



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENTAL AND LAND COURT AT NAIROBI**  
**ELC SUIT NO. 795 OF 2007**

**NISHI KENT**  
**UPASANA KENT**  
**(Both suing as the joint executrixes of the estate of**  
**RANBIR KRISHEN KEHARCHAND KENT.....PLAINTIFFS**

**VERSUS**

**JOHN OWAYO NEKO**  
**STEPHEN GIKONYO MWANGI ..... DEFENDANTS**

**EXBON ONGORO ADIKA**

**JOHN KAMANDE**

**AND**

**SIMON CHEGE**

**GEORGE MUHORO**

**SIMON MATHENGE**

**JULIA KAMUIRU**

**RICHARD AYUSA ONDIEKI .....1<sup>st</sup> -9<sup>th</sup> INTERESTED  
PARTIES**

**JACKSON MWELWA**

**PETER NJOROGE**

**STANLEY KAMAU**

**ABUODHA JOSEPH ONGETE.....10<sup>TH</sup> INTERESTED PARTY**

**LINK PROPERTIES LIMITED.....11<sup>TH</sup> INTERESTED PARTY**

**RULING**

There are two applications before the court for determination. The first is a Chamber Summons dated 16<sup>th</sup> September, 2010 brought by the 10<sup>th</sup> Interested Party under sections 1A and 1B of the Civil Procedure Act as well as Order 1 Rule 10 (2) and 22, Order XXXI Rules 4 and 9 and Order L Rule 1 of the revoked Civil Procedure Rules. What is pending for determination in the said Chamber Summons is the prayer that the orders dated 30<sup>th</sup> March, 2004 and 14<sup>th</sup> July, 2003 issued by the court in this suit, which was initially filed as HCCC No. 1502 of 2002, be discharged.

The second application is a Notice of Motion dated 30<sup>th</sup> March, 2011 by the 1<sup>st</sup> to 9<sup>th</sup> Interested Parties brought pursuant sections 1, 1A, 1B, 3A of the Civil Procedure Act and Order 39 Rule 4 and 9 and Order 6 Rule 13(1), (b), (c) and (d) of the Civil Procedure Rules. The outstanding prayers in the 1<sup>st</sup>-9<sup>th</sup> Interested Parties' application is that the orders issued by the court on 14<sup>th</sup> July, 2003 as well as all consequential orders and proceedings regarding LR No.11531/8 be discharged, varied and or set aside. The 1<sup>st</sup> to 9<sup>th</sup> Interested Parties have also sought to have the Plaint struck off for being an abuse of the court process.

There are spent prayers in the said applications in which the 1<sup>st</sup> – 10<sup>th</sup> Interested Parties asked to be joined as interested parties to these proceedings, which were allowed by this court on 8<sup>th</sup> February, 2012. The 11<sup>th</sup> Interested Party was also joined as party on the same date pursuant to a Chamber Summons it had filed dated 23<sup>rd</sup> September 2013.

**The 1<sup>st</sup> – 9<sup>th</sup> Interested Parties Case**

The 1<sup>st</sup> – 9<sup>th</sup> Interested Parties' application is supported by an affidavit sworn by the Interested Parties on 30<sup>th</sup> March, 2011, wherein they deponed that they were residents of Chokaa estate in Ruai, Nairobi situated on L.R. No. 11531/8, and stated that they were bringing the suit in a representative capacity for and on behalf of over 2,500 residents of Chokaa, Ruai, Nairobi. They attached a letter of authority bearing names of some of the residents .

The 1st - 9th Interested Parties contended that L.R. No. 11531/8 was at all material times registered in the name of the late Ranbir Krishen Kencharhand Kent who passed away on 9<sup>th</sup> December 1997, leaving his daughter's Nishi Kent alias Nidhi Kent and Upasana Kent as the executrixes of his will. They attached as evidence a copy of the will dated 14<sup>th</sup> April, 1997, a temporary grant of probate dated 9<sup>th</sup> December, 1997, as well as a certificate of confirmation of a grant dated 19<sup>th</sup> March,1998.

