



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC SUIT NO. 1084 OF 2016

MARGARET MUKAMI MACHARIA ADMINSTRATOR OF THE ESTATE OF

ESTHER WANGU MACHARIA.....PLAINTIFF

-VERSUS-

JESSIE MAINA GITAU.....DEFENDANT

JUDGMENT

INTRODUCTION

1. Vide Plaintiff dated the 7th day of September 2016, the Plaintiff herein implored the honourable court seeking the following reliefs;

I. The Defendant his agents or servants and employees be prohibited from trespassing on deceased Plot No. L35 Kahawa West and be evicted from the deceased Plot Number L35 Kahawa West, otherwise Known as Kinale 35 forthwith.

II. That the Defendant do pay for the costs of this suit.

2. Upon being served with the Plaintiff and Summons to Enter Appearance, the Defendant herein duly entered Appearance and thereafter filed a statement of Defence and Counter claim dated the 23rd October 2019.

3. For clarity, the Defendant has sought for the following Reliefs vide the Counter claim;

I. The Plaintiffs case against the Defendant in the main suit be dismissed with costs.

II. Declaration that the Plaintiff in the counter claim is the legal, lawful and rightful owner of all that property known as Plot No. L35 situated as Kahawa West Kware area.

III. A permanent injunction against the plaintiff in the main suit, her employees, servants, agents or any body claiming through her from entering into, levying distress, evicting or in other way, interfering with peaceful possession and/or interfering with the defendants property being all that property known as Plot Number L35 Kahawa West otherwise known as Kinale 35 forthwith.

IV. The OCS of the nearest police station do assist in enforcement in the above orders.

V. Cost of the suit and interest thereon till payment in full.

4. It is worthy to note, that the Plaintiff herein filed a Reply to Defense and a Defence to the Counter Claim, whereby same denied and/or controverted the claims made on behalf of the Defendant.

EVIDENCE BY THE PARTIES

EVIDENCE BY THE PLAINTIFF

5. The plaintiff herein testified as PW1 and same adopted and reiterated the witness statement dated the 7th of September 2016.

6. On the other hand, the Plaintiff also adopted and produced in Evidence contained at the foot of the list of documents dated the 7th September 2016. For clarity, the Plaintiff produced in evidence of a total of 4 exhibits, which were marked as exhibits P1 to 4, respectively.

7. Other than the foregoing, the Plaintiff added that she is the lawful and duly appointed legal Administratrix of the estate of Esther Wangui Macharia, deceased who died on the 25th June 2002.

8. Further, the Plaintiff also testified that following the death of the deceased, her brother, namely Alfred Mike Mureithi, and herself applied for and were issued with grant of letter of administration, which were signed on the 14th March 2007.

9. Besides, the Plaintiff also testified that prior to the death deceased, same was the lawful and registered Proprietor of the property, namely *Plot Number L35 Kahawa West otherwise known as Kinale 35 forthwith*.

10. However, the Plaintiff further testified that on or about the 31st August 2016, the Defendant herein unlawfully and illegally entered onto and trespassed upon the suit property and commenced to dig trenches and erect a foundation for purposes of putting up a permanent building.

11. Plaintiff further testified that as a result of the actions by and/or on behalf of the Defendant herein, same was compelled to file the subject suit, with a view to protecting and/or preserving the estate of the deceased.

12. On cross examination, the Plaintiff maintained that the Suit property lawfully belonged to the Deceased and that at the time of the death of the Deceased, the Property was lawfully registered in her name.

13. In answer to a further question in cross examination, the Plaintiff herein stated that one Alfred Michael Mureithi, now deceased was her brother. However, the Plaintiff maintained that her said deceased brother was neither authorized nor mandated to sell and/or alienate any property of the deceased.

14. In any event, the Plaintiff further contended that as at 25th November 2002, when it is purported that the said Alfred Michael Mureithi, sold the suit property to Susan Njeri, same had not acquired Grant of letters of Administration.

15. At any rate, the Plaintiff further contended that the Agreement of sale, which was shown to her and wherein it was contended that Michael Mureithi, sold the suit plot to Susan Njeri, does not bear the Identity Card Card Number of the alleged seller, namely, Michael Muriithi. In this regard, the Plaintiff disputed the validity of the sale agreement alluded to.

