



**Kirima (Suing on Behalf of the Estate of the Late Gerishon Kamau Kirima Deceased) v Corner Place Investment Limited & 3 others (Environment & Land Petition 45 of 2017) [2023] KEELC 18788 (KLR) (13 July 2023) (Judgment)**

Neutral citation: [2023] KEELC 18788 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND PETITION 45 OF 2017**

**LN MBUGUA, J  
JULY 13, 2023**

**BETWEEN**

**TERESIA WAIRIMU KIRIMA (SUING ON BEHALF OF THE ESTATE OF THE LATE GERISHON KAMAU KIRIMA DECEASED) ..... PETITIONER**

**AND**

**CORNER PLACE INVESTMENT LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**NAIROBI CITY COUNTY GOVERNMENT ..... 2<sup>ND</sup> RESPONDENT**

**CHIEF LAND REGISTRAR ..... 3<sup>RD</sup> RESPONDENT**

**MINISTRY OF LAND, HOUSING & URBAN DEVELOPMENT .... 4<sup>TH</sup> RESPONDENT**

**JUDGMENT**

1. At the heart of the dispute is a parcel of land situated at Nairobi City Park Estate, identified and being claimed by the Petitioner as LR 209/11092/16 registered on 11.12.1996 under the Registration of Titles Act Cap 281 Laws of Kenya (RTA) (Repealed); The same parcel of land is also apparently identified and is being claimed by the 1<sup>st</sup> Respondent as Nairobi Block 37/73 registered on 30.1.2015 under the Registered Lands Act Cap 300 laws of Kenya (RLA) (Repealed).
2. There is no controversy that the initial head lessor of the suit property was/is the City Council of Nairobi (2<sup>nd</sup> Respondent) as reflected in the primary documents of registration availed by the combatants namely; the RTA Grant no. 59724 at page 11 of Petitioner's documents as well as the Green Card for LR 37/73 which is document No.2 availed by the Land Registrar (Dw3). The Petitioner who has a Grant of Letters of Administration to the estate of Gerishon Kamau Kirima (hereinafter, Kirima) contends that the suit parcel was allocated to Kirima by the 2<sup>nd</sup> Respondent way back in the



year 1979. Kirima was thereafter registered as a lease holder of parcel LR 209/11092/16 vide the RTA Grant 59724 on 11.12.1996.

3. On the other hand, the registration records (read the green card) indicate that as at the time the green card was opened on 16.5.2002, the lessor was still the 2<sup>nd</sup> Respondent, the land was subsequently alienated as follows;
  1. 16/5/2002 Certificate of Lease issued to Nicholas B. Ruto.
  2. 1/9/2003 Certificate of Lease issued to Mohamed Abdi Guhad.
  3. Registration on 7/2/2008 to Mohamud Sheikh Hussein and a Certificate of Lease issued on 28.8.2011.
  4. 30.1.2015 Certificate of lease issued to Corner Place Investments Limited
4. The 1<sup>st</sup> Respondent Corner Place Investments Limited contends that it acquired the land via purchase from the immediate registered owner namely Mohamed Sheikh Hussein.
5. The Petitioner avers that the allotment and lease given to Kirima has never been cancelled, while on the other hand, the Respondents (particularly the 2<sup>nd</sup> - 3<sup>rd</sup> Respondents) contend that the titles issued under the RTA were extinguished upon the conversion of the entire block of land to RLA titles.
6. It is quite clear that litigation over the suit property has been in abundance from the Magistrate's courts all the way to the Court of Appeal as outlined at paragraph 29-31 of the Petition and in various court documents.
7. The Petition was heard by way of viva voce evidence.

### **The Petitioner's Case**

8. Vide a Petition dated 3.11.2017, the Petitioner seeks the following orders;
  - a. A declaration be issued holding that the proprietary interest of the suit premises LR No. 209/11092/16 IR No. 75353 Nairobi City Park Estate also known as Nairobi Block 37/73 vests in the estate of Gerishon Kamau Kirima.
  - b. A declaration order be issued holding that the title documents being held by the 1<sup>st</sup> Respondent and issued by the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents with respect to all that land known as LR No. 209/11092/16 I.R No. 75353 Nairobi City Park Estate also known as Nairobi Block 37/73 is illegitimate, unlawful and tantamount to an infringement of the Petitioner's right to property as enshrined in Article 40 of the *Constitution* and contravened the Petitioner's right to fair administrative action that is lawful and procedurally fair as enshrined in Article 47 of the *Constitution* of Kenya.
  - c. An order be issued calling before the Court for quashing, the title document held by the 1<sup>st</sup> Respondent and the Land register held by the 3<sup>rd</sup> and 4<sup>th</sup> Respondents for all the land known as LR Nairobi /Block/37/73.
  - d. A declaration order be issued holding that failure of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents to take any action in relation to complaints lodged with them by the Petitioner amounted to breach of the Petitioner's fundamental right to fair administrative action as enshrined under Article 47 of the *Constitution* and a



breach of the National values and principles as enshrined under Article 10 of the *Constitution*.

