Talent Academy Limited v Kenya National Highways Authority & 3 others (Environment & Land Case 879 of 2013) [2025] KEELC 1104 (KLR) (28 February 2025) (Judgment)

Neutral citation: [2025] KEELC 1104 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ENVIRONMENT & LAND CASE 879 OF 2013

EK WABWOTO, J

FEBRUARY 28, 2025

BETWEEN

TALENT ACADEMY LIMITED ..... PLAINTIFF

AND

KENYA NATIONAL HIGHWAYS AUTHORITY ..... 1ST DEFENDANT

NATIONAL LAND COMMISSION ..... 2ND DEFENDANT

THE CHIEF LAND REGISTRAR ..... 3RD DEFENDANT

HON ATTORNEY GENERAL ..... 4TH DEFENDANT

JUDGMENT

1. This suit was commenced through a plaint dated 22nd July 2013 which was later amended on 22nd October 2020 upon which the Plaintiff sought the following reliefs;-

    a. An order of declaration be issued that the Plaintiff's title to the property known as L.R. No. 209/11630 measuring in area 0.3333 hectares or thereabouts situate in Lang'ata, Nairobi, comprised in Grant No. IR 58294 (the "Suit property") is valid, indefeasible, unimpeachable.

    b. An order of declaration be issued that the Plaintiff's title to, rights over and interest in property L.R No. 209/11630 comprised in Grant No. IR 58294 could not be upset, taken away or expropriated without following the due process of compulsory acquisition outlined under Part VIII of the *Land Act*, No. 6 of 2012 and in conformity with the provisions Article 40 of *the Constitution* of Kenya.

    c. An order of declaration be issued that the Defendant's acts of demolition of the premises erected on the property L.R No. 209/11630 by the 1st defendant; purported revocation by the 2nd Defendant of Grant No. 58294 in respect of the suit property as set out in Gazette Notice No. 6865 dated 17th July 2017; and registration of a caveat by the 3rd Defendant against the

property on 29th August 2017 were unlawful, illegal and unconstitutional and the said acts amount to unlawful and/or arbitrary deprivation of private property.

d. General damages jointly and severally against the Defendants for the blatant violation of the Plaintiff's rights and interests in the property known as L.R. No. 209/11630.

e. An order be issued directing the 3rd Defendant to restore the title the suit property and to cancel, remove and de-register the caveat registered by the 3rd Defendant on 29th August, 2017 against the Plaintiff's property LR. No. 209/11630.

f. An order of permanent injunction be issued restraining the Defendants, their agents, servants and officers from interfering with the Plaintiff's proprietorship tights, title and interest in property L.R. No. 209/11630 or possession and occupation thereof in any other way whatsoever from dealing with the· said property.

g. Payment of Kshs. 39,034,803.00 being costs of replacement of the demolished premises.

h. Payment of Kshs 44,548,000.00 being the loss of rental income from August, 2013 to October, 2020 computed at the rate of Kshs. 518,000.00 per month and further payment of Kshs. 518,000.00 per month from October, 2020 until full restoration of the demolished developments.

i. Interest on (G) and (H), above at Court rates from August, 2013 until settlement thereof in full.

j. An order directing the 1st Defendant to give vacant possession of the Property L.R No. 209/11630 and to clear the debris resulting from the demolition of the Building and any structure that may have been erected thereupon subsequent to demolition.

k. In the alternative to prayers (E) and (F), an Order be issued directing the 1st and 2nd Defendants undertake compulsory acquisition of the property L.R No. 209/11630 comprised in the Grant No. IR 58294 in strict compliance Article 40 of *the Constitution* and Part Vill of the Land Act, No, 6 of 2012 and do pay prompt and adequate compensation to the Plaintiff based on, inter alia, the current market value of the Suit Property within a period not exceeding Forty Five (45) days of judgment of this Honourable Court.

l. Exemplary and aggravated damages against the Defendants jointly and severally for breach of the Plaintiff's rights over and interests in the Suit Property.

m. Costs of this suit against the Defendants, jointly and severally, plus interest thereon from date of judgment until settlement thereof in full.

2. The suit was contested by the Defendants. The 1st Defendant filed a statement of defence dated 16th August 2013, the 2nd Defendant filed a statement of defence dated 15th November 2021 while the 3rd and 4th Defendants filed a statement of defence dated 12th May 2021. The Plaintiff also filed a Reply to defence dated 1st December 2021 in response to the 2nd Defendants defence and a reply dated 25th February 2022 in response to 3rd and 4th Defendants defence.

The Plaintiff's case

3. It was the Plaintiff's case that the Plaintiff is the registered owner as lessee of the land parcel known as Land Reference No. 209/11630 situated in Langata, Nairobi measuring 0.3333 hectares or thereabouts (that is to say 0.8236 acres) (hereinafter the "Suit Property") registered in Grant No.

IR 58294 in consequence of purchase thereof for good consideration in or around 1996 from Ngebe Enterprises Limited (the "Initial Allottee").

4. It was averred that the entire processes and procedures attendant to creation, allotment, alienation and transfer of the suit property were followed and the Plaintiff's title thereto is unimpeachable and cannot be subject to any challenge by the 1st Defendant or any other person or entirety whatsoever. In relation to these processes, it was averred that by an Approved Part Development Plan No. 355 prepared by the Ministry of Lands dated 19th April 1991 bearing Department Reference Number 42/8/91/5 certain properties including the Suit Property located in Lang'ata Nairobi were proposed and planned for residential purposes in conformity with the then Planning Regulations.

5. Subsequent to completion of the planning processes, by an allotment letter dated 27th June 1991 bearing Reference No. 97831/11/220 and quoting Authority to allocate as Government Reference No. 102749/31/XII/9 the Suit Property, which was identifiable in the aforesaid PDP as Plot D measuring approximately 0.33Ha, was in line with the obtaining processes allotted to the Initial Allottee subject to the terms therein stipulated including payment of the requisite premium.

6. The allotment conditions were duly complied and, in the meantime, the suit property was alongside other parcels identified in the said PDP surveyed with the respective sizes, delineations, beacons and ground positions being represented on Survey Plan F/R No. 226/114 prepared under the authority of and authenticated by the Director of Survey.

7. Arising from the survey and adoption by the Director of Survey, the suit property was assigned property L.R No. 209/11630 and a Deed Plan No. 165792 prepared on 18th August 1992 to the intent that a title would be issued.

