



**Porter (Suing on Behalf of the Estate of Arthur Thomas Porter)
& another v Bixby Limited & 2 others (Environment & Land Case
116 of 2019) [2023] KEELC 19801 (KLR) (30 August 2023) (Judgment)**

Neutral citation: [2023] KEELC 19801 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 116 OF 2019
EK WABWOTO, J
AUGUST 30, 2023**

BETWEEN

**EMMA ADINA PORTER (SUING ON BEHALF OF THE ESTATE OF ARTHUR
THOMAS PORTER) 1ST PLAINTIFF
EMMA ADINA PORTER 2ND PLAINTIFF**

AND

**BIXBY LIMITED 1ST DEFENDANT
MARY WANJIKU KIHORI 2ND DEFENDANT
AKIDELE DANIEL PORTER 3RD DEFENDANT**

JUDGMENT

1. The Plaintiffs filed an amended plaint dated 12th November 2019 seeking for the following orders against the Defendants:
 - a. An order of injunction restraining the Defendants by themselves, their servants, agents or any person acting under their instructions from transferring and dealing in any way and or in any other manner whatsoever interfering with the parcel of land known as Title No. 19139, Land Reference No. 209/5919/8 situated along Manyani Road in Nairobi within the republic of Kenya;
 - b. A mandatory order directed to the Defendants by themselves, their servants, agents or any person acting under their instructions to immediately surrender the original Title No. 19139, Land Reference No. 209/5919/8 situated along Manyani road in Nairobi within the Republic of Kenya to the Plaintiffs;



- c. An order directing the Defendants by themselves, their servants, agents or any person acting under their instructions to account for and subsequently to surrender to the Plaintiffs all amounts, together with interest calculated at court rates, collected as the rent from the parcel of land known as Title No. 19139, Land Reference No. 209/5919/8 situated along Manyani road in Nairobi within the Republic of Kenya to the plaintiff from the year 2012 to the date;
 - d. An order directing the Defendants by themselves, their servants, agents, or any person acting under their instructions to immediately grant vacant possession to the Plaintiffs of the parcel of land known as Title No. 19139, Land Reference No. 209/5919/8 situated along Manyani Road in Nairobi within the Republic of Kenya to the Plaintiffs.
 - e. Costs of this suit and interest thereon at court rates with effects from the date of filing suit;
 - eA) That a declaration be issued that the Defendants by themselves, their servants, agents or any person acting under their instructions have fraudulently attempted to transfer all the parcel of land known as Title No. 19139, Land Reference No. 209/5919/8 situated along Manyani Road in Nairobi within the Republic of Kenya by uttering false documents and forgery and also have committed an offence of intermeddling as provided for under Section 45 (2) (a) of the Law of Succession Act and direct the Deputy Registrar of the Environmental and Land Act to immediately forward the court file to the office of Director Public Prosecution for his consideration to prosecute.
 - f. Any further orders that this Honourable Court may deem necessary to make.
2. The Defendant contested the suit and filed an amended statement of Defence dated 20th January 2020. The Defendants sought for dismissal of the entire suit with costs.

The Plaintiffs case.

3. It was the Plaintiff's case that on 31st March 1967, Arthur Thomas Porter (now Deceased) acquired the suit property for a term 99 years from 1st November 1960 while in Kenya which he held as the proprietor to the date of his death and now which is being held by his Estate in accordance with the Law of Succession. The Deceased later relocated from Kenya over 40 years ago and was domiciled in Ontario, Canada until his demise.
4. It was also averred that the Deceased then left the suit property under the management of Lloyd Masika who were to collect rent on his behalf and forward the same to him. Lloyd Masika continued to manage the suit property upto about 2012, when the 2nd Defendant offered and the Deceased accepted the 2nd Defendant's offer to manage the property on the Deceased's behalf as he was out of the Country. The management of the suit property solely entailed the collection and deposit of rent into the Deceased Barclays Bank Account as well as overseeing any necessary repairs.
5. The Plaintiffs also averred that the Defendants actions were intended to defraud them of their entitlement to the suit property. The following particulars of fraud were pleaded:
 - a. The defendant obtained the original title of the suit property fraudulently and without the consent of the deceased.
 - b. The defendant unlawfully and fraudulently continues to hold the original title of the suit without consent from the deceased or his estate with intent of fraudulently transferring property to themselves;
 - c. The defendants forged transfer documents of the suits property in favour of the 1st defendant.



