



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT NAIROBI
ELC SUIT NO. 993 OF 2016

PAUL CURZON (aka PAVEL LUDEVIT VACLAV CURZON).....PLAINTIFF

VERSUS

MARTIN NGAO MUTHAMA.....1ST DEFENDANT

STEPHEN KIRIANKI NKANYAANA.....2ND DEFENDANT

JOHN OMULUBI OMUTIMBA T/A MATRIX AUCTIONEERS.....3RD DEFENDANT

CHIEF LAND REGISTRAR..... 4TH DEFENDANT

JUDGMENT

This suit was commenced by a plaint dated 16th August, 2016. The Plaintiff sought the following reliefs;

- a) Orders that the transfer entry No. I.R. 24467/14 to the 1st and 2nd Defendants and any subsequent transfers be revoked/cancelled.
- b) Orders compelling the Defendants to give back to the Plaintiff vacant possession of the suit property.
- c) Compensation at market value for the Plaintiff's house illegally demolished.
- d) Compensation for value of motor vehicles, household goods and personal items stolen by the Defendants.
- e) Damages for trespass to the Plaintiff's property.
- f) Other or further relief the court may deem fit to grant.
- g) Costs of the suit.

The Plaintiff's case:

In his plaint aforesaid, the Plaintiff averred as follows: He was the lawful owner of all that parcel of land known as L.R. No. 209/3163 situated along Nyeri Road in Kileleshwa Estate, Nairobi (hereinafter referred to as 'the suit property') having purchased the same from one, Naomie Rebecca Laozi Ramtu on

29th July, 2004. Before purchasing the suit property, he was occupying the property as a tenant from 1993. After the suit property was transferred to him through an instrument of transfer dated 17th December, 2004, he took possession of the same and occupied it as his matrimonial home until 22nd June, 2016.

He was a registered engineer and a non-executive director/majority shareholder in Premier Plant Hire Limited and Central Testing Laboratories Limited (both incorporated in Kenya). The benefits that accrued to him from the two companies were used to pay land rates, land rent, water bills, electricity bills and charges for security services provided on the suit property until 22nd June, 2016.

Sometime in March, 2013 while he was in the United Kingdom there was suspicion of unauthorized access to the house on the suit property but his staff could not identify any evidence of forced entry. It later came to his knowledge that old passports and title documents relating to the suit property and his other properties had been stolen. On 22nd June, 2016 while he was in the United Kingdom attending to his ailing wife, the 1st to 3rd Defendants fraudulently obtained orders in Nairobi CMCC Misc. Application No. 523 of 2016 (hereinafter referred to as "the lower court") to levy distress for rent and wrongly used the said orders with the assistance of the police to break into the suit property, evict his staff, steal motor vehicles, household and personal items and to take possession of the property. Upon learning of this development, he made an application to discharge/vacate the said orders of the lower court.

Through the affidavits that were filed in lower court by the 1st, 2nd and 3rd Defendants, he learnt that the 1st and 2nd Defendants had transferred the suit property to themselves on 28th April, 2016 claiming that he (Plaintiff) had died in 2006. He averred that he was alive and in good health and had never transferred the suit property to the 1st and 2nd Defendants and that the alleged transfer was fraudulent and illegal. The particulars of fraud on the part of the 1st, 2nd and 3rd Defendants were pleaded as;

- i. Stealing the Plaintiff's title deed to the suit property.
- ii. Stealing the Plaintiff's old passports.
- iii. Forging a transfer to themselves.
- iv. Transferring the suit property to themselves without consent or knowledge of the Plaintiff.
- v. Transferring the suit property to themselves without consideration.
- vi. Using the Plaintiff's stolen old passport to transfer the property to themselves.
- vii. Falsifying documents.
- viii. Fraudulently obtaining court orders to allegedly levy distress for rent and using the said orders to grab the Plaintiff's property.

