



GIKERA

MUNENE:.....PLAINTIFF

VERSUS

**MWANGI NGURO:.....1ST
DEFENDANT**

THE CITY COUNCIL OF NAIROBI:.....2ND DEFENDANT

THE DISTRICT LAND REGISTRAR:.....3RD DEFENDANT

THE COMMISSIONER OF LANDS:.....4TH DEFENDANT

JUDGMENT

The plaintiff Gikera Munene moved to the seat of justice vide a plaint dated 19th day of May, 2004, and filed the same date. The key averments in the plaint are that the plaintiff is the registered proprietor of land parcel number LR. Dagoretti/Kangemi S.396 situated at Kangemi Trading centre measuring approximately 0.24 hectares; the said plot is fully developed; it has a frontage/car park serving customers to the plaintiff’s premises. On unknown dates, the commissioner of lands allocated the frontage/car park portion to the first defendant and issued Title to him known as LR. No.Dagoretti/Kangemi/T.436. The planning Authority of the Nairobi City Council protested that allocation. Likewise the commissioner of lands realized his mistake and has recalled the first defendants Title for cancellation.

By reason of the matters aforesaid the plaintiff contended that the defendant had refused to surrender the title for cancellation and in consequence thereof the plaintiff sought orders for:-

- (1)An injunction restraining the city council of Nairobi from authorizing any developments on the suit parcel till the hearing and determination of this case or further orders of the court.**
- (2)An order of injunction restraining Mwangi Nguro himself, agents or servants from dealing with the suit parcel in howsoever manner that is inconsistent with its status as a frontage car parking area for LR. Nairobi/Dagoretti/Kangemi/396 until the hearing and determination of this suit.**
- (3)An order of mandamus compelling the commissioner of lands/Registrar of lands Dagoretti to recall and cancel the title for Nairobi Dagoretti/Kangemi 436.**
- (4)General damages**
- (5)Costs**
- (6)Interests**

In response to the plaintiffs claim, the first defendant vide a defence and counter claim dated 15th day of

October,2007 averred that the plaintiff was put to strict proof in his averments in the plaint. Further that the first defendants registration of the suit land LR.Dagoretti/Kangemi/S.436 is a first registration and cannot be defeated otherwise than as provided for in the registered land Act.

By reason of the afore set out averments the first defendant counter claimed **“a dismissal order for the plaintiffs suit; a declaration that the plaintiffs suit is resjudicata; a permanent injunction restraining the plaintiff/defendants, his agents, tenants from trespassing in whatsoever manner from interfering with the defendant/plaintiffs enjoyment of parcel number 436, general damages for trespass, costs of the counter claim and any other further relief that the court shall deem fit to grant.**

The second defendant responded to the plaintiffs claim vide a defence filed on the 2nd day of July,2004 in which they basically denied the plaintiffs claims and put him to strict proof.

The 3rd and 4th defendants defence was filed on the 19th day of March, 2009 admitting paragraphs 1,2,3,4 and 5 of the plaint, put the plaintiff to strict proof on paragraphs 6, 7,8,9,10,11 and 12 of the plaint. In the alternative pleaded that LR. Dagoretti/Kangemi 436 is a public plot which serves as a garage and parking public space; that the government is empowered by law namely the government lands Act cap 280 laws of Kenya only to make grants of un alienated governments land and parcel land LR.Dagoretti/Kangemi/436 had already been alienated and thus the same was not available for alienation; that they reserve the right to raise a preliminary objection to the suit on account of the action being statutorily barred as against them on account of failure to comply with section 13A of the government proceedings Act cap 40 laws of Kenya. Also reserved the right to have the suit struck out because of the courts inability to grant the relief sought against the 3rd and 4th defendants, and on that account prayed for the dismissal of the plaintiffs’ suit against them.

In response to the first defendants defence and defence to the counter claim, the main plaintiff Gikera Munene reiterated the content of the plaint and contended that he was entitled to demand that the first defendant do return his Title to the commissioner of lands for cancellation because the allocation to him of a frontage/car park to his (plaintiff) premises was done in error and the allocating authorities namely the 2nd and 4th defendants have admitted that their actions herein error.