8. In confirmation that the due processes relating to allotment and alienation had been satisfied, a title to the Suit Property was issued to the initial allottee, namely, Grant No. I.R. 58294 on 11th March, 1993.

9. Thereafter the Plaintiff by an agreement for sale dated 30th January 1996 agreed to purchase the Suit Property from the Initial Allottee as the legal proprietor thereof for a consideration of Ksh. 1,600,000.00. The transfer was subsequently stamped and thereafter registered against the Grant on 20th June 1996 conferring upon the Plaintiff a good and unimpeachable title to the Suit Property.

10. It was further averred that as a purchaser for good value and upon issuance and registration of the Grant in respect of the suit property in its favour pursuant to the then applicable law, namely Registration of Titles Act, Cap 281, Laws of Kenya (now repealed) (the "RTA") the Plaintiff's interests and rights in the Suit Property were absolute and indefeasible within the meaning of Section 23(1) of the RTA (repealed).

11. It was also averred that pursuant to the provisions of Section 24,25(1) and 26(1) of the *Land Registration Act*, No. 3 of 2012 (the "LRA") which repealed the RTA, its proprietorship rights and interests conferred by the Grant are absolute, exclusive, indefeasible and incapable of being defeated by anyone including the Defendants except as provided therein.

12. It was pleaded that by virtue of its exclusive, undisturbed, continuous and uninterrupted possession of the suit property for more than 17 years coupled with due satisfaction of obligations touching on payment of the requisite land rent and rates the Plaintiff did harbor a legitimate expectation as by law stipulated that it could not be deprived of the suit property by the Defendants or any other person or entity whatsoever without due compliance with the law relating to compulsory acquisition of property.

13. On the strength of its proprietary rights over the suit property and in order to realize its commercial objectives the Plaintiff prepared and submitted development plans for the construction of residential

apartments on the suit property which plans were approved on 15th November 2001 by the now defunct City Council of Nairobi.

14. The Plaintiff thereafter erected on the suit property, residential apartments in line with the approval granted, comprising 16 two-bedroomed units, six (6) servant quarter units together with the ancillary facilities which premises had been fully leased out to tenants.

15. It was also pleaded that the Plaintiff's title to, rights over and interest in the suit property notwithstanding, the 1st Defendant by its agents, servants and/or employees illegally and without any colour of right violated the Plaintiff's rights of ownership, use, quiet enjoyment and possession of the Suit Property by inter alia:-

    a. Without notice, entering upon and illegally placing mark "X" on the perimeter wall enclosing the Suit Property on 20th July 2013 to the intent that it would demolish the development on the Suit Property for reasons that were never disclosed to the Plaintiff.

    b. Designating the Suit Property as a road reserve in total disregard of the Plaintiff's title.

    c. Entering upon and recklessly demolishing and destroying the premises on the Suit Property on 23rd July 2013 at aobut 6:00a.m. without having given the Plaintiff an opportunity to demonstrate its proprietorship rights over the suit Property.

    d. Digging up huge parts of the Suit Property and dumping soil and other debris on the other parts thereof wholly rendering it unusable.

16. It was pleaded that at the time the developments on the suit property were destroyed the value of the suit property and the developments thereon commanded a market value of Kshs. 89,630,000.00 and the Plaintiff earned, as rental income from the units leased to various tenants, Kshs. 518,000.00 on a monthly basis.

17. Out of the total value of Kshs. 89,630,000.00 the Plaintiff further pleads that the value of the improvements (excluding the value of the undeveloped land) was approximately Kshs. 39,034,803.00 based on the Bill of Quantities prepared in August 2014 or thereabouts.

18. It was contended that the Defendants actions were not only illegal but were also reckless in so far as following demolition, no measures were taken to secure the Suit Property from invasion by third parties with the result that illegal encroachments have occurred exacerbating the Plaintiff's loss and suffering.

19. It was also pleaded that in continued violation of the Plaintiff's proprietary rights over the suit property on 17th July 2017 the 2nd Defendant vide Gazette Notice No. 6865 published in the Kenya Gazette Vol. CXIX-No. 97 unlawfully, illegally and unilaterally purported to revoke the Grant held by the Plaintiff citing reason thereof as illegal allocation of public utility land, notwithstanding knowledge of existence of this suit by the 2nd Defendant at the time of the impugned decision.

20. It was averred that the purported revocation of the grant to the suit property was an un-procedural, illegal and unlawful and amounts to unlawful and/or arbitrary deprivation of private property without following due process and/or compensation as provided for under Article 40 and Part VIII of the *Land Act*, No. 6 of 2012 bearing in mind inter alia, that:

    a. No notice was given to the Plaintiff before the purported cancellation of the title.

    b. Pursuant to the provisions of Section 14(6) of the National Land Commission, *Act No. 5 of 2012*, the Plaintiff's title to the suit property having been acquired in consequence of purchase

thereof for value without notice of any defect thereof enjoys full protection thereunder and it is not amenable to review and revocation thereof.

c. The Plaintiff was denied an opportunity to be heard before the decision to purportedly revoke the title was taken thereby abrogating its constitutional right not be condemned unheard.

d. The suit property was not a public utility land either as claimed or at all.

21. It was contended that in furtherance of the illegal, unlawful and unprocedural decision of the 2nd defendant aforesaid, the 3rd Defendant unlawfully placed a caveat against the suit property on 29th August 2017 claiming an interest under Section 65(1) of the Registration of Titles Act the effect whereof was to restrict and prohibit the Plaintiff from dealing with the property all in further deprivation of its rights proprietorship rights guaranteed under the law.

22. It was the Plaintiff's case that in consequence of the Defendant's unconstitutional, illegal, arbitrary, oppressive, capricious, unfair and unreasonable acts aforesaid, it has suffered and continues to suffer loss and damage owing to the deprivation of the Plaintiff's proprietorship rights and interests over the Suit Property including use and possession thereof.

23. It was also averred that the Plaintiff's title to the suit property is still valid and unimpeachable since the Plaintiff was not a party to any irregularity and did not contribute to the same in any way.

24. During trial, the Plaintiff relied on the witness statement of its director, Sarah Omondi, dated 20th January 2021, who testified as PW-1 partly adopting her Witness Statement. Mr. Peter Atandi, director of Boma a licensed and practising Surveyor, testified as PW-2 whilst Mr. Herbert Mwangi Kamau, a registered and practicing Valuer working with Amazon Valuers Limited testified as PW-3.

