



**Muchangi v Lucky Summer Estate Co Ltd & another (Environment & Land Case 129 of 2007) [2023] KEELC 16586 (KLR) (23 March 2023) (Judgment)**

Neutral citation: [2023] KEELC 16586 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 129 OF 2007**

**JO MBOYA, J  
MARCH 23, 2023**

**BETWEEN**

**FRANCIS MUCHANGI ..... PLAINTIFF**

**AND**

**LUCKY SUMMER ESTATE CO LTD ..... 1<sup>ST</sup> DEFENDANT**

**MARY NYAKIO ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

**Introduction And Background**

1. The Original Plaintiff, (who subsequently suffered and developed mental disorder), culminating into the appointment of the current Plaintiff as the manager and legal guardian thereof, filed and commenced the instant suit vide Plaintiff dated the 30<sup>th</sup> January 2007.
2. In respect of the original Plaintiff, the Plaintiff had sought for various reliefs, inter-alia a declaration that same is the lawful and legitimate owner of L.R No. Nairobi/Block 113/229,( hereinafter referred to as the suit property).
3. Subsequently, the original Plaintiff sought for and obtain Leave to amend the Plaintiff culminating into the filing of the Amended Plaintiff dated the 27<sup>th</sup> April 2007. For the avoidance of doubt, the said Amended Plaintiff was further amended culminating into the filing of the Further Amended Plaintiff dated the 28<sup>th</sup> September 2022.
4. Vide Further Amended Plaintiff dated the 28<sup>th</sup> September, 2022, the Plaintiff herein has approached the Honourable court seeking for the following reliefs;
  - i. A Declaration order that the Plaintiff is the lawful owner of the said piece of land, and that any allotment thereof made subsequent to the Plaintiff's allotment is unlawful.



- ii. Any order that the 1<sup>st</sup> Defendant do execute a Lease in favor of the said Francis Muchangi, namely, Plaintiff and thereafter the Land Registrar, Nairobi do rectify the Register to reflect the Plaintiff as the lawful registered owner of L.R No. Nairobi/Block 113/229.
  - iii. A Permanent Injunction restraining the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, agents and/or servants and all persons claiming any rights under them, from developing, selling, transferring, charging and dealing in any manner howsoever with all that piece of land known as L.R No. Nairobi/Block 113/229 situated in Embakasi within Nairobi.
  - iv. General damages for trespass.
  - v. Costs of the suit.
  - vi. Interest on (d) and (e) at bank rates.
5. Upon being served with the summons to enter appearance, the 1<sup>st</sup> Defendant herein duly entered appearance and thereafter filed a statement of defense. For clarity, the 1<sup>st</sup> defendant entered appearance on the 3<sup>rd</sup> April 2007, but filed her statement of defense on the 20<sup>th</sup> of April 2007.
  6. Subsequently and upon being served with the amended Plaintiff, the 1<sup>st</sup> Defendant proceeded to and indeed filed an amended statement of defense dated the 9<sup>th</sup> May 2007. However, the said amended statement of defense was filed in court on the 10<sup>th</sup> May 2007.
  7. On the other hand, the Plaintiff herein was unable to effect service of the summons to enter appearance and the various Plaintiffs including the amended Plaintiff, upon the 2<sup>nd</sup> Defendant. In this regard, the Plaintiff thereafter reverted to court and sought Leave of the Honourable court to effect service of the summons to enter appearance and the amended Plaintiff vide substituted service.
  8. It is imperative to point out that the application by and on behalf of the Plaintiff and in respect of which same sought for Leave to effect service vide advertisement, was heard and disposed of in terms of the ruling rendered on the 2<sup>nd</sup> October 2009.
  9. Furthermore, upon procuring and obtaining leave to effect service by way of advertisement, the Plaintiff proceeded to and indeed advertised service vide the Daily Nation published on the 29<sup>th</sup> October 2009. In this regard, an affidavit of service was thereafter filed before the Honourable court on the 15<sup>th</sup> December 2009.
  10. Despite service having been effected upon the 2<sup>nd</sup> Defendant, details in terms of the preceding paragraph, the 2<sup>nd</sup> Defendant herein failed and or neglected to enter appearance or file statement of defense. Consequently, counsel for the Plaintiff was constrained to and indeed sought for interlocutory judgment to be entered against the 2<sup>nd</sup> Defendant.
  11. For coherence, the request for Interlocutory Judgment was thereafter acted upon by the Honourable Deputy Registrar on the 21<sup>st</sup> December 2009.
  12. Consequently and in view of the foregoing, the subject matter therefore proceeded effectively for formal proof as against the 2<sup>nd</sup> Defendant.
  13. Subsequently, the subject matter went through the requisite pretrial conference, whereupon the Parties confirmed the filing of the various documents and witness statements. In this regard, the matter was thereafter confirmed ready for hearing.



## **EVIDENCE BY THE PARTIES:**

### **a. PLAINTIFF'S CASE:**

14. The Plaintiff's case gravitates and revolves around the evidence tendered by one, Purity Wambui Muchangi, who had hitherto been appointed and constituted as the Manager and Legal Guardian of the Plaintiff. In this regard, the named witness introduced and tendered before the Honourable court a copy of the order issued on the 30<sup>th</sup> June 2022 by the High Court.
15. Furthermore, the witness herein testified that same is the wife of Francis Muchangi, who is the original Plaintiff in this matter. In any event, the witness added that the original Plaintiff suffered mental indisposition and as a result of the mental indisposition, same (witness) applied for and was duly constituted as the legal guardian.
16. Additionally, the witness averred that the original Plaintiff herein had entered into various transaction with the 1<sup>st</sup> Defendant and in respect of which the original Plaintiff bought/purchased two plots from the 1<sup>st</sup> Defendant. However, the witness added that she was not party to the transactions and dealings between the original Plaintiff and the 1<sup>st</sup> Defendant.
17. Other than the foregoing, the witness herein alluded to her witness statement dated the 11<sup>th</sup> November 2022, which same sought to adopt and rely on. In this regard, the witness statement dated the 11<sup>th</sup> November 2022, was duly admitted and constituted as the evidence in chief of the witness.
18. Furthermore, the witness also identified the witness statement of the original Plaintiff, namely, Francis Muchangi, dated the 22<sup>nd</sup> August 2011 and same similarly, sought to adopt the named Witness Statement, as further Evidence on behalf of the Plaintiff.
19. Suffice it to point out that the witness statement of the original Plaintiff was thereafter admitted and constituted as Further Evidence- in- chief.
20. Additionally, the witness herein also alluded to the List and Bundle of documents dated the 15<sup>th</sup> September 2011; and which documents, the witness sought to adopt and rely on. In this regard, the documents at the foot of the List and Bundle of documents dated the 15<sup>th</sup> September 2011, were thereafter admitted and produced in evidence as exhibit P1 to P26, respectively.
21. Other than the foregoing, the witness also adverted to and referred to the Supplementary List of Documents dated the 11<sup>th</sup> November 2022 and which, same sought to adopt and rely on. In the absence of any objection by the counsel for the 1<sup>st</sup> Defendant, the document at the foot of the said List was thereafter admitted and constituted as Exhibit P27.
22. Other than the foregoing, the Plaintiff alluded to the Further Amended Plaint dated the 28<sup>th</sup> September 2022 and thereafter sought to adopt the contents thereof. In this regard, the witness implored the Honourable court to grant the reliefs sought at the foot thereunder.
23. On cross examination, the witness testified that same is the Wife of the original Plaintiff, namely, Francis Muchangi.
24. In addition, the witness averred that the original Plaintiff developed mental disorder, culminating into the issuance of the order constituting her (witness) as the Manager and Legal guardian of the original Plaintiff.



