



**Langat v Timoi Farms and Estates Limited & another (Environment and Land Case
Civil Suit 606 of 2015) [2023] KEELC 16850 (KLR) (18 April 2023) (Judgment)**

Neutral citation: [2023] KEELC 16850 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT 606 OF 2015
SO OKONG'O, J
APRIL 18, 2023**

BETWEEN

FLORENCE CHELANGAT LANGAT PLAINTIFF

AND

TIMOI FARMS AND ESTATES LIMITED 1ST DEFENDANT

ISAYA KIPTARUS KIMEIYWO 2ND DEFENDANT

JUDGMENT

1. The Plaintiff brought this suit against the Defendants on 29th June 2012 through a plaint of the same date. The Plaintiff filed an amended plaint dated 12th October 2018 on 25th October 2018. In her amended plaint, the Plaintiff averred that the 2nd Defendant was at all material times a director of the 1st Defendant. The Plaintiff averred that on diverse dates, one, Kipngeno Arap Ngeny (hereinafter referred to only as “Arap Ngeny”) offered to sell to the Plaintiff four parcels of land namely; Olenguruone/Amalo/314, Olenguruone/ Amalo/315, Olenguruone/Amalo/316 and Olenguruone/Amalo/321(hereinafter together referred to as “the suit properties” and separately as “Plot No. 314, Plot No. 315, Plot No. 316 and Plot No. 321”).
2. The Plaintiff averred that on 1st March 2012, she entered into an agreement for sale with Arap Ngeny in respect of the suit properties. The Plaintiff averred that the said agreement for sale of the suit properties was completed on 24th May 2014 and the properties were handed over to her on 26th May 2014. The Plaintiff averred that she was the registered proprietor of the suit properties. The Plaintiff averred that she purchased the suit properties for value without notice of any defect in the titles that were held by Arap Ngeny.
3. The Plaintiff averred that as the registered proprietor of the suit properties, she was entitled to exclusive possession and occupation thereof. The Plaintiff averred that the Defendants by themselves, their



agents, servants or employees without any right had threatened to enter and occupy the suit properties and to interfere with the Plaintiff's possession and occupation thereof.

4. The Plaintiff sought judgment against the Defendants for;
 - a. A declaration that the Plaintiff was the rightful owner of the suit properties.
 - b. A declaration that the Defendants were trespassers on the suit properties.
 - c. An order of eviction of the Defendants, their agents, employees, servants or any person acting on the Defendants' behalf from the suit properties.
 - d. An order for the Defendants to account for the tea sale proceeds from 19th July 2012 to the date of determination of the suit.
 - e. An order for the Defendants to pay mesne profits to the Plaintiff.
 - f. Costs of the suit.
5. The Defendants filed a joint statement of defence and counter-claim dated 23rd July 2012. The Defendants averred that the alleged sale and transfer of the suit properties by Arap Ngeny to the Plaintiff was unlawful in that Arap Ngeny had already sold the suit properties to the 1st Defendant. The Defendants denied that the Plaintiff was entitled to exclusive possession and occupation of the suit properties following the alleged sale since the 1st Defendant was already in possession of the same. The Defendants denied that they had threatened to enter the suit properties and to take possession thereof. The Defendants averred that the 1st Defendant had taken possession of the said properties and had been using the same for 4 years prior to the suit by the Plaintiff.
6. The Defendants denied that the Plaintiff was entitled to the reliefs sought in her plaint. The Defendants averred that the Plaintiff's suit was bad in law and disclosed no cause of action against the 2nd Defendant.
7. In its counter-claim, the 1st Defendant averred that on or about 10th December 2008, Arap Ngeny sold to it the suit properties at a consideration of Kshs. 23,800,000/- of which it paid to Arap Ngeny a sum of Kshs. 8,700,000/- as a deposit. The 1st Defendant averred that it took possession of and occupied the suit properties upon execution of the sale agreement between it and Arap Ngeny. The 1st Defendant averred that it had uninterrupted possession of the suit properties until 1st July 2012 when the Plaintiff came to the premises with a court order made on 29th June 2012 and evicted its employees therefrom.
8. The 1st Defendant averred that upon purchase of the suit properties, it planted thousands of tea plants and exotic trees and constructed workers' houses and an office block on the suit properties bringing its total investment on the suit properties to Kshs. 103,000,000/-. The 1st Defendant averred that following a dispute that emerged between it and Arap Ngeny, it filed a suit against Arap Ngeny in the High Court at Nakuru namely; Nakuru HCCC No. 32 of 2010 which suit was pending a hearing. The 1st Defendant averred that the Plaintiff having purchased the suit properties after the 1st Defendant had purchased the same and was in occupation thereof, the Plaintiff's purported purchase of the said properties was subject to the 1st Defendant's right as a purchaser.
9. The 1st Defendant averred that Arap Ngeny having sold the suit properties to the 1st Defendant and granted it vacant possession, he had no title left in the said properties that he could pass to the Plaintiff. The 1st Defendant averred that the purported sale and transfer of the suit properties by Arap Ngeny to the Plaintiff was null and void.
10. The 1st Defendant averred that the Plaintiff's continued picking of the 1st Defendant's tea leaves was unlawful and as such the 1st Defendant was entitled to compensation for the value of the tea picked



and sold during the Plaintiff's unlawful occupation of the suit properties. The 1st Defendant averred further that when its employees were evicted from the suit properties on 1st July 2012 by the Plaintiff, the 1st Defendant had on the premises a sum of Kshs. 1,000,000/- for the workers' salaries which was stolen by the Plaintiff's agents during the said eviction. The 1st Defendant averred that it was entitled to recover the said amount from the Plaintiff.

11. The 1st Defendant averred further that during the said eviction exercise, the Plaintiff threw out of the suit properties and damaged the following items; 3 Chemical pumps valued at Kshs. 150,000/-, Furniture, TV, Pruning Machine, Fertilizer, white wash, wheel barrows, packing baskets and stationaries all valued at Kshs. 3,000,000/-. The 1st Defendant averred that it was entitled to compensation from the Plaintiff for the said items.
12. The 1st Defendant averred that it would continue to suffer loss and damage until vacant possession of the suit properties was restored to it. The 1st Defendant sought judgment against the Plaintiff by way of a counter-claim for;
 - a. A declaration that the forceful entry into the suit properties by the Plaintiff was unlawful and illegal and similarly the subsequent eviction of the 1st Defendant's workers from the properties.
 - b. A declaration that the purchase and transfer of the suit properties to the Plaintiff was subject to the 1st Defendant's rights.
 - c. An order cancelling the title deeds for the suit properties in the name of the Plaintiff.
 - d. A permanent injunction against the Plaintiff, her agents or servants restraining them from entering, picking tea and from in any way interfering with the suit properties or the 1st Defendant's use and enjoyment thereof until the hearing and determination of the suit.
 - e. An order for compensation for stolen money and damaged goods as well as unlawfully picked tea.
 - f. Costs of the suit.
13. The Plaintiff filed a reply to defence and defence to counter-claim on 9th October 2014. The Plaintiff denied all the allegations and claims made against her in the Defendants' defence and the 1st Defendant's counter-claim. The Plaintiff averred that she purchased the suit properties while vacant and that Arap Ngeny gave her vacant possession on 24th May 2012. The Plaintiff averred that she was a stranger to the alleged agreement for sale that the 1st Defendant entered into with Arap Ngeny in respect of the suit properties. The Plaintiff denied that the 1st Defendant was in possession of the suit properties until July 2012. The Plaintiff also denied that the 1st Defendant had done any developments on the suit properties. The Plaintiff averred that she was a stranger to any disagreement the 1st Defendant may have had with Arap Ngeny and a suit that the 1st Defendant filed following such disagreement. The Plaintiff averred that she was lawfully in possession of the suit properties from March 2012 until July 2012 when she was removed from the properties through a court order. The Plaintiff averred that the Defendants' defence and the 1st Defendant's counter-claim were frivolous and vexatious. The Plaintiff averred that the Defendants had no right over the suit properties. The Plaintiff averred that the Defendants had approached the court with unclean hands. The Plaintiff urged the court to dismiss the 1st Defendant's counter-claim.
14. At the trial, the Plaintiff gave evidence as PW1 and called two witnesses. The Plaintiff adopted her witness statement dated 5th November 2019 as part of her evidence in chief. The Plaintiff stated that the Defendants were unknown to her and that after she purchased the suit properties from Arap Ngeny, he



