

- c. An order of this honourable court directed at the defendant, its agents, or servants and others claiming through it to vacate the plaintiff's property being L.R no. 12814.*
 - d. General damages of Kshs.30,000,000/- for trespass to the plaintiff's property.*
 - e. An award for compensation of Kshs.30,000,000/- for violation of the plaintiff's right under Articles 24, 27(1) and Article 40 of the Constitution of Kenya.*
 - f. Costs of the suit and interests thereon.*
 - g. Such other or alternative remedy as this honourable court may deem fit to grant.*
2. The plaintiff averred that it entered into a lease agreement with the defendant in which the defendant was to erect a mass booster including a tower and other passive infrastructure for that purpose. That over time, the defendant has frustrated the plaintiff by failing to pay rent and as a result, it issued a termination and eviction notice on 6th December, 2022 pursuant to clauses 5 and 12 of the lease agreement which said notice lapsed on 5th June, 2023. The plaintiff averred that following the issuance of the

notice, the defendant settled part of the amounts due and owing in April 2023 and October, 2023.

3. The plaintiff averred that following the eviction notice, the defendant continues to occupy the suit property illegally which amounts to trespass thus causing prejudice. This continued occupation by the defendant is an infringement of the plaintiff's fundamental rights and freedoms as provided under **Articles 27** and **40** of the **Constitution** and has hampered its efforts to utilize the property as it desires.
4. The defendant filed its statement of defence and counterclaim dated 26th February, 2024. While denying the contents of the plaint, the defendant averred that it has a valid lease entered into with Telkom Kenya Limited as the lessor for a term of 10 years commencing on 21st January, 2019 and under this lease, it was granted exclusive quiet and peaceful use of the suit property for an annual rent of Kshs.700,000/- subject to an annual escalation.
5. The defendant denied frustrating the plaintiff and pleaded that on 9th March, 2023 it learnt that Telkom Kenya Limited sold the suit property to Jambo Credit Limited for Kshs.76,200,000/-. The

defendant further denied that there being a valid termination and eviction notice as the same can only be done pursuant to clause 9 of the lease. The defendant averred that it performed all its covenants by paying rent annually in advance through RTGS. Further, that there is no change of circumstances, and the letter by the Water Resources Authority does not affect the delineated portion of the lease.

6. The defendant denied being a trespasser as it has a valid lease that would expire on 21st January, 2029 thus its use of the suit property is proper, lawful and valid. Further, that the enjoyment of its rights under the lease does not in any way deprive the plaintiff of the ownership of the suit property. It was asserted that the plaintiff is not entitled to the reliefs sought in the plaint and that the same should be dismissed with costs.
7. In its counter claim, the defendant averred that it has a valid lease over the defined portion of the suit property and that it is entitled to occupy and use it peaceably for the full term of the lease. Further, that any attempt to terminate the lease is unjustified, and would amount to a breach of contract, thus suffering significant loss and inconveniences. The defendant averred that it maintains sensitive and critical infrastructure on the suit property regulated

by the Communication Authority and any interference will have negative ramifications.

8. The defendant prays that judgment be entered against the plaintiff for the following orders:-

1. Permanent injunction restraining the plaintiff in the plaint (defendant in the counterclaim) from interfering with the defendant in the plaint (plaintiff in this counterclaim) lawful occupation, use and quiet possession of the suit property.

2. Costs of the counterclaim.

9. The plaintiff filed its response to the defence dated 11th March, 2024. While reiterating the contents of the plaint, the plaintiff averred that the defendant has made a generalized assertion without evidence on the alleged relocation of the safaricom mast and stated that no such relocation has ever been done. Further, it abandoned all negotiation regarding the relocation of the mast as a result of the defendant's failure to pay rent and to fulfil its obligation under the lease agreement.

10. The plaintiff reiterated that the failure by the defendant to pay rent owed for the years prior to the issuance of the termination

and eviction notice justified the termination of the lease, and that the same rendered the sums due as debt owed to the landlord. The plaintiff averred that there was no such communication from the Water Resources Authority annulling its earlier correspondence and neither did the defendant challenge the same before the Water Appeals Tribunal.

