



**National Oil Corporation v Al-Busaidy & 3 others (Civil Appeal  
77 of 2018) [2022] KECA 79 (KLR) (4 February 2022) (Judgment)**

Neutral citation: [2022] KECA 79 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT MOMBASA  
CIVIL APPEAL 77 OF 2018  
RN NAMBUYE, W KARANJA & AK MURGOR, JJA  
FEBRUARY 4, 2022**

**BETWEEN**

**NATIONAL OIL CORPORATION ..... APPELLANT**

**AND**

**SULEIMAN MOHAMED SAID SULEIMAN AL-BUSAIDY .... 1<sup>ST</sup> RESPONDENT**

**ALI MOHAMED SAID SULEIMAN AL-BUSAIDY ..... 2<sup>ND</sup> RESPONDENT**

**SHELL COMPANY OLD EAST AFRICA ..... 3<sup>RD</sup> RESPONDENT**

**VIVO ENERGY KENYA LTD ..... 4<sup>TH</sup> RESPONDENT**

*(Being an appeal of the decree and orders of the Environment and Land Court at  
Mombasa (A. Omollo, J.) dated 22nd March, 2018 in ELC Case No. 16 of 2016)*

**JUDGMENT**

1. The 1st and 2nd respondents suing as the legal representatives and the heirs of the estate of the late Mohamed Said Suleiman Al-Busaidy sued Shell Company Old East Africa and Vivo Energy Kenya Ltd, the 3rd and 4th respondents respectively and National Oil Corporation, the appellant, at the Mombasa Environment and Land Court (ELC) vide a plaint dated 9th February, 2016. It was their case that their grandmother, Binti Sawadi leased Parcel L.R No. Mombasa/Block XV111/244 (hereafter the suit property) to the 3rd respondent in 1937 for a term of 99 years. Later when Binti died, her son Mohamed Suleiman Mohamed, the 1st and 2nd respondent's father became the administrator and heir of her Estate.
2. Years later after Mr. Mohamed died, his sons the 1st and 2nd respondents inherited the suit property. It would appear that the 1st and 2nd respondents were not hands on landlords and did not give much attention to what was happening on the suit property. Even as ownership of the property changed



from one generation to the next, the lease to the 3rd respondent remained unchanged until 2008 when the event leading to these proceedings happened.

3. It was the 1st and 2nd respondents' case that the appellant entered into the suit property in 2008 without authority or consent and they have been running a petrol station thereon from then to date earning profits to the detriment of the 1st and 2nd respondents who have been denied access to the said suit property. It was their case that the 3rd respondent also breached the lease by failing to pay the rates and rent since 1985 as stipulated in the lease agreement. The 3rd respondent also transferred the lease to the appellant herein without their knowledge or consent on 29th July, 2015, whom together with the 4th respondent obtained waiver of consent from the Land Registrar fraudulently and irregularly on 20th September, 2013 following their application on 19th August, 2013.
4. In the plaint, the 1st and 2nd respondents (then plaintiffs) sought reliefs before the ELC as follows:
  - a. A declaration that the 3rd respondent is in breach of the lease agreement dated 1st April, 1937 and that the said property reverts back to the 1st and 2nd respondents.
  - b. A declaration that the 1st and 2nd respondents are entitled to exclusive and unimpeded right of possession and occupation of all that piece of land known as L.R No. Mombasa/Block XVIII/244.
  - c. A declaration that any waiver of consent obtained by the 4th respondent and subsequent transfer of any lease to the appellant was obtained irregularly and fraudulently by concealment of facts and as such null and void.
  - d. A declaration that the appellants, 3rd and 4th respondents whether by themselves or their servants or agents or otherwise howsoever are wrongfully, illegally in occupation of the suit property L.R No. Mombasa/Block XVIII/244 and accordingly trespassers on the same.
  - e. A declaration that the appellant, 3rd and 4th respondents whether by themselves or their servants or otherwise howsoever are not entitled to remain on the suit property.
  - f. An injunction restraining the appellant, 3rd and 4th respondents whether by themselves or their servants or agents or otherwise howsoever from remaining or continuing in occupation of the suit property.
  - g. Eviction order/vacant possession of the suit property.
  - h. General damages for breach of contract.
  - i. Costs of the suit together with interest thereon at such rate and for such period of time.
5. In their defence, the 3rd and 4th respondents filed a joint statement of defence dated 14th March, 2016. The appellant filed a defence and counter-claim dated 11th May, 2016. They denied the claim and invited the 1st and 2nd respondents to strict proof. The appellant asked the court to dismiss the 1st and 2nd respondents claim against it and allow its counter-claim and grant it relief as follows:
  - i. A declaration that the 1st and 2nd respondents' action and or condition in relation to the appellant's application for the head lessors consent to transfer of lease amounts to an unreasonable withholding of the consent;



