



**Thuo t/a Export Solve Agencies v Atenya & 7 others (Environment & Land Case 85 of 2019) [2025] KEELC 522 (KLR) (5 February 2025) (Judgment)**

Neutral citation: [2025] KEELC 522 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT & LAND CASE 85 OF 2019  
A NYUKURI, J  
FEBRUARY 5, 2025**

**BETWEEN**

**LOISE WAMBUI THUO T/A EXPORT SOLVE AGENCIES ..... PLAINTIFF**

**AND**

**GEORGE ATENYA ..... 1<sup>ST</sup> DEFENDANT**

**NOVELTY MANUFACTURING LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**USHINDI COMMUNICATIONS LIMITED ..... 3<sup>RD</sup> DEFENDANT**

**ALLCAN AGENCY NETWORK LIMITED ..... 4<sup>TH</sup> DEFENDANT**

**THE CHIEF LAND REGISTRAR ..... 5<sup>TH</sup> DEFENDANT**

**THE NATIONAL LAND COMMISSION ..... 6<sup>TH</sup> DEFENDANT**

**THE DIRECTOR OF SURVEYS ..... 7<sup>TH</sup> DEFENDANT**

**THE HON ATTORNEY GENERAL ..... 8<sup>TH</sup> DEFENDANT**

**JUDGMENT**

**Introduction**

1. Loise Wambui Thuo, Trading as Export Solve Agencies, who is the plaintiff in this case, sued the defendants herein vide a plaint dated 25<sup>th</sup> July 2019, which was amended on 6<sup>th</sup> November 2019 and further amended on 6<sup>th</sup> January 2020, seeking the following orders;

- a. A temporary injunction be issued against the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants to restrain them either by themselves, their servants, anybody acting under their instructions, agents and or employees from building or continuing to build, erecting or continuing to erect structures, encroaching, entering, remaining or in any other manner whatsoever trespassing upon and/



or dealing with parcels known as L.R. No. 12715/13863 (I.R. No. 208444), L.R. No. 12715/13864 (I.R. No. 208445 and L.R. No. 12715/13865 (I.R. No.208446) which are the subdivisions of the mother title L.R. No. 12715/594 (I.R. No. 47715) pending the hearing and determination of this suit.

- b. A permanent injunction be issued against the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants, by themselves, their servants, anybody acting under their authority, agents and or employees from building or continuing to build, erecting or continuing to erect structures, encroaching, entering, remaining or in any other manner whatsoever trespassing upon and/or dealing with parcels known as L.R. No. 12715/13863 (I.R. No. 208444), L.R. No. 12715/13864 (I.R. No. 208445 and L.R. No. 12715/13865 (I.R. No.208446) which are the subdivisions of the mother title L.R. No. 12715/594 (I.R. No. 47715).
  - c. A mandatory injunction do issue against the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants compelling them to demolish the structure erected on the plaintiff's parcels of land known as L.R. No. 12715/13863 (I.R. No. 208444), L.R. No. 12715/13864 (I.R. No. 208445 and L.R. No. 12715/13865 (I.R. No.208446) which are the subdivisions of the mother title L.R. No. 12715/594 (I.R. No. 47715).
  - d. In the alternative to 3 above, the plaintiff be granted leave to demolish all the structures that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants have erected on L.R. No. 12715/13863 (I.R. No. 208444), L.R. No. 12715/13864 (I.R. No. 208445 and L.R. No. 12715/13865 (I.R. No.208446) which are the subdivisions of the mother title L.R. No. 12715/594 (I.R. No. 47715) and the OCS Athi River Police Station be directed to provide security to oversee the enforcement of this order.
  - e. A declaration be issued that the plaintiff is the lawful rightful and sole registered owner of the parcels known as L.R. No. 12715/13863 (I.R. No. 208444), L.R. No. 12715/13864 (I.R. No. 208445 and L.R. No. 12715/13865 (I.R. No.208446).
  - f. The Honourable court be pleased to order the 5<sup>th</sup> and 6<sup>th</sup> defendants to cancel any title documents issued to the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> or 4<sup>th</sup> defendants in respect of the land parcel known as L.R. No. 12715/594 (I.R. NO. 47715).
  - g. Costs of this suit.
  - h. Any other or further relief that this Honourable court may deem fit to grant.
2. The plaintiff's case was that she is the registered proprietor of the business known as Export Solve Agencies and also the registered proprietor of the parcel of land known as L.R. No. 12715/594 (I.R. No. 47715 which she purchased from one Alan Njuki Kamanda T/a Tec Land Surveyors, who had purchased the property from Embakasi Ranching Limited. She stated that she lawfully subdivided the said propriety into L.R. No. 12715/13863 (IR NO. 208444), L.R. No. 12715/13864 (IR NO. 208445) and L.R. No. 12715/13865 (IR NO.208446). She accused the 1<sup>st</sup> to 4<sup>th</sup> defendants of fraud and complained that in August 2018, the 1<sup>st</sup> defendant trespassed into and occupied the suit property claiming that they had authority to do so from the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants.
  3. The 1<sup>st</sup> defendant did not file defence. The 2<sup>nd</sup> defendant filed defence and counter claim dated 17<sup>th</sup> September 2019. It denied the plaintiff's claim and averred that it owned the parcel of land known as L.R. No. 12715/594 (I.R. No. 45484) which it occupies, having purchased the same from Embakasi Ranching Limited who had bought it from Syokimau Farm Limited. It accused the plaintiff of attempting to trespass on the suit property.
  4. It sought the following orders in its counterclaim;



