



Murang'a Road Motor Mart Limited & 2 others v Rockville Junior Academy Limited & 8 others (Environment & Land Case 1382 of 2016 & 174 of 2017 & 706 of 2011 (Consolidated)) [2023] KEELC 18935 (KLR) (22 May 2023) (Judgment)

Neutral citation: [2023] KEELC 18935 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 1382 OF 2016 &
174 OF 2017 & 706 OF 2011 (CONSOLIDATED)**

JO MBOYA, J

MAY 22, 2023

BETWEEN

MURANG'A ROAD MOTOR MART LIMITED PLAINTIFF

AND

ROCKVILLE JUNIOR ACADEMY LIMITED 1ST DEFENDANT

GERVASE OMOLO ODIKE 2ND DEFENDANT

CHIEF LAND REGISTRAR 3RD DEFENDANT

**THE TRUSTEES OF THE KENYA INDUSTRIAL RESEARCH &
DEVELOPMENT STAFF RETIREMENT & GROUP LIFE ASSURANCE
SCHEME 4TH DEFENDANT**

NAIROBI CITY COUNTY GOVERNMENT 5TH DEFENDANT

DIRECTOR OF SURVEY 6TH DEFENDANT

FRANCIS NG'ANG'A MUNDIA 7TH DEFENDANT

JOHN NDIRANGU KARIUKI 8TH DEFENDANT

AS CONSOLIDATED WITH

ENVIRONMENT & LAND CASE 174 OF 2017

BETWEEN

**KENYA INDUSTRIAL RESEARCH & DEVELOPMENT STAFF RETIREMENT
& GROUP LIFE ASSURANCE SCHEME (SUING THROUGH ITS TRUSTEES,**



**NAMELY, AUTHUR S ONYUKA, JACKSON O. OMAMO, JOSEPH K KAMAU,
LILIAN K NKAABU & AGNES C KISORYO) PLAINTIFF**

AND

MURANG'A ROAD MOTOR MART LIMITED DEFENDANT

AS CONSOLIDATED WITH

ENVIRONMENT & LAND CASE 706 OF 2011

BETWEEN

ROCKVILLE JUNIOR ACADEMY LIMITED PLAINTIFF

AND

FRANCIS NG'ANG'A MUNDIA 1ST DEFENDANT

JOHN NDIRANGU KARIUKI 2ND DEFENDANT

JUDGMENT

Introduction and Background

1. The subject Judgment relates to three (3) separate suits which were filed by the various Parties; but which however touch on and concern the property otherwise referred to as L.R No. Nairobi Block 107/1/1133 or Nairobi Block 107/1133. For good measure, the dispute pertains to whether the registration numbers alluded to/ concern one and the same property or otherwise.
2. On one part, the Plaintiff herein filed a Plaint dated the 9th November 2016; and which was thereafter amended on the 20th March 2017. In respect of the amended Plaint, the Plaintiff has sought for the following Reliefs;
 - i. A Permanent Injunction restraining the 1st Defendant, his servants, agents and/or employees and/or anyone else claiming ownership under him from disturbing, trespassing, alienating, claiming ownership and/or interfering with the Plaintiff's quite possession, peaceful enjoyment and/or ownership of the parcel of land known and registered as L.R No. Nairobi Block 107/1133 or any part thereof.
 - ii. A declaration that the Plaintiff is the Bona fide and Legal Owner of all that parcel of Land known and registered as L.R No. Nairobi Block 107/1133 or any part thereof..
 - iii. An order do issue compelling the 1st Defendant to produce before the Honourable Court all original sale and transfer documents including the title to his property L.R No. Nairobi/ Umoja/Block 107/1/1133 for examination.
 - iv. An order do issue compelling the 4th Defendant to produce before the Honourable Court all the original sale and transfer document to L.R No. Nairobi Block/107/1133 for examination.
 - v. An order do issue compelling the 3rd and 5th Defendants to produce before the Honourable court their respective files on L.R No's Nairobi/Umoja/Block/107/1/1133 and Nairobi Block 107/1133 for examination.



- vi. A declaration that the 1st Defendant purported parcel of Land L.R No. Nairobi/Umoja/Block 107/1/1133 does not exist.
 - vii. An order do issue compelling the 1st and 4th Defendants to surrender all original documents of title to L.R No. Nairobi/Umoja/Block/107/1/1133 and Nairobi Block 107/1133 and Nairobi/Umoja/Block/107/1/1133 to the 3rd Defendant for immediate cancellation.
 - viii. The Honourable court be pleased to issue an order directing the 3rd and 5th Defendants to expunge and/or cancel any records reflecting the 1st and/or 4th Defendants as the registered owners of Nairobi Block/107/1133.
 - ix. The Defendants be condemned to pay costs of this suit.
 - x. Any other order or relief that this Honourable court may deem fit to grant.
3. Inevitably, upon being served with the amended Plaint herein, the Defendants variously filed their respective Statements of Defenses. Furthermore, the 1st and 2nd Defendants also filed a Counter-claim.
4. The other suit relates to ELC No. 174 of 2017, which was filed by the 4th Defendant herein. For clarity, the suit was filed vide Plaint dated the 14th March 2017 and which alludes to the following Reliefs;
- a. The Defendant (now the Plaintiff) by itself and/or through its directors, shareholders, employees, servants and/or agents be restrained by way of a permanent injunction from trespassing, disturbing, interfering with the Plaintiffs possession, use and ownership, alienating, claiming ownership, developing or wasting in any way whatsoever all that parcel of land known as Nairobi/Umoja/Block/107/1/1133.
 - b. A declaration that the Plaintiff herein (4th Defendant) is the bona fide legal and registered owner of the property known as Nairobi/Umoja/Block/107/1/1133.
 - c. A declaration that the title held by the Defendant (the Plaintiff) and known as Nairobi/Block/107/1133 is defective, irregular, a fraud and thus a nullity.
 - d. An order do issue compelling the Defendant to surrender to this Honourable court and/or to the Chief Land Registrar original title Documents known as Nairobi/Block/107/1133 for immediate cancellation.
 - e. Orders do issue directing and compelling the Chief Land Registrar to cancel, expunge and remove all records of entries relating to the property known as Nairobi/Block/107/1133 from the Land Registry record.
 - f. Damages for trespass as against the Defendant.
 - g. Cost of the suit be borne by the Defendant.
 - h. Interest on Damages for trespass and costs from the date of Judgment until payment in full.
 - i. Any other orders that this Honourable court may deem fit and just to grant in the circumstances.
5. Instructively, upon being served with the Plaint vide ELC No. 174 of 2017, the Defendant therein (who is the Plaintiff in the consolidated suit) duly entered appearance and thereafter filed a Statement of Defense on the 19th July 2017. For clarity, the Defendant disputed the claims at the foot of the said Plaint.



6. There was also ELC No. 706 of 2011 which was filed by the 1st Defendant in the consolidated suit (Rockville Junior Academy Ltd) and wherein the said claimant sought for the following Reliefs.
 - a. A Permanent Injunction to restrain the defendants jointly and/or severally either by themselves, servants, employees or agents and any body acting or purporting to act under the Defendants authority from trespassing, encroaching, disposing of, selling, alienating, charging, leasing, pleadings or in other manner whatsoever dealing and/or interfering with the property known as Nairobi Block 107/1/1133.
 - b. General Damages for malicious damages costs on L.R No. Nairobi/Block/107/1/1133.
 - c. The Officer in charge of Division Buru Buru Police Station do enforce the orders of the court and do ensure that the law and order is maintained.
 - d. Cost of the suit.
 - e. Interest on cost of the suit.
 - f. Any other or further reliefs and remedy which the Honourable court may deem fit to award.
7. Suffice to point out that there was a dispute as to whether or not the summons to enter appearance and Plaint in respect to the instant matter were duly served. Nevertheless, it is instructive to note that the firm of M/s Murage Juma & Company Advocates ultimately filed a Notice of Appointment of advocate on behalf of the 1st Defendant on the 24th October 2017.
8. However, there is no evidence that a Statement of Defense, or any other form of denial, was ever filed by and on behalf of either of the Defendants.
9. Insofar as the dispute herein touches on and concerns a related property, which is being claimed by the disputants herein, the subject proceedings were directed to be taken in respect of the current file. Invariably, the suits were consolidated and the proceedings have so far been taken and recorded in ELC No. 1382 of 2016, which was constituted as the Lead File.