In his oral testimony in court the plaintiff Gikera Munene (PW1) maintained that on the basis of his pleading and the bundle of documents tendered to court as exhibits he is entitled to the reliefs sought because:-

- (i) His Title LR. Dagoretti/Kangemi/S.396 was first in time as it is a conversion of Title he originally held in respect of inherited land although he did not have documents of this earlier Title.
- (ii) Concedes that the first defendant’s Title appears to be earlier in time than his current Title which came out in 1998 because the current Title is a resulting conversion of the old absolute surrendered Title.
- (iii) He maintains that his assertion that the plot currently registered in the name of the first defendant is a frontage /car park serving his plot is justified and has been supported by documentary proof.
- (iv) That his plot is already developed while that of the first defendant is not.
- (v) He relies on the documentation and the pleadings of both the 2nd and 3rd and 4th defendants which go to support that the 2nd and 4th defendants have confirmed that this is public land and had already been alienated as a frontage and car park for the plaintiffs’ plot.
- (vi) That the 2nd defendant had intimated that they would not approve any plans for development in the suit plot and him plaintiff was surprised that they had approved building plans in respect of the same plot as at trial but confirmed that no construction had taken place to interfere with routine usage of this portion.

The first defendant's evidence in summary is that he applied for and he was allocated the suit land LR. Dagoretti/Kangemi/T.436, he fully paid for it and when the 4th defendants threatened to cancel it he moved to the court and filed Nairobi HCCC 645/97 in which he obtained judgment securing the suit Title in his name and for this reason any issue touching on the validity or otherwise of the suit Title are Resjudicata.

The 2nd, 3rd and 4th defendants did not offer evidence.

At the close of the trial, the participating parties filed written submissions. Those of the plaintiff were filed on 20th day of December, 2011 stressing that there is no dispute that the plaintiff is the owner of land parcel number Dagoretti/Kangemi/396 while the first defendant is the owner of land parcel number Dagoretti/Kangemi/T.436. The first defendant's plot is directly in front of the plaintiff's plot. That the 2nd defendant wrote a letter to the commissioner of lands on 23rd October, 1996 asking the commissioner of lands to recall the title. The commissioner of lands responded via a letter dated 30th day of January, 1997 requesting the first defendant to surrender the Title for cancellation. But instead of doing as requested, the first defendant filed Nairobi HCCC NO. 645 of 2004 seeking sanctification of the Title in his name and got ex parte orders which declared the first defendant as an owner. It is the contention of the plaintiff that the first defendant's Title is not protected and should not be protected because it was not issued following adjudication of land and for this reason it is not protected under section 143(1) of the registered land Act as being indefeasible. The reason being that the 2nd defendant excised the said portion, gave an allotment letter and then asked the 4th defendant to issue a Title deed which was done. Thereafter the 2nd defendant realized the mistake made and they withdrew the allocation and requested the 4th defendant to recall the said Title, deed. That the plaintiff has earned the relief sought because the plaintiff's evidence is uncontroverted firstly as proved by production of the documents relied upon and secondly by the 2nd, 3rd and 4th defendants failure to call evidence to controvert the evidence of the plaintiff. They also contend that the 4th defendant had power to recall the said 1st defendant's Title. They contend further that the presence of HCCC 645/97 does not aid the first defendant because it did not involve the plaintiff.

Turning to the 1st defendant's counter claim, the plaintiff contends that the reliefs sought are not available to the first defendant because the plea of Resjudicata does not hold because the plaintiff was not party to those proceedings, and secondly the issues in controversy in both cases are different. Lastly that the issue of general damages against the plaintiff does not arise because it is the 2nd defendant who allocated the suit land and the 4th defendant issued the Title is the same one who had recalled it and if the first defendant has any genuine claims he should direct them to those defendants. Further that since the evidence reveals that the 2nd defendant realized it had made a mistake in the allocation of the suit land, like wise the 2nd defendant was in error when subsequently they approved the building plans for the first defendant when in fact they had committed themselves not to approve any building plans on the suit plot and had gone further to state that any structures constructed thereon would be pulled down if they would not be in line with the approved use of the plot as frontage/car park.