- a. The plaintiff's suit be dismissed with costs together with interest thereon for such period and at such rate as the court may determine.
  - b. Judgment be entered for the 2<sup>nd</sup> defendant against the plaintiff and the 5<sup>th</sup> to 8<sup>th</sup> defendants for;
    - i. An order of cancellation of LR No. 12715(IR 47715) and the resultant number L.R. No. 12715/13863 (I.R. No. 208444), L.R. No. 12715/13864 (I.R. No. 208445 and L.R. No. 12715/13865 (I.R. No.208446).
    - ii. An order for compensation for trespass on the 2<sup>nd</sup> defendant's property being Land Reference Number 12715/594 (I.R. No. 45484).
    - iii. A declaration that the 2<sup>nd</sup> defendant is the sole owner of Land Reference Number 12715/594 ( I.R. No. 45484); and
    - iv. Costs of this suit and of the counterclaim together with interest thereon for such period and at such rate as this Honourable court may deem appropriate.
5. The 3<sup>rd</sup> and 4<sup>th</sup> defendants filed a joint statement of defence and counterclaim dated 29<sup>th</sup> January 2021. They denied the plaintiff's claim and stated that the 4<sup>th</sup> defendant acquired the suit property from the 3<sup>rd</sup> defendant on 11<sup>th</sup> December 2017, and has since been in possession of the same and that no construction is ongoing thereon. That the 4<sup>th</sup> defendant conducted due diligence before acquisition of the suit property. According to the 3<sup>rd</sup> and 4<sup>th</sup> defendants, the history of the suit property was that the original grantee from the Government of Kenya was Syokimau Farm Limited for a period of 99 years from 1<sup>st</sup> November 1983. That Syokimau Farm Limited transferred the land to Gideon Mbithi Malinda and Stephen Mailu Kitina on 8<sup>th</sup> December 1988. That thereafter, the latter transferred the same to Carmelina Ngami Mburu on 5<sup>th</sup> June 1990, who subsequently effected a transfer to Ushindi Communications Limited on 9<sup>th</sup> October 2007 and finally Ushindi Communications Limited transferred it to Allcan Agency Network limited the 4<sup>th</sup> defendant on 11<sup>th</sup> December 2017.
6. They stated that the 3<sup>rd</sup> defendant had at all material times paid land rent and rates and had not been put on notice by the plaintiff or any other person. They maintained that the alleged subdivision by the plaintiff was irregular and unlawful as there was no consent granted by the County Government of Machakos or the Director of Surveys. Further that the suit property remains intact.
7. They accused the plaintiff of obtaining title by fraudulent documents. The 4<sup>th</sup> defendant stated that it had acquired the suit property lawfully for value and had possession thereof. They sought the following orders;
- a. An order for dismissal of the plaintiff's suit against the 3<sup>rd</sup> and 4<sup>th</sup> defendants.
  - b. A declaration that the 4<sup>th</sup> defendant is the rightful owner of Land Reference Number 12715/594 (IR 45484).
  - c. A permanent injunction restraining the plaintiff either by herself, her servants, agents or any other person acting under her instructions or claiming interest in the suit property from entering, occupying, or in any other manner trespassing and or interfering with the 4<sup>th</sup> defendant's ownership or quiet ownership of Land Reference Number 12715/594 (I.R. 45484).
  - d. An order for cancellation of title No. 12815 (IR 47715) or any other title issued to the plaintiff or any other party with respect to land reference Number 12715/594(I.R. 45484).



- e. An order for cancellation of titles to subdivisions land Reference Numbers 12715/13863 (I.R. NO. 208444), 12715/13864 (I.R. NO. 208445) and 12715/13865 (I.R. NO.208446) and any other subdivisions titles issued at the instance of the plaintiff or any other party with respect to Land Reference Number 12715/594 (I.R. 45484).
  - f. General damages for trespass.
  - g. Costs of the suit and counterclaim.
  - h. Interest at court rates.
  - i. Such further relied that this Honourable Court shall deem fit to grant.
8. The 5<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> defendants filed a statement of defense dated 25<sup>th</sup> May 2021. They averred that they were strangers to the plaintiff's allegations and that they were not privy to the transactions between the plaintiff and any other party. They denied the plaintiff's claim and stated that upon subdivision of L.R. No. 12715/594 (I.R. No. 47715), the same ceased to exist.
9. No defence was filed by the 6<sup>th</sup> defendant. This matter proceeded to hearing by way of viva voce evidence. The plaintiff presented three witnesses; the 2<sup>nd</sup> defendant presented one witness; the 3<sup>rd</sup> and 4<sup>th</sup> defendants presented two witness while the 5<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> defendants presented one witness.

#### **Plaintiff's evidence**

10. PW1 was Loise Wambui. She adopted her witness statement dated 13<sup>th</sup> July 2021 as her evidence in chief and produced the filed documents as Plaintiff (P) exhibits 1 to 33. It was her testimony that she was the sole proprietor of Export Solve Services which has since been converted into a limited liability company. She stated that she was the registered proprietor of land known as LR No 12715/594(IR NO. 47715) situate in Syokimau, Machakos County (suit property). She testified that she purchased the suit property from her brother one Allan Njuki Kamanda T/a Tec Land Surveyors, in 1996. She informed court that she was now the registered owner of the three titles that resulted from the subdivision of the suit property done in 2018 which are L.R. No. 12715/13863 (IR NO. 208444), L.R. No. 12715/13864 (I.R. No. 208445 and L.R. No. 12715/13865 (I.R. No. 208446).
11. She stated that after subdividing her property, she approached one Paul Masila Kimeu to write a letter as administrator of Syokimau Farm Limited confirming that she is the registered, lawful and legitimate owner of the resultant titles. She stated that during subdivision, she complied and obtained approvals and paid outstanding rates in the sum of Kshs 294, 153/=, plot registration fees of Kshs 6000/= and rates clearance certificate. That Geospatial Systems Ltd prepared her subdivision scheme She maintained that she presented the subdivision scheme to Mavoko Subcounty Planner and obtained development permission and also obtained approval of the National Land Commission. That both the Director of Surveys and the Director Land Administration also gave their approvals for the subdivision. That titles were then issued after deed plans were forwarded to the Director of Surveys.
12. She averred that she discovered a letter dated 18<sup>th</sup> December 2018 alleged to have been written by the Vice Chairperson of the National Land Commission stating that the suit property belonged to the 2<sup>nd</sup> defendant and that the said Vice Chairperson disowned the letter.
13. It was her evidence that the Chief Land Registrar wrote a letter confirming that the suit property and the resultant subdivisions belong to her. She also stated that since 1996 upon purchase of the suit property, she had been paying rates and ground rent. She maintained that the grant held by the 4<sup>th</sup> defendant was a forgery.