Evidence By The Parties

A: The Plaintiff's Case:

10. The Plaintiff's case revolves and gravitates around the Evidence of Five witnesses (5), namely, Francis Ng'ang'a Mundia (PW1), John Peter Ndambuku (PW2), Michael Thiong'o Kinyanjui (PW3), Wilfred Muchai (PW4) and Gildine Gatwiri Karani (PW5), respectively.
11. It was the testimony of PW1, that same is a Director of the Plaintiff company and that the Plaintiff company deals in selling and buying of motor vehicles and related accessories. In addition, the witness testified that on or about May 2005, same entered into an exchange Agreement, culminating unto him (PW1) acquiring the property known as L.R No. Nairobi Block 107/1133, from John Ndirangu Kariuki.
12. Furthermore, the witness testified that at the time of the execution of the exchange agreement, the Vendor, namely, John Ndirangu Kariuki agreed to deliver unto him the duly signed transfer forms for the subject property measuring 0.400 Ha.
13. Additionally, the witness testified that at the same time the vendor also represented unto him (the witness) that upon the signing the agreement for exchange, the Vendor would cause the erstwhile proprietors of the subject property, namely, Gerald Makau and Esther Mwangi to effect the transfer of



- the sold property, directly unto the Plaintiff. For good measure, the witness added that the exchange agreement was duly signed and executed by both Mr. John Ndirangu Kariuki and himself (the witness).
14. It was the further testimony of the witness that same latter on met Gerald Makau and Esther Mwangi who confirmed that though same were registered proprietors of the suit property at the time, they however admitted that same had sold the property to John Ndirangu Kariuki, who was yet to effect a transfer of the property unto his name.
 15. On the other hand, the witness added that Gerald Makau and Esther Mwangi further confirmed that they would be willing to execute any documents to facilitate the transfer of the property directly unto the Plaintiff. In any event, the witness averred that the said registered owners also availed unto him a copy of the Certificate of Lease confirming that they were indeed the owners of the said property.
 16. Other than the foregoing, the witness testified that thereafter same instructed and engaged a firm of advocate to carryout and undertake due diligence over and in respect of the subject property and to ascertain the ownership status thereof.
 17. It was the further testimony of the witness that on the 5th December 2006, the Ministry of Lands issued a Certificate of Official search, which authenticated that L.R No. Nairobi Block 107/1133 was indeed registered in the names of Gerald Makau and Esther N Mwangi, respectively.
 18. Further, the witness averred that the two, namely, Gerald Makau and Esther N Mwangi, thereafter executed a transfer of lease in favor of the Plaintiff, which Lease was duly registered.
 19. Be that as it may, the witness stated that on or about May 2010, the 2nd Defendant herein, who is said to be a Director of the 1st Defendant entered upon and commenced to erect a perimeter wall fence on L.R No. Nairobi/Block/107/1133. In this regard, the witness added that same was constrained to lodge a Complaint with the Directorate of Criminal Investigations, DCI, at Buru Buru.
 20. Additionally, the witness stated that following the lodgment of the Complaint, the 2nd Defendant herein was duly summoned to the Directorate of Criminal Investigations and that during the resultant meeting, the 2nd Defendant produced a Certificate of Lease relating to L.R No Nairobi/Umoja/Block/107/1/1133, containing that same related to the subject property.
 21. On the other hand, the witness testified that on the 24th May 2010, the DCIO wrote to the Director of survey and sought to confirm the true status and details of the subject property. In this regard, the witness added that thereafter the Director of survey responded to the DCIO vide Letter dated the 24th June 2010 and in respect of which the Director of survey is indicated to have been categorical that L.R No. Nairobi Block/107/1/1133 did not exists in their registration system.
 22. In addition, the witness testified that the Letter from the Director of survey dated the 24th June 2010, confirmed that it is the Plaintiff's L.R No. Nairobi/Block/107/1133, which was discernable from the survey records in terms of Survey Plan FR No. 251/87.
 23. Furthermore, the witness added that from the information gathered from the Director of survey , the DCIO generated a report dated the 9th august 2013 and in respect of which same confirmed that L.R No. Nairobi Block/107/1133, lawfully belongs to the Plaintiff.
 24. In addition, the witness testified that insofar as the subject property belongs to the Plaintiff, the Plaintiff is therefore entitled to enjoy quiet and vacant occupation, possession and use thereof.
 25. Other than the foregoing, the witness testified that the Plaintiff herein continued with her efforts to unravel the ownership dispute concerning the subject property and in this regard, the Plaintiff retained



- an advocate who thereafter wrote to the Nairobi City County offices seeking confirmation that the Plaintiff herein is the registered proprietor of the subject property.
26. Nevertheless, the witness testified that despite the fact that the subject property lawfully belongs to the Plaintiff, the 2nd Defendant has continued to lay a claim to the subject ground and contend that the subject property lawfully belong to the 1st Defendant, which is not the case. In this regard, the witness has therefore implored the Honourable court to find and hold that the 1st Defendant does not have any legitimate title to and in respect to the suit property.
 27. In any event, the witness has averred that any Certificate of title that is held by himself or anybody claiming under her is tainted with irregularities and illegalities and hence should be nullified.
 28. Other than the foregoing, the witness alluded to his witness dated 9th November 2016 and which the witness sought to adopt. In this respect, the witness statement dated 9th November 2016, whose contents have been reproduced hereinbefore were duly adopted and constituted as Further Evidence-in chief.
 29. In addition, the witness also alluded the Further Witness Statement dated the 21st May 2021; and which the witness similarly sought to adopt and rely on. For good measure, the contents of the said witness statement were also admitted as Evidence in chief.
 30. Furthermore, the witness alluded to a List and Bundle of Document dated the 9th November 2016; and comprising of 18 Documents. There being no objection to the Documents at the foot of the List of Documents dated the 9th November 2016, same were duly admitted and produced as Exhibits P1 to P18 respectively.
 31. On the other hand, the witness also referred to the List and Bundle of Documents dated the 21st May 2021 comprising of a Further 18 Documents. Similarly, the witness sought to rely on and adopt the said documents as further Exhibits in the case. In this regard, the documents at the foot of the List dated the 21st May 2021 were admitted and produced as Exhibits P19 to P36, respectively.
 32. Additionally, the witness referred to a Supplementary List and Bundle of Documents dated the 1st February 2028; and which comprise of six documents. Similarly, the Documents at the foot of the said a List were admitted and constituted as further Exhibits. For clarity, same were produced as Exhibits P37 to P42, respectively.
 33. On cross examination by Learned Counsel for the 1st and 2nd Defendants, the witness stated that same entered into an agreement dated the 4th May 2005. In addition, the witness stated that the said Agreement was entered into between himself and one John Ndirangu Kariuki.
 34. Further, the witness stated that even though the named agreement was entered into between himself and John Ndirangu Kariuki, the suit before the court has been filed by the Plaintiff company.
 35. Be that as it may, the witness clarified that the subject property was purchased on behalf of the Plaintiff company.
 36. Whilst under further cross examination, the witness stated that at the time of entering into the Sale Agreement with Mr. John Ndirangu Kariuki, the subject property was however registered in the name of Gerald Makau and Esther Mwangi. In addition, the witness added that same did not enter in any sale agreement with Gerald Makau and Esther Mwangi.
 37. Furthermore, the witness thereafter stated that he recalls that he entered into a sale agreement with Gerald Makau and Esther Mwangi. However, when pressed on; the witness stated that he has not produced any such agreement before the court.



38. On the other hand, the witness also testified that the registered owners latter executed a Transfer Instrument in favor of the Plaintiff company. In this respect, the witness alluded to a copy of the Transfer Instrument which has been produced before the Honourable court. Nevertheless, the witness acknowledged that the date on the Transfer Instrument is not clear.
39. In any event, the witness added that the Transfer Instrument over and in respect of the subject Property was executed by Gerald Makau and Esther Mwangi, respectively, in favor of the Plaintiff company.
40. As to whether the transfer to and in favor of the Plaintiff company was premised on a consent, the witness indicated that he was not aware whether the consent of the Lessor was procured and obtained. He, however, added that the transaction was undertaken by an advocate albeit on his behalf.
41. Additionally, the witness stated that at the time when he bought the suit property there were outstanding rates that had not been paid. However, the witness averred that he proceeded to and cleared all the outstanding Rates.
42. Other than the foregoing, the witness testified that he has hitherto met the 1st and 2nd Defendants and the witness pointed out that he met same when the said Defendants went to demolish the wall on the suit property. Further, the witness stated that the 1st and 2nd Defendants were also laying a claim to the suit property.
43. On the other hand, the witness also testified that the current registered owner of L.R No 107/1133; is the 4th Defendant. However, the witness pointed out that he is not aware whether there was any amendment.
44. In any event, the witness averred that the Plaintiff's parcel of land is L.R No Nairobi Block 107/1133; and that the said property was transferred and registered in the name of the Plaintiff company in the year 2012.
45. It was the witness further testimony that when the 1st and 2nd Defendants attempted to grab his land he went to the County Government of Nairobi and lodged a complaint that the said 1st and 2nd Defendants were attempting to grab his land.
46. On cross examination by Learned Counsel for the 4th Defendant, the witness stated that the 4th Defendant herein has also grabbed the land belonging to the Plaintiff company. However, the witness added that same has never interacted with the 4th Defendant herein.
47. Additionally, the witness testified that prior to buying the suit property, same undertook due diligence and obtained a Certificate of official search from the Ministry of Lands.
48. On cross examination by Learned Counsel for the 5th Defendant, the witness testified that he signed a Transfer Instrument in favor of the Plaintiff company. In any event, the witness added that the suit property was transferred and registered in the name of the Plaintiff company in the year 2012.
49. Nevertheless, the witness testified that he is not aware of whether the consent of the 5th Defendant was procured and obtained before the subject property was transferred and registered in the names of the Plaintiff company.
50. Additionally, the witness stated that purchaser at the foot of the Agreement of sale dated 4th May 2005; was the Plaintiff.
51. Furthermore, the witness stated that the Ministry of Land has never invited the Plaintiff herein for rectification of the title of the subject property. In particular, the witness averred that the Certificate of title in the name of the Plaintiff company has never been canceled.



