



Kamau v Athi Water Works Development Agency (Environment and Land Appeal E064 of 2021) [2024] KEELC 13675 (KLR) (26 November 2024) (Judgment)

Neutral citation: [2024] KEELC 13675 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E064 OF 2021
MD MWANGI, J
NOVEMBER 26, 2024**

BETWEEN

SAMUEL MACHARIA KAMAU APPELLANT

AND

ATHI WATER WORKS DEVELOPMENT AGENCY RESPONDENT

JUDGMENT

Introduction

1. This appeal emanates from the Judgement delivered on the 9th August, 2021 in Nairobi Milimani CMCC No. 2506 of 2019. The suit was commenced by a Plaintiff dated 10th April, 2019 by Samuel Macharia Kamau, the Plaintiff in the lower Court (hereafter the Appellant) against Athi Water Services Board (hereafter the Respondent). The Plaintiff sought for payment a sum of Kshs. 8,050,000/= with interest at prevailing bank rates from April, 2010 until payment in full.
2. The Appellant's case in the lower Court was that he is the registered owner of the parcel of land known as LR. No. 57/2135 situated in Kasarani within Nairobi County. He alleged that between April 2010 and May 2012, the property trespassed on his land and constructed a Sewer line with a promise to compensate him for the wayleave. He averred that the Respondent acquired about 55 % of the property leaving the remaining portion non-beneficial. However, despite availing the necessary document to facilitate the compensation, the Respondent refused fulfill its promise. It is the alleged denial to use his property that he sought for payment of a sum of Kshs. 8,050,000/= being the market value of the property.
3. The Respondent in its Defence dated 21st November, 2019, admitted to constructing a Sewer Project affecting various residents within Nairobi County. It alleged that all the affected proprietors were duly compensated. It denied taking over the Appellant's property and promising to compensate him. The Respondent argued that the Project was undertaken on gazette road reserves and riparian land. The



Respondent denied encroaching upon the Appellant's property and any liability to compensate him. The Respondent sought the dismissal of the Appellant's case with costs.

4. The matter proceeded to trial and both parties adduced evidence in support of their respective cases. At the conclusion of the trial, the learned Magistrate analyzed the evidence and in the end found that, the Appellant may have proved that his property was affected by the construction of the sewer but failed to prove that he was the lawful owner at all material times and thus entitled to compensation. She therefore found no merit in the suit and dismissed it with costs.
5. The Appellant was aggrieved by the said Judgement and preferred the instant appeal. Vide the Memorandum of Appeal dated 3rd September, 2021, the Appellant raised Fifteen (15) grounds of appeal arguing that the learned magistrate erred in law and in fact by:
 - a. Failing to consider the Appellant's submissions on Article 40 (3) and 40(4) and Chapter 5 of the Constitution of Kenya, 2010 and Part VIII of the Land Act, 2012 on compulsory acquisition of the Appellant's land for public purpose occasioning a miscarriage of justice, substantial loss and violation of the Appellant's right to property.
 - b. In narrowing the scope of application of compulsory acquisition principle/doctrine to persons who only hold title to property contrary to Article 40 (4) of the Constitution of Kenya, 2010 thus misdirecting herself on the matters before her and arriving a wrong conclusion and erroneous decision.
 - c. Dismissing the Appellant's claims based on extraneous and unpleaded matters on alleged ownership of the land when the construction of the Gatharaini Trunk Sewer and Reticulation was being undertaken by the Respondent without any legal basis and which issues were neither pleaded nor canvassed by parties during trial.
 - d. Failing to appreciate that parties are bound by their pleadings thus arriving at a wrong conclusion and decision.
 - e. Failing to constrain her determination to the case presented by parties and the issues raised therein thus arriving at a wrong conclusion and decision.
 - f. Considering and making determination on extraneous issues of fact and evidence not raised or pleaded by the Respondent in its pleadings or evidence in Court thereby with bias prosecuted the Respondent's case without giving the Appellant corresponding opportunity to respond or submit on such issues and violating the Appellant's right to fair hearing, fair and lawful administrative action.
 - g. Failing to find that the Respondent's construction of its Gatharaini Trunk Sewer and Reticulation project on the suit property without compensation or proof of payment of compensation amount to the owner thereof was unlawful.
 - h. Failing to find that the Respondent did not comply with or prove compliance with the provision of Section 111 of the Land Act, 2012 and Section 8 of the Land Acquisition Act, Cap 295 Laws of Kenya in construction of the Sewer Project on the Appellant's land.
 - i. Failing to find that the Respondent had on or about 2018 offered to purchase the suit property from the Appellant thereby acknowledging Appellants claim on the land and the Respondents default in paying compensation to the Appellant in compliance with the Section 111 of the Land Court, 2012 and Section 8 of the Land Acquisition Act, Cap 295 Laws of Kenya.