25. The Plaintiff produced through PW 1, Plaintiff's Exhibits A (1-15), comprising Plaintiffs List and Bundle of Documents dated 20th January 2021, Exhibit B(l-16) comprising Plaintiffs Supplementary List of Documents dated 4th November 2011. The Valuation Report dated 13th October 2021 was produced by PW-3 and marked as Plaintiff's Exhibit C while the Survey Report by Covenant Geo-Survey Systems dated November 2013 appearing at pages S(a)-8 in the Further List dated 20th January 2021. was produced by PW-2 as Plaintiff's Exhibit D.

26. PW1 testified that the Plaintiff bought the land through an agent who connected them to the initial owner. The sale agreement was done on 30th August 1995 between them and Ngebe Enterprises Limited. She also stated that the Plaintiff did due diligence before purchase and then got a transfer dated 20th June 1996.

27. After purchase the Plaintiff undertook developments on the land after obtaining the necessary approvals.

28. It was also her testimony that despite obtaining an injunction the Plaintiff's property was demolished. No notice nor reasons were given to show that the same was on a road reserve. She also stated that the Plaintiff never attended any hearing at National Land Commission.

29. When cross-examined by Counsel for the 1st Defendant she stated that the previous owner had an allotment letter. The same had no signature.

30. She also stated that her land was not part of the road reserve. Their property was demolished in July 2013. The Plaintiff did due diligence and established that the property was not on a road reserve.

31. On cross-examination by Learned Counsel Ms. Masinde for the 2nd Defendant. She stated that she could not recall if a search was done at the time of purchase of the properties. She also stated that her

allotment letter filed in court did not have a signature and she had not verified if it was genuine. She also stated that the Plaintiff would not have constructed on the land if indeed it was on the road reserve.

32. On cross-examination by Learned Counsel Ms. Kerubo for the 3rd and 4th Defendants, she stated that the allotment letter did not show the year it was issued. She did not do a search at the Registrar of Companies to confirm the details of the Plaintiff's company. The sale agreement did not have the name of any director from Ngebe. The purchase price was Kshs. 3,200,000/= She had not produced any evidence to demonstrate if stamp duty was paid. The National Land Commission directed the Chief Land Registrar to cancel the title.

33. When re-examined, she stated that she never doubted the authenticity of the title. The records shows that the property was transferred for Kshs. 1,600,000/=. She did due diligence before purchase. Other properties in the area were not demolished. She has not been served with any notice of compulsory acquisition.

34. Peter Atandi a Registered Land Surveyor testified as PW2. It was his testimony that he was instructed by the Plaintiff to undertake the survey. The purpose of the survey was to confirm if the property had encroached on the road reserve. He did due diligence and obtained all the relevant documents. He obtained the survey plan. Foio No. 226/114, 126/314, 348/151, 318/85. He also obtained the Part Development Plan from the Director of Survey.

35. It was his testimony that he visited the site and he confirmed that the property did not touch on the road reserve. The Part Development Plan was prepared by the Physical Planning Department.

36. He also stated that the 1970 plan was not in any way affected by the Part Development Plan of 1991. The demolished building did not in any way fall within the 60 meters corridor.

37. He also stated that the Plaintiff's bundle had a Part Development Plan done in 1991. The land was not on a road reserve. It was free land available for re-allocation.

38. When cross-examined by Counsel for the 1st Defendant, he stated that the allotment letter was valid despite missing other pages. He obtained the copy of the same from the Director of Survey.

39. When cross-examined by Counsel for the 2nd Defendant he stated that the year of issuance of the allotment was not indicated.

40. When cross-examined by Counsel for the 2nd Defendant, he stated that the Plaintiff was not the original owner of the land. He never contacted the original owner. He never contacted anyone from the 1st Defendant. The suit property was not on a road reserve.

41. When cross-examined by Counsel for the 3rd and 4th Defendants, he stated that the purpose of the report was to verify if the Plaintiff's property touched on the road reserve and he has been able to demonstrate that the same does not. He also stated that he did not measure the road. The developments showed that the road shrunk from 120m to 60m. The suit property is 10 meters away from the edge of the 60 meters road reserve.

42. When re-examined, he stated that he obtained the letter of allotment from the Director of Survey.

43. Herbert Mwangi Kamau a Registered and Practicing Valuer testified as PW3 in the matter. It was his testimony that he was instructed to prepare a valuation report for L.R No. 209/11630. He visited the site on 8th September 2021. He was furnished with a copy of the title and images of the property before the demolition. He also stated that he did not conduct an official search since his terms of reference were to do a valuation but not to conduct/establish ownership. He stated that according to his report,

the current value of the land was Kshs. 85,000,000/= the demolished improvements were valued at Kshs. 45,000,000/= and as of August 2013, the total rent was Kshs. 518,000/= per month.

44. When cross-examined by Counsel for the 1st Defendant he stated that the company has other Directors. He did not conduct an official search of the property and he had not included the tenancy agreements in his report.

45. When cross-examined by Learned Counsel Mr. Motari for the 3rd and 4th Defendants, he stated that the use of the land was residential. Condition 5 of the title was that the land was to be used for one dwelling house. He did not ascertain the distance of the road to the property. He did not do any search.

46. When re-examined, he stated that it is not inconsistent to have a multiple dwelling unit on a title indicating single dwelling since there are change of users which are normally done. He also stated that he had seen the tenancy agreement.

The case of the 1st Defendant

47. The 1st Defendant field a Statement of Defence dated 10th August 2013 where it denied the averments made in the plaint and sought for the dismissal of the suit. It was averred that the Plaintiff acquired interest to the property unlawfully. The demolished structures had been built on a road reserve. The Plaintiff had been given a notice as early as 6th August 2003 but did not vacate.

48. During trial, Milcah Muendo a Land Surveyor working with the 1st Defendant testified as DW1. She relied on the 1st Defendant's Statement of Defence dated 16th August 2013 and bundle of documents of 16th August 2013 in her evidence in Chief and her witness statement dated 12th September 2022.

49. It was her testimony that the property was not available for private use because it had been set aside for road development. The reservation was done in 1985 and the same was clear from the structural plan of 1985. The title came later after the area had been reserved for the road facility.

50. She also stated that the Plaintiff had been given a notice to vacate but did not comply. There was no injunction order issued against any demolition. The road development is not complete since an inter change is yet to be done. She also agreed with the National Land Commission's recommendation on revocation of the title.

