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REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ELC NO. E021 OF 2023

**ANNEMARIE MTONYI MECCA
SAMUEL WANYONYI MECCA-----
PLAINTIFFS**
*(Suing on behalf of the Estate of
ELIZABETH NASIMIYU NYONGESA)*

VERSUS

**COUNTY GOVERNMENT OF
TRANS
NZOIA-----
DEFENDANT**

JUDGMENT

1. The plaintiffs approached this court through a further amended plaint dated **12/6/2025**. As the legal representatives of the estate of the Late Elizabeth Nasimiyu Nyongesa, pursuant to a limited grant of letters of administration ad litem dated **15/5/2025**, who was the registered owner of **Title No. L.R. No. 2116/276**, situated in Trans Nzoia County. They sought:
 - (a) **Permanent injunction restraining the defendant from evicting, repossessing, demolishing, or interfering with quiet enjoyment of the suit premises.**

- (b) Declaration that plaintiffs are the legally registered leasehold holders of the suit property.**
- (c) General damages for trespass.**
- (d) General damages for willful and malicious destruction of property.**
- (e) Aggravated damages for pain and suffering.**
- (f) Special damages of Kshs. 118,635,195/=.**
- (g) Exemplary and punitive damages.**
- (h) In the alternative, compensation at the market value and price of the suit property, including the buildings and structures thereon, and loss of income suffered, all totaling to Kshs. 140,709,195/=.**
- (i) Costs.**

2. The plaintiffs contended that the deceased was at all material time lawfully and rightfully in possession and ownership of the suit property to which she was issued with a letter of allotment with notice to the Commissioner of Lands, and eventually with a leasehold title by the government of Kenya, through its authorised officials, who had both actual and implied authority to act in those transactions, which leasehold for **99** years was still active, had subsisting with a reminder of **57** years.

3. The plaintiffs aver that sometime in **1984**, the deceased sought to develop the suit property, duly made and submitted the relevant applications, structural plans that were duly approved by the defunct municipal council of Kitale, and abided by all the conditions pertaining to ownership of the title, including making good the land rates and rents.
4. The plaintiffs aver that the deceased fully developed the suit property by putting up residential apartments for rental purposes, and on numerous occasions charged the suit premises with various financial institutions for financial accommodation, as shown in the entries to the title register.
5. The plaintiffs aver that on **17/4/2023**, in the early hours of dawn, and without any notice, the defendant, through its authorised agents, officers, and or servants, trespassed onto and illegally descended on the suit property, demolished part of the perimeter wall and promised to return any time thereafter to demolish the entire building standing thereon, allegedly to pave way for the expansion of the stadium, which is across the road bordering the suit property.
6. The plaintiffs aver that at around **9:54 a.m.** of **18/4/2023**, the defendant shared a series of posts

on the official account of the Trans Nzoia County Government on X, formerly known as Twitter, with the hashtag #natembeya delivers ([https://twitter.com/Trans Nzoia Gov](https://twitter.com/Trans_Nzoia_Gov)), which included pictures of the defendant's authorised agents, officers and or servants on the suit property during the aforementioned illegal and unlawful trespass, invasion and demolition.

7. Further, the plaintiffs aver that the suit property had tenants with the deceased deriving a monthly gross rental income of **Kshs. 139,500/=** per month.
8. The plaintiffs aver that once the threat to demolish the suit property and the rental apartments was imminent, the deceased filed this suit on **19/4/2023**, seeking interim orders by way of a certificate of urgency, which the court heard *exparte* and gave orders of temporary injunction restraining the defendants, its agents, servants or employees from interfering with the suit property in any way.
9. The plaintiffs aver that while the defendants and its officers were aware and had properly been served with the aforesaid interim orders of injunction, which demanded and directed them to immediately halt the then intended demolition and or purported demolition, or any further interference with the suit

property to allow the court to heard m and determine the matter, without giving any notice or legal justification, proceeded to make good its threats by trespassing onto and evicting the deceased together with her tenants from the suit property in the afternoon of **19/4/2023** in willful, deliberate, flagrant and obstinate disregard and disobedience of the court orders.

- 10.** The plaintiffs aver that the defendant, having evicted the tenants from the suit property, proceeded to illegally and wrongfully demolish and destroy the residential apartments on the suit property and effectively rendered the same no longer fit for habitation, without any colour of right, notice to demolish, repossess, or compulsorily take over the property, offer or pay any compensation and also making suggestions that the deceased was a corrupt and guilty of economic crime.
- 11.** Again, the plaintiffs aver that the defendant carried out the acts complained of above maliciously and out of spite for the deceased, with an intention of humiliating, injuring her feelings, or causing her to be ridiculed by the public, friends, and neighbours, and the acts brought the interim orders of the court into disrepute.

- 12.** The plaintiffs aver that the deceased made a report of the defendant's act of trespass and demolition to the Kitale Police Station on **20/4/2023** as OB No. **72/20/4/2023**.
- 13.** As a result of the foregoing, the plaintiffs aver that the deceased and her estate suffered loss and damage, anguish and mental distress, embarrassment and shame before the public, who, by the defendant's conduct, were made to believe that the deceased had illegally encroached onto the suit property.
- 14.** The plaintiffs itemized the special damages at **Kshs. 121,650/=**, cost of the building, **Kshs.1,255,500/=**, for loss of monthly rental income, **Kshs. 9,418,000/=**, for loss of future earnings, **Kshs.100,000/=**, loss of the fence, **Kshs. 221,695/=**, for the search certificate, valuation report, and the quantity surveyor fees, making a total of **Kshs. 118,635,195/=**.
- 15.** The plaintiffs aver that the deceased, as a consequence, instituted contempt proceedings against the defendant for breach of a valid court order, whose ruling of **23/1/2024** found the defendant's agents or employees guilty of contempt of court.

- 16.** The defendant opposed the suit through an amended statement of defence and counterclaim dated **30/6/2025** to the further amended plaint. The defendant denied that the deceased was the rightful owner of title **L.R. No. 2116/276**, otherwise, she was invited to its offices to provide proof of the suit property, including possession and construction approvals, if any, but declined the opportunity to do so, and instead maliciously proceeded to seek the court's intervention, yet her ownership of the suit property is illegal, for a letter of allotment per se was not a proof of ownership.
- 17.** The defendant faults the deceased for failing to provide vital documents, which the defendant needed to approve her occupancy and development of the suit land, and being the custodian of all public lands and in charge of controlling developments in the county, the defendant avers that it was and remains justified under its law to summon the deceased or the plaintiffs to protect public interests, unless the contrary is proved.
- 18.** In addition, the defendant avers that the alleged approvals by the defunct municipal council of Kitale were among others the reason why the deceased was summoned by its officers to verify and dispense

with the approvals afresh, which calls, unfortunately, the deceased defied to submit vital documents to the relevant departments and instead invoked the court's jurisdiction.

- 19.** The defendant insists that the deceased acquired the suit property fraudulently, and unless the plaintiffs prove otherwise, the title, if any, is illegal and invites revocation. The defendant avers that the deceased was duly served with a notice upon which she proceeded to seek audience with the officers of the County. She met the Governor and requested the county machinery to aid her in demolishing the structures on the suit land and also sought time to find a way to preserve building materials and other useful objects.
- 20.** The defendant avers that it is the deceased who demolished the structures without any form of undue influence, but as a sign of goodwill when she could not comply with the county notices; otherwise, the defendant refutes the contents of paragraphs **10** and **12** of the further amended plaint.
- 21.** Equally, the defendant refutes the allegation in paragraphs **12, 14, 15, 16, 17, 18, 19, 20, 21,** and **22** of the further amended plaint, since the contempt application filed by the plaintiff dwelt with

the issues, now overtaken by events, making the circumstances thereto irrelevant to the facts in issue.

- 22.** The defendant avers that the alleged police report did not result in any arrest of the defendant or its officers, hence it cannot be judged legally culpable for the alleged crime on the strength of a mere OB report.
- 23.** The defendant contends that a right cannot be claimed on illegally acquired property and that the failure to prove acquisition of the suit property, and or produce ownership documents, clearly indicates that the plaintiffs are part of the land grabbers that the county is grappling with.
- 24.** The defendant avers that the plaintiffs have failed to prove ownership or development approvals of the suit property, met with the governor of the county and pleaded with him to allow her to vacate the property as well as to proceed with the demolition herself, while at the same time sought support with machinery to do the demolition herself.
- 25.** Again, the defendant terms the suit inept, incompetent, and not disclosing sufficient material facts against it, thereby depicting a perfect example of an abuse of the court process, and ought to die

without any hope of resurrection, if the latter is an option.

- 26.** By way of a counterclaim, the defendant avers that it is a County created by **Article 176** of the Constitution and the County Government Act, mandated with the planning and control of development within Trans Nzoia County, and as a custodian of public lands within its jurisdiction.
- 27.** The defendant avers that all land within Trans Nzoia County that is not proven to have been lawfully allocated and registered to private individuals remains public land and the county government is mandated to protect such land from encroachment and illegal occupation.
- 28.** The defendant avers that parcel **L.R. No. 2116/276** is public land and has at no time been lawfully allocated or transferred to the deceased or her estate. The defendant avers that the alleged ownership of the land by the deceased, now asserted by the plaintiffs, by way of an allotment letter or approval documents, has never been validated by the county government of Trans Nzoia.
- 29.** The defendant avers that on several occasions, including meeting with the county officers and the governor, the deceased failed to provide any

documentary proof of ownership or approvals for development, and instead expressed her willingness to vacate the land and even requested the county equipment or machinery to assist in demolition and clearance.

