



**Kwamboka v Gichuke & 2 others (Environment and Land Case Civil Suit
225 of 2004) [2022] KEELC 15029 (KLR) (24 November 2022) (Judgment)**

Neutral citation: [2022] KEELC 15029 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT 225 OF 2004
SO OKONG'O, J
NOVEMBER 24, 2022**

BETWEEN

LEONIDA KWAMBOKA PLAINTIFF

AND

JOHN MAINA GICHUKE 1ST DEFENDANT

NATIONAL LAND COMMISSION 2ND DEFENDANT

DAVID KARIUKI 3RD DEFENDANT

JUDGMENT

1. The plaintiff brought this suit in the lower court through a plaint dated November 29, 2001. The plaint was amended on January 2, 2002 before the suit was transferred to this court in 2004. The plaint was further amended on August 29, 2014. In her further amended plaint filed on August 29, 2014, the plaintiff sought the following reliefs;
 1. A mandatory injunction restraining the defendants from in any way whatsoever alienating, constructing on, fencing off or interfering with the plaintiff's parcel of land known as LR No 209/12552, Grant No IR 71179 (hereinafter referred to as "the suit property").
 2. Costs of the suit.
2. The plaintiff averred that she was the proprietor of the suit property and that sometimes in the year 2001, the defendants commenced construction on the suit property without her permission. The plaintiff averred that by reason of the defendants' actions aforesaid, the plaintiff was unable to develop the suit property as a result of which the plaintiff suffered loss and damage.
3. The suit was defended by the 1st defendant only. The 1st defendant filed a mended statement of defence and counter-claim on November 7, 2014. The 1st defendant averred that he was a stranger to the plaintiff's claim. The 1st defendant averred that he was allocated a portion of land known as Residential



Plot No 7 Bahati Annexe measuring approximately 0.02 hectares (hereinafter referred to as “Plot No 7”) by the Nairobi City Commission. The 1st defendant averred that he paid a total sum of Kshs 8,640/- comprising of stand premium and annual rent after which he was given possession. The 1st defendant averred that Plot No. 7 was part of a larger parcel of land known as LR No 209/5389 measuring 119 acres that was owned by the Nairobi City Council (hereinafter referred to as “the Council”) since March 11, 1957 when the Crown/the Government transferred the same to the Council.

4. The 1st defendant averred that the plaintiff who was claiming the suit property which was the same as Plot No 7 on the ground was allocated the suit property by the Commissioner of Lands unlawfully, irregularly and unprocedurally. The 1st defendant averred that the suit property was not Government land and as such the Commissioner of Lands had no legal capacity to allocate the same to the plaintiff and to issue a Grant to her in respect thereof. The 1st defendant averred that he was the bona fide and genuine owner of Plot No 7 that the plaintiff had referred to as LR No 209/12552, Grant No IR 71179(“the suit property”).
5. The 1st defendant averred that he commenced and completed construction on the disputed parcel of land not as a trespasser but as the owner of the property. The plaintiff averred that he had always had possession of the disputed property since the same was allocated to him on August 3, 1992.
6. In his counter-claim, the 1st defendant reiterated the contents of his statement of defence. The 1st defendant reiterated that the suit property was unlawfully allocated to the plaintiff by the Commissioner of Lands, the predecessor of the 3rd defendant. The 1st defendant averred that Plot No 209/5389 had been allocated and transferred to the Council by the Government on March 11, 1957. The 1st defendant averred that Plot No 209/5389 or a portion thereof was not available to the Commissioner of Lands for allocation to the plaintiff on July 1, 1994. By way of a counter-claim, the 1st Defendant sought judgment against the plaintiff and the 3rd defendant for;
 1. A declaration that the suit property, LR No 209/12552 forms part of the larger parcel of land known as LR No 209/5389 owned by the Nairobi City Council.
 2. A declaration that the Commissioner of Lands did not have the capacity to allocate the suit property to the plaintiff and that as at July 1, 1994, the property was not available for allocation to the plaintiff.
 3. An order directing the 3rd defendant and/or the Registrar of Titles to cancel Grant No IR 71179 for LR No 209/12552 issued by the Commissioner of Lands to the plaintiff.
 4. Costs of and incidental to the suit together with interest.