51. On cross-examination by Learned Counsel Njoroge for the Plaintiff, he stated that purpose of the structural plan is to guide development and allocation of resources. The plan also shows the proposed Trans African Highway and other roads. She also stated that she could not tell whether the open space was public land from the 1976 plan. She also stated that the structural plan did not have the signature of the Commissioner of Lands and the date when the approval was given.

52. On further cross-examination she stated that the detailed design shows the inter change of Langata Southern bypass road but does not have a similar plan for Langata Kibera road. She also stated that a structural plan is not a survey plan and that the letter dated 3rd December 2013 from the Ministry of Lands shows that the structural plan was not approved but was only certified by Director Physical Planning to guide the development of the area.

53. On further cross-examination she stated that the suit property is not built on either the railway or the road reserve. There was no correspondence confirming suit property was on the road reserve. There was also no survey plan confirming that the suit property was on a road reserve. The Plaintiff was not given any specific notice that the property was on a road reserve. The demolition took place in 2013. There was no communication made to the Plaintiff. She could not remember whether the Plaintiff participated in any hearing before the National Land Commission. The National Land Commission

hearing were after the property had been demolished. She was not aware if the allocation was done after a Part Development Plan had been approved by the Ministry of Lands. She did not have any evidence that the alienation was not properly done.

54. When re-examined she stated that the structural plan is certified by Director of Physical Planning and it is a legitimate document. She also stated that there was a public notice informing the public of the hearing and all properties were listed in the same.

55. She also stated that from the structural plan, the land is within the road corridor. The development of the road infrastructure is still ongoing. The structure plan has not been challenged as an illegal document.

The case of the 2nd Defendant

56. The 2nd Defendant filed a statement of defence dated 15th November 2021. The 2nd Defendant denied the averments made in the plaint and it denied infringing on the Plaintiff's proprietary rights over the suit land. It also denied demolishing of any structures on the said land. In its statement of defence that had been filed in court, the 2nd Defendant prayed for dismissal of the Plaintiff's suit. The 2nd Defendant participated during trial but it however did not call any witness to testify on its behalf.

The case of the 3rd and 4th Defendants

57. The 3rd and 4th Defendants filed a Statement of Defence dated 12th May 2021.

58. The 3rd and 4th Defendants denied that the Plaintiff is a purchaser for good value and they averred that the Plaintiff ought to bring proceedings against the Vendor and seek indemnity from the said Vendor for refund of the purchase price.

59. It was also averred that the alleged acquisition of the suit property was revoked vide gazette notice number 6865 of 17th July 2017 and further that the suit land have been illegally, unlawfully and fraudulently acquired the Defendant issued gazette notice number 3632 of 6th June 2003.

60. It was also averred that the Plaintiff is not entitled to any compensation for the reason that the suit area had been planned for Trans Africa Highway in the 1970s and hence the Plaintiff ought to have known of the same. It was averred that the Plaintiff is the author of his own mistakes.

61. During trial, two witnesses testified on behalf of the 3rd and 4th Defendants. Arthur Mbatia, Assistant Director of Physical Planning testified as DW2 and Charles Ngetich, the Land Registrar as DW3.

62. DW2 relied on his witness statement dated 9th November 2022 in his evidence in chief. It was his testimony that the suit land was reserved as an open space and it had been left out from the main residential allocation. He also stated that open spaces are usually meant for public purposes and for use by residential neighbourhood. He also stated that the Commissioner for Lands cannot allocate open spaces and the same cannot be used for any other purposes since open spaces cannot be available for alienation. He also stated that the Part Development Plan in reference was not used for alienation of the property indicated in the allotment letter.

63. When cross-examined by Counsel for the 2nd Defendant he stated that the allocation was done by the Commissioner of Lands.

64. On cross-examination by Counsel for the Plaintiff, he stated that what was referred to in the allotment letter was not a Part Development Plan but a sketch which was contrary to the usual practice. He also

stated that a Part Development Plan ought to be prepared first before an allotment letter can be issued and in this case the sketch does not refer to the Part Development Plan.

65. On further cross-examination, he stated that his office prepared the Part Development Plan which indicated that the purpose of the property as residential. The Part Development Plan was prepared for the purposes of alienation of the plot. The Part Development Plan shows an open space within it. The 1975 plan has an open space. The plot is not marked as an open space or a public space. The suit property lies outside the 60 meters of the Trans African Highway and 60 meters Railway Reserve.

66. He also stated that Plan No. 355 is still valid and has not been revoked. He also stated that in the 1976 plan, the open space does not appear where the subject property is located. He also stated that he had not seen any information that the subject property could not be allocated. He had also not seen anywhere stating that the subject land was an interchange.

67. When re-examined, he stated that a sketch is not an authority for allocation of land. The sketch does not bear any number similar to the one stated in the allotment letter. The allocation is on a different reference number. The suit property is part of the larger open space. He also stated that an allocation not premised on a Part Development Plan is illegal.

68. Charles Ngetich, the Deputy Chief Land Registrar testified as DW3. He adopted and relied on his witness statement dated 21st October 2021 in his evidence in chief.

69. On cross-examination by Counsel for the Plaintiff he stated that the suit property is on the Southern Bypass. He also stated that there was a Part Development Plan by the Physical Planning Department and that the suit property is not indicated in the survey plan. He also stated that the Part Development Plan had an approval number 355 of 1991. The road had been planned in 1996. There is a map for 1976 showing that the Southern Bypass had been planned as early as then. He also stated that he could not tell if the same was on a road reserve. He also stated that he was not aware of any objection from the Survey Department in respect to the issuance of the said title.

70. When re-examined, he stated that a title can only be issued after getting information from other departments. He also stated that the Part Development Plan is dated 11th March 1976. He stated that Plot D being the suit property does not appear in the Part Development Plan. The allotment letter refers to a different Part Development Plan.

The Plaintiff's submissions

71. The Plaintiff filed written submissions dated 14th June 2024 through the law firm of Lesinko, Njoroge & Gathogo Advocates. Counsel submitted on the following issues:-

    i. Whether the suit property falls on a road reserve earmarked for construction of the Trans Africa Highway also known as the Southern Bypass.

    ii. Whether the title held by the Plaintiff over the suit property is valid and indefeasible in light of factors 24, 25(1), 26(1) of the *Land Registration Act* No. 3 of 2012.

    iii. Whether the acts of the Defendants in relation to the suit property amounted to a violation of the Plaintiff's fundamental right to property under Article 40 of *the Constitution* and whether they breached Plaintiff's fundamental rights under Articles 27 and 97 of *the Constitution*.

    iv. Whether the Plaintiff is entitled the reliefs sought in the amended plaint dated 22nd October 2022.

    v. Who should bear costs of the suit.

