



**Kihara (Suing as a Legal Representative of Priscilla Wambui Kihara)
v Mbugu & another (Environment & Land Case 1265 of 2016)
[2022] KEELC 13272 (KLR) (30 September 2022) (Judgment)**

Neutral citation: [2022] KEELC 13272 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 1265 OF 2016
LN MBUGUA, J
SEPTEMBER 30, 2022**

BETWEEN

**PAULINE WANGUI KIHARA PLAINTIFF
SUING AS A LEGAL REPRESENTATIVE OF PRISCILLA WAMBUI KIHARA**

AND

**BEATRICE MUKERI MBAGU 1ST DEFENDANT
JOSEPH KAMAU MBAGU 2ND DEFENDANT**

JUDGMENT

Background

1. At the heart of the dispute is a parcel of land No Nairobi/Block 82/3602 measuring 0.0343 Ha (herein the suit property) which is registered in the name of the defendants, a mother and son team. One Priscilla Wambui apparently bought the suit land through her mother Jacinta Wanjiru from the defendants sometime on September 24, 2008. Jacinta passed on and Priscilla who allegedly resides in the United States of America gave her sister, Pauline Wangui a power of attorney and the latter proceeded to institute this suit. The land was not transferred to the purchasers but the said purchasers proceeded to build a multi-storey building on the suit property.

The pleadings

2. In the amended plaint dated February 20, 2018, the plaintiff claims that her late mother Jacinta Wanjiru Kihara purchased the suit property for her sister Priscilla from the defendants in the year 2008 for a valuable consideration of Kshs 1,500,000 which was paid to G Kamonde, the advocate who was acting for both parties. The purchase price was paid in full and an official receipt was duly issued by the said advocate. The late Jacinta also paid the requisite stamp duty and legal fees for the transaction.



3. Upon payment of the said purchase price, the plaintiffs were granted vacant possession and have been in possession of the same since 2009 and even began construction in anticipation of being issued with completion documents. Days passed without any transfer prompting Jacinta to lodge a complaint against the said advocate with the Advocates Complaints Commission. She also lodged a caution against the suit property in September 2015.
4. The Plaintiff further pleaded that upon the demise of Jacinta in March 2016, the defendants began disrupting their peaceful possession of the suit property and demanding more money in order to issue the plaintiff with the property's original documents. The plaintiff claimed that she could not be issued with an occupation certificate for the building she had put up, which had cost about Kshs 15,000,000 due to lack of documents showing that she was the legal owner.
5. The plaintiff claims that she stands to suffer substantial loss if the situation was not remedied and she thus prays for the following orders;
 - i. A permanent injunction restraining the defendants; either by themselves, their representatives, agents or any other person(s) from accessing, entering and/or interfering with the construction and/or endangering the peaceful possession of the plaintiff and her intended tenants over parcel of land known as Title Number Nairobi/ Block 82/3602.
 - ii. An order for specific performance compelling the defendants to complete the sale agreement by transferring the parcel of land known as Title Number Nairobi/ Block 82/3602 to the plaintiff or surrender of original documents of title and necessary completion documents including but not limited to; consent to transfer and a duly executed transfer over parcel of land known as Title Number Nairobi/ Block 82/3602 to the plaintiff.

In the alternative to the foregoing main prayers, the following prayers;
 - iii. An order compelling the Chief Land Registrar Nairobi to execute the transfer documents on behalf of the defendants and issue a certificate of Lease over Title Number Nairobi/ Block 82/3602 to Priscilla Wambui Kihara.
 - iv. Special damages in the sum of Kshs 1,500,000 as pleaded in paragraph 5 and Kshs 15,000,000 as pleaded in paragraph 20.
 - v. General damages for breach of contract.
 - vi. Aggravated damages.
 - vii. Costs of this suit.
 - viii. Interest at court rates on (c), (d) and (e) until settlement in full.
6. The defendants opposed the suit vide their amended defence dated April 19, 2018 where they stated that the breach of contract was occasioned by the plaintiff who failed to honour the agreement and went on to put up structures on the suit property despite protest from the defendants. They aver that the plaintiff's claim should be against the advocate G Kamonde but not them.