- gave her vacant possession of the properties. She stated that after obtaining vacant possession of the suit properties, she engaged a manager to look after the same. She stated that possession was subsequently taken from her through a court order issued by Emukule J. The Plaintiff stated that Arap Ngeny told her after possession had been taken away from her that the Defendants wanted to purchase the suit properties but failed to complete the sale. The Plaintiff stated that Arap Ngeny told her further that an application for injunction that was filed by the Defendants against Arap Ngeny to restrain him from selling the properties to any other person was dismissed by Wendoh J. on 10th December 2010 before Arap Ngeny sold the properties to her in 2012.
15. The Plaintiff stated that the Defendants did not pay the purchase price in full to Arap Ngeny and as such, they were not issued with the consent of the Land Control Board (hereinafter referred to as “LCB”). The Plaintiff stated that when she took possession of the suit properties, it was Arap Ngeny who was in occupation and he was the one who handed over possession to her. She stated that she purchased the suit properties at Kshs. 29,040,000/-. The Plaintiff stated that she was informed by Arap Ngeny that there was an ongoing case with a previous purchaser of the suit properties. The Plaintiff stated that she released a sum of Kshs. 8,700,000/- from the purchase price to be deposited in court being the payment that had been made by the said previous purchaser. The Plaintiff stated that the Defendants were denied an injunction by the court and as such Arap Ngeny was free to sell the suit properties to her. The Plaintiff stated that she had title deeds for the suit properties. The Plaintiff stated further that she conducted due diligence before purchasing the suit properties. The Plaintiff stated that she was given the Land Control Board Consent by the Advocates who were acting for Arap Ngeny.
 16. The Plaintiff stated that there was no ban imposed against the issuance of LCB consent for the transaction involving the suit properties. The Plaintiff stated that the suit properties were exempted from the said ban through a Gazette Notice and a letter from the Chief Land Registrar. The Plaintiff stated that after she was registered as the owner of the suit properties, she went to the suit properties with Arap Ngeny and Arap Ngeny handed over possession of the properties to her. She stated that after she took possession, she started picking tea that was on the properties. The Plaintiff stated that she was entitled to the profit she would have earned from the suit properties from July 2012 until possession is delivered to her. The Plaintiff produced several documents in evidence as exhibits.
 17. On cross-examination, the Plaintiff stated that Arap Ngeny did not disclose to her the existence of a case between him and the 1st Defendant that was pending in the High Court at Nakuru. She stated that she was however told that there was someone who wanted to purchase the suit properties but did not complete the payment for the same. The Plaintiff stated that she was not told that the said purchaser was in possession of the suit properties. The Plaintiff stated further that one, Kiprono Siele Sigira advocate acted for Arap Ngeny in the sale transaction between her and Arap Ngeny. The Plaintiff stated further that one, Richard Kiprop Marusoi acted as a representative of Arap Ngeny in the applications for LCB consents that were issued by Molo Land Control Board (LCB) in respect of the sale of the suit properties to her. The Plaintiff stated further that the tea plants on the suit properties were planted by Arap Ngeny and that that information was given to her by Arap Ngeny. The Plaintiff denied that she evicted anyone from the suit properties. She stated that it was Arap Ngeny’s son, Patrick Ngeny who gave her vacant possession of the suit properties. She stated that Arap Ngeny died in 2015.
 18. On re-examination, the Plaintiff stated that the applications for LCB consents were signed by Mr. Marusoi on behalf of Arap Ngeny. The Plaintiff reiterated that she was not aware of the existence of the High Court suit that was pending over the suit properties. She stated that she paid a total of Kshs. 29,000,000/- for the suit properties and that Mr. Ngeny was very sick when she dealt with him.
 19. The Plaintiff’s first witness was KIPRONO SIELE SIGIRA(PW2). PW2 was an advocate of the High Court Kenya. He told the court that he represented Arap Ngeny in the sale transaction between him



- and the Plaintiff. He stated that Arap Ngeny appointed an attorney, Mr. Marusoi to act on his behalf in the transaction. He stated that he acted for Arap Ngeny in several matters including the suit in which he was sued by the Defendants herein in Nakuru. He stated that in 2012, Arap Ngeny's health had started to deteriorate but he was in a good state of mind. He stated that in the agreement between Arap Ngeny and the Plaintiff, the responsibility for obtaining LCB consent was on Arap Ngeny. He stated that he was the one who prepared the application for LCB consent and the power of attorney that Arap Ngeny donated to Marusoi. He stated that his due diligence revealed that the suit properties were not under a caveat by the Government as they did not fall under the Mau water tower. He stated that the documents that were produced in court by the Plaintiff were valid.
20. On cross-examination, PW2 stated that he was aware that Arap Ngeny had entered into a sale transaction with the 1st Defendant in relation to the suit properties. He stated that he did not however act for Arap Ngeny in that transaction. He stated that he was also aware of the suit that the 1st Defendant had filed against Arap Ngeny in the High Court at Nakuru namely, Nakuru HCCC No. 32 of 2010 (hereinafter referred to as the "High Court suit"). He stated that he was acting for Arap Ngeny in the suit. He stated that although he prepared the agreement for sale between the Plaintiff and Arap Ngeny in respect of the suit properties, he was not acting for the Plaintiff in the transaction. He stated that the Plaintiff was represented by another advocate. PW2 stated that although Arap Ngeny's health had started deteriorating in 2012, he was still of sound mind and could give instructions. PW2 stated that although he was the one who prepared the power of attorney that was donated by Arap Ngeny to Marusoi, he did not witness the signature of Arap Ngeny on the said power of attorney and as such he did not wish to comment on the same.
 21. PW2 stated that the application for LCB consent that he prepared was signed on behalf of Arap Ngeny by his attorney. PW2 denied that the transaction between the Plaintiff and Arap Ngeny was fraudulent. He stated that the transaction was above board and that he did not breach any professional duty in drawing the agreement between the Plaintiff and Arap Ngeny. He stated that there was no order issued in the High Court suit prohibiting the transaction.
 22. On re-examination, PW2 stated that the 1st Defendant sought but was denied an injunction in the High Court suit. He stated that the court in that suit did not stop Arap Ngeny from selling the suit properties. He stated that the 1st Defendant was given enough time to complete the sale transaction between it and Arap Ngeny but it failed to do so.
 23. The Plaintiff second witness was PATRICK KIPCHIRCHIR NGENY(PW3). PW3 was the son of Arap Ngeny. He stated that the suit properties were registered in the name of Arap Ngeny but he was the beneficial owner thereof. He stated that he was to be the beneficiary of the proceeds of sale thereof. He stated that he was fully involved in the sale of the suit properties. He stated that Mr. Marusoi was representing Arap Ngeny in the area where the suit properties are situated and that he was to attend all LCB meetings. PW3 stated that they were in possession of the suit properties before the same were sold to the Plaintiff and that they used to sell tea to the nearby tea factory.
 24. PW3 stated that the Defendants were the first to approach him with a proposal to purchase the suit properties. He stated that the agreement that they entered into with the Defendants had 90 days completion period. He stated that the Defendants paid a deposit but failed to raise the balance of the purchase price even after the completion period was extended for them to do so. PW3 stated that the Plaintiff produced in evidence letters that the Defendants had written requesting for an extension of the completion period. He stated that they did not give the Defendants possession of the suit properties because they had not completed the payment of the purchase price.



25. PW3 stated that Arap Ngeny entered into another agreement for sale with the Plaintiff after the Defendants failed to pay the balance of the purchase price. He stated that he was the one who handed over possession of the suit properties to the Plaintiff. He stated that he later learnt that the Plaintiff had been evicted from the suit properties by the Defendants who had not completed the payment of the purchase price. He stated that none of the documents produced by the Plaintiff in evidence were forgeries.
26. On cross-examination, PW3 stated that he did not sign the agreement that Arap Ngeny entered into with the Defendants. He stated that the agreement was signed by Arap Ngeny the same as the one that Arap Ngeny entered into with the Plaintiff. He stated that he was aware that his father had appointed executors of his estate. PW3 stated that he was involved in the two agreements that Arap Ngeny entered into with the Defendants and the Plaintiff. He stated that he was aware of the suit that the Defendants had filed against Arap Ngeny in Nakuru. He stated that the suit was dismissed by the court. He stated that the Defendants could not have been in possession of the suit properties since they had not completed the payment of the purchase price. He stated that he was the one who negotiated the sale of the suit properties with the Plaintiff and that the Plaintiff was aware of the Nakuru High Court case that was brought by the Defendants. PW3 stated that the proceeds of sale of the suit properties to the Plaintiff were deposited in the family company's account and that the same were subsequently transferred to him. He stated that Arap Ngeny was the signatory to the said account and that it was Arap Ngeny who transferred the said proceeds of sale to him. PW3 denied that Arap Ngeny was not involved in the sale of the suit properties to the Plaintiff. He also denied that Arap Ngeny did not execute the power of attorney in favour of Marusoi. On re-examination, PW3 stated that the suit properties were given to him by Arap Ngeny when he was distributing his properties among his children.
27. The Defendants' first witness was the 2nd Defendant, ISAIYA KIPTARUS KIMEIYWO(DW1). DW1 was a director and a shareholder of the 1st Defendant. DW1 adopted his two witness statements dated 24th July 2012 and 27th August 2021 as part of his evidence in chief and produced documents at pages 13 to 121 of the Defendants' bundle of documents dated 27th August 2020 as DEXH.1. DW1 stated that the Directorate of Criminal Investigations (DCI) had prepared a report on the dispute between the parties which was part of the Defendants' bundle of documents.
28. On cross-examination, DW1 stated that his name was Kiptarusand not Kiptonui. DW1 stated that the Plaintiff got his name wrong. DW1 stated that he had been involved in the purchase of other properties and as far as he was concerned, once a deposit is paid, a property stands purchased. He stated that the 1st Defendant purchased the suit properties at Kshs. 23,800,000/- of which the 1st Defendant paid a deposit of Kshs. 8,700,000/-. He stated that the completion date was 30th April 2009. He stated that the agreement between the 1st Defendant and Arap Ngeny had Special Conditions. He stated that Arap Ngeny was to supply various documents. He stated that the 1st Defendant's advocate asked for an extension of the completion period to 30th July 2009. He stated that Arap Ngeny did not comply with the said Special Conditions of the agreement in that he failed to supply the LCB consent. He stated that the 1st Defendant did not apply to the court for the extension of time to apply for the LCB consent. He stated that he applied for the LCB consent to the District Commissioner who responded that the Land Control Board (LCB) for the area where the suit properties are situated had been suspended.
29. DW1 stated that he was aware that the 1st Defendant's application for an injunction in the High Court suit was dismissed by Wendoh J. DW1 stated that when the 1st Defendant purchased the suit properties, there was one wooden house only on the suit properties. He stated that upon purchasing the suit properties, the 1st Defendant put up a house and an office thereon. He stated that he also pruned