- e. A declaration order be issued holding that the 1<sup>st</sup> Respondent's actions of issuing threats to enter and consequently entering the suit premises, evicting tenants therein, removing the perimeter fence and later attempting to gain full entry and start construction on the suit property are express violations to the Petitioner's right to property as provided for under Article 40 of the *Constitution*.
  - f. This Honourable court do grant an order for compensation for the infringement of the Petitioner's rights.
  - g. This Honourable Court do order that costs of this petition be borne by the Respondents.
9. During the trial, the Petitioner, Teresia Wairimu Kirima testified as PW1. She relied on her Supporting Affidavit to the Petition dated 3.11.2017 as her evidence and she produced the bundle of annexures therein items 1-22 running from page 1-98 as her exhibits. She avers that the late Kirima is the sole owner of all that piece of land known as LR No. 209/11092/16/ I.R No. 75352 Nairobi City Park Estate and also known as Nairobi Block 37/73 by virtue of allotment by the then City Council of Nairobi vide the letter dated 2.10.1979. She adds that Kirima complied with the conditions in the said letter of allotment by paying ksh.56,000/= as required.
10. She avers that by a letter dated 11.2.1985 signed by the then Town Clerk S.J Getonga, the Nairobi City Council confirmed allocation of the plot of land and further informed Kirima that a lease agreement would be drawn by the then Nairobi City Council. Thereafter, they entered into a lease of 99 years from 1.11.1981. The said lease is dated 7.6.1996, of which the sublease was subsequently registered on 11.12.1996 as IR. No. 75353, LR No. 209/11092/16 and an entry to that effect was made to the mother title. The deceased and his estate took possession of the said land.
11. She avers that about the year 2003, the late Kirima suspected fraudulent dealings concerning the suit premises when 3<sup>rd</sup> parties started making claims to the same. Upon conducting a search, at the Lands registry, he discovered that the suit premises had fraudulently and unlawfully been registered as Nairobi Block 37/73 under the [RLA](#) and a title issued to one Nicholas B. Ruto who subsequently transferred it to Mohammed Abdi Guhad, Mohamed Sheikh Hussein and finally to Corner Place Investments, the 1<sup>st</sup> Respondent.
12. She accuses the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents of unlawfully creating a parallel title to the suit premises under Nairobi Block 37/73 under the repealed [RLA](#) (Cap 300) and allocated the suit property to other people.
13. She avers that upon inquiry at the Nairobi City Council Offices, Kirima was directed to the offices of Musyoka Annan & Company Advocates who were mandated to act on behalf of the City Council in respect of City Park Housing Scheme. The said firm informed him that it was the sole custodian of the head title of City Park Estate and further, that the Advocates had not surrendered the head title deed which is registered under the [RTA](#) and therefore they were unaware of the issuance of a parallel title to Nicholas B. Ruto and Subsequently to Mohammed Abdi Guhad.
14. The said firm inquired from the 3<sup>rd</sup> and 4<sup>th</sup> Respondents who disowned the titles issued under the [RLA](#). However, the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents have continuously allowed transfer conveyance and other transactions thereof in respect of the impugned title.



15. PW1 further stated that on or about 2.6.2010, the beneficiaries of the deceased, Kirima subleased the property to Capital Truck and Cars Limited. However, the 1<sup>st</sup> Respondent has on several occasions trespassed on the suit premises and committed massive acts of destruction thereon occasioning the petitioner Ksh.2.5 million loss.
16. She deposes that Mohammed Sheikh Hussein, a director of the 1<sup>st</sup> Respondent filed Milimani CMCC No. 624 of 2012 Mohammed Sheikh Hussesin v Mehmood Tariq & others after which he forcefully evicted tenants in the suit premises subjecting the petitioner to loss of rental income. She adds that the said suit was later overturned by the High Court in Milimani ELC Suit No. 622 of 2011 Mohammed Sheikh Hussein v Capital Cars & Truck Ltd where the Court noted the Plaintiff's multiplicity of suits seeking eviction orders in respect of the suit premises and in dismissing the suit, it held that the then Plaintiff was abusing the Court process.
17. PW1 avers that she still pays rates to the City Council. She adds that by the time a title to the suit land was issued in year 2003, her lease was still subsisting.
18. PW1 was only cross-examined by counsel for the 1<sup>st</sup> defendant. She stated that this suit was filed in 2017, about 15 years after the fraud was discovered. She further stated that there was a suit HCCC No. 1065 of 2003 filed by Mohamed Abdi Guhad against the late Kirima.
19. She further stated that Mr. Kirima got his lease from the Government, she has seen the 1<sup>st</sup> Respondent's lease which was also issued by the Government.
20. Upon re-examination, PW1 stated that HCCC. 1065 of 2003 in which Mohamed Abdi Guhad had sued late Kirima was withdrawn on 30.3.2010. She further stated that there have been 3 different claimants of the suit land in court including the 1<sup>st</sup> respondent, thus it is not true she has stayed for 17 years without filing a claim to the suit land.

### **Case for the 1<sup>st</sup> Respondent**

21. The case of the 1<sup>st</sup> Respondent was advanced by DW1, Abdirizak Ibrahim who introduced himself as a director of the 1<sup>st</sup> Respondent. He adopted the contents of his Replying Affidavit sworn on 20.3.2018 and his Further Affidavit sworn on 4.3.2020 as his evidence and he produced the annexures therein as their exhibits.
22. He stated that the 1<sup>st</sup> Respondent got his title from Mohamed Sheikh Hussein and he paid the purchase price; there was a charge from Kenya commercial Bank which was paid and the title was transferred to them. Subsequently, the 1<sup>st</sup> Respondent was issued with a Certificate of Lease on 30.1.2015.
23. He also stated that they are in possession of the suit land and have always been recognized by the 2<sup>nd</sup> Defendant as owners of the said land as evidenced by the rate demand notes and clearance certificate for the year 2015.
24. He contends that the 2<sup>nd</sup> Respondent by a letter dated 9.5.2016 confirmed that the RTA title was converted to Block 37 and new titles issued. The 2<sup>nd</sup> Respondent also approved its building plans on 2.7.2015. However, they could not develop the property because there were trespassers preventing them from doing so. Due to this, the 1<sup>st</sup> Respondent was prompted to seek court's redress and to engage the Ministry of lands, the 2<sup>nd</sup> Respondent and the Director of Criminal Investigations to try and solve the issues surrounding the land.



25. He avers that the petition does not disclose any violation and is an attempt to hide from the law of Limitation of Actions and an attempt to challenge conversion of the suit property from the RTA to the RLA regime.
26. He further deposes that while the Petitioner alleges that the late Kirima discovered fraud on the suit property in 2002, he did not take any action in court for the nullification of the RLA title which is alleged to have been registered in the name of Nicholas B. Ruto.
27. He avers that in the cases cited by PW1 concerning the suit property, in none of them was a determination made that the suit property was owned by Kirima or that the RLA title was void, or that there was any illegality involving the transfer of the property to the 1<sup>st</sup> Respondent.
28. He also deposes that the ruling in Mehmood Tariz v Capital Trucks and Cars Ltd & another [2013] eKLR confirms that the eviction subject of the suit land was lawful contrary to assertions by the Petitioner. He adds that the Petitioner cannot claim loss of rental income as the property did not belong to the estate of Kirima.
29. Upon cross-examination by petitioners' counsel, DW1 stated that as at the time the title herein was issued to Mohamed Guhad in 2003, the 1<sup>st</sup> Respondent was non-existent as it was registered in 2014. Referred to HCCC No. 1065 of 2003 Mohammed Abdi Gubad v Gerishon Kamau Kirima & 2 others, he stated that he was aware of the case. Referred to the orders issued therein and contained at page 58 of the Petitioner's bundle of documents, he stated that the suit was withdrawn.
30. Referred to the case HCCC No. 622 of 2011 Mohammed Sheikh Hussein v Capital Cars & Truck Ltd, he stated that the ruling dated 12.6.2012 contained at page 68 C of the Petitioner's bundle of documents indicates that the suit was dismissed.
31. He also stated that he reported the issue surrounding title to the suit property to the police for investigations in the year 2016 and it was confirmed that the suit parcel has 2 leases as per the document at page 22 of his bundle in the Further Affidavit sworn on 4.3.2020.
32. DW1 also stated that he can't recall if Mohamed Guhad showed him an allotment, but he recalls seeing a lease document and he wouldn't know it since the documents were exchanged by lawyers. He added that when he purchased the suit land, he did a ground inspection and found it was empty save for trees forming a fence.
33. When re-examined, Dw1 stated that the 1<sup>st</sup> Respondent was registered in 2014 and the title herein was issued in 2015. As regards the court cases relating to this suit, he states that the 1<sup>st</sup> Respondent was not party to them and that he has not seen any document stating that the 1<sup>st</sup> Respondent doesn't own the suit land. He added that they conducted due diligence prior to purchasing the suit land.

