

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT NAIROBI

ELC CIVIL SUIT NO. 423 OF 2010

LAVINGTON PALMS LIMITED.....PLAINTIFF

VERSUS

FRED OCHANDA.....1ST DEFENDANT

REMMY KARANI.....2ND DEFENDANT

C.M WAMUGI.....3RD DEFENDANT

J.M KATHENGE.....4TH DEFENDANT

NAIROBI COUNTY CITY.....5TH DEFENDANT

JUDGMENT

1. The plaint that initiates this suit is the one amended pursuant to this Court's leave and dated 21st November 2023. The plaintiff contends that on 27th November 2009, it entered into an agreement for the lease of land parcel number L.R No. 3734/843, with a written understanding that it would take possession of and meet the costs of developing the land in accordance with the approved plans. The agreement further allowed it to occupy the land once it had completed the development of the proposed commercial centre (shops and offices). The architectural drawings had already been submitted to the 5th

defendant on 12th October 2009 and approved on 2nd November 2009, via a letter of the same date.

2. The Plaintiff further stated that it developed the said parcel of land according to the approved architectural plans and, took possession of the shops and offices thereof. It is the Plaintiff's argument that having complied with all the requirements of licensing imposed by the 5th Defendant, it would be entitled to quiet enjoyment and possession of the premises comprised in land parcel number L.R No. 3734/843.
3. However, on or about the 19th of July, 2010, at around 11.00 am, the 1st, 2nd, 3rd and 4th Defendants, in the company of a group of rowdy men, entered into the said premises and proceeded to wantonly demolish the shops, offices and perimeter wall erected on the said property without any notice whatsoever. The Plaintiff contends that the demolition was malicious and wrongful, as it was carried out without notice, and it interfered with its possession of the suit premises. It further stated that the demolition was carried out despite the existence of injunction orders issued by the Nairobi HCCC NO. 820 OF 2006, RIVER BANK PLAZA LIMITED VS. CITY COUNTY COUNCIL OF NAIROBI.
4. It pleaded the following particulars of trespass and malice against the 1st to 4th Defendants in paragraph 23 of the Plaint thus:

- a) *Deliberately entering into the premises situated on L.R No. 3734/843 without lawful authority;*
- b) *Deliberately destroying the shops and offices situated on L.R No. 3734/843 without justification;*
- c) *Violently destroying their buildings and perimeter wall erected on L.R No. 3734/843;*
- d) *Interfering with the Plaintiff's quiet enjoyment and possession of the premises situated on L.R No. 3734/843;*
- e) *Failing to take heed that the shops and offices situated on L.R No. 3734/843 were fully compliant with all the building and development requirements as provided in law;*
- f) *Failing to take heed that the premises had the necessary building approvals issued by the 5th Defendant;*
- g) *Negligently failing to abide by the Court order barring it from interfering with the subject parcel of land;*
- h) *Approving the Plaintiff's landlord's building plans and subsequently proceeding to demolish their premises without notice or justification;*
- i) *Issuing business permits to operate on the said business and subsequently proceeding to demolish the said business premises;*

j) Destroying by demolishing the Plaintiff's premises without any colour or right

5. The Plaintiff also blamed the 5th Defendant for trespass and urged this Court to find it fully liable for the actions of 19th July, 2010 which were grossly negligent, malicious, arbitrary and executed with impunity. It listed the particulars of trespass and malice against the 5th Defendant in paragraph 24 of its Plaint as:

- a) Encouraging, instigating and procuring the commission of trespass to the land namely L.R No. 3734/843 by the 1st, 2nd, 3rd and 4th Defendants;
- b) Providing its vehicles in particular KAW 824Z and facilitating the 1st, 2nd, 3rd and 4th Defendants to carry out illegal entry upon land parcel number L.R No. 3734/843;
- c) Aiding, enabling and instigating the unlawful entry and destruction of property on L.R No. 3734/843 by the 1st, 2nd, 3rd and 4th Defendants;
- d) Aiding, enabling and instigating the breach of lawful court order that was in force.

