County Government of Meru v M'Anampiu (Being Sued on behalf and aTrustee/ Secretary General of Kenya Christian Brotherhood Church) (Environment and Land Appeal E112 of 2021) [2024] KEELC 1586 (KLR) (13 March 2024) (Judgment)

Neutral citation: [2024] KEELC 1586 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ENVIRONMENT AND LAND APPEAL E112 OF 2021

CK NZILI, J

MARCH 13, 2024

BETWEEN

COUNTY GOVERNMENT OF MERU ..... APPELLANT

AND

PETER RIUNGU M'ANAMPIU (BEING SUED ON BEHALF AND A TRUSTEE/SECRETARY GENERAL OF KENYA CHRISTIAN BROTHERHOOD CHURCH) ..... RESPONDENT

(Being an appeal from the judgment of the Chief Magistrate's court at Meru (Hon. D.W Nyambu - CM) in Meru CMCC No. 421 of 2014 delivered on 21.9.2021)

JUDGMENT

1. The respondent, as the plaintiff at the lower court, had sued the appellant as the defendant by a further amended plaint dated 10.4.2019, for trespass into and construction of structures and a parking lot in Parcel No. 17664 Meru Municipality. It was alleged to have occurred between January and February 2019. The respondent had prayed for (a), a declaratory order that it was the proprietor or owner of the land; (b), a permanent injunction barring and restraining the appellant, its agents, servants or employees from constructing, entering, invading, parking vehicles, putting up building stores, trespassing into or any way whatsoever interfering with the respondents quiet and peaceful enjoyment of the land; (c) removal of vehicles, trees and demolition of any structures, buildings, stalls or houses erected therein and in the alternative to (d) above, removal at the appellant's expense or cost and lastly, general damages for trespass.

2. The appellant opposed the claim by a statement of amended defense dated 27.8.2019. It averred that the parking area was constructed on public land. Further, the appellant averred parcel No. 17664 Meru Municipality did not exist and was not reflected in any survey maps, and therefore, the documents held by the respondent were of no substantive value.

3. The appellant averred that his actions were lawful and not malicious as the locus in question was public land on which the appellant had a legal mandate. Similarly, the appellant had filed a preliminary objection dated 15.1.2015, that the respondent lacked locus standi to institute the suit as the suit land was registered under somebody else's name, the suit was incompetent and an abuse of the court process.

4. At the trial, the respondent called Cyprian Kirera Riungu as PW 1. As a registered land valuer, PW 1 told the court that on 10.4.2019, upon instructions from the respondent, he visited the suit land situated at Gitimbine bordering Meru Nkubu road and Meru Marindu road and valued it at Kshs.19,800,000/=. PW 1 said he established that the respondent was issued with a deed plan on 3.12.1992. He denied that the land was a road reserve. Further, PW 1 said he verified that the plot was not captured in the Ndugu Report as an illegal allocation to the respondent.

5. Further, PW 1 said he also checked Registry Index Map Sheets No. 4 & 5 of the Ntakira registration section. PW 1 said Peter Riungu was one of the registered trustees of the respondent's church. He said the land was sold to the respondent by the then-lessor, Mr. Mutuma Angaine, though he did not have a sale agreement to that effect.

6. Peter Riungu testified as PW 2. He told the court that he was a Bishop and trustee of the respondent church and adopted the witness statements dated 27.11.2014 and July 2019, as his evidence in chief. PW 2 told the court that the suit land belonged to the church after it was court from the 1st registered owner, Mr. Mutuma Angaine, who had applied for a grant as per a letter of allotment forwarded to him on 3.3.1993. he produced the letter of allotment as P. Exh No. (2) and the grant as P. Exh No. 3. PW 2 said the church followed due process in acquiring the land as per the transfer form duly executed, letter by the seller to the principal registrar of titles dated 16.10.2003 as P. Exh No. (5) & (6). Further, he produced consent from the physical planner Meru central dated 13.1.2007 clearance certificate and an objection letter dated 20.6.2006 as P. Exh No. 7-10, respectively.