#### **Case for the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents**

34. The notable pleading filed by the 2<sup>nd</sup> Respondent is a Replying Affidavit sworn by one Githuku Thomas Waweru on 2.2.2018 and filed on the same date. Paragraph 3 thereof indicates that this was their response to the Petition. The said document was not abandoned or expunged from the record. As for the 3<sup>rd</sup> and 4<sup>th</sup> Respondents, this court did not trace any pleadings filed on their behalf.
35. The proceedings of 29.9.2018 indicate that directions were given by the court for parties to file and serve their paginated bundles containing their pleadings, witness statements and documentary evidence within 60 days. The aforementioned Respondents did not comply.



36. Nevertheless, officers from the aforementioned entities did appear before this court and testified, but this was courtesy of a consent agreement made by counsel for the Petitioner and the 1<sup>st</sup> Respondent on 9.2.2023 which stated as follows;

“By consent of advocates for the Petitioner and 1<sup>st</sup> Respondent:

Summons to issue to Director of lands of 2<sup>nd</sup> Respondent and Chief Land Registrar to appear in court and give evidence and to produce documents relating to ownership of Parcel LR No. Nairobi Block 37/73 and LR No. 209/11092/ and IR No 75352”.

37. That is how DW2 and DW3 ended up before this court to tender evidence on the disputed properties.
38. DW2 introduced himself as Stephen Gathuta Mwangi, the C.E.C Urban Planning and Building Environment at Nairobi City County. He relied on his Replying Affidavit dated 20.11.2020. He contends that the suit property was initially leased by the 2<sup>nd</sup> Respondent to one Nicholas Ruto who remains the valid lessee and was never issued to any other party.
39. Still in his affidavit, he avers that the suit premises were converted from RTA to Nairobi Block 37/73 and a new lease was issued in favour of Mohammed Sheikh Hussein. He produced the annexures therein as their exhibits.
40. Upon cross-examination by counsel for the Petitioner, DW2 stated that Nairobi Block 37/73 is the same as LR No. 209/11092/16, but only the land registrar can confirm the same. He disowned the Grant of title when he was directed to the same in Petitioner’s documents at entry No.52. Similarly, when he was shown the rates receipt issued to Kirima (deceased) at page 24 of the Petitioner’s bundle, he stated that he does not know whether it is authentic though it is issued by City Council of Nairobi.
41. He stated that the initial title was issued to Nicholas Ruto, but he does not have a document to show that the said Ruto applied for allocation of the suit land.
42. He further stated that the suit land belonged to Nairobi City Council and that it was converted to RLA by the Director of Survey who does not need a request to do so. He is familiar with the process of conversion of title. He pointed out that the director of survey decides to take a certain area as a block and he gives it a block number. Subsequently, the plots in that block are given parcel numbers and people would be notified of the conversion via Gazette Notice, but he is not aware whether such a notice was published with regard to City Park Estate.
43. He added that the conversion does not change the ownership, so the sub lease holders were to be the owners of Block 37 under RLA. He added that from their records, the land was issued to one Nicholas but under the RTA, the sublease for the suit land was unknown to him.
44. Upon cross examination by counsel for the 1<sup>st</sup> defendant, DW2 stated that for the allotment letter dated 2.10.1979 at page 1 (A) of the Petitioner’s list of documents, he could not confirm whether it is from the County of Nairobi as he did not find it in their records but it says it is for plot No.6 and has the City County’s letter head.
45. He also stated that he is familiar with the process of allocation of land. He pointed out that the receipt dated 27.2.1978 cannot support an allotment of 1979. He also pointed out that at page 3 of the Petitioner’s bundle, there is a letter which does not make reference to plot No.16, it refers to plot 6. He added that at page 10(A) of the Petitioner’s bundle, the reference No. of the property is LR 2019/11092/15, yet petitioner is claiming parcel LR 209/11092/16 which could be 2 different properties.