25. Furthermore, the witness stated that the original Plaintiff bought the suit plot from the 1<sup>st</sup> Defendant in the year 1976. However, the witness stated that same was not present when the original Plaintiff bought the said plot.
26. On the other hand, the witness averred that though she was not present at the time when the original Plaintiff bought the suit plot, the original Plaintiff however kept her duly informed and posted of the developments, including the purchase and acquisition of the suit plot.
27. It was the further testimony of the witness that same has introduced and tendered before the Honourable court various documents, including the share certificate, which were issued to and in favor of the original Plaintiff.
28. In addition, the witness testified that the matter pertaining to the transfer of the suit plot has taken a long time to resolve, because the 1<sup>st</sup> Defendant herein was never keen and or desirous to effect the transfer of the suit plot to the original Plaintiff.
29. Besides, the witness averred that the 1<sup>st</sup> Defendant herein latter requested the original Plaintiff to pay some money in respect of the suit plot. For clarity, the witness pointed out that the monies which were requested for were for purposes of transfer of the suit plot to and in favor of the Plaintiff.
30. Nevertheless, the witness added that the Plaintiff did not pay the monies which were sought for by the 1<sup>st</sup> Defendant for purposes of transfer of the suit property to and in favor of the Plaintiff.
31. Other than the foregoing, the witness pointed out that the 1<sup>st</sup> Defendant declined to transfer the suit property to and in favor of the original Plaintiff.
32. Whilst under further cross examination, the witness was referred to the subdivision scheme approval dated the 26<sup>th</sup> August 1994; and thereafter asked to confirm whether the original Plaintiff paid the monies at the foot of the said subdivision scheme approval.
33. In answer to the question pertaining to the monies at the foot of the subdivision scheme approval, the witness stated that the original Plaintiff did not pay the monies alluded to thereunder.
34. Furthermore, the witness stated that it is the 1<sup>st</sup> Defendant who owned the land and hence it is the 1<sup>st</sup> Defendant who was obligated to process and facilitate the issuance of the certificate of title to the original Plaintiff.
35. On the other hand, the witness stated that though plot number 229 belongs to the original Plaintiff, the 1<sup>st</sup> Defendant herein conspired and caused the said plot to be registered in the name of the 2<sup>nd</sup> Defendant.
36. Whilst still under further cross examination, the witness has further averred that same has not presented before the Honourable court any documents and or evidence to show that the 2<sup>nd</sup> Defendant is the owner of the suit property.
37. On the other hand, the witness has also added that the original Plaintiff has never followed with the Ministry of Lands for purposes of procuring a certificate of title over and in respect of the suit property.
38. In any event, the witness has further added that same has not been able to view the suit plot and in this regard, same is not aware of whether the suit plot is developed or otherwise.
39. With the foregoing testimony, the Plaintiff's case was closed.



### **a. 1<sup>st</sup> Defendat's Case**

40. The 1<sup>st</sup> Defendant's case is premised and anchored on the evidence of Peter Mutua Musee, who testified as DW1. For clarity, the witness herein pointed out and averred that he is a Director of the 1<sup>st</sup> Defendant Company.
41. Furthermore, the witness added that he was conversant and knowledgeable of the original Plaintiff herein.
42. Other than the foregoing, the witness averred that same is also knowledgeable of the suit property, namely, L.R No. Nairobi/Block 113/229. For the avoidance of doubt the witness stated that the suit plot does not belong to the Plaintiff herein.
43. On the contrary, the witness averred that the suit plot belongs to and was duly allocated to the 2<sup>nd</sup> Defendant, namely, Mary Nyakio.
44. Additionally, the witness testified that on the 19<sup>th</sup> November 1994, the 1<sup>st</sup> Defendant herein convened and held an annual general meeting, wherein same resolved that all the members of the 1<sup>st</sup> Defendant who had been allocated plots, but had not fully paid for the Plots were to clear/settle any outstanding payments on or before December 1995.
45. On the other hand, the witness further testified that it was also resolved that if any member who had been allocated a Plot did not clear/settle any outstanding payments, then the 1<sup>st</sup> Defendant would repossess the Plot and re-allocate same to other members on the waiting list.
46. In addition, the witness testified that the Minutes of the Annual General Meeting were duly adopted and thus became effective as at the 29<sup>th</sup> November 1994.
47. Other than the foregoing, the witness further testified that the 1<sup>st</sup> Defendant herein had also issued and published a notice in the Kenya Gazette, wherein the 1<sup>st</sup> Defendant intimated to all her members that any member who was not fully paid up, would be struck out from the membership register. For clarity, the witness alluded to the gazette notice published on the 11<sup>th</sup> May 1984.
48. It was the further testimony of the witness that the original Plaintiff herein was one of those Members who never complied with the terms of the gazette notice published on the 11<sup>th</sup> May 1984; and hence same was never allocated any plot.
49. Other than the foregoing, the witness herein alluded to the undated witness statement, but which was filed in court on the 16<sup>th</sup> September 2019. In this regard, the witness sought to adopt and rely on the contents of the named witness statement.
50. Pursuant to and at the request of the witness, the witness statement filed in court on the 16<sup>th</sup> January 2019, was duly admitted and constituted as the Further evidence in Chief of the witness.
51. On the other hand, the witness also alluded to the List and Bundle of documents dated the 15<sup>th</sup> of January 2019 and sought to adopt and rely on the contents of the named documents. In this regard, the documents at the foot of the list dated the 15<sup>th</sup> January 2019 were admitted and produced as exhibit D1 to D3, respectively.
52. On cross examination, the witness herein averred that the 1<sup>st</sup> Defendant convened and held an Annual General Meeting on the 19<sup>th</sup> November 1994.



