Kandie v Zonken Tourist Mart Company Ltd (Environment and Land Case E007 of 2024) [2025] KEELC 18452 (KLR) (8 December 2025) (Judgment)

Neutral citation: [2025] KEELC 18452 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KABARNET

ENVIRONMENT AND LAND CASE E007 OF 2024

L WAITHAKA, J

DECEMBER 8, 2025

BETWEEN

KIGEN KANDIE ..... PLAINTIFF

AND

ZONKEN TOURIST MART COMPANY LTD ..... DEFENDANT

JUDGMENT

1. On 15th March, 2022 the plaintiff and the defendant herein entered into an agreement for sale of the parcel of land known as Lembus/Chemogosh/78 (hereinafter referred to as the suit property). At the time of entering into the agreement, the suit property was registered in the name of Aaron Kimosop Kandie (deceased). What was being sold was the plaintiff's beneficial interest in the suit property pursuant to a confirmed grant issued to the plaintiff in Nairobi High Court Succession Cause No.991 of 2003-In the matter of the Estate of Aaron Kimosop Kandie.

2. Through the sale agreement executed between the plaintiff and the defendant (Pexbt 2), the agreed purchase price of the suit property, measuring 28.8 hectares (71.166 acres) or thereabout, was Kshs. 49, 816, 200/-.

3. Under the sale agreement executed between the plaintiff and the defendant, the defendant was supposed to pay a deposit of Kshs. 5,000,000/- upon execution of the sale agreement and the balance of the purchase price, amounting to Kshs. 44, 816, 200/- within 24 months from the date of execution of the agreement.

4. The sale agreement executed between the plaintiff and the defendant further provided that in the event that the sale was not completed on the completion date through default on the part of the purchaser (defendant), the vendor would give the purchaser a 21 days' notice to comply with its obligation and that upon expiry of the notice, the vendor had the discretion to extend the time subject to payment of interest on the late completion but without prejudice to remedies available to him.

5. The purchaser defaulted in its obligations leading to issuance of the completion notices contemplated in the sale agreement and/or provided for under the *Land Act*, 2012 by the plaintiff.

6. Correspondences exchanged between the plaintiff and the defendant concerning the defendant's failure to meet his contactual obligation show that the defendant acknowledged that it defaulted in its contractual obligation.

7. Citing economic hardship among other challenges, the defendant pleaded with the plaintiff to extend the time within which it ought to have complied with its contractual obligations to no avail.

8. Arising from the defendant's failure to meet its contractual obligation and failure by the parties to settle the dispute arising from the default through negotiation as provided for in the sale agreement, the plaintiff instituted the instant suit seeking judgment against the defendant for: -

    a. An order/declaration that the defendant is in breach of the sale agreement dated 15th March, 2022 and thus find that the defendant is currently in unlawful occupation of the plaintiff's property without express/ lawful authority or without right or licence under any law;

    b. Mesne profits from 29th May, 2024;

    c. General damages for breach of contract;

    d. An order that the defendant remove themselves and/or any other persons that they may have placed on the suit property forthwith and in default and/or such persons be forcefully evicted and vacant possession be given to the plaintiff;

    e. An order that Legacy Auctioneering Services do effect and execute the above eviction order;

    f. An order that the OCS Eldama Ravine Police Station do provide security in ensuring compliance of the order of eviction above;

    g. Costs of the suit plus 16% VAT;

    h. Any other relief that the Court may deems just to grant.