- d. The defendants presented forged, false and fraudulent documents to the Registrar of Titles to have the suit property to the 1st defendant.
 - e. The defendants fraudulently attempted to transfer the suit property to the 1st defendant.
 - f. The defendants caused fraudulent registration of the suit property in favour of the 1st defendant.
 - g. The 2nd and 3rd Defendants fraudulently misrepresented their relationship with the 1st plaintiff as wife and son respectively;
 - h. That with the view of meeting the requisite requirements of the Land Act and Land Registration Act, the 2nd defendant fraudulently executed a purported affidavit of consent of spouse and claiming under oath that she was the spouse of the deceased under any recognized Law;
 - i. Forging the signature of the deceased on a transfer dated 26th May 2014 and also forging the signature of purported Notary Public going by the name Evgeny Koslov;
 - j. Failing to account for the rent collected on suit property since 2012 and illegally and unlawfully claiming the same for themselves at the detriment of the deceased during his lifetime;
 - k. That despite being aware of the demise of the deceased they have continued to illegally collect rent contrary to established legal principles and laws of Succession.
 - l. Fraudulently and unlawfully denying the deceased the right to own property.
6. During trial, Emma Adina Porter, PW1 testified as the sole Plaintiffs' witness. She relied and adopted her witness statement that had been filed and was on court record as her evidence in chief. She also adopted her bundle of documents dated 8th July 2021 which was also produced in her evidence in chief.
 7. On cross examination by counsel for the Defendants, she stated that the 2nd Defendant herein had been engaged by her father for the purposes of collecting rent in respect to the suit property. She also stated that she did not have any contract between the 2nd Defendant and herself. She further stated that the collected rent would be deposited in Barclays Bank Account.
 8. When asked about the alleged loss of the original Title Deed of the suit property, she stated that nobody had ever been charged for the loss of the same but she was aware that the firm of Muriu Mungai and Co. Advocates had objected to the issuance of the provisional title.
 9. When re-examined, she stated that her late father had stated as much on the one of the issue of rent in these proceedings. She also stated that in the current suit she was seeking the release of the original title deed.

The Defendants case

10. In the amended statement of defense dated 20th January 2020, the Defendants averred that the 1st Plaintiff was the registered owner of the suit property until he executed a transfer dated 26th May 2014 in favour of the 1st Defendant and that the suit property is held by the 1st and 2nd Defendants awaiting the registration of the transfer.
11. The Defendants also averred that the suit property was managed by Lloyd Masika for about 2 years but the sole intention of the deceased was to bequeath the same to the 2nd and 3rd Defendants as a gift and not for the purposes of collecting rent on behalf of the Deceased.