72. It was submitted that the suit property does not fall on the road reserve and that the Defendants had failed to demonstrate otherwise.

73. Counsel submitted that the survey plan Folio No. 126/84 of 1972 relied upon by the 1st Defendant speaks of a specific area and the properties contained therein cannot be a basis upon which the suit can be stated to have been on a road reserve. It was further submitted that cadastal Sheet No. 5 exhibited at page 27 of the 1st Defendant's bundle does not show that the location falls on a road reserve.

74. It was also submitted that the draft structure plan allegedly prepared by the Ministry of Works, Housing and Physical Planning bearing Department Reference No. 42 – 28 – 85 -9 was neither signed nor approved by the Commissioner of Lands or by the Minister in Charge of planning in line with the then Land Planning Laws thereby irredeemably denting its value as the authority on planning matters in Nairobi South.

75. Counsel also submitted that if indeed the suit property was planned for specific purpose then the burden lay on the Defendants to produce a signed and approved plan showing thus which they have not produced simply because at no point was the suit property planned for any other purpose other than residential.

76. It was further submitted that the location of the Suit Property in this 197 6 plan is comprised in what was then a large V-shaped (triangular) yet-to-be planned strip of land, bordering and running parallel to the Trans-Africa Highway as shown by continuous dashes up to the edge of the now constructed Langata-Kibera Link road, from where it turns inwards and runs parallel to this road all the way up to the exit of Ngei Estate. It was argued that the key showed and described spaces earmarked for public purposes in the plan which were shaded and that none of the space within this V-shaped strip of land was shaded as land for public purposes as was indeed admitted by DW-2 in her evidence so that the claims by the defendants that the suit property was open space for public purposes is hollow and without any basis.

77. In respect to the status of these the two unsigned plans being relied upon by the Defence, it was argued that they cannot be taken as authority that the suit property had been planned for a use other than as a residential property, in line with the signed and approved Part Development No. 355.

78. It was further submitted that the applicable law at the time was the Land Planning Act. Cap 303 and the Regulations made thereunder, which was repealed in 1996 by Physical Planning Act (cap 286), subsequently repealed by the Physical Planning and Land Use Act, 2019. Under the provisions of Regulations 6. 7 and 8 of the Development and Use of Land (Planning Regulations) made under Cap 303, "town plans", "area plans" and "sub-division use plans", each of which term was defined in the Regulations, required to be approved by the Minister for the time responsible for planning or by the Commissioner of Lands pursuant to Regulation 33(1), exercising the delegated authority of the Minister.

79. Counsel also urged the Court to note that the Nairobi Southern By-pass design documents produced by the 1st Defendant (nos. 10 and 11 in the I" Defendant's List of Documents) (pages 10-17. 28 and 29 of the Bundle) are not authoritative on planning and surveying matters, which functions are, respectively, in the domain of Planning and Surveying departments of the Ministry of Lands. This is borne out from the clarifications that were being sought by the 1st Defendant from the Ministry of Lands on whether the suit property, listed in the letter, amongst others were on Nairobi Southern By-Pass and to which an answer was provided by the Ministry in its letter dated 3rd December 2013 exhibited at page 20 of the 1st Defendants bundle. It was further submitted that the said letter proves that at the time demolitions were done in July 2013 and there was no evidence from the Ministry that

the suit property was on a road reserve begging the question as to what documents were relied upon by the 1st Defendant in demolishing the Plaintiff's property.

80. Counsel submitted that whilst contentions were made to the effect that the Suit Property provided for an interchange of traffic between Nairobi Southern By-Pass and Langata-Kibera Link Road and this was cited as justification for demolition of the Plaintiff's property and recommendation for revocation of the Title thereto by the 2nd Defendant in Gazette Notice No. 4283 dated 17th July 2017 at page 139 of Plaintiff's Exhibit A (14)), when DW-1 was cross-examined on Road Design document exhibited at page 29 of the of the 1st Defendant's Bundle, she admitted that in fact the design document does not show any inter-change between the two roads and the only interchange appearing in the document was the one at the top-left side depicting Nairobi Southern By-Pass and Langata Road interchange.

81. It was also submitted that it is misplaced for the Defendants to contend that cadastal sheet No. 5 the unsinged and unapproved 1976 plan and the alleged (unproduced) 1981 plan, reserved the suit property as open space for purposes of construction of the Trans-Africa Highway or for any other purposes.

82. It was further submitted that the defence had not demonstrated that the suit property was at any point in time used for any public purposes or earmarked for use as such. The court was urged to find that the suit property was not on the road reserve.

83. In respect to the validating and impeachability of the title of suit property, it was submitted that the Plaintiff purchased the property from is initial allottee in 1996 and as such is entitled to enjoy all the night, interests and benefit of proprietorship.

84. It was argued that the same was purchased for a consideration of Kshs. 3,200,000/=and transfer dated 22nd March 1996 and stamp duty was paid for the full consideration of Kshs. 1,600,000/=

85. It was also submitted that upon purchase the Plaintiff sought and obtained approvals and did construct on the suit property a 4 storey building comprising 16 three bedroom and 1 one bedroom units, 6 servant quarter units together with the ancillary facilities which were leased out to tenants.

86. It was also submitted that no evidence has been placed on record to prove fraud on the part of the Plaintiff in the acquisition of the suit property and thus the court should uphold the title. The cases of Moses Parantai & Peris Wanjiku Mukumu suing as the legal representatives of the estate of Sospeter Mukumu Mbere (deceased) =Versus= Stephen Njoroge Macharia (2020) eKLR, Caroget Stephen Investment Limited =Versus= Aster Holding Limited & 4 Others (2019) KLR, Dina Margaret Limited =Versus= County Government of Mombasa & 5 Others (2023) KESC 30 (KLR) and Nelson Kazungu Chai & 9 Others =Versus= Pwani University (2019) eKLR were cited in support.

87. In view of the foregoing, this court was urged to hold and find that the title to the suit property as held by the Plaintiff is valid and indefeasible.