46. On the process of conversion, he stated that it is the Director of Survey who does conversion and then the Land Registrar does the registration; thus he would not know if the petitioner surrendered his lease or not. He added that in their records, they have no leases between the County and Kirima for plot no 6 or 15.
47. On cross examination by counsel for the 3<sup>rd</sup> and 4<sup>th</sup> Respondents, DW2 stated that it is the responsibility of the City County to prepare leases, they then forward the documents to the Land Registrar for registration. They are not supposed to issue two leases for the same property. He added that the protagonists are tracing their leases to the county.
48. When re-examined, DW2 stated that the 2<sup>nd</sup> Respondent has no records of ownership for the late Gerishon Kirima. As per their records, the initial owner was Nicholas Ruto while the current one is 1<sup>st</sup> respondent.
49. DW3, one Gildine Gatwiri Karani introduced herself as a Principle Land Registrar Stationed at the Chief Land Registrar's office Ardhi House. She commenced her testimony on 9.12.2022 where she stated that she had two files in relation to the disputed Parcel of land. That for the property LR 209/11092/ (IR.753522), it was a lease registered on 11.12.1997, the lessor being City Council of Nairobi and the lessee being Gerishon Kamau Kirima. The lease has a caveat registered by Registrar of Titles claiming an interest under Section 65 (1) of RTA and Section 76 (1) of the LRA, registered on 15.8.2016, and the lease is under Cap 281 (RTA). She produced a certified copy of the said document as an exhibit.
50. The 2<sup>nd</sup> file was in relation to Nairobi Block 37/73. She told the Court that there is a green card for the said parcel where lessor was Nairobi City Council and lessee is Nicholas B Ruto. The lease was registered on 16.5.2002 and a certificate of lease was issued on same date. The 3<sup>rd</sup> entry is a transfer to Mohamed Abdi Guhad registered on 1.9.2003 and a certificate of lease was issued on same date. The 5<sup>th</sup> entry is a transfer to Mohamed Sheikh Hussein registered on 7.2.2008 and a certificate of lease was issued on 23.8.2011, while the last entry is registered to the 1<sup>st</sup> Respondent on 30.1.2015 and a certificate of lease was issued on the same date. She added that the said title is not encumbered.
51. Dw3 produced the green card as an exhibit alongside several other documents in support of the said green card for Block 37/73. It was noted that one of her documents, The Grant for I.R.59724 was incomplete; thus she was stood down to avail a complete document at a later date.
52. Dw3 was to appear before this court again on 1.3.2023 when she stated that the Grant for I.R. 59724 ceased to exist based on the correspondence files she had in Court, which clearly indicated that the whole block was converted to 37/173. She added that upon conversion, the grant IR. 59724 and its subleases stopped existing. She also stated that the conversion is done at Survey of Kenya of which the correspondence that forwarded its RIM is dated 19.9.2018.
53. Upon cross examination by counsel for the Petitioner, DW3 stated that in relation to Grant IR. 59724, they wrote to the Nairobi City Counsel and they confirmed parcel 37/73 and LR 209/11092/16 are one and the same parcel, save that the latter had been converted.
54. She further stated that the copy of her document, the Grant no. IR 59724 was incomplete, though it was certified on 8.10.2022 as a true copy of the original. She went on to say that “ the Grant 59724 doesn't relate to Block 37/73 and is not relevant”.
55. She added that she would not know when conversion was done as it is done by Survey of Kenya, but reiterated that there is a Letter dated 19.9.2018 forwarding the RIM for Nairobi Block 37/173 which gave rise to other subleases including Nairobi Block 37/73 which was registered in 2002.



56. She stated that she did not have documents pertaining to conversion of Nairobi Block 37/73 and has no record of when its RIM was forwarded and does not know when conversion started but there is an ongoing exercise of migrating RTA titles to RLA which is done by Survey of Kenya and the old titles have to be gazetted. For IR 59724, she stated that it involved several people but she does not know whether various owners had been captured in the records of the original grant.
57. Referred to page 11-22 of the Petitioner's bundle, she stated that she sees the subleases which are registered, but she does not know if the conversion involved the subleases. She added that conversion would entail one owner to another as the lessor would determine term of lease.
58. She stated that the original records are with Nairobi City Council, so she does not know if the Petitioner's lease was cancelled, but to her knowledge, the Grant IR No. 59724 was cancelled though the letter dated 9.5.2016 doesn't capture the term "cancellation" as it reads "...the entire City Park Estate LR No. 209/11092 IR 59724 was converted to Block 37/73 and new certificates of lease issued consequently."
59. She added that since the 2<sup>nd</sup> Respondent prepares leases and presents them at lands offices, she does not know the details of the lease issued to the Petitioner. She has no documents to show surrender of documents upon conversion of the suit properties.
60. She also stated that upon conversion from RTA, to RLA, a party cannot keep both titles, they would have to surrender the converted one.
61. Upon cross examination by counsel for the 1<sup>st</sup> Respondent, DW3 stated that she has no document showing that Gerishon Kirima is owner of Block 37/73. She has nothing to show that the 1<sup>st</sup> Respondent acquired the property unlawfully and based on documents presented, conversion was clear, and no step was skipped and there was no impropriety. However, the conversion was done by the City Council of Nairobi and the Survey of Kenya.
62. Upon re-examination, DW3 stated that their records appertains to the head lease, and the lessor, 2<sup>nd</sup> Respondent would have other individual records for the sub leases. She added that the letter dated 9.5.2016 was authored by the Chief Officer, Nairobi City County as there were queries on the land and investigations gave a true position that IR 75352 is the same as Block 37/73.

### **Submissions**

63. The submissions of the Petitioner are dated 13.4.2023. She contends that since she had produced the lease registered on 11.12.1997 between Gerishon Kamau Kirima and Nairobi City Council of which the mother lease for LR 2019/11092/16 at entry no. 52 depicted that Kirima was the registered owner of the suit land, then she should be the owner of the suit property.
64. She argues that the lease registered to Mr. Kirima is registered pursuant to Section 40 of the repealed Registration of Titles Act and it was not surrendered as it ought to have been under Section 44(1) thereof.
65. She also submits that she has been in possession of the suit land since 11.12.1996 and the rates clearance certificate dated 8.2.2017 and a sub-lease agreement allowing Capital Trucks & Cars Limited to use the suit property as a motor vehicle showroom is evidence of possession.
66. She further submits that LR No. 209/11092/16 is registered under the Registration of Titles Act while LR No. Nairobi /Block 37/73 is registered under the Registered Land Act and according to the 3<sup>rd</sup> and 4<sup>th</sup> Respondents who are responsible for maintaining the register of ownership of properties, both titles refer to the same parcel.



