



Case Number:	Environment and Land Petition 1524 of 2016
Date Delivered:	12 Nov 2021
Case Class:	Civil
Court:	Environment and Land Court at Nairobi
Case Action:	Judgment
Judge:	Antonina Kossy Bor
Citation:	Nazmudin Habib Kassam Kurji v Frank Logistics Limited & 9 others [2021]e KLR
Advocates:	Mr. I. Kanja holding brief for Ms. T. Raore for the Petitioner Mr. Francis Njeru- the 2nd Respondent Mr. Allan Kamau for the 6th, 7th, 9th and 10th Respondents
Case Summary:	-
Court Division:	Environment and Land
History Magistrates:	-
County:	Nairobi
Docket Number:	-
History Docket Number:	-
Case Outcome:	Petitioner awarded
History County:	-
Representation By Advocates:	One party or some parties represented
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
<p>The information contained in the above segment is not part of the judicial opinion delivered by the Court. The metadata has been prepared by Kenya Law as a guide in understanding the subject of the judicial opinion. Kenya Law makes no warranties as to the comprehensiveness or accuracy of the information.</p>	

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC PETITION NO. 1524 OF 2016

IN THE MATTER OF ARTICLE 22(1) & (2) OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF ARTICLES 10, 19, 20, 21, 22, 23, 24 AND 25 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF THE LAND ACT, 2012

AND

IN THE MATTER OF THE LAND REGISTRATION ACT, 2012

AND

IN THE MATTER OF THE NATIONAL LAND COMMISSION ACT, 2012

AND

IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT, 2015

AND

**IN THE MATTER OF ENFORCEMENT OF FUNDAMENTAL RIGHTS & FREEDOMS UNDER ARTICLES 28, 40(2)
(a), 40(3), 43(b), 47 AND 57(c) OF THE CONSTITUTION OF KENYA**

BETWEEN

NAZMUDIN HABIB KASSAM KURJI

.....PETITIONER

AND

FRANK LOGISTICS

LIMITED..... 1ST

RESPONDENT

FRANCIS NYAGA

NJERU.....2ND

RESPONDENT

JUDY MUTHONI NGUGI

3RD

RESPONDENT

SWAMI CONTRACTORS

LIMITED.....4TH

RESPONDENT

NAIROBI CITY

COUNCIL.....5TH

RESPONDENT

THE CABINET SECRETARY MINISTRY OF LANDS, HOUSING & URBAN DEVELOPMENT.....6TH RESPONDENT

THE CHIEF LAND

REGISTRAR.....7TH

RESPONDENT

THE NATIONAL LAND COMMISSION

8TH RESPONDENT

INSPECTOR GENERAL OF THE NATIONAL POLICE SERVICE9TH

RESPONDENT

THE HON. ATTORNEY GENERAL

.....10TH RESPONDENT

JUDGEMENT

1. The Petitioner resides in Kenya and was the registered proprietor of land reference number (L.R. No.) 1870/1/338. The 1st Respondent is a limited liability company duly registered under the Companies Act. The 2nd Respondent and 3rd Respondents are Directors of the 1st Respondent. The 4th Respondent is a limited liability and was hired by the 1st to 3rd Respondents to evict the Petitioner from the Suit Property. The 5th Respondent is a creature of Chapter 11 of the Constitution and operates under the Cities and Urban Areas Act and the Devolved Governments Act.

2. The 6th Respondent is established pursuant to Article 152 (1) (d) of the Constitution and is in charge of the Ministry of Land and Physical Planning, Housing and Urban Development. The 7th Respondent is established by Section 12 of the Land Registration Act. The 8th Respondent is a constitutional Commission established pursuant to Article 67 of the Constitution and is the successor of the defunct office of the Commissioner of Lands. The 9th Respondent is a state officer required to exercise independent command over the National Police Service. The 10th Respondent is the Attorney General of the Republic of Kenya who is the Principal Legal Adviser to the Government of Kenya pursuant to Article 156(4) of the Constitution.

3. The Petitioner's claim is that on 29/4/1971, he purchased L.R. No. 1870/1/290 Parklands, Nairobi for valuable consideration from M & H Corporation Limited with Kurbanali Habib Kassam Kurji, Nasirbanu Habib Kurji, Kulsum Sadrudin Darvesh and Sadrudin Habib Kassam Kurji. That sometime in September, 1986 Kurbanali Habib Kassam Kurji, Nasirbanu Habib Kurji, Kulsum Sadrudin Darvesh made a gift of their undivided three fifths share in L.R. No. 1870/1/290 Parklands, Nairobi to Sadrudin Habib Kassam Kurji and himself. The Petitioner and his late brother, Sadrudin Habib Kassam Kurji, applied for sub-division of L.R. No. 1870/1/290 which sub-division was duly approved by the relevant offices. Subsequently, Sadrudin Habib Kassam Kurji and the Petitioner were issued with separate deed plans from the Director of Surveys and the two sub-divisions became L.R. Nos. 1870/1/337 and 1870/1/338 Parklands, Nairobi.

4. The Petitioner claimed that he developed a town house on his parcel of land being L.R. No. 1870/1/338 Parklands, Nairobi ("the

Suit Property”) where he lived with his family for four decades. He rented out the town house in 2000 to a tenant who vacated it sometime in 2007. The Petitioner claimed that he occupied the town house with his family in 2008 after renovating it. The lease over the Suit Property expired on 31/5/2003 and on 2/4/2007, the Petitioner applied for extension of his lease. The Commissioner of Lands acknowledged receipt of his application and sought comments from the Director of Physical Planning, Director of Surveys and Director of City Planning. He averred that from 2007 he visited the 6th and 7th Respondents' offices to monitor the progress of his application and was informed that it was still being processed.

5. The Petitioner averred that he continued to receive rent and rate demands from the 5th and 6th Respondents and that he duly paid all rent, rates and other attendant costs of his proprietorship. He claimed that he had a legitimate expectation that the 6th, 7th and 8th Respondents would issue a fresh grant for the renewed lease period to him. However, on 24/11/2016, the 1st to 3rd Respondents' agents gained entry into the Petitioner's house in the company of police officers and began to interrogate the Petitioner about the ownership of the Suit Property. They gained entry into the adjoining parcel of land belonging to the Petitioner's late brother, being L.R. No. 1870/1/337.

6. He added that in the wee hours of the morning of 4/12/2016, a gang of hoodlums wielding machetes and clubs and agents of the 1st to the 4th Respondents encircled the Suit Property threatening to cut and burn the Petitioner and his family. That the gang attacked the Petitioner's guards and his family whilst purporting to act at the behest of the 1st to 4th Respondents. The gang flattened the entire town house sitting on the Suit Property as well as the adjoining premises using bulldozers. The Petitioner claimed that his calls for help from the 9th Respondent's officers based at Parklands Police Station went unanswered and were deliberately ignored. The Petitioner contended that the 1st to 4th Respondents' agents did not carry out the eviction in accordance with Articles 28, 29 (c), 29 (f), 31 (b), 40, 43(b), 57(c) of the Constitution or the procedures set out in Sections 152B, 152E and 152G of the Land Act, 2012.

7. The Petitioner contended that the 1st Respondent claimed to have been issued a letter of allotment dated 6/1/2009 pursuant to its application for allocation of the Suit Property together with a lease and certificate of lease both of which were dated 6/7/2016. The Petitioner maintained that the documents issued to the 1st Respondent were tainted with illegality.

8. The Petitioner claimed that on 24/11/2016 he lodged a complaint with the National Land Commission (NLC) regarding the illegal activities which were being carried out on the adjoining premises and its illegal occupation and trespassing by persons who he later came to learn were agents of the 1st and 2nd Respondents. That despite the NLC being seized of the question regarding ownership of the Suit Property, the 1st and 2nd Respondents went ahead to demolish his home, flattened all the structures and forcibly evicted him from the Suit Property.

9. The Petitioner averred that the officers of the 5th, 6th and 7th Respondents who it was claimed prepared, executed, issued or registered the 1st Respondent's title documents had disowned the documents as fraudulent and confirmed that the signatures appearing on those documents were forged.

10. The Petitioner averred that there was irrefutable and undeniable evidence of fraud in relation to the issuance of the grant of the Suit Property to the 1st Respondent and that it was part of an elaborate and well-crafted scheme orchestrated by the 1st to 3rd Respondents on the one hand and unknown officers of the 5th, 6th and 7th Respondents on the other hand, to fraudulently dispossess him of and extinguish his constitutional and legal rights over the Suit Property through illegal, unprocedural and improper dealings.

11. The Petitioner urged that under Article 40 (2) and (3) of the Constitution, neither the State nor any individual could arbitrarily deprive a person of property or of any interest in or right over any property unless the deprivation resulted from an acquisition, conversion of an interest in land, or for a public purpose or where the property was found to have been unlawfully acquired. The Petitioner contended that the alienation of the Suit Property to the 1st Respondent by the officers of the 6th and 7th Respondents was unconstitutional and illegal.

12. He claimed that he had applied for extension of his lease and that he made numerous attendances at the lands offices where he was assured that his application for extension of the lease over the Suit Property was under consideration and that he would be notified as soon as a decision was reached. He faithfully paid land rent and rates in respect of the property. The Petitioner contended that having created a legitimate expectation that his lease would be extended, the Commissioner and the land officers could not withdraw it without due process or consultation and argued that they were bound by the representations which they made and which he relied upon.

13. He contended that the alienation of the Suit Property without due process or consultation contrary to the assurances was undertaken without deference to and outside the doctrine of legitimate expectation. He added that in processing his application for the extension of his lease over the Suit Property, the Commissioner of Lands and the officers of the 6th and 7th Respondents were discharging an administrative action and were therefore enjoined by Articles 47 and 232 (c) and (f) of the Constitution to do so expeditiously, efficiently, lawfully and fairly.

14. He stated that his household goods as well as those of his family, personal effects, memorabilia and home were lost and destroyed during the demolition of the town house. He averred that the market value of a structure similar to the demolished town house and the servant quarters and other improvements was approximately Kshs. 6,584,500/=. He sought to be compensated for all their household goods, personal effects, memorabilia and all other items lost and destroyed during the demolition whose value he gave as Kshs. 13,550,300/=.

15. The Petitioner stated that as a result of the demolition and eviction, they had to find alternative means of shelter and incurred costs paying for rented accommodation and buying household items and goods since the Petitioner's entire lifetime of household items lay in a pile of rubble in the Suit Property. He urged that the Respondents should be held liable to compensate him for the extra and unnecessary financial burden of the amounts he had to pay for rent and which he incurred in furnishing and stocking his new accommodation all totalling Kshs. 1,366,402/=.

