



**Mwangi & another (As Executrix of The Estate of Patrick Nelson Gathu Mwangi) v Mboroki; City Council of Nairobi (Third party) (Environment and Land Case Civil Suit 727 of 2004) [2022] KEELC 2725 (KLR) (23 June 2022) (Judgment)**

Neutral citation: [2022] KEELC 2725 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE CIVIL SUIT 727 OF 2004  
LC KOMINGOI, J  
JUNE 23, 2022**

**BETWEEN**

**MARY WANJIRU MWANGI ..... 1<sup>ST</sup> PLAINTIFF**

**CATHERINE WANJA MUGO ..... 2<sup>ND</sup> PLAINTIFF**

**AS EXECUTRIX OF THE ESTATE OF PATRICK NELSON GATHU MWANGI**

**AND**

**DIONISION RIUNGU MBOROKI ..... DEFENDANT**

**AND**

**CITY COUNCIL OF NAIROBI ..... THIRD PARTY**

**JUDGMENT**

1. By a Plaint dated 6<sup>th</sup> July 2004 and amended on 28<sup>th</sup> October 2016; the Plaintiff prays for judgement against the Defendant for:-
  - a) A permanent injunction to restrain the Defendant, his servants, agents, and anybody authorized by them or claiming through him from selling, advertising for sale, interfering with, alienating, sub-dividing, trespassing upon, or in any manner dealing with all that parcel of land situated at Umoja Innercore Sector 2, Nairobi and known as L.R No. Nairobi Block83/14/440 or any part thereof.
  - b) General damages.
  - c) Costs of the suit.
  - d) Interest on b) and c) above.



- e) Any other remedy that this Honourable court may deem fit to award.
2. It is the Plaintiff's case that he was and still is the registered proprietor of all that parcel of land situate at Umoja Innercore Sector 2 known as L.R No. Nairobi Block 83/14/440. He further contended that on or about 2<sup>nd</sup> July 2004, the Defendant fraudulently misrepresented to the public that he was the registered owner of the suit premises and therefore in a position to offer it for sale. He added that on the same day, the Defendant wrongfully entered the suit premises and proceeded to erect a sign board therein offering it for sale and also erected a fence around it thereby restraining the Plaintiff's rightful entry. The Plaintiff's case is that due to the Defendant's illegal entry on his suit premises, he suffered loss and damage. He accused the Defendant of fraud and misrepresentation.

### **The Defendant's case**

3. In response to the Plaintiff's claim, the Defendant filed a defence and counterclaim dated 29<sup>th</sup> July 2004. He denied allegations against him contained in the plaint. He contended that he is the rightful owner the suit premises which was originally known as plot No.A 103, Umoja Innercore Sector 2 for which reason he applied for a caution to be registered in the lands registry on 24<sup>th</sup> June 2004 to forbid the registration of any dealings and the making of entries in the register relating to the title number Nairobi Block 83/14/440 without his consent. He further contended that he took possession of the suit premises in 1999 and has always been in occupation since then.
4. In his counterclaim, he stated that on or about 23<sup>rd</sup> April 2004, the Plaintiff irregularly, unprocedurally and fraudulently in collusion and or aid of the City Council of Nairobi and the land Registrar obtained a lease and a certificate of lease in respect of the suit premises, being the title known as Nairobi Block 83/14/440. He added that they procured the Plaintiff's title fraudulently and that they misrepresented themselves to obtain it. He sought orders:-
- a) A declaration that the Defendant is the rightful and legal owner ; of the parcel of land currently known as Nairobi/block 83/14/440 formerly known as plot No.A 103 Umoja Innercore Sector 2.
- b) An order for an injunction to restrain the Plaintiff, his agents, servants and anyone authorized by them or claiming through him/them by way of an injunction from selling, offering for sale, alienating, disposing, trespassing upon or in any manner dealing with all that parcel of land or its title documents at the lands registry situate at Umoja Innercore Sector 2 Nairobi and currently known as plot No.A 103 Sector 2.
- c) An order for cancellation of the Plaintiff's Title on all that parcel of land known as L.R No. Nairobi Block 83/14/440 formerly known as plot No.A 103 Umoja Innercore Sector 2 and rectification of the register at the lands registry to read the Defendant as the rightful and legal owner of the said parcel of land in place of the Plaintiff.
- d) Costs of the suit and interest.
- e) Any other or further lawful and equitable relief that this Honourable court may deem fit to grant.

