

- d. Thirty (30) months' interest on the late payment of repair costs totaling Kshs. 9,835,204.50, calculated from 1st May 2019 to 14th October 2021 at court rates;*
- e. An order of injunction compelling the 1st Defendant to issue:
 - (i) A handover report; and*
 - (ii) A report detailing the factors considered in arriving at the repair costs of Kshs. 9,835,204.50**
- f. Interest on items (b), (c), and (d) above at court rates from the date of filing suit until payment in full;*
- g. Costs of the suit; and*
- h. Any other relief the Court may deem fit and just to grant.*

2. The Plaintiff pleaded that on or about 13th June 2016, it entered into a Lease Agreement with the Government of Kenya through the 1st Defendant for the leasing of 322 residential flats situated on Nairobi/Block 82/4175-4181, Donholm Estate, for a term of three (3) years commencing on 15th April 2016, for purposes of housing police officers
3. The Plaintiff averred that by a letter dated 30th October 2018, the 1st Defendant issued a three-month notice terminating the lease effective 1st November 2018 to 31st January 2019, but failed to yield vacant possession upon

expiry. It was alleged that occupation continued until April 2019, causing financial loss.

4. The Plaintiff further contends that the Defendants failed to settle utility obligations and caused extensive damage to the premises. It is pleaded that despite undertaking to conduct a joint inspection and settle pending dues, the 1st Defendant delayed payment of repair costs for approximately 30 months, ultimately remitting Kshs. 9,835,204.50, which the Plaintiff avers was delayed and inadequate.
5. The Plaintiff maintains that after vacant possession was eventually yielded, it was compelled to carry out extensive renovations at its own expense, and that the property remained uninhabitable for approximately six months, resulting in loss of expected rental income.
6. It is on the basis of the foregoing alleged breaches that the Plaintiff seeks the reliefs enumerated in the plaint.
7. In their statement of defence dated 9th June 2022, the Defendants denied the claim in its entirety. They challenged the Plaintiff's capacity, contending that it was not the registered proprietor and lacked authority to lease the premises. They further argued that the lease was unregistered and unenforceable.
8. The Defendants maintained that the tenancy lawfully terminated on 31st January 2019, that vacant possession was surrendered following a joint inspection, that rent was fully

paid up to termination, and that repair costs were assessed and settled.

9. At the hearing, each party called one witness. Pw1 - James Mwangi, testified on behalf of the Plaintiff. He adopted his witness statement and bundle of documents, both dated 1st April 2022, as his evidence in chief. He testified that the relationship between the parties was governed by a written Lease Agreement which expressly provided for termination upon notice, recovery of possession, and the tenant's obligation to restore the premises to good and tenantable condition upon expiry of the term. He relied in particular on the clauses permitting either party to issue a termination notice and requiring the tenant to vacate and surrender possession upon expiry.
10. Pw1 stated that a notice of termination dated 31st October 2018 was duly issued, notifying the Defendants that the tenancy would expire on 31st January 2019. He maintained that the notice complied with the terms of the lease and was properly served. According to him, the Defendants did not accept any renewal offer within the stipulated period and therefore could not lawfully claim continued occupation under any subsisting arrangement.
11. It was Pw1's further testimony that despite expiry of the notice period, the Defendants failed to vacate the premises within the agreed timeframe. He referred to subsequent correspondence, including a letter dated 12th February 2019, in which the Defendants disputed the termination and raised concerns regarding inspection and

alleged attempted eviction. PW1 denied that any unlawful eviction was undertaken and clarified that any demand to vacate emanated from him pursuant to the lease and not from law enforcement authorities.