Evidence

Plaintiff's case

9. When the case came up for hearing, the plaintiff who testified as PW1, relied on his witness statement recorded and signed on 27th September, 2024 after it was adopted as his evidence-in-chief. He produced the documents contained in his list of documents dated 27th September 2025 as follows: -

    i. Copy of the title deed for Lembus/Chemogosh/78 as Pexbt 1;

    ii. Sale Agreement dated 15th March 2022 (Pexbt 2);

    iii. Letter dated 20th March 2024-Pexbt 3;

    iv. Letter dated 29th March 2024-Pexbt 4;

    v. Letter dated 9th April 2024-Pexbt 5;

    vi. Letter dated 2nd May 2024-Pexbt 6;

    vii. Letter dated 29th March 2024-Pexbt 7;

viii. Letter dated 6th June 2024-Pexbt 8;

ix. Affidavit of service filed on 27th September, 2024-Pexbt 9;

x. Letter dated 4th September 2024-Pexbt 10.

10. The plaintiff informed the court that the defendant who is a Chinese Company, approached him with the intention of purchasing his land; that they entered into an agreement drawn by Wambua & Maseno Advocates, who represented the defendant and he; that the completion date was 24 months upon execution of the agreement and that the defendant only paid the deposit but failed to pay the balance of the purchase price within the agreed time and at all.

11. The plaintiff further informed the court that the defendant had already taken possession of the land; that because the defendant failed to comply with the conditions set out in the sale agreement, several letters were written to him through the firm of Mukite Musangi & Company advocates (Pexbt 3-8); that the defendant filed a statement of defence, on 22nd January, 2025 in which he admits that he (the plaintiff) owns the land.

12. Maintaining that demands were made to the defendant by his advocates after the defendant failed to comply with the conditions of sale of the land, the plaintiff urged the court to grant him the reliefs sought in his plaint.

13. In cross examination, the plaintiff stated as follows: -

> " I met the Director of the defendant company in 2022. For the last one year, we have not heard a good relationship. I have so far received a deposit of about 5.5-6.5 million from the defendant. The defendant took possession of the entire land after payment of deposit as per clause 7 of the agreement. The defendant is utilizing the entire suit property. After the agreement had expired, I received a letter seeking extension of time (Pexbt 5). We had written to them a letter dated 29th March 2024 (Pexbt 4). I was not willing to extend/enter into a fresh agreement and we wrote a letter on 2nd May 2024 (Pexbt 6) asking the defendant to vacate the suit property. Clause 12 of the agreement states that time shall be of essence. Clause 10 sets out what would happen if there was failure to complete by the purchaser. According to clause 10, I had discretion whether or not to take any remedy offered by the purchaser. It is true that in clause 7, we gave the defendant possession but this was upto the completion date. Thereafter the defendant was required to pay mesne profits. Currently the defendant has established a processing plant and a nursery. There is bad faith on the part of the defendant because he has spent a lot of money setting up the processing plant but still refuses to complete making full payment. I have been given different options by the defendant. One of them is that they take 9 acres paid for. I am not willing to go this direction. I would rather refund the money paid."

14. In re-examination, the plaintiff stated as follows: -

> " The agreement was signed on 15th March 2022. I was expecting payment in full in 24 months as per the agreement."

Defendant's case

15. Zhuo Wu, a director of the defendant company, testified as DW1. He relied on his witness statement recorded on 10th June, 2025 after it was adopted as his evidence in chief. He informed the court that he filed a list of documents dated 22nd January, 2025. He further informed the court that the documents

filed by the defendant are similar to those filed by the plaintifff and that for that reason, the defendant would rely on the plaintiff's documents.

16. DW1 stated/testified as follows: -

> " We have so far paid the plaintiff 6.5 million of the purchase price. We have had financial challenges and were not able to complete paying as per the agreement. I had a good relationship with the plaintiff and I informed him I had applied for a loan in May 2024 from my bank. The plaintiff did not have a problem and stated that he could even give me 5 years to pay.
>
> After sometime the plaintiff became very difficult even after agreeing to enhance the purchase price but for a smaller portion of land. I am still willing to purchase the land and pay the interest as per clause 11 of the Sale Agreement. The project will not only benefit the plaintiff but will benefit the entire community. It should be noted the land is registered in the name of the plaintiff's father and succession process is ongoing. I'm still willing to complete the agreement and pay interest as per clause 12 of the agreement and costs. In the alternative, I am willing to purchase a smaller portion of the land."