The Evidence

7. During the hearing, PW1, Pauline Wangui Kihara testified and adopted her witness statement dated February 20, 2018 as her evidence in chief as well as the affidavits in her bundle of documents dated February 20, 2018. She also produced the 15 documents in her list dated February 20, 2018 as her



- exhibits 1 – 15. The contents of her statement mirrors her pleadings, adding that defendants have resorted to extortion by demanding more money from the plaintiff.
8. On cross examination, PW1 affirmed that her late mother was the one who purchased the suit property on behalf of Priscilla and that she, (PW1) had the power of attorney to represent her sister Priscilla in this suit. She also affirmed that there was a sale agreement between the defendants and Priscilla dated September 24, 2008 which was drawn by Mr Kamonde who was acting for both vendor and purchaser. In the sale agreement the completion date was to be in November 2008 upon payment of purchase price of Kshs 1,500,000 which sums were paid to the said Mr Kamonde and receipts were duly issued to her late mother. She also testified that there were further receipts of Kshs 37,000 and Kshs 60,110 which were payments for legal fees and stamp duty respectively.
 9. She also stated that her late mother wrote to the said Mr Kamonde *vide* a letter dated May 18, 2011 asking for title documents and also filed a complaint dated November 24, 2014. She also sought services of Mativo and Co Advocates who also wrote to Mr Kamonde *vide* a letter dated October 7, 2014 also following up on the issue of title documents for the suit property.
 10. PW1 further stated that the defendants were to receive the purchase price from the said Mr Kamonde who was acting for both parties. However, they could not sue him for the amount of money advanced because he passed on before the complaint filed by their mother could be processed. She also indicated that she was neither aware of any discussions held between her mother and the defendants nor of any other executed sale agreement.
 11. On re-examination, PW1 stated that the agreement was between Priscilla and the defendants and her mother's role was to effect payment. She stated that when her mother tried to talk to the defendants about the suit property, they always referred her to Mr Kamonde.
 12. The 1st defendant Beatrice Mukeri Mbagu testified as DW1. She adopted her witness statement dated April 19, 2018 as her evidence in chief and also produced the 3 documents in their bundle dated April 19, 2018 as defence exhibits 1 – 3. In her statement, DW1 conceded that indeed they had entered into a land sale agreement with the plaintiff on September 24, 2008, where it was provided that completion date was within 45 days from date of execution of the agreement and that the vendor was only to be paid upon transfer of the property. She contended that transfer was not effected and they were not paid any monies as purchase price. However, the plaintiff has trespassed upon the suit land.
 13. She further avers that Priscilla died before the sale could be completed and was survived by Pauline Wangui Kihara, with whom they sought negotiations for the purchase of the land and that on June 9, 2016, Pauline Wangui committed herself to pay sh 5,500 000 within 3 months as purchase price for the suit land. However, she neglected, failed or refused to pay the purchase price a second time.
 14. In her oral testimony, DW1 stated that she is a teacher residing in Germany and affirmed knowledge of the sale agreement produced by the plaintiff. However, she stated that there was breach of contract and that is why the property was never transferred to the said Priscilla because the purchase price was not paid within the 45 days as stipulated in the agreement as Mr Kamonde never gave them any money.
 15. She testified that there was another agreement between Jacinta and her advocate on one hand and DW1 on the other hand where the late Jacinta agreed to purchase the suit property for Kshs 5,500,000 and Jacinta had a deposit of Kshs 1,500,000 but she passed on before the transaction was completed.
 16. She testified that when they learnt about the illegal construction on the suit property by the plaintiff, they tried to stop it but the plaintiff agreed to pay Kshs 5,500,000 within three months from June 9, 2016 which was also not done. The said letter was drawn at the Chief's Camp. She therefore stated that she had held discussions with both the plaintiff and her late mother about purchasing the suit



property for Kshs 5,500,000 pointing out that the meeting with the Plaintiff's late mother was held at the defendant's advocate's office.