- 30.** The defendant avers that the acts of the deceased and, by extension, the plaintiffs amount to illegal occupation of public land and a violation of the right and interest of the people of Trans Nzoia County.
- 31.** The defendant avers that the claim by the plaintiffs amounts to trespass, misrepresentation, and interference with its statutory and constitutional mandate; otherwise, the plaintiffs have no proprietary rights over the suit land, and their claim is an abuse of the court process intended to shield an illegal occupation, lawful county planning, and development.
- 32.** According to the defendant, the public stands to suffer loss and prejudice should the court fail to issue appropriate orders confirming the suit property as public land and restraining the plaintiffs from laying any claim on it.
- 33.** The defendant counterclaims for:
 - (a) Dismissal of the further amended plaintiff dated 12/6/2025 with costs.**

- (b) Declaration that L.R. No. 2116/276 is public land lawfully vested in the County Government of Trans Nzoia.**
- (c) Declaration that the plaintiffs have no lawful or equitable interest in L.R. No. 2116/276 and their continued claim amounts to trespass.**
- (d) Order of eviction of the plaintiffs, their servants, agents, or representatives from L.R. No. 2116/276.**
- (e) Permanent injunction.**
- (f) General damages for trespass and unlawful occupation.**

34. In reply to the defence and defence to the counterclaim dated **7/7/2025**, the plaintiffs insist that the deceased lawfully acquired and was in possession of the suit property, through a valid letter of allotment, approved development plans, and a registered leasehold title holder.

35. The plaintiffs deny that the deceased was ever invited to the defendant's offices for any reason or at all. The plaintiffs aver that the defendant proceeded maliciously and without any colour of right to demolish the suit property and has already been adjudged by this court to be in contempt of court and has yet to purge the same. The plaintiffs insist that the title over the suit land is valid, proper, and indefeasible, having been acquired legally and

regularly, with the defendant's full knowledge that the deceased had followed all due processes and procedures, including securing relevant approvals from the defunct Municipal Council of Kitale.

- 36.** The plaintiffs deny that the initial plaintiff was afforded any opportunity to provide ownership documents as alleged or at all; otherwise, failure to do so, which is denied, could not be a reason for the defendant to demolish the plaintiffs' buildings in bold, bullish, and blatant defiance of an order of this court.
- 37.** The plaintiffs aver that some of the issues raised in paragraphs **12, 13, 14, 15,** and **17** of the further amended plaint, having been settled in the ruling dated **23/7/2024**, and the consequential sentencing conviction of **3/10/2024**, the plaintiffs should refer to the ruling for its full effects.
- 38.** The plaintiffs aver that, whereas no arrest has been made following the police OB report, the plaintiffs cannot give directions to the National Police Service concerning the arrest and prosecution of the involved officer of the defendant as concerns the demolition of the suit property, otherwise the filing of the police OB report No. **72/20/04/2023** was

lawful and corroborates their account of the illegal demolition of the suit property by the defendant.

- 39.** Further, the plaintiffs state that it is an abuse of the court's time and process for the defendant to lament illegalities, without an iota of evidence. The plaintiffs aver that, as private citizens, they have tendered an abundance of records, during more than **40** years, showing the process of the acquisition, possession, and development of the suit property; otherwise, they deny all allegations of fraud, which in any event have not been particularized with the specificity required by the law.
- 40.** The plaintiffs deny that the occupation and possession of the suit property was illegal for any person, or at all; otherwise, the defendant had never previously challenged the ownership until the events leading to the demolition. The plaintiffs reiterate that the defendant is in contempt of court orders, has been sentenced, but is yet to purge the contempt because the defendant clutched at the ownership straw and the court was lenient enough to stay a restoration order to afford the defendant an opportunity to prove its alleged ownership claim of the suit property.

- 41.** Further, the plaintiffs term the amended defence and counterclaim scandalous, frivolous, vexatious, and otherwise an abuse of the court process, considering the circumstances of the case, the counterclaim as an afterthought and contrary to an accrued reply as previously filed by the deceased, considering paragraph(s) of the original reply to defence dated **8/1/2025**.
- 42.** The plaintiffs reiterate that the demolition of the buildings on the suit property was unlawful, high-handed, and in breach of both valid court orders and the constitution.
- 43.** By way of a defence to the counterclaim, the plaintiffs deny that the suit property was public land, given that it was lawfully allocated, surveyed, titled, and developed over a span of four decades by the plaintiffs. The plaintiffs deny that the defendant has demonstrated that the title to the suit property is invalid or was fraudulently obtained; otherwise, the counterclaim is made in bad faith and was contrary to the defendant's prior conduct, including the issuance of land rates, demands, and approvals.
- 44.** Again, the plaintiffs aver that the title deed issued to the deceased in **1981** has not been lawfully revoked under the Land Act or the Land Registration Act, and

therefore remains valid, binding, and conclusive proof of ownership of title to the suit property by the plaintiffs.

- 45.** The plaintiffs reiterate that they are not trespassers and state that their continued possession, development, and enjoyment of the suit property was lawful and legal until the illegal eviction and demolition by the defendant.
- 46.** The plaintiffs aver that the counterclaim is vexatious, incompetent, and constitutes an abuse of the court process, intended to regularize an unlawful demolition already declared contemptuous by this court. The plaintiffs aver that the counterclaim lacks a valid verifying affidavit, as the one in place was made fraudulently, considering the past ruling of this court.
- 47.** At the hearing, **Haron Gekonga Nyakundi** testified as **PW1**. As a Quantity Surveyor running a practice known as Har-Consult, PW1 told the court that he holds a Bachelor's Degree in Building Economics from the University of Nairobi, and is a recognized quantity surveyor and a fellow of the Chartered Institute of Quantity Surveyors. PW1 relied on a witness statement dated **5/2/2025** as his evidence-in-chief.

- 48.** PW1 told the court that the deceased engaged him to give expert advice on the restoration of a structure that had been demolished on her developments over L.R. No. **2116/267**. PW1 said that he prepared a report dated **5/2/2025**, containing his expertise, after thoroughly analysing the relevant data and the information supplied to him on various dates.
- 49.** PW1 said that he relied on the approved development plans and architectural drawings, current cost data as provided by the Ministry of Public Works, the government, Central Bank of Kenya, data on interest rates, the Kenya Bureau of Standards, and the current data based on his office's day-to-day experience.
- 50.** PW1 said that based on his examination of the data, if the building were to be restored to its initial state, it could cost the plaintiffs **Kshs. 118,521,871.37** as per his report produced as **P. Exhibit. No. 1(a), (b) and (c)**.
- 51.** PW1 said that he visited the suit property after reviewing the valuer's report. PW1 also produced annexures to his report showing his current practicing certificate as **P. Exhibit. No. (2)**, summary of the recommendation on costs as **P.**

Exhibit. No. (3), proforma invoice as **P. Exhibit. No. (4)**, receipt dated **3/2/2025** as **P. Exhibit. No. (5)**, Ministry of Public Works costs Handbook **P MFI No. (6)**, and lastly, his current practicing certificate for **21/1/2025** as **P. Exhibit. No. (7)**.

52. In cross-examination, PW1 told the court that in preparing his report, he relied on the valuer's report, the approved building plan, and a Bill of Quantity, on top of the other relevant materials or data alluded to in his evidence in chief. PW1 said that as an expert, he also relied on his day-to-day experience to review the above data or information; otherwise, it was normal to prepare an expert without necessarily visiting the suit property, since restoration costs are futuristic in nature. In this case, PW1 said the building had already been brought down, leaving only a foundation in existence at the site.

53. Francis Kariuki Njagi testified as **PW2**. As a holder of a Bachelor of Lands Economics from the University of Nairobi in **1991**, and a registered Valuer/Estate Agent, PW2 told the court that he was engaged by the deceased to undertake a valuation of the suit property. PW2 said that on **18/4/2023**, he inspected the suit property during an ongoing demolition, and undertook both internal and

external inspection of the property as it was before the valuation.

- 54.** PW2 said that he prepared a report dated **19/4/2023**, comprising the value of the land at **Kshs. 26,000,850/=**. PW2 relied on information from the deceased's rental income and looked at the ownership documents. He produced a report and a receipt for his cost as **P. Exhibit. No. 8(a)** and **(b)** respectively.
- 55.** PW2 said that when he initially visited the suit property, the only items that had remained were the doors and the windows. PW2 said he was a trained valuer on post-factor valuation of demolished buildings. PW2 contended that the demolition was being undertaken by the defendant, through its county employees, whom he could not identify by name.
- 56.** PW2 admitted that he was not furnished with monthly rental income receipts. PW2 said that the property value was based on a comparable scale in the **2023** market; otherwise, he had not attached the same to his report, which can be ascertained from other reports. PW2 said his report had photos showing the status of the building at the time.

- 57.** PW2 said that he had also interviewed the owner prior to the inspection, who explained the status of the property before the demolition.
- 58. Anne Marie Mecca** testified as **PW3**. She relied on her witness statement dated **12/6/2025** and also on that of her late mother, accompanying the initial plaint dated **18/4/2023**. PW3 told the court that she and her brother, Samuel Wanyonyi Mecca, brought the suit as legal representatives of the estate of their late mother, Elizabeth Nasimiyu Nyongesa, the original plaintiff, pursuant to leave to join the suit granted on **9/6/2025**.
- 59.** PW3 told the court that her late mother obtained a letter of allotment for the plot on **19/11/1981** from the Commissioner of Lands, and on **24/2/1982**, the Director of Survey was duly notified of the allotment, from which a grant was subsequently issued on **1/12/1981**, on a leasehold title for a period of **99** years for L.R. No. **2116/276**.
- 60.** PW3 said that her late mother had used the certificate of title on **7/3/1996, 19/4/2007, 28/3/2008, 24/2/2010, 20/12/2010, 26/6/2013, 29/12/2017**, and on **4/2/2022** to secure loan advances from Housing Finance Company of Kenya, Agricultural Finance Corporation, and Barclays Bank

of Kenya, out of which she developed the suit land by putting up residential apartments thereon for rental purposes.

