



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CIVIL SUIT NO. 65 OF 2017

JOEL MUNYOKI MUNENE.....PLAINTIFF

-VERSUS-

AGNES KAGURE KARIUKI.....1ST DEFENDANT

THE CITY COUNTY OF NAIROBI.....2ND DEFENDANT

CHIEF LAND REGISTRAR.....3RD DEFENDANT

JUDGMENT

INTRODUCTION

1. Vide Plaintiff dated the 31st January 2017, the Plaintiff herein has sought for the following Reliefs;

a. a Permanent Injunction do issue restraining the 1st Defendant, her servants and/or agents from entering, occupying, trespassing, sub-dividing, selling and/or in any way interfering with property known as Plot No. A28 in Umoja Innercore Sector III, now Plot No. Nairobi/Block 83/1903.

b. An order do issue to the 2nd and 3rd Defendants to reinstate the expunged original records on the title to Plot No. A28 in Umoja Innercore Sector III now Plot No. Nairobi/Block 83/1903 indicating the Plaintiff as the legal and/or bonafide owner.

c. An order do issue declaring that the Certificate of Lease issued to the 1st Defendant on the 1st day of November 2016 in respect to Plot No. A28 in Umoja Innercore Sector III now Plot No. Nairobi/Block 83/1903 is fraudulent, illegal, null and void ab initio and an order to the commissioner of lands to cancel it.

d. That an order do issue declaring that the Applicant is the bon fide owner of Plot No. Nairobi/Block 83/1903.

e. Costs of this suit.

f. Any other relief this honourable court deems fit to grant.

2. Upon being served with the Plaintiff and Summons to Enter Appearance, the 1st Defendant herein duly entered appearance and thereafter filed a Statement of Defense on the 31st July 2017, in respect of which, the 1st Defendant denied the contents of the Plaintiff. For clarity, the 1st Defendant disputed the Plaintiff's claim as pertains to ownership of *Plot No. A28 in Umoja Innercore Sector III, now Plot No. Nairobi/Block 83/1903.*

3. On the other hand the 2nd Defendant herein also entered appearance, but does not appear to have filed any Statement of Defense, in respect of the subject matter.

4. On the other hand, the 3rd Defendant duly entered appearance and thereafter filed a Statement of Defense, the latter dated 18th April 2017, and in respect of which same denied and/or disputed the Plaintiff's claim.

5. Based on the foregoing pleadings, the subject matter was set down for hearing and same indeed proceeded to and was heard. Nevertheless,

it is imperative to note that only the Plaintiff testified and called one witness and at the close of the Plaintiff's case, the 2nd and 3rd Defendants, indicated that same had no witnesses to call.

6. For completeness of record, when the hearing was concluded, the 1st Defendant was not in attendance and hence the 1st Defendant's case was closed without any evidence having been led by and/or on behalf of the 1st Defendant.

EVIDENCE BY THE PARTIES:

PLAINTIFFS CASE:

7. During the hearing of the subject matter, the Plaintiff herein testified as PW1 and same informed the court that he purchased the suit property from two persons namely, Erastus Nyaga Timothy and Flora Muthoni Nyaga, hereinafter referred to as the vendors, who thereafter signed and executed a Sale Agreement dated the 31st May 2007.

8. It was the Plaintiff's further evidence that the said vendors thereafter proceeded to and wrote to the Director of Housing Department, city county of Nairobi, informing same of the Sale of the suit property to and or in favor of the Plaintiff and thereby requesting the City council of Nairobi to issue the requisite consent and facilitate the transfer of the suit Property in favor of the Plaintiff.

9. Further, the witness also testified that following the request by the vendors to the City council of Nairobi to facilitate the transfer of the suit property to and/or in favor of the Plaintiff, the City council of Nairobi wrote back and confirmed the approval of the transfer of the suit property to and or in favor of the Plaintiff herein.

