



REPUBLIC OF KENYA



**Agriculture & Food Authority v Natarge & 5 others (Environment & Land
Petition E023 of 2022) [2023] KEELC 17544 (KLR) (11 May 2023) (Judgment)**

Neutral citation: [2023] KEELC 17544 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND PETITION E023 OF 2022**

JO MBOYA, J

MAY 11, 2023

BETWEEN

AGRICULTURE & FOOD AUTHORITY PETITIONER

AND

JULIUS WAMTAI OLE NATARGE 1ST RESPONDENT

RICHARD MATERE LUSUETI 2ND RESPONDENT

KERUKE LEPOSO LEKINYONGO 3RD RESPONDENT

LEMARIMBE JOHN 4TH RESPONDENT

THE CHIEF LAND REGISTRAR 5TH RESPONDENT

THE ATTORNEY GENERAL 6TH RESPONDENT

JUDGMENT

1. The Petitioner herein is a Statutory Body established and created pursuant to the provisions of *Agriculture and Food Authority Act*, 2013; and same is the successor of the Regulatory Institutions in the sector of Agriculture and Food, respectively.
2. In addition, the Petitioner herein by dint of the provisions of the Parent Act, took over the assets and liabilities of, inter-alia, the Coffee Board of Kenya, which was thereafter, constituted as a Directorate, albeit, under the auspices of the Petitioner herein.
3. Following her establishment and by dint of the provisions of *Agriculture and Food Authority Act*, 2013, the Petitioner herein vide vesting order issued on the 21st July 2017; was vested with the ownership of various properties, inter-alia, L.R No. 209/10537(I.R No. 53462); which was hitherto registered in the name of Coffee Board of Kenya. In this regard, the Petitioner became the lawful and registered proprietor of the suit property.



4. Nevertheless, despite being the lawful and registered proprietor of the suit property, various persons purported to lay a claim to and in respect of the suit property. Consequently, the Petitioner herein was constrained to and indeed mounted the subject Petition.
5. Invariably, vide the Petition which is dated the 10th June 2022, the Petitioner has sought for a plethora of reliefs, whose details are as hereunder;
 - i. Declaration that the petitioners fundamental rights as enshrined in Article 40 in the constitution 2010 have been violated, or threatened with contravention or infringement.
 - ii. Declaration that the registration of grant number I.R 63454 in the name of Regina Nyokabi Kuria and the alleged transfer to Julius Wamtai Ole Natarge are illegal null and void.
 - iii. Grant number I.R 63454 registered in the name of Regina Nyokabi Kuria and the alleged transfer of the Interest therein to Julius Wamtai Ole Natarge be and are hereby canceled.
 - iv. Declaration that grant number I.R 101456 in the names of Richard Matere Lusweti (2nd Respondent), Keruke Leposo Lekinyongo (3rd Respondent) and Lemarimbe John (4th Respondent), is illegal, null and void.
 - v. Grant number I.R 101456 in the names of Richard Matere Lusweti (2nd Respondent), Keruke Leposo Lekinyongo (3rd Respondent) and Lemarimbe John (4th Respondent), be and is hereby canceled.
 - vi. A Declaration that the subdivision of the Petitioners property L.R. No. 209/10537 is illegal null and void.
 - vii. An order of Mandamus directed to the 5th Respondent requiring it to cancel all registration, entries, transactions and records relating to grant number I.R 63454 and grant number I.R 101456, and all entries in respect thereof.
 - viii. A Conservatory order in the nature of Permanent Injunction be and is hereby issued restraining or prohibiting the Respondents jointly and severally whether by themselves, their servants, their officers, agents or any other person claiming under or through any of the Respondents from dealing with, subdividing, entering to or otherwise interfering with the Petitioners property rights in respect of the suit property L.R. No. 209/10537 or rights of the Petitioners lawful tenants.
 - ix. General damages.
 - x. Costs of and incidental to this Petition be granted to the Petitioner.
 - xi. Any other order that this Honourable court deems fit and just to grant under the circumstances.
6. Upon being served with the instant Petition, the 2nd and 4th Respondents duly entered appearance through the firm of M/s Howard & Kenneth Advocates. For good measure, the appearance was lodged on the court on the 29th June 2022.