16. The Petitioner urged the court to hold and declare that the actions of the 1st to 4th Respondents of evicting him from the Suit Property and the demolition of the town house while he was paying land rent, rates and other attendant costs to his proprietorship, which rendered the Petitioner and his family homeless contravened Articles 2 (5), 28, 29(c), 29(f), 31(b), 40, 43(1)(b), 47(1) and 57(c) of the Constitution; and his fundamental rights under Section 152(g) 152(b) and 152(e) of the Land Act, Article 11 of the International Covenant on Economic, Social and Cultural Rights and Articles 16 and 18 of the African Charter on Human and People's Rights as read with Article 2(6) of the Constitution.

17. Further, he sought a declaration that the 1st to 3rd Respondents' actions of fraudulently and improperly obtaining title documents over the Suit Property through forgery was unconstitutional, illegal, and void. He sought a declaration that his fundamental right to property had been contravened.

18. He sought to have the court declare the 6th, 7th and 8th Respondents' refusal to renew his lease over the Suit Property as discriminatory, unconstitutional, *ultra vires* and a violation of his legitimate expectations, fundamental rights and freedoms guaranteed by the Constitution. In addition, that the Respondents are not entitled to deprive him of the rights over the Suit Property except in accordance with due process of law and upon prompt payment of compensation for the improvements on the Suit Property at the market rates as provided by Article 40 (3) of the Constitution.

19. The Petitioner sought a permanent injunction to prohibit the Respondents and their agents from attempting to obtain possession, dispose of, alienate, charge, transfer, offer for sale, allocate or deal with the Suit Property or interfere with his proprietorship of the land.

20. The Petitioner urged the court to hold and declare that the 1st, 2nd and 3rd Respondents' actions to threaten the Petitioner and his family and violently evict them from the Suit Property was a violation and contravention of the Petitioner's constitutional right to freedom and protection from torture, violence, cruel, inhuman or degrading treatment guaranteed by Article 29 of the Constitution.

21. He sought to have the court declare that the letter of allotment, lease and certificate of title issued to the 1st Respondent were all fraudulent, illegal, null and void *ab initio*. He sought an order of mandamus for the 6th and 7th and 8th Respondents to cancel those documents and any entries they made against the Suit Property in favour of the 1st Respondent including cancelling the name of the 1st Respondent as the proprietor of the Suit Property. He also sought an order of mandamus to compel the 6th, 7th and 8th Respondents to renew his lease over the Suit Property.

22. He urged the court to award him general damages against the 1st, 2nd and 3rd Respondents for trespass, detinue and illegal and unlawful conversion of his property by the 1st to 3rd Respondents. He gave a breakdown of the special damages he seeks made up as follows: amounting to Kshs 13,550,300/= being the value of the household goods and personal effects in the town house as at 3/12/2016; Kshs. 6,584,500/= being the value of the developments on the Suit Property; Kshs. 832,500/= on account of the rent which he and his family incurred from December, 2016 to December, 2017 in seeking alternative accommodation after the

destruction of their home on 4/12/2016; Kshs. 533,902/= incurred in the purchase of personal and household goods to restart his and his family's life post-demolition and eviction.

23. He also sought Kshs. 1,620,000/= being the anticipated rent for the years 2018 and 2019 during the period for the reconstruction of his home on the Suit Property. He urged the court to order that such costs that he will incur to restore the Suit Property to the state it was in as at the 3/12/2016 including clearing the debris left by the demolition, be borne by the 1st to 3rd Respondents on an indemnity basis. He also sought exemplary damages against the Respondents for breach of his fundamental constitutional rights and freedoms.

24. The 2nd Respondent swore the Replying Affidavit on 16/1/2017 in opposition to the petition. The averments in the affidavit are similar to those in the 2nd Respondent's witness statement, which he adopted as his evidence during the hearing of the case. The averments are set out in this judgement.

25. Sergeant Gilbert Okello, a Police Officer attached to the Directorate of Criminal Investigations (DCI) Headquarters, Land Fraud Investigation Unit who was one of the Investigating officers in the case, swore the Replying Affidavit on behalf of the 9th and 10th Respondents. He confirmed that a complaint was made to the DCI Headquarters on 6/12/2016 by the Ministry of Lands and Physical Planning and that the DCI directed investigations into the matter which he took part in with I.P Mohammed.

26. They conducted investigations which established that the dispute revolved around the ownership of I.R. 1870/1/337 and 338 which had a semi-detached maisonette. The Petitioner recorded a statement with the DCI officers. To prove ownership of the land, he produced correspondences supporting his occupation of the Suit Property and the application he made for extension of the lease. The Petitioner neither had the original lease nor certificate of title over the land. He summoned the Director of the 1st Respondent who supported his claim to the land with letters of allotment, original certificates of title and leases, deed plans and a copy of the enforcement notice. In the course of the investigations at Survey of Kenya, Sergeant Okello established that the deed plans which the 1st Respondent purported had been signed by P.F Njoroge were forgeries when that officer disowned the signature and the deed plans which were signed on 20/10/2015, a public holiday. He averred that the signature of Francis Kimani Ngugi on the deed plans alleged to have been signed, verified and stamped by him were also subjected to document analysis and turned out to be forgeries.

27. The report also confirmed that the signatures of the two officers working with the Ministry of Lands, that is C.K Ngetich and Onyino Mukobe who it was alleged signed the 1st Respondents documents, were forged. At Ardhi House, they learned that the Inland Registry numbers IR. No. 176232 and 176234 were issued in respect of L.R. No.13486/258 and 13486/254 which belong to Francis Munene Hiram and not the 1st Respondent.

28. The data trail they obtained from the ICT office in the Ministry of Lands showed how the lands information system was manipulated with the assistance of an ICT Officer known as Abner Bangi and fraudulent leases were printed in the name of the 1st Respondent. These findings were supported by a cyber-crime report dated 13/12/2016. The two DCI officers extended the investigations to City Hall, Nairobi where they established that the Enforcement Notice dated 10/11/2016 used by the 1st Respondent to demolish the maisonette on L.R. Numbers 1870/1/337 and 338 was a forgery as confirmed by the Nairobi City County letter dated 19/12/2016.

29. According to Sergeant Okello, the statements of witnesses, documents and the expert report showed that fraud had been committed. He arrested and charged the Director of the 1st Respondent, Francis Nyaga Njeru, the 2nd Respondent in Criminal Case No. 1998/2016.

30. The hearing of this suit commenced on 6/12/2017. The Petitioner called five witnesses to give evidence in support of his case. His daughter, Jaameeta Nazmudin Kurji was the first to testify. She stated that her father owned the Suit Property which he leased to Mr. Sanghani until 2007. When Mr. Sanghani died, her father made renovations to the house and constructed the boundary wall. Her family moved into the Suit Property from the adjoining property belonging to her late uncle Sadrudin Kurji, where they had been staying. The family resided on the Suit Property until they were violently and forcefully evicted and their home demolished. She stated that on 24/11/2016, two men parked a car in front of her late uncle's house, broke the padlock on the gate and entered the land. They chased away their house help when he went to find out what they were doing.

31. When that happened, she called the Aga Khan Community Security (AKS) to report the incident because she thought they were being robbed. They also informed her cousin of the incident. AKS investigated the incident and two police officers later went to

their house and questioned her father about the ownership of the Suit Property and the adjoining parcel of land. She stated that when her cousin Hanif went to report the break in at the Parklands Police Station, it took several days before the police recorded the complaint in the occurrence book. She added that between 24th and 27th November 2016, several men and a woman accessed the adjoining premises several times and cleared the site. They trimmed the hedges, uprooted the banana tree which they had planted, and removed items such as the television, a photocopier, wooden doors, drawers, steel manhole covers, a motor bike and other items from the house and the servant quarters.

32. On 2/12/2016 at around 7.30 pm, she saw over fourty young men arrive at the adjoining premises armed with machetes and clubs. Some of them were patrolling from the hedge while others sat along the boundary wall. Others entered the adjoining house and she could hear pounding sounds and glass breaking against the shared wall between her home and the adjoining premises. She attempted to contact a police officer from the DCI to inform him of what was transpiring in the adjoining premises but he did not answer the call. She rang their private security firm, First Security to inform them of the disturbance that was going on and asked them to send their backup patrol car to assist the four security guards who were working with their guard Evans Orina Obade (Evans) to secure the Suit Property.

33. She stated that when the police arrived, she heard them laughing and conversing with the caretaker who was on the adjoining premises and reported on his radio that all was calm and there were no harmed individuals on the premises. Her brother recorded the events and took pictures but the goons stole his phone containing the pictures when they demolished the Suit Property. A representative of NLC went to the premises on 3/12/2017, and issued summons for a public hearing scheduled for 9/12/2016 which had been organised to review the disposition of the grant over the Suit Property. Her father received the copy of the letter and Hanif was also served with the summons as the beneficiary of the adjoining premises.

34. She narrated how at around 4:45 am on 4/12/2016, Evans, their guard, woke them up in a panic telling them that there was trouble. The security patrol car drove off with two of the security guards. They switched on the security spot light and bedroom lights in their house and she noticed that the armed goons were knocking down the concrete boundary wall at the adjoining premises after destroying the gate. In panic, they tried contacting everyone they could think of including various CID officers, security firms, family members, AKS, Oshwal Security, their neighbours and their lawyers.

35. Her mother tried waking her father up but his legs were cramping and he could not move. They feared that he would suffer a heart attack. Her mother finally managed to help him get dressed and go downstairs. A large top loader with a bulldozer entered the adjoining premises and there were about ten goons armed with machetes lined up against the shared garden hedge who were screaming at their guards. She took turns with her brother to film what was happening. The men threw a stone at their window to stop them from filming the incident. The bulldozer started demolishing the adjoining premises and they could feel the wall of their home shaking.

36. Her parents went outside to the car fearing that the Suit Property was not stable. She stayed in the Suit Property when about fifteen men rushed through the gate of the Suit Property and started screaming at them. They locked the grill doors to their house and stood outside. The goons screamed at them, pushed them around and threatened to kill them all. They pleaded with the goons to let them leave. Some of the goons were hitting the bonnet and roof of the car with their machetes and clubs while others were pushing them.

37. Her father managed to get into the car but was too frail and agitated to start the car. As her brother Rahim was trying to get their mother into the car, two of the goons who were wielding machetes stole his phone and camera so that all the photographs and videos they had taken were lost. One of the goons realised they were struggling to leave the suit premises and suggested that they put the handbrake down and push the car outside the gate. Some of the goons assisted them while others banged on the windows, bonnet and boot of the car with their clubs and machetes. Her family pleaded with the goons to give them time to calm her father down to enable them locate the car keys. After they left the premises, the goons, under the supervision of the caretaker and another man broke the locks to their house and started looting their belongings. She saw them empty the suitcases which they had packed and left downstairs in anticipation of any emergency.