17. In cross examination, DW1 stated as follows: -

> " The agreement was signed on 15th March 2022. Completion date was within 24 months. Clause 12 states time is of essence. I understand this to mean that the agreement was for 24 months.
>
> We took possession but we could not start utilizing the land immediately because the title was not in the plaintiff's name and China was under lock down because of Corona.
>
> Before the contract (agreement) expired, I contacted the plaintiff several times but I do not have evidence to that effect. The agreement signed was for 71 acres. We made development only on about 7 acres of the suit property."

18. In re-examination DW1 stated as follows: -

> " Currently I am only utilizing 7 acres of the suit property. The plaintiff is utilizing the rest of the land. I have tried to reach out to the plaintiff severally but because my English is not good, I have approached him through mutual friends. I have whatsapp messages from the mutual friends and the plaintiff".

19. At close of hearing, the parties filed submissions, which I have read and considered.

Submissions

Plaintiff's submissions

20. In his submissions filed on 31st July, 2025 the plaintiff identifies three issues for the court's determination namely: -

    i. Whether the defendant is liable for breach of the sale agreement executed on 15th March 2022;

    ii) Whether the plaintiff is entitled to the reliefs sought; and

    iii) Who should bear the costs of the suit.

21. On whether the defendant is liable for breach of the sale agreement executed on 15th March 2022, the plaintiffs submits that the defendant is undeniably in breach and violation of the sale agreement executed on 15th March, 2025. In that regard, the plaintiff makes reference to the pleadings filed by the parties and the evidence adduced which he submits clearly bares out the fact that the defendant breached or violated the terms of the sale agreement. Based on the decision in the case of Total Kenya Ltd vs. Joseph Ojiem, Nairobi HCC No.1243 of 1999 cited with approval in the case of Alton Homes Limited & Another v Davis Nathan Chelogoi & 2 others (2018) e KLR, that parties to a contract they have entered into voluntarily are bound by its terms and conditions and the cases of National Bank of Kenya Ltd vs. Pipeplastic Samkolit (K) Ltd & Another, the plaintiff submits that the defendant is liable for breach of the sale agreement.

22. On whether the plaintiff is entitled to the reliefs sought, the plaintiff states/submits as follows: -

> "…. the plaintiff through evidence has established and proved breach of the sale Agreement on the part of the defendant and as such the plaintiff is entitled to the reliefs as sought in the plaint….
>
> We humbly submit that the plaintiff is fully entitled to the reliefs sought…having rightfully exercised his right to rescind the Sale Agreement consequent to the defendant's clear and admitted breach. Such right was exercised pursuant to the provisions of the Sale Agreement. Clause 12 of the Sale Agreement…mandated/entitled the plaintiff to terminate the Sale Agreement in case of breach from the defendant and that the said clause also availed other remedies within the plaintiff's discretion.
>
> As demonstrated herein, the plaintiff caused issuance and service of all the relevant notices to the defendant after the defendant's continued failure to honour its contractual obligations.
>
> We reiterate that the plaintiff has sufficiently demonstrated and proved that consequent to the continued breach of contract by the defendant, the plaintiff caused issuance and service of notice to vacate the property and pursuant to clause number 10 of the subject Agreement the defendant was accorded a twenty-one (21) days' notice to complete failure to which the agreement would void. …
>
> The plaintiff further caused a Notice of Eviction vide a letter dated 29th May 2024 to be issued against the defendant pursuant to Section 152A, 152B and 152E of the *Land Act* (Cap 280) Laws of Kenya for failure and/or unwillingness to complete specified under Clause number 10 of the subject Agreement and which notice was duly served upon the defendant on the 3rd June 2024 whereby the defendant acknowledged receipt….
>
> In case of Sisto Wambugu vs. Kamau Njuguna (1983) e KLR it was held that "The vendor's right to rescind an agreement for sale for non-payment at the appointed time is only exercisable where time is of essence or where the innocent party has issued a notice to the defaulting party making time of essence."
>
> We humbly submit that the plaintiff exercised his right to rescind the contract consequent to the defendant's continued and admitted breach and we humbly invite this honourable court to find as such in line with the holding of Court in Gathoni Alias Anne Wanjiku Lidonde v Mwanzia (Environment and Land Case Civil Suit No.500 of 2014) (2022) KEELC 2381 (KLR) (23 June 2022) (Judgment)…