According to the 1st - 9th Interested Parties, the late Ranbir Krishen Kencharhand Kent had employed their parents who resided and worked on the suit property since the early 1960's. They alleged that they have exclusively occupied the suit property since they were born, together with their 2<sup>nd</sup> and 3<sup>rd</sup> generation families. According to the applicants, the late Ranbir Krishen Kecharhand Kent had constructed workers' quarters on parcel no. L.R. No. 11531/8 where their parents resided with their families while working on the farm.

It is the 1st - 9th Interested Parties' case that they have openly occupied and lived on parcel L.R. No. 11531/8 where they have built and developed residential homes, and they annexed photographs of the

said buildings as evidence. The applicants also annexed a registration certificate of Ruai Chokaa Settlement Self-help Group dated 30<sup>th</sup> July, 2004, as well as copies of water bills from Nairobi Water Company to show that water supply to the estate was properly installed. Further, the 1st - 9th Interested Parties have alleged that the self help group has developed community projects for the benefit of the occupants of L.R. No. 11531/8, which include schools, a health clinic, an electrification project as well as a church and mosque.

According to the 1st - 9th Interested Parties, the executrixes of the estate of the late Ranbir Krishen Keharchard Kent filed the suit herein against alleged trespassers on L.R. No. 11531/9 and that the Plaintiff was later amended to include parcel L.R. No. 11531/8 which they occupy, without joining them as Defendants. The applicants have stated that the orders obtained against the occupants of L.R. No. 11531/8 were irregular and contrary to the principles of natural justice, since the residents were not given an opportunity to be heard. Copies of the amended plaint in HCCC No. 1502 of 2002 dated 15.10.02, the court order issued on 11.08.03, as well as an affidavit sworn by Nishi Kent were annexed as evidence.

The 1st - 9th Interested Parties have claimed that the court order was being utilized by the Plaintiff in collaboration with the OCPD Embakasi to coerce residents of L.R. No. 11531/8 into entering into irregular compensation transactions over the suit parcel, and it is alleged that the Plaintiffs attempted to evict the residents through Expeditious Auctioneers. The applicants have further stated that they have filed a representative suit on behalf of the 2,500 residents of Chokaa, Ruai, Nairobi for adverse possession in respect of L. R. No. 11531/8, and annexed a copy of the Originating Summons in ELC no. 615 of 2010 dated 9<sup>th</sup> December 2010. They also attached a copy of a court order issued on 9<sup>th</sup> March, 2009 in ELC suit no. 795 of 2007 where the court ordered that the *status quo* be maintained.

The 1st - 9th Interested Parties claimed that they held several meetings with Rajesh Kent who had entered into transfer agreement with the executrixes of the estate of the late Ranbir Krishen Keharchard Kent for LR. No. 11531/8, and that the said Rajesh Kent agreed to abandon his claim for the suit parcel on condition that the residents refunded him the deposit of Kshs.8,560,721.50/= he had already paid to the executrixes of the estate. It is the applicants' case that on 1<sup>st</sup> October, 2010, an amount of Kshs.7,500,000/= was paid to M/s Otieno Okeyo & Company advocates for Rajesh Kent through a banker's cheque, and a receipt dated 01.10.09 has been annexed as evidence. Further, the applicants have annexed rate payment receipts dated 19.02.09 and 28.04.09 issued by the City Council of Nairobi.

The 1st-9th Interested Parties further alleged that Kenya Power and Lighting Company has almost completed installation of the power supply project to the residents of Chokaa estate, Ruai on L.R No. 11531/8, and they annexed electricity bills as evidence. It is alleged by the applicants that the 11<sup>th</sup> Interested Party obtained court orders in HCCC No. 114 of 2010 barring Kenya Power and Lighting Company from completing the power supply project, and a copy of the said order dated 30<sup>th</sup> September, 2010 was furnished.

In a supplementary affidavit sworn by the 1st - 9th Interested Parties on 20<sup>th</sup> February 2012, it was contended that the Plaintiffs as administrators of the estate of the late Ranbir Krishen Kencharhand Kent have no reason to pursue the suit, since they relinquished ownership of L.R. No. 11531/8 to their brother Rajesh Kent vide a transfer executed in favour of the 11<sup>th</sup> Interested Party, which was attached as evidence.