12. It was also averred that Deceased willingly handed over the title deed to the 3rd defendant to facilitate the registration of the transfer. It was further averred that the 3rd defendant was born in 1973 and grew up knowing that the Deceased and the 2nd defendant as his biological father and mother respectively.
13. During the trial two witnesses testified on behalf of the defendants. Evgeny Kozlov testified as DW2 and Akidele Daniel Porter as DW1.
14. DW1 relied on his witness statement on record and the bundle of documents dated 27th may 2019 as his evidence in chief. When cross-examined he stated that the deceased is still the registered owner of the suit property. He also stated that he gave his Advocates the original copy of the title deed. He also stated that the Deceased was to transfer the property to him and there was a caveat that had been registered. He also stated the Land Registrar cancelled the transfer while rejecting the signature of the Deceased.
15. On further cross examination he stated that the Notary witnessed the transfer being signed. He also stated that no marriage certificate had been attached in his documents. He also confirmed that he has been collecting rent from the property from 2016 and that deceased was aware of the same.
16. When asked about the averments made by the deceased, he stated that he was surprised to see that Deceased denied ever authorizing him to collect rent.
17. When re examined he stated that the Deceased and 2nd defendant were married and were his parents. He also stated that the issue of paternity wasn't an issue before this court. He further stated that the deceased signed the transfer before a Notary Public and the transfer did not have any thumb print. He also stated that he tried to reach out to the deceased but all was in vain since he had been moved to a different residence. He also stated that the transfer was willingly executed and no proceedings have ever been brought against him in respect to any forgery. He also stated that he had no obligation to account for the property because it was willingly given to him.

The Plaintiffs submissions.

18. The Plaintiffs filed written submissions dated 13th January 2023 and supplementary submissions dated 24th April 2023 through Andrew and Steve Advocates. Counsel for the Plaintiffs submitted on the following issues; whether there is a valid gift in favour of defendants, whether the purported transfer was marred by fraud and forgery, whether the plaintiffs are entitled to the prayers sought and who bears the cost of the suit.
19. It was submitted that the Defendants have since confirmed through their Advocates that they are in process of transferring the suit property to the 1st Defendant which is wholly owned by the 2nd and 3rd Defendants for the purposes of preservation of the alleged "family property" with the 2nd and 3rd Defendants claiming to be the wife and son to Deceased respectively.
20. It was also submitted that the Deceased during his life time was only married to Rigmor Sondergard Rasmussen a marriage that was celebrated in Copenhagen, Denmark and the marriage was duly registered therein under the Danish Laws and recognized under common law. The Deceased was unequivocal that at no time did he marry the 2nd Defendant under any law.
21. It was also submitted that Deceased during his final days, suffered greatly as the Defendants had conspired to deny his rental income for subsistence and was therefore forced to depend heavily on the 2nd plaintiff for his physical and medical expenses. This is despite the fact that at all material times he was the undisputed registered owner of the suit property.



22. The Plaintiffs cited the following cases in their submissions which the court has considered; Peter Ndiritu Kibui, Ann Magure Kibui [2016] eKLR Re Estate of the late Gedion Marthi Nzioka (Deceased)[2015] eKLR Re Estate of Chesimbili Sindani (Deceased)[2021] eKLR and Charles Gitahi Kamau in District Land Registrar Nakuru, Pricilla Wanjiku Thambi and 2 Others (interested parties) [2021]eKLR
23. On whether the purported transfer was marred by fraud and forgery. It was submitted that the Deceased expressly denied ever signing the purported transfer or any Affidavit stating that the 2nd Defendant is his wife. The purported transfer dated 26th May 2014 has not been paginated or initialed by the Deceased which would go a long way in confirming if each page formed part of the purported transfer. The Notary testified and confirmed that the execution page was on a separate page and therefore he could not be able to tell whether the same formed part of that document he purportedly notarized. In addition, the transfer alleges that deceased passport number was QC597847. The plaintiffs in their bundles have attached the only two known passports of the deceased on page 46 and 60 of their bundle documents. The passport numbers are JV573789 and AD201611.
24. It was also submitted that DW2 also did not formally produce the statutory declaration attached to the defendants' further list and bundle of documents.
25. It was also submitted that the 3rd defendant also testified that he appeared before the Notary when the Deceased allegedly signed the document, but he mysteriously did not sign it then and he did not furnish the court with a valid reason why he signed the document later or why he had to sign the document in the presence of the 2nd defendant.
26. The Plaintiffs submitted that there was no evidence tendered by the Defendants to prove the said marriage.
27. It was further submitted that the 2nd defendant testified and confirmed that they presented the transfer document for registration however the same was cancelled by the Chief Land Registrar on 5th December 2014. He further confirmed that the cancellation was due to deceased's signature being inconsistent with his known signature. The 2nd defendant similarly confirmed a second attempt to lodge the same transfer document again on 26th July 2018 but the same was rejected by the Chief Land Registrar for reasons contained in the lodged documents. These documents were not included as evidence.
28. It was further submitted that DW1 confirmed that he did not lodge a notice of Appeal of refusal of registrar to register the transfer which would have been lodged in the Statutory Form F annexed to the [Land Registration Act](#) and neither did he file any proceedings before the High Court challenging the said decision. During the hearing, the 2nd defendant failed to explain why they lodged the same transfer document for a second time knowing well that it contained the signature rejected by the Chief Land Registrar and that this was proof that defendants were fraudulently seeking to have the transfer registered.
29. It was further submitted that the Plaintiffs have sufficiently pleaded and demonstrated the particulars of fraud and forgery and they urged the court to find that the defendants herein used forged documents and falsely represented facts with the intentions of defrauding them the suit property.
30. The Plaintiffs also submitted that the suit property is still registered in name of the deceased. In addition, thereto, it is prima facie evidence that the person named proprietor of the land is the absolute and indefeasible owner thereof. Reliance was placed on Section 26(1) of the [Land Registration Act](#).



