



**Stantech Motors Limited v Syokimau Farm Limited & 4 others (Environment & Land Case E005 of 2022) [2024] KEELC 3263 (KLR) (3 April 2024) (Judgment)**

Neutral citation: [2024] KEELC 3263 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT & LAND CASE E005 OF 2022**

**A NYUKURI, J**

**APRIL 3, 2024**

**BETWEEN**

**STANTECH MOTORS LIMITED ..... PLAINTIFF**

**AND**

**SYOKIMAU FARM LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**PAUL MASILA KIMEU ..... 2<sup>ND</sup> DEFENDANT**

**BENEDICT MACKENZIE MUTUKU ..... 3<sup>RD</sup> DEFENDANT**

**SAMUEL NDERITU ..... 4<sup>TH</sup> DEFENDANT**

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

**JUDGMENT**

**Introduction**

1. By a plaint dated 26<sup>th</sup> January 2022, the plaintiff sought against the defendants, the following orders;
  - a. A permanent injunction restraining the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants together with their servants and agents jointly and severally from trespassing, entering, constructing or interfering in whatsoever manner with the property known as Grant No. 46936. and Land Reference No. 12715/616 Syokimau in Machakos County.
  - b. A declaration that the 3<sup>rd</sup> title I.R. No. 224390 Land Reference No. 12715/ 616 is null and void.
  - c. An order compelling the 5<sup>th</sup> defendant to cancel the certificate of title I.R No. 224390 Land Reference No. 12715/616.
  - d. General and exemplary damages for loss of use of the property and trespass.



- e. Costs of this suit with interest.
2. The plaintiff averred that since the year 2008, the plaintiff was the registered owner of all that property known as Land Reference Number 12715/ 616, (suit property) having purchased the same from the original owner one Peter Nzuki Ndeti. It stated that the suit property was transferred to the plaintiff on 2<sup>nd</sup> April 2009 and that the same is still registered in the plaintiff's name. It further stated that it had come to the knowledge of the plaintiff that the 1<sup>st</sup> defendant, through the 2<sup>nd</sup> defendant, had fraudulently secured a certificate of title for the suit property on 14<sup>th</sup> January 2020. It also stated that the 2<sup>nd</sup> and 3<sup>rd</sup> defendants represent themselves as administrator and former director of the 1<sup>st</sup> defendant respectively, and claimed that the first defendant was wound up voluntarily, yet it can own a title. It stated the particulars of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants' fraud as securing a certificate of title in the name of a wound up company; colluding with the officials at the lands registry to secure a fraudulent certificate of title; and representing themselves as acting on behalf of a wound- up company.
  3. It further stated that its directors visited the suit property upon being informed that there were strangers who had trespassed on the suit property and began constructing a perimeter wall thereon. That when they went to the suit property they found the 4<sup>th</sup> defendant who represented himself as the contractor of the 3<sup>rd</sup> defendant and gave them title in the name of the 3<sup>rd</sup> defendant. That it reported the matter to the police and the Deputy County Commissioner Athi River, whereof the defendants were ordered to stop the construction, but they declined.
  4. The suit was opposed. The 1<sup>st</sup> to 4<sup>th</sup> defendants filed a joint statement of defence dated 10<sup>th</sup> February 2022. They denied the plaintiffs claim and stated that the suit property is registered in the name of the 3<sup>rd</sup> defendant, who purchased the same from one Peter Ndeti in terms of shares, as the latter was a shareholder of Syokimau Farm Limited having been issued with shares numbered 1081-1090 in respect of share certificate No. 109. They stated that Peter Ndeti had been allocated plot beacon number 268 and issued a letter of allotment dated 11<sup>th</sup> April 1982 in respect of share certificate number 109 dated 3<sup>rd</sup> November 1980. That at the time of purchase by the 3<sup>rd</sup> defendant, the suit property did not have title and was only known as plot beacon No. 268 and what was transferred to the 3<sup>rd</sup> defendant was the shares. That it was upon purchase that Peter Ndeti handed over the original share certificate, original letter of allotment, and original subscription receipts for the processing of the title to the 3<sup>rd</sup> defendant. They maintained that there is a difference between Peter Ndeti and Peter Nzuki Ndeti, as the latter has never been a shareholder of Syokimau Farm Limited and he could not process title in respect of the suit property. They further alleged that when Syokimau Farm Limited was wound up in 2013, the 2<sup>nd</sup> defendant was mandated to be the administrator thereof and that he is the only one authorised to transact on behalf of the 1<sup>st</sup> defendant until the latter's dissolution.
  5. They maintained that the 1<sup>st</sup> defendant's winding up was still ongoing and that the 2<sup>nd</sup> defendant's mandate was to ensure that members and bona fide purchasers had been facilitated to process their titles. Further that the title is first processed in the name of Syokimau Farm Limited and thereafter transferred to the bona fide member or purchaser and that, that is why the suit property was processed in the name of Syokimau Farm Limited and transferred to the 3<sup>rd</sup> defendant. They denied the plaintiff's allegation of being in actual possession of the suit property and insisted that the same was occupied by the 3<sup>rd</sup> defendant.
  6. The 5<sup>th</sup> defendant neither entered appearance nor filed defence. The suit proceeded by way of viva voce evidence. The plaintiff presented three witnesses while the 1<sup>st</sup> to 4<sup>th</sup> defendants presented two witnesses.



