



**Njubi (Suing on Behalf of the Estate of Peter Njubi Njoroge,
Now Deceased) v Kanja & 4 others (Environment & Land Case
E004 of 2023) [2024] KEELC 708 (KLR) (15 February 2024) (Judgment)**

Neutral citation: [2024] KEELC 708 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E004 OF 2023
JO MBOYA, J
FEBRUARY 15, 2024**

BETWEEN

**LUCY NYAGAKI NJUBI [SUING ON BEHALF OF THE ESTATE OF PETER
NJUBI NJOROG, NOW DECEASED] PLAINTIFF**

AND

**LAWRENCE KANJA 1ST DEFENDANT
ESTHER WANJIKU 2ND DEFENDANT
ANTHONY WAGAKI 3RD DEFENDANT
EMBAKASI RANCHING COMPANY LIMITED 4TH DEFENDANT
THE CHIEF LAND REGISTRAR 5TH DEFENDANT**

JUDGMENT

1. The Plaintiff herein has approached the Honourable court vide Plaintiff dated the 4th July 2023; and in respect of which the Plaintiff has sought for various reliefs, namely, [verbatim]
 - i. A declaration that the 4th Defendant having allotted the suit properties, that is to say, Parcel of land numbers Nairobi Block 136/6166 (formerly plot number M266); and Nairobi Block 136/6167 [formerly plot number M267]; and the Plaintiff's father having accepted the allotment and met the conditions therein, the said plots were not available for re-allotment to the 2nd and 3rd Defendants or purported sale to the 1st Defendant and the same remains the property of the Plaintiff's father, now deceased.
 - ii. A mandatory Injunction restraining the 5th Defendant whether by himself/servant and/or agents from in any way whatsoever alienating the suit properties that is to say, parcel of land numbers Nairobi Block 136/6166 (formerly plot number M266); and Nairobi Block



136/6167 [formerly plot number M267]; or in any other way dealing with it to the detriment of the Plaintiff.

- iii. An order requiring the 5th Defendant to cancel any entry/certificate of lease in the name of the 1st, 2nd and 3rd Defendants and any other person and issue a Certificate of Lease in favor of the Plaintiff.
 - iv. General damages.
 - v. Costs of the suit.
 - vi. Any other/further reliefs as the honorable court may deem fit to grant.
2. Upon the filing of the instant suit, the Plaintiff proceeded to and extracted summons to enter appearance which were thereafter duly served upon the 4th and 5th Defendants herein in the normal course of service of court process.
 3. Pursuant to and upon being served with the Plaint and summons to enter appearance, the 5th Defendant duly entered appearance and thereafter filed a Statement of Defense dated the 20th September 2023. Instructively, the 5th Defendant denied the allegations contained at the foot of the Plaint.
 4. On the other hand, having made various efforts to serve the 2nd and 3rd Defendants in the normal manner of service, but having failed to trace the named Defendants for purposes of service, the Plaintiff sought for and obtained leave to serve the 2nd, 3rd and 4th Defendant vide substituted means.
 5. For coherence, the Plaintiff thereafter proceeded to and published an advertisement in the Daily Nation, wherein same intimated that the 2nd, 3rd and 4th Defendants that same had been sued in the instant matter.
 6. Be that as it may, neither the 2nd, 3rd nor 4th Defendants entered appearance nor filed a Statement of Defense.
 7. Other than the foregoing, it is also important to point out that though the Plaintiff herein had hitherto impleaded and sued the 1st Defendant, the suit against the 1st Defendant was marked as withdrawn on the 21st September 2023; and hence the only remaining Defendants are the 2nd, 3rd, 4th and 5th, out of whom only the 5th Defendant filed a Statement of Defense.
 8. Subsequently, the matter herein was listed for pre-trial directions, whereupon Learned counsel for the Plaintiff and the 5th Defendant confirmed to the court that same had filed and exchanged the requisite documents and list of witness. In this regard, the matter was thereafter confirmed ready for hearing.