14. She produced Certificate of registration dated 14<sup>th</sup> April, 1994; Certificate of incorporation issued by the Registrar of Companies; Grant LR No. 12715/594 (IR No. 47715); Grant of Title LR No. 12715/594 (TR No. 47715); Certificates of Title for LR No. 12715/13863 (IR No. 2080444) (Deed Plan No. 425054), LR No. 12715/13864 (IR No. 208445) (Deed Plan No. 425055 ) and LR No. 12715/13865 (IR No. 208446)(Deed plan No. 425056); official search Certificate for LR 12715/13863 (IR No. 208444). LR No. 12715/12864 (IR No. 208445) and LR No. 12715/13865 (IR No. 208446), letter dated 9<sup>th</sup> July 2019 by Paul Masila Kimeu; request for payment of rates; Debt Clearance Certificate and the Clearance Certificate Nos. 14077; and Nos 000001 – 4206935 generated from E-Citizen and endorsed by County Government of Machakos Accountant; Application for search certificate dated 21<sup>st</sup> November, 2017 and the Search certificate dated 21<sup>st</sup> November, 2017; proposed subdivision scheme prepared by Geo-Spatial systems Ltd; Application letter dated 28/2/2018; Notification of Approval of Development permission dated 2/3/2018; Letter of National Land Commission dated 17/4/2018; Letter by Network Surveys dated 14/5/2018; Letter dated 7/6/2018 ref No. 187312/18; Letter by Network Surveys dated 26/6/201; Letter of Abigael Mbagaya- Mukolwa (Mrs) dated 11/10/2019; letter of the Chief Land Registrar ref. CLR/A/1/VOL.V.209; and Bundle of bills and receipts for payments of rates and ground rent.
15. On cross examination, she stated that she had been on the suit property in 1994 when she was shown the same by her brother Alan Njuki Kamanda and that she had no written agreement with Allan Njuki Kamanda. She also stated that she did not sign any transfer forms and that the entire transaction was handled by the vendor. On whether stamp duty was paid she stated that she presumed that the same was paid. She added that she did not attend any land control board.
16. According to her, between 1996 and 2018, there were no developments on the suit property. She stated that the surveyor supplied her with mutations and that she obtained all necessary consents for subdivision. She stated that she was summoned by the DCI headquarters to record a statement because the 4<sup>th</sup> defendant had made a complaint that she had stolen their land and subdivided it. She stated that her exhibit 4 showed L.R NO.12715/591/1 yet the mother title has no forward stroke and that exhibit no 5 which is a title has /1. She stated that the suit property was in her possession and her name. Further that she did not conduct due diligence.
17. She averred that the error in her Exhibit 5 was done by the lands office. She stated that she purchased the suit property at kshs.2,500,000/=. She also stated that Embakasi Ranching Limited did not sell any shares to her and that the letter written by Syokimau Farm Limited dated 9<sup>th</sup> July 201 was from the administrator of the company and she requested him to write the same. She stated that she was aware that Syokimau Farm Limited was wound up. She stated that she had search certificate to show the property was hers.
18. In re-examination, she stated that she did not conduct due diligence because she was on bed rest. She also stated that she needed a validation letter from Syokimau Farm Limited because some people were trying to steal her land.
19. PW2 was Paul Masila Kimeu. He stated that he was the administrator of Syokimau Farm Limited. That in 2013 the company decided to wind up the company and he was nominated as administrator and that he had dealt with members' cases where there were disputes. He adopted his witness statement dated 13<sup>th</sup> July 2021 as his evidence in chief. His evidence was that he knew the plaintiff as she was member number 670 of shares 6991- 6700 equivalent to 5 acres plot in Syokimau Farm Limited. He stated that Syokimau Farm Limited was wound up during the Annual General Meeting of the company held on 26<sup>th</sup> July 2013 and that he was given mandate as administrator to appear in court and keep records of



- the company among other roles. That the company was wound up vide Gazette Notice No. 11485 of 8<sup>th</sup> August 2013.
20. According to him, share No. 670 was originally given to Embakasi Ranching Company limited by Syokimau Farm Limited when the former acquired shares being share 6991 to 6700. That Embakasi Ranching was given a letter of allotment for plot No. 313 on LR No. 7149/1/R IR No. 40213/3 which was the larger Syokimau Farm. That upon surrender of the mother title, a new title 12715/594 was issued to Syokimau Farm Limited on 5<sup>th</sup> August 1988. That the said title was held by Syokimau Farm Limited on behalf of Embakasi Ranching Company limited. That Embakasi Ranching Limited executed a transfer of their shares on 23<sup>rd</sup> October 1987 in favour of Gideon Mbithi Malinda and Stephen Mailu Kitina and that that is the reason the plaintiff's title does not show the name of Embakasi Ranching Limited as they sold their shares before Syokimau surrendered the grant to the Government for subdivision in 1988.
  21. Further that the title for the suit property was transferred to Gideon Mbithi Malinda and Stephen Mailu Kitina then transferred to Alan Njuki Kamanda in 1990 who sold the suit property to the plaintiff. He stated that when the plaintiff wanted to subdivide her property she informed him of the same and she requested him to write a letter to NLC and Director of Surveys to confirm that she was the registered proprietor of the suit property which he wrote and that after subdivision, the plaintiff requested him to write another letter confirming that she was the registered proprietor of the resultant subdivisions. He maintained that the plaintiff was the lawful rightful owner of the suit property as there has never been a transfer to the defendants cleared by Syokimau Farm Limited.
  22. He also stated that the 2<sup>nd</sup> defendant title IR NO. 45484 does not exist in the records of Syokimau Farm Limited and the same was obtained fraudulently. He further stated that the 4<sup>th</sup> defendant's title IR 47715 does not exist in the records of Syokimau Farm Limited and that the same is also a forgery.
  23. On cross examination, he stated that he had been an administrator of Syokimau Farm Limited from 2013 to date and had not concluded his mandate and that he was not aware that Syokimau Farm Limited had title to the suit property. He also stated that there was a transfer of the suit property from Syokimau Farm Limited to Embakasi Ranching Limited. He also stated that Embakasi Ranching Limited did not sell land to the plaintiff. When shown his letter dated 9<sup>th</sup> July 2019 stating that Embakasi Ranching Limited sold land to the plaintiff, he stated that he did not disown the letter. In re-examination, he stated that Syokimau Farm Limited transferred the share of Embakasi Ranching Limited to Gideon and Stephen, from Stephen to Alan and then to the plaintiff and that it was him who used to sign the relevant documents.
  24. PW3 was Alan Njuki Kamanda. He adopted his witness statement dated 13<sup>th</sup> July 2021 as his evidence in chief. His testimony was that he was the registered proprietor of Tec Land Surveyors and is the plaintiff's brother. He stated that in 1990 he purchased the suit property from Gideon Mbithi Malinda and Stephen Mailu Kitina who transferred the land to him. Further that the vendors had purchased the suit property from Embakasi Ranching Limited who transferred their shares to them. He stated that on 5<sup>th</sup> June 1996, he sold the suit property to the plaintiff at Kshs 2,500,000/=. He maintained that the correct IR NO. for the suit property was 47715 and not 45485.
  25. On cross examination, he stated that he did not have a sale agreement with the plaintiff and that the titles held by the defendants were fraudulent. Further that he did not have a copy of the transfer of the suit property to him. That he had no sale agreement with Gideon and Stephen. That he paid Gideon and Stephen Kshs. 1,600,000/= but had no evidence to that effect. That marked the close of the plaintiff's case.