10. Other than the foregoing, the witness also testified that at the time of purchase of the suit property from the named vendors, the vendors handed over unto him, namely, the witness various background documents, relating to the suit property and essentially confirming that the suit property had hitherto been allocated to one Silas Mugo Kithenji, vide letter of allotment dated the 15th December 1993 and thereafter the said Silas Mugo Kithenji complied with the terms of the letter of allotment and was issued with a certificate of confirmation of ownership as well as the beacons certificate, by the city county of Nairobi.

11. Other than the foregoing, the witness also testified that the vendors also handed unto him a copy of the Deed of assignment, which was executed between the City council of Nairobi and Silas Mugo Kithenji on one part and the vendors on the other part, as proof of ownership, of the suit property on the part of the vendors.

12. Nevertheless, the witness further testified that when he proceeded to the offices of the 3rd Defendants to pursue the transfer and registration of the lease in his favor in the year 2007, same was informed that the office of the 3rd Respondent was carrying out a pilot scheme in respect of Umoja Innercore Area and as a result of the pilot scheme the registration of the lease could not be undertaken thereof.

13. Be that as it may, the witness further testified that in the year 2016 when he lodged his application for registration same was returned with an endorsement that the lease could not be registered because it was a case of double allocation. In this regard, the witness testified that he was constrained to carry out and/or conduct a search over and in respect of the suit property to ascertain the status of registration in respect thereof.

14. It was the further testimony of the witness that when he carried out and/or conducted a search over and in respect of the suit property, same was surprised to find out that the suit property had been registered in the names of the 1st Defendant herein and indeed a Certificate of lease had been issued on the 1st November 2016.

15. It was the witness further testimony that the transfer and issuance of the certificate of lease in respect of the suit property in favor of the 1st Defendant, was irregular, unlawfully and fraudulent, because the suit property had long been allocated to Silas Mugo Kithenji, who thereafter transferred same to the vendors and ultimately to himself and hence same was therefore unavailable for re-allocation.

16. In the premises, the witness contended that the certificate of lease issued in favor of the 1st Defendant therefore ought to be expunged, revoked and/or nullified.

17. Other than the foregoing, the witness herein adopted and relied on the witness statement dated the 31st January 2017, which was constituted as the Evidence in chief and similarly, the witness also produced before the court the bundle of documents at the foot of the list of documents dated the 31st January 2017. For clarity, the documents were produced and marked as P1 to P17, respectively.

18. On cross examination, the witness contended that the documents which were used to process and issue the certificate of lease in favor of the 1st Defendant were fraudulent and illegal.

19. Secondly, the witness also stated that the lease instrument that was used and relied upon by the 3rd Defendant to prepare and generate the certificate of lease, was prepared and signed by the City council of Nairobi in the year 2016, long after the said City Council of Nairobi ceased to exist.

20. Lastly, the witness testified that the fraud which led to the issuance of the certificate of lease arose at the offices of the 2nd and 3rd Defendants and therefore same were jointly, liable.