67. She submits that since no land should be registered more than once or have 2 separate titles held by 2 separate persons, one of the said titles was then issued unlawfully and illegally.
68. She relies on the case of *Hubert L Martin & 2 others v Margaret J. Kamar R & 5 Others* [2016] eKLR as well as the case of *Munyu Maina v Hiram Gathiba Maina* [2013] eKLR to submit that the court should examine the root of her title as well as that of the 1<sup>st</sup> Respondent. She adds that the evidence tendered shows that her root of title is regular and asks the court to be guided by the decision of the court in a similar matter, Nairobi ELC 1458 of 2014 *Ramuka Agencies Limited v Stephen Kamau Kirima*.
69. She argues that the 1<sup>st</sup> Respondent only produced a title to Nairobi Bock 37/73 registered under the *Registered Land Act*, but it did not produce documents to support the root of the said title. She points out that the 1<sup>st</sup> Respondent has not stated how ownership of the suit property passed from the City Council of Nairobi to the different lessees it claims to have purchased from.
70. The Petitioner further argues that despite the fact that the 1<sup>st</sup> Respondent failed to show root of its title, its title to the suit property was issued last, hers having been issued on 11.12.1996 while the 1<sup>st</sup> Respondent's certificate of title was issued on 16.5.2002.
71. She submits that the alleged conversion of LR No. 209/11092/16 from *Registration of Titles Act* to the *Registered Land Act* System was unlawful and unprocedural and as such, the said title should be cancelled under Section 26 of the *Land Registration Act*. She relies on the case of *Margaret Nyokabi Mbugua & 5 others v Ngenda New Framers Co. Ltd & 4 others* [2019] eKLR.
72. She adds that failure to follow recognized and lawful procedure with regard to conversion and re-allocation of the suit property is unlawful and contrary to the rules of justice and the same ought to be nullified.
73. She argues that the Respondents are in violation of her Constitutional rights under Article 10, 40 and 47 of the *Constitution*. To this end, she has suffered in defending multiple suits by the successors of title of the impugned certificate of lease, suffered eviction of her tenants and suffered considerable expense in restoring her perimeter wall. She urges the court to award her ksh.10 million in damages. To buttress this point, she relied on the Supreme Court's decision in *Rutongot Farm Ltd v Kenya Forest Service & 3 others* [2018] eKLR.
74. The Petitioner also submits that her claim is founded upon violation of fundamental rights and freedoms and therefore it is not statute barred. She relies on the case of *David Gitua Njau & 9 others v Attorney General* [2013] eKLR, *Oriental Commercial Bank Limited of Kenya v Central Bank of Kenya* [2015] eKLR as well as the case of *Wachira Weheire v Attorney General* [2010] eKLR.
75. The submissions of the 1<sup>st</sup> defendant are dated 30.4.2023, where it claims that this suit concerns the enforcement of private claims by the estate of the deceased, as the substance is to determine which of the 2 titles is genuine, the cause of action being fraud. Thus the suit violates the Constitutional avoidance Rule which is to the effect that a case should not be resolved by deciding a Constitutional question if it can be resolved in some other fashion.
76. It argues that Kenyan Courts including the Supreme Court abhors the approach taken by the Petitioner on the basis that there are available mechanisms for resolution of such disputes. It relies on the Supreme Court case of *Communications Commission of Kenya & 5 others v Royal Media Services Ltd & 5 others* Pet.14a,14vb& 14c of 2014[2014] eKLR as well as the case of *Republic v Paul Kibara Kariuki, Attorney General & 2 others Ex Parte Law Society of Kenya* [2020] eKLR.



77. It was further submitted that the claim for fraud as pleaded at paragraph 23 and Dii of the petition is barred by Limitation, and the petitioner has tried to avoid this by filing a petition as opposed to a normal suit. It points out that the limitation period for fraud is 1 year from the date of discovery of fraud and PW1 testified that the deceased became aware of the fraud in 2002 yet the petition was filed in 2017, 15 years after.
78. The 1<sup>st</sup> Respondent also argues that particulars of fraud were not specifically pleaded, thus the claim on fraud must fail. It adds that the standard of proof in fraud is higher than on a balance of probabilities and the Petitioner failed to prove it. It relies on the case of *Grace Wairimu sorora & another v National Land Commission & 2 others* [2021] eKLR.
79. It was also submitted that while the alleged fraud was discovered in 2002, the 1<sup>st</sup> respondent was incorporated in 2015, thus it could not have participated in the fraud. It adds that as discerned from the green card, it was not the 1<sup>st</sup> registered owner of the suit land. It argues that DW2 and DW3 confirmed that the records indicate that the 1<sup>st</sup> Respondent is the registered owner of the suit land, thus there is no proof of illegality.
80. It was further argued that the Petitioner pleaded that the 1<sup>st</sup> Respondent's title was issued following an unlawful land conversion process, but she failed to call any evidence from Survey of Kenya to prove that the procedure adopted in the conversion was unlawful. The court was drawn to the testimony of DW3 who stated that the entire block of land Grant No. 59724 (LR No. 209/11092) was converted to land governed by the *Registered Land Act* (Nairobi Block 37 /173) and that this was the mother to the lease Nairobi Block 37/73 in the 1<sup>st</sup> Respondents' name.
81. It submits that there was insufficient evidence to support the Grant availed by the Petitioner as there was no official search to confirm ownership as claimed. It points out that DW3 testified that the Grant IR 57524 which was the original number for the entire block under *RTA* ceased to exist following conversion, thus the Petitioner cannot rely on the same to claim any rights to the property. It adds that the Petitioner's argument of the Petitioner being 1<sup>st</sup> in time in title is baseless since under both leases, the lease is for 99 years from 1.11.1981.
82. The 1<sup>st</sup> Respondent urges the Court to dismiss the petition for failing the specificity test by failing to specify with precision the articles of the *Constitution* that were infringed and the specific manner in which they were infringed. Finally, the 1<sup>st</sup> Respondent submits that the Petitioner failed to provide any material for purposes of assessment of general damages and failed to prove special damages sought. It relies on the case of *John Wamalwa Wamare v Saboti Lands Dispute Tribunal & 3 others* [2022] eKLR.
83. I did not see any submissions of the 2<sup>nd</sup> -4<sup>th</sup> Respondents as at the time the court embarked on writing the Judgment, noting that the said Respondents had been given upto 30.4.2023 to file and serve their submissions, which date was later extended to 30.5.2023.

## Determination

84. The issues falling for determination are;
- a. Whether the Petition meets the Constitutional Threshold and whether the doctrine of Constitutional avoidance is applicable herein.
  - b. Whether the suit is time barred under the Limitation Statute.
  - c. Is the parcel of land Nairobi Block 37/73 registered in the name of the 1<sup>st</sup> Respondent the same land as LR No. 209/11092/16 registered in the name of Gerishon Kirima?



- d. Whether by issuing title to Nairobi Block 37/73, the 2<sup>nd</sup>-4<sup>th</sup> Respondents are in breach of the Petitioner's rights under Article 40,10 and 47 of the *Constitution*?
- e. Has the Petitioner made a case for grant of the orders sought?

