



**Mwangi v Gikonyo (Environment & Land Case E227 of 2021)
[2024] KEELC 13266 (KLR) (29 October 2024) (Judgment)**

Neutral citation: [2024] KEELC 13266 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E227 OF 2021
MD MWANGI, J
OCTOBER 29, 2024**

BETWEEN

GEORGE GIKONYO MWANGI PLAINTIFF

AND

HANNAH WAMBUI GIKONYO DEFENDANT

JUDGMENT

1. The Plaintiff and the Defendant herein are a son and mother respectively. The Plaintiff in his amended plaint amended on 2nd August 2022 avers that he and the Defendant are the registered owners of the parcel of land known as Dagoretti/Kangemi/S.93 (hereinafter referred to as ‘the suit property’) as tenants in common with equal undivided shares. The suit property belonged to the late Josephine Gikonyo Mwangi, the Plaintiff’s biological father, who passed on in the year 1969, with the Plaintiff as his only surviving child and the Defendant his only surviving widow.
2. Subsequent to the death of the late Joseph Gikonyo Mwangi, the suit property was transferred to the Plaintiff through transmission and a title deed issued in the Plaintiff’s name on 23rd August 1971. On 14th October 2005, the Plaintiff who was then of majority age transferred a half undivided share of the suit property to the Defendant, his mother, in consideration of love and affection. That is how they ended up as tenants in common with equal undivided shares in the suit property.
3. The Plaintiff asserts that the Defendant who had the custody of the original title deed of the suit property somehow managed to take loans using the title as the security without his consent in spite of the fact that they as tenants in common with equal undivided shares. The Plaintiff alleges that in the year 1999, he was forced to pay up one such loan with the Agricultural Finance Corporation to save the suit property from being auctioned after the Defendant defaulted in repayment of the loan.



4. It is the Plaintiff's case that the Defendant for a second time managed to take a second loan in the year 2007 and purchased three (3) properties in Juja, Kiambu County with the loan proceeds which she solely registered in her name.
5. In spite of the fact that the suit property is registered in the names of the Plaintiff and the Defendant as tenants in common with equal undivided shares, the Plaintiff alleges that the Defendant has, in the false belief that she solely owns the suit property, purported to unilaterally divide it into five (5) parts and casually bequeathed one of the five (5) portions to the Plaintiff and the rest to herself and her daughters. The Defendant has further allegedly proceeded to singlehandedly construct an assortment of residential houses and wrongfully listed the Plaintiff as one of the 'developers' of the suit property despite the Plaintiff's protestations.
6. The Plaintiff claims that the Defendant has altered the physical structure as well as the state of the suit property by laying sewer lines and digging of trenches all over the property. The Plaintiff avers that some of the residential and commercial units constructed on the suit property have already been occupied by tenants, with the Defendant solely receiving the rent proceeds and appropriating it despite the Plaintiff owning a half share in the suit property. The Plaintiff avers that the Defendant has deprived him of his constitutional rights to property and continues to do so by unilaterally appropriating the rent arising therefrom. Further, the development on the suit property has denied the Plaintiff access to sunlight, free circulation of fresh air and access to his house.
7. The Plaintiff prays for;
 - a. A declaration that the Defendant has deprived him of his right to an equal and undivided share in the suit property;
 - b. An order that a valuation be done of the suit property exclusive of any development thereon;
 - c. An order that upon valuation, the Plaintiff's half share be sold and the proceeds remitted to the Plaintiff; or
 - d. An order that the suit property be sold and half of the proceeds be remitted to the Plaintiff;
 - e. An order that the Defendant pays the Plaintiff mesne profits of Kshs. 200,000/-;
 - f. Cost of the suit with the interest at court rates; and
 - g. Any other order deemed fit by the court.

Defence and Counter-claim by the Defendant.

8. In her amended statement of defence and counter-claim dated 1st September 2022, the Defendant wholesomely denied the Plaintiff's assertion in his amended plaint. She denied that they were registered as tenants in common with equal and undivided shares of the suit property with the Plaintiff. She instead asserted that they are only jointly registered as such after having inherited the said parcel after the death of the late Joseph Gikonyo Mwangi (deceased).
9. At paragraph 6 of the amended statement of defence and counter-claim, the Defendant puts the Plaintiff to strict proof on the allegation that the suit property belonged to the late Joseph Gikonyo Mwangi (deceased). She proceeds to state that the Plaintiff was a minor and lacked capacity to apprehend the ownership status of the suit property or who his biological father was. She too denied that the suit property was transferred to the Plaintiff through transmission.