7. PW 2 likewise produced letters dated 20.2.2012, 6.9.2011, PDP, approved plan P. Exh No's. 11, 12, 13, 14 & 15. Additionally, PW 2 said they had paid up-to-date rates to the County Government of Meru as per as P. Exh No. 17. More so, PW 2 told the court that the appellant, while aware of the court case, put up kiosks and car parking on the land as per photographs produced as P. Exh No. 18. He said the church commissioned a valuation for the plot as per P. Exh No. 18 and eventually wrote a demand letter to the appellant dated 22.8.2014 which he produced as P. Exh No. 19. In cross-examination, PW 2 said the church is duly registered as per the certificate of incorporation. He denied that the suit land had featured in the Ndugu Report as irregularly allocated to Mutuma Angaine and transferred to the church.

8. Elizabeth Wanjiru Mburu, a director of a physical planning department with the appellant, testified as DW 1 and adopted her witness statement dated 26.9.2019 as her evidence in chief. She produced the registry index map for the area. Further, DW 1 told the court that the land claimed by the respondent was part of a road reserve service junction of four roads meeting at the point. She said the purpose of a road reserve is to enable all free roads to have a clear visibility at the junction and, therefore was not an ideal place for putting up any structure. She said that if the land were constructed, it would reduce visibility at the junction and create traffic jams in that area. She denied that the land if it were a leasehold, would fall under Ntima/Ntakira. Further, she said a leasehold would have a deed plan since a Part Development Plan was a document prepared by a physical planner for purposes of allocating a lease or an allotment and must have a reference number and a parcel number in the map.

9. DW 1 said the number for Meru would be MRU and not NRB. She said the source of the documents should have stamped and signed the documents. Additionally, DW 1 said her office had no such PDP. Regarding the documents held by the respondent. Additionally, DW 1 said the letter of allotment and

the PDP number did not tally, and both of them should have accompanied each other. Similarly, DW 1 said the letter of allotment referred to a petrol station, while the PDP referred to a communal plot. She said the conditions in the letter of allotment had to be met within 6 months by presenting building plans for approval and erection of the same within 24 months; otherwise, the allocation would be invalid.

10. DW 1 said the appellant decided to create the plot as an open park and had allowed the putting up of kiosks since it had no intention of allocating the plot to third parties. DW 1 said the respondent intended to put up a one-story building, unlike the kiosk which is a low-lying development just like a petrol station. She admitted that the respondent's building plans appeared to have been approved on 6.3.2013, though they had glaring discrepancies.

11. In cross-examination, DW 1 said the area map she had produced was dated 2015; she said though the letter of April 2012 showed the land was allocated to Mutuma Angaine, the said plot was included in the Ndungu Report as an irregular allocation. She could not tell why the physical planning department had given consent for no objection to an irregularly allocated plot. Her view was that the approved building plan of the respondent conflicted with the lease. After reviewing the evidence, the trial court allowed the claim.

12. The appellant faults the judgment by the trial court for:

    i. Finding the respondent as the owner of the land despite the fact that there was no evidence that the plot was available for allocation to private individuals, the existence of any legal allocation to the respondents by the appellant.

    ii. For failing to appreciate that the suit land was public land which was never set aside for alienation to individuals.

    iii. For finding that Sections 24, 25 & 26 of the *Land Registration Act* could sanitize an irregularly obtained property and title deed.

    iv. For finding the property had been compulsorily acquired by the appellant and awarding Kshs.19,800,000/= contrary to public property.

    v. For finding the property existed in the land record through a registry index map yet a leasehold is primarily based on a PDP and not a registry index map.

    vi. For awarding Kshs.100,000/= as general damages for trespass, yet it was public property where no compensation could ensue.

    vii. For ruling against the weight of the evidence, law and written submissions by the appellant.

13. With leave of court, parties were directed to file canvass the appeal through written submissions by 15.1.2024. The mandate of an appellate court of the 1st instance is to rehearse, re-hear, re-appraise, and re-look at the lower court record with a fresh perspective and open mind, then come up with independent findings as to acts and law while bearing in mind that the trial court had an opportunity to see and hear the witnesses first hand. See *Abok James Odera t/a A.J Odera & Associates v John Patrick Machira t/a Machira & Co Advocates* [2013] eKLR, *Selle v Associated Motor Boat Company Ltd* [1968] EA 123 and *Peter v Sunday Post Limited* [1958] EA 424.

14. The appellant has in its written submissions dated 11.1.2024 submitted that uncontroverted evidence was tendered that the suit land was falling on a road reserve and therefore could not be available for any private development, except that it has used it as a parking bay or public stalls for commercial use by members of the public.