The first defendant's submissions were filed on the 20th day of December, 2011 contending that the plaintiff stands non-suited because the issues in controversy herein had already been settled in Nairobi HCCC NO.645 of 1997 and the court is invited to take note of the same as the court therein firstly having declared the first defendant's title indefeasible, and secondly since the order in the said proceedings has not been upset, by being reviewed and or set aside and it still stands, and in the process crystallizes the first defendant's title. There can be no permissible lawful challenge to the first defendant's Title. They contend further that the two parcels of land are distinct from each other and there is no justification for the plaintiff to prevent the first defendant from using his property in the best way he could; that the plaintiff is propelled by greed as there is no proof that the suit plot had ever been ancestral land for the plaintiff as there was no documentary proof. The court was also invited to note that an attempt by the plaintiff to seek interim protective orders was rejected.

The 2nd defendant's submissions were filed on the 20th day of December, 2011 and in a summary, it

submitted that the dispute is between the plaintiff the first defendant and the 4th defendant because the plaintiffs complaint is directed at the first defendant who was allocated the suit land alleged to be the frontage or parking lot serving the plaintiffs premises, and against the 4th defendant who allegedly issued the contested Title to the first defendant and for this reason there is no tortuous, statutory or contractual or any lawful claim by the plaintiff against the 2nd defendant hence the request that the suit against them be dismissed with costs. There were no submissions from the 3rd and 4th defendants.

The court has given due consideration to the rival pleadings and evidence tendered as well as rival submissions filed and the court proceeds to make the following findings on the factual aspect of the dispute.

(i) (a) There were previous attempts by the first defendant to defeat the plaintiffs suit from proceeding on to trial but the court declined them and enabled the plaintiffs suit to proceed to full trial and have the issues in controversy ruled upon on their merits.

(b) Both the 2nd, 3rd and 4th defendants pleaded that they could raise preliminary objections to the plaintiff's suit against them but these were not taken up hence the suit proceeding to full trial on its merits.

(ii) There is no dispute that there are two parcels of land namely LR. Number Dagoretti/Kangemi/396 belonging to the plaintiff and LR No. Dagoretti/Kangemi T.436 registered in the name of the first defendant which have featured prominently side by side in these proceedings.

(b) These parcels were acquired differently. That of the plaintiff is alleged to have its roots in the plaintiff's inheritance of ancestral agricultural land in respect of which the plaintiff allegedly received a Title. It is further the plaintiff's assertion that the city council of Nairobi spread out its wings to Dagoretti /Kangemi the effect of which was that the agricultural land titles had to under go conversion from those of agricultural land titles, to those of Town plots. It was conceded by the plaintiff in his cross-examination that he did not have the documentation on the agricultural lands Title then held by the plaintiff before conversion. The first defendant raised the same issue in their submissions. It is however clear that the plaintiff's assertions have not been ousted by way of other documentary proofs such as an application for allocation from the city council of Nairobi and a letter of allotment for his current Title. This is fortified by the fact that there is a document exhibited on record whose authenticity has not been disputed. It is a document of surrender of lease. The plaintiff explained it was for surrendering the agricultural Title so as to be given the Town plot Title. That assertion has not been controverted. The court finds that indeed the plaintiffs' plot has its roots in his inheritance of ancestral land later converted into a Town plot. As for the subject plot which is now registered in the name of the first defendant, the documentation exhibited by both sides show clearly that it has its roots from an alleged application for allocation of a plot at Dagoretti/Kangemi. The application letter has not been exhibited. But one thing which is not in contest is that a letter of allocation was allegedly granted to the first defendant by the 2nd defendant. This letter of allotment has not also been exhibited. But all these afore mentioned documents gave rise to the issuance of a Title in favour of the first defendant which has been exhibited.

(iii) The plaintiff has moved to fault the afore said Title issued to the first defendant on account of the same having been issued in error as it forms the frontage or the parking yard for the plaintiffs customers visiting his commercial premises. It is the plaintiff's assertion that if the said frontage is interfered with, use of the plaintiffs plot will be rendered useless. The second reason is because the allocation was acknowledged to have been a mistake or done in error by the 2nd defendant who duly informed the 4th defendant who in turn wrote to the first defendant recalling the Title and asking the first defendant to surrender the Title for cancellation.

(iv) The first defendant has not exhibited the correspondences afore mentioned. Neither did the first defendant deny the plaintiffs assertion that indeed the 4th defendant wrote to him first defendant asking for the return of the said Title for cancellation. The plaintiff exhibited these two correspondences in the plaintiff's bundle of documents filed on the 9th day of May, 2008. A summary of the said bundle of

documentation reveals the presence of:-

(a) A lease in favour of the plaintiff Gikera Munene dated the first day of May 1998 and registered on the 6th day of November, 1998.

