



**Kilonzo v Kiige; Embakasi Ranching Company Limited (Interested Party) (Environment and Land Case Civil Suit E285 of 2022) [2025] KEELC 377 (KLR) (3 February 2025) (Judgment)**

Neutral citation: [2025] KEELC 377 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE CIVIL SUIT E285 OF 2022**

**EM WASHE, J  
FEBRUARY 3, 2025**

**BETWEEN**

**DOMITILA MUMBUA KILONZO ..... PLAINTIFF**

**AND**

**JOHN KAMAU KIIGE ..... DEFENDANT**

**AND**

**EMBAKASI RANCHING COMPANY LIMITED ..... INTERESTED PARTY**

**JUDGMENT**

1. The Plaintiff filed a Complaint dated September 8, 2022 (hereinafter referred to as “the present suit”) seeking the following Orders against the Defendant; -
  - a. A declaration that the Plaintiff, pursuant to the Certificate of Lease dated 18<sup>th</sup> September 2017 is the lawful registered owner of land parcel number Title No. Nairobi/Block 105/7986 measuring approximately 0.108000 Hectares situated in Embakasi Ranching Company on Nairobi County.
  - b. An Order to evict the Defendant or their agents, employees, servants, nominees, hirelings, goons or otherwise from the suit property, to demolish all illegal structures erected upon and to restore to its former condition all that parcel of land Title No. Nairobi/Block 105/7986 measuring approximately 0.108000 Hectares situated in Embakasi Ranching Company in Nairobi County.
  - c. An Order of permanent injunction restraining the Defendant by himself, his agents, employees, servants, nominees, hirelings, goons, any other person claiming under them or otherwise from in any way invading, entering upon, trespassing or continuing to trespass upon, settling on, occupying, utilizing, erecting illegal structures, threatening the Plaintiff, destroying



boundary marks, selling, leasing, wasting or purporting and holding out to be owners or otherwise in any manner dealing or interfering with the Plaintiff's exclusive possession, occupation, use and ownership of all that parcel of land Title No. Nairobi/Block 105/7986 measuring approximately 0.10800 Hectares or thereabouts, situated in Embakasi Ranching Company in Nairobi County.

- d. An Order directing the Officer Commanding Police Division (OCPD) Ruai and the officers working under them at police posts, to ensure that the Defendant complies with the Orders (b) and (c) above, that he does not engage in acts of lawlessness or any manner breach of the peace.
  - e. General damages on the footing of punitive or exemplary damages on account of the Defendant's wrongful actual possession and trespass to the Plaintiff's parcel of land known as LR.No.Nairobi/Block 105/7986 measuring approximately 0.10800 hectares or thereabout, situated in Embakasi Ranching Company in Nairobi County.
  - f. Cost of this suit be awarded to the Plaintiff.
  - g. Any other relief or order that this Honourable Court may, in the interest of justice, deem fit to grant.
2. The facts in support of the prayers above can be summarised as follows; -
- a. The Plaintiff herein is the lawful and registered owner of the property known as LR.No.Nairobi/Block 105/7986 measuring approximately 0.10800 Hectares or thereabout, which land she bought from Embakasi Ranching Company Limited in the year 1988 and issued with a Certificate of Lease on 18.09.2017.
  - b. However, in the same year 2017, the Defendant herein without any colour of right claimed ownership of the same portion of land and erected temporary structures thereon destroying the beacon markings that delineate the suit property.
  - c. Despite demands from the Plaintiff to the Defendant to demolish, remove and vacate the suit property, the Defendant has refused, neglected and/or failed to comply.
  - d. The Plaintiff's prayer therefore is that the Defendant be ordered to demolish, remove and vacate the suit property which belongs to the Plaintiff.
3. The present suit was duly served on the Defendant who duly acknowledged receipt thereof.
4. The Defendant in response to the present suit filed a Statement of Defence and Counter-Claim dated 24.01.2023.
5. The Defendant in the Statement of Defence challenged the Plaintiff's case on the following grounds; -
- a. The Defendant herein is the co-administrator and beneficiary of the Estate of one Flomena Wanjiku Kiige (Deceased) who was his biological mother.
  - b. The Defendant pleaded that his parents Flomena Wanjiku Kiige (deceased) and Kiige Kabuchi (deceased) were members of Hamza Traditional Group which had bought shares in Embakasi Group Ranch sometime in 1978.
  - c. The Defendant further pleaded that Flomena Wanjiku Kiige (deceased) was issued with a Share Certificate No. 7126 on the 31.12.1978.