15. Regarding the allotment to the initially registered owner and the subsequent transfer to the respondent, the appellant submitted that the letter of allotment dated 13.8.1992 issued to Mutuma Angaine, a PDP, and the rates payments receipts, under the repealed (Government *Land Act*), a PDP had to be drawn and approved by the Commissioner of Lands, and followed by an allotment letter based on an approved PDP. In this appeal, the respondent did not produce any approved PDP by the Commissioner or Minister, and the one produced bore a ref "NRB" as opposed to "MRU." Similarly, the two documents referred to different times as a petrol station and a commercial plot, raising questions as to their authenticity, legality, veracity and regularity.

16. The appellant submitted that the initial allottee was not called as a witness to prove how he acquired the land other than producing the transfer documents, land rent and rates receipts in addition to the two documents alluded to above. The appellant submitted that the evidence of Mutuma Angaine was crucial in establishing how he acquired the land procedurally and legally. Reliance was placed on *Dina Management Ltd v County Government of Mombasa & others* (Petition 8 (E010) of [2021] [2023] KESC 30 (KLR) (21st April 2023) Judgment.

17. Additionally, the appellant submitted that parties are bound by their pleadings, and one cannot be granted relief he has not sought. To this end, the appellant submitted the amended plaint by the respondent had no relief for compensation. Therefore, it was submitted that the trial court would overstep the law and order for compensation without involving the National Land Commission in line with Section 107 of the *Land Act*. Reliance was placed on *Joseph Ochweri Obegi & others v Gesare Okioma* [2012] eKLR.

18. The respondent relied on written submissions dated 11.1.2024. It was submitted that the appeal is fatally defective for lack of a decree as held in *Lucas Otieno Masaye v Lucia Olewe Kidi* [2022] eKLR citing with approval *Bwana Mohamed Bwana v Silvano Buko Bonaya & others* [2015] eKLR and Chege v Suleiman [1988] eKLR.

19. The respondent submitted that the trial court was correct to find the respondent as the lawful owner of the land based on an allotment letter, Grant No. 1992 and IRN No. 4948 produced as P. Exh No's. 2 & 4 and letters from the defunct County Council of Meru, confirming the existence of the plot, which documents were not challenged by way of rival documents from the appellant, to prove that the property had been acquired fraudulently, illegally and unprocedurally. The respondent submitted that no evidence was produced to support the allegations that the plot fell on a road reserve, was included in the *Ndungu Report*, and did not exist as private property.

20. The respondent submitted that the appellant admitted collecting land rates and rent from the church; otherwise, it could not have been doing so if the property did not exist or had not been allocated to them and if it was on a road reserve. The respondent urged the court to find that the judgment was based on sound legal principles.

21. The issues for my determination are:

    i. If the appeal is competent for lack of a decree appealed against.

    ii. If the appeal has merits.

    iii. What is the order of costs?

22. Further, Order 42 of the *Civil Procedure Rules* provides that the entire record of the lower court file, including the decree or order appealed against, must form part of the record of appeal. In this appeal, the respondent submits that the decree was omitted in the record of appeal and hence the appeal

is incompetent. In *Emanuel Ngade Nyoka v Kitheka Mutisya Ngata* [2017] eKLR, the Court of Appeal said an omission of a decree was a mere technicality that could not sit well with the current constitutional dispensation on substantive justice as opposed to technicalities. In *MZM v JMM & 3 others* (Civil Appeal (Application) E024 of 2022) [2023] KECA 982 (KLR) (28th July 2023) (Ruling), the court cited *Mukenya Ndunda v Crater Automobiles Ltd* [2015] eKLR that rules of procedure serve as the handmaidens of justice not to defeat it. The court held that the preliminary objection was on form and did not go to the substance. The court opted to decide the matter on merits. In this appeal, the respondent was allowed to file a supplementary record of appeal dated 25.10.2023. It should have also included the decree. I find no merits or prejudice occasioned by the omission.

23. It is trite law that parties are bound by their pleadings, and issues flow from them. In *Stephen Mutinda Mule v Independent Electoral and Boundaries Commission* [2013] eKLR, the court cited *Malawi Railways v Nyasulu* [1998] MWSC 3, that in an adversarial system, it is the parties, through their pleadings, that define the parameters of the dispute and issues for the court's determination, with the court's duty bound to follow the agenda set by the parties, with no room for any other business. In *Raila Amollo Odinga & others v IEBC* [2017] eKLR, the court emphasized that a party has to adhere to the set timelines, and so does the court, and that evidence not based on filed pleadings was inconsequential.