21. The other witness called by the Plaintiff was Sargent Simion Adol, number 54265, a police officer, currently attached the Directorate of Criminal Investigations, Kilimani Nairobi.
22. The witness herein testified that the Directorate of Criminal Investigations received a complaint from the Plaintiff herein pertaining and/or concerning fraud in respect of the suit property and that upon receipt of the complaint, same was minuted unto him for investigations.
23. It was the further evidence by the witness, that after the Complaint was allocated unto him for investigations, he took over and conducted investigations in respect of the subject matter and that in the process of investigations he visited the offices of the 2nd Defendant, namely Nairobi City County of Nairobi, as well as the office of the 3rd Defendant, namely the Chief Land registrar.
24. The witness further testified that during the occasion when he visited the offices of the 2nd Defendant, same spoke to and interrogated an officer known as Wesonga Sigeyo, a legal officer working with the 3rd Defendant. For clarity, the witness testified that he proceeded to and extracted a witness statement from the said legal officer.
25. Pw2 further testified that in the course of his interactions with Mr. Wesonga Sigeyo, Legal Officer of the 2nd Defendant, same informed him that the suit property lawfully belonged to the Plaintiff.
26. On the other hand, the witness further testified that Mr. Wesonga Sigeyo was surprised that the suit property was registered in the names of the 1st Defendant and in this regard, Mr. Wesonga Sigeyo could not be able to explain how such registration transpired.
27. Finally, the witness herein stated that he also proceeded to the office of the 3rd Defendant and while at the said offices, same obtained copies of documents which were used to facilitate the transfer of the suit property in favor of the 1st Defendant.
28. Be that as it may, the witness concluded that having reviewed the totality of the documents obtained from the office of the 2nd and 3rd Defendants, same came to the conclusion that the fraud was conducted at the Ministry of land.
29. In respect of the investigations that were carried out and/or conducted by the witness, same indicated that he proceeded to and prepared a Report and in this regard, same proposed to produce the Report as an exhibit. For clarity, the witness Statement of the witness and the attendant report were thereafter produced and marked as exhibit P15.
30. On cross examination, the witness herein reiterated that the fraud leading to the transfer and registration of the suit property in favor of the 1st Defendant was carried out at the Ministry of land.
31. Nevertheless, the witness testified that the Chief land Registrar does not draft the transfer instrument.
32. On the other hand, the witness also stated that neither the Chief Land Registrar nor any officer working at the office of the Chief land Registrar, has ever been charged in respect of the subject matter. Finally, the witness stated that during the course of his investigations, the Chief Land Registrar and his officers co-operated with him and availed all the documents that he required and/or sought for.
33. With the evidence of PW2, the Plaintiff's case was closed.

1ST DEFENDANTS CASE:

34. Though served with the hearing Notice for hearing of the case on the 15th December 2021, the 1st Defendant herein failed to attend court and upon being satisfied that the 1st Defendant was duly notified and was thus aware of the hearing date, the court ordered and/or directed that the matter proceeds for hearing.
35. Subsequently, at the close of the Plaintiff's case, there was no evidence that was adduced by and/or on behalf of the 1st Defendant and in this regard, the 1st Defendant's case was closed without any evidence having been tendered and/or adduced.

2ND DEFENDANT'S CASE:

36. The 2nd Defendant herein indicated that same was not calling any witness or at all and in this regard the 2nd Defendant chose to close her case without tendering any evidence at all.
37. Consequently, the 2nd Defendant's case was closed.

3RD DEFENDANT'S CASE:

38. Similarly, the counsel for the 3rd Defendant also informed the court that the 3rd Defendant was not keen on calling any witness and same was therefore closing the 3rd Defendant's case, without tendering any evidence.
39. Premised on the foregoing, the 3rd Defendant's case was equally closed without any evidence having been proffered or adduced, whatsoever.

SUBMISSIONS:

40. At the close of the case for the respective Parties, the advocate for the Parties herein sought to file written submissions, consequently, directions were given on the filing and exchange of written submissions by and or behalf of the Parties.

41. Pursuant to the directions on the filing and exchange of written submissions, the Plaintiff's counsel proceeded to and filed written submissions on the 22nd February 2022, whereas the 3rd Defendant filed written submissions on the 15th March 2022, even though same are curiously dated the 15th March 2021.

42. Briefly, it is the Plaintiff's submission that the suit property herein having been dully allocated to and in favor of one Silas Mugo Kithenji, on the 15th December 1993 and same having complied with the terms of the letter of allotment, culminating into the issuance of the Certificate of confirmation of ownership, beacon certificate, as well as the Deed of assignment, by the 2nd Defendant herein, the suit property, was thereafter unavailable for re-alloaction.

43. On the other hand, the Plaintiff's counsel has submitted that the purported allocation of the suit property to and in favor of one Joseph Chege Muturi, who was the predecessor of the 1st Defendant herein, was irregular, unlawful and illegal. Consequently, the Plaintiff has submitted that the 1st Defendant does not have a good title to the suit property.