31. It was further submitted that It is evident that the defendants obtained the original title without the consent of the deceased and they unlawfully and fraudulently continue to hold the same and that the 2nd defendant however has to date failed to remit or account of the amounts of rent collected due to alleged repairs and expenses incurred.
32. The Plaintiffs urged the court to grant them the prayers sought.

The Defendants submissions.

33. The Defendants filed written submissions dated 1st March 2023 and were filed by Muriu Mungai & Co. Advocates. Counsel for the defendants submitted on the following issues; whether the plaintiffs have proved the allegations of forgery and fraud against the defendants to the required standards, whether by the transfer dated 26th March 2014 to the 1st defendant the gift was completely constituted, whether the supporting affidavit and the sworn statement by Mr. Arthur Thomas Porter (deceased) dated 7th March 2019 should be disregarded as being hearsay evidence and whether the defendants should account for rental income generated from the suit property.
34. On whether the transfer dated 26th May 2014 to the 1st defendant the gift was completely constituted, It was submitted that the Deceased expressed the desire to bequeath the suit property to the 3rd Defendant and his mother as a gift and the Deceased signed the Transfer dated 26th May 2014 in favour of the 1st Defendant and also willingly handed over the original title in respect to the suit property. It was argued that the gift herein was made during the lifetime of the Deceased and the same was complete. Reliance was made to the following cases; Registered Trustees Anglican Church of Kenya Mbeere Diocese vs David Waweru Njoroge [2007] eKLR, Re Estate of the Late Gedion Manthi Nzioka, Re Estate of Godana Songoro Guyo (Deceased) (2020) eKLR.
35. On whether the supporting affidavit and the sworn statement by Mr. Arthur Porter on 7th March 2019 should be disregarded for being hearsay evidence, it was submitted that the same amounts to hearsay and is of zero probative value and therefore should be disregarded in its entirety. Reliance was placed to the following cases; Alfred Kiptoo Keter vs Bernard Kibor Kitur & Independent Electoral & Boundaries Commission [2018] eKLR, Kenya Commercial Bank Ltd vs Thomas Wandera Oyalo [2005] eKLR, Abdi Adan Mohamed vs Republic [2017] eKLR and Ethics and Anti Corruption Commission vs Mary Ngechi Ngethe [2021].
36. On whether the Defendants should account for the rental income generated from the suit property, it was submitted that the Defendants do not need to account for the same because there was no evidence of any agreement between the Deceased and the 2nd Defendant for collection of rent over the suit property.
37. The Defendants concluded their submission by urging this court to find that the Plaintiffs have not proved any allegations of forgery or fraud and dismiss the suit.