16. Finally, on cross examination the Plaintiff contended that the person shown on the face of the Sale Agreement was known as Michael Muriithi and not Alfred Michael Mureithi, the latter who was his brother.

17. In the premises, it was the plaintiff's position that the transaction involving the suit property was illegal, unlawful and thus neither Susan Njeri nor the Defendant acquired any valid title thereto.

DEFENDANT'S EVIDENCE

18. Upon the close of the Plaintiff's case, the Defendant herein testified as DW1 and same also adopted his witness statement dated the 23rd October 2019.

19. On the other hand, the Defendant also adopted and produced in Evidence the Documents contained at the foot of the List of documents dated the 23rd October 2019, whereby the said Documents were produced and marked as exhibit D1 to 7 respectively.

20. The Defendant further testified, that the suit property was sold to him by one, namely Susan Njeri, whereby both himself and the vendor entered into and executed a land sale Agreement on the 5th August 2015.

21. It was the Defendant's further testimony that upon executing the sale agreement, same paid to and in favor of the vendor the sum of Kes.1, 500, 000/= Only, and the balance of Kshs 1, 000, 000/= Only, to be paid within 90 days from the date of the agreement.

22. It was the Defendant's further evidence that the balance of Kes.1, 000, 000/= Only, was thereafter paid to the vendor and upon such payment, the vendor handed over the title Documents, including the share Certificate for Wawanju Investments Limited, to him.

23. Further the Defendant testified that he later proceeded to the office of Wawanju Investment Company Limited, for purposes of transfer of the suit plot to and in his favor, whereupon he paid the transfer fees of Kes.50, 000/= Only, vide receipt issued on the 17th November 2015.

24. Owing to the foregoing, the Defendant testified that he is therefore the lawful owner of the suit plot and that the Plaintiff herein does not have any lawful rights to interfere with his possession, occupation and use of the suit property.

25. On cross examination, the Defendant averred that he bought the suit property from one Susan Njeri, to whom he paid a total of Kes.2, 500, 000/=Only, being the Agreed Purchase Price or Consideration.

26. The Defendant further averred on cross examination, that upon purchase and completion of payment of consideration, the vendor did not give unto him any share certificate and that the share certificate he has was issued by the Company.

27. On the issue that he had trespassed onto the property of a deceased person, the Defendant responded by stating that the suit property lawfully belongs to him. In this regard, the Defendant averred that he cannot therefore be a trespasser on own Land and/ or Property.

28. The Defendant thereafter called one Susan Njeri who testified as DW2. According to the said witness, same entered into a land sale agreement with one Michael Muriithi over and in respect of the suit property. In this regard, the witness referred to the Sale Agreement 25th November 2002, which was produced as exhibit D6.

29. The witness further testified that upon entering into the Sale Agreement, she paid to the vendor, namely Michael Muriithi, the sum of Kes.260, 000/= only, being the total Purchase price, which was the sum that was agreed upon.

30. It was the witness further statement that the sale agreement between herself and Michael Muriithi was reduced into writing and same was signed by both the buyer and the seller, Michael Muriithi, as well as a testifying witness.

31. On the other hand, the witness testified that she was aware that the suit property belonged to one Esther Wangui Macharia, now deceased, but that the deceased had bequeathed her properties to her children and in this regard Michael Muriithi, was the one gifted the suit property.

32. Finally, the witness testified that upon the sale of the suit plot to her by Michael Muriithi, same was not given the certificate from Wawanju Investments.

33. On cross examination, the witness admitted that she was aware that the suit property belonged to the deceased and that when she bought the Property, was aware of that fact, but that the deceased had gifted her properties to her children and that Michael Muriithi was the one who was gifted the suit property.

34. The witness also admitted that though same entered into a land sale agreement, the said Agreement, did not contain the Identity Card Number for the Vendor, namely Michael Muriithi.

SUBMISSIONS:

35. At the conclusion of the hearing the parties herein sought for liberty to file written submissions and consequently, the court proceeded to and directed that the written submissions be filed and exchanged within stipulated timelines.