6. The Plaintiff contended further that the Defendants' actions caused him to suffer great material loss totaling to K.Shs. 15,696,000 and outlined the particulars of the special damages in paragraph 25 of its Plaint as follows:

- a) K.Shs. 6,000,000 for the demolished two office blocks with a plinth area of 133 sq. meters;
- b) K.Shs. 1,200,000 for the destroyed mild steel grille fence measuring 200M by 1.5M valued at 6000 per meter;
- c) K.Shs. 6,600,000 for the destroyed electric fence along the grille fence valued at K.Shs. 3000 per meter;
- d) K.Shs. 1, 536,000 for the destroyed car shade net measuring 1280 sq. meters on mild steel tubes;
- e) K.Shs. 360,000 for the three (3) destroyed steel gates made of mild steel tubes with electric wire fence each valued at K.Shs. 120,000/-.

7. It is contended for the Plaintiff that it suffered loss of income from its business following the demolition and urged this Court to find the 5th Defendant vicariously liable for the actions of the 1st, 2nd, 3rd and 4th Defendants. It prayed for judgment against the Defendants jointly and severally for orders;

- a) **A permanent injunction to restrain the Defendants whether by themselves, their servants, employees or agents or otherwise from entering the suit premises or in any way interfering with the Plaintiff's quiet possession of the suit property premises;**
- b) **Special damages in the sum of KShs. 15,696,000/-;**
- c) **Exemplary damages;**

d) **Costs of the suit;**

e) **Any other or further relief as the Court may deem fit to grant.**

8. The Defendants filed an amended joint Statement of Defence dated 25th March, 2024. They denied all the allegations in the Plaint and stated that despite these allegations, the Plaintiff acted contrary to the approvals granted to it to have offices and shops on the suit parcel and instead operated a car bazaar business. They also stated that the licenses issued by the 5th Defendant did not in any way change the approvals or the intended use of the property.
9. The Defendants pleaded further that the demolitions were never done out of sheer impunity as stated, but that the same were subject to the powers conferred to the 5th Defendant under CAP 265 Local Government Act and CAP 286 of the Physical Planning Act, Building Code and bylaws. They urged this Court to dismiss the Plaintiff's suit with costs.
10. Both the Plaintiff and the Defendants relied on the evidence of one witness each. The Plaintiff called Antony James Kiriacho who tendered his testimony on 13.2.2025 in support of the claim. He adopted his written statement dated 11.7.2023 as his evidence in chief and produced the bundles of documents contained in the list dated 15.12.2023 as Pex. 1-9.
11. He introduced himself as the property manager appointed to oversee the Plaintiff's rental properties, specifically the property with Land Reference

Number 3734/843. Pw stated that the Plaintiff is the lawful lessee of the property known as L.R. No. 3734/843, held under a lease agreement dated 27th November 2009, while the registered owner is Riverbank Plaza Limited. Evidence of this interest, alongside the landlord's title, is documented in the Plaintiff's bundle at pages 1 through 19.

12. The development of the land was initiated on or about 12th October 2009, when the landlord submitted architectural plans for a commercial center to the **5th Defendant** for approval. These plans were formally sanctioned on 2nd November 2009 by the 5th Defendant's Director of City Planning, who issued a letter of authority for the construction to proceed. Consequently, and in strict adherence to these approved designs, the property was developed into a commercial complex comprising shops and offices.
13. The witness affirms that the Plaintiff took possession of the completed shops and offices on 1st December 2009 and; with the authority of the 5th Defendant who licensed the businesses. He stated that the Plaintiff set up three different businesses on the premises
14. However, on **19th July 2010**, the **1st, 2nd, 3rd, and 4th Defendants**, accompanied by a group of rowdy individuals and demolition equipment, entered the premises without prior notice or legal justification. These

Defendants then proceeded to wantonly demolish the existing shops and offices, as well as the surrounding perimeter fence.