### **The 10<sup>th</sup> Interested Party's Case**

The 10<sup>th</sup> Interested Party's application is supported by an affidavit he swore on 16<sup>th</sup> September, 2010 wherein he stated that he is the proprietor of the parcel of land known as LR No. 11531/14 pursuant to a letter of allotment dated 2<sup>nd</sup> July, 1998 issued by the City Council of Nairobi. Further, that since the allotment, he has resided on parcel without any hindrance and has continued to pay rates to the City Council of Nairobi. A copy of the said allotment letter and rate demand notes dated 10.03.08 and 04.03.08 issued by the Nairobi City Council in his name were annexed as evidence.

The 10<sup>th</sup> Interested Party averred that on 6<sup>th</sup> September, 2010, he was instructed by the O.C.S Ruai Police Station to vacate the suit premises on grounds that eviction orders had been issued by the court in HCCC No. 1502 of 2002, and a copy of the order issued on 22<sup>nd</sup> April 2004 has been annexed as evidence. He averred that he protested the threatened eviction through a letter to the O.C.S Ruai Police Station dated 7<sup>th</sup> September, 2010 whose copy was attached to the application. Further, the applicant stated that similar orders were granted by the court on 14<sup>th</sup> day of July, 2003, and the applicant has exhibited as evidence a copy of the said orders.

The 10<sup>th</sup> Interested Party stated that he has never been a party to the proceedings in HCCC No. 1502 of 2002. Further, he contended that the Plaintiffs title is LR No. 11531/4 and not 11531/14 which is his property, and he annexed a copy of a certificate of title issued to Ranbir son of Keharchand on 15<sup>th</sup> December, 1993. He stated that it is necessary for him to be joined in this suit to enable the court adjudicate upon, and settle all questions and issues. Lastly, the 10<sup>th</sup> Interested Party stated that he was aggrieved by the two *ex-parte* orders which adversely affect his proprietary interest and rights over L.R No. 11531/14, yet he was never afforded an opportunity of being heard before they were issued.

### **The Plaintiffs' Response**

The Plaintiffs opposed the Chamber Summons by the 10<sup>th</sup> Interested Party dated 16<sup>th</sup> September 2010 in a replying affidavit sworn by Rajesh Kent on 16<sup>th</sup> November, 2010. The deponent stated that he was a beneficiary of the estate of the late Ranbir Krishen Kerachand Kent, and contended that the 10<sup>th</sup> Interested Party cannot be the Proprietor of Land Reference Number 11531/14 Nairobi which has been the Deceased's since the 1<sup>st</sup> September, 1964.

The Plaintiffs averred that Land Reference Number 11531/14 Nairobi is a resultant parcel of Land Reference Number 11531/4 Nairobi which was sub-divided into Land Reference Number 11531/8 Nairobi and Land Reference Number 11531/14 Nairobi. According to the Plaintiffs, the allotment letter furnished by the 10<sup>th</sup> Interested Party was fraudulent since the City Council of Nairobi could not allocate land that was already demarcated and owned by someone else, who had been issued with a Deed Plan and a Land Reference Number after a survey.

Lastly, the Plaintiffs stated that Land Reference Number 11531/8 Nairobi which is the subject of the order of 11<sup>th</sup> August, 2003 belongs to an entirely different entity and therefore, that the orders cannot be discharged to the detriment of the said entity without being given an opportunity to be heard. The Plaintiffs annexed as evidence a copy of an agreement for sale over LR no.11531/8 between Upasana Ahmed, Nishi Kent and the 11<sup>th</sup> Interested Party, Link Properties Ltd, dated 19<sup>th</sup> June, 2006.

The Plaintiffs also filed Grounds of Opposition dated 29<sup>th</sup> July 2013 in opposition to the 10<sup>th</sup> Interested Party's Chamber Summons dated 16<sup>th</sup> September 2010 and 1<sup>st</sup> – 9<sup>th</sup> Interested Parties Notice of Motion dated 30<sup>th</sup> March 2011. It was the Plaintiffs' contention that the applicants therein were guilty of inordinate delay, and had not furnished the Court with any evidence, nor disclosed any right or claim to warrant the exercise of discretion in their favour.