- 61.** PW3 said that on **17/4/2023**, the defendant's authorised agents and officers and servants invaded and trespassed on the suit property, demolished part of the perimeter fence, and promised to return and demolish the entire building, leading to this suit, whereby on **19/4/2023**, interim orders of injunction were issued and served upon the defendant, who despite acknowledging of the orders, returned to the suit property and demolished the entire building.
- 62.** PW3 said that the suit property is not located within the stadium or part of it; otherwise, the two have separate and distinct titles or localities. PW3 said that the rental houses were yielding a monthly gross rental income of **Kshs. 139,500/=**, and that the estate had suffered special damages, loss, and income as per PW1 and PW2. PW3 produced a letter of allotment dated **19/11/1981** as **P. Exhibit. No. (9)**, letter from the defunct Commissioner of Land dated **24/2/1982** as **P. Exhibit. No. (10)**, Grant of lease dated **1/12/1981** as **P. Exhibit. No. (11)**, extension of lease dated **8/3/1984** as **P. Exhibit. No. (12)**, submission of proposed development

plans dated **22/5/1991** as **P. Exhibit. No. (13)**, approved development plans dated **25/5/1994**, as **P. Exhibit. No. (14)**, letter from the Commissioner of Land for approval dated **3/2/1986** as **P. Exhibit. No. (15)**, a Commissioner of Lands, extension of user approval dated **5/9/1986** as **P. Exhibit. No. (16)** and land rent clearance certificate dated **31/12/2017** as **P. Exhibit. No. (17)**, a series of certificates concerning rate clearance as **P. Exhibit. No. 18(a), (b), (c), and (d)**, a notification of charge dated **5/2/2025** as **P. Exhibit No. (19)**, certificate of electronic evidence as **P. Exhibit No. (20)**, ruling dated **23/1/2024** as **P. Exhibit No. (21)**.

- 63.** PW3 told the court that after the advertisement for the allocation of the suit property was carried out in the Daily Nation newspaper of **1980/81**, after her late mother applied for the plots, after she had carried out due diligence by way of a historical search up to **1960**. PW3 said that she was not aware whether, before the approved development plans were made, her late mother was asked by the defendant to provide any ownership documents.
- 64.** PW3 said that before the demolition, her late mother had tried in vain to reach out to the defendant's

senior officers, including camping to see the Governor to present copies of her ownership documents, which she, however, shared with anyone she met in the process before she collapsed at their offices and even became sickly.

- 65.** PW3 said that her mother was actively involved in the exercise as she was sending live updates on her X-account as the demolition was going on.
- 66.** PW3 said that the photos before the court show the stats of the apartment block before it was pulled down, as well as the live updates by the county governor of the defendant, cheering the exercise.
- 67.** Despite accommodating for the defendant's witness to attend court, either physically or virtually, the defendant's witnesses failed to show up.
- 68.** The defendant's amended statement of defence and counterclaim dated **30/6/2025** was marked as closed, dismissed respectively on **29/9/2025**, and parties ordered to put in written submissions by **15/10/2025**.
- 69.** The plaintiffs rely on written submissions dated **6/10/2025**. It is submitted that the suit was instituted vide plaint dated **19/4/2023**, simultaneously with an application under certificate of even date, to which interim orders of injunction

were issued halting any interference with the plaintiffs' quiet enjoyment of L.R. No. **2116/276**, which order, unfortunately, the defendant ignored, and instead proceeded with the demolition exercise as per the ruling delivered on **23/1/2023** and the sentencing of the defendant's officers on **3/10/2024**, which contempt is yet to be purged.

- 70.** The plaintiffs submit that following the demise of their late mother, the suit papers were amended further on **12/6/2025**, to which they PW1, PW2, and PW3, testified in support of the reliefs sought in the further amended plaint. The plaintiffs isolate seven issues for the court's determination.
- 71.** On the first issue, the plaintiffs submit that they have adduced oral and documentary evidence conclusively establishing ownership and legal possession of the suit property, including a letter of allotment, **P. Exhibit. No. 9**, issued on **19/11/1981**, and **P. Exhibit No. 11**, a certificate of lease issued under the repealed Registration of Titles Act as a grant of **99** years, lease commencing **1/12/1981**, and after full compliance with the provisions of the repealed Government Land Act, Cap **280** Laws of Kenya.

- 72.** The plaintiffs submit that the allocation letter was duly affirmed by the Commissioner of Lands and the Director of Survey as per **P. Exhibit. No. 10**, and payment receipts and rates clearance certificates produced as **P. Exhibit. Nos. 17** and **18**.
- 73.** The plaintiffs submit that **P. Exhibit No. 19** reveals that there was a notification of charge of the suit properties, showing that the deceased utilized the title documents or grant to obtain financial accommodation from various banks between **1996 - 2002**, as evidenced in the copy of the green card as **P. Exhibit No. 19**.
- 74.** Further, the plaintiffs submit that under **Section 26** of the LRA, a certificate of title is to be taken as *prima facie* evidence that the person named thereon is the absolute and indefeasible owner of the land unless it is proved that it was acquired fraudulently, unprocedurally, or through a corrupt scheme. The plaintiffs submit that the defendant has not specifically pleaded and proved fraud.
- 75.** Reliance is placed on **Esther Ndegi Njiru & Another -vs- Leonard Gatei [2014] KEHC 8290 [KLR]**, *Black's Law Dictionary*, **Section 2** of the Registration of Titles Act (repealed), **Vijay Morjaria -vs- Nansingh Madhusingh Darbar & Another**

[2000] KECA 223 [KLR], and Elizabeth Kamene Ndolo -vs- George Matata Ndolo [1996] KECA 209 [KLR].

- 76.** The plaintiffs submit that, going by the official search certificate dated **25/1/2025** and produced as exhibit before this court, the deceased remains the registered owner of the suit property and has been in constant possession and ownership of which title has not been impeached or revoked in law to date since **1981**.
- 77.** Further, the plaintiffs submit that in the absence of any formal revocation, the defendant could just wake up and allegedly claim ownership without tendering any document of ownership, especially when it has continued to accept the payment of rates and rent through its predecessors in title to the present, as per the exhibits tendered as **P. Exhibit. Nos. 17 and 18**.
- 78.** As to the development of the suit property, the plaintiffs submit that since **1984**, the plaintiff, through Ms. Lubred Architects, sought an extension of use of the suit property from the defunct Commissioner of Lands as per **P. Exhibit. No. 12**, and on **22/5/1991**, she duly submitted her structural plans for the suit property, which were

duly approved on **25/5/1994**, **3/2/1996**, and an extension was granted on **5/6/1986** by the defunct Commissioner of Lands as per **P. Exhibit. Nos. 1 (a)-(d), 13, 14, 15,** and **16**, respectively.

- 79.** The plaintiffs submit that the photographs, as well as the valuation report dated **19/4/2023**, together with receipts from the tenants, all confirm the aforesaid developments as per **P. Exhibit. Nos. 11, 14, 15, 16, 17,** and **18**. The plaintiffs submit that the foregoing evidence reveals that apartments had been set up on the suit property, yielding a monthly income of **Kshs.139,500/=**, totaling to **Kshs. 1,674,000/=**, per annum.
- 80.** The plaintiffs submit that the evidence of PW1 and PW2 all confirms that the value of the demolished building and the loss of rent income, including the expenditure on fencing, security, search valuation, and the survey, which exhibits or evidence have not been controverted by the defendant, and have discharged the burden of proof in law.
- 81.** Reliance is placed on **Trust Bank Ltd -vs- Paramount Universal Bank Ltd & Others [2009] eKLR**, on non-objection to exhibits at the time of their production. As to whether the acts of the defendant to demolish the buildings in the suit

property, the value of the demolished buildings, and photographs are testimonial evidence confirming the demolition during the subsistence of injunctive orders, the conduct of the defendant was wanting.

- 82.** Again, the plaintiffs submit that even after the ruling on contempt and the sentencing, the defendant has filed multiple inconsistent defence and a knee-jerk counterclaim unsupported by title or map, and made an unsuccessful application for joinder of the Land Registry, which, by ruling dated **12/3/2025**, the court found the role of the Land Registrar to the event of **April 2023** as unpleaded in the defendant's then statement of defence.
- 83.** The plaintiffs submit that despite the ruling dated **12/3/2025** at paragraph **20**, the defendant failed to seek summons and or produce any document showing its ownership of L.R. No. **2116/276**, as a justification for moving in a bold, blatant, and bullish manner, devoid of a valid court order to demolish the suit premises and its buildings.
- 84.** The plaintiffs submit that the defendant has been unable to justify the basis under which it made false ownership claiming on the suit property before this court, on what basis it besmirched, disparaged and or maligned the deceased plaintiff, who was a one-

time checking the defunct municipal county council between **2003-2007**, and a former county secretary for land between **2013-2017**, on the defendant and account on **18/4/2023** that their demolition in defiance of a valid court order was an exercise in the eviction of individual who illegally occupied land at the Kenyatta Stadium, that with no single document supporting its assertion of ownership, what the triable issue is.

- 85.** Further, the plaintiffs submit that, in the absence of answers to the posed question above, this remains a classical case of abuse of process as described in **Muchanga Investments Ltd -vs- Safari Unlimited (Africa) Ltd & Others [2009] KECA 453 [KLR], Core Investments Ltd -vs- Rono & Others [2025] KECA 1089 [KLR], and J.P. Machira T/A Machira & Co. Advocates -vs- Wangethi Mwangi & Another [1998] KECA 46 [KLR].**
- 86.** On damages, the plaintiffs submit that it is their case that the defendant's conduct has obstructed the cause of justice, wasted previous judicial time, and compounded their injury with full knowledge that the claim for ownership of the suit property was baseless and unfounded, hence the defendant is

liable for prayers for damages for the wrongs made under the headings.