24. In this appeal, the primary pleadings at the trial court were the further, further amended plaint dated 14.2.2019, amended defense dated 27.8.2019 and a preliminary objection dated 15.1.2015.

25. The respondent had pleaded trespass into its Parcel LR No 17664 Meru Municipality by the appellant between January 2019 and February 2019, illegal developments there on, a misrepresentation that the suit land belonged to it or was public property and dispossession of the suit land. The respondent prayed for a declaration that it was the sole owner of the land, permanent injunction, eviction and demolition of the illegal developments at the expense of the appellant, general damages for trespass, or in the alternative to prayers (b), (c) & (d), payment of the market value of the land at Kshs.19,800,000/=.

26. The appellant, by an amended defense dated 27.8.2019, denied the contents of the further further amended plaint and instead averred it constructed the parking area on public land, that the cited parcel by the respondent did not exist or was not reflected in the survey maps or documents, and that the documents held by the respondent lacked substantive value. Additionally, the appellant pleaded that its actions alluded to in the claim were lawful and not malicious, given that it had a legal mandate to do so on public land. It denied that the suit disclosed any cause of action or that a demand letter had been sent to it.

27. The appellant in this appeal has raised a ground that the trial court erred in finding the respondent as the owner of the land, yet there was no evidence of allocation to a private individual, and it was never allocated legally to the respondent; it was public land which was never set aside for any alienation to private individuals and that the trial court sanitized an illegally obtained property and title deed.

28. A title to land can indeed be impeached under Sections 24, 25, and 26 of the *Land Registration Act*, if it is obtained illegally, fraudulently, unprocedurally, or through a corrupt scheme. A party seeking to impeach a title to land must plead and prove the ingredients or particulars of fraud, illegality, unprocedural means, or corrupt scheme used in acquiring the title or land. In *Wambui v Mwangi & 2 others* Civil appeal 465 of [2019] [2021] KECA 144 (KLR) (19th November 2021) (Judgment), the court said Section 80 of the *Land Registration Act* does not provide succor for illegally obtained title to land and a claim to title cannot be considered as a stand-alone issue, without the trial court interrogating the root of the title. The court said a court of law would not sanction and pass as valid

any title to property founded on fraud, deceitfulness, illegality, unprocedural, or otherwise a product of a corrupt scheme.

29. The court further said that no property in law can have two parallel titles. Further, that under the Torrens land registration system, a party suffering from entries made in the register kept by the government and held out by the government as correct was entitled to compensation as a result of acting on those entries. Regarding unjust enrichment, if the judgment was upheld, the court said the trial court, as well as an appellate court, was bound by the record as laid before both forums. Similarly, the court said that since the 3rd respondent had neither raised a counterclaim nor sought summons against either the 1st or 2nd respondents who were the beneficiaries of those parcels or filed a cross-appeal, the trial court was limited in considering the issues raised in the pleadings and evidence on record, and so was the appellate court. The court held it could not confer a relief or pronounce itself on an issue not adequately laid before it.

30. In this appeal, the appellant at the lower court failed to plead that the title documents held by the respondent were illegally, unprocedurally, fraudulently, and or corruptly acquired, obtained, and or recorded. The appellant did not plead that the suit land was at all material times public property, incapable of being set aside or alienated to private persons.

31. The respondent, from 26.11.2014, had pleaded that the suit land was acquired pursuant to bonafide approvals and consents arising from the appellant. The plaint dated 26.11.2014 was accompanied by a list of documents dated 26.11.2014 and, 17.9.2015 among them, a grant issued under Cap 281, duly signed by the Registrar of Titles on 17.2.1993, and a deed plan dated 3.11.1992, duly signed by the Director of Surveys. Through an affidavit in reply sworn on 19.2.2015, by Jefferson Musyoka, the appellant relied on a survey map to impeach the title documents held by the respondent. The map was not gazetted or issued by the Director of Surveys. The assertion of the survey map as bonafide has been the common thread from the appellant's initial statement of defense dated 1.4.2015 and the preliminary objection dated 15.1.2015, up to the grounds of this appeal.

32. The respondent, in reply to the defense dated 8.4.2015, denied that the suit land was public, even as the appellant embarked on developing the suit land during the pendency of the suit, leading to the amendment of the plaint dated 12.2.2019 to include paragraphs five and new reliefs (a) & (b) of the further amended plaint. The appellant did not bother to amend its defense and try to impeach the title held by the respondent on account of Sections 24-25 and 26 of the *Land Registration Act*.

