



Ndoto v Kenya Forest Service & 2 others (Environment & Land Case E089 of 2021) [2023] KEELC 18619 (KLR) (6 July 2023) (Judgment)

Neutral citation: [2023] KEELC 18619 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E089 OF 2021**

JO MBOYA, J

JULY 6, 2023

BETWEEN

GEORGE MUTUA NDOTO PLAINTIFF

AND

KENYA FOREST SERVICE 1ST DEFENDANT

CHIEF LAND REGISTRAR 2ND DEFENDANT

ATTORNEY GENERAL 3RD DEFENDANT

JUDGMENT

Background and Introduction

1. Vide Plaintiff dated the 16th February 2021; the Plaintiff herein has approached the Honorable Court seeking for the following Reliefs;
 - i. A declaration that the Plaintiff is the Legal Owner of the Property known as Land Reference Number 22410, Nairobi.
 - ii. A declaration that the invasion of the said Land by the 1st Defendant, its agents, servants, employees and/or representatives and the subsequent evictions and demolition thereupon was unlawful.
 - iii. A permanent prohibitory injunction do issue against the 1st Defendant against any interference with the Plaintiff's property Land Reference Number 22410, Nairobi, his access and enjoyment thereof.
 - iv. General Damages for trespass and wrongful restriction.
 - v. Interests on (e) and (f) above at court rates.



- vi. In the alternative, the 1st and 3rd Defendants be and are hereby ordered to compensate the Plaintiff for the full value of the property at the current market value.
 - vii. Costs of the suit.
 - viii. Any other relief that the Honorable Court may deem fit and expedient to grant.
2. Upon being served with the Plaint and summons to enter appearance, the Defendants herein duly entered appearance and thereafter filed a Statement of Defense dated the 12th October 2021 and in respect of which the Defendants denied and or disputed the claims at the foot of the Plaint. Furthermore, the Defendants herein contended that the suit property, which is being claimed by the Plaintiff was illegally and unlawfully hived out of Ngong Forest, albeit without due compliance with the provisions of Section 4 of the Forest Act, Chapter 285 Laws of Kenya, now repealed.
 3. On the other hand, the Defendants herein later sought for and obtained Leave to file an amended Statement of Defense and Counterclaim and upon the Leave being granted, same proceeded to and lodged the amended Statement of Defense and Counterclaim dated the 26th April 2022.
 4. Vide the Counterclaim dated 26th April 2022, the Defendants herein sought for various reliefs, inter-alia;
 - a. Declaration that the issuance of title, transfer and subsequent registration of the Plaintiff in the main suit as the proprietor of L.R No. 22410, Nairobi was irregular and illegal and unlawful.
 - b. A declaration that the Defendant to the counterclaim has never had ownership or possession of the suit property known as L.R No. 22410 I.R No. 179460.
 - c. Declaration that the suit property is public land as it forms part of Ngong Road Forest reserve.
 - d. An order directing the chief land registrar to cancel the title in respect of L.R No. 22410 I.R No. 179460.
 - e. Costs of the suit and the counterclaim.
 5. Suffice it to point out that upon being served with the amended Statement of Defense and Counterclaim, the Defendant to the counterclaim filed a Reply to the Statement of Defense and Defense to the Counterclaim dated the 18th July 2022; and in respect of which the Defendant to the counterclaim controverted the claims by the Counter-claimer.
 6. Further and in addition, the Defendant to the counterclaim curiously sought further prayers at the foot of the Defense to the Counterclaim.
 7. For good measure, the Defendant to the counterclaim sought the following reliefs;
 - i. Declaration that the issuance of title, transfer and subsequent registration of the suit property of land L.R No. 22410 is lawful and regular.
 - ii. Declaration that the Defendant in the counterclaim is the legal owner of the suit property L.R No 22410 I.R No. 179460.
 - iii. Declaration that the suit property does not form part of Ngong Forest and therefore same is not public land.
 - iv. Award of costs of the suit and counterclaim in favor of the Plaintiff in the main suit and the Defendant in the counterclaim.



8. First forward, the pleadings in respect of the instant matter ultimately closed and the suit was subjected to the requisite Pre-trial directions, whereupon the Parties confirmed due compliance with the provisions of Order 11 of the Civil Procedure Rules. In this respect the suit was thereafter declared ready and ripe for hearing.

Evidence By The Parties

a.Plaintiff's Case:

9. The Plaintiff's case is premised and anchored on the Evidence of one witness, namely, Mohamed Munir Chaudhri, who testified as PW1.
10. It was the testimony of the witness that same is a lawful and duly constituted attorney of the Plaintiff herein pursuant to and on the basis of a Power of Attorney registered as P/A45705/1, a copy of which was duly produced and tendered to the Honourable court as an Exhibit.
11. Furthermore, the witness testified that what now comprises of the suit property was duly and lawfully allocated to the Plaintiff on the basis of a Letter of allotment dated the 26th August 1996; which Letter of allotment was duly signed and executed by the commissioner of land.
12. Additionally, the witness testified that at the time of the issuance of the Letter of allotment dated the 26th August 1996, the suit property had not been surveyed. In this regard, the witness added that what was allocated was therefore known as un-surveyed residential plot number 6 Karen- Nairobi.
13. It was the further testimony of the witness that after the issuance of the Letter of allotment, the Plaintiff through the law firm owned by the witness remitted to and in favor of the Office of the Commissioner of Land a Bankers' cheque for the sum of Kes.117, 017/= only, on account of, inter-alia, a stand premium, rent, conveyancing fees, survey fees, approval fees and stamp duty, respectively.
14. Furthermore, the witness testified that the Bankers cheque in question was transmitted to the Office of the Commissioner of Land vide letter dated the 27th March 2000 and that upon receipt of the Bankers Cheque, the Commissioner of Land issued a revenue receipt denoting acceptance of the payments.
15. In addition, the witness testified that subsequently, the Office of the Commissioner of Lands generated a Letter dated the 17th July 2000 and in respect of which, the Commissioner of Land directed the Director of survey to proceed and undertake survey of the plot which had been allocated to the Plaintiff.
16. On the other hand, the witness testified that pursuant to and in compliance with the Letter by the Commissioner of Lands, the Director of survey indeed proceeded to and prepared the requisite Survey and Deed Plan respectively, which were thereafter forwarded to the Commissioner of Lands for further action.
17. Other than the foregoing, the witness also testified that vide Letter dated the 25th June 2004, the Commissioner of Lands again wrote unto the Plaintiff and sought to procure and obtain from the Plaintiff a file reference, with a view to facilitating the processing of the certificate of lease over and in respect of the suit property, which at the material point in time had been duly surveyed and issued with the requisite survey number.
18. Further and in addition, it was the testimony of the witness that thereafter the Plaintiff herein was issued with the requisite Lease Instrument, which was duly executed and thereafter presented to or lodged with the office of the Chief Land Registrar, for purposes of registration and further action.



19. Moreover, it was the testimony of the witness that even though the process leading to the issuance of the Certificate of Lease took along duration to actualize; same was ultimately issued with a Certificate of Lease on the 16th May 2016, respecting the suit property.
20. Furthermore, the witness averred that during the entire period between the issuance of the Letter of allotment up to and including the registration of the suit property in favor of the Plaintiff, the Plaintiff had unhindered access to the suit property and was similarly paying the land rates.
21. Nevertheless, the witness contended that on or about August 2020, the 1st Defendant herein illegally, unlawfully and without lawful basis blocked and prevented the Plaintiff from accessing and using the suit property, albeit under the pretext that the suit property fell within the area covered by Ngong Forest.
22. Premised on the foregoing, the witness averred that the actions by and on behalf of the Defendants and in particular, the 1st Defendant herein, constitutes trespass and thus same ought to be averted.
23. Other than the foregoing, the Plaintiff also testified that same was able to procure and obtain two gazette notices which were published by the Minister for Environment and Natural Resources and in respect of which the Minister declared an intention to alter the boundaries of Ngong Road Forest.
24. Other than the foregoing testimony, the witness alluded to the Witness Statement dated 16th February 2021 and thereafter same adopted and relied on the contents of the named witness statement. In this regard, the Witness statement dated the 16th February 2021 was admitted and constituted as Further Evidence- in -chief of the witness.
25. Other than the foregoing, the witness also alluded to a Further Witness Statement dated the 24th January 2023; and in respect of which the witness sought to rely on. Similarly, the witness statement dated the 24th January 2023 was adopted and admitted as further Evidence- in -Chief on behalf of the witness.
26. Moreover, the witness alluded to the List and Bundle of Documents dated the 16th February 2021, comprising of a total of 17 documents. In this regard, the witness implored the Honourable court to admit and mark the named documents as Exhibits on behalf of the Plaintiff.
27. There being no objection to the admission of the documents at the foot of the List dated 16th February 2021; same were duly admitted and marked as Exhibits P1 to P17, respectively.
28. Additionally, the witness also referred to the Further List and Bundle of documents dated the 24th January 2023; and same sought to have the Documents thereunder admitted as Further Plaintiff's evidence. For good measure, the documents at the foot of the List was duly admitted and constituted as Exhibit P18.
29. On cross examination, the witness stated that the Letter of allotment in question was duly and lawfully issued to and in favor of the Plaintiff. In any event, the witness averred that the Letter of allotment was handed over to him by the Plaintiff.
30. Additionally, the witness stated that upon the Letter of allotment being handed over unto him, same visited the Land Registry and he was informed that the Letter of allotment was lawful and legitimate.
31. Furthermore, the witness averred that after cross checking with the Ministry of Lands about the legitimacy of the Letter of allotment, same thereafter procured and obtained a Bankers cheque payable to and in favor of the Commissioner of Lands.



32. Moreover, the witness added that the Bankers cheque was thereafter remitted to the office of the Commissioner of Land, who duly accepted the payments and thereafter issued a revenue receipt confirming receipt of the monies at the foot of the Bankers cheque.
33. Whilst still under cross examination, the witness testified that even though same generated and remitted a Bankers cheque, the Bankers cheque was however remitted long outside the timeline that was stipulated at the foot of the Letter of allotment.
34. On the other hand, the witness also conceded that same issued a Letter of acceptance in respect of the allotment. However, the witness pointed out that the Letter of acceptance was not part of the Documents produced before the court as part of the Exhibits.
35. Nevertheless, the witness also added that the Letter of acceptance was also made well outside the timeline contained at the foot of the Letter of allotment.
36. Other than the foregoing, the witness testified that upon receipt of the Bankers cheque, the Commissioner of Lands generated a letter directed to the Director of survey and which Letter requested the Director of survey to prepare the requisite Survey Plan and the Deed Plan to facilitate the processing and ultimate issuance of a Certificate of Lease in favor of the Plaintiff.
37. Further and in addition, the witness also testified that the Commissioner of Land also wrote a Letter to the Plaintiff herein and wherein the Commissioner of Land sought to procure and obtain a filed reference (FR) from the Plaintiff for purposes of finalizing the issuance of the certificate of lease.
38. Additionally, it was the testimony of the witness that ultimately the Plaintiff herein was issued with a Certificate of Lease over and in respect of the suit property. In this regard, the witness contended that upon the issuance of the Certificate of Title to and in favor of the Plaintiff, the Plaintiff became the lawful and legitimate proprietor of the suit property.
39. Other than the foregoing, the witness averred that despite being issued with the Certificate of Lease, the 1st Defendant herein has prevented and/or barred the Plaintiff from accessing and using the suit property, albeit without any lawful basis.
40. Finally, the witness averred that the Certificate of Lease which was initially signed and issued unto him had/ contained certain errors relating to the date of issuance. However, the witness added that the error which related to the year of issuance was thereafter corrected and the Plaintiff was issued with a corrected version of the Certificate of Lease.
41. With the foregoing testimony, the Plaintiff's case was closed.

b. Defendants' Case:

42. The Defendants' case is premised and anchored on the Evidence of one witness, namely, Evans Kegode, who intimated to the Honourable court that same is the Head of Survey and Mapping at the Kenya Forest Services, which is the 1st Defendant herein.
43. Furthermore, the witness added that by virtue of his office, same is privy to and has the custody of various records pertaining to and comprising of the Ngong Forest Reserve. In this regard, the witness alluded to the area comprising of Ngong Forest Reserve being proclaimed vide Proclamation Number 44 Of 1932 and thereafter being declared as a Central Forest vide Legal Notice Number 174 of 20th May 1974.



44. On the other hand, the witness testified that later the area comprising of Ngong Forest Reserve was reduced by Legal de-gazettement of approximately 1600.86 Ha; but which de-gazettement was undertaken before the requisite declaration.
45. On the other hand, the witness also testified that over time several parcel of lands were hived and/ or curved out of Ngong Forest Reserve, albeit illegally and unlawfully.
46. Moreover, the witness testified that one of the titles that were created and curved out of Ngong Forest Reserve includes L.R No. 22410, which is the property being claimed by the Plaintiff herein.
47. Nevertheless, it was the testimony of the witness that according to the Plan which delineates the boundaries of Ngong Forest Reserve, the suit land falls within the forest land. Further and in any event, the witness added that the boundaries of Ngong Forest Reserve have never been lawfully altered and degazetted.
48. Premised on the foregoing, the witness averred that the suit property, which is being claimed by the Plaintiff falls within the Ngong Forest Reserve and hence same constitutes Public Land. In this regard, the witness added that the Plaintiff cannot therefore be heard to lay a claim to ownership of the suit property or at all.
49. Other than the foregoing the witness alluded to the Witness statement dated the 8th October 2021 and thereafter sought to adopt and rely on the contents of same. For good measure, the contents of the witness statement were thereafter adopted and constituted as the evidence in chief of the witness.
50. On the other hand, the witness also alluded to the List and Bundle of documents dated the 12th October 2021; and same sought to have the documents contained thereunder produced as Exhibits on behalf of the Defendants.
51. In the absence of any objection to the production of any documents, the Documents at the Foot of the List of Documents dated the 12th of October 2021; were produced and admitted as D1 to D3, respectively.
52. Further and in addition, the witness also alluded to a Further List and Bundle of documents dated the 17th March 2023; and same sought to produce the documents as Exhibits before the Honourable court. Similarly, the documents at the foot of the List dated 17th March 2023 ;were admitted as Defense Exhibits 4 and 5, respectively.
53. On cross examination, the witness stated that the proclamation which same has produced and tendered before the Honourable court relates to and defines the extent and limits of Ngong Forest Reserve. In addition, the witness stated that the extent of the Ngong Forest Reserve is well delineated.
54. Whilst under further cross examination, the witness conceded that Kenya Forest Service does not issue Letters of allotment and neither does same issues Certificate of titles/ Leases.
55. Be that as it may, the witness averred that the portion of land being claimed by the Plaintiff herein however falls within and constitutes part of the Forest Land.
56. When referred to the Gazette notices which were produced as Exhibit P18, the witness pointed out that the Gazette Notice in question related to an intention by the Minister for Environment and Natural Resources to alter the boundaries of the forest, but the witness clarified that the intention expressed vide the Gazette Notices did not actualize.
57. With the foregoing testimony, the Defendants' case was marked as closed.



Submissions by the Parties

a. Plaintiff's Submissions:

58. The Plaintiff herein filed written submissions dated the 31st May 2023 and in respect of which the Plaintiff has raised, canvassed and highlighted Four (4) salient issue for consideration by the Honorable court.
59. Firstly, Learned counsel for the Plaintiff has submitted that the Plaintiff herein was duly and lawfully issued with a Letter of allotment dated the 26th August 1996, which related to a plot which had not been surveyed, as at the time of the allotment. For good measure, Learned counsel has submitted that the Letter of allotment was in respect of un-surveyed Residential Plot Number 6 Karen – Nairobi.
60. Furthermore, Learned counsel for the Plaintiff has thereafter proceeded to and contended that upon the issuance of the Letter of allotment, the Plaintiff ultimately complied with the terms and conditions at the foot of the Letter of allotment, inter-alia payment of the stand premium and the rest of the statutory levies. In this regard, Learned counsel pointed out that the payment of the various statutory levies was remitted vide Bankers cheque forwarded on the 27th March 2000.
61. Owing to the foregoing, Learned counsel submitted that upon receipt of the statutory levies whose details were enumerated in the body of the Letter of allotment, the Commissioner of Lands processed and ultimately facilitated the issuance of the Certificate of Lease over and in respect of the suit property.
62. In view of the foregoing, Learned counsel for the Plaintiff has submitted that upon the issuance of the Certificate of Lease, the Plaintiff herein became the lawful and legitimate proprietor of the suit property and thus the Plaintiff holds a good title to and in respect of the suit property.
63. In respect of the foregoing submissions, Learned counsel for the Plaintiff has cited and relied on various decisions, inter-alia, Dr. Joseph N.K Arap Ngok versus Justice Moijo Olekeiuya & Others (1997)eKLR, David Peterson Kiengo & 2 Others versus Kariuki Thuo Machakos HCC No. 180 of 2011 (UR), Munyu Maina versus Hiram Gathiha Maina (2013)eKLR and Mako Abdi Dolal versus Ali Duane & 2 Others (2019)eKLR.
64. Secondly, Learned counsel for the Plaintiff has submitted that the Plaintiff has placed before the Honorable court clear evidence explaining the process leading to the issuance of Certificate of lease over and in respect of the suit property.
65. Additionally, Learned counsel has submitted that having availed all the critical evidence attendant to and in respect of the process leading to the acquisition of the suit property, the Plaintiff has established and demonstrated the root/ foundation of his Certificate of title.
66. In any event, Learned counsel for the Plaintiff has further submitted that the Certificate of Lease to and in favor of the Plaintiff was lawfully and procedurally acquired and hence same cannot be defeated on the basis of mere allegations of fraud, mistake and/or misrepresentations, which have not been proved, in any event.
67. Thirdly, Learned counsel for the Plaintiff has submitted that the suit property does not fall within or form part of Ngong Forest Reserve, either as alluded to by the Defendants or at all.
68. To the contrary, the Counsel has contended that what comprises of the suit property was well delineated by the Director of survey in terms of a lawful Survey and Deed plan, whose authenticity has not been impugned and/or challenged.



69. Fourthly, Learned counsel for the Plaintiff has submitted that even though the Defendants herein alluded and adverted to claims of fraud, misrepresentations and illegality; in the issuance of the certificate of title in favor of the Plaintiff, same have however neither established nor tendered any scintilla of evidence to prove the allegations of, inter-alia, fraud.
70. In any event, Learned counsel for the Plaintiff has submitted that fraud is a serious charge and therefore it behooved the Defendants to place before the Honourable court credible and plausible evidence in proof of the claim/charge of fraud.
71. In support of the foregoing submissions, Learned counsel for the Plaintiff has cited and quoted the decision in the case of Urmilla w/o Mahendra Shah versus Barckleys Bank International Ltd & Another (1979)KLR 76.
72. Lastly, Learned counsel for the Plaintiff has submitted that in the unlikely event that the Honourable court finds that the suit property falls within the boundaries of Ngong Forest Reserve; then the court should proceed and decree compensation to and in favor of the Plaintiff insofar as the Plaintiff's title was lawfully issued by the office of the Chief Land Registrar.
73. Furthermore, Learned counsel has submitted that by issuing the Certificate of Lease in respect of the suit property, the office of the Chief Land Registrar created an impression that the suit property was lawfully available and has thus inspired the Plaintiff to develop a Legitimate expectation as pertains to ownership of the suit property.
74. In any event, Learned counsel has invoked and relied on the provisions of Section 81 of the [Land Registration Act](#), 2012; and thus justified the contention that the Plaintiff would be entitled to indemnity, if the title of the suit property is found to have been irregularly issued.
75. In respect of the claim pertaining to compensation/indemnity, Learned counsel for the Plaintiff has cited and quoted the decision in the case of Livingston versus Rawyards Coal Company (1880) Ltd 5APP Cases at page 25, to justify that the Plaintiff would be entitled to recompense.
76. Nevertheless, Learned counsel for the Plaintiff has implored the Honourable court to find and hold that the Plaintiff herein has placed before the court cogent, credible and plausible evidence to warrant entry of Judgment as prayed for at the foot of the Plaint dated the 16th February 2021.

