



Kotecha v Highway Commodity Stores Limited & 3 others (Environment and Land Case Civil Suit 458 of 2015) [2023] KEELC 20281 (KLR) (28 September 2023) (Judgment)

Neutral citation: [2023] KEELC 20281 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT 458 OF 2015
SO OKONG'O, J
SEPTEMBER 28, 2023**

BETWEEN

SHASHIKANT SAMJI KOTECHA PLAINTIFF

AND

HIGHWAY COMMODITY STORES LIMITED 1ST DEFENDANT

DIRECTOR OF SURVEYS 2ND DEFENDANT

CHIEF LAND REGISTRAR 3RD DEFENDANT

ALPHA GRAIN MILLERS LIMITED 4TH DEFENDANT

JUDGMENT

1. The Plaintiff brought this suit initially against the 1st to 3rd Defendants only on 28th May 2015. The plaint was amended on 2nd December 2015 on an oral application by the Plaintiff to add the 4th Defendant to the suit. In his amended plaint, the Plaintiff averred that at all material times, he was registered as the owner of all that parcel of land known as LR No 20264(formerly known as Plot No. 58) situated at Industrial Area, Nairobi and measuring 1.0 hectares (hereinafter referred to as “the suit property”). The Plaintiff averred that he acquired the suit property from one, Gideon Mutiso on 30th June 1995.
2. The Plaintiff averred that he was and remained the owner of the suit property from 1995 until 6th March 2015 when he made a land rent payment request and learnt that the property was in the name of one, Peter Mutua Maundu. The Plaintiff averred that at the time he was making the land rent payment request, unknown persons who were suspected to be the agents, servants and/or employees of the 1st Defendant had trespassed on the suit property. The Plaintiff averred that the falsification of records by the 1st and 4th Defendants and simultaneous invasion of the suit property amounted to a fundamental breach of the Plaintiff’s property rights. The Plaintiff averred that the 2nd, 3rd and 4th Defendants had colluded with the 1st Defendant to fraudulently defeat the Plaintiff’s proprietary rights over the suit



property. The Plaintiff pleaded several particulars of the 2nd, 3rd and 4th Defendants' acts of fraud, trespass and illegality. The Plaintiff averred that he had consistently and faithfully paid land rent to the Commissioner of Lands and land rates for the suit property to the relevant authority.

3. The Plaintiff sought judgment against the Defendants for;
 1. A mandatory injunction directed against the 1st and 4th Defendants their agents, servants, associates, contractors and/or employees compelling them to vacate the suit property.
 2. An order of a permanent injunction directed at the Defendants, their agents, servants, contractors, proxies, and/ or employees restraining them from staying, using, possessing, trespassing, constructing or in any way interfering with the Plaintiff's possession of the suit property.
 3. An order directed at the 2nd and 4th Defendants to halt, stop, rectify and cancel any complete or intended subdivision over the suit property into four plots; LR No 20264/1, 20264/2, 20264/3 and 20264/4.
 4. An order directed at the 3rd Defendant to revoke, cancel and/or annul the surrender of the suit property and rectify the register with regard to the suit property in favour of the Plaintiff.
 5. A declaration that the Plaintiff was the registered and bona fide owner of the suit property to the total exclusion of the 1st and 4th Defendants.
 6. General and exemplary damages for unlawful occupation and interference with the Plaintiff's possession of the suit property.
 7. Costs of the suit and interest.
4. The 1st Defendant did not defend the suit. The 2nd and 3rd Defendants filed a joint statement of defence dated 23rd November 2015. Save for the jurisdiction of the court, the 2nd and 3rd Defendants denied the Plaintiff's claim in its entirety and put the Plaintiff to strict proof thereof.
5. The 4th Defendant filed a statement of defence on 26th November 2018. The 4th Defendant averred that it was the registered owner of all those parcels of land known as LR No 20264/1, 20264/2, 20264/3 and 20264/4 (hereinafter referred to together as "the subdivisions"). The 4th Defendant averred that it acquired the subdivisions from Peter Maundu at a consideration of Kshs. 10,000,000/= each and was registered as the owner thereof on 20th March 2015. The 4th Defendant averred that the validity of its titles over the subdivisions was confirmed by the Director of Criminal Investigations and the Chief Land Registrar, the 3rd Defendant herein. The 4th Defendant averred that it had been in uninterrupted occupation of the subdivisions since 2015. The 4th Defendant averred that the Plaintiff had no valid claim over the subdivisions since his claim was in respect of the suit property which was different from the subdivisions.
6. At the trial, the Plaintiff gave evidence in proof of his case while the Defendants did not adduce evidence in their defence. The 2nd and 3rd Defendants closed their case without calling evidence while the 4th Defendant's case was closed by the court after the 4th Defendant's witnesses failed to turn up in court for the hearing without valid reason.
7. The Plaintiff, Shashikant Samji Kotecha(PW1) adopted his witness statement dated 26th May 2015 as part of his evidence in chief. He produced bundles of documents which were attached to his affidavit sworn on 26th May 2015 in support of his interlocutory application for injunction as "SKI" to "SKI3", as P.Exh. 1 to 13 respectively. He also produced the documents in his supplementary list of documents