Evidence By The Parties::

- a. Plaintiff's Case
9. The Plaintiff's case revolves around the Evidence of one witness, namely, Lucy Nyagaki Njumbi, who testified as PW1.
 10. It was the testimony of the witness that same is the duly appointed and constituted Legal Administratrix of the Estate of one Peter Njumbi Njoroge, now deceased, having been duly issued with the Grant of Letters of Administration dated the 9th May 2019.



11. Furthermore, it was the testimony of the witness, that Peter Njumbi Njoroge, now deceased, was allotted Plots number M266 and M267, respectively, by the 4th Defendant herein. Besides, the witness averred that upon being allotted the named plots, the deceased proceeded to and complied with the terms of the Letters of allotment and thus the deceased acquired lawful rights and interests over and in respect of the designated plots.
12. Other than the foregoing, the witness also testified that subsequently the designated plots, namely , Plots M266 and M267, were surveyed and thereafter were assigned as L.R No's Nairobi Block 136/6166 and 6167, respectively.
13. Additionally, the witness herein has testified that despite the fact that the 4th Defendant had lawfully allocated the designated plots to and in favor of the deceased, the 4th Defendant has since purported to re-allocate the designated plots and by extension the parcel numbers to the 2nd and 3rd Defendants, who are keen to appropriate the ownership rights to and in respect of the designated properties.
14. Other than the foregoing, the witness testified that the 4th Defendant has similarly forwarded the names of the 2nd and 3rd Defendants to the 5th Defendant, namely, the Chief land Registrar, with a view to being issued with a certificate of title to and in respect of L.R No's Nairobi Block 136/6166 and 6167, respectively.
15. According to the witness, the impugned actions by and on behalf of the 4th Defendant are calculated to deprive the Estate of the Deceased of its lawful rights and interests over the suit properties and hence the necessity to grant the reliefs sought at the foot of the Plaint herein.
16. Other than the foregoing, the witness alluded to the witness statement dated the 4th July 2023; and which same sought to adopt as Evidence in chief. For coherence, the witness statement, whose terms have been highlighted herein before was adopted and further constituted as further evidence on behalf of the witness.
17. In addition, the witness also alluded to the List and Bundle of documents dated the 4th July 2023 containing 7 documents and thereafter implored the court to adopt and admits same as Exhibits on behalf of the Plaintiff.
18. Pursuant to and at the instance of the witness, the documents at the foot of the List and Bundle of documents dated the 4th July 2023, were duly admitted as Plaintiff's Exhibit P1 to P7, respectively.
19. Having tendered the foregoing documents, the Plaintiff implored the court to proceed and grant the relief at the foot of the Plaint dated the 4th July 2023.
20. On cross examination by Learned counsel for the 5th Defendant, the witness herein indicated that same had sued the 5th Defendant because the 5th Defendant was on the verge of transferring and registering the suit properties in favor of the 2nd and 3rd Defendants.
21. Additionally, the witness averred that even though same has sued the Defendant, same (witness) has neither tendered nor placed before the court any documents to show that the 5th Defendant has received any application for transfer and registration of the suit properties in favor of the 2nd and 3rd Defendants.
22. Whilst under further cross examination, the witness averred that the 5th Defendant has however not breached and/or violated any of her (witness rights). In any event, the witness added that same had no claim against the 5th Defendant, namely, the Chief Land Registrar.
23. With the foregoing testimony, the Plaintiff's case was duly closed.



b. Defendants' Case:

24. As pointed elsewhere herein before, the suit against the 1st Defendant was withdrawn by consent of the Parties. Consequently, the 1st Defendant ceased a party to the instant proceedings.
25. On the other hand, the 2nd, 3rd and 4th Defendants neither entered appearance nor filed any statement of defense. Notably, the Plaintiff's case against the named Defendant proceeded on the basis of formal proof.
26. In respect of the 5th Defendant, it suffices to state that same duly entered appearance and thereafter filed a Statement of defense. Nevertheless, the 5th Defendant neither filed any witness statement nor bundle of documents, or at all.
27. Furthermore, Learned counsel for the 5th Defendant proceeded to and implored the Honourable Court to close the 5th Defendant's case albeit without having tendered any evidence. Consequently and in this regard, the 5th Defendant's case was duly closed.