Analysis and Determination

38. Having reviewed and evaluated the pleadings filed by the parties, evidence produced by the witnesses together with their written submissions, this court is of the opinion that the following are the salient issues for determination herein;
 - i. Whether there was a valid gift in favour of the defendants.
 - ii. Whether the allegations of fraud as against the defendants have been proven herein.



- iii. Whether the plaintiffs are entitled to the prayer sought.
- iv. What orders should issue as to cost.

Issue No 1

Whether there was valid gift in favour of the defendants.

39. It was the Plaintiffs case that on or about 1st April 2017 the Deceased confirmed in writing that he had at all material intended to transfer the suit property to the 2nd Plaintiff. Later on 9th August 2018 the Deceased through his then advocates confirmed that he had no knowledge of the whereabouts of the original title to the suit property and he did not know how it got into the hands of the Defendants and he also confirmed that he did not execute any transfer to the 1st defendant and or any other party herein.
40. All the parties herein were of the view that the gift herein was deemed as gift inter vivos. In the case of *In re Estate of Chesimbili Sindani (deceased)* 2021 eKLR Musyoka J. dealt extensively with the issue of gift inter vivos. The learned judge at paragraphs 29, 30 and 31 of the said judgment which I reproduce hereunder expressed himself as follows:-

29. In *In re Estate of Nyachieo Osindi (Deceased)* [2019] eKLR (Ougo J), the court found that there was sufficient proof of a gift inter vivos, where the deceased had given possession of a piece of land to another, and signed a transfer form in his favour, but died before the transfer was registered. In *In re Estate of Muchai Gachuika (Deceased)* [2019] eKLR (Gikonyo J), it was established that the deceased had registered three assets in the names of some of his sons during his lifetime, and it was held that those gifts were complete and the assets in question did not form part of the estate of the deceased. It was said, in *In re Estate of Phylis Muthoni M’Inoti (Deceased)* (2019) eKLR (Gikonyo J), that a person claiming that the deceased had made a gift inter vivos to them, but the titles were not deduced during his lifetime, should show such conduct of the donor which would give the intended donee the right to enforce the gift. On the facts of that case, the court found no evidence of gifts inter vivos, for there were no consents to transfer the property, duly signed by the deceased, or any evidence that the subdivision of the land by the deceased was intended to benefit the persons claiming. The court further found that none of the alleged beneficiaries had claimed to have had been put in possession of the subject property by the deceased, nor to build or built on the subject property.
30. The principles relating to inter vivos gifts have been stated in very many cases, which include, but not limited to *In re Estate of Godana Songoro Guyo (Deceased)* [2020] eKLR (Nyakundi J), *William M’Arimu M’tuambae vs. Rosemary Karamuta for estate of George Gatimi* [2017] eKLR (Gikonyo J), *In re Estate of Monicah Wambui Nguthiru (Deceased)* [2020] eKLR (Ongeru J), *In re Estate of Osoro Motari (Deceased)* [2020] eKLR (Ougo J), *In re Estate of M’Raiji Kithiano (Deceased)* [2017] eKLR (Gikonyo J), *Evans Onguso & 2 others vs. Peter Mbuga & 4 others* [2020] eKLR (JM Mutungi J), *Margaret Mumbi Kihuto vs. Peter Ngure Kihuto & another* [2017] eKLR (Onyiego J), *In re Matabo Sabora (Deceased)* [2019] eKLR (Mrima J), *Naomi Wanjiru Njoroge & 2 others vs. Winston Benson Thiru* [2018] eKLR (Muigai J) and *In re Estate of Japhet M’tuamwari M’ikandi (Deceased)* [2019] eKLR (Gikonyo J).

