Maswan v Kanyiri (Environment & Land Case 417 of 2011) [2022] KEELC 13569 (KLR) (13 October 2022) (Judgment)

Neutral citation: [2022] KEELC 13569 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ENVIRONMENT & LAND CASE 417 OF 2011

LN MBUGUA, J

OCTOBER 13, 2022

BETWEEN

JEBICHI FLORENCE MASWAN ..... PLAINTIFF

AND

CATHERINE KANYIRI ..... DEFENDANT

JUDGMENT

1. The protagonists herein are laying claim of ownership to a parcel of land Known as Nairobi/Block 63/611 (the suit land) situated at Jamhuri estate in Nairobi county; Each one having various documents to proof ownership including titles to the suit land. The plaintiff claims to have bought the said land in year 2007 from one Mary Njeri Njuku who in turn had been alloted that land by the Nairobi city Commission on February 13, 1992. The plaintiff was apparently issued with a certificate of lease thereof on May 16, 2008. The defendant on the other hand avers that she was allocated the land by the Nairobi city Commission vide the latter of allotment dated July 17, 1992 and she was eventually issued with a certificate of lease on October 17, 2001. Thus the dispute herein is manifesting itself as a case of double allocation and perhaps double registration.

2. Vide the Plaint dated August 16, 2011, the plaintiff sought the following orders.

    i. An order of permanent injunction to restrain the Defendant by herself, her servants and or agents from doing any of the following acts that is to say, entering, taking possession, demolishing any structures, halting construction works, removing and carrying away any construction equipment and materials and trespassing on all that property known as title number Nairobi/Block 63/611 and or from harassing, evicting and or threatening the Plaintiff's agents, employees and or in any manner howsoever interfering with the Plaintiff's exclusive use and possession of the said parcel of land known as title number Nairobi/Block 63/611.

ii. An order of mandatory injunction compelling the Defendant, her servants and or agents to forthwith remove vacate the suit property, to remove any equipment or personal effects dumped or stored in the Plaintiff's parcel of land known as title number Nairobi/Block 63/611.

iii. Special damages as particularized as paragraph 7 of the Plaint.

iv. General damages for trespass.

v. Costs of this suit.

vi. Any or further relief that this Honourable Court may deem fit and just to grant.

3. The Defendant filed a statement of Defence and counterclaim dated June 8, 2012 where she denied the Plaintiff's claims. The orders sought in the Counterclaim are for; Rectification of Title in respect of Nairobi/ Block 63/611 by cancelling the Certificate of Lease in favour of the Plaintiff plus costs.

4. The actual trial has been conducted by various judges; and in all such instances, the parties through their advocates have opted to proceed from where the matter had stopped.

5. The Plaintiff Jebichi Florence Maswan,PW1 commenced her testimony on September 22, 2014. She adopted her witness statement dated August 16, 2011 as her evidence. She stated that she purchased the suit property from Mary Njeri Njuki in 2007 and she was subsequently issued with a certificate of lease.

6. In the year 2010, she applied for building approvals and began construction which went on until August 2011 when her husband was informed that there was someone closing down the said plot. The Plaintiff reported the incident at Kilimani Police Station. The plaintiff had then proceeded to the site thereafter with a police officer and was informed by the said officer that if there was no court order against her, then she could go on with the construction. However, later on the same day, she was once again informed that there were three men on the suit land. She once again went to Kilimani Police Station with her documents where she found the officers who had earlier on accompanied her to the site who asked her to follow up on the issue with the Lands office the following day.

7. Unfortunately, between 6pm and 7.30 pm on the same day, a group of men gathered at the suit property destroyed the building under construction and carried away some building materials. On August 12, 2011 when she went to record a statement at the police station, she was informed that a lady by the name Catherine Kanyiri had laid claim on the land. She stated that prior to this incident, no claim had ever been made by any person on the said property.

8. To support her claim, PW1 produced 15 documents in her bundle as Plaintiff Exhibit 1 to 19 which include; A Certificate of lease as well as a certificate of official search showing that the suit land is registered in her name, the approval to construct together with receipts of payment and structural design drawings; Allotment letter in favour of Mary Njeri dated February 13, 1992, receipts of stand premium payments by Mary dated March 6, 1992, an agreement of lease between the City Council of Nairobi and Mary (date not clear) for Plot No 43 Jamhuri Phase 2 and a lease registered on July 12, 2007 between the City Council of Nairobi and the said Mary, a transfer of lease for Nairobi/Block 63/611 from Mary Njeri to the plaintiff registered on May 16, 2008 and a stamp duty payment of Kshs. 20,100.

