



**Mudavadi (Suing as the Administrator of the Estate of Rosebella Jerono
Mudavadi - Deceased) & 7 others v Kariuki (Sued as Administrator of the Estate
of David Kariuki Waiganjo - Deceased) & 3 others (Environment and Land
Case 140 of 2019) [2025] KEELC 5891 (KLR) (6 August 2025) (Judgment)**

Neutral citation: [2025] KEELC 5891 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND CASE 140 OF 2019**

**MAO ODENY, J
AUGUST 6, 2025**

BETWEEN

**GEOFFREY KEGODE MUDAVADI (SUING AS THE ADMINISTRATOR OF THE
ESTATE OF ROSEBELLA JERONO MUDAVADI - DECEASED) ... 1ST PLAINTIFF**
JOSEPH MOJONG 2ND PLAINTIFF
ROBERT LANGAT 3RD PLAINTIFF
RICHARD AMDANY 4TH PLAINTIFF
JOSHUA CHEPSERGON 5TH PLAINTIFF
JOSHUA SOI 6TH PLAINTIFF
FRANCIS RUTO 7TH PLAINTIFF
SAMMARY CHEPKEMOI 8TH PLAINTIFF

AND

**JANE NJAMBI KARIUKI (SUED AS ADMINISTRATOR OF THE ESTATE OF
DAVID KARIUKI WAIGANJO - DECEASED) 1ST DEFENDANT**
GILLETTE AUCTIONEERS 2ND DEFENDANT
THE OCS NAKURU POLICE STATION 3RD DEFENDANT
THE HONOURABLE ATTORNEY GENERAL 4TH DEFENDANT

((FORMERLY HCC NO 77 OF 2011))



JUDGMENT

1. The Plaintiff sued the Defendant vide plaint dated 10th February, 2014 which was further amended on 16th June, 2022 seeking the following orders:
 - a. Special damages in the sum of Kshs 8, 253, 567/= being the value of the property destroyed as per the valuation dated 26/1/2010 and household items and cash destroyed during the demolition on 24th December, 2009.
 - b. A permanent injunction restraining the 1st defendant Jane Njambi Kariuki [the administrator of the estate of David Kariuki Waiganjo by himself, her agents, her servants and whosoever from selling and or disposing of land parcels number Miti Mingi/Mbaruk Block 3/793, [Barut] LR No. Nakuru Municipality Block 29/915 [Ronda] pending the hearing and determination of this suit. [sic]
 - c. General damages for trespass.
 - d. Any other relief this Honourable court deems fit and just to grant.
 - e. Costs of the suit.

PLAINTIFF'S CASE

2. PW1 James Patrick Cheruiyot testified that has been the Chairman of Koyunkei Housing Co-operative Society Ltd since its inception in 1998 and knows the 1st to 8th Plaintiffs who are members of Koyunkei Housing Co-operative Society Ltd.
3. It was PW1's evidence that they bought 2.5 acres or 0.96 hectares plot known as Miti Mingi Mbaruk Block 3/788 [Barut] from Rosebella [the 1st deceased plaintiff] in the year 2002 of which they paid the full consideration of Kshs.750, 000/= in 2004. PW1 further testified that the 1st Plaintiff had subdivided the plot into 17 plots of which they bought 16 of them and distributed to their members and gave them allotment letters.
4. It was PW1's testimony that they entered into sale agreements with the 1st Plaintiff dated 17th October 2002, 4th September 2003 and 5th March 2004, respectively which he produced as PExb.1A, 1B and 1C. He stated that on 24th December 2019, he was called and told that their members' houses were being demolished.
5. PW1 testified that he rushed to the scene and found that it was the OCS Nakuru Police Station who was in charge of demolition having been issued with a court order in respect of plot No. 793 and not their plots. That they went ahead and demolished houses belonging to Robert Langat, Joseph Mojong, Richard Adamy, Joshua Chepsergon, Joshua Soi, Francis Ruto and Sammy Chepkemoi which were on Plot No. 788. PW1 testified that they lodged a protest with the OCPD Nakuru.
6. Upon cross-examination by Mr. Waiganjo for the 1st Defendant, PW1 stated that the 1st Plaintiff sold to them the land parcel and she no longer has an interest in the plot or in this case. He stated that plot 788 had not been transferred in favour of Koyunkei Housing Co-operative Society Ltd, though they had requested the 1st Plaintiff to transfer it to them. PW1 further stated that Koyunkei Housing Co-operative Society Ltd does not have any claim in this case and he does not know if the 2nd plaintiff or 3rd plaintiff have any titles.



