Matu & 3 others v Guchu (Land Case 20 of 2015)
[2024] KEELC 213 (KLR) (25 January 2024) (Judgment)

Neutral citation: [2024] KEELC 213 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MALINDI

LAND CASE 20 OF 2015

EK MAKORI, J

JANUARY 25, 2024

BETWEEN

GRACE GATHONI MATU & 3 OTHERS ..... APPELLANT

AND

EPHANTUS KIHARA GUCHU ..... RESPONDENT

(Appeal arising from the judgment dated 18th March 2015 delivered by Hon. C.M Nzibe – RM, appealed to this Court vide Memorandum of Appeal dated 9th April 2015)

JUDGMENT

1. A total of 12 grounds of appeal have been proffered in this appeal:
    a. The judgment delivered was null and void and unenforceable having been made against people who were `not parties to this suit
    b. The judgment was irregular and invalid having been purportedly dated when the trial Magistrate was not sitting.
    c. The Magistrate acted as a litigant in the case and litigated the case on behalf of the plaintiffs in the Subordinate Court.
    d. The trial Court awarded what was not pleaded.
    e. The award of Kshs. 300,000/= had no basis since it was not pleaded.
    f. The trial Court justified an illegality by holding that the sale agreement was valid albeit riddled with illegalities and irregularities.
    g. The suit in the Lower Court was fatally defective having been filed against parties who were not part of the sale transaction.

h. The trial Court relied on documents that were contested having been made by makers who were never called to testify.

i. The suit filed was against 5 individuals and did not incorporate the registered owner of the suit property.

j. The sale agreement by the individuals was null and void as the property owner was not involved and therefore null and void.

k. The purchaser did not do due diligence, conduct searches, and do all necessary things to make sure the purchase was above board and that the land was available for sale.

l. The loss incurred by the plaintiff was self-inflicted and could not call for compensation.

And therefore, the appellant sought the setting aside of the judgment, award, and decree entered in favour of the respondent and substituted with an order dismissing the plaintiff's case in the Lower Court with costs.

2. A first appellate court is mandated to re-evaluate the evidence before it and arrive at its own independent decision on whether or not to allow the appeal. A first appellate court is empowered to subject the whole of the evidence to a fresh and exhaustive scrutiny and make conclusions about it, bearing in mind that it did not have the opportunity of seeing and hearing the witnesses firsthand. This duty was stated in Selle & Another v Associated Motor Boat Co. Ltd. & others and in Peters v Sunday Post Limited [1968]E. A 268.

3. The dispute in this matter revolves around a sale agreement of a portion of land known as Lamu/ Lake Kenyatta/1/278. The respondent was said to have coincidentally been the husband of one Cecilia Kihara, who was initially sued as the 2nd defendant- in the plaint dated 14th June 2011 as one of the officials of Multipurpose Women Group, with three others - Alice M. Magu, Teresiah Wanjohi, and Hellen Muthoni.

4. The appellants' case in the Lower Court, was that the 2nd defendant who doubled as a treasurer and wife of the plaintiff, conspired with other officials and then, sold the land in question to the second defendant using the plaintiff's pseudo-name.

5. According to the appellants, the sale was not sanctioned in a general meeting and members of the group were never aware of it. No minutes were taken in any sitting authorizing the sale. The members came to learn of it when building materials were being dropped on the site for construction. It was then disclosed that the respondent had purchased the suit property. It was resisted by the members. A warning letter was sent to the respondent with the area administration being notified. The respondent did not stop construction and the members (not the officials), realizing he was high handed stormed the site and brought down the structures.

6. Later the members convened a general meeting and elected new officials and according to the appellants the corrupt (sic) officials were removed from office.

7. The plaint was later amended to incorporate the new office bearers. The land was later subdivided and distributed to the members of the group. Presently it is alleged, that respectively member holds title to their respective portions as distributed. As of today, the sued officials do not hold office as subsequent officials were appointed.

8. The judgment obtained was directed for execution against the officials and not a society called Multi-Purpose Women Group hence the current appeal.

9. The respondent testified as a sole witness in the Lower Court and stated that he had been approached by the group to purchase part of their land because they had financial difficulties that arose from a land matter they were pursuing and lacked money. The group sold him the land at a price of Kshs 30,000/- he embarked on development and construction and incurred an expense of Kshs. 48,890/-

10. The appellants submitted that the sale was minus the relevant Control Board as required by law citing the case of - In re Estate of Shee Mohamed Athman (Deceased) [2017] eKLR where Chitembwe J. held that consent from a Land Control Board was a prerequisite in the sale of agricultural land. Therefore, the finding that the sale was legal by the Magistrate had no basis in law.

