



Arimi & 2 others v Kiambu Dandora Farmers Co. Ltd & 15 others; Mwangi (Interested Party) (Civil Suit E277 of 2021) [2025] KEELC 321 (KLR) (21 January 2025) (Judgment)

Neutral citation: [2025] KEELC 321 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
CIVIL SUIT E277 OF 2021
JO MBOYA, J
JANUARY 21, 2025**

BETWEEN

**JACOB NGONDOKI ARIMI 1ST PLAINTIFF
SPAAP LIMITED 2ND PLAINTIFF
DAND DEVELOPMENT LIMITED 3RD PLAINTIFF**

AND

**KIAMBU DANDORA FARMERS CO. LTD 1ST DEFENDANT
NAIROBI METROPOLITAN SERVICES 2ND DEFENDANT
NAIROBI CITY COUNTY 3RD DEFENDANT
DEPUTY COUNTY COMMISSIONER, EMBAKASI SUB-COUNTY 4TH
DEFENDANT
DEPUTY COUNTY COMMISSIONER, NJIRU SUB-COUNTY 5TH
DEFENDANT
HON. ATTORNEY GENERAL 6TH DEFENDANT
DR. MARK LERERUK 7TH DEFENDANT
FRANCIS KAMAU 8TH DEFENDANT
PETER KUNGA 9TH DEFENDANT
JAMES KIANDA 10TH DEFENDANT
FLORENCE MWOROA 11TH DEFENDANT
SAMUEL MURUNGI 12TH DEFENDANT
ABDULLAHI MUIGAI MUIRURI 13TH DEFENDANT**



JOSEPH MWANGI KARANJA 14TH DEFENDANT
PETER KARUMBI KEINGAT 15TH DEFENDANT
JAMES CHACHA 16TH DEFENDANT

AND

JOSEPHAT KARIUKI MWANGI INTERESTED PARTY

JUDGMENT

Introduction and Background:

1. The Plaintiffs herein approached the court vide Plaint dated 27th July 2021, which Plaint was amended and thereafter re-amended. For coherence, the Further Amended Plaint is dated 11th January 2022; and wherein the Plaintiffs have sought the following reliefs:
 - i. The Honourable Court be pleased to issue a permanent injunction restraining the Defendants whether by themselves or through their directors, employees, servants, representatives or agents or through any other person claiming under or through them or otherwise howsoever, from trespassing into, constructing upon, carrying out unlawful acts of violence, destruction or eviction against the Plaintiff and/or their agents and/or employees or in any other manner interfering, further interfering and/or dealing in any other manner interfering with the Plaintiffs rights to quiet possession, enjoyment, ownership and use of the parcels of land known as Land Reference Numbers 16285/2, 16285/3, 16285/4, 16285/5, 16285/6, 16285/7 and 16285/8.
 - ii. The Honourable Court be pleased to grant an order of mandatory injunction compelling the Defendants, their directors, nominees, servants, agents or persons claiming through them to remove and/or demolish all structures, buildings or things erected on parcels of land known as Land Reference Numbers 16285/2, 16285/3, 16285/4, 16285/5, 16285/6, 16285/7 and 16285/8 failing which the Plaintiffs shall be at liberty to demolish all structures, buildings or things and the cost of such removal or demolition to be recovered from the Defendants.
 - iii. The Honourable Court be pleased to order the Ward Commander, Kinyago Police Station to avail all necessary assistance and security to secure the rights of the 1st and 2nd Plaintiffs to occupy and use parcels of land known as Land Reference Numbers 16285/2, 16285/3, 16285/4, 16285/5, 16285/6, 16285/7 and 16285/8 situated in Embakasi District in the Nairobi City County and to prevent the interference, invasion and trespass by the Defendants or any of them or their agents, servant or persons acting in their name and to ensure that the 1st and 2nd Plaintiffs enjoy quiet possession and uninterrupted possession and use of the suit property and to ensure that the orders of the Honourable Court are complied with and enforced.
 - iv. An order directing the Defendants, jointly and severally, to compensate the Plaintiffs to the tune of KShs. 62,507,957 Only, as pleaded herein.
 - v. An order directing the Defendants to reimburse the Plaintiffs the costs and expenses incurred in continuing to secure the properties.
 - vi. Costs of the suit.



- vii. Any further or other order that this Honourable Court may deem fit.
2. Upon being served with the Plaint and Summons to Enter Appearance, the 1st, 9th, 13th, 14th and 15th Defendants [hereinafter referred to as the named Defendants] duly entered appearance and filed a Statement of Defence dated 8th March 2022. Pertinently, the named Defendants disputed the claims at the foot of the Further Amended Plaint. Furthermore, the named Defendants also impugned the validity and authenticity of the certificates of title held by the Plaintiffs herein.
 3. Moreover, the named Defendants also contended that the properties which were adverted to and claimed by the Plaintiffs herein fall within L.R No. 11379/3 belonging to and registered in the name of the 1st Defendant. In this regard, the 1st Defendant contended that the Plaintiffs titles were illegal, fraudulent and thus invalid.
 4. The 3rd Defendant duly entered appearance and filed a Statement of Defence dated 18th October 2021. Similarly, the 3rd Defendant denied the allegations adverted to and contained at the foot of the Plaint.
 5. Suffice it to state that even though the 3rd Defendant was served with the Further Amended Plaint, same [3rd Defendant] did not file an Amended Statement of Defence. For good measure, the 3rd Defendant relied on the contents of the Statement of Defence dated 18th October 2021.
 6. The 4th, 5th and 6th Defendants also entered appearance and filed a Statement of Defence. The named Defendants denied and disputed the claims at the foot of the Further Amended Plaint.
 7. The Interested Party filed an application and wherein same sought to be joined into the matter. Suffice it to state that the Interested Party was thereafter joined into the suit and constituted as such.
 8. The instant matter came up for case conference on various dates including 18th July 2022; whereupon the advocates for the parties intimated to the court that same had duly filed and exchanged the pleadings, list and bundle of documents and the witness statements. Furthermore, the advocates confirmed that the matter was ready for hearing.
 9. Premised on the foregoing, the court confirmed that the matter was indeed ready and ripe for hearing. Additionally, the court proceeded to and set down the matter for hearing.

Evidence by the Parties:

a. Plaintiffs' Case

10. The Plaintiffs' case is anchored and premised on the evidence of five [5] witnesses, namely, Jacob Ngondoki Arimi, William Karanja, Emmanuel Muugu Ngugi, Samuel Wachira King'ori, Matthew Irungu Mwangi and David Chege Kariuki. Same testified as PW1, PW2, PW3, PW4, PW5 and PW6 respectively.
11. It was the testimony of PW1 [Jacob Ngondoki Arimi] that same is the 1st Plaintiff in respect of the instant matter. Moreover, the witness testified that same is also a director of the 2nd Defendant. In addition, the witness averred that same is also a shareholder in the 3rd Plaintiff company.
12. Arising from the foregoing, the witness averred that by virtue of being the 1st Plaintiff and coupled with his association with the 2nd and 3rd Plaintiffs, same is therefore conversant with the facts of the instant matter. Furthermore, the witness also testified that same has also been mandated/authorised by the 2nd and 3rd Plaintiffs to testify on their behalf. To this end, the witness has referenced the resolution under seal which has been duly filed.



13. In addition, it was the testimony of the witness that same has since recorded and filed a witness statement in respect of the instant matter. In this regard, the witness referenced the witness statement dated 27th July 2021; and which witness statement the witness sought to adopt and rely on as his evidence in chief.
14. Instructively, the witness statement dated 27th July 2021 was duly adopted and constituted as the evidence in chief of the witness. Additionally, the witness averred that same has also recorded a Further Witness Statement dated 7th January 2022. The witness thereafter sought to adopt and rely on the Further Witness Statement as his further evidence in chief.
15. Suffice it to state that the Further Witness Statement was duly adopted and constituted as further evidence in chief on behalf of the witness.
16. It was the further testimony of the witness that same also filed another witness statement dated 10th June 2022; and which witness statement the witness sought to adopt and rely on as his additional evidence in chief. Notably, the witness statement dated 10th June 2022 was adopted and constituted as further evidence in chief of the witness.
17. Moreover, the witness adverted to a List and Bundle of Documents dated 13th June 2022 and containing a total of thirty-five [35] documents. Thereafter, the witness sought to tender and produce the various documents as exhibits on behalf of the Plaintiffs.
18. In the absence of any objection to the production of the documents as exhibits, same [documents] were duly admitted and constituted as exhibits P1 to P35 respectively.
19. Furthermore, the witness also adverted to the List and Bundle of Documents dated 12th January 2023 containing ten [10] documents. The witness equally sought to tender and produce the documents as exhibits on behalf of the Plaintiffs.
20. There being no objection to the production of the named documents, same [documents] were tendered and admitted as exhibits P36 to P45 respectively.
21. Other than the foregoing, the witness adverted to the Further Amended Plaint dated 11th January 2022 and which the witness sought to adopt and rely on. In addition, the witness invited the court to grant the reliefs sought/highlighted at the foot of the Further Amended Plaintiff.
22. On cross examination by learned counsel for the 1st, 9th, 13th, 14th and 15th Defendants [hereinafter referred to as the named Defendants], the witness averred that the Plaintiffs lawfully acquired the titles to and in respect of the suit properties. In addition, the witness averred that the Plaintiffs herein acquired the parcels of land in question by way of allotment. In this regard, the witness averred that same procured the letters of allotment.
23. It was the further testimony of the witness that even though same procured the letters of allotment, same [witness] has however not tendered any application letter from the previous allottees.
24. It was the further testimony of the witness that the Plaintiffs herein were not the first allottees. For good measure, the witness averred that the Plaintiffs herein bought land from the previous allottees.
25. While under further cross-examination, the witness averred that one parcel of land cannot have two [2] sets of certificates of title. Nevertheless, the witness testified that same has seen the documents filed by and on behalf of the 1st Defendant. Furthermore, the witness averred that in the documents filed by the 1st Defendant, same [witness] has seen a certificate of title.



26. It was the further testimony of the witness that the Plaintiffs obtained their titles from the previous owners in 1995. Further and in any event, the witness averred that their titles are indicated to have arisen from L.R No. 11379/3.
27. Additionally, it was the testimony of the witness that same is not conversant with or knowledgeable of whether the 1st Defendant owns land in the area. Nevertheless, the witness averred that the land which the 1st Defendant owned was compulsorily acquired by the Government of Kenya. In any event, the witness averred that the land was compulsorily acquired in 1974.
28. The witness further testified that same has produced a copy of the charge that confirms that the land was compulsorily acquired.
29. While under further cross-examination, the witness averred that same does not know whether the Government can compulsorily acquire land for private use. Nevertheless, the witness added that the 1st Defendant's title has been revoked.
30. Regarding compulsory acquisition, the witness adverted to the document at page 120 of the Plaintiffs' Bundle of Documents. In particular, the witness averred that the document under reference is testament to and indicative of the compulsory acquisition.
31. It was the further testimony of the witness that following the compulsory acquisition of the 1st Defendant's land, the government entered upon and took possession of the land in question. Furthermore, the witness referenced the certificate of official search which demonstrates that the land was compulsorily acquired.
32. Upon being shown a copy of the survey report by the Regional Surveyor, the witness averred that same was neither privy nor party thereto. Moreover, the witness also averred that same is not aware whether National Land Commission prepared a report over and in respect of the 1st Defendant's land.
33. While still under cross-examination, the witness averred that same is aware of the decision of Hon. Justice Okong'o, Judge; in respect of ELC Misc. No. 35 of 2018. In particular, the witness averred that the award/decision of the National Land Commission was quashed.
34. It was the further testimony of the witness that the land being claimed by the 1st Defendant was compulsorily acquired by the government and thereafter portions thereof were allocated to designated people. However, the witness averred that same [witness] was not an allottee of the land.
35. On the contrary, it was the testimony of the witness that same was a purchaser of the plots from persons who had previously [hitherto] been allocated the plots.
36. The witness further testified that the report by the Regional Surveyor seems to suggest that the land in question belongs to the 1st Defendant. In addition, the witness averred that the Report by the Regional Surveyor suggests that the 1st Defendant's land has never been sub-divided.
37. Other than the foregoing, it was the testimony of the witness that same undertook various developments on the suit property. In this regard, the witness averred that same had constructed/erected various structures on the suit property. Furthermore, the witness referenced the various photographs that have been tendered and produced before the court.
38. It was the further testimony of the witness that same procured approved building plans before undertaking the building on the suit property. The witness further averred that the approved building plans are before the court. Nevertheless, it was the testimony of the witness that the approval that has been tendered before the court relates to and is in respect of a perimeter wall.