7. PW1 went on to state that members were to follow up on their own titles and that plot 788 is within Nakuru Municipality whereby a building plan is a prerequisite before construction. PW1 further stated that the constructions were carried out in the year 2003 and he does not know if approved building plans were needed during that year. PW1 further stated that during the purchase of the plot he met the 1st Plaintiff who showed him the plot. PW1 informed the court that the 1st Plaintiff was not living on the plot but had a Manager who resided on the plot.
8. According to PW1, the OCS had an order allowing demolition on plot 793, and that he was present together with an auctioneer known as Gillete [the 2nd Defendant]. PW1 stated that the 1st Plaintiff told them that she had a dispute with David Waiganjo [1st deceased Defendant] whereby they had a case in court which was concluded. PW1 was shown a copy of the title for plot 793 and confirmed that it was in David Waiganjo's name issued on 5th May 1993 measuring 1.20 Hectares. He also stated that David Waiganjo's land is 1.8 acres and not 1.20 Hectares which means that it has reduced to 0.72 Hectares which was done by the company. PW1 informed the court that the title does not correspond to the land on the ground.
9. PW1 further testified that he does not know if any legal proceedings were initiated by the company to reduce David Waiganjo's land size, but stated that it was not true that reduced land is what was taken by the 1st Plaintiff. He stated that the size of the 1st Plaintiff's land is 0.96 Hectares and the title was issued on 3rd August 1993 and that it was issued after David Waiganjo's title. PW1 was shown the Green Card for plot 788 and he stated that it shows that the 1st Plaintiff had a title issued on 30th January 1992 and a reissue of the title deed on 3rd August 1993. He stated that he does not know where the original title is.
10. It was PW1's testimony that the 1st Plaintiff told him that there was a High Court Case between her and Waiganjo in which Waiganjo was stopped from entering the land. PW1 further stated that he is not aware of the Land Dispute No. 1/2004 or a decision dated 21st December 2004, but is aware that the 1st Plaintiff moved to court vide Nakuru HCC 11/2006 after the decision of the Tribunal. PW1 stated that he can see a judgment dated 14th July 2006 in HCCC 11/2006 [Nakuru] and the judgment states that plot 788 measures 0.96 Hectares. PW1 stated that he is not aware that the tribunal award had been adopted as a judgment of the court.
11. PW1 was shown the ruling delivered on 24th November 2005 by E. Ominde SRM in CM Nakuru Land Dispute No. 2 of 2005 and stated that it was a ruling on an application to set aside the award which was dismissed. PW1 stated that the Tribunal's findings were in December 2004, the same month when 1st plaintiff sold the land to them and that the green card indicates that plot No. 793 certified as at 30th October 2015 is 1.20 Hectares.
12. PW1 confirmed that many plot sizes were corrected by the company without invitation to the owner and that the RIM [Registered Index Map] for Miti Mingi/Mbaruk Block 3 [Batuti] 4th Edition stamped on 19th June 1996 indicates that plot No. 793 looks bigger than plot 788. PW1 stated that Rift Valley Enterprises Ltd. did the changes.
13. Upon cross-examination by Mr. Kahiga, PW1 stated that Koyunkei Housing Co-operative Society Ltd was started in 1998 as a society and were issued with certificate by the Registrar of Societies. PW1 stated that they have annual returns which show that he is the Chairman. PW1 stated that their last AGM [Annual General Meeting] where elections were held was in June 2018 and he has not produced any list of members, although they have over 1000 members. He confirmed that they have other parcels of land besides the land in dispute in this case.



14. PW1 referred to PExb.1A, 1B and 1C and stated that the agreement was not done before an advocate but they went to the District Commissioner's Office. PW1 stated that they did a search before they bought the land but did not have the search in court. PW1 referred to the 1st Defendant's supplementary list of documents dated 6th April 2017 and stated that he sees item No. 1 on the said list which is a decree issued in Nakuru CM Land Disputes Award No. 2 of 200, which indicated that there was a caution and an order for removal of the caution was made.
15. PW1 stated that the Sale Agreements that he has produced do not have any sketch showing the portions bought. Further that the land was not transferred to Koyunkei Housing Co-operative Society Ltd as they wanted the land transferred directly to members. PW1 stated that they did not seek any consent of the Land Control Board for the agreement between them and the 1st Plaintiff.
16. It was PW1's evidence that he is not aware of any order reversing the Subordinate Court decree and that when they were purchasing the land he was not aware of any court order allowing 1st Plaintiff to sell the land and this case was filed to assist them to move into the land, but they were already on the land. It was his testimony that neither the OCS nor the Auctioneer had the area map and that he is a member and not an official of the company.
17. PW1 stated that he has not seen any entry in the green card showing a reduction in the area of plot No.793 and that when they bought the land in 2002 the map was different from the one in court, further that he did not present any alternative map to the OCS or the auctioneer.
18. Upon cross-examination by Mr. Ondieki, PW1 stated that the eviction and demolition had not yet started when he arrived, further that the police were giving protection and were not involved in the demolition. PW1 stated that in the sale agreement, the 1st Plaintiff handed over the title to Koyunkei Housing Co-operative Society Ltd after completion of payment, that he had the title but was not served with the demolition order since he was not a party to the case.
19. PW1 stated that they gave the plaintiffs allotment letters and Plot Nos 788 and 793 are separated by a wire fence. PW1 stated that he was not aware that the court order stated that the 1st plaintiff was in occupation of David Waiganjo's property.
20. Upon re-examination by Mr. Simiyu, PW1 testified that an individual and not the Municipal Council was doing the eviction. PW1 referred to the Decree in the 1st Defendant's supplementary list of documents and stated that the decree in Land Dispute No. 2 did not talk of the 1st Plaintiff giving vacant possession. PW1 testified that the 1st Plaintiff did not return the title for plot 788 and was not cited for contempt for not returning the title. He testified that document No. 2 on the 1st Defendant's supplementary list stated that land 793 had been decreed to David Waiganjo.
21. PW1 further testified that he was neither aware if the 1st Plaintiff ever occupied plot 793 nor that she was served with the application that gave rise to the order. PW1 testified that the plaintiffs were unceremoniously evicted without any notice on 24th December 2004.
22. PW2, Joseph Mojong adopted his witness statement dated 4th April 2011 and testified that he knows the 1st Defendant who is the wife of Mr. Waiganjo Kariuki who was his neighbour. PW2 testified that he lived on land belonging to Rosebella Mudavadi [the 1st deceased Plaintiff] and Kariuki [the 1st deceased Defendant] bought his land from another person. He testified that Rosebella's land was Miti Mingi Mbaruk/788 measuring about 2 acres.
23. PW2 testified that he worked for Rosebella from his youth and she therefore gave him one plot on the said land where he still lives. PW2 testified that he started living there in 1972 and in December 2009