tea plants on the suit properties that had been neglected. He stated that the suit properties measured approximately 121 acres. He stated that the tea plants were planted at a density of about 5600 plants per acre. He stated that when they purchased the suit properties, about 50 acres of land was covered with tea plants. DW1 stated that he was not given LCB consent and that the 1st Defendant did not seek extension of time to apply for the consent. He stated that the 1st Defendant was ready with the balance of the purchase price. He stated that the said balance was payable to Arap Ngeny upon compliance by him with the Special Conditions of the Agreement. DW1 stated that the 1st Defendant was not seeking a refund of the deposit and compensation for the developments he had made on the suit properties. He stated that the 1st Defendant was seeking damages.

30. On re-examination, DW1 stated that the 1st Defendant paid a total of Kshs. 8,700,000/- as a deposit. He stated that the 1st Defendant paid Kshs. 4,700,000/- first and a further sum of KShs. 4,000,000/- after which the 1st Defendant was given possession of the suit properties. He stated that the 1st Defendant was not obliged under the agreement for sale to make any further payment to Arap Ngeny on account of the deposit after the initial sum of Kshs. 4,700,000/-. He stated that the 1st Defendant paid additional sum of Kshs. 4,000,000/- because Arap Ngeny had agreed to give the 1st Defendant possession of the suit properties. He stated that the initial deposit that was paid by the 1st Defendant was more than 10% of the purchase price.
31. DW1 stated that it was the obligation of Arap Ngeny to supply the completion documents. He stated that the 1st Defendant was ready and willing to pay the balance of the purchase price upon receipt of the completion documents. DW1 stated that it was the duty of Arap Ngeny to provide the LCB consent. He stated that when the 1st Defendant entered into the agreement for sale with Arap Ngeny, the Defendants were not aware of the embargo that had been imposed by the Government on the land transactions in the area where the suit properties are situated.
32. He stated that the transaction between the 1st Defendant and Arap Ngeny required consent of the LCB. He stated that the 1st Defendant applied to the court for extension of time within which to apply for the LCB consent and the application was allowed. He stated that the order did not impose any time limit within which the application was to be made. He stated that the 1st Defendant's High Court suit was still pending. He denied that the same was dismissed. He stated that the District Commissioner, Kuresoi District informed him that the Land Control Board for Kuresoi was not sitting and that the same was still not sitting as at the time he was giving evidence.
33. DW1 stated that Arap Ngeny had not supplied the 1st Defendant with the completion documents. He stated that there was no way the suit properties could have been transferred to the Plaintiff while the LCB was not sitting. DW1 stated that the 1st Defendant bought land with over-grown tea plants and one timber house. He stated that in addition to an office and a house that the 1st Defendant put up on the suit properties, the 1st Defendant also built a dam that costed it about Kshs. 5,000,000/-. He stated that the 1st Defendant also fenced the entire farm and put up a water factory. He stated that the 1st Defendant also planted more tea. He stated that the 1st Defendant thereafter started picking tea and got its first tea bonus in 2010. He stated that the suit properties were sold to the Plaintiff secretly.
34. The Defendants' second witness was DAVID CHEGE KARIUKI(DW2). DW2 was a licensed and registered valuer. DW2 adopted his witness statement dated 23rd January 2020 and report dated 6th July 2012 as his evidence in chief. On cross-examination, DW2 stated that when he carried out a search on the suit properties as part of the valuation process, he found that the same were registered in the name of the Plaintiff.



35. On re-examination, DW3 stated that he was instructed to establish the market value of the suit properties as at July 2012 which he assessed at Kshs. 103,193,600/-. He stated that this value was inclusive of land and developments on the land. He stated that during the valuation exercise, he visited the suit properties and took photographs.
36. The Defendants next witness was DAVID KIPNGENO ARAP SOI(DW3). DW3 stated that he was a resident of Kiptagich, Kuresoi South. He stated that the 2nd Defendant was known to him and that they met when the 2nd Defendant was looking for land to purchase. DW3 adopted his written witness statement dated 23rd January 2020 as his evidence in chief.
37. On re-examination, DW3 stated that he did the work of pruning tea on the Defendants' farm. He stated that when he was pruning tea for the Defendants he was already working as a farm manager at Kiptagich farm. He stated that he was working for the Defendants on contract. He stated that he was using a power saw to prune the tea at the Defendants' farm because the tea plants had overgrown. He stated that it took him 3 months to prune the tea. He stated that he was employed by the 2nd Defendant who was paying his charges.
38. The Defendant's next witness was Simon Kemei(DW4). DW4 told the court that he was staying at Timoi in Olenguruone. He stated that he was a farmer and knew Arap Ngeny as he was his neighbor. He stated that Arap Ngeny had engaged him to do some work on a farm that he was selling. He stated that the farm was sold to the 1st Defendant. DW4 identified the items in the photographs at pages 56 to 58 of the Defendants' bundle of documents as the 1st Defendant's things that were thrown out of the suit properties. He stated that it was the Defendants who were his neighbours at the time he was giving evidence.
39. On cross-examination, DW4 stated that the photographs he had referred to were taken on the Defendants' farm. He stated further that he spoke to Arap Ngeny and he told him that he was selling the suit properties and that he should talk to his son, Patrick Kipchirchir Ngeny. On re-examination, DW4 stated that Arap Ngeny told him that he had left the farm to the Defendants. He stated that the process of pruning tea on the suit properties started in 2009.
40. The Defendants' next witness was Collins Liyayi Aliela(DW5). DW5 was a land registrar stationed at Nakuru Land Registry. DW5 confirmed that the suit properties existed in the land register at Nakuru Land Registry. He stated that the land registers for Plot No. 314, 316 and 321 were opened on 6th February 1978 while the register for Plot No. 315 was opened on 6th February 1979. He stated that Arap Ngeny was registered as the owner of Plot No. 314 on 23rd September 1987 and as the owner of Plot No. 315, 316 and 321 on 13th April 1989. He stated that the suit properties fell within the Mau Complex which was a forest covering zone. He stated that titles had been issued in respect of land within the complex and there was occupation.
41. He stated that in 2009, the Government imposed a Caveat or an embargo on land falling within the Mau Complex that was declared a forest. He stated that the said Caveat barred any further transactions involving the parcels of land falling within the Mau Complex. He stated that the Caveat was extended in 2013 and the same was still in force as at the time of his testimony. He stated that according to the records held at the land registry, the suit properties were registered in the name of the Plaintiff. He stated further that there were restrictions registered against the titles of the suit properties on 9th November 2017 on behalf of the 1st Defendant claiming purchaser's interest.
42. He stated that the Plaintiff was registered as the owner of the suit properties on 24th May 2012 during which time the Government restriction on land transactions in the area was still in force. DW5 stated