Parties' Submissions:

a. Plaintiff's Submissions:

28. The Plaintiff filed written submissions dated the 25th January 2024; and in respect of which same has raised, highlighted and canvassed two [2] pertinent issues for due consideration by the Honourable court.
29. Firstly, learned counsel for the Plaintiff has submitted that the 4th Defendant duly and lawfully issued a Letter of allotment to and in favor of one Peter Njumbi Njoroge, now deceased and in respect of which the 4th Defendant allocated Plot numbers M266 and M267, respectively to the deceased.
30. Furthermore, Learned counsel for the Plaintiff has also submitted that upon being issued with the Letter of allotment dated the 28th November 1992, Peter Njumbi Njoroge, now deceased, proceeded to and complied with the terms of the Letter of allotment and particularly, by paying the monies which were alluded to at the foot of the said Letter of allotment.
31. Other than the foregoing, Learned counsel for the Plaintiff has submitted that upon payments of the monies alluded to at the foot of the Letter of allotment, the deceased acquired lawful and legitimate rights to and in respect of the named plots, hence the 4th Defendant cannot purport to re-allocate the same plots to and in favor of the 2nd and 3rd Defendants.
32. Be that as it may, Learned counsel for the Plaintiff has submitted that subsequently the plots which were hitherto known as M266 and M267, respectively, were surveyed and assigned land reference numbers, namely, Nairobi Block 136/6166 and 6167, respectively.
33. Premised on the foregoing, Learned counsel for the Plaintiff has therefore implored the court to find and hold that upon the issuance of the Letter of allotment and coupled with the satisfaction of the terms thereto, the 4th Defendant ceased to have any proprietary rights to in respect of the suit properties.
34. In support of the foregoing submissions, Learned counsel for the Plaintiff has cited and relied on, inter-alia, the case of Republic vs The City Council of Nairobi & Another (Ex-parte Mutuota Family Society; Rukaya Ali Muhamed vs David Gikonyo Nambacha Kisumu HCCA No. 9 of 2004 (UR) and Republic vs The Commissioner of Lands & Another (Ex-parte Kithinji Murugu M' agere) (Nairobi HCC Misc. 395 of 2012) (UR).



35. Secondly, Learned counsel for the Plaintiff has submitted that to the extent that the suit properties had been lawfully allocated to and in favor of the deceased, the Estate of the Deceased was vested with lawful rights to enter upon and use the suit properties.
36. However, Learned counsel for the Plaintiff has submitted that despite being the lawful allottees of the suit properties, the 2nd, 3rd and 4th Defendants have interfered with the rights attendant to the Estate of the deceased and hence learned counsel for the Plaintiff has implored the court to find and hold that the Plaintiff is entitled to recompense on account of General damages for trespass.
37. In any event, Learned counsel for the Plaintiff has thereafter proceeded to and proposed an award in the sum of Kes.1, 000, 000/= only to be paid by the 2nd and 3rd Defendants herein.
38. In a nutshell, the Plaintiff has implored the Honourable court to find and hold that the claim at the foot of the Plaint herein, is meritorious and therefore ought to be granted.
 - b. 5TH Defendant's Submissions:
39. Though the 5th Defendant participated in the proceedings and indeed cross examined the Plaintiff's witness, Learned counsel for the 5th Defendant intimated to the court that same would not be filing any written submissions. For good measure, no submissions were ever filed by and on behalf of the 5th Defendants.