The Plaintiff averred further that on 20th July, 2016, he obtained orders in the lower court stopping the sale of his goods that had been carried away by the 1st, 2nd and 3rd Defendants during the purported distress for rent. The Plaintiff averred that the Defendants thereafter descended on the suit property and demolished the building that was standing thereon. The Plaintiff averred that as a result of the acts of the Defendants aforesaid, he suffered loss and damage the particulars of which were pleaded as;

- i. Cost of the house (to be valued).
- ii. Cost of household goods (to be established).
- iii. Cost of motor vehicles (to be established).

iv. Cost of personal items (to be established).

The Plaintiff averred that the Defendants were actively marketing the suit property for sale to developers and unless restrained by the Court, they would sell, transfer, charge or otherwise remove the property from the Plaintiff's reach. The Plaintiff averred that the 3rd Defendant had abdicated his duties under the law and was a party to the fraud. The Plaintiff averred that if the 3rd Defendant had inspected the purported lease agreement and notice of default on rent, he would have had doubts as to the validity of the distress that he was instructed to carry out. The Plaintiff averred that the 4th Defendant was negligent in performance of its duties by failing to detect that the Plaintiff's signature in the transfer document that was presented to it for registration by the 1st and 2nd Defendants was a forgery and that the Plaintiff's passports that accompanied the transfer had long expired.

The 1st and 2nd Defendants' case:

The 1st and 2nd Defendants filed a joint statement of defence dated 18th March, 2019 on 21st March, 2019 denying the Plaintiff's claim in its entirety. The 1st and 2nd Defendants averred as follows: They were the registered owners of the suit property having purchased the same from the previous registered owner in 2005. They leased the suit property to one, Ngulua J. Karai and had been paying land rent, land rates and utility bills for the property. They averred that the Plaintiff had admitted that he was not in possession of the suit property's title documents and this they contended was because the Plaintiff sold/conveyed ownership of the suit property to them (the 1st and 2nd Defendants) in 2005 and definitely on 28th April, 2016 when they were registered as the owners of the property. They denied removing the Plaintiff's goods from the suit property. They averred that they were in sole occupation of the suit property since 2005 to the exclusion of the Plaintiff save for a period in early 2016 when they had rented it out to a tenant.

With regard to the lower court suit, the 1st and 2nd Defendants averred that the same was instituted by the auctioneer against their tenant on the suit property with their express instructions. They averred that the Plaintiff was joined in the lower court suit on account of an unproven competing interest in the suit property. They averred further that they did not know whether the Plaintiff was alive or not but he was alive and well when he transferred the suit property to them. The 1st and 2nd Defendants averred that they dealt with Paul Curzon and not the Plaintiff herein whose change of names is intended to steal a match on them. They alleged that the Plaintiff's claim over the suit property was fraudulent. The particulars of fraud and illegality were stated as follows:

- a) Claiming and failing to report the loss of title.
- b) Claiming and failing to report the loss of passports.
- c) Claiming to be the registered owner of the suit property when he is not.
- d) Impersonating the registered owner of the suit property.
- e) Conman of the highest order by impersonating Paul Curzon.
- f) Claiming property that does not belong to him.
- g) Claiming loss that he never suffered.
- h) Fraudulently introducing new names to defeat the Defendants' title.

The 3rd Defendant's case:

The 3rd Defendant entered appearance but did not file a defence.

The 4th Defendant's case:

The 4th Defendant filed a statement of defence dated 20th March, 2019 on 21st March, 2019 denying the Plaintiff's claim in its entirety. The 4th Defendant averred as follows: The Plaintiff was never registered as the owner of the suit property. The 4th Defendant performed due diligence and believed that the documents presented by the 1st and 2nd Defendants were genuine. The 4th Defendant averred that should it be found culpable by the court for the registration of the suit property in the name of the 1st and 2nd Defendant having relied on information presented by the said Defendants, it shall seek indemnity under Order 1 Rule 24 of the Civil Procedure Rules as against the 1st to 3rd Defendants.