From the case law above, the principle that emerges is that any gift inter vivos should be backed by some memorandum in writing, and the gift would be complete once title to the subject property is transferred to the name of the beneficiary of the gift. Difficulties arise where transfer is not effected to the beneficiaries before the death of the deceased, in which case such property would remain the free property of the deceased, available for distribution at confirmation, the



argument being that such gift was founded on a mere promise which the deceased did not carry through prior to his death. Where some preliminary steps were taken towards effectuating his promise, so that all what remained after the death of the deceased was mere registration of the property in the name of the beneficiary, it would be presumed that that the deceased intended to make a gift *inter vivos*. That would be the case where the deceased has complied with the [Land Control Act](#), Cap 302, Laws of Kenya, where the land is subject to that law, by applying for consent to transfer the property from the name of the deceased to that of the beneficiary, the consent had been granted, and he had signed a transfer form to facilitate registration of the property in the name of the beneficiary. That would mean practically everything had been done to perfect or complete the gift were it not for the demise of the deceased. The mere fact of being shown a piece of land and given permission to occupy and use it, without more, is not adequate proof for a gift *inter vivos*. The deceased, as registered proprietor of the land in question, would have the right to licence a person to occupy the land and use it. A child who has been shown a piece of land to build on and to till, is not in the shoes of an owner, but a mere licensee. The death of the deceased would not upgrade the licence to ownership, if anything the death of the proprietor could mean that the license comes to an end, and the licensee continues to occupy and work the land at the mercy of the administrator.”

41. Being guided by the above, it is clear that the law on the gifts *inter vivos* is well settled. In the present case evidence was tendered to the effect that the transfer was never affected during the lifetime of the Deceased. The court agrees with submissions made by the Plaintiffs that the gift and donation alleged to have been issued herein was never completed during the lifetime of the deceased and as such the same cannot be valid.

Issue No 2

Whether the allegations of fraud as against the defendants have been proved herein.

42. The Plaintiffs under paragraph 37 of the amended plaint have pleaded and enumerated various particulars of fraud and forgery by the Defendants. The Plaintiffs also submitted that The Deceased expressly denied ever signing the purported transfer or any Affidavit stating that the 2nd Defendant is his wife. The Deceased expressly denied having any intention to transfer any interest of the suit property to the 1st Defendant and his lifetime demonstrated the same. The purported transfer dated 26th May 2014 has not been paginated or initialed by the Deceased which would go a long way in confirming if each page formed part of the purported transfer. The Notary testified and confirmed that the execution page was on a separate page and therefore he could not be able to tell whether the same formed part of that document he purportedly notarized. In addition, the transfer alleges that deceased passport number was QC597847. The Plaintiffs in their bundles have attached the only two known passports of the deceased passports numbers being JV573789 and AD201611.
43. Fraud is defined under the Black’s Law Dictionary 10th Edition as

“A knowing misrepresentation or knowing concealment of a material fact made to induce another to act to his or her detriment”.
44. How then can fraud be proved? The Court of Appeal in Mombasa Civil Appeal No. 312 of 2012 *Emfil Limited v Registrar of Titles Mombasa & 2 others* [2014] eKLR held;

“Allegations of fraud are allegations of a serious nature normally required to be strictly pleaded and proved on a higher standard than the ordinary standard of balance of probabilities”.



45. Similarly, the Court of Appeal decision in the case of John Kamunya & Another v John Nginyi Muchiri & 3 Others [2015] eKLR held that:

“We find that the law is clear as put by Mr. Karanja that matters of “fraud” must be strictly and specifically pleaded before these can be interrogated by a court of law. Alternatively, even though not pleaded, these may be raised in the cause of the trial, evidence tendered on them, submission made on them and then left for the court to determine.”

46. To succeed in claiming fraud the Plaintiffs not only need to plead but also particularized it by laying out water tight evidence which the court would consider. It is therefore trite law that any allegations of fraud must be pleaded and strictly proved. In this respect, it is appropriate to recognize and take cognizance of the succinct exposition of the Law by the Supreme Court in the case of Samson Gwer & 5 others versus Kenya Medical Research Institute & 3 others [2020] eKLR, where the court stated and held thus;

(49)Section 108 of the *Evidence Act* provides that, “the burden of proof in a suit or procedure lies on that person who would fail if no evidence at all were given on either side;” and Section 109 of the Act declares that, “the burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”[50] This Court in Raila Odinga & Others v. Independent Electoral & Boundaries Commission & Others, Petition No. 5 of 2013, restated the basic rule on the shifting of the evidential burden, in these terms:“... a Petitioner should be under obligation to discharge the initial burden of proof before the Respondents are invited to bear the evidential burden....”