- 87.** Reliance is placed on McGregor on “*Damages*”; by Harvey McGregor **2014** Thorn Reuters (Prof) UK, ***Municipal Council of Eldoret -vs- Titus Gatitu Njau [‘2020] KECA 782 [KLR], Total (Kenya) Limited formerly Caltex Oil (Kenya) Limited -vs- Janevans Limited [2015] eKLR and Peter M. Kariuki -vs- Attorney General [2014] eKLR.***
- 88.** The plaintiffs submit that the defendant is liable for damages for trespass and for violation of proprietary rights on the suit land at **Kshs. 50,000,000/=**. Reliance is placed on ***Godfrey Julius Ndumba Mbogori & Another -vs- Nairobi City County [2-18] KECA 702 [KLR], Park Towers Ltd -vs- Moses Chege & Others [2014] KEHC 7655 [KLR], Willesden Investments Ltd -vs- Kenya Hotels Properties Ltd HCCC No. 367 of 2000,*** and ***Kamau Macharia -vs- Mwangi Kigundu & Others HCCC No. 4067 of 1986.***
- 89.** On general damages for willful and malicious destruction of property, the plaintiffs submit that the acts of the defendant were willful, deliberate, and malicious, carried out during the pendency of an interim order of injunction, the maligning and

besmirching of the deceased on social media as a land grabber. The conduct not only destroyed the plaintiff's property but also inflicted indignity and hardship, aggravating the injury suffered.

- 90.** The plaintiffs submit that the initial plaintiff was a respected former officer of the defendant, whose development of the suit property was the pride and joy of a pioneer and trailblazing black women which was land mark literally and figuratively in the Kitale Skyline, who eventually passed on on **22/3/2025** unvindicated, leaving a family bearing a triple wound, the destruction of their property the loss of their mother and the subject to the defendant's abuse of the court process, acts of official oppression and constitutional delinquent. A figure of **Kshs. 10,000,000/=** is suggestive.
- 91.** Reliance is placed on **Obongo & Another -vs- Municipal Council of. Kisumu (1971) E.A 91, Said Mohamed Abdalla -vs- Mombasa County Government [2025] KEELC 1344 [KLR], Rooker -vs- Barnard [1964] AC 1129, Godfrey Julius Ndumba Mbogori & Another -vs- Nairobi City County (supra) and Kenya Hotel Properties Ltd -vs- Willesden Investment Ltd (supra).**

92. On exemplary damages, the plaintiffs submit their objection to compensate the claimant for the harm done and the punish the defendant for its conduct in inflicting that harm as held in **Mcgregor** (*supra*) at pages **454-455**, **Rooker -vs- Barnard** (*supra*) **Obongo -vs- Municipal Council of Kisumu** (*supra*), and **Mistry Valji -vs- Janendra Raichand & 2 others [2016] KECA 538**.
93. The plaintiffs submit that the defendant, as a body corporate under **Section 6** of the County Government Act, bears primary responsibility for the unlawful acts of demolition and damages flowing therefrom and given the rate of its officers, who should bear personal liability which hiding under the corporate veil of the county, the public officers who acted *mala fides* should be held liable.
94. Reliance is placed on **Gitobu Imanyara -vs- Attorney General & Others [2016] eKLR** and **Kenya Agricultural and Livestock Research Organization -vs- Kisii County & another [2021] eKLR**, and made without any notice at all, or justification, since the defendant has been unable to impeach the title to the suit property on account of fraud.

95. The plaintiffs submit that a figure of **Kshs. 15,000,000/=** on this subheading will be adequate to compensate for the loss of the rental income.
96. On special damages, the plaintiffs submit that they have not only pleaded the particulars of special damages but also tendered evidence from PW1 and PW2 to substantiate the figure of **Kshs. 118,521,871.37** and **Kshs. 140,384,506.37**, going by **P. Exhibits. No. 2, 3, 5(a), (b), 6, 8(b)**. Reliance is placed on **Herbert Hahn -vs- Amrik Singh [1985] KECA 68 (KLR)**.
97. On aggravated damages, the plaintiffs submit that, as held in **McGregor** (*supra*) at page **71**, it applies to international torts, where the mental distress of the claimant has been exacerbated by the unpleasant nature of the defendant's conduct.
98. In this case, it is submitted that given the humiliations and oppressive circumstances of the unlawful demolition, they are entitled to:
- a) General damages for trespass - **Kshs. 50,000,000/=.**
 - b) General damages for willful and malicious destruction of property - **Kshs. 15,000,000/=.**
 - c) Special damages - **Kshs. 140,384,506.37.**
 - d) Aggravated damages - **Kshs. 10,000,000/=.**

e) Exemplary damages - **Kshs. 50,000,000/=.**

f) Total - **Kshs. 265,384,506.37**

99. On costs, the plaintiffs rely on **Section 27** of the Civil Procedure Act, **Rosemary Wairimu Munene, Ex parte Applicant, Ihururu Dairy Farmers Cooperative Society Ltd Judicial Review Appl. No. 6 of 2014.**

100. The court has carefully considered the pleadings herein, the evidence tendered, and the written submissions. The issues calling for my determination are:

(1) If the plaintiffs have proved that the late Elizabeth Nasimiyu Nyongesa was lawfully registered owner, occupant, and developer of buildings and developments on L.R. No. 2116/276.

(2) If the defendant has pleaded and proved that the suit property was public land irregularly, illegally, and fraudulently registered, occupied, possessed, and developed by the deceased plaintiff contrary to public interest.

(3) If the defendant lodged a complaint, instituted, demanded for recall or revocation and cancellation of the certificate of title, grant or lease held by the deceased plaintiff as forming part of public land, namely Kitale Stadium.

(4) If the defendant complained of, notified, stopped, and or objected to the deceased

plaintiff's use, occupation, approval for development, developments thereon, planning and use, operation of rental business, occupation or possession of rental houses on the suit property as against public interest.

- (5) If the defendant notified, demanded, and or issued any formal notice for the entry, demolition, and recovery of the L.R. No. 2116/276, as public land forming part of the Kitale Stadium.**
- (6) If the defendant was served with a court order on 19/4/2023, stopping it from trespassing into, entering into, or in any way whatsoever interfering with the late plaintiff's quiet occupation, use, and possession of the suit property pending hearing and determination of this suit.**
- (7) If the defendant's agents, servants, or employees entered into, trespassed, and committed acts of demolition of buildings standing on L.R. No. 2116/276.**
- (8) If the defendant's agents, servants, or employees' entry into, trespass into, and commission of acts of destruction or demolition on the suit property was justified under any statutes or the Constitution.**
- (9) If the plaintiffs have proved any loss, damage out of the defendant's acts, to be entitled to the reliefs sought.**
- (10) Whether the plaintiffs are entitled to special and general damages.**

(11) What is the order as to costs?

- 101.** A cause of action refers to acts, on the part of the defendant, that give rise to a cause of complaint on the part of the plaintiff. See **DT Dobie & Company (Kenya) Limited -vs- Muchina & another [1980] KECA 3 (KLR).**
- 102.** In this suit, the plaintiff's cause of action as the legally registered holder of a **99** year leasehold from **1/12/1981** being title No. **2116/276**, which she was legally, procedurally, allocated and issued with a certificate of lease, lawfully, and procedurally was issued with approved developments, plans and extension of user, on which she had put up apartment building, was that on **17/4/2023**, without notice, trespassed and illegally descended upon by the defendant's authorised agent, officers and or servants, who demolished part of the perimeter wall and promised to return thereafter to demolish the entire buildings standing thereon to pave way for the expansion of the Kitale Stadium situated across the road bordering the suit property.
- 103.** The plaintiffs aver that on **18/4/2023**, the defendant's agents or employees shared a social media post on its official X-account hashtag

#natembeya delivers, which included pictures of the defendant's authorised agents, officers, or servants on the suit property during that aforesaid trespass, invasion, and demolition.

104. The plaintiffs aver that their late mother, the initial plaintiff, sensing imminent danger or threat to the impending demolition, filed this suit under certificate of urgency, obtained interim orders of injunction restraining the defendant, its agents, or servants from carrying out or interfering with the suit property in any way, which orders were properly served upon the defendant.

105. The plaintiffs aver that, despite knowledge of and proper service of the court order upon the defendant, without giving notice and with no legal justification, the defendant proceeded to make good its threats, by trespassing into, evicting the plaintiffs' tenants on the apartment building on **20/4/2023**, in willful, deliberate, flagrant, and absolute disregard or disobedience of the court order. Further, that upon the trespass and eviction of the tenants, the defendant's agents, servants, or employees proceeded to illegally and wrongfully demolish and destroy the residential apartment on

the suit property, effectively rendering it uninhabitable.

106. The plaintiffs aver that the defendant had no colour of right, did not give any notice of the intention to enter and destroy the buildings, there was no notice to repossess or compulsorily take over the suit property, and there was no offer for compensation for the purported compulsory acquisition, the same was done in flagrant disregard of valid court orders, the demolition exposed the owner to unnecessary publicity in a manner to suggest that she was corrupt, guilty of economic crimes and had encroached on public land, it caused her humiliation, injury, mental distress, embarrassment, shame, loss and damage, public ridicule, it brought the court into disrespect.

107. The defendant on its part, denies that the deceased plaintiff was the rightful owner of title **L.R. No. 2116/276**, as alleged or at all, otherwise despite notice to provide proof of ownership of the suit property including possession and construction approvals if any, had declined the opportunity to do so, hence the occupation, possession of the suit property according to the defendant was illegal in absence of evidence to the contrary.

- 108.** The defendant avers that the initial plaintiff had failed to provide documents of ownership, approved documents for occupancy and development of the suit land for verification, and, being the custodian of all public land in charge of controlling developments in the county, it was justified under the laws to summon the deceased and to protect public interests.
- 109.** The defendant avers that, instead of subjecting herself to the jurisdiction of its relevant departments as requested, the defendant avers that the deceased plaintiff instead invoked this court's jurisdiction, given she had acquired the property fraudulently, and that, unless otherwise proved, the title to the suit property, if any, is illegal and invites revocation.
- 110.** The defendant avers that the deceased plaintiff was duly served with a notice upon which she proceeded to successfully seek audience with the county officers, including the governor, and requested for the county machinery to aid in her demolition of the structures therein and for time to find a way of preserving building materials, other useful objects therein, otherwise, she was the one who demolished the structures without any form of undue influence

as a sing of goodwill after failing to comply with the county notices.