39. While still under cross-examination, the witness admitted that same has not tendered and/or produced any approval for purposes of a building.
40. It was the further testimony of the witness that though same has tendered and produced a copy of the judgement that was delivered by Hon. Justice Okong'o, Judge; same [witness] does not understand the import and tenor thereof.
41. On cross-examination by learned counsel for the 3rd Defendant, the witness averred that same has sued the 3rd Defendant [The City County Government of Nairobi] because same were involved in the demolition of the structures on the suit property. Furthermore, the witness averred that the plots under reference were duly developed.
42. While still under cross-examination, the witness averred that same had constructed on the suit property. In any event, it was the testimony of the witness that the construction was undertaken by himself.
43. On further cross-examination, the witness averred that same had approvals for the building of the wall. However, the witness admitted that same had no approvals for the buildings.
44. It was the further testimony of the witness that even though same contends that the 3rd Defendant was involved in the demolition, same did not mount/lodge any complaint against the 3rd Defendant.
45. Furthermore, it was the testimony of the witness that the 3rd Defendant does not employ police officers.
46. Regarding the document at page 40 of the Plaintiffs' List and Bundle of Documents, the witness averred that the document shows that the 3rd Defendant has been interfering with the Plaintiffs' rights to the suit property. Nevertheless, it was the testimony of the witness that same has neither tendered nor availed any evidence to show interference by the 3rd Defendant.
47. Upon being referred to paragraphs 42 and 43 of the witness statement, the witness averred that same has neither tendered nor produced any evidence before the court to show that the 3rd Defendant was involved in any demolition.
48. On cross-examination by learned counsel for the 4th, 5th and 6th Defendants, the witness averred that same undertook due diligence and necessary investigations in respect of the suit properties before purchasing same. It was the further testimony of the witness that the structures and developments that were on the suit property were destroyed. The witness averred that the destruction was done by the 1st, 2nd, 3rd and 4th Defendants.
49. While under further cross examination, the witness averred that it is the said Defendants who came to the suit plots and thereafter undertook the offensive demolition of the structures that were on the suit properties.
50. It was the further testimony of the witness that same has been paying land rates in respect of the suit property. To this end, the witness averred that same has tendered and produced evidence before the court.
51. While still under cross-examination, the witness averred that the demolition in question was undertaken by the 1st, 2nd, 3rd and 4th Defendants. In any event, the witness testified that the demolitions were being carried out by police officers and officers from the Nairobi Metropolitan Services.
52. The second witness who testified on behalf of the Plaintiffs was William Karanja Kihara. Same testified as PW2.



53. It was the testimony of the witness [PW2] that same is a business person residing at Buruburu within the city of Nairobi. Furthermore, the witness averred that same is conversant with the facts of the case. In this regard, the witness added that same has since recorded and filed a witness statement. The witness thereafter sought to adopt and rely on the witness statement dated 22nd December 2021 as his evidence in chief.
54. Suffice it to state that the witness statement was duly adopted and constituted as the evidence in chief on behalf of the witness.
55. It was the further testimony of the witness that same is aware that the Plaintiffs herein filed a List and Bundle of Documents. In particular, the witness referenced the documents at pages 85, 86, 87, 88, 89 and 90 at the foot of the Bundle filed by the Plaintiffs. Moreover, the witness averred that the documents under reference relate to photographs of the structures that were sitting on the suit property before demolition.
56. It was the further testimony of the witness that the structures in question belonged to the church. Nevertheless, the witness added that the church structures were on the property that had been leased to the church by the 1st Plaintiff.
57. On cross-examination by learned counsel for the 1st, 9th, 10th, 13th, 14th and 15th Defendants, the witness averred that same is a business person and at the same time the administrator of Kingdom Reality Chapel. Nevertheless, the witness testified that even though same is the administrator of the said church, same [witness] has not tendered any document before the court to demonstrate that he is an official of the said church.
58. While under further cross-examination, the witness averred that same is privy to the demolitions that were carried out on the suit property. The witness added that the demolition was undertaken on 6th August 2021. Furthermore, the witness averred that the demolition complained of took place on Wednesday and Thursday. However, the witness averred that same does not know the persons who were responsible for the offensive demolitions.
59. It was the further testimony of the witness that even through the church building was demolished same[witness] has not shown the court where the church was at the time of the demolition.
60. It was the further testimony of the witness that same went to the police station with a view to reporting the demolition of the church building, but the OCS at the police station was very hostile.
61. While still under cross-examination, the witness averred that same has not mentioned in his witness statement the details of the items of the church that were destroyed during the demolitions.
62. Upon being referred to the photographs at pages 87,88 and 90 of the Plaintiffs Bundle of Documents, the witness averred that the pages relate to photographs concerning the church building which was demolished.
63. It was the further testimony of the witness that same got to know of the 1st Plaintiff around the year 2011. In particular, the witness added that same got to know the First Plaintiff when the church was searching for land to lease.
64. On cross-examination by learned counsel for the 3rd Defendant, the witness averred that same [witness] saw the demolition that was being undertaken on the suit property. Furthermore, the witness added that same went to the scene and found the demolitions being carried out.



65. It was the further evidence of the witness that same saw police officers at the locus in quo and that the police officers were providing security to the goons. In any event, the witness averred that the police officers were in uniform.
66. The witness further testified that same went to the local police station in a bid to report the incident. However, the witness averred that the OCS declined to record the statement.
67. On cross-examination by learned counsel for the 4th, 5th and 6th Defendants, the witness averred that the demolition was carried out/undertaken on the suit properties. In any event, the witness testified that same went to the suit property when the demolition was being undertaken.
68. It was the further testimony of the Witness that the offensive demolitions were being undertaken by goons. However, the witness added that the goons were being secured by police officers who were in uniform.
69. It was the further testimony of the witness that the police officers were also participating in the demolition.
70. On cross-examination by learned counsel for the Interested Party, the witness stated that the church had leased a portion of the land from the 1st Plaintiff. It was the further testimony of the witness that same went to the locus in quo [site] and found the demolition being undertaken.
71. Furthermore, the witness testified that the police officers who were at the site [locus in quo] declined to stop the demolition. On the contrary, the witness averred that the police officers appeared to have been giving security to the goons while same were undertaking the demolition.
72. The third witness who testified was Emmanuel Muugu Ngugi. Same testified as PW3. It was the testimony of the witness that same operates a garage at Komarock Area in the City of Nairobi. Furthermore, the witness averred that same is conversant with and knowledgeable of the 1st Plaintiff. In addition, the witness averred that the 1st Plaintiff owns land at Komarock Area.
73. Moreover, it was the testimony of the witness that same is conversant with the facts of this matter. In this regard, the witness posited that same has since recorded and filed a witness statement. To this end, the witness sought to adopt and rely on the witness statement dated 22nd December 2021 as his evidence in chief.
74. Suffice it to state that the witness statement dated 22nd December 2021 was duly adopted and constituted as the evidence in chief of the witness.
75. It was the further testimony of the witness that same witnessed the demolition that was undertaken in the 6th August 2021. In particular, the witness averred that the offensive demolitions were being carried out by a group of goons.
76. It was the further testimony of the witness that same [witness] went to the locus in quo and witnessed the demolitions. In any event, the witness added that the demolitions complained of commenced on the night before the 6th August 2021.
77. On cross-examination by learned counsel for the 1st, 9th, 10th, 13th, 14th and 15th Defendants, the witness averred that same has known the 1st Plaintiff for more than thirty years. In particular, the witness averred that same got to know the 1st Plaintiff at Meru.



78. It was the further testimony of the witness that the land in question belongs to and is the property of the 1st Plaintiff. Nevertheless, the witness averred that same has never seen the certificates of title in the name of the 1st Plaintiff.
79. While under cross-examination, the witness averred that same went to the land during the time when the demolition was being undertaken. Furthermore, the witness added that same [Witness] saw the 1st Plaintiff at the scene of the demolition.
80. It was the further testimony of the witness that the demolition complained of was done on the 5th August 2021. Nevertheless, the witness averred that same cannot remember the day of the week when the demolition was undertaken.
81. On further cross-examination, the witness averred that the demolition under reference did not take place on 11th August 2021.
82. On cross-examination by learned counsel for the 3rd Defendant, the witness averred that same saw once William Karanja at the locus in quo [site of demolitions] during the demolition. However, the witness added that there were many people at the site of the demolition.
83. It was the further testimony of the witness that the demolition under reference took place on 6th August 2021. However, the witness averred that same did not see any demolition on the 6th August 2021.
84. On further cross-examination, the witness averred that the demolition had been done on the preceding day. In particular, the witness added that when he went to the locus in quo he found that the property had been demolished.
85. The fourth [4th] witness who testified on behalf of the Plaintiffs is Smauel Wachira King'ori. Same testified as PW4. It was the testimony of the witness [PW4] that same is a resident of Embakasi Constituency within the City of Nairobi. In addition, the witness averred that same is a business person.
86. Other than the foregoing, the witness testified that same is conversant with the facts of the case. Moreover, the witness averred that same has since recorded a witness statement dated 7th January 2022; and which witness statement the witness sought to adopt and rely on as his evidence in chief. Instructively, the witness statement was duly adopted and constituted as the evidence in chief of the witness.
87. It was the evidence of the witness that same had been engaged by the 1st Plaintiff as a property manager/caretaker. The witness further testified that his mandate included aiding and assisting in the maintenance of the suit properties.
88. It was the further testimony of the witness that same has recorded a witness statement which captures all the pertinent facts of the case. Besides, the witness averred that the contents of the witness statement are correct.
89. On cross-examination by learned counsel for the Interested Party, the witness averred that premises were demolished on the 5th August 2021. In addition, the witness testified that the people who demolished the buildings on the suit property were Kiambu Dandora accompanied by government agencies. In particular, the witness averred that the government agencies included police officers and employees of Nairobi Metropolitan Services.



90. While under further cross-examination that same knew and was conversant with some of the police officers who were on site. In any event, the witness clarified that the police officers were in uniform and same were carrying guns.
91. Additionally, it was the testimony of the witness that same knew the members and officers of Kiambu Dandora. In any event, the witness testified that Kiambu Dandora had been holding meetings on the land.
92. On cross-examination by learned counsel for the 1st, 9th, 10th, 13th, 14th and 15th Defendants, the witness averred that same did not see the police officers demolish the premises. In any event, the witness added that he was not present when the demolition was been carried out.
93. It was the further testimony of the witness that same went to the locus in quo [site] on 6th August 2021. At any rate, the witness added that when he went to the locus in quo, the buildings on the suit property had been demolished. Besides, it was the further testimony of the witness that same saw very many people including police officers.
94. While still under cross-examination, the witness averred that the demolition was undertaken on 5th August 2021. However, the witness added that same was not at the scene when the demolition was carried out. At any rate, the witness testified that he did not see anyone who carried out and undertook the demolitions.
95. On cross examination by learned counsel for the 3rd Defendant, the witness averred that same is a caretaker of the 1st Plaintiff. In addition, the witness testified that his duties include maintaining the properties of the Plaintiff. Furthermore, the witness testified that same is knowledgeable of and conversant with the details of the titles belonging to the 1st Plaintiff. In this regard, the witness testified that the suit properties belong to the 1st Plaintiff.
96. It was the further testimony of the witness that the Plaintiff had constructed/erected various structures on the suit property. Nevertheless, the witness stated that same is not aware whether the Plaintiff had procured and obtained any building approvals.
97. While still under cross-examination, the witness further averred that same went to the suit property on 6th August 2021. In any event, the witness clarified that by the time he went to the suit property, the demolition had already occurred.
98. It was the further testimony of the witness that same did not see anyone from Nairobi City County Government at the locus in quo. Moreover, the witness averred that what he has spoken to concerning the events of the 5th August 2021 relate to information that same received. In particular, the witness reiterated that he did not see what happened and transpired on the suit property on 5th August 2021.
99. On cross-examination by learned counsel for the 4th, 5th and 6th Defendants, the witness averred that same is a business person and runs a rental shop in Embakasi. Furthermore, the witness averred that his rental shop is located approximately two hundred meters from the suit properties.
100. It was the testimony of the witness that the demolitions complained of were undertaken on the properties belonging to the 1st Plaintiff. Furthermore, the witness averred that same reported the incident to Dandora Police Station. However, the witness averred that the police officers refused to record the complaint.
101. It was the further testimony of the witness that by the time the demolitions were being undertaken, there were police officers at the site.