- d. Based on the Share Certificate No. 7126 dated 31.12.1978, the late Flomena Wanjiku Kiige was allocated Plot.No.F.275 by Embakasi Ranching Company Limited through a Letter of Allotment dated 28.11.1982.
  - e. On the other hand, the Defendant's father Kiige Kabuchi (deceased) registered his sister Nyambura Kiige Mureithi to own his share and the said Nyambura Kiige Mureithi was issued with a Share Certificate No. 7127 on the 31.12.1978.
  - f. The person known as Nyambura Kiige Mureithi was then based on the Share Certificate No. 7127 and dated 31.12.1978 was allocated a parcel of land known as F 276 by Embakasi Ranching Company Limited and a bonus Plot.No. F 276 B.
  - g. Similarly, Flomena Wanjiku Kiige was allocated Plot.No. F275-B which she paid for KShs 6,000/- on the 17.10.1994 and its is this Plot No. F275-B that is now titled as LR.No.Nairobi/Block 105/7986.
  - h. However, instead of the property known as F 275-B now registered as LR.No.Nairobi/Block 105/7986 being registered in the name of the Defendant, the same was registered in the name of the Plaintiff herein.
  - i. The Defendant's position therefore is that the suit property herein was fraudulently and unlawfully registered in the name of the Plaintiff without proper and legitimate documents therein.
  - j. The Defendant proceeded to state that he has been on the suit property for the past 19 years and by the time the Plaintiff was erecting a perimeter wall, the Defendant had already built a two-bedroom semi-permanent house with a toilet and done some cultivation.
  - k. The Defendant further averred that even if the Plaintiff's registration as the owner of the suit property was lawful, which was denied, then his cause of action was time barred and the Defendant had a valid claim through adverse possession for having occupied the suit property for over a period of 12 years.
  - l. In conclusion therefore, the Defendant sought this court to dismiss the present suit with costs.
6. In addition to the Statement of Defence, the Defendant filed a Counter-Claim against the Plaintiff seeking the following Orders; -
- a. A permanent injunction restraining the Defendant by herself, her agents or servants or any person claiming under her or otherwise from in any way entering, alienating and/or in any way interfering with the Plaintiff's (Defendant's) use and quite enjoyment of the Plot. No. F 275-B (Title Number LR.No.Nairobi/Block 105/7986).
  - b. A declaration that Plot. No. F 275-B (LR.No.Nairobi/Block 105/7986) belongs to the Estate of Flomena Wanjiku Kiige (deceased).
  - c. An Order directing the Chief Land Registrar to cancel Certificate of Lease Title No. LR.No.Nairobi/Block 105/7986 in the name of Domitila Mumbua Kilonzo and have the same registered in the name of Flomena Wanjiku Kiige (deceased).
  - d. General Damages.
  - e. Costs of the suit.
  - f. Any other order as the Court may deem appropriate.