9. PW1 went on to testify that there were photographs produced which showed the damage occasioned on the suit property by the Defendant, where the building's peripheral wall and part of the stone wall were smashed, its framework destroyed and building materials carted away. She indicated that the

destruction was caused by people working under the instructions of the Defendant stating that she had neither been notified nor asked to stop the construction and was not aware that there was any other person claiming the suit property.

10. After the destruction, a quantity surveyor assessed the damage and quantified it at Kshs. 625,000 as of December 9, 2014. During the hearing, PW1 informed court that she had finished undertaking construction on the suit property and was in its possession.

11. On December 5, 2017, the cross examination of PW1 took off. She restated that she purchased the suit property in 2007 for valuable consideration of Kshs. 2,800,000, that a search was conducted at the time of purchase and that a written sale agreement had been executed. She added that she had lived next to the suit property from the year 2003 and knew that Mary Njeri was the owner of the suit land. She rehashed that the register was opened on July 12, 2007 and the suit land transferred to her in 2008.

12. She indicated that by the time her construction was destroyed, she had finished constructing the ground floor and was casting a slab for the 1st floor. She was informed by the contractor that there were people who had gone to stop the construction claiming that the property belonged to the Defendant. She went to the site and a police officer by the name of Inspector Oyaro asked her to report the matter at Kilimani Police Station. Later that day at around 6pm she was once again informed that a group of people were on the suit property and she went back to Kilimani Police Station to file another complaint. However, by the time the police officers arrived at the site at 9pm, the building had already been demolished. She stated that she saw the people who demolished the building but the Defendant was not one of them.

13. She indicated that Inspector Oyaro informed her that the Defendant resided in Thika.

14. On the issue of items particularized in the Plaint, she indicated that she had receipts for the same but had not produced them in court. However, a qualified quantity surveyor carried out a valuation and quantified the loss.

15. On re-examination, PW1 stated that the vendor, Mary Njeri was issued with her Title to the suit property on July 12, 2007, and the property was transferred to her on May 16, 2008 and that is the same date the Title was issued.

16. Mary Njeri Njuku, (PW2) introduced herself as a business lady dealing with spare parts at Kirinyaga Road. She adopted her witness statement dated November 20, 2013 as her evidence. She testified that she was allocated the suit property in 1992 vide the allotment letter dated February 13, 1992 by the City Council of Nairobi and was given possession after making the requisite payments. She had remained in its possession until 2007 when she sold the land to the Plaintiff and no person had claimed its ownership there before.

17. Pw2 indicated that before the sale, they confirmed that the ownership of the property was in her name. She also stated that she had been paying land rates and after the sale, she gave the receipts to the Plaintiff. She indicated that she had known the Plaintiff since 1992 when the City Council was pointing out beacons of their plots at Jamhuri.

18. On cross examination, PW2 reiterated that she was allocated the suit property by Nairobi city Commission in 1992 after satisfying the set out conditions. She paid the stand premium and ground rent. She pointed out that her allotment letter was dated February 13, 1992, while that of the Defendant is dated July 17, 1992 and therefore it could not be true that the Defendant was issued an allotment letter following PW2's default. She also stated that she was issued a lease in 2007 which was signed by the then Town Clerk Mr. Wandera.

19. She pointed out that prior to the sale, she had put an iron sheet structure on the suit property and had a caretaker occupying it.

20. On re-examination, PW2 stated that the Defendant had never sued her or laid claim on the suit property and buttressed that she had an agreement for lease with the City Council of Nairobi vide the allotment letter dated February 13, 1992 and that she had paid the stipulated amount of Kshs. 10,800 on March 6, 1992 which was within the 30 days set in the conditions. She pointed out that both her letter and the Defendant's letter bore the Nairobi City commission name, but in the Defendant's bundle, there was no evidence of payment of stand premium or an agreement of lease or a lease. She indicated that her lease was drawn up by an advocate whom she paid Kshs. 32,685 on September 30, 2003. She also stated that she was the one who offered to sell the suit property to the Plaintiff who was occupying the neighbouring property.