The Evidence by the Parties:

7. The plaintiff withdrew the case against the 2nd defendant while the 3rd defendant did not enter appearance. At the trial, the plaintiff who gave evidence as PW1 told the court that the suit property was allocated to her by the Commissioner of Lands as unsurveyed parcel of land and that she paid Kshs 46,370/- for the allocation after which the land was surveyed and she was issued with a title in respect thereof. The plaintiff told the court that she visited the suit property and found the 1st defendant interfering with the same and that is when she made a decision to file this suit. The plaintiff produced the documents attached to her list of documents dated October 26, 2004 as exhibits. The plaintiff stated that the parcel of land claimed by the 1st defendant falls within as LR No 209/5389, Grant No IR 13513 and as such the same is different from the suit property. In cross-examination, the plaintiff admitted that the parcel of land that was allocated to her was within LR No 209/5389, Grant No IR 13513 and that it was part of a larger parcel of land that had been allocated to various parties. The



- plaintiff stated that the Commissioner of Lands had the right to allocate the suit property to her and that before the allocation, the Commissioner of Lands confirmed that the land was uncommitted. The plaintiff urged the court to grant the reliefs sought in the plaint.
8. The plaintiff called one witness, Francis Kenyeru Orioki (PW2). PW2 was a retired Land Registrar. He told the court that he worked with the Ministry of Lands from 1989 to 2019. He stated that he was employed as a land officer and rose through the ranks to become a Principal Land Registrar as at the time of his retirement from public service. He stated that he was the one who signed the letter of allotment dated July 1, 1994 in favour of the plaintiff. He stated that the plaintiff and others not parties to the suit applied as a group to be allocated a piece of land. He stated that intensive consultations were done at the Ministry of Lands on the availability for allocation of the land that the group had applied for. He stated that following those consultations., it was confirmed to the Commissioner of Lands that the land was not committed and as such the same was available for planning and allocation. He stated that the Commissioner of Lands thereafter arranged for a Part Development Plan (PDP) to be prepared in respect of the piece of land that the plaintiff's group had applied for. He stated that the PDP Ref 42.18.94.12 dated May 16, 1994 was prepared in which the piece of land in question was subdivided into Plots "A" to "P" of various sizes. He stated that the plaintiff was allocated Plot "B" in respect of which she was issued with an allotment letter dated July 1, 1994 followed by Grant No IR 71179. He stated that the allocation of the suit property to the plaintiff followed the laid down procedure and the law and that the same received all the requisite approvals. He stated that he did not see any connection between the suit property and LR No 209/5389 Grant No IR 13513.
 9. In cross-examination, PW2 stated that the parcels of land the subject of PDP Ref 42.18.94.12 dated May 16, 1994 on the strength of which the suit property was allocated to the plaintiff were the same as the plots that are in the Survey Plan Folio No 259 Register 44 in respect of LR No 209/5389 that was owned by the City Council of Nairobi. He stated that if the land the subject of the said PDP was owned by the City Council of Nairobi then it could not be referred to as uncommitted government land. He stated that he had not seen any document showing that the City Council of Nairobi had surrendered the land that was allocated to the plaintiff and her group back to the Government.
 10. The 1st defendant's first witness was Peter Ndungu Wanyoike(DW1). DW1 was a land surveyor with the Nairobi City County Government. He told the court that the parcel of land known as LR No 209/5389, Grant No IR 13513 was owned by the Nairobi City County Government's predecessor, City Council of Nairobi ("the Council"). He stated that the City Council of Nairobi hold LR No 209/5389, Grant No IR 13513(hereinafter referred to only as "the council land") on a 99-year lease from the Government of Kenya with effect from June 1, 1949. He stated that the lease will expire in 1948. He stated that the council land that is situated in Bahati Nairobi measures 119 acres and that the same was registered on March 11, 1957. He stated that in 1992 the Council planned a portion of the council land and created a total of 116 plots which were allocated to various persons. He stated that a Part Development Plan (PDP) was prepared for that purpose. He stated that the land was undeveloped and as such it was necessary to re-plan it for housing to ease the housing demand in the city of Nairobi. He stated that the 1st defendant was one of the persons who were allocated one of the said 116 plots known as Plot No 7 Bahati Annex by the Council on August 3, 1992. DW1 stated that the survey plan through which the suit property was created is similar to the PDP through which 116 parcels of land were created from LR No 209/5389, Grant No IR 13513(the council land) and allocated to among others the 1st defendant. He stated that the said survey plan and the PDP were in respect of land in the same area. He stated that he plotted the survey plan Folio No 259 Register No 44 which has the suit property on the said PDP and found that it falls within the portion of LR No 209/5389, Grant No IR 13513(the council land) that was the subject of the PDP. He stated that following that plotting he found that the 15 plots that include the suit property falls within the northern side of LR