52. The 2nd witness who testified on behalf of the Plaintiff was John Peter Nambugu. For clarity, same testified as PW2.
53. It was the evidence of the witness that same is conversant with facts of this matter and particularly the ownership of the subject property. In addition, the witness testified that he is the registered owner L.R No. Nairobi Block 107/1134.
54. Other the foregoing, the witness alluded to his witness statement dated the 31st January 2018; and same sought to adopt and rely on the contents of the said witness statement. In this regard, the contents of the said witness statement were duly adopted and admitted as Evidence in chief of the witness.
55. On cross examination by Learned Counsel for the 4th Defendant, the witness stated that is a Member of the Association that undertook the registration process in respect of the various properties situated in Block 107. However, the witness clarified that he is not an Official of the said Association.
56. On the other hand, the witness also stated that prior to and before undertaking registration of various properties situate within Nairobi Block 107, no official search was ever carried out and/ or obtained.
57. The other witness who testified on behalf of the Plaintiff was one Michael Thiong'o Kinyanjui. For good measure, same testified as PW3.
58. It was the testimony of the said witness that same is similarly conversant with the area comprising of Nairobi Block 107, wherein the subject property is located. In addition, the witness also stated that same is also an owner of a property located within the same locality.
59. Other than the foregoing, the witness referred to his witness statement dated the 30th January 2018; and same sought to adopt the witness statement as his Evidence in chief. In this regard, the witness statement dated the 30th January 2018; was admitted as the Evidence in chief of the witness.
60. For good measure, the witness herein was not cross examined by any of the advocates appearing for the Defendants.
61. The Fourth (4th) Witness who testified on behalf of the Plaintiff was one Wilfred Muchai. Same testified as PW4.
62. It was the evidence of PW4 that same is a Principal Land Surveyor, currently attached to the office of the Director of Surveyor.
63. In addition, the witness testified that same has the Cadastral Map/ Survey Plan relating to L.R No. Nairobi Block 107/1133. For clarity, the witness stated that the said property was duly reflected in the Cadastral map.
64. On the other hand, the witness stated that L.R No. Nairobi Block/107/1/1133; does not appear in the cadastral plan.
65. It was the further testimony of the witness that same is not aware of any Double allocation in respect of L.R No. Nairobi Block 107/1133.
66. On cross examination by Learned Counsel for the 1st and 2nd Defendants, the witness testified that same is a Licensed land surveyor and that his registration number is 204 of 2012. Further and in addition, the witness averred that he is also a Land surveyor with the Institute of Surveyors of Kenya.
67. Nevertheless, the witness testified that he is not the drawer of the Cadastral Plan which is before the Honourable court. In any event, the witness stated that the Cadastral Plan before the Honourable court was procured from the office of the Director of Surveyor and that same has been duly certified.



68. Whilst still under cross examination, the witness pointed out that a Cadastral Plan is separate and distinct from a Part Development Plan. For clarity, the witness pointed out that a Part Development Plan is an initial plan developed and prepared by the Director of Planning for purposes of alienation, whilst a Cadastral Plan is prepared by the Director of Survey and relates to the survey process.
69. Furthermore, the witness testified that the Part Development Plan, if any, relating to L.R No's Nairobi Block 107/1/1133 and L.R No. 107/1133, if any, were to be issued by the Director of Physical Planning.
70. Additionally, the witness stated that the two parcel of land herein are not the same. However, the witness added that he is only aware of L.R No. Nairobi Block 107/1133 and not otherwise.
71. The other witness who testified on behalf of the Plaintiff was Gildine Gatwiri Karani and same testified as PW5.
72. It was the testimony of the said witness that same is a Senior Land Registrar attached to the Office of the Chief Land Registrar and that her duties entail, inter-alia, registration of Documents; as well as court attendance, when designated to do so.
73. In respect of the subject matter, the witness testified that same has records pertaining to and concerning L.R No's Nairobi Block 107/1133 and Nairobi Block 107/1/1133, respectively. However, the witness added that in respect of the latter there are two sets of records.
74. It was the further testimony of the witness herein that in respect of L.R No. Nairobi Block 107/1133, the Certificate of Lease was registered on the 24th November 2004 and thereafter a Certificate of Lease was issued on even date.
75. It was the further testimony of the witness that subsequently a Transfer Instrument was lodged for registration and same culminated into the transfer of L.R No. Nairobi Block 107/1133; to and in favor of the Plaintiff company. Consequently, the witness added that the suit property was transferred to and registered in the name of the Plaintiff.
76. Additionally, the witness testified that in respect of L.R No. Nairobi Block 107/1/1133, the Lease was first registered on the 15th January 1998 in favor of one Zipporah Mbesa. Furthermore, the witness also confirms that a Certificate of Lease was thereafter was issued in favor of Zipporah Mbesa.
77. On the other hand, the witness testified that L.R No. Nairobi Block 107/1/1133; was thereafter transferred to and registered in the name of the 1st Defendant. In particular, the witness testified that the Certificate of Lease in favor of the 1st Defendant was issued on the 17th July 2009.
78. In addition, the witness added that L.R No. Nairobi Block 107/1/1133; was thereafter transferred to and in favor of Kenya Industrial Research & Development Staff Retirement Scheme. In this regard, the witness pointed out that the transfer was effected on the 27th July 2016.
79. Other than the foregoing, the witness testified that another Certificate of Lease was issued on the 11th February 2017 and same was registered in the names of various persons, albeit as Trustees of Kenya Industrial Research & Development Staff Retirement Group Life Assurance. In particular, the witness stated that the Certificate of Lease herein relates to L.R No. Nairobi Block 107/1/1133.
80. Other than the foregoing, the witness testified that the transfer dated the 27th July 2016 is shown to have been registered by one S M Nabulindo. In addition, the witness also confirms that the said officer also issued the Certificate of Lease dated the 27th July 2016.



81. Additionally, it was the testimony of the witness that there is no application for correction of name, which has ever been lodged by the 4th Defendant herein in respect of L.R No 107/1/1133.
82. Be that as it may, it was the testimony of the witness that the transaction between Zipporah Mbesa and Rockville Junior Academy on one hand and thereafter between Rockville Junior Academy Ltd and Kirdi; on the other hand relates to L.R No. Nairobi Block 107/1/1133.
83. In any event, the witness added that the instruments touching on L.R No. Nairobi Block 107/1/1133 can only be registered as against the said title and not otherwise. For clarity, the witness added that it is important that the specific title which is to be affected by the Instrument be clearly stated and referenced.
84. On cross examination by Learned Counsel for the 1st and 2nd Defendants, the witness averred that the current registered owner of L.R No. Nairobi Block 107/1133 is the Plaintiff herein. In addition, the witness testified that the Certificate of Lease was duly issued.
85. On the other hand, the witness testified and clarified that L.R No. Nairobi Block 107/1/1133; is currently registered in the name of the 4th Defendant.
86. Whilst under further cross examination the witness stated that same has before the Honourable court the Transfer Instrument which was registered on the 29th May 2016. For good measure, the witness stated that the said instrument related to L.R No. Nairobi Block 107/1/1133.
87. Furthermore, the witness testified that the Certificate of Lease dated the 27th July 2016; was canceled and that the Certificate of Lease which is now available and obtaining at the Land Registry is the one dated the 19th January 2017.
88. On cross examination by Learned Counsel for the 3rd and 6th Defendants, the witness herein indicated that same is privy to and knowledgeable of what constitutes a Green Card. In addition, the witness clarified that the Green Card is where all the entries affecting a particular title are entered and endorsed.
89. Furthermore, the witness stated that the Certificate of Leases would have serial Numbers, but the Serial Numbers are never entered on the Green card. Nevertheless, the witness admitted that same has not produced a copy of the Green card as pertains to the two properties being disputed before the Honourable court.
90. On the other hand, the witness pointed out that the office of the Chief Land Registrar is currently on the process to phase out Green Cards.
91. On cross examination by Learned Counsel for the 5th Defendant, the witness testified that there are two different registration relating the Properties before the court. For clarity, the witness added that there is a Register in respect of L.R No. Nairobi Block 107/1/1133 and another Register for L.R No. Nairobi Block 107/1133.
92. With the foregoing testimony, the Plaintiff's case was closed.

a. The 1st And 2nd Defendants' Case:

93. The 1st and 2nd Defendants' case revolves around the evidence of one witness, namely, Jane Achieng Odipo. Same testified as DW1.
94. It was the testimony of the said witness that same is a Teacher by Profession and also a Director of the 1st Defendant herein. In addition, the witness stated that same is conversant with the facts of the Dispute before the Honourable court.



95. Furthermore, the witness stated that same also recorded a witness statement in respect of the instant matter, which statement the witness sought to adopt and rely on. In this regard, the Witness statement dated the 30th April 2018; was admitted and adopted as the Evidence in chief of the witness.
96. On the other hand, the witness also referred to a List and Bundle of documents dated the 30th April 2018; and which documents the witness sought to adopt and rely on. There be no objection of the named documents, same were admitted and produced as Exhibits D1 to D24, respectively.
97. Furthermore, the witness also stated that the 1st and 2nd Defendants had also filed a Counter-claim dated the 29th June 2021; and in this respect, same averred that the 1st and 2nd Defendants are seeking the reliefs contained at the foot of the said counterclaim.
98. Additionally, the witness herein also alluded to the Plaint which was filed in respect of ELC No. 706 of 2011; and same pointed out that the Defendants in that particular suit were Francis Ng'ang'a Mundia and John Ndirangu Kariuki, respectively.
99. As pertains to ELC No. 706 of 2011, the witness stated that same had recorded a witness statement dated the 13th December 2011, which witness statement the witness sought to adopt as her further evidence in chief. For good measure, the said Witness statement was duly adopted as the evidence in chief of the witness.
100. In addition, the witness also stated that same had also filed a List and Bundle of Documents dated the 13th December 2011 containing 10 Documents. In this respect, the witness sought to adopt and rely on the said documents. There being no objection, the documents at the foot of the List dated the 13th December 2011 were produced as Exhibits D25 to D34, respectively.
101. Finally, the witness herein also stated that same is aware of the existence of another suit, which has been filed by the 4th Defendant herein. For good measure, the witness stated that the said suit is ELC No. 174 of 2017.
102. On cross examination by Learned Counsel for the 3rd and 6th Defendants, the witness stated that the Land, namely, L.R No. Nairobi Block 107/1/1133, was allocated by the City Council of Nairobi to one Zipporah Mbesa. However, the witness added that the named allottee was the one who sold and transferred the land unto the 1st Defendant.
103. Furthermore, the witness testified that same has not produced or tendered before the Honourable court a copy of the Letter of allotment which was issued to and in favor of Zipporah Mbesa.
104. On cross examination by Learned Counsel for the 4th Defendant, the witness averred that L.R No. Nairobi Block 107/1/1133, was sold to and transferred of the 4th Defendant by the 1st Defendant herein.
105. In addition, the witness admitted that the sale transacted between the 1st and 4th Defendants was reduced into writing vide Sale Agreement dated the 14th March 2016.
106. It was the further testimony of the witness that subsequently the 1st and 4th Defendants also executed an addendum dated the 17th May 2016. Additionally, the witness added that the land which was sold to and in favor of the 4th Defendant is currently under the possession of the 4th Defendant.
107. On cross examination by Learned Counsel for the Plaintiff, the witness testified that she is a Director of the 1st Defendant and that the 1st Defendant was incorporated on the 4th July 2007.