21. Pw3, one Mr. Rasugu Nyamboki a Quantity Surveyor working with Nyara Consults Quantity Surveyors testified on December 10, 2018. He adopted his written statement dated December 3, 2013 as his evidence averring that he was tasked to assess the works that had been demolished which he did and prepared the Bill of Quantities dated September 14, 2011. He was later informed that this Bill of Quantities had captured some works that had not been affected by the demolition and subsequently amended the Bill of Quantities to the one dated 15th September 2011. PW3 produced the two Bills of Quantities as Plaintiff Exhibit 20 and 21.

22. On cross examination, PW3 indicated that he was instructed to inspect the damages occasioned on the suit property orally and he visited the site, observed the damages and took measurements. The first costing amounted to Kshs. 1,900,000 but this amount changed because the reinforcement and frame work could be re-used and reinstated. He indicated that he did not attach photos.

23. Pw4, one Mr. Charles Kipkurei Ng'etich the Deputy Chief Land Registrar based at Ardhi House gave his testimony on February 8, 2022. He testified that on January 10, 2022 he received summons to produce the register in relation to the parcel Nairobi/Block 63 parcel 611. He had checked their records in relation to the said parcel of land and had found that the records were captured in the EDMS (Electronic Data Management System). In the register, the Title to the said land measuring 0.0200 ha was registered on July 12, 2007 in the name of Mary Njeri Njuku of Po Box 23431 Nairobi who was given a lease of 99 years less 3 days from January 1, 1968.

24. He went on to state that according to their records, the said Mary had transferred the property to Jebichii Florence Maswani on May 16, 2008 for Kshs. 2,800,000 and a certificate of lease was issued to her. The register including the green and white cards were produced in court as plaintiff's Exhibits.

25. On cross examination, PW4 stated that he had not been briefed on the nature of the dispute and had only been asked to produce the register as per their records, and they only had one Title on record. Counsel for the Defendant showed PW4 a Title document bearing the name of the defendant who's corresponding copy was in the Defendant's bundle, of which PW4 indicated that the said Title was for Nairobi/ Block 63 parcel 611 whose register was opened on October 17, 2001 in favour of Catherine Kanyiri. He stated that the digitization of filing records (EDMS) was commenced more than 2 years ago and the records he had availed in court (the green card and white card) were the once transferred to the EDMS. He indicated that those were the last records before the EDMS. He however stated that there were physical documents kept in a Kalamazoo binder which could be removed from the file.

26. He added that the body tasked with allocation of the land was the Nairobi City Council, and the Land Registrar's mandate was only to register the interest.

27. He stated that the document listed as number 3 on the Defendant's bundle was a letter addressed to the Chief Land Registrar forwarding a list of owners of the suit property and on it was the name of Catherine Kanyiri, the Defendant who was listed as number 16. In item 5 of the same bundle was a memorandum of registration of transfer of land Block 63/611 from the Nairobi City Council to Catherine Kanyiri, but PW4 could not confirm if the said memorandum emanated from the Ministry.

28. He went further to state that both Titles availed were registered under Cap 300 (repealed) and under that Act, there was a procedure to follow while challenging a Title. Under Section 14 of the *Land Registration Act* the Land Registrars conducts hearings to ascertain bona fide owners. As such, it was illegal to generate another Title without cancelling a previous one. He stated that under the repealed cap 300, the office of the Chief Land Registrar could cancel an entry but cancellation of Titles was the mandate of the Court as per Section 90 thereof.

29. He concluded by stating that he was not familiar with Jamhuri Estate.

30. On re-examination PW4 restated that the summons were to produce records regarding Parcel Nairobi/ Block 63/ 611 and he had duly produced the records in their possession. He also pointed out that the document No 3 on the Defendant's bundle was neither signed nor did it have a receiving stamp from the Chief Land Registrar.

31. The Defendant Catherine Kanyiri testified as DW1 and she adopted her statement dated June 9, 2012 as her evidence. She also produced 10 items in her bundle of documents which were marked as Defendant Exhibit 1 to 10. Dw1 avers that she was the registered owner of the suit land in tandem with her Certificate of lease issued on October 17, 2001 and her Title had neither been challenged nor cancelled.

32. She was allocated the unsurveyed Plot No 43 Jamhuri Phase II by the Nairobi City Council on July 17, 1992. Having complied with the conditions of the allocation and a subsequent survey undertaken converting the said Plot No 43 to Nairobi Block 63/611, a lease was executed between her and the Nairobi City Council.