No 209/5389, Grant No IR 13513 (the council land). He stated that the council land from which the suit property among others was carved out was not uncommitted government land. He stated that the council land belonged to the council and was not available for allocation by the Commissioner of Lands.

11. DW1 stated that the Council took up the issue of double allocation of its land with the Commissioner of Lands and asked to the Commissioner of Lands to correct the anomaly. DW1 stated that the titles for the plots that were allocated to the 1st defendant among others by Council have not been processed due to the issue of double allocation by the Commissioner of Lands. DW1 reiterated that the suit property among others were created on top of the Councils existing title in respect of LR No 209/5389(council land). On cross-examination, DW1 stated that the 1st defendant's group could not be issued with titles because the plaintiff's group had been issued with titles in respect of the same parcels of land and which titles had not been cancelled. He stated further that the Commissioner of Lands did a mistake in creating titles on top of another.
12. The 1st Defendant gave Evidence next as DW2. DW2 adopted his witness statement dated August 13, 2014 as part of his Evidence in chief and produced documents numbers 1,2,3,4,7,8,12 and 13 in his list of documents dated August 13, 2014 as exhibits. DW2 stated that he had put up a 4 storey building on the suit property. He stated that the suit property belongs to him and not to the plaintiff. He urged the court to dismiss the plaintiff's suit and to cancel her title. On cross-examination, DW2 stated that he commenced construction in 2000 and completed the same in 2014. He stated further that he was told by the Council that it was processing his title and that the process had delayed because there were other titles that had been issued in respect of the same property that had to be cancelled before he could be issued with a title.
13. The 1st defendant's next witness was a land registrar Ms Gildine Karani(DW3). DW3 came to court to produce the records kept at the land registry relating to the council land. She brought with her a file containing the records relating to LR No 209/5389, Grant No IR 13513(council land). She told the court that according to the records held at the land registry, the Council was the leasehold proprietor of the property. She stated that the Council had issued several sub-leases which had been registered against the title. DW3 stated that the Council had not surrendered any portion of the council's land to the Government and that save for the subleases, the council's land remained intact. She produced a copy of the title for the council land as an exhibit.
14. The 1st defendant's last witness was Simon Ngumi Munyu(DW4). DW4 worked with the Survey of Kenya as Principal Land Surveyor. He told the court that he was summoned to attend court to produce the survey records relating to the council land. DW1 told the court that he brought one survey plan, Folio No 75 Register No 69 in respect of the council land. He stated that the council land measured 119 acres and was situated in Bahati. He stated that the Deed Plan for the council land was consistent with the survey plan aforesaid. DW4 stated that the suit property was created within the council land and that the surveyor who created the suit property did not refer to the survey plan for the council land. He stated that the survey giving rise to the suit property was conducted by a private surveyor and that he failed to refer to the older survey records. On cross-examination, he stated that the suit property overlapped the council land and that that was very clear when the coordinates in the survey plans creating two parcels of land were considered. On re-examination, DW4 stated that the survey plan that created among others the suit property would not have been authenticated by the Director of Surveys if all factors were considered and records checked.