(b) There is also the letter dated 23/10/1996 from the Director of city planning and Architecture addressed to the commissioner of lands. The subject of the correspondence is plot 436 Dagoretti/Kangemi. It reads:-

**“Mr. Odongo
2450
CP & ARCH/FP/1004085/436
23-10-96**

Commissioner of Lands,

P.O. Box 30089

**NAIROBI
RE: PLOT NO. 436- DAGORETTI/KANGEMI.**

My attention has been drawn to an allocation of the above space which functionally a frontage/car parking servicing the existing shops.

This is to inform you that the allocation of the said space for use other than a car park/frontage to the existing shops is not acceptable from planning point of view. To this end the council will not give planning permission for development of the space and any unauthorized construction on the same will be demolished without reference to the allottee.

In this circumstance I would like to request your office to revoke the said allocation to prevent development which may be injurious and prejudicial to the existing physical investment.

Signed
G.A. Kiguangu

Director of City Planning & Architecture.

(c) There is also a communication from the 2nd defendant to the plaintiff ref CP & ARCH/DC/268/436

Addressed to the plaintiff dated 31/1/97. The subject is building plans REG. NO.396- Dagoretti /Kangemi. It reads:-

For inquiries ask for Mr. Mbuthi.

[Tel:No.224281](tel:224281)
Ext 2252

And quote Ref.No.CR&ARCH/DC/268/436

Date 31/1/97
Mr. Gikera Munene
P.O. Box 15550,
NAIROBI
Dear Sir,

REF: BUILDING PLANS REG. NO. 396-DAGORETTI/KANGEMI.

This is to inform you that your plan submitted under the above Reg. no has been scrutinized and is technically acceptable from a planning point of view.

Therefore the plan is pending approval by the Town Planning committee meeting which will be held in the month of February 1997.

M.T.N. Njoroge

For Director of City, Planning & Architecture”

(d) There is a document titled surrender of lease dated the 6th day of November 1998 emanating from Gikera Munene and in respect of title number Dagoretti/Kangemi/S.396. It is signed by the plaintiff and registered on the 6th day of November, 1998. It is the finding of this court that this document confirms and fortifies the plaintiff’s assertion that it was for conversion of the title document from agricultural land to that of a town plot.

(e) There is communication from the commissioner of lands to the office of the Attorney General instructing them to take up the defence of these proceedings. It reads:-

“160438/24
Attorney General Chambers P.O. Box 40112

14 April, 2005. The chief litigation Counsel

NAIROBI

RE: NAIROBI HCCC510 OF 2004

GIKERA MUNENE VERSUS MWANGI NGURO AND 3 OTHERS.

Enclosed here with please find a memorandum of Appearance, summons to enter Appearance and the plaint as served upon us on the above cited case.

The suit property is Dagoretti/Kangemi/436 the first defendant has a 99 year lease from 1.10.94 for purposes of shops and office purposes. This is a public purpose plot which serves as a garage and parking for plot No. Dagoretti/Kangemi/396 which is developed for commercial purposes operates shops and other different businesses.

The allocation to M/S Mwangi Nguro was done without due consideration. As such it’s the wish of this office not to contest the cancellation of the title on the suit property as intended by this suit.

Please oblige us with your able intercession and counsel on the matter.

Signed.

Mbogori M.K.

For Commissioner of land.

“The Permanent Secretary Ministry of lands Housing Nairobi”

This communication confirms the plaintiffs assertion that the relevant allocating authority namely the 2nd and the 4th defendant realized that the allocation of parcel number Dagoretti/Kangemi T.346 was made in error and it had to be recalled. The line of defence which was to be undertaken by the state on behalf of the 4th defendant was one geared towards cancellation and the confirmation that the allocation of plot number Dagoretti/Kangemi/T.436 was in error.

(f) Title number Dagoretti/Kangemi/S.396 was issued on the 6th day of November 1998 in the name of

the plaintiff.

(g) There is a letter from the department of lands dated 30th January 1997 to the first defendant it reads:-

“Ref No.240438

30th January, 1997

**Mwangi Nguro
P.O. Box 15536
NAIROBI**

RE: PLOT NO.436-DAGORETTI/KANGEMI.