7. The Statement of Defence and Counter-Claim by the Defendant were served on the Plaintiff who responded to them through a Reply to Defence and Defence to Counter-Claim dated 17.02.2023.
8. In the Reply to Defence by the Plaintiff, the following facts were pleaded; -
  - a. The Plaintiff stated that she was allocated P2255B now registered as LR.No.Nairobi/Block 105/7986 directly by Embakasi Ranching Limited and did not purchase the same from the alleged person known as Christine Njeri.
  - b. The Plaintiff pleaded that the documents and/or receipts produced by the Defendant as confirmation of paying for the property known as Plot.No. F275-B which is now alleged to be Plot.No. F275-B did not belong to the Defendant and in fact were payments for membership and survey fees of a bonus plot which was not indicated in the said receipts.
  - c. The Plaintiff further pleaded that the Receipts produced by the Defendant did not demonstrate allocation of the property known as Plot.No. F275-B by Embakasi Ranching Company Limited to the Defendant and/or the Defendant did not show the Application for Consent to Transfer lodged by Embakasi Ranching Company Limited with the Commissioner of Lands in favour of the Defendant's mother known as Flomena Wanjiku Kiige.
  - d. In essence, the Plaintiff averred that the Defendant had not tabled any ownership document relating to the suit property herein.
  - e. Further to that, the Plaintiff pleaded that at the time of allocation of the property known as Plot.No.P2255B now the suit property, the same was vacant and without any occupation until the year 2013 when the Defendant unlawfully and illegally entered into the suit property and erected a two-bedroom semi-permanent house.
  - f. The Plaintiff reiterated that she is the absolute and lawful owner of the Plot. No. P2255B now the suit property having duly acquired the same through a Transfer by Embakasi Ranching Company Limited and the Certificate of Lease issued to her is prima facie evidence of her legitimate and lawful ownership.
  - g. The Plaintiff further pleaded that the Defendant's occupation since the year 2013 has been always contested through complains before the local administration and therefore the said occupation is not one that can be deemed open and uninterrupted as alleged for the last 12 years.
  - h. In conclusion, the Plaintiff sought this Court to dismiss the Defendant's Defence and enter judgement in line with the prayers sought in the present suit.
9. As regards the Counter-Claim by the Defendant, the Plaintiff filed a Defence to Counter-Claim of which he also pleaded as follows; -
  - a. The Plaintiff stated that the Defendant did not have any documentary proof that the late Flomena Wanjiku Kiige was the bona-fide owner of the suit property and/or the entity known as Embakasi Ranching Company Limited had ever transferred the suit property to her.
  - b. The Plaintiff further stated that there is no evidence placed before the Court to prove that the suit property was part of the Estate of the late Flomena Wanjiku Kiige who the Defendant now alleges to be heir for the same.
  - c. The Plaintiff averred that if indeed the suit property belonged to the late Flomena Wanjiku Kiige who died on 12.07.2021, then any claim by the Estate of the late Flomena Wanjiku Kiige



against the Plaintiff is time barred keeping in mind that Certificate of Title in favour of the Plaintiff was issued in the year 2007.

- d. The Plaintiff pleaded that there was no prove that the property known as F275-B being claimed by the Defendant is actually the same as the suit property that is registered in the name of the Plaintiff herein.
  - e. As regards the Defendant's Receipt No. 3926 dated 17.10.1994, the Plaintiff's view was that the said payment of Kshs. 6,000/- was for payment of registration fees and survey fees by the late Flomena Wanjiku Kiige and there was not indication that such payments were for Plot. No. F 275-B as pleaded.
  - f. On the allegations that a sum of Kshs. 50,000/- was paid on the 23.03.2015 by the late Flomena Wanjiku Kiige to Embakasi Ranching Company Limited for Title processing, the Plaintiff indicated that there was no evidence of any Transfer documents and/or a Certificate of Lease issued by the Chief Land Registrar to that effect.
  - g. On the issue of possession, the Plaintiff reiterated that the Defendant took possession of the suit property in the year 2013 and his occupation on the same has been disputed from the very beginning and can not be deemed to be open and uninterrupted as claimed.
  - h. Consequently, the Plaintiff having duly been recognised as the legitimate owner of the Plot. No. P2255B and subsequently issued with an appropriate Certificate of Lease, then it is clear that she is the lawful and bona-fide owner of the suit property to the exclusion of any other person including the Defendant.
    - i. In the end, the Plaintiff sought for the Counter-Claim to be dismissed with costs.
10. After filing of the Reply to Defence and Defence to Counter-Claim, the present suit was listed for pre-trial and certified ready for hearing on 04.12.2024.
  11. On the 04.12.2024, the matter proceeded for hearing after having confirmed that the Defendant was served with a Hearing Notice dated 27.11.2024 by the Court process server on their Advocates registered email.

### **Plaintiff's Case**

12. The Plaintiff's case proceeded on the 04.11.2024 with the Plaintiff being the first witness who was marked as PW 1.
13. The Plaintiff informed the Court that she had prepared and filed a witness statement dated 08.09.2022 of which she adopted as her evidence in chief.
14. Further to that, the Plaintiff produced the following documents in support of her case;-
  - PW 1 Exhibit 1- Copy of the Certificate of Incorporation of Embakasi Group Ranch Limited.
  - PW 1 Exhibit 2- Copy of Share Certificate No. 11941 issued by Embakasi Group Ranch Limited in the name of the Plaintiff.
  - PW 1 Exhibit 3- Copy of the Transfer of Lease relating to LR.No.Nairobi/Block 105/4879 from Embakasi Ranching Company Limited to the Plaintiff dated 14.11.2006.
  - PW 1 Exhibit 4- Copy of the Lease Agreement between Embakasi Ranching Company Limited and the Plaintiff over LR.No.Nairobi/Block 105/4879 dated 17.10.2006.