The Submissions:

15. After the close of evidence, the parties were directed to make closing submissions in writing. The plaintiff filed submissions dated April 14, 2022 while the 1st defendant filed Submissions dated March 24, 2022. The plaintiff submitted that she acquired the suit property lawfully and that the 1st defendant did not prove allegations of fraud made against her. The plaintiff submitted that in the circumstances, her title is indefeasible. The plaintiff submitted that the 1st defendant did not establish that the parcel of land the subject of his counter-claim has any relationship with the suit property. The plaintiff submitted that she is the lawful proprietor of the suit property and urged the court to enter judgment in her favour and to dismiss the 1st defendant's counter-claim against her.
16. On his part, the 1st defendant submitted that the suit property was not government land and as such the same was not available for allocation to the plaintiff. The 1st defendant submitted further that the suit property was created from LR No 209/5389(council land) that was allocated to the City Council of Nairobi (Council) in 1957 for a term of 99 years with effect from June 1, 1949 and as such the same could not be again allocated to the plaintiff while the lease to the Council was subsisting. The 1st defendant submitted that its claim over the suit property was anchored on the Council's title. The 1st defendant submitted that the Council subdivided a portion of its parcel of land LR No 209/5389 into several plots and allocated one of the plots namely, Plot No 7 to the 1st defendant. The 1st defendant submitted that as at the time the Commissioner of Lands purported to allocate the suit property to the plaintiff, the property was not available for allocation as it was neither uncommitted Government land nor planned Government land. The 1st defendant submitted that the plaintiff's claim over the suit property cannot stand because its title was created from land that belonged to the Council and as such it is legally untenable. The 1st defendant submitted that the plaintiff's title was created over another title. The 1st defendant submitted further that his claim over the suit property is well grounded in that it has its root on the title held by the council who allocated the same to the 1st defendant. The 1st defendant urged the court to dismiss the plaintiff's suit and to enter judgment in his favour as prayed in the counter-claim.

Analysis and Determination:

17. I have considered the pleadings, the evidence tendered by the parties in support of their respective cases and the submissions by the advocates for the parties. From the pleadings, the following in my view are the issues arising for determination in this suit;
 1. Whether the plaintiff is the lawful owner of the suit property.
 2. Whether the 1st defendant is a trespasser on the suit property.
 3. Whether the plaintiff is entitled to the reliefs sought in her plaint.
 5. Whether the 1st defendant is entitled to the reliefs sought in his counter-claim.
 6. Who is liable for the costs of the suit and the counter-claim?

Whether the plaintiff is the lawful owner of the suit property.

18. The suit property was allocated to the plaintiff through a letter of allotment dated July 1, 1994 as "UNS. Residential Plot "B" Bahati, Nairobi". The plaintiff was in a group 15 people who applied to the Commissioner of Lands on April 6, 1994 to be allocated what was referred to as "A Government Plot: Nairobi." After paying the necessary charges the plaintiff was issued with Grant No 71179 in



respect of the suit property, LR No 209/ 12552 on September 25, 1996. The title was registered on November 6, 1996.

19. The 1st defendant has contended that the suit property was allocated to the plaintiff irregularly in that the suit property was carved out from a parcel of land known as LR No 209/5389 (the council land) that was leased to the City Council of Nairobi (the Council) by the Crown/Government of Kenya on March 11, 1957 for a term of 99 years with effect from June 1, 1949. The 1st defendant has contended that as at July 1, 1994 when the suit property was allocated to the plaintiff, the suit property belonged to the Council and as such the same was not unalienated government land that could be allocated to the plaintiff or any other person. The 1st defendant has contended further that as at that date, the Council had already subdivided a portion of LR No 209/5389(council land) from which the suit property was carved out into several plots one of which it allocated to the 1st defendant on August 3, 1982 as Plot No 7 which is the same parcel of land (the suit property) claimed by the plaintiff. The 1st defendant has contended that since the plaintiff's title was created over an existing title owned by the Council that had not been surrendered to the Government and which the Council had already allocated to the 1st defendant, the title was illegal, null and void.
20. The question that I need to answer is whether it has been established that the suit property is within the council land and if so, whether the plaintiff's title to the suit property is lawful. In order to determine these issues, it is necessary to consider in detail the law on allocation of public land and the circumstances under which title to land may be held to be invalid.

Section 3(a) of [Government Lands Act](#), Chapter 280 Laws of Kenya (now repealed) provides that;

“The President, in addition to, but without limiting, any other right, power or authority vested in him under this Act, may—

(a)* subject to any other written law, make grants or dispositions of any estates, interests or rights in or over unalienated government land;”

Unalienated Government land” is defined in section 2 of the [Government Lands Act](#) (now repealed) as:

“Government land which is not for the time being leased to any other person, or in respect of which the Commissioner has not issued any letter of allotment”.