53. Furthermore, the witness added that the Annual General Meeting, which was held on the 19<sup>th</sup> November 1994 was attended by various Members of the 1<sup>st</sup> Defendant and thereafter the said meeting passed various resolutions.
54. It was the further evidence of the witness that the resolutions of the Annual General Meeting were thereafter communicated and disseminated to various members of the 1<sup>st</sup> Defendant, including the original Plaintiff.
55. Nevertheless, the witness admitted and conceded that same did not file or tender before the Honourable court any letter communicating the outcome and resolutions of the annual general meeting to the original Plaintiff.
56. Other than the foregoing, the witness admitted that by the time the Annual General Meeting was being held, the 2<sup>nd</sup> Defendant had already been allocated the suit Plot.
57. Furthermore, the witness added that the suit Plot had been repossessed on the basis of the decision of the First Defendant's committee.
58. Whilst still under cross examination, the witness admitted and acknowledged that the 1<sup>st</sup> Defendant had retained and engaged the services of M/s Kembi & Muhia Advocates, to act on behalf of the 1<sup>st</sup> Defendant. In this regard, the witness was able to identify a letter dated the 7<sup>th</sup> March 1995, which was written/authored by the said law firm.
59. Be that as it may, the witness added that by the time the said law firm wrote the letter dated the 7<sup>th</sup> March 1995, the 1<sup>st</sup> Defendant had terminated the services of the said firm of advocate.
60. In addition, the witness testified that the letter dated the 7<sup>th</sup> March 1995, was in respect of payments towards and for purposes of effecting the transfer of the suit property to and in favor of the Plaintiff.
61. Besides, the witness was also referred to a letter of allotment/subdivision scheme approval dated the 26<sup>th</sup> August 1994 and the witness pointed out that the said letter of allotment was generated and issued by the commissioner of lands.
62. In any event, the witness further testified that the letter of allotment, which was issued in favor of the original Plaintiff had not been revoked and/or canceled by the time the 2<sup>nd</sup> Defendant was allocated the suit Plot.
63. Be that as it may, the witness also testified that the Plaintiff herein was also issued with assorted Share certificate(s), over and in respect of the various Plots, inter-alia, the suit property.
64. With the foregoing testimony, the 1<sup>st</sup> Defendant's case was duly closed.

#### **b. 2<sup>nd</sup> Defendant's Case**

65. It is imperative to state and underscore, that though the 2<sup>nd</sup> Defendant was duly served vide substituted means/ service, in terms of the order of the Honourable court issued on the 2<sup>nd</sup> October 2009, same neither entered appearance nor filed any Statement of Defense.
66. Furthermore, the Plaintiff herein thereafter applied for Interlocutory Judgment as against the 2<sup>nd</sup> Defendant and the request for such Judgment was duly approved and thereafter endorsed on the court record on the 21<sup>st</sup> December 2009.



67. Other than the foregoing, it is also appropriate to underscore that the firm of M/s Kanyi Ndurumo and Company Advocates only entered appearance and thereafter filed Statement of Defense for and on behalf of the 1<sup>st</sup> Defendant and not otherwise.
68. In addition, even when counsel filed and canvassed the Notice of Preliminary Objection, same was canvassed for and on behalf of the 1<sup>st</sup> Defendant. See the submissions dated and filed on the 3<sup>rd</sup> May 2017.
69. First forward, on the 15<sup>th</sup> January 2019, M/s Kanyi Ndurumo and Company Advocates, filed a List and Bundle of documents showing that same were filed for and on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. However, the record of the Honourable court remains crystal clear that the firm of M/s Kanyi Ndurumo & Co. Advocates, are only on record for the 1<sup>st</sup> Defendant.
70. Having made the foregoing observation, it is appropriate to state and underscore that the 2<sup>nd</sup> Defendant herein neither entered appearance nor filed any Statement of Defense.
71. In any event, the 2<sup>nd</sup> Defendant also did not attend Honourable court or tender any evidence. In this regard, the 2<sup>nd</sup> Defendant's case was closed, albeit without any evidence being proffered and/or tendered on her behalf.

### **Submissions By The Parties:**

#### **a. Plaintiff's Submissions:**

72. The Plaintiff filed written submissions dated the 20<sup>th</sup> December 2022 and in respect of which the Plaintiff raised, highlighted and amplified three salient issues for due consideration by the Honourable court.
73. Firstly, learned counsel for the Plaintiff submitted that the original Plaintiff had entered into a sale transaction with the 1<sup>st</sup> Defendant, culminating into the purchase and acquisition of various Plots, inter-alia, Plot number 229, which is the suit property herein.
74. It was the further submissions of counsel for the Plaintiff that upon purchasing the named plots, inter-alia, the suit property, the 1<sup>st</sup> Defendant issued to and in favor of the original Plaintiff assorted share certificates, which confirmed that the Plaintiff was duly allocated the named Plot.
75. In addition, learned counsel for the Plaintiff further submitted that after the allocation of the suit plot to an in favor of the original Plaintiff, the Original Plaintiff made the requisite payments and thereafter became entitled to entry upon and possession of, inter-alia, the suit property.
76. In the premises, learned counsel for the Plaintiff submitted that the Plaintiff lawfully bought and purchased inter-alia the suit plot, culminating into the issuance of the requisite letters of allotment.
77. In short, learned counsel for the Plaintiff has submitted that the original Plaintiff acquired lawful and legitimate rights over and in respect of the suit property and hence, the suit Property ought to have been transferred unto the Original Plaintiff.
78. Secondly, learned counsel for the Plaintiff has submitted that even though the 1<sup>st</sup> Defendant had contended that the original Plaintiff failed and neglected to pay the various payments towards completion of the transaction, the 1<sup>st</sup> Defendant however failed to tender and place before the Honourable court any credible evidence to prove the allegation of non- payments.