17. On cross-examination, DW1 stated that they never received the sum of Kshs 1,500,000 and that they never handed the physical possession of the suit property to the plaintiff. However, she confirmed that the said Mr Kamonde was acting for both parties and he had been their advocate in many other dealings. She stated that the second agreement between them and the plaintiff was drawn in 2015, but the date indicated on the agreement was 2020 which was inaccurate since it was drawn before the current suit was filed in court.
18. She contested being aware of any construction on the suit property in 2009 and stated that she only became aware of the developments in 2016 when she met Pauline. This is because she had been out of the country. As at year 2016 when they were signing an agreement at the chief's camp, she was aware that there was a storied apartment on the suit property.
19. She stated that between the year 2008 and 2018 she never lodged a complaint against the said illegal construction because she was out of the country and was unaware of the dealings on the suit property. However, she was aware that there was a caution against the suit property lodged by the plaintiff which they had not tried to lift due to the ongoing suit.
20. On re-examination, DW1 clarified that the 1st page of the draft agreement showed the year 2015 and that the year 2020 indicated thereon was a typographical error.
21. On the issue of the payments made in 2008 by the plaintiff, DW1 stated that payment was to be advanced to them which was not done and thus they neither transferred nor relinquished possession of the property. She stated that the plaintiff continued to construct on the suit property despite failing to adhere to the draft agreement of 2015.
22. The 2nd defendant, Joseph Kamau Mbagu testified as DW2. He adopted his witness statement dated April 19, 2018 as well as a replying affidavit dated June 19, 2017 as his evidence. He also produced 4 documents in the bundle dated January 30, 2020 as defence exhibits 4 – 7. He identified 1st defendant as his mother. The contents of his statement is a replica of what is contained in DW1's statement.
23. In his oral testimony, DW2 confirmed having entered into a sale agreement for the suit land, but avers that they were never paid and they never effected the transfer of the land. He further stated that he resides in Kenya at Syokimau but he was not aware of the trespass until the time they found construction going on and they reported the matter at the chiefs camp. It is then that Pauline agreed to pay Kshs 5 500 000 as per the undated draft agreement. Sometime in year, 2019 he discovered that construction on the suit property had been completed and tenants were in occupancy. He also testified that they had been paying rates upto to the year 2019.
24. On cross examination, DW2 restated being aware of the agreement dated September 24, 2008 and that Mr Kamonde was their advocate in other matters. So it is them who knew Mr Kamonde. He was however not aware that the sum of Kshs 1.5 million was paid to Mr Kamonde. He averred that due to the non-payments, he retrieved back the suit property's documents from Mr Kamonde.
25. He stated that when they attempted to enter into the 2nd agreement of year 2015, they were not aware of what was happening on the ground. He went on to state that in 2016 when he found construction on going, he spoke to Mr Kamonde who informed him that he was not paid his fees. DW2, however did not inquire as to where the purchase price was.
26. On land rates, the defendants are the ones who have been paying for the same as from year 2016, but DW2 was unaware as to who was making such payments between the years 2008-2016.



27. On the issue of the agreement entered into at the chief's camp, DW2 stated that when the plaintiff was summoned at the chief's camp due to constructing illegally on the defendants' property, she agreed to pay Kshs 5,500,000 but this agreement was never converted into a formal agreement before the advocates. DW2 also stated that he was aware that a caution had been lodged against the suit property but was neither aware who placed it nor attempted to have it lifted.
28. On re-examination, DW2 stated that the 2015 draft agreement was drawn by Muigai Kemei Advocates because Mr Kamonde was no longer there as he was not alive anymore. He stated that the receipts produced by the plaintiff only indicated purchase of plot and confirmed that one of the receipts had clearly indicated the suit property's number. However, they never pressed Mr Kamonde over the payment because he did not inform them of the same. He also noted that since they had the title documents they never deemed it necessary to check on the property to see if there was a trespasser.