### **The Third Party's case**

5. The Third Party was brought into these proceedings through the Defendant's Third Party notice dated 9<sup>th</sup> November, 2004. It filed the amended defence to counterclaim dated 27<sup>th</sup> July 2006. It denied allegations contained in the plaint and the defence and counterclaim. It contended that it had



repossessed the suit property from the Plaintiff due to non-payment of rates and other outstanding dues. It further contended that the Certificate of Lease obtained by the Plaintiff was done fraudulently. It particularized the Plaintiff's alleged fraud and added that according to its records, the suit property was registered in favour of one Fredrick Augustine Gachagua.

### **The Plaintiff's evidence**

6. PW1, Patrick Nelson Gathu Mwangi, testified before Muchelule J on 10<sup>th</sup> March 2010. He told the court that he bought Plot No.A 103 Section II Umoja Innercore from Mrs. Mary Muigai Kenyatta in 1980. He produced her letter of allotment dated 31<sup>st</sup> August 1978, and receipts issued in her name to show that she had paid for the plot. It was his testimony that after the sale agreement, they went to Nairobi City Council to effect the change of name where he and the seller signed an assignment document on 3<sup>rd</sup> November 1980. He stated that he paid Kshs 1000/= for Assignment of the plot and Kshs.3,610 /=being transfer fees. He produced the receipts. He also produced the Assignment dated 10<sup>th</sup> March 2004 but stated that he signed it together with the seller on Third November 1980. Nairobi City Council retained with it and they were required to wait until it the lease was ready for issuance.
7. It was his testimony that he received the demand letter dated 27<sup>th</sup> January 1984 for rates amounting to Kshs.10,920/= which were payable within 30 days or he could lose the plot. He stated that he paid the amount demanded and produced the receipt.
8. It was his testimony that he received a letter dated 12<sup>th</sup> July 1990 requiring him to go and be shown the plot and that he went and he was shown the beacons of the suit premises. He stated that on 28<sup>th</sup> October 1996, he received a demand notice to pay kshs.27, 000/= which was surprising to him since he had paid all dues. He added that he wrote back on 11<sup>th</sup> November 1996 seeking an explanation and annexed receipts of all the payments he had made in respect to the plot amounting Kshs.46,032/= . He added that there was no response to his letter and that he did not receive further demands.
9. He further stated that on 29<sup>th</sup> October 1997, he received a letter from Chief Counsel Conveyancing advising him to go to City Hall to collect the Assignment relating to the suit land but he was not given and instead, he was directed to go to Nairobi City Council's Advocates M/S Musyoka Annan for further directions. He added that Musyoka-Annan Advocates calculated and told him to pay kshs.15, 016/ = for the Title and Kshs.10,000/= for stamp duty .They also told him that he should await an advertisement to be made about the issuance of the leases. He stated that there was an advertisement over the plots in the area on 6<sup>th</sup> April 2003, requiring Allottees and Assignees to go to M/S Musyoka Annan Advocates. He went to the Advocates and paid Kshs.15,216/= for the Title. He was then given the Assignment and the Lease which he signed and it was registered on 23<sup>rd</sup> June 2004. He told the court that he conducted two searches to confirm the suit property was his on 13<sup>th</sup> May 2004 and on 31<sup>st</sup> August 2004 and applied for approval to develop it. He produced plans and receipts for payment. He stated that the plans were not approved. He also stated that he filed this case because when he visited the plot, he found a notice on it advertising it for sale and he called the number on the Notice for sale posing as a buyer. He found out that it is the Defendant who had put up the 'plot for sale' signage. He stated that he had no notice that the plot would be repossessed or had been repossessed.
10. When cross-examined, he told the court that he bought the plot from Mary Wambui in 1979/1980 at ksh.38,050/= and that he paid her Kshs.20,000/= in instalments for the plot which she acknowledged and the balance was a refund of the money she had paid to the council but there was no sale agreement drawn between them. He stated that he does not have any documents showing he refunded the money to the seller.