36. On the 27th January 2022, the matter came up for mention with a view to confirming the filing and exchange the written submissions and thereupon the matter was reserved for Judgment.

37. Suffice it to say, that the written submissions filed by both parties are on record and same have been duly considered and taken into account. However, briefly it is the Plaintiff's position that the suit property lawfully belonged to one esther Wangui Macharia deceased, who died on 25th June 2002.

38. It was the Plaintiff's further submissions that at the time of the death of the deceased, the suit property was still registered in her name. Consequently, the Plaintiff contended that the suit property thus forms part of the estate of the deceased.

39. The Plaintiff further submitted that the purported Sale agreement between one, Michael Muriithi and DW2 namely, Susan Njeri was an illegality and hence could not confer any title to and in favor of DW2.

40. In the premises, the Plaintiff contends that the transfer and registration of the suit property to and in favor of DW2 and thereafter the sale thereof to the Defendant ,did not vests in the Defendant any lawful title capable of being protected under the law.

41. On his part, the Defendant has submitted that same bought the suit property from one Susan Njeri, who was the lawful owner thereof and proceeded to and paid unto her the entire Purchase Price, as was agreed upon.

42. Besides the Defendant has further submitted that upon entering into the sale agreement same was handed over the requisite certificate, which he relied upon and utilized to facilitate the transfer and registration of the suit property in his name.

43. It is the Defendant's further submissions that having bought the property from DW2, same is a Bona fide Purchaser for value without Notice of any defect in the vendors title. Consequently, the Defendant has therefore pleaded and relied on the Doctrine of Bona fide Purchase for value without Notice.

ISSUES FOR DETERMINATION:

44. Having reviewed the pleadings filed by the parties herein, namely the Plaintiff, the statement of defense and counter claim, as well as the Reply to Defense and Defense to Counter claim and having considered the witness statements tendered by the parties and witness, which were duly admitted and similarly having considered the written submissions filed, the following issues are germane for determination;

I. Whether the sale agreement and/or transaction between Michael Muriithi and Susan Njeri was lawful and/or legitimate.

II. Whether Susan Njeri acquired a valid title to and in respect of the suit property.

III. Whether the Defendant was/is a bonafide purchaser for value without notice.

IV. Whether the Defendants' title is Indefeasible.

ANNALYSIS AND DETERMINATION

ISSUE NUMBER 1

Whether the Sale Agreement and/or transaction between Michael Muriithi and Susan Njeri was lawful and/or legitimate.

45. Susan Njeri, who testified as DW2 adopted her witness statement and therefore tendered Evidence as hereunder;

"sometime in the year 2002, I was a tenant at one of the properties of the deceased and managed by his late son, one Michael Muriithi.

I know of my own knowledge that at the time the late Esther Wangui Macharia passed on she had already bequeathed her properties to her children, being the late Michael Muriithi and the Plaintiff herein.

The late Michael Muriithi informed me that he was selling several properties which had been bequeathed by their late mother's medical bills. I informed my friend, one Peris Nyakio and after viewing the properties I was interested to plot no. L35 while my friend was interested in plot L36 both situated in Kware, in Kahawa West.

46. From the foregoing testimony, it is evident and apparent that DW2 knew and/or was aware that the suit property belonged to and was registered in the name of Esther Wangui Macharia, deceased.

47. Secondly, though DW2 says that the deceased had bequeathed her properties to her children, namely Michael Muriithi and the Plaintiff, no evidence of such bequest was tendered and/or shown to the court.

48. Other than the foregoing, DW2 did not tender any evidence to show that by the time Michael Muriithi was selling the suit property to her, the said Michael Muriithi had obtained and/or procured Grant of letters of administration in respect of the estate of Ester Wangui Macharia, Deceased.

49. Nevertheless, having admitted and acknowledged that the suit plot belonged to Esther Wangui Macharia, Deceased, who had allegedly bequeathed to Michael Muriithi it was incumbent upon DW2 to enquire from Michael Muriithi whether same had obtained Grant of letters of administration, over the estate of his deceased mother, prior to entering into the Sale agreement.