Submissions

29. It was submitted for the plaintiff that the sale agreement dated September 24, 2008 and signed by the defendants was valid and ought to be performed as stipulated, stating that the defendants breached their duties and obligations thereof, noting that the plaintiff paid the purchase price within the 45 days as stipulated in the aforementioned agreement.
30. The plaintiff questioned how the defendants would grant vacant possession to the Plaintiff in 2009 if the plaintiff had not paid the purchase price, adding that giving the plaintiff vacant possession of the suit property was part performance of the agreement. Reference was made to the case of *Mwangi & Another v Mwangi*, (1986) KLR 328 and the Supreme Court of the United Kingdom in *RTS Flexible Systems Ltd v Molkerei Alois Müller GmbH & Co KG* (UK Production) [2010] UKSC14, [45] to buttress the point that a person in possession or occupation of land has equitable rights and that the parties had a legally binding relationship.
31. It was further submitted that defendants had made it clear that Mr Kamonde was their family advocate, and the question begging for an answer is; if the said advocate did not give them the purchase price of the suit property, how then did they allow the plaintiffs possession of the suit property? And how come they never filed a complaint against the said advocate?. It was pointed out that the defendants allegation that they were unaware of the construction going on at the suit property for over 8 years was being disingenuous. And the fact that even after finding out that the plaintiff had allegedly trespassed the suit property, they never took any action against her meant that they were well aware of the happenings.
32. It was submitted that the defendants actions were malicious, stating that it was inexplicable how, if they purported to never have handed possession of the land to the plaintiff, had not paid land rates of the suit property from 2009, and only started paying rates in 2016 when the current suit was instituted.
33. On the issue of existence of other agreements, it was submitted that the agreements adduced by the defendants were not capable of being enforced since they were undated and unsigned, questioning how the defendants who evidently sought services of advocates and had engaged one in the previous sale agreement could enter into another alleged sale agreement over land in a chief's office under the supervision of administrative police officers. It was highlighted that when the said agreement was purportedly entered into at the chief's office, the plaintiff was mourning the demise of her mother whom they had buried a few days before the said event and any such agreement was undertaken under duress. Thus this amounted to extortion and harassment of the plaintiff by the defendants.
34. In conclusion, it was submitted that the defendants had clearly frustrated registration of the suit property by failing to complete the transaction, hence the orders sought ought to be granted.



35. For the defendants, it was submitted that the plaintiff did not produce evidence of the power of attorney as claimed.
36. While in agreement that there was a sale agreement executed between the parties herein, the defendants submitted that no transfer documents were exchanged and the plaintiff went ahead to undertake construction on the suit premises knowing quite well that the land did not belong to them which was an act of trespass as was buttressed by Kemei J in the case of *Eliud Njoroge Gachiri v Stephen Kamau Ng'ang'a* ELC 121 of 2017.
37. The defendants have questioned how construction was undertaken on the suit land without approvals since the plaintiff did not have any documents of the said land, thus fraud and corruption must have been involved, noting that the building on the suit land already had tenants without a certificate of occupation.
38. It was further submitted that there was a commitment note that was signed by the parties to this suit at the chief's office in which the plaintiff committed to pay Kshs 5,500,000 within three months which she did not honour but instead filed the current suit. Thus this suit was an attempt to sanitize her conduct and compel the defendants to execute a contract the plaintiff breached by failure to pay the purchase price.
39. It was submitted that the defendants had always been ready and willing to sell the plot of land, pointing that the late G Kmaonde might have failed in his duty to the parties but that did not justify the plaintiff's forceful takeover. As such, the suit should be dismissed and the plaintiff barred from further interference with the suit land and the caution in place ought to be lifted. The defendants also pray for costs of the suit.