- ii. A declaration that given the circumstances of the case, it was proper for the appellant to seek and obtain a waiver of the head lessors consent to the transfer of lease and that the registrar acted lawfully in dispensing with the requirement under section 54(2) of the Land Registration Act no. 3 of 2012;
- iii. In the alternative to prayer(ii) above, the honorable court be pleased to waive the requirement for the head lessor's consent and to consequently deem the registration of the transfer of lease on 29th July, 2015 as entry No. C2 as having been done in accordance with the law.
- iv. Costs of the counter-claim be awarded to the appellant against the 1st and 2nd respondents.

**1st and 2nd respondents' case**

- 6. At the trial the matter was canvassed by way of viva voce evidence. The 1st respondent testified on his own behalf and that of the 2nd respondent. He asked the court to adopt his witness statement dated 18th January, 2016. He testified that he lived in both Oman and Lamu; the first lease was executed by his grandfather Sir Mohamed Said Albusaidy in 1936 and it was renewed by his grandmother Zawana Albusaidy in 1965; upon her death his father took over the administration of the estate before he died in 1989. After his death their step- mother took over the administration of the estate before she died in 1999 - 2000. They took out letters of administration to run the estate and he used advocates to dispose of most of the properties. He said that he was surprised to learn that the 3rd respondent had transferred the suit property to the appellant without their consent.
- 7. It was his evidence further, that in 2010, 19th November, 2013 and 27th October, 2014 the appellant expressed interest to buy (1st and 2nd respondents) freehold interest in the suit property but the sale did not materialize. The 3rd respondent through their nominee the 4th respondents had irregularly transferred the lease without their consent to the appellant and had also obtained a waiver from the Registrar of Titles on the ground that they were not interested in the suit land and neither had they applied for the letters of administration. They had forfeited the lease because of non-payment of ground rents as stated in their advocates' letters dated 20th May, 2010 and 12th July, 2010.
- 8. On cross-examination by Mrs. Mwangi learned counsel for the 3rd and the 4th respondents and Mr. Kongere for the appellant, the 1st respondent stated that the property had not been transferred to the beneficiaries. He confirmed that the appellants were on the suit property illegally as they did not offer the purchase price they wanted. The notice to vacate was issued by their advocates and the appellant was given 30 days and not 6 months because there was no lease between the appellant and them.
- 9. In re-examination he stated that he had not received any rent payment from the appellant and negotiations to purchase the suit property began in 2010 and collapsed in 2014 when they could not agree on the purchase price.

**3rd and 4th respondents' case**

- 10. The 3rd and 4th respondents called one witness Naomi Njeri Assumani the head of legal and Company Secretary of Vivo Energy (K) Ltd. She testified and stated that the 3rd and 4th respondents were one business entity save for the names that occurred because of change in the shareholding of the 3rd respondent who first signed the lease in 1937 for a period of 99 years effective 1st July, 1937 at an annual rent of Ksh.2000. That pursuant to this lease it constructed a petrol station on the suit property and in 2007 it transferred the lease to the appellant following conditions put to them by the then Finance



minister that they had to sell off 13 of their stations to get approval to acquire interest in the British Petroleum (B.P).

11. They therefore had to obtain consent of the head lessor, and when they enquired from Pandya & Talati Advocates, they were informed that the lessor was deceased and his children were all living abroad, and their advocate advised them to obtain a waiver from the Land Registrar, which application was made on 19th August, 2013. She denied giving the registrar false information and that they were not paying rent. That in 2007 they paid a sum of Ksh. 2000 and by 2010 when Y. A. Ali wrote a letter they were not in occupation of the suit property. It was her evidence that they only sold the leasehold interest of the suit property and they had never been served with any notice to terminate the lease.
12. On cross examination she stated that possession of the suit property was transferred to the appellant in 2008 for a consideration of Ksh. 26,000,000 and that she was not aware the 1st respondent was the administrator to the estate. Further that the company never received a 6 months' notice and that the waiver preceded the confirmation of the grant which came to their notice when they were served with the 1st and 2nd respondents' documents.

