



**Baringo United Company Limited v Bina Wholesalers & 2 others (Environment & Land Case E196 of 2021) [2024] KEMC 133 (KLR) (25 July 2024) (Judgment)**

Neutral citation: [2024] KEMC 133 (KLR)

**REPUBLIC OF KENYA  
IN THE NAKURU LAW COURTS  
ENVIRONMENT & LAND CASE E196 OF 2021  
PA NDEGE, SPM  
JULY 25, 2024**

**BETWEEN**

**BARINGO UNITED COMPANY LIMITED ..... PLAINTIFF**

**AND**

**BINA WHOLESALERS ..... 1<sup>ST</sup> DEFENDANT**

**WEST COMMERCIAL STORE ..... 2<sup>ND</sup> DEFENDANT**

**MENENGAI SPICES LIMITED ..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. The suit herein was instituted by the Plaintiff in this matter, vide a plaint dated 10<sup>th</sup> November 2021. The said plaint was subsequently filed before this Honorable Court on the 18<sup>th</sup> day of November 2021. The plaint was predicated on a dispute that arose between the Plaintiff and Defendants herein, with respect to a tenancy relationship between the parties herein.
2. The Plaintiff buttressed its plaint with a verifying affidavit, sworn by the deponent, Laremasubet Micah K. Kiptui, its chairman of the Board of Directors. In the plaint herein, the Plaintiff is seeking judgement to be entered against the Defendants for the orders: -
  - i. A declaration that the 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> Defendants are trespassers on the Plaintiff property Nakuru Municipality Block 5/114.
  - ii. Kshs. 419,000, on account of rent arrears up to the 31<sup>st</sup> October 2021 against the 1<sup>st</sup> Defendant
  - iii. Mesne profit at the rate of;
    - a. Kshs 104,632 per month as from 1<sup>st</sup> November 2019 and as may accrue until vacant possession is given as against the 1<sup>st</sup> Defendant.



- b. Kshs. 63,800 per month from 1<sup>st</sup> November 2019 and as may accrue until vacant possession is given as against the 2<sup>nd</sup> Defendant.
  - c. Kshs. 111,012 per month from 1<sup>st</sup> November 2019 and as may accrue until vacant possession is given, against the 3<sup>rd</sup> Defendant.
  - iv. Eviction of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants from the property Nakuru Municipality Block 5/114 within 90 days from the date hereof, of which notice is hereby given; and the Officer Commanding Nakuru Central Police Station to ensure compliance and supervise the eviction for the purposes of maintaining law and order.
  - v. Interests on (ii) and (iii) above at the rate of 12% per annum from 1<sup>st</sup> November 2019 until vacant possession is given.
  - vi. Costs of this suit
  - vii. Such other and further relief as this Honorable Court may deem fit and just to grant.
3. The issue herein is based on the fact of the Plaintiff, being a landlord and the proprietor of the suit land in question, Nakuru Municipality Block 5/114, seeks this court's indulgence to evict the Defendants, tenants, from the said premises.

#### **Summary of the Plaintiff's case**

- 4. As per the Plaintiff's averments, it is alleged that the Defendants herein were issued with Notices of Termination of Tenancy, dated 26<sup>th</sup> June 2019 and were to take effect on 1<sup>st</sup> November 2019. The said notice was not challenged as the application to file reference out of time was dismissed.
- 5. The Plaintiff further asserts that the Defendants failed to adhere to the Notices of Termination of Tenancy, and it is only after institution of this suit that the 3<sup>rd</sup> Defendant moved out of the premises, albeit the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, remained in occupation of the said property.
- 6. The Plaintiff adduced evidence in support of its claim against the Defendants, which includes witness testimony of PW1, his statement, among other documents marked as Plaintiff exhibits No. 1,2,3,4 & 5. The Plaintiff's witness, PW1 (Laremasubet Micah K. Kiptui), on cross-examination, stated that they did not receive any money from the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. Further, the witness claims that any payment made by the 1<sup>st</sup> Defendant in respect to rent fees were done without his knowledge, and bank slips and receipts of payment thereof were not availed to the Plaintiff by virtue of the 1<sup>st</sup> Defendant acknowledging that they were no longer the Plaintiff's tenants.
- 7. It is the Plaintiff's assertion that the 2<sup>nd</sup> Defendant herein, has been in rent arrears even before the termination notices were issued. That the 2<sup>nd</sup> Defendant is in default of rent fees amounting to Kshs. 419,000. This Court takes note and acknowledges that prior to this suit being instituted, a congruent matter was handled with respect to the subject matter herein, at the Business Premises Rent Tribunal-Tribunal Case No. 173 of 2019. In that case, the Tribunal, in its ruling dated 20<sup>th</sup> April 2022, held in favor of the Plaintiff, stating that the termination notices were valid and stood in effect, without objection, since any reference by the Defendants, were filed out of time, thus inadmissible.
- 8. The Plaintiff vide the testimony of PW1, affirmed that the 1<sup>st</sup> and 3<sup>rd</sup> Defendants had been paying rent to their bank account and that the 1<sup>st</sup> and 3<sup>rd</sup> Defendants had moved out in 2023, but that the 1<sup>st</sup> Defendant came back and got another shop.



