



Oganyo & 9 others v Harambee Sacco Society Limited & 2 others (Environment & Land Case 639 of 2016) [2022] KEELC 2512 (KLR) (14 July 2022) (Judgment)

Neutral citation: [2022] KEELC 2512 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 639 OF 2016
EK WABWOTO, J
JULY 14, 2022**

BETWEEN

**LINUS OGANYO 1ST PLAINTIFF
CHRIS MWANGI 2ND PLAINTIFF
JOYCE NGINA 3RD PLAINTIFF
RICHARDS BOSIRE 4TH PLAINTIFF
DENISE ODHIAMBO 5TH PLAINTIFF
MESHACK ANDERE 6TH PLAINTIFF
MICHAEL ODHIAMBO 7TH PLAINTIFF
ALICE SIFUNA 8TH PLAINTIFF
GEORGE NYAMBANE 9TH PLAINTIFF
JOHN KIMANI 10TH PLAINTIFF**

AND

**HARAMBEE SACCO SOCIETY LIMITED 1ST DEFENDANT
CHIEF LAND REGISTRAR 2ND DEFENDANT
DIRECTOR SURVES 3RD DEFENDANT**

JUDGMENT

Background

1. The genesis of the dispute herein between the Plaintiffs and the Defendants can be traced from the 1st Defendant's actions of subdividing of three plots known as L.R. No. Nairobi Block 82/4323, 4836



- and 5104 into four plots each leading to a total of 12 plots known as L.R Numbers Nairobi Block 82/8847, 8848, 8849, 8850, 8851, 8852, 8853, 8854, 8855, 8856, 8857 and 8858. The Plaintiffs aver in their plaint dated 14th June 2016 that they are residents of Harambee Green Field estate who own some of the plots and or parcels of land in the estate which was sold to them by the 1st Defendant.
2. The Plaintiffs further alleges that in the Daily Nation Newspaper of 21st April 2016, the 1st Defendant advertised for the sale of Twelve (12) new parcels allocated Land Reference Numbers Nairobi Block 82/8847, 8848, 8849, 8850, 8851, 8852, 8853, 8854, 8855, 8856, 8857 and 8858. The same was without the knowledge and or consent of the Plaintiffs and or other Landlords of Harambee Greenfield Estate.
 3. According to the Plaintiffs the purported sale and subdivisions of the said properties was unlawfully and illegal since the same was part of the properties that had been set aside as open spaces and or public utility parcels.
 4. The Plaintiffs prays for Judgment against the Defendants for: -
 - a) A declaration that sub-divisions of LR. Numbers Nairobi Block 82/4323, 4386 and 5104 was unlawful and illegal.
 - b) Cancellation of LR. Numbers Nairobi Block 82/8847, 8848, 8849, 8850, 8851, 8852, 8853, 8854, 8855, 8856, 8857, and 8858.
 - c) Cancellation of Survey map for sub-division of LR Numbers Nairobi Block 82/4323, 4836, and 5104 Folio No. 484 Register No.31.
 - d) Restoration of LR Numbers Nairobi Block 82/4323, 4836 and 5104.
 - e) A declaration that LR Numbers Nairobi Block 82/4286, 4323, 4642, 8236, 4836, 5104, 5183, 5255, 5325 and 6359 belong to Landlords of Harambee Greenfields Estate.
 - f) Transfer of LR. Number 82/4323, 4836 and 5104 to Association and/or management company of Harambee Greenfields Estate.
 - g) Costs of the suit