### **Appellant's case**

13. Gladys Koletit the legal affairs manager testified on behalf of the appellant and stated that in 2007, it entered into an asset purchase agreement with the 3rd respondent to acquire specific number of its service stations and on 20th May, 2010 it received a letter from Y. A. Ali advocates who indicated that it represented the estate of Mohamed Said Suleiman Al-Busaidy and the letter also notified the 1st respondent of the forfeiture of the lease for non-payment of the rent. Upon clarification on who represented the 1st and 2nd respondents, the firm of Pandya & Talati vide their letter dated 12th July, 2010 indicated that Ms. Y. A. Ali represented the owners of the suit property and on 2nd February, 2011 they requested to have the contacts of the representatives to the estate and Mr. Pandya wrote back indicating that the children had not taken any interest in the property.
14. Further that on 15th February, 2012, they requested the firm of Y. A. Ali to give them the head lessor's contact in-order to obtain their consent to facilitate the transfer but they never received any feedback necessitating them to apply for exemption under section 54(2) of the [Land Registration Act](#) on 19th August, 2013. John Kibara testified as a second witness for the appellant. He stated that he was involved in the attempt to purchase the freehold interest over the suit property and the firm of Muriu Mungai & Co. Advocates was appointed to represent the company. Panya & Talati advocates indicated that they were representing the owners of the suit property and he was only supplied with the copy of the title in September, 2012.
15. In February 2012, the firm of Y. A. Ali informed them that the representative to the estate lived in Lamu and when contacted, the 1st respondent demanded a sum of Ksh. 7,500,000 for him to consent to the transfer of the lease and a purchase price of Ksh. 40,000,000 and they opted to proceed with the transfer of the lease and the issue in regard to the purchase was to be looked into later on. On cross-examination he stated that the Ksh. 7,500,000 was for illegal possession of the property and the 1st and 2nd respondents had assumed that the purchase price would be Ksh. 40,000,000 and the appellants case was closed.
16. Parties filed their submissions and upon consideration of the evidence, submissions and the authorities relied on by the respective parties in support of their rival positions, the court delivered its judgment on 22nd March, 2018 and allowed the 1st and 2nd respondents' prayers (a) to (g) of the plaint as against the 3rd and 4th respondents and appellant jointly and severally. Further that the 1st and 2nd respondents were entitled to damages and the same were assessed as mesne profits for the unpaid rent due for the period there had been default together with interest at court rates from the date of filing of the suit



till payment in full. The court adopted the period from 1985 using the dates of the invoice from the municipal council showing the outstanding rates which were paid by the 4th respondent. The costs of the suit were also awarded to the 1st and 2nd respondents. The appellants counter-claim was dismissed with no order as to costs and further the appellant was given 120 days' notice to vacate the suit property since they were operating a business on the premises unlawfully, in default the 1st and 2nd respondents were at liberty to evict them using lawful means.

17. Aggrieved by the trial court's decision, the appellants filed its Notice of Appeal and a record of appeal raising grounds of appeal, inter alia that the learned Judge erred in law and fact;
  - i. In finding that the lease dated 1st April, 1937 had been forfeited or terminated by letters dated 20th May, 2010 or 12th July, 2010 or at all;
  - ii. In law and fact in finding that there was an assignment of lease done in the year 2008 between the appellant and the 3rd and 4th respondents without the consent of the 1st and 2nd respondents;
  - iii. In finding that the waiver obtained on 20.9.2013 was obtained by the appellant;
  - iv. In finding that the waiver obtained on 20.9.2013 was obtained unlawfully and was therefore void.
  - v. In awarding mesne profits from the year 1985 when she made a finding of fact, albeit an erroneous one, that the trespass commenced in 2008.
18. The appellant has asked this Court to allow the appeal, set aside the judgment of the ELC and substitute it therefor with an order dismissing the 1st and 2nd respondents' suit and allowing its counterclaim.
19. The appeal came for plenary hearing on 16th June, 2021. Learned counsel Billy Kangere appeared for the appellant. Titus Mungambi appeared for the 3rd and 4th respondents. There was no appearance for the firm of Chepkwony & Associates on record for the 1st respondent. The court being satisfied that they had due notice of the hearing of the appeal having been served electronically with a hearing notice by the Deputy Registrar of this Court on Thursday, May 27, 2021 at 2.19pm allowed learned counsel present to prosecute the appeal. Counsel adopted their written submissions without oral highlights. The appeal was canvassed via Go-To-Meeting platform through written submissions and legal authorities relied upon by the respective parties in support of their rival positions. It was submitted on behalf of the appellant that the court erred in finding the lease had been terminated by the time the 3rd and 4th respondents purported to transfer the lease to it. The letter dated 12th July, 2010 is authored by Pandya & Talati and it was clear they acted for Mrs. Pandya who owned plot no. 258 and the firm of Y. A. Ali advocates acted for the 1st and 2nd respondents. The lease could only be terminated under section 58 of the repealed *Registered Land Act* (Cap 300) and section 75 of the *Land Act* 2012 or the termination clause but not by a letter dated 12th July, 2010 which asked them to vacate the suit land. Therefore, the learned Judge was faulted for finding that the appellant did not challenge the notice. To buttress this argument, the Court was referred to the case of *Aroko vs Ngotho & Another* [1991] KLR and *Trust Bank Ltd vs Eros Chemists Ltd & Another* [2000] eKLR. It was their submission that at least a 30 days' notice should have been issued.
20. On the court's finding that the assignment was done in 2008, it was submitted that the appellant occupied the suit property from 2008 with the 3rd and 4th respondent's permission, and this did not imply that the lease was assigned and registered in 2007. According to the appellant, it was however