- 11.** The plaintiff averred that it is misleading for the defendant to claim that it did not know about the transfer of the lease yet they were all in communication when the negotiations with the landlord was taking place since the year 2021 having been notified on 14th June, 2021 about the transfer and assignment of the lease. The plaintiff reiterated that the defendant deliberately breached the lease agreement and failed to pay rent for the years 2021 and 2022.
- 12.** The plaintiff filed its response to the counter claim dated 11th March, 2024. The plaintiff pleaded that the counterclaim is defective and an abuse of the court process, and a mere attempt by the defendant to benefit from its own wrongdoing and illegalities by inviting the court to compel the parties to enter into a contractual relation where the same has been terminated. Further, that the defendant breached the terms of the lease

agreement, and that the plaintiff rightfully exercised its powers under the lease agreement to issue a termination and eviction notice.

- 13.** The plaintiff's case proceeded for hearing on 16th October, 2024. Samuel Njuguna Kimani (PW1) introduced himself as the director of the plaintiff. He adopted his witness statement dated 8th January, 2024 as his evidence in chief. He also produced the list and bundle of documents dated 8th January, 2024 and the further list of documents dated 11th March, 2024 as P. exhibits no. 1 to 4 respectively.
- 14.** On cross-examination, PW1 stated that the defendant had a lease with Telkom Kenya Limited, and that the suit property was sold to him. Thereafter, the lease agreement was assigned to him. He further stated that the lease between Telkom Kenya and the defendant was for ten years commencing on 21st January, 2019 and ending on 20th January, 2029. While referring to clause 3 of the lease, including clause 3.1.2 which relates to the relocation of the mast, PW1 admitted that the same is binding on the plaintiff. PW1 testified that the plaintiff had disagreements with the defendant from the year 2021 over payment of rents. With regard to the letter dated 6th December, 2022, PW1 testified

that the grounds for the termination of the lease were that the mast is situated on wet land.

- 15.** PW1 further testified that as per the email dated 4th April, 2023 the rent of KShs. 1,500,000/- had been paid. However, he did not receive rent from the year 2021 to 2023 but acknowledged that the rents were initially being paid to Telkom Kenya Limited. It was further his testimony that the plaintiff had a dispute with the defendant over the question of relocation of the mast, and that he agreed that the mast was constructed by the defendant before the plaintiff acquired rights to and in respect of the suit property. The dispute was over and in respect of the non-payment of rents.
- 16.** Further cross-examination of PW1 proceeded on 3rd July, 2025. PW1 testified that the principal issue was payment of rent and that they had given the defendant the notice to vacate. He stated that they had discussions with the defendant on re-allocation of the mast as it was in the middle of the suit property. PW1 further testified that it was their intention to develop the suit property and the issue of the mast being on riparian land did arise. Further, that when he applied for a permit to construct, the Water Resources Management Authority came on site and said that the mast was on riparian land. While the defendant's documents

showed safaricom satellite booster within the suit property, which has encroached the wetland riparian reserve, it was his testimony that he would not know if the mast was brought down. PW1 did not know that the defendant and Telkom Kenya Limited obtained approvals from NEMA as was shown to him the documents contained in page 84 of the defendant list and bundle of documents.

- 17.** PW1 further testified that they had discussion with the defendant over the costs of relocation of the mast, and that following the inspection by the Water Resources Management Authority, the mast had to be relocated. He testified that the defendant sent the bill of costs for the re-allocation of the mast, and according to him, there was no money that he needed to send to the defendant. He stated that the defendant wanted to share the costs, but he refused as it was an issue that arose from the Water Resources Management Authority.
- 18.** While admitting that the purchase of the property was conditional of lessee on the property, he disagreed that Telkom Kenya was the landlord and maintained that the defendant owes him the rent arrears. Further, that he had not received any rent since October 2023. PW1 testified that the relocation of the mast has not been

done, and he disagreed with the defendant that it needed time to ascertain the new owner of the property before paying the rent. He also said that it would not be fair to reconcile records of ownership for two years.

- 19.** In re-examination, PW1 testified that there was a letter giving notice and another letter which was sent as a reminder. He also stated that there were other correspondences prior to this notice. That as per the email dated 14th June, 2021 the suit property was sold to Jambo Credit and copied to the defendants and himself. It was also further his testimony that rent was payable so long as the defendant was on the property, and that the issue of relocation was another matter. Further, that as per the letter dated 7th April, 2023 PW1 stated that the rent paid was below what ought to have been paid and he maintained that the full rent has not been paid to date. With the testimony of PW1, the plaintiff rested its case.
- 20.** The defence hearing proceeded on 27th November, 2025. Lee Gachari (DW1), the legal manager of the defendant adopted his witness statement dated 24th February, 2024 as his evidence in chief. He also produced the list and bundle of documents as D. exhibits 1 to 12 respectively. DW1 testified that the defendant

entered into a lease with Telkom Kenya Limited, which was part of the documents during the sale of the property. He testified that prior to the transfer, Telkom was supposed to notify them before transferring the property to a third party, and that they learnt about the transaction between Telkom Kenya Limited and Jambo Credit through late notification. He stated that they used to remit rent and honoured their obligation stipulated in the lease to Telkom Kenya, and that the defendant was compliant with legal requirement in terms of a proper lease.