The Plaintiffs Case

5. The Plaintiffs case is reiterated in their plaint dated 14th June 2016, the list and bundle of documents dated 14th June 2016, witness statement sworn by the 9th Plaintiff, George Nyambane on 14th June 2016 and the written submissions filed by Modi and Co. Advocates on 28th March 2022.
6. The Plaintiffs are residents of Harambee Greenfield Estate who purchased various properties from the 1st Defendant. They contended that the 1st Defendant owned Land Parcel L.R No. Nairobi Block 82/2703 which was sub-divided into One Thousand and Ninety one (1091) residential plots and twelve (12) open spaces which included playing grounds, social facilities and schools for the residents' children.
7. It was further contended that the 1st Defendant had reserved three (3) parcels of land and one (1) other parcel of land for schools and social facility, the same were allocating Land Reference Numbers Nairobi Block 82/5172, 5254, 5326 and 4286.
8. It was also the Plaintiffs case that the 1st Defendant had reserved nine (9) open spaces which were allocated and Reference Numbers Nairobi Block 82/4323, 4642, 4836, 5104, 5183, 5255, 5325, 5326 and 6359.



9. The Plaintiffs averred that the 1st Defendant without knowledge and/or consent of the Plaintiffs and other residents and/or landlords of Harambee Greenfields Estate where thirteen (13) aforesated open spaces and/or utility parcels of land are situated have subdivided three (3) open spaces Land Reference Numbers Nairobi Block 82/4323, 4836 and 5104 into four (4) parcels of plots each hence a total of twelve (12) parcels and/or plots.
10. The Plaintiffs further averred that the twelve (12) new parcels of land which were unlawfully and illegally subdivided have been allocated Land Reference Numbers NAIROBI 82/8847, 8848, 8849, 8850, 8851, 8852, 8853, 8854, 8855, 8856, 8857 and 8858.
11. The Plaintiffs also averred that the 1st Defendant advertised in the Daily Nation Newspaper of 21st April 2016 on the sale of the 12 plots without the knowledge and or consent of the Plaintiffs and/or other Landlords of Harambee Greenfields Estate.
12. It was contended that at the time of purchasing their parcels from the 1st Defendant, the purchase price included payment for value of the open spaces facilities and schools, parcels of land.

The 1st Defendant's Case

13. The 1st Defendant filed a Statement of Defence dated 4th February 2020. In the said Defence, the 1st Defendant stated that they owned parcel of land L.R. No. Block 82/2703 which was subdivided into 1095 plots and eight (8) open spaces.
14. The 1st Defendant denied that the four (4) plots claimed by Plaintiffs as open spaces were never allocated to any person by the 1st Defendant but had been left for subdivision in future.

The 2nd and 3rd Defendants Case.

15. The 2nd and 3rd Defendant filed their joint statement of Defence on 18th August 2016 wherein they denied the contents of the plaint save for jurisdiction of the court which was admitted.

The Plaintiffs evidence

16. The suit was heard on 7th March 2022. The Plaintiffs called two witnesses, George Nyambane the 9th Plaintiff who testified as PW1 and Peter Ayima Atandi, the Surveyor who testified as PW2.
17. PW1 adopted his witness statement dated 14th June 2016. He stated that the Harambee Sacco Society Limited owned Land Reference No. Nairobi Block 82/2703, which was subdivided into 1091 residential plots and twelve open spaces. The open spaces were reserved for children playing ground, social facilities and a nursery school.
18. It was PW1's testimony that the purchase price for the respective plots by the members factored in the value of the open spaces, social facilities and schools. PW1 further stated that the open spaces are nine (9) in total and were allocated Land Reference Numbers Nairobi Block 82/4323, 4624, 4836, 5104, 5183, 5255, 5325, and 6359. The plots for schools were three (3) in total and were allocated Land Reference Numbers Nairobi Block 82/5172, 5254 and 5326. The parcel for social facility was allocated Land Reference Number Block 82/4286.
19. He further stated that the 1st Defendant had subdivided the open spaces/children's playground which were Land Reference Numbers Nairobi Block 82/4323, 4836 and 5104 each into 4 plots which were allocated numbers Nairobi Block 82/8851, 8852, 8853 and 8854. According to PW1, all these subdivisions were illegal and unlawful.