- j. Failing to find that the Appellant had by the Report and Valuation Report dated 15th March, 2019 of the suit property proved that the Respondent had utilized or constructed the sewer on 55% of the Appellant's property and rendered the unused portion unviable /unusable hence the Appellant was entitled to compensation amount equal to the market value of the property valued in the said Report at Kshs. 8,050,000/= with interest thereon from May 2012 thus occasioning a miscarriage of justice.
 - k. Failing to award interest at commercial rates to the Appellant on the value of the land or principal compensation amount of Kshs. 8,050,000/= from 2012 until payment in full despite the Respondent having admitted that it completed the project affecting the Appellant's land in the said 2012 thereby admitting having taken possession of the Appellants land in the said year without compensation to the Appellant.
 - l. Failing to find that the Respondents complied with the provisions of Part VIII of the Land Act, 2012.
 - m. Failing to make a finding to find that the Respondent's failed to Gazette and conduct a public inquiry over compulsory acquisition of the suit property prior to commencing and carrying out the project on Appellant's land thereby making an erroneous decision.
 - n. Failing to appreciate and consider the Appellant's pleadings, evidence and submissions and giving more weight to the Respondents submissions thereby arriving at a wrong and erroneous decision.
 - o. That the decision by the Learned Magistrate was wholly erroneous in law, contrary to judicial precedent on the matter and a miscarriage of justice.
6. The Appellant therefore prays that the appeal herein be allowed by setting aside the entire Judgement delivered on the 9th August, 2021 by the Subordinate Court and substituting the said judgement with one allowing the Appellant's suit as contained in the Plaint. The Appellant also prays for costs of both the Appeal and the suit in the Subordinate Court.
7. The appeal was canvassed through written submissions by learned counsel for the respective parties. The Appellant's submissions are dated 16th October, 2023 whereas the Respondent's submissions are dated 4th December, 2023. The Appellant filed Supplementary submissions dated 8th February, 2024.

Appellant's Submission

8. The Appellant identified three issues for determination. The first is whether the Trial Magistrate erred in law and fact by dismissing the Appellant's claim based on an unpleaded issue on ownership of the land. The Appellant submits that the issue of ownership was never raised by parties. He asserts that parties are bound by their pleadings and cannot deviate from them. Therefore, by deciding an unpleaded issue, the trial Court pleaded the Respondent's case with bias without giving the Appellant corresponding opportunity to respond thereby violating his right to a fair hearing, fair and lawful administrative action.
9. The second issue submitted on by the Appellant is whether the trial Court erred in finding that the Appellant was not entitled to compensation contrary to Article 40(3) and 40(4) of the Constitution. The Appellant avers that the Court erred in finding that he was not entitled to compensation despite him having produced a Valuation Report dated 15th March, 2019 confirming that the Respondent's project had taken up 55% of his land rendering the unused portion untenable. It is on this basis that



the Appellant contends that he is entitled to compensation to an amount equal to the current market value as pleaded in his plaint.

10. Finally, the Appellant faulted the trial Magistrate for failing to find that the Respondent did not comply with or prove compliance with Section 111 of the *Land Act*, 2012 and Section 8 of the Land Acquisition Act. The Appellant submits that having interest over the parcel of land, he is entitled to compensation for compulsory acquisition of his property at a market value of Kshs. 8,050,000/=. He relied on the case of Patrick Musimba –vs- The National Land Commission and 4 Others (2016) eKLR in which the Court discussed at length the process involving compulsory land acquisition. The Appellant therefore prays that the appeal be allowed with costs of the Appeal as well as costs before the Subordinate Court.