11. On execution the Court of Appeal found that execution should have been directed to the Group and not individuals. If the execution were to happen to individuals, then it should be directed to the office bearers when the sale transaction happened.

12. On the grounds of appeal, the appellants argued that the judgment was directed to the wrong people – officials who were never in office at the time of the sale agreement. The judgment in place cannot be executed against them. The record ought to be made clear that the execution be directed to the former officials.

13. On the fairness of the Magistrate, the appellants contended that the judgment was read when she was not sitting as per the attached cause list of the day. It was read in the absence of parties.

14. The appellants allege that their contention that the judgment should have been directed to the group and not individuals was never addressed. This violates Order 24 of the Civil Procedure Rules. None of the 5 officials owned the land. The sale was by Multipurpose Women Group through its officials then, and not the ones elected later as can be seen in this case the decision in Bellevue Development Company Ltd v Vinayak Builder Ltd and Another [2014] eKLR, was quoted to support the contention.

15. The appellants argued that the land owned by the group consisted of 10 acres, the trial Court did not specify which portion the injunction issued could apply.

16. On damages the appellants said that the award of Kshs. 300,000/= had no basis in law. If any recovery is to be made, then in the absence of the Land Control Board's consent it had to be the purchase price.

17. The respondents submitted that on the issue of lack of consent from the relevant Land Control Board, the issue has been crystalized by the Court of Appeal and it is no longer tenable as a ground for voiding the sale of agricultural land, citing the case of Aliaza v Saul (Civil Appeal 134 of 2017) [2022] KECA 583 (KLR) (24 June 2022) (Judgment).

18. On the issue of General Damages, the respondent asserted that given the decision that consent from the Land Control Board is no longer a prerequisite in the validation of the sale of agricultural land, an award of Kshs. 300,000/= was justified and regular.

19. As for the office bearers who have been sued – the Court of Appeal already resolved the same and ruled that the parties sued were in their capacities as officials of the Society and therefore proper.

20. 12 grounds were submitted on appeal. I have considered those grounds and reckoned that they can be collapsed as follows:

    a. whether the appellants were properly sued in the Lower Court.

    b. Whether the judgment herein was rendered irregular on allegations that it was delivered on a day the trial Magistrate was not sitting and therefore an imputation that she aided the respondent in his case as against the respondents and therefore she was biased.

c. Whether the trial Court arrived at its decision based on documents that were produced by parties who were not makers.

d. Whether the agreement was riddled with illegalities and irregularities, particularly for lack of consent from the relevant Land Control Board.

e. Whether the award of Kshs 300,000/= in General Damages for breach of contract had no basis.

f. Who should bear the costs of this suit?

21. On the issue of capacity to sue or to be sued, this Court (Olola J.) had considered the current appeal dismissed the Lower Court's finding, and set aside the decree and judgment thereto on the one sole ground of capacity as follows:

> " In my mind, a number of individuals may come together and form an identifiable group. They may take action as a group but that does not mean that the group is not vested with legal capacity to sue and to be sued. Unincorporated entities have no legal capacity to sue or to be sued in their own names. Mpeketoni Multi-Purpose Women was such an entity.
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> Arising from the foregoing, I did not consider that I needed to look at any other of the 12 grounds of appeal listed herein. In the circumstances, the judgment, award, and decrees(sic) entered in favour of the respondent is hereby set aside and instead substituted with an order striking out the plaintiff's case in the lower court."

22. The Court of Appeal instead held:

> " In the present case, the learned judge appears to have overlooked that the society was sued through its officials with the result that he fell into error in ordering the striking out of the appellant's "case in the lower court".
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> Turning to the issue whether the judge erred in failing to consider the appeal before him in its entirety, it is common ground that beyond the question of capacity of the society to be sued, the judge did not consider any of the 12 grounds of appeal. Consequently, this Court does not have the benefit of the input by the High Court on the grievances raised by the respondent in its Memorandum of Appeal against the decision of the trial court"

23. Based on the extract I have cited, the Court of Appeal concluded that the appellants were legitimately sued in their capacity as Mpeketoni Multi-Purpose Women Group office bearers. As a result, the appellants were the office bearers and could be sued on behalf of the Society on the question of competence over whether or not they were officials at the time of entering the contested agreement, that issue then was resolved by the Superior Court. They were properly sued.