Analysis and Determination

40. Having considered the rival pleadings, evidence and submissions, this court finds that the issues for determination are:
 - i. Whether the sale agreement dated September 24, 2008 was breached and who breached the same;
 - ii. What remedies are available to the parties?
41. There is no controversy that the defendants are the registered owners of the suit property. It is also not in contention that there was a sale agreement dated September 24, 2008 drawn by the late G Kamonde (advocate) and signed by the 1st and 2nd defendants as the vendors and Priscilla Wambui Kihara as the purchaser for land LR No Nairobi/Block 82/3602. Thus there was a legally binding contract as per the provisions of Section 3(3) of the *Law of Contract Act*.
42. The agreement (plaintiff's exhibit 1) clearly stipulated that the purchase price for the said land was Kshs 1,500,000 which was to be paid in two instalments of Kshs 800,000 and Kshs 700,000 within 45 days of execution of the contract and it is not in contention that the late G Kamonde acted for both parties. On the issue of an advocate acting for both parties, Hancox CJ had this to say in the Court of Appeal case of *Mayfair Holdings Ltd v Ahmed* [1990] eKLR:

“...I might mention at this stage that it frequently happens that an advocate, or a solicitor in England, receives instructions from and acts for both parties to a land transaction, and there is nothing unlawful in it so long as the relevant rules are not infringed. But this practice must



on occasion, particularly when a dispute subsequently develops and ends up in court, be fraught with some danger, or at least risk, to both the advocate and his client or clients...”

43. It is also not in contention that the said agreement was breached due to non- performance by one of the parties. This is where the game of musical chairs begin with each party blaming the other. So who breached the agreement?
44. The plaintiff claims that they adhered to what was stipulated in the contract and paid the full purchase price of Kshs 1,500,000 in two instalments to the late G Kamonde within the stipulated 45 days as provided in the agreement. They led evidence and adduced copies of two banker’s cheques dated September 29, 2008 and October 30, 2008 for Kshs 800,000 and Kshs 700,000 herein marked as plaintiff exhibit 4 and 5 respectively.
45. The plaintiff also adduced the following receipts with the advocate’s letterhead as confirmation of the moneys paid. Marked as plaintiff exhibit 6 and 7 dated September 29, 2008 and October 30, 2008 were receipts for Kshs 800,000 and Kshs 700,000. The receipt marked as plaintiff exhibit 6 reads: “Being payment of purchase of Nairobi Block 82/3602...” The receipt marked as plaintiff exhibit 7 reads: “Being payment of purchase of plot...” The plaintiff also indicated that they paid advocates fees of Kshs 37,000 and adduced a receipt dated October 30, 2008 for that amount marked as plaintiff exhibit 8 which also read: “being payment of purchase of plot...” The plaintiff also testified that they paid stamp duty for the said plot and adduced a receipt for Kshs 60,110 dated July 3, 2009 marked as plaintiff exhibit 9 which read: “Being payment of stamp duty...”
46. The plaintiff stated that they were granted vacant possession of the suit land upon payment of the purchase price and started putting up a building in 2009. The defendants however contested having received the said purchase price from the advocate and the 2nd defendant who testified as DW2 stated that after the lapse of the completion period and having not received the said purchase price he took back the documents of the said land from the advocate.
47. It is quite clear that the plaintiff had complied with her obligations in so far as the agreement of September 24, 2008 is concerned. Clause 2 (a) of the said agreement indicates that: “The sum of sh.800 000 has been paid to G Kamonde Advocate...to hold same as a stake holder”, while clause 2 (b) states that the sum of sh 700 000 was to be paid within 45 days. This means that as at the time the defendants were signing the agreement, they were well aware that the 1st installment of sh 800 000 was already in custody of their erstwhile advocate. They cannot feign ignorance of the monies paid to their advocate.
48. The defendants claim that the plaintiff ought to follow up with the late advocate on the said purchase price because they never received the money. However, the agreement of September 24, 2008 executed by the parties at clause 3 reads as follows:

“ That the vacant possession of the said plot shall be given by the vendors unto the purchaser upon payment of the full purchase price by the purchaser unto the vendor as aforesaid...”