44. Notwithstanding the foregoing, the Plaintiff has further submitted that the issuance of the Certificate of lease in favor of the 1st Defendant was riddled with fraud and illegality and on that particular basis, the Certificate of lease, ought not to be sustained.

45. In this regard, the Plaintiff's counsel has invited the court to take cognizance of the decision in the case of **Kinyanjui Kamau v George Kamau Njoroge (2015) eKLR**, in support of the contention that a title procured by fraud ought to be cancel or revoked.

46. On her part, the 3rd Defendant has submitted that the Plaintiff herein has not proved her case on a balance of probabilities and in any event a case based on fraud must not only be specifically pleaded, but must be proven to a standard beyond a balance of probabilities.

47. In support of her submissions, the 3rd Defendant herein has relied on the Decisions in the case of **Urmila Wife of Mahendra Shah v Barcklays International Ltd & Another (1979) eKLR, Vijay Morjaria v Nann Sign Madhusighn Dabar & Another (2000) eKLR and Central Bank of Kenya v Trust Bank Ltd & 4 Others (1996) eKLR**.

48. In a nutshell, it is the 3rd Defendant's submissions that the 3rd Defendant acted in good faith and in accordance with the law. In this regard, the 3rd Defendant has implored the court to dismiss the Plaintiff's case with cost.

ISSUES FOR DETERMINATION:

49. Having reviewed the Pleadings filed by the Parties herein, and essentially the Complaint dated 31st January 2017, the Statement of Defense dated the 31st July 2017 and 18th April 2017 respectively, and having taken into account the Documentary evidence tendered and produced by the Plaintiff, as well as the oral testimony adduced before the Court and having similarly evaluated the submissions filed, the following issues do arise and are germane for determination;

a. Whether Plot No. A28 in Umoja Innercore Sector III (later Plot No. Nairobi/Block 83/1903) was dully allocated to Silas Mugo Kithenji and if so, whether the said plot was thereafter available for re-allocation to Joseph Chege Muturi or any other Person or at all.

b. Whether the transfer and registration of the suit property in the name of the 1st Defendant was lawful or otherwise.

c. Whether the Plaintiff is entitled for the Reliefs sought at the foot of the Complaint.

ANALYSIS AND DETERMINATION:

ISSUE NUMBER 1:

Whether Plot No. A28 in Umoja Innercore Sector III (later Plot No. Nairobi/Block 83/1903) was dully allocated to Silas Mugo Kithenji and if so, whether the said plot was thereafter available for re-allocation to Joseph Chege Muturi or any other Person.

50. From the evidence tendered and/or availed to the court, it is apparent that the suit property was allocated to and/or in favor one Silas Mugo Kithenji vide letter of allotment the 15th December 1993, by Nairobi city council, now defunct, who was the predecessor of the 2nd Defendant herein.

51. It is also evident that upon the allotment of the suit property to and in favor of the said Silas M Kithenji, same complied with the terms of the letter of allotment, including inter alia, payment of the monies indicated therein and after the completion of the stipulated payments, the city council of Nairobi issued a Certificate of confirmation of ownership dated the 30th March 1998, whereby same confirmed and/or authenticated that indeed Silas Mugo Kithenji was the true allottee of the suit property.

52. Other than the issuance of the certificate of confirmation of ownership, the City council of Nairobi also proceeded to and carried out a survey in respect of the suit property over and in respect thereof and after the completion of the survey exercise, same issued a Beacon certificate to and or in of the said Silas Mugo Kithenji. For clarity, the Beacon certificate was issued on the 30th March 1998.

53. As if the foregoing was not enough, the City Council of Nairobi proceeded to and also executed a Deed of assignment in favor Silas Mugo Kithenji whereby the City council of Nairobi signified that the said allottee had been conferred with the rights and/or interests to and in respect of the suit property.