102. On re-examination, the witness averred that same was privy to and knowledgeable of the 9th Defendant. In particular, the witness averred that the 9th Defendant was the OCS Dandora Police Station.
103. While under further re-examination, the witness averred that same has not mentioned the names of the 14th and 15th Defendants in his witness statement.
104. It was the further evidence of the witness that the structures which were standing on the suit property were demolished by government officers.
105. The 5th witness who testified on behalf of the Plaintiffs was Matthew Irungu Mwangi. Same testified as PW5. It was the testimony of the witness that same is a taxi driver. In addition, the witness averred that same is conversant with the facts of the matter.
106. Moreover, the witness averred that same has since recorded and filed a witness statement before the court. In particular, the witness referenced the witness statement dated 22nd December 2021 and which witness statement the witness sought to adopt and rely on as his evidence in chief.
107. Suffice it to state that the witness statement dated 22nd December 2021 was thereafter adopted and constituted as the evidence in chief of the witness.
108. In addition, the witness averred that same is privy to and knowledgeable of the contents of a video which has since been played before the court. In addition, the witness averred that from the video, same was able to identify police officers at the site.
109. It was the further testimony of the Witness that the video, which was tendered and produced before the Court, shows the actions and activities that transpired on the suit property. In any event, the witness testified that the police officers were assisting/helping persons who were demolishing the buildings on the suit property.
110. On cross-examination by learned counsel for the 1st, 9th, 13th, 14th and 15th Defendants, the witness averred that same has neither referenced nor mentioned the video in his witness statement. Furthermore, the witness averred that the persons captured in the video are police officers. In any event, the witness testified that he knew that the persons are police officers because same were dressed in police uniform.
111. While still under cross-examination, the witness averred that the police officers were present at the site. However, the witness added that the police officers did not endeavour to stop the demolition that was being undertaken.
112. On cross-examination by learned counsel for the 3rd Defendant, the witness averred that same is conversant with one, namely, Samuel Wachira King'ori. Furthermore, the witness averred that Samuel Wachira King'ori was a watchman for the 1st Plaintiff.
113. While still under cross-examination, the witness averred that the said Samule Wachira King'ori whom same [witness] stated that was a watchman of the 1st Plaintiff was more of a caretaker.
114. It was the further testimony of the witness that same visited/went to the locus in quo where the demolitions were being undertaken. In particular, the witness added that same found that the demolition had already taken place.
115. It was the further testimony that the demolition complained of was undertaken in the night. In particular, the witness averred that the demolition commenced at 2:00 am. Nevertheless, the witness testified that same did not know the persons who were responsible for the demolitions.



116. On cross-examination by learned counsel for the 4th, 5th and 6th Defendants, the witness averred that same was aware of the structures that were standing on the suit property. In any event, the witness added that the suit property belongs to the 1st Plaintiff.
117. It was the further testimony of the witness that the entire plot was developed and same had various structures thereon.
118. Additionally, the witness averred that there was a portion of the suit property which was not developed. However, the witness clarified that the portion of the suit property which was not developed was being used as parking. Besides, the witness averred that there was also a church house [Building] on a portion of the suit property.
119. It was the further testimony of the witness that there were several vehicles which were driven to the suit property during and at the time of the demolition. In particular, the witness averred that the vehicles belonged to the National Police Service and the National Youth Service. However, the witness clarified that the registration number plates of the vehicles were concealed/hidden.
120. On further cross-examination, the witness averred that same was not able to recall the names of the people who were involved in the demolition. Nevertheless, the witness added that there were police officers present at the scene during the demolitions.
121. Furthermore, the witness added that same remained at the locus in quo up to and including 2:00 pm the following day. In addition, the witness stated that the persons who were demolishing the building were the goons.
122. On cross-examination by learned counsel for the Interested Party, the witness averred that same is conversant with the Interested party. In particular, the witness testified that the Interested Party is a business person. Besides, the witness averred that the Interested Party also owns a property in the neighbourhood of the suit property.
123. While still under cross-examination, the witness averred that same does not know the identities of the people who undertook the offensive demolition.
124. The sixth [6th] witness who testified on behalf of the Plaintiffs was David Chege Kariuki. Same testified as PW6.
125. It was the testimony of the witness [PW6] that same is a registered and licensed valuer. In addition, the witness stated that same is also the director of the company that was instructed to undertake the valuation. Moreover, the witness averred that pursuant to the instructions, by and on behalf of the Plaintiffs, same [Witness] visited the site on 2nd December 2021.
126. It was the further testimony of the witness, that the site that the same visited was in respect of L.R No. 16285/2, 16285/3, 16285/4, 16285/5, 16285/6, 16285/7 and 16285/8, respectively.
127. Moreover, the witness averred that same thereafter undertook inspection over and in respect of the suit property. Furthermore, the witness averred that same proceeded to and prepared a valuation report dated 11th January 2022. In this regard, the witness sought to tender and produce the valuation report as an exhibit before the court.
128. There being no objection to the production of the valuation report, same tendered and produced as exhibit P14 on behalf of the Plaintiffs.



129. It was the further testimony of the witness that the findings and conclusions are contained at page 16 of the valuation report. In particular, the witness stated that his findings have highlighted the values of the various structures and properties that were demolished.
130. On the other hand, the witness averred that same [PW6] valued various properties, including the perimeter wall. In this regard, the witness averred that the perimeter wall was valued at KShs. 8,000,000/- Only.
131. On cross-examination by learned counsel for the 1st, 9th, 13th, 14th and 15th Defendants, the witness averred that same is a qualified and registered valuer. Furthermore, the witness added that same undertook inspection of the suit properties and thereafter prepared a valuation report. The witness added that the valuation report has since been tendered and produced before the court.
132. It was the further testimony of the witness that the suit properties are situated at Dandora Area within the City of Nairobi.
133. Additionally, the witness averred that the values arising out of the evaluation have been enumerated and highlighted in the body of the valuation report. Furthermore, the witness averred that the perimeter wall was not entirely demolished. However, it was the testimony of the witness that the Valuation Report provides an estimate for the entire perimeter wall because the remainder portion had been impacted by the demolition.
134. Moreover, it was the testimony of the witness that valuation is guided by the public works guidelines. Nevertheless, the witness clarified that there is a difference between valuation and quantity survey.
135. While still under cross-examination, the witness averred that same visited the locus in quo on 2nd December 2021. However, the witness stated that the valuation report is dated 11th January 2022.
136. Regarding the photographs contained at page 9 of the valuation report, the witness averred that same demonstrate the existence of a toilet that was demolished. In particular, the witness clarified that what is shown thereon [on the photograph] is the slab that was demolished.
137. On cross examination by learned counsel for the 3rd Defendant, the witness averred that the valuation report which has been tendered and produced before the court contains an inventory of what the witness saw on the ground. In any event, the witness averred that same arrived at various values after adopting and deploying the comparable approach.
138. It was the further testimony of the witness that there was a church on the suit properties. In addition, the witness averred that same valued the properties of the church. Nevertheless, the witness clarified that the church did not belong to the Plaintiffs.
139. While still under cross-examination, the witness averred that same was also informed by the 1st Plaintiff that there were security persons employed to watch over the suit property. In particular, the witness averred that the security was comprised of about fifty persons.
140. It was the further testimony of the witness that the quotation on account of security had something wrong with it. In particular, the witness averred that the figures adverted to therein are not realistic.
141. On cross-examination by learned counsel for the 4th, 5th and 6th Defendants, the witness averred that the valuation report prepared by himself was for both compensation and litigation. Furthermore, the witness averred that the report beforehand is meant to assist the Plaintiffs to procure compensation.



142. While still under cross-examination, the witness testified that same deployed the comparable methodology. Furthermore, the witness averred that the comparables that were used in arriving at the values have been highlighted in the body of the valuation report.
143. With the foregoing testimonies, the Plaintiffs' case was closed.

b. 1st, 9th, 13th, 14th and 15th Defendants' Case

144. The 1st, 9th, 13th, 14th, and 15th Defendants' case revolves around the evidence of one witness, namely, Josph Mwangi Karanja. Same testified DW1. It was the evidence of the witness that same is a director of the 1st Defendant herein. In addition, the witness averred that by virtue of being a director of the 1st Defendant, same is conversant with the facts of this matter.
145. Moreover, the witness averred that same [Witness] has since recorded a witness statement dated 8th March 2022 and which witness statement the witness sought to adopt and rely on as his evidence in chief. To this end, the witness statement under reference was adopted and constituted as the evidence in chief of the witness.
146. Furthermore, the witness adverted to and referenced a List and Bundle of Documents dated 8th March 2022 containing four [4] documents. The witness thereafter sought to tender and produce the various documents before the court as exhibits.
147. There being no object to the production of the documents at the foot of the List and Bundle of Documents under reference, same [documents] were duly produced and admitted as exhibits D1 to D4, respectively.
148. On the other hand, the witness adverted to a Further List and Bundle of Documents dated 9th March 2022 containing one [1] document. In particular, the witness pointed out that the one document is a survey report dated 17th March 2021.
149. Nevertheless, the document under reference was objected to and thereafter same was marked for identification as DMFI5.
150. It was the further testimony of the witness that the 1st Defendant herein is the lawful owner and proprietor of L.R No. 11379/3. Furthermore, the witness averred that the 1st Defendant has never surrendered the certificate of title in respect of L.R No. 11379/3. In particular, the witness averred that the certificate of title in favour of the 1st Defendant has been under the custody and possession of the 1st Defendant to date.
151. It was the further testimony of the witness that L.R No. 11379/3 has never been compulsorily acquired. In this regard, the witness averred that the 1st Defendant's title is still lawful and valid.
152. On cross-examination by learned counsel for the 4th, 5th, and 6th Defendants, the witness averred that same is a director of the 1st Defendant. Furthermore, the witness averred that by virtue of being a director of the 1st Defendant, same is conversant with the facts of the subject matter.
153. Moreover, the witness averred that before the 1st Defendant acquired L. R No. 11379/3 same undertook due diligence before purchasing the property from the Khan family. In any event, the witness averred that the vendor who sold L. R No. 11379/3 to the 1st Defendant had lawful title to and in respect of the property L. R No. 11379/3.



154. It was the further testimony of the witness that there are several people who have laid a claim over and in respect of portions of L. R No. 11379/3. Furthermore, the witness averred that same is aware that the 1st Defendant herein has also filed ELC Petition No. 47 of 2011.
155. While still under cross-examination, the witness averred that the 1st Defendant has variously conducted a search over and in respect of L. R No. 11379/3 and the search reveals that the said parcel of land is still registered in the name of the 1st Defendant.
156. On cross-examination by learned counsel for the Plaintiff, the witness averred that even though same is a director of the 1st Defendant, same [witness] has not brought before the court any document to demonstrate that same is indeed a director of the 1st Defendant. Moreover, the witness averred that same is not only testifying on behalf of the 1st Defendant but also on behalf of five other persons who have also been sued in the matter.
157. It was the further testimony of the witness that the 1st Defendant herein holds the original title in respect of L. R No. 11379/3. In any event, the witness averred and reiterated that the said property belongs to the 1st Defendant.
158. It was the further testimony of the witness that the certificate of title which same has tendered and produced before the court is a certified copy. In particular, the witness averred that the certified copy is dated 13th August 2020.
159. While under further cross-examination, the witness averred that same had referenced a certificate of official search in his evidence in chief. However, the witness admitted that same has neither tendered nor produced the certificate of official search that was referenced.
160. Upon being referred to the document at page 119 of the Plaintiffs' List and Bundle of Documents, the witness admitted and acknowledged that the document under reference is a certificate of title. In particular, the witness stated that the said certificate of title is the same as the one that he [DW1] has tendered and produced before the court.
161. It was the further testimony of the witness that same has seen the entry contained in the certificate of title produced before the court by the Plaintiffs. For good measure, the witness acknowledged that there is an entry relating to compulsory acquisition. In any event, the witness admitted that the entry pertaining to compulsory acquisition is said to have been entered on 20th November 1974.
162. While still under cross-examination, the witness averred that the named document before the court is a certificate of official search. In particular, the witness stated that the certificate of official search is dated 11th January 1996.
163. It was the evidence of the witness that the suit property has never been compulsorily acquired. In any event, the witness averred that his documents, namely, the ones produced on behalf of the 1ST Defendant, do not evidence/show compulsory acquisition.
164. Regarding the judgement rendered vide Judicial Review No. 35 of 2018; and where the Judge referenced the Gazette Notices underpinning compulsory acquisition, the witness contended that there is an appeal that was filed against the judgement in respect of ELC Misc. No. 35 of 2018. Furthermore, the witness averred that the appeal is still pending.
165. It was the further testimony of the witness that the land in question, namely, L. R No. 11379/3 is situated in Eastlands. The witness further averred that the land borders Umoja Estate and Makongeni Estate, respectively.