- 111.** The defendant denies the allegations in paragraphs **13 - 19**, stating that the court had conclusively dealt with those issues in the application for contempt of court, hence they are overtaken by events and are irrelevant to the facts in issue in the suit.
- 112.** The defendant avers that despite the alleged police report, none of its officers were arrested, to be judged legally culpable for the alleged crime on the mere strength of an OB report, without prejudice to the foregoing.
- 113.** The defendant avers that a right cannot be claimed on illegally acquired property and that the deceased plaintiff failure to prove acquisition of the suit land and the failure to produce documents clearly indicate that she was part of land grabbers that the county has been grappling with, otherwise, the plaintiff (deceased) had acquired the suit land fraudulently or on suspicious agenda, which she had not when called upon provided evidence to the contrary including ownership, possession and development approvals of the suit property. As a result of this, the defendant avers that she sought

from the Governor to be allowed to voluntarily vacate the suit property, as she proceeded with the demolition herself.

114. The defendant, by way of a counterclaim, avers that as a creature of **Article 176** of the Constitution and the County Government Act, it has a planning mandate to control developments within the county and to be a custodian of public land within its jurisdiction and therefore all land within the county that is not proven to have been lawfully allocated and registered to private individuals remains public land, which it is mandated to protect from encroachment and illegal occupation.

115. The defendant avers that L.R. No. **2116/276** is public land and had not been lawfully allocated or transferred to the late Elizabeth Nasimiyu Nyongesa or her estate. The defendant avers that the alleged claim of ownership by her or her estate is fraudulent, unsubstantiated, and based on irregular documents or approvals that have not been made available to or validated by the County Government, despite notices to and meetings by its officer with the deceased.

116. The defendant avers that the deceased or her estate is allegedly occupying public land and was in

violation of the rights and interests of the people of Trans Nzoia and her continued claim over the suit property amounts to trespass, misrepresentation and interference with its statutory and constitutional mandate, since she has no proprietary rights over the suit property and the suit was an abuse of the court process to shield her illegal occupation and to frustrate the county planning and development.

117. The defendant avers that the court should confirm the suit property as public land and restrain the deceased or her estate from laying any claim over it. The suit property should revert and vest with it, evict the plaintiff from it, for she has no lawful or eligible interest, she is a trespasser on public land, she ought to pay damages for trespass, declare it as public land illegally acquired, and which and unlawful occupation of public land and the plaintiffs be restrained by way of a permanent injunction.

118. Article 40 of the Constitution provides that, subject to **Article 65**, every person has a right either individually or in association with others to acquire and own property of any description in any part of Kenya. **Article 40(2)** provides that parliament shall not enact any law that permits the state or any person to arbitrarily deprive a person of property of

any description or intent in, or right over, any property or limit its enjoyment thereof unless for a public purpose, and is in accordance with **Chapter 5**.

119. Article 40 (6) provides that the rights, however, do not extend to property that has been found to have been unlawfully acquired. **Article 61** classified land into three categories. Public land is defined under **Article 62(1)** of the Constitution. Unalienated government land under **Article 62(1)(b)** has to be defined by an Act of Parliament that was in force by **27/8/2010**.

120. In *John Entick -vs- Nathan Carrington [1765] EWHC KB 898*, the court held that there was unlawful trespass and government interference with property rights. It established that the principle of individual freedom and privacy is the cornerstone of modern democratic societies ever since. The court held that the common law provided protection for individual freedom and privacy, and the crown had no power to infringe on those rights without lawful authority. The case established the principle that the judiciary has the power to declare government actions illegal if they are not authorized by law, since no one is above the law, including the crown.

The case also laid the groundwork for the principle of the tort of trespass, the importance of the rule of law, and the separation of powers.

- 121.** In **Torino Enterprises -vs- Attorney General & Others Petition No. 5 (E006) of 2023**, the court, regarding **Article 62(1)(a)** of the Constitution, cited **Section 2** of the Government Land Act (repealed), that unalienated government land means government land which is not for the time being leased to any other person or in respect of which the Commissioner of Lands had not issued any letter of allotment. Further, the court cited **Section 3** of the Physical Planning Act, Cap **286** (repealed), that unalienated government land was in similar terms.
- 122.** The court also cited **Kiluwa Ltd & Another -vs- Business Liaison Co. Ltd & Others Petition 14 of 2017 [2021] KESC 37 KLR**, that unalienated government land is public land within the context of **Article 62** of the Constitution and the repealed Government Land Act, and that the expression public land only came into force with the **2010** Constitution as terms delimiting the frontiers of public land by identifying and consolidating all areas of 'public tenure', otherwise the retired constitution

used the term 'government instead of 'public' to define such land.

123. The court in **Torino Enterprises -vs- Attorney General** (*supra*), held that once an individual acquires any unalienated government land or other land for that matter, consequent upon registration of title, in accordance with the application of the applicable law, such land transmits from 'public' to 'private' land, which is defined under **Article 64** of the Constitution.

124. The court cited **Benja Properties Limited -vs- Syedna Mohammed Burhannudin Sahed & 4 others [2015] KECA 457 (KLR)**, that the legal effect of registration made in **1907** and **1911** was to convert the suit property at the time from unalienated government land to alienated land, with the consequence that the suit property became private property and moved out of the ambit and confines of the Government Land Act.

125. It is trite that when a land title is under attack, a party cannot merely waive the instrument of title without going behind it to show that the process leading to its acquisition was procedural, legal, formal, regular, and free of any encumbrances.

- 126.** In ***Dina Management Ltd -vs- County Government of Mombasa [2023] KESC 30 [KLR]***, the court observed that the sanctity of a title is contingent upon the legality of the process that created it and that a registered proprietor cannot merely dangle the instrument of title as proof of ownership when the root is challenged, since a title is an end product, which if it is a product of a flawed process becomes defeasible.
- 127.** It has been argued that the cases of ***Dina*** (*supra*) and ***Torino*** (*supra*) have a profound paradigm shift in the Kenyan land law, that the central question is no longer “who is the registered owner, but “how did they become registered?” In ***Sehmi & Another -vs- Tabarana Co. Ltd & 5 Others Petition E033 of 2023 [2025] KESC 21 [KLR]***, the court has defined who is a *bona fide* purchaser for value and a legal estate.
- 128.** The defendant has pleaded that the deceased plaintiff holds no valid title to the suit property, that she was a land grabber, that the land is public, that she was a trespasser, that the buildings therein were constructed without approvals, that the suit property forms part of Kitale Stadium and its use, occupation and possession by the deceased or her

estate is impending the county planning developments hence denying the residents of Trans Nzoia services, otherwise the defendant as the custodian of public land is entitled to have the suit property declared as public land.

129. As a starting point, the constitution and statutory powers, functions, and obligations of the defendant are donated by **Articles 6, 174, 175, 176, 184, 185, 186, 187,** and **Part 2 Schedule 4** of the Constitution as read together with the County Government Act, Physical and Land Use Planning Act **2019**, and the Urban Access of Cities act. Under **Sections 40 and 46** of the Physical and Land Use Planning Act, the defendant has a mandate regarding local physical and land use development plans, over, inter alia, land use, planning, and development. The parameters for development control are set out in **Section 55** of the Act and the Third Schedule. The parameters for development control include location, size of the area, the zoning regulation, surrender of land for public utilities, mining, size of the plot, and subdivisions.

130. Public land is defined under **Article 62** of the Constitution. It includes land which, on the effective date, was unalienated government land as defined

by an Act of Parliament in force at the effective date, and or land in respect of which no individual or community ownership can be established by any legal process.

131. Article 62(2) provides that public land shall vest in and be held by the county government in trust for the people resident in the county and shall be administered on their behalf by the National Land Commission, if it is classified under **Clause 1(a), (c), (d), or (e).**

132. The bone of contention by the defendant is that the suit property forms part of the Kitale Stadium and was never available for any alienation to a private individual, and whether the deceased held any title to the same, it was fraudulently and or illegally obtained, hence the court should, by way of a counterclaim, declare the land public and invalidate the certificate of lease or title for the land to revert to the public for use.

133. The defendant has pleaded that a letter of allotment cannot confer ownership of land to the plaintiffs and that, unless the contrary is proved, the initial plaintiff has no ownership rights to the land and any developments thereon were not approved by the county. The plaintiffs, on the other hand, have

tendered documents to show that there was a valid letter of allotment, followed by the necessary approvals by both the defunct Commissioner of Lands and the Director of Surveys, culminating in a certificate of lease issued in **1981**.

134. Further, the plaintiffs contend and have produced documents to show that both the extension of use, approvals for developments were duly submitted and endorsed by the relevant authorities, including the predecessor in title to the defendant, who has also been receiving land rates and land rents as per the certificates produced before the court. Additionally, the plaintiffs aver and have produced documents showing that the deceased, over the years, has sought and obtained financial benefits to develop the suit property from banking institutions; otherwise, if she had no valid title to the suit land, it would not have been possible to use the title as security with the banks.

135. Section 23(1) of the Registration of Titles Act (repealed) under which the plaintiff's certificate of lease was issued, embodied the doctrine of indefeasibility of the title. It produced that "The certificate of title issued by the Registrar, to a purchaser of land upon a transfer or transmission by

the proprietor thereof shall be taken by all costs as conclusive evidence that the person named thereon as proprietor of title is the absolute and indefeasible owner thereof, subject to the encumbrances, consents and conditions therein, or entitled thereon, and the title of that proprietor shall not be subject to challenge, except on the ground of fraud or misrepresentation to which he is proved to be a party”.

- 136.** In *Joseph Arap Ngok -vs- Justice Moiwo Ole Keiwua, Nairobi Civil Appl. No. 60 of 1997*, the court held that Section **23(1)** of the Registration of Titles Act, repealed, gives an absolute and indefeasible title to the owner of the property. **Article 40(6)** of the Constitution, however, does not extend the application of the right to property that has been found to have been unlawfully acquired.
- 137.** It is trite law that the burden of proof is on he who alleges such facts to exist. In this case, it is the defendant who is challenging the title held by the plaintiffs as invalid, fraudulently obtained, and issued on land that belonged to the public. In *Munyu Maina -vs- Hiram Gathiha Maina [2013] eKLR*, as cited in *Dina (supra)*, the court held that where a proprietor’s title is under challenge, it is not

enough to dangle the instrument of title as proof of ownership, and that he must go beyond the instrument and prove the legality of the title and show that the acquisition was legal, formal and free of any encumbrances including interest which would not be noted in the register.