38. They stood helplessly at the side of the road and watched as their home was destroyed. The bulldozer broke the upstairs wall and they saw the young men loot their belongings including her mother's jewellery and her brother's bags. One of the men stood on the opposite side of the road watching her family react to the horror happening before their eyes. They asked one of the demolition men if they could try to salvage some of their belongings. She was saddened by the fact that the police never went to their rescue despite being contacted by AKS and her family.

39. She stated that officers from NLC and the OCS of Parklands Police Station showed up much later during the day once the media reported the demolition. Mr. Gikunda, head of the CID in Parklands was also present and asked them to give their statements. Later that day she went with her brother Rahim to Parklands Police Station to record statements after taking her parents to a relative's house. They also recorded statements with the CID Land Fraud Investigation Department in the course of that week. Mr. Abdalla Komesha, Head of Land Fraud at DCI assigned Mr. Gilbert Okello and Mr. Ibrahim, officers serving under him, to take statements from all of them.

40. After the demolition of their home her family was forced to seek alternative rented accommodation and restart their lives from scratch. She surmised that their lives were ruined by the fraudulent and corrupt actions of the 1st, 2nd and 3rd Respondents together with their agents. She blamed the 9th Respondent for doing nothing to assist her family to stop the demolition of their home and was convinced that the 9th Respondent's officers were instrumental in ensuring that their property was destroyed by turning a blind eye and failing to record their statements or provide any police assistance to us. She implored the court to ensure that they got justice and compensation for the loss of their home and belongings.

41. On cross examination, she stated that her father bought the Suit Property before she was born but she had nothing to show that it belonged to her father. She stated that they stayed on the Suit Property from 2008 and that prior to that they lived next door in her uncle's house. She could see the men in the car from her bedroom window because the two houses shared a common wall and roof. She reiterated that she reported the incident on two occasions and recorded statements at the Parklands Police Station. She clarified that she saw the news item on television indicating that the 2nd Respondent, Mr. Francis Nyaga Njeru had been charged in criminal proceedings over the demolition of their home.

42. The Petitioner gave evidence. He stated that he was the owner of the Suit Property, which he bought for valuable consideration. That on 29/4/1971, he and Kurbanali Habib Kassam Kurji, Nasirbanu Habib Kurji, Kulsum Sadrudin Darvesh, Sadrudin Habib Kassam Kurji purchased L.R. No. 1870/1/290 Parklands, Nairobi for valuable consideration from M & H Corporation Limited. He produced a copy of the Indenture dated 16/3/1967 between Charles Levitan & Gladys Dorothy and M & H Corporation. He also produced a copy of the sale agreement dated 12/3/1971 between M & H Corporation Ltd and Nazmudin Habib Kassam Kurji, together with a copy of the Indenture dated 29/4/1971 between M & H Corporation Ltd and Sadrudin Habib Kassam Kurji, Kurbanali Habib Kassam Kurji, Nazmudin Habib Kassam Kurji, Nasirbanu Habib Kurji and Kulsum Sadrudin Darvesh conveying L.R. No. 1870/1/290.

43. He explained that in September 1986, Kurbanali Habib Kassam Kurji, Nasirbanu Habib Kurji, Kulsum Sadrudin Darvesh made a gift of their undivided three fifths share in L.R. No. 1870/1/290 Parklands, Nairobi to his late brother Mr Sadrudin Habib Kassam Kurji and him. He produced a copy of the Indenture of Assignment dated 30/9/1986 between Kurbanali Habib Kassam Kurji, Nasirbanu Habib Kurji, Kulsum Sadrudin Darvesh and Sadrudin Habib Kassam Kurji and Nazmudin Habib Kassam Kurji gifting the three fifths share in L.R. No. 1870/1/290 to Sadrudin Habib Kassam Kurji and Nazmudin Habib Kassam Kurji.

44. He applied with his late brother for sub-division of L.R. No. 1870/1/290 which was duly approved by all the relevant offices including the 6th and 7th Respondents and the Commissioner of Lands. They were issued separate deed plans by the Director of Surveys and the two portions became L.R. Nos. 1870/1/337 and 1870/1/338 Parklands, Nairobi. He produced a copy of the Deed of Partition dated 30/9/1986 between Sadrudin Habib Kassam Kurji and him creating L.R. No. 1870/1/337 and L.R. No. 1870/1/338. He averred that from 2000 to 2007 he leased the Suit Property to a tenant Mr. Sanghani. He moved into the townhouse with his family in 2008 after undertaking extensive repairs and erecting a boundary wall. The Suit Property became his family's residence until they were violently and forcefully evicted from it and it was demolished. Prior to occupying the Suit Property, he resided on the adjoining property known as L.R. No. 1870/1/337 belonging to his late brother.

45. He stated that on 2/4/2007 he applied to the Commissioner of Lands for extension of his lease over the Suit Property to. The Commissioner of Lands acknowledged receipt of his application on the same day and requested the Director of Physical Planning, the Director of Survey and the Director of City Planning to give their comments on his application. He produced a copy of his application for extension of lease dated 2/4/2007, together with a copy of the letter dated 2/4/2007 from the Commissioner of Lands to the Directors of Physical Planning, Surveys and City Planning.

46. He wrote to the Director of City Planning on 5/4/2007 requesting him to give his letter of recommendation at the earliest so that they could expedite the process of extending the lease over the Suit Property. The letter was received by the Nairobi City Council and on the same day, he paid Kshs. 20,000 to the Nairobi City Council for the application. He produced a copy of the letter and the

receipt issued to him on payment of the application fee.

47. He attended the 6th Respondent's offices on multiple occasions to enquire about the progress of his application for extension of lease and was assured that his application was being considered and that he would be notified when a decision was reached. In the meantime, the 5th and 7th Respondents continued to receive payments of land rent and rates from him in respect of the Suit Property. He produced copies of the land rent payment receipts in respect of the Suit Property for the years 1988 to 2016 as well as copies of land rate payment receipts for the years 1986 to 2016.

48. He stated that he received verbal assurances from the 6th Respondent's officers that his lease would be extended once they finalised the administrative processes at the lands registry and that he therefore legitimately expected, based on the application, internal letters written by the Commissioner and demand for land rent and rates that he received and subsequently paid, that the Commissioner would extend his lease. He averred that he continued to diligently pay land rates and rent as a land owner and abided by the terms and conditions of the lease.

49. He and his family were shocked on 24/11/2016 to notice persons who they later learned were agents of the 1st to 3rd Respondents, forcibly gain entry into and possession of the adjoining premises belonging to his late brother. The intruders broke the padlock to the gate and house and gained access to the adjoining premises. When his house help, Edward Nyandiko Omwenga (Edward) went to find out who the intruders were, he was chased away. His daughter, Jaameeta Kurji, called the Aga Khan Security (AKS) for assistance. He informed his nephew, Mr. Hanif Kurji, who is the beneficial owner of the adjoining premises of the trespass. AKS went to the land and also got in touch with the police. When the police arrived, they questioned him demanding details and documents pertaining to ownership of the Suit Property without addressing what had happened at the adjoining premises. Edward then went with members of the AKS to Parklands Police Station to record a statement about the break in. Edward informed him that while they were at the Police Station, the police refused to record any statement.

50. On 25/11/2016, the goons began to conduct cleaning and other activities inside the adjoining premises and there was banging against the walls. The goons cleared the small trees and shrubs around the adjoining premises and several unknown persons arrived at the premises who removed furniture and fittings including a photocopying machine, television, a motorcycle and other items which were in the house.

51. Feeling discouraged by the lack of action on the part of the police officers at Parklands Police Station towards the illegal actions of the 1st, 2nd and 3rd Respondents, he and his family decided to report the incident to the 8th Respondent. One of his nephews, made several visits to the 8th Respondent's offices on his behalf due to his age, and made frantic efforts to report the illegal activities and what appeared to be crystallizing into a land grabbing scheme where his property of 40 years was the target.

52. He stated that on 3/12/2016, an officer from NLC together with security officers went to the Suit Property to serve summons on him and the 1st and 2nd Respondents, for a hearing that was scheduled to take place at the 8th Respondent's offices on 9/12/2016. He produced copies of the 8th Respondent's notice dated 3/12/2016 and the gazette notice.

53. In the early hours of 4/12/2016, he was frantically woken up by his wife who had been alerted by their security guard, Evans Orina Obae (Evans) that a gang of goons armed with machetes and clubs had begun to break the gate and the wall of the adjoining premises. He looked outside and saw some of them lining up against the hedge separating the Suit Property and the adjoining premises. A large bulldozer drove through the broken gate and wall of the adjoining premises. His wife helped him downstairs as the walls of their home began to shake. His son and daughter were upstairs recording the events on a camera and phone. After he got downstairs, he saw the men who had lined up against the hedge cutting through it with their machetes while others seemed to be forcing his security guards out of the Suit Property. He was worried about his children who were still upstairs and asked his wife to tell them to get out of the house as they were afraid it would collapse. The bulldozer was aggressively knocking down the shared wall. They were attacked and threatened by the armed goons as they pleaded for their lives and frantically tried to exit the Suit Property with their vehicle. The goons pushed and shoved them and banged clubs and machetes on their vehicle.

54. While they were being threatened and forcefully evicted from the Suit Property in the early hours of Sunday 4/12/2016 by the armed goons, other members of the same gang of hoodlums wielding machetes and clubs as well as agents of the 1st to 4th Respondents entered the Suit Property through the destroyed wall and began looting their possessions from the Suit Property as they watched helplessly. Their home was demolished and through their agents, the 1st to 4th Respondents gained unlawful entry into the Suit Property and carried out an unlawful eviction. He contended that the 1st to 3rd Respondents disregarded the Constitution, the

rule of law and the constitutional mandate vested on the NLC when they forcibly evicted them and demolished his home and the adjoining premises despite NLC having summoned all the parties in a bid to have the issue relating to the ownership of the Suit Property considered.

55. He stated that prior to the events of 4/12/2016, he went with his family to Parklands Police Station several times to report the unlawful trespass and threats but their pleas to the 9th Respondent's officers to intervene before things escalated were ignored. In addition, the reports the security company made on the day of the demolition to Parklands Police Station were not dealt with.