- assigned and registered in 2015. The appellant also faulted the learned Judge's finding that the waiver sought was invalid since there was no lease capable of being transferred in 2013 and it had no business applying for the waiver. The letter for a waiver was done by the 3rd and 4th respondents' advocates. Further that since the lease was still valid, the waiver was lawfully obtained.
21. In regard to payment of mesne profits, the court held that the appellant was to pay from the year 1985 yet it had initially held that the appellant was in the suit property from the year 2008, this was faulted by the appellant asking why it was being compelled to pay for the period it did not occupy the suit property. Finally, we were urged to find merit in the appeal and allow the grounds of appeal as prayed.
  22. The 1st and 2nd respondents urged this Court to uphold the findings of the ELC. It was submitted that the 3rd and 4th respondents were in breach of the lease since rent had not been paid; the suit property was assigned to the appellant without the consent of the head lessor and that the waiver was irregular and was fraudulently obtained by concealment of material facts thus null and void. The 3rd and 4th respondents had paid the rates till 2007 when they assigned the suit property to the appellant.
  23. In addition, there had been negotiations in 2012 to purchase the freehold interest in the suit property but the same collapsed and on 27th May, 2015, new demand notices were issued to the appellant asking them to vacate within 30 days. Initially a notice to terminate had been issued on 20th May, 2010 and 12th July, 2010 and reasons for the termination were given as provided under section 58 of the repealed *Registered Land Act* and section 75 of the *Land Act*.
  24. On whether the lease had been assigned to the appellant without the consent of the head lessor, this Court was asked to uphold the finding of the trial court. The appellant had entered the suit property without their consent and took possession. The waiver was obtained by the appellant and the 4th respondent when the appellant was already in occupation. The reason given for the waiver of consent by the head lessor was that the 1st and 2nd respondents were no longer interested in the suit property. Neither had they obtained the Grant of letters of administration The Registrar could not have granted a waiver in the circumstances since they had expressly refused to give consent on grounds of forfeiture.
  25. Further that the 3rd and 4th respondents had not obtained consent before transferring the suit property to the appellants, which transfer was not done immediately until the 29th July, 2015 when they received a demand letter dated 27th May, 2015. We were therefore asked to cancel the transfer for being obtained through misrepresentation of facts.
  26. Turning to the ground on award of mesne profits against the 3rd and 4th respondents, it was submitted that they had breached the lease agreement by failing to pay the agreed land rent and assigning the lease to the appellant without their consent. The appellant continues to occupy the land without the consent of the 1st and 2nd respondents and therefore they are entitled to damages of Ksh. 25,000,000 for the loss of user and illegal occupation.
  27. The 3rd and 4th respondents on their part submitted that they had been paying land rates to the defunct Mombasa municipal council till 2008, which the 1st and 2nd respondents denied and the court went on to make a finding in their favor and penalized them to pay unpaid rent from the year 1985, erroneously held by the trial Judge to be outstanding. The 1st and 2nd respondents did not challenge the appellant's letter dated 8th July 2020 to their advocate Y. A. Ali attaching the payment receipts of rent for the year 2005, 2006 and 2007, yet the court held that the lease had been terminated for breach of non-payment of rent. It was submitted further that the letters dated 20th May, 2010 by Y. A. Ali advocate and 12th July, 2010 by Pandya & Talati Advocates were relied on by the court to hold that the lease had been terminated, yet the firm of Pandya & Talati had informed them through a letter dated 9th June, 2010 that the letter from Y. A. Ali was improper and that the deceased's children were not interested in the suit property.