12. On the condition of the premises, Pw1 testified that an inspection was carried out after the Defendants vacated. He contended that the premises had not been restored to a good and tenantable state as required under the lease. He disputed the accuracy of a handover certificate dated 22nd February 2019, asserting that it did not reflect the true condition of the premises at the time of surrender. He further testified that he incurred substantial expenses in undertaking repairs and restoration works, which took a considerable period. In his view, the Defendants were contractually liable for damage beyond ordinary wear and tear, as well as outstanding utility bills and related charges.
13. Pw1 maintained that there was no clause in the lease entitling the Defendants to the sums advanced in defence, and that the Defendants bore the burden of proving any such entitlement. He urged the Court to find that proper notice had been issued, that the tenancy lawfully terminated on 31st January 2019, and that the Defendants were liable for loss arising from continued occupation and failure to restore the premises.
14. The defence called Dw1 - No. 65076 Police Constable Daniel Ndegwa, formerly attached to the Directorate of Criminal Investigations (DCI), Kilifi. He testified on oath and

adopted his recorded witness statement as his evidence in chief.

Plaintiff's submissions

15. The Plaintiff submits that it proved, on a balance of probabilities, the existence of a valid Lease Agreement dated 13th June 2016 for a term of three years commencing 15th April 2016, which contained an express termination clause requiring three months' notice. It is contended that although the 1st Defendant issued a termination notice on or about 30th October 2018 effective 31st January 2019, the Defendants failed to yield vacant possession upon expiry and continued occupying the premises in breach of the lease.
16. The Plaintiff relies on correspondence exchanged in February and March 2019 to demonstrate continued occupation and contends that the 1st Defendant, having contracted for the benefit of its officers, bore full responsibility for compliance with the lease. It invokes the doctrine of privity of contract, relying on **Dunlop Pneumatic Tyre Co Ltd v Selfridge & Co Ltd** and **Agricultural Finance Corporation v Lengetia Ltd**, and further cites **National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd** and **Pius Kimaiyo Langat v Co-operative Bank of Kenya Ltd** for the proposition that courts cannot rewrite contracts. The Plaintiff maintains that it suffered financial loss through continued occupation,

delayed repairs, and loss of rental income, and urges the Court to grant the reliefs sought.

Defendants' submissions

17. The Defendants, on their part, submit that the lease was lawfully terminated by a three-month notice effective 31st January 2019 and that vacant possession was duly yielded following a joint inspection. They contend that rent was fully paid up to termination and that no legal or contractual basis exists for rent or mesne profits thereafter. The Defendants further submit that the Plaintiff failed to strictly prove continued occupation, loss of expected income, or additional repair costs, emphasizing that special damages must be specifically pleaded and strictly proved. They also argue that the lease contains no provision for interest on repair costs and that general damages are not recoverable for breach of contract.
18. In conclusion, the Defendants urge the Court to find that the Plaintiff has failed to prove its case on a balance of probabilities and to dismiss the suit with costs

Analysis and determination

19. I have carefully considered the pleadings, the oral and documentary evidence on record, and the rival submissions of counsel. From the foregoing, the following issues arise for determination:

- i. *Whether there existed a valid and enforceable Lease Agreement between the parties;*
- ii. *Whether the tenancy lawfully terminated on 31st January 2019 and whether vacant possession was yielded upon expiry of the notice;*
- iii. *Whether the Plaintiff is entitled to rent or mesne profits for the period 1st February 2019 to 30th April 2019;*
- iv. *Whether the Plaintiff has proved loss of expected income for the period 1st May 2019 to 31st October 2019;*
- v. *Whether the Plaintiff is entitled to interest on delayed repair costs, general damages, and the ancillary reliefs sought;*
- vi. *Who should bear the costs of the suit.*

Whether there existed a valid and enforceable Lease Agreement between the parties

20. The Defendants challenged the Plaintiff's capacity to lease the premises and further contended that the lease was unregistered and therefore unenforceable. However, it is not disputed that a written Lease Agreement dated 13th June 2016 was executed between the Plaintiff and the Government of Kenya through the 1st Defendant for a term of three years commencing 15th April 2016.

21. The parties acted upon that agreement. The Defendants took possession of the premises, placed their

officers therein, and paid rent in accordance with the agreed terms. The Plaintiff, on its part, granted quiet possession and received rent pursuant to the contract.