The evidence tendered by the parties:

At the trial the Plaintiff testified and closed his case without calling any other witness. The Plaintiff adopted his witness statement dated 11th August, 2016 as part of his evidence in chief and produced the documents in his bundle of documents dated 16th August, 2016 as exhibits. In his witness statement, the Plaintiff reiterated the contents of his plaint that I have highlighted above. In his testimony given in court, the Plaintiff stated as follows: His name as it appears in his passport is Pavel Ludevit Vaclav Curzon. He is also known as Paul Curzon. He explained that the name Paul is the English version of Pavel which is a Czech name. He is a registered civil engineer. He bought the suit property on 29th July, 2004 from Naomie Rebecca Laozi Ramtu at Kshs. 8,500,000/-. The transfer in his favour was dated 17th December, 2004 and the same was registered on 29th December, 2004. He was issued with a title but the same was stolen from his house. He had lived and worked in Kenya for 20 years before he purchased the suit property. Initially he was employed by Alexander Gibb and later worked as a freelancer. He acquired two companies namely - Central Testing Laboratories Limited and Premier Plant Hire Limited.

He lived on the suit property from 1993 initially as a tenant. On the suit property was a 1950s 4-bedroom bungalow with servant quarters. He occupied the suit property until 2016 when unknown persons entered, took possession and evicted his staff therefrom.

He contacted his lawyer over this incident who after investigating the matter found out that the Defendants had obtained orders to levy distress for rent in the lower court which order they used to evict him from the suit property with the assistance from the police. He stated that he was the owner of the suit property and not a tenant thereon. He referred to the utility bills and security service invoices paid by his companies during his occupation of the suit property. He denied selling the suit property to the 1st and 2nd Defendants whom he contended were strangers to him. He told the court that he was alive and did not die in 2006 as claimed by the Defendants.

He stated that he had not accessed the suit property since 2016. His staff were also unable to access the same. One member of staff who gained partial access to the property informed him that the house on the property had been demolished but the debris was still in place. He stated that it would cost him USD 250,000/- to rebuild the house. He urged the court to grant the reliefs sought in the plaint.

On cross-examination by the advocate for the 1st and 2nd Defendants, he stated as follows: He travelled to Kenya the day before his testimony on a passport bearing the name Curzon Pavel Ludevit Vaclav. He had an alien I.D when he worked in Kenya. It bore the same names as the names in his passport. He used his full names on official documents while in his everyday life he used the name Paul Curzon. He stated that he entered into the agreement for the purchase of the suit property as Paul Curzon and a transfer was also executed in the same name. He stated that the theft of his title deed for the suit property was reported to the police but no action was taken.

On cross-examination by the 4th Defendant's advocate, the Plaintiff stated as follows: He had tried to do a search on the suit property but the file could not be found. He stated that he had not seen the transfer that was executed in favour of the 1st and 2nd Defendants nor perused the 4th Defendant's records. He

admitted that the 4th Defendant was not involved in the takeover of the suit property. He admitted further that he did not have a list detailing the loss he suffered.

On re-examination he stated that the Ministry of Lands was the custodian of land records. He stated that he could not carry out a search because the parcel file was missing. He stated that the blame for the loss of the said parcel file lay with the 4th Defendant. He stated that he joined the 4th Defendant in the suit because he has sought revocation of the title held by the 1st and 2nd Defendants and only the 4th Defendant can undertake the revocation.

On examination by the Court the Plaintiff stated that he was a British citizen and that he had travelled on British passport which was issued in 2010 and was to expire in 2020. He produced in court a complete copy of the said passport.

All the Defendants did not attend court when the matter came up for the hearing of the Defendants' case and their cases were closed without evidence.

The submissions by the parties:

The Plaintiff's submissions:

After the close of evidence, the court directed the parties to make closing submissions in writing. The Plaintiff filed his submissions dated 8th March, 2021. The Plaintiff framed a number of issues for determination by the court. The first issue that the Plaintiff submitted on was the illegal and/or fraudulent transfer of the suit property from the Plaintiff to the 1st and 2nd Defendants. The Plaintiff submitted that he was neither dead nor did he sell the suit property to the 1st and 2nd Defendants as he continued paying for the utilities and security thereon until 22nd June, 2016. The Plaintiff submitted further that he also had staff on the suit property until the said date. The Plaintiff submitted that the Defendants had not shown that they had occupied the suit property prior to 22nd June, 2016. The Plaintiff submitted further that the 1st and 2nd Defendants did not produce any evidence of the payment of the purchase price for the suit property neither did they produce an instrument of transfer executed by the Plaintiff in their favour. The Plaintiff submitted that the 1st and 2nd Defendants did not explain how they obtained the Plaintiff's Certificate of Title and that the only inference the court can make is that they were beneficiaries of the 2013 break in to the suit property when the Plaintiff's title and other documents were stolen. The Plaintiff submitted further that the 1st and 2nd Defendants also failed to explain how they registered a transfer on 28th April, 2016 without producing a Grant of Probate or Letters of Administration in respect of the Plaintiff's estate after claiming that the Plaintiff had died in 2006.