20. It was also the testimony of PW1 that they had tried to amicably resolve the issue and had even written various letters dated 28th March 2016 and 31st March 2016 but the same were not responded to. To their surprise, the 1st Defendant had even proceeded to place an advert selling the 12 illegally and unlawfully subdivided plots to the members of the public.
21. He concluded his testimony by urging this court to grant them the reliefs sought in their plaint dated 14th June 2016.
22. On cross-examination by Counsel for 1st Defendant he maintained that they bought their plots when the open spaces had been reserved for public use and that the open spaces were owned by the 1st Defendants and that the new numbers were issued by Survey of Kenya. He also stated that he had produced sufficient evidence to show that the twelve plots were open spaces.
23. On further cross-examination by Ms. Mwalozi Learned Counsel for the 2nd and 3rd Defendant, he stated that he did not have the current search and he may not be sure of the current registered owners of the property.
24. In re-examination, he reiterated that the subdivided plots were being sold by the 1st Defendant.
25. Peter Ayimba Atandi, PW2 testified as the Surveyor. He stated that he prepared the survey report dated January 2019. In the course of preparing the report he made reference to the RIM maps, Survey plan and the approved scheme.
26. It was his testimony that the original use of the property was captured from the original subdivision scheme which he got copies from the Nairobi City County and he was able to establish the original use of each and every plot.
27. He further stated that the subdivision plan was opened by the then Nairobi City Council in 1994. The original block was B2. The block numbers were given by Survey of Kenya. The open spaces were not supposed to be given numbers. It was his testimony that Plot 82/5254 was reserved for a nursery school. Plot 82/5325 was an open space. Plot 82/5326 was also reserved for a Nursery school. Plot 82/4326 was an open space. Plot 82/52 was also reserved for a nursery school. Plot 82/5104 was an open space. Plot 82/6354 was also an open space. The essence of the open spaces was meant for the residents and their children for recreation since this is a necessary requirement under the *Physical and Land Use Planning Act* Act No. 13 of 2019.
28. On cross-examination by Mr. Chege Learned Counsel for the 1st Defendant he stated that he does not know who was allocated the subdivided new plots.

The evidence of the 1st Defendant

29. The 1st Defendant called one witness during the hearing of the case who was Tikoishi Naikumi Koitaat who testified as DW1. He adopted his witness statement dated 4th February 2020 and the 1st Defendant's bundle of documents that was filed on the same day.
30. He stated that there were never any open spaces that were left for further subdivision. It was also his testimony that the parcels of Land in dispute were never part of the purchase price of the other plots as alleged by the Plaintiffs and that is why the certificate of leases for parcels of land reference numbers Nairobi Block 82/8847, 82/8848, 82/8849, 82/8850, 82/8851, 82/8852, 82/8853, 82/8854, 82/8855, 82/8856, 82/8857 and 82/8858 were issued to them by 2nd Defendant in January 2016.



The case of the 2nd and 3rd Defendant

31. The 2nd and 3rd Defendant filed their witness statement on 18th August 2016 but never called any witness to testify on their behalf.

Plaintiffs submissions

32. The Plaintiffs filed written submissions dated 28th March 2022 through the firm of Modi & Co. Advocates. In the said submissions, Counsel submitted that the Plaintiffs had proved their case to the required standard through the testimony tendered by PW1 and PW2.
33. It was submitted that the Plaintiffs had demonstrated that the three (3) open spaces L.R. Nos. Nairobi Block 82/4323, 82/4836 and 82/5104 were indeed reserved as open spaces for Harambee Cooperative Sacco Housing Scheme in June 1994. The three (3) open spaces were later in the year 2016 sub-divided and titles issued to the 1st Defendant number as L.R. Nos. Nairobi Block 82/8847, 82/8848, 82/8849, 82/8850, 82/8851, 82/8852, 82/8853, 82/8855, 82/8856, 82/8857 and 82/8858. The defendants having failed to challenge the evidence of the Plaintiffs and the Plaintiffs have demonstrated compliance with the provisions of Section 56(1) of the *Physical and Land use Planning Act* 2019 for reservation of open spaces for the public good, they had proved their case to the required standard.