## Plaintiffs Evidence

7. PW1 was Patrick Mwetzi Kailikia, a shareholder and director of the plaintiff. He adopted the averments contained in his witness statement dated 3<sup>rd</sup> March 2022 as his evidence in chief. His testimony was that the plaintiff was incorporated in 1997 and on 16<sup>th</sup> May 2008, it entered into a land sale agreement with one Peter Nzuki Ndeti, the registered owner thereof in respect of the suit property at a consideration of Kshs. 30,000,000/= (Thirty Million). He stated that at the time of purchase, the registered owner Mr. Peter Nzuki Ndeti had charged the suit property with African Banking Corporation Limited, and that, that charge was discharged and transfer done in his favour before a subsequent charge in favour of Savings and Loans Kenya Limited for a loan of Kshs. 18,000,000/= (Eighteen Million) was registered in respect of a loan granted to the plaintiff.
8. He further stated that they were in the process of subdividing the suit property into three portions. He alleged that on 23<sup>rd</sup> January 2022 he was called by the plaintiff's caretaker one Elizabeth Mutuku Kathae who told him that some people were constructing on the suit property. That when he went to the suit property he found the 4<sup>th</sup> defendant who alleged that he had been contracted by the 3<sup>rd</sup> defendant to construct a perimeter wall on the suit property. That the 4<sup>th</sup> defendant gave him a copy of title registered in the name of the 1<sup>st</sup> defendant on 14<sup>th</sup> January 2020 and transferred to one Benedict Mackenzie Mutuku, the 3<sup>rd</sup> defendant on 15<sup>th</sup> December 2021 at a consideration of Kshs. 2,000,000/= (Two Million).
9. He stated that he noted that the title had the same L.R number as that of the plaintiff but with a different I.R number, being I.R. number 224390, while the plaintiffs I.R number is 46936. He stated that this prompted him to report to Mlolongo police station vide OB No. 59/23/1/22 and thereafter filed this case. That they learned from their advocate that another similar case involving other parties had been filed against the 1<sup>st</sup> and 4<sup>th</sup> defendants vide ELC No. E044 of 2021, where the two defendants had constructed on the property of the plaintiff in that matter on the basis of a similar title.
10. The witness maintained that as the 1<sup>st</sup> defendant was wound up in 2013, then it does not exist and could not have been issued with a title in 2020. He insisted that the acquisition of title by the defendants was fraudulent and done in cahoots as the value given is Kshs. 2,000,000/= (Two Million) when the property was valued at over Kshs. 300,000,000/= (Three hundred Million). He stated that the 3<sup>rd</sup> defendant failed to produce a transfer executed in his favor or evidence of payment of stamp duty. That the Plaintiff had exhibited ownership of the suit property by documents produced, including payment of rates, correspondence with the office of Inspector General, DCI, ODPP, Business Registration Bureau and Lands Office.
11. PW 1 produced the following 30 documents in support of their case;
  1. Copy of plaintiff's incorporation certificate.
  2. Copy of company resolution dated 24<sup>th</sup> January 2022.
  3.
    - i. Copy of Title Deed for L.R. No. 12715/616.
    - ii. Copy of letter dated 9<sup>th</sup> April 2008 from A. M. Mbindyo & Co. Advocates forwarding copies of Identity Card of Peter Nzuki Ndeti to A. F. Gross & Co. Advocates.



- iii. Copy of letter dated 20<sup>th</sup> May 2008 from A. F. Gross & Co. Advocates forwarding copy of Identity Card for Peter Nzuki Ndeti for due diligence and copy letter of allotment from Syokimau Farm Ltd.
  - iv. Copy of letter from Director of National Registration dated 26<sup>th</sup> May 2008 confirming Identity Card Number belongs to Peter Nzuki Ndeti.
4. Copy of Sale Agreement dated 16<sup>th</sup> May 2008 between plaintiff and Peter Nzuki Ndeti.
  5. Transfer dated 16<sup>th</sup> December 2008 of L.R. No. 12715/616 from Peter Nzuki Ndeti to plaintiff.
  6. Copy of letter dated 30<sup>th</sup> April 2008 from A. F. Gross & Co. Advocate to plaintiff asking for deposit of purchase price.
  7. Copy of letter dated 12<sup>th</sup> September 2008 from Saving & Loans to Louis Onguto & Co. Advocates confirming mortgage facility of Kshs. 18 Million to the plaintiff together with the letter of offer to the plaintiff dated 30<sup>th</sup> August 2008.
  8. Copy of letter dated 19<sup>th</sup> September 2008 from J. Louis Onguto Advocate to the plaintiff forwarding charge, guarantee and indemnity documents for execution.
  9. Copy of professional undertaking from J. Louis Onguto Advocate to Kipkenda Lilan & Koech Advocates dated 23<sup>rd</sup> September 2008.
  10. Copy of letter dated 24<sup>th</sup> September 2008 from J. Louis Onguto forwarding charge documents to Savings & Loans (K) Ltd.
  11. Copy of letter dated 4<sup>th</sup> November 2008 from A. F. Gross to J. Louis Onguto Advocate forwarding bankers cheque for stamp duty.
  12. Copies of invoices and payment receipt for Land Rates from Mavoko Sub County from the year 2017 to 2022.
  13. Copies of clearance certificates from Mavoko Sub County for the years 2017 to 2022.
  14. Copies of Deed Plans for sub division of the suit property into three sub titles L.R. Nos. 12715/13915, 12715/13916 and 12715/13917.
  15. Copy of valuation report.
  16. Copy of letter from the plaintiff's advocates to Official Receiver requesting for information and record of correspondence regarding Syokimau Farm Limited dated 8<sup>th</sup> February 2022.
  17. Copy of letter dated 11<sup>th</sup> February 2022 from Official Receiver to plaintiff's advocates and copies of correspondences requested:
    - a. Copy of letter dated 6<sup>th</sup> October 2021 from Official Receiver to 2<sup>nd</sup> defendant warning him to stop acting as the Administrator of Syokimau Farm Limited.
    - b. Copy of letter dated 15<sup>th</sup> November 2011 from Official Receiver to ODPP requesting for investigations of the conduct of the 2<sup>nd</sup> defendant.
    - c. Copy of letter dated 29<sup>th</sup> November 2021 from ODPP to Inspector General directing the office to undertake comprehensive and thorough investigations.



