



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Nduta v Bhanushankar & 2 others (Environment & Land Case
168 of 2015) [2024] KEELC 6341 (KLR) (1 October 2024) (Judgment)**

Neutral citation: [2024] KEELC 6341 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 168 OF 2015**

**MAO ODENY, J
OCTOBER 1, 2024**

BETWEEN

JOSEPHINE NDATA PLAINTIFF

AND

VYAS VIMAL BHANUSHANKAR 1ST DEFENDANT

KRISHNA VIMAL VYAS 2ND DEFENDANT

LAND REGISTRAR, NAKURU 3RD DEFENDANT

JUDGMENT

1. By Plaintiff dated 12th June, 2015, the Plaintiff herein sued the Defendants seeking the following orders:
 - a. An order of temporary/permanent injunction do issue against the Defendants whether by themselves servants and/or agents or otherwise whomsoever from trespassing, erecting, transferring and/or interfering with the Plaintiff's quite possession and enjoyment of parcel of land known as Nakuru/Block 17/651 Formerly Unsurveyed Plot "C".
 - b. A declaration that the Plaintiff is the owner of parcel of land known as Nakuru/Block 17/651 Formerly Unsurveyed Plot "C" and order cancelling title issued to the Defendants in respect of Nakuru/Block 17/651 Formerly Unsurveyed Plot "C".
 - c. Costs and interest of the suit and damages.
 - d. Any other relief this honourable court deems fit to grant.
2. The 1st and 2nd Defendants filed a Statement of Defence and Counter-Claim dated 15th February, 2017 where they prayed for the dismissal of the Plaintiff's claim and judgment against the Plaintiff in the counter-claim for:



- a. Cancellation and or revocation of title No. Nakuru Municipality Block 17/651 issued to the Plaintiff on 16th May, 2016.
- b. Permanent injunction be issued restraining the Plaintiff from trespassing, selling, disposing and or dealing in Nakuru Municipality Block 17/651 in any manner whatsoever.
- c. Cost of this suit and counterclaim.

Plaintiff's Case

3. PW1 Josephine Nduta testified that she was initially allotted a plot at Manyani vide an allotment letter dated 15th March 1995 but was later given the disputed plot at Milimani as Manyani became a burial site. She produced the allotment letter as PEX No. 1 which she paid the stand premium of Kshs. 47,610 and was issued with a receipt.
4. PW1 further stated that upon receipt of the allotment she started cultivating the plot and has been paying but was later told that someone else had been paying rates for the same plot. PW1 produced the copies of receipts dated and 3rd August, 2012, 28th June, 2016, and 14th March, 2017 as P. Exb.2 (a), P. Exb.2 (b) and P. Exb.2(c) respectively.
5. PW1 filed a list of documents dated 23rd November, 2017 which she produced as follows: search certificate Pex 9, a receipt No. 641102 as Pex.10(a), receipt No. 651101 as Pex.10(b), a copy of the letter dated 4th May, 2016 to the Land Registrar Nakuru from Chief Land Registrar as Pex .11(a) – 11(f), Kutty Construction Limited quotation dated 17th March, 2004 as Pex .12(a) – (c).
6. PW1 testified that she later found out that the person paying the rates was an Asian and that the person who assisted in grabbing her plot was one Chumo. It was her evidence that upon visiting the Ministry of Lands Nairobi, she was issued with a registry index map and a letter dated 17th December, 2012 addressed to Land Registrar Nakuru.
7. PW1 further testified that the officers at Ardhi House in Nairobi sent the Registry Index Map (RIM) to the Registrar in Nakuru and was issued with another letter dated 7th April 2015 from Department of Lands Nairobi to the Director of Survey Nairobi. It was PW1's testimony that she was later instructed by phone to go to Lands office Nakuru to pick her original lease dated 4th May, 2016 which she produced a copy as P. Exb.5. and was subsequently issued with a certificate of lease dated 16th May, 2016, she produced a copy of certificate of lease as Pex 6 and a search as Pex No. 7.
8. PW1 testified that she reported the dispute to the police at Nakuru but she was referred to the Criminal Investigations Department (CID) where they summoned Mr. Chumo but he never honored the summons and he later passed away. PW1 produced a letter dated 5th February 2013 from CID Nakuru addressed to the Clerk, Municipal Council of Nakuru. It was her testimony that she is the owner of the suit plot and that the defendants could not have validly obtained a title without the Registry Index Map.
9. Upon cross-examination by Mr. Waiganjo, PW1 stated that she was issued with a lease and an allotment letter which indicated that the land is edged red in the letter and that she paid Kshs. 47,610/ on 11th March 2004. PW1 confirmed that the conditions in the letter stipulated that she pays the premium within thirty days and that the letter of allotment was issued to her in 1995.
10. PW1 stated that Stephen Chumo was a councilor in Nakuru and that it is not true that he stopped her from constructing a house and further that he died before she constructed the house. PW1 was referred to the witness statement filed on 23rd May, 2017 where she stated that Stephen Chumo demolished her