11. He stated that he signed the Assignment on Third November 1980 together with the seller before the Nairobi City Council Conveyance officer and they were asked to leave the assignment there. He added that the assignment had not been signed by the mayor, Town clerk when they signed and that he does not know when they signed.
12. He stated that while the letter dated 29<sup>th</sup> October 1997 stated that the Assignment document was ready for finalization, he was not given the assignment when he went to City Hall. Instead he was directed to go to, Musyoka Annan Advocates who calculated his dues and but he did not give him the Assignment. He stated that the advertisement placed in the newspaper referred to plots in Umoja Phase 1 Blocks C, H, N, P, & Q and Section II Innercore and that it was for issuance of leases. He stated that one had to present a letter of allotment, an Assignment, among other documents and that when he paid for the lease on 16<sup>th</sup> April 2003, he did not have the Assignment neither did he have a clearance letter from City Council or Dandora Housing office. He told the court that he received the lease and the assignment subsequent to payment.
13. When referred to the Assignment, he stated that while he paid fees on 16<sup>th</sup> April 2003, it was assessed for stamping on 15<sup>th</sup> April 2003, a day before he paid. He stated that City Hall calculated that he pays ksh.25,016/=; Ksh 15,016 for title and Kshs 10,000/= being stamp duty. He stated that he paid M/ S Musyoka-Annan Advocates Kshs.25016 but he received kshs.16,060/=. He stated that he did not take possession in 1980 when he bought the suit premise but he took possession in 1990 after survey work had been done but did nothing on the plot. He stated that he did not know that the plot was repossessed in 1993 by the council.
14. When referred to the amended defence by the Third Party, he admitted that it states that the records of City Council show the Defendant is the owner pursuant to the Assignment of 2001 the suit property having been repossessed from the Plaintiff for non-payment of rates. He stated that he knows rates are payable but he could not pay because he has not received demands. He stated that he began paying in 2004 when he was issued with a lease.
15. When referred to the Assignment and the Third Party's list of documents specifically the letter dated 12<sup>th</sup> November 2004, he stated that it states that the assignment was signed by Wawire on 10<sup>th</sup> April 2003 when he ceased to be Town Clerk in 1984, and that it is witnessed by Mr. Mwangella Advocate, who was not an employee of the council.
16. When he was re-examined, he stated that he only signed the Assignment, he did not prepare it and he does not know when the other parties signed it as he left it with the offices of the Nairobi City Council. He added that he later saw it when it was handed to him by Musyoka-Annan Advocates, together with the Title. He also stated that he did not obtain the documents of registration fraudulently.

#### **The Defendant's evidence\*\***

17. DW1, Dionision Riungu Mboroki, testified on 1<sup>st</sup> February 2022. He told the court that on 19<sup>th</sup> May 1997, he bought plot A103 Umoja Estate Sector II from Augustine Gachagua for Kshs.488,000/= after conducting due diligence. He produced the sale agreement dated 13<sup>th</sup> May 1997 and the Letter of Allotment dated 15<sup>th</sup> December 1993 issued to Joseph Njiru Bernard. He also produced a sale agreement between Augustine Gachagua and Joseph Njiru Bernard over the plot, clearance certificate, several receipts given to him issued to Joseph Njiru Bernard, and a memo from the accountant dated 19<sup>th</sup> May 1997 addressed to the Chief State Counsel City hall confirming Joseph Njiru Bernard had paid for the plot in full. He stated that he took possession and started paying rates.



18. It was his testimony that in 2004, he wanted to sell the plot therefore he placed his phone number on site and received several calls from potential buyers including the Plaintiff who told him that he owns the plot. He further stated that he visited Dandora offices where he checked the records and confirmed that the plot is his. He also stated that the City Council denied it issued the Plaintiff with a title document. When referred to the Assignment issued to the Plaintiff dated 10<sup>th</sup> April 2004, he stated that the council denied that it issued Assignment. He also stated that the Plaintiff's title ought to be investigated and cancelled and the suit plot registered in his name. He added that in the alternative, the city council ought to give him another plot or compensate him at the current market value.
19. When cross examined and referred to his claim that there was collusion between the Plaintiff and the Third Party, he admitted that he has not adduced any evidence to that effect. He stated that every time he approached the Third party since 2003, they informed him that the plot was his and they claimed that they do not know the Plaintiff's documents. He added that he has no letter to confirm the Third Party's position.
20. He stated that he did his search to confirm that the plot was Gachagua's at the Dandora offices but he was not given a letter to confirm the search. He stated that he got an Assignment in is favour on 13<sup>th</sup> May 1999 and that he signed before an advocate but he does not recall the name of the Advocate. He stated that he does not know where Mr. Gachagua is and that he does not have his number.
21. At the close of the oral testimonies parties tended final written submissions.