9. The Plaintiff has this filed this suit to seek judicial redress and offset the eviction of the Defendants herein, from their property. The Plaintiff vehemently denounces any claim by the Defendants as to their continued tenancy in the suit premises, and hence, prays for a declaration of trespass, rent arrears, mesne profits, interest and costs of the suit.

### **Summary of the Defendants' case**

10. In this matter, it is only the 1<sup>st</sup> Defendant whom provided testimony and evidence in support of their case against the Plaintiff. Apart from their witness testimony, the 1<sup>st</sup> Defendant produced exhibits to reinforce their case, namely; Exhibit No. 1,2,3& 4.
11. DW1, Mr. Savla, testified to being the Director of the 1<sup>st</sup> Defendant. He stated that they have been in occupancy of the Plaintiff's premises since 2002 and have been paying rent as duly expected. The witness, DW1, acknowledged that the Plaintiff had issued them with a termination notice in 2019, but that they did not vacate the premises and have been in occupation despite the notice having taken effect. In his testimony, he (DW1) alleges that subsequent to the issue of termination notices, new tenants began their occupancy and possession of the 1<sup>st</sup> floor. He affirms that the termination notices were selectively issued and he was unduly subjected to the same.
12. The witness also confirms that there exists no written tenancy agreement between them and the Plaintiff herein, but that they have nevertheless been paying rent to the Plaintiff as usual, and the Plaintiff/Landlord has never, at any point, refused acceptance of the same, or reverted the paid sums back to the 1<sup>st</sup> Defendant. The 1<sup>st</sup> Defendant has furnished the court with documents (copies of Bank receipts) proving that indeed, they have been paying the Plaintiff rent, even after the termination notice took effect in 2019. The witness further claims that even though he has been making payments to the Plaintiff, the Plaintiff has not furnished them with any receipt in acknowledgement of their payments. Prior to the termination notice taking effect in 2019, the Plaintiff used to give receipts to the 1<sup>st</sup> Defendant upon rent payment, as alleged by the witness, DW1.
13. The Defendants allege to be lawful tenants and are not trespassers since they have been paying rent to the Plaintiff, even after the termination notices took effect. They further claim that the Plaintiff herein is not entitled to the prayers pleaded in their plaint, since it would be tantamount to double compensation and arbitrary eviction, owing to the fact that they have allegedly been paying rent and are in current occupation of the suit premises. They pray that this court dismisses the Plaintiff's suit, and with costs to the Defendants herein.

### **Issues for determination**

14. Having read through and analyzed the submissions from both the Plaintiff and Defendants, it is this court's finding, that the points of determination herein, are;
- i. Whether the Defendants are lawful tenants or they are trespassers?
  - ii. Whether the Plaintiff herein is entitled to the reliefs sought in this suit?

### **Analysis & Determination**

#### **Issue No. (i) Whether the Defendants are lawful tenants or they are trespassers?**

15. The matter herein pertains controlled tenancy. The law governing tenancy of such a nature, is the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*, Chapter 301 of the Laws of Kenya. Section 2 (1) of the act it states that;



‘Controlled tenancy’ means a tenancy of a shop, hotel or catering establishment—

- (a) which has not been reduced into writing; or
- (b) which has been reduced into writing and which —
  - (i) is for a period not exceeding five years; or
  - (ii) contains provision for termination, otherwise than for breach of covenant, within five years from the commencement thereof; or
  - (iii) relates to premises of a class specified under subsection (2) of this section:

Provided that no tenancy to which the Government, the Community or a local authority is a party, whether as landlord or as tenant, shall be a controlled tenancy