The Plaintiff submitted that the 4th Defendant contravened Sections 7, 9 and 10 of the Land Registration Act, 2012 by failing to produce a copy of the transfer used to register the suit property in the names of the 1st and 2nd Defendants and by failing to keep proper records of the suit property. The only inference that could be made from this according to the Plaintiff was that the 4th Defendant colluded with the 1st and 2nd Defendants in the illegal and fraudulent transfer of the suit property to the 1st and 2nd Defendants.

The Plaintiff urged the court to exercise its powers under section 80 (1) of the Land Registration Act, 2012 by revoking entry registered as 24467/14 on 28th April, 2016 through which the 1st and 2nd Defendants acquired the suit property and all subsequent entries. The Plaintiff submitted that the suit property should be restored to the Plaintiff and a title deed issued to him.

The second issue that the Plaintiff submitted on was whether the Defendants should be compelled to restore vacant possession of the suit property to the Plaintiff. The Plaintiff submitted that the court should order the Officer Commanding Kileleshwa Police Station to remove the 1st and 2nd Defendants and their agents from the suit property as their occupation is illegal. The Plaintiff submitted that the 1st and 2nd Defendants obtained orders to levy distress for rent but not to occupy the suit property or demolish the

house thereon. The Plaintiff submitted further that the letter to the 3rd Defendant to levy distress was written on the same date that the 1st and 2nd Defendants were purportedly registered as owners of the suit property. The Plaintiff submitted that there could not have been any rent due to the 1st and 2nd Defendants. The Plaintiff submitted that the 1st and 2nd Defendants used the excuse of levying distress for rent to get police assistance that enabled them gain forceful entry into the suit property.

The third issue on which the Plaintiff submitted on was the prayer for return of the movable goods that were attached by the 3rd Defendant failing which compensation should be considered. The Plaintiff urged the court to issue an order compelling the 3rd Defendant to return items including two motor vehicles, household goods, memorabilia, and personal items of the Plaintiff that were removed from the suit property within 14 days failing which the court should assess the compensation due to the Plaintiff in respect thereof. The Plaintiff submitted that instead of levying distress, the Defendants carried away the Plaintiff's goods and thereafter demolished his house. The Plaintiff submitted that this action was illegal. The Plaintiff submitted further that the lower court had issued an order restraining the 3rd Defendant from selling the Plaintiff's properties.

The fourth issue was compensation for the house that was demolished by the 1st and 2nd Defendants. The Plaintiff submitted that the demolition of the house on the suit property made valuation difficult. The Plaintiff submitted further that the architectural and engineering drawings in respect of the said house could also not be traced at the approvals department of the Nairobi City County. The Plaintiff urged the Court to consider the malice and arrogance of the 1st and 2nd Defendants (which made valuation impossible) in awarding damages. The Plaintiff relied on Municipal Council of Eldoret v Titus Gatitu Njau [2020] eKLR in support of this submission. Relying on Kenya Power and Lighting Company Limited v Phillip A M Kimondu [2018] eKLR, the Plaintiff submitted that there was uncertainty in assessing damages in this case. The Plaintiff urged the Court to award damages that are just and fair to enable the Plaintiff put up a new house and other developments on the suit property. The Plaintiff urged the court to award Kshs. 60,000,000/- of which Kshs. 50,000,000/- is the construction costs while Kshs. 10,000,000/- is professional fees.

The fifth issue on which the Plaintiff submitted on was damages for trespass to the suit Property. The Plaintiff cited Halsbury's Laws of England 4th Edition paragraph 872 in which the authors stated as follows on assessment of damages for trespass:

“The normal measure is the market rental of the property for the period of wrongful occupation without any deduction for the fact that the property might not have been fully occupied or might have been used unprofitably had it remained in the occupation of the Plaintiff for that period.”