We further submit that the plaintiff is entitled to award in general damages for breach of contract against the defendant. The defendant's breach having been proved and admitted then an award of general damages should issue in favour of the plaintiff....

Having stated that the defendant was in breach of the Sale Agreement for failing to pay the purchase price, it goes without saying that the Plaintiff is entitled to damages for breach of contract....

Who should bear the costs of this suit

... We humbly submit that the plaintiff is entitled to the costs of this suit payable by the defendant. That the plaintiff being an innocent party herein has sufficiently proved breach of the Subject Sale Agreement on the part of the defendant who despite admitting the said breach failed, neglected and/or declined to settle the plaintiff's claim...

We thus humbly implore upon Your Ladyship to find that the plaintiff has proved his case against the defendant and thus allow the plaintiff's claim as prayed with costs for reasons aforementioned."

Defendant's submissions

23. In his submissions filed on 23rd September, 2025 the defendant acknowledges that it breached the terms of the sale agreement executed between the plaintiff and itself but that notwithstanding, frames three issues for the court's determination. These are: -

    i) Whether the intention and willingness to complete by the defendant outweigh the breach?

    ii) Whether the plaintiff is entitled to mesne profits

    iii) Costs.

24. Concerning the issues, the defendant states/ submits as follows: -

> " The plaintiff by a notice dated 29/05/2024 unilaterally purported to terminate the contract and sought to evict the defendant when at the same time the defendant had sought for extention of time within which to complete.
>
> This was manifest bad faith, ill-will from the plaintiff having had knowledge that the defendant was still willing, had means to complete and would pay any applicable interest as a result of any extention granted. The defendant secured the financing from DTB Bank, but avers that it's the plaintiff who failed to cooperate to release the title for requisite processes to be applied pending release of the funds.
>
> Subsequent to the notices, and even institution of this suit, the parties herein have continued to hold both formal, informal, official and unofficial meetings aided by their respective counsel and several proposals were arrived at towards resolution of this matter but the plaintiff kept shifting goal posts making it impossible to find a solution.
>
> We submit that based on our submissions at paragraph 8-11 and 19 the plaintiff has put in deliberate efforts to sabotage and disenfranchise the defendant Company by relying on breach, which the defendant was willing to remedy.
>
> Equitably, the honourable court is implored to invoke the appropriate principles to resolve the suit and safe the defendant from enormous loss in the event of an order for full eviction is issued.

Equity is one of the national values which binds courts in interpretting any law (Article 10(1)(b). Further, by Article 159(2)(e), the courts in exercising judicial authority are required to protect and promote the purpose and principles of *the Constitution* and for the just determination of the disputes before it.

During the trial, the defendant confirmed that he is willing to complete the transaction, while the plaintiff submitted that he was willing to refund the deposit, less costs and mesne profits (in the event that it is awarded) so that he gets back his land.

In the alternative the defendant proposed to retain such size of land that equals the refund already paid and restore any excess land under his occupation at the moment to its old stage and surrender it to the plaintiff.

Whereas the honourable court's hands may be tied in the terms of writing or compelling a party from undertaking an obligation beyond what the contract dictates, the situation and circumstances of this case offer themselves to declaratory orders that the parties proceed to complete the agreement within a certain period, with failure to adhere resulting in automatic eviction, without recourse to court.