33. She pointed out that she had fenced the land and she had enjoyed quiet and peaceful use of the suit property until sometime in 2007 when she noted that there were illegal activities going on. She claimed that she discovered that her file at the Lands Office was unavailable and established that the Plaintiff had obtained another Title in respect to the suit property which was obtained fraudulently since the Defendant's Title had neither been cancelled nor revoked. These fraudulent events prompted the defendant to file a suit ELC No 93 of 2009. The defendant had tried in vain to get an official search.

34. On cross examination, Dw1 re-stated that her records regarding the suit property had been tampered with at the Lands Office and that she had mentioned Mary Njeri as the culprit, but she did not know whether the said Mary ever worked at the Lands office. She had also not brought Mary Njeri on board in the counterclaim. She again reiterated that she had filed the suit ELC Case No 93 of 2009, but she had not availed documents for the said suit in her bundle and could not recall whether she had sued the Land Registrar.

35. She indicated that she had a lease dated September 27, 2001 in her bundle of documents together with a letter forwarding the lease but could only see a certificate of lease without a lease. She also stated that she could not see an agreement for lease between her and the City Council of Nairobi. She stated that she was just a minor from school and the City Council informed her that they could not find any documents.

36. The court questioned DW1 regarding her age, of which she stated that she was 54 years at the time of her testimony.

37. On re-examination, Dw1 stated that the land was allocated to her by Nairobi City Council and she was issued with an allotment letter after meeting the requisite requirements and was also issued with a Certificate of Lease.

38. The Plaintiff's submissions are dated July 20, 2022 where four issues for consideration have been framed as follows: i) Whether the Plaintiff was the registered proprietor and owner of the suit premises; ii) Whether the Defendant's action amounted to trespass; iii) whether the Defendant has any legal proprietary interest over the suit land; iv) Whether the parties are entitled to the orders sought.

39. On the question of ownership, it was submitted that plaintiff had tabled evidence showing how Mary Njeri Njuku acquired the suit property having been allotted the same vide an allotment letter dated February 13, 1992 by the Nairobi City Commission, an agreement of lease entered between the said Mary and the Nairobi City Council dated June 7, 1999 and also evidence of rates and other outgoings paid to the Nairobi City Council. Subsequently the Plaintiff purchased the suit property from Mary through a transfer of lease dated March 25, 2008 and a Certificate of Lease dated May 16, 2008 was issued to her. It was pointed out that the Land Registrar had also testified and supported plaintiff's case. As such the Plaintiff lawfully and procedurally acquired the suit property.

40. On the allegation of fraud fronted by the Defendant, it was submitted that fraud and misrepresentation were grounds for challenging a Certificate of Title as per Section 26(1) of the *Land Registration Act* but the said fraud had not been proved as was held by the Court of Appeal in the cases of *Kuria Kiarie & 2 others v Sammy Magera* [2018] eKLR and *Kinyanjui Kamau v George Kamau* [2015] eKLR.

41. On the issue of trespass, the plaintiff highlighted the definition of trespass as per *Clerk & Lindsell on Torts* 18th Edition at Paragraph 18-01 submitting that the Defendant and/or her servants on August 11, 2011 halted construction works on the suit land claiming that it belonged to the Defendant and carted away some construction equipment/ materials. This occasioned the Plaintiff loss and damage which amounted to unwarranted interference contrary to Article 40 of the Constitution. The case of *Park Towers Ltd vs John Mithamo Njika & 7 Others* (2014) eKLR was proffered where Justice J.M. Mutungi held that: "... Where trespass is proved a party need not prove that he suffered any specific damages or loss to be awarded damages. The Court ... is under duty to assess the damages awardable..."

42. On the issue of whether the Defendant had any legal proprietary rights over the suit property, it was submitted that where there is double allocation of land, the first allotment should prevail as was held in the case of *Kamau James Njendu v Serah Wanjiru & Another* [2017] eKLR, And that as per the Court of Appeal case of *Joseph Arap Ng'ok v Justice Moijo Ole Keiwua* [1997] eKLR, the Plaintiff's interest on the suit property crystallized upon complying with the conditions set out in the allotment letter dated February 13, 1992 which included payment of Kshs. 10,800 which was done and evidence tabled in court.

43. It was argued that the Defendant had not tabled nay evidence showing that she adhered to the conditions stipulated in her allotment letter dated July 17, 1992. She did not also produce a lease executed between the Nairobi City Council and herself which led to the issuance of her purported Certificate of lease dated October 17, 2001. As such, the Defendant did not have any proprietary interests over the suit property.