The Plaintiff submitted that he was deprived of the suit property on 22nd June, 2016. The Plaintiff invited the court to take judicial notice of the rental income for stand-alone premises in Kileleshwa published by Hass Rental Index from the year 2016. The Plaintiff submitted that he was deprived of a rental income of Kshs. 250,000/- per month which exceeded Kshs. 15,000,000/- in the five years the deprivation has persisted. The Plaintiff urged the court to award the said amount as compensation for loss of user or as mesne profits.

The sixth issue was on other or further reliefs sought by the Plaintiff. The Plaintiff submitted that he should be awarded indemnity under section 81 of the Land Registration Act, 2012 to the tune of Kshs. 10,000,000/- for the inconvenience suffered. The Plaintiff submitted that the payment should be made by the 1st, 2nd and 4th Defendants. The Plaintiff submitted further that he should be paid Kshs. 5,000,000/- for the mental distress, anxiety and suffering occasioned to him and his now deceased wife. In support of this submission, the Plaintiff relied on Phillip Kimondu case (supra). The Plaintiff argued that an award of damages for trespass does not stop the court from awarding damages for mental distress. The Plaintiff also relied on Godfrey Julius Ndumba Mbogori & another v Nairobi City County [2018] eKLR and urged the Court to award exemplary damages to punish the Defendants and deter the actions complained of.

The 1st, 2nd and 3rd Defendants' submissions:

The 1st, 2nd and 3rd Defendants did not file submissions.

The 4th Defendant's submissions:

The 4th Defendant filed its submissions on 22nd September, 2020. In its submissions, the 4th Defendant framed two issues for determination namely, whether the 4th Defendant was negligent in the performance of its duty and whether the Plaintiff is entitled to the reliefs sought in the plaint. The 4th Defendant submitted that no evidence was placed before the court in proof of the alleged negligence on the part of the 4th Defendant in the performance of its duties. The 4th Defendant submitted that in registering the transfer of the suit property from the Plaintiff to the 1st and 2nd Defendants, it acted within its statutory powers. On whether the Plaintiff is entitled to the reliefs sought, the 4th Defendant submitted that the Plaintiff had failed to prove that the suit property was transferred to the 1st and 2nd Defendants fraudulently and that the 4th Defendant was a party to the fraud. The 4th Defendant submitted that in the circumstances, the Plaintiff is not entitled to any of the reliefs sought against the 4th Defendant. The 4th Defendant submitted further that the Plaintiff did not serve a notice upon the 4th Defendant prior to the filing of this suit and as such the Plaintiff is not entitled to costs as against the 4th Defendant. The 4th Defendant urged the court to dismiss the Plaintiff's suit as against the 4th Defendant with costs.

DETERMINATION:

From the pleadings, the following in my view are the issues arising for determination in this suit;

1. Whether the Plaintiff was at all material times the registered proprietor of the suit property.
2. Whether the 1st and 2nd Defendants acquired the suit property illegally and fraudulently.
3. Whether the Plaintiff is entitled to the reliefs sought in the plaint.
4. Who is liable for the costs of the suit?

Whether the Plaintiff was at all material times the registered proprietor of the suit property.

I am satisfied from the material before the court that the names Paul Curzon and Pavel Ludevit Vaclav Curzon refers to one and the same person and that both are the names of the Plaintiff. I am also satisfied from the evidence on record that the Plaintiff was the registered owner of the suit property until 2016 when the 1st and 2nd Defendants caused themselves to be registered as the owners of the property. The Plaintiff produced evidence showing that he purchased the suit property from one, Naomie Rebecca Laozi Ramtu on 29th July, 2004 at Kshs. 8,500,000/- through a sale agreement of the same date. The Plaintiff also produced evidence that the said Naomie Rebecca Laozi Ramtu transferred to him the suit property on 17th December, 2004 and that the transfer in his favour was registered at the Land Titles Registry Nairobi on 29th December, 2004 as No. I.R 24467/1. The Plaintiff produced evidence showing that he was paying land rates for the suit property until 2016 the same with utility bills for the house that was standing on the suit property. The Plaintiff told the court that his title for the suit property was stolen earlier from his house on the suit property before the property was transferred to the 1st and 2nd Defendants and that his attempts to carry out a search on the title of the suit property at the Land Registry failed because the parcel file containing the records relating to the suit property disappeared at the Land Registry.