24. On whether the judgment rendered herein by the trial court is irregular and the Magistrate sided with the respondent, I see no basis in that allegation. I cannot delve into the circumstances under which the cause list shown was made. Or how the day could have looked like when the judgment was rendered, A cause list per se cannot be a basis to impute serious and ill motives on the Magistrate. In my view, it adds no value to this appeal. This is a lazy ground of appeal. The magistrate is not on trial in this appeal. Let's dwell on the merits. In golfing, we say - "eyes on the ball" – the merits of the appeal.

25. On whether the Court used secondary documents not produced by the makers, I have not been specifically shown which these documents are and whether there was raised objection on those documents and a ruling delivered by the Magistrate. The ground collapses.

26. The next issue is whether the sale was riddled with irregularities and illegalities arising from the failure to obtain consent from the relevant Land Control Board. On this issue, the appellants cited the case of - In re Estate of Shee Mohamed Athman (Deceased) [2017] eKLR, where Chitembwe J. faced a similar issue held as follows:

> " There are plenty of cases relating to the issue of lack of consent from the Land Control Board. In the case of Simiyu V Watambamala, Civil Appeal No. 34 of 1984 KLR [1985] 852. It was held that due to lack of consent in a controlled transaction, the sale agreement became void and the buyers could only seek the recovery of the purchase price. Similarly, in the case of Onyango & Another V Luwayi, (1986) KLR 513, it was held by the Court of Appeal that owing to the failure to obtain the consent of the Land Control Board within six (6) months, the sale transaction became void. In the case of Karuri V Gituru 1881 [KLR] 247, the Court of Appeal held that the provisions of the Land Control Board Act are of an imperative nature, there is no room for the application of any Doctrine of Equity to soften its harshness.
>
> Given the pleadings herein, I do find that if there was any sale agreement between the objector and the deceased, then such an agreement is void due to lack of consent from the Land Control Board. Although section 8 (1) of the *Land Control Act* empowers the court to extend the six months period, this cannot happen as the registered owner is now deceased. My finding on this issue is that the deceased did not sell the land to the objector. Apart from the purported sale agreement, there is no other evidence to show that there was any sale of land. No transfer was signed. No letter was written by the deceased to the Settlement Fund Trustees informing them about the sale of the land. The sale agreement was not witnessed by any independent party. PW3, the area chief simply wrote a letter to the public trustee. He did not witness the sale agreement. It was not seen by anyone else from 2001 upto 2009. The petitioners were not aware of the alleged sale agreement. Even if there was a sale agreement, I do find that the same is void due to lack of consent from the Land Control Board. The transaction was controlled. Section 22 of the *Land Control Act* takes effect and the objector's occupation of the land is deemed to be a criminal offence."

27. On the other hand, the respondents were of the view that the issue of consent from the Land Control Board nowadays is no longer necessary given the decision by the Court of Appeal in Aliaza v Saul (Civil Appeal 134 of 2017) [2022] KECA 583 (KLR) (24 June 2022) (Judgment) (see Mumbi JA.):

> " In my view, from the time the appellant entered the first of the two parcels of the suit land in 2002 and into the subsequent portion that he purchased in 2004, a constructive trust in his favour was created in respect of the land. Such trust, as was found by the court in the case of Macharia Mwangi Maina, became an overriding interest over the suit land. The failure on the part of the respondent to obtain the necessary consent from the Land Control Board within the required period of six (6) months to enable the appellant transfer the suit land into his name does not render the transaction void. Equity and fairness, the guiding principles in Article 10 of *the Constitution*, require that the *Land Control Act* is read and interpreted in a manner that does not aid a wrongdoer, but renders justice to a party in the position of the appellant."