- dated 5th August 2016 as P.Exh. 14 to P.Exh. 18 respectively. He told the court that, he purchased the suit property from Gideon Mutiso in 1995. Gideon Mutiso handed over to him several documents which included a letter of allotment(P.Exh.14). Gideon Mutiso was to pay to the Commissioner of Lands a sum of Kshs. 422,950/= for the allotment. The said amount was paid through a banker's cheque dated 5th July 1995(P.Exh. 15). The suit property was transferred to him on 10th July 1995 by Gideon Mutiso (P. Exh. 17).
8. He entered into an agreement in writing with Gideon Mutiso on 30th June 1995(P.Exh. 3). When he purchased the suit property, it was known as Plot No. 58, Nairobi and it measured 1.0 Ha. The purchase price was Kshs.1,500,000/=. The payment of Kshs.422,950/= to the Commissioner of Lands was made by him. He subsequently paid Stamp Duty and had a title in respect of the property issued in his name on 24th July 1995 as Grant No. 66454 (P. Exh. 1). He had been paying land rates since he acquired the title although the land was not developed.
 9. When he went to pay the land rates, he found the records changed to the name of Peter Mutua Maundu. When he made inquiries, he was informed that it was the 1st defendant which was now the owner of the suit property. He referred the court to the 1st Defendant's title, Grant No. 127186 that he had produced in evidence as P. Exh. 7. He stated that the parcel number in the said Grant was the same as the suit property, LR No 20264. He stated that when he went to the ground, he found that a wall had been put up around the suit property. He stated that he did not sell the property to anyone and that he was still in possession of the original title for the property.
 10. The Plaintiff stated further that later on, the 4th Defendant came up and claimed that he had purchased portions of the suit property. He stated that the 4th Defendant claimed to have acquired LR No 20264/2, 20264/3 and 20264/4. He stated that he had not subdivided the suit property or sold the same to anyone. He stated that he was shocked about the alleged subdivision. He stated that there was falsification of documents and fraud on the part of the Defendants. He urged the court to grant the reliefs sought in the plaint.
 11. The Plaintiff was recalled and gave further evidence in chief and was cross-examined and re-examined. In his evidence on recall, the Plaintiff stated that he knew Gideon Munyao Mutiso who sold the suit property to him. He stated that Gideon Munyao Mutiso was 90 years old and very sick. He produced a medical report on the status of Gideon Munyao Mutiso's health as P.Exh. 19. He also adopted Gideon Mutiso's witness statement filed on 22nd June 2016 in which he confirmed that he had sold the suit property to him as part of his evidence.
 12. On cross-examination by the advocate for the 2nd and 3rd Defendants, the Plaintiff stated that, he purchased unsurveyed Plot No.58, Nairobi, and that the land was surveyed subsequently and given its current number. He stated that according to Special Condition No. 2 in the letter of allotment, the payment for the allotment was to be made within 30 days. He stated that the payment was made in 1995. On cross-examination by the 4th Defendant's advocate, the Plaintiff stated that he was issued with a title for the suit property in 1995. He stated that when he purchased the suit property, it was full of squatters who hindered his access to the land and that he did not develop the property because of the squatters. He stated that he did not submit any drawings or plans for developing the suit property. He stated that his title was not cancelled although he defaulted in complying with the development conditions. He stated that he was not aware of the sale of the suit property by Peter Maundu to the 4th defendant. He stated that his title was not withdrawn and that he continued to pay land rent for the property.
 13. After the close of evidence, the parties were directed on 22nd June 2022 to make closing submissions in writing. The Plaintiff filed submissions dated 25th July 2022 while the 2nd and 3rd Defendants filed