7. However, on the 26th October 2022, the law firm of M/s Howard & Kenneth filed an application to cease acting for and on behalf of the 2nd and 4th Respondents. Instructively, the application to cease acting was ultimately heard and disposed of vide the Ruling and order of the Honourable court made on the 2nd February 2023.
8. On the other hand, the 5th and 6th Respondents duly entered appearance and thereafter filed an elaborate Replying affidavit sworn on the 28th September 2022; by one Robert J Simiyu. For clarity, the deponent intimated that same is the Assistant Director, Land Administration Department, within the Ministry of Land, Public Works, Housing and Urban Development.
9. For completeness of proceedings, the 1st and 3rd Respondents herein neither entered appearance nor filed any response to the instant Petition.
10. On the 2nd of February 2023, the Honourable court with the concurrence of the advocates for the Petitioner and the 5th and 6th Respondents, respectively issued directions pertaining to the disposal of the Petition. In this respect, it is worthy to observe that the Parties agreed to dispose of the Petition on the basis of affidavit evidence and written submissions.

Submissions By The Parties

a. Petitioner's Submissions

11. The Petitioner herein filed written submissions dated the 14th March 2023; and in respect of which same raised, highlighted and amplified three issues for consideration and determination of the Honourable court.
12. First and foremost, learned counsel for the Petitioner submitted that the suit property was hitherto allocated to and in favor of Coffee Board of Kenya, through a Letter of allotment dated the 9th October 1986.
13. In addition, Learned counsel submitted that upon the issuance of the Letter of allotment, Coffee Board of Kenya (which has now been constituted as a Directorate under the Petitioner), proceeded to and complied with the terms of the Letter of allotment, inter-alia, payment of the stand premium, acceptance of the Letter of allotment and same was ultimately issued with a certificate of title over and in respect of the suit property.
14. It was the further submissions of learned counsel for the Petitioner, that upon the suit property being allocated to and in favor of Coffee Board of Kenya (now defunct), the suit property ceased to be available for allocation or alienation to any other party, the 1st to 4th Respondents not excepted.
15. Additionally, learned counsel submitted that upon being issued with the certificate of title over and in respect of the suit property, Coffee Board of Kenya, now defunct acquired lawful and legitimate rights to and in favor of the suit property. Instructively, counsel added that it is the said rights and interests over the suit property that were thereafter transferred and vested in the Petitioner by virtue of Section 3(3) of The Agriculture & Food Authority Act, 2013.
16. Furthermore, learned counsel for the Petitioners has submitted that upon her establishment, the Petitioner herein moved the Honorable court by dint of an application which was filed vide ELC Misc. Application no. 99 of 2017 and thereafter procured a vesting order pertaining to and in respect of, inter-alia, the suit property.