Respondent’s Written Submissions

11. In opposing the appeal, the Respondent filed its submission dated 4th December, 2023 responding to the issues raised by the Appellant in his submissions. On the issue of unpleaded ownership, the Respondent contends that the Appellant pleaded ownership in the Plaint at paragraph 3 thereof where he had stated that he is the registered proprietor of the suit property. The Appellant accused the Respondent of taking possession of his property in February 2018 and immediately commenced construction of the project. Therefore, the Appellant having pleaded compulsory acquisition, it was in order for the Court to determine the issue of ownership.
12. Further, the Respondent argues that its witness confirmed that they undertook the said project in the years 2008 to 2012. During that period, the Appellant did not have a title to the suit property. The Appellant bought the suit property from Clay works Limited vide an Indenture of Conveyance dated 17th March, 2015. Consequently, the trial Court did not err in finding that the Respondent having completed the project in 2012, could not have sought to acquire the same property in 2018 as alleged by the Appellant.
13. In response to the second issue as to whether the Respondent compulsorily acquired the Appellant’s property, the Respondent maintains that the project was undertaken before the Appellant purchased the property. Further, that the burden of proof was upon the Appellant to avail evidence to prove the contrary. In reference to the assertion that the Respondent had not proved compliance with Section 111 of the *Land Act*, the Respondent argues that it was upon the Appellant to prove its case on a balance of probabilities. It asserts that it was for the Appellant to prove that the Respondent acquired his property in 2018. The Respondent also argues that if at all the Appellant’s land was acquired, then it ought to have surrendered its title; it cannot be the case that the suit property was compulsorily acquired and at the same time the Appellant still retains the title.
14. On the last issue as to whether the Respondent offered to purchase the suit property, the Respondent denies the assertion and submits that the Appellant had not adduced any evidence proving the alleged offer. What the Appellant had adduced was a “Land Purchase Agreement Form” which does not amount to an offer. That being a transaction for disposition of an interest in land, the Appellant was under duty to adduce a Sale Agreement duly executed by the parties in compliance with the provisions of Section 3 (3) of the Law of Contract and Section 38 (1) of the *Land Act*. Therefore, even if the Court was to assume that there was an offer to purchase the suit property, the same does not amount to a contract hence it is not enforceable. That evidently, the trial Court did not err in finding that the agreement between the parties was unreliable and unenforceable.
15. The Respondent therefore prayed that the appeal be dismissed with costs to the Respondent and the trial Court’s judgement upheld.



Appellant's Supplementary Submissions

16. The Appellant filed Supplementary Submissions dated 8th February, 2024 in response to the Respondent's submissions. The Appellant contends that the issue of ownership of the suit property was never disputed before the trial Court. The Respondent never raised an issue of ownership in its pleadings neither did it ever deny ownership of the property. Therefore, the trial Court arrived at a wrong determination without even according the Appellant a corresponding opportunity to respond.
17. It was the Appellant's submission that the Respondent did not prove that it compensated Clay works Limited even at the time when the Appellant did not have possession of the suit property. The moment he bought the suit property, he acquired the rights and possession since the sewer project affected it anyway, a fact not disputed by the Respondent. The Appellant submits that the year when the project was conducted is immaterial. What was expected of the Respondent was proof of whether compensation was awarded. The Appellant maintains that the trial Magistrate erred in law and in fact by stating that the Appellant did not prove ownership as opposed to the Respondent demonstrating compensation.
18. Regarding the offer to purchase the suit property, the Appellant submits that the Respondent submitted to Clay works Limited the Agreement Form who failed to execute it. However, that since ownership of the property was not disputed, it should not be the basis to argue that the Appellant is non-deserving of the compensation sought. The Appellant therefore prays that the Appeal be allowed.

Issues for Determination

19. As a first appellate Court, this Court's role is to subject the whole of the evidence to a fresh and exhaustive scrutiny and make its own conclusions on it. This duty was pronounced in *Selle & Another -vs- Associated Motor Boat Co. Ltd. & Others* (1968) EA 123 in the following terms:

“I accept counsel for the respondent's proposition that this Court is not bound necessarily to accept the findings of fact by the Court below. An appeal to this Court from a trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put they are that this Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular, this Court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanour of a witness is inconsistent with the evidence in the case generally (*Abdul Hammed Saif v Ali Mohamed Sholan* (1955), 22 E.A.C.A. 270).

20. In the case of *Chief Land Registrar & 4 Others -vs- Nathan Tirop Koech & 4 others* [2018] eKLR, the Court of Appeal cited the case of *Peters vs. Sunday Post Ltd* [1958] EA 424, at P 429 where it was stated that;

“An appellate Court has, indeed, jurisdiction to review the evidence in order to determine whether the conclusion originally reached upon that evidence should stand.”