- that he was unable to trace the parcel files for the suit properties. He produced copies of the registers for the suit properties as exhibits. He stated that the fact that there was a Government embargo was in the public domain.
43. On cross-examination, DW5 stated that before registering a document, the land registrar has a responsibility of ensuring that the document is properly executed and if any consent is required, that the same has been obtained. DW5 stated that he did not have evidence of the Government embargo that he testified about.
44. The Defendants next witness was James Gatune Wathigo(DW6). DW6 was an advocate of the High Court of Kenya. He adopted his witness statement dated 23rd January 2020 as part of his evidence in chief. He stated that he drafted the agreement for sale dated 12th December 2008 between the 1st Defendant and Arap Ngeny. He stated that he acted for both parties in the transaction. He stated that Arap Ngeny was known to him and he executed the agreement in his presence. He stated that he knew Arap Ngeny's signature and that the signature that was appearing in the power of attorney dated 13th March 2012 said to be that of Arap Ngeny did not look like his signature. He stated that Arap Ngeny did not inform him that he was rescinding the agreement dated 12th December 2008.
45. On cross-examination, DW6 stated that he was not an expert in handwriting but that the signature in the power of attorney did not look like the known signature of Arap Ngeny. He admitted that he wrote a letter dated 21st April 2009 requesting for extension of the completion period. On re-examination, DW6 stated that he was familiar with the signature of Arap Ngeny having acted for him in several transactions.
46. The Defendants' next witness was Richard Kiprop Marusoi(DW7). DW7 told the court that he was a farmer. He adopted his witness statement dated 2nd June 2020 as part of his evidence in chief. DW7 stated that Arap Ngeny was well known to him and that he worked with him. DW7 denied that Arap Ngeny gave him a power of attorney dated 13th March 2012. He denied that he signed the said power of attorney. He also denied that he appeared before the Land Control Board (LCB) on behalf of Arap Ngeny. He stated that he was not given any power of attorney by Arap Ngeny in relation to the suit properties and that he did not attend any LCB meeting in relation thereto. He also denied signing any document in relation to the suit properties.
47. On cross-examination, DW7 stated that he knew Arap Ngeny in 2008. He stated that Arap Ngeny had engaged him as an agent in relation to a parcel of land that he was selling. He stated that he was supposed to get purchasers for the land. He stated that he also knew Siele Sigira Advocate who was acting for Arap Ngeny in the sale of the said parcel of land. DW7 stated that there was a suit in Narok between him and one, Erick Kiplangat Cheruiyot in which he filed a statement. He stated that in the said statement, he mentioned that Arap Ngeny had appointed him as a chief agent in the sale of the suit properties. He stated that he did not state in that statement that he was given a power of attorney by Arap Ngeny. He stated that what he was given by Arap Ngeny was a letter and not a power of attorney. He stated that he did not have the letter with him. He denied that the letter he was referring to was the power of attorney. He stated that he was told that the Land Control Board (LCB) for the area where the suit properties are situated was not sitting because the land in the area was under a Government embargo. DW7 admitted that he was facing a criminal case in Narok in which Arap Ngeny was the complainant. He stated that he was accused of putting people on Arap Ngeny's land. In re-examination, DW7 stated that he knew Arap Ngeny well and that Arap Ngeny had not sued him. He admitted that the photograph in the power of attorney was his but he did not sign the power of attorney.
48. The Defendants' next witness was Nixon Rono (DW8). DW8 described himself as a boda boda rider. He adopted his witness statement dated 2nd June 2020 as his evidence in chief. He stated that the



photograph at page 60 of the Defendants' bundle of documents shows the people that they removed or evicted from the suit properties together with their belongings. On cross-examination, he stated that the eviction that they carried out was lawful since it was sanctioned by the court. He stated that they were about 20 people when they carried out the eviction and that the people they evicted were related to the 2nd Defendant. He stated that after the eviction of the said people, they occupied the suit properties for about two months until they were removed from the properties through another court order.

49. In re-examination, DW8 stated that when they were carrying out the eviction, they were acting on the instructions of the son of Arap Ngeny and the Plaintiff. He stated that the two told them that they had a court order to evict the occupants of the suit properties. He stated that the photograph he was referred to showed the people they had evicted and their goods that they threw out of the suit properties. He stated that after they left the premises following another court order, the earlier occupants of the premises returned.
50. The Defendants' last witness was Alex Mwongera (DW9). DW9 was a document examiner. He told the court that he was based at DCI Headquarters in Nairobi. He stated that on 26th February 2021, the DCI received some exhibits from the Defendants' advocates on record. The exhibits were a power of attorney dated 13th March 2012 which contained a questioned signature of Arap Ngeny and a land sale agreement dated 12th December 2008 which bore the known signature of Arap Ngeny. He stated that the Defendants' advocates requested the DCI to ascertain whether the signature in the power of attorney and in the land sale agreement were made by the same person. He stated that he carried out examination of the said exhibits and in his opinion, he was of the view that the signatures in the two documents were not similar. He stated that the same were distinguishable. He stated that he formed the opinion that the signatures were not made by the same person. He thereafter prepared a report that he produced in court as an exhibit.
51. On cross-examination, DW9 stated that he was informed that the complainant on whose behalf the examination of the said exhibits was requested was the 2nd Defendant. He stated that apart from the agreement for sale that was presented for examination and which was said to contain the known signature of Arap Ngeny, he did not look at other documents with known signatures of Arap Ngeny. DW9 admitted that the power of attorney that was forwarded to him for examination was a photocopy and that photocopies are prone to manipulation. In re-examination, DW9 stated that the documents that were presented to him for examination were clear and legible.
52. After the close of evidence, the parties were directed to make closing submissions in writing.

The submissions:

53. The Plaintiff filed submissions and further submissions dated 17th August 2022 and 30th December 2022 respectively. The Defendants on the other hand filed their submissions dated 29th September 2022.

The Plaintiff's submissions:

54. In her submissions, the Plaintiff framed five (5) issues for determination namely;
 - a. Whether there was a valid agreement between Arap Ng'eny and the Defendants.
 - b. Whether the Plaintiff is the legitimate owner of the suit properties having paid for the same.
 - c. Whether there was fraud in acquiring and transferring the suit properties to the Plaintiff.
 - d. Whether the Defendants are trespassers on the suit properties.



- e. Whether the Defendants should be ordered to vacate the suit properties.
 - f. Whether the Defendants should pay the mesne profit that they have obtained for the period they have been on the land illegally.
55. On the issue of whether there was a valid agreement for sale between the Defendants and Arap Ngeny, the Plaintiff submitted that the Defendants breached the agreement for sale between them and Arap Ngeny by their failure to pay the balance of the purchase price. The Plaintiff submitted that at the time the Plaintiff purchased the suit properties in March 2012, the agreement between the Defendants and Arap Ngeny had lapsed due to default in December 2009. The Plaintiff submitted that out of a total purchase price of Kshs. 23,800,000/-, the Defendants had only paid Kshs. 8,700,000/-. The Plaintiff submitted that the Defendants failed to pay the balance of the purchase price even after time was extended for them to do so. The Plaintiff submitted that in his witness statement dated 24th July 2012, the 2nd Defendant stated that he would accept a refund of the money that he had paid to Arap Ngeny. The Plaintiff submitted that the Defendants failed to prove that there was a Government Caveat against land transactions in the area where the suit properties are situated and as such the LCB consent could not be issued.
56. On the issue whether the Plaintiff is the legitimate owner of the suit properties, the Plaintiff submitted that she entered into a valid agreement for sale dated 1st March 2012 with Arap Ngeny (deceased) in respect of the suit properties. The Plaintiff submitted that Arap Ngeny supplied her with all the completion documents including the LCB consent and upon payment of the full purchase price, the suit properties were transferred to her. The Plaintiff submitted that she was thereafter given vacant possession of the suit properties. The Plaintiff submitted that prior to the purchase of the suit properties, she carried out due diligence and confirmed that there were no encumbrances against the titles of the suit properties. The Plaintiff submitted that the Defendants did not prove that she acquired the suit properties fraudulently and as such her titles to the suit properties were protected under section 26 of the Land Registration Act 2012.
57. The Plaintiff submitted that the Defendants illegally occupied the suit properties knowing well that the same were owned by the Plaintiff. The Plaintiff submitted that the mere occupation of the suit properties by the Defendants did not amount to ownership of the same. The Plaintiff submitted that the Defendants were trespassers on the suit properties.
58. On whether the Plaintiff acquired the suit properties fraudulently, the Plaintiff submitted that fraud must be pleaded, particularized and proved to a standard higher than on a balance of probabilities. The Plaintiff cited the cases of *Vijay Morjaria v. Nansingh Madhusingh Darbar & another* [2000] eKLR, *Kinyanjui Kamau v. George Kamau Njoroge* [2015] eKLR and *Arthi Highway Developers Limited v. West End Butchery Limited & 6 others* [2015]eKLR in support of this submission. The Plaintiff submitted that the Defendants pleaded merely that the Plaintiff acquired the suit properties fraudulently without giving the particulars of the alleged fraud. The Plaintiff urged the court to ignore the evidence of the document examiner (DW9). The Plaintiff submitted that DW9 considered only one known signature of Arap Ngeny. The Plaintiff submitted that it was necessary for DW9 to examine several documents with the known signatures of Arap Ngeny before reaching the conclusion that the signature on the disputed power of attorney was not that of Arap Ngeny. The Plaintiff cited *Re Estate of Lihasi Bidali(deceased)*[2019]eKLR in support of this submission.
59. The Plaintiff submitted further that DW9 examined a photocopy of the power of attorney that was donated by Arap Ngeny rather than the original document and admitted that photocopies of documents are prone to manipulation. The Plaintiff submitted further that the person who could say



whether the signature on the power of attorney was that of Arap Ngeny or not was the advocate who witnessed the signature of Arap Ngeny on the document.