- Mr. Kariuki came with a lorry full of police officers. He testified that a person by the name Khaemba, OCS Nakuru called him outside and asked him if he knew Kariuki and was told to remove his goods from the house. PW2 testified that he questioned the directive and when he gave him a decree, he was informed that it was an old one and was subsequently evicted.
24. It was PW2's testimony that his house was cut down with a power saw and they had no case over the land. PW2 testified that the next day, they filed a complaint and wrote a statement at the Police Station. It was further his testimony that they sued because their property including houses were destroyed and that the land they are occupying does not belong to Kariuki. He testified that Rosebella's land was larger in size and there was once a boundary dispute but it ended at the High Court. PW2 testified that Kariuki came with Gillette auctioneers [the 2nd Defendant] on that day and they did not investigate properly.
 25. PW2 testified that he has not even repaired the house to date and that Mr. Waiganjo was jailed for contempt by the court. PW2 testified that there is a valuation report on the particulars of damage which he pleaded at paragraph 16 1[a] and [b] of the Plaintiff and testified that he lost property worth KShs. 1,111,950/= and asked for compensation.
 26. PW2 testified that he got a power of attorney to represent Rosebella to prosecute this case on her behalf which he produced as "PExh.2" PW2 testified that the original receipts were destroyed by rain when the house was demolished, further that he knows the map of the area and that they are not on Mr. Waiganjo's land.
 27. Upon cross-examination by Mr. Waiganjo, PW2 stated that he is in court as the person whose property was destroyed and as Rosebella's Attorney. He stated that there has been a boundary dispute between Rosebella, owner of Plot No. Miti Mingi Mbaruk/BK3/788 and Mr. Kariuki of plot is No. Mbaruk Miti Mingi BK 4/795, which was concluded. PW2 further stated that the auctioneer did not verify the land to evict persons from and he had a decree regarding plot No. 793, which was from the lower court.
 28. PW2 was shown the decision of the Land Dispute Tribunal and he stated that in respect of document number 8 of the 1st Defendant's list of documents, it is not true that Rosebella's land was 0.48 Hectare, and the Tribunal's award has never been reversed. PW2 stated that he does not know that Rosebella had a title to plot No. 788 in 1992 and he does not know that he got another title in 1993.
 29. PW2 further stated that he has never seen the plan on the site for these plots and his plot is in the map, and further that Plot No. 788 was subdivided and his plot is No.5006. PW2 stated that the mutation form reads 0.96 Ha and that the Tribunal finding that Rosebella's land was 0.48 Ha was erroneous. PW2 was shown the copy of RIM for Miti Mingi Mbaruk/BK3 and he stated that Plot No. 788 is not there as the drawing is different from the one on the mutation which is the correct one. PW2 stated that the RIM was not used in respect of the suit land and the map is inapplicable. Further that the stamp on the RIM is not genuine.
 30. PW2 stated that Rosebella never sold the land while the case was pending and when the Tribunal case was concluded, the restriction on plot 788 was lifted. PW2 also stated that when the auctioneer came, Rosebella had no property on the land and that the properties that were destroyed belonged to the Plaintiffs who had one title deed.
 31. PW2 stated that he subdivided the title as per the power of Attorney and that his claim is not for KShs. 558,700/= but for above KShs. 1,000,000/= as his computations and the damage occurred in December. PW2 stated that the Police Officer told him to remove his goods from the house and lost KShs. 300,000/= cash together with his things that were in the house.



32. PW2 told the court that his house was made of mud which he still resides in, further that Waiganjo was committed for contempt vide a decree in HCC No. 11/2006 and that he got the power of Attorney after the dispute was over.
33. Upon Cross-examination by Mr. Muriithi, PW2 stated that he started working for Rosebella in 1972 and showed the court his plot on the mutation. He stated that Kalenjin Enterprises gave them the whole land and he went to live on his portion.
34. PW2 stated that Rosebella returned the title to the Registrar and then she went to the High Court. He stated that he sued Gillette Auctioneers [the 2nd Defendant] as they ought to have verified which land was affected by the order, hence both the auctioneer and Kariuki are to blame for the demolitions.
35. Upon cross-examination by Mr. Ondieki, PW2 stated that he produced the ruling on the injunction by Hon. Martha Koome and he stated that maybe he would not have suffered any loss if he had removed his goods from the house. He stated that he reported the matter to the police and got an Occurrence Book number, which he has not brought to court. PW2 stated that the inventory of the loss was done and the valuer came to the site after about two days and if anything got lost, the demolisher was liable. He further stated that the OCS had a court order dated 23rd December 2009 issued 22nd December 2009.
36. PW2 stated that by the time of demolition, they did not have titles, and that his land was a gift from Rosebella. He also gave evidence that the others bought their portions and had all the transaction documents.
37. Upon re-examination by Simiyu, PW2 testified that he neither knows what the Tribunal's award was nor whether Rosebella returned the title to the Land Registrar. PW2 testified that he is still in possession of the suit land as the case was concluded.
38. PW3 Robert Kipkemoi Langat adopted his witness statement dated 4th November 2021 and stated that he is an accountant and that his claim is for the wrongful demolition of his residential house within Kapkures Location on plot No. Miti Mingi Mbaruk Block 3/788, more specifically parcel Nos 5010, 5011 and 5013 which he bought in 2020 at Kshs 50,000/ each through Koyunkei Housing Co-operative Society Ltd, and issued with original letters of allotment. PW3 produced the allotment letters dated 6th November 2003 and 28th December 2003 as PExh.3 [a] and PExh.3 [b].
39. PW3 further testified that he had built a permanent house on the two parcels of which he begun construction in 2004 and completed in May 2009 and occupied the house in July 2009. PW3 testified that on 24th December 2009, while with his family, they saw group of people with the Kenya Police, including Mr. Waiganjo with tools, and that the OCS showed him a court order and told him to vacate.
40. It was PW3's testimony that the court order read plot 793 and he informed them that their plot was 788 which order was directed to Rosebella and not him. He testified that his house was demolished from about 9:30-10:00am under Mr. Waiganjo's instructions and his wife collapsed. It was his testimony that he had a modern family house with two bedrooms a master bedroom, a kitchen and furniture. PW3 testified that he lost radios, cameras. Professional books, briefcase with his academic certificates and Kshs. 200,000/= in cash. It was further PW3's testimony that his claim is for Kshs. 595,500/= in terms of the goods and the cash, and 300 chickens which were trampled on and some stolen.
41. Upon cross-examination by Mr. Waiganjo, PW3 stated that he did not buy the land from Rosebella but was allocated as a member of the Company. He stated that the day before, he had been paid Kshs. 220,000/= and Kshs. 180,000/= was in his briefcase. He stated that he had crops of a 50x100 plot which were trampled on but did not call an Agricultural Officer to assess the loss.