- d. Copy of letter from DCI addressed to Official Receiver requesting for documents to assist investigations dated 7<sup>th</sup> December 2021.
  - e. Copy of letter dated 21<sup>st</sup> December 2021 from Official Receiver to DCI forwarding documents requested.
  - f. Copy of letter from Ahmednasir Abdullah Advocates LLP dated 31<sup>st</sup> January 2022 addressed to Business Registration Services requesting confirmation of authenticity of a letter dated 6<sup>th</sup> September 2021 from Business Registration Service authorizing the 2<sup>nd</sup> defendant to transact business of the 1<sup>st</sup> defendant.
  - g. Copy of letter dated 31<sup>st</sup> January 2021 from Business Registration Services addressed to Ahmednasir Advocates Abdullahi LLP denying the contents of the letter in question.
  - h. Copy of letter from Malonza & Co. Advocates dated 19<sup>th</sup> August 2013 addressed to Registrar of Companies confirming the voluntarily winding up of Syokimau Farm Limited and requesting the company's name to be removed from the Register of Companies.
18. Copy of letter from plaintiff's advocates dated 22<sup>nd</sup> February 2022 addressed to Chief Land Registrar attaching a letter dated 12<sup>th</sup> March 2021 addressed to the Director Survey by C. K. Ngetich requesting for authenticity and response thereto dated 23<sup>rd</sup> February 2022.
19. Copy of witness statement of Registrar of Lands Benson L. Longolenyang.
12. On cross examination, he stated that before purchasing the suit property, the plaintiff did due diligence. Further that the vendor had an allotment letter and title. He also averred that the share certificate was unnecessary because the vendor had title. He stated that there was the plaintiff's construction on the suit property for the caretaker. In re-examination, he stated that the title had been charged to ABC Bank and it was in the vendor's name. He further stated that their title was with the KCB Bank and that they are still the registered proprietors of the suit property since 2009 and that if the 1<sup>st</sup> defendant was wound up in 2013, it cannot be holding title thereafter.
13. PW2 was Raymond Korir, the Assistant Official Receiver in the office of the Official Receiver. He stated that the plaintiff's lawyer wrote to them requesting information concerning the 1<sup>st</sup> defendant and that they responded to the request vide their letter of 11<sup>th</sup> February 2022. He stated that his office was aware that the 1<sup>st</sup> defendant was wound up pursuant to a special resolution of the members of the company, although the gazette notice does not show that a liquidator was appointed. He stated that the office of the Official Receiver deals with insolvency matters and also license insolvency practitioners. That his office is not aware of any appointment of a liquidator regarding the 1<sup>st</sup> defendant.
14. It was his testimony that when he found out that the 2<sup>nd</sup> defendant was referring to himself as administrator of the 1<sup>st</sup> defendant, he cautioned him to cease and desist from acting as such and asked him to surrender to the Official Receiver all documents on the 1<sup>st</sup> defendant's affairs. He took the position that the 2<sup>nd</sup> defendant was not a licensed insolvency practitioner and therefore he cannot act as a liquidator or administrator of a company as he has no capacity to do so.
15. This witness disowned the letter dated 6<sup>th</sup> September 2021 which the defendants relied on as authorizing the 2<sup>nd</sup> defendant to act for the 1<sup>st</sup> defendant. He referred to the letter from his office of 31<sup>st</sup> January 2022 as a confirmation that the letter dated 6<sup>th</sup> September 2021 does not emanate from



- the Registrar of Companies. He stated that as per their office, there is no Official Receiver for the 1<sup>st</sup> defendant.
16. In cross examination, he stated that a company may be wound up voluntarily by its members or by creditors or through court. That in the circumstances of this case, the members did not appoint a liquidator and therefore the official receiver becomes the default liquidator by operation of the law. His position was that the 2<sup>nd</sup> defendant had violated section 5 of the *Insolvency Act* and that he had been reported to the DCI for further investigation. He also stated that the 2<sup>nd</sup> defendant is not qualified to act as official receiver and that even if he were to be appointed by the members, he could not act as such under the law. He stated that the gazette notice of 26<sup>th</sup> July 2013, on record, showed voluntary winding up of the 1<sup>st</sup> defendant. Further that before 2015, the official receiver had no control of who could be appointed as liquidator as there were no qualifications. He stated that he could not confirm if the 1<sup>st</sup> defendant had been dissolved and that it is the liquidator who can transact on behalf of the company including transfer of shares. He averred that he was not aware that the appointment of the 2<sup>nd</sup> defendant was never challenged.
  17. In re-examination he stated that a liquidator can only hold office for a year and thereafter he must seek authority of the court to continue and must inform the office of the official receiver and that failure to get authority, the liquidation is transitioned into the provisions of the *Insolvency Act*. That the 2<sup>nd</sup> defendant having not had authority from court cannot purport to act as liquidator.
  18. PW3 was Charles Kipkirui Ngetich, the Deputy Chief Land Registrar in the Ministry of Lands, Public Works, Housing and Urban Development. He stated that he has worked in the ministry of lands for 20 years and he is a qualified advocate of the High Court of Kenya. He stated that he attended court pursuant to court summons to provide evidence in respect of the suit property. According to the witness, the parcel I.R. No. 46936 L.R. No. 12715/616 was originally registered in the name of Syokimau Farm Limited, but is currently registered in the name of Stantech Motors Limited and also currently charged to Savings and Loan Kenya Limited for a sum of Kshs. 18,000,000/= (Eighteen Million). That the title is currently under the process of subdivision at Survey of Kenya and currently awaiting geospatial data capturing.
  19. He stated that the title by the defendants relating to I.R. No. 224390 was a forgery as that title is not in the official Government lands system. He stated that although the title by the defendants was purported to have been signed by him, that was not true as he denied signing the same. He maintained that his office was in possession of the transfer instrument transferring the suit property from Peter Nzuki Ndeti to the plaintiff, which is dated 16<sup>th</sup> December 2008 and registered on 2<sup>nd</sup> April 2009. He stated that it is not possible that the suit property would be valued at Kshs. 2,000,000/= (Two Million) in 2021 and it should be over Kshs. 40,000,000/= (Forty Million).
  20. He denied authoring the letter dated 12<sup>th</sup> March 2021 at page 75 of the plaintiff's documents and alleged that the same was a forgery and that the signature on that letter and the one on the letter dated 23<sup>rd</sup> February 2022 at page 76, thereof are different. That his response at page 76 clarified that issue and stated that he did not author the former. He stated that he does not know the 2<sup>nd</sup> and 3<sup>rd</sup> defendants. He insisted that the defendants' documents were forgeries.
  21. In cross examination, he stated that the 1<sup>st</sup> defendant was a private company. He stated further that he registers interest in land and does not process titles. He maintained that Syokimau Farm Limited was no longer in existence. He stated that each title has a history. He stated that the suit property was originally registered in 1989 and underwent subdivisions. That the Plaintiff title was genuine having been signed by a former Commissioner of Lands. He stated that the officer who is alleged to have written the letter



dated 9<sup>th</sup> February 2022, at page 58 of the defendants' documents, was a junior officer with no authority to write such letter and has no authority to write on behalf of the Chief Land Registrar. That marked the close of the plaintiff's case.