17. In view of the foregoing, learned counsel for the Petitioner has therefore submitted that the Petitioner herein is the lawful and legitimate proprietor of the suit property and her rights thereto are thus insulated and vindicated by the provision of Section 24 and 25 of the [Land Registration Act](#), 2012.
18. Secondly, learned counsel for the Petitioner has submitted that insofar as the suit property had been duly and lawfully allocated to Coffee Board of Kenya, now defunct (which was a Public body), the suit property could no longer be allocated to any third party.
19. In addition, learned counsel submitted that despite the fact that the suit property stood duly alienated in favor of Coffee Board of Kenya now defunct, the 1st to 4th Respondents have purported to have acquired various allotments over and in respect of the suit property and thereafter same proceeded to and obtained (sic) illicit certificates of title, purporting to be the registered owners of various portions of the suit property.
20. It is the submissions of learned counsel for the Petitioner that the impugned Letters of allotments, which were relied upon by the 1st to 4th Respondents, to procure registration over portions of the suit property, were irregular, illegal and procured procedurally. In any event, counsel has added that no such Letter of allotment could issue without first rescinding the Letter of allotment that had hitherto been issued in favor of Coffee Board of Kenya.
21. On the other hand, learned counsel has further submitted that the Certificate of titles propagated by the 1st to 4th Respondents are similarly invalid and incapable of protection. In this regard, learned counsel submitted that the Honorable court can only sanction and protect legitimate titles whose owners could justify the manner in which same were procured and acquired.
22. In support of the submissions pertaining to the impropriety of the Letters of allotment(s) and Certificate of Titles held by the 1st to 4th Respondents, Learned counsel for the Petitioner has cited and relied on, inter-alia, *Waas Enterprises Ltd v City Council of Nairobi & Another* [2014]eKLR, *Rukaya Ali Mohamed v David Gikaiyo Nambacha & Another Kisumu HCCA No. 9 of 2004* (Unreported) and *Hubat L Martine & 2 Others v Margaret J Kamar & 5 Others* [2016]eKLR and *Josphat Muthui Mwangi v The Chief Land Registrar & 2 Others* [2015]Eklr, respectively.
23. Thirdly, learned counsel for the Petitioner has submitted that by virtue and on account of the illicit Letters of allotment(s) and Certificate(s) of title that are held by the 1st to 4th Respondents, the rights of the Petitioner over and in respect of the suit property have been variously interfered with and or infringed upon.
24. As a result of the violation, interference with and infringement upon the rights of the Petitioner, learned counsel has submitted that the Petitioner is thus entitled to recompense by an award of Damages. In this regard, learned counsel has proposed an award in the sum of Kes.1, 000, 000/= only, as against each of the Respondents.
25. In a nutshell, learned counsel for the Petitioner has implored the Honourable court to find and hold that the Petitioner has been able to demonstrate and establish the root cause of her title to and in respect of the suit property. Consequently, Learned counsel added that it is therefore imperative to find and hold that the Petitioner has duly discharged the burden of proof as required by dint of Sections 107, 108 and 109 of the [Evidence Act](#), Chapter 80 Laws of Kenya.

b. 5th and 6th Respondents' Submissions



26. The 5th and 6th Respondents filed written submissions dated the 16th March 2023; and in respect of which same has raised and highlighted just one issue for consideration and determination by the Honourable court.
27. It is the submissions of the 5th and 6th Respondent that the suit property herein was lawfully allocated to Coffee Board of Kenya (which has since been constituted as a directorate under the Petitioner) and who upon allocation duly complied with the terms of the Letter of allotment dated the 9th October 1996.
28. In addition, learned counsel for the 5th and 6th Respondents has submitted that upon compliance with the terms of the Letter of allotment; the office of the Commissioner of Land duly processed the requisite instruments, culminating into the issuance of a certificate of title in favor of Coffee Board of Kenya. Instructively, counsel has pointed out that the certificate of title was preceded by the issuance and execution of the requisite Deep Plan Number 143775 ; dated 6th March 1990.
29. Further, Learned counsel for the 5th and 6th Respondents has submitted that the purported Grant in respect of I.R No. 63454, which was allegedly issued to one Regina Nyokabu Kuria and which was thereafter transferred to the 1st to 4th Respondents, did not emanate from the Office of the Chief Land Registrar.
30. In view of the foregoing, Learned counsel for the 5th and 6th Respondents submitted that the impugned Grant, which relates to and concerns the same suit property, but albeit in the name of Regina Nyokabi Kuria was illegal, unlawful and void. Consequently, counsel has supported the Petitioner's case.
31. In support of the submissions that the Petitioner is the lawful and legitimate proprietor of the suit property, Learned counsel for the 5th and 6th Respondents has cited and relied upon the decision in the case of Waas Enterprises Ltd v City Council of Nairobi & Another [2014]eKLR and Republic v Land Registrar, Kilifi, Ex-parte Daniel Rici [2013]eKLR, respectively.
32. Premised on the foregoing, Learned counsel for the 5th and 6th Respondents has therefore joined issues with the Petitioner in imploring the Honourable court to rescind, cancel and nullify the impugned Grants held by the 1st to 4th Respondents.

Issues for Determination

33. Having reviewed and evaluated the Petition and the supporting affidavit thereof; the Replying affidavit on behalf of the 5th and 6th Respondents; and upon taking into account the written submissions filed on behalf of the named Parties; the following issues do arise and are thus worthy of determination;
 - i. Whether the Petitioner herein is the lawful and legitimate proprietor of the suit property.
 - ii. Whether the suit property was available and capable of (sic) being allocated to, inter-alia, Regina Nyokabi Kuria and by extension the 1st to 4th Respondents.
 - iii. Whether the Petitioner is entitled to recompense on account of Damages.