## The 2<sup>nd</sup> defendant's evidence

26. DW1 was Rajesh Juthalal Shah, a director of the 2<sup>nd</sup> defendant. He adopted his witness statement dated 17<sup>th</sup> September 2019 as his evidence in chief. He also produced documents attached to the list of documents dated even date as Defence (D) exhibits 1 to 11. He asked the court to allow his counterclaim. His testimony was that the 2<sup>nd</sup> defendant was the registered proprietor of L.R. No. 12715/594 (I.R. No. 45484) having purchased the same from Embakasi Ranching Company limited in 1997 who had purchased the same from Syokimau Farm Limited. The faulted the plaintiff's case arguing that the plaintiff pleaded that she bought the suit property from Embakasi Ranching Company limited but gave a different narration. He stated that as of 18<sup>th</sup> December 2018, the National Land Commission's records showed that the 2<sup>nd</sup> defendant was the registered proprietor of the suit property and on 12<sup>th</sup> October 2018 the County Government of Machakos approved the 2<sup>nd</sup> defendant's development of the suit property and a search done on 2018 showed that the 2<sup>nd</sup> defendant owns the suit property.
27. He produced Copies of title for Land Reference Number 127/594 (IR No. 45484); Sale Agreement; transfer; receipt for stamp duty payment; land rent receipts and certificates; Letter dated 12<sup>th</sup> October, 2018 from the County Government of Machakos; Letter dated 18<sup>th</sup> December, 2018; search dated 18<sup>th</sup> December, 2018; company search dated 17<sup>th</sup> September, 2019 and Photographs of the 2<sup>nd</sup> Defendant's property.
28. On cross examination, he stated that the 2<sup>nd</sup> defendant was incorporated in 1981, but he did not produce a certificate of incorporation. He stated that from his exhibit 9 the date of registration of the 2<sup>nd</sup> defendant is shown as being 12<sup>th</sup> February 1998 and that the transfer to the 2<sup>nd</sup> defendant is indicated as having been done in 1997.
29. He also stated that his sale agreement was not dated or signed by the vendor or witnessed by an advocate. He stated that there was no reason why registration numbers of the transacting companies were not indicated in the transfer forms. That from his documents IR NO. of the property was 4548/3 and that the number on the grant was 45484. He also conceded that the names of the directors of Embakasi Ranching Limited were not indicated on the transfer documents. Further, he averred that he was not aware that the purported author of the letter from NLC, a Mrs Abigail Mbagaya wrote another letter disowning the earlier letter which stated that the suit property belonged to the 2<sup>nd</sup> defendant.
30. Regarding his search certificate, he conceded that it had no signature by the Land Registrar. That the 2<sup>nd</sup> defendant had been paying rates but that the clearance certificate did not bear the 2<sup>nd</sup> defendant name. He also stated that he was not aware that the NLC was not custodian of titles in Kenya. He confirmed that the search showed that the 2<sup>nd</sup> defendant was Registered in 1998. That the agreement showed 11<sup>th</sup> November 1996 and the agreement is dated 1996 which means the transactions took place before the 2<sup>nd</sup> defendant was in existence. He stated that he signed the sale agreement and not the transfer. He stated that the 2<sup>nd</sup> defendant IR number was different from that of the plaintiff. He stated that as his title was different from the one by the plaintiff they could be for different parcels.
31. He further stated that he was issued title on 30<sup>th</sup> July 1997 and that he had no grievance against the Land Registrar and the Surveyor.
32. In reexamination, he stated that the IR NO 45485/3 shows that it referred to the 3<sup>rd</sup> owner of the land and that the letter by Mrs. Mbagaya had no letterhead. That marked close of the 2<sup>nd</sup> defendant's case.



### **The 3<sup>rd</sup> and 4<sup>th</sup> defendants' evidence**

33. DW2 was Eric Chege Kamau who testified on behalf of the 3<sup>rd</sup> and 4<sup>th</sup> defendants. He stated that he was the sole director of the 4<sup>th</sup> defendant. He adopted his witness statement dated 28<sup>th</sup> May 2021 as his evidence in chief and produced documents filed on 13<sup>th</sup> July 2021 as Defence (D) exhibits 3-15. The witness did not have listed documents numbered 1, 2, 12 and 13.
34. His testimony was that he was the principal director of the 4<sup>th</sup> defendant. He stated that the 4<sup>th</sup> defendant acquired the suit property from the 3<sup>rd</sup> defendant and has been in continued and quiet possession of the same. He stated that before acquisition of the suit property he conducted due diligence and noted that the Government of Kenya made a grant to Syokimau Farm Limited on 1<sup>st</sup> November 1983, who then transferred the suit property to Gideon Mbithi Malinda and Stephen Mailu Kitina on 8<sup>th</sup> December 1988. That the two transferred the property to Carmelina Ngami Mburu on 5<sup>th</sup> June 1990, who transferred the same to Ushindi Communications Limited the 3<sup>rd</sup> defendant; who then subsequently who transferred to the 4<sup>th</sup> defendant.
35. He stated that he paid all the land rates and had confirmed from the County Government of Machakos and Director of Surveys that no subdivision has ever been done in respect of the suit property. He pointed out what he termed as material misrepresentation and inconsistencies in the plaintiff's documents. He stated that the plaintiff's assertion that she purchased the suit property from Syokimau Farm Limited is not supported by the title document which show that the transfer was from Gideon and Stephen to Allan Njuki and that there is no entry in favor of Embakasi Ranching Company limited in the plaintiff's title documents. Further that the grant and deed plan exhibited by the plaintiff do not contain entries of the alleged subdivision resulting in the alleged three titles alluded to by the plaintiff. Further that the certificates of title were generated on 27<sup>th</sup> May 2019 and deed plans verified on 31<sup>st</sup> May 2019, yet verification of deed plans precede generation of titles. He also pointed out that the letter of allotment dated 6<sup>th</sup> August 1981 contradicts the plaintiff's assertion that she acquired the suit property from Embakasi Ranching co. Ltd on 1<sup>st</sup> November 1979 as per clause 5 thereof. And that the letter clearly shows that the land was allocated to Embakasi Ranching Limited by Syokimau Farm Limited and not the other way around.
36. He also testified that one of the plaintiff's receipts bears the stamp of Anthony M Mulekyo advocate and commissioner of oaths, of Box 182 Tala who from the records of the Law Society of Kenya was not a practicing advocate as he was admitted in 1995, yet the receipts were for the years 1980 and 1981.
37. Regarding the letter signed by Paul Masila Kimeu for Syokimau Farm Limited dated 9<sup>th</sup> July 2019 that allegedly confirmed that the plaintiff is the owner of the suit property and that subdivisions occurred, yet the last time Syokimau was registered owner was in 1983, he questioned the basis of Mr. Masila's information. He stated that it was in public knowledge that Syokimau Farm Limited was by a special resolution of 26<sup>th</sup> July 2013 wound up and therefore the company is not in existence hence the letter by the alleged administrator of the company is a fabrication and a fraud. He sought for dismissal of the plaintiff's case as she did not prove good title, that subdivisions were done in respect of the suit property, occupation and documents presented are fabricated.
38. He produced copies of Certificate of incorporation and CR 12 Form of the 4<sup>th</sup> Defendant; Authority to plead and make statement by the 4<sup>th</sup> Defendant; instrument of Transfer from Carmelina Ngami Mburu to the 3<sup>rd</sup> Defendant; Search for LR No. 12715 /594 (IR 47715) dated 18/7/2017; instrument of transfer from the 3<sup>rd</sup> Defendant to the 4<sup>th</sup> Defendant; Certificate of title to LR No. 12715/594 (IR 47715) dated 11/12/2017; certificates of search to LR No. 12715/94 (IR 477/15/0 dated 17/9/2017



and 7/2/2020; survey map for LR No. 12715/594 (IR 47715) and payment receipt dated 6/9/2019; Gazette Notice No. 11485 published on 08<sup>th</sup> August, 2013 with respect to Syokimau Farm limited; rates Clearance Certificates Issued by the County Government of Machakos; Certified True Copy of the Deed Plan for LR No. 12715/594 (IR 47715); and printout of LSK Search records for Anthony Mulekyo Advocate.