- submissions dated 23rd August 2022. The Plaintiff submitted that he had proved that he was the registered owner of the suit property. The Plaintiff submitted that the documents of title to the subdivisions attached to the 4th Defendant's list of documents dated 14th January 2021 were obtained fraudulently. The Plaintiff submitted that the 4th Defendant tendered no evidence of how it purchased the subdivisions from Peter Mutua Maundu. The Plaintiff submitted that he was the first registered owner of the suit property and as such his right to the property could not be defeated without clear evidence that he obtained the same fraudulently.
14. The Plaintiff submitted that the 4th Defendant's titles to the subdivisions trace their root to a fake title that was held by the 1st Defendant namely, Grant No. 127186. The Plaintiff submitted that his investigations revealed that the said Grant was not for the suit property as it purported to be but was in respect of a leasehold parcel of land owned by the City Council of Nairobi and let out to one, William Kathogo Gachuri. The Plaintiff submitted that it was on the basis of this fake title that the 1st Defendant in collusion with the 2nd Defendant purported to subdivide the suit property owned by the Plaintiff through Survey Plan No. 564/161 to give rise to the subdivisions, LR No 20264/1,20264/2, 20264/3 and 20264/4 which the 4th Defendant claims to own. The Plaintiff submitted that since the 1st Defendant held a forged title, the 4th Defendant could not get a better title from it. The Plaintiff submitted that the 4th Defendant's claim over the suit property had no basis.
 15. The Plaintiff submitted that the 2nd and 3rd Defendants fraudulently falsified documents and illegally subdivided the suit property in collusion with the 1st Defendant. The Plaintiff submitted that Survey Plan No. 564/161 through which the suit property was purportedly subdivided into four portions was fraudulent. The Plaintiff submitted that the 2nd and 3rd Defendants had a responsibility to ensure the accuracy of the register of land and the authenticity of the titles issued by the Government. The Plaintiff submitted that by issuing certificates of title to the 4th Defendant without first ascertaining that the basic prerequisites for obtaining such titles had been met, the 2nd and 3rd Defendants were privy to the fraud that was perpetrated against the Plaintiff.
 16. The Plaintiff submitted that the 4th Defendant was not an innocent purchaser of the subdivisions for value without notice of any defect in the titles thereof in that its statement of defence and the documents that it filed in court had several inconsistencies. The Plaintiff submitted that he had proved his case against the Defendants and as such was entitled to the reliefs sought. On general and exemplary damages, the Plaintiff submitted that it had been denied peaceful possession of the suit property from May 2015, a period of 7 years. The Plaintiff submitted that it was entitled to an award of general and exemplary damages. The Plaintiff urged the court to award of Kshs. 300,000,000/= for general and exemplary damages.
 17. In their submissions, the 2nd and 3rd Defendants admitted that the Plaintiff had established that he was the registered owner of the suit property. The 2nd and 3rd Defendants submitted that the 4th Defendant on the other hand had failed to adduce any evidence to show how he acquired titles to the subdivisions of the suit property in respect of which it was claiming ownership. The 2nd and 3rd Defendants submitted that the Plaintiff did not prove that they acted fraudulently. The 2nd and 3rd Defendants submitted that fraud must be pleaded with the necessary particulars and each particular of fraud must be distinctly and strictly proved. The 2nd and 3rd Defendants submitted that the Plaintiff failed to prove how the 2nd and 3rd Defendants colluded with the other Defendants to defraud him of the suit property.
 18. On the issue of damages, the 2nd and 3rd Defendants submitted that the award of general damages is at the discretion of the court based on the evidence adduced. The 2nd and 3rd Defendants urged the court not to award the sum of Kshs. 300,000,000/= claimed by the Plaintiff for general and exemplary