28. In the two decisions cited obviously in the past the issue of consent from the Land Control Board was a must and as highlighted by the Court of Appeal Aliaza Case(supra):

> " As was recognized by this Court in the Macharia Mwangi Maina case, the *Land Control Act* is an old legislation, enacted in 1967. The public policy considerations underpinning the Act were well articulated in the Ole Tukai decision where this Court observed as follows: "What is beyond doubt, the paternalistic nuances of its colonial origins notwithstanding, is the fact that the enactment of the *Land Control Act* in 1967 was informed by noble and deliberate public policy considerations. The Act seeks to regulate transactions in agricultural land, to among other things avoid sub-division of land holdings into uneconomical units, thus undermining agricultural production; to mitigate the danger of landlessness inherent in unchecked sale and alienation of land; to control land holding by non-Kenyans, etc. It is for these reasons that in considering whether to grant or refuse consent regarding dealings in agricultural land, the land control board is obliged under the Act to consider, among others, such factors as the economic development of the land in question, the possibility of maintenance or improvement of standards of good husbandry; the agricultural land already owned by the proposed transferee; the fairness or unfairness of the proposed consideration or purchase price; and whether subdivision of the land in question would reduce the productivity of the land." (Emphasis added)."

29. That position has long transformed in tandem with *the Constitution* 2010, which now commands the Court to decide cases based on equity, fairness, and justice the Court of Appeal in the Aliaza Case (supra) (Kiage J. agreeing with Mumbi JA.), proceeded to state on that issue as follows:

> " Under the new constitutional dispensation and in light of the provisions of section 7 of the Sixth Schedule to *the Constitution*, the *Land Control Act* must be read in a manner that does not give succour to a party, such as the respondent, who wishes to renege on his contractual obligations in order to steal a match on the purchaser."

30. I agree with the position taken by the Court of Appeal on the issue of failure to obtain consent from the relevant land Control Board. The Court of Appeal, if I hear it well is saying that lack of consent per se cannot be used as a ground to deny a party who as a purchaser has done all that is required under the sun and the law to fulfill his part in a sale transaction – paid all the monies, required under the contract, taken possession, attempted to apply for consent but the vendor for all wrong reasons including the intention to defraud the purchaser, refuses to apply or endorse the consent and when sued to perform his part shrugs his arms and pleads 'lack of consent' from the Land Control Board. The Court of Appeal correctly asserted that it's not an honourable thing to do on the part of the vendor, which position I am persuaded to take.

31. From the record the trial Court did not direct its mind to the issue of consent from the Land control board. The Aliaza Case(supra) did not outlaw the provisions of the *Land Control Act* but rather said those provisions requiring consent from the Board have to be tinkered with the provisions of *the Constitution*, to conform with the latter where the lack of consent should not be a basis per se to create hardship to one party, usually where the vendor fails to complete his part and neglects to obtain or sign the necessary forms to get the consent, a constructive trust is inferred and the purchaser deemed to have properly discharged his part as the purchaser to pave way for issuance of title document of the purchased property to the purchaser. That is all that equity and fairness demand. Picking the words of Kiage JA - It is the honourable thing to do.

32. What we have in this case is that the respondent purchased the land from the appellants, and immediately embarked on construction oblivious that consent was necessary from the Land Control Board. There is nothing on record to show that an attempt was made to obtain such consent. Even if it were to be applied for, there had already brewed disquiet from the members of the Society who descended and brought down the structures he had placed on the construction site. The allegations put across were that the membership had not been consulted before the sale. Looking through the record, however, it will seem that on 7th November 2007, the group had consented to have a portion of their land sold for purposes of raising legal fees on a matter they were parties to, for purposes of defraying expenses and related activities. The main problem it would seem was that one of the officials happened to be the wife of the purchaser, the respondent herein. It is not true then that there was no ratification of the sale from the general membership as can be discerned from the record and the exhibits produced.