### **The 11<sup>th</sup> Interested Party's Response**

The 11<sup>th</sup> Interested Party opposed the Notice of Motion by the 1<sup>st</sup> – 9<sup>th</sup> Interested Parties in a replying affidavit sworn by Rajesh Kent on 13<sup>th</sup> July 2012. The deponent stated that the Plaintiffs entered into a sale agreement dated 19<sup>th</sup> June, 2006 with the 11<sup>th</sup> Interested Party in respect of the suit premises who paid the entire purchase price, and therefore, that the 11<sup>th</sup> Interested Party is the legal and beneficial owner of L.R. Number 11531/8. A copy of the sale agreement dated 19.06.06 as well as the transfer instrument were annexed as proof.

It was further stated that L.R Number 11531/8 is a creation of sub-division of L.R. Number 11531/4

which was sub-divided into L.R. Numbers 11531/8 and 11531/14. According to the deponent, the Plaintiffs as the joint executrix of the estate of Ranbir Krishen have the responsibility to ensure that the interest of the beneficiaries are protected, and the court was urged not to discharge or set aside the orders of 14<sup>th</sup> July, 2004.

The 11<sup>th</sup> Interested Party contended that the 1st - 9th Interested Parties are guilty of delay for coming to court more than seven years since the orders sought to be set aside were issued. It was further contended that the 1st - 9th Interested Parties have approached the court with unclean hands for seeking to set aside the orders and at the same time proposing to purchase the suit premises from the 11<sup>th</sup> Interested Party and paying a deposit of Kshs.7, 500,000/=. According to the Plaintiffs, the 1st - 9th Interested Parties would not have proposed to enter into a sale agreement with the 11<sup>th</sup> Interested Party if they did not concede to its beneficial interest in the suit premises.

### **The Submissions**

The court directed parties to file written submissions. The Plaintiffs in submissions dated 29<sup>th</sup> July, 2013 argued that although the court has a very wide and unfettered discretion, the same can only be exercised if the applicants have placed sufficient grounds, which was not the case herein. Counsel for the Plaintiffs relied on the principles for setting aside an *ex parte* judgment as set out in the cases of **Maina -vs- Mugiria(1983)KLR 78**, **Patel -vs- E. A Cargo Handling Services Ltd(1974)EA**, **Shah -vs- Mbogo (1967)EA 116** and **Mbogo -vs- Shah(1968)EA 93**.

It was argued for the Plaintiffs that the applicants are seeking to set aside orders which were issued more than seven years previously, and only moved to court when the Plaintiffs sought to enforce the eviction orders. The Plaintiffs contended that the applicants had not explained the delay and had not demonstrated why the court should exercise its discretion in their favour.

Counsel further submitted that the Plaintiffs had been denied possession of their land for many years, and that further delay will only cause hardship and a gross violation of the Plaintiffs' rights as registered proprietors by persons who have no interest known in law. It was argued for the Plaintiffs that an allotment letter issued to the 10th Interested Party cannot defeat the rights of a registered owner, and reliance was placed on the case of **Jaj Super Power Cash and Carry Ltd -vs- Nairobi City Council & 2 others, CA No. 111 of 2002**. The Plaintiff submitted that since it was not disputed that they were the registered proprietors of both LR 11531/8 and 14 which were subdivisions of LR 11531/4, the 10<sup>th</sup> Applicant has no superior claim than that of the Plaintiffs.

In respect to the application filed by the 1<sup>st</sup> - 9<sup>th</sup> Interested Parties, Counsel for the Plaintiffs submitted that the Plaintiffs obtained the orders of 14<sup>th</sup> July, 2003 regularly, and further, that the applicants being children of persons who were employed by the late Ranbir Krishen Keharchand Kent and who were on the land with the permission of the registered owner cannot claim adverse possession. The Plaintiffs referred the court to the case of **Wambugu -vs- Njuguna CA No. 10 of 1982** and **ELC No. 59 of 2010** for the submission that permissive occupation cannot give rise to adverse possession.