damages as no basis had been laid for the same. The 2nd and 3rd Defendants urged the court to take note that the Plaintiff had abandoned the suit property for 20 years after acquiring the same. The 2nd and 3rd Defendants submitted that there was no basis for condemning the 2nd and 3rd Defendants to pay damages to the Plaintiff.

Analysis and determination

19. I have considered the pleadings, the evidence tendered and the submissions by the advocates for the parties. The issues arising for consideration in this suit are as follows;

1. Whether the Plaintiff is the registered owner of the suit property.
2. Whether the Defendants fraudulently and illegally subdivided the suit property and created four separate titles that were registered in the name of one, Peter Maundu Mutua and subsequently transferred to the 4th Defendant.
3. Whether the 1st and 4th Defendants trespassed on the suit property.
4. Whether the Plaintiff is entitled to the reliefs sought.

Whether the Plaintiff is the registered owner of the suit property.

20. The Plaintiff produced in evidence a Grant No. I.R. 66454 in respect of LR No 20264 in his name. The Grant was for a term of 99 years with effect from 1st April 1994. The Grant was issued on 24th July 1995 pursuant to Survey Plan No. 197480 and was registered on the same date as No. I.R. 66454/1. The Plaintiff produced evidence showing that he purchased the suit property from Gideon Mutiso to whom the property was allocated by the Commissioner of Lands. The Letter of allotment issued to Gideon Mutiso, the agreement of sale between the Plaintiff and Gideon Mutiso, and the receipts for the payments made to the Commissioner of Lands were all produced in evidence. The evidence adduced by the Plaintiff that he acquired the suit property lawfully and was the registered owner thereof was not rebutted at the trial by any of the Defendants. As I have concluded herein below, the 1st and 4th Defendants did not prove their claim to the suit property. The root of their titles is tainted with fraud and illegality. In *Munyu Maina v. Hiram Gathiba Maina* [2013]eKLR, the Court of Appeal stated as follows:

“We state that when a registered proprietor’s root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which need not be noted on the register.”

21. In *Hubert L. Martin & 2 Others v. Margaret J. Kamar & 5 Others* [2016]eKLR, the court stated 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... Every party must show that their title has a good foundation and passed properly to the current title holder.”



22. Having considered and found that the 1st and 4th Defendants' claim over the suit property has no basis, it is my finding that the Plaintiff was at all material times and still is the registered owner of the suit property.

Whether the Defendants Fraudulently and Illegally Subdivided the Suit Property and Created Four Separate Titles that were Registered in the Name of One, Peter Maundu Mutua and Subsequently Transferred to the 4th Defendant.