1st Defendant's submissions

34. The 1st Defendant filed their written submissions dated 24th May 2022 through Amolo & Gacoka Advocates. Counsel identified three issues for consideration by the court. These included the following: -
- i. Whether the Plaintiffs have capacity to file this suit and or seek the orders sought,
 - ii. Whether the Plaintiffs have a right to representative suit on behalf of other parties.
 - iii. Whether the Plaintiffs are entitled to the prayers sought and;
 - iv. Whether the titles and survey map sub-division should be cancelled.
35. On whether the Plaintiffs have capacity to file this suit and or seek the orders sought, Counsel submitted that no evidence was placed before this court to suggest or even demonstrate that the Plaintiffs and or Landlords of Harambee Greenfields Estate and Association and/or Management Company of Harambee Greenfields Estate which are not legal entities have a right to ownership of the plots subject matter of this suit and the Plaintiffs in their capacity have no right to commence the present suit which appears to be a representative suit.
36. It was also contended that the Associations sought to be granted ownership of plots subject matter of this suit are not legal entities which can own land and no evidence was tendered during the hearing to suggest otherwise.
37. On whether the Plaintiffs have a right to representative suit on behalf of other parties, Counsel contended that the present suit is not a representative suit that could have been filed on behalf of the two associations and no evidence of registration/authority have been filed and/or produced during the hearing. Counsel relied on Order 4 rule 4 of the *Civil Procedure Rules* 2010 which states that: -

“Where the Plaintiff sues in a representative capacity the plaintiff shall state the capacity in which he sues and where the Defendant is sued in a representative capacity the Plaintiff shall



state the capacity in which he is sued and in both cases, it shall be stated how that capacity arises.”

38. On whether the Plaintiffs are entitled to the prayers sought, Counsel argued that the Plaintiffs are not entitled to the prayers sought having failed to demonstrate that they have brought a representative suit on that Land owners of Harambee Greenfields Estate and the Association and/or Management Company Harambee Greenfields Estate are registered legal entities and or have capacity to own land.
39. On whether the titles and survey map sub-division should be cancelled, Counsel relied on section 143(1) of the [Registered Land Act](#) (now repealed) and stated that the Plaintiffs have not shown that there was fraud or mistake to entitle them to such order. In view of the foregoing, Counsel urged the court to dismiss the suit with costs to the Defendants.

The submissions of the 2nd and 3rd Defendant.

40. The 2nd and 3rd Defendants filed their written submissions dated 5th May 2022. The same was filed by Learned Counsel Ms. Elizabeth Mwalizi, Counsel identified three issues for consideration by the court. She urged the court to consider the following issues; whether the Plaintiffs have proved their case, whether the Plaintiffs have raised a reasonable cause of action against the 2nd and 3rd Defendants and whether the Plaintiffs are entitled to the prayers sought.
41. Counsel submitted that the Plaintiffs had failed to produce a current search in respect to the suit parcels which they were seeking cancellation against and pursuant to Section 107 and Section 112 of the [Evidence Act](#) Cap 80 and the case of [Palace Investment Ltd –Vs- Geoffrey Kariuki Mwendu & Another](#) (2015) eKLR to the effect that the Plaintiffs had not proved their case to the required standard.
42. On whether or not the Plaintiffs have raised a reasonable cause of action against the 2nd and 3rd Defendants, Counsel submitted that the Plaintiffs had failed to demonstrate any wrong doing by the 2nd and 3rd Defendant in respect to the alleged subdivision of the suit properties and no evidence was produced to show that the 2nd and 3rd Defendants were involved in the process.

Issues, Analysis and Determination

43. Having considered the pleadings, evidence on record and the submissions from Counsel for all the parties, the issues for determination are as follows:-
 - i. Whether the Plaintiffs have the locus standi to institute the suit.
 - ii. Whether the subdivision of L.R. Nairobi/block 82/4323, 7836 and 5104 into twelve plots/parcels known as L.R. Numbers Nairobi Block 82/8847, 8848, 8849, 8850, 8851, 8852, 8853, 8854, 8855, 8856, 8857 and 8858 was lawful and regular.
 - iii. Whether the Plaintiffs are entitled to the orders sought.