Issues For Determination:

40. Having reviewed the Pleadings filed by and on behalf of the Parties, and upon taking into account the Evidence tendered [both oral and documentary] and finally upon consideration of the written submissions filed by the Plaintiff herein, the following issues do emerge and are thus worthy of determination;
 - i. Whether the Deceased was ever issued with a Letter of allotment relating to Plots numbers M266 and M267, respectively.
 - ii. If the answer to issue number (i) above is in the affirmative, whether the 4th Defendant could (sic) re-allocate the same Plots to and in favor of the 2nd and 3rd Defendants or at all.
 - iii. Whether the Estate of the Deceased acquired lawful and legitimate rights to and in respect of the suit properties and if so, whether same is entitled to issuance with the Certificate of title.
 - iv. What reliefs, if any , ought to be granted.

Analysis And Determination:

Issue Number 1

Whether the Deceased was ever issued with a Letter of allotment relating to Plots numbers M266 and M267, respectively.

41. It was the Plaintiff's evidence that the 4th Defendant herein duly and lawfully issued a Letter of allotment dated the 28th November 1982, to and in favor of one Peter Njumbi Njoroge, now deceased, whereupon the 4th Defendant allocated to and in favor of the said deceased Plot numbers M266 and M267, respectively.



42. Furthermore, the witness testified that upon being issued with a Letter of allotment, Peter Njumbi Njoroge, now deceased, proceeded to and complied with the terms of the Letter of allotment by paying the amounts stipulated and stated at the foot of the Letter of allotment.
43. In any event, the witness avers that upon payments of the monies at the foot of the Letter of allotment, same were duly received and acknowledged by the 4th Defendant.
44. Arising from the foregoing, the witness therefore contended that the 4th Defendant by issuing the Letter of allotment and thereafter receiving the monies at the foot of the Letter of allotment, duly confirmed and authenticated the allotment of the designated plots in favor of the deceased.
45. Premised on the foregoing, it is the Plaintiff's position that the suit plots, which were subsequently surveyed and assigned as land reference number Nairobi Block 136/6166 and 6167, respectively belonged to the Estate of the deceased.
46. Having reviewed and appraised the totality of the evidence on record and taking into account that the Plaintiff's evidence was neither controverted nor challenged, I come to the conclusion that the Plaintiff herein has duly established and proved her claim as pertains to the allotment of the designated plot in favor of the deceased.

Issue Number 2

If the answer to issue number (i) above is in the affirmative, whether the 4th Defendant could (sic) re-allocate the same plot to and in favor of the 2nd and 3rd Defendants or at all.

47. Having found and held that the designated plots were duly and lawfully allocated to and in favor of the deceased, who thereafter proceeded to and paid the monies at the foot thereof; the question that now merits due interrogation and redress, is whether the suit properties remained available and capable of being re-allocated by the 4th Defendant or otherwise.
48. Suffice it to point out that once the 4th Defendant proceeded to and allocated the suit plots to and in favor of Peter Njumbi Njoroge, now deceased, who proceeded to comply with the terms of the Letter of allotment, the 4th Defendant ceased to have any lawful rights and/or interests over and in respect of the suit plots.
49. To my mind, the act of allocating the suit plots vide issuance of Letter of allotment and thereafter receiving and acknowledging the payments at the foot of the Letter of allotment, divested the 4th Defendant of any further rights of the suit plots.
50. Henceforth, even though the 4th Defendant remains as the registered proprietor of the Mother title pending subdivision, survey and ultimate transfer of the allocated plots, the 4th Defendant continued to hold and indeed held the suit plots as a Trustee on behalf of Peter Njumbi Njoroge, now deceased.
51. Simply put, the 4th Defendant herein whilst holding the Mother title, [which included the designated plots], could not purport to alienate and re-alienate the same suit plots, which same had long alienated to and in favor of the deceased. Consequently and in this regard, it is my finding and holding that the suit plots, which had long been allocated to Peter Njumbi Njoroge, now deceased, could not be re-allocated to the 2nd and 3rd Defendants or at all.
52. As pertains to the legal import and tenor of allotment of land to and in favor of a designated person, in this case the deceased, it suffices to cite and reiterate the holding of the Court of Appeal in the case



of Benja Properties Limited versus Syedna Mohammed Burhannudin Sahed & 4 others [2015] eKLR, where the court held thus;

