another's property".*

62. **Indeed the Court of Appeal in the case of Nguruman Limited V Shompole Group Ranch & 3 Others Civil Appeal No 73 of 2004 reported in 2007 KLR**. *Citing Clerk and Lindsel on Torts 16th Edition, paragraphs 23-01 held that :*

"Every continuance of a trespass is a fresh trespass of which a new cause of action arises from day to day as long as the trespass continues".

63. In the case of **Isaack Ben Mulwa .vs. Jonathan Mutunga Mweke [2016] eKLR**, the Court of Appeal stated as follows in regard to a continuous trespass: -

"Each action of trespass constitutes a fresh and distinct cause of action. It is inconceivable that a claim based on an action for trespass committed in 2015 would be res – judicata simply because the same parties or their parents litigated over the same matter in 1985. It is well settled principle that continuous injuries to land caused by the maintenance of tortious acts create separate

causes of action barred only by the running of the statute of limitation against each successive acts."

64. The Plaintiff has alleged that the 2nd Defendant's pipes are still on the suit land and therefore the 2nd Defendant continues to commit fresh acts of trespass for every time the pipes continue being on the suit land. Time therefore begins to run afresh as long as the 2nd Defendant's pipes are still on the suit property. I find that the statute of limitation does not apply in the present scenario. It is trite law that continuous injuries to land create separate actions.

65. Having said that and the Plaintiff having been categorical that he was not against the pipes that had been laid on his land initially by the white settlers but rather that he was against the subsequent pipes laid by the 2nd Defendant, and there having been evidence adduced that the subsequent pipes were just to beef up the old pipes as a way of renovation, can we then say that the 2nd Defendant had trespassed on the Plaintiff's land if he had just renovated the existing pipes which the Plaintiff had no issue with? Was there *wrongful entry without any justifiable reason?* This Court answers this question in the negative.

66. Trespass has been defined by the 10th **Edition of Black's Law Dictionary** as;

"an unlawful act committed against the person or property of another; especially wrongful entry on another's real property.''

67. The Court in **John Kiragu Kimani vs Rural Electrification Authority [2018] eKLR also in defining trespass relied on Clark & Lindsell on Torts, 18th Edition on page 923** which defines trespass as;

'any unjustifiable intrusion by one person upon the land in possession of another. The onus is on the Plaintiff to proof that the Defendant invaded his land without any justifiable reason'.

68. *Section 3 (1)* **of the Trespass Act, defines trespass as follows;**

"Any person who without reasonable excuse enters, is or remains upon or erects any structure on, or cultivates or tills or grazes stock or permits stock to be on, private land without the consent of the occupier thereof shall be guilty of an offence."

69. From the holding herein above and the definition of trespass, the court finds that the circumstance leading to the 2nd Defendants action of laying the pipes underneath the Plaintiff's land to boost the old pipes which the Plaintiff had no issue with did not constitute trespass.

70. The Plaintiff has sued for mesne profits against the Defendants. Section 2 of the Civil Procedure Act defines mesne profits as follows:-

"mesne profits", in relation to property, means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but does not include profits due to improvements made by the person in wrongful possession;

71. The Court of Appeal in the case of **Attorney General vs Halal Meat Products Limited [2016] eKLR** considered when mesne profits could be awarded and stated as follows:-

"It follows therefore that where a person is wrongfully deprived of his property he/she is entitled to damages known as mesne profits for loss suffered as a result of the wrongful period of occupation of his/her property by another. See McGregor on Damages, 18th Ed. para 34-42."

72. The Plaintiff has sought for mesne profits from the Defendants for reasons that whereas he used to harvest 120 bags of maize from the 5 acres yearly where in the year 2010, a bag of maize used to cost Kshs. 1,500/= that he could no longer earn the said amount as he is unable to cultivate on the impugned portion of land due to the Defendants' acts of trespass. The Plaintiff also conceded that the suit property was yet to be valued.

73. The Court of Appeal in the case of **Peter Mwangi Mbuthia & another v Samow Edin Osman [2014] eKLR** was of the opinion that it was upon a party to place evidence before the court upon which an order of mesne profits could be made. The court stated as follows:-

"We agree with Counsel for the appellants that it was incumbent upon the respondent to place material before the court demonstrating how the amount that was claimed for mesne profits was arrived at. Absent that, the learned judge erred in awarding an amount that was neither substantiated nor established."

74. I have considered the evidence herein adduced by the Plaintiff and find that the same falls short of the requirements *proving that the Plaintiff had suffered loss of profits as a result of the Defendants alleged impugned actions on his land,* there were no photographs showing the cut trees or valuation report indicating the value of the alleged damaged/cut trees, or even a receipt produced therein confirming that the Plaintiff had paid professional fees for an assessment report and neither was there evidence adduced on the income produced through the harvest of maize on the impugned 5 acre piece of land prior to 2010. The net result therefore is that I find and hold that the Plaintiff has not proved his case as against the Defendants.

75. The summation of my finding is that having found that the Plaintiff had proved his case against the 1st Defendant only for trespass, I herein enter judgment in his favor as against the 1st Defendant on that account. And since there was no evidence tendered in relation to the

state or the value of the Plaintiff's property before and after the trespass, it would be difficult to assess the general damages. However considering the acreage involved and the fact that that the poles on the Plaintiff's land are of permanent nature wherein nothing can be constructed underneath, I shall exercise my discretion and find as follows:

i. The Plaintiff's suit against the 2nd Defendant fails in its entirety and is therefore dismissed with costs.

ii. Judgment is however entered for the Plaintiff against the 1st Defendant wherein I award him Kshs 5,000,000/= *(five million shillings only) plus interest from the date of this judgment until payment in full,* as compensation of the infringement of his right to use and enjoy the suit property.

iii. The 1st defendant shall meet the Plaintiff's costs on the successful claim only.

DATED AND DELIVERED VIRTUALLY AT KERICHO THIS 29TH DAY OF JULY 2021

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE