



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC SUIT NO. 597 OF 2017

DON-WOODS COMPANY LIMITED.....PLAINTIFF

=VERSUS=

ERIC MUMO MUTISYA.....1ST DEFENDANT

DONWOODS COMPANY LIMITED.....2ND DEFENDANT

THE REGISTRAR OF TITLES.....3RD DEFENDANT

THE HON.ATTORNEY GENERAL.....4TH DEFENDANT

JUDGMENT

1. The Plaintiff filed this suit against the Defendants through a plaint dated 22nd September 2017 seeking for the following reliefs;

- a) A declaration that the purported sale and transfer of the property known as L.R No.7785/1108 (Original Number 7785/10/845) (hereinafter referred to as “the suit property”) by the 2nd Defendant to the 1st Defendant was/is illegal null and void.
- b) An order that the judgment delivered on 13th May, 2016 and any consequential decree arising therefrom in Nairobi ELC Case No.865 of 2015-Eric Mumo Mutisya v Donwoods Company Limited be and is hereby set aside.
- c) A declaration that the Plaintiff is the lawful and *bona fide* owner of the suit property.
- d) A permanent injunction against the 1st and 2nd Defendants, their servants, agents, employees an any other person or individual acting on their instructions and on their behalf and any other third party whatsoever restraining them from trespassing, interfering with or dealing with the suit property in any manner whatsoever.
- e) A mandatory injunction against the 3rd Defendant directing it to cancel any certificate of Title issued to the 1st Defendant or to any other person other than the Plaintiff with respect to the suit property.
- f) A mandatory injunction against the 3rd Defendant directing it to issue a new Certificate of Title in the name of the Plaintiff with respect to the suit property.
- g) Alternatively, a mandatory injunction against the 3rd Defendant directing it to rectify the error in the spelling of the Plaintiff’s name in the original Certificate of Title to the suit property which is currently being held by the Plaintiff.
- h) Costs of the suit plus interest.
- i) Any other orders that this Honourable Court may deem fit and just to grant.

2. The Plaintiff averred that it was a limited liability Company incorporated on 27th November, 1980 under registration number C.21708 and was duly issued with a Certificate of Incorporation.

3. The plaintiff averred that in 1998, it purchased the suit property at a consideration of Kshs.2, 700,000/-. The plaintiff averred that the suit property was successfully transferred and registered in its name and it was issued with a Certificate of Title on 3rd June, 1999 under the Registration of Titles Act Chapter 281 of the Laws of Kenya (now repealed).