15. The Plaintiff further alleges that the **1st to 4th Defendants** acted with malice and without legal justification in demolishing the structures on **L.R. No. 3734/843**. This interference was purportedly intended to deprive the Plaintiff of its exclusive use and possession of the premises. Notably, the illegal demolition was carried out using a **Volvo bulldozer (Registration No. KAW 824Z)** belonging to the **5th Defendant**, alongside other unidentified vehicles. The witness avers that while the defendants carried out the illegal demolition, they were aware of an injunction order issued in HCCC NO. 820 of 2006, RIVERBANK PLAZA LIMITED -VS- CITY COUNCIL OF NAIROBI, against the 5th Defendant which order the defendants have deliberately chosen to contravene.
16. It is also his evidence that the conduct of the defendants in the foregoing paragraphs constitutes trespass to private property possessed by the plaintiff and, as a result of the defendants' said actions, the plaintiff has suffered significant material loss amounting to 15,696,000/-. The defendants have not offered any explanation despite being issued with a demand to make good all losses suffered.

17. It is the Plaintiff's case that the 5th Defendant is fully liable for the trespass actions on the said 19th July 2010, which were grossly negligent, malicious, arbitrary, and carried out with impunity; solely to frustrate and deprive the plaintiff of the quiet enjoyment of the property for unknown ulterior motives.
18. In cross-examination, the witness stated that their role include collecting rents and maintenance of the suit property although he did not include the management contract in the documents filed in court. Pw1 affirmed that the Plaintiff has a lease from River Bank Plaza dated 27.11.2009 but they have sublet the premises to someone else.
19. He admitted that the architectural drawings approved by the 5th Defendant were for constructing shops, offices and a restaurant. However, the Plaintiff started a car bazaar in the suit premises without applying for change of user from the 5th Defendant.
20. The witness admitted he was not on the premises on 17th July 2010 when the invasion occurred and that there are no CCTV cameras on the premises. He was called by a tenant and found the Defendants still there, continuing with the demolitions. He was told that the 1st to 4th Defendants were present, although he did not personally know them.
21. This witness asserted he had not seen the enforcement notice before the demolition was undertaken. He agreed that he had not produced any receipts to

support the claim, nor did he file an electronic certificate to verify the photographs produced as exhibits. That their client was forced to repair to avoid further losses. He affirmed that business permits are issued to their clients in the suit premises.

22. In re-exam, the Plaintiff's witness stated that the figures for damages claimed were based on market values used during the renovations. He did not and could not know the name of the driver of the bulldozer. The photographs were taken in 2010 while the demolition was ongoing. He reiterated that he was not present when the process started, but he found it was still ongoing on arrival at the suit premises. He insisted that Subri Motors' fence had been demolished.
23. Mr Fredrick Ochanda who is the Assistant Director of Development and Planning in the Urban Planning and Development Department at the 5th Defendant testified on behalf of the Defendants by adopting his witness statement dated 9.10.2024. He also produced the documents in the list dated 25.3.2025 as exhibits in support of the Defendants' case.
24. Dw states that On 26th February, 2010 their officers were doing a routine inspection of developments within the Lavington area and came across a development of a car bazaar. Upon enquiry, it was concluded that the developer did not have any approvals for the construction of the car bazaar from the City Council of Nairobi

25. The witness states that although the Plaintiff received approval for building plans intended for shops, offices, and restaurants, the site was instead used for a car bazaar. This unauthorised use caused numerous residents' complaints and physical interference with James Gichuru Road and nearby properties. As a result, because the Plaintiff's existing business permits do not cover automotive sales and no formal "change of user" was obtained as required by the Physical Planning Act and local building regulations, **Enforcement Notice No. 8358** was issued on 26 February 2010 to address these legal and regulatory breaches.
26. The 5th Defendant argues that although they learned through these proceedings that unidentified individuals entered the Plaintiff's premises on 19 July 2010 to carry out demolitions, the County has no knowledge of or involvement with those responsible for the destruction. Additionally, their official records show that the Plaintiff has consistently failed to comply with the requirements outlined in the previously issued enforcement notice.
27. During cross-examination by Ms Kiiru, learned counsel for the Plaintiff, the witness stated that the notice was issued due to the illegal conversion and was to be enforced immediately. He mentioned that the notice was deposited during a routine inspection and that no permits were produced for the car bazaar. He also denied being aware of any court order at the time of entering the premises.

The witness noted that the notice is dated 26.2.2010, and the demolition took place on 19.7.2010 by unknown persons. In re-examination, the witness denied that the 5th Defendant authorised the demolitions.