42. PW3 was shown the Green Card for plot 793 and confirmed that it shows 9th August 1991 as the date of opening of the card which was the same date as Rosebella's card. PW3 informed the court that there was no re- issue of the title entry on the Green card for plot No. 793.
43. PW3 informed the court that the map is not genuine as plot 793 is bigger than plot 798. PW3 was shown the letter from the District Land Registrar to Rosebella and Kariuki in respect of an amendment of Rosebella's green card pursuant to a court order where her title was to be rectified and the same was to be returned for amendment. He further denied that he was illegally on the land that is why he was evicted.
44. Upon cross-examination by Mr. Ondieki, PW3 stated that he did a background check on the land and then invested. PW3 stated that he bought other properties through the society and he was not shown the green card to show the history of the land. PW3 stated that his letter of allotment is dated 6th November 2003 and he held 150,000 shares.
45. Upon re-examination by Mr. Simiyu, PW3 testified that Mr. Kariuki had no license to evict anyone from the land and that there are two maps, one in the District Surveyor's report and has never seen the one-labelled 4th Edition.
46. PW4 Richard Ambany testified adopted his witness statement dated 4th April 2011 as his evidence and stated that he is a clerk in the Ministry of Health at K.M.T.C [Kenya Medical Training College]. He testified that he has been a member of Koyumkei Housing Cooperative Society Ltd since 2003, and that the society purchased land from Rosebella, Mbaruk Miti Mingi/Mbaruk Block 3/788 in 2002. PW4 testified that he purchased two plots from the society on 16th November 2003 and 9th December 2003, respectively, and produced the allotment letters.
47. PW4 testified that after buying the land, he built a semi-permanent house in 2004 and developed the land. PW4 further stated that on 24th December 2009 at about 9.00am he was at home and he saw Kariuki and 200 people, including Police whereby some men were armed with machetes with a court order to demolish their houses.
48. PW4 stated that he lost his posho mill and he produced the original receipt as PExh.6, further that he has just bought maize from Bomet cereals for Kshs. 62,000/= and produced the receipt dated 20th December 2009 as PExh.7. He also produced the receipt for the bicycle as PExh.8. PW4 testified that the water meter and furniture cost him Kshs. 35,000/= and he produce the receipts as PExh.9 [a] and PExh.9 [b].
49. PW4 produced the receipt showing the cost of a patient's medicine as PExh.10. PW4 testified that the court wrote to the District Surveyor to go to the site and ascertain the position of the two plots being 788 and 793 and the District Surveyor gave his report. He testified that their houses were demolished without notice on Thursday 24th December, 2009, a day before Christmas which caused their families loss and damage.
50. Upon cross-examination by Mr. Waiganjo, PW4 stated that he got to know of the Rosebella-Kariuki dispute after the High Court case and the land was bought by their society in 2002. He stated that they conducted a search on 21st October, 2003, and confirmed that the title had an acreage of 0.96 Ha issued on 3rd August, 1993 at entry No. 2 dated 30th January, 1992. PW4 disagreed that Rosebella interfered with the map and took over another person's land.
51. Upon cross-examination by Mr. Mwangi, PW4 stated that they occupy 0.9 Hetares, which is 2.4 acres, and he does not know about the size of Kariuki's land. PW4 informed the court that if it is found that



- they are encroaching on plot 793 they would have no issue. PW4 stated that he has not heard of any difference in the acreage of his land being plot Nos. 5018 and 5019.
52. PW5 Joshua Soi adopted his witness statement dated 4th April 2011 and stated that he is a retired National Cereals and Produce Board employee who lost property valued at Kshs. 284,150/= as per the valuation report and the items listed in his statement. He stated that he lost everything including the receipts during the eviction and demolition.
 53. Upon cross-examination by Mr. Waiganjo, PW5 stated that he bought plots Nos. 5021 and 5022 which are subdivisions that resulted from Rosebella's land; Block 3/788 from Kayumkei Co-operative Society. PW5 stated that the land dispute between Rosebella and Waiganjo does not concern him and he cannot comment on the same.
 54. Upon cross-examination by Mr. Mwangi, PW5 stated that the 2nd defendant acted together with Waiganjo in the eviction. Upon re-examination by Mr. Simiyu, PW5 testified that the Tribunal award did not have any eviction order.
 55. PW6 Caleb Kipkurui Kotut a retired District Surveyor, Nakuru County, stated that the court ordered that he visit parcel Nos. Mbaruk Block 3/788 and Block 3/793 to establish the owners and file a report. PW6 testified that he went to the site on 10th February, 2010 and met the chief, and the plaintiffs' representative one Mr. Joseph Mojong and others. He stated that he got the measurement for plot 788 and the plot was 0.96Ha [2.4 acres] while plot No. 793 was 0.5 [1.2 acres]. He filed a report in court dated 9th February, 2010 on 5th April, 2011 which he produced as PExh 13
 56. PW6 further stated that the demolished houses were on parcel No. 788 on the newly created parcels Nos. 5006 – 5022 and that parcel No. 793 had no buildings on it. PW6 testified that the two parcels are positioned on the ground as reflected on the RIM.
 57. Upon cross-examination by Mr. Waiganjo, PW6 stated that he had worked in Nakuru between 2000 and 2017 and he retired as Senior Surveyor Assistant II. PW6 stated that as at 9th February, 2010, he was not the District Surveyor Nakuru and one David Mwangi was the District Surveyor. PW6 further stated that he does not have any letter instructing him to visit the suit land but got a copy of the title for parcel No. 788 from the Plaintiffs.
 58. PW6 was shown DMFI-11 and stated that there is a parcel number 788 and 793 and that he used a different map during the survey. He further stated that plot 793 in the map looks bigger than plot 788. He informed the court that if this is a proper and correct map, then it must have been changed. The maps [RIM] for Miti Mingi Mbaruk [Barut] dated 17th October, 2003 and 16th November 2011 were produced by consent. He also stated that the entry number 19 means that there was a change of boundary area that was done in 2000 and it affected the area of plot No. 793 among others. PW6 further stated that normally owners of affected plots are involved.
 59. PW6 told the court that his report would be affected by the contents of the award if implemented and further that if the map DMFI-11 had been used, the Plaintiffs' houses would have been in plot No. 793. PW6 was shown PExh.11Entry No. 38 and stated that Plot No. 788 was subdivided on 31st January, 2002 and the area of plot 788 was increased then subdivided.
 60. Upon cross-examination by Mr. Mwangi, PW6 stated that his findings would have been different if he had known of the Land Registrar's letter dated 29th March, 2006. Further that he would have given a report explaining the discrepancies on the site. He stated that in the earlier version plot 793 is bigger and in the new version plot 788 is bigger.