50. Be that as it may, Evidence was tendered before the court that the Grant of letters over and in respect of the Estate of Esther Wangui Macharia, Deceased, was issued by the court on the 14th March 2007. See P exhibit 1.

51. From the foregoing, it is obvious that as at 25th November 2002, when DW2 purportedly entered into a Sale Agreement with one Michael Muriithi, no Grant of Letters of Administration had been issued, not alone confirmed.

52. In the premises, Michael Murithi, now Deceased, who allegedly sold the suit plot to DW2, did not have any legal capacity, either to enter to any Sale agreement or dispose of an asset of the Estate of the deceased.

53. At this juncture, it is worthy to take cognizance of Section 82 of the Law of Succession Act, Chapter 160, Laws of Kenya, which provides as hereunder;

Powers of personal representatives

Personal representatives shall, subject only to any limitation imposed by their grant, have the following powers—

(a) to enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arising out of his death for his personal representative;

(b) to sell or otherwise turn to account, so far as seems necessary or desirable in the execution of their duties, all or any part of the assets vested in them, as they think best:

Provided that—

(i) any purchase by them of any such assets shall be voidable at the instance of any other person interested in the asset so purchased; and

(ii) no immovable property shall be sold before confirmation of the grant;

(c) to assent, at any time after confirmation of the grant, to the vesting of a specific legacy in the legatee thereof;

(d) to appropriate, at any time after confirmation of the grant, any of the assets vested in them in the actual condition or state of investment thereof at the time of appropriation in or towards satisfaction of any legacy bequeathed by the deceased or any other interest or share in his estate, whether or not the subject of a continuing trust, as to them may seem just and reasonable to them

according to the respective rights of the persons interested in the estate of the deceased, and for that purpose to ascertain and fix (with the assistance of a duly qualified valuer, where necessary) the value of the respective assets and liabilities of such estate, and to make any transfer which may be requisite for giving effect to such appropriation:

Provided that except so far as otherwise expressly provided by any will—

(i) no appropriation shall be made so as to affect adversely any specific legacy;

(ii) no appropriation shall be made for the benefit of a person absolutely and beneficially entitled in possession without his consent, nor for the purpose of a continuing trust without the consent of either the trustees thereof (not being the personal representatives themselves) or the person for the time being entitled to the income thereof, unless the person whose consent is so required is a minor or of unsound mind, in which case consent on his behalf by his parent or guardian (if any) or by the manager of his estate (if any) or by the court shall be required.

54. It is also important to note that even if a Grant of Letters of Administration had been issued to Michael Muriithi, which is not the case, no alienation of the immovable property forming part of the Estate of the deceased, could be undertaken prior to and/or confirmation of Grant.

55. In the premises, I find and hold that the purported Sale Agreement, which was entered into between DW2 and one Michael Muriithi, over and in respect of the Suit property, was null and void, for all intents and purposes.

56. In view of the foregoing, no Property Rights passed to and/or in favor of DW2 that could confer title unto her or at all. Suffice it to say, that which was/ is a nullity, remains a nullity and same cannot be redeemed, by any amount of evidence and submissions.

57. In support of the foregoing observation, it is imperative to note the decision in the case of MACFOY VS UNITED AFRICA LTD (1961) 3 All F.R. 1169 Lord Denning said at p. 1172:

“If an Act is void, then it is in law a nullity and not a mere irregularity. It is not only bad but incurably bad. There is no need for an order of the court to set it up aside. It is automatically null and void without more ado, though it is sometimes convenient to have the court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.”

ISSUE NUMBER 2:

Whether Susan Njeri acquired a valid title to and in respect of the suit property.

58. Having found and held that one Michael Muriithi, who allegedly sold the suit property to DW2, had not been issued with Grant of letters of administration of the estate of the deceased, it is important to observe that same could not therefore confer any title to or over, the suit property.

59. To the extent that one Michael Muriithi did not have title to the suit property, the question then that arises is whether a person without title can pass a valid title to the 2nd Party or otherwise.