#### **The Plaintiff's submissions**

22. They are dated 14<sup>th</sup> February 2022. Counsel for the Plaintiff urged the court to find that the Plaintiff is the rightful and legal owner of the suit property as there is no evidence to impeach it in terms of Section 26 of the *Land Registration Act*. He relied on *Peter Wamaittha Gichangi v Stanley Kamau Kurua & another* [2020] eKLR, *Stephen Mugo Muchemi v Nairobi City Council & 3 others* [2017] eKLR and *Beatrice Maara v Winnie Murugi Mureu* [2015] eKLR. It was counsel's submission that that Defence's own exhibits clearly establish there was no repossession of the property because the letter of allotment dated 15<sup>th</sup> December 1993 was issued to the allottee three years before the Third Party's demand letter dated 28<sup>th</sup> October 1996. He relied on the case of *Rukaya Ali Mohamed v David Gikonyo Nambacha & Another*[Kisumu] HCCA No.9 of 2004.
23. With regard to the allegations of fraud, collusion and misrepresentation levelled against the Plaintiff, he relied on the case of *Benson Wandera Okuku v Isbmael Were Wakho*[2020]e KLR to submit that the onus was on the Defendant to prove the allegations but he failed to do so.
24. On the prayer for general damages, he submitted that although the Plaintiff did not adduce specific evidence of loss resulting from the Defendant's actions, the Plaintiff has been deliberately denied access to the suit premises since 2004 thus the interference with his occupation and use is a ground to award nominal damages of kshs9 million calculated at the rate of Kshs.500,00/= per year. He relied on the case of *Ochako Obinchu v Zachary Oyoti Nyamongo* [2018] eKLR and the case of *Eunice Nkirote Ringera v Kenya Power & Lighting Company* [2020] Eklr

#### **The Defendant's submissions**

25. They are dated 21<sup>st</sup> March 2022.It was Counsel for the Defendant's submission that the Plaintiff did not prove that he bought the suit premises from Mary Wamuhu Kenyatta as he did not exhibit a sale agreement which is a statutory requirement under the Law of Contract. He added there was also no evidence of payment of the consideration allegedly paid to Mary Wamuhu Muigai Kenyatta. It was



counsel's submission that the Plaintiff also failed to pay the balance owed to Nairobi City Council by Mary Wamuhu.

26. Counsel also submitted that it is clear that before the Chief Counsel or the legal department of the City Council prepared any lease agreement for the plots in question, he had to receive a memo of clearance from the Accountant in charge of sale of the plots confirming that the allottee and or assignee had cleared all the costs pertaining to the plots. Counsel urged the court to make a finding that the Plaintiff never took possession of the suit premises. He submitted that the Plaintiff was issued with title without proof of payment and argued that it is enough evidence that the title was issued fraudulently.
27. It was his submission that while the Third Party filed its defence to the Third Party notice, it did not tender evidence to support its case and that should the Defendant loose the suit land due to the negligent act of the Third Party of issuing title to the Plaintiff, then the Third Party should be ordered to shoulder the Defendant's loss and compensate him by allocating him a similar plot in the City or compensating the Defendant at the current market value.

### **The Third Party's submissions**

28. They are dated 22<sup>nd</sup> March 2022. Counsel for the Third Party submitted that the following issues arise for determination;
  - a) Whether the Defendant has indeed proven that the Third Party acted fraudulently and in collusion with the Plaintiff in the issuance of the title in the Plaintiff's favour; and
  - b) Whether the Third Party is entitled to indemnify the Defendant in the event that the matter is decided against him.
29. Counsel relied on the case of *Justus Atsieno Odhiambo v Peter Onyango Achieng'* [2021] eKLR to submit that that the Defendant's allegation that the Third Party fraudulently colluded with the Plaintiff were not supported by any evidence thus they remain mere statements. He also relied on the case of Ahmed *Mohammed Noor v Aziz Osman* [2019]e KLR.
30. It was his submission that the Third Party proceedings were instituted by the Defendant under Order 1 Rule 14 of the *Civil Procedure* Rules and by Order 1 Rule 15 of the *Civil Procedure Rules*, a Third Party can dispute a Plaintiff's claim in the suit as against the Defendant or dispute his own liability to the Defendant or dispute both and in this case, it disputes both. He put forward the case of *Cheruiyot Edwin Mutai v Cyrus Ngaruiya* [2020]e KLR.
31. I have considered the pleadings and the evidence on record. I have also considered the written submissions and the authorities cited. The issues for the determination are:-
  - (i) Who is the lawful owner of the suit property?
  - (ii) Is the Plaintiff entitled to the reliefs sought?
  - (iii) Is the Defendant entitled to the reliefs sought in the counterclaim?
  - (iv) Who should bear costs of this suit?
32. It is the Plaintiff's evidence that he purchased the suit property from Mary Wamuhu Muigai Kenyatta in 1990 and he paid the entire purchase price. He further stated that both parties proceeded to office of the third party to complete the sale and transfer in favour of the Plaintiff. The Deed of Assignment was produced an exhibit in this case. The same was left with the Third Party for processing and registration.