### **1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendant's evidence**

22. DW1 was Benedict Mackenzie Mutuku who adopted his witness statement dated 10<sup>th</sup> February 2022 as his evidence in chief. It was his testimony that he is the registered proprietor of parcel L.R. Number 12715/616 which he purchased from Peter Ndetei on 12<sup>th</sup> November 1989. He further stated that Peter Ndetei was a shareholder and member of the 1<sup>st</sup> defendant with shares numbered 1081 to 1090 with a share certificate number 109. He stated that Peter Ndetei was allocated plot beacon number 268 and issued with allotment letter dated 11<sup>th</sup> April 1982 and that his share certificate number 109 was issued to him on 3<sup>rd</sup> November 1980. According to this witness, when he purchased the suit property the title deed had not been processed and that what was transferred to him were the vendor's shares which were to enable him to process his title deed. He stated that at the time of the purchase Peter Ndetei handed him original share certificates, original letter of allotment and original share subscription receipts which he is in possession of. He stated that he has always been in possession of the suit property and that he authorized the 4<sup>th</sup> defendant to construct a perimeter wall thereon.
23. This witness alleged that the plaintiff's title was obtained by fraud which included colluding with the ministry of lands officials. He further alleged that the plaintiff's report to the DCI had been investigated and a letter dated 25<sup>th</sup> January 2022 had been written by DCI Mlolongo. He stated that the Ministry of Lands in their letter dated 9<sup>th</sup> February 2022 confirmed that the suit property belongs to him. Further that the 2<sup>nd</sup> defendant is the administrator of the 1<sup>st</sup> defendant and his role was to ensure that members and bona fide purchasers had their title deeds processed. He produced 12 exhibits being;
1. Sale agreement dated 12<sup>th</sup> November 1989.
  2. Copy of Title Deed.
  3. Copy of list of shareholders.
  4. Company resolution dated 26<sup>th</sup> June 2013.
  5. Copy of letter of allotment.
  6. Copy of share certificate.
  7. Copy of share subscription receipts.
  8. Copy of transfer of shares.
  9. Letter dated 25<sup>th</sup> January 2022.
  10. Copy of letter dated 9<sup>th</sup> February 2022.
  11. Winding up Gazette Notice dated 8<sup>th</sup> August 2013.
  12. Lands rates clearance certificate.
24. On cross examination he stated that his highest education level was form four which he attained in 1978. That in 1996 he worked as a board member of Syokimau Farm Limited up to 2013 and that the suit property is his as he bought it from a member of the 1<sup>st</sup> defendant in 1989. He stated that he did not know that after the sale he was to get the share certificate. He stated that his agreement showed that the land was registered as L.R 12715/616 instead of plot No. 268. He stated that when he purchased



- the land it had not been registered and was only known as plot No. 268 which was the beacon number and that he blamed the advocate who wrote the agreement for indicating the L.R. number of the land.
25. He stated that the title was transferred to him in 2021 by the 1<sup>st</sup> defendant and it is the 2<sup>nd</sup> defendant who transferred the land to him. He stated that he had no transfer instrument. He stated that from the list of the 1<sup>st</sup> defendant's members, Peter Ndetei is shown as member no. 109. He stated that he did not have Peter Ndetei's identity card. He stated that the 1<sup>st</sup> defendant was wound up in June 2013 as per the minutes filed by the defendants. He stated that the meeting held for winding up the 1<sup>st</sup> defendant was held on 26<sup>th</sup> June 2013. He stated that the gazette notice referred to minutes of 26<sup>th</sup> July 2013 but that that did not mean that their minutes of 26<sup>th</sup> June 2013 were forged. He confirmed that in the letter dated 19<sup>th</sup> August 2014 by Malonza & Co. Advocates, the Registrar was being asked to remove the 1<sup>st</sup> defendant from the company register but he is not aware if that was done. In re-examination he stated that the minutes herein were investigated and found to be valid.
  26. He stated that survey at the 1<sup>st</sup> defendant was done in 1984 and that is when shareholders were given letters of allotment.
  27. PW2 was Paul Masila Kimeu. He adopted his witness statement dated 10<sup>th</sup> February 2022 as his testimony in chief. It was his testimony that he was appointed caretaker/administrator of Syokimau Farm Limited in a resolution of the company dated 26<sup>th</sup> June 2014 where 665 shareholders were present and that he continues in that office pursuant to provisions of section 734(2) and (3) of the [Insolvency Act](#). He stated that he was appointed to appear in court proceedings and process titles to shareholders and members among other responsibilities. He stated that the suit property originally belonged to the 1<sup>st</sup> defendant which was originally L.R. No. 7149/11/R.
  28. He also alleged that the 1<sup>st</sup> defendant's shares were acquired by 31<sup>st</sup> December 1984 and shareholders were required to have share certificate, letter of allotment and share subscription receipts and a title would not be issued without those documents. That Peter Ndetei was a member and shareholder of the 1<sup>st</sup> defendant having shares numbered 1081 to 1090 with share certificate 109 dated 3<sup>rd</sup> November 1980 and that he was allotted plot beacon No. 268 with allotment letter dated 11<sup>th</sup> April 1982. He stated that Peter Ndetei and Peter Nzuki Ndeti were different persons.
  29. In cross examination, he stated that he joined the 1<sup>st</sup> defendant in 1967 and was caretaker of the 1<sup>st</sup> defendant's property up to 1984, when he was elected a board member up to 1996. He stated that he kept the 1<sup>st</sup> defendant's records and that he was the office manager up to 1998. He stated that from 2013 up to now he was still winding up the 1<sup>st</sup> defendant company. He stated that he did not have the list of members who attended the meeting of 26<sup>th</sup> June 2013. He stated that he did not have the original register of the 1<sup>st</sup> defendant's members and had no evidence to show Ndetei paid for the shares stated. That he was given the mandate to clarify in court who owns parcels originally owned by the 1<sup>st</sup> defendant.
  30. He stated that his highest level of education was form two. He confirmed that he did not comply with the conditions set by the official receiver in his letter dated 6<sup>th</sup> October 2021 at page 64 of the plaintiff's documents which cautioned him to cease and desist from acting as administrator and surrender to Official Receiver assets and documents of 1<sup>st</sup> defendant. He stated that he does not agree with the position taken by the Official Receiver in that letter. He further stated that the 1<sup>st</sup> defendant has no directors. He confirmed that he had no transfer forms between the 1<sup>st</sup> and 3<sup>rd</sup> defendants regarding the suit property although it was him who signed the transfer.



31. He stated that he knows parcel Nos. L.R 12715/307 and 308 as it belongs to the 1<sup>st</sup> defendant. He stated that one Mr. Mwakio wrote a letter denying a letter attributed to him. He stated that his documents showed that MacKenzie Mutuku appears to have paid rates for the suit property in 2017, although at that time he was not the registered proprietor. He stated that he cannot tell the value of the land but declared it at Kshs. 2,000,000/= (Two Million). He stated that the 4<sup>th</sup> defendant was hired by the 3<sup>rd</sup> defendant to put up the perimeter wall. He stated that he could not remember which day of the week it was when they had the meeting of 26<sup>th</sup> June 2013. He stated that he had more than 20 cases before this court which relate to fake documents. That marked the close of the defence case.
32. Parties were granted the liberty to file written submissions in support of their respective cases and on record are the plaintiff's submissions filed on 6<sup>th</sup> October 2023.