On the question of mesne profits, the defendants state that there is no beneficial use that has been derived from the portion occupied with permission of the plaintiff apart from installing a go down and some machinery. The operations of the company never kick-started and the same was coupled by inability of the parties to resolve the issue of the balance of purchase price.

Further the parties have continued to be in negotiations until last minute in respect of finalization of the agreement and the spirit to resolve showed by the defendant outweigh any claim for monetary compensation for time beyond the expected completion period.

The defendant submits that in the circumstances of the case, it was neither a trespasser or a wrongful occupier of the suit property to occasion assessment of mesne profits which in law refers to damages a trespasser or wrongful occupant of land will pay to the rightful owner for the profits they received or should have received during their un authourized occupation which deprived them of their property's use and enjoyment.

The defendant submits that there exist intervening circumstances in this case that deprives the plaintiff the entitlement to orders sought in the plaint."

Analysis and determination

25. In the circumstances of this case where it is either common ground and/or not in dispute that the defendant failed to fulfil its contractual obligations under the agreement executed between him and the plaintiff leading to issuance of a completion notice on it, which notice it failed to heed and/or comply with, I can do no better than adopt the decision in the case of Marete v Ndegwa & 2 Others (Civil Appeal E042 of 2021)(2024) KECA 545 (KLR) (24 May 2024) (Judgment) where the Court of Appeal stated/held:-

> " From the proceedings, it appears that there was a letter dated 10th January 2007 in which the appellant's request was conditionally accepted by the time extended for her to complete the transaction within 14 days on condition that she paid Kshs 1,000,000 within 2 days. Regrettably, that letter does not appear on record and, instead, the letter dated 7th January 2007 is exhibited in place of the said letter. It was contended by the appellant that the conditions imposed by the 1st respondent were not met. As a result, the 1st respondent's

advocates issued a letter dated 20th January 2007 repudiating the contract in which he stated that: "Further to the completion notice dated 7th December 2006 and your letter dated 8th January 2007 and ours dated 10th January 2007 and noting that your client has been unable to complete the transaction, we now formally notify you, pursuant to Clause 7(a) of the Law Society Conditions of Sale that our client has repudiated the Agreement forthwith. Consequently, your client will, within the next 2 days vacate, quit and hand over vacant possession to our client."

53. It is clear that the appellant was, due to financial constraints, unable to settle the balance of the purchase price on the agreed terms. Even after being accommodated by the 1st respondent, she was still unable to do so. In the meantime, the 1st respondent took steps to make time of the essence of the contract in terms of the stipulations in the Law Society Conditions of Sale. Having done so, the 1st respondent was entitled to repudiate the contract. Our view is in tandem with the holding of this Court in Njamunyu vs. Nyaga [1983] KLR 282 where the Court held that: "The principle to be acted upon in such a case is stated in Halsbury's Laws (4th edn) p 338, para 482, ie: Apart from express agreement or notice making time of the essence, the court will require precise compliances with stipulations as to time whenever the circumstances of the case indicate that this would fulfill the intention of the parties. Completion not having taken place upon consent as intended by the parties the issue between them then was when thereafter. In a case of this type a party who has been subjected to unreasonable delay may give notice to the party in default making time of the essence. The return of the money by the defendant was notice to the plaintiff that the defendant had made time of the essence and rescinded the agreement. Ordinarily before an agreement of this nature is rescinded the party in default should be notified of the default and given reasonable time within which to rectify."

54. It is clear that the 1st respondent made time of the essence and gave the appellant time within which to complete the agreement, but the appellant was unable to do so. In those circumstances, the appellant cannot blame the 1st respondent for repudiating the contract. In this regard, this Court in Housing Company of East Africa Limited vs. Board of Trustees National Social Security Fund & 2 others [2018] eKLR observed that: "Time had clearly been made of the essence in respect of the completion date of 30th September 2007, as a result of the appellant's own request for a final extension of 60 days and granted as per the letter of 2nd August 2007."