- house but she testified that she knew about Stephen Chumo's existence in 2012 whom she accused of grabbing her land.
11. It was PW1's further evidence that she filed this case on 16th June 2015 and as at the time of filing this case she did not have the certificate of lease as it was issued on 16th May 2016. PW1 was asked whether she knew a lawyer known as Ochieng Gai of which she denied but upon being shown Pex No 5 she admitted that the signature was hers although she has never been to Gai's office. That the only signature that obtained was that of the Land Registrar. PW1 stated that she never paid anything to be issued with a title and that she only paid for a search which amount she does not remember.
 12. It was PW1's evidence that she has never seen the title of the 1st and 2nd Defendants and that it is not true that their title was issued on 31st October 2013 and further that she is not aware that the register for 1st and 2nd defendant's title was opened on 18th July 2001. PW1 confirmed the entries of Stephen Chumo's name in the 1st and 2nd Defendant's title and also entry No. 5 dated 29th October, 2013 in the names of the 1st and 2nd Defendants.
 13. PW1 finally stated on further cross-examination by Mr. Waiganjo that she was the first to pay, therefore the plot is hers, and that she was not aware that the land was surveyed and given to Mr. Chumo.
 14. PW2 Robert Simiyu an Assistant Director, Land Administration Ministry of Lands Headquarters, Nairobi testified that he received summons to attend court and produce and be cross-examined on letters of 17th December, 2012 and 7th April, 2015. PW2 stated that he came with the parcel file and the letter of 17th December, 2012 was in the file Reference No. 247803/6. He testified that it is addressed to the District Land Registrar Nakuru over Nakuru Municipality Block 17/651 confirming the letter of allotment dated 15th March, 1995 was issued to the Plaintiff of which she paid and accepted the offer, and therefore she was the rightful owner.
 15. PW2 testified that Stephen Chumo does not own the land and produced the letter dated 17th December, 2012 as PExh.3. PW2 testified that the letter Ref. 247803/8 dated 7th April, 2015 addressed to Director of Surveys Nairobi in respect of the suit land is copied to the Plaintiff herein which he produced as PEx.4. It was PW2's testimony that the lease was processed on 4th May, 2016 which was forwarded to the District Land Registrar Nakuru.
 16. Upon cross-examination by Mr. Waiganjo, PW2 stated that he is a Senior Officer and is not aware of issuance by Government of two titles to the suit land. He stated that he is not aware the Plaintiff sought defendants' titles' cancellation. PW2 stated that he never sought any information from the local Land Office at Nakuru before he came to court. He stated that he only knows of the file in respect of the plot in the name of Josephine Nduta the Plaintiff herein.
 17. PW2 further confirmed that he knows Peter O. Adipo and that the letter of allotment was issued to the Plaintiff on 15th March, 1995 for un-surveyed Residential Plot No. Nakuru Municipality for a lease of 99 years from 1st March, 1995. PW2 testified that the allottee is supposed to comply with the terms of the offer and it gives thirty days to accept the offer. PW2 testified that there is an acceptance letter of 11th March, 2004 and that is almost ten years later which is a lot of time.
 18. PW2 stated that there was no acceptance within thirty days and the thirty days are provided to make people be bound by the terms. PW1 further stated that the letter of acceptance is not signed and that the payment was made on 11th March, 2004 and denied that the plot was allocated to Chumo.
 19. It was PW2's testimony that they only have one parcel file in respect of the suit property and that the letter recommended that Mr. Chumo brings his documents for verification which was copied to him but he does not know whether he received it, PW2 was referred 1st and 2nd defendants' list of documents



and he stated that document No. 4- 30884/XLVII is the Ref. on the letter of allotment dated 16th June, 1999 and that 30884/XLVIII is a general file for Nakuru Municipality which required Ksh. 43,020/ to be paid.