79. In addition, learned counsel has submitted that the claim that the Plaintiff herein did not conclude the payments towards and on account of the suit property are misleading and erroneous.
80. In this regard, counsel pointed out that the original Plaintiff could not have been issued with a Letter of allotment dated the 26<sup>th</sup> August 1994; and the various Letters which were drawn by the said Defendants advocates, calling upon the original Plaintiff to visit the Advocate offices with his identification documents and the various receipts for purposes of facilitating the transfer and registration of the suit property, in the name of the Plaintiff.
81. Furthermore, learned counsel for the Plaintiff invited the Honourable court to take cognizance of the various Letters which were written/ authored by the 1<sup>st</sup> Defendant and wherein same were inviting the original Plaintiff to attend the advocate offices with a view to having the suit property herein transferred unto him. For clarity, learned counsel invited the Honourable court to the contents of, inter- alia, Exhibit P13, 14, 15, 16, 22, 23, 24 and 25, respectively.
82. On the other hand, learned counsel further submitted that having duly and lawfully being allocated the suit plot, same could not be re-possessed from the Plaintiff without issuance and service of the requisite notice(s).
83. In any event, counsel pointed out that No Notice was ever issued to and in favor of the Plaintiff to forwarn same of (sic) any Intended repossession.
84. Thirdly, learned counsel has submitted that the original Plaintiff was therefore the lawful allottee of the Suit Property, and hence, entitled to be declared as the owner of the suit property.
85. In a nutshell, Learned Counsel added that the Plaintiff is therefore entitled to effective transfer and registration of the suit property in his name.
86. In addition, learned counsel has submitted that having been denied and/or deprived of the benefit of the suit property, the Plaintiff is also entitled to compensation on account on General Damages.
87. As concerns the submissions pertaining and concerning compensation in respect of General Damages, learned counsel has cited and quoted the decision in he case of Ann Mumbi Kinga versus Wiliam Wangi & Another (2017)eKLR; and Ochako Obinchu versus Zakary Oyoti Nyamoyo (2018)eKLR, respectively.
88. Premised on the foregoing, learned counsel has therefore submitted and implored the Honourable Court to award the Plaintiff General Damages to and in favor of the Plaintiff.
89. In a nutshell, learned counsel for the Plaintiff has therefore contended that the Plaintiff has placed before the Honourable court substantive and credible material to warrant findings in favor of the Plaintiff.
90. Consequently and in view of the foregoing, counsel has implored the Honourable court to grant the orders/ Reliefs sought.

**b. 1<sup>st</sup> Defendant's Submissions:**

91. The 1<sup>st</sup> Defendant filed written submission dated the 3<sup>rd</sup> March 2023, albeit titled Defendants' written submissions and in respect of which, the Learned counsel has highlighted and amplified Five (5) pertinent issues for consideration and determination by the Honourable court.



92. First and foremost, learned counsel has submitted that the Plaintiff herein neither tendered nor produced before the Honourable court any credible evidence to show that the original Plaintiff was ever allocated the suit property.
93. In addition, learned counsel has submitted that the evidence tendered by and on behalf of the Plaintiff was contradictory insofar as no explanation was tendered and availed to show how what was hitherto plot number 211 mutated from (sic) plots numbers 283, 212, 182 and then ultimately to 229, the latter which is the suit property.
94. Premised on (sic) the contradictions which are inherent in the evidence tendered before the Honourable court, learned counsel has therefore submitted that the Plaintiff herein has failed to discharge the Burden of Proof that was placed on her, towards proving ownership and title to the suit property.
95. Secondly, learned counsel for the 1<sup>st</sup> Defendant has submitted that even though the Plaintiff placed before the Honourable court evidence of the Letter of allotment dated the 26<sup>th</sup> August 1994, from the Commissioner of land, it was apparent that the same office of the commissioner of land had also generated and issued a second Letter of allotment dated the same date to and in favor of the 2<sup>nd</sup> Defendant.
96. In this regard, learned counsel therefore contended that it was incumbent upon the Plaintiff to show that same duly complied with the terms and conditions that were contained at the foot of the Letter of allotment issued by the commissioner of land.
97. Nevertheless, learned counsel added that the Plaintiff failed and/or neglected to place before the Honourable court evidence to show that same duly and timeously paid the amounts that were demanded at the foot of the Letter of allotment.
98. Thirdly, learned counsel for the 1<sup>st</sup> Defendant submitted that the suit property was lawfully and duly allocated to the 2<sup>nd</sup> Defendant. In this regard, learned counsel reiterated the evidence that was tendered by one Peter Mutua Musee, who testified as DW1.
99. Furthermore, learned counsel for the 1<sup>st</sup> Defendant also submitted that pursuant to and by dint of the resolutions of the 1<sup>st</sup> Defendant, the suit plot was repossessed by the 1<sup>st</sup> Defendant and thereafter re-allocated to and in favor of the 2<sup>nd</sup> Defendant. In this regard, counsel pointed out that the 2<sup>nd</sup> Defendant is therefore the lawful and legitimate owner of the suit property.
100. Fourthly, learned counsel for the 1<sup>st</sup> Defendant has submitted that even though the Plaintiff had alluded to and impleaded fraud as against the Defendants, the Plaintiff herein neither adduced nor tendered any iota of evidence to prove the claim of fraud.
101. In addition, learned counsel for the 1<sup>st</sup> Defendant submitted that the Letter of allotment in favor of the 2<sup>nd</sup> Defendant was issued by the Commissioner of Land and no evidence was called to show that the said Letter of allotment was either issued fraudulently or without the requisite authority.
102. In any event, counsel added that the Plaintiff herein neither summoned nor called any witness from the Land Registry or better still, the National Land Commission, to confirm that the Letter of allotment in favor of the 2<sup>nd</sup> Defendant was irregular, illegal and unlawful.
103. In short, learned counsel for the 1<sup>st</sup> Defendant submitted that the Plaintiff herein failed to prove and or establish that the allotment of the suit property in favor of the 2<sup>nd</sup> Defendant was (sic) fraudulent, either in the manner alluded to or at all.



104. In support of the submissions that the Plaintiff has not been able to tender sufficient evidence to prove fraud, learned counsel for the 1<sup>st</sup> Defendant has cited and quoted the decision in the case of Vijay Morjaria versus Nansigh Madhusingh Drabar & Another (2002)eKLR, Kinyanjui Kamau versus George Kamau (2015)eKLR and Demutila Nanyama Rurumu versus Salim Mohamed Salim (2018)eKLR, respectively.
105. Finally, learned counsel for the 1<sup>st</sup> Defendant has submitted that though the Plaintiff herein had introduced the question of monetary compensation in the course of her testimony, it is imperative to note that there is no claim for special damages contained in the body of the Pleadings before the Honourable court.
106. In this respect, learned counsel has contended that in the absence of any pleadings pertaining to and concerning special damages, no award of compensation can be made to the Plaintiff herein.
107. In any event, learned counsel contended that the Honourable court cannot proceed and make an award in respect of a relief which has not been pleaded.
108. Simply put, learned counsel for the First Defendant added that the Honourable court can only grant reliefs which flows from the pleadings filed by the Parties and not otherwise.
109. In a nutshell, learned counsel for the 1<sup>st</sup> Defendant has implored the Honourable court to find and hold that the Plaintiff has neither established nor proved her case to the requisite standards.
110. In the circumstances and in view of the foregoing, Learned counsel has contended that the Plaintiff's case therefore ought to be dismissed with costs.