39. On cross examination, he stated that the 4<sup>th</sup> defendant was incorporated on 14<sup>th</sup> November 2017 and purchased the suit property from the 3<sup>rd</sup> defendant. He stated that the I.R. No. for the suit property is 47715. Further that he has been in possession of the suit property having fenced the same with barbed wire and put up a toilet.
40. DW3 was Mercy Makena. She adopted her witness statement as her evidence in chief. Her testimony being that she was a director of the 3<sup>rd</sup> defendant and that the latter transferred the suit property to the 4<sup>th</sup> defendant on 11<sup>th</sup> December 2017 upon receiving full consideration. That before the aforesaid transfer the 3<sup>rd</sup> defendant had been in quiet possession of the suit property without any interruption from the plaintiff or any other person.
41. She further stated that the 3<sup>rd</sup> defendant had acquired the suit property from Carmelina Ngami Mburu. That when the 3<sup>rd</sup> defendant acquired the suit property it conducted due diligence first and confirmed that the suit property had been transferred from Syokimau Farm Limited the original grantee to Gideon Mbithi Malinda and Stephen Mailu Kitina, then to Carmelina Ngami Mburu. He argued that the plaintiff's claim had no merit and ought to be dismissed as she had failed to demonstrate good title, that subdivisions occurred, or that she had been in occupation of the suit property. He argued that the plaintiff's documents were forged. She adopted documents produced by DW2.
42. On cross examination, she stated that she had a written agreement with Carmelina Ngami Mburu but had not filed it in court. She stated that during her transaction the chairman of Syokimau Farm Limited was present and that upon purchase she fenced the land. She stated that her company had been incorporated about 18 years ago. She stated that the transfer had IR NO. 47715/1 which was a typing error. That marked the close of the 3<sup>rd</sup> and 4<sup>th</sup> defendants' case.

#### **The 5<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> defendants' evidence**

43. DW4 was Gildine Karani a Principal Land Registrar who was at the material time based at Ardhi house in charge of court section. She testified that she prepared a report in regard to LR No. 209/14069; LR 12715/594; LR NO. 12715/13863 and LR 12715/13866 and LR 12715/13864. She stated that in the preparation of her report she relied on the information on the ministry of lands system as it has since gone digital. She testified that the LR number is a reference Number according to the sequence of the parcel of land. While the IR NUMBER is a running number and therefore there can be no two IR numbers for the same landing the whole country. In her report, she stated that the land claimed by the 2<sup>nd</sup> defendant being Grant I.R. No. 45484 is in regard to L.R. No. 209/14069 which land is in Nairobi County and not Machakos county. That their records show that the said land is registered in the name of Benjamin Lemasei Times, Philip Tumpei Saiyda and Joseph Kuyan. Further that another LR NO 209/14069 was in respect of IR NO 92930 in the name of Daniel Letomir and Raphael Lerionka of Nairobi and the said land is situated in Nairobi city.
44. Regarding LR NO. 12715/594 (IR NO. 47715) she stated that her records show that a grant was issued to Syokimau Farm Limited on 10<sup>th</sup> August 1988 and on 8<sup>th</sup> December 1988, a transfer done in favor of Gideon Mbithi Malinda and Stephen Mailu Kitina as joint tenants in common in equal shares. That on 5<sup>th</sup> June 1990, a transfer was done to Carmelina Ngami Mburu and on 9<sup>th</sup> October 2007 a transfer



to Ushindi Communications Limited was done. That on 11<sup>th</sup> December 2017 a transfer was done to Allcan Agency Network limited who are the current registered owners.

45. Regarding parcels L.R. No. 12715/13863 (I.R. No. 208444), L.R. No. 12715/13864 (I.R. No. 208445 and L.R. No. 12715/13865 (I.R. No.208446) claimed by the plaintiff herein, she stated that no records were found in support of the aforesaid parcels hence no records of subdivision and surrender of the mother title and therefore those titles do not exist. She produced the report as an exhibit on behalf of the 5<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> defendants.
46. In cross examination, she stated that each IR number is unique to every parcel of land and one parcel of land cannot have more than one IR number. Further that the information forming the basis of the report was the digital system of the lands ministry.
47. She maintained that she did not see any surrender in respect of L.R. No. 12715/594 which title is still intact and that the I.R. No. given by the 2<sup>nd</sup> defendant is in respect of a different parcel of land. That when she keys the 2<sup>nd</sup> defendant's I.R. No. 45484 into the ministry of lands' system, then what the system reflects is L.R. No. 209/14069. She added that an L.R. number is specific to the location, and that LR No 209/14069 is a parcel in Nairobi.
48. According to her, Grant I.R. NO. 47715 is for L.R. No. 12715/594. When asked about the area being shown as 2.020 Hectares vis a vis 2.028 hectares, she stated that there was no variance in the same because it was an approximation. She stated that she had the registration certificate of the 4<sup>th</sup> defendant showing that it was registered on 14<sup>th</sup> November 2017. When questioned on the reason the transfer had IR 47715/1, she stated that it meant that it was the first document. She maintained that the registration to the 4<sup>th</sup> defendant was done before execution of the transfer. She stated that the transfer to the 4<sup>th</sup> defendant was on 11<sup>th</sup> December 2017. She maintained that where a subdivision is done the ministry of lands will get a surrender which was not done in regard to the suit property. That marked the close of the 5<sup>th</sup> to 8<sup>th</sup> defendants' case.
49. The parties filed written submissions in support of their respective cases. On record are the plaintiff's submissions dated 13<sup>th</sup> December 2023; the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants' submissions dated 13<sup>th</sup> February 2024 and the 2<sup>nd</sup> defendant's submissions dated 16<sup>th</sup> February 2024.

### **Plaintiff's Submissions**

50. Counsel for the plaintiff submitted that the plaintiff produced titles in respect of the subdivisions of the suit property done under the [Land Registration Act](#) and cited section 23 of the Registration of Titles Act (repealed) and submitted that a certificate of title is conclusive proof of absolute and indefeasible ownership of land. Reliance was placed on section 26 of the [Land Registration Act](#) and the case of *Hubert Martin & 2Others v Margaret J. kamar & 5Others* [2016] e KLR. Counsel urged the court to examine how each party's title was obtained and whether due process was observed, documents produced and the gaps showing fraud in title acquisition.
51. It was argued for the plaintiff that it was only the plaintiff's evidence and documents that show that the plaintiffs title to the suit property and subdivision thereof are the only ones that are valid as she showed the chain of how the title moved from Syokimau Farm Limited to her. Counsel argued that the plaintiff produced the share certificate of Embakasi Ranching Company limited and the transfer of those shares and no such evidence was produced by the 2<sup>nd</sup> to 4<sup>th</sup> defendants.
52. Further, counsel argued that the 2<sup>nd</sup> to 4<sup>th</sup> defendants were not in existence at the time they were registered as proprietors of the suit property as they failed to avail registration documents and that if the errors in the witness statements were typographical, the parties would have sought to amend the same.