Clause 6 reads:

“ That on completion the purchaser shall deposit the balance of the purchase price of the vendor’s advocate upon furnishing the following documents to the purchaser’s advocates...”

- “ Original Lease.
- a. Transfer duly executed by the vendor’s in favour of the purchaser.
- b. Photocopy of vendor’s identity cards.



- d. Valid rates clearance certificate.
- e. Photocopies of the vendor's pin certificates.
- f. Consent to transfer.
- g. Valuation duly signed.”

49. Nowhere in their pleadings and or their evidence in chief did the defendants indicate the steps they undertook to comply with the provisions of clause 6 of the aforementioned agreement by availing the documents needed to effect the transfer. It was only during cross examination that DW2 stated that they had given the original title to the advocate but retrieved the same after the lapse of the 45 days.

50. On this issue of the defendants not having received the purchase price from the late G Kamonde, this court once again cites in agreement the aforementioned case of *Mayfair Holdings Ltd v Ahmed* [1990] eKLR where Hancox CJ stated:

“ ... At that stage there was no question but that Mr Behan was acting both for Mr Gilani and for Shakeel. So by giving the cheque to their joint advocate Mr Gilani was in fact and in law giving it to Shakeel...”

51. In the court of Appeal case of *Samson Owino Ger v. Marmanet Forest Co-operative & Credit Society Limited* [1988] eKLR, the court stated that:

“When a person says that he has instructed an advocate to act for him, all he means and is understood by the officious bystander to mean, is that he has retained the professional services of an advocate in relation to a particular transaction or business and he has in consequence become that particular advocate's client.”

52. In light of the foregoing analysis, I find that by the plaintiff giving the advocate the purchase price, by dint of law and fact meant that the money was being given to the defendants. Therefore the claim by the defendants that they never received the money from the advocate totally fails.

53. This court notes that the defendants have gone to great lengths to show why they could not perform the contract but in the process, they have only managed to peddle falsehood. Hear this; during cross examination, DW2 stated that;

“GKamonde was our advocate. In 2016 when we found constructors on site, I talked to Mr Kamonde and he told me he did not get the fees. I did not inquire from G Kamonde as to where the purchase price was”.

54. However, during re-examination, DW2 stated that;

“The draft agreement of 2015 was done by Muigai Kemei advocates because Kamonde was no longer there. He was not alive anymore”.

55. How comes that DW2 was conversing with advocate G Kamonde in year 2016 while at the same time they were engaging another advocate by year 2015 because G Kamonde was no longer alive!. It is not lost to this court that this court did probe DW2 as to when the said Mr Kamonde passed on, but DW2 indicated that he did not know.