The 1st - 9th Interested Parties counsel filed submissions dated 30<sup>th</sup> April, 2012. He argued therein that the eviction orders issued in HCCC No. 1502 of 2002 in respect of LR No. 11531/8 were obtained irregularly, since the occupants of the said parcel were not afforded an opportunity to be heard, contrary to the principles of natural justice. Counsel submitted that the occupation of the said land by other persons other than the Defendants in HCCC No. 1502 of 2002 was not disclosed to the court, which issued the order against persons who were not party to the suit in ignorance. The court was referred to the decision in the case of **Justice Said Juma Chitembwe -vs- Edward Muriu Kamau & 4 otherse (2011)eKLR** for the submission that *ex parte* orders issued against persons who are not parties to the suit are highly prejudicial.

Counsel contended that the orders obtained by the Plaintiffs against the interested parties were irregular, unfair and highly prejudicial, and the court was urged to set them aside *ex debito justitiae*. It was further

contended that the *ex parte* orders were issued on the premise that they had not been challenged, and applicants contended that they would have contested the suit had they been joined.

Counsel for the 1st - 9th Interested Parties further argued that the Plaintiffs' non-disclosure to the court that there were thousands of persons occupying the suit premises constituted a serious abuse of the court process which the court ought not to countenance. He submitted that a person seeking ex-parte orders has a duty to make a full and frank disclosure of all material facts that may influence the court while making the decision. Reliance was placed on the decisions in **The King -vs- The Commission for Income Tax for the District of Kensington Ex-parte the Princess Polignac (1917)1KB 406**, **Obiebo Trading Company Ltd -vs- Pickwell HCCC 4611 of 1998**, and **Hannah Wangui Njuguna -vs- Kiambu Nyakinyua Farmers Co. Ltd & 2 others HCCC No. 4581 of 1989** in this regard.

The counsel also submitted that the principles upon which the court grants mandatory injunctions were set out in the case of **Kenya Railways Corporation -vs- Thomas M. Nguti & 6 others (2009) eKLR**, **Stephen Kipkebut T/A Riverside Lodge and Room -vs- Naftali Ogala (2009) eKLR**. It was argued that there were no special circumstances in this case to warrant the issuing of orders at the interlocutory stage.

It was further argued for the 1st - 9th Interested Parties that the Plaintiffs had no right in disposing off the suit property to the 11<sup>th</sup> Interested Party. Counsel contended that no evidence had been adduced to show that the Plaintiffs obtained authorization to sell the property to the 11<sup>th</sup> Interested Party who was not a beneficiary of the estate of the late Ranbir Krishen Kecharhand Kent. Counsel submitted that to the extent that the property was registered under the Registration of Titles Act (since repealed), the principle of *lis pendens* come into force as there were existing proceedings contesting ownership of the title.

The 1st - 9th Interested Parties counsel in addition submitted that the rules of equity favour them as the Plaintiffs have admitted that they had transferred the suit property and cannot approbate and reprobate by purporting to enforce the eviction orders. Further, it was argued that the 11<sup>th</sup> Interested Party cannot seek to enforce the eviction orders before a determination of the circumstances under which the amount of Kshs 7,500,000/= was paid to it in purchase of the suit premises. Counsel relied on section 51 of the Registration of Titles Act (repealed) and stated that the purported sale is of no consequences since the instrument of transfer was never registered and therefore, that the contract between the Plaintiffs and the 11<sup>th</sup> Interested Party did not confer any interest to the said Interested Party, who has no right in enforcing the eviction orders. the court was referred to the case of **Souza Figueiredo & Co -vs- Moorings Hotel Co. Ltd(1960)EA 926**. For this submission.

Lastly, it was the 1st - 9th Interested Parties' counsel's submission that they have openly occupied and lived on the suit premises with their respective families, and that their suit for adverse possession has high chances of success. Counsel submitted that they had fulfilled the conditions set out in the case of **Nyomo Kimwe -vs- John Anderson Githinji (2009) eKLR** and **Titus Mutuku Kasuve -vs- Mawani investments Ltd & 4 others CA No. 35 of 2002**.

The Counsel for the 10<sup>th</sup> Interested Party filed submissions dated 7<sup>th</sup> February, 2011, wherein he argued that the 10<sup>th</sup> Interested Party is the proprietor of L.R. No. 11531/14 pursuant to a letter of allotment dated 2<sup>nd</sup> July, 1998 issued to him in respect of the said parcel. He further argued that the Plaintiffs' certificate of title is in reference to LR 11531/4 and not LR 11531/14. It was the 10<sup>th</sup> Interested Party's submission that no evidence had been tendered to prove that LR no. 11531/14 was a resultant plot arising from the subdivision of to LR 11531/4 which was owned by the late Ranbir son of Keharchand. Lastly, the 10<sup>th</sup> Interested Party argued that he had established on a balance of probabilities that he was entitled to the orders sought.