88. As to whether the Defendants actions amounted to violation of the Plaintiff's fundamental rights to property, it was submitted that none of the Defendant's witnesses nor any of the documents produced found the suit property to be on a road reserve. The Defendants actions were undertaken callously, wantonly and recklessly in absolute disregard of its fundamental right to property enshrined under Article 40 of *the Constitution* as well as in reach of Plaintiff's fundamental rights of equality before the law and fair administrative action set out under Article 27 and 47 of *the Constitution*.

89. It was also submitted that the particulars of violation of the Plaintiff's constitutional and legal rights by the Defendants were pleaded at paragraphs *12*, *13*, *16*, *17*. 18, 19 and 24 of the Amended Plaint.

90. It was further submitted that the Defendants actions keen amounted to a violation of the Plaintiff's rights as pleaded. The case of Vipingo Beach Resort Limited =Versus= The A.G & 3 Others was cited in support.

91. In respect to the reliefs sought, it was submitted that the Plaintiff is entitled to the reliefs sought. The Plaintiff urged the court to grant general damages of Kshs. 100,000,000/= together with costs of the suit payable by the Defendants jointly and severally.

The 1st Defendant's submissions

92. The 1st Defendant did not file any written submissions for consideration by this court despite being granted an opportunity to do so.

The 2nd Defendant's written submissions

93. The 2nd Defendant filed written submissions dated 27th March 2024 through Masinde Cecilia Advocate. Counsel submitted on the following issues; whether the Plaintiff is a bona fide purchaser for value without notice, whether the suit land was available for allocation, whether the Plaintiff has a cause of action against the 2nd Defendant and whether the Plaintiff is entitled to the prayers sought.

94. It was submitted that the letter of allotment adduced before court is flawed, the Part Development Plan availed is not the one referred to on the letter of allotment, the allotment letter is missing the back page as well as two other pages, the same does not have the signature page and does not indicate the year it was issued.

95. It was also submitted that the Plaintiff has not adduced sufficient evidence before court to prove that the initial allotee had a valid allotment letter and as such the initial allotee was not conferred with a good title to enable it transfer to the Plaintiff and in view of the foregoing, the Plaintiff cannot be a good bonafide purchaser for value without notice.

96. It was argued that the suit land was not available for allocation. The testimony of DW2 Milcah Mwendo a land surveyor with KENHA was to the effect that the structure plan of 1985 produced by the 1st Defendant showed that the land site in the area was reserved for road development and the title to the suit land came into existence after the land was reserved.

97. It was also submitted that the Plaintiff is not entitled to the reliefs sought in view of the fact that the Plaintiff has not adduced sufficient evidence before court that the title that was passed to it by the initial allottee was good title. The case of Dr. Moses Ondeyo Lengo =Versus= The A. G. & Others ELC No. 561 of 2014 was cited in support.

The written submissions of the 3rd and 4th Defendants

98. The 3rd and 4th Defendants filed written submissions dated 12th April 2024 through J. Motari Matunda, Principal State Counsel submitted on the following issues:-

    i. Whether the suit title was properly revoked by the 2nd Defendant.

    ii. Whether the suit land was available for allocation.

    iii. Whether the Plaintiff was a bona fide purchaser for value.

    iv. Whether the Plaintiff is entitled to compensation of the land in the market value.

    v. Whether the Plaintiff is entitled to special damages from devolution.

vi. Whether the Plaintiff is entitled to costs.

99. It was submitted that the National Land Commission under the mandate indeed found that the suit land was allocated on public land and recommended for its revocation as shown at Kenya Gazette dated 17th July 2017 Vol. CXIX No. 97.

100. It was further submitted that as at 1972 the location of the said parcel of land LR 209/11630 has at all times been on the transport corridor and not in the boundaries set out by the survey map F/R no 126/84 which shows that area. That from the survey map (F/R no 126/84), it was apparent that the suit property was an addition to the transport corridor.

101. It was further submitted that due to the increased traffic along Nairobi City entry and exit of the section of Mombasa-Nairobi-Nakuru (A8) road the government envisaged the need for a road to bypass the City in order to address the traffic congestion within the City Centre. Taking this into account, the government developed a structural plan namely the Nairobi South Structure Plan No. 42/28/85/6 of 5th June 1985 whose purpose was to reserve land for a Transport Corridor to accommodate the Trans African Highway (Nairobi Southern bypass Road) and Embakasi to Kibera Railway line, including provision for junctions.

102. It was contended that the then Ministry of Public Works engaged Japan International Cooperation Agency (JICA) in 1989 to survey the area which covers the suit property and the survey and detailed design confirms that the suit property did not exist and was created at a later date.

103. The land LR 209/11630 situated in Langata, Nairobi falls within the southern by pass transport corridor established under the Nairobi South Structure Plan No. 42/28/85/9; and was in fact part of the illegal structures that had been earmarked for demolition following the notices that was issued in Kenya Times on 6th August 2003 and Kenya Gazette Notice Number 3632 of 6th June 2003.

104. Counsel submitted that the approved area must have been on planned government land based on the director of physical planning approved plan which plan now identified the area and designated a user for the said suit land.

105. It was argued that there was no application for allocation of the land, no evidence of acceptance, no evidence of payment of stand premiums, no Part Development Plan and no letter of allotment was produced.

106. It was also submitted that a title or lease is an end produce of process and if the process was flawed then such title cannot be held as indefeasible. The first allocation was irregularly obtained, Ngebe Enterprises had no valid interest which could pass to the Plaintiff.

107. It was also submitted that survey map F/R no 126/84 shows that the suit property was designated as a transport corridor as early as 1972. Further, Physical Development Plans 42/28/85/9 and PDP Ref. 42/8/76/C place the suit property within the said road corridor.

108. When the government became aware of developments along the road corridor, it issued a gazette notice in 2003 for removal of any structures constructed within the road reserve. The Plaintiff proceeded to develop on the property despite the notice.

109. It was argued that the effect of procuring alienation of a planned and surveyed public road reserve without a fresh physical plan within the requirements of Section 42 of the Physical Planning Act 1996 (repealed) is that the alienation was illegal and the resultant title was and remains a nullity. The suit property was and remains a public road reserve not available for alienation except in accordance with the law.

110. As to whether the Plaintiff is an innocent purchaser for value, Counsel submitted that the Plaintiff herein cannot claim to be an innocent purchaser for value when he did not produce any evidence of collaboration of any search before purchase nor enquiry from any other entity like the Ministry of roads at all if there was any inhibition to the suit land at all.