21. DW1 further testified that there were conditions which ought to have been met by Telkom Kenya Limited that include, NEMA approval that touched on licence as well as a valid lease and height approvals from Kenya Civil Aviation Authority which they had. According to DW1, the defendant was in good standing and that the plaintiff came into play after they got the agreement of sale while they were dealing with the deed of assignment. It was his testimony that no dispute arose between the parties at the time of assignment until sometime in 2023.

22. DW1 testified that they received communication that they were to be evicted from the suit property on account of the inspection by the Water Resources Management Authority which never

approached the defendant on the issue of riparian land. Further, that they had discussion with the plaintiff on the issue of relocating the mast as the authority had determined that it was in the riparian area. Further, that their lease on the property is supposed to last for ten years from the year 2019, and that the same allows them to remain on the suit property.

23. On cross-examination, DW1 testified that the defendant entered into a lease agreement by assignment of rights, and that it was supposed to pay rent annually by RTGS to the tune of Kshs.700,000/= subject to annual escalation. He disagreed with the contention that the defendant failed to pay rent for the year 2021 as they annexed the proof thereof in their bundle. DW1 agreed that under clause 9 and 9.2 of the lease, failure to pay rent warrants a termination of the lease, and that an offending party is required to remedy the breach after the lapse of thirty (30) days failure of which an aggrieved is entitled to terminate the lease.

24. While being shown the email correspondence in their bundle of documents, DW1 further testified that he never received any communication from Telkom Kenya Limited regarding the transfer of lease. Based on the email dated 14th June, 2021 he

could not confirm that the defendant was informed of the sale agreement as early as 24th June, 2021. He agreed that as at June 2021, the defendant engaged the plaintiff as the new lessor. It was further his testimony that the defendant received the lease termination notice dated 6th December, 2022 and a further notice as a follow up. He also agreed that the defendant never paid rent in the year 2022, and that the rent of Kshs.2,689,863/= has not been fully settled.

- 25.** DW1 further agreed that the defendant never challenged the letter by the Water Resources Authority dated 18th November, 2021 before the Water Tribunal because they are not supposed to. Further, the relocation of the tower was not pegged on payment of rent. He also agreed that there was no written agreement on the relocation of the mast.
- 26.** In re-examination, DW1 testified that the letter from the Water Resources Management Authority is addressed to in One Consultancy Limited and not to the defendant. Further, that the site where the mast is situated is not subject to the concern by the said authority. According to him, they were not required to address the same. He further stated that there was no nexus

between the relocation of the mast and the rent payment, and that the costs for the relocation was to be borne by the lessor.

- 27.** DW1 maintained that they never received a formal notice of transfer of rights as per the lease, and that they learnt of the transfer of the property through email correspondence and not by way of notice. Further, that they needed to verify ownership and that they reached out to Telkom themselves. DW1 further testified that as per the email dated 9th March, 2023 the right site had been identified, and that they also sought confirmation of the new ownership after which they paid rent.
- 28.** It was the testimony by DW1 that rent outstanding had been paid less 10% withholding tax, and that in 2023, they had material discussion as to payment of rent. He reiterated that in 2021, the discussion was on relocation of the mast and that they needed to pay rent to the valid lessor. Following payment of rent in 2023, he stated that they communicated with the lessor's advocate on the determination of lease as well as trying to negotiate whether they could relocate the mast to a new site. With the closure of the testimony by DW1, the defendant rested its defence and counterclaim.

29. The plaintiff filed its written submissions dated 27th November, 2025. The defendant filed its written submissions dated 16th January, 2026. I have considered the pleadings, the evidence tendered as well as the written submissions filed by both parties. The following issues arise for determination in this suit as submitted by both parties:-

a. Whether the plaintiff has made out a case to warrant the grant of the orders sought.

b. Whether the defendant's counterclaim is merited and competent.

30. At the centre of the dispute are two clauses in the lease agreement dated 21st January, 2019 entered into by Telkom Kenya Limited and the defendant. The lease is in respect to a portion of LR. No. 12814, which is for an initial period of ten years commencing on 21st January, 2019 with the rent payable of Kshs.700,000 being paid annually in advance through RTGS. This rent amount is also subject to increase based on the escalation capitation.