166. While still under cross-examination, the witness averred that same is aware that Mama Lucy Hospital is situated within L. R No. 11379/3. Furthermore, the witness acknowledged that there is also a police station located within L. R No. 11379/3.
167. The witness further acknowledged that there is a Civil Servants Housing Estate situated within L. R No. 11379/3. In addition, the witness averred that the Civil Servants Housing Estate is not a Government project.
168. On the other hand, it was the testimony of the witness that there is also another housing estate on L. R No. 11379/3. The other housing estate was referenced as Wasra Gardens Estate. Moreover, the witness stated that the said estate belongs to the 1st Defendant.
169. Nevertheless, it was the testimony of the witness that the owners of Wasra Gardens Estate have certificates of title over and in respect of their units. Besides, the witness also averred that same believes that Mama Lucy Hospital has a certificate of title over the land occupied by same.
170. On further cross-examination, the witness averred that same was made aware of the compensation money that was deposited over and in respect of L. R No. 11379/3. However, the witness stated that same does not know whether the compensation money that was deposited is still with the court.
171. It was the further testimony of the witness that the Plaintiffs' parcels of land are situate within L. R No. 11379/3. Furthermore, the witness admitted that there are also several persons who are in occupation of L. R No. 11379/3.
172. It was the further testimony of the witness that same has seen the Certificates of Titles presented to the court by the Plaintiffs. In addition, the witness has averred that same has also seen the certificates of official searches tendered before the court. For good measure, the witness averred that the certificates of official search confirm that the properties belong to the Plaintiffs.
173. While still under cross-examination, the witness averred that same has also seen the Kenya Gazette Notices referred to by the Plaintiffs. Nevertheless, the witness has contended that the 1st Defendant has since filed a Petition challenging the purported compulsory acquisition. However, the witness stated that the Petition under reference is still pending before the court.
174. It was the further testimony of the witness that L. R No. 11379/3 lawfully belongs to the 1st Defendant. In this regard, the witness averred that the 1st Defendant therefore has lawful rights to and in respect of the 1st Defendant.
175. Moreover, it was the testimony of the witness that same is aware that there was an order for re-survey of the land. In addition, the witness averred that the re-survey under reference was duly undertaken and a report was thereafter prepared.
176. On the other hand, the witness averred that same is aware that some demolitions were carried out on the land. However, the witness testified that the demolitions were not commissioned by the 1st Defendant.
177. Furthermore, it was the testimony of the witness that same is not aware whether the Plaintiffs' properties were interfered with. However, the witness stated that same is neither privy to nor conversant with the location of the Plaintiffs' properties.
178. Regarding ELC Petition no. 47 of 2011, the witness averred that same is challenging the validity of the compulsory acquisition that was undertaken by the government in respect of L. R No. 11379/3. In any event, the witness averred that the petition is coming up for hearing [sic] in April 2024. Additionally, the witness averred that the petition has a plethora of prayers including compensation.



179. On cross-examination by learned counsel for the Interested Party, the witness averred that the 1st Defendant is the registered owner and proprietor of L. R No. 11379/3. Moreover, the witness averred that L. R No. 11379/3 has never been sub-divided.
180. It was the further testimony of the witness that same [witness] does not know whether the Interested Party owns any land in the neighbourhood of L. R No. 11379/3.
181. It was the further testimony of the witness that the 1st Defendant has never commissioned any eviction from L. R No. 11379/3. Further and in any event, the witness added that the 1st Defendant has never evicted anyone from L. R No. 11379/3.
182. While still under cross-examination, the witness averred that the 1st Defendant is the one who filed ELC Petition No. 47 of 211. Nevertheless, the witness stated that the said petition is still pending hearing and determination.
183. Moreover, it was the testimony of the witness that the title of the 1st Defendant remains valid. In any event, the witness averred that the land belonging to the 1st Defendant has never been compulsorily acquired.
184. On re-examination, the witness averred that same has read the judgement rendered by Hon. Justice Okong'o, Judge; in respect of the ELC Misc. App. No. 35 of 2018. However, the witness averred that the said judgement does not reference compulsory acquisition. In any event, the witness remained categorical that there was no compulsory acquisition in respect of L. R No. 11379/3.
185. It was the further testimony of the witness that same was informed of a deposit that was made in court. However, the witness added that the deposit under reference was subsequently collected by the same authority which had deposited same. In particular, the witness averred that the deposit/Compensation was collected by the Commissioner of Lands [now defunct].
186. While still under re-examination, the witness averred that same has tendered and produced before the court the certificate of title in the name of the 1st Defendant. Furthermore, the witness averred that the certificate of title that was issue in favour of the 1st Defendant is still valid. It was the further testimony of the witness that the certificate of title in respect of L. R No. 11379/3 does not have any entry speaking to compulsory acquisition.
187. Furthermore, the witness averred that the documents that same [Witness] has tendered before the court are the original documents including the certificate of title in respect of L. R No. 11379/3.
188. It was the further testimony of the witness that the 1st Defendant's property was never compulsorily acquired. In any event, the witness averred that compulsory acquisition would ordinarily be done for public purpose and not otherwise.
189. With the foregoing testimony, the 1st, 9th, 13th, 14th and 15th Defendants' case was closed.

c. 4th, 5th and 6th Defendants' Case

190. The 4th, 5th and 6th Defendants' case is premised on the evidence of one witness namely, Mirriam Wanjiru Kigathi. Same testified as DW2.
191. It was the testimony of DW2 that same is a government surveyor currently attached to the Directorate of Survey. Furthermore, the witness averred that same has been attached to the directorate of survey since 2012.



192. It was the further testimony of the witness that by virtue of her office, same [witness] is conversant with the facts of this matter. Moreover, the witness averred that same also recorded a witness statement and which witness statement the witness sought to adopt and rely on as her evidence in chief. Instructively, the witness statement was duly adopted and constituted as the evidence in chief of the witness.
193. Additionally, the witness averred that same visited L. R No. 11379/3 and thereafter prepared a report dated 17th March 2021. In this regard, the witness sought to tender and produce the said report as an exhibit before the court. There being no objection to the production of the survey report, same [survey report] was tendered and produced as exhibit D1 on behalf of the 4th, 5th and 6th Defendants.
194. It was the testimony of the witness that L. R Nos. 16285/2, 16285/3, 16285/4, 16285/5, 16285/6, 16285/7 and 16285/8, respectively have been found to be inside L. R No. 11379/3. Furthermore, the witness averred that the survey plan [FR] that underpins the creation of L. R Nos. 16285/2, 16285/3, 16285/4, 16285/5, 16285/6, 16285/7 and 16285/8 is F.R No. 229/89.
195. On the other hand, it was the testimony of the witness that L. R No. 11379/3 is underpinned by survey plan [FR No. 113/29]. Furthermore, the witness averred that the survey plan for FR No. 11379/3 is separate and distinct from the survey plan that under pins L.R Nos. 16285/2-8.
196. It was the further testimony of the witness that L.R Nos. 16285/2-8 fall within the land belonging to the 1st Defendant.
197. Moreover, it was the testimony of the witness that L.R Nos. 16285/2-8 originated from L.R No. 11379/3. In any event, the witness averred that same has annexed/attached the various survey plans and the maps to the survey report.
198. On cross-examination by learned counsel for the 1st, 9th, 13th, 14th and 15th Defendants, the witness averred that the survey plan before the court which underpins the creation of L.R Nos. 16285/2-8 cannot be authenticated. Furthermore, the witness averred that the survey plan before the court is not supported by other critical documents.
199. While still under cross-examination, the witness averred that the survey report before the court was prepared by herself. Nevertheless, it was the testimony of the witness that the survey plan before the court does not capture the original number as pertains to the mother title.
200. While still under cross-examination, the witness averred that the Plaintiffs before the court had a right to come to court. In any event, it was the testimony of the witness that where a certificate of title is cancelled, the records at the land registry would reflect such cancellation.
201. On further cross-examination, the witness averred that the survey plan will ordinarily give the surveyor the location of the land in question. In addition, the Witness averred that the survey plan would enable the surveyor to understand the coordinates and the ground position of the land.
202. It was the further testimony of the witness that one survey plan cannot be superimposed on another survey plan. Moreover, the Witness averred that if another survey plan is superimposed on another survey plan, then such an eventuality is illegal.
203. On cross-examination by learned counsel for the interested party, the witness testified that L.R Nos. 16285/2-8 are subdivisions arising from L.R No. 11379/3. Moreover, the witness added that there are other plots that have also arisen from L.R 11379/3.
204. While still under cross-examination by learned counsel for the Interested Party, the witness averred that the Plaintiffs herein relied on the FR (Survey plan) before the court to procure their titles.



205. On cross-examination by learned counsel for the Plaintiff, the witness averred that same is a land surveyor.
206. In addition, the witness averred that same is a holder of a degree in Survey Technology from the Technical University of Kenya. It was the further testimony of the witness that same is the one who prepared the Survey report dated 17th March 2021. Nevertheless, the witness averred that same does not recall the date when the instant suit was filed. Furthermore, the witness added that same was not aware of the proceedings beforehand.
207. While under further cross-examination, the witness averred that same has alluded to a court order at the foot of the survey report. Nevertheless, the witness admitted that even though same has alluded to a court order, the court order has not been annexed to the survey report.
208. On further cross-examination, the witness averred that the court order is not part of the report filed.
209. It was the further testimony of the witness that she is the one who went to the ground prior to the compilation of the survey report. Moreover, the witness averred that the survey exercise was meant to ascertain and/or confirm the extent and boundaries of L.R Nos. 11379/3.
210. The witness further testified that the survey exercise was carried out on the basis of survey plan no. 113/29. In addition, the witness averred that the purpose of the survey was to discern and establish the extent of L.R No. 11379/3.
211. It was the further testimony of the witness that during the exercise of establishing the boundaries of L.R No. 11379/3, same [witness] established that there are several plots that are located within L.R. No. 11379/3.
212. It was the further testimony of the witness that same also discerned that there are various projects that are situate within L.R No. 11379/3. In particular, the witness referenced Mama Lucy Hospital; the Sub-County Headquarters, Embakasi Sub-County; Police Station and various housing estates.
213. On the other hand, it was the testimony of the witness that the Plaintiffs' titles emanated from a survey plan a copy of which has been tendered before the court. Nevertheless, the witness testified that the Plaintiffs' certificates of title did not emanate from L.R 11379/3.
214. Additionally, it was the testimony of the witness that the documents relating to the registration/ownership of land are kept by the Chief Land Registrar and not the Directorate of Survey.
215. Moreover, the witness averred that where there are sub-divisions of a plot, then the survey plan would show the sub-divisions and thereafter a notification would be shown/captured at the foot of the survey plan. Nevertheless, the witness averred that same is not aware whether the Plaintiffs herein have any certificates of title.
216. With the foregoing testimony, the 4th, 5th and 6th Defendants' case was closed.

d. Interested Party's Case

217. The Interested Party's case is premised on the evidence of one witness, namely, Josephat Kariuki Mwangi. Same testified as IPW1.
218. It was the testimony of the witness IPW1 that same is a business person within the City of Nairobi. In addition, the witness averred that same resides at Dandora within the City of Nairobi. Moreover, the witness testified that same is conversant with the facts of the instant case. In any event, it was the