108. In addition, the witness pointed out that the transfer to and in favor of the 1st Defendant was executed on the 12th July 2007, but same was registered on the 16th May 2007.
109. Furthermore, the witness clarified that the transfer of lease which was registered in favor of the 1st Defendant was in respect of L.R No. Nairobi Block 107/1/1133. In addition, the witness stated that thereafter a Certificate of Lease was thereafter issued in favor of the 1st Defendant.
110. Whilst still under cross examination by Learned Counsel for the Plaintiff, the witness testified that the Transfer Instrument which was executed by Zipporah Mbesa was however in the name of Gervas Odipo and herself. However, the witness pointed out that the eventual Certificate of Lease was issued in favor of the 1st Defendant.
111. Additionally, the witness testified that L.R No. Nairobi Block 107/1/1133; does not exist to date. For clarity, the witness says that the records were corrected by the office of the Land Registrar.
112. In this respect, the witness said the correction was effected on the basis of a Document executed by one, Mr. Wanyoike, in terms of Letter dated 1st July 2011.
113. With the foregoing evidence, the 1st and 2nd Defendants' case was duly closed.

b. The 3rd And 6th Defendants' Case:

114. Learned counsel Mr. Motari intimated to the Honourable court that the 3rd and 6th Defendants will not be calling any witnesses. In this regard, Learned counsel sought to close the 3rd and 6th Defendants.
115. Consequently and at the request of Learned Counsel for the 3rd and 6th Defendants, the court proceeded to and made an order closing their case.

c. The 4th Defendant's Case:

116. The 4th Defendant's case revolves around the Evidence of two (2) Witnesses, namely, Jackson Ogingo Omwamu, DW2 and David Wafula, DW3.
117. It was the evidence of DW2 that same is an Employee of Kenya Industrial Research & Development Institute. In addition, the witness also testified that he was the former Secretary of the 4th Defendant herein, which is a Retirement Benefit Scheme for the Employees of Kenya Industrial Research and Development Institute.
118. Furthermore, the witness testified that same is conversant with the facts pertaining to the subject matter. In particular, the witness pointed out that he is privy to and knowledgeable of the existence of the subject suit, namely, ELC No. 1382 of 2016 and another suit ELC No. 174 of 2017.
119. Additionally, the witness pointed out that same recorded witness statement in respect of the two matters and that the witness statements is dated the 14th March 2017. For good measure, the witness stated that the said witness statement was filed in respect of ELC No. 174 of 2017.
120. Be that as it may, the witness sought to adopt and rely on the Witness statement dated the 14th March 2017; as his Evidence in chief. In this regard, the witness statement was duly adopted and constituted as the Evidence in chief of the witness.
121. On the other hand, the witness also referred to the List and Bundle of Documents dated the 13th December 2018 filed vide ELC No. 174 of 2017; and sought to adopt same as evidence before the



- Honourable court. In this regard, the documents contained at the foot of the List dated the 13th December 2018; were produced as a bundle as Exhibit D1 on behalf of the 4th Defendant.
122. On cross examination by Learned Counsel for the 1st and 2nd Defendants, the witness testified that the 4th Defendant herein entered into a sale agreement with the 1st Defendant relating to L.R No. Nairobi Block 107/1/1133. Further and in addition, the witness stated that the said agreement was reduced into writing.
 123. On the other hand, it was also the testimony of the witness that prior to and before entering into the Sale Agreement with the 1st Defendant, the 4th Defendant retained an advocate who carried out due diligent over and in respect of the subject property that was being bought. In this regard, the witness added that the advocate did both official and physical search in respect of the subject property.
 124. It was the further testimony of the witness that the Sale Agreement which was entered into and executed between the 1st Defendant and the 4th Defendant related to L.R No. Nairobi Block 107/1/1133. However, the witness continued and stated that currently the 4th Defendant is in possession of a Certificate of Title of L.R No. Nairobi Block 107/1133.
 125. Whilst under further cross examination, the witness stated that the registration number in the Certificate of Lease was rectified by the office of the Chief Land Registrar, after it was discovered that there was an error. In this respect, the witness pointed out that the error was corrected on the basis of correspondence that was issued by the Office of the Chief Land Registrar. Further, the witness added that the said correction followed the Due process of the law.
 126. On cross examination by Learned Counsel for the 5th Defendant, the witness stated that the subject property was initially referred to as L.R No. Nairobi Block 107/1/1133. However, the registration details were thereafter corrected to reflect L.R No. Nairobi Block 107/1133.
 127. On cross examination by Learned Counsel for the Plaintiff, the witness pointed out that the 4th Defendant has never paid rates over and in respect of L.R No. Nairobi Block 107/1133. Furthermore, the witness stated that the sale agreement was executed between the 1st Defendant and Kenya Industrial Research and Development Institute Staff Retirement and Benefit Scheme.
 128. Whilst under further cross examination, the witness pointed out that a Certificate of Lease was duly issued to and in favor of the 4th Defendant. In this respect, the witness alluded to the Certificate of Lease issued on the 19th January 2017.
 129. It was the further evidence of the witness that the Instrument of Transfer which was presented before Land Registry for purposes of registration was in respect of L.R No. Nairobi Block 107/1/1133. However, the witness confirms that currently the 4th Defendant was issued with and is in custody of a Certificate of Lease relating to L.R No. Nairobi Block 107/1133.
 130. The other witness who testified on behalf of the 4th Defendant was David Wafula. For coherence, same testified as DW3.
 131. It was the testimony of the witness herein that same works with a Fund Management Company known as Genafrikan Asset Managers Ltd. Furthermore, the witness stated that his Employer (Genafrikan Asset Managers Ltd) was engaged by the 4th Defendant herein to offer Financial Consultancy advise.
 132. Furthermore, the witness stated that arising out of the engagement between his Employer and the 4th Defendant, same therefore became conversant with the issues at the foot of the current dispute. In any event, the witness stated that same recorded a witness statement dated the 11th April 2018; and in this



regard, the witness sought to adopt and rely of the witness statement. For good measure, the witness statement was duly adopted and constituted as the Evidence in chief of the witness.

133. Additionally, the witness also referred to the List and Bundle of documents dated the 16th October 2018, which comprised of 13 documents. Consequently, the witness sought to adopt and produce the said Documents as Exhibits before the Honourable court.
134. There being no objection to the production of the documents, same were produced and admitted as Exhibits D2 to D14 on behalf of the 4th Defendant.
135. On cross examination by Learned Counsel for the Plaintiff, the witness stated that same is a registered Valuer and Financial analyst. However, the witness admitted that same has not produced before the Honourable court any Professional document to confirm as much.
136. In addition, the witness testified that in respect of this matter, his employer was instructed and retained by the Secretary of the 4th Defendant's Scheme.
137. With the foregoing testimony, the 4th Defendant's case was duly closed.

d. The 5th Defendant's Case:

138. The 5th Defendant's case revolves around the Evidence of one witness, namely, Geoffrey Cheruiyot. Same testified as DW5.
139. It was the testimony of the witness that same is currently acting Director of survey with the County Government of Nairobi. In addition, the witness added that previously there was a substantive Director of survey but same has since retired.
140. Furthermore, the witness testified that by virtue of being the acting Director of survey with the County Government of Nairobi, same is thereafter privy to and knowledgeable with the facts pertaining to the subject matter.
141. Additionally, the witness testified that same recorded a witness statement dated the 12th November 2019; and which witness statement the witness sought to adopt as his Evidence in chief. In this regard, the witness statement was duly adopted as the Evidence in chief of the witness.
142. On the other hand, the witness also alluded to a List and Bundle of Documents dated the 12th November 2019; comprising of 11 documents. In this regard, the witness sought to produce the named documents as Exhibit on behalf of the 5th Defendant. There being no objection of the document at the foot of the List dated 12th November 2019; was marked as Exhibits D15 to D26, respectively on behalf of the 5th Defendant.
143. On cross examination by Learned Counsel for the 1st and 2nd Defendants, the witness testified that same is a Licensed surveyor and that furthermore same has been acting as the Director of survey, City County Government of Nairobi for closed to 2 years.
144. Whilst under further cross examination, the witness testified that the records that are currently held by the City County Government of Nairobi relates to L.R No. Nairobi Block 107/1133. In addition, the witness stated that the records in respect of L.R No. Nairobi Block 107/1/1133; were deleted on the advice of the Director of survey.
145. It was the further testimony of the witness that the said records relating to L.R No. Nairobi Block 107/1/1133; were deleted because there was no survey records or documents to authenticate same.