### **Plaintiff's submissions**

33. Counsel for the plaintiff submitted that there were nine issues for the court's determination, namely;
  1. Whether there was a valid AGM on the 26<sup>th</sup> June 2013 or the meeting was held on 27<sup>th</sup> July 2013.
  2. Whether the completion documents mentioned in the sale agreement of the 3<sup>rd</sup> defendant can confer title.
  3. Whether the administrator is a legal administrator in law.
  4. Whether the administrator can execute documents on behalf of a wound-up company.
  5. Whether the plaintiff's certificate of title is a genuine certificate of title.
  6. Whether the 3<sup>rd</sup> defendant's certificate of title is a genuine certificate of title.
  7. Whether Syokimau Farm Limited was capable of registering a title in its name when it is already wound up.
  8. Whether the orders sought by the plaintiff can be granted.
  9. Who should bear the costs of the suit.
34. Counsel submitted that the 2<sup>nd</sup> defendant failed to avail the register of members who attended the meeting of 26<sup>th</sup> June 2013 yet the gazette notice referred to an AGM held on 26<sup>th</sup> July 2013 as confirmed by the letter of the 1<sup>st</sup> defendant's advocates, Malonza & Company Advocates dated 19<sup>th</sup> August 2013, forwarding the resolution for winding up to the Registrar of companies. Counsel argued that the 2<sup>nd</sup> defendant's evidence that he was appointed administrator of the 1<sup>st</sup> defendant in a meeting of 26<sup>th</sup> June 2013 was false.
35. Counsel referred to the evidence of PW2 that even if DW2 were to be appointed as the 1<sup>st</sup> defendant's liquidator, he cannot be such liquidator due to provisions of the *Insolvency Act* because a liquidator must be an advocate of the High Court of Kenya or holder of CPA and that the 2<sup>nd</sup> defendant was in violation of section 5 of the Act.
36. Counsel submitted that the fact that the 1<sup>st</sup> defendant was wound up was not in dispute and that once a company is wound up, it ceases to exist and that the certificate of title could not be registered in such company's name. Further that the 2<sup>nd</sup> defendant had no capacity to transfer the suit property. Counsel argued that it was clear that the 3<sup>rd</sup> defendant's title was procured by fraud.



37. It was further contended for the plaintiff that the plaintiff had exhibited the entire process of how it acquired the suit property by providing the agreement, identity card of the vendor, search, and the charge to ABC Bank. Counsel argued that failure by the 4<sup>th</sup> defendant to testify in court clearly indicate his unlawful acts.
38. Reliance was placed on the cases of Alice Chemutai Too v. Nickson Kipkirui Korir & 2 Others [2015] eKLR and Dina Management Limited v. County Government of Mombasa [2023] eKLR for the proposition that registration is proof of indefeasibility unless the title was unlawfully obtained.
39. On trespass, counsel relied on the case of Park Towers Limited v. John Mithamo Njika & 7 Others [2014] eKLR to submit that where trespass is proved, a party need not prove specific loss.

### **Analysis and determination**

40. The court has carefully considered the pleadings, evidence and submissions filed. The issues arising in this matter are as follows;
  - a. Whether Syokimau Farm Limited is in existence as a juridical person.
  - b. Whether Paul Masila Kimeu is the lawful administrator of Syokimau Farm Limited, the 1<sup>st</sup> defendant
  - c. Who between the plaintiff and the 3<sup>rd</sup> defendant hold a valid title to the suit property.
41. The Black's Law Dictionary 11<sup>th</sup> Edition, defines "winding up" as "the process of settling accounts and liquidating assets in anticipation of a partnership's or a corporation's dissolution". It also defines "members voluntary winding up" as "the liquidation procedure begun after a company's owners vote to dissolve the business".
42. It is not disputed that on 26<sup>th</sup> July 2013, Syokimau Farm Limited, the 1<sup>st</sup> defendant herein was voluntarily wound up by members as per the Gazette Notice No. 11485. In the said Gazette Notice, no one was appointed as liquidator or administrator of the wound up company. It is also not disputed that the law firm of Malonza & Company Advocates forwarded to the Registrar of Companies, the newspaper advertisement; and gazette notice of the winding up of the 1<sup>st</sup> defendant and sought that the 1<sup>st</sup> defendant be removed from the register of companies. The face of that letter shows that it was received in the office of the Registrar of Companies on 6<sup>th</sup> September 2013. To date the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants have never produced any search (CR12) in respect of the 1<sup>st</sup> defendant to suggest that for whatever reasons, the 1<sup>st</sup> defendant is still in existence. It is my view that Syokimau Farm Limited having been voluntarily wound up on 26<sup>th</sup> July 2013, with no appointment of receiver, liquidator, administrator, or similar official, it became a dead and buried company. I say so because, there is no record of assets or accounts of that company which was presented in evidence before this court, as all that the 2<sup>nd</sup> Defendant stated was that his role was to appear in court and ensure members get their title deeds.
43. In this case as the 1<sup>st</sup> defendant was wound up voluntarily on 26<sup>th</sup> July 2013, leaving no liquidator or similar official, or assets and accounts, it ceased being in existence from that date. Therefore a non-existent company is not capable of being registered as holder of any property in its name. I therefore find and hold that Syokimau Farm Limited does not exist and is therefore not capable of owning property in its name or in any other way.