61. Upon re-examination by Mr. Simiyu, PW6 testified that the amendment of RIMs is done by the Provincial Surveyor's office and they use RIMs when they go to work on sites. He stated that older maps cannot be found and when going to the site, they use the current map, which he used. PW6 testified that sometimes there are discrepancies between title and ground sizes.
62. PW7, Francis Ngetich Ruto a former Telkom company employee, adopted his witness statement as part of his evidence-in-chief and testified that he lost 16 items worth approximately Kshs.516, 585/=. He testified that he had photocopies of the receipts and took the originals to his home in Timboroa. PW7 stated that he had copies of receipts for the following items: Power saw model 268 [2 pieces] one power saw model 272 X P [TPC] Panasonic Radio M300, Radio Model Tr 8500; Motorola Phone C115V; chain saw spares/services; which were marked for identification and also said that he lost cash worth Kshs.193,631/=
63. Upon cross-examination by Mr. Waiganjo, PW7 stated that he is a member of Koyumkei Housing Cooperative Limited, which purchased the plot from Rosebella, and he purchased from Koyumkei Housing Cooperative Limited. He stated that he had met Mr. Waiganjo Kariuki before 2003 and he was his neighbour. PW7 stated that he cannot know the size of his land and plot 788 was bigger than plot 793.
64. Upon cross-examination by Mr. Mwangi, PW7 stated that they were told to remove their things of which members of the public stole some. He stated that he became aware of the boundary dispute when the demolition occurred.
65. Upon cross-examination by Chepkirui, PW7 stated that the police came with a court order and they had a right to come to the land. He stated that the court order was to remove people from plot No. 793. Upon re-examination by Simiyu, PW7 testified that the orders were that Rosebella surrenders the title and was not to evict them and that they were never given notice.
66. PW8m Joseph Inoti a practicing valuer and a Land Economist, testified that he was approached by Koyumkei Society Ltd to carry out a valuation of the houses that were demolished on Plot No. Miti Mingi Mbaruk/788. He stated that he inspected houses in January 2010 and found they had been demolished as per the details on page 6.
67. He tabulated the damage as follows:
 - a. Kshs. 523,250/= as per finding on page 10.
 - b. Kshs. 217,350/- for Mr. Ruto's – plot No. 5007 at per page 13.
 - c. Plot No. 5008 [Sammy Tanui's] Kshs.1,058, 000/=, plot 5009, 5010 and 5011
 - d. Kshs.2, 403,500/= plot No. 5018 and 5019 had a value of Kshs.833, 750/=, plot 5016 had a value of Ksh 747,500/=, plot 5018 and 5019 – the value was Ksh 833,750/=, plots 5021 and 5022 – the value was Ksh 339,250/=. He testified that he took photographs and some were totally damaged and some demolished in part as per photographs at page 28 – 31 of his report which is dated 26th January, 2010 which was produced as PExh.14.
68. Upon cross-examination by Mr. Waiganjo, PW8 stated that he conducted a search before the valuation and the registered owner as at 2nd January, 2010 was Rosebella Jerono Mudavadi. He stated that the parcels ranging from 506 -2022 are in the map. PW8 further stated that the damage was to the specific plots, which were the product of the subdivision of plot 788, but the titles were not registered. He stated that he was never told that the proprietor of parcel 793 wanted to evict then. He stated that the map is the 28th Edition and attached the map to identify the affected parcels.



69. Upon cross-examination by Mr. Mwangi, PW8 stated that if they were relying on that map document No. 5, then the plaintiffs would be trespassing and he relied on the map, the title and search. He stated that parcel 793 is 1.2Ha, and parcel 788 is 0.96Ha. PW8 informed the court that parcel 793 ought to be bigger and that is not the case on the site.
70. Upon re-examination by Mr. Simiyu, PW8 testified that his work was to carry out the valuation and he was not to follow up the history of the two titles. He testified that upon amendment plots cease to exist and that they use the latest survey map.
71. PW9 Joshua Chepsergon adopted his witness statement and testified that he bought a 50X 100 feet plot for Kshs 50,000/ in 2003 from Koyumkei Co-operative Society, built a house which was demolished. It was his evidence that David Waiganjo demolished their houses with the help of the Police and he lost property worth lost Ksh.100,500/= and produced the original receipts of the items as PExh.15[a] – PExh.15[h]. PW9 testified that the total loss was Ksh.318,532/= in respect of the household items.
72. Upon cross-examination by Mr. Waiganjo, PW9 stated that if it had been confirmed that he was on plot 793, he would have vacated. He stated that they bought a plot excised from plot 788. He stated that seven plots had been built up and the demolition took place in the seven plots. PW9 stated that he lost all his property and he never reported to the police.
73. Upon cross-examination by Mr. Mwasi, PW9 stated that the court order was read to him and he had not produced anything to show his membership in the society. Upon cross-examination by Ms. Chepkirui, PW9 stated that he does not recall producing an agreement to show purchase and he never produced the title here in court.
74. PW10, Chepkemoi Tanui adopted her witness statement dated 4th April 2011 and testified that she purchased a 50x100 plot from the Koyumkei Society Limited as a member. She stated that she was evicted from her plot on 24th December, 2009 at 9:30am and incurred a loss of Kshs. 680,000/= which she seeks compensation.
75. Upon cross-examination by Mr. Waiganjo, PW10 stated that her plot is No. 5008 and Koyumkei Society Limited did a search which indicated that Rosebella was the owner of plot No. 788. She stated that she had not gotten the title by the time Waiganjo and the police came to demolish.
76. Upon cross-examination by Mr. Kibet, PW10 stated that her houses were damaged and she is claiming damages. She testified that she filed a valuation report and knew there was an order dated 22nd December, 2009 giving the 2nd Defendant authority to evict. PW10 stated that she did not have a title at the time of eviction and Rosebella is the one who had a title. She stated that David Kariuki Waiganjo also had a title. Upon re-examination by Mr. Simiyu, PW10 testified that she was not given any order by the 2nd Defendant.

DEFENDANTS' CASE

77. DW1, Jane Njambi Kariuki adopted her witness statement dated 11th November 2011 and stated that she is the widow and the Administrator of the estate of the late David Kariuki Waiganjo. She testified that she also filed a list of documents dated 11th November, 2011 which she produced as Dex. No. 1 to 10.
78. DW1 testified that she filed a supplementary list of documents dated 6th April, 2017 produced as Dex. No.11, 12 & 13 and a further list of documents on 14th August, 2018 which she produced as Dex. No. 14. DW1 testified that Kariuki's parcel No Miti Mingi/Mbaruk/3/793 was 3 acres and Rosebella's parcel No. Miti Mingi/Mbaruk/ Block 3/788 was 1 acre.