The Plaintiff told the court that it was from the documents that the 1st and 2nd Defendants filed in the lower court that he learnt that the 1st and 2nd Defendants had caused the suit property to be registered in their names in 2016. The Plaintiff stated that the 1st and 2nd Defendants claimed in the lower court that

they purchased the suit property from him in 2005 and that he subsequently died on 26th August, 2006.

The Plaintiff appeared before me and gave evidence. The Plaintiff was cross-examined by the advocate for the 1st and 2nd Defendants, and the advocate for the Attorney General. The advocates for the defendants did not create any doubt that the person who appeared and testified in court was not Paul Curzon also known as Curzon Pavel Ludevit Vaclav. The evidence that was given by the Plaintiff regarding his identity was not shaken. The evidence given by the Plaintiff that he purchased the suit property and had the same registered in his name was also not shaken. The same applies to the evidence that the Plaintiff paid Land Rates for the suit property and utility bills.

The 1st and 2nd Defendants who claimed in their defence to have purchased the suit property in 2005 and had the same transferred to them on 28th April, 2016 never tendered evidence at the trial. They did not place the agreement for sale and the instrument of transfer through which the property was transferred to them. There was also no evidence that they paid for the suit property. The 1st and 2nd Defendants did not also show that they had occupied the suit property at any time prior to 2016 when they took possession through a purported distress for rent.

The 4th Defendant who is the custodian of land records did not also give evidence. The advocate from the Attorney General's office who appeared for the 4th Defendant told the court on 20th March, 2019 that the file for the suit property was missing from the Land Registry. No evidence was therefore placed before the court by the Defendants to challenge the Plaintiff's ownership claim over the suit property.

It is therefore my finding that the Plaintiff was at all material times the lawful registered proprietor of the suit property.

Whether the 1st and 2nd Defendants acquired the suit property illegally and fraudulently.

The evidence before the court shows that the suit property was transferred to the Plaintiff on 29th December, 2004. The 1st and 2nd Defendants claimed to have acquired the suit property from the Plaintiff in 2005 on a date that has not been disclosed. The plaintiff having proved that the suit property was registered in his name on 29th December, 2004 and that he never sold the suit property to the 1st and 2nd Defendants, the burden was on the 1st and 2nd Defendants to prove that they acquired the suit property from the plaintiff or any other person lawfully. As I have stated earlier, the 1st and 2nd Defendants never tendered any evidence at the trial. They did not therefore discharge this burden of proof. In the absence of any evidence of how the 1st and 2nd Defendants acquired the suit property that was registered in the name of the Plaintiff and the mysterious disappearance of the records at the Land Registry relating to the suit property, the only inference the court can make is that the transfer of the suit property to the 1st and 2nd Defendants was fraudulent and as such illegal, null and void.

Whether the Plaintiff is entitled to the reliefs sought in the plaint.

I have set out earlier in the judgment, the reliefs sought by the Plaintiff. Parties are bound by their pleadings and the court cannot grant reliefs that have not been sought. In his submissions, the Plaintiff urged the court to grant some reliefs that he had not sought in the plaint under prayer, "Other or further relief the court may deem fit to grant." The court cannot grant a major relief such as damages for mental distress, anxiety and suffering, and indemnity for inconvenience under this prayer. These damages and indemnity had to be pleaded so as to give the Defendants opportunity to respond to the same and the Plaintiff had to tender evidence in proof thereof.

From the reliefs that were pleaded, I am satisfied that the Plaintiff is entitled to prayers (a), (b), and (e). The Plaintiff has proved that the transfer of the suit property to the 1st and 2nd Defendants was effected fraudulently and illegally. Section 80 (1) of the Land Registration Act, 2012 provides that:

(1) Subject to subsection (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.