- testimony of the witness that same has an interest in respect of the instant matter on account of having offices on the land being claimed by the 1st Defendant.
219. Furthermore, the witness averred that same has since recorded and filed a witness statement. In this regard, the witness referenced the witness statement dated 18th April 2023 and which witness statement the witness sought to adopt and rely on as his evidence in chief. Instructively, the witness statement was adopted and constituted as the evidence in chief of the witness.
 220. Furthermore, the witness adverted to a list and Bundle of Documents dated 18th April 2023 containing four [4] documents and which documents the witness sought to tender and produce before the court. In the absence of any objection to the production of the documents, same [documents] were produced and marked as exhibits IP1-4 respectively.
 221. It was the further testimony of the witness that same is also appearing in court for and on behalf of other five [5] interested parties. In this regard, the witness referenced the authority and which authority was tendered as exhibit IP5.
 222. On cross-examination by learned counsel for the Plaintiff, the witness averred that same has a parcel of land situated at Dandora. In particular, the witness stated that his parcel of land is L.R No. 16285/15. Besides, the witness averred that his brother also owns land, namely, L.R No. 16285/20. Furthermore, the witness averred that same has since tendered and produced before the Court the certificates of title relative to his parcel of land.
 223. While under further cross-examination, the witness averred that the land in question was first allocated to a company known as Amboseli Court Limited.
 224. Furthermore, it was the evidence of the witness that the land was allocated by the Government of Kenya. In any event, the witness added that the land was allocated in 1983.
 225. While still under cross-examination, the witness testified that same has erected/built a garage on his land. However, the witness added that the garage in question was demolished by the 1st Defendant and her agents. Moreover, the witness added that same is able to identify some of the people who participated in the demolition.
 226. It was the evidence of the witness that the people who demolished the structures on the suit properties were agents of the 1st Defendant.
 227. Upon being referred to exhibit 4 produced on behalf of the Interested Party, the witness stated that same is a notice that was issued by the 1st Defendant. For good measure, the witness posited that the notice was intended to facilitate the regularisation of the titles held by the witness and others.
 228. On further cross-examination, the witness averred that the demolition in question was undertaken by the 1st Defendant. In any event, the witness added that the 1st Defendant had been threatening to demolish the structure[s] erected by the witness and others.
 229. On cross-examination by the learned counsel for the 1st, 9th, 13th, 14th and 15th Defendants, the witness averred that same has a certificate of title in respect of L.R No. 16285/15. Furthermore, the witness averred that his title arose from the sub-division of L.R No. 11379/3.
 230. While under further cross-examination, the witness averred that same is aware that the 1st Defendant has been claiming ownership of the land. Nevertheless, the witness averred that same is not aware whether the 1st Defendant was consulted to prior to the sub-division of L.R No. 11379/3.



231. It was the further testimony of the witness that same is before the court to claim compensation for the destruction that was done on his [witness] property.
232. It was the further testimony of the witness that same has not indicated the names of the persons who were responsible for the demolitions.
233. On cross-examination by learned counsel for the 4th, 5th and 6th Defendants, the witness averred that same bought his property from a lady known as Kegohi. In any event, the witness averred that his land is approximately 0.01 Ha.
234. The witness further testified that same carried out and undertook an official search in respect of his property before purchasing same. In any event, the witness added that he [Witness] purchased his property in 2014.
235. Furthermore, the witness testified that his land is close to the properties belonging to the Plaintiffs. In addition, the witness averred that the structures standing on his property were also demolished at the same time when the Plaintiff's structures were demolished.
236. On re-examination, the witness averred that same was issued with a valid and lawful title. In any event, the witness averred that his certificate of title has never been cancelled.
237. While still under re-examination, the witness testified that same is before the court seeking protection. In any event, the witness posited that same is inviting the court to find and hold that his certificate is valid and lawful.
238. With the foregoing testimony, the Interested Party's case was closed.

Parties' Submissions:

239. At the close of the hearing, the advocates for the parties covenanted to file and exchange written submissions. In this regard, the court proceeded to and circumscribed the timelines for the filing and exchange of the written submissions.
240. The Plaintiffs filed written submissions dated 24th August 2024 and wherein the Plaintiffs isolated three salient issues for consideration. In particular, the Plaintiff invited the court to consider whether the Plaintiffs have a good title to the suit properties; whether the Plaintiffs are entitled to compensation for the material damage as a result of the Defendants illegal invasion of their [Plaintiffs'] properties; and whether an order of mandatory injunction ought to issue.
241. Moreover, the Plaintiffs also filed a Supplementary Written Submissions dated 3rd November 2024 and wherein the Plaintiff responded to the submissions filed by the 1st, 4th, 5th, 6th, 9th, 13th, 14th and 15th Defendants.
242. The 1st, 9th, 13th, 14th and 15th Defendants filed written submissions dated 15th October 2024 and wherein same canvassed a plethora of issues. In the main, the named Defendants impugned the certificates of title held by and on behalf of the Plaintiffs. Moreover, the named Defendants also contended that the 1st Defendant's title, namely, L.R No. 11379/3 is still valid and in existence. In any event, the named Defendants contested the contention that L.R No. 11379/3 was compulsorily acquired.
243. The 4th, 5th and 6th Defendants filed written submissions dated 31st October 2024; and wherein same highlighted two [2] issues for determination. The issues canvassed by the named Defendants include



whether the Plaintiffs have a good title to the suit properties and whether the Plaintiffs have proved their case on a balance of probabilities.

244. The various submissions [details in terms of the preceding paragraphs] form part of the record of the court. Moreover, it suffices to underscore that the court has perused the written submissions and appraised the issues raised thereunder.
245. Even though the court has neither reproduced nor rehearsed the submissions in the body of the Judgement, it is apposite to state that the failure to do so is not informed by any contempt. On the contrary, it suffices to posit that the court is indeed grateful and indebted to the parties for the elaborate and comprehensive submissions and caselaw referenced thereunder.
246. Pertinently, the submissions under reference have greatly assisted the court in distilling the issues for determination.

ISSUES FOR DETERMINATION:

247. Having reviewed the pleadings, the evidence tendered [both oral and documentary] and upon consideration of the written submissions filed by and on behalf of the parties, the following issues crystallise [emerge] and are thus worthy of determination.
- i. Whether the 1st Defendant's title in respect of L.R No. 11379/3 remains in existence and is valid or otherwise.
 - ii. Whether the Plaintiffs titles to the suit properties are valid and legal or otherwise.
 - iii. Whether the Plaintiff's suit as against the 2nd Defendant is lawful and legally tenable.
 - iv. Whether the Interested Party can partake of and procure any substantive order in the instant matter/suit or otherwise.
 - v. Whether the Plaintiffs have proven and/or established their claim on account of trespass and if so, against whom.
 - vi. What reliefs, if any, ought to be granted.

Analysis and Determination

Issue Number One

Whether the 1st Defendant's title in respect of L.R No. 11379/3 remains in existence and is valid or otherwise.

248. The Plaintiffs claim at the foot of the instant suit touches on and concerns ownership of L.R Nos. 16285/2-8 respectively. It was contended that the L.R Nos. 16285/2-8 (herein referred to as the suit properties) arose from and/or constitute sub-divisions emanating from L.R No. 11379/3.
249. Moreover, it was contended that L.R No. 11379/3 was the subject of compulsory acquisition by the Government of Kenya. In this regard, PW1 tendered and produced before the court a certified copy of the tile in respect of L.R No. 11379/3 duly endorsed with an entry showing that the said property [L.R No. 11379/3] was compulsorily acquired by the government in 1974. To this end, the witness referenced the document at page 120 of the Plaintiffs' Bundle of Documents.



250. While under cross-examination by learned counsel for the 1st, 9th, 13th, 14th, and 15th Defendants, PW1 stated as hereunder:

“The land which the 1st Defendant is claiming was compulsorily acquired by the Government of Kenya. It was compulsorily acquired in 1974. I have a copy of the charge that confirms that the land was compulsorily acquired. I wish to repeat that the land was compulsorily acquired. The document that relates to compulsory acquisition is at page 120 of my Bundle of Documents. The documents at page 120 shows that the land was duly acquired.”

251. On the other hand, DW1 who testified on behalf of the 1st, 9th, 13th, 14th, and 15th Defendants contended that the title in respect of L.R No. 11379/3 belonging to the 1st Defendant is intact. Moreover, the witness averred that the said certificate of title has been under the custody of the 1st Defendant. To this end, DW1 tendered and produced the certificate of title in respect of L.R No. 11379/3.

252. It was the further evidence of DW1 that L.R NO. 11379/3 has never been compulsorily acquired. In particular, the witness averred that land cannot be compulsorily acquired for a purpose other than a public purpose.

253. Furthermore, the witness averred that the original certificate of title in respect of L.R No. 11379/3 does not have any entry relating to compulsory acquisition. In this respect, the witness reiterated that the government has never compulsorily acquired L.R No. 11379/3.

254. Nevertheless, while under cross-examination by learned counsel for the Plaintiffs the witness [DW1] confirmed that the document at page 120 of the Plaintiff's Bundle of Documents is a certified copy of the title in respect of L.R No. 11379/3. Furthermore, the witness averred that the certified copy of the title produced by the Plaintiffs contain an entry showing that L.R No. 11379/3 was compulsorily acquired.

255. Other than the foregoing, the witness averred that same is privy to and aware of the judgement rendered by Hon. Justice Okon'go, Judge; vide Milimani ELC No. 35 of 2018. In particular, the witness averred that the said judgement touched on and concerned the decision of National Land Commission that sought to review and council various titles that arose from L.R No. 11379/3.

256. Furthermore, the witness testified that the judgement which was rendered vide ELC Misc. 35 of 2018 also spoke to and addressed the issue of compulsory acquisition of L.R NO. 11379/3. In addition, the witness also confirmed that the said judgement also referenced various Gazette Notice which underpinned the intention of the government to compulsorily acquire L.R No. 11379/3.

257. Notwithstanding the foregoing, the witness [DW1], reiterated that L.R No. 11379/3 was never compulsorily acquired. However, while still under cross-examination by learned counsel for the Plaintiffs, the witness adverted to a plethora of issues which are pertinent and capable of helping the court to discern whether the title in respect of L.R NO. 11379/3 is still intact and in existent. In this regard, it is expedient and apposite to reproduce in extenso the evidence of DW1.

258. For coherence, DW1 stated thus:

“I can see and entry relating to compulsory acquisition. The entry is shown to have been entered on 20th November 1974. The document before the court is a certificate of official search. The certificate of official search is dated 11th January 1996.



259. Furthermore, DW1 proceeded and stated thus:

“Regarding the judgement vide ELC J.R No. 35 of 2018, the witness acknowledged that the judge made reference to various gazette notices. I am aware that there is an appeal against the judgement rendered vide ELC Misc. 35 of 2018. The appeal is still pending before the court of appeal. There has been no judgement by the court of appeal.”

260. Moreover, it was the testimony of DW1 that the gazette notices constituted an expression of the government to acquire the whole land.

261. Pertinently, the witness continued and testified thus:

“The land is situated in Eastlands. I am aware of Mama Lucy Hospital, The facility is within L.R NO. 11379/3. There is also a police post within the said land. There is also a civil servants housing estate within the said land. The estate is known as Civil Servants Housing Estates. The Civil Servants Housing Estate is not a government project.”

262. Additionally, the witness testified as hereunder:

“I am also aware of Wasra Garden Estate on the suit property, namely L.R NO. 11379/3. The owners of the estate is the 1st Defendant. The owners of Wasra Garden Estate have certificate of titles over and in respect of their units.

263. While still under cross-examination DW1 is on record stating thus:

“I am aware of Mama Lucy Hospital. The hospital belongs to the government of Kenya. I believe that Mama Lucy Hospital has a certificate of title over the land in question.

264. Moreover, DW1 is also on record as stating thus:

“I was made aware of the compensation money that was deposited over and in respect of the land. I do not know whether the money is still in court. I saw the Kenya Gazette Notices that were referenced by the Plaintiffs. The 1st Defendant herein has filed a suit against the purported acquisition of L.R NO. 11379/3. The suit filed by the 1st Defendant is still pending before the court.”

265. From the totality of the evidence that was tendered by DW1, it is evident and apparent that L.R NO. 11379/3 was indeed the subject of compulsory acquisition. For coherence, DW1 acknowledged the existence of a certificate of official search issued by the chief land registrar containing an entry dated 20th November 1974.

266. Notably the existence of the said entry which underpins the compulsory acquisition has not been impugned, challenged and/or invalidated. For coherence, the named entry remains in situ.

267. In my humble view, for as long as the entry endorsed on the certificate of title and obtaining at the offices of the chief land registrar remains in situ, there is no gainsaying that L.R NO. 11379/3 was indeed compulsorily acquired.

268. Other than the entry which was made and endorsed on the title of L.R NO. 11379/3 [details in terms of the preceding paragraphs] there is also the legal notices that were published vide gazette notice which



were referenced in the judgement vide ELC Misc. 35 of 2018. Pertinently, the Gazette Notices adverted to and concerned the compulsory acquisition of L.R NO. 11379/3.