111. It was contended that the Plaintiff fails to meet the principles that could regularize his acquisition if any but having been aware of the status of the suit land fails in his claim as demonstrated that indeed the suit land was not available for allocation and hence out of nothing comes nothing as affirmed in the principle of Nemo Dat Quod Habet Rule which is to effect that no one can give that which he do not have.

112. On whether the Plaintiff is entitled to the orders sought, it was submitted that the Plaintiff is not entitled to any reliefs since the suit property had been set aside by the Government for public purpose and as such the same could not have been lawfully allocated. It was also submitted that the Gazette Notice dated 6th June 2003 No. 3632 required the Plaintiff to remove any illegal structures. The Plaintiff did not comply and as such it cannot claim any compensation.

113. The court was urged to dismiss the suit with costs to the 3rd and 4th Defendants.

Analysis and Determination

114. The court has considered the pleadings, evidence adduced and written submissions filed and is of the considered view that the following issues are salient issues for determination of the suit filed herein:-

i. Whether the suit land was lawfully acquired by the Plaintiff herein rendering its title to be valid and indefeasible.

ii. Whether the suit property falls on a road reserve earmarked for the construction of the Trans Africa Highway also known as the Southern Bypass.

iii. Whether the Plaintiff is entitled to the reliefs sought.

iv. What orders should issue as to costs.

Issue No. (i) Whether the suit land was lawfully acquired by the Plaintiff herein rendering its title to be valid and indefeasible

115. It was the Plaintiff's case that it was is the registered owner as lessee of the land parcel known as Land Reference No. 209/11630 situated in Langata, Nairobi measuring 0.3333 hectares or thereabouts (that is to say 0.8236 acres) (hereinafter the "Suit Property") registered in Grant No. IR 58294 in consequence of purchase thereof for good consideration in or around 1996 from Ngebe Enterprises Limited (the "Initial Allottee") which it had undertaken developments thereon and the said developments were later demolished by the 1st Defendant for the reasons that they were on a road reserve a position which was disputed by the Plaintiff. It was also the Plaintiff case that as result of the said demolition which was done unlawfully, it has suffered losses and damages as was pleaded in the Plaint.

116. It is trite law that It is trite law that he who alleges must prove. This is set out under Section 107(1)(2) of the *Evidence Act*, which provides as follows:

> "(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person."

Sections 109 and 112 of the same Act states;

" 109. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

"112. In civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving that fact is upon him."

117. Where a title is challenged, it is not enough to wave an instrument of title or rest easy on the former rock of chronological primacy. What must now be established by he who would prevail is the solidity of the root of title. No flowery foliage, absent a sturdy and settled root speaking to a regular and legal process preceding the product that is the title, will avail the holder. That much is now the law pronounced in a lengthening line of authorities such as Munyu Maina vs Hiram Gathiha Maina (2013) eKLR and Funzi Development Ltd & Others vs Country Council Of Kwale [2014] eKLR, and by the Supreme Court in its authoritative and all-binding decision of Dina Management Limited vs County Government of Mombasa & 5 Others [2023] eKLR

118. From the testimony and cross-examination of PW1 and PW2 it was evident that the letter of allotment issued to Ngebe Enterprises Limited did not indicate the year that it was issued, it did not have the signature of the person who issued it and it was incomplete. PW1 stated on her evidence that while she did due diligence prior to purchase, she was not able to contact or get in touch with any of the directors of Ngebe the initial allotee.

119. It is now trite and established law that prior to and or before the commissioner of lands could issue a letter of allotment, there was a requirement that a PDP would have to be prepared, checked and approved by the director of physical planning and thereafter be escalated to the commissioner of land for final approval, before the commissioner of lands would venture forward and issue a letter of allotment.

120. It is worth noting that the PDP is a critical document in the alienation of public land, insofar as the same would confirm the availability or otherwise, of the plot or piece of land, that it is intended to be alienated and or allocated. Additionally, it is worth recalling that after a PDP has been duly prepared by the directorate of physical planning same would be subjected to the requisite checking and approval and ultimately the PDP would be assigned a plan number, which authenticates the veracity of the PDP.

121. Further and at any rate, it is important to underscore that whilst allocating land or issuing the letter of allotment, the then commissioner of land would be enjoined to indicate and reflect the plan number on the face of the letter of allotment.

122. The presence of the plan number in the letter of allotment would signify and confirm that indeed the plot or portion of land which is the subject of intended allocation or alienation, has indeed been confirmed to be available for such allocation.

123. A duly approved PDP that would pave the way to the issuance of a letter of allotment and hence in the absence of a such PDP, no legitimate letter of allotment can issue and or be granted.

124. The significance of a PDP in the allotment or alienation of public land has since received judicial affirmation by the Supreme Court of Kenya in the case of Dina Management Limited v County Government of Mombasa & 5 others (Supra) where the court stated and observed as hereunder;

> " 104. The procedure for the allocation of unalienated land is laid out by the Environment and Land Court in Nelson Kazungu Chai & 9 others v Pwani University [2014] eKLR as follows:"
>
> ...It is trite law that under the repealed Government Lands Act, a Part Development Plan must be drawn and approved by the Commissioner of Lands or the Minister for lands before any un-alienated Government land could be allocated. After a Part Development Plan (PDP) has been drawn, a letter of allotment based on the approved PDP is then issued to the allotees.
>
> 131. It is only after the issuance of the letter of allotment, and the compliance of the terms therein, that a cadastral survey can be conducted for the purpose of issuance of a certificate of lease. This procedural requirement was confirmed by the surveyor, PW3. The process was also reinstated in the case of African Line Transport Co Ltd v Attorney General, Mombasa HCCC No 276 of 2013 where Njagi J held as follows: "Secondly, all the defence witnesses were unanimous that in the normal course of events, planning comes first, then surveying follows. A letter of allotment is invariably accompanied by a PDP with a definite number. These are then taken to the department of survey, who undertake the surveying. Once the surveying is complete, it is then referred to the Director of Surveys for authentication and approval. Thereafter, a land reference number is issued in respect of the plot 132. A part development plan (PDP) can only be prepared in respect to Government land that has not been alienated or surveyed...
>
> 105. This process is restated in African Line Transport Co Ltd v Attorney General, Mombasa, HCCC No 276 of 2003 [2007] eKLR where it was held that planning comes first, then surveying. A letter of allotment is invariably accompanied by a PDP with a definite number, which would then be taken to the Department of Survey for surveying. Thereafter, it is then referred to the Director of Surveys for authentication and approval. It is after that process that a land reference number is issued in respect of the plot.
>
> 106. We note that the suit property was allocated to HE Daniel T Arap Moi who was not a party to the suit. The 2nd to 6th respondents on the other hand at the trial court in the replying affidavit of Gordon Odeka Ochieng in response to ELC Petition 12 of 2017 stated that certain documents that were required to support the allocation of the suit property to HE Daniel T Arap Moi were missing. These were, "the letter of application addressed to the Commissioner of Lands seeking to be allocated the suit land; and a Part Development Plan (PDP) showing the suit property in relation to the neighbouring parcels of land."