### **Constitutional Threshold and the Doctrine of Constitutional avoidance**

- 85. The 1<sup>st</sup> Respondent argues that the Petition does not meet the threshold of a Constitutional Petition. It also argued that the Petitioner is in violation of the doctrine of Constitutional avoidance as she is trying to enforce private claims anchored on allegations of fraud.
- 86. In *Anarita Karimi Njeru v Republic* [1976-1980] KLR, the Court held that;  
“if a person is seeking redress from the High Court on a matter which involves a reference to the *Constitution*, it is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains of, the provisions said to be infringed and the manner in which they are alleged to be infringed.”
- 87. For the principle of Constitutional avoidance, it entails that a Court will not determine a constitutional issues when a matter may properly be decided on another basis. This principle was well enunciated in the Court of Appeal case of *Ernest C.O. Muga vs. Attorney General* (2018) eKLR.
- 88. In the case of *Speaker of National Assembly Vs. Karume* [1992] KLR 425, cited in *Anne Wawuda & 3 others v Kenya Railways Corporation & another* [2015] eKLR, the court stated that;  
“where there was a clear procedure for the redress of any particular grievance prescribed by the *Constitution* of an Act of Parliament, that procedure should be strictly followed.”
- 89. I find that the Petitioner has given an elaborate account of the underpinning applicable Articles of the *Constitution* as set out in Paragraph B of the Petition, particularly paragraph 8 on the National values and Principles of Governance, Paragraph 10 on the obligation by state organs to respect, observe, protect, promote and fulfil the rights and fundamental freedoms in the bill of rights as well as paragraph 11 on the protection of right to own property.
- 90. Further, the Petitioner has given a chronology of the dispute which led her to file the Petition. Paragraph 23 of the Petition indicates that year 2003 is when the fraudulent activities were discovered by Kirima. The then parallel claimant of the suit property one, Mohamed Abdi Guhad soon thereafter filed a suit against Kirima, Nairobi City Council and the Commissioner of Lands in HCC 1065 of 2003. The document at page 52 indicates that Kirima filed a defence claiming that he had an indefeasible title and also asserted a claim that Mohamed Guhads title was fraudulently acquired.
- 91. The document at page 58 of plaintiffs bundle shows that the aforementioned suit was brought to an end in the following terms;  
“That by consent the suit be and is hereby withdrawn with costs to the defendants”.
- 92. The subsequent owner of the title 37/73, one Mohamed Sheikh Hussein was relentless in filing a plethora of cases against Kirima's tenants both in the Magistrates' courts and the High court. One of such suits is captured at page 68A of plaintiff's bundle in which the suit *Mohamed Sheikh Hussein vs. Capital & Trucks LTD* (2012) eKLR was dismissed with costs to the defendant (read the tenant of Kirima).



93. It is clear that even as the avalanche of litigation continued to flock the court corridors from year 2003 in relation to the subject property, the 3<sup>rd</sup> Respondent continued to allow the alienation of the suit property as stated in paragraph 18 of the Petitioners Supporting Affidavit to the Petition and as is evident from the registration history captured in the green card.
94. The particulars of violations and breach are clearly set out in paragraph 31 D of the Petition.
95. In light of the foregoing analysis, I do find that this Petition is properly before this court and does not violate the doctrine of Constitutional avoidance. To this end, I am guided by the finding of the Court in *Fred Munialo Maelo v Mathew Wamalwa Wafula & 2 others* [2020] eKLR where the Court held that:

“Each case must be considered on its own peculiar circumstances and it is not a principle of law that a Constitutional Petition cannot be filed where there is another remedy which the Petitioner could have pursued. A party is also entitled to pursue the remedy that would be most efficacious in addressing the grievance which has been pleaded before the Court”.

#### **Limitation**

96. As already stated, at paragraph 94 herein and as rightly submitted by the Petitioner, the suit relates to allegations of violations of fundamental rights and freedoms set out in the *Constitution*. It is an issue which goes beyond fraud.
97. Further in view of the litigation history relating to the suit property starting with the case HCC No.1065 of 2003, I find that the 1<sup>st</sup> Respondent is estopped from invoking the statute of limitation.

#### **Whether the parcel LR No. 209/11092/16 IR No. 75352 and Nairobi Block 37/73 is one and the same parcel of land.**

98. An argument has been advanced by the 1<sup>st</sup> Respondent that the aforementioned suit properties could be different. However, DW2, a witness from the 2<sup>nd</sup> respondent confirmed during cross examination by counsel for the Petitioner that the two parcel numbers refer to one and the same land. The Land Registrar (DW3) corroborated this position. The litigation history also points to the fact the suit land is ONE on the ground, but with two claimants having different registration numbers under different legal regimes.

#### **Whether by issuing title to Nairobi Block 37/73 the 2<sup>nd</sup>-4<sup>th</sup> Respondents are in breach of the Petitioner’s rights under Article 40, 10 and 47 of the Constitution?**

99. The Petitioner claims that Gerishon Kirima (deceased) was allocated the land known as LR No. 209/11092/16 IR No. 75352. It is the Petitioner’s case that the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents unlawfully and without following due procedure generated a parallel title to the suit property under Nairobi Block 37/73 and issued it to one Nicholas Ruto and the same is currently owned by the 1<sup>st</sup> Respondent.
100. On the other hand, the 1<sup>st</sup> Respondent claims to be the registered owner of parcel Nairobi Block 37/73, of which his claim is being supported by both the allotting and the registering authorities (read 2<sup>nd</sup>-4<sup>th</sup> Respondent).
101. As things stand, there are 2 leases issued over the same property under different registration regimes. The Petitioner’s title was registered as LR No. 209/11092/16 IR No. 75352I under the *RTA*. This registration is captured in the title availed by the Petitioner at page 11 of her documents in the Grant no. 59724 at entry no 52.