56. The Petitioner state that he learned through the pleadings filed in court that the 1st Respondent had asserted that when it was allocated the Suit Property in 2009, no one was living on it, which according to him was a blatant lie as evidenced by his application for extension of the lease and payment of land rent and rates. He stated that over the years while living on the Suit Property, neighbours, family and friends visited his family on the Suit Property and that Evans, their guard and Edward Omwenga, their house-help had been with his family for close to fifteen years guarding the Suit Property and assisting the family with chores around the house. He added that Edward and Evans were present when the 1st Respondent's agents descended on the Suit Property wielding machetes and crude weapons and used a bulldozer to flatten the structures on the Suit Property including the main residential house in which he resided with his family. He added that the post demolition fiasco was recorded by the media persons who went to the Suit Property.

57. The Petitioner stated that they had various household items and possessions inside the townhouse and that the 1st Respondent knew that they resided on the property because on the 24/11/2016, the 1st Respondent's agents followed men they believed were police officers into the Suit Property when the officers interrogated him on the ownership of the Suit Property. He registered a complaint of this visit with the 9th Respondent who did not take any action. He stated that the agents of the 1st to 3rd Respondents demolished their home in an inhumane manner using thugs and goons to threaten him and his family and without giving them the opportunity to salvage their possessions. He produced a copy of an inventory of the household items which were looted and destroyed as a result of the demolition.

58. He urged that the town house located on the Suit Property was an investment made by him and his family which was demolished in cold blood without a thought as to the damage it would cause to him and his family. He added that taking into account his age and that of his wife as well as his state of health, it was only through the grace of God that they managed to escape without any physical injury. He maintained that the indignity, the intimidation and terror they were subjected to from the time the gang of goons broke into the adjoining premises to the day they demolished his home was barbaric and due process was not followed.

59. He averred that prior to the demolition of his property, he was not aware that there was an enforcement or demolition notice for the Suit Property and only became aware of the enforcement notice purportedly issued by the 5th Respondent during the hearing held by the 8th Respondent when the 1st Respondent produced the notice as part of its documents. That was well after his property had been forcefully destroyed and they had been evicted. He maintained that no notice was served on him and his family to vacate the Suit Property and that the 1st to 3rd Respondents should have carried out the eviction in accordance with the law, in a respectful and dignified manner that did not threaten his family, employees and his own security. He urged that they ought to have been given sufficient time to salvage their belongings had it been a legitimate eviction. He produced a copy of the enforcement notice dated 10/11/2016.

60. The Petitioner challenged the allocation of the Suit Property to the 1st Respondent and questioned how the 1st and 2nd Respondents knew of the availability of the Suit Property for purposes of being allocated the land. He pointed out the anomalies in the undated application which the 1st Respondent alleged that it made for allocation of the Suit Property. He referred to the letter of allotment which contained a condition that the offer had to be accepted within 30 days by submission of a banker's cheque of Kshs. 106,270/= while pointing out that the banker's cheque through which the 1st Respondent claimed to have paid for the allocation of the land was issued almost seven years later on 28/10/2015.

61. He also pointed out that the cheque was addressed to the Commissioner of Lands, whose office had become defunct by the date of the cheque and having been succeeded by the National Land Commission. He queried how the cheque could have been banked and in which account since the Government of Kenya would not operate an account for an office that did not exist.

62. The Petitioner emphasised that the foundation upon which the 1st and 2nd Respondents were issued with a lease and certificate of title over the suit land were non-existent because they did not comply with the conditions in the letter of allotment. According to

him, once the 1st Respondent failed to make the requisite payment and abide by the terms of the letter of allotment within 30 days, no rights of title to the Suit Property could pass to the 1st Respondent.

63. The Petitioner stated that during the period when the 1st Respondent claims to have applied for allocation of the Suit Property and to have been issued a letter of allotment in respect of the land, his application for the extension of his lease was being processed by the Commissioner of Lands. He did not receive any communication from the Commissioner of Lands indicating that his application had been unsuccessful or that a decision had been made not to extend his lease over the Suit Property. During that period and after, he continued to be in possession of the property and continued paying the rent and rates demanded by the 7th and 5th Respondents respectively. He produced evidence to show that he continued paying the utility bills in respect of the services provided by various entities in relation to his occupation of the Suit Property.

64. He stated that the Nairobi County Government had expressly denounced the demolition notice which was purportedly issued for the destruction of the structure on the Suit Property. Further, that the Nairobi County had denied that being aware of the allotment of the Suit Property to the 1st Respondent. He believed that the issuance of the lease to the 1st Respondent if indeed it was sanctioned by the Ministry of Lands and Physical Planning, ran contrary to his expectation that his lease would be extended and termed the action unfair and disproportionate exercise of administrative power by the relevant government officers.

65. He termed the circumstances surrounding the issuance of a lease over the Suit Property to the 1st Respondent fraudulent. In his opinion, there was no justifiable reason why the Commissioner of Lands would have declined to extend his lease and instead issued a lease to the 1st Respondent while he was in occupation of the Suit Property and his application for the extension of his lease was pending. In light of the investment he had made in the town house, he contended that it would have been unjust to allot the Suit Property to a third party.

66. The Petitioner stated that together with his nephew, Hanif Sadrudin Kurji, who is the beneficiary of the adjoining premises, he appeared before the 8th Respondent on 9/12/2016 for the hearing of the claim over the Suit Property and the adjoining land and it became apparent during the hearing that the 1st and 2nd Respondents' title to the Suit Property was fraudulently and illegally obtained. That from the evidence of all the government officers and other public officers who testified before the 8th Respondent, it was apparent that the 1st, 2nd and 3rd Respondents used fraudulent and corrupt means to acquire a title whose authenticity could not be vouchsafed.

67. The Petitioner averred that after the demolition of his house and their forced eviction from the Suit Property, he and his family had to seek alternative rented accommodation. They were forced to start their lives from scratch and invest in household furniture, fittings and personal effects after they lost their entire livelihood on 4/12/2016 through the fraudulent, corrupt, malevolent and nefarious actions of the 1st, 2nd and 3rd Respondents. He expressed the possibility that the 1st, 2nd and 3rd Respondents may have been aided by some unscrupulous officers of the Ministry of Lands and Physical Planning and others affiliated to the 9th Respondent who he claimed turned a blind eye to the violent and illegal eviction process. He implored the court to ensure that justice prevailed and that he was compensated with his family for the loss of their house and belongings and for general damages for the Respondents' uncouth, corrupt and vile actions which had brought untold mental and emotional anguish on them. He produced copies of receipts for the costs they incurred in seeking alternative accommodation and for the purchase of various household items and personal effects. He urged the court to grant the orders he seeks in the Amended Petition.

68. On cross examination, the Petitioner reiterated that he became aware of the enforcement notice on 9/12/2018 after his home had been demolished on 4/12/2016. He conceded that his lease expired in 2003 and that he applied for extension of the lease in 2007. He emphasised that he was residing in the suit premises with his family when the demolition took place. He did not know if the officers from the lands office took part in the demolition. After applying for the renewal of his lease, he followed up the matter at the lands office and continued to pay rates and land rent in respect of the land. He stated that his claim for compensation based on the valuation reports which showed the special damages he was seeking from the court. He pointed out that some of the receipts for the items they lost were destroyed. He last visited the lands office in 2009 and after that kept in touch with Hanif who was following up the matter.

69. The Petitioner stated that he paid Kshs. 20,000/= to the City Council of Nairobi as he directed for the extension of his lease. He conceded that some of the documents he had produced gave the land reference for his plot as L.R. No. 1870/1/338/1. He explained that the receipts for the items he claims were destroyed during the demolition and that he had therefore given the estimate values in the petition. He insisted that he was residing in the Suit Property when it was demolished. They had to look for accommodation and purchase personal items to enable them to rebuild their lives after everything was destroyed. He did not get any formal

communication from the Commissioner of Lands. His application for the extension of the lease was received by Mr. Mukobe at the lands office, who informed him that the renewal of his lease was almost complete at the time he was transferred. He appeared before the NLC and became aware of the 1st Respondent's title over the Suit Property during the NLC proceedings. He and his family went to the police to record statements. He stated that he did not receive any assistance from the police and that they did not go to the suit premises when he called them during the demolition.

70. David Omodho gave evidence. He stated that he was a close family friend of the Petitioner and his family having known the Petitioner and his late brother, Mr. Sadrudin Kurji since he was a child when they did business with his father from around 1976. The Petitioner was very close to his family. That over the years, from around 2004 when he started living in Westlands to December, 2016, he visited the Petitioner and his family on several occasions both when they were living in the town house located on the adjoining property and at their town house located on the Suit Property. During his visits, he was entertained at the Suit Property and he witnessed the Petitioner's daughter Jaameeta and his son Rahim growing up on the Suit Property.

71. He was aware that the adjoining premises belonged to the Petitioner's late brother while the Suit Property belonged to the Petitioner. The Petitioner called him in November, 2016 and informed him that agents of the 1st to 3rd Respondents had forcibly gained entry into and taken possession of the adjoining premises. The Petitioner expressed concern about the intrusion and he advised him not to worry since there was no doubt that his late brother owned the adjoining plot. A week later, the Petitioner called him and again expressed great concern about the activities the agents of the 1st to 3rd Respondents were conducting on the adjoining land. Since he was in Westlands, he rushed to the Petitioner's home at around 11.30 am to see what was happening at the adjoining land. The Petitioner took him to his bedroom window so that we could look into the garden of the adjoining property.

72. He averred that he was saddened to see the Petitioner and his family traumatised and rendered destitute and homeless as a result of the unlawful eviction and demolition of their town house by agents of the 1st to 3rd Respondents. He was deeply troubled and traumatised by the manner in which the Petitioner and his wife, who were senior in age were evicted from their home. He was more saddened by the knowledge that the various actions or inactions of the Respondents would lead to the Petitioner being fraudulently dispossessed of a home he had occupied for over forty years and the demolition of his home in a cowardly manner under the cover of darkness. He supported the Petitioner's quest for justice while stating that the Petitioner had been in occupation of the Suit Property with his family from 2008 when his former tenant vacated the house. He dismissed as lies the allegation that the Suit Property was desolate or abandoned. He was shocked to see several young men who looked as though they were guarding the adjoining property.

73. Christopher Mbindah, a valuer gave evidence and produced the valuation report on the Suit Property which he prepared on 24/6/2017. The report gave the value of the land and developments comprising the Suit Property as Kshs. 48,875,665 as at December 2016. He gave the estimate value of the developments as Kshs. 6,584,500/=.