23. The 1st Defendant also claimed to be the registered owner of the suit property. From the evidence adduced by the Plaintiff, the 1st Defendant was allegedly issued with Grant No. I.R. 127186 in respect of the suit property. The Grant was for a term of 99 years with effect from 1st July 1996 and was allegedly issued on 4th February 2002 pursuant to Survey Plan No. 197480. The Grant was allegedly registered on 30th April 2002 as I.R. No. 127186/1. According to the investigations carried out by the Plaintiff, title No. I.R. 127186 was in respect of a parcel of land known as LR No 8285/1457 owned by the Nairobi City Council and leased to William Kagotho Gachuiri. The lease was registered as No. I.R. 127186/1 on August 3, 2010.
24. A number of issues arise here. First, the suit property already had a title issued to the Plaintiff in 1995. Another title in respect thereof could not be issued to the 1st Defendant until the Plaintiff's title was cancelled. There was no evidence that the Plaintiff's title was cancelled. The Plaintiff led evidence that was not challenged that his title for the suit property was still in his possession. The other issue is that the 1st Defendant's title to the suit property shares a title number with another parcel of land owned by someone else. This lends credence to the Plaintiff's contention that the 1st Defendant's title was a forgery and I so find.
25. From the evidence on record, the 4th Defendant's titles in respect of the subdivisions, LR No 20264/1, 20264/2, 20264/3 and 20264/4 came about following the subdivision of LR No 20264 (the suit property). The subdivision was carried out on or about 22nd May 2014. As at this date, the Plaintiff was the registered owner of the suit property and there was in existence only one valid title to the suit property. The other title in existence was the fake one held by the 1st Defendant. On the face of the titles for the subdivisions, there is indication that the same were issued following a surrender of Grant registered as No. 66454/1. It was only the Plaintiff who held a Grant registered as No. 66454/1. The Plaintiff led evidence that he was still in possession of his Grant No. 66454.
26. No evidence was placed before the court showing that one, Peter Mutua Maundu also held a title in respect of the suit property and that his title was also registered as No. 66454/1. It is not clear how the titles for the subdivisions were issued in the name of Peter Mutua Maundu in the absence of evidence that he had a title for the suit property that was subdivided to give rise to the subdivisions.
27. From the foregoing, it is my finding that the purported subdivision of the suit property that gave rise to the subdivisions was fraudulent and illegal. First, the property was owned by the Plaintiff and it was only the Plaintiff who could subdivide the same. Secondly, the Plaintiff still holds the title to the suit property and as such the same was not surrendered to warrant the issuing of the titles for the subdivisions. Contrary to the 2nd and 3rd Defendants' submissions, I am persuaded that they were privy to the fraudulent subdivision of the suit property. The 2nd and 3rd Defendants did not adduce evidence on the propriety of the purported subdivision of the suit property and subsequent issuance of titles for the subdivisions. In their submissions, the 2nd and 3rd Defendants conceded that the Plaintiff was the registered owner of the suit property. The 4th defendant on the other hand did not tender evidence to prove that Peter Mutua Maundu from whom they allegedly acquired the subdivisions owned the



suit property whose subdivision gave rise to the said subdivisions. They ought to have established this as part of due diligence. It was not sufficient that the said Peter Mutua Maundu had an apparent title. In *Mwangi James Njehia v. Janetta Wanjiku Mwangi & another* [2021] eKLR, the court stated as follows:

“37. In *Lawrence P. Mukiri Mungai, Attorney of Francis Muroki Mwaura v. Attorney General & 4 Others*, Nairobi Civil Appeal No. 146 of 2014 this Court cited with approval the case of *Katende v. Haridar & Company Ltd* (2008) 2 EA 173, where the Court of Appeal in Uganda held that: -

“For the purposes of this appeal, it suffices to describe a bona fide purchaser as a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly.

For a purchaser to successfully rely on the bona fide doctrine as was held in the case of *Hannington Njuki v William Nyanzi* High Court civil suit number 434 of 1996, he must prove that:

1. he holds a certificate of title;
2. he purchased the property in good faith;
3. he had no knowledge of the fraud;
4. he purchased for valuable consideration;
5. the vendors had apparent valid title;
6. he purchased without notice of any fraud; and
7. he was not party to the fraud.”