Having satisfied myself that the registration of the 1st and 2nd Defendants as proprietors of the suit property was obtained by fraud, the order sought for the cancellation of that registration is for granting.

As for the order seeking vacant possession, the Plaintiff led uncontroverted evidence that the 1st and 2nd Defendants gained possession of the suit property forcefully using the orders that they obtained in the lower court for the Police to assist them to break into the premises for the purposes of levying distress. There is no evidence that the lower court allowed the 1st and 2nd Defendants to take possession of the suit property. The 1st and 2nd Defendants' act of taking over possession of the suit property through distress for rent that in itself was unlawful was in the circumstances illegal. In any event, the 1st and 2nd Defendants as I have held above are not the lawful owners of the suit property. They are in the circumstances not entitled to possession. The Plaintiff who is the lawful owner of the suit property has a right to vacant possession of the property.

With regard to the claim for compensation for the house that was illegally demolished by the 1st and 2nd Defendants, the Plaintiff did not lead sufficient evidence that can enable the court to award this claim. The Plaintiff just told the court that one of his employees gained partial access to the suit property and noted that the house that was standing thereon had been brought down by the 1st and 2nd Defendants. The Plaintiff did not lead any evidence regarding the value of the house as at the time it was brought down. What the Plaintiff told the court was that it would cost him about USD 250,000/- to put up a similar house. No evidence was tendered to support this estimation. I am unable to award this claim which is in the nature of special damages without sufficient proof. The other claim is for compensation for motor vehicles, household goods and personal items that were stolen by the Defendants. Again this claim is in the nature of special damages. It ought to have been pleaded with the necessary particulars and strictly proved. The Plaintiff did not give the particulars of the damages claimed in the plaint and no evidence was tendered in proof thereof. The Plaintiff is not entitled to the damages claimed under this head of claim. The final relief sought was damages for trespass. The Plaintiff submitted that he should be awarded a sum of Kshs. 15,000,000/- as damages for trespass. The Plaintiff submitted that he would have earned a rental income of Kshs. 250,000/- per month from the property if he was in possession. The plaintiff submitted that he had been kept out of the property for 5 years and as such he is entitled to the said sum of Kshs. 15,000,000/- for loss of use of the property or as mesne profits. I have found that the 1st and 2nd Defendant's entry into the suit property was illegal. The 1st and 2nd Defendants are therefore trespassers on the suit property. It is not disputed that the trespass has been going on for the last 5 years during which period the Plaintiff has not been getting any benefit or income from the suit property. I will award the Plaintiff Kshs. 15,000,000/- as general damages for trespass.

Who is liable for the costs of the suit?

Under section 27 of the Civil Procedure Act, costs of and incidental to the suit is at the discretion of the court. As a general rule, costs follow the event. In this case, the Plaintiff has succeeded in his claim against the Defendants. I will award the Plaintiff the costs of the suit.

Conclusion:

In conclusion, I hereby enter judgment for the Plaintiff against the Defendants on the following terms;

1. The registration of the transfer of all that parcel of land known as L.R No. 209/3163(the suit property) in the names of the 1st and 2nd Defendants that was effected as entry No. I.R 24467/14 and any subsequent transfer of the suit property are hereby cancelled.
2. The 1st and 2nd Defendants shall vacate and hand over possession of the suit property to the

Plaintiff within thirty (30) days from the date hereof in default of which the plaintiff shall be at liberty to apply for their forceful eviction from the suit property.

3. Kshs. 15,000,000/- as general damages for trespass payable by the 1st and 2nd Defendants.

4. Costs of the suit payable by the 1st, 2nd and 3rd Defendants.

DELIVERED AND DATED AT NAIROBI THIS 16TH DAY OF NOVEMBER, 2021

S. OKONG'O

JUDGE

**JUDGEMENT DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO
CONFERENCING PLATFORM IN THE PRESENCE OF:**

MR. OJIAMBO FOR THE PLAINTIFF

MR. OSUNDWA FOR THE 1ST, 2ND AND 3RD DEFENDANTS

MR. KAMAU FOR THE 4TH DEFENDANT

MS. SHIKALI FOR INTERESTED PARTY

MS. C. NYOKABI-COURT ASSISTANT