10. The Defendant denied that the Plaintiff ever transferred to her an undivided half share of the suit property on the alleged consideration of love and affection. She counters the Plaintiff's allegations asserting that she was the one who caused the title to the suit property to be registered in their joint names, to hold the suit property in trust for the themselves and other siblings.
11. The Defendant denied taking loans on the security of the title to the suit property. She further denied that the Plaintiff took over a loan she had secured with the Agricultural Finance Corporation after she defaulted in repayment as alleged. She instead, on a without prejudice basis, state that, if she ever took loans, the same were legal but that the issue is a non-issue with no bearing to the ownership of the suit property.
12. The Defendant avers that she fully engaged the Plaintiff in seeking approvals for the developments put up on the suit property. The decision to develop the suit property too was arrived at jointly by the Defendant, the Plaintiff and his siblings.
13. The Defendant categorically asserts that the mere fact that the Plaintiff is registered jointly with her as the common owners of the suit property does not entitle him to an ownership interest over the suit property. The Defendant affirms the Plaintiff has his portion on the suit property which he currently occupies and has erected rental Mabati structures and is therefore not entitled to what the Defendant and her other children have developed, without any contribution from the Plaintiff. She too denies blocking the Plaintiff from access to sunlight and free circulation of air in his portion of the suit property.
14. In her Counter-claim, the Defendant reiterates the allegations in her amended statement of defence. She further states that she and her late husband Joseph Gikonyo Mwangi were blessed with five issues including the Plaintiff and four daughters.
15. It is the Defendant's contention that after her husband's death in 1969, her brother-in-law tried to disinherit her from the suit property which was then under her late husband's name. As a result, she sought assistance from court and a ruling was allegedly delivered in her favor and that was how the suit property ended up being registered in the Plaintiff's name. The Plaintiff at the time of registration was four years old.
16. The Defendant pleaded that the Plaintiff at one point in time asked for the title deed of the suit property from her with the intention to use it as a security to take a loan. The Defendant refused to give the Plaintiff the title and also went ahead to caution it. In 2005, the Defendant alleges that she had the title registered in trust on behalf of the entire family and beneficiaries of the late Joseph Gikonyo Mwangi including the Plaintiff and the Defendant and their four daughters.
17. The Defendant alleges that in 2020, her family, including the Plaintiff, agreed that since the property was registered in the names of both the Plaintiff and the Defendant, they would develop it separately, with the Defendant and her daughters taking one side and the Plaintiff the other side.
18. The Defendant accuses the Plaintiff of illegally and irregularly impeding her quiet possession and enjoyment of the suit property. She accuses the Plaintiff of encroaching on her portion of the suit property, demolishing her structures constructed on the suit property and denying her access and further interfering with her occupation of the suit property.
19. The Defendant in the Counter-claim prays for;
 - a. A declaration that the Plaintiff demolishes the rooms constructed on the suit property to allow the beneficiaries to take possession of their rightful allocations;



- b. A declaration that the title deed to the suit property be amended to bear the names of the five children, namely;
 - i. Mary Wambui Mwangi,
 - ii. Susan Njeri Mwangi,
 - iii. Lucy Wanjiru Mwangi,
 - iv. Rose Nyambura Mwangi, and
 - v. George Gikonyo Mwangi;
- c. A declaration that the Plaintiff holds the property in trust for himself, the Defendant and his siblings;
- d. Costs of this suit; and
- e. Any further or other relief as the honorable court may deem fit and just to grant.

Evidence Adduced at the Hearing.