PW 1 Exhibit 5- Copy of the booking Form of the Transfer of Lease dated 09.02.2004.

PW 1 Exhibit 6- Copy of Stamp duty payment for the Transfer of Lease dated 08.06.2007.

PW 1 Exhibit 7- Copy of an Official Search for property LR.No.Nairobi/Block 105/4879 dated 07.05.2018.

PW 1 Exhibit 8- Copy of an Official Search for property LR.No.Nairobi/Block 105/4879 dated 06.06.2019

PW 1 Exhibit 9- Copy of a Certificate of Lease in favour of the Plaintiff over the property known as LR.No.Nairobi/Block 105/4879 dated 09.02.2007.

PW 1 Exhibit 10- Copy of Receipts from Embakasi Ranching Company Limited issued on the 29.01.1997 for the bonus plot identified as P.2255-B now LR.No.Nairobi/Block 105/7986.

PW 1 Exhibit 11- Copy of a Police Abstract from Kilimani Police Station relating to the Loss of a Share Certificate of Plot.No.P 2255-B dated 23.02.2022.

PW 1 Exhibit 12- Copy of an affidavit sworn by the Plaintiff on the 23.02.2012 relating to the loss of the Share Certificate of Plot. No. P 2255-B.

PW 1 Exhibit 13- Copy of a Receipt from Embakasi Ranching Company Limited to the Plaintiff relating to Plot.No.P.2255-B.

PW 1 Exhibit 14- Copy of a Receipt for a site visit by Embakasi Ranching Company limited dated 19.08.2014 and 20.11.2024.

PW 1 Exhibit 15- Copy of an Application for consent to transfer relating to the property known as LR.No.Nairobi/Block 105/7986 from Embakasi Ranching Company Limited to the Plaintiff dated 20.11.2024.

PW 1 Exhibit 16- Copy of a letter dated 15.04.2015 from one Simon K. Mbia to Embakasi Ranching Company Limited over the property known as LR.No.Nairobi/Block 105/7986.

PW 1 Exhibit 17- Copy of the Lease Agreement between Embakasi Ranching Company Limited and the Plaintiff over LR.No.Nairobi/Block 105/7986 dated 12.08.2015.

PW 1 Exhibit 18- Copy of the Transfer of Lease from Embakasi Ranching Company Limited to the Plaintiff relating to LR.No. Nairobi/Block 105/7986 dated 18.09.2017.

PW 1 Exhibit 19- Copy of a Certificate of Lease over LR.No.Nairobi/Block 105/7986 dated 18.09.2017.

PW 1 Exhibit 20- Copy of an official search of LR.No.Nairobi/Block 105/7986.

PW 1 Exhibit 21- Copy of the Survey Map from the Director of Survey showing the location of LR.No.Nairobi/ Block 105/7986.

PW 1 Exhibit 22- copies of Rates payment receipts for LR.No.Nairobi/Block 105/7986 between 2017 and 2022.

PW 1 Exhibit 23- Copy of a letter dated 30.11.2017 from the Chief Ruai Location to Whom It May Concern.

PW 1 Exhibit 24- Copy of a Demand Letter dated 12.11.2018 from the Plaintiff's lawyer to the Defendant.



PW 1 Exhibit 25- Copy of a Police Statement made by the Plaintiff on 03.02.2022 at Ruai Police Station against the Defendant over the suit property.

PW 1 Exhibit 26- Copy of Police Statement made by the Defendant on 22.03.2022 at Ruai Police Station regarding the suit property.

15. The Plaintiff therefore sought the court to grant the prayers sought in the Amended Plaint and evict the Defendant from the suit property.
16. Further to that, the Plaintiff requested that the Defendant be ordered to restore the suit property in the manner it was before his unlawful occupation and the Officer in Charge of Ruai Police Station to ensure compliance with the said orders.
17. At the end of this testimony in chief, the Plaintiff was discharged from the witness box and the Plaintiff's case closed thereafter.