56. On the issue of occupation of the suit land by the plaintiff, both defendants denied being aware of the ongoing construction on the suit land for a period of over half a decade despite DW2 being a resident in Kenya (Syokimau to be precise). It is not fathomable that the defendants went on with their lives and business as usual without ascertaining the status of the land on the ground simply because they had the title. If anything the defendants were rather casual on this issue with DW1 stating that: “as at now (time of her testimony in court),I am not aware of the developments on the land”. But she went on to state that in year 2016 when they went to the chief’s place, she was aware that there was a storied apartment on the suit land. As for DW2, he stated that he stays in Syokimau but he discovered that plaintiff had constructed on the land on June 9, 2016!.
57. In their endeavour to show that the plaintiff breached the contract entered in 2008, the defendants led evidence that they entered into a second agreement marked as defendant exhibit 1 with the plaintiff drawn by the advocate on record dated 2015. The said agreement is however undated and unsigned. That document is not a binding agreement. If anything, it buttresses the claim of the plaintiff that the defendants had resorted to extortion and harassment by demanding more money from the plaintiff.
58. Kamau J in the case of *Capacity Building & Research Company Limited v Permanent Secretary, Minister of Labour & another* [2020] eKLR held that:
- “... the said sample contract was undated, unsigned and did not show the parties of the contract and consequently, the learned trial magistrate found correctly that the same was not legally binding between it and the appellant herein... Even if one was to assume that the sample contract was valid, it would not have been applicable in the circumstances of the case herein because it could not have applied retrospectively as the contract herein was entered into in 2010. This court therefore came to the conclusion that the learned trial magistrate arrived at the correct conclusion when she found and held that the said document had no legal effect and could not bind the appellant and the 1st respondent herein...” (emphasis own).
59. It is therefore quite apparent that the defendants had embarked on having a second bite of the cherry by purporting to sell the suit land a second time to the plaintiff. The draft agreement exhibited by the defendants remains as such, a draft.
60. Finally, counsel for the defendants questioned how the plaintiff had put up a construction without approvals and submitted lengthily on that issue and went on to accuse the plaintiff of corruption. This line of argument is not anchored on the pleadings or evidence and cannot be made a subject of contest at the stage of submissions. In any event, the issue before this court relates to the sale of the land and not un-approved building. Likewise, the defendants have submitted that the plaintiff did not avail the power of attorney, yet that was not a subject of contest during the trial. Nevertheless, the power of attorney happens to be the plaintiff’s 1st document (exhibit 1) in their trial bundle dated February 20, 2018.
61. In the Court of Appeal case of *William Muthee Muthami v Bank of Baroda* [2014] eKLR , it was stated that;
- “...It is a firmly established rule of evidence that the evidence to be produced in court to prove a claim must flow from pleadings. See *Galaxy Paints Company Ltd v Falcon Guards Ltd*, Civil Appeal No 219 of 1998” , where the court held that:-



“The issues for determination in a suit generally flowed from the pleadings and the trial court could only pronounce judgment on the issues arising or such issues as the parties framed for the court’s determination.”

62. It is not lost to this court that despite the claim of the defendants that the plaintiff is a trespasser, they have not framed any counter claim in their pleadings, they have never sought for the eviction of the plaintiff and though being aware that plaintiff had lodged a caution on the suit land, they never sought to have the same lifted.
63. The upshot of this judgment is that the plaintiff has proved her case on a balance of probabilities. However, the court shall not award any damages to the plaintiff in view of the fact that plaintiff has been in possession of the suit land since year 2009. In that regard an award of costs and interest shall be adequate. The disposal orders are as follows:
 - i. An order is hereby issued for specific performance compelling the defendants to complete the sale agreement by transferring the parcel of land known as Title Number Nairobi/ Block 82/3602 to the plaintiff within 30 days of this order.
 - ii. If order number (i) above is not adhered to, the Chief Land Registrar Nairobi *vide* this order is hereby directed to register the land Nairobi/ Block 82/3602 in the name of Priscilla Wambui Kihara. For purposes of effectuating the said order, the Deputy Registrar of this court is hereby granted authority to sign all requisite documents necessary to facilitate the transfer of the land from the defendants to Priscilla Wambui Kihara.
 - iii. A permanent injunction is hereby issued restraining the defendants; either by themselves, their representatives, agents or any other person(s) from accessing, entering and/or interfering with the construction and/or endangering the peaceful possession of the plaintiff and her intended tenants over parcel of land known as Title Number Nairobi/ Block 82/3602.
 - iv. The plaintiff is awarded costs of the suit plus interest at courts rate of which the said interest shall be calculated from the date of filing of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30TH DAY OF SEPTEMBER, 2022 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Mwaura for the plaintiff

Joan Njoroge holding brief for Muigai for Defendants

Court assistant: Joan