Analysis and Determination

Issue Number 1. Whether the Petitioner herein is the Lawful and Legitimate Proprietor of the Suit Property.

34. It was the Petitioner's case that the suit property was duly and lawfully allocated to Coffee Board of Kenya, (which has since been converted into a Directorate under the Petitioner) by virtue of a Letter of allotment issued on the 9th October 1986.



35. In addition, the Petitioner, averred that upon the issuance of the letter of allotment, Coffee Board of Kenya duly complied with the terms of the letter of allotment, inter-alia, issuance of a formal letter of acceptance and payments of the requisite stand premium, within the stipulated timelines.
36. Furthermore, the Petitioner posited that upon compliance with the terms of the Letter of allotment; the office of the commissioner of land, in liaison with the Director of Survey processed the requisite instrument, including the Deed Plan and ultimately issued a Certificate of title in favor of Coffee Board of Kenya. For clarity, the Petitioner alluded to the Certificate of title which was registered on the 27th of August 1991 vide I.R No. 53462/1.
37. Additionally, it was the Petitioner's case that latter on Parliament, (read, the National Assembly and the Senate) enacted Agriculture & Food Act, 2013 which, inter-alia, established the Petitioner herein. In addition, it was pointed out that by dint of Section 3(3) of the said Act, the Petitioner herein took over the assets and liability of inter-alia Coffee Board of Kenya, which included the suit property.
38. In any event, it was pointed out that following the enactment of Agriculture & Food Authority Act, the Petitioner herein filed an application before the Environment and Land Court vide ELC Misc. Application 99 of 2017 and in respect of which same sought for and obtained a vesting order, relating to, inter-alia, the suit property.
39. Premised on the foregoing averments, the Petitioner has thus contended that the suit property lawfully belongs to and is registered in her name, as evidenced vide entry Number 2 shown in the certificate of title. In this regard, the Petitioner has thus invoked and relied on the provisions of Section 24 and 25 of the [Land Registration Act](#), 2012, to vindicate her claim and entitlement to the suit property.
40. On the other hand, the 5th and 6th Respondent filed an elaborate Replying affidavit sworn by one Robert J Simiyu and in respect of which same gave a break down pertaining to and concerning the process culminating into the issuance of Letters of allotment in favor of Coffee Board of Kenya; and thereafter ultimate registration and issuance of Certificate of title.
41. In addition, the 5th and 6th Respondents have confirmed and vindicated that indeed the suit property lawfully belongs to and is the property of the Petition, who took over the assets and liability of Coffee Board of Kenya by dint of Section 3(3) of [Agriculture and Food Authority Act](#), 2013.
42. From the totality of the averments/depositions obtaining in respect of the subject matter, there is no gainsaying that the Petitioner has been able to place before the Honourable court sufficient and credible material to prove the root cause of her title to and in respect of the suit property. Inevitably, the Petitioner has placed before the court the entire set of documentation, bespeaking the chain underlining the acquisition and registration of the suit property.
43. In this respect, the court finds and holds that the Petitioner's title is indeed lawful and valid. Contrarily, the 1st to 4th Respondents, who had also laid a claim to ownership of the suit property, have not been able to proffer or avail any evidence, whatsoever, to vindicate their claims/entitlement to the suit property.
44. As a result for the foregoing, I come to the conclusion that by virtue of being the registered owner of the suit property, the Petitioner is entitled to statutory protection and insulation, as pertains to her rights over the suit property. Indeed, the registration of the Petitioner as the owner and the ultimate issuance of certificate of title vests in the Petitioner legitimate title thereto.
45. To underscore the extent and scope of the Petitioner's rights and interests over the suit property, premised on the certificate of title, it is appropriate to restate and reiterate the holding of the Court



of Appeal in the case of Elizabeth Wambui Githinji & 29 others v Kenya Urban Roads Authority & 4 others [2019] eKLR, (per Ouko P.C.A) where it was stated and held as hereunder;

“It has long been accepted beyond debate that the land registration process in Kenya is a product of the Torrens system. This was acknowledged in, among a long line of decided cases, this Court’s judgments in Dr. Joseph Arap Ngok v Justice Moiwo ole Keiwua & 5 others, Civil Appeal No. Nai. 60 of 1997 and Charles Karathe Kiarie & 2 Others v Administrators of Estate of John Wallance Muthare (deceased) & 5 others, Civil Appeal 225 of 2006.