44. On whether Paul Masila Kimeu is the administrator of Syokimau Farm Limited, it is noted that Syokimau Farm Limited was wound up in 2013 before the enactment of the [Insolvency Act](#). Section 6 of the [Insolvency Act](#) provides for qualifications of an insolvency practitioner as follows;
1. Subject to subsection (2) and (3), a person is qualified to act as an insolvency practitioner only if the person—
    - a. satisfies the requirements of the insolvency regulations with respect to education, practical training and experience;
    - b. is a member of a professional body recognized under section 7; and
    - c. satisfies the requirements (if any) of the rules governing the body.
  2. A natural person is disqualified from being or acting as an insolvency practitioner if the person—
    - a. has been adjudged bankrupt, or the person's estate has been sequestrated and, in either case, the person has not been discharged;
    - b. is subject to a disqualification order made under the law relating to companies; or
    - c. is unable to perform the functions of an insolvency practitioner because of physical or mental infirmity.
  3. A body corporate is not eligible to be an insolvency practitioner, but this subsection does not extend to an employee of a body corporate.
  4. A natural person who, during the two years immediately preceding the commencement of this Part, was carrying on any of the activities referred to in section 4(1) or (2) is, unless disqualified under subsection (2), taken to be qualified to be and to act as an insolvency practitioner on and after that commencement, but ceases to be so qualified unless the person has, within the twelve months after that commencement, complied with the requirements of subsection (1).
45. Therefore, to act as an insolvency practitioner, a person must meet the qualifications in section 6 of the [Insolvency Act](#). The 2<sup>nd</sup> defendant having testified that his highest academic qualification being high school upto form two, it is clear that he is not qualified to act as administrator of the 1<sup>st</sup> defendant or any other company in Kenya, that has been wound up.
46. As Syokimau Farm Limited was wound up in 2013 before the enactment of the [Insolvency Act](#), the transitional provisions in Regulation 141 of the Insolvency Regulations, 2016 apply in the circumstances of this case and the same provides as follows;
1. A practitioner carrying on any assignment under the repealed [companies Act](#) after the one year after the commencement of the [Insolvency Act](#) shall declare to the official receiver any such pending assignment and whether he wishes to carry on under the repealed [companies Act](#) until the assignment is completed.
  2. If an insolvency practitioner wishes to carry on any existing assignments under the repealed [companies act](#) after the one year, the party concerned shall make an application to the High Court, requesting for an extension of time and the court on hearing such an application may extend the time as the court may consider just and expedient.
47. If the 2<sup>nd</sup> defendant was an administrator as alleged then he would still be required to exhibit a declaration to the Official Receiver of his intention to continue as such or an order of extension of time



from the High Court. These documents were not produced by the 2<sup>nd</sup> defendant, and he confirmed not having them.

48. The only document relied upon by the 2<sup>nd</sup> defendant to support his claim of being an administrator of the 1<sup>st</sup> defendant are the purported minutes of the 1<sup>st</sup> defendant dated 26<sup>th</sup> June 2013. I have considered those minutes together with the evidence of the 1<sup>st</sup> to 4<sup>th</sup> defendants. While the record shows by evidence of the 1<sup>st</sup> to 4<sup>th</sup> defendants that Gazette Notice dated 8<sup>th</sup> August 2013, in Gazette Notice No. 11485, the Board of Directors of Syokimau Farm Limited gazetted the voluntary winding up of that company which was pursuant to a Special Resolution passed on 26<sup>th</sup> July 2013 by shareholders, clearly, that Gazette Notice, is materially inconsistent with the evidence of the said defendants and the minutes of 26<sup>th</sup> June 2013. To begin with, the Gazette Notice shows that the resolution to wind up the 1<sup>st</sup> defendant was in a special general meeting held on 26<sup>th</sup> July 2013 and not in an Annual General Meeting held on 26<sup>th</sup> June 2013 as maintained by the 1<sup>st</sup> to 4<sup>th</sup> defendants' witnesses. In addition, the resolution for winding up, referred to in the Gazette Notice did not appoint any person as liquidator or administrator or similar official of the 1<sup>st</sup> defendant, contrary to the claim made by the 2<sup>nd</sup> defendant that he was appointed the 1<sup>st</sup> defendant's administrator in the Annual General Meeting of 26<sup>th</sup> June 2013.
49. The defendant's witness PW2 who confirmed being in custody of the 1<sup>st</sup> defendant's records confirmed that he had no record of the list of members who attended the alleged meeting of 26<sup>th</sup> June 2013, and there is no official gazette notice by the 1<sup>st</sup> defendant's board of directors referring to the meeting of 26<sup>th</sup> June 2013. I have considered the minutes dated 26<sup>th</sup> June 2013, which are titled "Minutes of the Annual General Meeting of Syokimau Farm Limited held on the farm office on Saturday, 26<sup>th</sup> June, 2013 at 10 a.m." While the minutes state that 26<sup>th</sup> June 2013, was a Saturday, that is not correct and as pointed out by the plaintiff's counsel, that day was a Wednesday. Besides, the letter dated 6<sup>th</sup> September 2021 purportedly written by the Registrar of Companies regarding the 2<sup>nd</sup> defendant being authorized to act as administrator of the 1<sup>st</sup> defendant was referred to as a forgery and the Official Receiver who was PW3 denied the claim that the same originated from the Registrar's office. In view of the above, I find and hold that the evidence that there was a meeting of the 1<sup>st</sup> defendant's members on 26<sup>th</sup> June 2013 is not credible and the minutes dated 26<sup>th</sup> June 2013 are a forgery of Paul Masila Kimeu and Makenzie Mutuku the 2<sup>nd</sup> and 3<sup>rd</sup> defendants herein. In view of the fact that the Gazette Notice dated 26<sup>th</sup> July 2013, only wound up Syokimau Farm Limited and did not appoint anyone as administrator, liquidator or similar official, I also find and hold that there is no evidence that Paul Masila Kimeu, the 2<sup>nd</sup> defendant was appointed as administrator of the 1<sup>st</sup> defendant. Consequently, I find and hold that Paul Masila Kimeu has never been and is not the administrator of Syokimau Farm Limited, the 1<sup>st</sup> defendant and therefore all transactions made by him in such capacity are null and void with no legal consequence, and he is personally liable for the same.
50. I now turn to the last issue on who between the plaintiff and the 3<sup>rd</sup> defendant has a valid title of the suit property. It is not in dispute that both the plaintiff and 3<sup>rd</sup> defendant have presented titles of L.R No. 12715/616, although the plaintiff's I.R. Number is 46936 while the 3<sup>rd</sup> defendant's I.R number is 224390.
51. Article 40 (1) and (6) of *the Constitution* provides legal protection for ownership and acquisition of property only to the extend of property lawfully acquired.
52. Section 26 of the *Land Registration Act* provides as follows;
  1. The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie



evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—

- a. on the ground of fraud or misrepresentation to which the person is proved to be a party; or
  - b. where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.
2. A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original.
53. It therefore follows that a certificate of title or lease is confirmation of indefeasibility of title unless it is proved that such title was obtained by fraud, misrepresentation, improper procedure or through a corrupt scheme.
54. In the case of *Dina Management Limited v. County Government of Mombasa & 5 others* [2023] eKLR, the Supreme Court of Kenya held that the legal protection given to a registered proprietor for absolute and indefeasible title is only present where the acquisition was legal, proper and regular, because a court cannot sanction or approve an irregularly or illegally acquired title.
55. Similarly, in the case of *Alice Wambui Gichuru (Suing as the administrator of the estate of Samuel Gichuru George (Deceased) v Gathoni Chege as the personal representative of the estate of Geoffrey Chege (Deceased) & 2 Others* [2021] eKLR, the court cited with approval the decision in the case of *Munyu Maina v Hiram Gathiha Maina* [2013] eKLR, where the court 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 encumbrance including any and all interests which need not be noted on the register.