269. It is not lost on this court that DW1 admitted and acknowledged the existence of the said Gazette Notices. Furthermore, DW1 went further and intimated to the court that the 1st Defendant has since challenged the said Gazette Notices.
270. Notwithstanding the foregoing, there is no gainsaying that the challenge, if any, of the Gazette Notices underpinning the compulsory acquisition of L.R NO. 11379/3 by and of itself does not constitute a declaration. For good measure, the legal position is to the effect that the Gazette Notices remain effective and valid.
271. Other than the foregoing, it is also worth recalling that DW1 also testified that the 1st Defendant owns an estate, namely, Wasra Garden Estate situate on [sic] L.R NO. 11379/3. In addition, DW1 ventured forward and stated that the owners of units within Wasra Garden Estate have been issued with certificates of title in respect of their own units.
272. Moreover, DW1 is on record as testifying that Mama Lucy Hospital which is also situated on [sic] L.R NO. 11379/3 also has a separate title. In this regard, it is worthy to recall that there is no way Mama Lucy Hospital and the other title holders whose details have been adverted to by DW1 can hold titles without [sic] L.R NO. 11379/3 being sub-divided.
273. On the other hand, it is also worthy to recall that DW1 confirmed that the 1st Defendant herein has since filed ELC Petition No. 47 of 2011 wherein the 1st Defendant is reported to be challenging [sic] the compulsory acquisition of L.R NO. 11379/3 by the government. Instructively, the 1st Defendant would not have filed the said petition, if at all, same [1st Defendant] is convinced that the said parcel of land was never compulsorily acquired.
274. To my mind, the filing of ELC Petition No. 47 of 2011, which admittedly is still pending, denotes that the 1st Defendant is aware of the fact that L.R No. 11379/3 was compulsorily acquired. However, the legality or otherwise of the process pertaining to and underpinning the compulsory acquisition is a different matter altogether.
275. Moreover, it is also on record that the 1st Defendant is said to have mounted an appeal against the judgement/decision Hon. Justice Okong'o, Judge; rendered vide ELC Misc No. 35 of 2018. Notably, the learned judge found and held that L.R No. 11379/3 was the subject of compulsory acquisition and indeed the learned judge referenced various Gazette Notices that underpinned the compulsory acquisition.
276. There is no gainsaying that DW1 testified and stated that the 1st Defendant has since filed an appeal against the judgement issued vide ELC Misc. No. 35 of 2018. Nevertheless, it is worth recalling that DW1 did not cite or reference any [sic] Appeal number.
277. Be that as it may, it is common ground that the 1st Defendant would not have filed and/or mounted any appeal against the decision vide Milimani ELC No. 35 of 2018, if the findings touching on compulsory acquisition and the various Gazette Notices did not impact on the 1st Defendant.
278. Additionally, DW2 namely Miriam Wanjiru Kigathi testified that the suit properties, namely, L. R No. 16285/2-8 arose from L.R No. 11379/3. In particular, DW2 testified that the Survey Plan [FR] that underpins the creation of the suit properties is survey plan number 229/89. Besides, DW2 also admitted and acknowledged that the suit properties fall within [sic] L.R No. 11379/3. Furthermore, and while under cross-examination by learned counsel for the Plaintiffs, the witness [DW2] testified that the suit properties arose from the sub-division of L.R No. 11379/3.



279. The totality of the evidence on record demonstrates that L.R NO. 11379/3 was indeed compulsorily acquired. No doubt, it is the said compulsory acquisition that underpins the Petition that was filed the 1st Defendant. In this regard, the 1st Defendant cannot be heard to contend that L.R No. 11379/3 was not compulsorily acquired on one hand; while on the other hand same [1st Defendant], is in court challenging the propriety/validity of the compulsory acquisition.
280. Certainly, the 1st Defendant cannot be allowed to approbate and reprobate at the same time. In any event, its is not lost on the court that one, the 1st Defendant not excepted, who oscillate[s] between two extreme positions, is guilty of abuse of the due process of the law. In this regard, I find and hold that the 1st Defendant is indeed abusing the due process of the law.
281. Without belabouring the point, it is instructive to cite; restate and reiterate the holding of the Court in the case of Republic versus Institute of Certified Public Secretaries of Kenya Ex-parte Mundia Njeru Geteru (2010)eKLR, where the court stated and held thus;
- “It is obvious that Mundia is approbating and reprobating which is an unacceptable conduct. Such conduct was considered in *Evans vs Bartlam* (1973) 2 ALL ER 649 at page 652, where Lord Russel of Killowen said; The doctrine of approbation and reprobation requires for its foundation inconsistency of conduct, as where a man having accepted a benefit given him by a judgment cannot allege the invalidity of the judgment which conferred the benefit. Again in *Banque De Moscou vs Kendersley* (1950) ALL ER 549, Sir Evershed said of such conduct. This is an attitude of which I cannot approve, nor do I think in law the defendants are entitled to adopt it.
- They are, as the Scottish lawyers (frame it) approbating and reprobating or, in the more homely English phrase blowing hot and cold.”
282. On the other hand, it is also apposite to state and underscore that once a particular parcel of land, L.R No. 11379/3 not excepted, is compulsorily acquired, the land in question vests in the government and by extension the acquiring authority. Suffice it to state that even where the entire land compulsorily acquired is not utilised, the remainder portion does not revert to the previous owners.
283. It is equally important to state that the previous owners, namely, the ones from whom the property was compulsorily acquired, are deemed to have been duly compensated. In any event, there is no gainsaying that some compensation is reported to have been deposited in court for an on behalf of the 1st Defendant.
284. Moreover, whether the monies that were deposited in court on account of compensation was collected by the 1st Defendant or otherwise, is also another issue. For good measure, the question of whether that compensation was sufficient or otherwise; or whether that compensation was collected by the 1st Defendant are not part of the issues before this court.
285. Before departing from this issue, it is imperative to reference the decision of the Supreme Court [the apex court] in *Town Council of Awendo v Onyango & 13 others; Mohamed & 178 others (Interested Parties)* [2019] KESC 38 (KLR) where the Supreme Court addressed the legal import and implications attendant to compulsory acquisition.
286. For coherence, the court stated and held thus:
60. By the same token, it cannot be said that the land over which the pre-emptive right of re-acquisition arises upon failure or cessation of the public purpose, is the same as un-utilized land or portion of land that remains once the public purpose becomes spent. In the former



case, there is a total failure of the public purpose, meaning that the acquired land cannot be used as earlier envisaged. The wording of section 110(2) of the *Land Act* is permissive (“the Commission may offer”) in the sense that the acquiring authority, is not necessarily barred from applying the land to another public purpose. However, should it decide to abandon the land to private purchase, then the original owners have the pre-emptive rights to re-acquire the land upon restitution of the full sum that was paid in compensation. The land to be re-acquired in this case is the “whole” as opposed to “a portion thereof”. This explains why the sum of money to be restituted by the original owners is “the full amount paid in compensation.” In the latter case, the public purpose has been realized, but the acquired land has not been utilized in full, leaving a portion thereof. In this instance, neither the original owners, nor their successors in title have pre-emptive rights to re-acquire the un-utilized portions.

61. On the basis of the foregoing analysis, we hereby issue the following guiding principles:

General Principles

1. Where the Government, pursuant to the relevant constitutional and legal provisions, compulsorily acquires land, such land, shall only be used for the purpose for which it was compulsorily acquired.
2. The allocation of compulsorily acquired land, to private individuals or entities, for their private benefit, in total disregard of the public purpose or interest for which it was compulsorily acquired, shall be incapable of conferring title to that land in favour of the allottees.
3. A person whose land has been compulsorily acquired in accordance with the relevant constitutional and legal provisions does not retain any reversionary interest in the said land.
4. Un-utilized portions of compulsorily acquired land may be used for a different public purpose, or in furtherance of a different public interest, including the allocation of such portions to private individuals or entities, at the market price, in furtherance of such public interest.

287. Arising from the foregoing analysis, my answer to issue number one is to the effect that the title in respect of L. R. No. 11379/3, which is claimed by the 1st Defendant does not legally exist. For good measure, the title under reference ceased to exist upon compulsory acquisition which has not been invalidated to date.

288. Other than the compulsory acquisition, it is not practicable and/or legally feasible for one to contend that the said title remains in existence despite the acknowledgements that there are various titles that have been carved out of the said title. For example, DW1 acknowledged that there is an estate known as Wasra Garden Estate situate on [sic] L.R No. 11379/3 and whose owners are said to have been issued with titles.

289. Additionally, the same DW1 is on record stating that Mama Lucy Hospital, which is a government project, has a separate title arising out of L.R No. 11379/3. Surely, for the said institutions and persons to have acquired their titles out of [sic] L.R. No. 11379/3, a sub-division scheme must have been prepared and approved by the relevant governmental authorities.

290. There is no gainsaying that one of the conditions underpinning the approval of a sub-division scheme is the surrender of the mother title for cancellation. It is puzzling and confounding for DW1 to maintain



that the original title in respect of [sic] L.R No. 11379/3 is still in existence and [sic] under the custody of the 1st Defendant.

Issue Number Two (2)

Whether the Plaintiffs titles to the suit properties are valid and legal or otherwise.

291. PW1 testified that the Plaintiffs herein were not the direct allottees of their respective properties. However, it was the evidence of PW1 that the Plaintiffs herein bought/purchased their respective parcels of land from the previous allottees. In any event, the witness averred that prior to and before purchasing their respective parcels of land, the Plaintiffs herein carried out and undertook due diligence.
292. It was the further evidence of PW1 that upon the purchase of their respective titles, the Plaintiffs were duly issued with the requisite certificates of title. In this regard, PW1 tendered and produced before the court the certificates of title in the names of the Plaintiffs as well as the certificates of official search attesting to ownership of the respective parcels of land.
293. It was the further testimony of PW1 that the certificates of titles which were issued to and in favour of the Plaintiffs have neither been cancelled nor revoked by any court of law. In any event, PW1 stated that upon being issued with the certificates of titles, the Plaintiffs entered upon and took possession of their respective parcels of land and remained in occupation thereof up to and including August 2021, when same were evicted therefrom.
294. The identities of the persons who undertook the eviction and demolitions of the Plaintiffs developments on the suit properties shall be addressed while considering the subsequent issues. Nevertheless, the critical question that underpins the instant issue is whether the Plaintiffs' certificates of title are lawful and legitimate.
295. It is also important to revert to the evidence of DW1. Same is on record as confirming that the Plaintiffs herein have certificates of titles over and in respect of the properties claimed by the said Plaintiffs.
296. In this regard, it is imperative to take cognisance of the evidence of DW1 while under cross-examination by learned counsel for the Plaintiff.
297. Same stated as hereunder:
- “The Plaintiffs are in occupation of their own land/properties. There are various persons who are in occupation of portions of L.R No. 11379/3. I have seen the certificate of title presented to court by and on behalf of the Plaintiffs. The certificates of searches show that the suit properties belong to the Plaintiffs.”
298. DW1 is also on record as stating thus:
- “I saw the Kenya Government Gazette Notices that were referenced by the Plaintiffs. The 1st Defendant herein has filed a suit against the purported acquisition of the suit property.”
299. Additionally, and while under cross-examination, DW1 confirmed and acknowledged that the suit properties fall within [sic] L.R. No. 11379/3 which is claimed by the 1st Defendant.
300. What becomes apparent is that the Plaintiffs herein procured and were issued with certificates of titles over and in respect of various portions of land. The suit properties are admittedly located within what used to be [sic] L.R. No. 11379/3.



301. Notwithstanding the foregoing, there is no gainsaying that the certificates of title and the certificates of official search underpinning the Plaintiffs properties have neither been impugned nor invalidated. In any event, even the Hon. Attorney General who was impleaded as the 6th Defendant has neither challenged the legality and validity of the Plaintiffs' titles.
302. Other than the foregoing, it is also not lost on this court, that the 1st Defendant who contends that the suit properties were illegally and unlawfully curved out of [sic] L.R. No. 11379/3, has neither filed a counterclaim nor sought to invalidate the Plaintiffs' titles.
303. The bottom line is that the Plaintiffs' titles which were lawfully issued by the relevant governmental office [the Chief Land Registrar] remain in existence. Same are lawful. Same underpin legal and legitimate rights to and in respect of the suit properties.
304. To my mind, the certificates of title held by the Plaintiffs herein vest and confer upon the Plaintiffs lawful rights and interest. For good measure, the Plaintiffs are entitled to partake of and benefit from the provisions of Sections 24 and 25 of the *Land Registration Act, 2012*.
305. Additionally, it is imperative to underscore that under the Torrens principle the registration of a particular landed property confers lawful rights to and in respect of the designated property, unless the registration in question was procured contrary to the law. In any event, such a situation must be proven and established in accordance with the due process of the law.
306. Notably, the legal import of the Torrens principle was highlighted and elaborated by the Court of Appeal in the case of *Elizabeth Wambui Githinji & 29 others v Kenya Urban Roads Authority & 4 others* [2019] eKLR where the court stated and held thus:

If a certificate of lease duly issued by the Registrar is prima facie evidence of ownership and if the owner is proved to have exercised due diligence at the point of acquisition, on what basis could the appellants' petition for protection under Article 40 be defeated?