74. On cross examination, he confirmed that he did not attach any ownership documents to his report. He stated that he visited the Suit Property on 19/6/2017 and tried to peep through the gate. He did not get into the Suit Property when he carried out the valuation. By that time there was no structure on the land as it had been demolished. He could not access the suit land because it was fenced and had a steel gate. His valuation was based on the drawings of the house and a comparison with similar properties in the same area.

75. The Petitioner also called Edward Nyandiko Omwenga to give evidence. He was employed by the Petitioner and had worked for him for fifteen years. He confirmed that on 4/12/2016, two men went and broke the gate on the Petitioner's brother's plot. He asked them why they wanted to break the gate. He informed the Petitioner who called the security firm. Other people including police officers went to the suit land and the police asked the Petitioner how he acquired the property. He went to record a statement at the police station on 3/12/2016 when the caretaker stationed on the adjoining land threatened him. He saw people in the compound of the Petitioner's late brother. He explained that there was a photocopying machine, television and an old motorcycle on the plot. He also confirmed that NLC went to the suit land on 2/12/2016 and that the townhouse on the Suit Property was demolished on 4/12/2016.

76. After the Petitioner had closed his case, the 2nd Respondent commenced his testimony on 22/10/2018. He adopted his witness statement and produced some documents. An objection was taken to him producing photographs and the court granted him leave to file supplementary documents while adjourning the hearing of the suit to 28/3/2019. The court further directed that witness summons were to issue to Charles Kipkurui Ngetich, Stephen Mukobe and Corporal Gilbert Okello to attend court on 28/3/2019 and give evidence.

77. The 1st to 3rd Respondents' advocate was said to be ill on 28/3/2020 when the hearing of the suit was scheduled to continue. The court directed that the hearing would proceed. Sergeant Gilbert Okello testified on behalf of the 6th, 7th, 9th and 10th Respondents. He stated that he was a police officer attached to the Directorate of Criminal Investigations (DCI) Headquarters, Land Fraud Investigation Unit and was one of the Investigating officers seized of the facts in this petition.

78. The Ministry of Lands and Physical Planning lodged a complaint with the DCI vide a letter dated 6/12/2016. The DCI directed him and I.P Mohammed to carry out investigations into the matter. They commenced investigations which established that the dispute related to ownership of parcels of land IR. 1870/1/337 and 338 with a semi-detached maisonette. The Petitioner recorded a statement and to prove ownership, produced correspondences supporting his occupation of the land and application for extension of the lease. He did not furnish them the original lease or certificate of title.

79. He summoned the 1st Respondent's director who supported his claim to the suit land through the production of allotment letters, original certificates of titles, two original leases, deed plans for both plots and a copy of the enforcement notice. The investigations he conducted at the Survey of Kenya regarding the 1st Respondent's two deed plans which appeared to have been signed by P.F Njoroge showed that they were forgeries because the officer disowned the signature and the deed plans which were signed on 20/10/2015, known to be a public holiday. He produced a copy of the report prepared by the document examiner which affirmed that the documents were forged as well as a copy of a register.

80. He averred that the signatures on the deed plans purported to have been signed, verified and stamped by Francis Kimani Ngugi were subjected to document analysis and turned out to be forged. Further, that in the document examiner's report, two officers working with the Ministry of Lands, that is C.K Ngetich and Onyino Mukobe who it was alleged signed the 1st Respondent's title documents were also established to be forged. The investigations at Ardhi House revealed that Inland Registry numbers (IR) 176232 and 176234 issued in respect of L.R.No.13486/258 and 13486/254 belonged to Francis Munene Hiram and not Frank Logistics. He explained that IR numbers are unique to a particular lease and one cannot be used to process two leases. He produced a certified copy of the register.

81. He added that the data trail obtained from the ICT office at the Ministry of Lands showed how the system was manipulated with the assistance of ICT Officer Abner Bangi and how fraudulent leases were printed in Frank Logistics' name. He relied on the cyber-crime report dated 13/12/2016, a copy of which he produced. He extended the investigations to City Hall Nairobi and established that the enforcement notice dated 10/11/2016 used by Frank Logistics to demolish the town house on the Suit Property was a forgery. He relied on the letter dated 19/12/2016 alongside other supporting documents from the Nairobi County. The enforcement notice was subjected to document analysis and the examiner concluded that it was a forgery as indicated in the report dated 3/2/2017.

82. Based on the evidence evinced from the statements of witnesses, documents and the expert report which showed that consistent fraud had been committed, he arrested and charged the 2nd Respondent as a director of Frank Logistics in Criminal Case No. 1998/2016. He produced a copy of the charge sheet. The 2nd Respondent filed Miscellaneous Civil Application 236/2017 seeking to stay the criminal but the court ruled that the criminal case should proceed.

83. Stephen Onyino Mukobe was also called by the Attorney General to testify in the case. He stated that he was employed by the National Land Commission as a Principal Land Administration Officer and was working in Kisumu. Previously, he worked at the Ministry of Lands and Physical Planning from 1989. He recalled that between 2007 and 2008 when he worked at Ardhi House, the owners of L.R.1870/1/337 and 1870/1/338 were the Kurji family. They applied for extension of the leases in respect of the two parcels of land. He received the applications and thereafter called for their file which showed that the land belonged to the Kurji family. After confirming that everything was in order, he generated a letter dated 2/4/2007 reference 80995/32 for extension of the lease over L.R. No. 1870/1/338. He signed the letter and copied it to the owner, that is, Nazmudin H K Kurji. The letter was addressed to the Director of Physical Planning. He did the same for L.R.No.1870/1/337 since it was the Petitioner who was following up the lease renewals for both plots because his brother who was the owner of L.R. No. 1870/1/337 had suffered a stroke.

84. He stated that he visited the site to confirm the status of the land and established that it was developed and that the Kurji families were living in the house shared by the two brothers which had a common wall but separate entrances. Once he had initiated the extension of the leases, he referred them to a Surveyor by the name Ambani who became the Chair of the Institute of Surveyors of Kenya. To his knowledge he expected the process to have been concluded during the time when he worked at Ardhi House. He confirmed that the Petitioner, Nazmudin, used to follow up on the issue with his office until he was transferred to Kisii Land

Registry.

85. He was shown a letter of allotment purported to have been issued to the 1st Respondent, Frank Logistics Limited dated 6/1/2009 under reference 121786/3 which he had purportedly signed, and he denied signing that letter. He pointed out that the approximate fees payable for allotment was Kshs.2000/= and not Kshs 5000/=, which was the sum charged for extension of leases. He concluded that the details of the disputed allotment must have been captured from the true documents which he was processing for the Kurji family.

86. When he was cross examined, he confirmed that extension of leases took time. He denied signing the letter of allotment in favour of the 1st Respondent despite the fact that it bore his name. He was categorical that the letter was not genuine. He explained that a letter of allotment being the first step in the procedure for land allocation, it could not confer title. He was transferred from Nairobi in 2010 by which time he had visited the suit land and the surveys for the renewal of the leases had been done. He had written to various authorities seeking their comments on the extension of the leases of the two plots. By that time the deed plans had been prepared which in his opinion demonstrated that the extension could not have been rejected at that stage.

87. The Honourable Attorney General also called Charles Kipkurui Ngetich to give evidence. Mr. Ngetich stated that he worked with the Ministry of Lands and Physical Planning as a Principal Land Registration Officer and was attached at Ardhi House, Nairobi. He was categorical that the signature appearing on I.R. No. 176232 and I.R. No. 176234 registered in the name of the 1st Respondent was not his. He added that the handwriting appearing on the 1st Respondent's titles was not his and maintained that he neither signed the leases nor was the stamp impression used on those leases his. He stated that the stamp impression "C.K. Ngetich x212" on the 1st Respondent's lease appeared to have been forged.

88. Mr. Ngetich clarified that memorandum number 3 on the 1st Respondent's title was wrongly stated because the special conditions should have been noted in the old original lease and not in the new ones being I.R. 176232 and I.R. 176234. Further, that the recitation of "Nil Nil" should not have been indicated on the renewal of the lease because these would ordinarily be filled with the particulars of the old title. He pointed out other anomalies on the 1st Respondent's lease including the I.R. numbers being indicated in the registrar's own handwriting and the advocate who attested the lessee's signatures failing to date the document. He could not remember handling those transactions and maintained that they were not done properly. He was emphatic that no title passed to the 1st Respondent and stated that they had cancelled the 1st Respondent's title even in their database in the lands office.

89. The 5th Respondent called Richard Mumo Mutuku to give evidence on its behalf. Mr. Mutuku denied that the enforcement notice which the 1st and 2nd Respondents' relied on when they carried out the demolition was issued by the 5th Respondent. He was emphatic that he did not sign the enforcement notice which he termed a forgery because it did not emanate from his office. He confirmed that the Nairobi City County did not demolish the townhouse on the Suit Property. He clarified that a demolition would ordinarily be carried out on a building which was being constructed without approval unlike in the circumstances of this case where the townhouse had been in existence. He was emphatic that the Nairobi City County did not approve the demolition of the townhouse by any party. Mr. Mutuku stated that the Nairobi City County had disowned the enforcement notice. He explained that it was a forgery because the serial number appearing on it did not exist in the County records and added that the stamp on that notice was not from the County.

90. After the 5th Respondent had closed its case, the 2nd Respondent filed the application dated 12/4/2019 seeking to have the proceedings of 28/3/2019 expunged from the court record and to have the documents filed on 21/3/2019 also expunged. The application was heard and the court delivered its ruling on 27/9/2019. The court directed that the 1st to 3rd Respondents would be afforded an opportunity to cross examine the witnesses of the 6th, 7th, 9th and 10th Respondents who had testified on 28/3/2019.

91. The 2nd Respondent testified on 20/2/2020. He stated that he was a director of the 1st Respondent. He stated that on 18/12/2008, the 1st Respondent applied to the Commissioner of Lands for allocation of L.R. No. 1870/1/337 and L.R. No. 1870/1/338. That the application was approved and the 1st Respondent received communication to this effect on 6/1/2009. He stated that the Commissioner of Lands issued letters of allotment for the two plots to the 1st Respondent and required it to pay stand premium of Kshs. 80,000/= among other costs for each plot. That the 1st Respondent accepted the offer and presented cheques for payment to the Commissioner of Lands for the requisite fees. He averred that upon payment of the sums demanded, the Department of Lands processed the documents and issued leases to the 1st Respondent for execution. The leases were executed on 6/7/2016 and a title over the Suit Property was issued to the 1st Respondent on the same day.