25. In arriving at our decision, we note that an interest in land cannot be allotted, alienated or transferred when the specific parcel of land allotted is not in existence. Allotment of an interest in land is a transaction in rem attaching to and running with a specific parcel of land. In the instant case, the allotment by the Commissioner of Land to the original allottees did not attach in rem to any land since there was no parcel upon which the allotment could attach. What the 5th respondent, the appellant and the original allottees did was to engage in paper transactions without a parcel of land upon which any interest in land would attach and vest – it was paper transactions without any parcel of land as its substratum.

53. Additionally, the effect of a Letter of allotment whose terms have been complied with was also adverted to and discussed in the case of Philemon L Wambia vs Gaitano Lusitsa Mukofu & Another (2019)eKLR, where the court stated and held thus;

36. On our part, we have considered the evidence on record on the two letters of allotment. The evidence on record shows that the first allotment to the suit property was to Mr. Joseph Muturi Muthurania. In Benja Properties Limited -v- Syedna Mohammed Burhannudin Sahed & 4 others [2015] eKLR, this Court stated that an allotment of an interest in land is a transaction in rem attaching to and running with a specific parcel of land.

54. Arising from the holdings in the decisions, [which have been alluded to in the preceding paragraphs], it is evident and apparent that once a Letter of allotment has been issued to and in respect of a particular property, in this case M266 and M267, respectively (which upon survey were assigned land reference numbers Nairobi Block 136/6166 and 6167, respectively), then the said properties ceased to be available and could not therefore be at the disposal of the 4th Defendant for purposes of second or subsequent allocation or at all.

55. In any event, there is no gainsaying that if the 4th Defendant purported to allocate or re-allocate the suit plot to and in favor of the 2nd and 3rd Defendants, then the 4th Defendant was merely engaging in paper transactions, albeit devoid of any right in rem, capable of being conveyed to (sic) the purported allottees.

56. Finally, it is common ground that once a letter of allotment has been issued, like in the instant case, there are only two [2] ways upon which the Letter of allotment can be superseded. Firstly, the originator of the Letter of allotment, for a lawful reason, subject to the provisions of Article 47 of *the Constitution*, 2010; may recall and/or rescind same.

57. Secondly, a duly issued Letter of allotment, like the one in favor of the deceased herein, can also terminate and/or lapse by effluxion of time, that is where the terms thereof are neither complied with nor acted upon by the allottee, within the set timelines.

58. Other than the foregoing instances, where a Letter of allotment can be superseded, it is not open to the originator of the allotment, [in this case the 4th Defendant], to purport to issue another set of a letter of allotment, albeit on the face of an existing and valid letter of allotment, whose terms have been duly complied with by the allottee.

59. In a nutshell, my answer to issue number two [2] is to the effect that having lawfully allocated the suit plots to and in favor of the deceased, the 4th Defendant was divested of the requisite authority and/or mandate to issue a second and/or subsequent Letter of allotment.



60. Consequently and in this regard, the attempted issuance of secondary allotment to and in favor of the 2nd and 3rd Defendants, is defeated by the Doctrine of Ex-nihilo-nihil-fit [out of nothing comes nothing].

Issue Number 3

Whether the Estate of the Deceased acquired Lawful and Legitimate rights to and in respect of the suit properties and if so, whether same is entitled to issuance with the certificate of title.