It has long been accepted beyond debate that the land registration process in Kenya is a product of the Torrens system. This was acknowledged in, among a long line of decided cases, this Court's judgments in *Dr. Joseph Arap Ngok V. Justice Moijo ole Keiwua & 5 others*, Civil Appeal No. Nai. 60 of 1997 and *Charles Karathe Kiarie & 2 Others V Administrators of Estate of John Wallance Muthare (deceased) & 5 others*, Civil Appeal 225 of 2006.

Under that system, the title of a bona fide purchaser for value without notice of fraud cannot be impeached; that the land register must mirror all currently active registrable interests that affect a particular parcel of land; that the Government, as the keeper of the master record of all land in Kenya and their owners, guarantees indefeasibility of all rights and interests shown in the land register against the entire world; and that in case of loss arising from an error in registration, the Government guarantees the person affected of compensation. Finally, the statutory presumption of indefeasibility and conclusiveness of title based on the register can be rebutted only by proof of fraud or misrepresentation which the buyer is himself shown to have been involved.

The object of the Torrens system was, in very compelling language, explained in the decision of the Privy Council in *Gibbs V. Messer* [1891] AC 247 P.C. at page 254 as follows:-

“The main object of the Act, and the legislative scheme for the attainment of that object, appear to them to be equally plain. The object is to save persons dealing with registered proprietors from the trouble and expense of going behind the



register, in order to investigate the history of their author's title, and to satisfy themselves of its validity. That end is accomplished by providing that everyone who purchases, in bona fide and for value, from a registered proprietor, and enters his deed of transfer or mortgage on the register, shall thereby acquire an indefeasible right, notwithstanding the infirmity of his author's title." (Emphasis supplied).

307. Most recently, the legal import of a certificate of title procured in accordance with the law was re-visited and underscored in the case of Embakasi Properties Limited & Safe Cargo Limited v Commissioner of Lands & Attorney General [2019] KECA 1001 (KLR) where a five-judge bench of the Court of Appeal stated thus:

We reiterate that under the insurance principle the State guarantees the accuracy of all registered titles through the register; and that there would be indemnity in case a registered proprietor is deprived of his title or is prejudiced by a correction of any mistake in the register. The mirror principle is a guarantee that the register is a perfect mirror of the state of title while the curtain principle holds that a purchaser need not worry about the history of the title so long as from the register it is clear that whoever is transferring the property to him has the capacity.

308. From the foregoing analysis, my answer to issue number two [2] is to the effect that the Plaintiffs herein have demonstrated and proven that same have lawful rights to and in respect of the suit properties. In this regard, the Plaintiffs are entitled to partake of and enjoy the protection afforded under the law. [See the provisions of Sections 24 and 25 of the *Land Registration Act*, 2012 [2016].

Issue Number Three (3)

Whether the Plaintiff's suit as against the 2nd Defendant is lawful and legally tenable.

309. The suit beforehand was commenced vide Complaint dated 27th July 2021, which was subsequently amended and thereafter re-amended. For good measure, the operative Complaint that guides these subject proceedings is the Further Amended Complaint dated 11th January 2022.

310. It is instructive to recall that by the time the instant suit was filed, the 2nd Defendant was lawfully in existence. Notably, the 2nd Defendant was established and thereafter constituted to take part of the functions of the City County Government of Nairobi.]

311. Be that as it may, it is common knowledge that the 2nd Defendant ceased to exist immediately following the conclusion of the General Elections which were held on or about the 5th August 2022. In this regard, all the functions that were hitherto vested in the 2nd Defendant reverted to the City County Government of Nairobi.

312. It is important to point out that by the time the hearing of the instant matter commenced on 23rd February 2023, the 2nd Defendant had ceased to exist. Nevertheless, the Plaintiffs herein chose to continue with the suit and the proceedings as against the 2nd Defendant.

313. The question that does arise is whether a suit/civil proceedings; can be maintained and/or prosecuted against a non-existent body and/or entity. To my mind, the cessation of the 2nd Defendant is equivalent to death of a natural human being. The death of a natural human being terminates the suit as against the dead person, subject to substitution in accordance with the law of succession Chapter 160 laws of Kenya.



314. In respect of the instant matter, there is no gainsaying that no legal proceedings could be continued with and/or maintained against the 2nd Defendant. In this regard, it is my humble finding and holding that by the time the hearing of the suit commenced, the 2nd Defendant had ceased to exist. To this end, the continued proceedings as against the 2nd Defendant were a nullity and thus void.
315. Where proceedings are void as against a particular party, no lawful rights and/or action accrue. In any event, where the impugned action is void, same cannot be redeemed or cured,; or at all.
316. Without belabouring the point, I beg to adopt and reiterate the dictum in the case of *Macfoy vs. United Africa Co. Ltd* [1961] 3 All E.R. 1169; where Lord Denning MR stated as hereunder:
- “If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the Court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the Court declare it to be so. and every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.”

Issue Number Four (4)

Whether the Interested Party can partake of and procure any substantive order in the instant matter/ suit or otherwise.

317. The Interested Party herein filed an application and sought leave of the court to be joined into the proceedings herein. In particular, the Interested Party contended that same is the registered owner and/or proprietor of L.R No. 16285/15 and which property was contended to be situated in the neighbourhood of the suit properties.
318. Arising from the foregoing, the Interested Party posited that same has a stake and an actionable interest in the subject suit. In this regard, the court proceeded to and admitted the Interested Party as a party in the instant suit.
319. Following the admission of the Interested Party as a party in the suit, the Interested Party proceeded to and filed [sic] a Statement of Defence, List and Bundle of Documents and Witness Statement. Thereafter, the Interested Party tendered and adduced evidence before the court.
320. Instructively, in the course of his testimony, the Interested Party testified and stated as hereunder:
- “I am before the court to claim for compensation for the destruction that was done on my property. I have not indicated who was responsible for the demolition.”
321. While under re-examination, the Interested Party stated thus:
- “I do pray for the protection of the court and particularly for the court to order that my title is lawful and valid.”
322. The question that the court must grapple with relates to whether or not an Interested Party can propagate own cause/ claim in a suit filed by the principal parties. Pertinently, the role of an Interested Party is circumscribed and limited under the law. In particular, an Interested Party cannot be heard to propagate a claim for [sic] compensation and declaration.
323. The Supreme Court of Kenya [the apex Court] elaborated on the scope and mandate of an Interested Party in the case of *Muruatetu & another v Republic; Kenya National Commission on Human Rights*



& 2 others (Interested Parties); Death Penalty Project (Intended Amicus Curiae) (Petition 15 & 16 of 2015 (Consolidated)) [2016] KESC 12 (KLR) (Civ) (28 January 2016) (Ruling) where the court stated thus:

42. Therefore, in every case, whether some parties are enjoined as interested parties or not, the issues to be determined by the Court will always remain the issues as presented by the principal parties, or as framed by the Court from the pleadings and submissions of the principal parties. An interested party may not frame its own fresh issues, or introduce new issues for determination by the Court. One of the principles for admission of an interested party is that such a party must demonstrate that he/she has a stake in the matter before the Court. That stake cannot take the form of an altogether a new issue to be introduced before the Court.
324. Whether or not an Interested Party can partake of or procure a precipitate order in a matter where same is joined as an Interested party whether from the onset or midstream the proceedings, was also addressed by the Court [Five Judge Bench of the High Court] in the case of *Philomena Mbeti Mwilu v Director of Public Prosecutions & 3 others; Stanley Muluvi Kiima (Interested Party); International Commission of Jurists Kenya Chapter (Amicus Curiae)* [2019] eKLR, where the Court stated thus;
415. What emerges from the above decisions is that an interested party is a peripheral party and cannot introduce new issues for determination by the court. Further, that in determining the matters before it, the court will only consider the issues raised in the pleadings by the principal parties. This rule will be particularly unyielding when the matter before court is a private as opposed to a public interest claim.
416. Notwithstanding that the Interested Party before us was joined in the matter from the outset by the Petitioner, he is still only an interested party within the meaning ascribed to that phrase by the law and judicial precedents which we have set out above. His joinder ab initio does not elevate his position in the matter. The court can only grant reliefs as sought by the Petitioner or as it deems appropriate as provided under Article 23(3) of *the Constitution*.
325. Flowing from the above analysis, it is my finding and holding that the Interested party herein cannot procure any substantive reliefs in the matter beforehand, or at all. In the premises, the prayers sought by the Interested party herein are not only misconceived but also legally untenable.

Issue Number Five (5)

Whether the Plaintiffs have proven and/or established their claim on account of trespass and if so, against whom.

326. The Plaintiffs herein contend that despite being the lawful and registered proprietors of the suit properties, namely, L.R No.s 16285/2-7, respectively, some persons proceeded to and undertook demolitions on the suit property on the suit properties on 5th August 2021 and on the 6th of August 2021, respectively.
327. It was the testimony of PW 1 that the persons who carried out and undertook the offensive demolitions included the 1st, 2nd, 3rd and 4th Defendants. To this end, PW 1 thereafter sought that the court be pleased to find and hold that the actions of the named 1st – 4th Defendants' constituted trespass.
328. It was the further testimony of PW 1 that same [PW 1] had erected and constructed a perimeter wall fence round the suit properties. Similarly, PW 1 also testified that same had also erected assorted structures/buildings on the suit properties.



329. Be that as it may, it was the testimony of PW 1 that the perimeter wall fence and the assorted structures [buildings] which were erected on the suit properties were demolished by the 1ST, 2ND, 3RD and 4TH Defendants, respectively.
330. Moreover, while under cross examination by learned counsel for the 3rd Defendant, the witness [PW1] is on record as stating thus;
- I have sued the 3rd Defendant. I have sued the 3rd Defendant because same was involved in the demolitions of the structures in the Plots. The Plot was duly constructed.
331. While under further cross examination PW 1 is on record as stating as hereunder;
- Regarding the document at page 40 of the Plaintiffs bundle of documents, the witness states that the 3rd defendant has been interfering with the rights of the plaintiffs. I have not shown any evidence of interference by the 3rd Defendant.
332. Additionally and while under further cross examination PW 1 stated as hereunder:
- Referred to paragraphs 42 of the witness statement and the witness states that there is no evidence before the court to show that the 3rd Defendant was involved in any demolition.
333. From the foregoing evidence [detail in terms of the preceding paragraphs] there is no gainsaying that PW1 exonerated the 3rd defendant from the offensive demolitions that took place on the suit properties. In this regard, no evidence has therefore been tendered and placed before the court to connect the 3rd Defendant to the actions complained of.
334. Arising from the foregoing, it is my finding and holding that the Plaintiffs herein have neither established nor proven any claim as against the 3rd Defendant on a balance of probabilities. In this regard, I am minded to dismiss the Plaintiffs' claim as against the 3rd Defendant.
335. On the other hand, PW 1 tendered the evidence before the court that the impugned destructions were also under taken by the 1st and 4th defendants. In respect of the 1st defendant, the witness averred that the 1st defendant had been contending that the suit properties fall within its land, namely, L.R No. 11379/3.
336. Furthermore, the witness also averred that the 1st Defendant had previously convened meetings and invited inter-alia the Plaintiffs herein to regularize their title over the suit properties.
337. Other than PW 1 it is also imperative to recall that PW 2 also testified that same went to the suit property when the impugned demolitions were being undertaken. The witness averred that while at the locus in quo, same [Witness] saw various persons undertaking demolitions on the suit properties. In particular, the witness averred that the demolitions were being undertaken by goons who were being offered security by police officers.
338. It is pertinent to reproduce the salient features of the evidence of PW 2. Same testified as hereunder while under cross examination by learned counsel for the 3rd defendant;
- I saw some police officers and the same were providing security to the goons. The police officers were in uniform. The other people were in casual dresses.
339. The other witness who spoke to the demolitions that took place was PW 3. The witness herein testified that same went to the locus in quo and found when the demolition was being undertaken.