16. The Plaintiff herein claims that the Defendants are trespassers on his premises and is before this court seeking their eviction, rent arrears, mesne profits and interests on the same and costs of the suit. The Plaintiff has provided proof of the termination notice issued to the Defendants herein, dated 26<sup>th</sup> June 2019, and which took effect on 1<sup>st</sup> November 2019. The termination notice marked PExh 4 and DExh 2, shows that the Plaintiff sought to terminate the tenancy agreements with the Defendants so as to undertake renovations and construct a modern building. The notices were served to all three defendants herein on 26<sup>th</sup> June 2019 and they were given 4 months’ notice of eviction, which was to be effected on 1<sup>st</sup> November 2019. Additionally, the Plaintiff seeks rent arrears and mesne profits from the Defendants. Because of the evidence of the termination notices which was to take effect on 1<sup>st</sup> November 2019, I do find that the Defendants owe the Plaintiff mesne profits as from 1<sup>st</sup> November 2019 till the date that vacant possession is granted to the Plaintiff. However, the court takes into consideration the evidence in the bank slips, being payment of rent by the 1<sup>st</sup> and 3<sup>rd</sup> Defendants herein, as from September till December of 2022.

17. The matter that arises therefore, is whether the said termination notices were valid. The termination notices were filed in adherence to Section 4 (2) of the Landlord & Tenant (Shops, Hotels & Catering Establishments) Act Cap 301 Laws of Kenya, which provides that;

A landlord who wishes to terminate a controlled tenancy or to alter to the detriment of the tenant any term or condition in or right or service enjoyed by the tenant under such a tenancy shall give notice in that behalf to the tenant in the prescribed form

18. The reason for termination was legitimate and was consistent with the provisions of Section 7 of the said Act, with regard to the reasons of termination of tenancy, which provides under subsection (f) that;

...on the termination of the tenancy the landlord intends to demolish or reconstruct the premises comprised in the tenancy, or a substantial part thereof, or to carry out substantial work of construction on such premises or part thereof, and that he could not reasonably do so without obtaining possession of such premises.

19. As it is, the notices were effective as from 1<sup>st</sup> November 2019, as provided by Section 6 (1) prescribes that: -

A receiving party who wishes to oppose a tenancy notice, and who has notified the requesting party under section 4(5) of this Act that he does not agree to comply with the tenancy notice, may, before the date upon which such notice is to take effect, refer the



matter to a Tribunal, whereupon such notice shall be of no effect until, and subject to, the determination of the reference by the Tribunal

20. Noting from the Tribunal Case No. 173 of 2019, that preceded the suit herein, the Defendants references were filed out of time and thus, the termination notices remained valid and in effect. In *Nandlal Jivraj Shah & 2 others (all trading as Jivaco Agencies v Kingfisher Properties Limited [2015] e KLR*, the Court therein pronounced itself on the issue of references and termination notices, citing that in the absence of duly lodged and served references, termination notices stood effective, and the claim that controlled tenancy continued to exist even upon the lapse of the stipulated notice period is erroneous. The court also observed that it is only the filing of a reference which suspends time with respect to the tenancy notice.

21. Similarly, this Court also takes cognizance of the observations of the court in *Mbandu v Chohan & another (Environment and Land Case Civil Suit E005 of 2020) [2023] KEELC 17335 (KLR)*, where it was stated,

After the dismissal of the 1<sup>st</sup> Defendant's reference, the 1<sup>st</sup> Defendant's tenancy stood terminated in accordance with the notice dated 4<sup>th</sup> October 2016 that was served upon the 1<sup>st</sup> Defendant pursuant to section 4(2) of the Act. The 1<sup>st</sup> Defendant therefore became a trespasser on the suit property. The 1<sup>st</sup> Defendant being a trespasser on the suit property, the notice to vacate that was served upon him by the Plaintiff on 1<sup>st</sup> July 2020 that was not even necessary was sufficient. The 1<sup>st</sup> Defendant's tenancy having been terminated by operation of law; the Plaintiff needed not to give any reason for asking the 1<sup>st</sup> Defendant to vacate the suit property.

22. Likewise, and in parallel regard, this Court stands guided by the findings and subsequent ruling of the Business Premises Rent Tribunal in the Tribunal Case No. 173 of 2019. The Tribunal therein, found in favor of the Plaintiff herein, and dismissed the Defendants application to file references out of time. This had the effect of authenticating the legitimacy of the termination notices dated 26<sup>th</sup> June 2019, meaning that they stood valid, and without any reference as to their objection. Thus, as per the requisite date of 1<sup>st</sup> November 2019, the Defendants had legally ceased being tenants of the Plaintiff's premises, and any continued occupation of the said property after the said date, would suffice to amount to trespass.