### **Defence Case**

18. Neither the Defendant nor the Defence Counsel was present dispute service of the hearing date by the Court process server.
19. There was no reason as to why the Defendant and/or the Defence Counsel had failed to appear and the Court therefore marked the Defence case as closed.
20. The Plaintiff's Counsel was directed to prepare, file and serve their final submissions which directions they complied with.
21. The Court has gone through the pleadings, the testimony of the Plaintiff and the evidence produced during the hearing and the following issues are hereby identified for determination; -

Issue No.1- Which of the two plots known as F.285-B & P2255-B Created the property known as LR.No.Nairobi/Block 105/7986?

Issue No. 2- Was the registration of the property known as LR.No.Nairobi/Block 105/7986 to the plaintiff lawful?

Issue No. 3- Is the defendant in lawful occupation and/or use of the property known as LR.No.Nairobi/Block 105/7986?

Issue No. 4- IS The plaintiff entitled to the prayers sought in the amended plaint dated 15.04.2024?

Issue No.5- Is the counter-claim dated 24.01.2023 merited?

Issue No. 6- Who bears the costs of the main suit & counter-claim?

22. The Court having identified the above-mentioned issues, the same will now be discussed below.

### **Issue No.1- Which of the Two Plots Known As F.285-b & P2255-B Created the Property Known As LR.No.Nairobi/Block 105/7986?**

23. The first issue for determination is which between the Plots known as Plot.No. P.2255B belonging being claimed by the Plaintiff and Plot.No. F.285-B being claimed by the Defendant created the suit property.



24. The Plaintiff states that she was allocated and/or assigned the Plot known as Plot.No.P2255B by the Interested Party herein and thereafter the said Plot was registered as the present suit property.
25. The Defendant on the other hand in his pleadings stated that the Plaintiff herein processed the Certificate of Lease to the suit property using fake documents.
26. According to the Defendant's pleadings, the suit property should be created from Plot.No. F.285-B which belongs to the late Flomena Wanjiku Kiige.
27. At the hearing of the Plaintiff's case, the Plaintiff produced her Share Certificate No. 11941 issued to her by the Interested Party on the 19.04.1988 as PW 1 Exhibit 2.
28. Looking at this Share Certificate, the name of the Plaintiff herein appears as one of the legitimate shareholders of the Interested Party.
29. Based on the Share Certificate No. 11941 issued on 19.04.1998, the Plaintiff herein was issued a Bonus Plot.No. P.2255-B by the Interested Party through a Payment Receipt No. 00254 on the 29.01.1997 which has been produced as PW 1 Exhibit 10.
30. The Court has thoroughly perused the Plaintiff's Exhibit PW 1 Exhibit 10 and confirms that indeed, the Plaintiff herein was assigned and/or allocated a Bonus Plot.No.P.2255-B on the 29.01.1997 based on the Share Certificate No. 11941.
31. The Plaintiff's Exhibit PW 1 Exhibit 10 also indicates that the fees payable to the Bonus Plot amounting to KShs 6,000/- were duly paid and received by the Interested Party.
32. In addition to the Payment Receipt produced as PW 1 Exhibit 10, the Plaintiff also produced PW 1 Exhibit 14 (a) (b) and (c) which include the Payment Receipt for the Site Visit for the property known as P.2255-B dated 19.08.2014, the Receipt for the Title Processing Fees dated 20.04.2014 and the Site Visit Confirmation Note by the Interested Party dated 07.10.2014 which also contains the approval that the Title of P.2255-B can now be processed made on the 21.10.2014.
33. The important document among Exhibits PW 1 Exhibit 14 is Exhibit 14 (B) which is the payment Receipt dated 20.11.2014.
34. In this Receipt No. 040897 issued to the Plaintiff on the 20.11.2014 by the Interested Party, there is an indication on the face of the said Receipt that the resultant property emanating from the property known as Plot No.P.2255-B is Nairobi Block/105/7986.
35. Further to the above, in the Site Visit Confirmation Note by the Interested Party dated 07.10.2014 and the subsequent Approval by the Interested Party that the Plaintiff can now proceed and process the resultant Certificate of Lease which was done on 21.10.2014 and forms part of PW 1 Exhibit 14 (C), the Interested Party indicated that the resultant property from P.2255-B is LR.No.Nairobi/Block 105/7986.
36. The Defendant on the other hand did not attend the hearing of the Plaintiff's case.
37. However, from the Pleadings filed in Court, the Defendant's position was that the suit property emanated from Plot.No. F.275-B which was registered in the name of the late Flomena Wanjiku Kiige.
38. According to the Defendant, the late Flomena Wanjiku Kiige was a registered Shareholder of the Interested Party based on the Share Certificate No. 7126 issued on the 31.12.1978.