60. The Plaintiff submitted that the valuation report that was produced by DW2 had no probative value. The Plaintiff submitted that DW2 could not have inspected the suit properties for the purposes of the said valuation because the same were already in the possession of the Plaintiff. The Plaintiff submitted further that no evidence was placed before the court of the approvals for the buildings that were alleged to have been put up by the Defendants on the suit properties. The Plaintiff submitted that if any buildings had been put up on the suit properties then the same were illegal for want of approval from the relevant County government.
61. The Plaintiff submitted that DW5 did not produce any documentary evidence in proof of the existence of the alleged Government embargo that was alleged to have frustrated the agreement between Arap Ngeny and the Defendants. The Plaintiff submitted that the suit properties fell outside the area that was affected by the said embargo. The Plaintiff submitted that she placed in evidence a letter dated 22nd February 2012 and Kenya Gazette Notice No. 6265 dated 25th April 2012 which showed that the suit properties were not affected by the said embargo. The Plaintiff submitted that the alleged embargo was being used by the Defendants as an excuse for their failure to perform their part of the agreement with Arap Ngeny.
62. The Plaintiff submitted that DW7 gave a false testimony. The Plaintiff submitted that in Nakuru ELCC No. 111 of 2014, DW7 admitted that he was instructed by Arap Ngeny through a power of attorney to facilitate the transfer the suit properties to the Plaintiff. The Plaintiff submitted that DW7 had disowned the transaction between Arap Ngeny and the Plaintiff in which he was involved because he had been sued by the family of Arap Ngeny for failing to account for the monies that he received on behalf of Arap Ngeny in another transaction.
63. The Plaintiff submitted further that the Defendants defence and counter-claim was defective for failure by the Defendants to join the Chief Land Registrar in the suit. The Plaintiff submitted that a suit for the cancellation of a title cannot be maintained without the Chief Land Registrar having been made a party to such suit because it is only the Land Registrar who can be directed to cancel a title. The Plaintiff submitted that failure to join the Chief Land Registrar in their counter-claim was fatal to the Defendants' claim for the cancellation of the titles held by the Plaintiff in respect of the suit properties.
64. On whether the Defendants were trespassers on the suit properties, the Plaintiff submitted that she had proved that the suit properties were acquired by her legally and as such the Defendants had no right to occupy the same. The Plaintiff reiterated that the payment of a deposit did not give the Defendants proprietary rights over the suit properties. The Plaintiff submitted that as the registered owner of the suit properties, the Plaintiff was entitled to free access, occupation and use of the same for her benefit. The Plaintiff submitted that the Defendants had deprived her of her proprietary rights over the suit properties and that the Defendants' continued occupation of the suit properties amounted to trespass. On whether the Defendants should be ordered to vacate the suit properties, the Plaintiff submitted that the suit properties were owned by the Plaintiff and as such the Defendants had no right to continue benefiting from the same.
65. On the issue of mesne profits, the Plaintiff submitted that the Defendants being trespassers on the suit properties should not be allowed to derive any benefit from an illegal act. The Plaintiff submitted that she was entitled to mesne profits from the Defendants. The Plaintiff submitted that the Defendants had derived income from the suit properties which they should account for. The Plaintiff submitted that the Defendants should remit to her all the income that the Defendants have generated from the suit properties from the time the properties were transferred to the Plaintiff.



66. On the issue of damages, the Plaintiff submitted that she deserved to be awarded damages for all the unfair business practices that the Defendants had subjected her to. In support of this submission, the Plaintiff cited *DIM Agencies Limited v. Kenya Airports Authority* [2021]eKLR in which the court held that where trespass has been proved, a party need not prove that he has suffered any specific damage or loss to be awarded damages and that the court is under a duty to assess the damages awardable depending on the unique facts and circumstances of each case.
67. On the damages to be awarded, the Plaintiff urged the court to assess reasonable damages having regard to the circumstances of this case and considering the fact that in the aforesaid case that the Plaintiff relied on, the court had awarded the Plaintiff a sum of Kshs. 10,000,000/- as damages for trespass on a parcel of land within Nairobi City measuring 0.6070 hectares (approximately 1.5 acres).
68. The Plaintiff urged the court to grant the prayers in her amended plaint dated 12th October 2018 and to dismiss the Defendants' counter-claim with costs.
69. As mentioned earlier, the Plaintiff filed further submissions dated 30th December 2022. These submissions were filed without leave of the court and as such the same were irregular. It is also not clear as to what prompted the filing thereof since the issues raised therein had already been covered in the Plaintiff's earlier submissions. The only new thing I picked from the same was that the 1st Defendant's suit (Nakuru HCCC No. 32 of 2010 (the High Court suit)) against Arap Ngeny for specific performance of the agreement for sale between Arap Ngeny and the 1st Defendant in respect of the suit properties abated following Arap Ngeny's death on 1st July 2014 and the 1st Defendant's application for the revival of the suit and the joinder of the administrators of the estate of Arap Ngeny to the suit was dismissed on 24th March 2022.

The Defendants' submissions:

70. In their submissions dated 29th September 2022, the Defendants submitted as follows by way of introduction: The 1st Defendant entered into a sale agreement with Arap Ngeny on 12th December 2008 for the purchase of the suit properties. The agreed purchase price was Kshs 23,500,000/=. It was among the terms of the agreement that a deposit of Kshs 4,700,000/- was payable and the balance of Kshs 18, 800,000/= was payable upon completion and registration of transfers in favour of the 1st Defendant.
71. The Defendants submitted that it was a further term of the agreement that the 1st Defendant was to get possession of the suit properties upon signing of the sale agreement and this happened. The Defendants submitted that Arap Ngeny thereafter failed to deliver the completion documents due to an embargo/ caveat that had been placed on dealings with the land in the area where the suit properties are situated a fact that was not disputed.
72. The Defendants submitted that the 1st Defendant moved to the High Court in Nakuru in HCCC No. 32 of 2010 (the High Court suit) against Arap Ngeny seeking specific performance of the agreement. The Defendants submitted that the plaintiff herein purported to have bought the suit properties from Arap Ngeny. The Defendants submitted that the Plaintiff having acquired title to the suit properties fraudulently, unprocedurally and in a corrupt manner, the Plaintiff attempted to evict the 1st Defendant from the subject properties but the 1st Defendant was reinstated into the properties by the court in this suit while it was still in Nakuru. The Defendants submitted that the Plaintiff attempted all manner of tricks to stop the two suits from getting concluded including refusing to have this matter heard in Nakuru and even applying for judges to recuse themselves from the matter. The Defendants submitted that the matter was eventually transferred to Nairobi and set down for hearing.



73. The Defendants framed the following four issues for determination by the court;
- a) Who is the legitimate/ beneficial owner of the suit properties?
 - b) Is the plaintiff entitled to an order of eviction against the defendants?
 - c) Are the defendants entitled to the reliefs sought and especially an order for compensation to the tune of Kshs 103 Million?
 - d) Who should bear the costs of the suit?
74. On the first issue, the Defendants submitted that from the analysis of the evidence tendered by both parties, the 1st Defendant was the legitimate and bona fide owner or beneficial owner of the suit properties for the following reasons;
- a) The sale agreement dated 1st March 2012 between Arap Ngeny and the Plaintiff was a complete nullity. The agreement appreciated the existence of a court case in which the seller had been sued for specific performance and the payments of the purchase price were made to entities different from the seller. There was no connection between the said entities and Arap Ngeny. Although it was said that the said payments were for onward transmission to Patrick Ngeny (PW3) the supposed beneficial owner of the suit properties, there was no evidence that indeed such payments were made in full to the alleged payees or that the said payments were transmitted to PW3. What came out was that Patrick Ngeny (PW3) had intended through forgery to sell the suit properties behind the back of his father, Arap Ngeny.
 - b) Whereas the balance of the purchase price of Kshs 24,040,000/- was to be paid into an escrow account, there was no evidence that such an account was opened or that any payment reached such an account. The alleged sale was therefore a complete decoy. The Plaintiff did not produce any bank statement to show that she had any such monies in her account. Anyone could write a cheque and fill an RTGS form and get it stamped by a bank and as such the same were not sufficient proof of payment. A swift confirmation or a certified bank statement would have served as proof payment. There was no evidence that Arap Ngeny acknowledged receipt of any payment from the Plaintiff.
 - c) The Plaintiff failed to prove that she had attended any Land Control Board (LCB) meeting or that she had obtained a proper LCB consent to transfer the suit properties to her name. The Plaintiff also failed to prove that the suit properties were exempted from the embargo that was imposed by the Government against dealings with land in the area where the properties are situated. The allegation that the said embargo was lifted through the Kenya Gazette of May 2012 was an afterthought since the sale took place in March 2012 and the purported consents were issued in April 2012. The Plaintiff could back date letters but not the Kenya Gazette notice which in any event was not produced as evidence in court.
 - d) The Plaintiff failed to produce in evidence the transfer documents that were signed in her favor by Arap Ngeny or to show that she paid stamp duty or paid for registration of the transfer of the suit properties in her favor. The plaintiff only waived copies of titles as evidence of ownership that were not enough proof of ownership.
 - e) The sale agreement relied on by the Plaintiff did not state that the suit properties would be sold through a power of attorney. The alleged holder of the power of attorney did not also sign the sale agreement or any other document. He did not even accept the alleged power of attorney that was donated to him.