60. In my humble view, What becomes apparent is the import and tenor of the Doctrine of *Nemo dat quod non habet*, which signifies that he who has no title, cannot pass anything to the 2nd party at all.

61. In support of the foregoing position, it is important to take cognizance of the decision in the case of **Diamond Trust Bank Kenya Ltd v Said Hamad Shamisi & 2 others [2015] eKLR**, where the court observed as hereunder;

Firstly, section 26 (1) and (2) are exceptions to the general rule in the sale of goods that a person who does not have title to goods cannot, without the owner’s authority or consent, sell and confer a better title in the goods than he has. (Nemo dat quod non habet). These exceptions are examples of initiatives towards the protection of commercial transactions that Lord Denning famously referred to in BISHOPSGATE MOTOR FINANCE CORPORATION LTD V. TRANSPORT BRAKES LTD (1949) 1 KB 322, at pp. 336-337 when he stated:

“In the development of our law, two principles have striven for mastery. The first is for the protection of property: no one can give a better title than he himself possesses. The second is for the protection of commercial transactions: the person who takes in good faith and for value without notice should get a good title. The first principle has held sway for a long time, but it has been modified by the common law itself and by statute so as to meet the needs of our own times.”

62. To the extent that Michael Muriithi had no good title to pass, the consequence thereof is that the vendor in favor of the Defendant acquired no title over the suit property and similarly, same thus could not confer any title in respect thereof, to anyone, let alone the Defendant herein.

ISSUE NUMBER 3:

Whether the Defendant was/is a bonafide purchaser for value without notice

63. The Defendant herein tendered evidence that he bought the suit property from DW2 and that upon purchase of the suit property, same paid to and in favor of the vendor the agreed purchase price amounting to Kes.2, 500, 000/=Only, being the Full Purchase Price in respect thereof.

64. On the other hand, the Defendant also testified that upon payment of the purchase price the vendor handed over and unto him all the requisite documents, including the share certificate for Wawanju Investments, over and in respect of the suit property.

65. Pursuant to the foregoing, the Defendant hereafter contended that same proceeded to and paid the transfer fees in favor of Wawanju Investments, culminating into the suit property being transferred to and registered in his name.

66. Owing to the foregoing, it was the Defendant's testimony that same was/is therefore a Bona fide purchaser for value, without notice of any defect in the vendors title or at all. In this respect, the Defendant has therefore sought to rely on the Doctrine of bonafide purchaser for value without notice.

67. Besides, the Defendant's counsel also made extensively submissions and placed reliance on the Decision in **Katende v Haridar & Company Ltd (2008) 2 E.A 173**.

68. However, the import and tenor of the Doctrine of bonafide purchaser for value and in particular the decision in **Katende v Haridar & Company Ltd (2008) 2 E.A 173**, has since been reviewed as explained vide the decision in case of **Mwangi James Njehia v Janetta Wanjiku Mwangi & another [2021] eKLR**, where the court explained as hereunder;

As appears from the 1st appellant's testimony and as correctly observed by the trial Judge, the first appellant is a veterinary doctor. Therefore, it is peculiar that he would take a transaction worth Kshs. 4,000,000, so casually to the extent of not finding it necessary to keep records pertaining to the same.

Further, despite deposing that some of the documents pertaining to the conveyance were in the custody of M/s Kambi Muhia Advocates who were acting for both deceased and the 1st and 2nd appellants, he did not bother to call an advocate from the firm to testify in that regard or produce the said documents in evidence.

36. From the mere conduct of the appellants herein, it could be construed that the circumstances under which they acquired the suit property were fraudulent and fraught with illegalities and that they were well aware of those circumstances.

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, 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.

We have no hesitation in concluding that the appellants do not fall in the category of innocent purchasers. Their appeal is destined to fail for two reasons. First, because as we have demonstrated in this judgment, the deceased had no good Title to pass to anybody; second because the appellants were not innocent purchasers for value without notice and they cannot call in aid the provisions of Section 26 (1) of the Land Registration Act.

69. From the foregoing decision, it is worthy to note that condition number 5 has since been varied and consequently before one can benefit from the doctrine for bona fide purchase for value, same must established that the vendor had a valid title, as opposed to apparent valid title.