54. Simply put, by issuing the foregoing documents the City council of Nairobi was confirming that the allottee had duly complied with and/or satisfied the requisite conditions at the foot of the letter of allotment.

55. Having satisfied and/or complied with the terms of the Letter of allotment, the suit property, which had been allotted by the City council of Nairobi thereby ceased to be available for allocation and/or re-allocation, to anyone else, Joseph Chege Muturi not excepted.

56. In support of the contention that once an allottee has complied with the terms of the letter of allotment, the land becomes unavailable for re-allocation, it is imperative to take cognizance of the decision in the case of **Republic v City Council of Nairobi & 3 Others (2014) eKLR** where it was held as hereunder;

“Once allotment letter is issued and the allottee meets the conditions therein, the land in question is no longer available for allotment since a letter of allotment confers absolute right of ownership or proprietorship unless it is challenged by the allotting authority or is acquired through fraud mistake or misrepresentation or that the allotment was out rightly illegal or it was against public interest. In other words, where land has been allocated, the same land cannot be reallocated unless the first allocation is validly and lawfully cancelled.”

57. Other than the foregoing, it is also worthy to note that where an allottee has complied with the terms of the Letter of allotment and the allotting authority has proceeded to and executed a transfer instrument, in this case, a Deed of assignment, which was executed in favor of the 1st allottee and which was thereafter transferred in favor of the vendors and ultimately transferred in favor of the Plaintiff, with the approval of the city council of Nairobi, now defunct, the beneficiary of such allotment, acquires a legitimate title and same becomes private Property, which cannot be impugned without compliance with Due process of the law.

58. If any case law was required to buttress the foregoing trite position, then one need not look far and wide, but suffice it, to refer to the decision in the case of **Benja Properties Limited v Syedna Mohammed Burhannudin Sahed & 4 others [2015] eKLR**, where the Court of Appeal stated as hereunder:

“The legal effect of the registrations made in 1907 and 1911 was to convert the suit property at that time from un-alienated government land to alienated government land with the consequence that the suit land became private property and moved out of the ambit and confines of the GLA. This made the suit property unavailable for subsequent allotment and alienation by the Commissioner of Lands or the President of Kenya.

The appellant’s title to the suit property was thus anchored on land that was not unalienated government land. We concur with the trial judge’s finding that “the suit land having been owned privately was not GLA land, and was not available for alienation. Its alienation was illegal and void ab initio.”

59. In my humble view, the suit property having been allocated to one Silas M Kithenji, whose allocation, founds and/or premises the title claimed by the Plaintiff herein, same could not have been allocated to and in favor of one Joseph Chege Muturi on the 25th July 2002 or at all.

60. Consequently and in the premises, I find and hold that the purported letter of allotment issued to Joseph Chege Muturi by Nairobi city council on the 25th July 2002 and on which the said Joseph Chege Muturi relied on to sell the suit property to the 1st Defendant, was invalid, null and void.

61. For the avoidance of doubt, I beg to point out that this was not a case of Double allocation, but one of illegal allocation, insofar as the suit property was not available for allocation and/or alienation, at the time when Nairobi city council purported to allocate or re- allocate same on the 25th July 2002.

ISSUE NUMBER 2:

Whether the Transfer and registration of the suit property in the name of the 1st Defendant was lawful or otherwise.

62. While dealing with the first issue, I have found and held that the suit property had long been allocated and/or alienated by Nairobi city council to and in favor of Silas Mugo Kithenji, who duly complied with the terms of the Letter of allotment, culminating into the issuance of the Deed of assignment in his favor and which Deed of assignment was thereafter transferred to the vendors and ultimately in favor of the Plaintiff.

63. Nevertheless, the point herein however relates to whether the transfer of the suit property in favor of the 1st defendant was lawful or otherwise. In this regard, to be able to authenticate the illegality or otherwise of the transfer, one needs to authenticate whether the terms Letter of allotment which was issued to Joseph Chege Muturi, who thereafter sold the suit property to the 1st Defendant were complied with.