- f) The power of attorney was not registered and no evidence of its registration was produced in evidence. There was no indication of the same in the copies of the registers that were produced in evidence by the Land Registrar.
- g) The purported power of attorney that was produced by the Plaintiff was only for Plot No. 321. No power of attorney was produced for the other three parcels of land. The said power of attorney was a forgery. The alleged donee denied having been given a power of attorney in respect of the suit properties.
- h) The Plaintiff tried to forcefully enter the suit properties using an unlawfully obtained injunction order. The court was not amused and threw out the Plaintiff's application and ordered reinstatement of the Defendants into the suit properties.
- i) The plaintiff and all her witnesses failed to show that there was a proper and legal termination of the agreement dated 12th December 2008 between the 1st Defendant and Arap Ngeny. Clause 5 of the said agreement incorporated LSK terms and conditions of sale. The plaintiff did not produce any single letter giving the 1st Defendant a notice to complete the sale. Clause 4 of the said agreement provided that the balance of the purchase price was to be paid upon completion and specifically upon transfer of the suit properties in favor of the 1st Defendant which never occurred. There was no basis for the Plaintiff's claim that the 1st Defendant was in breach of the sale agreement of 2008. The 1st Defendant was always ready and willing to complete the agreement.
- k) There was no reason for Arap Ngeny not completing the agreement if indeed the embargo by the Government on the suit properties had been lifted. There was also no reason why Arap Ngeny would sell the suit properties to another purchaser while there was an ongoing case in court.
- l) The Plaintiff knew that the suit properties had been sold and that there was a pending case in court and proceeded to purport to enter into a sale agreement for the same parcels of land with Arap Ngeny. The plaintiff knew that there were persons occupying the suit properties pursuant to a sale agreement and proceeded discretely to obtain an ex-parte order of injunction which she misused to evict the 1st Defendant from the suit properties because her husband was in the provincial administration.
- m) The plaintiff failed to prove that she had possession of the suit properties. Save for the two months the plaintiff illegally occupied the suit properties, the Defendants have been in occupation of the properties legally and legitimately.
- n) In the absence of a legitimate termination of the agreement dated 12th December 2008, Arap Ngeny could not purport to sell the suit properties to the Plaintiff and he had no legal title to pass to the Plaintiff.
- o) The 1st Defendant remains the only legitimate person entitled to be in possession of the suit properties and is the proper bona fide owner of the same.
- p) It is trite law that a title acquired through fraud, unprocedural and in a corrupt manner or other mischievous ways is not a good title.

75. In support of their submissions on that first issue, the Defendants relied on section 158 of the [Land Act](#) 2012, sections 26 and 103 of the [Land Registration Act](#) and the cases of *Elijah Makeri Nyang'wara v. Stephen Mungai Njuguna & Another*[2013]eKLR and *Chauhan v. Omagwa*[1985]KLR 656.



76. On the issue whether the Plaintiff was entitled to an order of eviction against the Defendants, the Defendants submitted that the Plaintiff had no right to claim the suit properties. The Defendants submitted that they had demonstrated the 1st Defendant's interest in the suit properties. The Defendants submitted that the 1st Defendant had also obtained a court order to enable it apply for consent of the LCB once the Government embargo is lifted. The Defendants submitted further that the Plaintiff must comply with section 152E to 152F of the Land Act 2012 before she can evict the Defendants from the suit properties.
77. On the sum of Kshs. 103,000,000/- and other reliefs claimed by the Defendants in the counter-claim, the Defendants submitted that they had demonstrated that they were entitled to the same. On their claim seeking the cancellation of the Plaintiff's titles, the Defendants submitted that a fraudulently obtained title is a useless piece of paper. The Defendants submitted that they had proved that the Plaintiff committed fraud and that Marusoi (DW7) did not sign the instruments of transfer of the suit properties in favour of the Plaintiff. The Defendants submitted that the Plaintiff did not have the instruments of transfer and could not demonstrate how she got registered as the owner of the suit properties. The Defendants submitted that the titles held by the Plaintiff are fraudulent. The Defendants submitted that a fraudulent title is invalid and should be cancelled.
78. The Defendants submitted that they were also entitled to the injunctive reliefs sought. With regard to the compensation for the money stolen and unlawfully picked tea, the Defendants submitted that they had proved that they were evicted from the suit properties and that they stayed out of the premises for two months. The Defendants submitted that during their absence from the properties, the Plaintiff picked tea that she never planted. The Defendants submitted that the items and equipment lost were valued at Kshs. 103,193,600/-. The Defendants submitted that the valuation report that they produced in evidence was not challenged. The Defendants submitted that the 1st Defendant's investment on the suit properties had more than doubled in terms of value. The Defendants submitted that the 1st Defendant should be awarded the said sum of Kshs. 103,193,600/-. The Defendants submitted that they had placed sufficient evidence before the court in support of this claim. In support of this submission, the Defendants cited *Moi Education Centre Co. Ltd v. William Musembi & 16 others* [2017] eKLR.
79. On the issue of costs, the Defendants submitted that costs follow the event unless the court orders otherwise for some compelling reason. The Defendants submitted that they had proved their counter-claim and as such were entitled to the costs of the suit. In support of this submission, the Defendants cited, *Halsbury's Laws of England* and page 101 of *Judicial Hints on Civil Procedure* by Justice(Rtd) Richard Kuloba.
80. The Defendants submitted that the Plaintiff's submissions were filed outside the time that was given by the court and as such the same should be struck out of the court record. The Defendants submitted that if the court finds it fit to consider the said submissions, the court should note that the Plaintiff did not explain how the Defendants breached the agreement dated 12th December 2008 with Arap Ngeny. The Defendants submitted further that the Plaintiff purported to produce evidence through submissions by annexing documents to the submissions for the court's consideration. The Defendants submitted that the purported evidence that was not produced in court was inadmissible and should be disregarded. The Defendants submitted that even if the court was to consider the Kenya Gazette that the Plaintiff had produced unprocedurally, it will be noted that the agreement of sale between the Plaintiff and Arap Ngeny was on 1st March 2012 while the Gazette Notice lifting the Government's embargo was published in May 2012. The Defendants submitted that the embargo had not been lifted as at the time the Plaintiff and Arap Ngeny entered into the said agreement for sale.



81. The Defendants submitted further that their failure to plead fraud was due to the fact that the fraudulent documents were produced by the Plaintiff at the trial and that they did prove fraud. The Defendants submitted further that the Plaintiff did not plead general damages and as such could not ask the court to grant the same. The Defendants submitted further that although the Plaintiff claimed mesne profits, no evidence was led in proof of the same. The Defendants submitted that the claim being in the nature of special damages, the same must be pleaded and strictly proved. The Defendants submitted that failure by the Defendants to join the land registrar to their counter-claim was not fatal as there was no claim directed against the land registrar.
82. In conclusion, the Defendants submitted that the Plaintiff had failed to prove her case to the required standard while on the other hand, the Defendants had proved their counter-claim. The Defendants urged the court to allow their counter-claim.

Analysis and determination:

83. Each party framed its own issues for determination by the court. Issues arise from the pleadings. Matters which are not pleaded are not for determination by the court even if evidence has been led in respect thereof unless both parties acknowledged the existence of the issue and left it to the court for determination. From the parties' pleadings, the following in my view are the issues arising for determination;
- a. As between the Plaintiff and the 1st Defendant, who is the lawful owner of the suit properties?
 - b. Whether the Defendants are trespassers on the suit properties.
 - c. Whether the Plaintiff is entitled to the reliefs sought in the amended plaint.
 - d. Whether the Defendants are entitled to the reliefs sought in the counter-claim.
 - e. Who is liable for the costs of the suit and the counter-claim?

As between the Plaintiff and the 1st Defendant, who is the lawful owner of the suit properties?

84. The suit properties are registered under the Registered [Land Act](#), Chapter 300 Laws of Kenya (now repealed). Sections 27 and 28 of the Registered [Land Act](#) provides as follows:

“ 27. Subject to this Act -

- (a) a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto;
- (b) b) the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied and expressed agreements, liabilities and incidents of the lease.

28. The rights of a proprietor, whether acquired on first registration or whether acquired subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject -



- (a) a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and
- (b) b) unless the contrary is expressed in the register, to such liabilities, rights and interests as affect the same and are declared by section 30 not to require noting on the register:

Provided that nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which he is subject as a trustee.”

85. Section 143(1) and (2) of the Registered *Land Act* provides as follows:

- “(1) Subject to subsection (2), the court may order rectification of the register by directing that any registration be cancelled or amended where it is satisfied that any registration (other than a first registration) has been obtained, made or omitted by fraud or mistake.
- (2) The register shall not be rectified so as to affect the title of a proprietor who is in possession and acquired the land, lease or charge for valuable consideration, unless such proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by his act, neglect or default.”

86. Section 24 and 25 of the *Land Registration Act*, 2012 provides as follows:

“24. Subject to this Act—

- (a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and
- (b) the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.

25.(1) The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject—

- (a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and
- (b) to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.
- (2) Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee.”