31. The plaintiff contends that the lease agreement was terminated on two grounds, mainly breach of clause 5 and change of

circumstances pursuant to clause 12.2 thereof. The plaintiff decried the defendant's refusal to pay rent from the year 2021 frustrated the lease despite several demands. As a result, it issued a termination and eviction notice dated 6th December, 2022 which lapsed on 5th June, 2023. The defendant, having refused to vacate the suit property following the notice, is now considered a trespasser on the suit property.

32. On the other hand, the defendant in its defence and counterclaim, maintained that it has a valid lease which grants it exclusive, quiet and peaceful use and occupation thereof. The defendant denied the existence of a valid termination notice on grounds that it has fulfilled all its covenants under clause 5 of the lease as well as it has not breached any terms to warrant the purported termination.
33. First, neither party has disputed the validity of the lease, and to that extent, the law is clear as to the nature of an agreement which parties have entered into willingly. In the case of **National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & another [2001] KECA 362 (KLR)**, the court stated as follows:-

"A court of law cannot re-write a contract between the parties. The parties are bound by the terms of their contract, unless coercion, fraud or undue influence are pleaded and

proved.” With emphasis. This position was also reiterated in the case of Langat v Co-operative Bank of Kenya Ltd [2017] KECA 152 (KLR).

34. Clause 5.1 of the lease provides as follows:-

“ the lessee shall pay the rent annually in advance by way of Real Time Gross Settlement (RTGs) to any bank and account that the lessor may from time to time nominate in writing, or, at the option of the lessor, in any other manner that the lessor determines. The rent payable for the first year of the term shall be Kenya Shillings Seven Hundred Thousand (Ksh 700,000) and shall be subject to an annual escalation on the anniversary of the commencement date by the rate of the percentage increase in the Consumer Price Index published by the state of Kenya National Bureau of Statistics) (“Actual CPI”) for the preceding year as measured every anniversary of the commencement date, beginning on the first anniversary of the commencement date subject to such increase being no greater than one thousand (1000) basis points being ten percent (10%) (“Escalation Cap”)....”

35. In determining whether the defendant breached clause 5 of the lease agreement, it will be necessary to interrogate the plaintiff's point of entry and the events that followed thereafter. The plaintiff

produced an email dated 14th June, 2021 which was sent to Allan Muhatia (an employee of the defendant) with the subject being 'Gigiri Exchange Relocation'. It will be noted that the lease agreement was initially entered into between Telkom and the defendant. In this email, Telkom informs the defendant that the suit property has been sold to Jambo Credit Limited and that the transaction is completed. The email further reads:-

“We handed over the property to the new owner. ATC lease was assigned. The new landlord has been considering relocating the tower as earlier advised. You carried out the survey and shared the costs below. He has requested for a meeting with ATC to discuss the relocation and any other modalities relating to the relocation should he choose to pursue that option”.

36. From this email, it is clear that the defendant through the email dated 18th November, 2020 had shared the costs amounting to Kshs.9,061,647.43/- for the relocation based on joint survey findings. The email dated 14th June, 2021 points us to the entry of Jambo Credit Limited as the owner of the suit property, and its desire to relocate the mast to pave way for the construction of a permanent structure. However, the plaintiff provides no agreement for sale to the court, to ascertain the same except that the defendant produces the agreement

indicating that the sale was entered into sometime in December 2020. Be that as it may, the plaintiff was incorporated on 3rd June, 2021 and the transfer of the suit property to the plaintiff is registered on 10th December, 2021 following its nomination pursuant to the letter dated 21st June, 2021 written by Jambo Credit Limited. Prior to the plaintiff's registration as the owner of the suit property, we see a response to a request for construction of a building made by In One Consultancy Limited written by Water Resources Authority and dated 18th November, 2021. This letter intimates that a site visit was conducted on 5th November, 2021 where it was found that a Safaricom satellite booster had encroached on the wetland riparian reserve. There is no indication whatsoever that this letter was brought to the attention of the defendant save to note the previous intention that the new owner of the suit property had reconsidered relocation of the said booster (see the email dated 14th June, 2021).