61. Whilst discussing issue number two [2] herein before, the court has found and held that Peter Njumbi Njoroge, now deceased, was lawfully allocated the suit properties.
62. Furthermore, the court has equally found and held that upon being allocated the suit plots, Peter Njumbi Njoroge, now deceased, proceeded to and complied with the terms of the Letter of allotment.
63. To the extent that the deceased duly complied with and/or adhered to the terms of the Letter of allotment, the deceased accrued and/or accumulated lawful rights to and in respect of the suit property. Consequently, the rights that vested in and/or accrued in favor of Peter Njumbi Njoroge, now deceased, are rights which are worthy of vindication under the law.
64. Nevertheless, even though Peter Njumbi Njoroge, now deceased, had not been issued with the requisite Certificate of title, there is no gainsaying that same was seized and in possession of the requisite documentation, which would have led to the issuance of the Certificate of title, had it been that the 4th Defendant was not keen on playing hide and sake [lottery] with the question of allotment.
65. To my mind, Peter Njumbi Njoroge, now deceased; and by extension his Estate have acquired rights to the suit properties and hence it is appropriate and expedient to proclaim that the suit properties forms part and parcel of the Estate of the deceased.
66. In terms of the rights that accrues to and in favor of the legitimate allottee, it suffices to point out that such an allottee, would be placed in a near similar position and status as the registered owner of the property; and more particularly where the allottee has duly complied with and indeed, fulfilled all the requisite conditions.
67. To underscore the foregoing exposition of the law, it suffices to adopt and reiterate the holding of the Court in the case of Moya Drift Farm Ltd. v. Theuri (1973) EA 114; where the Eastern Africa Court of Appeal [EACA]; Spry, V-P at 116, considered the effect of section 23 of the Registration of Titles Act and held –

“I cannot see how a person could possibly be described as “the absolute and indefeasible owner” of land if he could not cause a trespasser to be evicted. The Act gives a registered proprietor his title on registration and, unless there is any other person lawfully in possession, such as a tenant, I think that title carries with it legal possession: there is nothing in the Act to say or even suggest that his title is imperfect until he has physical possession.”

Furthermore, Sir William Duffus, P. *ibid* at p.117 agreed with Spry, JA as follows:

“In any even I agree with the Vice-President that the fact that the appellant was the registered proprietor as owner in fee simple under the Registration of Titles Act, and as such vested with the absolute and indefeasible ownership of the land, was sufficient to vest legal possession of the land in the appellant and that this possession would be sufficient to support the action of trespass against a trespasser wrongly on the land.”



68. Taking into account the foregoing position and coupled with the fact that Peter Njumbi Njoroge, [now Deceased], had indeed complied with the terms of the Letter of allotment, it is my finding and holding that same therefore fits within the prescription articulated and espoused by the Court in the cited decision.

Issue Number 4

What reliefs, if any, ought to be granted

69. The Plaintiff herein sought for a plethora of reliefs at the foot of the Plaint dated the 4th July 2023. Nevertheless, the salient and pertinent reliefs sought touches on a declaration that the suit plots, now known as L.R No's Nairobi Block 136/6166 and 6167, respectively had lawfully been allocated to and in favor of Peter Njumbi Njoroge, now Deceased, and were therefore not available for re-allocation or at all.
70. In my humble view, whilst discussing issue number 2 and 3 herein, the court has since found and held that Peter Njumbi Njoroge, now deceased, was lawfully allocated the suit properties and hence same is entitled to be issued with a Certificate of title.
71. On the other hand, if as a result of the illegal and unlawful actions by the 4th Defendant any title has since been issued to and in favor of the 2nd and 3rd Defendants, then no doubt, such sets of title would be void and incapable of conferring any legitimate rights or at all, to the 2nd and 3rd Defendants.
72. Finally, the Plaintiff herein also sought for recompense on account of General damages for trespass. Suffice to point out that trespass is actionable per se and hence having found and held that deceased was entitled to exclusive possession, occupation and use of the suit properties, no doubt, the Plaintiff has laid/established a basis for the grant of General damages.
73. In short, I am of the view that an award in the sum of Kes.1, 000, 000/= only, would suffice as recompense and/or atonement for the damages suffered arising from the deprivation of the suit properties.
74. In assessing and awarding the quantum of General damages [details in terms of the preceding paragraph], I have taken into account and adopted the principles espoused in the case of Kenya Power & Lighting Company Ltd v Ringera & 2 others (Civil Appeal E247 & E248 of 2020 (Consolidated)) [2022] KECA 104 (KLR) (4 February 2022) (Judgment), where the Court of Appeal stated and held thus;