Section 7 of the [Government Lands Act](#) provides that:

“The Commissioner or an officer of the Lands Department may, subject to any general or special directions from the President, execute for and on behalf of the President any conveyance, lease or licence of or for the occupation of Government lands, and do any act or thing, exercise any power and give any order or direction and sign or give any document, which may be done, exercised, given or signed by the President under this Act:

Provided that nothing in this section shall be deemed to authorize the Commissioner or such officer to exercise any of the powers conferred upon the President by sections 3, 12, 20 and 128.”

The suit property was registered under the [Registration of Titles Act](#), Chapter 281 Laws of Kenya (now repealed). Section 23 of the [Registration of Titles Act](#) provides as follows:

“The certificate of title issued by the registrar to a purchaser of land upon a transfer or transmission by the proprietor thereof shall be taken by all courts as conclusive evidence that the person named therein as proprietor of the land is the absolute and indefeasible owner



thereof, subject to the encumbrances, easements, restrictions and conditions contained therein or endorsed thereon, and the title of that proprietor shall not be subject to challenge, except on the ground of fraud or misrepresentation to which he is proved to be a party”.

Section 26 of the [Land Registration Act, 2012](#) which repealed the [Registration of Titles Act](#), provides as follows:

“26.

- (1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—
 - (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
 - (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.
- (2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original.”

Article 40 of the [Constitution](#) provides that:

- “(1) Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property—
 - (a) of any description; and
 - (b) in any part of Kenya.
- (2) Parliament shall not enact a law that permits the State or any person—
 - (a) to arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description; or
 - (b) to limit, or in any way restrict the enjoyment of any right under this Article on the basis of any of the grounds specified or contemplated in Article 27 (4).
- (3) The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation—
 - (a) results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or



- (b) is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that—
 - (i) requires prompt payment in full, of just compensation to the person; and
 - (ii) allows any person who has an interest in, or right over, that property a right of access to a court of law.
- (4) Provision may be made for compensation to be paid to occupants in good faith of land acquired under clause (3) who may not hold title to the land.
- (5) The State shall support, promote and protect the intellectual property rights of the people of Kenya.
- (6) The rights under this Article do not extend to any property that has been found to have been unlawfully acquired.”

21. In *Munyu Maina v Hiram Gathiba Maina* [2013] eKLR, the Court of Appeal stated 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 need not be noted on the register.”

22. In *Daudi Kiptugen v Commissioner of Lands & 4 Others* [2015] eKLR the court stated that:

“...the acquisition of title cannot be construed only in the end result; the process of acquisition is material. It follows that if a document of title was not acquired through a proper process, the title itself cannot be a good title. If this were not the position then all one would need to do is to manufacture a Lease or a Certificate of title at a backyard or the corner of a dingy street, and by virtue thereof, claim to be the rightful proprietor of the land indicated therein.”

23. In the case *Henry Muthee Katburima v Commissioner of Lands & Another* [2015] eKLR, the Court of Appeal stated that:

“We have considered the provisions of Section 26 of the Land Registration Act in light of the provisions of Article 40(6) of the Constitution and it is our considered view that the concept of indefeasibility of title is subject to Article 40(6) of the Constitution. Guided by Article 40 (6) of the Constitution, we hold that the concept of indefeasibility or conclusive nature of title is inapplicable to the extent that the title to the property was unlawfully acquired.”

24. I am satisfied from the evidence placed before the court by the 1st defendant that the suit property was irregularly and illegally created. The 1st defendant has placed irrefutable evidence showing that the suit property was among several other plots that were irregularly created by the Commissioner of Lands from the Councils parcel of land, LR No 209/5389. When the Commissioner of Lands purported to give authority on or about May 11, 1994 for Part Development Plan(PDP) to be prepared in respect of among others the suit property, the land that was the subject of the PDP was owned by



the Council which had a subsisting lease in respect thereof. The land was not unalienated Government land and as such the same was not available for planning and alienation by the Government. It follows therefore that the plots that were created through PDP No 42.18.94.12 dated May 11, 1994 were created over land that was already alienated to the Council and a title issued and as such were irregularly and unlawfully created. The title held by the plaintiff having been created unlawfully, the same is illegal, null and void. It is my finding therefore that the plaintiff does not hold a valid title to the suit property.