(51)In the foregoing context, it is clear to us that the petitioners, in the instant case, bore the overriding obligation to lay substantial material before the Court, in discharge of the evidential burden establishing their treatment at the hands of 1st respondent as unconstitutional. Only with this threshold transcended, would the burden fall to 1st respondent to prove the contrary. In the light of the turn of events at both of the Superior Courts below, it is clear to us that, by no means, did the burden of proof shift to 1st respondent.”

47. In the instant case the Plaintiffs in my view have failed to prove the allegations of fraud and forgery as against the Defendants. During trial, evidence was adduced to the effect that the Deceased had signed the transfer in the presence of a Notary who testified as DW2. In this case the Plaintiffs have not tendered any sufficient evidence that prove the particulars of fraud as against the Defendants to the satisfaction of the court and this court agrees with the submissions made by the Defendants on this issue that the Plaintiffs failed to discharge this burden.

Issue No 3.

Whether the Plaintiffs are entitled to the reliefs sought.

48. The Plaintiffs sought several reliefs in their amended plaint. In respect to the order for permanent injunction sought herein, I wish to state that an order of permanent injunction is meant and/or intended to prohibit, restrain and bar the happening of an event. For good measure, such an order operates to forestall invasion of, inter-alia, land by a party, who has no legitimate rights and Interests to the land in question. In respect of the instant case, evidence abound that the Defendants are already on the suit land hence the prayers for permanent injunction and eviction that have been mounted by the Plaintiffs.



49. In respect to the orders sought against the Defendants for surrender and account for all the funds together with the interest in respect to the rent collected from the suit property, the Plaintiffs have not laid any basis for the grant of the same and in the circumstances the said relief is declined.
50. Having considered and evaluated the evidence herein and further coming to the analysis of the issues outlined by this court, the Plaintiffs' suit partially succeeds and they are entitled to some of the reliefs sought.
51. On the issue of costs, it is trite law that costs shall follow the events, but it is also noteworthy that this court retains the discretionary rights on award of costs. Having found that the Plaintiffs suit has partially succeeded I will direct each party to bear own cost of suit.

Final orders.

52. Having carefully considered and evaluated the evidence herein and further owing to the analysis of the issues herein, the Plaintiffs suit partially succeeds and this court proceeds to grant the following orders;
 - i. An order of injunction restraining the Defendants by themselves, their servants, agents or any person acting under their instructions from transferring and dealing in any way and or in any other manner whatsoever interfering with the parcel of land known as Title No. 19139, Land Reference No. 209/5919/8 situated along Manyani Road in Nairobi within the republic of Kenya.
 - ii. A mandatory order directed to the Defendants by themselves, their servants, agents or any person acting under their instructions to surrender the original Title No. 19139, Land Reference No. 209/5919/8 situated along Manyani road in Nairobi within the Republic of Kenya to the Plaintiffs.
 - iii. An order directing the Defendants by themselves, their servants, agents, or any person acting under their instructions to grant vacant possession to the Plaintiffs of the parcel of land known as Title No. 19139, Land Reference No. 209/5919/8 situated along Manyani Road in Nairobi within 90 days from today.
 - iv. Any other relief not expressly granted is declined.
 - v. Each party to bear own costs of the suit.

Judgment accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 30TH DAY OF AUGUST 2023

E.K. WABWOTO

JUDGE

In the presence of: -

Mr. Kimathi and Ms. Mwaniki for the Plaintiffs.

Ms. Muthee for the Defendants.

Court Assistant – Caroline Nafuna.