138. In **Funzi Island Development Ltd -vs- County Council of Kwale [2014] eKLR**, an absolute and indefeasible title exists if and only where the allocation was legal, proper, and regular. Courts of law cannot, on the basis of indefeasibility of title, sanction an illegal or give a seal of approval to an illegal or irregularly obtained title. See **Chemey Investment Limited -vs- Attorney General & 2 others [2018] KECA 863 (KLR)**. The burden, therefore, was on the defendant after the plaintiffs tendered documentary evidence that followed due process in acquiring title to the land, in terms of **Sections 114-117** of the retired Constitution and the Trust Land Act, (repealed).

139. In **Odinga & another -vs- Independent Electoral and Boundaries Commission & 2 others; Aukot & another (Interested Parties); Attorney General & another (Amicus Curiae) [2017] KESC 42 (KLR)**, the court distinguished between

legal and evidential burden and how the latter keeps shifting.

- 140.** The defendant pleaded fraud, irregularity, and illegality. Fraud or illegality must be specifically pleaded and proved on a balance higher in ordinary suits. In **Vijay Morjaria -vs- Nansingh Madhusingh Darbar & another [2000] KECA 223 [KLR]**, the court said that particulars of alleged fraud must be stated on the face of the pleading and the fraudulent conduct must be distinctly alleged and proved, and cannot be inferred from the facts. In **Ndolo -vs- Ndolo [1996] KECA 209 [KLR]**, the court said that fraud, being a serious charge, requires a standard of proof higher than in the ordinary balance of probabilities.
- 141.** In this suit, other than alleging fraud, illegality, or nullity of title, the defendant did not provide on the face of the amended defence and counterclaim any particulars of when, how, and in which manner there was fraud or fraudulent conduct.
- 142.** In **Milan Kumar Shah & Others -vs- City Council of Nairobi & Another Nairobi HCCC No. 1024 of 2005**, the court said that where it is demonstrated that the title was not obtained in line with the

applicable law and not in public interest, a title could not be absolute and indefeasible.

143. In **Fanikiwa Ltd & Others -vs- Sirikwa Squatters Group & Others Petition 32, 35, and 36 (E036, E039, and E039) of 2022**, the court said that where there is a competing claim on ownership of land, that must decide on the same procedurally based on the law and evidence before it, and thoroughly interrogate how such ownership was conferred. The court held that fraud had not been proved in the absence of any serious attempts to table concrete evidence. The court cited **Central (K) Ltd -vs- Trust Bank Ltd & Others [1996] eKLR**, where the court observed that a mere and very general allegation of fraud against the respondents required a degree of proof higher than in ordinary suits, since fraud and conspiracy to defraud are very serious allegations.

144. The court also cited **Vivo Energy (K) Ltd -vs- Malobe Petrol Station Ltd 7 others [2015] eKLR**, that **Order 2 Rule 10** of the Civil Procedure Rules, requires specifics and particulars to be given on fraud in a pleading. Additionally, the court cited

RG Patel -vs- Lalji Makanji [1957] EA 314, that an allegation of fraud must be strictly proved.

- 145.** In this suit, other than making wild, vague, and general allegations of fraud, illegality, unprocedural means of obtaining the title, and stating that the suit property is public land, the defendant did not attach any paper trail to the statement of defence and counterclaim.
- 146.** Such evidence would have showed how the suit land was reserved for public use, when it was reserved, the particulars of the Kitale Stadium parcel of land to which the suit land is part of, any document showing that the defendant since **2010**, asserted superior rights on the suit land and made a formal complaint to land fraud department, the National Land Commission or the Ethics an Anti- Corruption Commission to commence investigation towards recovery of the suit land on account of fraudulent allocation and issuance of certificate of lease.
- 147.** Further, there is no evidence that the defendant formally wrote to, issued a notice, and or demanded from the deceased plaintiff or her estate that the suit land was public property being part of Kitale Stadium, requiring its expansion on behalf of the public.

- 148.** In *Fanikiwa -vs- Sikirwa* (*supra*), the court emphasised that credible evidence is required to prove the serious allegation, which may also attract criminal proceedings.
- 149.** In this suit, the defendant has also invoked the doctrine of legitimate expectation. In *Fanikiwa* (*supra*), the court held that the doctrine only applies to protect expectations that have arisen through the conduct of an administrative body and not those that arise out of an individual subject or at his own risk. Further, the court said that the legitimate expectation must also be reasonable in the light of the previous circumstances to be sanctioned by the law.
- 150.** In this suit, the defendant is asserting that the land is public. **Section 2** of the repealed Government Land Act defines unalienated government land as government land which is not, for the time being, leased to any other person or in respect of which the Commissioner has not issued any letter of allotment. In this suit, there is undisputed evidence that, as far back as **1981**, a letter of allotment was issued to the deceased for the suit property. It was also followed by a certificate of lease after the director of Surveys authenticated the allocation by way of a

Part Development Plan or a survey plan. The defendant invokes **Article 62(2)** of the Constitution. However, that Article is clear that public land is what was defined on such by an Act of Parliament as of the effective date.

151. In **Kilava Ltd & Another -vs- Business Liaison Co. Ltd & Others SC Petition No. 14 of 2017 [2021] KESC 37 [KLR]**, the court clarified what unalienated government land was. It was observed that the expression public land came to the fore with the **2010** Constitution. The court said thus: “What **Article 62** of the Constitution does is to clearly delimit the frontiers of public land by identifying and consolidating all areas of land that were regarded as falling under the province of ‘public tenure’. The retired constitution used the term ‘government’ instead of public to define such land. Therefore, it is incorrect for the respondent to assert that the land in question was unalienated government land but not public land. It is even more inaccurate to argue that the said parcel had never been public land. Unalienated government land remains public until it is privatised through allocation to individuals or other private entities”.

152. In ***Torino*** (*supra*), the court pronounced itself on what constitutes public land and private land. The court said that once an individual or entity acquires any unalienated government land, or other land for that matter, consequent upon registration of title, in accordance with the provisions of the applicable law, such land transmutes from public to private land. The court further said that such land is, as a consequence, removed from the ambit and confines of the Government Land Act repealed to the new legal regime conferring title to the entity other than the government and on such terms as shall be inscribed on the new title.

153. In ***Fanikiwa*** (*supra*), the court said that the subject parcels of land was private property, vested in Lohnor Agribusiness and could not fall under unalienated government land, as envisaged under the Government Land Act repealed and that the former president Moi had no legal capacity and authority to allocate or confer any legitimate interest, in the subject suit land to either Sirikwa or any other entity.

154. The defendant has insisted that the suit property was reserved for public use. Reservation of public land by the National Land Commission is provided

under **Section 5** of the Land Act. Evidence of when the reservation was made was not made available to the defendant. There was no pleading on when the reservation was made and through which instrument of reservation. It is not clear from the defendant's pleadings if the reservation was made before or after **2010**. If it were after **2010**, the defendants were supposed to make such a request under the Land (Allocation of Public Land) Registration to the National Land Commission or the National Government.

- 155.** The other process could be selling apart for public use. Evidence that the suit property had been set apart for public utility is lacking. Similarly, there was no pleading to that aspect. See **Republic -vs- Commissioner of Lands & Others, Ex parte Associated Steel Ltd Misc. Civil Suit No. 273 of 2007**. Another aspect would be that the plot had been surrendered for public use, such that it forms public land.
- 156.** Again, the defendant did not plead or prove such a surrender. See **Nyimu Farm Ltd -vs- Attorney General [2015] eKLR, Dorcas Atieno Rajora & Others Mjahid Sub-Chairman Harambee Maweni Committee SHG & Others [2016] eKLR,**

where the court said that the law is that plots for public utilities and upon spaces are usually surrendered to either the council, the county government, or the national government, which is required to hold the plots meant for public utilities on behalf of the residents.

157. In this suit, the defendant has pleaded both in the amended defence and counterclaim that the plaintiffs are seeking the court to sanctify an illegally and fraudulently obtained title for land otherwise belonging to the public. In **Elijah Makori Nyang'wara -vs- Stephen Mungai Njuguna & 2 others [2012] eKLR, KACC -vs- Online Enterprises Ltd & Others [2019] eKLR,** and in **Chemey Investment Ltd -vs- Attorney General (supra),** the court said that severally they have refused to recognise and protect title to land which has been obtained fraudulently or illegally and instead cancelled such titles obtained on transactions out of the suit property post the surrender or a reservation as a nullity.

158. The defendant has described the deceased title holder as part of the land grabbers that the county is grappling with. In **KACC -vs- Online (supra),** the court held that courts, indeed, should nullify titles by

land grabbers who state at their face and wave a title of grabbed land and loudly plead the principle of indefeasibility of the title deed.

- 159.** The defendant herein pleads that, as the custodian of the public land and the title to the suit land should be invalidated and the land reverted for public use by the residents of the county of Trans Nzoia in the public interest.
- 160.** The law is that the Hon. Attorney General and the National Land Commission are obligated to protect public property. There is no evidence that the defendant protested, complained, and initiated the process of any recovery or invalidation of the title held by the deceased since its issuance from **2010**, and before the events of **19/4/2023** in a formal manner. There is no single document to show that the defendant lodged a restriction, or sought for inhibition against the title register for the suit property on account of public interest or public land, or a superior title.
- 161.** He who alleges must prove. The defendant was granted a chance severally to provide cogent and tangible evidence to impeach the title held by the plaintiffs. During the evidence by PW1, PW2, and PW3, no specific questions and documents held by

the defendant that the suit property was reserved, surrendered, or set apart land for public use before issuance of the certificate of lease were posed to the plaintiff. Impeachment of title on account of fraud or illegality must be based on cogent and credible evidence.