22. The evidence therefore demonstrates not merely the existence of a written contract, but substantial performance thereunder by both parties. In those circumstances, the Defendants cannot be permitted to approbate and reprobate. Having enjoyed the benefits of the lease for its duration, they are estopped from denying its validity inter parties in the absence of fraud, illegality, or want of authority duly proved.

23. The law is settled that parties are bound by the terms of the contracts they voluntarily enter into. In **National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & Another [2001] eKLR**, the Court of Appeal emphatically stated:

“A court of law cannot rewrite 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.”

24. No evidence of fraud, coercion, or undue influence was pleaded or proved in this case. The attempt by the Defendants to impeach the Plaintiff’s capacity after full performance of the lease is therefore untenable in law.

25. With regard to the argument on non-registration, it is indeed correct that under the land registration regime, leases exceeding the statutory term are registrable instruments and, if unregistered, may not confer a legal interest in land capable of enforcement against third parties. However, it does not follow that non-registration *ipso facto* nullifies the contractual obligations voluntarily assumed between the parties. The law is settled that an unregistered instrument, though ineffective to pass a legal estate in land, may nonetheless operate as a binding contract inter parties - See **Kenya National Capital Corporation Ltd v Albert Mario Cordeiro & Another [1981] eKLR.**

26. Having taken possession and enjoyed the premises for the agreed term, and having paid rent thereunder, the Defendants are bound by the contract they executed. I therefore find that the Lease Agreement dated 13th June 2016 was valid and enforceable as between the Plaintiff and the 1st Defendant, and the relationship between the parties was governed by its terms.

Whether the lease was lawfully terminated and vacant possession yielded

27. Clause 22 of the Lease Agreement expressly provided that either party could terminate the lease upon issuance of three (3) months' notice. The evidence on record demonstrates that the 1st Defendant issued a written notice dated 30th October 2018 terminating the lease with effect

from 31st January 2019. The Plaintiff does not impugn the validity of that notice. I therefore find that the lease was lawfully terminated in accordance with its terms.

28. The gravamen of the Plaintiff's complaint is not the propriety of termination, but the alleged failure by the Defendants to yield vacant possession upon expiry of the notice and the alleged continued occupation of the premises until April 2019.

29. Pw1 testified that police officers remained in occupation beyond 31st January 2019 and relied on correspondence exchanged in February and March 2019, complaining of continued occupation. The Defendants, however, maintained that vacant possession was yielded following a joint inspection and denied any holding over.

30. The legal burden of proof rests upon he who alleges. Sections 107 and 109 of the Evidence Act, Cap 80 Laws of Kenya, provide that whoever desires the court to give judgment as to any legal right dependent on the existence of facts which he asserts must prove that those facts exist.

Section 107(1) stipulates:

“Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.”

31. The Court of Appeal in **Karugi & Another v Kabiya & 3 Others civil Appeal 80 of 1982 [1983] KECA 38 KLR** reiterated that the burden of proof remains with the plaintiff

throughout and does not shift merely because the defendant has denied the claim.

32. In the present case, apart from letters complaining of alleged continued occupation, the Plaintiff did not tender cogent evidence demonstrating that the Defendants retained possession beyond 31st January 2019. No evidence was adduced as to the specific units allegedly occupied, the number of officers who remained, the duration of such occupation, or any independent inspection report confirming continued possession by the Defendants after termination.
33. On the other hand, the Defendants adduced evidence that a joint inspection was conducted and a handover/takeover certificate prepared on 22nd February 2019. While the Plaintiff disputes the accuracy of that certificate, its existence supports the Defendants' position that surrender of the premises had substantially occurred.
34. It is trite that upon expiry of a lease duly terminated, the tenant is obligated to yield vacant possession. However, holding over must be strictly proved. Courts cannot infer unlawful occupation in the absence of credible and specific evidence.
35. In the circumstances of this case, and applying the standard of proof on a balance of probabilities, I am not satisfied that the Plaintiff discharged the burden of proving that the Defendants unlawfully held over the premises beyond 31st January 2019.