- 20. This case proceeded to full hearing with each party testifying in his case and calling one additional witness.
- 21. The Plaintiff adopted his witness statement dated 30th August 2022 as his evidence in chief. He further produced the documents in his three lists and bundles of documents as exhibits in support of his case. In total, the Plaintiff produced 13 documents as exhibits in support of his case.
- 22. The Plaintiff reiterated the assertions in his amended plaint in his testimony. He insisted that he was the only child of his late father at the time of his demise in 1969. The title registered in his name did not indicate that he was holding the land in trust for anyone else. He was the one who made a decision to transfer the half share of the suit property to his mother, the Defendant in this case.
- 23. The Plaintiff's testimony was that on his part, he has never used the title of the suit property as a collateral. He learnt about his mother having used the title as a collateral when he was called by the manager of the Agricultural Finance Corporation (AFC) and informed about the pending repayments by his mother. When he confronted his mother on the issue, she showed him a newspaper advertisement of the impending sale of the suit property by the bank. He took over the loan and paid the outstanding loan arrears thereby redeeming the suit property.
- 24. Subsequently, the Plaintiff, in his own words, guaranteed his mother for a loan with Equity Bank.
- 25. The Plaintiff testified that he had not consented to the developments on the suit property undertaken by the Defendant. He insisted that they are equal owners of the suit property with his mother.
- 26. Responding to questions put to him by the the Defendant's Advocate in cross-examination, the Plaintiff stated that he was born on 10th June 1967. His father passed on in 1969. The title to the suit property (PEXh 2) was registered in his name on 23rd August 1971 when he was only four years. He had no details how the said registration was done. His mother later told him that she had gone to court and the court had directed the registration of the title in his name, as the only heir to his late father.
- 27. Regarding his allegation that he took over and paid up the loan allegedly taken by his mother with AFC, the Plaintiff admitted that he had not presented any documentary evidence in support of the



- allegation. He explained that he was unable to trace the bank records as they had already been destroyed. The title to the suit property was released to him after he paid that loan.
28. The Plaintiff admitted having four half-sisters who according to their national identity cards were born in 1974, 1980, 1982 and 1985 respectively, all after his late father's death. Though they were born in the suit property, they no longer resided therein.
 29. The development of the suit property by his mother occupies about three quarters (3/4) of the suit property. He was neither involved in the development nor in seeking approvals for the development. The suit property, according to the Defendant, is incapable of any further subdivision.
 30. The second witness for the Plaintiff, PW2 too adopted his witness statement dated 2nd September 2022 as his evidence in chief. He testified that he is a member of the Kikuyu Council of Elders, (Kiama kia Ma) since 2012 and therefore well-versed with the Kikuyu culture.
 31. PW2 told the court that in the 1960s and 70s, after a Kikuyu man died, his land was left for the surviving male offspring (s). The wife could live on the land but could not sell it. Daughters were not supposed to inherit any land from their father.
 32. Responding to questions in cross-examination, PW2 admitted that he was at one time a workmate of the Plaintiff. He first met the Plaintiff in Laikipia where they worked together for a period of three years before the Plaintiff was transferred.
 33. PW2 stated that he had no documents to prove that he was a Kikuyu elder, and a member of the Kikuyu Council of Elders. He too had not called anyone to confirm that he was indeed a Kikuyu elder.
 34. PW2 was told about the Plaintiff's family background by the Plaintiff himself. He does not know any other member of the Plaintiff's family. He believed what the Plaintiff had told him. He did not therefore find it necessary to consult any other family member of the Plaintiff's family. His evidence was based on what the Plaintiff had told him.
 35. On her part, the Defendant adopted her witness statement dated 16th November 2021 as her evidence-in-chief. She further produced 13 documents from her bundle of documents of even date as exhibits in support of her case.
 36. The Plaintiff insisted that the suit property was her property inherited from her late husband who died in 1969. She was not issued with any death certificate of her late husband.
 37. The Plaintiff testified that she filed a case in court where the court declared the suit property to be hers. It was her decision to register the suit property in the Plaintiff's name after the declaration by the court.
 38. The suit property at the time of her testimony was however registered in her name and that of the Plaintiff as tenants in common with equal undivided shares. She admitted having used the title to the suit property to secure loans. She was however the one who had paid the loan that was due to the AFC. The bank that had at one time advertised the suit property for sale was Habib Bank not AFC. She was assisted by Hon. Beth Mugo (MP then) to pay the loan.
 39. Responding to questions put to her in cross-examination by the advocate for the Plaintiff, the Defendant admitted that the Plaintiff was her only son with her late husband at the time of his death. She maintained that she was the one who was entitled to the suit property and not the Plaintiff.
 40. The Defendant admitted that she had not produced before this court the alleged ruling that had supposedly declared her as the sole owner/beneficiary of the suit property after the death of her late husband.