Issue No 1 Whether the Plaintiffs have the locus standi to institute the suit.

44. In the 1st Defendant’s written submissions dated 24th May 2022, Counsel raised two issues to the effect that the Plaintiffs have no capacity to file this suit and or seek the orders sought and also that the Plaintiffs have no right to representative suit on behalf of other parties. The two issues raised by the 1st Defendant can simply be condensed into one issue of whether the Plaintiffs have the locus standi to bring the case herein.



45. It was submitted that the Plaintiffs had filed this suit in their private capacity yet they were seeking orders in favour of Landlords of Harambee Greenfields Estate and Association and/or Management Company of Harambee Greenfields Estate which were two different entities with no capacity to own land.
46. Counsel for the 1st Defendant also submitted that the present suit is not a representative suit and hence could not be filed on behalf of the two associations, and no evidence of registration/authority have been filed and or produced during the hearing.
47. Locus standi connotes ‘a right to bring action’. The issue of locus standi has been discussed widely within the Kenyan jurisdiction. The Court in the matter of *Michael Osundwa Sakwa v Chief Justice and President of the Supreme Court of Kenya & another* [2016] eKLR while referring to the matter of *Ms. Priscilla Nyokabi Kanyua vs. Attorney General & Interim Independent Electoral Commission* Nairobi HCCP No. 1 of 2010 asserted that;
- “...In Kenya the Court has emphatically stated that what gives locus standi is a minimal personal interest and such interest gives a person standing even though it is quite clear that he would not be more affected than any other member of the population.”
48. Similarly, the Court in the matter of *Kbelef Khalifa El-Busaidy v Commissioner of Lands & 2 others* [2002] eKLR while canvassing the issue of Locus Standi stated thus:
- “...for an individual to have a locus standi, he must have an interest either vested or contingent in the subject matter before the court, which interest must be a legal one. Such interest must be above that of other members of the public in general.”
49. In the current suit, the Plaintiffs averred at paragraph 5 of their plaint, that they are residents of Harambee Green Fields Estate and some of the plots and parcels in the estate were sold to them by the 1st Defendant and further the 1st Defendant owned L.R No. Nairobi/block 82/2703 which was subdivided into 1091 residential plots and twelve (12) open spaces which included playing grounds, social facilities and schools for the residents’ children.
50. During the hearing of the suit, the evidence adduced by PW1, George Nyambane on behalf of the Plaintiffs clearly demonstrated the interest that the Plaintiff’s had in respect to the suit properties and as such it is the finding of this court that the Plaintiffs have locus standi to bring the suit.
51. On whether or not the suit is not a representative suit which could not have been filed on behalf of Harambee Greenfield’s Estate and Association and or Management Company of Harambee Greenfield Estate, this appears to me to have been an issue of misjoinder of a party which does not affect the dispute between the Plaintiffs and the 1st Defendant. Order 1 Rule 9 of the *Civil Procedure Rules* (2010) makes it abundantly clear that misjoinder or non-joinder of parties cannot be a ground to defeat a suit. I wish reproduce the same hereunder: -
- “No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it”.



Issue No 2. Whether the subdivision of L.R. NAIROBI/BLOCK 82/4323, 7836 and 5104 into twelve plots/parcels known as L.R. NUMBERS NAIROBI BLOCK 82/8847, 8848, 8849, 8850, 8851, 8852, 8853, 8854, 8855, 8856, 8857 and 8858 was lawful and regular.