36. I therefore find that the lease was lawfully terminated and that unlawful holding over by the Defendants has not been proved.

Claim for rent from 1st February 2019 to 30th April 2019

37. The Plaintiff seeks Kshs. 15,972,000 being rent allegedly due for the period 1st February 2019 to 30th April 2019. The foundation of this claim is the assertion that the Defendants continued occupying the premises after the lease terminated on 31st January 2019.

38. As already found, the lease was lawfully terminated pursuant to Clause 22 of the agreement. It follows that any entitlement to rent beyond 31st January 2019 could only arise if the Plaintiff proved that the Defendants held over the premises after termination.

39. Rent is a creature of contract. It is payable pursuant to the terms agreed by the parties. Upon lawful termination of a lease, the contractual obligation to pay rent ceases unless the tenant remains in occupation, thereby giving rise to a claim for mesne profits.

40. Where a party alleges continued occupation after termination, the proper remedy lies in a claim for mesne profits. Mesne profits, being in the nature of special damages, must be specifically pleaded and strictly proved. In **Kenya Hotel Properties Ltd v Willesden Investments Ltd [2009] eKLR**, the Court of Appeal underscored that mesne profits must be proved by evidence and cannot be

presumed. Likewise, the Court in **Hahn v Singh [1985] KLR 716** emphasized that special damages must not only be specifically pleaded but must also be strictly proved.

41. In the present case, the Plaintiff has not placed before the Court credible and specific evidence demonstrating continued occupation by the Defendants after 31st January 2019. No evidence was tendered as to the specific units allegedly occupied, the duration of occupation, or the persons said to have remained in possession. In the absence of such proof, the claim cannot be sustained.

42. In the circumstances, I find that the Plaintiff has failed to discharge that burden in respect of this head of claim. Accordingly, the claim for Kshs. 15,972,000 for rent allegedly due from 1st February 2019 to 30th April 2019 lacks evidential and legal foundation and is hereby declined.

Loss of Expected Income from 1st May 2019 to 31st October 2019

43. The Plaintiff seeks Kshs. 31,944,000 for alleged loss of rental income during the period the premises were said to be under renovation. This head of claim is in the nature of special damages. The law on special damages is settled. They must not only be specifically pleaded but must also be strictly proved.

44. In the present case, although PW1 testified that the premises remained uninhabitable for approximately six months following surrender, no documentary evidence was

placed before the Court to substantiate the claim. There was no schedule of repairs showing the duration of works undertaken, no tenancy agreements demonstrating prospective or actual tenants ready to take up the units, no valuation report assessing rental loss, and no audited accounts or financial statements evidencing actual loss suffered.

45. The quantum claimed appears to have been derived from the contractual rental figure, but there was no evidential basis laid to demonstrate that the premises would have been let immediately upon surrender, or that they were incapable of occupation for the entire six-month period alleged.

46. Further, it is a cardinal principle of the law of damages that a claimant must mitigate his loss. In **African Highland Produce Limited v John Kisorio [2001] KECA 364 (KLR)** the Court of Appeal held:

“The prime factor is that he, plaintiff, has a duty to mitigate loss if it is within his means to do so.”

47. The evidence on record does not demonstrate the steps taken by the Plaintiff to mitigate the alleged loss, nor does it show that the duration of renovation was beyond its control.

48. In the absence of strict proof, this claim remains speculative. Courts do not award damages on conjecture. Accordingly, I find that the Plaintiff has failed to prove its claim for Kshs. 31,944,000 for loss of expected income, and the same is hereby dismissed.