#### **Issues For Determination:**

111. Having reviewed and evaluated the Further Amended Plaintiff and the various documents filed by and on behalf of the Plaintiff and having taken into account the Amended Statement of Defense filed by and on behalf of the 1<sup>st</sup> Defendant, together with the attachment thereto; and having further taken into account the oral evidence tendered before the Honourable court by the various witnesses; and finally having considered the written submissions filed by the respective Parties, the following issues do arise and are thus worthy of determination;
  - i. Whether or not the Plaintiff/original Plaintiff was duly allocated Plot No. 229 (now L.R No. Nairobi/Block 113/229).
  - ii. Whether the suit Plot was Lawfully and Legally repossessed.
  - iii. Whether the 2<sup>nd</sup> Defendant acquired lawful and legitimate title to and in respect of the Suit property or otherwise.
  - iv. Whether the Plaintiff is entitled to the Reliefs sought at the foot of the Further Amended Plaintiff.

#### **Analysis And Determination**

##### **Issue Number 1**

Whether or not the Plaintiff/original Plaintiff was duly allocated Plot No. 229 (now L.R No. Nairobi/Block 113/229).



112. The Plaintiff herein testified and informed the Honourable court that same was duly appointed and constituted as the manager and legal guardian of the original Plaintiff. In this regard, the witness tendered and produced before the court a copy of the order issued on the 30<sup>th</sup> March 2022 vide Nairobi HCC Misc. Cause No E068 of 2022.
113. Having tendered and produced before the Honourable court the order appointing same as the legal guardian of the original Plaintiff, the witness thereafter adopted the original witness statement which was recorded by the original Plaintiff.
114. It is imperative to recall and reiterate that the original Plaintiff herein had adverted to and explained how same entered into transactions with the 1<sup>st</sup> Defendant culminating into the purchase and acquisition of various plots, inter-alia, plots number 84 and 229, respectively.
115. Furthermore, the original Plaintiff also adverted to and pointed out that after making the requisite payments to and in favor of the 1<sup>st</sup> Defendant, the 1<sup>st</sup> Defendant proceeded to and processed the requisite share certificate, which were ultimately issued in favor of the original Plaintiff.
116. At any rate, it was pointed out that the share certificate authenticated and confirmed that indeed the original Plaintiff was a lawful member of the 1<sup>st</sup> Defendant.
117. Additionally, the Original Plaintiff had also stated that subsequently, the 1<sup>st</sup> Defendant re-surveyed the entire parcel of land and thereafter generated a scheme of subdivision containing various resultant subdivision, inter-alia L.R No. Nairobi/Block113/229, which is the suit property.
118. Subsequently, the subdivision scheme which was generated by and on behalf of the 1<sup>st</sup> Defendant herein was transmitted to and handed over to the office of the commissioner of land, who thereafter generated the requisite approval and issued letters of allotment. In this regard, the Plaintiff pointed out that same was issued with a letter of allotment dated the 26<sup>th</sup> August 1994, confirming allotment of the suit property.
119. Other than the foregoing, evidence was also tendered and placed before the Honourable Court that the 1<sup>st</sup> Defendants advocates, namely, M/s Kembu Muhia & Company Advocates thereafter sent assorted letters, inter-alia the letter dated the 7<sup>th</sup> March 1995 and 15<sup>th</sup> March 1995, respectively wherein same were asking the original Plaintiff to visit their offices and to avail the requisite identification documents for purposes of processing and facilitating and transfer of the suit property in favor of the original Plaintiff.
120. Additionally, the Plaintiff also placed before the Honourable court evidence to show that upon receipt of the named letters from the 1<sup>st</sup> Defendants own advocates, same duly complied and visited the offices of the 1<sup>st</sup> Defendant's advocate, availed the requisite information and identification documents which were required and thereafter same was handed over the original letter of allotment in respect of inter-alia the suit property.
121. In this respect, the Plaintiff tendered before the Honourable court the requisite acknowledgement dated the 17<sup>th</sup> August 2004.
122. Despite the fact that the 1<sup>st</sup> Defendant was served with the various documentary exhibits produced by and on behalf of the Plaintiff, the 2<sup>nd</sup> Defendant did not file any documentary evidence to contradict the validity, legitimacy and or propriety of the various documents proffered on behalf of the Plaintiff.



123. Nevertheless, when confronted with the letters dated the 7<sup>th</sup> March 1995 and 15<sup>th</sup> March 1995, which were produced as exhibit P14 and P15, respectively, DW1 contended that by the time the named advocate wrote the impugned letters, same had been dismissed by the 1<sup>st</sup> Defendant.
124. However, it is not lost on this court that no evidence was brought forth by and on behalf of the 1<sup>st</sup> Defendant to show that the said law firm had ceased to act for the 1<sup>st</sup> Defendant. Clearly, a letter from the 1<sup>st</sup> Defendant unto the named advocates (sic) terminating their services would have been appropriate, nay, sufficient.
125. Furthermore, if the letters dated the 7<sup>th</sup> March 1995 and 15<sup>th</sup> March 1995, had been written by the named advocates, albeit without the requisite authority, then it behooved the 1<sup>st</sup> Defendant to mount and/or lodge a complaint with the Law Society of Kenya or the Advocates Disciplinary Tribunal, for professional misconduct.
126. Be that as it may, no such evidence was ever tendered or placed before the Honourable court by the 1<sup>st</sup> Defendant.
127. Consequently and in the premises, what becomes evident and apparent is that the original Plaintiff had been duly allocated plots numbers 84 and 299 respectively and that following the said allotment, the 1<sup>st</sup> Defendant's advocates duly advised the original Plaintiff to facilitate the payments to enable the effective transfer and issuance of the certificate of title.
128. In my humble view, the 1<sup>st</sup> Defendant's advocate, would not have called upon the original Plaintiff to supply and avail the requisite identification documents and to make the requisite payments for purposes of facilitating procession of certificate of title and issuance of grant, if the original Plaintiff had not been duly allocated the named plots.
129. Furthermore, it is also important to recall that during cross examination, DW1 conceded and acknowledged that the original Plaintiff herein was duly allocated the suit property. In this respect the testimony of DW1 whilst under cross examination is imperative.
130. For coherence, the witness stated as hereunder;