33. The Third Party wrote to the Plaintiff vide a letter dated 27<sup>th</sup> January 1984 demanding arrears of rates in the sum of Kshs.10,920/- which the Plaintiff paid on 14<sup>th</sup> March 1984. It is his evidence that he made further payments on 19<sup>th</sup> August 1988 in the sum of Kshs.12,452/-. By a letter dated 12<sup>th</sup> July 1990, the Third Party requested the Plaintiff to avail himself with documents pertaining to the suit property so that he could be shown the plot on the ground. The Plaintiff complied and took possession of the suit property.
34. The Third Party again wrote to the Plaintiff vide a letter dated 28<sup>th</sup> October 1996 demanding payments of rates. The Plaintiff replied vide his letter dated 11<sup>th</sup> November 1996 denying that he was in arrears of rates. He never got a reply to this letter.
35. The Third Party wrote to the Plaintiff vide a letter dated 29<sup>th</sup> October 1997 requesting him to contact the Chief Counsel for processing of his documents to the suit property. He was advised to visit the offices of M/S Musyoka Annan & Co. Advocates who told him to await the advertisement as to when the titles for Umoja area would be processed.
36. The Plaintiff stated that the advertisement appeared in the local daily newspaper on 16<sup>th</sup> April 2003. He then went to the offices of M/S Musyoka Annan & Co. Advocates and paid the processing fees including the Advocates legal fees. After the process was completed he collected his title deed for Nairobi/Block 83/14/440.
37. The Plaintiff was therefore surprised when he visited the suit property on 2<sup>nd</sup> July 2004 and found a notice board erected advertising the property for sale. He called the number on the notice board and talked to the Defendant who claimed he was selling the plot. He then decided to institute this suit.
38. The Defendant on the other hand has demonstrated that he bought the plot from F. A. Gachagua for Kshs.488,000 on 19<sup>th</sup> May 1999. From the sale agreement the plot is described as Plot A103 Umoja Sector II. It is his case that the said Augustine Gachagua had bought the plot from Joseph Njiru Bernard who had the Letter of Allotment dated 15<sup>th</sup> December 1993.
39. He produced several documents in the name of Joseph Njiru Bernard. They were handed over to him by F A Gachagua. One of them is an Assignment in favour of the Defendant dated 3<sup>rd</sup> May 2001 (exhibit D-11). He also stated that he has been paying rates for the suit property. He produced some receipts. When he was cross examined by the Plaintiff's counsel, he admitted that he has no documents from the Third Party or the Third Party's offices at Dandora to confirm that the suit property belongs to him. He also failed to avail F. A. Gachagua as his witness.
40. The Third Party was brought into this proceeding by the Defendant. It is its case that the suit property was repossessed back for failure by the Plaintiff to pay rates. It should be noted that the Third Party did not adduce any evidence or avail any witness.
41. It is its assertion that the Title Deed held by the Plaintiff was obtained illegally and fraudulently. It gave the particulars of fraud. The said particulars have not been proved. Fraud is a matter of fact which has to be proved. In the case of *Benson Wandera Okuku v Ishmael Were Wakho* [2020] e KLR, Justice Kaniaru held that:-

“The Plaintiff would have done well to appreciate that it is also trite law that where the person alleges a fact and the other person denies it, that fact is not proved. As things stand, what the court has as evidence is the Plaintiff's word against the word of the Defendant. Yet the burden of proof of the case did not lie with the Defendant. it was the Plaintiff's sole responsibility. The Defendant did not have to prove that he was not fraudulent. It was the



Plaintiff who was supposed to prove that the Defendant was fraudulent. Yet he only alleged and left it to the court to infer that the Defendant was fraudulent. And even the inference itself was supposed to be drawn from the sole evidence of the Plaintiff and all this concerning a transaction involving a lengthy process that obviously involved various actions”.