Plaintiff's Submissions:

28. The Plaintiff's submissions are dated 8th December, 2025 where it submitted on the following issues:

- a) *Whether an enforcement notice was served on the Plaintiff to justify the Defendant's activities?*
- b) *Whether the alleged enforcement notice is valid, scrutiny of the enforcement notice?*
- c) *Having established its case, should the Plaintiff's suit be allowed as prayed?*

29. Regarding the first issue, the Plaintiff argued that no notice was served upon them as claimed by the Defendants and that no evidence was provided to substantiate the alleged service. The Plaintiff further contended that the demolition of the property was such a drastic and draconian measure that it lacked justification, as there was a specific criterion that should have been followed before proceeding with the demolition. The Plaintiff also asserted that his rights were violated due to the absence of adequate prior warning.

30. That the balance of probabilities shifts in the Plaintiff's favour and the Defendants cannot feign ignorance as to who demolished the Plaintiff's premises yet they explained that the enforcement notice was given to the Plaintiff seeking to have the premises demolished and it was not in line with section 30 of the Physical Planning Act. That the failure to produce a notice rendered the whole process illegal and unjustified.
31. For the second issue, the Plaintiff submitted that the alleged enforcement notice was never issued, contrary to section 30(1) of the Physical Planning Act, Cap 286, which requires that no one shall carry out development in any area without the permission of the local authority. The Plaintiff explained that it obtained all relevant approvals to establish the physical structures on L.R No. 3734/843.
32. It further submitted that the applications for approval were submitted on 12th October 2009. Although the Defendants claimed that the approvals granted were not for the car bazaar, the permissions issued were for commercial use, as outlined under section 30(6). The permission was granted, and a letter of approval was issued by the 5th Defendant, permitting the Plaintiff to construct shops and offices on the said land.
33. Submitting on the third issue, the Plaintiff urged this court to find that it had established its case. That it had demonstrated that it was not legally or factually

possible for the Defendants to have issued a notice to the Plaintiff and that the said property was destroyed using the Defendants' bulldozer registration number KAW 824Z. Furthermore, it has proved the destruction caused damage amounting to KShs. 15,696,000/- despite being aware of the pending court order issued on the 6th of July, 2007.

34. The Plaintiff describes these actions as trespass and urged this Court to order that they pay the special damages as particularized in paragraph 25 of the Plaintiff. The Plaintiff relied on the cases *inter alia*, NJOROGE VS. NYAGISERA (2024) KEHC 5163 (KLR) where the Court held that:

“In the instant case, it is evident that the appellant’s claim for costs of repairs are special damages claim in the form of material damage. The Appellant herein produced as evidence photographs and the assessor’s report showing the extent of material damage on his motor vehicle.”

35. On the heading of exemplary damages, the Plaintiff submitted that the Defendants demolished its suit property in total disregard of the court order restraining them and their agents from trespassing, entering, demolishing, or in any manner interfering with the Plaintiff’s possession of the property. That the Defendants acted with impunity and destroyed the Plaintiff’s property worth millions, defying the existing court orders. It proposed an award of **KShs.**

15,000,000 is sufficient exemplary damages. This was based on the property's value, the loss incurred, and the time taken to recover it over the years.

36. The Plaintiff was categorical that this Court should not allow the Defendants to benefit from their misconduct and that the suggested sum of KShs. 15,000,000 will be fair in the circumstances and act as a great deterrence to the public not to disobey court orders. It cited the case of **GRINYAMWAYA VS. NAIROBI CITY COMMISSION (1985) KEHC 38 (KLR)** where the Court held that:

“The Plaintiff’s property was damaged without any cause. Such actions would not only amount to trespass to property but would make the defendant to be charged for a criminal offence of malicious destroying, damaging property, for which the Defendants would be punished...”

37. Also, in **C.A.M VS. ROYAL MEDIA SERVICES LIMITED (2013) KECA 178 (KLR)** the Court of Appeal noted that exemplary damages needed to be enhanced in order to prevent, deter and punish the Respondent from such reckless or negligent publication in the future.