87. From the foregoing, it is clear that under the current land registration system and the land registration regime under which the suit properties were registered and purchased by the Plaintiff, the Plaintiff's titles are indefeasible unless any illegality, procedural impropriety or fraud is established in the acquisition thereof.
88. The Plaintiff led evidence that she entered into an agreement for sale of the suit properties with Arap Ngeny on 1st March 2012 under which Arap Ngeny agreed to sell the suit properties to her at a consideration of Kshs. 29,040,000/-. The Plaintiff testified that she paid the full purchase price to Arap Ngeny. The Plaintiff testified that the suit properties were thereafter transferred to her and registered in her name on 24th May 2012. The Plaintiff produced in evidence among others; the agreement of sale between her and Arap Ngeny, the searches that she carried out on the suit properties before and after the suit properties were transferred to her, proof of payment of the purchase price and copies of the title deeds for the suit properties in her name in proof of her ownership of the suit properties.
89. The Plaintiff having proved that she was the registered owner of the suit properties, the burden shifted to the Defendants to demonstrate that the registration of the Plaintiff as the owner of the suit properties was carried out illegally, unprocedurally or fraudulently. The Defendants' case is that at the time Arap Ngeny entered into the agreement of sale dated 1st March 2012 with the Plaintiff, there was already a valid agreement for sale between the 1st Defendant and Arap Ngeny dated 12th December 2008 that was pending completion by Arap Ngeny. The Defendants have argued that the agreement for sale between Arap Ngeny and the Plaintiff was subject to the 1st Defendant's interest in the suit properties. The Defendants have argued that the 1st Defendant had sued Arap Ngeny in the High Court at Nakuru (the High Court suit) for specific performance of the said agreement at the time Arap Ngeny purported to sell the suit properties to the Plaintiff.
90. In her response, the Plaintiff contended that at the time Arap Ngeny sold the suit properties to the Plaintiff, the 1st Defendant had defaulted on its obligations to Arap Ngeny under the agreement between them in that it had failed to pay the balance of the purchase price. The Plaintiff contended that the 1st Defendant's attempt to stop Arap Ngeny from selling the suit properties through a court injunction in the High Court suit was rejected by the court in a ruling that was delivered on 10th December 2010. The Plaintiff has contended that as at 1st March 2012, there was nothing stopping Arap Ngeny from selling the suit properties to the Plaintiff.
91. I am of the view that the issue whether the agreement for sale dated 12th December 2008 between Arap Ngeny and the 1st Defendant was still valid and binding as at 1st March 2012 when Arap Ngeny entered into the second agreement for sale with the Plaintiff cannot be determined in this suit. Arap Ngeny who is now deceased was not joined in this suit as a party and no relief was sought against him by either party. The validity or otherwise of the said agreement for sale between Arap Ngeny and the Plaintiff cannot be determined by the court in the absence of Arap Ngeny. It is understandable why both parties did not see the need for the joinder of Arap Ngeny as a party to this suit. For the Plaintiff, Arap Ngeny had already transferred the suit properties to her and as such she had no claim against Arap Ngeny to warrant joining him to the suit. For the 1st Defendant, it had already sued Arap Ngeny in Nakuru HCCC No. 32 of 2010 (the High Court suit) which was pending as at the time this suit was filed.
92. In my view, the appropriate forum in which the issue of the validity of the agreement of sale dated 12th December 2008 between Arap Ngeny and the 1st Defendant should be determined is the High Court suit where the issue is in contention between the 1st Defendant and Arap Ngeny. It would be prejudicial to Arap Ngeny and against the rules of natural justice if this court was to determine the issue in this suit between the Plaintiff and the Defendants in which Arap Ngeny is not a party.



93. The burden of proof is on he who alleges. The 1st Defendant who has alleged that he had a valid and binding agreement for sale with Arap Ngeny in respect of the suit properties as at 1st March 2012 when Arap Ngeny entered into a second agreement with the Plaintiff had the burden of establishing that fact. In *Kurshed Begum Mirza v. Jackson Kaibunga* [2017] eKLR , the court stated as follows:

“(16) Turning to the second issue; according to section 107 of the *Evidence Act*, the burden of proof in any case lies with the party who desires any court to give judgment as to any legal right or liability. It is for that party to show that the facts which he alleges his case depends upon exist. This is known as the legal burden.

The Halsbury’s Laws of England, 4th Edition, Volume 17, at paras 13 and 14: describes it thus:

“13. The legal burden is the burden of proof which remains constant throughout a trial; it is the burden of establishing the facts and contentions which will support a party’s case. If at the conclusion of the trial he has failed to establish these to the appropriate standard, he will lose.

14. The legal burden of proof normally rests upon the party desiring the court to take action; thus a claimant must satisfy the court or tribunal that the conditions which entitle him to an award have been satisfied. In respect of a particular allegation, the burden lies upon the party for whom substantiation of that particular allegation is an essential of his case. There may therefore be separate burdens in a case with separate issues.” (emphasis added)”

94. Attention of the court has been brought to the fact that after the death of Arap Ngeny on 1st July 2014, the 1st Defendant’s claim against him for specific performance of the agreement for sale dated 12th December 2008 in Nakuru HCCC No. 32 of 2010 (High Court suit) abated and an application by the 1st Defendant herein for the revival of the suit and the joinder of the administrators of his estate to the suit in his place was dismissed by the High Court on 24th March 2022. What this means is that the issue of the validity of the said agreement dated 12th December 2008 was not determined in the High Court suit neither is it pending determination in that suit.

95. Having held that this court cannot determine the issue of the validity of the said agreement between Arap Ngeny and the 1st Defendant because Arap Ngeny is not a party to this suit and the issue having not been determined in the High Court suit, I have to hold that the Defendants have failed to establish that there was a valid and binding agreement between the 1st Defendant and Arap Ngeny as at 1st March 2012 when Arap Ngeny entered into a second agreement for sale with the Plaintiff in respect of the suit properties. There would be no basis therefore for this court to hold as urged by the Defendants that the said agreement dated 1st March 2012 between Arap Ngeny and the Plaintiff was subject to the agreement between Arap Ngeny and the 1st Defendant.

96. The Defendants had also contended that the transfer of the suit properties to the Plaintiff was illegal and fraudulent in that the consents of the Land Control Board were not obtained and the powers of attorney if any through which the purported consents of the Land Control Board were applied for were forged.

97. The term fraud is defined in Black’s Law Dictionary 9th Edition as follows;

“Fraud consists of some deceitful practice or willful device, resorted to with intent to deprive another of his right, or in some manner to do him an injury. As distinguished from



negligence, it is always positive, intentional. As applied to contracts, it is the cause of an error bearing on a material part of the contract, created or continued by artifice, with design to obtain some unjust advantage to the one party, or to cause an inconvenience or loss to the other. Fraud, in the sense of a Court of equity, properly includes all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust, or confidence justly reposed, and are injurious to another, or by which an undue and unconscientious advantage is taken of another”.

98. As correctly submitted by the Plaintiff fraud must be pleaded with the necessary particulars and proved to a standard beyond a balance of probabilities. In *Vijay Morjaria v. Nansingh Madhusingh Darbar & another* (supra), the court (Tunoi JA) stated as follows:

“It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must of course be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and as distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.”

99. In *Railal Gordhanbhai Patel v Lalji Makanji* [1957] E.A 314, the court stated as follows at page 317:

“Allegation of fraud must be strictly proved: although the standard of proof may not be so heavy as to require proof beyond reasonable doubt, something more than a mere balance of probabilities is required.”

100. In *Virani t/a Kisumu Beach Resort v. Phoenix of East Africa Assurance Co. Ltd* [2004] 2 E.A KLR 269, the court held that:

“Fraud is a serious quasi-criminal imputation and it requires more than proof on a balance of probability though not beyond reasonable doubt”.

101. In *Kampala Bottlers Ltd. v. Damanico (UG) Ltd.* [1990-1994] E.A141(SCU), the Supreme Court of Uganda held that:

“To impeach the title of a registered proprietor of land, fraud must be attributable to the transferee either directly or by necessary implication. The transferee must be guilty of some fraudulent act or must have known of some act by somebody else and taken advantage of such act. The burden of proof must be heavier than a balance of probabilities generally applied in civil matters.”

102. Without fraud having been pleaded by the 1st Defendant with the necessary particulars, the court is unable to determine whether it was Arap Ngeny or the Plaintiff who was involved in the alleged fraud. In any event, there is no evidence that the Plaintiff who was purchasing the suit properties at Kshs. 29,040,000/- was involved in the alleged fraud. I am unable to see how the Plaintiff would have appointed an attorney for Arap Ngeny or how and why she would have arranged for consents of the Land Control Board to be issued in the name of someone else other than Arap Ngeny. The Defendants submitted that it was Arap Ngeny’s son, Patrick Ngeny(PW3) who tried to fraudulently sell the suit properties to the Plaintiff behind the back of Arap Ngeny. PW3 was not a party to the suit and his alleged acts of fraud which in any event were neither pleaded nor proved could not be attributed to the Plaintiff.