52. The Plaintiffs in their case and from the testimony that was adduced by PW1 stated that the 1st Defendant owned L.R. Nos. Nairobi/block 82/2703 which was later subdivided into 3 open spaces identified as L.R. No. Nairobi Block 82/4323, 82/4836, 82/5704 and were open spaces meant for children playing grounds in the estate. It was also the Plaintiffs testimony that the 1st Defendant without their knowledge and or consent proceeded to subdivide L.R. No. Nairobi Block 82/4323, 82/4836 and 82/5104, into 12 plots of L.R. Nos. Nairobi Block 82/8847, 8848, 8849, 8850, 8851, 8852, 8853, 8854, 8855, 8856, 8857 and 8858 which subdivision was illegal and unlawful. The Plaintiffs also called the PW2, Peter Ayimba Atanda, a Surveyor who produced his report, Survey plans, approved scheme plan from Nairobi City County and RIMs which confirmed that the 3 open spaces were set aside as open spaces as per the approved scheme plan registered with the then Nairobi City Council in July 1994. The 1st Defendant's witness DW1 Tikoishi Naikumi Koitat denied that the said plots had been set aside for public utilities and or open spaces, however he did not adduce any evidence to controvert the evidence presented by the Plaintiffs to the effect that the 12 plots L.R. Numbers Nairobi Block 82/8847, 8848, 8849, 8850, 8851, 8852, 8853, 8854, 8855, 8856, 8857 and 8858 were not subdivisions out of the social amenity plots.
53. From the evidence that was adduced by PW1 and PW2, it is evident that the 3 open spaces L.R. NO. Nairobi Block 82/4323, 82/4836 and 82/5104 were indeed reserved as open spaces for 1st Defendant Housing scheme in June 1994. It was also evident that the 12 plots were carved out from the 3 plots that were set aside for public utilities, children play area among other public use. It is also evident that the subdivision was done by the 1st Defendant.
54. In short, the Land that was set aside for public purposes and public utilities was subdivided and put for sale by the 1st Defendant. It is noteworthy that the said subdivision was not done with the consent of the Plaintiffs. The surveyor's report filed and produced by PW2 showed that the subdivision was carved out from land meant for public use such as children play area, schools, nursery among others. The Defendants did not produce any other report to controvert the surveyor's report. In the circumstances, the contents of the surveyor's report are deemed to be correct.
55. DW1 testimony to the effect that the subdivided plots had never been set aside for public use was equally never substantiated with any documentary evidence and as such his testimony was of no evidential value to this court.
56. Section 56(1) of the *Physical and Land Planning Act* No. 13 of 2019 provides for reservation of opening spaces for public good and land set aside for such purposes is not available for reallocation. The said plots having been set aside for public use was deemed relinquished by the 1st Defendant save for only public purpose.
57. I must emphasize that the open spaces were set aside for public use including playground for children, primary schools and even a nursery school. The government of Kenya has consistently maintained a strong commitment to the provision of education, and has made primary education one of its key priorities. Also, as a vibrant member of the international community, Kenya is a state party to several international and regional human rights treaties and non-binding instruments that address the right to education. These include the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), the *UN Convention on the Rights of the Child* (CRC), the *African Charter on Human and Peoples' Rights* (ACHPR), the *African Charter on the Rights and Welfare of the Child*



(ACRWC), and the [UN Convention on the Rights of Persons with Disabilities](#), (CRPD). The influence of these commitments is acknowledged in domestic law, including [the Constitution](#). [The Constitution](#) provides that every child has a right to education and that the state shall take legislative, policy and other measures towards the progressive realization of this right. The [Children Act](#) is the principal legislation on the rights of children in Kenya, and a pathway to universal primary education. In terms thereof, every child is entitled to education, the responsibility for the provision of which vests on the government and parents. Hence therefore by taking away these open spaces and converting them to other use contrary to their initial purpose deprives the children the realization of these rights which is also contrary to the best interest of the children and as such this court has a duty to intervene and safeguard the same.