“The letter of allotment was authored by the Commissioner of Lands. The letter of allotment was generated by the Commissioner of Land and same sought for payments of some monies. The letter of allotment that was issued to Francis Muchani had not been revoked by the time the Plot was issued to the 2<sup>nd</sup> Defendant”.
131. My understanding of the excerpt that has been reproduced in terms of the preceding paragraph, denotes that indeed the original Plaintiff had been allocated the suit plot. For clarity, the allocation of the suit plot to the original Plaintiff by the 1<sup>st</sup> Defendant was thereafter escalated to the Commissioner of Lands who proceeded and issued a Letter of allotment (read subdivision scheme approval) dated the 26<sup>th</sup> August 1994.
132. In view of the foregoing, there is therefore no debate, or better still, worthy Debate, that the original Plaintiff was indeed allocated/allotted plot number 229. For clarity, the totality of the evidence (read both documentary and oral) vindicate and confirm as much.
133. In the premises, I have no difficulty in coming to the conclusion that Plot 229 (the suit property), was duly allocated to the original Plaintiff by both the 1<sup>st</sup> Defendant, as well as the Commissioner of Lands.



## Issue Number 2

Whether the Suit Plot was Lawfully and Legally Repossessed.

134. Having established and confirmed that Plot/Parcel No. 229 had hitherto been lawfully allocated to and in favor of the original Plaintiff, it thus follows that the said plot could only be taken away from the original Plaintiff vide a lawful process, inter-alia repossession.
135. In any event, DW1 tendered evidence and stated that the original Plaintiff herein was one of the members of the 1<sup>st</sup> Defendant, who (sic) had neither paid nor cleared his membership fees, including payments on account his plots.
136. Furthermore, DW1 added and contended that owing to the fact that some members of the 1<sup>st</sup> Defendant, inter-alia the original Plaintiff herein had not paid the outstanding arrears, the 1<sup>st</sup> Defendant generated and published a notice in the Kenya Gazette on the 11<sup>th</sup> May 1984, calling upon the defaulting members to either pay or be struck out from the membership register.
137. Additionally, DW1 also stated and averred that on the 19<sup>th</sup> November 1994, the 1<sup>st</sup> Defendant herein convened and held an annual general meeting, wherein various resolution were passed. For clarity, the witness added that one of the resolutions was to the effect that members who were in arrears and had not fully paid for the plots were called upon to pay and clear the arrears on or before December 1995.
138. It was the further testimony of DW1 that the original Plaintiff was one of the members who had (sic) not cleared payments on account of his plots and hence the suit plot was repossessed and re-allocated to the 2<sup>nd</sup> Defendant.
139. However, on cross examination, the witness herein (DW1) made very puzzling statements. In this regard, it is imperative to reproduce salient aspects of his evidence.
140. For ease of reference, the salient aspects are reproduced as hereunder;

“By the time of the annual general meeting, the 2<sup>nd</sup> Defendant had been allocated the suit plot. The repossession of the plot was taken on the basis of a decision by the committee. The letter of allotment that was issued to Francis Muchangi had not been revoked by the time the plot was issued to the 2<sup>nd</sup> Defendant.
141. Furthermore, during re-examination the same witness (DW1) testified as hereunder;

The plot that was to be allocated to the Plaintiff was repossessed. The repossession was undertaken with the authority of the committee of the 1<sup>st</sup> Defendant. I wish to add that the resolution of the committee was letter adopted and ratified by the annual general meeting of the 1<sup>st</sup> Defendant. The plot that was for the Plaintiff was re-allocated to the 2<sup>nd</sup> Defendant.
142. From the foregoing testimony, what is discernable is that though the original Plaintiff had been allocated the suit property, same was repossessed and thereafter re-allocated to the 2<sup>nd</sup> Defendant.
143. In the premises, the question that must now be addressed is whether the impugned repossession was lawful and legitimate.
144. According to DW1, the impugned repossession was informed by and/or anchored on the resolutions of the 1<sup>st</sup> Defendant which were made on the 19<sup>th</sup> November 1994. See exhibits D2.



145. However, it is not lost on the court that the impugned minutes indicate that those members who were in arrears and were (sic) not fully paid- up were to be granted up to and including December 1995 to settle and/or clear whatever arrears, if any, same had.
146. Given the terms and the wordings of the impugned minutes, it is evident and apparent that no repossession could therefore be carried out and undertaken prior to and before the 31<sup>st</sup> December 1995, which was the last date for clearing (sic) plot arrears, if any.
147. However, in respect of the subject matter, it is apparent and crystal clear that the impugned repossession is stated to have been undertaken and carried out even before the convention and holding of (sic) the Annual General Meeting.
148. To this end, it is appropriate to revert back to the evidence of DW1. For clarity same stated as hereunder;
- “By the time of the Annual General Meeting, the 2<sup>nd</sup> Defendant had been allocated the suit plot. The repossession of the plot was taken on the basis of a decision by the committee”.
149. Clearly, there is no gainsaying that the minutes and resolution arising from the annual general meeting held on the 19<sup>th</sup> November 1994, cannot be relied upon to vindicate and/or sanitize a purported repossession that was carried out long before the said Annual General Meeting.
150. Furthermore, the Letter of allotment, which is stated to have allocated (re-allocated) the suit plot to and in favor of the 2<sup>nd</sup> Defendant is dated the 26<sup>th</sup> August 1994, yet the Annual General Meeting was held on the 19<sup>th</sup> November 1994.
151. In any event, it is also worthy to note that whilst issuing the letter of allotment (read subdivision scheme approval) in favor of the 2<sup>nd</sup> Defendant, the Commissioner of Land was purporting to cancel the Letter of allotment in favor of the original Plaintiff, certainly on the advise of the 1<sup>st</sup> Defendant.
152. Could the re-allocation of the suit plot have been done on the 26<sup>th</sup> August 1994, if at all the re-allocation was predicated on the resolution of the Annual General Meeting, which came more than three months letter on.
153. In my humble view, the 1<sup>st</sup> Defendant and/or her officers were playing around with the allotment of the suit plot and same had hatched a subtle, but deliberate scheme to defraud the original Plaintiff of the suit plot.
154. On the other hand, I beg to state and underscore that by the time the 1<sup>st</sup> Defendant was purporting to allocate/re-allocate the suit property to the 2<sup>nd</sup> Defendant, the suit property stood allocated to the Plaintiff and was therefore not available.
155. To this end, it is imperative to underscore that once a particular property/plot is duly allocated, same ceases to be available for further allocation, unless duly repossessed.
156. Consequently and in this regard, what the 1<sup>st</sup> Defendant purported to do in respect of the suit property was therefore a nullity.
157. To understand the legal implication attendant to a letter of allotment and in particular that once allocation has been done, the named plot ceases to be available for further allocation, it is imperative to reiterate the holding of the Court of Appeal in the case of Benja Properties & 2 others versus Dr.