Whether the 1st defendant is a trespasser in the suit property.

25. Trespass has been defined as any intrusion by a person on the land in the possession of another without any justifiable cause. See, *Clerk & Lindsell on Torts*, 18th Edition, page 923. In *Gitwany Investments Limited v Tajmal Limited & 3 others* [2006] eKLR, it was held that title to land carries with it legal possession. I have made a finding that the plaintiff does not hold a valid title in respect of the suit property. It is also not disputed that the plaintiff has never taken possession of the suit property since the same was allocated to her in 1994. Since the plaintiff has no valid title over the suit property, she cannot maintain an action for trespass. I have held further that the suit property is part of LR No 209/5389 owned by the Council. The 1st defendant has placed evidence before the court showing that the Council subdivided a portion of the said parcel of land, LR No 209/5389 in 1992 into several plots and allocated one of the plots namely, Plot No 7 to the 1st defendant on August 3, 1992. The 1st defendant has demonstrated that it is this Plot No 7 which is the subject of the plaintiff's claim. The 1st defendant has demonstrated that he met the conditions of the allotment and was given possession of the said plot. The 1st defendant has demonstrated that he has developed the plot and that he is in occupation of the same. The 1st defendant having acquired the suit property from the lawful owner thereof, the 1st defendant is the lawful beneficial owner of the property. As the owner of the suit property, the 1st defendant has a right to enter, use and deal with the property in any manner deemed fit. The 1st defendant is therefore not a trespasser on the suit property.

Whether the plaintiff is entitled to the reliefs sought in her plaint.

26. From the foregoing findings by the court, the plaintiff has not proved her claim against the defendants. The plaintiff is therefore not entitled to any of the reliefs sought in her further amended plaint.

Whether the 1st defendant is entitled to the reliefs sought in his counter-claim.

27. The 1st defendant has proved that the suit property was created illegally and that the plaintiff does not hold a valid title in respect thereof. In the circumstances the 1st defendant is entitled to the reliefs sought in his counter-claim.

Who is liable for the costs of the suit?

28. In the Supreme Court of Uganda case of *Impressa Ing Fortunato Federice v Nabwire* [2001] 2 EA 383 the court stated that:

“The effect of section 27 of the Civil Procedure Act is that the Judge or court dealing with the issue of costs in any suit, action, cause or matter has absolute discretion to determine by whom and to what extent such costs are to be paid; of course, like all judicial discretions, the discretion on costs must be exercised judiciously and how a court or a judge exercises such discretion depends on the facts of each case. ... While it is true that ordinarily, costs should follow the event unless for some good reason the court orders otherwise, the principles to be applied are: - (i). Under section 27(1) of the Civil Procedure Act (Chapter 65), costs should



follow the event unless the court orders otherwise. This provision gives the judge discretion in awarding costs but that discretion has to be exercised judicially. (ii). A successful party can be denied costs if it is proved that but for his conduct the action would not have been brought.”

29. In the present case, the plaintiff has failed in her claim while the 1st defendant has succeeded in his counter-claim. No reason has been put forward by either party to warrant a departure on the general rule on costs. The 1st defendant shall have the costs of the suit and the counter-claim.

Conclusion:

30. In conclusion, I hereby make the following orders;

1. The plaintiff's suit is dismissed.
2. Judgment is entered for the 1st defendant in his counter-claim for;
 - a) A declaration that LR No 209/12552 forms part of the larger parcel of land known as LR No 209/5389 owned by the City Council of Nairobi.
 - b) A declaration that the Commissioner of Lands did not have the capacity to allocate the suit property to the plaintiff and that as at July 1, 1994, the property was not available for allocation to the plaintiff.
 - c) Grant No IR 71179 for LR No 209/12552 issued by the Commissioner of Lands to the plaintiff is hereby cancelled.
- 3 The 1st defendant shall have the costs if the suit and the counter-claim.

DELIVERED AND DATED AT KISUMU THIS 24TH DAY OF NOVEMBER 2022

S. OKONG'O

JUDGE

Judgment delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:

N/A for the Plaintiff

Mr. K.Ombati for the 1st Defendant

N/A for the 2nd and 3rd Defendants

Ms. J.Omondi-Court Assistant