33. A valuation report dated 10.4.2019 was duly served upon the appellant, indicating that the respondent's parcel was not included on pages 162 to 171 of the Ndung'u report of June 2004 as illegally or irregularly allocated land. The amended defence dated 27.8.2019 maintained the contents of paragraph 7 but omitted to amended paragraphs seven thereof but introduced paragraphs 7A, B & C, insisting that the land was public. A demand letter dated 22.8.2014 had been received by the appellant on 25.8.2014, raising the legality of ownership and the question of trespass to private land. The respondent substantiated its pleadings by producing a paper trail on all the processes, procedures and legalities in acquiring the land. The exhibits produced by the respondent were and are all originals, starting from P. Exh No. 1 - 7 and 7– 19. The appellant did not object to the production of those original documents before the trial court or insist that the makers be summoned for cross-examination. Further, DW1 did not poke any holes in the original documents or call the assistance of the land registrar or land surveyor to denounce the exhibits. More curious, DW1 did not deny the legality and regularity of the entire letters and consents issued to the respondent regarding the existence and non-objection to the allocation of the suitland by the predecessor in title to the appellant.

34. On the other hand, and notwithstanding that the issues of legality, procedural, and regularity of acquisition of the title were not pleaded in the statement of amended defense, DW 1 insisted the suit land fell under a road reserve; it was necessary for ease of transport and control of traffic joining the main road from the four junctions, and purported to attack the PDP and the letter of allotment. Her attacks, unfortunately, were not backed by any contrary evidence from competent officers alluded to above from the lands department.

35. DW 1 admitted that the appellant decided to create an open park and construct kiosks for commercial purposes, which she termed as a low-lying development as opposed to the one-story building plans approved for the respondent by the appellant on 6.3.2013. Strangely, the minutes and documentation from the appellant support that evidence was not produced by DW1. She relied on the registry index map, which she was not the author or an expert on. She was incompetent to prove its contents. Similarly, DW 1 was unable to verify if a road reserve fell under its mandate or KeNHA. Additionally, DW 1 produced no other superior documents to show that the suit land was public and that it had been authorized to occupy it based on any superior right in place of the respondent.

36. The appellant before this court still insists that the respondent's ownership documents, starting from P. Exh No. 1-2, were irregularly, unprocedurally and illegally obtained for public land, which was not available to be alienated, was not legally alienated and remains public land. As indicated above parties are bound by their pleadings. A party may not, without leave, raise new issues on appeal that were not raised and ventilated before the trial court. The court finds no basis for those grounds of appeal.

37. The appellant has submitted that the legal procedures set under the Government Lands Act, now repealed, were not followed. The appellant relies on Dima Management Ltd v The County Government of Mombasa (supra). The appellant before the trial court and in this appeal was silent on the purport and effect of P. Exh. No. 2, whose deed plan was duly signed by the Registrar of Titles, the PDP map dated 6.8.1990, the registration of new grant on 3.3.1993 produced as P. Exh No. 3; Grant registered under Cap 281 P. Exh No. 4 containing Deed Plan No. 168526 dated 3.13.1992 transferring the land to the respondent. The transfer instrument dated 20.5.2009 duly registered on 26.6.2009 (P. Exh No. 5) based on an approval letter from the principal registrar of titles dated 16.10.2013 (P. Exh No. 6), letters dated 14.11.2007, 13.11.2007, rates payment receipt dated 20.6.2006, 20.2.2012, 6.9.2011, from the appellant and approval to developments under Physical Planning Act 1996, P. Exh No. (16). All these were correspondences between the appellant, the Ministry of Lands, and the respondent regarding the transfer. As alluded to above, such a paper trail was not challenged by the appellant by way of pleadings and through the production of rival documentation. My finding, therefore, is that the appellant's grounds of appeal on the manner of acquisition of the title by the respondent lack merits and are hereby dismissed.