125. The allotee thereof is obligated to comply with and or adhere to the special terms and conditions highlighted at the foot of the letter of allotment.

126. In the instant case, the letter of allotment issued herein was incomplete and it did not indicate the year that it was issued. PW2 stated in his cross-examination that he obtained the same from the Director of Survey, PW1 stated that he was not able to get in touch with the Directors of Ngebe to get the complete document.

127. Having this in mind, something does not add up. It seems that the process attendant to the issuance of the certificate of title could have been undertaken in a vacuum. It is evident that a party can only acquire legitimate interest over a property from a valid allotment letter issued in favour of the allotee and not otherwise.

128. There was no evidence tendered by the Plaintiff demonstrating that there was an application made by the initial allotee for the allocation of the property, there was no evidence of any acceptance of the said allocation by the initial allotee, there was no evidence of payment of the stand premium, no evidence of the Part Development Plan, the allotment letter produced was flawed, it did not have any signature nor the year that it was issued.

129. The Plaintiff had ample time and as was expected to demonstrate to this court that indeed they had obtained the proper documents from the initial allotee but failed to do so. The Plaintiff did not lead evidence by the allottee of the suit property to demonstrate the physical planning status of the land at the time they procured the allotment letter. The Plaintiff did not, similarly, join the said initial allotee as a party to this suit, to demonstrate to the court the circumstances under which they procured the alienation and the impugned grant. Further, the Plaintiff did not present evidence relating to any approved physical plan (part development plan) which formed the basis of the alienation of the land.

130. In view of the foregoing, it is the finding of this court that the Plaintiff has failed to demonstrate to this court that the initial allotee Ngebe Enterprises had a valid allotment in respect to the suit parcel upon which it could transfer good title to the Plaintiff and as such the Plaintiff did not acquire a good title from the initial allotee.

Issue No. (ii) Whether the suit property falls on a road reserve earmarked for the construction of the Trans Africa Highway also known as the Southern Bypass

131. It was the Plaintiffs contention that the suit property did not fall on a road reserve as was contended by the Defendants.

132. PW2 testified that he was instructed by the Plaintiff to undertake the survey. The purpose of the survey was to confirm if the property had encroached on the road reserve. He did due diligence and obtained all the relevant documents. He obtained the survey plan. Folio No. 226/114, 126/314, 348/151, 318/85. He also obtained the Part Development Plan from the Director of Survey.

133. It was his testimony that he visited the site and he confirmed that the property did not touch on the road reserve. The Part Development Plan was prepared by the Physical Planning Department.

134. He also stated that the 1970 plan was not in any way affected by the Part Development Plan of 1991. The demolished building did not in any way fall within the 60 meters corridor.

135. He also stated that the Plaintiff's bundle had a Part Development Plan done in 1991. The land was not on a road reserve and he maintained the same position during his cross examination.

136. During trial and the cross-examination of DW1 and DW2 they conceded that the suit property was not on a road reserve but rather an open space or land set aside for construction of the road infrastructure.

137. The Plaintiff also submitted extensively on the said issue demonstrating how the said property did not fall on the road reserve.

138. The court has considered the evidence on record and indeed the survey report which showed that the land did not fall within the 60 meter road reserve. The Southern by pass was about 10 meters away from the 60 meter road reserve. The Plaintiff also produced a survey report which confirmed that it had not encroached the road reserve. The Defendants did not adduce any evidence to controvert the same. However, they took the position that the said property was an open space set aside for use during the construction of the Trans Africa Highway/ Southern bypass and that the 1st Defendant was still expected to construct an inter change utilizing the said portion.

139. The court visited the site after the Southern Bypass had been constructed and confirmed as much even though DW1 and DW2 indicated that the road was still under construction, the same did not change the evidence on record that the suit parcel was not on a road reserve.

Issue No. (iii) Whether the Plaintiff is entitled to the reliefs sought

140. The Plaintiff sought for several reliefs as enumerated in tis amended plaint dated 22nd October 2020. However, for the court to grant the said reliefs, the Plaintiff ought to have demonstrated that indeed it acquired the suit parcel lawfully. The court in addressing itself on the first issue as to whether the Plaintiff acquired good title from the 1st allotee arrived at a finding that the initial allotee did not have a good title to pass to the Plaintiff.

141. In view of the foregoing, it is the finding of this court that the reliefs sought cannot be granted and the court cannot stretch itself to grant the same. The Plaintiff having failed to demonstrate a good root to its title and further that the initial allotee lawfully acquired the said property, it cannot have any reliefs or declaration issued in its favour. Having stated as much this court is unable to grant the same.

Issue No (iv) What orders should issue as to costs

142. In respect to costs, the general rule is that costs shall follow the event in accordance with the provisions of Section 27 of the *Civil Procedure Act* (Cap. 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. This was the holding in Hussein Janmohamed & Sons v Twentsche Overseas Trading Co. Ltd [1967] EA 287. However, in the instant case considering the fact that the Plaintiff's property was demolished during the pendency of the suit this court cannot condemn them to costs and in view of the foregoing, it is hereby directed that each part shall bear own costs of the suit.

Conclusion

143. In conclusion, it is the finding of this court that the Plaintiff has not been able to prove its case to the required standard and regrettably so and while sympathizing with the predicament of the Plaintiff this court being unable to grant the reliefs sought in the amended plaint dated 20th October 2020 it follows therefore that the Plaintiff's suit fails.

144. Consequently, the Plaintiff's suit is hereby dismissed with an order that each party bears own costs of the suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI THIS 28TH DAY OF FEBRUARY 2025.

E. K. WABWOTO

JUDGE

In the presence of:-

Mr. Chege Njoroge for the Plaintiff.

Mr. Mwenesi for the 1st Defendant.

Ms. Cecilia Masinde for 2nd Defendant.

Mr. Motari for 3rd and 4th Defendants.

Court Assistant: Mary Ngoira.