79. DW1 testified that they took their title in 1993 and Rosebella also took hers in the same year. It was her evidence that they had a case at the Tribunal as Rosebella claimed 2½ acres from Kariuki. She further stated that Rosebella trespassed on Kariuki's land and took 1 acre and the tribunal ruled that the land belonged to Kariuki and that is when she came to court.
80. It was DW1's testimony that Rosbella was told to return the title deed to be given a title for 1 acre but she did not return, prompting the Land Registrar to summon them to his office but Rosebella did not avail herself. She further stated that David Waiganjo Kariuki appeared before the Registrar who cancelled the title and wrote a letter office and the Registrar cancelled the title and wrote a letter.
81. DW1 testified that the court gave an order for demolition and eviction of the people who were on the suit land. DW1 was shown the map of the suit plot No. 793 and 788 and testified that it shows that plot No. 793 is bigger in size. She further stated that the houses that were demolished belonged to Rosebella and the receipts are not in her name, further that she does not know the plaintiffs apart from Rosebella.
82. Upon cross-examination by Mr. Kibet, DW1 stated that her late husband sued Rosebella and got an order for eviction. She stated that they engaged the 2nd Defendant who was enforcing court orders. Upon cross-examination by Ms. Chepkurui, DW1 stated that the police were ordered to enforce the order for eviction.
83. Upon cross-examination by Mr. Simiyu, DW1 stated that her husband was given a court order on 22nd December, 2009 and there was an order on 6th May, 2009 restraining her husband from interfering with plot No. 788. DW1 stated that her husband was jailed for three months for contempt of court and he filed an appeal but he died before the appeal was heard. DW1 stated that it is not true that the houses were on plot No. 788, and that her husband had given notice to Rosebella. DW1 stated that she has not filed a counterclaim for cancellation or rectification of the titles.
84. Upon re-examination by Mr. Waiganjo, DW1 testified that the tribunal ordered Rosebella to return the title to be rectified but she did not comply and that the demolished houses were on Kariuki's plot. DW1 stated that the court pronounced that the plaintiff's [Rosebella] cannot be given any compensation without evidence in proper proceedings. She testified that it is not true that her husband's plot was 1.2 acres and that her husband had a court order for eviction together with police assistance for enforcement of the order.

PLAINTIFFS'S SUBMISSIONS

85. Counsel for the Plaintiff filed submissions dated 26th February, 2025 and submitted that it was the court's observation in HCC No 11 of 2006 that it's judgment was only limited to contempt proceedings and that a fresh suit for compensation had to be filed if at all the Plaintiffs wished to be compensated and that is the subject matter of this suit. Counsel submitted that the 2nd Defendant never gave any notice to the Plaintiff's and that the law does not allow an auctioneer to attach one's property without issuing a proclamation notice.
86. Counsel submitted that the 3rd Defendant failed to verify the authenticity of the court order and also failed to forward the eviction order to the County Security Committee. It was counsel's submission that the 1st Defendant never gave an early notice and one was issued on 24th December, 2009, a day before Christmas when the courts were not sitting, having the eviction application heard ex-parte, mistook the tribunal's judgement and intentionally carried out an eviction on a parcel of land that belonged to the Plaintiffs.
87. Counsel relied on the case of Grace Wambui Kabira v Honourable Attorney General Nairobi ELC No 1433 of 2014 and urged the court to grant the prayers sought.



1ST DEFENDANT'S SUBMISSIONS

88. Counsel for the 1st Defendant filed submissions dated 28th May, 2025 and identified the following issues for determination:
- a. On which property was the eviction carried out?
 - b. Whether the eviction was lawful?
 - c. Whether the Plaintiffs are entitled to the orders sought?
89. On the first issue, counsel submitted that the structures that were demolished were erected on Miti Mingi/Mbaruk Block 3/793 which were the subject matter of the eviction order issued in Nakuru CMC No 2 of 2005. Counsel relied on Section 3 of the Trespass Act and Section 19 of the Registered Land Act [now repealed].
90. On the second issue, counsel submitted that the court bailiff lawfully executed the eviction orders with the assistance of the Police. Counsel submitted that the 1st Defendant was not in charge of the demolition and if there was any error or mistake in the course of execution of the orders, he cannot be held liable for such error and or mistake.
91. On the third issue, counsel relied on Section 107 of the Evidence Act and submitted that the Plaintiffs failed to prove that they own Miti Mingi Block 3/788, that they suffered actual damage as a result of the 1st Defendant's conduct and that the 1st Defendant is liable for the loss. Counsel urged the court to dismiss the Plaintiffs' claim against the 1st Defendant and hold that the eviction was properly executed on Miti Mingi Mbaruk Block 3/793 as ordered by the court. Counsel also prayed for costs of the suit.

2ND DEFENDANT'S SUBMISSIONS

92. Counsel for the 2nd Defendant filed submissions dated 18th June, 2025 and identified the following issues for determination:
- a. Whether the 2nd Defendant has locus standi to be sued or to sue?
 - b. Whether the eviction was undertaken on all that parcel of land known as Miti/Mingi/Mbaruk Block 3/793 [Mbarut]?
 - c. Whether the 2nd Defendant is liable of trespass?
 - d. Whether the 2nd Defendant is an agent of the 1st Defendant and the court can be held liable?
 - e. Whether the Plaintiffs have proved their case to their required standard of proof?
 - f. Whether costs should issue?
93. On the first issue, counsel submitted that the 2nd Defendant is described as Gillette Auctioneers which is a business name incapable of suing or being sued. Counsel relied on Order 4 Rule 4 of the Civil Procedure Rules 2010 and the cases of Ruga Distributors Limited v Nairobi Bottlers Limited [2015] KEHC 214 [KLR], Sisilia Nyakoe & Another v Attorney General & 4 others [2021] eKLR, Law Society of Kenya v Commissioner of Lands & Others, Nakuru High Court Civil Case No 464 of 2000 and Alfred Njau and Others v City Council of Nairobi [1982] KAR 229. Counsel submitted that the issue of locus standi goes into the jurisdiction of this court and counsel urged the court to dismiss the suit against the 2nd Defendant.