- 162.** It is not enough, as case law has shown, for the defendant to assert a superior title without proof or evidence from the custodian of land records on when the suit property was set apart, surrendered, or reserved for public use, or as forming part of Kitale Stadium.
- 163.** The defendant did not list or call for evidence from the Land Registrar, the Land Surveyor, or the Director of Land Administration at the Lands Headquarters Nairobi, to sustain its defence and counterclaim that the suit property was never available for allocation in the first instance and secondly, that investigations had established that the certificate of lease or grant held by the plaintiffs was irregularly, unprocedurally or fraudulently obtained in disregard of any applicable law.
- 164.** The defendant, after the deceased initial plaintiff, submitted the documents to be used at the hearing at the inception of the suit, did not subject the said

documents to forensic documentation examination, in which a finding was made at the land registry that they were forgeries, or irregularly obtained since the suit property or tile register showed the land as reserved, set apart or surrendered for public use. Therefore, the defendant, in the circumstances, has not only failed to impeach the process of allocation and registration of the title or certificate of lease but also the title itself as held by the plaintiffs' late mother.

165. Having established the validity of the certificate of lease, the next issue is whether the plaintiffs have proved trespass, invasion and commission or acts of demolition. In **Gichuhi -vs- County Government of Kirinyaga & Others [2024] KEELC 5967 [KLR] (12th September 2024) (Judgment)**, the court held that the protection of title to private property is granted under **Article 40(2), (3), and (4)** of the Constitution, except if unlawfully obtained.

166. In **Rutongot Farm Ltd -vs- Kenya Forest Service & Other [2018] eKLR**, the court observed that once a proprietary interest has been lawfully acquired, the right to protect it is expressed in terms that no person should be arbitrarily deprived of their

land. The defendant bases its submission on trespass and invasion due to the constitution and statutory mandate as custodian of public land, county planning, and development.

- 167.** The law on eviction of illegal occupants or encroachment of public, private, and community land is **Section 152A** of the Land Act, the Prevention, Protection, and Assistance of Internally Displaced Persons and Affected Communities Act.
- 168.** In **Julius L Marten -vs- Caleb Arap Rotich [2021]**, the court said that an eviction order has far-reaching implications as it entails the removal forcefully of a party from land that he has been in occupation or possession for some time.
- 169.** Eviction must be sanctioned by a court. See **Atinga -vs- Ogumbo & 2 others is [2025] KEELC 1274 (KLR)**. Section **152E** relates to an eviction notice of **3** months and the involvement of the Deputy County Commissioner and Officer Commanding Police Division, of the area where the subject land is situated. **Section 152F** requires that after a notice is issued, the alleged illegal occupier may move to court or redress, and if he fails to do so, the issues of the notice must move to court for the

confirmation of the eviction notice and to obtain an eviction order.

170. In **Mitubell Welfare Society -vs- The Kenya Airports Authority & Others, Petition No. 3 of 2018**, the court re-emphasised the right to housing as guaranteed under **Article 43(1)(b)** and the role of the state to safeguard constitutional rights under **Article 21(2)** thereof. The court held that the right to housing is for every individual or family by virtue of being a citizen of this country. The court said that even where there are illegal occupants on public land who have established residences therein, they are entitled to a protectable right to housing over the same. The court said that, faced with an eviction on grounds of public interest, such potential evictees have a right to petition the court for protection, even if the eviction might be justifiable in the public interest.

171. In **William Musumbi & Others -vs- Moi Education Centre Co. Ltd & Others Petition No. 2 of 2018**, the court affirmed that the eviction of the petitioners had resulted in a violation of their rights since there was no notice in writing, it was not carried out in a manner that respects the dignity, right to life and security of the affected and the

vulnerable and that the evictees were not given the priority to demolish or salvage their property. The court held that the mandate of private entities under **Article 20 (1)** of the Constitution, the state is not to violate **Article 43**. The court said that non-violation of all bills of right applies both horizontally and vertically and binds all persons.

172. In this suit, the plaintiffs have pleaded and testified that the trespass, invasion, and demolition of the structures on the suit property were not justified in law, and there was no notice issued as per law; there was in place a valid court order, and the defendant acted maliciously, deliberately, and callously in the invasion and demolition.

173. In paragraph **9** of the amended defence and counterclaim, the defendant states that the plaintiff had been served with a notice upon which the deceased proceeded to seek audience with its officers and made a request to be assisted and given time to demolish the same and to preserve the building materials and other useful objects. It is pleaded that the deceased is the one who demolished the structures without any form of undue influence, but as a sign of goodwill, when she could not comply with the costs notices.

- 174.** The defendant denied the contents of paragraph **12** of the amended plaint that its senior officers were present on the suit land on **18/4/2023** during the exercise of invasion and demolition, overseeing or supervising the demolition exercise, and cheering the same as per photographs on social media posts before the court as exhibits.
- 175.** The plaintiffs pleaded and testified that eventually, the defendant's officers were found guilty of contempt of court as per the ruling and sentencing before the court.
- 176.** In response, the defendant avers that paragraph **11** of the amended defence states that the issues were dwelt with and are now overtaken by events, and the plaintiffs should justify how the previous circumstances are relevant, otherwise the title held by the deceased was fraudulent or suspiciously obtained.
- 177.** In **Gichinga Kibutha -vs- Caroline Nduku [2018] eKLR**, the court observed that the party who wishes the court to give a judgment or to declare any legal right dependent on a particular fact or set of facts, that party has the legal obligation to provide evidence that will facilitate the proof of the existence of those facts.

178. The burden was on the defendant to produce all the evidence reasonably within its mandate to prove there was adequate notice in line with **Section 152A-1** of the Land Act, or under the Physical and Land Use Planning Act. Development Control by the defendant is governed by **Sections 55** and **56** of the Physical Land Use Planning Act. There is no evidence that the defendant had reserved the suit property as a sports ground under **Section 56(5)** of the Physical Land Use Planning Act before April **2023**.

179. There is no evidence that the defendant had issued a notice for the plaintiffs not to carry out development on the suit land before **15/4/2023**, and who failed to do so under **Section 57(3)**, leading to a cancellation of the development permission under **Section 57(4)** and **(5)** thereof. There is no evidence that the defendant had formerly sought from the plaintiffs to apply for development permission under **Section 58(1)-(5)** of the Physical Land Use Planning Act, and she refused to do so or was found to have no documents of ownership or approval plans.

180. There is no evidence that the plaintiff's development plans or documents accompanying them were found

as prepared by an unqualified person or in line with **Sections 59** and **60** of the Physical Land Use Planning Act.

181. There is no evidence that the defendant county executive made a decision and communicated the same to the deceased as per **Section 61** of the Physical Land Use Planning Act, regarding any development permission or revocation to make an appeal to the County Physical and Land Use Planning Liaison Committee pursuant to **Section 61(4)** of the Physical Land Use Planning Act.

182. There is no evidence that the deceased's record did not appear in the register of documents for developers or had not paid development fees by dint of **Sections 62** and **61** of the Physical Land Use Planning Act. Equally, there is no evidence that there was a lapse of development permission issued to the deceased regarding the suit property by dint of **Section 64** of the Physical Land Use Planning Act. Additionally, there is no evidence that the defendant had prohibited the grant of license, or permission to develop or occupy the building which the deceased had disobeyed or disregarded by April **2023**, contrary to the provisions of **Sections 65, 66, and 67** of the Physical Land Use Planning Act.

- 183.** Moreover, there is no evidence that the defendant had been served with an enforcement notice under **Section 72** of the Physical Land Use Planning Act regarding ownership, occupation, developments, and possession of the land, and disobeyed or disregarded the same, hence the events of **17/4/2023** and thereafter.
- 184.** The defendant pleaded that there was adequate notice issued, which the deceased disobeyed or disregarded. The easiest thing for the defendant was to avail before the court, since the inception of this suit, all those notices which had been issued by its officers or avail minutes when the deceased attended the notices in its offices and pleaded for time or means to undertake the demolition.
- 185.** It is unbelievable, therefore, for the court to take it as pleading, in the circumstances that the deceased, who had a valid title deed and approved development plans, would simply opt to demolish the building and blame the defendant, more so when she had a valid court order with her. Justice Holmes wrote that the life of law has not been logic, but experience. See Kenneth D. Chestek, "The life of Law has not been Logic. It has been a Story"

[2013], finally Articles h//tp
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- 186.** The defendant's pleadings, in my view, sound illogical, particularly when this court has in the past dwelt on the issue of contempt of court and the contemnors did not state that indeed it was the deceased who orchestrated the exercise and turned to them as scapegoats.
- 187.** The law of demolition is governed by the Physical Land Use Planning (Development Control Enforcement) Regulation **2021**. An enforcement notice has to be issued as per **Section 72** of the Physical Land Use Planning Act, where there is a breach or an act of development that has been undertaken without planning permission or in contravention of planning permission granted.
- 188.** The same applies to non-compliant development. **Rules 4** and **5** cover the enforcement team and their functions. Rule **6** refers to the mandate of her technical committee, which must prepare a report on the status of the development for action. **Rules 9** and **14** relate to the enforcement process, service of the notice, feedback mechanism, general principles of enforcement, including compliance with **Article 47** of the Constitution, execution of the enforcement

notice, and identification of the enforcement team. **Rule 15** relates to the execution of an enforcement notice for the demolition and alteration of buildings.

189. Form **PLUPA-D-C-22**, as set out in the **Second Schedule**, has to be filled by taking an inventory of any possession on the property. The same must be served upon the owner or developer. **Rule 16** relates to the determination of restoration of the land to its original state.

190. **Rule 18** provides that there must be a register of enforcement notices kept by the County Director as per **Form PLUPA-DC-23**. The enforcement notice has to be filed.

191. In this suit, the defendant did not plead or tender evidence that the above registrations were fully complied with. Due process was emphasised in **Shollei -vs- Judicial Service Commission [2022] KESC 5 [KLR] (17th February 2022)**. In **Adembesa & Another -vs- Gweno [2024] KEHC 5279[KLR] (17th May 2024)**, the court held that where a party fails to call evidence, the plaintiff's evidence remains uncontroverted and the statement of defence remains mere statements. See **Mau Resort Limited v Narok County Government**

(Environment & Land Case 181 of 2017) [2022] KEELC 3112 (KLR) (30 June 2022) (Ruling).