The 11<sup>th</sup> Interested Party filed submissions dated 3<sup>rd</sup> May, 2013 where it argued that it was the registered proprietor of the suit property having bought the same from the Plaintiffs *vide* a sale agreement dated 19<sup>th</sup> June 2006. Further, that having paid the entire purchase price to the Plaintiffs was entitled to possession

and occupation of the suit premises.

It was argued that being the legal and beneficial owner of the suit premises, the 11<sup>th</sup> Interested Party would be greatly prejudiced were the orders issued on 14<sup>th</sup> July, 2003 to be discharged. Further, it was submitted that the rights of the interested party would be violated were the applicants to be allowed to continue occupying the suit premises illegally and without any rights or interests over the property.

Counsel contended that the applicants were guilty of delay since despite being aware of the filing of the suit, they never took action until the Plaintiffs attempted to evict them from the suit premises. It was argued that the orders sought to be set aside were issued after *inter- partes* hearing and further, that the applicants have not shown what interest or rights they have over the suit premises and therefore that the applicants were trespassers who were not entitled to the orders sought.

Further, Counsel submitted that the applicants had approached the 11<sup>th</sup> Interested party to purchase the suit premises since they did not have any right or interest in the suit property.

In respect to the application dated 16<sup>th</sup> September 2010, Counsel submitted that the suit parcel has been registered in the name of the late Ranbir Kent since 1<sup>st</sup> September, 1964 and therefore, that the City Council of Nairobi cannot allocate land which belongs to another person. It was also contended that the applicant failed to prove that he had complied with the terms of the allotment and was issued with a title document. Lastly, it was submitted that none of the applicants had shown that the orders of 14<sup>th</sup> July 2003 were obtained irregularly and without disclosure of material facts, or that the same were obtained fraudulently and therefore that the applications should be dismissed with costs.

### **The Determination**

After carefully reading and considering the pleadings filed in the two applications before the court, I find that the issue for determination is whether the injunction orders issued on 14<sup>th</sup> July, 2003 and 30<sup>th</sup> March 2004 should be discharged, varied and/or set aside. Although the 1st - 9th Interested Parties in addition sought to have the Plaintiff herein struck off for being an abuse of the court process, no grounds were adduced substantiate this prayer which will therefore not be considered, and hereby fails.

The two sets of orders sought to be discharged varied and/or set aside were firstly, the ones granted on 14<sup>th</sup> July 2003 by Ransley J. (as he then was) and issued on 11<sup>th</sup> August 2003, that restrained the Defendants from interfering with the Plaintiffs possession of the said properties, and also ordered them to vacate the properties. The second set of orders of 30<sup>th</sup> March 2004 were granted by Nyamu J. (as he then was) and issued on 22<sup>nd</sup> April 2004. The said orders sought to restore possession of the LR 11531/8 and LR 11531/14 to the Plaintiff and ordered the eviction of the Defendants herein from the said properties.

The applications to discharge, vary or set aside the injunction orders were brought under the provisions of Order XXXIX Rule 4 of the revoked Civil Procedure Rules, which provisions are now found in Order 40 Rule 7 of the Civil Procedure Rules of 2010. The rule provides that any order for injunction may be discharged, varied or set aside on an application made to the court by any party dissatisfied with the order. The Court of Appeal has in this regard held in **Lifico Trust Registered vs Patel (1985) KLR 538** that in an application to set aside an interlocutory injunction the discretion of the granting judge should not be interfered with unless there is justification and necessity to do so, and where it has been shown that prejudice has been caused to the applicant.