33. The Magistrate summed up her findings as follows:

> " The plaintiff herein has shown that the purchased land from the defendant group herein vide an agreement dated 24th October 2007. The said agreement was signed by the multi-purpose group officials and the land was sold for Kshs. 30,000/=. The plaintiff did pay for the land and was issued with a receipt and an allotment letter. He produced receipts as Exh. 5 totaling to Kashs. 48,890 /=. Once he completed construction in November 2011, the defendants through its representative's new officials attempted to stop the plaintiff from further construction on the suit land. The defendant went ahead and demolished the plaintiff's house. The plaintiff produced a photograph of the demolished house Exh. 7.
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> The defence produced Minutes dated 7th November 2007 and under Minutes 3/7/07 confirmed the intention of the group to sell the said land. They however stated that the plaintiff had acquired the land fraudulently when his wife was an official of the group. They stated that the purchase receipt could not be authenticated neither could the Minutes authorising the sale of the suit land. They stated that there was no way the group's land could be sold without the group's consent.
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> The agreement signed by the plaintiff and the defendant for the sale of the land was produced in Court. The group officials signed the agreement in their official capacity and as representatives of the whole group. The defence witness did confirm that indeed prior to them taking office, the defunct officials were lawful officials and signatories to the group. She also confirmed the stamp on the agreement and that the purchase receipts were those from the group. There was no evidence tendered to show that the same was procured fraudulently. Allegations of fraud must be strictly proved. Although the standard of proof may not be so heavy as to require proof beyond a reasonable doubt, something more than a mere balance of probabilities is required (see Gladys Wanjiru v AG Civil Appeal No. 94 of 2009). It is my view that the new officials took over and sought to clean house so to speak, does not necessarily negate dealings the group had through its former officials when they were lawfully in office."

34. At the end of the day with the change of management of the group and the new officials taking a stance that they were to 'clean the house and messes' created by the former officials, it will mean then that, even if consent were to be sought, obviously the new officials would not accept. In any event, already the respondent was ejected from the suit property. In the end, even if we were to discuss the issue of consent from the relevant Land Control Board it would not add any value in this case because the respondent has long been ejected from the suit property, the membership and officials could hear none of it.

35. It brings me then to the issue of the award of Kshs. 300,000/= as General Damages, the appellants say was baseless, not pleaded, had no foundation, and was exorbitant, perhaps the trial Court should have stuck at an award of the refund of the purchase price only.

36. From the plaint, I reckon the plaintiff sought General Damages for breach of contract. In making the award, the trial Magistrate stated as follows:

> " The plaintiff submitted to be awarded damages for breach of contract, the value of the damaged house, and costs. The principles as to payment of the damages in case of breach of contract as cited in the case of V R Chande and Others v E.A Airways Corporation [1964] E.A 78 which was quoted with approval in Francis Namatoi Obongita v Cocker Printers and Designers Ltd where the Court held:
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> "The general rule as to the quantum of damages to be awarded for breach of contract was stated by ALDERSON, B in Hadley Baxendale (18854) 9 Ex 341 (156 E R 145 at P. 151) in the following terms: -
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> Now we think a proper rule in such a case as the present is this; where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as my fairly and reasonably be considered either arising naturally i.e. according to the usual course or things from such a breach of contract itself or such as may be reasonably supposed to have been in the contemplation of both parties, at the time they made the contracts the probable result of the breach of contract."
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> The defendant did not provide a valuation report as to the value of the demolished house. Even if there is proof that the said house was demolished, as ordered by the defendants, the Court is at a loss for its value. However, the plaintiff did provide receipts totaling Kshs. 48,890/= which were among the costs he incurred in the construction of the house. I am also not able to determine the loss of future earnings arising from the house as no evidence was tendered to show the earnings emanating from that house. Because the plaintiff was able to prove on a balance of probabilities that he purchased the plot, a permanent injunction will be issued forthwith restraining the defendants by themselves, servants, agents, or representatives from interfering with the plaintiff's peaceful occupation and enjoyment of the said plot without title previously owned by the defendant. Therefore, I will award a global sum of Kshs. 300,000/= for breach of contract and damages to his house. I will also award as compensation the sum of Kshs. 48,890/= as part of the costs incurred in the construction of the house on the suit land. I am aware damages which a party ought to receive for breach of contract should be such as may fairly and reasonably be considered either arising naturally i.e. according to the usual course of things from the breach of contract itself."

37. From the flow of the events the agreement between the plaintiff and the defendant could not be discharged or specifically performed by the collective group on suspicion of corruption (sic) by the former officials by selling the land to the husband of one of the officials. The 'corrupt deals' could not be proved at the hearing. The agreement was then breached by the group who had earlier consented to the sale of the land in a General Meeting which authorised their office bearers to sell the land. The group proceeded to eject the plaintiff from the land and damaged his house and construction materials. It implies then that from the plaint, the evidence before the Court, the respondent requested General Damages for breach of contract, as correctly observed by the learned Magistrate, nothing was presented say a valuation report to show the loss the respondent could have incurred in the course of the

demolition other than the specific sum which went to the purchase of the land and the sum he proved to have expensed for the construction materials. The authorities from this Court take a trajectory that in cases of this nature the doctrine - restitutio in integrum - "restitution to the original position" comes to play. The remedy of rescission of a contract where the aim is to return the parties to the position they would have been in if the contract had never existed. See Majanja J. in Barclays Bank of Kenya Limited v Mema (Civil Appeal E011 of 2021) [2021] KEHC 333 (KLR) (Commercial and Tax) (3 December 2021) (Judgment):