We nonetheless wish to state that the law, including case law is not static and the above requirements which were crafted over twenty years ago cannot be said to have been cast in stone. We hold the view that (5) above will need to be revisited and the word “apparent” be done away with altogether.

38. We say so because in the recent past and even presently, fraudsters have upped their game and we have come across several cases where Title deeds manufactured in the backstreets have, with collusion of officers in land registries, been transplanted at the Lands Office and intending buyers have been duped to believe that such documents are genuine and on that basis they have “purchased” properties which later turn out to belong to other people when the correct documents mysteriously reappear on the register or the genuine owner show up after seeing strangers on their properties waving other instruments of title. It is the prevalence of these incidents that have necessitated the current overhaul and computerization of the registration systems at the Land Registry in Nairobi.

39. The elephant in the room is whether genuine, legitimate owners of property should be dispossessed of their hard earned property, because a party has “purchased” the property on the basis of an “apparent title” at the land registry which had been transplanted in place of the genuine title, only for the genuine one to reemerge after the transaction? In our view, no legitimate owner of property should be divested of their property unlawfully, under the guise that the “purchaser” was duped to buy land which he/she could have believed to be genuinely owned by the person holding himself out as the vendor.”



Whether the 1st and 4th Defendants Trespassed on the Suit Property.

28. Trespass has been defined as any intrusion by a person on the land in the possession of another without any justifiable cause. See, *Clerk & Lindsell on Torts*, 18th Edition, page 923, paragraph, 18-01. In *Gitwany Investments Limited v. Tajmal Limited & 3 others* [2006] eKLR, it was held that title to land carries with it legal possession. This means that even if one does not have actual possession of land, so long as he has a title to the land, that is deemed as possession for the purposes of trespass. I have already made a finding that the Plaintiff is the lawful owner of the suit property. As the owner of the suit property, the Plaintiff is entitled to quiet possession and enjoyment thereof. From the evidence on record, the suit property is now occupied by the 4th Defendant who claims to own the subdivisions thereof namely, LR No 20264/1, 20264/2, 20264/3 and 20264/4. I have held that the titles for these parcels of land were acquired illegally and fraudulently since the suit property was not lawfully subdivided. It follows therefore that the titles held by the 4th Defendant in respect thereof are invalid, null and void. As a holder of these invalid titles, the 4th Defendant has no right to be in possession of the suit property. It is my finding therefore that the 4th Defendant is a trespasser on the suit property. I have also held that the title held by the 1st Defendant in respect of the suit property is similarly fraudulent. The 1st Defendant would also be a trespasser in the event that it occupies any portion of the suit property.

Whether the Plaintiff is Entitled to the Reliefs Sought.

29. I have set out earlier in the judgment, the Reliefs Sought by the Plaintiff against the Defendants. From the findings I have made above, I am satisfied that the Plaintiff has proved his case against the Defendants. I am of the view that the Plaintiff is entitled to all the Reliefs Sought in the amended plaint save for general and exemplary damages. The Plaintiff has claimed an award of Kshs. 300,000,000/= for general and exemplary damages on account of loss of use of the suit property.

30. In *Park Towers Ltd. v. John Mithamo Njika and 7 Others* 2014 eKLR, the court stated as follows:

“I agree with the learned judges that where trespass is proved a party need not prove that he suffered any specific damage or loss to be awarded general damages. The court in such circumstances is under a duty to assess the damages awardable depending on the unique circumstances of each case”

31. In *Halsbury's Laws of England* 4th Edition Volume 45 para. 26 1503 the authors have stated as follows on the computation of damages:

- a) If the Plaintiff proves the trespass, he is entitled to recover nominal damages even if he has not suffered any actual loss.
- b) If the trespass has caused the Plaintiff actual damage, he is entitled to receive such amount as will compensate him for his loss.
- c) Where the Defendant has made use of the Plaintiff's land, the Plaintiff is entitled to Receive by way of damages such an amount as would reasonably be paid for that use.
- d) Where there is an oppressive, arbitrary or unconstitutional trespass by a Government official or where the Defendant cynically disregards the rights of the Plaintiff in the land with the object of making a gain by his unlawful conduct, exemplary damages may be awarded.
- e) If the trespass is accompanied by aggravating circumstances which do not allow an award of exemplary damages, general damages may be increased.”