Under that system, the title of a bona fide purchaser for value without notice of fraud cannot be impeached; that the land register must mirror all currently active registrable interests that affect a particular parcel of land; that the Government, as the keeper of the master record of all land in Kenya and their owners, guarantees indefeasibility of all rights and interests shown in the land register against the entire world; and that in case of loss arising from an error in registration, the Government guarantees the person affected of compensation.

Finally, the statutory presumption of indefeasibility and conclusiveness of title based on the register can be rebutted only by proof of fraud or misrepresentation which the buyer is himself shown to have been involved.

The object of the Torrens system was, in very compelling language, explained in the decision of the Privy Council in Gibbs v Messer [1891] AC 247 P.C. at page 254 as follows:-

“The main object of the Act, and the legislative scheme for the attainment of that object, appear to them to be equally plain. The object is to save persons dealing with registered proprietors from the trouble and expense of going behind the register, in order to investigate the history of their author’s title, and to satisfy themselves of its validity. That end is accomplished by providing that everyone who purchases, in bona fide and for value, from a registered proprietor, and enters his deed of transfer or mortgage on the register, shall thereby acquire an indefeasible right, notwithstanding the infirmity of his author’s title”.

46. In addition, where there arises a dispute pertaining to ownership over a designated piece of land and two or more persons are holding parallel/ competing certificates of title thereto, it behooves the Parties laying a claim to the designated property to place before the Honourable court credible evidence justifying their process pertaining to the acquisition and issuance of the impugned certificate of titles.
47. Instructively, in respect of the subject matter only the Petitioner has placed before the court the requisite documentations undergirding the process culminating into the acquisition, registration and ultimate issuance of certificate of title in her favor. In short, the Petitioner has established and duly demonstrated the validity of her Title to the suit property.
48. To buttress the foregoing explication of the law, it is appropriate to adopt and reiterate the holding of the court in the case of Hubert L. Martin & 2 Others v Margaret J. Kamar & 5 Others[2016] eKLR, where the Honourable court stated and observed as hereunder;

“A court when faced with a case of two or more titles over the same land has to make an investigation so that it can be discovered which of the two titles should be upheld. This investigation must start at the root of the title and follow all processes and procedures that brought forth the two titles at hand. It follows that the title that is to be upheld is that which conformed to procedure and can properly trace its root without a break in the chain. The parties to such litigation must always bear in mind that their title is under scrutiny and they



need to demonstrate how they got their title starting with its root. No party should take it for granted that simply because they have a title deed or Certificate of Lease, then they have a right over the property.

The other party also has a similar document and there is therefore no advantage in hinging one's case solely on the title document that they hold.

Every party must show that their title has a good foundation and passed properly to the current title holder. With the nature of case at hand, I will need to embark on investigating the chain of processes that gave rise to the two titles in issue as it is the only way I can determine which of the two titles should be upheld.”

49. Finally, the sanctity of the certificate of title, which currently inheres in the Petitioner is further vindicated by the holding in the case of Joseph N.K. Arap Ng'ok v Moiyo Ole Keiwua & 4 others [1997] eKLR, where the Honourable Court of Appeal held as hereunder;

“Section 23(1) of the Act gives an absolute and indefeasible title to the owner of the property. The title of such an owner can only be subject to challenge on grounds of fraud or misrepresentation to which the owner is proved to be a party. Such is the sanctity of title bestowed upon the title holder under the Act. It is our law and law takes precedence over all other alleged equitable rights of title. In fact the Act is meant to give such sanctity of title, otherwise the whole process of registration of titles and the entire system in relation to ownership of property in Kenya would be placed in jeopardy”.