Reference is made to the allocation of the above plot to you and issuance of the title deed.

It has come to the notice of the government that the plot in question is functionally a frontage/car parking servicing the existing shops. It cannot therefore be developed for the purpose it was allocated for.

It is therefore government intention to cancel the allocation so as to prevent development injurious prejudicial to the existing physical developments.

You are thus required to return the title for surrender purposes to avoid any inconvenience either to yourself or the existing facilities.

Signed

P. Amiani.

For: Commissioner of lands.

**CC
Permanent Secretary
Ministry of lands settlement.
NAIROBI**

Director of City Planning & Architecture.

**Nairobi City Council
P.O. BOX 30075
NAIROBI”**

This communication also confirms the plaintiff’s assertion that indeed the 4th defendant recalled the 1st defendant’s Title and required the first defendant to surrender the said Title for cancellation.

(g) There are correspondences on the record. The earliest dated 24/1/1991 from the 2nd defendant to the plaintiff whose content reveals that it was in response to the plaintiffs application for change of user of his plot. The plaintiff was being informed that the request for change of user was acceptable and in order to get approval he was requested to pay the requisite fee. The said communication was followed by another correspondence from the second defendant to the plaintiff dated 18th February, 1991 (18-2-1991) addressed to the plaintiff. The subject is change of use from Residential to commercial cum residential on plot No.396-Dagoretti/Kangemi. The content is to the effect that the 2nd defendant at its meeting held on the 15th February 1991 recommended for approval the subject change of user subject to submission of satisfactory building plans within one year and completion of construction within two years otherwise the

approval lapses and also subject to payment of revised rates as will be determined by the chief valuer Nairobi City Commission. The two correspondences culminated in the issuance of the correspondence dated 29th day of May 1998 from the department of lands ref 45802/4111/38 addressed to the plaintiff. The subject is change of user from residential to commercial cum Residential on plot Dagoretti/Kangemi/S.396. The central theme in the correspondence is that the commissioner of lands had approved the change of user in favour of the plaintiff upon satisfaction of the requirement of submission of completion of construction within two years and acceptance of payment of revised rates as will be determined by the chief valuer Nairobi City Council and surrender of the existing free hold Title in exchange for a new one with a pepper corn rent per year assessed in total at 7,620.00.

These correspondences go along way to confirm that the plaintiff and his current Title were on the scene earlier than the first defendant; that the plaintiff had an earlier absolute Title which he had wanted to change its user way back in 1991 which request was approved in the same year of 1991 by the second defendant. These approvals were before the 1st defendant came on to the scene. It is however conceded that final approval from the commissioner of lands came when the first defendant was already on the scene with a Title in dispute but which had already been recalled as per the documents exhibited.

(v) Turning to the pleadings, the plaintiff pleaded in paragraph 6,7,8,9 and 10 of the plaint that the 4th defendant had allotted the suit plot T.436 without regard to the interests of the user on plot No.S.396; that the 2nd defendant had protested the move and the 4th defendant recalled the title of the first defendant and that the first defendant should be compelled to surrender the said Title to the 4th defendant for cancellation. In response to the said paragraphs 6,7,8,9,10,11 and 12 of the plaint, the first defendant relies on the allocation, and issuance of Title in his favour and his moving to forestall the recall of the Title by the 4th defendant by filing and obtaining exparte judgment in Nairobi HCCC No.645 of 1997. The 2nd, 3rd and 4th defendants put the plaintiff to strict proof over the content of the said paragraphs. The plaintiff tendered the documentary exhibits assessed above to confirm that the averments in those paragraphs were the correct position of facts. Neither the 2nd, 3rd and or 4th defendants tendered evidence to controvert the plaintiff's assertion that indeed the 2nd and 4th defendant recalled the first defendant's Title for cancellation.