44. On the issue of the orders sought, it was submitted that the plaintiff was entitled to prayers sought and costs for the suit because she had proved that the suit property legally belonged to her and that the Defendant had trespassed on it.

45. The Defendant was to file her submissions by August 13, 2022 but there was no compliance with the said directions.

Determination

46. Having considered all the pleadings and the evidence tendered herein as well as the submissions of the plaintiff, I find that the issues falling for determination are;

    i. Who is the legal and lawful proprietor of land known as Nairobi/ Block 63/ 611;

    ii. Whether the Defendant trespassed on the Plaintiff's land known as title number Nairobi/Block 63/611;

    iii. If the answer to point No ii above is in the affirmative, what remedies are available.

Ownership

47. In this matter, we have a piece of land number Nairobi/Block 63/611 that is being claimed by the Plaintiff and the Defendant. The Plaintiff has outlined how she came into possession of the said land having purchased the same from PW2 who was allotted that piece of land on February 13, 1992 by the Nairobi City Council. She claimed that the Defendant entered into the suit land illegally and demolished part of the building under construction. The Defendant has contested this claim by stating that she is the lawful owner of the suit property having been allotted the said land on July 17, 1992 by the Nairobi City Council and was issued with a Certificate of Lease on October 17, 2001. She further stated that a search conducted on October 11, 2006 showed that she was the suit land's proprietor but when she conducted another search on October 9, 2008 the results showed that the proprietor was the Plaintiff.

48. The defendant had further claimed that the Title to the suit property held by the Plaintiff was fraudulently acquired, an allegation which was denied by the plaintiff. Thus each claimant is waving a certificate of title to proof ownership of the same parcel of land.

49. In the case of *Lawrence P. Mukiri Mungai, Attorney of Francis Muroki Mwaura v Attorney General & 4 others* [2017] eKLR the court held that :

    " A property cannot have two valid title deeds....."

50. It is therefore apparent that both titles held by the parties are under challenge, thus the root of each title has to be considered. In the case of Munyu Maina v Hiram Gathiha Maina, Civil Appeal number 239 of 2009, the Court of Appeal held as follows:

    '"We state that when a registered proprietor's root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which would not be noted in the register"'.

51. Both parties trace their interests in the suit land to the same allotting authority which is the Nairobi city Commission, with Mary Njeri having an allotment dated February 13, 1992, where as that of defendant is dated July 17, 1992. The plaintiff has availed a document on page 37 of her bundle indicating that the stand premium was paid on March 6, 1992 for plot 43. There is no evidence of such payments made by the defendant.

52. In the case of Rukaya Ali Mohamed v David Gikonyo Nambacha & Another Kisumu HCCA No 9 of 2004 cited in *Republic v Permanent Secretary, Ministry of Lands & Housing & another Ex parte Charles Mukabi Sihuli* [2017] eKLR, it was stated that;

> " ...a letter of allotment confers absolute right of ownership or proprietorship unless it is challenged by the allotting authority or is acquired through fraud mistake or mis-representation or that the allotment was out rightly illegal or it was against public interest... There is a difference between title to land and title document and one acquires title to land the moment a letter of allotment is issued and you meet the conditions in that letter...Once the conditions are met, the land is no longer available for alienation."

53. There is no evidence to indicate that the allotment letter of Mary Njeri had been cancelled by the alloting authority by the time the defendant was being issued with a letter of allotment three months later on July 17, 1992 for the same plot No 43. What this means is that there was no land identified as plot no 43 at Jamhuri estate available for allocation on July 17, 1992. What this portends is that the allocation given to the defendant was simply a paper document with no rights or interests in any land.

54. It follows that the subsequent Certificate of lease dated October 17, 2001 issued to the defendant is anchored on quicksand and must fall. This far, it is apparent that the root of the certificate of lease issued to the plaintiff has its roots on a lawful and regular allotment. The same cannot be said of the title held by the defendant.

55. It is also worthy to not that the documents relating to the registration of the land held by the Lands registry indicate that the plaintiff is the owner of the suit land. The evidence to that effect was availed by PW4, a Deputy Land Registrar and was not shaken in cross examination.