4. The Plaintiff averred that the Certificate of Title issued to it had a typographical error in that its name was erroneously spelt as DONWOODS COMPANY LIMITED instead of DON-WOODS COMPANY LIMITED. The Plaintiff averred that it nonetheless took possession of the suit property and had had in its possession the original Certificate of Title in respect thereof from 3rd June 1999 to date.
5. The Plaintiff averred that on or about July, 2017, it became aware that there was another company in existence with the name DONWOODS COMPANY LIMITED, 2nd Defendant herein through Kenya Revenue Authority(KRA) officials who had visited the Plaintiff's offices to make some inquiries about the said company. The plaintiff averred that it was during the said inquiries that it learnt that the directors that were being referred to by the said KRA officials were not known to it and that the said officials were referring to a different company that was in existence and bearing an almost identical name to its name and using its postal address for business.
6. The Plaintiff averred that through its advocates on record, it wrote to the Registrar of Companies to establish under what circumstances the 2nd Defendant was incorporated as a company when its name was almost identical to the Plaintiff's name and to demand the 2nd Defendant's deregistration. The Plaintiff averred that the Registrar of Companies never responded to the said letter.
7. The Plaintiff averred that towards the end of August, 2017, it leant through a land selling agent that had been appointed by the 1st Defendant's advocate (hereinafter referred to as 'the agent') that the suit property appeared to have been sold by the 2nd Defendant to the 1st Defendant and that the 1st Defendant had advertised it for sale to the public.
8. The Plaintiff averred that it also received from the said agent a purported copy of an official search in respect of the suit property showing that the suit property had been allegedly transferred to the 1st Defendant pursuant to a vesting order that was issued on 13th May, 2016 in Nairobi ELCC No. 865 of 2015, Eric Mumo Mutisya v Donwoods Company Limited.
9. The Plaintiff averred that it was shocked to learn that the 2nd Defendant had purportedly sold the suit property to the 1st Defendant at a paltry consideration of Kshs. 9,000,000/- and that the 1st Defendant had instituted the previous suit against the 2nd Defendant after failed attempts to obtain the original Certificate of Title from the 2nd Defendant to enable him transfer the suit property to his name.
10. The Plaintiff averred that judgment that was delivered in the previous suit revealed that one of the prayers that had been sought by the 1st Defendant was an order directing the 3rd Defendant to register the suit property in the name of the 1st Defendant which was granted by the court.
11. The Plaintiff averred that it conducted an official search on the suit property at the 3rd Defendant's offices which confirmed that indeed the 1st Defendant was registered as the owner of the suit property.
12. The Plaintiff averred that it attempted to conduct a search of itself at the Companies Registry but was informed that its file was missing and/or non-existent.
13. The Plaintiff averred that in a bid to safeguard its property from being illegally and fraudulently disposed of given the developments it had discovered, it made a formal complaint to the Directorate of Criminal Investigation's Land Fraud Unit on 4th September, 2017 which was recorded as Complaint Reference No. CID/C/GEN/COMP/6/11/2017/731.
14. The Plaintiff averred that it had never sold the suit property to anyone or entity whatsoever since acquiring it in 1999 despite records at the 3rd Defendant's offices purportedly showing that the 1st Defendant was the current owner of the suit property and had the original title in respect of the property.
15. The Plaintiff averred that upon conducting further investigations into the matter, the Plaintiff established that the suit property was fraudulently transferred by the 2nd Defendant to the 1st Defendant.
16. The Plaintiff averred that the scheme to defraud it of the suit property was cleverly hatched and executed by the 1st and 2nd Defendants after the 2nd Defendant became aware of the typographical error in the original Certificate of Title issued to the Plaintiff bearing the name DONWOODS COPANY LIMITED instead of DON-WOODS COMPANY LIMITED.
17. All the Defendants did not defend the suit. The 1st Defendant filed a Notice of Appointment of Advocates on 10th October, 2017 while the 3rd and 4th Defendants filed a Memorandum of Appearance on 9th October, 2017. The 2nd Defendant was served with Summons to enter appearance through substituted service and it never entered appearance. All the defendants did not file statements of defence to the Plaintiff's claim.
18. At the trial, the Plaintiff called two witnesses while the Defendants did not tender any evidence. The Plaintiff's first witness was Paul Chege (PW1). PW1 told the court that he was an advocate of the High Court of Kenya and a partner in the firm of Amolo & Gacoka Advocates. He adopted his witness statement dated 13th December, 2019 as his evidence in chief. PW1 told the court that in 1998, his firm was instructed by a company known as Mae Properties Limited to act for it in the sale of the suit property to the Plaintiff. His firm's instructions were to undertake all processes incidental to the sale and to transfer the suit property to the plaintiff upon payment of the full purchase price in the sum of Kshs. 2,700,000/-.
19. He stated that the Plaintiff paid the purchase price in full through two instalments of Kshs. 700,000/- and Kshs. 2,000,000/- which payments were made by cheques. He stated that the suit property was sold to the Plaintiff and that on a few occasions, the name DONWOODS COMPANY LIMITED and DONWOOD COMPANY LIMITED were used interchangeably to refer to the Plaintiff. He stated that

this is clear from the correspondence that was exchanged by the parties during the time of sale of the suit property.

20. PW1 stated that during the transaction, the person he was dealing with at the Plaintiff's side was one, Donald Kiboro Mwaura. He stated that the instrument of transfer indicated erroneously that the suit property was being transferred to DONWOODS COMPANY LIMITED, the 2nd Defendant and not DON-WOODS COMPANY LIMITED, the Plaintiff herein. He stated that it was this error that resulted in the title of the suit property having the name of the 2nd Defendant instead of that of the Plaintiff despite the fact that the consideration for the property was paid by the Plaintiff. PW1 stated that the suit property was sold by his client Mae Properties Limited to the Plaintiff and not to the 2nd Defendant or any other person.

21. The Plaintiff's second witness was Donald Kiboro Mwaura (PW2). PW2 adopted his witness statement dated 22nd September, 2017 as his evidence in chief. He stated that he was the Managing Director of the Plaintiff which was incorporated on 27th November, 1980 under Certificate of Incorporation Number C. 21708. He stated that the Plaintiff purchased the suit property in 1998 at a consideration of Kshs. 2,700,000/- from Mae Properties Limited. He stated that after the property was transferred to the Plaintiff, the Plaintiff took possession thereof and had never parted with possession.