39. Thereafter, based on the Share Certificate No. 7126, the late Flomena Wanjiku Kiige paid a further KShs 6,000/- which was for the Bonus Plot known as Plot.No. F.275-B which is now titled as LR.No.Nairobi/Block105/7986.
40. Unfortunately, all these documents referred to were not produced by the Defendant in Court due to his none- attendance.
41. However, regardless of the Defendant's absence, this Court is satisfied that the Plaintiff has demonstrated the relationship of the property known as Plot.No. P.2255B and the resultant LR.No.Nairobi/Block 105-7986 and as such, a finding is hereby made that indeed Plot.No. P.2255-B is the one that was registered as LR.No.Nairobi/Block 105/7986 by the Interested Party.

**Issue No. 2- Was the Registration of the Property Known as LR.No.Nairobi/Block 105/7986 to the Plaintiff Lawful?**

42. The second issue is the manner or procedure that the Plaintiff undertook to become the registered owner of the suit property.
43. The Plaintiff in her pleadings as well as the testimony before the Court stated that she was a registered member of the Interested Party and therefore allocated the property known as Plot.No.P2255-B based on the Share Certificate No. 11941.
44. It is this property known as Plot.No.P2255-B that was later registered in the name of the Plaintiff herein after issuance of the Certificate of Lease under LR.No.Nairobi/Block 105/7986.
45. The Defendant on the other hand disputed the Plaintiff's registration on the suit property on the basis that it was undertaken using forged and/or fraudulent documents hence the registration of the Plaintiff's name on it is illegal and unlawful.
46. According to the Pleadings filed by the Defendant, the suit property herein emanates from the property known as F.275-B which was allocated to the late Flomena Wanjiku Kiige who held the Share Certificate No. 7126.
47. The Defendant also pleaded that the Late Flomena Wanjiku Kiige paid the appropriate fees after allocation of the property known as Plot.No. F.275-B to the Interested Party hence she is the legitimate and lawful owner of the resultant property known as LR.No.Nairobi/Block 105/7986 which the resultant property thereof.
48. to begin with, the Defendant did not attend Court and produce the documentary evidence that he relied upon in his pleadings filed before this Court.
49. Nevertheless, this Court in Issue No. 1 made a finding that based on the documentary evidence produced by the Plaintiff, it was satisfied that this suit property emanated from Plot.No. P.2255-B.
50. Further to that, the Plaintiff also produced PW 1 Exhibit 15, 16,17,18 & 19 which speak to the manner and procedure that was used to have the suit property registered in the name of the Plaintiff.
51. To begin with, PW 1 Exhibit 17 was first issued in the name of the Interested Party and thereafter the said Lease was transferred to the Plaintiff as contained in the Transfer of Lease dated 05.03.2017 and produced as PW 1 Exhibit 18 (a) (b) and (c).
52. In other words, the legal position on the ownership of the suit property was that it belonged to the Interested Party first as demonstrated by PW 1 Exhibit 17 before it was transferred to the Plaintiff through PW 1 Exhibit 18 (c) which was registered on the 18.09.2017.



53. According to the above documents, the procedure and manner in which the Plaintiff was registered as the proprietor of the suit property is properly documented and in accordance to the provisions of the *Land Registration Act*, No. 3 of 2012.
54. There is no evidence produced by the Defendant proving that the Plaintiff and/or the Interested Party used fraudulent documents or misrepresented any facts to procure the registration of the suit property either in the Interested Party's name or that of the Plaintiff.
55. In the Statement of Defence dated 24.01.2023, the Defendant pleaded that the suit property herein was sold to the Plaintiff by one Christine Njoki on or around the year 2013 when she first visited the suit property.
56. The Defendant further pleaded that at this particular time, he was already in possession and occupation of the suit property and had even submitted all the Title processing documents to the Interested Party for issuance of the appropriate Certificate of Title.
57. Unfortunately, the Defendant did not produce any documents of either the purported sale of the suit property from one Christine Njoki to the Plaintiff and/or evidence to show that indeed any documents of Plot.No. F.275-B had been submitted for processing of any title.
58. In the absence of such evidence, this Court is satisfied that the suit property was properly allocated to the Plaintiff herein as Plot.No. P.2255-B and thereafter transferred to her name once the Certificate of Lease was issued to the Interested Party by the Government of Kenya.
59. Based on the above observations, this Court makes a finding that the Plaintiff herein is the lawful and legitimate registered owner of the suit property herein in line with the provisions of Section 26 of the *Land Registration Act*, No. 3 of 2012.