41. The Defendant further admitted that the title to the suit property was issued in 1971 was issued to the Plaintiff as absolute owner of the land. It was not indicated in the title that it was held in trust.
42. The Plaintiff told the court that her late husband had bought the suit property with his own money. It was not an inheritance from his family.
43. The title issued in the year 2008 was issued to the Defendant and the Plaintiff. It is not indicated that they were to hold the same in trust. On the proprietorship section, it is indicated that the suit property is held in equal undivided shares. When the title was registered as such, the Plaintiff a grown-up then. The consent too issued by the Land Control Board was for transfer for of an undivided share; to be held in common and in equal shares.
44. In 2008 the Defendant's daughters were adults. They have not instituted any proceedings claiming the suit property.
45. The Defendant further stated that Equity Bank collects the rental proceeds from the suit property but could not tell how much is collected. The loan nonetheless is secured with a different title. Not the title to the suit property.
46. The Defendant affirmed that the Plaintiff does not and is not entitled to a share of the suit property unless she, the Defendant says so. If at all, the Plaintiff is entitled to a share of the suit property equal to all the other Defendant's children. That is how the Defendant has divided the suit property on the ground.
47. Answering to a question from the court, the Defendant confirmed that the property is 80 feet by 100 feet roughly an eighth (1/8) of an acre. She could not however tell its value. It has a one storey building on it and some mabati houses.
48. DW2 was one of the Defendant's daughters by the name of Mary Wambui. She too adopted her witness statement dated 16th November 2021 as her evidence in chief.
49. In cross-examination, DW2 confirmed that she was born in 1974. She admitted that neither the title issued in 1971 nor the subsequent one indicated that the registered proprietors were holding the suit property in trust. The 2008 title indicate that the Plaintiff and the Defendant own it absolutely and in equal undivided shares.
50. DW2 affirmed that she was not the biological daughter of the late Joseph Gikonyo Mwangi. She had no prove that the Plaintiff had not been paying the rates payable in respect to the suit property nor that it was her mother who was making the payments. She does not live in the suit property; none of her sisters either.
51. In re-examination, DW2 stated that the suit property is equally occupied by the Plaintiff and the Defendant. She asserted that she was claiming a share in the suit property since she was born therein and it is the only home that she knows of.

Court Directions

52. The court upon close of the hearing directed parties to file written submissions. Both parties complied and the court has read and considered the submissions which now form part of its record.

Issues for Determination

53. What the Plaintiff is seeking in this suit is the severance/termination of the common tenancy with the Defendant over the suit property. The Defendant opposes the same on the premises that though they



are registered together with the Plaintiff as tenants in common with equal undivided shares over the suit property, they hold the title as trustees for themselves and four others (step-sisters of the Plaintiff). That is the gist of her statement of defence and counterclaim.

54. The issues then arising for determination in this matter are as follows;
- A. Whether the Defendant has established the existence of a customary trust over the suit property;
 - B. Whether the Defendant has the authority to sue and claim on behalf of her four adult daughters;
 - C. Whether the Plaintiff has made a case for the severance/termination of the common tenancy over the suit property; and
 - D. Whether either of the parties is entitled to the orders/reliefs sought in the Plaintiff and the Defence and Counter-claim respectively.

Analysis and Determination

A. Whether the Defendant has proved the existence of a customary trust over the suit property.

55. The Plaintiff principally relied on the title to the suit property to support his unyielding affirmation that from 1971 up to the year 2008, he held the title to the suit property as the absolute owner and not in trust for any other person(s). In 2008, he transferred a half share interest in the suit property to the Defendant and they were duly registered as tenants in common with equal undivided shares in the suit property. The title does not indicate that they hold the same in trust for any other persons.

56. It is the Defendant who alleges that the Plaintiff held the title in trust for her and her daughters and subsequently that though they are registered as tenants in common with equal undivided shares, that they hold the same interest in trust for themselves and the Defendant's daughters born after the death of the late Joseph Gikonyo Mwangi.

57. I wholly associate with the holding of the Court of Appeal in the case of Peter Ndung'u Njenga –vs- Sophia Watiri Ndung'u (2000) eKLR, that the concept of trust is not new in Kenya.

58. In the case of Salesio M'Itonga –vs- M'Ithara & 3 others (2015) eKLR, the Court of Appeal held that;

“It is trite law that trust is a question of fact and has to be proved by evidence. Trust must be proved by credible evidence adduced by the person claiming that a trust exists.”

59. In this case, the Defendant being the party alleging the existence of a customary trust is the one legally bound to prove its existence.