The Defendants’ Submissions:

38. The Defendants’ submissions are dated 3rd March, 2026, submitting on the following issues for determination:

a) Whether the development on L.R No. 3734/843 was lawful;

- b) Whether the enforcement notice was lawful and validly served upon the Plaintiff;*
- c) Whether the evidence adduced by the Plaintiff was admissible*
- d) Whether the Defendants unlawfully and illegally demolished or caused to be demolished structures on the suit properties*
- e) Whether the Plaintiff has suffered loss and damages;*
- f) Whether the Plaintiff has dispensed the burden of proof.*

39. On the first question, the Defendants faulted the Plaintiff for failing to prove its case to the court and that the lawfulness of the approvals obtained for the allegedly demolished structures is unfounded and baseless ab initio. That section **30(1) of the Physical Planning Act**, prohibited the Plaintiff from carrying out any development of the land without the approval of the County.
40. Further, any material changes to the structures contrary to the approved developments on L.R No. 3734/843 ought to have been made following further approvals and specifically approvals for change of use as per the Physical Planning Act, the Nairobi County's bylaws and Building Codes. That the single business permits sought by the Plaintiff were for large traders, shops, retail shops and not for a car bazaar. They argued that the Plaintiff neglected to seek proper approval from the 5th Defendant before using the land in contravention to the existing approvals.

41. For the second issue, the Defendants submitted that enforcement notice serial no. 8352, which was served upon the Plaintiff on 26th February 2010, notified it of the illegal conversion of the premises. They state the notice was served on the occupiers of the premises and not on the Plaintiff itself, as it had already sublet the premises.

42. The Defendants submitted that PW1 had admitted that there was a car bazaar on the land with three different business permits for different business entities but failed to produce any CR 12 to prove the ownership of the businesses. The Defendants urged this Court to find that PW1 was irregularly before court because he lacked authority to testify on the Plaintiff's behalf. They relied on the case of EAST AFRICAN PORTLAND CEMENT LTD VS. CAPITAL MARKETS AUTHORITY & 4 OTHERS (2014) eKLR where the Court held that:

“....This is a petition allegedly filed by the East African Portland Cement...For any action or proceedings to be taken in its name, such action or proceedings must be authorized in accordance with the Articles of Association. It is not a procedural technicality to require a company authorizes proceedings brought in its name.”

43. On the fourth issue, the Defendants relied on the case of GIELLA VS. CASSMAN BROWN & CO. LTD (1973) EA 358 and that of MRAO LTD

VS. FIRST AMERICAN BANK OF KENYA LTD & 2 OTHERS (2003) KLR 123, arguing that the Plaintiff had not proved a prima facie case regarding the allegations levelled against them in the Plaint. They contended that there was no evidence to support the claim that the Defendants entered into the suit parcels illegally with a group of rowdy men. It is their argument that the Plaintiff also failed to prove that the damages caused to the building on the suit property were unlawful and a direct violation of the approvals granted by the 5th Defendant. The Plaintiff relied on the case of **ALI & 3 OTHERS VS. CITY COUNCIL OF NAIROBI (2003) PG 596-600**, where the Court held that:

“Where one is dissatisfied with the decision of the Local Authority declining permission to undertake development on a specified parcel of land he is entitled to appeal against the said decision pursuant to the Physical Planning Act, CAP 286. The City Council of Nairobi is a local authority and just like the Government no injunction can lie against it and its officers. The proper remedy in such a course would be with an application by way of judicial review.”

44. Additionally, they argue that the Plaintiff has not proven to the required standard that sums are due and owing as special damages. The Plaintiff’s failure to specify the particular losses or damages in the Plaint nor did they

bother to provide evidence to support their claim, despite the allegations that they had incurred millions in reconstruction after the alleged demolition.

45. While submitting on exemplary damages, the Defendants placed reliance in the case of GODFREY JULIS NDUMBA MBOGORI VS. NAIROBI CITY COUNTY (2018) eKLR where the Court held that:

“Exemplary damages are essentially different from ordinary damages. The object of damages in the usual sense of the term is compensate. The object of exemplary damages is to punish and deter...”