340. In particular, the witness averred that the demolition took place on 5th August 2021. It was the further testimony of the witness that while at the locus in quo same [witness] saw police officers who were on site while the demolitions were being undertaken.
341. Other than the testimony of PW 1, PW 2 & PW 3 touching on the question of demolition[s] that was undertaken on the suit properties, PW 4 also highlighted the presence of police officers who were at the locus in quo when the demolitions were being undertaken.
342. Furthermore, the issue pertaining the demolition of the developments [Structures] standing on the suit properties was also adverted to and highlighted by PW 5. It was the testimony of PW 5 that the demolitions were being undertaken by people who were in civilian clothes.
343. However, the witness added that same saw various vehicles belonging to the National Police Service [NPS] and the National Youth Service [NYS] ferrying police officers to the scene of demolitions. Nevertheless, the witness confirmed that the demolitions went on while the police remained on site. For good measure, the witness added that the police were involved in the demolition[s] of the structures/developments on the suit properties.
344. It is also worthy to recall that the issue of the demolitions that were carried out and or were taken on the suit property was also adverted to and highlighted by DW 1. For coherence, DW 1 is on record as stating thus;
- “I am aware that there were some demolitions that were carried out on the land. However the demolitions were not commissioned by the 1st defendant. I am not aware whether the plaintiff’s property was interfered with. I saw the photos that were produced before the court.
345. Suffice it to state that it is the 1st defendant who has variously claimed that the suit properties fall within L.R 11379. In this regard, there is no gainsaying that the 1st Defendant would be hellbent on seeking recover the land from [sic] the various persons from L.R No. 11379.
346. It is worthy to recall that even though evidence was tendered to implicate the 1st and 4th defendants pertaining to the offensive demolitions, the 1st and 4th Defendants did not substantively bring forth evidence to controvert the positive evidence placed on record by and on behalf of the Plaintiffs.
347. From the foregoing, I come to the conclusion that the Plaintiffs have tendered and placed before the court sufficient material to demonstrate and establish that the said 1st & 4th Defendants were/are culpable. In any event, it is not lost on the court that the standard of proof is on a balance of probabilities. [See the provisions of Sections 107, 108 and 109 of the *Evidence Act*, Chapter 80, Laws of Kenya].
348. Before departing from this issue, I deem it expedient to cite and reference the decision in the case of Agnes Nyambura Munga (suing as the Executrix of the Estate of the late William Earl Nelson) v Lita Violet Shepard (sued in her capacity as the Executrix of the Estate of the Late Bryan Walter Shepard) [2018] eKLR:
- The burden of proving the existence of any fact lies with the person who makes the assertion. That much is clear from Sections 107 and 109 of the *Evidence Act*. The standard of proof



is on a balance of probabilities which Lord Denning in the case of *Miller vs Minister of Pensions (1947)* explained as follows:-

“That degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that the tribunal can say: ‘We think it more probable than not’, the burden is discharged, but, if the probabilities are equal, it is not. Thus, proof on a balance or preponderance of probabilities means a win, however narrow. A draw is not enough. So, in any case in which the tribunal cannot decide one way or the other which evidence to accept, where both parties’ explanations are equally (un)convincing, the party bearing the burden of proof will lose, because the requisite standard will not have been attained.”

349. Arising from the foregoing, my answer to issue Number Five [5] is three- fold. Firstly, the Plaintiffs’ herein have neither tendered nor adduced any plausible or cogent evidence to underpin the claim as against the 3rd defendant [City County Government of Nairobi].
350. Secondly, evidence abound that the 1st, 4th, 5th & 6th Defendants were responsible for the offensive demolitions. Notably, the 6th Defendant is vicariously responsible for the actions and/or omissions of the 4th and 5th Defendants.
351. Thirdly, though the rest of the Defendants were joined into the matter, no evidence was tendered to implicate same. In any event it is elementary learning that the directors and members of the 1st defendant cannot be held personally liable for any actions or omissions of the 1st defendant.
352. In the premises, I find and hold that other than the 1st, 4th, 5th & 6th Defendants, the rest of the defendants are not liable to and in favour of the Plaintiffs.

Issue No. 6

What reliefs, if any, ought to be granted

353. The Plaintiffs’ herein have sought for a plethora of reliefs at the foot of the Further amended Plaint dated 11th January 2022. To start with, the Plaintiffs have sought for an order of permanent injunction to restrain the defendants either by themselves, agents, servants and or employees from interfering with their [Plaintiffs] rights to and in respect of the suit properties.
354. While discussing issue Number two [2] herein before, the court found and held that the plaintiffs had tendered and produced plausible evidence to demonstrate the validity of their titles to the suit properties. Furthermore, the court also found and held that by virtue of the ‘Torrents’ principle, the Plaintiffs are entitled to enjoy the proprietary rights to the suit property.
355. One of the salient features that underpin the torrents principle is the right to exclusive possession and occupation. Instructively, the right and entitlement under reference cannot be partaken of; if the registered owners title [ownership] is under threat.
356. To underscore the scope of the rights of a registered owner of land, it suffices to reference the decision in the case of *Mohansons (Kenya) Limited v Registrar of Titles & 2 others* [2017] eKLR; where the Court stated as hereunder;
 - (18) As held by the Court of Appeal for East Africa held in *Moya Drift Farm Ltd. v. Theuri* (1973) EA 114 a registered proprietor of land is the absolute and indefeasible owner of land and is entitled to take proceedings for trespass and eviction of a trespasser even if he did not



have possession of the property. Spry, V-P at 116, considered the effect of section 23 of the Registration of Titles Act and held –

“I cannot see how a person could possibly be described as “the absolute and indefeasible owner” of land if he could not cause a trespasser to be evicted. The Act gives a registered proprietor his title on registration and, unless there is any other person lawfully in possession, such as a tenant, I think that title carries with it legal possession: there is nothing in the Act to say or even suggest that his title is imperfect until he has physical possession.”

Sir William Duffus, P. *ibid* at P.117 agreed with Spry, JA as follows:

“In any even I agree with the Vice-President that the fact that the appellant was the registered proprietor as owner in fee simple under the Registration of Titles Act, and as such vested with the absolute and indefeasible ownership of the land, was sufficient to vest legal possession of the land in the appellant and that this possession would be sufficient to support the action of trespass against a trespasser wrongly on the land.”

357. Guided by the ratio highlighted in the decisions [supra] I find and hold that the enjoyment of the rights to and in respect to the suit property can only be vindicated by the issuance of the orders of eviction and permanent injunction, respectively. To this end, I proceed to decree and order that an eviction shall issue as against the 1st Defendant and or her agents, servants and or any person claiming from the said 1st Defendant.
358. Moreover, I also decree that an order of permanent injunction is also apposite. For coherence, the import and tenure of an order of permanent injunction is to protect the registered owner from 3rd party invasion. [see Kenya Power & Lighting Co. Limited v Sheriff Molana Habib [2018] eKLR.
359. Additionally, the Plaintiffs also sought for compensation in the sum of Kshs.62,507,957/= Only, [whose details/particulars have been highlighted at the foot of paragraph 43 of the Further amended Plaintiff]. However, it is imperative to state and underscore that the only amount that is proved and payable is the amount on account of the perimeter wall in the sum of Kshs.8,530,000/=Only.
360. For good measure, it is imperative to state that the valuation report, which was tendered by PW 6 highlighted the cost of the perimeter wall. Furthermore, there is no gainsaying that the only developments on the suit properties for which the developments approval was issued is the perimeter wall.
361. It is not lost on the court that PW 1 conceded and acknowledged that other than the building approval for the perimeter wall, there was no other approval. Suffice it to posit that no development/building[s] could have been constructed on the suit properties without compliance with the provisions of the Physical Planning Act [now repealed] and Physical Land Use and Planning Act [2019].
362. In the absence of the requisite building approvals, I am afraid that no other compensation can issue and or be granted in favour of the Plaintiffs. To this end, the claim for recompense on account of buildings, stores and equipment is not legally tenable.
363. The other aspect of claim that has been pleaded by and on behalf of the Plaintiffs relates to church equipment and furniture. However, it is not lost on this court that a church is not a party to this suit. Furthermore, the Plaintiffs herein have neither tendered nor produced any document to demonstrate that same [Plaintiffs] have been authorized to mount any claim on behalf of the church.



364. Notwithstanding, the foregoing it is also not lost on the court that the claim pertaining to church equipments and furniture do not fall within the constitutional and statutory remits of the environment and land court. [See Article 162[2][b] of *the constitution*.
365. The other claim that has been raised by and on behalf of the Plaintiffs touch on entrance; compound materials; hardware; construction and technical equipment. Suffice it to state that no evidence was tendered that such materials were on site.
366. Nevertheless, there is no gainsaying that the valuation report which adverted to same does not provide [constitute] the requisite basis to warrant an award of such compensation.
367. Additionally, the Plaintiffs also sought for payment of security and defence cost. Nevertheless, it is worthy to recall that PW 6 conceded that the compensation on the head of security and defence was not well grounded. Simply put, the witness admitted that there was an error and/ or something wrong with the computation of the said costs and the error was never remedied.
368. Finally, the Plaintiffs have sought for loss of income due to damages. Be that as it may, the best that the plaintiffs did was to bring forth a valuation report. However, it is common knowledge that loss of income is an item that can only be addressed by an accountant, auditor or loss adjustor; and not a valuer.
369. Arising from the foregoing, it is my finding and holding that save for the claim for compensation touching on and concerning the perimeter wall, the rest of the items are not payable. In any event, the claims thereto have not been proven in accordance with the law. [see *Superior Homes (Kenya) PLC v Water Resources Authority & 9 others (Civil Appeal E330 of 2020) [2024] KECA 1102 (KLR) (19 August 2024) (Judgment)*].

Final Disposition:

370. Flowing from the analysis [details highlighted in the body of the judgment] I come to the conclusion that the Plaintiffs' have established and proved their claim on a preponderance of probabilities.
371. In the circumstances, Judgment be and is hereby entered in favour of the Plaintiffs as hereunder:
1. There be and is hereby issued an Order of permanent injunction restraining the Defendants whether by themselves or through their directors, employees, servants, representatives or agents or through any other person claiming under or through them or otherwise howsoever, from trespassing into, constructing upon, carrying out unlawful acts of violence, destruction or eviction against the Plaintiff and/or their agents and/or employees or in any other manner interfering, further interfering and/or dealing in any other manner interfering with the Plaintiffs rights to quiet possession, enjoyment, ownership and use of the parcels of land known as Land Reference Numbers 16285/2, 16285/3, 16285/4, 16285/5, 16285/6, 16285/7 and 16285/8, namely, the Suit Properties herein.
 2. There be and is hereby granted an order of mandatory injunction compelling the Defendants, their directors, nominees, servants, agents or persons claiming through them to remove and/ or demolish all structures, buildings or things erected on parcels of land known as Land Reference Numbers 16285/2, 16285/3, 16285/4, 16285/5, 16285/6, 16285/7 and 16285/8 failing which the Plaintiffs shall be at liberty to demolish all structures, buildings or things and the cost of such removal or demolition to be recovered from the Defendants, subject to same [such costs] be certified by the Deputy Registrar of the Court.
 3. Special damages of Kshs.8,530,000/=only, and is hereby awarded to the 1st Plaintiff.



4. The award of Special damages in terms of clause [3] shall attract interest at court rates [14% per annum] with effect from date of filing of suit.
5. Costs of the suit be and are hereby awarded to the Plaintiffs
6. The costs in terms of item (5) hereon shall be borne by the 1st, 4th, 5th and 6th Defendants.
7. The Plaintiffs' case against the 2nd defendant be and is hereby struck out with no orders as to costs.
8. The Plaintiffs case against the 3rd defendant be and is hereby dismissed with no orders as to costs.
9. The Plaintiffs' case against the 7th to the 16th Defendants be and is hereby dismissed with no orders as to costs.
10. The Interested Parties claims be and is hereby dismissed with no orders as to costs.
11. Any other order not expressly granted is hereby declined.

372. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 21ST DAY OF JANUARY 2025.

OGUTTU MBOYA

JUDGE.

In the presence of:

Mutuma/Benson – Court Assistant.

Mr. Kirimi D for the Plaintiffs.

Mr. Odera Were for the 1st, 9th, 13th, 14th and 15th Defendants.

Mr. C.N Menge for the 4th, 5th and 6th Defendants.

Mr. Nahashon Kiriba for the Interested Party.

N/A for the 3rd Defendant.

N/A for the rest of the Defendants.