146. On the other hand, the witness also testified that the position relating to the fact that there were no records pertaining to L.R No. Nairobi Block 107/1/1133; was also confirmed by the Chief valuer, Nairobi City County.
147. Whilst under further cross- examination , the witness stated that the 2 properties namely, L.R No. Nairobi Block 107/1/1133 and L.R No. Nairobi Block 107/1133, respectively, were captured and appeared in the Valuation Roll of the City County Government of Nairobi up to and including the 11th November 2016.
148. Nevertheless, the witness added that thereafter the County Government received advice from the Director of survey giving clarifications as pertains to the correct Plot / Parcel Number.
149. It was the further testimony of the witness that upon receipt of the advice from the Director of survey, which gave the correct Plot/ Parcel Number, the City County Government thereafter removed/struck out L.R No. Nairobi Block 107/1/1133; from the valuation roll. In addition, the witness pointed out that the advice leading to the striking out of L.R No. Nairobi Block 107/1/1133; was conveyed vide the Letter dated 6th October 2016.
150. Furthermore, the witness herein testified that currently the valuation roll at the City County Government of Nairobi only reflects and shows the existence of L.R No. Nairobi Block 107/1133; and not otherwise.
151. On cross examination by counsel for the 3rd and 5th Defendants, the witness herein pointed out that it is the Land registry that would forward to the City County Government of Nairobi the various Leases which have been approved for registration. In addition, the witness averred that the Leases would show the relevant blocks for purposes of registration.
152. On the other hand, the witness also stated that the format of the Leases which were forwarded by the office of the Chief Land Registrar related to L.R No. Nairobi Block 107; followed by the number of the property. For clarity, the witness stated that there was no slush (/) 1.
153. On cross examination by the Learned Counsel for 4th Defendant, the witness acknowledged and admitted the existence of a letter dated 1st July 2011; from the County Council of Nairobi. However, the witness added that the said Letter did not form part of the List and Bundle of Documents.
154. Whilst under further cross examination, the witness herein stated that same is not aware whether the contents of the letter dated 1st July 2011; has since been recanted and/ countermanded by the City Government of Nairobi.
155. On cross examination by Learned Counsel for the Plaintiff, the witness herein stated that the only record that is currently held by the City County Government relates to L.R No. Nairobi Block 107/1133; and not otherwise. In addition, the witness stated that the records obtaining at the City County Government of Nairobi also shows that the current rate payer of the property known as L.R No. Nairobi Block 107/1133; is the Plaintiff herein.
156. Further, the witness stated that there are no records showing that the 1st and 4th Defendants have ever paid rates for the property known as L.R No. Nairobi Block 107/1133, or at all.
157. Finally, the witness stated that the bundle of documents produced by same confirms that L.R No. Nairobi Block 107/1133; belongs to the Plaintiff.
158. With the foregoing Evidence, the 5th Defendant's case was duly closed.



Submission By The Parties:

159. At the close of the case for the 5th Defendant, the advocates for the respective Parties thereafter intimated to the Honourable court that same were desirous to file and exchange written submissions. In this respect, the court proceeded to and granted timeline for the exchange of written submissions.
160. Instructively and for good measure, the Parties herein thereafter variously filed and exchanged written submission, which submission forms part and parcel of the record of the court. Consequently and in this regard, the court shall endeavor to and adopt the written submissions, where relevant and applicable.

Issues For Determination:

161. Having reviewed and evaluated the Pleadings filed by the respective Parties pertaining to and concerning the three separate suits, which were ultimately consolidated under ELC No 1382 of 2016; and having taken into account the testimonies of the witnesses (oral and documentary) ; and having considered the written submissions filed, I come to the conclusion that the following issues do arise and are worthy of determination;
- i. Whether L.R No. Nairobi Block 107/1/1133 and L.R No. Nairobi Block 107/1133, (which are the subject of dispute before the Honourable court) constitute and comprise of one and the same ground.
 - ii. Who between the Plaintiff and the 4th Defendant is the Legitimate owner of L.R No. Nairobi Block 107/1133.
 - iii. What Reliefs ought to be granted.

Analysis And Determination

Issue Number 1

Whether L.R No. Nairobi Block 107/1/1133 and L.R No. Nairobi Block 107/1133, (which are the subject of dispute before the Honourable court) constitute and comprise of one and the same ground.

162. It is common ground that the property/properties which are in dispute before the Honourable court was hitherto registered in the name of the City Council Nairobi as the Lessor. Thereafter, it is the City Council of Nairobi that undertook the preparation of the requisite Part Development Plan with a view to facilitating the allotment of the designated plots to various allottees/Leases.
163. Instructively, both the Plaintiff, the 1st Defendant, as well as the 4th Defendant do acknowledge and confirm that the City Council of Nairobi, now defunct and by extension the City County Government of Nairobi; remains the Lessor as pertains to the suit property, irrespective of the diverse registration details.
164. Furthermore, there is no gainsaying that insofar as the City Council of Nairobi, now defunct, is the lessor then it is the aid lessor who would be responsible for issuance of the Letters of allotment, (which is the first Document in the process of alienation) and ultimately the preparation of the Lease instrument, which would thereafter be transmitted to the office of the Chief land Registrar for registration; before issuance of the requisite Certificate of lease.



165. From the foregoing background, it then means that to determine the true character and origin of the two properties which are being disputed before the Honourable court, one therefore needs to go back to the original and primary documentation obtaining at the City Council of Nairobi. In this respect, I am obliged to venture back to the offices of the City Council of Nairobi and in particular to take cognizance of the contents of the Letter dated the 1st July 2011.
166. For good measure, the Letter in question was authored by the Town Clerk of City Council of Nairobi; and same was copied to, inter-alia, the Commissioner of Lands, The Chief Land Registrar and the Director of Survey.
167. Instructively, the contents of the said Letter provides a comprehensive chronology of the activities that led to what the Town Clerk referred to as Double registration by the Chief Land Registrar. In particular, the Town clerk states that the city council of Nairobi generated a Part Development Plan and which was prepared by the City Planning Department in November 1991.
168. Furthermore, the Town Clerk posits that the Part Development Plan was thereafter transmitted to the office of the Commissioner of Land for approval and same received the approval of the Commissioner of Land on the 7th September 1994. Inevitably, it is confirmed that the approval by the commissioner of lands was communicated vide Letter referenced 92516/11/(29).
169. In addition, the Town Clerk of the City Council of Nairobi further states that the council allocated the plots, whose details were contained in the approved Part Development Plan, to various parties and he (Town Clerk) thereafter proceeds to supply an inventory containing the relevant allottees. In respect of L.R No. Nairobi Block 107/1/1133 , the Town clerk confirms that the authentic and legitimate allottee was one Zipporah Mbesa.
170. On the other hand, the Town Clerk proceeds and states that sometime the year 2002 to 2004, some Leases arose and which purported to be in respect of plots which were, inter-alia, Nairobi Block 107/1133. For good measure, the Town Clerk posits that this second Lease among others did not have any trace or origin from the offices of the City Council of Nairobi.
171. Perhaps and for good measure, it is imperative to reproduce verbatim the words of the Town clerk, City Council of Nairobi.
172. Same are reproduced as hereunder;

“Sometimes between 2002 and 2004, without any trace of their origin, leases purporting to relate to the same land as stated above were registered in the lands office. This leases bear the format of Nairobi/Block 107/xxx.”

We have received complaints of the two parties laying claims to the land on the ground on the basis of the documents they hold.

173. Furthermore, the Town Clerk proceeds and states as follows;

“The counsel recognizes only those parcel owners whose genesis and valid records are known. As a matter of enforcing this anomaly, the city council of Nairobi is under no obligation to allow developments on ownership documents whose origin and opaque conveyance cannot be accounted for”.



174. It is imperative to recall that the City Council of Nairobi, now defunct, whose chief executive officer was the Town clerk, was expressly indicating that the authentic allotments were premised on a Part Development Plan that was duly approved by the Commissioner of Lands on the 7th September 1994.
175. Furthermore, the Town Clerk of the Lessor is also ventilating a position that subsequently and unknown to the Lessor, some Leases crept/ emerged out of somewhere, but albeit without the knowledge of the city council of Nairobi.
176. Be that as it may, what is important for now is the fact that the Town Clerk; was confirming that the subsequent Leases were purporting to have been issued over and in respect of the same land, meaning same ground position.
177. In my understanding, what the Town Clerk seems to be stating is that the parallel Leases, which were subsequently issued, albeit without the authority of the Lessor were purported to be superimposed on the corresponding numbers. In this regard, the Lease in respect of (sic) L.R No. Nairobi Block 107/1133 was superimposed on the same ground as the initial Lease of L.R No. Nairobi Block 107/1/1133.
178. Interestingly, the contents of the Letter by the Town Clerk dated the 1st July 2011; was reaffirmed by the County Chief Officer, Lands of the City County Government of Nairobi vide Letter dated 9th February 2016. For good measure, the said officer signaled that the persons whose registration bore the abbreviation L.R No. Nairobi Block 107/1/XXX, were the ones whose conveyance documents were done by the City Council of Nairobi. In any event, the said Chief Officer was also imploring the office of the Chief Land Registrar and the letter of survey to address and correct the anomaly in the registration to avoid further confusion.
179. Other than the Letter dated the 9th February 2016, which came from the County Chief Officer Lands, Nairobi city county same also availed the duly approved Deed Plan which showed the exact ground position.
180. Back to the critical question, the contest before the court is whether the parcel of Land known as L.R No. Nairobi Block 107/1/1133 and the sister number L.R No. Nairobi Block 107/1133, are sitting on the same ground or otherwise.
181. In my respectful view, the Letter by the Cown clerk of the City Council of Nairobi dated the 1st July 2011 is succinct, clear and apt. For good measure, it does confirm that the subsequent Leases, whose origin is not traceable to the lessor were being superimposed on the corresponding numbers.
182. Arising from the foregoing, there is therefore no gainsaying that the two numbers which are being disputed before the Honourable court actually relates to the same ground position. Consequently, irrespective of whether one uses L.R No. Nairobi Block 107/1/1133 or L.R No. Nairobi Block 107/1133, the connotation is that the ground which is situated on the Planet Earth is one and the same.
183. Owing to the foregoing, I come to the conclusion that the usage of the two set of abbreviations, were merely caused by shrewd and cunning persons, sitting at the office of the Chief Land Registrar, who was desirous to circumvent and defeat the intendment of the city council of Nairobi/the Lessor.