22. PW2 stated that the Plaintiff was still having in its possession the original certificate of title for the suit property. He stated that in the said certificate of title, the name of the Plaintiff is indicated as DONWOODS COMPANY LIMITED which is the Plaintiff's name but without a hyphen. PW2 stated that in the Plaintiff's communication with its customers, some of them used to omit the hyphen in the Plaintiff's name in the correspondence and the Plaintiff did not think that it was a big issue. He stated that the Plaintiff paid for the suit property by cheques that were drawn by the Plaintiff in its correct name. PW2 produced in court for the court's perusal, the original Certificate of Title No. I.R 80523 and original instrument of transfer dated 3rd May, 1999.

23. PW2 produced as exhibits the documents attached to the Plaintiff's List of Documents filed in court on 22nd September, 2017. PW2 stated that he did not know the 1st Defendant and that during the purchase of the suit property, they dealt with the law firm of Amolo & Gacoka Advocates who acted for Mae Properties Limited from which the Plaintiff purchased the property. The PW2 urged the court to grant the reliefs sought in the plaint.

24. After the close of evidence, the parties were directed to make closing submissions in writing. The plaintiff filed its submissions on 19th June, 2020. The Defendants did not file submissions. The Plaintiff submitted that in the absence of any evidence by the Defendants to rebut the evidence adduced by the Plaintiff, the Plaintiff's case must succeed. In support of this submission, the Plaintiff cited Motex Knitwear Limited v Gopitex Knitwear Mills Limited Nairobi HCCC No. 834 of 2002, Trust Bank Limited v Paramount Universal Bank Limited & 2 Others Nairobi HCCC No.1243 of 2001 and Linus Nganga Kiongo & 3 Others v Town Council of Kikuyu [2012] eKLR.

25. The Plaintiff submitted that from the evidence on record, it had proved on a balance of probabilities that it was the lawful and bona fide owner of the suit property and that it was entitled to the reliefs sought in the plaint.

26. I have considered the pleadings and the evidence on record. The following in my view are the issues arising for determination in this suit:

- a) Who was the lawful owner of the suit property as between the plaintiff and the 2nd defendant?
- b) Whether the 1st defendant acquired the suit property lawfully.
- c) Whether the plaintiff is entitled to the reliefs sought in the plaint.
- d) Who is liable for the costs of the suit?

Who was the lawful owner of the suit property as between the plaintiff and the 2nd defendant?

27. I am satisfied from the evidence adduced by the Plaintiff that it was the Plaintiff who was at all material times the owner of the suit property and that the 2nd Defendant had at no time been the owner of the suit property. The Plaintiff's Managing Director (PW2) gave a detailed account of how the Plaintiff acquired the suit property from the previous owner Mae Properties Limited in 1999. PW2 produced in court evidence of payment of the purchase price and the correspondence exchanged between the Plaintiff and the advocates who acted for Mae Properties Limited in the transaction. PW2 produced the instrument of transfer through which the suit property was transferred to the Plaintiff and in which its name was erroneously indicated as DONWOODS COMPANY LIMITED instead of DON-WOODS COMPANY LIMITED. PW2 produced in evidence its certificate of incorporation, Kenya Revenue Authority PIN Certificate and Value Added Tax Certificate of Registration. PW2 also produced a copy of its title for the suit property and showed the court the original thereof.

28. PW2's evidence was corroborated by PW1 who was the advocate who acted for Mae Properties Limited in the sale of the suit property to the Plaintiff. I am satisfied from the evidence on record that it is the Plaintiff who purchased the suit property, paid for it and was registered as the owner thereof. I am satisfied with the explanation given by the PW1 and PW2 on how the suit property was registered in the name of DONWOODS COMPANY LIMITED instead of DON-WOODS COMPANY LIMITED. As I have mentioned earlier, the Defendants did not file statements of defence. No evidence was placed before the court of the existence of a company known as DONWOODS COMPANY LIMITED the 2nd Defendant herein and if it existed, when it was incorporated. No evidence was also placed before the court showing how it acquired the suit property and from whom and whether any payment was made respect thereof.

29. Due to the foregoing, it is my finding that the Plaintiff was at all material times the lawful owner of the suit property and that the Plaintiff's name was erroneously indicated in the instrument of transfer as DONWOODS COMPANY LIMITED instead of DON-WOODS COMPANY LIMITED which resulted in the Certificate of Title being issued in the name of DONWOODS COMPANY LIMITED which is

not the correct name of the Plaintiff.