37. In between this period and most importantly following the registration of the plaintiff as the owner of the suit property, and bearing in mind clause 5 of the lease, the defendant appears not to be aware that the plaintiff is the new registered owner. I say this for the reason that the sale agreement was between Jambo Credit Limited and Telkom, and Jambo Credit later nominated the

plaintiff to be registered as the owner of the suit property which registration took place on 10th December, 2021. Did the plaintiff find it necessary to inform the defendant of such registration? I think not or perhaps it may have forgotten to bring this to the attention of the defendant. The subsequent emails following the notice purporting to terminate the lease dated 6th December, 2022 and the reminder dated 8th March, 2023 in my view, confirmed that the defendant did not have all this information.

- 38.** The email dated 8th March, 2023 written by DW1 requests the plaintiff's counsel to share a copy of the lease, as they could not trace the same using the landlord's name. On the same day, the plaintiff's counsel supplied a copy of the lease. On 9th March, 2023 DW1 acknowledged the lease and informed the plaintiff's counsel that the property manager was working to resolve the matter. Again, through email, the property manager confirmed that they had identified the right site. She also requested for the lease assignment from Telkom to the plaintiff and a copy of the new title to enable them proceed with the change of banking details from Telkom to Giriri Mart (*sic*) and then process the rent via EFT.

39. The learned counsel for the plaintiff in an email dated 9th March, 2023 sends the assignment of the lease and the nomination of the plaintiff as the registered owner of the suit property. On the same day, the defendant's property manager requests for a copy of the title and the change of the bank details as well as an updated KRA pin. The plaintiff's counsel on the same date sent the KRA pin and a copy of the title.
40. Thereafter, the plaintiff's counsel sought information as to when the plaintiff should expect payment, and in an email sent on 18th March, 2023 they were asked to await payment for 10 days. Further demands were made on 29th March, 2023 and the defendant was reminded that the delay in payment was in breach of the terms of the contract. The defendant's response was as follows:-

"The payment is yet to be processed. It's pending creation of the new payee account details in our system. We need proof of banking details. Once created rent shall be paid by Thursday next week. Kindly assist to get either of the documents requested on the bank details form as a confirmation of the bank details.

NB: Kindly attach either of the 3 items listed below to re-confirm the bank details given above.

- 1. A copy of bank statement (Clearly showing the part with bank account details) or***

- 2. A crossed cheque or**
- 3. A letter from the bank to confirm the bank account details**
- 4. KRA pin.**

You can also attach an image of the bank card showing the bank details”

- 41.** On 4th April, 2023 the defendant informed the plaintiff’s counsel that the rent outstanding had been paid less 10% withholding income tax. This payment was acknowledged by the plaintiff in a letter dated 7th April, 2023 except that the annual escalation was not factored thus a further sum of Kshs.1,140,863/- was now due. In an email sent on 11th April, 2023 the defendant requested the plaintiff’s counsel to allow them reconcile and revert.
- 42.** Later on, 3rd May, 2023 the defendant’s property manager explained to the learned counsel that the withholding tax effect on the rent payable and further indicated that by the time they were informed of the sale, the annual rent for the year had been paid to the previous owner. The plaintiff was advised to follow up on the apportioned rent with Telkom. There is no further response from the plaintiff’s counsel concerning this issue at all.

43. It then appears that the plaintiff's counsel wrote the letter dated 26th October, 2023 to the defendant. This letter was not produced, and its contents are unknown to the court. However, and through both the email and the letter dated 2nd November, 2023 it is evident that there is communication breakdown between the parties and a one on one meeting is proposed. Also, as I note on 5th October, 2023 the defendant paid the annual rent in advance of Kshs.805,441.85/- less 10% withholding tax.

44. I have taken time to comb through the evidence tendered by the parties. In my view, the defendant is not in breach of Clause 5.1. of the lease agreement. Indeed, when the plaintiff was registered, this information and details were not brought to the attention of the defendant in time to update its records. The above summary of evidence bears witness to the same. In any case, the defendant promptly acted on this matter to resolve the issue of the outstanding rent. The defendant is not to blame at all.

45. On whether the lease stood terminated by virtue of clause 12.2. of the lease, this clause provides:-

“If a party is prevented in the performance or the punctual performance (as the case may be) of any of its obligations under this lease by force majeure

and if such party gives written notice thereof to the other party specifying the matters constituting force majeure together with such evidence as can be reasonably given and specifying the period for which it is estimated that such prevention or delay will last, then the affected party shall be excused from the performance or the punctual performance(as the case may be) of that obligation as from the date of such notice for so as such cause of prevention or delay shall continue and provided that the parties shall perform their obligations when conditions permit and provided further that if the force majeure event occurs for a period exceeding four (4) months, either party can terminate by giving notice to the other party. For the purposes of this clause, "Force Majeure" means all circumstances beyond the control of the party affected where such circumstances shall render impossible the performance of that party's duties and obligations under this lease, but specifically excludes the inability to pay rent, taxes or any other fees or monies due to the lessor or to any other party in connection with this lease."