53. Counsel faulted the variance in acreage stated in the 3<sup>rd</sup> and 4<sup>th</sup> defendants' documents and that the IR numbers for the defendants were different from those of the plaintiff who had been consistent. Counsel faulted the 2<sup>nd</sup> defendant's witness agreement for want of signature by the vendor. Counsel argued that photographs by the defendants were inadmissible for being undated and for want of certification. For those reasons counsel urged the court to find that the plaintiff was the sole lawful owner of the suit property. To buttress their position, counsel referred to the case of Elizabeth Wambui Githinji & 29 Others v Kenya Urban Roads Authority & 4 Others (2019) e KLR.
54. According to the plaintiff's counsel, the order commending itself in this matter is for cancellation of the defendants' title and dismiss the 2<sup>nd</sup> and 4<sup>th</sup> defendants' counterclaims. The court was also referred to the cases of Administrators of the Estate of the late John Kiondo Kahuhu v District Land Registrar Kaimbu and Republic v Minister for Transport & 5 Others Ex parte Waa ship Garbage Collector & 15 Others (2006) 1 KLR among others. On the question of costs, counsel relied on section 27 of the [Civil procedure Act](#) and argued that costs should follow the event.

### **2<sup>nd</sup> Defendant's Submissions**

55. Counsel for the 2<sup>nd</sup> defendant submitted that the plaintiff's evidence did not meet the threshold of the evidentiary burden on her to demonstrate that she was the owner of the suit property. Counsel argued that DW2 produced title, a letter from the National Land Commission and a search showing that the suit property belongs to it. Counsel argued that the plaintiff's challenge on the 2<sup>nd</sup> defendant's sale agreement for want of execution by the vendor does not hold water as it was drawn by the vendors advocates and the 2<sup>nd</sup> defendant duly executed its part. Counsel submitted that the transfer documents for the 4<sup>th</sup> defendant had different IR numbers and that there were discrepancies in the acreage shown being 2.02 hectares and 2.028 hectares. Counsel submitted that the contest of the suit property was between the plaintiff and 4<sup>th</sup> defendant as the 2<sup>nd</sup> defendant's claim was on a different land parcel. Counsel faulted the report by the Land Registrar DW4 stating that the 2<sup>nd</sup> defendant's land was LR 12715/594 IR Number 45484 and not LR 209/14069 I.R. 45484.
56. On the question as to who is the lawful owner of the suit property, counsel submitted that the 2<sup>nd</sup> defendant proved beyond reasonable doubt that it owned the suit property and therefore deserves the orders sought. Counsel referred to section 109 and 112 of the [Evidence Act](#) and argued that the plaintiff and the 4<sup>th</sup> defendants had not proved their case.
57. Reliance was placed on section 26 of the [Land Registration Act](#) and the case of Waterfront Holdings Limited v David Kipkurui Kandie & 2 Others [2023] e KLR for the argument that title alone does not confer indefeasibility.

### **3<sup>rd</sup> and 4<sup>th</sup> defendants' submissions**

58. Counsel for the 3<sup>rd</sup> and 4<sup>th</sup> defendants submitted that the evidence on record shows that there were no subdivisions done in respect of the suit property and therefore the plaintiff's claim cannot stand. Counsel submitted that the plaintiff was unable to prove her case as Allan Njuki who she alleged to have purchased the suit property from was not even registered as owner thereof. As regards the 2<sup>nd</sup> defendant's claim counsel argued that the latter's LR No and IR No were inconsistent as proved by the evidence of the Land Registrar. Counsel argued that the plaintiff evidence through PW2 that she purchased the suit property from Embakasi Ranching Company limited contradicted her other evidence. Counsel submitted that the 2<sup>nd</sup> defendant's parcel is different from the suit property as shown by DW4 and that the evidence of DW4 corroborated evidence of the 3<sup>rd</sup> and 4<sup>th</sup> defendants that the suit property is owned lawfully by the 4<sup>th</sup> defendant.



59. Reliance was placed on sections 107, 108 and 109 of the *Evidence Act* and the case of *Munyu Maina v Hiram Gathiha Maina* (2013/ e KLR and *Benja Properties Ltd v Syedna Mohamed Burhannudin Sahed & 4 Others* (2015) e KLR for the proposition that where a proprietor's title is challenged, the court ought to examine the root of the title.

### **Analysis and determination**

60. The court has carefully considered the parties' respective pleadings, evidence and submissions. Two issues that arise for the court's determination are as follows;
- a. Who between the plaintiff, the 2<sup>nd</sup> defendant and the 4<sup>th</sup> defendant is the lawful proprietor of the suit property?
  - b. What orders should the court grant?
61. Article 40 (1) and (6) of *the Constitution* of Kenya limits legal protection to cover only lawfully acquired and owned property. The said provision states as follows;
- 40 Protection of right to property
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. ....
  3. ....
  4. ....
  5. ....
  6. The rights under this Article do not extend to any property that has been found to have been unlawfully acquired.
62. Section 26 of the *Land Registration Act* provides for indefeasibility of title as follows;
- Certificate of title to be held as conclusive evidence of proprietorship
- (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.



63. Therefore, registration of title demonstrates indefeasible and absolute ownership of land by the proprietor. However, a title may be challenged on account of having been obtained by fraud, want of procedure, illegality or corruption. Hence validity of a title is demonstrated in the root of such title. A title without proof of lawful acquisition is not protected in law. In the case of *Munyu Maina vs. Hiram Gathiha Maina* [2013] eKLR, 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 need not be noted on the register.

64. Similarly, in the case of *Hebert L Martin & 2 Others v Margaret J Kamar & 5 Others* {2016} the Court stated as follows:

A court when faced with a case of two or more titles over the same land has to make an investigation so that it can be discovered which of the two titles should be upheld. This investigation. This investigation must start at the root of the title and follow all processes and procedures that brought forth the two titles at hand. It follows that the title that is to be upheld is that which conformed to procedure and can properly trace its root without a break in the chain. The parties to such litigation must always bear in mind that their title is under scrutiny and they need to demonstrate how they got their title starting with its root. No party should take it for granted that simply because they have a title deed or Certificate of Lease, then they have a right over the property. The other party also has a similar document and there is therefore no advantage in hinging one's case solely on the title document that they hold. Every party must show that their title has a good foundation and passed properly to the current title holder.”