.Whether the 1st Defendant acquired the suit property lawfully.

30. The 1st Defendant had contended in the interlocutory proceedings herein that it acquired the suit property through a decree that it obtained in ELCC No. 865 of 2015, Erick Mumo Mutisya v DONWOODS COMPANY LIMITED. That in my view cannot correct. I have perused the judgment that was delivered in that case on 13th May, 2016. The 1st Defendant did not approach the court to be declared the owner of the suit property. The 1st Defendant approached the court for an order vesting the suit property into his name on the basis that he had purchased the suit property from the 2nd Defendant and that the 2nd Defendant had failed to surrender to him the original certificate of title to enable him transfer the property to its name. Due to the foregoing, the 1st Defendant had a duty to prove in these proceedings how he acquired the suit property. He had a duty to prove that he acquired the suit property lawfully and in good faith having been accused of fraudulently colluding with the 2nd Defendant to dispose of the Plaintiff of the suit property. The 1st Defendant was under a duty to defend himself against the Plaintiff's accusation that ELCC No. 865 of 2015, Erick Mumo Mutisya v DONWOODS COMPANY LIMITED was part of a fraudulent scheme to use the court process to sanitize an otherwise fraudulent transaction.

31. The 1st Defendant did not deny the allegations made against him by the Plaintiff in the plaint. The evidence that was adduced by the Plaintiff that the 1st Defendant had instituted the above suit fraudulently when he failed in his attempts to get the original certificate of title for the suit property was not rebutted. The evidence that was adduced by the Plaintiff that the 1st Defendant in collusion with the 2nd Defendant hatched a scheme to defraud the Plaintiff of the suit property upon becoming aware of the typographical error in the certificate of title that was issued to the Plaintiff in respect of the suit property was also not rebutted.

32. I have held earlier that the Plaintiff was at all material times the lawful owner of the suit property and that the 2nd Defendant did not own the property at any one time. It is common ground that the Plaintiff did not sell the suit property to the 1st Defendant. The 1st Defendant did not tender any evidence that the 2nd Defendant held any form of title over the suit property; in fact, none was given to the 1st Defendant. That is why the 1st and 2nd Defendants were in court for a vesting order. In ELCC No. 865 of 2015, Erick Mumo Mutisya v DONWOODS COMPANY LIMITED, the 1st Defendant claimed that the 2nd Defendant had sold and transferred the suit property to it. Since the 2nd Defendant was not the owner of the suit property, it had no right or interest in the property that it could sell and transfer to the 1st Defendant. Those behind the 2nd Defendant in my view were fraudsters. If at all the 1st Defendant acquired the suit property from the 2nd Defendant in good faith, then he dealt with fraudsters who had no interest in the suit property. In Samuel Kamere v Land Registrar Kajiado, Nairobi Court of Appeal, Civil Appeal No. 28 of 2005, the Court addressing on the issue of competing titles stated that:

“It is evident that there are two competing claims over the suit property, and we have said that the plaintiff’s proprietary interest is already established. Since the appellant’s title is under challenge, in order to be considered a bona fide purchaser for value, he must prove that he had acquired a valid and legal title, secondly, that he carried out the necessary due diligence to determine the lawful owner from whom he acquired a legitimate title, and thirdly that he paid valuable consideration for the purchase of the suit property.”

33. In Munyu Maina v Hiram Gathiha Maina, Court of Appeal Civil Appeal No. 239 of 2009 the Court stated that:

“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 would not be noted in the register.” (Emphasis added)

34. Neither the 1st nor the 2nd Defendant made any attempt to establish their titles to the suit property.

35. In Mwangi James Njehia v Janetta Wanjiku Mwangi & another [2021] eKLR, the court stated as follows:

“37. In Lawrence P. Mukiri Mungai, Attorney of Francis Muroki Mwaura v. Attorney General & 4 Others, Nairobi Civil Appeal No. 146 of 2014 this Court cited with approval the case of Katende v. Haridar & Company Ltd (2008) 2 EA 173, where the Court of Appeal in Uganda held that: -

“For the purposes of this appeal, it suffices to describe a bona fide purchaser as a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly.