56. In the instant suit, the plaintiff gave evidence on how it acquired the suit property. It stated that in 2008, at a consideration of Kshs. 30,000,000/= (Thirty million), it purchased the suit property from one Peter Nzuki Ndeti, who was then the registered proprietor thereof. That at the time of purchase, the vendor was still indebted to ABC Bank and that the charge was discharged, the suit property registered in the plaintiff's name and subsequently charged to Savings and Loan Kenya Limited at the behest of the plaintiff for a sum of Kshs. 18,000,000/= (Eighteen million). PW1 testified that since purchase the plaintiff has been in possession until the defendants' trespass in 2021. The plaintiff produced a copy of title, showing that the plaintiff was registered on 2<sup>nd</sup> April 2009, which date a charge in favour of Savings and Loan Kenya Limited was also registered. It also produced a search certificate, a sale agreement dated 16<sup>th</sup> May 2008 between itself and Peter Nzuki Ndeti, confirmation from the registrar of persons that Serial Number 209xxxx61 and Identity Card Number 29xxx79 was issued in the name of Peter Nzuki Ndeti. He further produced a letter of allotment showing that Peter Ndeti was owner of plot Number 268, a transfer executed by the plaintiff and Peter Nzuki Ndeti; rates payment receipts and clearance certificates from 2017 to 2022; documents regarding the charge on the suit property and valuation report dated 30<sup>th</sup> June 2015, among other documents.
57. On the other hand, the 1<sup>st</sup> to 4<sup>th</sup> defendants' version is that the suit property was allocated to Peter Ndeti in 1980 and later sold to the 3<sup>rd</sup> defendant on 12<sup>th</sup> November 1989. That at the time of sale, there



- was no title for the suit property but it was known as plot beacon No 268. That the 2<sup>nd</sup> defendant was appointed as administrator of the 1<sup>st</sup> defendant vide minutes of the 1<sup>st</sup> defendant members' meeting held on 26<sup>th</sup> June 2013, with the mandate to clarify and testify in court on who owns parcels which formerly belonged to the 1<sup>st</sup> defendant. That in his capacity as administrator of the 1<sup>st</sup> defendant, he processed the title in the name of the 1<sup>st</sup> defendant and subsequently transferred it to the 3<sup>rd</sup> defendant. The defendants insisted that the plaintiff's title was a forgery and that Peter Nzuki Ndeti and Peter Ndeti were different people.
58. The plaintiff challenged documents presented by the defendants starting from the minutes of 26<sup>th</sup> June 2013, the sale agreement, register of shareholders, allotment letters, share certificate and other documents.
59. I have considered the competing evidence presented on both sides. My assessment of the same is that the plaintiff's evidence and account on how it acquired the suit property is quite straight forward, as his title shows that the former owner one Peter Nzuki Ndeti whose identification documents were verified by the registrar of persons, lawfully owned the suit property before selling and transferring the same to the plaintiff. The search shows the I.R No. as 46936 and L.R No. 12715/616 and the transfer documents show the transferor's and transferee's details and execution. The plaintiff has also shown to have been paying rates for the suit property, with receipts from 2017 to date. In view of the above evidence, it is clear that the plaintiff has given a clear account demonstrating that the root of its title is clean and hence deserving protection of the law.
60. Reverting to the documents forming the basis of the 3<sup>rd</sup> defendant's title, the first document relied upon is the sale agreement. The vendor in the sale agreement is referred to as Peter Ndeti. This person's identity document is not disclosed, as no identity card number is stated anywhere in the sale agreement or in the letter of allotment or in any other documents produced by the defendants. This is despite the fact that the plaintiff's letter of allotment referred to Peter Ndeti citing his identity card number and as having plot No. 268 and share certificate No. 109. The defendants' alleged vendor/shareholder is referred to as Peter Ndeti, while the plaintiff's is Peter Ndeti. The defendant's shareholder has no identification documents, and this court notes the fact that the difference is their names that is Ndeti vis a vis Ndeti and the fact that Ndeti has no identification document. As no effort was made by the 1<sup>st</sup> to 4<sup>th</sup> defendants to avail any identification document for their Peter Ndeti, it is clear that they only corrupted the lawful owner Peter Ndeti's name and forged all the other documents to make it look like there is a Peter Ndeti. It is strange that this person's identity card number is not disclosed in any of the defendant's documents. The 2<sup>nd</sup> defendant who is in custody of the 1<sup>st</sup> defendant's records was unable to avail the original register of members of the 1<sup>st</sup> defendant, or obtain any copy of an identification document for this Peter Ndeti. My conclusions from the above evidence is that there was no shareholder in Syokimau Farm Limited called Peter Ndeti and that this name is fictitious and a creation of the fertile imagination of the 2<sup>nd</sup> to 4<sup>th</sup> Defendants who corrupted the name of Peter Ndeti, the real shareholder of share certificate No. 109 and plot No. 268, which is the suit property.
61. The evidence of the 3<sup>rd</sup> defendant was that when he purchased the suit property it was not titled but was only known as plot beacon Number 268. However, he produced a sale agreement showing that the land he purchased in 1989 was registered as L.R No. 12715/616. Therefore this material inconsistency in his evidence shows that his evidence has no credibility. He produced a title showing that the suit property was on 14<sup>th</sup> January 2020 registered in the name of Syokimau Farm Limited and on 15<sup>th</sup> December 2021 transferred to him. Therefore if the suit property was first registered in the 1<sup>st</sup> defendant's name in 2020, and was said to be unregistered in 1989, what was the source of the L.R. Number stated in the sale agreement of 1989? The 3<sup>rd</sup> defendant's allegation that, that was a mistake of his advocate, only shows that everything the defendants did in regard to L.R No. 12715/616, was a badly thought out, poorly