65. Also, in the case of *Alice Chemutai Too – Vs – Nickson Kipkurui Korir & 2 Others* [2015] eKLR the court held that:

It will be seen from the above that title is protected, but the protection is removed and title can be impeached, if it is procured through fraud or misrepresentation, to which the person is proved to be a party; or where it is procured illegally, unprocedurally, or through a corrupt scheme. Where one intends to impeach title on the basis that the title has been procured by fraud or misrepresentation, then he needs to prove that the title holder was party to the fraud or misrepresentation. However, where a person intends to indict a title on the ground that the title has been acquired illegally, unprocedurally, or through a corrupt scheme, my view has been, and still remains, that it is not necessary for one to demonstrate that the title holder is guilty of any immoral conduct on his part. I had occasion to interpret the above provisions in the case of *Elijah Makeri Nyangwara –vs- Stephen Mungai Njuguna & Another*, Eldoret ELC Case No. 609 B of 2012 where I stated as follows:- “...it needs to be appreciated that for Section 26(1) (b) to be operative, it is not necessary that the title holder be a party to the vitiating factors noted therein which are that the title was obtained illegally, unprocedurally or through a corrupt scheme. The heavy import of Section 26 (1) (b) is to remove protection from an innocent purchaser or innocent titleholder. It means that the title of an innocent person is impeachable so long as that title was obtained illegally, unprocedurally, or through a corrupt scheme. The titleholder need not have contributed to these vitiating factors. The purpose of Section 26 (1) (b) in my view is to protect the real



title holders from being deprived of their titles by subsequent transactions. “I stand by the above words and I am unable to put it better than I did in the said dictum.

66. In the instant case, three parties lay claim to the suit property; namely, the plaintiff; the 2<sup>nd</sup> defendant and the 4<sup>th</sup> defendant. The plaintiff describes the suit property as parcel known as Land Reference L.R No. 12715/13863 (IR No. 208444), L.R No. 12715/13864 (IR No. 208445) and L.R. No. 12715/13865 (IR NO.208446) which are as a result of the subdivision of title L.R No. 12715/594 (IR No. 47715). The 2<sup>nd</sup> defendant on its part described the suit property as L.R. NO. 12715/594 (IR No. 45484), while the 4<sup>th</sup> defendant described the suit property as L.R. NO. 12715/594 (IR NO. 47715) and denied there being any subdivision of the said title. Each of the three claimants presented their respective title documents in support of their respective claims. Therefore, the issue that the court must determine is who between the plaintiff, the 2<sup>nd</sup> defendant and the 4<sup>th</sup> defendant holds a genuine title to the suit property. Clearly, the 2<sup>nd</sup> defendant’s Grant I.R No. is 45484 which is different from the IR number presented by the plaintiff and the 4<sup>th</sup> defendant which is 47715.
67. Registration of land under the repealed Registration of Titles Act demonstrated both the Grant I.R. number and the L.R number (Land Reference Number). As explained by the Land Registrar who testified in this matter on behalf of the 5<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> defendants, the IR number is unique for every parcel of land in Kenya and no two or more parcels of land in Kenya share the same I.R number. However, L.R. number is specific to a registration area and therefore there is a possibility of having similar L.R numbers for different registration areas. No single parcel has two different I.R Numbers. But there cannot be similar IR Numbers for different registration areas. In registration of Land under the repealed Registration of Titles Act, what was registered first was the Grant I.R number which is the IR number which grant was then subsequently allocated an L.R number.
68. In the case of *Wibeso Investments Limited & Another v Tamarind Meadows Limited & 5 Others* [2020] eKLR, while referring to provisions of sections 25, 26, 27, 28, 29, 30, 31 and 32 of the Registration of Titles Act (repealed), the court took the position that a land reference number (L.R) number is assigned to a registered grant which already has an IR number and that no two grants can be registered in respect of one parcel of land.
69. In the instant case the plaintiff and 4<sup>th</sup> defendant presented title for IR Number 47715 while the 2<sup>nd</sup> defendant presented title for IR No. 45484. In the evidence of DW4, the Principal Land Registrar produced a report and testified that IR Number 45484 was in reference to L.R Number 209/14069 which land is situated in Nairobi County and registered in the names of Benjamin Lemasei Tumbes, Philip Tumpeine Saiyda and Joseph Kuyan. She produced a search certificate to that effect showing that the three were registered as proprietors of the said Grant on 1<sup>st</sup> August 1999.
70. The Chief Land Registrar further stated that grant IR Number 47715 was in reference to LR number 12715/594. This evidence was not shaken, challenged or rebutted by any of the parties herein and therefore the court accepts the same as a reflection of the correct status of the Grant IR Number 45484. That being the case, this court finds and holds that the title held by the 2<sup>nd</sup> respondent is not a genuine title as the IR number and the LR number are at variance. The conclusion made by this court is that the 2<sup>nd</sup> defendant’s title is a forged title as the IR number thereof is in respect of land situated in Nairobi County and not in Machakos county.
71. That then leaves the plaintiff and 4<sup>th</sup> defendant in contention for ownership of title of the suit property as both of their titles refer to IR No. 47715 and L.R No. 12715/594. There is no doubt that the original allottee of this title was Syokimau Farm Limited. It is a matter of local notoriety within Machakos county, a matter that this court takes judicial notice of, under section 60 (1) (o) of the *Evidence Act*, that



Syokimau Farm Limited owned that land known as L.R 12715, which it distributed and transferred titles thereof to its members in the 1980s and the company was voluntarily wound up (on July 2013, by Gazette Notice Number 11485 of 8<sup>th</sup> August 2013, in which notice there was no appointment of an administrator or liquidator as shown in the plaintiff's documents). Therefore, once land was registered in a member's name it ceased to be owned by Syokimau Farm Limited because it was no longer a share in the company and therefore the records thereof were solely held at the lands office and transactions thereon could only be done at the lands office and not at Syokimau Farm Limited.