50. In a nutshell, I come to the conclusion that the Petitioner herein is the lawful and legitimate proprietor of the suit property in terms of the certificate of title which was hitherto issued in favor of coffee board of Kenya (now defunct), but which has since vested in the Petitioner by virtue of Gazette notice Number 13 of 25th January 2013, as read together with the vesting order issued vide ELC Misc. Application no. 99 of 2017. Instructively, the vesting order was duly registered against the certificate of title in terms of entry number 2 endorsed on the 14th October 2021.

Issue Number 2. Whether the Suit Property was available and capable of (sic) being allocated to, inter-alia, Regina Nyokabi Kuria and by extension the 1st to 4th Respondents.

51. It is common ground that the suit property herein was hitherto public land and thus capable of being alienated and allocated by the office of the commissioner of land, albeit under the authority of the President by dint of the provision of Section 3 of The Government *Land Act*, Chapter 280 Laws of Kenya (now repealed).
52. Pursuant to and in exercise of her mandate, the commissioner of land duly issued a Letter of allotment to and in favor of Coffee Board of Kenya (now defunct) vide letter dated the 9th October 1986.
53. Furthermore, it is common ground that upon the issuance of the Letter of allotment, the allottee (who was herself a statutory body) thereafter proceeded to and complied with the terms of the Letter of allotment, inter-alia, formal acceptance and payment of the stand premium.
54. Notably, upon due compliance with the terms of the Letter of allotment, the office of the Director of Survey proceeded to and prepared Deed Plan Number 143775; dated the 6th March 1999, which was thereafter escalated to the Commissioner of Land.
55. Subsequently, the Commissioner of Land generated and issued Certificate of title in favor of the allottee, namely, Coffee Board of Kenya. In this respect, it is worthy to note that the allocation and



- ultimate registration of the suit property to and in favor of Coffee Board of Kenya, now defunct, took away the suit property and made same unavailable for further allocation or alienation, whatsoever.
56. Notwithstanding the foregoing, the Petitioner herein has placed before the Honourable court various documents including a Grant number I.R 63454 in respect of L.R No. 209/10537, issued to and in favor of one Regina Nyokabi Kuria. In addition, the Petitioner has also placed before the Honourable court another certificate of title registered as Grant number 101456 and relating to L.R No. 209/10537.
 57. It would appear that even though the suit property had long been alienated and registered in the name of Coffee Board of Kenya and thereafter vested in the name of the Petitioner, the Commissioner of Land, (sic) still purported to allocate/alienate the same property to and in favor of, inter-alia, Regina Nyokabi Kuria, on one hand; and the 1st to the 4th Respondents on the other hand.
 58. Clearly and in my view, once the Commissioner of Lands issues a letter of allotment in favor of a designated allottee; and the terms of the letter of allotment are duly complied with, the property at the foot of the Letter of allotment ceases to be available for further allocation or alienation, unless the letter of allotment is rescinded and revoked.
 59. In the premises, for as long as the suit property had long been allocated to and in favor of Coffee Board of Kenya, now defunct, and thereafter issued with a Certificate of title, any subsequent allocation of the suit property would be irregular, illegal and unlawful. In addition, such subsequent allocation would not (sic) convey in favor of the subsequent allottee, any lawful or legitimate interest in the impugned property.
 60. To buttress the position that once Land has been allocated/ reserved for a particular purpose, same is no longer available for (sic) allocation, the holding in the case of *Benja Properties Limited v Syedna Mohammed Burhannudin Sahed & 4 others* [2015] eKLR, is imperative.
 61. For coherence, the Honourable of Court of Appeal held as hereunder;
 25. In arriving at our decision, we note that an interest in land cannot be allotted, alienated or transferred when the specific parcel of land allotted is not in existence. Allotment of an interest in land is a transaction in rem attaching to and running with a specific parcel of land. In the instant case, the allotment by the Commissioner of Land to the original allottees did not attach in rem to any land since there was no parcel upon which the allotment could attach. What the 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.
 62. In addition, the position, that a subsequent letter of allotment cannot issue, where previous Letter of allotment had hitherto been issued and the terms thereof complied with; was also reiterated in the case of *Waas Enterprises Ltd v City Council of Nairobi & Another* [2014]eKLR, where the Honourable court stated and observed as hereunder;
 - “..Once allotment letter is issued and the allottee meets the conditions therein, the land in question is no longer available for allotment since a letter of allotment confers absolute right of ownership or proprietorship unless it is challenged by the allotting authority or is acquired through fraud mistake or misrepresentation or that the allotment was out rightly illegal or it was against public interest. In other words, where land has been allocated, the