23. The Defendants on the other hand, claim that they are lawful tenants within the Plaintiff's property. They acknowledge receipt of termination notices from the Plaintiff, dated 26<sup>th</sup> June 2019. They allege that on account of technological difficulties on the Judiciary's end, they were unable to file their references in time. Notwithstanding, they affirm that they have been paying rent as normal, to the Plaintiff, specifically, the 1<sup>st</sup> and 3<sup>rd</sup> Defendants.

24. Section 109 of the *Evidence Act* 2012, stipulates that the burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence unless it is provided by any law that the proof of that fact shall lie on any particular person.

25. In consideration of the aforementioned, it is trite that the Defendants herein, bear the evidentiary burden of proving the alleged payments of rent to the Plaintiff, from 1<sup>st</sup> November 2019 till the institution of this suit. The receipts provided by the 1<sup>st</sup> and 3<sup>rd</sup> Defendant only provide proof of payment for rent for the months of September, October, November & December of 2022. They have not provided proof of payment of rent from 1<sup>st</sup> November 2019 to August 2022. In addition, no evidence has been adduced as to the payment of rent beyond December 2022. In light of this, it would



be justified to come to the conclusion that, upon termination of tenancy vide the notices dated 26<sup>th</sup> June 2019, the Defendants ceased being tenants and any continued occupation of the said premises would be trespassing on the Defendants part.

26. With respect to the 2<sup>nd</sup> Defendant, as from the date which the termination notice of their tenancy took effect, on 1<sup>st</sup> November 2019, they have been in possession and occupation of the Plaintiff's property illegitimately. They have not provided proof of any payments of rent made. Moreover, it is alleged that the 2<sup>nd</sup> Defendant is in arrears of rent prior to the issuance of the termination notice by the Plaintiff.

27. The provisions of the Land Act 2012, Section 60, the law prescribes that:

A lessor who accepts rent in respect of any period after the lease has been terminated or the term of the lease has expired, shall not, by reason of that fact, be deemed to have consented to the lessee remaining in possession of the land, or as having given up on any of the rights or remedies of the lessor against the lessee for breach of a covenant or condition of the lease, and if the lessor continues to accept rent from a tenant who remains in possession for two months, after the termination of the lease, a periodic lease from month to month shall be deemed to have come into force.

28. To this effect, the courts have made a similar observation in this respect, where, in the case of Nancy Njeri Gitau & Another v James Muchone Njuga & Another 2021 eKLR, it was held that by the mere fact that the landlord received rent after the issuance of the termination notices, superseded the notice, thereby creating a controlled tenancy and as such, a landlord/tenant relationship was born into existence. Similar sentiments were echoed by the court in Ngunjiri (Administrator of the Estate of Muraya Chege (deceased) v Muhia 2023 KEELC 18269 Environment & Land Appeal E006 of 2022.

29. Considering the issue as to the legitimacy of the tenancy relationship, it is this Court's finding that the Defendants ceased being tenants on 1<sup>st</sup> November 2019, after the termination notices took effect. However, consideration is due, to the fact that the 1<sup>st</sup> and 3<sup>rd</sup> Defendants deposited sums of money to the Plaintiff's bank account for payment of rent. The bank slips provided as exhibits on behalf of the Defendants, show that they have only paid rent to the Plaintiff for the months of September, October, November and December 2022. This would imply that since the termination notice took effect on 1<sup>st</sup> November 2019, no rent was paid by the Defendants till August of 2022. Resultantly, the Defendants, having no active or valid tenancy agreement with the Plaintiff, have been in trespass of the Plaintiff's property, as from 1<sup>st</sup> November 2019. The 3<sup>rd</sup> Defendant as noted in the witness testimony of PW1, moved out after the suit herein was instituted, thus their duration of trespass runs from 1<sup>st</sup> November 2019 till November 2021. With regards to the 1<sup>st</sup> and 3<sup>rd</sup> Defendants, upon payment of rent in September 2022, they resumed their tenancy in 2022, from September, on a monthly basis, till December 2022.