46. They submitted that if its true the 1st to 4th Defendant were government employees, the Plaintiff has failed to prove to the threshold on the issue exemplary damages against them. That he had also failed to prove that the demolition if conducted by the 5th Defendant was unlawful and unjustified. They urged this Court to disregard the prayer for exemplary damages.
47. The Defendants reiterated that PW1’s testimony should be treated with an abundance of caution despite being given under oath. They relied on the case of AHMED MOHAMMED NOOR VS. ABDI AZIZ OSMAN (2019) eKLR where the Court held that:

“...for clarity, the legal burden of proof in a case is always static and rests on the Claimant throughout the trial. It is only the evidential

burden of proof which may shift to the Defendant depending on the nature and effect of evidence adduced by the Claimant.”

48. That the Plaintiff failed to tender any evidence of its relationship to the suit premises and it was clear that he was not a proper witness as he did not have firsthand information as to the occurrences of the 19th of July, 2010. They urged this Court to dismiss the case with costs.

ANALYSIS AND DETERMINATION:

49. I have reviewed the pleadings, the evidence and the submissions on record and now proceed to determine whether the Plaintiff has proved its case since the burden of proof lies on its shoulders.

50. **Halsburys Laws of England, Vol. 17** at paragraph 260, defines proof as follows:

“Proof is that which leads to a conviction as to the truth or falsity of alleged facts which are the subject of inquiry. Proof refers to evidence which satisfies the court as to the truth or falsity of a fact. Generally, as we well know, the burden of proof lies on the party who asserts the truth of the issue in dispute. If that party adduces sufficient evidence to raise a presumption that what is claimed is true, the burden passes to the other party who will fail unless sufficient evidence is adduced to rebut the presumption.”

51. The plaintiff accused the Defendants of illegal entry onto the suit premises and demolishing their structures, which were itemised and valued at Kshs 15,696,000. Of course, the Defendants deny authorising the demolition but, on the other hand, state that the Plaintiff's car bazaar business was not licensed. In order to succeed, the Plaintiff must prove the following;

- a. That there was actual demolition.**
- b. That it was the Defendants who undertook the alleged demolition.**
- c. That there was no notice.**
- d. That the Plaintiff suffered loss.**

52. On the first point, the Plaintiff stated that on 19th July 2010, the 1st to 4th Defendants armed with demolition equipment and accompanied with rowdy men entered the suit premises and proceeded with wanton demolition of shops and offices erected thereon. It was their evidence that they also demolished the fence.

53. This was the description made by the Plaintiff's witness, "*each of the defendants, from the 1st to the 4th, wrongfully and maliciously demolished the property situate on LR. No. 3734/843 and interfered with its exclusive use and possession by the unlawful means with the intention of depriving it of enjoyment of the said premises. In carrying out the illegal demolition, the*

defendants were using bulldozer Volvo registration number KAW 824Z which belongs to the 5th Defendant and other unidentified vehicles.”

54. The witness affirmed that he did not know the 1st to 4th Defendants before this incident. He was not on site when the operation began but came and found them still continuing with the demolitions. In fact in cross-exam he said he was told the 1st to 4th Defendants were there but he does not disclose the source of this information. I find the evidence placing the 1st to 4th Defendants at the scene of the incident very weak.
55. Despite want of proof of the presence of the 1st to 4th Defendants on the scene, the Plaintiff provided evidence of demolition having taken place by agents of the 5th Defendant. This included a picture of the bulldozer with number plates bearing the colours of the 5th Defendant's vehicles. There are pictures of structures demolished at the suit premises in addition to the 5th Defendant admitting issuance of the enforcement notice dated 26th February, 2010. The Defendants' defence was that the businesses carried out within the suit property were illegal, hence the consequences.
56. The Defendants repeatedly cited the provisions of section 30(1) of the Physical Planning Act Cap 286 (repealed) which states thus;

“No person shall carry out development within the area of a local authority without a development permission granted by the local authority under section 33.”

57. However, the notice they relied on was general, not directed to a disclosed person nor detailing the offending structures. It was addressed to the occupant of plot no 3734/843 to **“vacate and remove/demolish the illegal structures.”**

58. In their statement of defence and witness evidence, the 5th Defendant states that they issued the notice following complaints from residents and during a routine inspection when they observed the car bazaar business. However, the 5th Defendant’s witness initially denied that their office authorised the demolition but later contradicted himself by saying that the structures were demolished because they were built without approval. This casts doubt on the truthfulness of this witness.