**Issue No. 3- Is the Defendant In Lawful Occupation and/or Use of the Property Known as LR.No.Nairobi/Block 105/7986?**

60. The third issue is whether the Defendant's occupation on the suit property is lawful and legitimate or not.
61. The Plaintiff in the pleadings and the testimony before the Court submitted that the Defendant's occupation on the suit property is unjustified and without any legal right.
62. The Plaintiff demonstrated through the Exhibits produced at the hearing that the suit property is her lawful asset and she is entitled to sole possession of the same to the exclusion of any other person unless with her consent.
63. The Plaintiff produced various documents which included PW Exhibit 23, 24 and 25 to demonstrate the presence of the Defendant on the suit property which belongs to her.
64. Unfortunately, her efforts to regain possession and/or occupation of the suit property from the Defendant has not yielded any fruits as the Defendant adamantly declined to vacate and/or give possession and occupation of the same to the Plaintiff.
65. The Defendant in the Statement of Defence and the Counter-Claim confirmed that indeed he is in occupation of the suit property based on the Late Flomena Wanjiku Kiige's claim on a property known as Plot.No. F.275-B.
66. The Defendant in the Statement of Defence and Counter-Claim pleads that their occupation of the suit property started way back in 1994 and has continued up to date without any interruptions.



67. Based on the pleadings by both the Plaintiff and the Defendant, it is clear that currently, the suit property is occupied by the Defendant herein.
68. Having made this finding, the next question is whether the Defendant's occupation is with the consent of the Plaintiff who is the lawful and legitimate owner of the suit property or not.
69. According to the pleadings and testimony by the Plaintiff, no such consent and/or authority has been granted to the Defendant to occupy the suit property.
70. Similarly, the Defendant has not pleaded that he occupies the suit property with the consent of the Plaintiff.
71. This being the scenario, it goes without saying that the Defendant's occupation on the suit property which has already been declared to be lawfully and legitimately registered in the name of the Plaintiff is unlawful and illegitimate.
72. As such, this Court hereby makes a finding that the Defendant's occupation of the suit property is unlawful, illegitimate and illegal no matter how long the same has been perpetuated against the Plaintiff herein.

**Issue No. 4- Is the Plaintiff Entitled to the Prayers Sought in the Amended Plaint Dated 15.04.2024?**

73. The fourth issue is what remedies has the Plaintiff sought for that can be granted by this Court.
74. Based on the findings made under Issue No. 1 to 3, the Court is satisfied that the Plaintiff is entitled to Prayer No. A to C.
75. Prayer No. D is one that deals with enforcement of the Orders issued under Prayer No. A to C.
76. This Court is of the considered option that Court Orders can not be issued in vain and therefore, if need be, the assistance of the law enforcement entities is a crucial ingredient to ensure that such orders are complied with or enforced.
77. To this end, Prayer No. D is also merited to assist the Plaintiff enjoy the fruits of this judgement.
78. As to Prayer No. E, the Plaintiff did not produce any evidence and/or prove any damage within the suit property that would set a good foundation for a claim of any damages.
79. As such, this Court will not grant Prayer No. E in the Amended Plaint dated 15.04.2024.

**Issue No.5- Is the Counter-claim Dated 24.01.2023 Merited?**

80. Issue No. 5 regards the Counter-Claim filed by the Defendant on the 24.01.2023.
81. In the Counter-Claim dated 24.01.2023, the Plaintiff (Defendant in main suit) is seeking for a declaration that the Estate of the Late Flomena Wanjiku Kiige is the lawful and legitimate owner of the suit property herein which emanates from Plot.No. F.275-B.
82. Further to that, the Plaintiff (Defendant in the main suit) is seeking this Court to direct the Chief Land Registrar to cancel the Defendant's (Plaintiff in the main suit) Certificate of Lease and/or Title and issue one in the name of the Estate of Flomena Wanjiku Kiige.
83. Lastly, the Plaintiff (Defendant in the main suit) is seeking for a permanent injunction against the Defendant (Plaintiff in the main suit) from interfering with the occupation and/or use of the suit property as she has no colour of ownership over the same.