- 192.** In **Kental Enterprises Ltd -vs- Attorney General [2025] KEELC 1470 [KLR] (24th March 2025) (Judgment)**, the court held that due process of the law envisaged that before any adverse action on a decision to demolish any property, the petitioner should have been given a fair hearing and the right to fair administrative action. The court said that the demolition relying on an enforcement notice was unconstitutional, unlawful, and barbaric.
- 193.** Acts of forceful takeover of personal property is what the defendant did in the name of public interest. In **Entick -vs- Carrington** (*supra*), the court emphasised that nobody is above the law, and the cornerstone of the rule of law is a democracy.
- 194.** Participating in acts of impunity, even when there was already a pending suit and a court order, is what the defendant did. There can be no justification for the acts of impunity for what the defendant did without a court order, and to come to court for it to sanction the illegality by way of a counterclaim.
- 195.** In **Kenya Railways -vs- Birah & Others [2025] KECA 545 [KLR] (21st March 2025) (Judgment)**,

the court emphasized the need for an evictee to be notified in writing, by notice in the gazette, and in a newspaper of national coverage at least **3** months before eviction and that the state is barred from forced eviction as one of its international obligations, due to the right to housing. The court said that since the statutory procedure for eviction had not been followed, any eviction, forcible or otherwise, was not only illegal but was also against **Articles 40 and 47** of the Constitution.

- 196.** In this suit, the dispute is compounded by the fact that there was a pending court suit and an order in favour of the plaintiffs against the defendant. The law is that court orders must be observed by all and sundry, until set aside. See **Thuo -vs- Njuru, Nairobi CA No. 278 of 1998, Teachers Service Commission -vs- Kenya National Union of Teachers & 3 others Petition No. 23 of 2013.**
- 197.** It is essential for the maintenance of the rule of law and order that the authority and the dignity of the court be upheld at all times. See **Econet Wireless (K) Ltd -vs- Minister for Information & Communication of Kenya & another [2005] eKLR.**

- 198.** The court will not conduct deliberate disobedience of its orders. The dangers of disobeying court orders strike at the very root of the rule of law, which is a foundation of a democratic society. The judiciary, as held in **TN Godavarman Third Multipad -vs- Ashok Khat & Another [2005] SCCC**, is the guardian of the rule of law. When the defendant fails to obey court orders, yet disturbs the very cornerstone of our constitutional scheme. The opposite will be the rule of the jungle.
- 199.** Self-help is what the defendant resorted to. The court has already found the defendant's agents or servants culpable for contempt of court. At the hearing, the defendant failed to offer any justification for its acts and in support of its amended defence and counterclaim, especially to show that, despite the contempt of court, its acts were justifiable, reasonable, valid, and genuine in an open and democratic country, such as ours.
- 200.** In **Keroche Industries Limited -vs- Kenya Revenue Authority & 5 Others [2007] eKLR**, the court said that a public authority may do none of these things unless it acts reasonably and in good faith and upon a lawful and relevant ground of public interest.

- 201.** In this suit, the defendant invoked the public interest and public good of its respondents. In **Satrose Ayuma & Others -vs- Registered Trustees of the Kenya Railways Petition No. 65 of 2010**, the court abhorred an eviction with no adequate warning or compensation.
- 202.** Contempt of court is conduct that defies the authority of dignity of the court and interferes with the administration of justice. **Section 29** of the Environment and Land Court Act is the law on sanctions. By ignoring the court order, the defendant exacerbated the situation and caused loss and damage to the plaintiffs. The defendant did it in a manner that is not expected of a creature of the Constitution. As indicated above, the defendant not only defied a court order but also all the laws and regulations governing its exercise of the Constitution and Statutory mandate as a County Government. The defendant breached not only the plaintiffs' right to property, fair hearing, access to justice, human dignity, security of person, privacy, fair administrative action, right to housing, but also the right to physical and mental health.
- 203.** Trespass is actionable *per se*. The amended defence and counterclaim have not been substantiated.

Evidence of a superior title or justification is not available. A claim or justification with substance or merit to justify the demolition cannot be termed as public interest or for the public good, but amounts to an abuse of the court process. See **Muchanga Investments Limited -vs- Safari Unlimited. (Africa) Ltd & 2 Others [2009] KLR 229** and **JP Macharia & Others -vs- Wangethi Mwangi (supra)**.

- 204.** Special damages must be pleaded and proved. The expert reports produced by the plaintiffs were not challenged by any rival expert evidence. Expert evidence must also be considered alongside other evidence and tested against known facts. See **Kagina -vs- Kagina & Another [2016] eKLR** and **Stephen K. Wangondu -vs- The Ark Ltd [2016] eKRL**.
- 205.** The court has referred to the law that an inventory before demolition ought to have been prepared by the enforcement or demolition team. See **Municipal Council of Eldoret -vs- Titus Gatitu Njau (supra)**. In the absence of that, I see no basis why the defendant is objecting to the evidence of PW1 and PW2. I allow the claim for special damages.

206. The purpose of general damages is for tort, as held in **Total (Kenya) Limited, formerly Caltex Oil (Kenya) Limited -vs- Janevans Limited** (*supra*), is to entitle the appellant to recover damages for the foregone gains because of the breach or interference. In **Peter M. Kariuki -vs- Attorney General [2014] eKLR**, the court said that non-pecuniary loss assessment is awarded as a substitute for what is generally more important than money, in the circumstances of the case.
207. In **Godfrey Julius Nduba Mbogori & Others -vs- Nairobi City County** (*supra*), and in **Park Towers Limited -vs- Moses Chege & 7 others [2014] KEHC 7655 (KLR)**, the court said that trespass constitutes of interference with possession, and when deprived of use of the land, the measure of damages is what the court considers reasonable in the circumstances.
208. In **Imanyara & 2 others -vs- Attorney General (Petition 15 of 2017) [2022] KESC 78 (KLR) (Constitutional and Human Rights) (17 February 2022) (Judgment)**, the court said that in assessing damages for constitutional vindication, the reward is discretionary and would depend on the facts and the circumstances of the case.

- 209.** In **Wanyeki -vs- Kerai & Others [2023] KECA 87 [KLR] (2nd February 2023) (Judgment)**, the court cited **Christine Nyambura Ovande -vs- Catholic Diocese of Homa Bay [2020] eKLR**, that tort damages are intended to return the party to the position they were before the wrongful act.
- 210.** In *Halsbury Laws of England 4th Edition Vol 45*, it is provided that where there is an oppressive, arbitrary or unconstitutional trespass by a government official or where the defendant cynically disregard the right of the plaintiff in the land with the object of making gain for him, unlawful conduct damages may be awarded, and where the trespass is accompanied by aggravating circumstances which do not allow an award of exemplary damages, general damages may be increased.
- 211.** In **Duncan Ndegwa -vs- Kenya Pipeline Ltd HCC No. 2577 of 1990**, the court held that the measure of damages is in trespass as the amount of diminution in value or the cost of reinstatement of the land.
- 212.** In **Kenya Power & Lighting Company Limited - vs- Fleetwood Enterprises Limited [2017] eKLR**, the court held that since trespass is actionable *per se*, where it is proved, the affected

party deserves damages, as the court may find just depending on the facts and the circumstances.

213. In **Mangara -vs- Muchiri & Another Civil Appeal 122 of 2020 [2025] KECA 1606 KLR (3rd October 2025) (Judgment)**, compensation for developments erected on the suit property for **Kshs. 28,000,000/=** had not been pleaded, making the claim defective. The court said that equity cannot override statutory requirements. See also **Kenya Hotel Properties Limited -vs- Attorney General & 5 others (Petition 16 of 2020) [2022] KESC 62 (KLR) (7 October 2022) (Judgment)**.

214. The claim for future earnings or rent was not only substantiated to the required standard, but is also exaggerated. See **Alobei & another -vs- Mohammed (Civil Appeal E074 of 2022) [2025] KEHC 1687 (KLR) (27 February 2025) (Judgment)**, **Muturi -vs-cx Two NK Holdings, Investment Group Ltd Civil Appeal E122 of 2022 [2025]** and **Kumar -vs- Ruto Civil Appeal E022 of 2024 [2025] KEHC 14190 [KLR]**.

215. The court, in the circumstances, issues the followings reliefs:

1. A permanent injunction restraining the defendant from evicting, repossessing, demolishing, or interfering with the quiet enjoyment of title **L.R. No. 2116/276.**
2. A declaration that the deceased plaintiff is the legally registered leasehold holder of title **L.R. No. 2116/276.**
3. An award for **special damages** for:-
 - a) The demolition of the apartment building, **Kshs. 21,650,000/=,**
 - b) Loss of rental income of **Kshs. 1,255,500/=.**
 - c) Costs for fencing and securing the property, **Kshs. 100,000/=.**
 - d) Search certificate, valuation report, quantity surveyor's fees, **Kshs. 211,695/=.**
4. **General damages** for:
 - a) The trespass, **Kshs. 10,000,000/=.**
 - b) The willful and malicious destruction of the suit property, **Kshs. 10,000,000/=.**
5. **Aggravated damages** for pain and suffering **Kshs. 5,000,000/=.**
6. **Exemplary and punitive damages, Kshs. 5,000,000/=.**
7. Costs of the suit and
8. Interests on numbers **(3), (4), (5),** and **(6)** above, at Court's rates from the date of the judgment.

216. Orders accordingly.

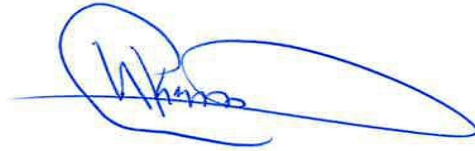
Judgment dated, signed, and delivered via
Microsoft Teams/Open Court at **Kitale** on this
26th day of **November 2025**.

In the presence of:

Court Assistant - Dennis

Mr. Masika for the plaintiff present

Mr. Akude for the defendant absent



HON. C.K. NZILI
JUDGE, ELC KITALE.