(vi) The first defendant has placed great reliance on the orders issued by the high court in Nairobi HCCC NO.645 of 1997. The pleadings were not exhibited but a copy of the judgment exhibited reveals that the suit was between the first defendant as plaintiff and the 4th defendant only as the defendant. There is observation that there had been an allotment letter issued in the first instance followed by issuance of a Title under section 23 of the registration of Title Acts cap 281 laws of Kenya. The learned judge seized of the matter Hayanga J as he then was went further to state that upon registration of the Title in the name of the first defendant as the plaintiff, there in, that Title became protected under section 23 of the Registration of Titles Act cap 281 laws of Kenya and if the defendant (4th defendant herein) wanted to take the plot back it had to follow the laid down procedures under the governments lands Act cap 280 laws of Kenya and the acquisition of land Act cap 295 laws of Kenya. After due consideration the court allowed the first defendants plea for declaration that he is the registered owner of the lease hold interest in the parcel of land known as Dagoretti/Kangemi/T.436 but the court declined to grant the plaintiff a permanent injunction restraining the defendant (4th defendant) from cancelling the registration of the plaintiff as the proprietor of the suit land. The foregoing being the position, it is the finding of this court that the judgment in HCCC Number 645 of 1997 did not sanctity the Title issued to the first defendant against interference by the defendants if so moved by a court order.

(vii) The first defendant also raised the issue of claims to his Title being resjudicata by reason of the proceedings in HCCC 645 of 1997. The doctrine of Resjudicata has been provided for in section 7 of the CPA. It provides in part:-

“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties or between parties under whom they or any of them claim, litigating under the same Title in a court competent to try

such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court...”

This court has judicial notice that this provision has been construed severally by both the High Courts and the Court of Appeal and the ingredients required to be established before the doctrine can be applied have now been crystallized. These are:-

1. There must be in place a court proceeding.
2. The point in issue must have been litigated in a previous court proceedings.
3. The litigation must have been between the same parties or any person claiming through the original parties.
4. The issues in controversy must have been determined by a court of competent jurisdiction.

When these ingredients are applied to the undisputed facts herein, it is the finding of this court that the first defendants plea of resjudicata does not hold because of the following reasons:-

(a) The parties in HCCC 645 of 1997 are not the same as those in the current proceedings because the current plaintiff and the 2nd and 3rd defendants were not participating in the said proceedings.

(b) Parties are not litigating in the same capacity as the claim was between the 1st defendant as plaintiff and the 4th defendants as defendant. Herein the plaintiff in 645 of 1997 is not the current plaintiff; neither is he claiming through the current plaintiff. Likewise the 4th defendant who was the only defendant therein was defending against the right to cancel the title registered in favour of the first defendant who was the plaintiff therein. He has been called upon to defend the current plaintiffs claim that they should effect the recalling of the 1st defendants title and then cancel the same.

(c) The issues in controversy are not similar as those in HCCC NO. 645/97 related to protection of Title registered in favour of the 1st defendant. The issues in controversy herein are based on the current plaintiff's plea to restrain the 1st and 2nd defendants from effecting approval of plans which would enable the 1st defendant carry out developments on the disputed plot.

(d) The competence of both courts is not indoubt.

In the premises this court makes a finding that the doctrine of resjudicata does not operate to shield the first defendant against claims lodged herein by reason of the orders granted in his favour in HCCC 645 of 1997.

(viii) Reliance was also placed on interim orders made at the interim stage by Onyancha J in a ruling delivered herein on the 7th day of April 2010. This too do not operate to shield the first defendants' Title as these were limited to the interim reliefs being sought then.

(ix) Reliance was also placed on the indefeasibility of the first defendants Title under section 143(1) of the registered land Act cap 300 laws of Kenya because it is a first registration. The plaintiffs counsel submitted that indefeasibility only arises where there has been adjudication of Title. Herein it is undisputed that there was no adjudication exercise leading to the issuance of the disputed Title. The correct position is that upon conversion from absolute agricultural Title to lease hold Title under City Council of Nairobi, the property became government property. The government became the first registered owner and that is why it was able firstly to allot the said property to the first defendant followed by the issuance of Title. In the premises the plea of first registration does not hold in favour of the first defendant.

Turning to the reliefs being sought, it is clear that both the plaintiff and the first defendant are contending

for reliefs. The guiding principles that this court has to bear in mind are that:-

1. Parties are bound by their pleadings and the court has no business introducing issues not placed before it by the parties for determination.
2. The relief(s) to be granted have to be supported by the facts forming the evidence adduced and the same must be within the applicable law.
3. A successful litigant is entitled to not only a remedy but to an effective remedy.
4. The latest addition to the above 3 are those principles enshrined now in Article 22(3)(d) and 159(2)(d) of the current Kenyan constitution 2010 which enjoins courts of law not to adhere to technicalities when rendering justice to litigants.