92. Mr. Njeru contended that the registration of the 1st Respondent as proprietor of the Suit Property vested in it absolute ownership and all rights over the land. Further, that the 1st Respondent was entitled to exclusive possession of the land to the exclusion of everyone else including the Petitioner. He urged that the 1st Respondent's title could only be impeached if it was obtained through fraud or misrepresentation which the 1st Respondent participated in; or if its certificate of title was acquired illegally, unprocedurally or through corrupt dealings. He maintained that the Petitioner had not pleaded any particulars of fraud or misrepresentation against the 1st Respondent.

93. He maintained that the Petitioner did not hold a valid title to the Suit Property because his lease expired on 2/6/2003 without renewal and the land therefore reverted to the Government which had the reversionary interest and could lease it to any deserving person including the 1st Respondent. He reiterated that the 1st Respondent's certificate of title deserved the protection of the court. He went further to clarify that the Petitioner could not have applied for extension of the lease over the Suit Property since the lease had expired and that he could only have applied for allocation of the land which he failed to do. He urged that the Petitioner did not possess any rights to the land capable of protection under Article 40 of the Constitution. He challenged the authenticity of the Petitioner's letter dated 2/4/2007 to the Commissioner of Lands.

94. He denied that the 1st Respondent demolished the house on the Suit Property and argued that the Petitioner's lease had expired and that the land and fixtures on it reverted to the Government. He stated that the Suit Property was allocated to the 1st Respondent when it comprised of an old abandoned house that had been erected by the previous owner whose lease had expired. He added that the Nairobi City County decreed vide a letter dated 2/12/2016 that the old abandoned structure on the suit land was unfit for human habitation. Further, that that letter required the 1st Respondent to either demolish the unfit structure or be prosecuted under the Physical Planning Act. Further, that the letter indicated that if the 1st Respondent failed to comply with the requirement, the Nairobi City County would demolish the structure at the expense of the 1st Respondent. He urged that the 1st Respondent should not be penalized for complying with the directives of the Nairobi City County.

95. He maintained that the 1st Respondent did not evict the Petitioner and his family from the Suit Property and averred that when the land was allocated to the 1st Respondent in 2009 no one was residing on it. He contended that the Petitioner had manufactured facts to sway the perception of the public to the detriment of the 1st Respondent. He added that the 1st Respondent who was lawfully in possession of the Suit Property had concluded contracts with third parties for the development of the Suit Property and stood to suffer prejudice if the court granted the orders the Petitioner is seeking. He maintained that the Petitioner could not rely on the Land Act which came into force after the expiry of his lease. He urged that the Government Land Act did not give the Petitioner pre-emptive right of renewal of the lease which was done at the discretion of the Commissioner of Lands.

96. Mr. Njeru produced copies of the letter of allotment dated 6/1/2009; the banker's cheque dated 28/10/2015 for Kshs. 106,270/= drawn in favour of the Commissioner for Lands; receipt dated 11/2/2016 issued by the lands office; lease dated 6/7/2016; certificate of title dated 2/11/2016 and a rates demand note from the Nairobi City County dated 24/11/2016.

97. On cross examination, Mr. Njeru stated that he learned of the land from his friends, one of whom was a land registrar called Geoffrey Birundu and the other, a surveyor called Joel, who was Birundu's friend. He stated that Mr. Birundu called him to his office in Ardhi House and had the files for the two parcels of land whose leases had expired in 2003. He did a search on the land and went to see it with two gentlemen and took photos of the property which he claimed was in a dilapidated state. He read the documents which showed the lease had expired. He claimed that he collected the letter of allotment from Mr. Birundu's office. He asserted that the office of the Commissioner of Lands was operational in 2015 and that he made payment of the allotment fees on 28/10/2015. He did not have evidence to show that he had paid rates for the land to the Nairobi City County.

98. He admitted that the 1st Respondent demolished the property based on the enforcement notice issued by the Nairobi City County. He did not know when the property was demolished because he was out of town when it happened. He asserted that the house was vacant when it was demolished and that it did not have any furniture. He stated that he had caretakers on both properties. He did not let the police know that there was an old Indian man on the suit land.

99. He was aware that the land registrar had denounced processing the two titles but disagreed with Mr. Charles Ngetich. He was also aware that the Nairobi City County had denied issuing the enforcement notice but averred that he sent one of his workers, Samuel Njoroge to the City Council to get the enforcement notice and that he talked to somebody in City Council. He maintained that an enforcement notice was served. He conceded that he was part of the people who made the decision to demolish the structures on the Suit Property in obedience to the enforcement notice.

100. Mr. Njeru stated that Mr. Birundu would call him when plots were available. When he was cross examined by Mr. Kamau State Counsel, Mr. Njeru stated that he intended to call Mr. Geoffrey Birundu as a witness. Mr. Kamau then informed him that Mr. Birundu had died in 2015. Mr. Njeru could not find anything wrong with the deed plans issued to the 1st Respondent. He maintained that Onyino Mukobe signed his letter of allotment even though he did not know him and had never met him. He was emphatic that Mr. Birundu gave him the letter of allotment.

101. During the hearing, an objection was taken to the production of photographs by the 2nd Respondent on the ground that they should have been produced by the person who took the photographs. When the court granted Mr. Njeru an adjournment to enable him call the person who took the photos to come and produce them in court, Mr. Njeru instead filed an application for the recusal of this court. The court delivered its ruling on that application and declined to recuse itself from handling the case.

102. The case came up for hearing on several occasions when the 6th, 7th, 9th and 10th Respondents availed their witnesses for cross examination by Mr. Francis Njeru as directed by the court but the witnesses were not cross examined. The court was informed that one of the witnesses would travel from Kisumu to attend court in Milimani, Nairobi. Several applications were subsequently urged in the matter and on 9/2/2021 the court directed parties to file their written submissions within certain timelines. Parties were to highlight their submissions on 11/3/2021.

103. The 4th Respondent who until the hearing of the suit was concluded had not participated in the proceedings filed an application dated 11/6/2021 seeking to set aside the proceedings and have the hearing of the case start afresh. The Petitioner filed a notice withdrawing the suit against the 4th Respondent dated 22/7/2021.

104. The 2nd Respondent filed the application dated 22/7/2021 seeking to strike out the Petitioner's notice of withdrawal of the claim against the 4th Respondent. In the alternative, he sought to have the court strike out paragraphs 11A, 12, 13, 14, 15, 17E and F, 35, 36, 42A of the Amended Petition as well as prayers (a) (c) (h), (n)a, (n)b (n)c, (o) and (p).

105. The application was made on the grounds that it would be illegal for the Petitioner to withdraw his claim against the 4th Respondent alone yet the claim against the 1st to 4th Respondents was intertwined and could not be separated. The 2nd Respondent contended that the allegation that the 4th Respondent demolished the town house on instructions from the 1st to 3rd Respondent was grave and needed to be proved or disproved through the 4th Respondent's participation in the proceedings. The 2nd Respondent urged that it was fair for the 4th Respondent to be given an opportunity to defend itself against the Petitioner's allegations. He contended that the 1st to 3rd Respondents stood to suffer great prejudice if the court allowed the Petitioner to withdraw his claim against the 4th Respondent.

106. The 2nd Respondent swore the affidavit in support of that application in which he deponed that the 4th Respondent learned of these proceedings when the notice of appeal dated 10/06/2021 was served on it. He maintained that the Petitioner should not be allowed to withdraw the claim against the 4th Respondent because it was only instructed to build the perimeter wall around the Suit Property but not to demolish the town house on the Suit Property. He added that the 4th Respondent had a duty to assist the court to completely and effectually determine the Amended Petition and that it needed to respond to the allegations in the petition in order to vindicate the 1st to 3rd Respondents.

107. The 2nd Respondent maintained that Order 25 of the Civil Procedure Rules requires that there be a written consent signed by all the parties before a suit can be withdrawn. He contended that the 1st to 3rd Respondents had a valid counter claim against the 4th Respondent and that he would suffer damage and loss if the claim against the 4th Respondent were withdrawn.

108. The Petitioner swore the Replying Affidavit opposing the application and averred that the application was not filed in good faith but was another attempt by the 1st to 3rd Respondents to delay the proceedings and the delivery of the judgement in this case. He pointed out that these Respondents had filed three applications to derail the completion of the suit and had even sought to re-litigate issues which the court had already ruled on.

109. The Petitioner averred that a party had a right to withdraw a claim or discontinue proceedings before a court subject to the court making appropriate orders as to costs. He added that Order 25 Rule 2 gave the court the discretion to grant leave to a party to discontinue their suit or withdraw any part of their claim subject to the court making orders that are just. The Petitioner denied that his claim against the 1st to 4th Respondent was intertwined or that it could not be separated. He pointed out that the 2nd Respondent had admitted that it was the 1st Respondent which demolished the structures on the Suit Property and therefore it was not necessary

for the 4th Respondent to participate in these proceedings as the 2nd Respondent was contending. The Petitioner urged that he was a stranger to the allegation that the 1st to 3rd Respondents had a counterclaim against the 4th Respondent. He pointed out that these were new facts which the 1st and 2nd Respondents had not raised before.

110. The 2nd Respondent and the Petitioner filed submissions as directed by the court. The court delivered its ruling on that application on 5/8/2021 and declined to grant the orders sought by the 2nd Respondent. The court granted the Petitioner leave to withdraw his claim against the 5th Respondent and directed that the reasons for disallowing the application would be included in the judgement.

111. The 2nd Respondent submitted that the suit had been fixed for hearing and had advanced to the submissions stage before the withdrawal hence Order 25 (2) (1) was the applicable provision. The 2nd Respondent relied on the decision in **Beijing Industrial Designing and Research Institute v Lagoon Development Limited (2015) eKLR** where the court analysed the scenarios regarding discontinuance of suits or withdrawal of claims. The court held that where the suit had been set down for hearing and the parties did not agree on the discontinuance of the suit or withdrawal of the whole claim or part of it, the plaintiff must obtain the leave of the court to discontinue the suit or withdraw the claim, and that the court will grant leave upon terms which are just. The court went further to state that the plaintiff's right to discontinue the suit was circumscribed by the requirements that he must obtain the leave of the court.

112. The 2nd Respondent submitted that the court could stop withdrawal if it constituted an abuse of the court process and urged that the withdrawal of the claim against the 4th Respondent alone would amount to gross abuse of the court process.