30. Accounting that as per the witness testimony of PW1, the 3<sup>rd</sup> Defendant is alleged to have moved out of the premises owned by the Plaintiff, sometime after this suit was instituted in the beginning of 2023. The same has only been stated via oral testimony, and no further evidentiary proof has been adduced to that effect. The 3<sup>rd</sup> Defendant has furnished bank receipts of payment of rent to the Plaintiff for September, October, November and December 2022. Noting that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants herein are still in occupation of the premises owned by the Plaintiff, it is commonplace that the Plaintiff ought to be compensated for the profit they would have earned from the occupancy of their premises.

31. Having taken the aforementioned into consideration, it is this court's finding that in light of the termination notices dated 26<sup>th</sup> June 2019, and which took effect on 1<sup>st</sup> November 2019, the Defendants herein ceased being tenants within the Plaintiff's property. This is in consideration of the fact that no



evidence as to payment of rent to the Plaintiff was given for the duration between 1<sup>st</sup> November 2019 to August 2022. In furtherance to this, the 2<sup>nd</sup> Defendant, having not paid or deposited any rent to the Plaintiff subsequent to the termination notice taking effect on 1<sup>st</sup> November 2019, as it stands, since then, to the date of this suit, the 2<sup>nd</sup> Defendant has been in occupation of the premises owned by the Plaintiff and thus, has been trespassing against the Plaintiff's property.

32. The 1<sup>st</sup> Defendant, is liable for trespass for the duration between 1<sup>st</sup> November 2019 till August 2022, and subsequently, after January 2024, they stand to be in trespass of the Plaintiff's premises. In conclusion, as things stand, the Defendants herein are trespassers on the Plaintiff's property.

### **Issue No. (ii) Whether the Plaintiff herein is entitled to the reliefs sought in this suit?**

#### **Rent Arrears**

34. Having established in the first issue of determination that the Defendants herein are in breach of the termination notices, it is evident that the Plaintiff, being the aggrieved party herein, is entitled to compensation and payment for the occupation of their property by the Defendants. This court, having established that the Defendants were in unlawful occupation and possession of the Plaintiff's premises, we shall proceed to dissect and analyze the other reliefs sought by the Plaintiff.
35. With respect to the rent arrears sought against the 2<sup>nd</sup> Defendant, amounting to Kshs. 419,000, the law as per the provisions of the *Evidence Act* (Section 107 & 109) tasks the Plaintiff to adduce evidence to prove that indeed, the 2<sup>nd</sup> Defendant is in default of rent fees. The Plaintiff has merely alleged that the 2<sup>nd</sup> Defendant is liable for rent arrears, which allegedly, have accrued prior to the termination notices taking effect. It would have been prudent on the Plaintiff's part, to undertake the production of evidence in support of their claim for rent arrears due to them against the 2<sup>nd</sup> Defendant.
36. In *Ciabaitani M'Mairanyi & Others V Blue Shield Insurance Co. Ltd* [\*CA No.101 of 2000\*](#)(2005) 1EA 280, the court held that; -

Whereas under section 107 of the *Evidence Act*, which deals with the evidentiary burden of proof, the burden of proof lies upon the party who invokes, the aid of the law and substantially asserts the affirmative of the issue. Section 109 of the same Act recognizes that the burden of proof as to any particular fact may be cast on the person who wishes the Court to believe in its existence.

37. This court agrees with the submissions of the Defendants specifically, on the reliance of the case of *Oscar Luvaha Explore Auto Valuers & Accessories Limited) v Babi Investments & Another* [2021] eKLR, where the Plaintiff's case in that matter, was dismissed for failure to discharge the burden of proving that the tenant therein, was in arrears of rent.
38. Taking into consideration that the Plaintiff herein has not adduced evidence to support their claim of rent arrears against the 2<sup>nd</sup> Defendant, this court finds that the Plaintiff is not entitled to the alleged rent arrears, owing to the fact that they have not proved that the alleged rent arrears of Kshs. 419,000 were due to them. Moreover, the Plaintiff has not established to the court, the duration for which the said rent arrears were due for. The Plaintiff has merely stated that the 2<sup>nd</sup> Defendant was in default of rent, even before the termination notice took effect on 1<sup>st</sup> November 2019.

#### **Mesne Profits**

39. In respect to the relief sought for mesne profits, this court has, in its analysis and examination of the particulars herein, established that the Defendants were unlawfully in occupation of the Plaintiff's



property. As from 1<sup>st</sup> November 2019, the tenancy agreement between the Plaintiff and Defendants herein, collapsed and ceased to be effective. Noting the same, it is a matter of fact, that the Defendants have not provided any evidence as to the rent payments made to the Plaintiff from November 2019, till beyond the time when the suit was instituted in 2021. Additionally, no evidence was given by the 1<sup>st</sup> Defendant in support of the claims of continued rent payment from November 2021 till 1<sup>st</sup> September 2022.