same land cannot be reallocated unless the first allocation is validly and lawfully cancelled.” It is therefore my opinion the suit property was not available at all for the 2nd defendant because by the time the licence was issued to the 2nd defendant, an allotment letter had already been issued to the plaintiff.

63. Arising from the foregoing, I come to the conclusion that the suit property having been duly and lawfully allocated by dint of the Letter of allotment issued on the 9th October 1986 and whose terms were complied by the allottee, culminating into the issuance of a certificate of title dated the 15th July 1990; same was no longer available and could thus not have been re- alienated and registered in the names of the 1st to 4th Respondents, whatsoever.
64. Instructively, the registration of the same suit property in favor of the 1st to 4th Resoondent on the basis of the impugned certificate of titles/Grants and which are purported to have been undertaken on the 3rd July 1999; and the one in favor of Regina Nyokabi Kuria, which has been stated to have been issued on the 4th March 1994; are void and otherwise a nullity.

Issue Number 3. Whether the Petitioner is entitled to Recompense on account of Damages.

65. Having been duly allocated the suit property and thereafter issued with a Certificate of title, Coffee Board of Kenya (now defunct) became the lawful and legitimate proprietor of the suit property in accordance with the provisions of Section 23 of the Registration of Titles Act, Chapter 281 Laws of Kenya, now repealed.
66. Subsequently, the suit property was transferred to and vested in the Petitioner herein on the basis of, inter-alia, Gazette Notice Number 13 of 25th January 2013; and vesting order issued on the 21st July 2017, albeit registered on the 4th October 2021. In this regard, the Petitioner thus assumed the proprietary rights to and in respect of the suit property.
67. Premised on the vesting of the suit property in favor of the Petitioner, the Petitioner was thus entitled to enjoy all the Proprietary rights attendant to and attaching on the suit property, to the exclusion of all and sundry, the 1st to 4th Respondent not excepted.
68. Moreover, it is worthy to state and observe that the extent and scope of the Petitioner’ rights to and in respect of the suit property are well delineated by dint of the provisions of Sections 24 and 25 of the Land Registration, Act 2012.
69. For good measure, the provisions of Section 24 and 25 provides as hereunder;

“ 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—

SUBPARA 1.

to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and

SUBPARA 2.

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.”

70. By virtue of being the registered owner/proprietor of the suit property, the Petitioner was therefore entitled to enjoy the benefits of such registration, without any interference from anyone.
71. Nevertheless, the 1st to 4th Respondent herein purported to interfere with the rights of the Petitioner, allegedly on the basis of fictitious Grants, which have since been disowned by the 5th and 6th Respondents. Clearly, the impugned actions and activities by the 1st to 4th Respondents constituted trespass and thus an infringement on the rights of the Petitioner.
72. In my humble view, the actions and activities by the 1st to 4th Respondent, denied and deprived the Petitioner of the enjoyment of her proprietary rights of her property. Consequently and in the premises, the Petitioner had no doubt to recompense on account for general damages for trespass.
73. As pertains to the Quantum of damages, it is instructive to note that the suit property measures about 8.1 Ha and thus same is indeed expansive. In any event, the suit property is situate within Embakasi Area in the City of Nairobi. In this respect, there is no gainsaying, that the suit property is indeed prime and lucrative.
74. While considering the ingredients and factors to be addressed in ascertaining the Quantum of Damages for trespass the court in the case of *Davis Mwashau Jome v 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.

75. Furthermore, the issues and factors to be considered before assessing and awarding Damages for trespass, was also ventilated and articulated in the case of *Caroget Investments Ltd v 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.”