28. In regard to trespass by the appellants as alleged by the 1st and 2nd respondents it was submitted that they were aware of their occupation of the suit property vide the various correspondences availed in court. The appellant was taken to court after negotiations on the sale of the suit property collapsed. Further that there was a misrepresentation of facts on the letters of administration by the 1st and 2nd respondents who were granted the same on 14th June, 2002 and confirmed on 10th October, 2013 yet this was disclosed to the appellant in 2015. Finally, the Court was urged to find merit in the appeal and allow it as prayed.
29. We have considered the record in its entirety, the rival submissions and authorities relied on by the parties and the relevant law. Having done so, we discern the issues falling for our determination to be:
- i. Whether the 1937 lease was ever terminated;
  - ii. whether the 3rd and 4th respondents lawfully assigned the lease to the appellant and whether there was a lease agreement between the appellant and the 3rd and 4th respondents without the consent of the 1st and 2nd respondents;
  - iii. Whether the waiver obtained from the Registrar of Lands was obtained unlawfully and;
  - iv. Whether the payment of mesne profits would commence in 1985 holding was that trespass commenced in 2008.
30. Being a first appeal, we are enjoined by Rule 29(1)(b) of our Rules to reconsider the evidence, re-evaluate it and draw out our own conclusions always bearing in mind that we neither saw nor heard the witnesses testify. *See Selle & another vs Associated Motor Boat Company Limited & Others* [1968] EA 123.
31. We have outlined above in detail the evidence adduced before the trial court. The history and ownership of the suit property is to a large extent not contested. The original owner of the suit property was Mohamed Said Suleiman Al-Busaidy. The property was inherited by the 1st and 2nd respondent's grandfather, then by their grandmother, then their father and eventually to the 1st and 2nd respondents upon the demise of their step mother. The Grant of letters of administration to their father's estate was issued to them on 14th June, 2002 and confirmed on 13th October, 2013.
32. It was the 1st and 2nd respondents' case that the suit property had been leased by their late grandmother to the 3rd respondent through a lease agreement dated 1st April, 1937 for a period of 99 years beginning 1st July 1936. The certificate of lease shows that the rent payable by Kenya Shell Limited was Ksh. 2000 per annum.
33. It is evident from the lease document between Sir Ali bin Salim El-Busaid Knight of the most excellent order of the British Empire as the landlord and the Shell Company (of East Africa) Ltd and its successors and assigns as the tenant. Shell Company as the tenant was to pay during the term of the lease rates, taxes and assessments as imposed on the said suit property by any government, municipal or other authority. This lease would not be assigned without the consent of the landlord in writing which consent shall not be unreasonable withheld.
34. Further it was a term of the lease that if the rent remained unpaid for a period of three months or if the tenant is guilty of any breach of the covenant, the landlord after due notice of a period of not less than six months may re-enter the whole or any part of the said premises on the whole and the term



granted shall cease and determine without prejudice to the remedies of the landlord for any antecedent breach. The lease was to run for 99 years.