184. Before departing from this pertinent issue, it is instructive to recall the evidence of DW5, who testified that he is the acting Director of Survey, Nairobi City County. For clarity, DW5 whilst under cross examination by Learned Counsel for the 4th Defendant stated as hereunder;
- “I wish to state that the letter dated 1st July 2011 is not part of my documents. However, I am not aware whether the contents of the letter herein have been recanted by the city county government of Nairobi”.
185. For good measure, the Letter dated 1st July 2011; is the one where the Town Clerk was confirming that the subsequent parallel Leases were being superimposed on the corresponding numbers.
186. In addition, even though DW5 purported to implead/ feign ignorance about the official position of the City County Government of Nairobi relating to the contents of the Letter dated 1st July 2011, it is crystal clear that the City County Government vide Letter dated 9th February 2016 were reiterating the contents of the letter dated 1st July 2011.
187. Sadly, some unbridled Public officers, who were tasked with an obligation and mandate to help the Republic of Kenya to get rid of corruption, impropriety and malpractices; do not appear to have imbued, inculcated and cultivated, inter-alia, the Principles of Public service as entrenched in Article 232 of *The Constitution* 2010.
188. No wonder, DW5 comes from the offices of Nairobi City County Government but espouses a position that is diametrically opposed to the totality of the documents in Evidence which have previously emanated from the County Government itself.
189. Without belaboring the point, I surmise that L.R No's. Nairobi Block 107/1/1133 and the sister Lease, namely, L.R No. Nairobi Block 107/1133, actually relates to one and the same ground.
190. For obvious reasons, that ground was well delineated by the Part Development Plan was duly approved by the Commissioner of Land on the 7th September 1994.

Issue Number 2

Who between the Plaintiff and the 4th Defendant is the Legitimate owner of L.R No. Nairobi Block 107/1133.

191. Having disposed of the first issue and having come to the conclusion that the two abbreviations which are being used to describe the property, relate to one and the same ground, the next question that now needs to be resolved is who between the Plaintiff and the 4th Defendant holds a valid Certificate of Lease over the suit ground.
192. Before venturing to address the question herein, it is instructive to take cognizance of the Letter by the Chief Land Registrar dated the 2nd September 2016 and wherein the Chief Land Registrar was advising the District Land Registrar Nairobi to liaise with the Director of Survey with a view to procuring fresh and authentic area List and Registry Index Map to facilitate the correction of the various sub-leases which had hitherto been issued and adopting numbers L.R No. Nairobi Block 107/1/1118 to 1134 with a view to issuing corrected Leases reading LR.Nairobi Block 107/1118 to 1134.
193. My understanding of the contents of the Letter by the Chief Land Registrar and which Letter was not contradicted by PW5; denotes that the Chief Land Registrar was already appraised of the Error which included stroke (/) 1 and was of the view that the error needed to be corrected. Nevertheless,



- the correction which was to be done was not meant to facilitate issuance of parallel/ New certificates of Leases to Persons, other than the authentic ones, who were known to the Lessor.
194. Be that as it may, the Plaintiff herein states that same entered into an exchange agreement with one John Ndirangu Kariuki on the 4th May 2005, wherein John Kariuki Ndirangu, agreed to facilitate the transfer of, inter-alia, Plot number L.R No. Nairobi Block 107/1133 unto the Plaintiff.
 195. However, at the time of the execution of the Agreement of Exchange, it is common ground that John Ndirangu Kariuki; was admittedly not the registered owner of (sic) the named property.
 196. First forward, PW1 states that whilst same was still waiting for John Ndirangu Kariuki to facilitate the submission and surrender of the requisite/necessary documentation to facilitate the Transfer and registration of the named property, the 1st and 2nd Defendants herein entered upon the suit property in May 2010 and commenced to put/ construct a perimeter wall fence.
 197. From the foregoing testimony, what comes out clear is that the transfer and registration of the subject property in favor of the 1st Defendant was earlier in time as compared to the Transfer in favor of the Plaintiff.
 198. Furthermore, the Plaintiff's witness states that the subject property was thereafter transferred to the Plaintiff by the registered owners of the said property, namely, Gerald Makau and Esther Mwangi respectively, albeit on instructions of John Ndiragu Kariuki.
 199. However, interestingly the transfer of lease seems to suggest that the Plaintiff herein paid to and in favor of Gerald Makau and Esther Mwangi, respectively, the sum of Kes.5, 000, 000/= only (sic) on account of consideration/ Purchase price.
 200. Interestingly, PW1 had hitherto testified that the only agreement relating to the purchase and acquisition of the interests in respect of the subject property was between him PW1 and John Ndirangu Kariuki. Consequently and in this regard, the question that begs an answer (but which answer was not supplied) is why then was the Plaintiff paying a consideration to Gerald Makau and Esther Mwangi.
 201. Notwithstanding the foregoing, it is not lost on this court that PW1 was clear in his mind that same did not enter into any Sale Agreement with Gerald Makau and Esther Mwangi, respectively.
 202. For good measure, PW1 intimated that the subject property actually belonged to John Ndirangu Kariuki, save for the fact that the transfer had not been perfected in his name.
 203. Moreover, there is yet another critical issues that merits consideration. This relates to the absence of a Lease Instrument duly executed by the City Council of Nairobi (the Lessor) to and in favor of (sic) Gerald Makau and Esther Mwangi, which upon registration would have facilitated the issuance of the Certificate of Lease dated the 24th November 2004.
 204. In my humble view, a Certificate of Lease cannot issue and/or be granted unless the Leasee has presented a duly executed Lease instrument bearing the execution marks of the lessor. For clarity, the Lease Instrument, which would have preceded the impugned Certificate of Lease dated the 24th November 2004, would have been executed by, inter-alia, the Town Clerk and the Mayor of the City Council of Nairobi.
 205. Invariably, though PW5 came from the offices of the Chief Land Registrar, she however did not have with herself a copy of the Lease Instrument, if any, that was ever presented for registration.
 206. Suffices it to state and notably, the Instrument of transfer was not also tendered in Evidence by the Plaintiff.



207. To my mind, there is a disconnect as pertains to the document that culminated into the issuance of the Certificate of Lease registered in favor of Gerald Makau and Esther Mwangi which was ultimately transferred to the Plaintiff.
208. Perhaps and at this juncture, it is appropriate to revert back to the Letter dated 1st July 2011 and whose terms were extensively reproduced while discussing issue number 1. For memory purposes, it is the Leases which did not bear the slush (/) 1, which the Town Clerk succinctly stated arose between 2002 and 2004; but which do not have any trace of origin at the City Council of Nairobi/Lessor.
209. In my humble view, the absence of a Lease Instrument duly executed by the City Council of Nairobi, who was the lessor, is informed by the fact that the resultant Certificate of Lease which was issued in favor of Gerald Makau and Esther Mwangi, respectively; did not have the blessing of the Lessor.
210. Based on the foregoing and taking into account the contents of the Letter dated 9th February 2016; from the County Chief Officer Lands, Nairobi City County, I come to the conclusion that there is a serious lacuna which bedevils/ affects the Certificate of title that was issued to and in favor of Gerald Makau and Esther Mwangi.
211. By parity of reasoning, insofar as the Certificate of Lease in favor of Gerald Makau and Esther Mwangi, respectively, was issued in vacuum it thus means that same had no legal interest capable of being conveyed to and in favor of the Plaintiff. In this respect, the Doctrine of Nemo Dat Quod Non Habet is relevant and apt.
212. Other than the absence of a Lease Instrument whose legal implication cannot be overstated, there is also evidence that by the time the leases which bears Nairobi Block 107/XXXX were being issued, the respective ground locations had hitherto been allocated in terms of what were described as L.R No's Nairobi Block 107/1/XXXX. In this regard, what is evident is that when the parallel leases were sprouting from elsewhere (without the knowledge of the lessor), the lessor had already alienated the various grounds.
213. Consequently, what becomes critical for interrogation is whether the subsequent and parallel Leases related to any actual ground, or better still, existing Land; taking into account that the respective ground stood alienated and was thus not available anymore.
214. The answer, to the puzzle captured in the preceding paragraph was well articulated/ elaborated upon in the case of Benja Properties Limited versus Syedna Mohammed Burhannudin Sahed & 4 others [2015] eKLR, is imperative. For coherence, the Honourable of Court of Appeal held as hereunder;
- “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 5th 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.
215. Furthermore, where the Land in question has hitherto been allocated by the Lessor, like in this case, by the City Council of Nairobi in terms of the contents of the Letter date the 1/07/2011, whose contents were never impeached, the same Land cannot be (sic) be re-allocated. In this respect, any attempt to re-allocate the Land would not convey any Lawful title to and in favor of the beneficiary thereof.