102. It has emerged through the evidence of DW2 and DW3 that the entire parcel for the Grant 59724 held by the 2<sup>nd</sup> respondent was converted to Nairobi Block 37/173 from registration under the Registration of Titles Act Cap 281 to Registered Lands Act Cap 300 (Now both repealed). In that conversion, the title of the petitioner apparently became Nairobi Block 37/73 and was registered in the name of one Nicholas Ruto.
103. To this end DW3 produced 2 separate files for the same property.
104. DW2 argues that they had leased the suit land to Nicholas B. Ruto, and he Dw2 produced a Certificate of lease issued to him dated 16.5.2002 to confirm this position.
105. As stated earlier on, there is no controversy that the initial lessor of the suit property (mother title) was the 2<sup>nd</sup> defendant. That being the case, it follows that each claimant's title is under challenge, hence they are called upon to give an account of the root of their respective titles. What more, the said titles must be deeply rooted in the RTA regime where the read leasor was the 2<sup>nd</sup> Respondent.
106. In Munyu Maina v Hiram Gathiba Maina [2013] eKLR, the Court held that;
- “.. 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.”
107. The Court also stated in Hubert L. Martin & 2 Others v Margaret J. Kamar & 5 Others [2016] eKLR, as follows;
- “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.”
- Also see: Chemey Investment Limited vs Attorney General & 2 Others [2018] eKLR.
108. As regards the case of the petitioner, she led evidence that the suit land was 1<sup>st</sup> allocated to Gerishon Kirima vide the allotment letter dated 2.10.1979. He paid for the premiums required and on 7.6.1996, he entered into a lease with the 2<sup>nd</sup> Defendant's predecessor. The said lease was properly executed and the 2<sup>nd</sup> Respondent has not tabled any evidence to topple it.
109. The Petitioner produced a copy of Grant IR 59724 and at entry No.52, the lease to Gerishon kirima was registered on 11.12.1996. The same was confirmed by the Ministry of lands and settlement's letter dated 8.10.2003. It was also confirmed by DW3 who tabled a file relating to the suit land in evidence.
110. There is a land rates demand note authored by the 2<sup>nd</sup> Respondent to the Petitioner dated 8.2.2017 which evidences that the Petitioner is a rateable owner of that land.
111. From the foregoing evidence, the Petitioner has given a plausible account of the root of her title 209/11092/16.
112. As for the case of the 1<sup>st</sup> Respondent, I find that DW2 was at pains to explain how one Nicholas B. Ruto became lessee of the suit property under RLA. Apart from waving the title under RLA, there was no explanation howsoever of how it was acquired. There was no evidence of the alleged lease between the



- 2<sup>nd</sup> Respondent and Nicholas Ruto as alluded to by DW2 more so in his letter dated 9.5.2016 availed by DW3 as Doc No. 5. The lease mentioned by Dw2 as having been given to Nicholas Ruto dated 16.5.2002 does not emanate from the 2<sup>nd</sup> defendant, it is from the 3<sup>rd</sup> defendant.
113. During the trial, DW2 had this to say in relation to the issue of conversion;
- “The conversion was from RTA to RLA and it did not change the ownership. So the sub lease holders were to be owners of the Block 37 under *RLA*”
114. DW2 went on to state that;
- “From our records the land was issued to one Nicholas. Under the *RTA*, the sublease for the suit land was not known to me...”.
115. It is not fathomable that DW2 is well aware that the 2<sup>nd</sup> defendant held the mother title in which the sub leases under *RTA* were anchored upon, he knew that the holders of those subleases were to become the owners of the new block, but he knew not who the sublease holders were!. He only knew the new beneficiary under the *RLA*!. On this point alone, it is clear that the evidence of DW2 is baseless and does not in any way validate the title issued under *RLA*.
116. It is quite telling that DW2 could not confirm whether the documents availed by the Petitioner emanating from their entity including rate payment receipts and the sublease were authentic yet, he had no single document of what was authentic from the 2<sup>nd</sup> Respondent.
117. At this juncture, it is pertinent to note that the only document filed as a response to the Petition is a Replying Affidavit dated 2.2.2018 by one Githuku Thomas. It was never expunged from the record, but Dw2 was mute on its fate. It is noted that the contents therein are completely at variance with the evidence that DW2 gave in court. What more, DW2 never clarified the basis upon which he filed the Replying Affidavit dated 20.11.2020. I pose the question; he was replying to what? Certainly not in response to the summons by the court given more than two years later on 9.2.2023! Further, there is nothing to indicate that the said Affidavit was a response to the Petition. The logical conclusion to make is that DW2 filed his Replying Affidavit primarily to peddle falsehood before this court.
118. In the said Affidavit dated 20.11.2020 S.G.Mwangi, (DW2) states that after conversion, into *RLA* regime, the parcel 209/11092/16 was converted to parcel 37/73 and the new lease was issued to Mohamud Sheikh!, this is another red flag that DW2’s testimony is messy, lacking any probative value and inconsistent with even the records he so much desires to support, that is the green card records.
119. Another point for consideration is that while the green card relating to Block 37/173 was produced in evidence, the same was only opened on 16.5.2002. The history of the suit premises prior to the said date cannot be erased. In any case, DW3 produced the file relating to Kirima’s title. The same bears no evidence that his lease was ever cancelled.
120. The letter produced by DW3 as Doc NO. 6 from the Ministry of Lands and Physical Planning dated 27.7.2016 insinuates that the Ministry of Lands does not have records of the Petitioner’s registration. The said letter is authored a few weeks after the DCI’S letter dated 20.4.2016 and the Ministry of Lands own letter dated 21.4.2016 which had confirmed that there were 2 registrations against the suit property pursuant to 2 different leases from the head lessor, 2<sup>nd</sup> Respondent. This is yet another tell tale signs of the lengths undertaken by some officers at lands office to try and sanitize the title of Nicholas Ruto.



121. The crafty machinations of the Respondents played out even in court where the court was treated to a circus in the production of documents by DW3, a Land Registrar summoned to tender evidence on the two registrations. Firstly, when DW3 appeared in court on 9.12.2022, she availed the documents haphazardly, So much so, that the court had to make a specific order on the same date for the documents to be arranged and paginated sequentially. Thus the documents were returned back to DW3.
122. However, when the witness re-appeared in court on another date (1.3.2023) this time round, the documents were not availed by Dw3! The court had to make an order captured at page 102 of the hand written notes for the documents to be availed to the court. They were availed, but in shambles with haphazard pagination. What more, there were allegations that some pages of some documents had been interfered with, to wit the first document which is a copy of the lease agreement dated 7.6.1996 between Kirima and the 2<sup>nd</sup> Respondent where the last page containing the caveat by the Registrar of titles dated 15.8.2016 was missing.
123. After much push and shove, counsel for the 3<sup>rd</sup> and 4<sup>th</sup> Respondents eventually availed the said completed document. That was not all, the copy of the title for the initial Grant no. 59724 captured as item 11 at page 105 of the hand written notes was not complete. The explanation proffered by DW3 was as follows;
- “I was stood down last time in order to produce Grant for I.R/59724. I don’t have the said grant because what I found out is that I think it ceased to exist based on the correspondence file.....
- The document doesn’t seem to exist. So upon conversion, the document I was to produce I.R.59724 stopped existing together with the other subleases”
124. Despite the above piece of evidence, DW3 still went ahead to produce the said document identified as Doc no. 11, albeit in its incomplete format. It is the same document availed by the Petitioners at page 11 of her bundle showing that the 2<sup>nd</sup> Respondent was the head lessor of the Grant I.R 59724 in which the registration of the sub lease holders including that of Kirima are captured with 62 entries. For the document availed by Dw3, it does not have the aforementioned entries.
125. This is hence not a case of the 3<sup>rd</sup> and 4<sup>th</sup> Respondents not having the aforementioned mother title under the RTA, rather it is a case of deliberate sinister schemes geared towards distorting evidence, yet DW3 was summoned to this court purposely to shed light on the two titles.
126. I also find that in registering the title for the new block under RLA, DW3 stated that they were relying on documents from the 2<sup>nd</sup> Respondent. She stated that upon such conversion, the RTA document were surrendered . She stated as follows;
- “ As I am here I do have the surrendered document in court. I can produce it. The court took the view that I produced it”
127. However, the RTA title availed by DW3, the incomplete document has no such markings as “Cancelled or surrendered” .