planned and terribly executed forgery. The Chief Land Registrar who testified in this matter confirmed that there is no record of the 3<sup>rd</sup> defendant's title in their system. All the letters the defendants produced as having emanated from the ministry of lands were denied by the Chief Land Registrar who stated that they were all forged. As noted earlier in this judgment, the letters from the Business Registration Service were also confirmed as being forgeries. The 1<sup>st</sup> Defendant being non-existent could not properly hold property in its name and be able to transfer it to the 3<sup>rd</sup> defendant; and the 2<sup>nd</sup> Defendant had no capacity to transact on behalf of the 1<sup>st</sup> defendant in purporting to transfer the suit property to the 3<sup>rd</sup> defendant. In addition, the 2<sup>nd</sup> and 3<sup>rd</sup> defendants had no transfer instrument to show the conveyancing process between themselves. And to show that the defendants' actions were dubious, unscrupulous and predicated on forgery, the 1<sup>st</sup> to 4<sup>th</sup> defendants have no search certificate to support their certificate of title to show that the same emanated from the Ministry of Lands; confirming the evidence of the Chief Land Registrar that the 3<sup>rd</sup> defendant's title does not exist in their system and or records. The totality of the evidence on record shows that the 1<sup>st</sup> to 4<sup>th</sup> defendants' evidence is premised on forgeries and demonstrates a criminal enterprise hellbent on creating fake documents and purporting them to have emanated from government offices, for the sole purpose of grabbing property. For the above reasons I find and hold that the 3<sup>rd</sup> defendant's title I.R. No. 224390 L.R. No. 12715/616 is the work of forgery by the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants herein and the same is null and void.

62. The plaintiff herein having clearly shown that it acquired the suit property lawfully by way of purchase from the lawful owner thereof, and subsequently obtaining transfer and registration in its name, it is my finding that the plaintiff has demonstrated the chain of transactions showing that the root of its title is clean and deserving legal protection.
63. On whether the plaintiff is entitled to the orders sought, the plaintiff shows that it sought for a permanent injunction against the defendants; declaratory order that title IR No. 224390 LR 12715/616 is null and void and cancellation of the same; and general and exemplary damages for trespass. The plaintiff having shown that it lawfully acquired the suit property, is entitled to enjoy the rights and interests conferred on registration as provided for in sections 24 and 25 of the [Land Registration Act](#) and therefore the defendants' trespass thereon is unjustified and must be stopped and punished. Therefore, the plaintiff deserves orders of permanent injunction in the terms sought.
64. It is trite that trespass is actionable in law per se, notwithstanding failure to prove actual loss (See *Sebastian Otieno Omari & 4 Others v. Derek Otieno Oluoch* [2018] eKLR). In the instant case, the plaintiff has shown by a valuation report that its property measures 2.037 hectares and is valued in 2015 at Kshs. 300,000,000/= (Three hundred million). The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants have trespassed thereon by constructing a perimeter wall. Considering the value of the suit property, and the fact that the trespass began in January 2022, I award general damages for trespass against the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants jointly and severally in the sum of Kshs. 30,000,000/= (Thirty Million).
65. The plaintiff sought exemplary damages. Exemplary damages are granted to deter wrongful behavior where the actions of the defendants are oppressive, unnecessary, unconstitutional and malicious. In the case of *James Orengo v. Attorney General*, Nairobi HCC No. 207 of 2002, the court held as follows;

The case law is clear that damages are designed not only to compensate the plaintiff but also to deter wrongful behavior. In *Rooks v Bernard* (supra) the court elaborated on the use and importance of exemplary damages: It serves a valuable purpose in restraining the arbitrary and outrageous use of executive power: The court emphasizes the use of exemplary damages in cases such as this one:



There are certain categories of cases in which an award of exemplary damages can serve a useful purpose in vindicating the strength of the law and thus affording practical justification for admitting into the civil law a principle which ought logically to belong to the criminal law. ...The first category is oppressive, arbitrary or unconstitutional action by the servant of government... where one man is powerful it is inevitable that he will try to use his power to gain his ends.”

66. Taking into account the callousness of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants and the forgeries done in this case and the fact that despite recommendations by the office of the Official Receiver and that of the Director of Public Prosecutions for action to be taken against them within the criminal justice system, and noting that as at the time the evidence in this case was closed, there was no indication that any action had been taken against the three persons, I take the view that this is a case where an award of exemplary damages is justified. Because, where like in this case, persons forge official documents without a care and without being confronted with the criminal justice system, for reasons this court cannot fathom, such persons should be penalized to pay exemplary damages as a deterrent measure. For that reason and in view of all the circumstances of this case, I order the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants to pay the plaintiff exemplary damages in the sum of Kshs. 30,000,000/= (Thirty million).
67. As the 3<sup>rd</sup> defendant's title is merely a forgery by the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants and not a reflection of the records held by the 5<sup>th</sup> defendant, the prayer that the 5<sup>th</sup> defendant be compelled to cancel the same, cannot be granted as the same was not issued by the 5<sup>th</sup> defendant. I therefore declare the title held by the 3<sup>rd</sup> defendant regarding the suit property as null and void.
68. In the premises, I find and hold that the plaintiff has proved its case on the required standard against the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants as sought in the plaint. The suit against Syokimau Farm Limited the 1<sup>st</sup> defendant is hereby dismissed with no order as to costs, as that entity does not exist, being a dead and buried company having been wound up in 2013 without appointment of liquidator or administrator or similar official, and there being no residual assets or accounts pending. As the forged title held by the 3<sup>rd</sup> defendant did not emanate from the office of the 5<sup>th</sup> defendant, the suit against the 5<sup>th</sup> defendant is dismissed with no order as to costs. I therefore enter judgment for the plaintiff against the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants jointly and severally in the following terms;
  - a. A permanent injunction be and is hereby granted restraining the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants together with their servants and agents jointly and severally from trespassing, entering, constructing or interfering in whatsoever manner with the property known as Grant No. 46936 and Land Reference No. 12715/616 Syokimau in Machakos County.
  - b. A declaration be and is hereby made that the 3<sup>rd</sup> defendant's Title I.R. No. 224390 Land Reference No. 12715/ 616 is null and void.
  - c. General damages for loss of use of the property and trespass are hereby awarded to the plaintiff against the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants jointly and severally in the sum of Kshs. 30,000,000/= (Thirty million).
  - d. Exemplary damages are awarded to the plaintiff against the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants jointly and severally in the sum of Kshs. 30,000,000/= (Thirty million).
  - e. The plaintiff is awarded costs of this suit plus interest thereon, to be borne by the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants.
69. It is so ordered.



**DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 3<sup>RD</sup> DAY OF APRIL, 2024 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM**

**A. NYUKURI**

**JUDGE**

In the Presence of;

Mr. Mutinda for plaintiff

Mr. Mulelu for defendants

Court Assistant – Josephine