59. Was the notice served that required compliance by the Plaintiff and which it failed to comply with? The enforcement notice dated 26.2.2010 highlighted the illegality, thus;

i. Illegal conversion of use from residential to commercial use (car bazaar)

60. The notice required compliance immediately. The Plaintiff denied receiving this notice, while the Defendants asserted it was deposited on the suit premises.

Since the Plaintiff denied receipt of this notice, the burden shifted on the 5th Defendant to prove that indeed the notice was served and show evidence of such service. See the holding in the case of **AHMED MOHAMMED NOOR VS. ABDI AZIZ OSMAN** supra.

61. Assuming the impugned notice was served in February for immediate action, would it still be a valid notice for the actions done in July? On the face of the notice, it was to take effect immediately unless there was an appeal to the Liaison Committee. Hence, the same not having been executed then, it is this court's opinion under the doctrine of reasonableness (under articles 10 and 47 of the constitution) that a fresh notice ought to have been issued for the impugned demolitions.
62. On account that there was no evidence of proof of service upon the Plaintiff or any of the occupant of the suit premises, I find there was no valid notice served for the demolitions which took place in July 2010.
63. Did the Plaintiff suffer any loss? There are photographs showing demolitions of structures in the suit premises. The Plaintiff produced architectural drawings presented to the 5th Defendant seeking their approval. The 5th Defendant confirms that through the office of Director of City Planning and Architecture, the development was approved for shops and offices but not for the business of the car bazaar.

64. The Plaintiff produced single business permits issued by the 5th Defendant for traders, shops, retail store etc. The 5th Defendant does not deny issuing these permits but argues that the car bazaar was not licensed. The 5th Defendant ought to have investigated which of these shops was operating the car bazaar or just ordered for the removal of the impugned cars from the suit premises.
65. The 5th Defendant through his witness did not demonstrate that all these shops/offices were doing car bazaar business. Even if that were the case, having approved the construction of the structures, they did not state under what law they would demolish the approved structures because the business conducted therein was unlawful.
66. To the extent that the approved developments which had been put up by the Plaintiff were destroyed without notice, I hold that it has shown that they suffered loss. The loss under special damages were set out in paragraph 25 of the plaint and under paragraph 22 of the witness statement of Anthony Mwaniki. The law requires the Plaintiff to strictly prove this kind of damage. See the case of Capital Fish Kenya Ltd vs Kenya Power Ltd cited by the Defendants herein above.
67. It is undisputed that the Plaintiff did not produce any receipts. Their witness stated that the figures were based on market values for purchases made during the renovations. Even the receipts for the purchases during the renovations

were not produced, nor did the Plaintiff's client, who carried out the renovations, provide testimony. Hence, I find no evidence supporting the special damages claimed in the sum of Kshs 15,696,000 and therefore make no award.

68. The Plaintiff also prayed for exemplary Damages, and urged the court to award it Kshs 15,000,000. Exemplary damages is also referred to as punitive damages and is generally awarded to act as a deterrent. In this case, the 5th Defendant carried out wanton demolitions including of structures they had earlier approved their developments. This entitles the Plaintiff to damages to compensate them for the loss. In the case of *Kimani v Attorney General* (1969) E. A 502, where Sir Charles Newbold said thus;

“There are a number of decisions in East Africa to the nature and measure of damages. Broadly, they are to this effect; that whether it be contract or tort, damages are to be compensatory, save in exceptional circumstances. They are compensatory when they give back to the Plaintiff what he has lost. In other words, the Plaintiff so far as money is concerned is to be put in the position in which he was immediately prior to the wrongdoing which gave rise to his complaint.”

69. Guided by the above decision and taking into consideration the inflationary trends, I award the Plaintiff exemplary damages assessed at KShs Eight

Million (Kes 8,000,0000) as reasonable compensation for the demolished structures. I also find they are entitled to costs of the suit. Both orders apply against the 5th Defendant.

70. The claim against the 1st to 4th Defendants are dismissed with no order as to costs since they were jointly represented by counsel of the 5th Defendant.

Dated, Signed and Delivered at KISII virtually, on 19th Day of March, 2026

A. OMOLLO

JUDGE