The 1<sup>st</sup> – 9<sup>th</sup> Interested Parties in this regard submitted that the orders issued on 14<sup>th</sup> July, 2003 were issued by the court without full disclosure by the Plaintiffs that other than the Defendants who were initially listed in the pleadings, there were other persons residing in LR 11531/8. A perusal of the impugned court orders shows that they were issued against the Defendants who were the only respondents in the suit. The 1st - 9th Interested Parties occupation of the suit premises was also not controverted by the Plaintiffs. I am guided in this respect by the decision in **Ragui vs Barclays Bank Ltd (2002)1 KLR**

**647** where it was held that where an interlocutory injunction is obtained by misrepresentation or concealment of material facts, the injunction will be discharged on application by an aggrieved party.

In addition, it was not disputed by the 11<sup>th</sup> Interested Party that it did receive money from the 1<sup>st</sup> -9<sup>th</sup> Interested Parties as part payment for the purchase of LR 11531/8. It is thus my finding that the 1<sup>st</sup> to 9<sup>th</sup> Interested Parties have established a justification and shown that they will suffer prejudice if the orders granted on 30<sup>th</sup> March 2004 and 14<sup>th</sup> July 2003 are not varied and or discharged.

In the case of the 10<sup>th</sup> Interested Party, it is not controverted that the 10<sup>th</sup> Interested Party is in possession of LR 11531/14. In addition, he was not a party to the proceedings herein when the impugned orders were granted. The findings in relation to the 1<sup>st</sup> to 9<sup>th</sup> Interested Parties hereinabove with regard to non-disclosure of these facts thereby also apply to the 10<sup>th</sup> Interested Party.

In addition, it is also apparent that there may have been double allocation with regard to LR 11531/14. The 10<sup>th</sup> Interested Party has produced evidence a letter of allocation of LR 11531/14 to him by the Nairobi City Council dated 2<sup>nd</sup> July 1998. It is was submitted by the Plaintiffs that it is not possible or legal for the 10<sup>th</sup> Interested Party to have been allocated LR 11531/14, as the Plaintiff's father has been the registered owner of the said land since September 1964. The Plaintiffs claim is that the land was originally registered as LR 11531/4 and was subdivided to various plots of land including LR 11531/14. However, the Plaintiffs did not produce evidence of their title to LR 11531/14 to verify their claim.

It is therefore the finding of this Court that until the ownership of LR 11531/14 is verified, the 10<sup>th</sup> Interested Party will be prejudiced by the execution of the orders granted herein on 30<sup>th</sup> March 2004 and 14<sup>th</sup> July 2003.

I accordingly allow the 10<sup>th</sup> Interested Party's Chamber Summons dated 16<sup>th</sup> September 2010, and the 1<sup>st</sup> to 9<sup>th</sup> Interested Parties' Notice of Motion dated 30<sup>th</sup> March, 2011, and order as follows:

1. That the orders granted herein (in HCCC No. 1502 of 2002) on 14<sup>th</sup> July 2003 and issued on 11<sup>th</sup> August 2003 are hereby set aside.
2. That the orders granted herein (in HCCC No. 1502 of 2002) on 30<sup>th</sup> March 2004 and issued on 22<sup>nd</sup> April 2004 are hereby set aside.
3. That the *status quo* to be maintained with regard to the properties known as LR 11531/8 and LR 11531/14 pending the hearing and determination of the suit filed herein or until further orders shall be as follows:
  - a. The Plaintiffs, Defendants and the 1<sup>st</sup> – 11 Interested Parties shall not sell, transfer, or in any other manner dispose of or alienate the said properties.
  - b. The Plaintiffs and 11<sup>th</sup> Interested Party shall not in any manner interfere with the 1<sup>st</sup> -10<sup>th</sup> Interested Parties' possession and occupation of the said properties, and shall not demolish and/or in any manner interfere with any structures and facilities on the said properties belonging to the 1<sup>st</sup> -10<sup>th</sup> Interested Parties.
4. Parties are at liberty to apply.
5. The costs of the 10<sup>th</sup> Interested Party's Chamber Summons dated 16<sup>th</sup> September 2010, and the 1<sup>st</sup> to 9<sup>th</sup> Interested Parties' Notice of Motion dated 30<sup>th</sup> March, 2011 shall be in the cause

Dated, signed and delivered in open court at Nairobi this \_\_\_\_31<sup>st</sup>\_\_\_\_ day of \_\_\_\_October\_\_\_\_, 2013.

**P. NYAMWEYA**

**JUDGE**