21. The Court of Appeal went on to state that:

“The test in deciding whether to uphold the trial Court’s conclusions on fact is set out in the quotation from Lord Simon’s speech in *Watt v Thomas* [1947] AC, 484 at p 485 as follows:

“...an appellate Court has, of course, jurisdiction to review the record of the evidence in order to determine whether the conclusion originally reached upon that evidence should stand; but this jurisdiction has to be exercised with caution. If there is no evidence to support a particular conclusion (and this is really a question of law) the appellate Court will not hesitate so to decide.

But if the evidence as a whole can reasonably be regarded as justifying the conclusion arrived at the trial and especially if that conclusion has been arrived at on conflicting testimony by a tribunal which saw and heard the witnesses, the appellate Court will bear in mind that it has not enjoyed this opportunity and that the view of the trial judge as to where credibility lies is entitled to great weight...”

22. The Appellant’s case before the trial Court was as stated in the Plaintiff’s plaint dated 10th April, 2019, filed in Court on 11th April 2019. The Plaintiff asserted that he was, at all material times the registered proprietor of all that parcel of land known as L.R No. 57/2135 measuring 0.062 acres situate at Clay works, Kasarani.

23. He further stated that on or about April 2020 and May 2012, the Defendant egressed into the property and constructed the Gatharaini trunk sewer and reticulation project through the property with a promise to acquire the property and compensate the lawful owners for the wayleave. On or about February 2018, the Defendant offered to purchase the property from the Plaintiff as compensation for taking up and using the property for the project at a market value consideration. The Plaintiff furnished the Defendant with the original indenture of the property and all the necessary completion documents save for an executed conveyance for purposes of processing compensation.

24. The Plaintiff further alleged that the Defendant took immediate possession of the property in February 2018 and completed the project through the suit property. The Defendant’s project cuts across the suit property, taking up 55% of the property, consequently rendering the remainder of the property uneconomical and unusable by the Plaintiff.

25. It was the Plaintiff’s case that the Defendant had failed to compensate him for the wayleave. The actions by the Defendant do not only amount to trespass but also ‘compulsory acquisition’ of property without just and full compensation in breach of the Plaintiff’s right to property; use and enjoyment. The Plaintiff claimed compensation for the full market value of the suit property being Kenya Shillings 8,050,000/- with interest at prevailing bank rates from April 2010 until payment in full, pursuant to the provisions of Part VIII of the *Land Act*.

26. The Respondent who was the Defendant in the case before the trial Court filed a statement of defence in response to the Plaintiff’s claim. It asserted that the construction of the Gatharaini Trunk Sewer Project affected various residents of Nairobi County, including residents of Clay works and Kasarani. All residents who were affected, according to the Defendant, were duly compensated. The Defendant put the Plaintiff to strict proof in regard to his claim against it.

27. The Defendant insisted that the Gatharaini Trunk Sewer Project was done on duly gazetted road reserves and riparian land which did not in any way affect the Plaintiff’s property known as L.R



No.57/2135. The Defendant asserted that the original construction path was altered when it was realized that it would necessitate acquisition of large tracts of land being acquired from private individuals.

28. Having considered the submissions by the parties herein, the pleadings filed before the trial Court, the evidence adduced before the trial court and the grounds in the Memorandum of Appeal, this Court is of the considered opinion that the issues for determination in this appeal are: -
- a. Whether the ownership of the suit property was disputed
 - b. Whether the Appellant proved violation of his right to property under Article 40 of the Constitution,
 - c. Whether the Appellant was entitled to compensation as pleaded, and
 - d. What orders should issue as regards the cost of the suit and the appeal.

Analysis and Determination.

A. Whether ownership of the suit property was disputed.

29. Order 21, Rule 5 of the Civil Procedure Rules requires a Court in its judgment to pronounce or state its finding/decision with reasons therefore upon every issue which has been framed.
30. An issue in law may be defined as a single material point of fact or law in litigation that is affirmed by one side and denied by the other. It therefore becomes the subject of determination.
31. The Supreme Court of India in *Makhan Lal Bangal v. Manas, Bhunnia and others*, AIR 2001, SC 490, explained on the importance of framing correct issues in the following words.