40. It is the court's finding in this matter, that the Defendants owe mesne profits to the Plaintiff herein, specifically;
- I. The 1<sup>st</sup> Defendant owes the Plaintiff mesne profits from 1<sup>st</sup> November 2019 till August 2022, then as from January 2024 till the date vacant possession is granted to the Plaintiff.
  - II. The 2<sup>nd</sup> Defendant owes the Plaintiff mesne profits as from 1<sup>st</sup> November 2019 till the date vacant possession will be accorded to the Plaintiff.
  - III. The 3<sup>rd</sup> Defendant owes the Plaintiff mesne profits from 1<sup>st</sup> November 2019 till August 2022.

### **Eviction order**

41. Having established that the termination notices stood effective as from 1<sup>st</sup> November 2019, the court finds that, with regards to the 2<sup>nd</sup> Defendant, the termination notice stands effective until the date vacant possession will be given to the Plaintiff. This would mean that the 2<sup>nd</sup> Defendant is liable for eviction, considering that they have not paid any rent to the Plaintiff as from 1<sup>st</sup> November 2019, to this current date.
42. For the 1<sup>st</sup> and 3<sup>rd</sup> Defendants, their termination notices also took effect as from 1<sup>st</sup> November 2019 till August 2022. Since the Plaintiff (PW1) herein acknowledged that the 1<sup>st</sup> and 3<sup>rd</sup> Defendants have been depositing money into their bank account, there existed a tenancy relationship on a monthly basis, with respect to the 1<sup>st</sup> and 3<sup>rd</sup> Defendants. This relationship, as per the evidence adduced, would only suffice for the period of 4 months, of which the 1<sup>st</sup> & 3<sup>rd</sup> Defendants had made payments for rent to the Plaintiff for the months of September till December 2022. The receipt of payment by the Plaintiff would serve to negate the termination notices issued in June 2019. This would mean that the termination notices ceased to be effective as from August 2022. From the said testimony of PW1, the 3<sup>rd</sup> Defendant herein has already vacated the premises thus, an eviction order against them would be irrelevant.
43. Acknowledging that there is no tenancy agreement between the Plaintiff and the Defendants herein, and that no rent and evidence of the same has been adduced to support the Defendants' claim of continued occupancy by virtue of payment of rent, this court finds that the Plaintiff being the proprietor of Nakuru Municipality Block 5/114, and having rights thereof, is entitled to quiet possession of their property, free from interference from the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, thus, an eviction order in favor of the Plaintiff, would serve to protect the property rights.
44. After consideration of the matter herein, and the respective party submissions, I do hereby enter judgement as follows;
- i. I do hereby certify that owing to the failure to relay payment of rent and lack of a valid tenancy agreement between the Plaintiff and the Defendants, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are trespassers in the suit property of the Plaintiff. The period for trespass for the Defendants being



- a. 1<sup>st</sup> Defendant; from (1<sup>st</sup> November 2019 – August 2022), then from January 2024 till the date vacant possession will be given to the Plaintiff.
  - b. 2<sup>nd</sup> Defendant; from (1<sup>st</sup> November 2019 till date vacant possession is granted to the Plaintiff).
  - c. 3<sup>rd</sup> Defendants being from (1st November 2019 – August 2022).
- ii. The Plaintiff is awarded mesne profits at the following rates of (plus Interest on the same)
    - a. Kshs. 104, 632 per month as from 1<sup>st</sup> November 2019 to August 2022, then as from 1<sup>st</sup> January 2024 and as may accrue until vacant possession is given as against the 1<sup>st</sup> Defendant.
    - b. Kshs. 63,800 per month from 1st November 2019 and as may accrue until vacant possession is given as against the 2nd Defendant.
    - c. Kshs. 111,012 per month from 1st November 2019 to August 2022.
  - iii. An order for eviction is hereby granted against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.
  - iv. Costs are awarded to the Plaintiff, against the Defendants.

**DATED, SIGNED AND DELIVERED AT NAKURU IN OPEN COURT THIS 25<sup>th</sup> DAY OF July 2024.**

**ALOYCE-PETER-NDEGE**

**SENIOR PRINCIPAL MAGISTRATE**

In the presence of;

Plaintiff's counsel: Kiptoon

Defendant's Counsel: n/a

Plaintiff: n/a

Defendant: n/a