20. PW2 stated that Mr. Otwori used to be an officer and he doubts the authenticity of receipt dated 14th July, 2000 as he has never come across the signature thereon. PW2 was shown plaintiff's receipt dated 11th March, 2004 and stated that it is issued for a cheque No. 689720 and that the one of 14th July, 2000 is paid for by cheque No. 003991. PW2 stated that they use the serial number and it can be found at the Government Printers if it is genuine but that he did not investigate the receipt before coming to court.
21. PW2 stated that the allotment letter is doubtful and the Land Registrar has been sued. PW2 was shown the lease dated 18th July, 2001 in 3rd defendant's list dated 12th November, 2018 but he stated that he cannot comment on it unless he sees a lease in Stephen Chumo's name. Further that one cannot get a certificate of lease without a lease.
22. PW2 confirmed that page two indicates Stephen Chumo as the first entry dated 18th July, 2001 and when shown a copy of transfer dated 26th March, 2013 from Stephen Chumo to George Arao Owanda and Rose Auma Arao, he stated that he is not content with that document. PW2 was also shown title in 1st and 2nd Defendant's bundle dated 31st October, 2013 and stated that he is not aware of this certificate of lease.
23. PW2 stated that the Land Registrar Nakuru was the one in a position to explain why there are two certificates of lease. PW2 stated that he cannot tell whether the 1st and 2nd defendants conducted any due diligence prior to purchase.
24. Upon cross-examination by Ms. Chepkurui, PW2 stated that he has no documents in the parcel file to show the certificate of lease was issued to one Stephen Chumo, hence the certificate must have been issued illegally if it was issued.
25. Upon re-examination by Mr. Moneri, PW2 testified that they normally direct the local Registries to issue certificates of lease upon issuance of leases in Nairobi. He testified that they have no file in Nairobi with Steven Chumo's lease. He stated that those certificates without files are fake. PW2 testified that Josephine Nduta is the owner of the suit land.

1st and 2nd Defendants Case

26. DW1 Vyas Vimal Bhanushankar adopted his witness statement dated 15th February, 2017 as his evidence in chief and stated that the 2nd defendant is his wife. He further produced a list of documents dated 15th February, 2017 as DEX No 1 to 8 and a further list of documents dated 6th June, 2018 which he produced as DEX No 9 to 32.
27. DW1 testified that he filed a counter-claim for the Plaintiff's title to be cancelled and that the Plaintiff was issued with a title during the pendency of this case on 26th May, 2016. He testified that the Plaintiff was aware that he had title to the suit land which she has admitted in the Plaintiff. DW1 was shown the documents filed by the 3rd Defendant and he testified that the 1st document is a title issued to Stephen Chumo in 2001, 2nd document is a lease in the name of Josephine Nduta registered on 16th May, 2016 of which he stated that by this date, he had a title in his name. The 3rd document dated 19th April 2013, a certificate of lease in the name of George Arao Owanda and the wife Rose Auma Arao which he stated that purchased the land from them.
28. DW1 further listed the documents as follows: 4th document a stamp declaration for George Arao Owanda and Rose Arao, 5th document a transfer of lease document for Stephen Chumo to George



Arao, 6th document a rates clearance form in the name of Stephen Chumo dated 15th March, 2013, 7th document a valuation registration of stamp duty from Stephen Chumo to George Arao from the lands office Nakuru, 8th document a copy of an identity card belonging to Stephen Chumo, 9th document a Personal Identification Number (PIN) certificate belonging to Stephen Chumo, 10th document a sale agreement between Stephen Chumo and George Arao dated 8th October, 2012, 11th document an application for registration of title from Stephen Chumo to George Arao, 12th documents are identity card copies of George Arao and his wife Rose Arao, 13th 14th 15th and 16th documents are copies of Kenya Revenue Authority documents, Stamp duty assessment slip from Stephen Chumo to George Arao, letter from Nakuru Criminal Investigation Directorate (CID) office to the Land Registrar and a letter from Mongeri Advocates dated 18th May, 2015 to the Land Registrar.