60. The Supreme Court in what has been variously termed as a ground-breaking decision in the case of Isaac M'Inanga Kiebia –vs-Isanya Theuri M'Lintari & Ano (2018) eKLR, authoritatively determined the question of customary trust and held that;

“We now declare that a customary trust, as long as the same can be proved to subsist, upon a first registration, is one of the trusts to which a registered proprietor, is subject under the proviso to Section 28 of the Registered *Land Act*. Under this legal regime, (now repealed), the content of such a trust can take several forms. For example, it may emerge through evidence, that part of the land, now registered, was always reserved for family or clan uses, such as burials, and other traditional rites. It could also be that other parts of the land, depending on the specific group or family setting, were reserved for various future uses,



such as construction of houses and other amenities by youths graduating into manhood. The categories of a customary trust are therefore not closed. It is for the court to make a determination, on the basis of evidence, as to which category of such a trust subsists as to bind the registered proprietor.”

61. The Supreme Court however was clear that each case must be determined on its own merit and evidence and that the critical considerations are the nature of the holding of the land and the intentions of the parties. The court described the tests to be applied being that;
 - a. The land in question was before registration, family, clan or group land;
 - b. The claimant belongs to such family, clan or group;
 - c. The relationship of the claimant to such family, clan or group is not it is not so remote or tenuous as to make his/her claim idle or adventurous;
 - d. The claimant could have been entitled to be registered as an owner or other beneficiaries of the land but for some intervening circumstances; and
 - e. The claim is directed against the registered proprietor who is a member of the family, clan or group.
62. These are the elements that the Defendant, who is claiming on behalf of her daughters must prove.
63. The evidence presented before the court, I must say does not support the claim for customary trust howsoever. The suit property was not family, clan or group land. The Defendant testified that the late Joseph Gikonyo Mwangi had purchased it with his own money and registered it in his name.
64. As I already stated, the Defendant lays the claim on behalf of her daughters. Evidence adduced before the court proves that none of the said daughters was a biological or even adopted daughter of the late Joseph Mwangi Gikonyo. The eldest of the four daughters was born five years after the demise of Joseph Mwangi Gikonyo. Even if the subject property was family, clan or group land, the four daughters do not belong to that ‘family or clan’. None of them therefore would have been entitled to have been registered as a beneficiary of the land.
65. The Defendant’s claim therefore fails. The Defendant has not established a customary trust over the suit property.
 - B. Whether the Defendant has the authority and or legal capacity to sue and claim on behalf of her four adult daughters.
66. The Defendant in her Counterclaim prays for a declaration that the Plaintiff holds the suit property in trust for himself, the Defendant and his siblings (meaning the Defendant’s four daughters born after the death of the late Joseph Mwangi Gikonyo). She further prays that the title to the suit property be rectified to reflect the above position.
67. I agree with the Plaintiff’s submissions that the Defendant’s counterclaim is for all the intents and purposes a representative suit. In such an instance, the law requires that one person or more persons be authorized to represent, appear, plead or act for the other persons.
68. The party who sues in a representative capacity shall state the capacity in which he/she sues and also how such capacity arises. The Defendant did not comply with the mandatory legal requirement for the filing of a representative claim. The non-compliance is sufficient reason to strike out the Defendant’s counterclaim. I would, even if I had arrived at a finding that the Defendant had established



a customary trust have gone ahead to strike out the Defendant's counterclaim for non-compliance with the provisions of Order 1 Rule 8 of the Civil Procedure Rules.

69. As the Court of Appeal observed in the case of *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others* [2013] eKLR, compliance with rules of procedure is not antithetical to Article 159 of *the Constitution*. The Court stated;

“In our view, it is a misconception to claim as it has been in recent times with increased frequency that compliance with rules of procedure is antithetical to Article 159 of *the Constitution* and the overriding objective principle under section 1A and 1B of the *Civil Procedure Act* (Cap 21) and section 3A and 3B of the *Appellate Jurisdiction Act* (Cap 9). Procedure is also a handmaiden of just determination of cases.”

C. Whether the Plaintiff has a case for severance/termination of the common tenancy with the Defendant over the suit property

70. The court's finding in this case is that the Plaintiff and the Defendant as per the title Deed to the suit property are tenants in common with equal undivided shares of the suit property. A tenancy in common may be determined, as held in the case of *Muhuri Muchiri –vs- Hannah Nyamunga* (sued as administrator of the estate of Njenga Muchiri also known as Samuel Njenga Muchiri (2015) eKLR, by agreement to sever the co-ownership by partition, by acquiring the interest of another co-owner and thus become solely entitled; or by sale of the common property and division of the proceeds of the sale.