58. In my view, the actions undertaken by the 1st Defendant seeking to subdivide plots that had been reserved for public utility and public purpose was irregular and unlawful. Public utilities and public purpose provided for are equally important. It is only important and looking at the bigger picture especially from the modern world where the changing lifestyles have made people to become acquainted with the value of recreational facilities to relieve the stresses of modern life. These facilities will be needed in the same plots which they were originally reserved for.
59. I also note that the changes proposed for subdivision of the land set aside for public use are major changes in land use which would have required an Environmental Impact Assessment (EIA) report submitted to the National Environment Management Authority (NEMA) as required by Section 58 of [Environmental Management and Coordination Act](#) No. 8 of 1999. The provision was not complied with.
60. In the circumstances, I agree with the submissions made by the Plaintiffs and find that the subdivision and titles issued to the 1st Defendant in respect to the 12 plots should be nullified since the same was illegal and irregular.

Issue No. 3 Whether the Plaintiffs are entitled to the orders sought.

61. The Plaintiffs has sought for various reliefs as stated in their plaint. The Plaintiffs have demonstrated through sufficient evidence that the 12 plots which were subdivided and titles issued had been done on plots originally set aside for public purposes.
62. Regarding the prayer for cancellation of titles issued for L.R. Numbers Nairobi Block 82/8847, 8848, 8849, 8850, 8851, 8852, 8853, 8854, 8855, 8856, 8857 and 8858 and Cancellation of Survey map for subdivisions of L.R. Numbers Nairobi Block 82/4323, 4836 and 5104 folio No. 484 Register No. 31 and Restoration of L.R. Numbers Nairobi Block 82/4323, 4836 and 5104, under Section 26 of the [Land Registration Act](#), a title can be nullified on the ground of fraud or misrepresentation to which the registered proprietor is proved to be a party or if it is shown that it was acquired illegally, unprocedurally or through a corrupt scheme. I held above that transfers of subdivision of L.R. Numbers Nairobi Block 82/4323, 4836 and 5104 and registration of was unlawful and illegal and registration of L.R. Numbers Nairobi Block 82/8847, 8848, 8849, 8850, 8851, 8852, 8853, 8854, 8855, 8856, 8857 and 8858 were illegal and unprocedural and hence the plaintiffs are entitled to an order for cancellation of those titles.
63. In respect to the orders sought in prayer (e) and (f) of the plaint to the effect that the properties be transferred to the management and landlords of Harambe Greenfield Estate, the Plaintiffs did not lay any basis for the same neither did they sought to enjoin the said entities as parties to this suit and this court will be stretching itself too far in granting the said orders outlined as prayer (e) and (f) of the plaint. In the circumstances the same can only be declined.



64. On the issue of costs, its trite law that the court has discretion as to whether costs are payable by one party to another, the amount of those costs, and when they are to be paid. Where costs are in the discretion of the court, a party has no right to costs unless and until the court awards them to him, and the court has an absolute and unfettered discretion to award or not to award them. This discretion must be exercised judicially; it must not be exercised arbitrarily but in accordance with reason and justice, having regard to all the relevant circumstances and considering the partial success of the suit, it would be fair, if each of the parties herein bear their own costs. That is my order on costs.

Conclusion

65. In conclusion, the Plaintiffs suit partially succeeds and I hereby enter Judgment for the Plaintiffs against the Defendants' as follows; -

- a) A declaration that subdivisions of L.R. Numbers Nairobi Block 82/4323, 4836 and 5104 was unlawful and illegal.
- b) Cancellation of L.R. Numbers Nairobi Block 82/8847, 8848, 8849, 8850, 8851, 8852, 8853, 8854, 8855, 8856, 8857 and 8858.
- c) Cancellation of Survey map for subdivisions of L.R. Numbers Nairobi Block 82/4323, 4836 and 5104 folio No. 484 Register No. 31.
- d) Restoration of L.R. Numbers Nairobi Block 82/4323, 4836 and 5104.
- e) Prayers (e) and (f) of the plaint are declined.
- f) Each party to bear own costs of the suit.

66. Judgment accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 14TH DAY OF JULY 2022.

E.K. WABWOTO

JUDGE

In the presence of:

Mr. Modi for the Plaintiffs.

Mr. Chege for 1st Defendant.

Ms. Mwalizi for the 2nd and 3rd Defendants.

E.K. WABWOTO

JUDGE