Interest on repair costs

49. The Plaintiff seeks interest for a period of thirty (30) months on repair costs amounting to Kshs. 9,835,204.50, contending that the payment was inordinately delayed.
50. The evidence on record shows that the repair costs were assessed and eventually paid by the Defendants. The dispute therefore is not whether the sums were paid, but whether the Plaintiff is contractually or legally entitled to interest for the period preceding payment.
51. A perusal of the Lease Agreement reveals no provision stipulating that interest would accrue on delayed settlement of repair costs. Courts cannot imply contractual terms which the parties themselves did not incorporate.
52. The law regarding interest prior to judgment is settled. In **Highway Furniture Mart Ltd v Permanent Secretary, Office of the President & Another [2006] KECA 190 (KLR)**, the Court held:
- “...interest antecedent to the suit is only claimable where under an agreement there is stipulation for the rate of interest (contractual rate of interest) or where there is no stipulation, but interest is allowed by mercantile usage (which must be pleaded and proved) or where there is statutory right to interest or where an agreement to pay interest can be implied from the course of dealing between parties...”***
53. In the present case, the Plaintiff has not demonstrated the existence of any contractual clause entitling it to interest on delayed repair payments. Neither has it pointed to any

statutory provision or established usage applicable to the transaction that would mandate such interest.

54. In the absence of contractual or statutory entitlement, the Court's jurisdiction to award interest is governed by Section 26(1) of the Civil Procedure Act. Thus, any award of interest would lie in the Court's discretion and ordinarily runs from the date of filing suit, unless special circumstances justify an earlier date.
55. In the circumstances of this case, and there being no contractual basis for pre-suit interest, the Plaintiff's claim for thirty months' interest prior to filing suit is untenable in law and is hereby declined.

General Damages

56. As regards the claim for general damages, the law is settled that such damages are not ordinarily recoverable for breach of contract. The object of damages in contract is compensatory, that is, to place the innocent party, so far as money can do it, in the position he would have been in had the contract been performed, and not to punish the defaulting party.
57. In **Kenya Tourist Development Corporation v Sundowner Lodge Ltd [2018] KECA 312 (KLR)** the Court stated:

“As a general rule, general damages are not recoverable in cases of breach of contract...it is well settled that the governing purpose of

damages is to put the party whose rights have been violated in the same position so far as money can so as if his rights had been observed...”

58. The principle is therefore beyond peradventure that a claimant in contract must specifically plead and strictly prove the loss suffered. In the present case, no actionable breach has been established to warrant an award of compensatory damages beyond what was already settled. In the absence of proof of recoverable loss flowing from breach, the prayer for general damages must fail.
59. With regard to the prayer for injunctive orders compelling the issuance of a handover report and a report detailing the basis of the repair costs, the evidence on record demonstrates that a joint inspection was undertaken and that the assessed repair costs were subsequently settled. The purpose for which the orders were sought has therefore been overtaken by events.
60. Courts do not act in vain. Injunctive remedies issue to address existing or threatened violations, not to grant orders in vain. Once the substratum of the relief sought has been spent, the Court will decline to issue declaratory or injunctive relief.
61. In the circumstances, the prayer for injunctive orders is moot and cannot be granted.

On costs

62. On the issue of costs, Section 27(1) of the Civil Procedure Act provides that costs follow the event unless the Court, for good reason, orders otherwise. The Plaintiff bore the burden of proof under Sections 107 and 108 of the Evidence Act, which require that he who alleges must prove. As already analyzed, the Plaintiff has failed to establish its claims on a balance of probabilities.

63. In the premises, this Court finds that the Plaintiff has not proved its case as required in law. Consequently, the plaint dated 7th March 2022 is hereby dismissed.

64. Bearing in mind the nature of the dispute and the relationship between the parties, and in exercise of the Court's discretion under Section 27 of the Civil Procedure Act, each party shall bear its own costs.

It is so ordered.

JUDGMENT delivered virtually, dated and signed at **NAIROBI**

This **26th** day of **February** 2026.

P.M. MULWA
JUDGE

In the presence of:

Mr. Njehu for Plaintiff

Ms. Murugi for Defendants

Court Assistant: *Carlos*