128. Another point of concern is that DW3 gave inconsistent information regarding when they received the Registry Index Map (RIM) from the survey for purposes of registration. She repeatedly stated that the letter forwarding the RIM is dated 19.9.2018. Her verbatim words on the issue are as follows;

“It was for Nairobi Block 37/173. This is a whole block that gave birth to the other subleases including Nairobi Block 37/73. This was done in 2018. That is when this lease was registered (37/173).”

129. However, Dw3 went on to state that;

“The lease in Nairobi Block 37/73 was not registered in 2018. It was registered in year 2002!”

130. DW3’s explanation of this discrepancy is that the registration did not have to take place at the same time. However, that is an illogical and hollow explanation since she has already stated that the larger Block 37/173 is what gave birth to the title in 37/73!

131. What resonates from the evidence of the 2<sup>nd</sup> - 4<sup>th</sup> Respondents is that although conversion from one titling regime to another did not mean change of ownership, for the case of the Petitioner, it surely did!. The logical conclusion to make is that the conversion from the RTA to RLA was fraudulently done in so far as the rights and interests of the Petitioner are concerned.

132. The not so well choreographed script of the 2<sup>nd</sup> - 4<sup>th</sup> Respondents fails to indicate how rights and interests in the suit property under the RTA regime transitioned to one Nicholas Ruto, the 1<sup>st</sup> title holder under RLA. It follows that the said title was acquired fraudulently and no good title could subsequently be passed by him.

133. I therefore find that the 1<sup>st</sup> Respondent is unable to explain the root of its title despite the spirited manouvours by none other than the keepers of the records to support his claim. The titles preceding his have no explanation either.

134. DW1 has admitted that they were aware of the case HCC 1065 of 2003. They still went ahead to buy the suit property despite the relentless litigation mounted by the previous title holders. In the case of Amos Kibata Githeko v Loise Gachiku Kinuthia [2021] eKLR, I decried the crafty machinations of the alleged “bonafide purchasers” in filing various suits, even against each other. Similarly in the current suit, the 1<sup>st</sup> Respondent does not fit the definition of a “bonafide purchaser”. There is even an allegation by the Petitioner which was not rebutted that the immediate previous owner of the suit property, one Mohamud Sheikh Hussein is a director of the 1<sup>st</sup> Respondent.

135. I conclude that the Petitioner is the rightful owner of the suit property. I also find that the 2<sup>nd</sup> - 4<sup>th</sup> Respondents were in breach of Petitioner’s right to property, Fair Administrative Action and the National Values and Principles of Governance. Thus she is entitled to all the rights that appertains to ownership as set out under Section 24 (a) of the Land Registration Act.

## Relief

136. I find that the 2<sup>nd</sup> - 4<sup>th</sup> Respondents are the authors of the untold suffering occasioned unto the Petitioner. I have considered the anguish occasioned to the Petitioner for years where she had to face a plethora of litigation from various claimants of the suit property, all because of the sinister schemes of the Respondents. She is thus entitled to damages. The Petitioner has quantified the same at Ksh. 10 000 000. I find that an award of sh 5,000,000 is fair and reasonable.

137. In the final analysis, I find that this Petition is merited. The same is allowed in the following terms;



- a. A declaration is hereby issued holding that the proprietary interest of the suit premises LR No. 209/11092/16 IR No. 75352 Nairobi City Park Estate also known as Nairobi Block 37/73 vests in the Estate of Gerishon Kamau Kirima.
- b. A declaration order is hereby issued to the effect that the title documents being held by the 1<sup>st</sup> Respondent and issued by the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents with respect to all that land known as LR No. 209/11092/16 I.R No. 75352 Nairobi City Park Estate also known as Nairobi Block 37/73 is illegitimate and unlawful.
- c. An order is hereby issued for the cancellation of the title documents held by the 1<sup>st</sup> Respondent as well as by the 3<sup>rd</sup> and 4<sup>th</sup> Respondents for parcel LR Nairobi /Block/37/73; including the Certificate of Lease issued to the 1<sup>st</sup> Respondent dated 30.1.2015 and the registration entries in the Green Card.
- d. An order is hereby issued restraining the 1<sup>st</sup> Respondent from interfering with Petitioner's occupation of the suit property LR No. 209/11092/16 I.R No. 75352 Nairobi City Park Estate also known as Nairobi Block 37/73.
- e. An order is hereby issued directing the 3<sup>rd</sup> Respondent to register the suit property Nairobi Block 37/73 into the name of the Estate of Girishon Kamau Kirima and to rectify their records accordingly.
- f. The Petitioner is hereby awarded General damages for compensation for the infringement of the Petitioner's rights to the tune of Ksh.5 000 000, the same to be paid jointly and severally by the 2<sup>nd</sup>- 4<sup>th</sup> Respondents.
- g. An order is hereby issued condemning the Respondents jointly and severally to pay the costs of the suit to the Petitioner.
- h). A copy of the extracted decree herein is to be placed in the parcel file for LR 37/73 at the land Registry.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 13<sup>TH</sup> DAY OF JULY, 2023 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

In the presence of:-

Muriithi for 1<sup>st</sup> Respondent

Court Assistant: Eddel