71. The legal term, 'partition' as defined in the *Halsbury's Laws of England* 4th Edition (re-issue) Volume 39 (2) at paragraph 215,

“...is applied to the division of land, tenements and hereditaments belonging to co-owners and the allotment among them of the parts so as to put to an end to community ownership between some or all of them.”

72. The Plaintiff accuses the Defendant of violating his right to the enjoyment of his half share of the suit property. He seeks the partition of the common tenancy between him and the Defendant.

73. Either tenant in a common tenancy has the right to seek the partition of the common tenancy as the Plaintiff has sort in this case.

74. From the testimony of both the Plaintiff and the Defendant, it is clear that the suit property is incapable of any further subdivision. Both parties confirmed the position.

75. Section 96 of the *Land Act* contemplates such a scenario. It provides that if for any reason the land sought to be partitioned is incapable of being partitioned or the partition would adversely affect the proper use of the land and the applicant for partition or one or more of the other tenants in common require the land to be sold and the tenants in common cannot agree on the terms and conditions of the sale, or the application of the proceeds of the sale, they may make an application to court for an order for sale.

76. Section 96 allows the court to;

- a. Cause a valuation of the land and of the shares of the tenants in common to be undertaken, and
- b. order the sale of the land or the separation and sale of shares of the tenants in common by public auction or any other means which appears suitable to the court; or



- c. make any other order to dispose of the application which the court considers fair and reasonable.
77. The only available option in this case is the sale of the suit property; either by one party buying out the other or sale to a third party by public auction and the proceeds assignable to each in respect of the value of the undeveloped land shared equally amongst the parties. The value attributable to the developments on the land are to be shared proportionately; proportionate to each party's contribution to such developments made on the subject property.
78. The order then that this court makes is that the suit property be sold by public auction upon valuation by a professional valuer agreed upon by the parties or in case of a disagreement within 45 days of this judgment, upon a joint valuation by two professional valuers, each appointed and representing either party and the proceeds shared as discussed above.
79. On the Plaintiff's claim for mesne profits, this court must remind the Plaintiff that a claim for mesne profits is equivalent of a claim for special damages which must not only be pleaded but strictly proved. Section 2 of the *Civil Procedure Act* defines mesne profits to mean (in respect to property) 'those profits which the person in wrongful possession of such property actually received or might have with ordinary diligence have received therefrom.'
80. The law is well established in this regard. Special damages must be pleaded with distinct particularity and strictly proved. As the Supreme Court of Nigeria held in the oft-quoted case of *Union Bank of Nigeria PLC -vs- Alhaji Adams Ayabule & Another* (2011) JELR 48225 (SC),
- “...a court is not entitled to make an award of special damages based on conjecture or on some fluid and speculative estimate of alleged loss sustained by a Plaintiff.....” a trial court cannot make its own individual or arbitrary assessment of what it conceives the Plaintiff may be entitled to. What the law requires in such a case is for the court to act strictly on the hard facts presented before the court and accepted by it as establishing the amount claimed justifying the award.”
81. Addressing a similar situation where a party merely listed special damages without proof and expected the court to allow them, the Court of Appeal stated in *Capital Fish Limited v Kenya Power and Lighting Company Limited*, (2016) eKLR,
- “The appellant apart from listing the alleged loss and damage, it did not... lead any evidence at all in support of the alleged loss and damage. As it were, the appellant merely threw figures at the trial court without any credible evidence in support thereof and expected the court to award them. Indeed, there was not credible documentary evidence in support of the alleged special damages.”
82. The Plaintiff apart from pleading the figure of Kshs.2,000,000/- did not make even the slightest effort to justify the figure of Kshs.2,000,000/-. My finding is that the Plaintiff has not proved the figure pleaded of Kshs.2,000,000/-. The prayer for mesne profits is disallowed.
83. The upshot is that the Plaintiff's case is allowed in terms of prayers A, B, C and D. The Plaintiff is also awarded the costs of the suit against the Defendant.
84. In respect to the Defendant's counterclaim, the same fails in its entirety. It is dismissed with costs to the Plaintiff.

It is so ordered.



DATED, SIGNED AND DELIVERED AT NAIROBI THIS 29TH DAY OF OCTOBER 2024

M.D MWANGI

JUDGE

In the Virtual Presence of:-

Mr. Ong'ato for the Plaintiff

Mr. Kimani for the Defendant

Court Assistant: Yvette

M.D. MWANGI

JUDGE