For a purchaser to successfully rely on the bona fide doctrine as was held in the case of Hannington Njuki v William Nyanzi High Court civil suit number 434 of 1996, he must prove that:

- 1. he holds a certificate of title;**
- 2. he purchased the property in good faith;**
- 3. he had no knowledge of the fraud;**

4. he purchased for valuable consideration;
5. the vendors had apparent valid title;
6. he purchased without notice of any fraud; and
7. he was not party to the fraud.”

We nonetheless wish to state that the law, including case law is not static and the above requirements which were crafted over twenty years ago cannot be said to have been cast in stone. We hold the view that (5) above will need to be revisited and the word “apparent” be done away with altogether.

38. We say so because in the recent past and even presently, fraudsters have upped their game and we have come across several cases where Title deeds manufactured in the backstreets have, with collusion of officers in land registries, been transplanted at the Lands Office and intending buyers have been duped to believe that such documents are genuine and on that basis they have “purchased’ properties which later turn out to belong to other people when the correct documents mysteriously reappear on the register or the genuine owner show up after seeing strangers on their properties waving other instruments of title. It is the prevalence of these incidents that have necessitated the current overhaul and computerization of the registration systems at the Land Registry in Nairobi.

39. The elephant in the room is whether genuine, legitimate owners of property should be dispossessed of their hard earned property, because a party has “purchased” the property on the basis of an “*apparent title*” at the land registry which had been transplanted in place of the genuine title, only for the genuine one to reemerge after the transaction? In our view, no legitimate owner of property should be divested of their property unlawfully, under the guise that the “purchaser” was duped to buy land which he/she could have believed to be genuinely owned by the person holding himself out as the vendor.”

36. In Alberta Mae Gacie v Attorney General & 4 Others [2006] eKLR the court stated as follows:

“Cursed should be the day when any crook in the streets of Nairobi or any town in this jurisdiction, using forgery, deceit or any kind of fraud, would acquire a legal and valid title deceitfully snatched from a legal registered innocent proprietor. Indeed, cursed would be the day when such a crook would have the legal capability or competence to pass to a third party, innocent or otherwise, a land interest that he does not have even if it were for valuable consideration. For my part, I would want to think that such a time when this court would be called upon to defend such crooks, has not come and shall never come....”

37. In Iqbal Singh Rai v Mark Lecchini and the Registrar of Titles, Civil Case No 1054 of 2001, the court stated as follows:

“At the time when the 1st Defendant sought to buy the land in dispute the registered proprietor was the Plaintiff. There is no dispute that he never dealt with the Plaintiff in the transaction that followed. The person with whom he dealt was not the registered proprietor of the land in dispute. The person was a fraud who had no claim whatsoever to the land. The consequence is that the 1st Defendant was a purchaser who did not deal with the registered proprietor of the land. Section 23(1) protects ‘title issued to a purchaser upon the transfer or transmission by the proprietor thereof’. The 1st Defendant did not obtain a transfer from the Plaintiff who was the registered proprietor. He obtained a transfer from a fraudulent person who had no claim to the land. He cannot I find invoke the provisions of section 23(1) to say he obtained an indefeasible title.”

38. In my view, the 2nd Defendant was an imposter. It pretended to be the Plaintiff which owned the suit property. The mere fact that the property was registered in the name of DONWOODS COMPANY LIMITED did not make the 2nd Defendant the owner thereof. The 1st Defendant having purchased the suit property from a fraudster who did not own the property and as such had no interest in the property, he did not get a valid title in respect of the suit property. The purported sale and transfer of the suit property by the fraudsters to the 1st Defendant could not transfer the proprietary interest in the suit property to the 1st Defendant. Even the vesting order that was obtained by the 1st Defendant in ELCC No. 865 of 2015, Erick Mumo Mutisya v DONWOODS COMPANY LIMITED could not sanitize the fraud. The transaction between the 1st and 2nd Defendants was tainted with fraud and illegality and the same could not confer upon the 1st Defendant a valid interest.

39. As I stated earlier in the judgment, the averments in the plaint and the evidence adduced by the Plaintiff that the 1st Defendant procured the judgment in ELCC No. 865 of 2015, Erick Mumo Mutisya v DONWOODS COMPANY LIMITED through fraud was not rebutted. I am of the view that a judgment procured through fraud and misrepresentation is void. In the Supreme Court of Virginia case of Jones v Willard 224 Va. 602, 607 (Va. 1983), the court stated that:

“The judgment of a court, procured by intrinsic fraud, i.e., by perjury, forged documents, or other incidents of trial related to issues material to the judgment, is voidable by direct attack at anytime before the judgment becomes final; the judgment of a court, procured by extrinsic fraud, i. e., by conduct which prevents a fair submission of the controversy to the court, is void and subject to attack, direct or collateral, at any time.”