38. Regarding damages for trespass and or compensation, the further further amended plaint introduced the issues of new developments on the land during the pendency of the suit. The appellant did not challenge the valuation report showing that the suit land was valued at Kshs.19,800,000/=. The respondent had pleaded the market value of the land in paragraphs 8, 9, 10, 11, 12 & 13 of the further further amended plaint dated 10.4.2019. The same was sought as an alternative relief in prayers (f) thereof. The appellant was privy to the pleadings when it filed an amended defense dated 27.8.2019. It failed to specifically address the issue of the takeover of the plot, the erection of a parking bay, commercial kiosks thereon, and the denial of the respondent in enjoying its ownership rights under Article 40 of the *Constitution* as read together with Order 40 of the Civil Procedure Rules. The appellant, before the trial court, did not plead and prove any superior rights or justification why it had trespassed into the respondent's parcel of land in January 2019 and February 2019, to the hearing of the suit.

39. Trespass under Section 3 (3) of the *Trespass Act* refers to unjustified or unauthorized entry into and commission of acts of destruction or wastage to private land. The appellant had merely invoked public rights to the occupation. None were pleaded particularized and proved. Trespass is actionable per se. It can be continuous or ongoing. See *Kenya Power & Lighting Company v Eunice Ringera* (2022) KECA 104 (KLR). The respondent proved every element and produced every step and documentation towards the acquisition of the suit land. The appellant challenged none of the said documents on account of illegality, irregularity, unprocedural, and issuance through a corrupt scheme. The appellant did not call for evidence from the land registrar, who is the custodian of land records, to impeach or deny the legality of the title documents held by the respondent.

40. DW 1 was a physical planner and not a land surveyor, a land registrar, or a road engineer. Evidence to show that the suit land fell under a road reserve was not availed. The appellant did not find it necessary to write to the National Land Commission or call them as witnesses, as custodians of public land. The appellant did not call the road engineer to sustain its defense that the suit land was necessary for traffic flow and or control. The public element in the suit land was merely alleged but not proved to the required standard. A party, as held in *Wangui v Mwangi* (*supra*), is bound by his pleadings both in the primary court and in an appellate court.

41. The appellant faults the trial court for ordering compensation for an alleged compulsory acquisition. As indicated above, the relief for a market value of Kshs.19,800,000/= was an alternative prayer. The trial court made a finding that there was trespass to private land. The appellant had not pleaded any counterclaim for the land as public land irregularly alienated and acquired by the respondent.

42. The appellant did not attempt to justify the public good, interest, or ownership of the plot. Be that as it may, no filing fees for the alternative prayer for Kshs.19,800,000/= were assessed and included in receipt No. 3595133 issued on 12.4.2017, when the further further amended plaint was filed.

43. The maker of the valuation report was not called to testify and substantiate the intended land use by the respondent and the basis of assessing the market value at Kshs.19,800,000/=. No comparable figure for land within the vicinity was included. The annexed development plans to the report were undated, unapproved and did not contain a bill of quantities. It fails the test as set in *Kanini Farm Ltd v Commissioner of Lands* [1986] KLR 310 and *Stanley Munga Githunguri v National Land Commission* [2016] eKLR and the processes set out under Section 111 of the *National Land Commission Act* to regulate assessment of such just compensation as read together with the Land Value Amendment Act 2019. The jurisdiction for the trial court to hear and determine matters of compulsory acquisition and order for just compensation under Section 133C (6) of the *Land Act* falls under the Land Acquisition Tribunal. See *Katra Jama Issa v Attorney General* [2018] eKLR, Land (Assessment of Just Compensation) Rules 2017, *Patrick Musimba v National Land Commission* [2016] eKLR

44. In Alex Wainaina T/A John Commercial agencies v Johnson Mwangi Wanjihia Civil Appeal No Nai. 297 of 2014, the court said where a relief is prayed for in the alternative, a court has to choose on the facts, whether to grant the main relief or the alternative and give reasons either way. See *National Bank of Kenya v Samuel Nguru Mutonya* [2019] eKLR.

45. I find the respondent was only entitled to the main prayers in the further further amended plaint dated 10.4.2019. The award for general damages is sustained. In view of the foregoing, the appellant is directed to hand over vacant possession of the suit premises to the respondent after a period of 90 days as required under Sections 152 A – F of the *Land Act*, in default of which the respondent shall evict the occupants from the said land.

46. Costs of the removal of any illegal structures on the suit land shall be at the appellant's expense in the event there is no compliance within the set period. Half the costs of this appeal, together with total costs at the lower court, are granted to the respondent.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 13th DAY OF MARCH, 2024

HON. C K NZILI

JUDGE

In presence of

C.A Kananu

Gitonga for the respondent

Mwirigi B for the appellant