76. Having made the foregoing observation, the Court of Appeal proceeded and stated as hereunder;

We are not persuaded that the learned Judge took into account any material which he ought to have avoided or that he failed to consider something material, as a result of which he arrived at an erroneous decision.

77. Premised on the articulation alluded to in the preceding paragraphs, I am minded to assess and award General damages as against the 1st to the 4th Respondents in the sum of Kes.2, 000, 000/= only, each and the award of Damages herein shall attract Interest at Court rates (14% per annum) from the date of Judgment.

78. However, the 5th and 6th Respondent disowned the Certificate of Titles/Grants, which were propagated by the 1st to 4th Respondents. Indeed, it was pointed out that the named certificate(s) of title did not emanate from the offices of the 5th Respondent. For good measure, the position taken by the said Respondents, was not controverted or at all.

79. Owing to the deposition that the impugned certificate of title/Grant, held by the 1st to the 4th Respondents, did not emanate from the offices of the 5th Respondent; I am not inclined to make any award of General damages as against the 5th and 6th Respondents.

80. Notwithstanding the foregoing, it is appropriate to state and underscore that time is ripe for the 5th Respondent to take the requisite steps towards riding her offices of in-house fraudsters and cartels, that are being used as the leverage by Land grabbers to procure fictitious Certificate(s) of title.

81. Instructively, the 5th Respondent must inculcate in her office and officers the principles espoused and entrenched in Articles 10 and 232 of *the Constitution* 2010.



Final Disposition

82. Having duly addressed the itemized issues that were enumerated in the body of the Judgment; it is now appropriate to anchor the Judgment and to make the dispositive orders.
83. Inevitably, I have found and held that the Petitioner has duly proved and established her case, essentially as against the 1st to 4th Respondents. Consequently and in the premises, I enter Judgment in favor of the Petitioner in the following terms;
- i. Declaration that the Petitioners Fundamental Rights as enshrined in Article 40 in *the constitution* 2010 have been violated, or threatened with contravention or infringement.
 - ii. Declaration that the registration of grant number I.R 63454 in the name of Regina Nyokabi Kuria and the alleged transfer to Julius Wamtai Ole Natarge are illegal null and void.
 - iii. Grant number I.R 63454 registered in the name of Regina Nyokabi Kuria and the alleged transfer of the interest therein to Julius Wamtai Ole Natarge be and are hereby cancelled.
 - iv. Declaration that Grant number I.R 101456 in the names of Richard Matere Lusweti (2nd Respondent), Keruke Leposo Lekinyongo (3rd Respondent) and Lemarimbe John (4th Respondent), is illegal, null and void.
 - v. Grant number I.R 101456 in the names of Richard Matere Lusweti (2nd Respondent), Keruke Leposo Lekinyongo (3rd Respondent) and Lemarimbe John (4th Respondent), be and is hereby canceled.
 - vi. A Declaration that the sub-division of the Petitioners property L.R No. 209/10537; is illegal null and void.
 - vii. An order of Mandamus be and is hereby issued and directed to the 5th Respondent requiring it to cancel all registration, entries, transactions and records relating to grant number I.R 63454 and grant number I.R 101456, and all entries in respect thereof.
 - viii. A Conservatory order in the nature of Permanent injunction be and is hereby issued restraining or prohibiting the Respondents jointly and severally whether by themselves, their servants, their officers, agents or any other person claiming under or through any of the Respondents from dealing with, subdividing, entering to or otherwise interfering with the Petitioners property rights in respect of the suit property L.R No. 209/10537 or rights of the Petitioners lawful tenants.
 - ix. General Damages is assessed in the sum of Kes.2, 000, 000/= only each as against the 1st to 4th Respondents.
 - x. The award of General damages shall attract Interest at Court rates, namely, 14 % per annum, from the date of Judgment.



- xi. Cost of the Petition shall be borne by the 1st to 4th Respondent jointly and or severally

84. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 11TH DAY OF MAY 2023.

OGUTTU MBOYA

JUDGE.

In the Presence of;

Benson Court Assistant

Mr. Eugene Lubulella for the Petitioner

Mr Allan Kamau h/b for Ms. Kerubo for the 5th and 6th Respondents

N/A for the 1st to 4th Respondents