113. The Petitioner submitted that a party had a right to choose to discontinue its suit or withdraw its entire claim or part of it. It maintained that a court could not bar a party from withdrawing its claim. He submitted that he had filed a notice to withdraw his claim against the 4th Respondent and was seeking the court's leave to withdraw the claim. He maintained that the court's discretion to grant leave under Order 25 Rule 2 was dependent on the facts of the matter and that the court would ordinarily grant leave unless the party seeking leave abused the process of the court which he had not done. The Petitioner urged that the 1st to 3rd Respondents made representations as to their participation in the demolition of the Suit Property and it was not therefore necessary for the 4th Respondent to participate in these proceedings. Further, that the 1st to 3rd Respondents have not previously made any claim or counterclaim against the 4th Respondent and that in any event they could file a new claim against the 4th Respondent. The Petitioner added that there would be no prejudice or injustice caused to the 4th Respondent because it could be compensated by costs. He reiterated that the application was made in bad faith with the sole purpose of delaying the conclusion of this case.

114. Order 25 Rule 2 of the Civil Procedure Rules speaks of discontinuance or withdrawal of a suit, the whole or part of claim after the matter has been set down for hearing. It requires that there be a written consent by all the parties while giving the court discretion to allow such an application by the Plaintiff subject to considerations such as costs, the filing of another suit and the prejudice the other parties stand to suffer. Order 25 Rule 4 deals with stay of subsequent suits and states that if any subsequent suit is brought before payment of the costs of a discontinued suit upon the same, or substantially the same cause of action, the court may order a stay of the subsequent suit until the costs are paid.

115. The court agrees with the Petitioner's submission that the 2nd Respondent failed to demonstrate what prejudice he or the 1st Respondent would suffer if the Petitioner withdrew his claim against the 4th Respondent. The 2nd Respondent did not demonstrate how his defence to the Petitioner's claim and that of the 1st Respondent were intertwined or linked to that of the 4th Respondent. The 2nd Respondent admitted that it was the 1st Respondent which demolished the structures on the Suit Property. The 1st and 2nd Respondents did not make any counterclaim against the 4th Respondent regarding the manner in which the demolition of the house on the Suit Property was conducted.

116. Only the Petitioner filed submissions on the petition. He submitted that he had a valid claim to the Suit Property having been the registered owner of the land. He added that he had a legitimate expectation that his lease over the Suit Property would be renewed. He gave the history of how he acquired the suit land with his siblings in 1971, how his siblings gave a gift of their shares in the land to him and his late brother in 1986 and how the land was subdivided to create two parcels for him and his late brother. He reiterated that he rented out the house to a tenant between 2000 until 2007 when he moved into it with his family. Further, that he resided on the Suit Property until 4/12/2016 when they were forcefully evicted and their home was demolished.

117. The Petitioner conceded that he failed to apply for extension of the lease before it expired and that on 2/4/2007 he applied to

the Commissioner of Lands for extension of his lease. The Commissioner acknowledged receipt of his application and sought the comments of the respective Directors of Physical Planning, Surveys and City Planning. He paid Kshs. 20,000/= to the City Council in respect of the application for extension of the lease. He mentioned that he made several visits to the lands office to inquire about the progress of his application for extension of his lease. That based on his application and the internal processes at the lands office, he legitimately expected that the Commissioner of Lands would extend his lease over the suit land. He relied on the testimony of his employees Mr. Evans Obae and Mr. Edward Omwenga who were his guard and house worker respectively regarding his occupation of the Suit Property. He made reference to the testimony of his friend Mr. David Omodho who visited him and his family on the Suit Property.

118. The Petitioner referred to the testimony of Mr. Stephen Onyino Mukobe who testified on behalf of the 6th, 7th, 9th and 10th Respondents, who confirmed that the Petitioner had applied for extension of his lease. Mr. Mukobe also confirmed that lands officers visited the Suit Property and that deed plans had been prepared by the time he left the lands office in Nairobi. He added that his legitimate expectation to have his lease renewed was based on the fact that he continued to reside on the suit land and to comply with the lease terms after the lease expired; he continued paying rates and land rent, he applied for extension of his lease and followed up the matter at the lands office where he was assured that his application was being considered.

119. The Petitioner cited various authorities on the doctrine of legitimate expectation including **Justice Kalpana H. Rawal v JSC & 3 Others [2016] eKLR**, **Diana Kethi Kilonzo & Another v IEBC & 2 Others [2013] eKLR** and **Savtri v Gidoomal & 2 Others (as legal representatives of the Estate of V. H. Gidoomal) v NLC & 2 Others [2018] eKLR**.

120. The Petitioner submitted that a legitimate expectation was created where a public authority represented that it would conduct itself in a particular manner and where the expectation arose the public authority had to give effect to that expectation. He urged that it may also arise from the existence of a repeated or regular practice of the public body or official which is reasonably expected to continue. The Petitioner submitted that in cases where the court found that a person had a legitimate expectation that their lease would be renewed, the courts have issued orders of mandamus directing the extension of leases. The Petitioner cited in the case of **Savit v Gidoomal & Others (as legal representatives of Estate of V.H. Gidoomal) v National Land Commission & 2 others [2018] eKLR** where an application for the extension of lease was approved by the relevant government ministries which issued various letters of no objection to the renewal of the lease. The court held in that case that the Petitioners had a legitimate expectation that their lease would be renewed.

121. The Petitioner also relied on the case of **Bhanumati Ishwarlal Ghadiyal v Thomas Maseki Mera & Another [2019] eKLR** whose facts were similar to his involving the illegal and forceful eviction of a plaintiff whose lease had expired. The court found that the plaintiff had a legitimate expectation that her lease would be extended and it had not been proved that she failed to comply with the terms of the lease which would have disentitled her to an extension of the expired lease.

122. The Petitioner maintained that the Commissioner of Lands did not communicate to him that his application for the extension of his lease had been declined. That in fact Mr. Mukobe's testimony was that the lease renewal process had reached an advanced stage and the deed plans had been prepared. That as the previous holder of the lease over the Suit Property he had a right to the renewal of his lease pursuant to Section 13 of the Land Act. He contended that the allocation of the Suit Property to the 1st Respondent in 2016 was in breach of Section 13 of the Land Act. The Petitioner argued that the 1st Respondent's letter of allotment over the Suit Property was questionable and that the process did not comply with the applicable law. He pointed out that the 2nd Respondent failed to call the surveyor and the Land Registrar who he claimed informed him about the Suit Property.

123. He also pointed out that the 1st to 3rd Respondents did not call the photographer who took photographs at the time the 2nd Respondent claimed to have visited the Suit Property with Mr. Birundu. The Petitioner pointed out that Mr. Mukobe had denied signing the letter of allotment and stated that he had never seen that document. He denied that the signature appearing on the 1st Respondent's letter of allotment was his.

124. The Petitioner submitted that the 1st Respondent did not have a valid legal claim to the Suit Property and had failed to discharge the burden of proof that it was the registered proprietor of the land. Further, that the allocation of the suit land to the 1st Respondent was contrary to the law and that its title documents were forged. He submitted that the purported allocation of the land to the 1st Respondent was done after his application for extension of the lease had been received and approved by the Commissioner of Lands. The Petitioner submitted that the 1st Respondent failed to comply with the terms of the letter of allotment and that the banker's cheque it was relying on was issued seven years after the letter of allotment.

125. The Petitioner pointed out the irregularities on the 1st Respondent's lease and certificate of title. He also relied on the testimony of the Land Registrar, Mr. Charles Ng'etich who denied signing the 1st Respondent's lease and stated that the signature on it was forged and it was not his. The other anomaly which the Petitioner pointed out was that the 1st Respondent's deed plan was signed on 20/10/2015 was a public holiday when government offices were closed. The Petitioner denied that the 1st Respondent was entitled to the protection of its rights to property under Article 40 of the Constitution or that that right had been violated. He pointed out that the 5th, 6th and 7th Respondents disputed the validity of the 1st Respondent's title documents claiming that they were forged and were therefore fraudulent.

126. The Petitioner submitted that his eviction from the suit land by the 1st to 3rd Respondents was illegal, forceful and unprocedural. He pointed out that the eviction did not comply with Section 152(B) to (F) of the Land Act as well as the provisions of Section 152(G) of that Act. He added that no mechanisms were put in place to protect him as an elderly member of society during the eviction which rendered him and his family homeless and destitute. He added that the 1st Respondent did not issue a notice of the eviction and that at the time NLC had notified the parties that it would hold an inquiry to determine the ownership of the Suit Property. The Petitioner reiterated that the 5th Respondent testified that the enforcement notice which the 1st and 2nd Respondents relied on did not emanate from their office.

127. The Petitioner relied on the decision in the case of **Musa Mohammed Dagane & 25 Others v Attorney General & Another [2011] eKLR** where the court stated that a forceful eviction has a sense of arbitrariness, unreasonableness, unlawfulness and illegality which results in violation of the right to life, the right to security of a person, reach of privacy, family and home. That if the eviction is carried out in a crude and forceful manner, it results in perpetual trauma and damage. The Petitioner pointed out that he was neither consulted before the eviction, nor was he given reasonable notice. Further, no alternative housing was provided for him and his family and that based on the forceful eviction he was entitled to compensation for the loss suffered.

128. The Petitioner submitted that it was clear from the hearing of the case that the townhouse on the Suit Property was demolished and that his household items and personal effects were lost or damaged during the demolition. Other household items were covered in the debris in the aftermath of the demolition which he claimed was widely reported in the media. He contended that the 1st to 4th Respondents trespassed into the Suit Property on the day they carried out the eviction. He added that the 2nd Respondent admitted in his testimony that the 1st Respondent was responsible for the eviction and demolition of his home. He denied that the house was vacant at the time of the demolition. He reiterated that Mr. Richard Mutuku who gave evidence on behalf of the 5th Respondent confirmed that the enforcement notice which the 2nd Respondent relied on was forged and that the 5th Respondent did not approve the demolition. Further, that the enforcement notice was a forgery because the serial numbers indicated on it did not exist in the 5th Respondent's records and the stamp on the notice was also not from the 5th Respondent's office. He maintained that the eviction and demolition was unlawful and that it was undertaken without any consideration of his right to property, to dignity and security. He submitted that he had suffered substantial loss and damage as a result of the unlawful eviction and demolition carried out by the 1st to 4th Respondents. He urged the court to grant the reliefs sought in the petition.

129. The Petitioner contended that his right to equal protection and equal enjoyment of the law enshrined in Article 27 of the Constitution, the right to dignity under Article 28, the right to security of the person and not to be subjected to violence under Article 29, right to privacy under Article 31 and the right of older members of society to live in dignity and free from abuse under Article 57(c) were violated when he was evicted with his family from the Suit Property in the early hours of 4/12/2016 in a forceful manner.