“An obligation is cast on the Court to read the plaint/petition and the written statement/counter, if any, and then determine with the assistance of the learned counsel for the parties, the material propositions of fact or of law on which the parties are at variance. The issues shall be framed and recorded on which the decision of the case shall depend. The parties and their counsel are bound to assist the Court in the process of framing of issues. Duty of the counsel does not belittle the primary obligation cast on the Court. It is for the Presiding Judge to exert himself so as to frame sufficiently expressive issues. An omission to frame proper issues may be a ground for remanding the case for retrial subject to prejudice having been shown to have resulted by the omission. The petition may be disposed of at the first hearing if it appears that the parties are not at issue on any material question of law or of fact and the Court may at once pronounce the judgment. If the parties are at issue on some questions of law or of fact, the suit or petition shall be fixed for trial calling upon the parties to adduce evidence on issues of fact. The evidence shall be confined to issues and the pleadings. No evidence on controversies not covered by issues and the pleadings, shall normally be admitted, for each party leads evidence in support of issues the burden of proving which lies on him. The object of an issue is to tie down the evidence and arguments and decision to a particular question so that there may be no doubt on what the dispute is. The judgment, then proceeding issue-wise would be able to tell precisely how the dispute was decided.”

32. From a careful look at the plaint by the Appellant and the statement of defence filed by the Respondent, one can clearly tell that the ownership of the suit property was not in dispute. Though the Defendant denied the contents of Paragraph 3 of the plaint where the Plaintiff had pleaded that he was



the registered proprietor of the suit property, in the subsequent paragraphs, it expressly acknowledged the ownership of the property by the Plaintiff. Case in point is Paragraph 6 of the Statement of Defence where the Defendant avers that the construction of the Gatharaini Trunk Sewer Project did not in any way affect the Plaintiff's property known as L.R No. 57/2135. That is a positive averment in reference to the suit property as 'the Plaintiff's property known as L.R. No.57/2135.'

33. The averment is repeated once again at Paragraph 8 (e) where the Defendant asserts that the redesigned constructed sewer line did not encroach upon the Plaintiff's property known as L.R No. 57/2135.
34. The correct framing of issues obligates the Court to look at the pleadings before it in their entirety. As in the above-cited case, the framing of issues remain the primary obligation of the Court.
35. Consequently, I disagree with the finding of the learned Magistrate to the effect that the Plaintiff failed to demonstrate that the lawfully owner the suit property. Ownership was never in dispute and was therefore not an issue that required to be proved, whether at the time the project was taken or at the time the Plaintiff's suit was filed. I will explain the point further under the second issue for determination.

B. Whether the appellant proved violation of his right to property under article 40 of the Constitution.

36. In its judgment of 9th August 2021, the trial Court made a somewhat 'lukewarm' finding. At Paragraphs 33 and 34 of the judgment, the trial Court stated that,

“It is difficult to accept the Defendant's assertion that they did not trespass onto the Plaintiff's property. The failure to adduce these crucial documents leads me to the conclusion that the contents would be adverse, to the Defendant's case in that the sewer line was constructed over the suit property. I also find that the conduct of the Defendant in calling for the Plaintiff's documentation also lends credence to the fact that they knew that they had constructed the sewer line in a manner affecting the suit property. There being no evidence to controvert the fact that the project encroached on to the Plaintiff's land, I find that the Plaintiff proved this issue on the balance of probabilities.”

37. I called the finding of the trial Court lukewarm because the Court did not come out explicitly to pronounce itself on the finding and categorically state that the Defendant was guilty of trespass over the Plaintiff's property. That nonetheless is the clear conclusion of Paragraph 33 and 34 of the judgment.
38. I find no fault in the finding of the Court which was arrived at after analysis of the evidence presented before the Court. The Appellant had proved trespass of its land by the Defendant by the construction of the Gatharaini Trunks Sewer line through the land.
39. The Appellant however, in his plaint and in his subsequent submissions before the trial Court as well as before this Court wrongly referred to the Defendant's actions as amounting to compulsory acquisition of land. Compulsory acquisition of land is an elaborate legal process governed and regulated by the law. The Appellant assertion was that he was deprived of his land without due process. That is not the same as saying that his land was compulsorily acquired.
40. Of course the issue that the Appellant was asserting in his plaint was the illegality in the manner in which the Defendant, a government agency, constructed the sewer line and has maintained the same through his property without compensating him.