94. On the second issue, counsel submitted that eviction was undertaken on Miti Mingi/Mbaruk Block 3/793 [Mbarut] and the same gave effect to the decision by the Land Disputes Tribunal dated 21st December, 2004. Counsel submitted that the 2nd Defendant was not at fault whatsoever. On the third issue, counsel submitted that a claim for trespass can only be raised by a party who is able to demonstrate its ownership of the property in question which the Plaintiffs have failed to demonstrate. It was counsel's submission that eviction was undertaken in Miti Mingi/Mbaruk Block 3/793 [Mbarut] as ordered by the court.
95. On the fourth issue, counsel submitted that the 2nd Defendant was a mere agent and was not liable. Counsel relied on Section 6 of the [Judicature Act](#) and the following cases: Thomas Masare v George Anyoke Rogito & 3 others [2009] KEHC 2049 [KLR], David Njuguna Ngotho v Family Bank Limited & another [2018] KEHC 3701 [KLR], Republic v The Chairman, Business Premises Rent Tribunal Ex parte Velji Premchand Shah [2012] KEHC 2425 [KLR] and Stephen Mwallyo Mbondo v County Government of Kilifi [2021] KEELRC 42 [KLR].
96. On the fifth issue, counsel submitted that the Plaintiffs have failed to prove their case and urged the court to dismiss the suit against the 2nd Defendant with costs. Counsel relied on Section 27 of the [Civil Procedure Act](#) and the case of Orix Oil Limited v Paul Kabeu [2014] eKLR.

ANALYSIS AND DETERMINATION

97. The issues for determination are:
- a. Whether the order for eviction and demolition of the Plaintiffs' properties was effected on Miti/Mingi/Mbaruk Block 3/793 [Mbarut] or on Miti Mingi Mbaruk/Block 3/788 [Barut]
 - b. Whether the Plaintiffs are entitled to the orders of special damages of Kshs 8, 253, 567/= being the value of the property destroyed as per the valuation dated 26/1/2010, household items and cash during the demolition on 24th December, 2009.
 - c. Whether the Plaintiffs' are entitled to an order of a permanent injunction restraining the 1st Defendant from interfering with the suit land.
98. The Plaintiffs' case is that they bought land parcel No. Mingi/Mbaruk Block 3/788 [Barut] from Koyunkei Housing Co-operative Society Ltd who initially purchased the land from Rosebella Mudavadi the 1st Plaintiff. They further testified that they built both permanent and temporary houses on their respective portions of land.
99. The Plaintiffs stated that sometimes in the year 2004, the 1st Defendant referred a land dispute between himself and the 1st Plaintiff to Nakuru Land Dispute Tribunal on 22nd December, 2009, whereby the 1st Defendant obtained an order to evict people who were living on his parcel number Miti Mingi/Mbaruk Block 3/793 vide Nakuru Land Disputes Tribunal Award No. 2 of 2005.
100. It is the Plaintiffs' case that instead of evicting people on the said land parcel, with the assistance of the 2nd and 3rd Defendants on 24th December, 2009, they jointly invaded land parcel number Miti Mingi Mbaruk/Block 3/788 [Barut] and carried out massive destruction of property built by the Plaintiffs rendering them homeless. The Plaintiffs in their further amended plaint have tabulated the loss suffered totaling to Ksh 8, 252, 567/=
101. It is the Plaintiff's case that the 1st and 3rd Defendants ignored the judgment delivered in Nakuru High Court Civil Suit No. 11 of 2006 in which it was decreed that land parcel number Miti Mingi Mbaruk/



- Block 3/788 [Barut] was the property of the 1st Plaintiff and the 1st Defendant was prohibited by way of a permanent injunction from entering the said land.
102. The 1st Defendant stated that the 1st Plaintiff encroached parcel No Miti Mingi/Mbaruk Block 3/793 and erected illegal structures that were the subject of eviction in Chief Magistrate Land Dispute Tribunal No 2 of 2005- David Kariuki Waiganjo v Rosebella Jerono Mudavadi.
 103. The 1st Defendant's case that parcel No Miti Mingi/Mbaruk Block 3/793 measures 1.20 hectares as per the title deed issued on 5th May, 1993 and that it was the duty of the 2nd Defendant to ensure that he evicted only the persons occupying title No Miti Mingi/Mbaruk Block 3/793 but not those in occupation of Miti Mingi/Mbaruk Block 3/788.
 104. It is the 2nd Defendant's case that David Kariuki Waiganjo [Deceased] was present when the eviction occurred and had accompanied Philip Mwaura Munyua T/A Gillette Auctioneers during the exercise, who was an agent of David Kariuki Waiganjo- [deceased]. The 2nd Defendant confirmed that he was not aware of another suit and/or any other dispute between the 1st Plaintiff and the 1st Defendant and that he was guided by the court order dated 22nd December, 2009, the title deed of Miti Mingi/Mbaruk Block 3/793 [Mbarut] and the registry map sheet no 119/111/6/11 which showed the same measured 1.20ha whereas the neighboring Plot No. Miti Mingi/Mbaruk Block 3/788 [Mbarut] measured 0.48 ha. The 2nd Defendants also confirmed that the eviction was undertaken on all that parcel of land known as Miti/Mingi/Mbaruk Block 3/793 [Mbarut].
 105. This is a case, which involves compensation for demolition and destruction of property by the defendants purportedly pursuant to a court order. The court is not invited to adjudicate on the ownership of the two parcels of land. The court has been called upon to adjudicate on the issue of compensation by way of special damages of the wrongful demolition of the plaintiffs' houses on Plot No. 788. The 1st Defendant also does not claim Plot No. 788 and the background of this case shows that they have had a boundary dispute which was referred to the Land Disputes Tribunal.
 106. It is also not disputed that the husband of the 1st Defendant David Waiganjo was restrained by a court order from interfering with the suit land and later jailed for contempt of Court for a period of three months. It was the testimony of the 1st Defendant that the husband was jailed for contempt of court and that he filed an appeal but he died while the appeal was still pending. This shows that there was some wrongdoing by the late Waiganjo in respect of the suit land.
 107. PW8 stated that he conducted a search before the valuation and the registered owner of the suit plot as at 2nd January, 2010 was Rosebella Jerono Mudavadi. He stated that the parcels ranging from 506 -2022 are in the map and that the damage was to the specific plots, which were as a result of subdivision of plot 788, but titles were not yet issued.
 108. Similarly, PW6 testified that the houses demolished were on parcel No. 788 on the newly created parcels Nos. 5006 – 5022 and that there were no buildings on parcel No. 793. The Plaintiffs are still in possession of their respective parcels of land and this is strange as I would have expected the 1st Defendant to lay a claim on them if they were actually trespassers as she would want the court to believe.
 109. I think this is a case where an eviction went wrong by demolishing structures in the wrong parcel of land or that the 1st defendant had perceived that the land belonged to him. The 1st Defendant admitted that she did not file a counterclaim. If they had issues with the boundary or encroachment, how were they to solve the problem or were they litigating by instalments?