56. In the case of case of *Elizabeth Wambui Githinji & 29 others v Kenya Urban Roads Authority & 4 others* [2019] eKLR, it was held that:

> " The land register must mirror all currently active registrable interests that affect a particular parcel of land; that the Government, as the keeper of the master record of all land in Kenya and their owners, guarantees indefeasibility of all rights and interests shown in the land register against the entire world..."

57. No evidence was adduced to indicate that there was fraud in the manner the plaintiff acquired her title to the suit land, See- *Lawrence P. Mukiri Mungai, Attorney of Francis Muroki Mwaura v Attorney General & 4 others* [2017] eKLR.

58. It is not lost to this court that the defendant has asserted that she had filed a suit ELC No 93 of 2009 when she discovered that there was interference with her title, however, she was mute on the status of this suit and she never availed any documents to show that such a suit existed.

59. In the circumstances, the question of ownership is hereby put to rest by a pronouncement that the plaintiff is the lawful owner of the suit land.

Trespass/Damages

60. Did the Defendant trespass on the Plaintiff's land? Section 3 of the *Trespass Act* outlines what amounts to trespass. In the aforementioned case of *Elizabeth Wambui Githinji & 29 others v Kenya Urban Roads Authority & 4 others* [2019] eKLR Justice P. Ouko. J.A (as he then was) stated that:

> "Nuisance and trespass laws give every property owner the right to use and enjoy his or her property reasonably, without unreasonable interference by others."

61. The Court of Appeal in *Kenya Power & Lighting Company Limited v Fleetwood Enterprises Limited* [2017] eKLR while upholding the decision of Judge Angote in *Fleetwood Enterprises Ltd v Kenya Power & Lighting Co Ltd* [2015] eKLR stated that where trespass is proven, the affected party need not prove that it suffered damages or loss as a result of the trespass so as to be awarded damages because once the trespass is proved, the court is bound to assess and award damages on a case to case basis.

62. The Applicant has given minute details of what transpired on her land on two days; August 11, 2011 and August 12, 2011, whereby some people descended on her building where construction was underway and they proceeded to demolish the same. The persons who destroyed her structures claimed to have been acting on instructions of the defendant. The defendant has not rebutted this evidence.

63. It is also not lost to this court that the issue of trespass is what prompted the plaintiff to file an application dated August 16, 2011 to halt the invasion of which the court delivered a ruling in her favour on February 9, 2012. I am satisfied that there was trespass on the suit land by the defendant hence the plaintiff is entitled to damages.

64. Pw3 had assessed the damages incurred at the sum of Ksh. 625 000. In the case of *Rhoda S Kiilu v Jiangxi Water and Hydropower Construction Kenya Limited* [2019] eKLR, it was stated that damages are awarded at the discretion of the court. And in the Court of Appeal Case of *Christine Nyanchama Oanda v Catholic Diocese of Homa Bay Registered Trustees* [2020] eKLR, it was held that;

> "In tort damages are awarded as a way to compensate a party for the loss he or she had incurred due to a wrongful action on the part of the other party. The damages so awarded are intended to return the party back to the position he or she was in before the wrongful act was committed. Halsbury's Laws of England 4th Edition Volume 45 para 26 1503 provides as follows on computation of damages in an action for trespass:
>
> a) If the Plaintiff proves the trespass, he is entitled to recover nominal damages even if he has not suffered any actual loss.
>
> b) If the trespass has caused the Plaintiff actual damage, he is entitled to receive such amount as will compensate him for his Loss".

65. I proceed to give an award of Ksh. 450 000 as damages for trespass.

Relief

66. In the final analysis, I hereby give orders as follows.

i. The Plaintiff is declared to be the legal and lawful proprietor of property known as title number Nairobi/Block 63/611;

ii. The Defendant or her servants are hereby prohibited from entering or trespassing on all that property known as title number Nairobi/Block 63/611 or from harassing, evicting and or threatening the

Plaintiff's agents, employees and or in any manner howsoever interfering with the Plaintiff's exclusive use and possession of the said parcel of land.

iii. An order is hereby issued to the effect that the Certificate of Title for title number Nairobi/Block 63/611 held in the name of the Defendant is hereby cancelled.

iv. The plaintiff is hereby awarded damages for trespass against the defendant to the tune of Ksh. 450 000.

v. The Counter claim of the defendant is hereby dismissed.

vi. The costs of the suit (main suit) are awarded to the Plaintiff.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 13TH DAY

OF OCTOBER, 2022 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Bundotich for the plaintiff

Nyaga for the defendant

Court assistant: Eddel/Joan