130. He regurgitated the circumstances under which they were evicted and their home brought down by a bulldozer. He maintained that the Parklands Police Station and its officers did not do anything to stop the eviction and the demolition of their home. Additionally, that the Parklands Police Officers failed to ensure that the State carried out its duty to protect private property, security and dignity of its citizens as well as ensuring that other citizens respected the rule of law. He argued that the 9th Respondent was vicariously responsible for the inaction of the Parklands Police Station who failed in their duty to ensure that the Petitioner's rights under Articles 27, 28, 29, 31 and 57(c) of the Constitution were protected. He further urged that the 9th and 10th Respondents breached his constitutional rights.

131. The Petitioner contended that his right to property under Article 40 of the Constitution read with Article 60 (1) (b) and his right to accessible and adequate housing under Article 43 of the Constitution had been violated. He argued that he had a right to peaceful and quiet possession of the Suit Property which extended to other goods and personal property that were in his house. He argued that the 1st to 3rd Respondents violated his rights to property and to accessible and adequate housing. Further, he argued that the 1st to 3rd Respondents violated his right to property when they colluded with employees of the 6th and 7th Respondents to procure title

documents to the Suit Property. He contended that the 6th, 7th and 9th Respondents had a duty to refrain from interfering with his rights to property. He further contended that the 6th and 7th Respondents ought to have renewed his lease so that he could continue enjoying his right to the Suit Property.

132. The Petitioner contended that this right to fair the administrative action under Article 47 and effective public service under Article 232 had been violated when the 7th Respondent failed to extend his lease following the application which he made in 2007. He faulted the 7th Respondent for not renewing his lease between 2007 and 2016 claiming that he understood that the renewal of his lease had been approved. He faulted the 6th, 7th and the 8th Respondents for not completing the process leading to the renewal of his lease and issuance of a new lease. He maintained that he had a pre-emptive right of first refusal under Section 13 of the Land Act and that that right was infringed by the issuance of a lease to the 1st Respondent. He added that no decision was communicated to him that his lease would not be renewed, he was not consulted nor provided with an opportunity to make representations concerning the non-renewal of his lease. He relied on decisions where the court dealt with the renewal of expired leases and found that failure to extend the leases breached Article 47 of the Constitution.

133. The Petitioner submitted that he had demonstrated through case law that this court ought to issue orders of mandamus and for compensation. He urged the court to award him the special damages set out in the petition and pointed out that he had incurred further rental costs which ought to be compensated by the 1st to 3rd Respondents. He urged the court to go by the valuation report which he produced on the replacement value of the Suit Property. He sought general damages for the forceful eviction and the demolition of his property as well as the violation of his constitutional rights. He urged the court to award him exemplary damages against the 1st to 3rd Respondents considering the gravity of the actions of these Respondents coupled with the pain, stress, humiliation, anguish, fear, and psychological trauma which he was subjected to. He urged the court to condemn the impunity and the acts of the 1st Respondent and to award damages to reflect the sense of public outrage to deter further breaches. He also urged the court to award him costs against the Respondents and faulted the 5th, 6th, 7th, 8th and 9th Respondents for failing to protect his rights to property.

134. The main issues for determination in this suit are:

- i. Who between the Petitioner and the 1st Respondent has a valid claim to the Suit Property"
- ii. Did the 1st Respondent forcefully evict the Petitioner and his family from the Suit Property and demolish the townhouse erected on the suit land"
- iii. Did the Respondents violate the Petitioner's constitutional rights"
- iv. Is the Petitioner entitled to the reliefs he seeks in the Amended Petition"

135. It is not in dispute that the Petitioner was registered as proprietor of the Suit Property or that his lease expired in 2003 and was not renewed. The witnesses called by the 6th and 7th Respondents confirmed that the Petitioner's application for renewal of the lease was received and acted upon in their offices. There is no evidence that a decision was ever communicated to the Petitioner by the relevant offices that his lease would not be renewed.

136. The Petitioner faulted the 7th Respondent for not renewing his lease between 2007 and 2016. From the evidence adduced, it is apparent that the Petitioner made an application for renewal of his lease in 2007 and followed up on the matter until 2009. There is no evidence that he pursued the renewal of his lease and issuance of a new lease at the lands office between 2009 and 2016. The evidence of the witnesses called by the 6th and 7th Respondents corroborated the fact that the Suit Property was not allocated to any other person and that the Petitioner's application was being considered by the Commissioner of Lands.

137. The court agrees with the position urged by the 2nd Respondent that the Land Act enacted in 2012 does not apply to the Petitioner's circumstances since his lease expired in 2003. The applicable law at the material time was the Government Land Act. Section 9 of the repealed Government Land Act gave the Commissioner of Lands power to deal with land after the expiry of a lease. After the expiry of the lease, Sections 9, 12 and 13 of that Act came into play on the process for granting the leasehold to someone else. The 2nd Respondent testified that he was called by a surveyor and a Mr. Birundu who informed him of the availability of the Suit Property for allocation since the lease had expired. Certainly that was not the procedure contemplated in the Government Land

Act on the allocation of land to another person after the previous owner's lease had expired.

138. What emerged from the evidence of Mr. Stephen Mukobe and Charles Ngetich, who both worked at the lands office at the material time, as well as Sergeant Gilbert Okello is that the title to the Suit Property which the 1st Respondent relied on was forged and did not emanate from the lands office. The letter of allotment which would form the basis upon which the suit land could have been lawfully allocated to the 1st Respondent was also forged. The 2nd Respondent was hard pressed to establish the root of the 1st Respondent's title. Mr. Mukobe confirmed that the Petitioner's application for extension of the lease was received by the Commissioner of Lands and acted upon. The court is satisfied that the Petitioner had a legitimate expectation that his lease over the Suit Property would be renewed and therefore had a valid claim to the suit land. On the other hand, the 1st Respondent failed to prove that it had a valid claim to the suit land. The forged documents which the 1st Respondent relied on could not confer any title to it over the Suit Property. Mr. Ngetich confirmed that they had cancelled the 1st Respondent's title in the lands database at the lands office. It would therefore be superfluous for this court to issue the orders of cancellation of the 1st Respondent's title over the Suit Property which the Petitioner seeks.

139. The Petitioner faulted the Parklands Police for failing to protect him against the unlawful eviction and demolition of his home on the Suit Property. From the evidence led, it is discernible that the 1st and 2nd Respondents engineered the unlawful eviction of the Petitioner and his family from the suit land. They acted without any lawful authority. There was no proof of collusion between the police and the 1st to 3rd Respondents in the eviction of the Petitioner from the Suit Property and the demolition of his home. Based on the wide and extensive investigations which the DCI carried out into the matter which formed the evidence of Sergeant Gilbert Okello on the forgeries of title documents by the 1st and 2nd Respondents, the court is not inclined to find that the police breached the Petitioner's rights as he contended.

140. The evidence led in court by the Petitioner's witnesses together with the 2nd Respondent's admission that the 1st Respondent demolished the town house ostensibly in compliance with an enforcement notice issued by the 5th Respondent, leave no doubt that the Petitioner was unlawfully evicted from the Suit Property and his home demolished without due process. The Petitioner gave evidence of the loss and damage he suffered as a result of the eviction which was not controverted.

141. The eviction of the Petitioner, a senior citizen, by the 1st and 2nd Respondents from the Suit Property and the subsequent demolition of the townhouse on the Suit Property was unlawful and contravened the Petitioner's rights under Articles 28, 29 (c) and (f), 40, 43 (1) (b) and 57 (c) of the Constitution. The unlawful eviction of the Petitioner and his family from the Suit Property by the 1st and 2nd Respondent was in breach of the Petitioner's rights protected by Section 152 (B), (E) and (G) of the Land Act and Article 11 of the International Covenant on Economic, Social and Cultural Rights.

142. The 1st and 2nd Respondents' actions of obtaining a forged letter of allotment and title over the Suit Property was illegal, void and did not confer any rights on the 1st Respondent over the Suit Property. The Respondents are not entitled to deprive the Petitioner of his right to the Suit Property except in accordance with the law and upon payment of prompt compensation.

143. A permanent injunction is issued against the 1st to 3rd Respondents restraining them from obtaining possession, disposing of, alienating, charging, transferring, selling or dealing with the Suit Property.

144. The 6th, 7th and 8th Respondents are directed to complete the process of renewal of the Petitioner's lease over the Suit Property in accordance with the relevant laws within six months of the date of this judgement.

145. The Petitioner is awarded general damages of Kshs. 5,000,000/= against the 1st and 2nd Respondents for violations of the Petitioner's constitutional rights and specifically the violent, inhuman and degrading treatment of the Petitioner and his family and for the losses and inconveniences they suffered as a result of their unlawful eviction from their home and the demolition of the Petitioner's townhouse on the Suit Property.

146. The Petitioner is awarded general damages of Kshs. 1,000,000/= against the 1st and 2nd Respondents for trespass, detinue and illegal conversion of his properties by the 1st and 2nd Respondents.

147. The Petitioner is awarded special damages of Kshs. 13,550,300/= being the value of the household items which were in the townhouse before it was demolished by the 1st and 2nd Respondents; Kshs. 6,584,500/= being the value of the developments on the

Suit Property which was demolished by the 1st and 2nd Respondents; Kshs. 3,072,500/= being the cost of seeking alternative accommodation from 4/12/2016 until 31/12/2021 after the demolition of their home on 4/12/2016; and Kshs. 533,902/= incurred in the purchase of personal and household items following their eviction and the demolition of the Petitioner's home on the Suit Property. The Petitioner is also awarded interest on all the sums above at court rates from the date of this judgement until payment in full.

148. The 1st and 2nd Respondents will bear the costs that will be incurred by the Petitioner in restoring the Suit Property to the state it was in before the demolition on 4/12/2016 including clearing the debris left from the demolition on an indemnity basis. However, the sum of Kshs. 6,584,500/= already awarded to the Petitioner will be deducted from the sum incurred in restoring the townhouse on the Suit Property.

149. The Petitioner is awarded the costs of the suit which will be borne by the 1st and 2nd Respondents.

DELIVERED VIRTUALLY AT NAIROBI THIS 12TH DAY OF NOVEMBER , 2021

K. BOR

JUDGE

In the presence of: -

Mr. I. Kanja holding brief for Ms. T. Raore for the Petitioner

Mr. Francis Njeru- the 2nd Respondent

Mr. Allan Kamau for the 6th, 7th, 9th and 10th Respondents

Mr. V. Owuor- Court Assistant

No appearance for the other Respondents



While the design, structure and metadata of the Case Search database are licensed by [Kenya Law](#) under a [Creative Commons Attribution-ShareAlike 4.0 International](#), the texts of the judicial opinions contained in it are in the [public domain](#) and are free from any copyright restrictions. Read our [Privacy Policy](#) | [Disclaimer](#)