29. DW1 further testified that he carried out a search which he produced as DEX No 8 and that he applied for a search in 2015 but was given the search with a comment by the Land Registrar that the green and white card could not be traced. DW1 testified that by June 2015, he had a title in his name but later they got summons from the Plaintiff's Advocates claiming that the land belongs to their client.
30. DW1 testified that he has seen the allotment letter to Josephine Nduta whereby she complied with the conditions in 2004. He testified that Stephen Chumo paid and was issued with a title in 2001 and that they have been paying rates.
31. Upon cross-examination by Mrs. Moenga, DW1 stated that the land registrar commented on an application that they could not trace the green and white card to the suit land. He stated that they followed up but the land registrar stated they were still tracing the title. DW1 informed the court that he has asked for the green card and he has been paying land rates and he has the payment receipts. DW1 stated that the rates clearance came from Nakuru Municipal Council and they bought the land from people who had bought from Stephen Chumo. He stated that the allotment letter was dated 16th July, 1999 and he complied with the conditions on 14th July, 2000. He stated that the land is within Nakuru Municipality and he has a certificate of lease.
32. Upon re-examination, DW1 testified that Stephen Chumo paid the stand premium and was issued with a certificate of lease in his name. He testified that the Plaintiff was issued with a lease in 2016 while the case was pending.

Plaintiff's Submissions

33. Counsel for the Plaintiff filed submissions dated 1st August, 2024 and identified the following issues for determination:
 - a. Whether the prayers and orders sought by the plaintiff should be granted as prayed?
 - b. Whether costs and interests of the suit should be awarded to the plaintiff?
34. Counsel submitted that the plaintiff has discharged the burden of proving her case that she is the owner of the suit land and relied on the cases of M'Rigia M'Mwoga (Environment and Land Appeal E001 of 2023) [2024] KEELC 3770 (KLR) (25 April 2024) (Judgment), Republic v Senior Registrar of Titles Ex-Parte Brookeside Court Ltd [2012] eKLR, Kuria Kiarie & 2 others v Sammy Magera (2018) eKLR and Isca Adhiambo Okayo v Kenya Women's Finance Trust KSM CA Civil Appeal No. 19 of 2015 [2016] eKLR and Section 107 (1) of the *Evidence Act* (Chapter 80 of the Laws of Kenya).
35. On the second issue, Counsel relied on Section 27 (1) of the *Civil Procedure Act*, Cap 21 and submitted that the costs of the suit and interest should be awarded in favor of the Plaintiff.



1st and 2nd Defendant's Submissions

36. Counsel for the 1st and 2nd Defendants filed submissions dated 11th September, 2024 and identified the following issues for determination:
 - a. Who is the lawful owner of the suit land?
 - b. What remedies are available to the parties herein?
 - c. Who bears the cost of the suit?
37. Mr. Waiganjo submitted that the 1st and 2nd Defendants were not party to any fraud that may have resulted in the issuance of the title in the name of Stephen Chumo. Counsel submitted that the Plaintiff did not provide evidence to show that the 1st and 2nd Defendants obtained the certificate of title illegally, unprocedurally or through a corrupt scheme and that they produced supporting documents to show how they acquired the property together with a certificate of title issued to them. Counsel relied on the case of *Munyu Maina v Hiram Gathiha Maina* [2013] eKLR.
38. Counsel further submitted that the Plaintiff could not explain why she did not meet the terms of the letter of allotment as required by the Commissioner of Lands hence failed to prove her case on a balance of probabilities.
39. It was counsel's submission that the issuance of a title to the Plaintiff during the pendency of this suit was illegal as it violated the doctrine of *lis pendens* which prohibits dealing with the suit property when the suit is pending before the court and relied on the cases of *M' Mugwika M'Rugongo v Settlement Fund Trustee & another* [2022] eKLR and *Malewa Farmers' Co-operative Society Ltd vs Settlement Fund Trustees & 4 others* [2021] eKLR. Counsel urged the court to dismiss the plaintiff's case and enter judgment in favour of the 1st and 2nd Defendants as prayed in the counter claim with costs.