38. The principles both parties have relied upon in their invitation for the Court to decide either way are those enunciated by the predecessor of this Court and either crystallized or restated by this Court which we find prudent to distill and replicate as hereunder:

- i. Harlsburys Laws of England 4th Edition Vol. 45 at para 26 pg 1503, namely, the owner of the land is entitled to nominal damages where there is no actual damage occasioned to the owner by the trespass, such amounts as will compensate the owner for loss of use resulting from the damage caused by the trespass, reasonable damages are payable where the trespasser has made use of the owner's land, exemplary damages are payable where the trespassers conduct towards the owner is not only oppressive but also cynical and carried out in deliberate disregard of the right of the owner of the land with the object of making a gain by his/her unlawful conduct, general damages may be increased where the trespass is accompanied by aggravating circumstances to the detriment of the owner of the land.



- ii. Duncan Nderitu Ndegwa vs. Kenya Pipeline Company limited & Another [2013] eKLR - damages payable for trespass are the amount of diminution in value or the loss of reinstatement of the land with the overriding principle being to put the claimant in the position he was in prior to the infliction of harm.
- iii. Philip Ayaya Aluchio vs. Crispinus Ngayo [2014] eKLR, - the measure of damages for trespass is the difference in the value of the plaintiffs' property immediately before and immediately after the trespass or the cost of restoration whichever is less.
- iv. Ephantus Mwangi & Another vs. Duncan Mwangi [1981 – 1988] I KAR 278, - an appellate court is not bound to accept and act on the trial court's findings of fact if it appears clearly that the trial court failed to take account of particular circumstances or probabilities material to an estimate of evidence.
 - b) a Court of Appeal will not normally interfere with a finding of fact by the trial court, unless it is based on no evidence or on a misapprehension of the evidence or the Judge is shown demonstrably to have acted on wrong principles in reaching the findings he did.
- v. Kiambu Dairy, Farmers Co-operative Society Limited vs. Rhoda Njeri & 30 Others [2018] eKLR, - the extend of an award of compensatory damages lies in the discretion of the trial court and interference therewith on appeal must be approached with a measure of circumspection and well settled principles.
- vi. Kemfro Africa Limited vs. Lubia & Another [No. 2] [1987] KLR 30 as approved in Peter M. Kariuki vs. Attorney General [2014] eKLR, - before interference with the quantum of damages awarded by a trial court the appellate court must be satisfied that either the judge in assessing the damages took into account an irrelevant factor, or left out of account a relevant one or short of the above, the award is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damages payable.
- vii. Johnson Evans Gicheru vs. Andrew Martin & Another [2005] eKLR, - this Court on appeal will be disinclined to disturb the finding of the trial Judge as to the amount of damages awarded by the trial court merely because if it had tried the case itself in the first instance, it would have awarded either a higher or lesser sum
 - b) justification for reversing a trial Judge on an award of damages only applies where the court is convinced either that the Judge acted upon some wrong principle of law or that the amount awarded was so extremely high or so very low as to make it an entirely erroneous estimate of the damage to which the aggrieved party is entitled.
- viii. Sumaria & Another vs. Allied Industries Limited [2007] 2 KLR I, - an appellate court should be slow in moving to interfere with a finding of fact by a trial court unless it was based on no evidence or based on a misapprehension of the evidence or that the Judge had been seen demonstrably to have acted on a wrong principle in reaching the finding he/she did.
- ix. Butt vs. Khan [1981] KLR 349, - an appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate
- x. it must be shown that the Judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived at a figure which was either inordinately high or low.