Syedna Mohammed Burhannuddin Saheb & 2 others vs [2015] eKLR;, where the court stated and observed as hereunder;

25. In arriving at our decision, we note that an interest in land cannot be allotted, alienated or transferred when the specific parcel of land allotted is not in existence. Allotment of an interest in land is a transaction in rem attaching to and running with a specific parcel of land. In the instant case, the allotment by the Commissioner of Land to the original allottees did not attach in rem to any land since there was no parcel upon which the allotment could attach. What the 5<sup>th</sup> respondent, the appellant and the original allottees did was to engage in paper transactions without a parcel of land upon which any interest in land would attach and vest – it was paper transactions without any parcel of land as its substratum.

158. At any rate, by the time the 1<sup>st</sup> Defendant was purported to re-allocate the suit plot and advising the commissioner of land to issue a letter of allotment, same had no ownership rights and/ or Interests thereto.

159. In this regard, the 1<sup>st</sup> Defendant was engaged in an illegal and illegitimate process, which could not confer, convey and/or otherwise vests any legal interests upon the 2<sup>nd</sup> Defendant.

160. To this end, the decision of the Court of Appeal in the case of Caroget Investment Company Ltd versus Aster Holdings Ltd (2019)eKLR, where the court stated and observed as hereunder;

From the Council to the appellant and from the appellant to White Horse no title could be passed because ex nihilo nihil fit – out of nothing comes nothing.

161. In a nutshell, neither the 1<sup>st</sup> Defendant who had purported to repossess the suit property, nor the Commissioner of Land, who issued the letter of allotment in favor of the 2<sup>nd</sup> Defendant, albeit on the advise of the 1<sup>st</sup> Defendant, could convey any legitimate title to the said 2<sup>nd</sup> Defendant.

162. Consequently and in the premises, I come to the conclusion that the purported re-possession and the consequential re-allocation of the suit property to and in favor of the 2<sup>nd</sup> Defendant, was irregular, illegal and unlawful.

### **Issue Number 3**

Whether the 2<sup>nd</sup> Defendant acquired Lawful and Legitimate Title to and in respect of the Suit Property or otherwise.

163. The 2<sup>nd</sup> Defendant herein was/is the beneficiary of the re-allocation of the suit property, following (sic) the impugned repossession that was allegedly carried out and undertaken by the 1<sup>st</sup> Defendant herein.

164. It is worthy to recall that the court has since calibrated upon and addressed the legality and/or propriety of the repossession, which gave rise to (sic) the re-allocation of the suit property to and in favor of the 2<sup>nd</sup> Defendant. For clarity, the court has found and held that the repossession was irregular, illegal and unlawful.

165. Given the foregoing, the question that does arise and which the court must now deal with; is whether the certificate of title which was issued to and in favor of the 2<sup>nd</sup> Defendant was therefore procedural, lawful and valid.



166. Before venturing to examine the propriety and validity of the named certificate of title in favor of the 2<sup>nd</sup> Defendant, it is imperative to state and underscore that it is not enough to procure and obtain a certificate of title. For clarity, it matters the process through which the impugned certificate of title was procured and obtained.
167. Furthermore, where a certificate of title is challenged, it is not enough for the owner or bearer of the certificate of title to wave the certificate of title and imagine that the existence of such certificate of title is sufficient and enough.
168. To the contrary, where a certificate of title is challenged, it behooves the bearer thereof to tender and adduce before the Honourable court credible evidence to justify how the impugned certificate of title was acquired.
169. In this regard, the 2<sup>nd</sup> Defendant was called upon to show how same acquired the certificate of title, yet the suit property had long been allocated to and in favor of the original Plaintiff.
170. Without belaboring the point, it is appropriate to adopt and reiterate the succinct pronouncement of the law obtaining in the case of *Munyua Maina versus Hiram Gathiha Maina* [2013] eKLR, where the Court of Appeal held as hereunder;

“We state that when a registered proprietor’s root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which need not be noted on the register. It is our considered view that the respondent did not go this extra mile that is required of him and no evidence was led to rebut the appellant’s testimony. We find that a trust exists in relation to the suit property”.

171. Additionally, the necessity of a title holder to place and/or lay before the Honourable court credible and cogent basis pertaining to the circumstances under which the impugned title was obtained was revisited and addressed by the Honourable court in the case of *Daudi Kiptugen versus Commissioner Of Lands Nairobi Lands & 4 others* [2015] eKLR, where the court stated and held as hereunder;

“In order to determine the question whether the lease held by the plaintiff is valid, it must be demonstrated that it was properly acquired. It is not enough that one waves a Lease or a Certificate of Lease and assert that he has good title by the mere possession of the Lease or Certificate of Lease. Where there is contention that a Lease or Certificate of Lease held by an individual was improperly acquired, then the holder thereof, must demonstrate, through evidence, that the Lease or Certificate of Lease that he holds, was properly acquired. The acquisition of title cannot be construed only in the end result, the process of acquisition is material. It follows that if a document of title was not acquired through the proper process, the title itself cannot be said to be a good title. If this were not the position, then all one would need to do is to manufacture a Lease or Certificate of Title, at a backyard or the corner of a dingy street, and by virtue thereof, claim to be the rightful proprietor of the land indicated therein. It is therefore necessary for this court to determine how the plaintiff ended up having a Lease and Certificate of Lease in his name, and further determine if the Government did intend to issue the plaintiff with a Lease over the suit land”.



172. Taking into account the ratio decidendi espoused in the foregoing decisions, it is my humble view that the certificate of title in favor of the 2<sup>nd</sup> Defendant having been procured and obtained on the basis of a faulty and invalid letter of allotment (read subdivision scheme approval), same is therefore deficient and invalid.
173. In the premises, my answer to issue number 3 is to the effect that the 2<sup>nd</sup> Defendant herein did not acquire any lawful and legitimate rights to and in respect of the suit property, whatsoever and howsoever.

**Issue Number 4:**

Whether the Plaintiff is entitled to the Reliefs sought at the foot of the Further Amended Plaintiff.