40. In Fritts v Krugh, Supreme Court of Michigan, 92 N.W.2d 604, 354 Mich. 97(1958), the court stated that:

“A "void" judgment, as we all know, grounds no rights, forms no defense to actions taken thereunder, and is vulnerable to any manner of collateral attack (thus here, by habeas corpus). No statute of limitations or repose runs on its holdings, the matters thought to be settled thereby are not res judicata, and years.....later, when the memories may have grown dim and rights long been regarded as vested any disgruntled litigant may reopen the old wound and once more probe its depths. And it is then as though trial and adjudication had never been.”

41. In Macfoy v United Africa Co. Ltd. (1961)3 All ER 1169, Lord Denning stated as follows at page 1172:

“If an act is void then it is in law a nullity. It is not only bad but incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void without much ado, though it is sometimes convenient to have the court to declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.”

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

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

Due to the foregoing, it is my finding that the 1st Defendant did not acquire the suit property lawfully.

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

43. I have set out at the beginning of this judgment the reliefs sought by the plaintiff. From the findings that I have made above, I am satisfied that the Plaintiff has proved its case against the Defendants on a balance of probabilities and that it is entitled to the reliefs sought in the plaint.

Who is liable for the costs of the suit?

44. Under section 27 of the Civil Procedure Act, the costs of and incidental to a suit is at the discretion of the court and as a general rule, costs follow the event. The Plaintiff has succeeded in its claim against the Defendants. No reason has been put forward to warrant denying the Plaintiff its costs of the suit. The costs shall however be paid by the 1st and 2nd Defendants only. I am of the view that the 3rd and 4th Defendants were joined in the suit merely for the purposes of enforcement of the orders given by the court. No wrong doing was established against them.

Conclusion:

45. In conclusion, I hereby enter judgment for the Plaintiff against the Defendants as follows:

- a) I declare that the purported sale and transfer of the property known as L.R No.7785/1108 (Original Number 7785/10/845) by the 2nd Defendant to the 1st Defendant was illegal, null and void.
- b) The judgment delivered on 13th May, 2016 in Nairobi ELC Case No.865 of 2015, Eric Mumo Mutisya v Donwoods Company Limited and any consequential orders and/or decree arising therefrom are set aside and the registration thereof against the title of L.R No.7785/1108 (Original Number 7785/10/845) is cancelled.
- c) I declare that the Plaintiff is the lawful and bona fide owner of the property known as L.R.No. 7785/1108 (Original Number 7785/10/845).
- d) A permanent injunction is issued restraining the 1st and 2nd Defendants, their servants, agents, employees an any other person or individual acting on their instructions and on their behalf from trespassing, interfering or dealing with the property known as L.R NO.7785/1108 (Original Number 7785/10/845) in any manner whatsoever.
- e) A mandatory injunction is issued compelling the 3rd Defendant to cancel the registration of the 1st Defendant as the owner of the property known as L.R.NO.7785/1108 (Original Number 7785/10/845) and the certificate of title that was issued to him in respect thereof.
- f) The 3rd Defendant shall amend the Plaintiff's name in the original Certificate of Title No. I.R 80523 in respect of the property known as L.R No.7785/1108 (Original Number 7785/10/845) in the possession of the Plaintiff and in the register held by the 3rd Defendant to read, DON-WOODS COMPANY LIMITED instead of DONWOODS COMPANY LIMITED. In the event that the amendment is not possible, the 3rd Defendant shall be at liberty to issue a new Certificate of Title in the name of the Plaintiff with respect to the property known as L.R No.7785/1108(Original number 7785/10/845) in the name, DON-WOODS COMPANY LIMITED.
- g) The Plaintiff shall pay any statutory fees or charges that may be required by the 3rd Defendant in order to amend the certificate of

title or to issue a new one pursuant to the order given in (f) above.

h) Costs of the suit to be paid by the 1st and 2nd Defendants jointly and severally.

DATED AND DELIVERED AT NAIROBI THIS 26TH DAY OF APRIL 2021

S. OKONG'O

JUDGE

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

Mr. Wandati for the Plaintiff

N/A for the Defendants

Ms. C.Nyokabi-Court Assistant