110. The Plaintiffs stated that they bought the suit parcels of land from the Society which had purchased the same from Rosebella Mudavadi which they subsequently subdivided and got their respective portions. The Defendant does not dispute that there is a distinct parcel of land known as plot No. 788.
111. Where eviction and demolition are done on the wrong parcel of land, the party affected is entitled to compensation for loss occasioned or suffered by the act of wrongful eviction. The evidence on record shows that the Plaintiffs were given neither notice to vacate nor an opportunity to remove their belongings. The Plaintiffs explained to the defendants that the land they were occupying was Plot No 788 and that the order read Plot No. 793 but they proceeded with the eviction.
112. This is a case where the Plaintiffs are seeking special damages for the the wrongful demolition of their houses which must be specifically pleaded and proved. In the case of John Richard Okuku Oloo versus South Nyanza Sugar Co. Ltd [2013] eKLR, the Court of Appeal stated and held:

We agree with the learned judge that a claim for special damages must indeed be specifically pleaded and proved with a degree of certainty and particularity but we must add that, that degree and certainty must necessarily depend on the circumstances and the nature of the act complained of.

In the Jivanji case [supra], a decision of this court differently constituted, it was held that the degree of certainty and particularity depends on the nature of the acts complained of. The following passage which partly quotes *Coast Bus Service Limited v Murunga & others Nairobi CA No. 192 of 1992 [ur]* appears in the Jivanji case:

“It is now trite law that special damages must first be pleaded and then strictly proved. There is a long line of authorities to that effect and if any were required, we would cite those of *Kampala City Council v Nakaye* [1972] EA 446, *Ouma v Nairobi City Council* [1976] KLR 297 and the latest decision of this Court on this point which appears to be *Eldama Ravine Distributors Limited and another v Chebon* civil appeal number 22 of 1991 [UR]. In the latest case, Cockar JA who dealt with the issue of special damages said in his judgement:

“It has time and again been held by the courts in Kenya that a claim for each particular type of special damage must be pleaded. In *Ouma v Nairobi City Council* [1976] KR 304 after stressing the need for a plaintiff in order to succeed on a claim for specified damages. Chesoni J quoted in support the following passage from Bowen LJ’s judgment at 532-533 in *Ratcliffe v Evans* [1892] QB 524, an English leading case of pleading and proof of damage.

“The character of the acts themselves which produce the damage, and the circumstances under which those acts are done, must regulate the degree of certainty and particularity with which the damage done ought to be stated and proved. As much certainty and particularity must be insisted on, both in pleading and proof of damage, as is reasonable, having regard to the circumstances and to the nature of the acts themselves by which the damage is done. To insist upon less would be to relax old and intelligible principles. To insist upon more would be the vainest pedantry.”

113. The Plaintiffs were under a duty to prove that they are the owners / in occupation of the suit land, which is not in dispute. They produced agreements, allotment letters, and maps. They further gave evidence through their elaborate testimonies how the destruction and demolitions took place, photographs and receipts to show the loss and damage. The Plaintiffs also engaged the services of



experts, a surveyor and a Valuer who did the valuation of the loss immediately after the demolitions and filed/ produced a valuation report in court. The Plaintiffs further produced the receipts of the items destroyed.

114. Even if the Defendants wanted to evict the Plaintiffs on parcel No. 793, which is not the case, the law requires that they give proper notice and evict in a humane manner and not destroy property indiscriminately.

115. In the case of Union Bank of Nigeria PLC versus Alhaji Adams Ayabule & another [2011] JELR 48225 [SC] [SC 221/2005 [16/2/2011]], Mahmud Mohammed, JSC. delivering the judgment of the Supreme court of Nigeria stated:

“I must emphasize that the law is firmly established that special damages must be pleaded with distinct particularity and strictly proved and as such a court is not entitled to make an award for special damages based on conjecture or on some fluid and speculative estimate of loss sustained by a plaintiff.... Therefore, as far as the requirement of the law are concerned on the award of special damages, a trial court cannot make its own individual arbitrary assessment of what it conceives the plaintiff may be entitled to. What the law requires in such a case is for the court to act strictly on the hard facts presented before the court and accepted by it as establishing the amount claimed justifying the award.”

116. The Plaintiffs specifically pleaded the special damages and proved via evidence and documentation of the loss suffered. The Plaintiffs also sought for general damages for the wrongful demolitions and eviction. The eviction and the demolition of the Plaintiffs’ houses was actually unlawful as earlier stated that this was an eviction gone wrong in a wrong plot. It follows that the Plaintiffs are also entitled to general damages.

117. I have considered the pleadings; the evidence on record and the documents produced and find that the plaintiffs are entitled to the orders sought. Consequently, I issue the following orders:

- a. Special damages in the sum of Kshs 8, 253, 567/= are hereby awarded to the Plaintiffs as against the 1st and 2nd Defendants being the value of the property destroyed as per the valuation dated 26th January, 2010 during the demolition on 24th December, 2009.
- b. General damages in the sum of Ksh 3,000,000/= is hereby awarded to the Plaintiffs to be paid by the 1st and 2nd Defendants.
- c. The 1st Defendant is hereby restrained from interfering with the Plaintiffs’ suit land.
- d. Costs of the suit to the Plaintiff to be paid by the 1st and 2nd Defendants.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 6TH DAY OF AUGUST 2025.

M. A. ODENY

JUDGE