216. In this respect, it is appropriate to adopt and reiterate the holding of the Court of Appeal in the case of Caroget Investments Limited versus Aster Holdings Limited and Another(2019) eKLR, where the Court stated and held as hereunder;

“With the foregoing and the explicit and obvious admission by the Council that it had no interest in the suit property, the foundation of the appellant’s title dissipated. The suit property was not available for alienation, especially after it had been acquired by the 1st respondent many years before the issuance of the second grant and indeed after its subsequent amalgamation with another property. The 1st respondent had surrendered to the Government the initial grant by a deed of surrender dated 2nd August, 2001 which was duly registered on 13th August, 2001 in exchange for a new grant I.R. number 86672 which was also registered.”

217. Additionally, there is also the question that whenever public/government land was to be alienated by the Commissioner of Land, there was necessity that prior to any allotment and alienation, a Part Development Plan had to be prepared and approved by the concerned Physical Planning Department.

218. In respect of the allotments leading to the alienation of the various properties that are now referred to as L.R No. Nairobi Block 107/1/XXXX, the City Council of Nairobi indeed generated and prepared the Part Development Plan and same were duly approved.

219. To the contrary, the City Council of Nairobi, who was the Lessor states in clear and unequivocal terms that same had no knowledge of the Leases bearing the abbreviation Nairobi Block 107/XXXX. In this respect, it then means that the City Council of Nairobi did not generate the corresponding Part Development Plan to anchor the impugned Leases.

220. I must point out that from the totality of the Documents that were produced by the Plaintiff’s witness, there was no Part Development Plan which was tendered. Furthermore, there was also no letter either from the City Council of Nairobi or the office of the Commissioner of Land alluding to any such Part Development Plan.

221. In the absence of a duly approved Part Development Plan to anchor the various clusters of leases which bore the abbreviation Nairobi Block 107/XXXX, it then means that, inter-alia, the Certificate of Lease which was issued in favor of Gerald Makau and Esther Mwangi, was similarly illegitimate, illegal, unlawful and thus invalid.

222. For good measure, the law as pertaining to the relevance and importance of the duly approved Part Development Plan was succinctly stated and elaborately explained in the case of Nelson Kazungu Chai & 9 Others vs. Pwani University [2014] eKLR as follows:

“...It is trite law that under the repealed Government Lands Act, a Part Development Plan must be drawn and approved by the Commissioner of Lands or the Minister for lands before any un-alienated Government land could be allocated. After a Part Development Plan (PDP) has been drawn, a letter of allotment based on the approved PDP is then issued to the allottees.

131. It is only after the issuance of the letter of allotment, and the compliance of the terms therein, that a cadastral survey can be conducted for the purpose of issuance of a certificate of lease. This procedural requirement was confirmed by the surveyor, PW3. The process was also reinstated in the case of African Line Transport Co. Ltd vs. The Hon. Attorney General, Mombasa HCCC No.



276 of 2013 where Njagi J. held as follows: “Secondly, all the defence witnesses were unanimous that in the normal course of events, planning comes first, then surveying follows. A letter of allotment is invariably accompanied by a PDP with a definite number. These are then taken to the department of survey, who undertake the surveying. Once the surveying is complete, it is then referred to the Director of Surveys for authentication and approval. Thereafter, a land reference number is issued in respect of the plot.¹³² A part development plan (PDP) can only be prepared in respect to Government land that has not been alienated or surveyed...”

223. Lastly, it is imperative to underscore that whenever a court is confronted with two or more conflicting Certificates of Titles/Leases, over and in respect of the same property, it is incumbent upon the Honourable court to interrogate the root of each and every certificate of title, with a view to ascertaining the propriety and validity of the process culminating into the issuance of Certificate of Lease/title.
224. Instructively, it was therefore incumbent upon PW1 to place before the Honourable court all the requisite documents, inter-alia, the duly approved Part Development Plan; the Letter of allotment, if any, availed to him by the predecessor, the duly executed Lease Instrument; the sale agreement, the Transfer Instrument and ultimately the Certificate of Lease. Certainly, a certificate of lease cannot issue in vacuum.
225. I must point out that despite the now established and hackneyed position of the law in this respect, the Plaintiff was content with waving before the Honourable court the Certificate of Lease and the various rate payment receipts, (which are post registration documents), to stake a claim to the suit property.
226. The Court of Appeal in the case of *Munya Maina versus Hiram Gathiha Maina* [2013] eKLR, underscored the position in the following terms;

“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”.

227. The same position as espoused in the preceding paragraph had hitherto been succinctly explained by the Court of Appeal in an earlier decision, to wit, the case of *James Henry Mundiar t/a Kabarak Development Services V. Tradewheel Kenya Ltd* (1987) eKLR, where the court stated inter-alia as hereunder;

Where two parties assert competing proprietary interest over one parcel of land, each must produce evidence in support of his claim.

228. Recently, the Supreme Court of Kenya re-visited the importance of a Party providing the source and background documents leading to the issuance of the Certificate of Title in the case of *Dina*



“[108] As we have established above, before allocation of the unalienated Government Land, there ought to have been processes to be followed prior. Further, we cannot, on the basis of indefeasibility of title, sanction irregularities and illegalities in the allocation of public land. It is not enough for a party to state that they have a lease or title to the property. In the case of Funzi Development Ltd & Others v County Council of Kwale, Mombasa Civil Appeal No.252 of 2005 [2014] eKLR the Court of Appeal, which decision this Court affirmed, stated that:

“...a registered proprietor acquires an absolute and indefeasible title if and only if the allocation was legal, proper and regular. A court of law cannot on the basis of indefeasibility of title sanction an illegality or gives its seal of approval to an illegal or irregularly obtained title.”

[109] We note that the suit property was subsequently converted and H.E. Daniel T. Arap Moi registered as owner and obtained a freehold title. Further, the suit property herein is within the then Mombasa municipality. Contrary to the appellant’s averment, Section 10 of the GLA is applicable. Being a town plot, within the jurisdiction of the 1st respondent and its predecessor, it ought to have been an allocation for a lease for a term not exceeding 100 years

[110] Indeed, the title or lease is an end product of a process. If the process that was followed prior to issuance of the title did not comply with the law, then such a title cannot be held as indefeasible. The first allocation having been irregularly obtained, H.E. Daniel Arap Moi had no valid legal interest which he could pass to Bawazir & Co. (1993) Ltd, who in turn could pass to the appellant.

(111) Article 40 of *the Constitution* entitles every person to the right to property, subject to the limitations set out therein. Article 40(6) limits the rights as not extending them to any property that has been found to have been unlawfully acquired. Having found that the 1st registered owner did not acquire title regularly, the ownership of the suit property by the appellant thereafter cannot therefore be protected under Article 40 of *the Constitution*. The root of the title having been challenged, as we already noted above the appellant could not benefit from the doctrine of bona fide purchaser.

229. Premised on the foregoing, there is no gainsaying that the Certificate of Lease which the Plaintiff herein anchors the subject claim on, cannot by itself bestow and convey upon the Plaintiff any legitimate rights capable of being protected under the law, in the absence of the critical background documents provided for under the law.

230. Turning to the 4th Defendant’s claim, it is not lost on the Honourable court that the Certificate of Lease in favor of the 4th Defendant traces its origin to the allotment of L.R No. Nairobi Block 107/1/1133, to one Zipporah Mbesa, whose allotment is vindicated and confirmed by the impeccable Letter dated the 1st July 2011; and reiterated by the Letter dated 9th February 2016, by the Chief Officer, Lands Nairobi County.



231. Additionally, it is also important to state and underscore that after the Part Development Plan that anchored the allotment of the named property to Zipporah Mbesa was approved by the Commissioner of Lands, the City Council of Nairobi proceeded to and executed a Lease which was thereafter presented for registration and was duly registered by the Land Registrar on the 15th January 1998. For good measure, the Lease Instrument was executed on behalf of the relevant officers of the Nairobi City Council.
232. Moreover, after the registration of the Lease Instrument by the office of the Chief Land Registrar, a Certificate of Lease was duly signed and issued to and in favor of Zipporah Mbesa.
233. On the other hand, Zipporah Mbesa to whom a valid Certificate of Lease, (which traces its origin to the City Council of Nairobi), thereafter sold her interests in the named property to the 2nd Defendant and another in terms of the sale agreement dated 19th June 2006. For clarity, it is the said sale that culminated into the execution of a transfer of lease which was thereafter registered in the name of the 1st Defendant.
234. Subsequently, the 1st Defendant entered into a sale agreement with the 4th Defendant culminating into the transfer and registration of the named property, that is Nairobi Block 107/1/1133 in her favor.
235. Unlike the Plaintiff, the transfer and issuance of the Certificate of Lease in favor of the 4th Defendant is traceable to the City Council of Nairobi and is well grounded. For clarity, there is evidence that there was a Part Development Plan duly prepared and approved by the commissioner of land.
236. There is also evidence, that the city council of Nairobi executed a Lease instrument and finally there is evidence that city council of Nairobi were privy to and knowledgeable of the alienation.
237. On a balance of probabilities, I am persuaded that the 4th Defendant is the legitimate owner and proprietor of the suit property whose current registration bears the abbreviation, namely, L.R No. Nairobi Block 107/1133; certainly after compliance with the Letter by the Chief Land Registrar dated 2nd September 2016.
238. Instructively, the letter by the Chief Land Registrar dated the 2nd September 2016; had called upon, inter-alia, the Director of survey to undertake correction on the registration details with a view to eliminating slush(/) 1 and having the registration status changed to Nairobi Block 107/XXXX.
239. In a nutshell, I come to the conclusion that the 4th Defendant is the legitimate and Bona fide owner of the suit property whose current registration details have been highlighted in the preceding paragraph.