Analysis and Determination

40. The issues for determination are whether the plaintiff is the rightful owner of the suit land Nakuru/Block 17/651 Formerly Unsurveyed Plot "C", whether the Plaintiff is entitled to an order of a permanent injunction against the 1st and 2nd defendants, whether the 1st and 2nd defendants are the rightful owners of the suit land and whether they are entitled to the orders claimed in the counterclaim.
41. It is the Plaintiff's case that she is the rightful owner of the suit parcel of land having been allotted by the Commissioner of Lands and subsequently issued with a certificate of lease. She also claimed that the 1st and 2nd Defendants colluded with the 3rd Defendant and fraudulently obtained title documents. It is further her case that the 1st and 2nd Defendants illegally entered into the Plaintiff's parcel of land known as Nakuru/block 17/651 Formerly Unsurveyed Plot "C" without her consent.
42. It is the 1st and 2nd Defendants case that on 29th August, 2013 they purchased title No. Nakuru Municipality Block 17/651 for valuable consideration from George Arao Owanda and Rose Auma Arao who were then the registered owners of the suit land. It is also their case that upon purchase of the suit land, they were formally registered and a certificate of title issued to them on 31st October, 2013.
43. The 1st and 2nd Defendant's also stated that while this suit was pending before court, the Plaintiff illegally caused a title No. Nakuru Municipality Block 17/651 to be issued to her on 16th May, 2016 without their knowledge hence the same should be cancelled
44. This is a case where two certificates of lease were issued to two different people in respect of the same parcel of land. In such a case the court must trace the root of the title, whether the proper procedures



for allocation and acquisition were followed. In the case of *Munyu Maina Vs. Hiram Gathiha Maina* [2013] eKLR it was held that:

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

45. In an acquisition through a letter of allotment, a party must provide a copy of the letter of allotment, map, special conditions and payment receipt of the statutory fees and once this is complied with a survey is done, a Registry Index Map and the survey details are obtained and forwarded to the Commissioner of Land previously or currently to the National Land Commission for preparation of lease documents.

46. In the case of *Mako Abdi Dolal v Ali Duane & 2 others* [2019] eKLR it was noted that prior to the promulgation of the 2010 Constitution and the 2012 amendments to the body of Land Laws in Kenya, disposition of government land was governed by the Government Lands Act (Repealed). Section 4 of the Act provided as follows:

“All conveyances, leases and licenses of or for the occupation of Government Lands, and all proceedings, notices and documents neither this Act, made, taken, issued or drawn, shall serve as otherwise provided, be deemed to be made, taken, issued or drawn under and subject to the provisions of this Act.”

“Power to dispose of public land was vested in two entities: The President and the Commissioner of Lands, under Sections 3 and 9 respectively. The process of the disposition of government land followed the following procedure: First, the respective municipal council in which the land to be disposed was situate had the mandate of advising the Commissioner of Lands on which portions of land could be disposed. This step would have required the responsible council to visit the area or to carry out a fact-finding mission to satisfy itself that the land was first of all government land and second that it was indeed available for disposition” as was held in the case of *Harison Mwangi Nyota v Naivasha Municipal Council & 20 others* [2019] eKLR.

47. The second step would be for the part development plan to be drawn up and approved by the Commissioner of Lands, thirdly the determination of price at which the lease of the plot would be sold, the conditions to be inserted into the lease; the determination of any attaching special covenants and the period into which the term is to be divided and the annual rent payable in respect of each period as per section 11 of the Government Lands Act (repealed)

48. The fourth step is the gazettment of the plots to be sold as provided for under section 13 of Government Lands Act (repealed), fifth sale of the plots by public auction as per section 15, sixth, the issuance of an allotment letter and seventh cadastral survey is done after the allottee has complied with the conditions set out in the allotment letter, its authentication and approval by the Director of Surveys and the issuance of a beacon certificate and issuance of a lease which is forwarded to the Land Registry where the parcel of land is situate for purposes of issuance of a certificate of lease. See *Nelson Kazungu Chai & 9 Others vs. Pwani University College* (2014) eKLR.