41. As the Supreme Court of Kenya stated in the case of *Attorney General vs Zinj Ltd (Pet. 1 of 2020)* KESC 2021) Judgment,

“The only way the government could lawfully deprive the respondent of part or all of its property, was through a compulsory acquisition, in conformity with the provisions of article 40(3) of the *Constitution*, and the procedure stipulated in the repealed Land Acquisition Act (now repealed) which was the applicable law at the time.”

42. The Supreme Court of Kenya went ahead to discuss the compulsory acquisition process which is commenced by issuance of the requisite notice to the landowner. In this case, as was with the case before the Supreme Court of Kenya, there is nothing on record to show that the mandatory process of compulsory acquisition of private land including compensation was followed. Consequently, the only conclusion this Court may arrive at is that the construction of the sewer line through the Appellant’s land was unprocedural and unlawful and a violation of the Appellant’s rights to property. This is trespass on the Appellant’s land that is continuous. It is therefore actionable.

43. The Plaintiff has a right to sue the Defendant for the trespass even though he may not have been the owner of the land at the time of construction of the sewer line unless it be shown that the original owner was duly compensated. The trespass is continuous. He now is and was the owner of the suit property at the time of filing this suit.

B. Whether the appellant is entitled to compensation as pleaded

44. This Court is a Court of equity. Equity shall suffer no wrong without a remedy.

45. In the above referenced case of Attorney General versus Zinj Limited, (Supra), the Supreme Court of Kenya was categorical that,

“It is a trite principle of law, that any injury or loss suffered by a person either through a tortious act, omission or breach of contract, attracts redress in a Court of law. The redress includes an award of damages to the extent possible as may be determined by the Court. The question regarding the type, extent, and quantum of damages to be awarded, has long been settled through a long line of decisions from the Courts. Under article 22(1) of the *Constitution*, every person has the right to institute Court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed, or is threatened. Among the reliefs that a Court may grant upon proof of violation of a fundamental right, is an order for compensation (article 23(3)(e)). The quantum of damages to be awarded, depends on the nature of the right that is proven to have been violated, the extent of the violation, and the gravity of the injury caused.”

46. The learned trial Magistrate in her impugned judgment found that the Plaintiff had produced a valuation report dated 15th March, 2019 prepared by EPI Consultants Ltd where the valuer established the market value of the Plaintiff’s property to be Kshs. 8,050,000/- The valuer further observed that there was a sewer line cutting across the Plaintiff’s property and taking about 55% of the suit plot. This, according to the valuer rendered any residential development on the property uneconomical and difficult due to its small size.

47. Essentially, then and for all practical purposes, the trespass on the Plaintiff’s property by the Defendant has rendered the entire property permanently unusable. What then would be more appropriate compensation other than compensating the Appellant for the market value of the plot? The Appellant presented the valuation report declaring the market value of the suit property as Kshs. 8,050,000/-.



The Respondent did not provide any report or any other material to contradict the value of Kshs. 8,050,000/-.

48. I award the Appellant the sum of Kshs. 8,050,000/- being the market value of the suit property but on condition that the Appellant surrenders the suit property to the Respondent fully upon payment of the decretal amount.

49. The sum of Kshs. 8,050,000/- awarded shall attract interest at Court rates from the date of this judgment until payment in full. The Appellant sought interest at prevailing bank rates from April, 2010 until payment in full but did not justify the same before the trial court. The court exercising its discretion awards interest at court rates from the date of this judgement until payment in full.

B. What orders should issue in regard to costs?

50. The law is that costs follow the cause. Having found in favor of the Appellant, I award him the costs of this appeal and of the suit before the trial Court.

Final disposition

51. Consequently;

A. The appeal herein succeeds. The judgement delivered on the 9th August, 2021 in Nairobi Milimani CMCC No. 2506 of 2019 is hereby set aside and substituted with a judgement in favour of the Appellant against the Respondent for the sum of Kshs. 8,050,000/- being the market value of the suit property with interest at court rates from the date of this judgement until payment in full.

B. The shall unconditionally Appellant surrender the suit property to the Respondent fully upon payment of the decretal amount.

C. The Appellant shall have the costs of this appeal and of the suit before the trial court.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26TH DAY OF NOVEMBER, 2024.

M.D. MWANGI

JUDGE

In the virtual presence of:

Ms. Terer for the Respondent

Mr. Kinyanjui h/b for Mr. Litoro for the Appellant

Court Assistant: Yvette

M.D. MWANGI

JUDGE