64. First and foremost, it was incumbent upon the 1st Defendant to place before the court evidence of the letter of acceptance and payments of the monies stipulated on the face of the Letter of allotment and essentially to establish that same were made within the prescribed 30 days.

65. However, the totality of the bundle of documents, that were filed before the court by the 1ST Defendant, no Evidence and/ or Document, namely, the letter of acceptance and Revenue receipt denoting payments were ever attached and/ or availed.

66. In the absence of acceptance and/or payments of the monies stipulated on the face of the purported letter of allotment, it is my finding and holding that the letter of allotment, even if same had not been illegally issued, same would have long lapsed.

67. Simply put, if the terms of a letter of allotment are not complied with within the statutory timelines, same lapses automatically and hence ceases to exist in the eyes of the Law.

68. In support of the foregoing holding, it is sufficient to take cognizance of the decision in the case of **H.H. DR. SYEDNA MOHAMMED BURHANUDDIN SAHEB & 2 OTHERS v BENJA PROPERTIES LTD & 2 OTHERS [2007] eKLR**, where the Honourable Court, Visram Judge, held as hereunder;

“In any event, the letter of allotment relied upon by the Defendant had itself expired, and was therefore invalid. I do not accept Mr. Kirundi, Counsel for Defendant’s argument, that the expired letter, when acted upon, had been “revived” through conduct. The letter had expired. It was dead. There was nothing to “revive”.

69. Other than the foregoing, the other important point to note is that the lease instrument which was presented to and registered by the 3rd Defendant and thereby culminating into the issuance of the Certificate of lease in favor of the 1st Defendant, was allegedly drawn by the city council of Nairobi and same was signed by the Mayor and the Town Clerk on the 1st November 2016.

70. Curiously, one wonders how and when the City Council of Nairobi resuscitated for purposes of preparation and engrossment of the lease instrument on the 1st November 2016, yet it is common ground that the City Council of Nairobi, alongside all other Local authorities, were rendered defunct, on the 4th March 2013, immediately after the completion of the 1st General Election under the Constitution, 2010.

71. On the other hand, it is also worthy to note that the same lease instrument is also said to have been signed by and/or on behalf of the Mayor and the Town clerk, yet the operations of the City County Government of Nairobi was bestowed upon the Governor and the Executive Committee by dint of Article 179 of the Constitution, 2010.

72. Notwithstanding the foregoing, it is also worthy to note that the purported Lease instrument which was allegedly presented for registration and which was registered, culminating into Certificate of lease in favor of the 1st Defendant did not bear the relevant official records, including date of receipt, presentation book number and the registration fee, if any that was paid. Clearly, something was amiss.

73. In my humble view, the registration of the suit property to and in favor of the 1st Defendant was predicated and/or premised on the illegal and unlawful documents and hence same was plagued with illegalities, to the extent that the entire process, was illegal, un-procedural and void ab initio.

74. In my humble view, such kind of transaction, do not only defeat common sense, but raises serious question about adherence to and observance of the law by persons working at the office of the 3rd defendant.

75. Certainly, it cannot be said that the errors evident on the Lease instrument that was acted upon by the 3rd Defendant could not have been noted.

76. Nevertheless, it is my humble view that this is yet another case where the provisions of Section 26 (1) (b) of the Land Registration Act, 2012 would suffice. For clarity the said provisions are reproduced as hereunder;

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

77. I am aware, that the 1st Defendant may very well contend that same was never party or privy to the fraud or illegality that culminated into the issuance of the illegal letter of allotment that premised the unlawful lease instrument, but it must be noted that the provisions of Section 26 (1) b (supra), are more concerned with circumstance in which the title was acquired than to the knowledge of the Parties thereto.

78. Consequently, if it is proven that there was illegality or corrupt practice, as is the case herein, then the title, which arose from the said vitiated process, must be nullified.