Issue Number 3

What Reliefs ought to be granted.

240. At the onset of the Judgment, I pointed out that various Parties have filed conflicting claims with each side laying a claim to ownership of the suit property. Instructively, the Plaintiff has contended that same is the lawful and legitimate owner of the suit property and therefore the Honourable court ought to decree and issue the requisite declaration.
241. Further and in addition, the Plaintiff has also sought for an order for cancelation of the certificate of title held by the 1st and 4th Defendant, respectively.
242. Finally, the Plaintiff herein has also implored the Honourable court to issue and grant an order of Permanent injunction to restrain the 1st and 2nd and 4th Defendants from interfering with her ownership, possession and use of the suit property.



243. Nevertheless, in the course of discussing issue Number two, I have come to the conclusion that the Certificate of Lease held by the Plaintiff herein was issued in vacuum and thus replete with illegalities. Consequently, there is no gainsaying that the reliefs being sought by the Plaintiff cannot be granted.
244. On behalf of the 4th Defendant, same has sought various Declaratory orders; but essentially directed towards confirming that it is the 4th Defendant who is the legitimate owner of the suit property, albeit described as Nairobi/Umoja/Block/107/1133.
245. I must point out that I have resolved that the suit property herein, which was hitherto registered as L.R No. Nairobi Block 107/1/1133, and the property that was described as Nairobi Block 107/1133, relate to and concern the same ground, in the manner adverted vide the Letter of the Town Clerk, City Council of Nairobi dated the 1/07/2011.
246. Furthermore, I have also found and held that arising from the Letter by the Chief Land Registrar dated 2nd September 2016 the abbreviation details were corrected and therefore the resultant position now speaks to L.R No. Nairobi Block 107/1133; and not otherwise. For good measure, this is why DW2 confirmed that the 4th Defendant currently holds a Certificate of lease in respect of L.R No. Nairobi Block 107/1133.
247. To my mind, the Evidence on record vindicates the claim by and on behalf of the 4th Defendant herein. Consequently and in this respect, it is my conclusion that the 4th Defendant has established and proved her claims, as pertains to the suit Property.
248. However, it is also worthy to note that the 4th Defendant had also impleaded a claim for trespass as against the Plaintiff. Insofar as, the 4th Defendant has proved her case against the Plaintiff, there is no gainsaying that the 4th Defendant is entitled to General Damages for trespass.
249. The outstanding question relates to the Quantum Damages awardable to the 4th Defendant. However, it is instructive to note that there is no mathematical or arithmetical formula established for calculating and assessing an award of General Damages.
250. Notwithstanding the foregoing, it is incumbent upon the Honourable court to take cognizance of the size of the land, the extent of the trespass, the location as well as the general circumstances relating to the conduct of the Parties. In this respect, and bearing in mind that assessment of General Damages is an exercise of discretion, I am minded to award General Damages in the sum of Kes.10, 000, 000/= only.
251. To buttress the foregoing award of General Damages, I draw inspiration and courage from the decision of the Court of Appeal in the case of Caroget Investments Ltd versus Aster Holdings Ltd & Another (2019)eKLR, where the Court stated as hereunder;

“In awarding Kshs. 100,000,000 the learned Judge, as we have seen earlier, considered several factors, including the appellant’s own valuation of the suit property undertaken on 17th June, 2013 and estimated at Kshs.1,800,000,000 given, the fact that the 1st respondent was kept off its property for over 10 years, the size of the suit property, its strategic location, the lost investment opportunities to the 1st respondent, the fact that prior to the invasion by the appellant, 1st respondent had failed for over 14 years after acquiring the property to carry



out any development on it. In a passage from the judgment which we reproduced earlier the Judge reasoned that this failure to develop the property for this long period did not;

“mean that the property would have remained undeveloped until now. Considering the location and value of the suit property I assess general damages in the sum of Kshs. 100,000,000”.

In his lead judgment in the case of *Moya Drift Farm Ltd V. Theuri* [1973] EA 114, Spry, V.P, emphasised the import of section 23 aforesaid; that the absolute and indefeasible ownership of a property must, of necessity, entitle the rightful owner to evict a trespasser wrongly on his land.

252. Additionally, it is also imperative to take cognizance of the ratio decidendi in the case of *Davis Mwashau Jome versus Damaris Karanja & Another* (2021)eKLR, stated and held as hereunder;

“She cannot escape payment of general damages for trespass. In his submissions, Mr. Mwakisha pitched for general damages in the sum of Kshs. 2 million. Mr. Oddiaga did not make any submissions on the quantum of general damages. I have seen the case of *Duncan Nderitu Ndegwa vs Kenya Pipeline Company Limited & Another* (2013)eKLR referred to me by Mr. Mwakisha. In that case, Nyamweya J, awarded general damages in the sum of Kshs. 100,000/= for trespass. The quantification of such general damages is in the discretion of the court. On my part, considering the conduct of the 1st defendant, the length of time that the plaintiff has been kept out of possession, the size of the land, the location thereof, and all other factors, I do award general damages in the sum of Kshs. 1,000,000/= in favour of the plaintiff payable by the 1st defendant. The same shall attract interest at court rates from the date hereof”.

253. Finally, there is the claims that were mounted by and on behalf of the 1st Defendant herein. Invariably, it is noteworthy, that the 1st Defendant filed a Counter-claim in respect of ELC No. 1382 of 2016.

254. Furthermore, the same 1st Defendant also filed and maintained the proceedings vide ELC No. 706 of 2011, which had hitherto been filed over and in respect of the same Property, albeit before the same was sold to the Fourth Defendant herein.

255. Nevertheless, it is imperative to recall that the 1st Defendant herein sold and transferred her interest over and in respect of the suit property to the 4th Defendant pursuant to the Sale Agreement dated 14th March 2016.

256. Consequently and in my humble view, by the time the 1st Defendant’s witness testified before the Honourable court the 14th June 2022; the 1st Defendant herein had no legitimate title or Interest over the suit property capable of (sic) being prosecuted vide Counter-claim or otherwise.

257. Additionally, having sold the suit property to and in favor of the 4th Defendant, it behooved the 1st Defendant herein to take appropriate measures and/ or steps to withdraw the initial suit which had been filed vide ELC No. 706 of 2011. Inevitably, the subsistence and continuation of the said suit constitutes and amount to an abuse of the Due process of the Honourable court.

Final Disposition

258. Having discussed all the pertinent issues, it is now appropriate to anchor the Judgment and proclaim the final and dispositive orders pertaining to and concerning the various perspectives that were



canvassed by the Parties in respect of the three separate suits; but which were consolidated and prosecuted vide ELC No. 1382 of 2016.

259. In a nutshell, I find and hold that the 4th Defendant herein has established and proved her case at the foot of ELC No. 174 of 2017. Consequently, Judgment be and is hereby entered in terms of the reliefs enumerated thereunder.
260. In addition, General damages are assessed and awarded in favor of the 4th Defendant herein in the sum of Kes.10, 000, 000/= only, as against the Plaintiff in ELC No. 1382 of 2016.
261. Furthermore and for good measure, the suit property herein is hereby confirmed to be L.R No. Nairobi Block 107/1133; and same is declared to belong to the 4th Defendant, in whose favor the requisite Certificate of lease has since been issued. Consequently and in this regard, the Plaintiff shall vacate and hand over vacant possession of the Suit Property within 120 Days from the Date hereof.
262. Provided however, that should the Plaintiff fail to vacate and hand over vacant possession within the set timelines, the Fourth Defendant shall be at Liberty to Levy Eviction against the Plaintiff and thereby recover vacant Possession.
263. On the other hand, the Certificate of Lease relating to the same Property, namely, L.R No. Nairobi Block 107/1133; and issued in favor of the Plaintiff in ELC No. 1382 of 2016; be and is hereby canceled and revoked. Further, the 3rd Defendant, namely, the Chief Land Registrar and the 5th Defendant are hereby directed to comply with the order herein by ensuring that the documents in the name of the Plaintiff are canceled and expunged from their respective records.
264. Finally and as pertains to costs I make the following orders;
- i. The Plaintiff's suit in ELC No. 1382 of 2016 be and is hereby dismissed with costs to the 1st, 2nd and 4th Defendants.
 - ii. The counterclaim by the 1st Defendant in ELC No. 1382 of 2016 be and is hereby dismissed with Costs to the Plaintiff, 3rd, 5th and 6th Defendants only.
 - iii. The 1st Defendant's suit vide ELC NO. 706 of 2011 be and is hereby dismissed with no orders as to costs, insofar as no statement of defense was filed therein.
 - iv. The 4th Defendant's suit vide ELC NO. 174 of 2017 has since been allowed in terms of Paragraph 260 hereof. Consequently, the 4th Defendant is awarded cost of the suit to be borne by the Plaintiff.
 - v. The claim pertaining to Interest on costs is declined.
265. Having come to the foregoing conclusion, it is imperative and in the Interest of Justice to now state and proclaim that the Order of Status Quo, which was issued by the Honourable Court of Appeal vide Court of Appeal Civil Application Number 225 of 2019; and which was to last pending the Hearing and determination of the consolidated suits herein, be and is hereby spent.
266. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 22ND DAY OF MAY 2023.

OGUTTU MBOYA

JUDGE

In the Presence of;



Mr Joe Murage for the Plaintiff.

Mr. Adawo h/b for Mr. Kwanga Mboya for the First and Second Defendants.

Ms Angela Cheronno for the Fourth Defendant.

Ms Yvonne Omollo for the Fifth Defendant.

N/A for the Third and Sixth Defendants.