42. The Third Party also failed to prove that the said property had been repossessed and reallocated to Joseph N. Bernard as per the Letter of Allotment dated 15<sup>th</sup> December 1993. I agree with the Plaintiff’s submissions that both the Defendant and the Third Party failed to produce a Notice of Repossession duly served on the Plaintiff, Minutes of the Third Party’s Housing Management Committee passing a resolution for repossession of the suit property, a Kenya Gazette notice or any other notice or document in support of the alleged repossession.
43. Whoever alleges must prove. It was incumbent upon the Defendant and the Third Party to prove that the said plot had been repossessed. It appears that the reallocation to Joseph Njiru Bernard was done three (3) years before the alleged repossession. It is difficult to establish whether it refers to one and the same plot.
44. I agree on the Plaintiff’s submissions that the Defendant’s failure to avail Joseph N. Bernard, F. Augustine Gachagua or an officer for the Third Party is fatal to his (Defendant’s) case.
45. The Defendant and the Third Party have failed to prove that the Title to the Plaintiff was fraudulently and or illegally obtained. Section 26 (1) of the *Land Registration Act*, 2012 provides that:-
  - “(1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—
    - (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
    - (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”
46. I find that the Plaintiff is the lawful owner of the suit property having found the Certificate of Lease was lawfully issued.
47. Having stated that the Plaintiff is the lawful owner of the suit property, it follows that he is entitled to the reliefs sought. It is the Plaintiff’s case that by 2<sup>nd</sup> July 2004 the Defendant entered the suit property and fenced it off. The Defendant admitted that erected a fence and put up a notice board advertising the suit property for sale. This is evidence of trespass and the Plaintiff is entitled to damages. However, I doubt if the Defendant’s action was deliberate. He believed the plot to be his having been assured severally by the Third Party that the plot was his.
48. Nevertheless, the Plaintiff has suffered loss. The Plaintiff’s counsel suggest a figure of Kshs.9,000,000/- as being adequate to compensate the Plaintiff. I find this to be manifestly excessive. I award



Kshs.500,000/- which I think is adequate compensation. I rely on the case of *Philip Alucho v Chrispinus Ngayo* [2014] eKLR where Obaga J held:-

“.....the Plaintiff is entitled to general damages for trespass. The issue arises is as to whether is the measure of such damage. It has been held that the measure of damages is the difference in the value of Plaintiff’s property immediately after the trespass or the cost of restoration, whichever is less..... The plaintiff herein did not adduce any evidence as to the state of his property before and after the trespass. It therefore becomes difficult to assess general damages for trespass.....”

49. The upshot of the matter is that the Defendant’s counterclaim fails as against the Plaintiff. The Third Party has consistently held that the Defendant is the owner of the suit property. The Defendant produced documents issued by the Third Party. I find that he is entitled to compensation by way of another plot by the Third Party.
50. Accordingly, I find that the Plaintiff has proved his case as against the Defendant on a balance of probabilities. I enter judgement in his favour as follows:-
- (a) That a permanent injunction is hereby issued restraining the Defendant, his servants, agents or anybody claiming through him from selling, advertising for sale, interfering with, alienating, sub-dividing, trespassing upon or in any other manner dealing with all that parcel of land situated at Umoja Innercore, Section 2, Nairobi and known as Nairobi/Block 83/14/440 or any part thereof.
  - (b) General damages for trespass Kshs.500,000/-.
  - (c) Costs of the suit and interest.
  - (d) The Third Party is hereby directed to allocate the Defendant an alternative plot.

It is so ordered.

**DATED, SIGNED AND DELIVERED NAIROBI THIS 23RD DAY OF JUNE 2022.**

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**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

**Mr. Maina Mukoma advocate for the Plaintiff**

**Mr. Gichachi advocate for the Defendant**

**Ms Katana for Mr. Kithi for the Third Party.**

**Steve - Court Assistant**

**NAIROBI ELC NO.727 of 2004 Page 9**