55. Similarly, in the instant case, the appellant had made time of the essence by seeking for indulgence. In Housing Company of East Africa Limited vs. Board of Trustees National Social Security Fund & 2 others (supra), this Court cited with approval the case of J.T.M. Construction & Equipment Ltd-vs. Circle B. Farms Ltd, Claim Number 2007 Her 05110, where the Supreme Court of Judicature of Jamaica stated that; "

70. It is settled that 'when time is of the essence there is no leeway for delay'. Completion must be on the date specified. Failure to complete by the date set in the notice is a breach of contract. In such circumstances, the general principle is that the court will not assist the party served with the notice where

he fails to complete within the time specified. It follows that all remedies will be available to the aggrieved party, including rescission.

71. This principle was firmly established by the House of Lords in Stickney v Keeble (supra), where the House of Lords, having examined what was left to be done by the respondent as vendor, concluded that the time given (being fourteen days) was sufficient. The headnote, which is accepted as being reflective of their Lordship's decision, read:'Where in a contract for the sale of land, the time for completion is not made the essence of the contract but the vendor has been guilty of' unnecessary delay, the purchaser may serve upon the vendor a notice limiting time at the expiration of which he will treat the contract as at an end. And in determining the reasonableness of the time so limited, the Court will consider not merely what remains to be done at the date of the notice but all the circumstances of the case including the previous delay of the vendor and the attitude of the purchaser in relation thereof."

26. In the circumstances of this case, the defendant failed to meet its contractual obligation within the time agreed leading to issuance of the completion notice stipulated in the contract. Issuance of the completion notice made time of essence. As the duty of the court is to give effect to agreements voluntarily entered into and not to re-write the contract, this court cannot accede to the invitation by the defendant to help it escape the bad bargain it entered into. Consequently, I decline the invitation by the defendant to treat the contract as still capable of performance or modify the terms of the contract to accommodate it when the evidence clearly shows that it failed to meet its part of the bargain leading to rescission of the contract by the plaintiff.

27. As pointed out herein above, the plaintiff's seeks various reliefs arising from the breach of the contract entered into between itself and the defendant. The reliefs include, mesne profits. Concerning that relief, it is trite law that mesne profits are in the nature of special damages. That being the case, before an order of mesne profits can issue in favour of a claimant, the claimant should not only plead them particularly but also prove that he indeed suffers them.

28. In that regard, see the case of Peter Mwangi Mbuthia & another vs. Samow Edin Osman [2014] eKLR where it was held: -

> " That award for Kshs. 150,000.00 was not based on any evidence at all. In his affidavit in support of the application for summary judgment, the respondent deposed that "as an absolute owner of the property, I am entitled at common law to evict the trespasser to my property, mesne profits, and to self help remedy."

29. In the circumstances of this case, the plaintiff merely pleaded that he was entitled to mesne profits but failed to specifically plead the mesne profits payable to him. That being the case, the relief is incapable of being granted to him.

30. The plaintiff also claims to be entitled to damages for breach of contract. Concerning that prayer, I adopt the decision in Nyamweya v Asakania (Civil Appeal E237 of 2022) [2025] KEHC 1702 (KLR) (Civ) (23 January 2025) (Judgment) Neutral citation: [2025] KEHC 1702 (KLR) where the court stated/ held: -

> " ...the general rule is that general damages are not available for breach of contract for the reason that such damages are claimed in the form of special damages. The reason for this was expounded by the Court of Appeal in Kenya Tourist Development Corporation v