70. Be that as it may, in respect of the subject matter the vendor having bought the suit property from a person who had no capacity to sell and had no title, same therefore had no valid title.

71. Consequently, the Defendant's reliance on the Doctrine of bonafide purchaser for value without notice fails to surmounts the revised condition number 5 as captured in the afore cited Decision.

ISSUE NUMBER 4:

Whether the Defendants title is indefeasible

72. The Defendant has contended that the title which was issued to him in respect of the suit property is indefeasible. Consequently, the Defendant has sought for declaratory orders as pertains to the suit property.

73. However, I have pointed out that the circumstances under which the suit property was sold and transferred to the vendor, namely DW2, was colored by illegality that negated the title.

74. Owing to the illegality and/or unproceduralty, that informed the transaction in favor of DW2, the ultimate transfer to and in favor of the Defendant herein cannot therefore be clothed with indefeasibility, either in the manner pleaded by the Defendant or at all.

75. In support of the foregoing observation, one needs to point out the provision of Section 26(1) of the Land Registration Act, 2012, which provides as hereunder;

26. Certificate of title to be held as conclusive evidence of proprietorship

(1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—

(a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or

(b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

(2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original.

76. Where the title in favor of the vendor is proven to have been obtained and/or acquired unprocedurally, illegally or by corrupt practice, the second and subsequent purchaser of the suit property do not acquire any valid title, irrespective of whether same knew of the illegality or otherwise.

77. In my humble view the Provisions of Section 26 1(b) of the land Registration Act, 2012, was enacted to plug the gap that had hitherto existed in our laws and which enabled fraudsters to deprive Innocent owners of their hard-earned properties.

78. Indeed, the provisions of Section 26 1(b) of the Land Registration Act, 2012, does not require plaintiff/claimant to prove that the title holder was privy or party to the illegality, and/or corrupt practice. For clarity, all that a claimant that must prove is that the process of the acquisition of the title was replete with impropriety, illegality or corrupt practice.

79. In support of the foregoing observations, I share in the sentiments of Hon. Justice Sila Munyao, Judge, and decision in the case of **Alice Chemutai Too – Vs – Nickson Kipkurui Korir & 2 Others [2015] eKLR, where the court held as hereunder;**

... it needs to be appreciated that for Section 26 (1) (b) to be operative, it is not necessary that the title holder be a party to the vitiating factors noted therein which are that the title was obtained illegally, unprocedurally or through a corrupt scheme.

The heavy import of Section 26 (1) (b) is to remove protection from an innocent purchaser or innocent title holder. It means that the title of an innocent person is impeachable so long as that title was obtained illegally, unprocedurally or through a corrupt scheme.

The title holder need not have contributed to these vitiating factors. The purpose of Section 26 (1) (b) in my view is to protect the real title holders from being deprived of their titles by subsequent transactions.

The assertion of the defendants that they were innocent purchasers who were not aware of the fraudulent transaction does not hold the water in this case as the purpose of section 26 is to protect real title holders from the unscrupulous persons.

80. In a nutshell, it is my finding and holding that the Defendant's title is vitiated and in this regard, same is defeasible. Consequently, the Defendant's title is amenable to revocation and/or cancellation.

FINAL DISPOSITION

81. Based on the foregoing analysis, the orders that commend themselves to me are as follows;

I. Judgment be and is hereby entered in terms of the Plaintiff dated 7th September 2016.

II. The Defendants Title to and in respect of the suit property namely, L35 Kahawa West be and is hereby cancelled.

III. The Defendant shall vacate and hand over vacant Possession of the Suit Property, to and in favour of the Plaintiff within 60 Days from the Date hereof and in default, the same shall be Evicted therefrom.

IV. The Defendants counter claim be and is hereby Dismissed.

V. Costs of the suit and the counter claim be and are hereby awarded to the Plaintiff

82. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 17TH DAY OF FEBRUARY 2022.

HON. JUSTICE OGUTTU MBOYA

JUDGE

In the Presence of;

June Nafula Court Assistant

Mr. Njiri for the Plaintiff.

N/A for the Defendant.