72. I have considered the plaintiff's evidence. She stated that she purchased her land from her brother Alan Njuki Kamanda in 1996 and that title was transferred to her. She however stated that in 2019 she went to Syokimau Farm Limited and obtained a letter dated 9<sup>th</sup> July 2019, from one Paul Masila Kimeu the alleged administrator of Syokimau Farm Limited. In that letter, the author allegedly confirmed that according to the company's records, LR No. 12715/594 belonged to the plaintiff who had been a member of Syokimau Farm Limited and who bought shares Number 6991-6700 equivalent to 5 acres from Embakasi Ranching Company. He also stated that the plaintiff was the registered proprietor of the three titles being subdivisions of the suit property. Considering that the plaintiff's position was that at the time she purchased the suit property it was registered in the name of her brother, it is not probable that Syokimau Farm Limited would have records in regard to the suit property beyond the member who was allocated the same as subsequent transfers are done at the lands registry and not at Syokimau Farm Limited as land records are held by Government and not private individuals like syokimau Farm Limited. In the premises, the court finds that the evidence of Paul Masila has no value other than to mislead the court as he had no legal custody of registered instruments concerning subsequent of the suit property beyond the transfer by Syokimau Farm Limited to the shareholder. The suit property ceased from being a share of Syokimau Farm Limited upon transfer by Syokimau to its member and the administration thereof left the precincts of Syokimau Farm Limited into the authority of the Ministry of lands. In any event, the narration by the said Paul Masila that the suit property was purchased by the plaintiff from Embakasi Ranching and that the plaintiff was a member of Syokimau Farm Limited was a contradiction of the plaintiff's evidence that she purchased the suit property from her brother Alan Njuki.
73. While PW2 alleged that their records showed that the suit property was subdivided into three titles, which now belong to the plaintiff, the Rand Registrar testified that the Ministry of lands has no record of subdivisions of L.R No. 12715/594 and that there is no record of L.R No. 12715/13863 (IR No. 208444), L.R No. 12715/13864 (IR No. 208445 and L.R. No. 12715/13865 (IR No. 208446) claimed by the plaintiff. Again, this evidence by the Land Registrar was not challenged at all. I therefore find and hold that as the plaintiff's titles for L.R No. 12715/13863 (IR No. 208444), L.R No. 12715/13864 (IR NO. 208445 and L.R. No. 12715/13865 (IR No.208446) do not exist in the records of the ministry of lands, those titles do not exist, the same are forged and there has never been subdivision of LR 12715/594 IR No. 47715. The plaintiff's titles, and search certificates are not authentic because if the ministry of lands has no records for the alleged subdivisions, there can be no basis upon which the searches thereof can be issued. In addition, it is clear that letters produced by the plaintiff allegedly emanating from the Chief Land Registrar and other Government offices allegedly confirming that the plaintiff as the owner of the suit property, were not premised on official Government records and therefore as the Principal Land Registrar confirmed non-existence of the plaintiff's titles, those letters are fraudulent. For the above reasons, I find and hold that the root of the plaintiff's title for the suit property is not traceable and therefore the plaintiff is not the rightful or registered proprietor of the suit property.
74. From the evidence of the Land Registrar regarding LR No. 12715/595 IR 47715, their records showed that a Grant was issued to Syokimau Farm Limited on 10<sup>th</sup> August 1988 and on 8<sup>th</sup> December 1988 a



transfer was effected in favour of Gedion Mbithi Malinda and Stephen Mailu Kitima as joint tenants in common in equal shares. Further that on 5<sup>th</sup> June 1990, a transfer was done to Carmellia Ngami Mburu. Further, that on 9<sup>th</sup> October 2007 a transfer was done to Ushindi Communications Limited, and lastly a transfer was done in favour of Allcan Agency Network Limited on 11<sup>th</sup> December 2017, who are the current registered owners. She produced a search to that effect. The land Registrar stated that there were no records in regard to the three titles allegedly held by the plaintiff and stated that there were no records regarding subdivision of LR No. 12715/595 or surrender of the mother title and she maintained that the plaintiff's subtiles do not exist.

75. Considering the evidence of the 3<sup>rd</sup> and 4<sup>th</sup> defendants it is clear that the same corroborates the evidence of the Land Registrar. The 3<sup>rd</sup> defendant stated that she purchased the suit property from Carmelina Ngami Mburu and sold it to the 4<sup>th</sup> defendant who gave a similar history as that given by the Land Registrar. This evidence was not shaken in cross examination or rebutted by the plaintiff or the 2<sup>nd</sup> defendant. In view of the fact that the 3<sup>rd</sup> and 4<sup>th</sup> defendants demonstrated the root of their title whose evidence was corroborated by the Land Registrar who is the custodian of land records, this court finds that the 4<sup>th</sup> defendant has demonstrated lawful ownership of the suit property and therefore I find and hold that the 4<sup>th</sup> defendant is the lawful and genuine owner of the suit property. The evidence of the plaintiff and 2<sup>nd</sup> defendant did not prove any vitiating factors that could impeach the 4<sup>th</sup> defendant's title as provided for in section 26 of the *Land Registration Act*, and therefore I find and hold that the 4<sup>th</sup> defendant is the lawful owner of the suit property.
76. Section 25 of the *Land Registration Act* confers rights vested in a registered proprietor and protected under the law. As the 4<sup>th</sup> defendant is the lawful proprietor of the suit property, it has the right to quiet possession thereof without interference by any other person including the plaintiff and 2<sup>nd</sup> defendant. Therefore the 4<sup>th</sup> defendant is entitled to an order of permanent injunction in the terms sought in their counterclaim. As the title of the suit property in the plaintiff's name is not genuine, the 4<sup>th</sup> defendant is entitled to orders of cancellation under section 80 of the *Land Registration Act*.
77. On trespass, it is trite that trespass is actionable per se without proof of actual damage. As the plaintiff herein has been in trespass of the suit property since 2019 and bearing in mind the area thereof I make an award of Kshs. 2, 000, 000/= for general damages for trespass as against the plaintiff. As the three alleged titles allegedly held by the plaintiff do not exist, this court will not issue orders cancelling the non-existent titles as the court will not make orders in vain.
78. In the result I find and hold that the plaintiff and 2<sup>nd</sup> defendants have failed to prove their respective claims herein on the required standard and the same are hereby dismissed with costs to 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> defendants. I further find that the 4<sup>th</sup> defendant has proved its counterclaim on the required standard which I allow in the following terms;
- a. A declaration be and is hereby made that the 4<sup>th</sup> defendant is the lawful and rightful owner of Land Reference Number 12715/594 (IR 47715).
  - b. A permanent injunction is hereby issued restraining the plaintiff either by herself, her servants, agents or any other person acting under her instructions or claiming interest in the suit property from entering, occupying, or in any other manner trespassing and or interfering with the 4<sup>th</sup> defendant's ownership or quiet ownership of land Reference Number 12715/594 (IR 47715).
  - c. An order is hereby granted for cancellation of title No. 12715 (IR 47715) issued to the plaintiff or any other party with respect to Land Reference Number 12715/594(IR 47715).



- d. General damages for trespass in the sum of Kshs. 2, 000, 000/= are awarded to the 4<sup>th</sup> defendant to be paid by the plaintiff.
- e. The costs of the suit and those of the counterclaims herein are awarded to the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> defendants, and the same shall be borne by the plaintiff and the 2<sup>nd</sup> defendant.

79. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 5<sup>TH</sup> DAY OF FEBRUARY, 2025 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM**

**A. NYUKURI**

**JUDGE**

In the presence of;

Ms Kyania for the plaintiff

Mr. Chasia holding brief for Mr. Ochieng for the 2<sup>nd</sup> defendant

Mr. Karanja holding brief for Mr. Githinji for the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants

No appearance for the 6<sup>th</sup> defendant.

Court Assistant: M. Nguyai