35. It is necessary to point out that the 4th respondent was an assign of the 3rd respondent and was sued in that capacity. Sometime in year 2007, in order to comply with some directives from the Minister for Finance, it became necessary for the 3rd and 4th respondents to transfer the leasehold to the appellant. This is not disputed at all. The lease agreement does not forbid assigning the lease, however it has put a condition to this that the same was to be done only with the consent of the Landlord. In this case, the original landlord had died and the subsequent administrators had passed on till 2002 when the 1st and 2nd respondents were appointed as administrators of their late father's Estate.
36. The appellant's case is that with the 3rd and 4th respondents, they started looking for the 1st and 2nd respondents in order to seek the necessary consent. We have on record various correspondences to the firm of Pandya & Talati Advocates by the appellant asking for the 1st and 2nd respondents contacts but these enquiries yielded no fruits. Also, letters dated 15th February, 2012 and 19th March, 2012 sent to Y. A. Ali Advocate by the appellant seeking to be assisted to obtain consent from the legal representatives did not yield any fruit.
37. Following these frustrations, the 3rd and 4th respondents through their advocates made an application to the Registrar of Lands on 19th August, 2013 under section 54(2) of the *Land Registration Act* and the waiver was granted on 20th September, 2013. Interestingly, as we will discuss hereafter, by the time the application for waiver was made to the Land Registrar, the 1st and 2nd respondents had through their advocates expressed their intention to re-enter the suit premises.
38. The learned Judge held that the said waiver was of no legal consequence since the same had been obtained after the expiry of the lease, and this brings us to the first issue as to whether the lease had been terminated or not. It was the appellant's defence that the lease agreement was still valid.
39. The 1st and 2nd respondents submitted that they sent the notice vide letters dated 20th May, 2010 and 12th July, 2010. The letter dated 20th May, 2010 by Y. A. Ali Advocates to the 3rd respondent informed them of the landlord's intention to re-enter the suit property because of non- payment of rent for the period 1989 to 2010. The letter dated 12th July 2010 was written by Pandya & Talati Co. Advocates informing the appellant that it was in breach of the terms of the lease. It can be concluded that the appellant received these letters since vide its letter dated 8th July, 2010 it indicated it had paid rent for the year 2005, 2006 and 2007 to Pandya & Talati whom they thought was the trustee of the lessor.
40. It was a term of the lease agreement that before any assignment of the lease, consent had to be obtained from the head lessor which was not complied with by the appellant and the 3rd and 4th respondents. The court has a duty to maintain the performance of the contracts according to the intention of the parties, as was held in *Lalji Karsan Rabadia & 2 Others vs Commercial Bank of Africa* [2015] eKLR. The 3rd and 4th respondents were aware of the lease agreement in their possession signed in 1937 and the same had a clause on transfer which expressly stipulated the pre-requisite of obtaining the consent of the head lessor. Their purported assignment of the property to the appellant without the required consent of the head lessor was consequently, null and void.
41. As regards the issue of whether the lease had expired or not, it is a term of the lease that the landlord was to issue a 6 months' Notice to the tenant to vacate if they wanted to re-enter the premises but the appellant, 3rd and 4th respondents denied ever receiving the same. As stated above, from the response from the appellant in the letter dated 8th July, 2010, we are satisfied that the appellant was given the requisite 6 months' Notice of the 1st and 2nd respondents' intention to re-enter the property. Accordingly, by the time the 3rd and 4th respondents applied for the waiver, in 2013, the lease had



already terminated. We are therefore in agreement with the learned Judge's finding to that effect. This finding takes care of the issues i, ii, iii and iv which we identified earlier.

42. In regard to payment of mesne profits, the appellant's contention is that they entered the suit property in 2008 and therefore the damages should be awarded from this period and not from 1985. Section 2 of the Civil Procedure Act defines mesne profits as:

“In relation to property, means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but does not include profits due to improvements made by the person in wrongful possession.”

The trial judge relied on the invoice which indicated payment of rates from 1985. However, there is no evidence on payment of rent which the 1st and 2nd respondents are seeking. The parties were silent on this, but in their submissions they have asked this court to grant them an award of Ksh. 25,000,000 for trespass. The 1st and 2nd respondents are seeking damages in their submissions and not by way of a cross-appeal thus the same fails.

43. On the issue of payment of mesne damages as ordered in order (h) of the judgment of the learned Judge, we have seen the Rent Invoice from the Municipal Council of Mombasa dated 20th December 2007. The rent demanded in the said invoice was for the period 1985-2007. In response to the said invoice, there is a receipt for Ksh. 714,539.15. dated 20th December, 2007. This in our view is evidence that land rates for the period 1985 - 2007 were cleared and there were no arrears of rent in 2008 when the appellant moved into the suit premises in 2008. The mesne damages payable as ordered by the trial Judge should therefore be payable by the appellant for the period starting from 2008 until payment in full plus interest thereon at court rates.
44. Other than the above adjustment on mesne damages, we find no merit in the rest of the appeal and the same is hereby dismissed with costs to the 1st and 2nd respondents. The appellant is given 60 days from the date of this judgment to either vacate the suit premises or be evicted therefrom. It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 4TH DAY OF FEBRUARY, 2022.**

**R. N. NAMBUYE**

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**JUDGE OF APPEAL**

**W. KARANJA**

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**JUDGE OF APPEAL**

**A. K. MURGOR**

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**JUDGE OF APPEAL**

*I certify that this is a true copy of the original*

*Signed*

**DEPUTY REGISTRAR**