When these principles are applied to the rival claims herein it is evidently clear that although the first defendant was declared to be the registered owner of land parcel number LR.Dagoretti/Kangemi/T.436 in Nairobi HCCC 645/1997, he was denied an injunctive relief preventing the defendant therein who is the 4th defendant herein from moving to fault the said Title. This denial of the said relief opened room for the plaintiff herein to challenge the use of that Title by the first defendant in a manner other than for use by the plaintiff's property as a frontage and car park. The evidence assessed herein all go to show that there are documents emanating from the 2nd and 4th defendants clearly stating that the suit plot was granted to the first defendant in error. As observed earlier on, the plaintiff pleaded so, he was put to strict proof which proof he has discharged by both evidence and documentary exhibits and is therefore entitled to an effective relief. The effective remedy or relief and or remedy that the plaintiff seeks from the court is that the said parcel of land do remain as a frontage and car park for the plaintiffs premises. This intention is anchored on prayers 1 and 2 in the plaint which unfortunately are framed in a temporary manner as they are pleaded that they do last pending the hearing and determination of the suit as opposed to them lasting perpetually. In this court's opinion, finding that the plaintiff has a genuine complaint supported by documentary proof and then going ahead to order that enjoyment of the benefit of that complaint should only last up to the determination of the suit by reason of failure to plead that it be granted permanently and or perpetually would amount to a denial of an effective remedy to a successful litigant. The court will therefore invoke its inherent powers to grant the reliefs in prayer 1 and 2 of the plaint to last beyond the determination of the suit.

For the reasons given in the assessment, the court proceeds to make the following final orders in the disposal of the plaintiffs' suit:-

1. In terms of prayer 1, an order be and is hereby made and ordered that a permanent and perpetual injunction order do issue against the 2nd defendant the City Council of Nairobi restraining them from authorizing developments on land parcel number Dagoretti/Kangemi/T.43 in favour of the first defendant howsoever and whatever.
2. In terms of prayer 2, an order be and is hereby made and ordered that a permanent and perpetual injunction do issue restraining the first defendant Mwangi Nguro by himself, agents or servants from dealing with land parcel number LR.Dagoretti/Kangemi/T.436 in howsoever and whatever manner that is inconsistent with its status as a frontage car parking area for LR. No.Dagoretti/Kangemi/S.396.
3. Under such other or further relief that this court may deem fit to grant an order be and is hereby made and ordered that if there are any plans in existence which have been approved by the second defendant City Council of Nairobi in favour of the first defendant Mwangi Nguro for construction of any other developments on the suit land these be and are hereby declared null and void and of no consequence and are ordered to be recalled by the 2nd defendant City Council of Nairobi and cancelled accordingly.
4. Prayer 3 is dismissed because an order of Mandamus can only be issued by way of a judicial review. The plaintiff is at liberty to resort to this process if he deems it fit to do so as a form of execution.

5. Prayer 4 on general damages is dismissed because firstly no evidence was adduced to support it and secondly it is on record that it is the plaintiff who has been making use of the disputed portion to the exclusion of the first defendant and for this reason issue of damages being payable does not arise.
6. The plaintiff who had a genuine complaint against the defendants firstly by the 2nd defendant allotting the suit plot erroneously, 2ndly by the 3rd and 4th defendants failing to actualize the recalling of the Title and having it cancelled and 3rdly by the first defendant refusing to surrender the recalled Title for cancellation by the 4th defendant will have costs of the proceedings against all the defendants jointly and severally.
7. The order for interest in his favour will be confined to resulting costs of the proceedings and interest will be payable at court rates.
8. Turning to the first defendants counter claim, the court makes an order that for the reasons given in the assessment and orders made on the plaintiffs claim above, the first defendants counter claim against the plaintiff be and is hereby dismissed in its entirety with costs to the plaintiff.

SIGNED AT NAIROBI BY HON. LADY JUSTICE R.N. NAMBUYE- JA

DATED, READ AND DELIVERED AT NAIROBI BY LENAOLA ON THE 28TH DAY OF AUGUST, 2012.

JUDGE