Sundowner Lodge Limited [2018] eKLR, where the court stated that: "With the greatest respect to the learned Judge, we think that the reasoning is quite flawed. We are not persuaded that the authorities cited by the learned Judge support the proposition that in cases of breach of contract there does exist a large and wide-open discretion to the court to award any amount of damages. The opposite is in fact the case: as a general rule general damages are not recoverable in cases of alleged breach of contract and that has been the settled position of law in our jurisdiction, and with good reason. In Dharamshi Vs. Karsan[1974] EA 41, the former Court of Appeal held that general damages are not allowable in addition to quantified damages with Mustafa J.A expressing the view that such an award would amount to duplication. And so it would be. See also Securicor (k) V Benson David Onyango & Anor [2008] eKLR. The same situation applies to the case at bar in that the respondent having quantified what it considered to have been the loss it suffered, and gone on to particularize the same, there would be absolutely no basis upon which the learned Judge would go ahead to award the totally different, unrelated, unclaimed and unquantified sum of Kshs. 30 million merely because he believed that the respondent "had suffered serious damages" (sic). What was suffered or was believed to have been suffered, the damage that is, to be compensated by way of damages, could only be known by the respondent and it claimed it in specific terms which, in the event, it was unable to prove. To award it anything else would be to engage in sympathetic sentimentalism as opposed to proof-based judicial determination."

46. Further explanation as to why damages are not available for breach of contract was given by Majanja J. (as he then was) in the case of Consolata Anyango Ouma v South Nyanza Sugar Co. Ltd [2015] eKLR as follows: "The next question is whether the appellant was entitled to damages as a result of the breach. As a general principle, the purpose of damages for breach of contract is, subject to mitigation of loss, the claimant is to be put as far as possible in the same position he would have been if the breach complained of had not occurred. This is principle is encapsulated in the Latin phrase restitution in integrum (see Kenya Industrial Estates Ltd v Lee Enterprises Ltd NRB CA Civil Appeal No. 54 of 2004 [2009] eKLR, Kenya Breweries Ltd v Natex Distributors Ltd Milimani HCCC No. 704 of 2000 [2004] eKLR). The measure of damages is in accordance with the rule established in the case of Hadley v Baxendale (1854) 9. Exch. 341 that the measure of damages is such as may be fairly and reasonably be considered arising naturally from the breach itself or such as may be reasonably contemplated by the parties at the time the contract was made and a probable result of such breach (see Standard Chartered Bank Limited v Intercom Services Ltd & Others NRB CA Civil Appeal No. 37 of 2003 [2004] eKLR). Such damages are not damages at large or general damages but are in the nature of special damages and they must be pleaded and proved (see Coast Bus Service Ltd v Sisco Murunga Ndanyi & 2 others, NRB CA Civil Appeal No. 192 of 92 (UR) and Charles C. Sande v Kenya Co-operative Creameries Ltd, NRB CA Civil Appeal No. 154 of 1992 (UR)...".

46. The respondent in this matter raised a special claim for payment of Ksh. 202,279/= which was the balance of the loan unpaid by the appellant. In my view, it amounted to a duplication of the award of special damages for the respondent to be paid a further sum of Ksh. 50,000/= in general damages for

breach of contract even though the court termed it as nominal damages. There was no basis for the award of general damages and the same is thereby set aside."

31. Guided by the above cited decisions, I find and hold that the plaintiff is not entitled to payment of general damages for breach of contract.

32. The upshot of the foregoing is that the plaintiff has made up a case for being granted the reliefs sought in his plaint dated 27th September, 2024, which reliefs I hereby grant him in terms of prayers (a), (d), (e), (f) and (g) of the plaint.

33. In accordance with the letter and spirit of Section 152G of the Land Laws (Amendment Act) 2016, 1 stay execution of the orders of this court for a period of 30 days from the date of delivery of this judgment to give the defendant time to voluntarily remove itself, together with the developments it has put up in the suit property, failing which it shall be forcefully removed therefrom in accordance with the judgment of this court and the decree issued in respect thereof.

34. Orders accordingly.

JUDGMENT DATED, SIGNED AND DELIVERED AT KABARNET THIS 8TH DAY OF DECEMBER, 2025.

L. N. WAITHAKA

JUDGE

ln the presence of:-

Mr. Makora h/b for Mr. Situma for the Plaintiff

N/A for the Defendant

Court Assistant: Ian