84. The Counter-Claim dated 24.01.2023 was opposed by the Defendant (Plaintiff in the main suit) through the Amended Plaintiff's Reply to Defence and Defence to Counter-Claim dated 15.04.2024.
85. This being the case, the Plaintiff (Defendant in the main suit) was suppose to prove the facts of the Counter-Claim in line with Section 107 of the Evidence Act, Cap 80.
86. However, the Plaintiff (Defendant in main suit) failed to appear in Court on the date of the hearing and consequently, the Counter-Claim was not prosecuted and proved as required by law.
87. As such, the allegations contained in the Counter-Claim dated 24.01.2023 were not proved and this Court makes a finding that the entire Counter-Claim fails for none-prosecution.

#### **Issue No. 6- Who Bears the Costs of the Main Suit & Counter-claim?**

88. The last issue is one that deals with costs that are incidental to any litigation.
89. The settled rule guiding the issue of costs is whoever loses is condemned to pay the costs to the winner.
90. In the present suit, the Plaintiff succeeded in proving her claim against the Defendant and is therefore awarded the costs of the main suit.
91. As regards the Counter-Claim, the Defendant (Plaintiff in the main suit) filed a Defence to the Counter-Claim as expected by law.
92. However, the Plaintiff (Defendant in the main suit) failed to attend Court and prosecute the said Counter-Claim thereby resulting to the same being dismissed.
93. Consequently, the Plaintiff (Defendant in the main suit) is condemned to pay the costs of defending the Counter-Claim to the Defendant (Plaintiff in the main suit).

#### **Conclusion**

94. In conclusion, this Court hereby makes the following orders in determination of the Amended Plaintiff dated April 15, 2023 and the Counter-Claim dated January 24, 2023; -
  - a. The amended plaintiff dated 15.04.2024 is merited.
  - b. A declaration be & is hereby made that the plaintiff pursuant to the certificate of lease dated 18.09.2017 is the lawful and legitimate owner of the property known as LR.No.Nairobi/Block 105/7986 measuring approximately 0.108000 hectares situated in embakasi ranching company in narobi county.
  - c. The defendant herein in person or through his agents, employees, servants, moninees, relatives, hurelings and/or goons are directed to vacate, leave, remove, demolish and/or hand over vacant possession and/or occupation of the property known as LR.No.Nairobi/Block 105/7986 to the plaintiff herein within 90 days from the date of this judgement failure to which an eviction order will automatically issue and the deputy registrar will execute the same thereafter.
  - d. An order of permanent injunction is hereby issued against the defendant in person or through his agents, employees, servants, moninees, relatives, hurelings, goons or any other person therein prohibiting them from entering, invading, interfering, constructing , purporting to sell, leasing, trespassing and/or in any other manner whatsoever dealing with the plaintiff's property knoww as LR.No.Nairobi/Block 105/7986 measuring 0.108000 hectares or thereabout situated in embakasi ranching company within nairobi county.



- e. In the event the defendant fails to comply with order hereinabove, the plaintiff shall engage the services of a registered court bailiff to enforce the eviction orders issued herein and such court bailiff shall seek assistance of the police station nearest to the plaintiff's property known as LR.No.Nairobi/Block 105/7986 to ensure that peace & order is maintained during any eviction process.
- f. The counter-claim dated 24.01.2023 is dismissed for want of prosecution.
- g. The plaintiff is awarded costs of the amended plaint dated 15.04.2024 & the counter-claim dated 24.01.2023.

**DATED, SIGNED & DELIVERED VIRTUALLY AT ELDORET ELC ON 3<sup>RD</sup> OF FEBRUARY 2025.**

**EMMANUEL.M. WASHE**

**JUDGE**

In the Presence of:

Court Assistant: Brian

Advocates for the Plaintiff: No Appearance

Advocates for the Defendant: No Appearance