49. A party must comply with all these processes to enable them acquire an interest in land through an allotment letter. This shows the root of the title and it should be noted that a letter of allotment per se as was held in the the Court of Appeal cases of Gladys Wanjiru Ngacha v Teresa Chepsaat & 4 others 182/1992 (Nyeri); and in Dr. Joseph N.K. Arap Ng'ok v Justice Moiwo Ole Keiyua & 4 others C.A.60/1997 that:
- “It has been held severally that a letter of allotment per se is nothing but invitation to treat. It does not constitute a contract between the offerer and the offeree and does not confer interest in land at all. It cannot thus be used to defeat a title of a person who is the registered proprietor of the said parcel of land.”
50. The plaintiff produced an allotment letter, registry index map, payment receipt for the stand premium, lease, a forwarding letter for the lease, lease certificate, search, letter from the Commissioner of lands confirming the allotment and acceptance of the allotment. The letter from the Commissioner of Land also confirmed that the plaintiff was the one allocated the suit plot and that they did not have any documentation or any allocation to Stephen Chumo.
51. PW2 an Assistant Director from the Ministry of Lands gave evidence and stated that they only have records in respect of allocation to the Plaintiff Josephine Nduta and not the Defendants and any allocation to anybody else was suspect.
52. 1st and 2nd Defendants' case was that they bought the suit land from George Arao Oinda and Rose Auma Arao who previously purchased the same from Stephen Chumo who had been allocated the land. They produced the documents of sale transfer of lease, rates clearance certificate, search, receipts for payment of stand premium of Kshs 43,020 /issued to Stephen Chumo on 14th July, 2000.
53. The 1st and 2nd Defendants stated that the Plaintiff was allocated the suit plot on 15th March, 1995 and Stephen Chumo was allocated the same plot on 16th June, 1999. The 1st and 2nd Defendants submitted that the Plaintiff paid Ksh 47,610 on 11th March, 2004 whereas Stephen Chumo paid on 14th July, 2000.
54. The 1st and 2nd Defendants informed the court that the Plaintiff did not comply with the conditions within the 30 days required. The plaintiff's allotment was issued in 1995 and the defendants allege that Mr. Chumo was allocated in 1999. There was no evidence that the Commissioner of Lands rescinded the plaintiff's allocation. If that was the case then the allocation of Mr. Chumo would have been in the records at the Ministry PW2 Robert Simiyu produced the letter dated 17th December, 2012 as PExh.3 addressed to the District Land Registrar Nakuru over Nakuru Municipality Block 17/651 confirming the letter of allotment dated 15th March, 1995 was issued to plaintiff whereby she accepted the offer, paid the stand premium and therefore is she is the proper owner of the suit land. The issues of allotment letters are clarified by the allotting authority who was the Commissioner of Lands, anything happening at the Land registry where the parcel of land is situate, must emanate from the Ministry of Lands Ardhi house. The work of the Land registry at the district or county level is to receive a lease with a forwarding letter for registration
55. I find that the plaintiff followed due process in the issuance of the allotment letter and lease certificate which was confirmed by the allotting authority The defendants seems to have been shortchanged in the process of acquisition through purchase. It is noted that they purchased the suit land from a third party who had bought the land from Stephen Chumo whom the allotting authority denied ever issuing an allotment letter to him. It follows that the defendants' remedy does not lie in the counterclaim against the plaintiff but somewhere else. It is unfortunate that s fraudulent land transactions still occur in this day and age. In fact, it has now become rampant whereby buying land is pandemic, this has changed the



meaning of due diligence where you go outside the known parameters. People still get conned because there are cartels who ensure you only see what you want to see then the records are tampered with later.

56. The Court of Appeal in the decision of *Vijay Morjaria Vs Nansingh, Madhusingh Darbar & another* [2000] eKLR held:

“It is well established that fraud must be specifically pleaded and the particulars of fraud alleged must be stated on the face of the pleading. The act alleged to be fraudulent must of course be set out and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and distinctly proved and it is not allowable to leave fraud to be inferred from the facts.”

57. The root of the 1st and 2nd Defendants was tainted from the initial purported allottee Stephen Chumo who sold the land to the parties whom the defendants purchased the land from. I find that the plaintiff has proved her case against the defendants and the defendants counterclaim is dismissed with costs.

58. Section 80 (1) of the *Land Registration Act* provides that:

“Subject to subsection (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.”

59. I have considered the pleadings, the evidence on record and the submissions by counsel and issue the following orders:

- a. An order of permanent injunction is hereby issued against the Defendants whether by themselves servants and/or agents or otherwise whomsoever from trespassing, erecting, transferring and/or interfering with the Plaintiff's quiet possession and enjoyment of parcel of land known as Nakuru/Block 17/651 Formerly Unsurveyed Plot “C”.
- b. A declaration is hereby made that the Plaintiff is the owner of parcel of land known as Nakuru/Block 17/651 Formerly Unsurveyed Plot “C”.
- c. An order is hereby issued cancelling title issued to the Defendants in respect of Nakuru/Block 17/651 Formerly Unsurveyed Plot “C”.
- d. Costs of the suit to the Plaintiff.
- e. The 1st and 2nd Defendants Counter-claim is hereby dismissed with costs.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 1ST DAY OF OCTOBER 2024.

M. A. ODENY

JUDGE