- xi. Total (Kenya) Limited formerly Caltex Oil (Kenya) Limited vs. Janevans Limited [2015] eKLR, - whether the claim is in contract or tort, the only damages to which an aggrieved party is entitled to is the pecuniary loss;
 - (b) the accruing awardable damages is aimed at putting the aggrieved party into as good a position as if there had been no such breach or interference. In other words, in the position it/he/she was in with regard to the object trespassed upon before the onset of such a trespass;
 - (c) it is meant to cushion the aggrieved party against the expenses caused as a result of the trespass and loss of benefit over the period of the duration of the trespass.

Final Disposition:

75. From the foregoing analysis, it is crystal clear that the Plaintiff herein has duly established and proved the claims alluded to at the foot of the Plaint dated the 4th July 2023.
76. Consequently and in the premises, I am inclined to and do hereby enter Judgment in favor of the Plaintiff on the following terms;
 - i. A declaration be and is hereby issued that the 4th Defendant having allotted the suit properties, that is to say, parcel of land numbers Nairobi Block 136/6166 (formerly plot number M266); and Nairobi Block 136/6167 (formerly plot number M267); and the Plaintiff's father having accepted the allotment and met the conditions therein, the said plots were not available for re-allotment to the 2nd and 3rd Defendants or purported sale to the 1st Defendant and the same remains the property of the Plaintiff's father, now deceased.
 - ii. The 4th Defendant be and is hereby ordered and directed to generate, process and execute the relevant transfer instruments/instruments of conveyance as pertains to L.R No's Nairobi Block 136/6166 (formerly plot number M266); and Nairobi Block 136/6167 (formerly plot number M267 and thereafter transmit same to the Plaintiff to facilitate the transfer and registration of the suit properties.
 - iii. For coherence, the processing, preparation and execution of the Instruments of transfer shall be undertaken within a duration of 60 days from the date herein.
 - iv. In the event of default to comply with clause (iii), the Deputy Registrar of the court shall be at liberty to execute, sign and engross the requisite Instrument of conveyance to facilitate the transfer and registration of the suit properties in favor of the Plaintiff.
 - v. The 2nd and 3rd Defendants, herein be and are hereby ordered to vacate and hand over vacant possession of the suit properties, that is in the event same are in occupation thereof within a duration of 90 days from the date hereof.
 - vi. In the event of default by the 2nd and 3rd Defendants to vacate and hand over vacant possession, the Plaintiff shall be at liberty to levy Eviction and recover vacant possession.
 - vii. Where the Eviction is levied and/or undertaken by and on behalf of the Plaintiff, the costs incurred in levying such Eviction shall be certified by the Deputy Registrar and thereafter recoverable as part of costs.
 - viii. If and where a certificate of title in respect of the suit properties had hitherto been issued in favor of the 2nd and 3rd Defendants, same be and are hereby canceled, nullified and/or revoked.



- ix. Furthermore, there be and is hereby granted an order of Permanent injunction restraining the 2nd, 3rd and 4th Defendant either by himself/servant and/or agents from entering upon, re-entering, trespassing onto and/or otherwise dealing with the suit properties in a manner adverse to the interests of the Plaintiff herein.
- x. General damages in the sum of Kes.1, 000, 000/= only be and is hereby awarded to the Plaintiff as against the 2nd and 3rd Defendants, with interests at court rates until payment in full.
- xi. Costs of the suit shall be borne by the 2nd, 3rd and 4th Defendants and same to be taxed by the deputy Registrar of the court.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 15th DAY OF February 2024.

OGUTTU MBOYA

JUDGE

In the Presence of;

Court Assistant: Travis

Mr. Gatoto for the Plaintiff.

Mr Allan Kamau h/b for Ms Vivian Kirina for the 5th} Defendant.

No appearance for the 2nd, 3rd and 4th Defendants.