79. In support of the foregoing observation, I rely on and adopt the holding in the decision in the case of **Embakasi Properties Limited & Anor. vs. Commissioner of Land & Another. [2019] eKLR** in which this Court of Appeal expressed itself as follows:

“Although it has been held time without end that the certificate of title is: “... conclusive evidence that the person named therein as proprietor of the land is the absolute and indefeasible owner thereof”, it is equally true that ownership can only be challenged on the ground of fraud or misrepresentation to which the proprietor named is proved to be a party.

See section 23 of the repealed Registration of Titles Act. Section 26 of the Land Registration Act, 2012 though not as emphatic as section 23 aforesaid on the conclusive nature of ownership, confirms that the certificate is prima facie evidence that the person named as proprietor is the absolute and indefeasible owner. It adds that apart from encumbrances, easements, restrictions to which the title is subject, there is no guarantee of the title if it is acquired by fraud or misrepresentation or where it has been acquired “illegally, unprocedurally or through a corrupt scheme”

ISSUE NUMBER 3:

Whether the Plaintiff is entitled for the Reliefs sought at the foot of the Plaint.

80. Based on the findings and holdings in terms of issues number 1 and 2 herein above, it must become obvious that the transfer, registration and ultimate Issuance of the certificate of lease in favor of the 1st Defendant, over and in respect of the suit property was riddled, with illegalities, un-procedurality and hence same was null and void.

81. In any event, it is worth repeating that the lessor, who purportedly prepared the lease instrument in favor of the 1st Defendant was non-existent and therefore incapable of generating a legal instrument, in the first instance or at all.

82. In the premises, it is my humble position, that the Plaintiff herein has laid and/or established before the court a clear-cut case for the grant of the orders sought at the foot of the Plaint beforehand. Consequently, I would answer the third issue in the affirmative.

FINAL DISPOSITION:

83. Having addressed and/or dealt with the issues outlined herein before, it is now appropriate, to render a determination over and in respect of the subject matter.

84. Consequently and in the premises, I am persuaded to grant the following orders;

a. A Declaration be and is hereby issued that the certificate of lease issued to the 1st Defendant on the 1st day of November 2016 in respect to Plot No. A28 in Umoja Innercore Sector III, now Plot No. Nairobi/Block 83/1903 was/is fraudulent, illegal, null and void ab initio and same be and is hereby canceled, revoked and nullified.

b. The 3rd Defendant be and is hereby ordered and/or directed to remove and cancel all the records and entries bearing the name of the 1st Defendant from Plot No. Nairobi/Block 83/1903 and to desist from maintaining any a parallel records to that effect whatsoever and howsoever.

c. A declaration be and is hereby made that the Plaintiff is the lawful, legitimate and bona fide owner of Plot No. Nairobi/Block 83/1903.

d. The 3rd Defendant be and is hereby ordered and/or directed to register the lease instrument dated the 24th August 2015, which was presented by the Plaintiff herein on the basis of the application for registration dated 24th August 2015, but which was endorsed with the remarks, declined on the basis of Double allocation on the 22nd December 2016 forthwith and in any event within thirty (30) days of presentation of same and/or service of the judgment hereof.

e. An order of Permanent injunction be and is hereby issued restraining the 1st Defendant, her servants and/or agents from entering, occupying, trespassing, sub-dividing, selling and/or in any way interfering with property known as Plot No. A28 in Umoja Innercore Sector III, now Plot No. Nairobi/Block 83/1903.

f. Costs of this suit are awarded to the Plaintiff as against the Defendants jointly and/or severally, taking into account that all the Defendants herein, played a role in the circumstances leading to the cause of action beforehand.

85. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY OF APRIL, 2022

HON. JUSTICE OGUTTU MBOYA

JUDGE

In the Presence of;

June Nafula Court Assistant

No appearance for the Plaintiff

Ms. Letuya H/B Mr. Mingo for the 1st Defendant

Mrs. Mwambonu H/B for Mr. Njagi for the 3rd Defendant

No appearance for the 2nd Defendant