174. The Plaintiff herein has sought for various, albeit numerous reliefs at the foot of the Further Amended Plaintiff.
175. Firstly, the Plaintiff has sought to be declared as the lawful and legitimate proprietor of the suit property, premised and anchored on the basis that same was duly and lawful allocated unto him vide letter of allotment (read subdivision scheme approval) dated the 26<sup>th</sup> August 1994.
176. Whilst addressing issue number two herein before, the court came to the conclusion that indeed the Plaintiff was lawfully allocated the suit property and thereafter the allocation was escalated to the commissioner of land, who ratified same and executed a subdivision scheme approval to that effect.
177. In the premises, there is no gainsaying that indeed the Plaintiff, or better still the original Plaintiff is the lawful and bona fide proprietor of the suit property. In this regard, a suitable declaration is therefore merited.
178. Secondly, arising from the allotment/allocation of the suit property to and in favor of the Plaintiff/ Original Plaintiff, same was obliged to be issued with a certificate of title/certificate of lease. However, such certificate could only issue subject to payments of various charges/fees.
179. In the circumstances, it is my humble position that the 1<sup>st</sup> Defendant would be called upon to generate the requisite transfer instrument and to execute same for purposes of facilitating the transfer and registration of the suit property to and in favor of the Plaintiff.
180. Other than the foregoing, it is imperative to state and underscore that once the Plaintiff becomes the lawful and legitimate owner of the suit property, then same is vested with the absolute and exclusive rights to and in respect of the suit property, to the exclusion of all and sundry.
181. Consequently, it then follows that upon being registered as the lawful owner and proprietor, subject to execution of the transfer instrument, then the Plaintiff shall be entitled to an order of Permanent injunction, against to all and sundry, the Defendants, not excepted.
182. Finally, the Plaintiff has also sought for an award of General damages. In this regard, it is not lost on the Honourable court that once the Plaintiff has proved ownership and title to the suit property and by extension trespass, the Plaintiff becomes entitled to an award of General damages for trespass.
183. Suffice it to point out that trespass is actionable per se. In the circumstances, the claimant is ordinarily not obliged to prove that same has suffered any damage or actual loss as a result of the impugned trespass.



184. Premised on the established Jurisprudential position pertaining to award of damages for trespass, I would have been inclined to award a substantial amount on account of General damages. However, learned counsel for the Plaintiff only implored the Honourable court to award Kes.100, 000/ Only.
185. Consequently and in the premises, I can do no better than the request by counsel for the Plaintiff. In this regard, I award and decree the sum of Kes.100, 000/= only on account of General Damages for trespass.
186. As pertains to the law on award and computation of General Damages for trespass, it is sufficient to adopt and reiterate the holding in the case of Nakuru Industries Ltd versus S S Mehta & Sons (2016)eKLR, where the Honourable Court stated and held as hereunder;

“The tort of Trespass is one which is actionable without proof of any damage. There exist legion authorities in law regarding the amount which a court may award as general damages. In Anthony Kolani Mwanja 16 Vs Mwaka Omar Ali [2011]eKLR the Court awarded a sum of Kshs 50,000/= as general damages for trespass. Similarly in James Njeru Vs Ericson Kenya Limited [2015]eKLR the Court found that damages in a case of trespass where trenches had been dug across the plaintiff’s land would be assessed at Ksh 50,000/=. Finally on this point in the case of Philip Aluchio Vs Crispinus Ngayo [2014]eklr Hon. Justice E. Obaga held as follows:

“The plaintiff is entitled to general damages for trespass. The issue which arises is as to what is the measure of such damage. It has been held that the measure of damages for trespass is the difference in the value of the Plaintiff’s property immediately after the trespass or the costs of restoration, whichever is less .....

The plaintiff herein did not adduce any evidence as to the state of his property before and after the trespass. It therefore becomes difficult to assess general damages for trespass....”

**Final Disposition :**

187. Having dealt with and analyzed the various issues that were itemized in the body of the Judgment and whose determination, was necessary to finalize the subject matter, it must have become apparent that the Plaintiff’s suit is indeed meritorious.
188. Consequently and in the premises, Judgment be and is hereby entered in favor of the Plaintiff on the following terms;
- i. A Declaration order be and is hereby made that the Plaintiff, namely, Francis Muchangi is the lawful owner of plot Number 229 (now L.R No. Nairobi/ Block 113/229).
  - ii. The Certificate of Title/Certificate of Lease in respect of L.R No. Nairobi/ Block 113/229 bearing the name of the 2<sup>nd</sup> Defendant, be and is hereby canceled, revoked and nullified.
  - iii. That 2<sup>nd</sup> Defendant herein be and is hereby ordered and directed to surrender and hand over the named certificate of title to the Chief Land Registrar for cancelation and/or revocation.
  - iv. For clarity, the surrender of the certificate of title to the Chief Land Registrar by the 2<sup>nd</sup> Defendant shall be effected within 60 days from the date hereof.



- v. The 1<sup>st</sup> Defendant be and is hereby ordered and directed to execute the Transfer Instrument/documents, including a Lease in favor of the Plaintiff, namely Francis Muchangi, for purposes of effecting the transfer and registration of the suit property to and in favor of the named Plaintiff.
- vi. The Execution of the Transfer Instrument/documents, in terms of (v) shall be undertaken with 60 days; and in default the Deputy Registrar of the this Honourable court shall execute requisite Transfer Instruments to facilitate the effective transfer and registration of the suit property in favor of the Plaintiff.
- vii. Alternatively, the Chief Land Registrar and or his Designate be and is hereby ordered to rectify the Register in respect of the suit property and thereby reflect the name of the Plaintiff as the lawful and legitimate Proprietor/ Owner thereof.
- viii. The Defendants shall vacate and hand over vacant possession of the suit property to the Plaintiff within 90 days from the date of this Judgment.
- ix. In default to vacate and hand over vacant possession of the suit property to the Plaintiff, an order of Eviction shall issue against the Defendants herein and/or their agents from the suit property.
- x. An order of Permanent Injunction be and is hereby issued restraining the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, agents and/or servants and all persons claiming any rights under them, from developing, selling, transferring, charging and dealing in any manner howsoever with all that piece of land known as L.R No. Nairobi/ Block 113/229 situated in Embakasi within Nairobi.
- xi. The Plaintiff be and is hereby awarded General Damages in the sum of Kes.100, 000/= only, with Interests at court rates from the date of Judgment.
- xii. Costs of the suit shall be borne by the Defendants Jointly and/or severally.

189. It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 23<sup>RD</sup> DAY OF MARCH 2023.**

**OGUTTU MBOYA,**

**JUDGE**

**ENVIROMENT AND LAND COURT.**

**MILIMANI.**

In the Presence of;

Benson Court Assistant

Mrs. Susan Ndirangu for the Plaintiff

Mr. Kanyi Ndurumo for the 1<sup>st</sup> Defendant

N/A for the 2<sup>nd</sup> Defendant