> "In Dharamshi v Karsan [1974] EA 41, the Court of Appeal for East Africa held that general damages for breach of contract are not allowed in addition to quantified or special damages. The legal position on this issue has been restated several times by the Court of Appeal in the cases cited by the Bank and others including Postal Corporation of Kenya v Gerald Kamondo Njuki t/a Geka General Supplies NRB CA Civil Appeal No. 625 of 2019 [2021]eKLR. As to the nature of the damages awarded in cases of breach of contract, I summarized the position in Consolata Anyango Ouma v South Nyanza Sugar Company Limited MGR HCCA No. 53 of 2015 [2015]eKLR as follows:
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> 15. The next question is whether the appellant was entitled to damages as a result of the breach. As a general principle, the purpose of damages for breach of contract is, subject to mitigation of loss, the claimant is to be put as far as possible in the same position he would have been if the breach complained of had not occurred. This is principle is encapsulated in the Latin phrase restitution in integrum (see Kenya Industrial Estates Ltd v Lee Enterprises Ltd NRB CA Civil Appeal No. 54 of 2004 [2009] eKLR, Kenya Breweries Ltd v Natex Distributors Ltd Milimani HCCC No. 704 of 2000 [2004] eKLR). The measure of damages is in accordance with the rule established in the case of Hadley v Baxendale (1854) 9. Exch. 341 that the measure of damages is such as may be fairly and reasonably be considered arising naturally from the breach itself or such as may be reasonably contemplated by the parties at the time the contract was made and a probable result of such breach (see Standard Chartered Bank Limited v Intercom Services Ltd & Others NRB CA Civil Appeal No. 37 of 2003 [2004] eKLR). Such damages are not damages at large or general damages but are in the nature of special damages and they must be pleaded and proved (see Coast Bus Service Ltd v Sisco Murunga Ndanyi & 2 others, NRB CA Civil Appeal No. 192 of 92 (UR) and Charles C. Sande v Kenya Co-operative Creameries Ltd, NRB CA Civil Appeal No. 154 of 1992 (UR))."

38. The Magistrate properly found that the respondent did not attach a valuation report to capture the damages occasioned to his house after the demolition and proceeded to award Kshs. 300,000/ in General Damages. That figure was not supported. The natural consequence of the breach would have been, the refund of the purchase price, the proved costs of the construction, and related proved and pleaded and proved expenses. Perhaps if the respondent could have provided a valuation Report, it would then fall in the category of pleaded and proved special damages. I will decline the award of General Damages to the tune of Kshs. 300,000/= but instead award the amount proved as purchase price and the proved specials for construction.

39. This applies to injunction, it cannot be issued. The respondent was long ejected. His house was demolished. Besides the specific part of the 10 acres he purchased was not identifiable.

40. Future earnings from the house were remote and correctly declined by the Magistrate.

41. On the issue of whom to execute against, this is an unincorporated group under the *Societies Act*. It will be up to the respondent to know how to execute to avoid the proliferation of objection proceedings. Execution ideally should be directed at all the members and not individual officials of the group.

42. On costs, the appellants wholly opposed the findings and judgment of the Lower Court in its entirety, it will then follow that the respondent will be entitled to get costs of this appeal and those in the Lower Court.

43. In the end the present appeal will partially succeed with the orders of the Lower Court substituted as follows:

    a. An award of Kshs: 300,000/= general damages declined.

    b. Kshs 30,000 the purchase price, is awarded to the respondent.

    c. Kshs. 48,890 value of the demolished house awarded to the respondent.

    d. Perpetual injunction declined.

    e. Future earnings declined.

    f. Interest on (b) and (c) at Court rates to be calculated from the date of filing suit till payment in full.

    g. Costs of this appeal and the Lower Court awarded to the Respondent with interest at Court rates.

DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY ON THIS 25TH DAY OF JANUARY 2024.

E. K. MAKORI

JUDGE

In the Presence of:

Ms. Marubu for the Appellants

Ms.Bwaanadi for the Respondent

Court Clerk: Happy