46. The plaintiff contended that the lease terminated pursuant to the letter dated 18th November, 2021 written by Water Resources Authority. In its submissions, the plaintiff argued that the defendant did not tender any evidence revoking this letter and neither did it challenge the validity of this letter before the Water

Appeal Board. I would have expected the plaintiff to support this argument by elaborating further how neither party could continue with its contractual obligations under the lease because there existed an event or occurrence which was beyond its ability to do so. Instead, the plaintiff vehemently brought in the parole evidence rule while relying on the cases of **Universal Education Trust Fund v Monica Chopeta [2012] eKLR** and **Too v Orchardson (Environment & Land Case 56 of 2014) [2022] KEELC 12578 (KLR) (27 September 2022) (Judgment)**.

47. In **Kwanza Estates Limited v Jomo Kenyatta University of Agriculture and Technology [2024] KESC 74 (KLR)**, the Supreme Court pronounced itself as follows:-

“We find the decision in Pankaj Transport PVT Limited v SDV Transami Kenya Limited [2017] eKLR by the High Court (Ogola J) to be of persuasive value as it expounded the doctrine of force majeure quite aptly. The doctrine of force majeure has its origin in French law where there are express force majeure provisions in the French civil code which excuse contractual performance where events have happened outside the parties’ control which could not have been foreseen at the time of contracting and which could not have been avoided by appropriate measures. The doctrine of force majeure has expanded to include events caused by both

human actions and natural occurrences, defining situations beyond the control of parties that prevent them from meeting contractual obligations. Further, the interpretation the courts give is dependent on the choice of wording and events delineated by the parties in their contract.” With emphasis.

48. I will reiterate what I stated earlier in paragraph 36. The letter dated 18th November, 2021 is addressed to In One Consultancy Limited by Water Resources Authority. This letter intimates that a site visit was conducted on 5th November, 2021 where it was found that a Safaricom satellite booster had encroached on the wetland riparian reserve. There is no indication whatsoever that this letter was brought to the attention of the defendant save to note the previous intention that the new owner of the suit property had reconsidered relocation of the said booster.

49. It should be borne in mind that this lease was assigned to the plaintiff after Telkom procured the National Environment and Management Authority (NEMA) to conduct an environmental audit on the suit property. The letter dated 23rd October, 2017 testifies that the reports on the suit property were found to be satisfactory. Equally so, it will be noted that the plaintiff had expressed its desire to relocate the mast and, in my view, this

letter by Water Resources Authority was used as an avenue for relocation of the mast. I say this because the plaintiff did not inform the defendant of the site visit or even seek its involvement and the findings thereon.

- 50.** It is the finding of this court that the plaintiff has not proved there existed factors that would call for the invocation of clause 12.2 of the lease agreement.
- 51.** Having found that the defendant is not in breach of clause 5.1 and no justification whatsoever to invoke clause 12.2, the defendant is entitled to peaceful, quiet use and occupation of the suit property as provided in the lease. While the defendant averred in its counterclaim that it is entitled to damages for trespass because of the plaintiff's actions, the same was not sought among its prayers.
- 52.** From the above, the plaintiff has not proved its case on a balance of probabilities that it has a cause of action against the defendant to warrant the grant of the orders sought in the plaint. On the other hand, I find that the defendant is not in breach of the lease agreement and the counterclaim has merit. For this reason, I grant the following orders:

- 1. The plaint dated 8th January, 2024 is dismissed with costs to the defendant.**
- 2. The defendant's counterclaim dated 26th January, 2024 is allowed, and a permanent injunction is hereby issued restraining the plaintiff in the plaint (defendant in the counterclaim) from interfering with the defendant in the plaint (plaintiff in this counterclaim) lawful occupation, use and quiet possession of the suit property.**
- 3. The defendant (plaintiff in the counterclaim) is awarded the costs of the counterclaim.**

It is so ordered.

**DATED, SIGNED & DELIVERED VIRTUALLY
THIS 10TH DAY OF MARCH, 2026.**

**HON. MBOGO C.G.
JUDGE
10/03/2026.**

In the presence of:

Ms. Benson Agunga - Court assistant

Mr. Arnold Ochieng Oginga for the Plaintiff

Ms. Wanjiku King'ori for the Defendant