103. I am not persuaded by the Defendants that the suit properties were transferred to the Plaintiff either without Land Control Board(LCB) consents or with fraudulent consents. It was alleged that the land in the area where the suit properties are situated were under Government embargo and as such no consent could be issued in respect of transactions involving the same. The Plaintiff tendered evidence showing that the Chief Land Registrar had written to the District Land Registrar, Nakuru on 22nd February 2012 lifting the embargo on the suit properties. This was before the consents were issued in respect thereof on 5th April 2012. The notice lifting the Government embargo on the suit properties among others was subsequently published in the Kenya Gazette of 11th May 2012. The LCB consents for the sale and transfer of the suit properties were therefore not issued when the Government embargo which according to the Chief Land Registrar was imposed in error was in force.
104. It was also alleged that Richard Kiprop Marusoi (DW7) did not apply for LCB consent on behalf of Arap Ngeny and as such the consents that were issued in his name were all fraudulent. I got the impression that Richard Kiprop Marusoi (DW7) was not a credible witness. DW7 stated in cross-examination that he had indeed recorded a statement that was filed in a pending case in Narok in which he had admitted to having been issued with a power of attorney by Arap Ngeny to act for him in relation to the sale of the suit properties. In the said statement that the Plaintiff filed in court irregularly during submissions, DW7 described himself as a legal manager and agent of Arap Ngeny and stated that because of the good work he used to perform for Arap Ngeny, he (Arap Ngeny) used to give him powers of attorney so that he could act on his behalf and the example he gave of the powers of attorney that had been given to him by Arap Ngeny were the powers of attorney in respect of the suit properties. A person who recorded such a statement and had it filed in the High Court in a suit in which he was a party cannot turn around and claim that he was not given powers of attorney by Arap Ngeny in respect of the suit properties. I am unable to see why Molo Land Control Board could have issued a consent for the suit properties in the name of DW7 if he had not applied for the same and for him to so apply, he must have had a power of attorney issued by Arap Ngeny. I am persuaded that DW7 must have decided to disown the said powers of attorney following the death of Arap Ngeny and the filing of a suit against him in relation to some of the properties that he handled on his behalf.
105. There was also the issue of the powers of attorney not having been signed by Arap Ngeny. Like the issue mentioned earlier, this is an issue which this court cannot determine in a suit in which Arap Ngeny is not a party. It is for Arap Ngeny to say whether he signed the subject power of attorney or not. This court would be condemning Arap Ngeny unheard if it was to say that he signed or not signed the said power of attorney. Nothing therefore turns out on this issue.
106. The Defendants contended also that there was only one power of attorney produced in evidence and that it was for one parcel of land only. The Defendants claimed also that the instruments of transfer were not produced in evidence. As mentioned earlier, the issue of fraud in the transfer of the suit properties to the Plaintiff was not pleaded by the Defendants. The only issue raised was that the suit properties were sold and transferred to the Plaintiff subject to the 1st Defendant's purchaser's interest. The Plaintiff cannot therefore be blamed for not producing all the powers of attorney and instruments of transfer in court. No fraud or illegality involving these documents were raised or pleaded by the Defendants. It is not even clear to the court where the power of attorney that the Defendants presented for examination by the Document Examiner (DW9) came from. That power of attorney was not produced in evidence by the Plaintiff. I have not seen on record the Supplementary Bundle of Documents dated 19th February 2020 which the Defendants claimed to have contained such a document. The Defendants have also raised the issue of non-registration of the said powers of attorney. I have seen from the power of attorney that the Defendants presented for examination by the



Document Examiner that the same was registered in the register of powers of attorney. It is not clear therefore which other registration the Defendants were looking for.

107. The Defendants called Nakuru County Land Registrar (DW5) as a witness. DW5 produced copies of the land registers showing that the suit properties were registered in the name of the Plaintiff. DW5 told the court that he did not trace the parcel file for the suit properties that contained transactional documents. DW5 told the court however that before registering documents, they normally confirm that the same are complete. It follows therefore that the Plaintiff could not have been registered as the owner of the suit properties without instruments of transfer or LCB consents.
108. Due to the foregoing, the Defendants have not satisfied me that the Plaintiff acquired the suit properties illegally, unprocedurally or fraudulently. The Plaintiff is therefore the lawful owner of the suit properties.

Whether the Defendants are trespassers on the suit properties.

109. Trespass has been defined as any intrusion by a person on the land in the possession of another without any justifiable cause. See, Clerk & Lindsell on Torts, 18th Edition, page 923, paragraph, 18-01. In *Gitwany Investments Limited v. Tajmal Limited & 3 others* [2006] eKLR, it was held that title to land carries with it legal possession. This means that even if one does not have actual possession of land, so long as he has a title to the land, that is deemed as possession for the purposes of trespass.
110. I have held that the Plaintiff is the lawful proprietor of the suit properties. The Defendants have not convinced me that they have any justifiable cause for occupying the suit properties. In the absence of such cause, the Defendants are trespassers in the suit properties.

Whether the Plaintiff is entitled to the reliefs sought in the amended plaint.

111. The Plaintiff has proved her claim against the Defendants. The Plaintiff is therefore entitled to most of the reliefs sought in the amended plaint. The Plaintiff has sought several reliefs which I have set out in detail earlier in the judgment. The Plaintiff is entitled to the declaratory reliefs sought and an order for the eviction of the Defendants from the suit properties. As for the accounts for the tea sales, I am not satisfied that a proper basis was laid for the same. From the evidence on record, the Plaintiff did not plant the tea on the suit properties. The same were planted by Arap Ngeny. There is also evidence that the Defendants planted more tea plants on the suit properties and have been maintaining the plants. I am of the view that the Plaintiff and the Defendants were not in a fiduciary relationship that would entitle the Plaintiff to accounts in respect of the Defendants activities on the suit properties.
112. In my view, the Defendants were trespassers and what the Plaintiff is entitled to from them is damages for trespass or mesne profits. In the Indian case of *Triloki Nath Dhar v. Dharmarth Counsel, Srinagar and others*, AIR 1975 J and K76, the court stated as follows on the suits for accounts:

“The defendant did not stand in any fiduciary capacity so as to impose upon him a legal obligation to render accounts to the plaintiff, the relation being only that of a contractor and contractee/promisor and promisee... The scope of suit for accounts is limited to a certain number of cases for instance between one partner against another, between the beneficiary against the executor or administrator, between mortgagor against a mortgagee, between a cestui que trust against a trustee and between principal against an agent. But no suit for accounts can be maintained by a promisee against a promisor or as between two contracting parties.”



113. The Plaintiff also sought mesne profits. In *Attorney General v. Halal Meat Products Limited* [2016] eKLR the Court of Appeal stated as follows on mesne profits:

“It follows therefore that where a person is wrongfully deprived of his property he/she is entitled to damages known as mesne profits for loss suffered as a result of the wrongful period of occupation of his/her property by another. See *McGregor on Damages*, 18thEd. para 34-42.”

114. In the case of *Rajan Shah T/A Rajan S. Shah & Partners v. Bipin P. Shah* [2016] eKLR the court stated as follows:

“The term ‘mesne profits’ relates to the damages or compensation recoverable from a person who has been in wrongful possession of immovable property. The Mesne profits are nothing but a compensation that a person in the unlawful possession of others property has to pay for such wrongful occupation to the owner of the property It is settled principle of law that wrongful possession is the very essence of a claim for mesne profits and the very foundation of the unlawful possessor’s liability therefore. As a rule, therefore, liability to pay mesne profits goes with actual possession of the land. That is to say, generally, the person in wrongful possession and enjoyment of the immovable property is liable for mesne profits.”

115. In *Peter Mwangi Mbuthia & another v. Samow Edin Osman* [2014] eKLR the Court of Appeal stated as follows on proof of mesne profits:

“We agree with counsel for the appellants that it was incumbent upon the respondent to place material before the court demonstrating how the amount that was claimed for mesne profits was arrived at. Absent that, the learned judge erred in awarding an amount that was neither substantiated nor established.”

116. The Plaintiff claimed mesne profits but did not place any evidence before the court that could assist the court in awarding the same. The Plaintiff did not even indicate either in the plaint or submissions the amount she was claiming as mesne profits. The submissions by the Plaintiff were on damages for trespass. As correctly submitted by the Defendants, the Plaintiff did not claim damages for trespass and as such she is not entitled to the same. In the absence of any evidence in proof of the claim for mesne profits, the court will not grant the same.

Whether the Defendants are entitled to the reliefs sought in the counter-claim.

117. From the foregoing findings by the court, the 1st Defendant has failed to prove its counter-claim against the Plaintiff and as such it is not entitled to any of the reliefs sought in its counter-claim. I have held that the Plaintiff is the lawful owner of the suit properties. As the owner of the suit properties, the Plaintiff had a right to enter the same. The 1st Defendant is therefore not entitled to the declaratory reliefs sought in its counter-claim. There is also no basis for the cancellation of the Plaintiff’s titles for the suit properties. The Defendants are also not entitled to the injunctive reliefs sought. The compensation claimed which are in the nature of special damages were not proved and as such the 1st Defendant is not entitled to the same.

118. On the issue of costs, the Plaintiff has succeeded in her claim against the Defendants. No reason has been given that would justify denying the Plaintiff her costs of the suit and the counter-claim. The 1st Defendant shall bear the costs of the suit and the counter-claim.



Conclusion:

119. In conclusion, I hereby enter judgment for the Plaintiff against the Defendants as follows;

- a. I declare that the Plaintiff is the lawful owner of all those parcels of land known as Olenguruone/Amalo/314, Olenguruone/ Amalo/315, Olenguruone/Amalo/316 and Olenguruone/Amalo/321(“the suit properties”).
- b. I declare that the Defendants are trespassers on the suit properties.
- c. The Defendants shall vacate and hand over possession of the suit properties to the Plaintiff within forty-five (45) days from the date hereof in default of which the Plaintiff shall be at liberty to apply for warrants their forceful eviction from the suit properties.
- d. The 1st Defendant’s counter-claim is dismissed.
- e. The Plaintiff shall have the costs of the suit and the counter-claim to be paid by the 1st Defendant.

DELIVERED AND DATED AT NAIROBI THIS 18TH DAY OF APRIL 2023

S. OKONG’O

JUDGE

Judgement delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:

Ms. Wangui for the Plaintiff

Ms. Tuwei h/b for Mr. Kirimi for the Defendants

Ms. J. Omondi-Court Assistant