32. From the evidence on record, the suit property was registered in the name of the Plaintiff on 24th July 1995. The Plaintiff led evidence that as of March 2015 when he learnt of the 1st and 4th Defendants' adverse claims over the suit property, he had not taken possession of the property and had not carried out any development on the same. The Plaintiff told the court that he was prevented from taking possession and developing the suit property by squatters who had invaded and occupied the same. The Plaintiff stated that by the time he was filing this suit, the squatters had moved out of the property. He stated that the 1st and 4th Defendants appeared to have entered into some arrangement with the said squatters. What I gather from the foregoing is that for almost 20 years, the Plaintiff showed no interest in developing the suit property. The Plaintiff appears to have abandoned the suit property to the squatters. I am of the view that if the 1st and 4th Defendants had not entered into negotiations with the squatters that led to them vacating the property, they would still be in possession and the Plaintiff would not have taken possession. Due to the foregoing, I find no merit in the Plaintiff's claim for loss of use of the suit property which he had not put to any use for 20 years. Although the Plaintiff has proved acts of trespass, I am of the view that the circumstances of the case disentitles the Plaintiff to any form of damages nominal or otherwise. I also find no basis for the exemplary damages claimed.

Conclusion

33. In conclusion, I hereby enter judgment for the Plaintiff against the Defendants for;
1. A mandatory injunction directed against the 1st and 4th Defendants, their agents, servants, employees, associates, contractors, or anyone claiming under them compelling them to vacate and hand over to the Plaintiff all that parcel of land known as LR No 20264 and the alleged subdivisions thereof namely; LR No 20264/1, LR No 20264/2, LR No 20264/3 and LR No 20264/4 within 60 days from the date hereof failure to which the Plaintiff shall be at liberty to apply for warrants for their eviction therefrom.
 2. An order of a permanent injunction restraining the 1st and 4th Defendants, their agents, servants, employees, contractors, proxies, or anyone claiming under them from occupying, using, possessing, trespassing, constructing on, or in any way interfering with the Plaintiff's possession of all that parcel of land known as LR No 20264 and the alleged subdivisions thereof namely; LR No 20264/1, LR No 20264/2, LR No 20264/3 and LR No 20264/4 save for the purposes of handing over possession thereof to the Plaintiff in terms of order No. 1 above.
 3. An order directed at the 2nd and 3rd Defendants to cancel; the purported parallel title for LR No 20264 in the name of the 1st Defendant, the purported surrender of Grant No. I.R 66454 registered as No. I.R 66454/1, survey and subdivision of LR No 20264 that gave rise to LR No 20264/1, LR No 20264/2, LR No 20264/3 and LR No 20264/4, and the registration and certificates of titles for LR No 20264/1, LR No 20264/2, LR No 20264/3 and LR No 20264/4 within 60 days from the date hereof.
 4. An order directed at the 3rd Defendant to restore the ownership of all that parcel of land known as LR No 20264, Grant No. 66454 to the Plaintiff.
 5. A declaration that the Plaintiff is the registered and bona fide owner of all that parcel of land known as LR No 20264 to the total exclusion of the 1st and 4th Defendants.
 6. Costs of the suit.

DELIVERED AND DATED AT KISUMU THIS 28TH DAY OF SEPTEMBER 2023

S.OKONG'O



JUDGE

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

Mr. Mwangi for the Plaintiff

N/A for the 1st Defendant

Mr. Mwambonu h/b for Ms. Fatma for the 2nd and 3rd Defendants

N/A for the 4th Defendant