b. Defendants' Submissions:

77. The Defendants filed written submissions dated the 24th April 2023 and in respect of which same has highlighted, amplified and canvassed three (3) salient issues for consideration and determination by the Honourable court.
78. First and foremost, Learned counsel for the Defendant has submitted that what constitutes the suit property falls within and forms part of Ngong Road Forest Reserve in terms of the Proclamation Notice Number 44 of 30th April 1992 and as further gazetted vide Legal Notice Number 174 of 20th May 1974.
79. Furthermore, Learned counsel for the Defendants has submitted that the disputed portion of land has never been degazetted as part of Ngong Road Forest Reserve, either in accordance with the law or otherwise, to enable same to be available for allocation and/or alienation to any individual person, the Plaintiff herein not excepted.
80. In any event, Learned counsel has submitted that prior to de-gazettement of Forest land, it was incumbent upon the Minister for Environment and Natural Resources or such designated Minister to



issue a gazette notice declaring a portion of the forest to be unalienated Government Land. However, in this case, Learned counsel pointed out that no such gazette had hitherto been done prior to the offensive allocation of the suit property.

81. In support of the foregoing submissions, Learned counsel for the Defendants has cited and relied on the decisions in the case of Timothy Ingosi & 87 Others versus Kenya Forestry Services & 2 Others (2016)eKLR and Clement Kipchirchir & 38 Others versus The Principal Secretary, Ministry of Lands, Housing and Urban Development & 3 Others (2015)eKLR.
82. Secondly, learned counsel for the Defendants has submitted that even though the Plaintiff herein was issued with a Letter of allotment dated the 26th August 1996, same neither complied with nor performed the terms and conditions which were alluded to in the body of the Letter of allotment.
83. Significantly, Learned counsel for the Defendants has submitted that according to the terms of the Letter of allotment, it was incumbent upon the Plaintiff to pay the stand premium and the incidental statutory levies within 30 days from the date of issuance of the Letter of allotment, which was not complied with.
84. Additionally, Learned counsel for the Defendants has also submitted that it is also incumbent upon the Plaintiff to accept the terms of the Letter of allotment within 30 days from the date of issuance. Similarly, counsel has pointed out that this was also not complied with.
85. Premised on the foregoing, Learned counsel for the Defendants has therefore submitted that the impugned Letter of allotment which was issued in favor of the Plaintiff therefore lapsed and became extinguished after the 30 days duration. For good measure, Learned Counsel hence contended that the Letter of allotment thus ceased to exist and there was nothing to be complied with.
86. Furthermore, Learned counsel has submitted that insofar as the terms of the Letter of allotment lapsed after the passage of the statutory 30 days, there was no Letter of allotment capable of being accepted and/or acted upon by the plaintiff as at the 27th March 2000; when the Plaintiff purported to pay the stand premium and the incidental statute levies.
87. In view of the foregoing, Learned counsel has reiterated that any action taken on the basis of the Letter of allotment, whose terms had extinguished, did not confer, vest and/or otherwise bestow any lawful and legitimate rights to and in favor of the Plaintiff.
88. In support of the foregoing submission, Learned counsel for the Defendants have relied on various decisions inter-alia Joseph Kamau Muhoro versus The Attorney General & 2 Others (2021)eKLR, Dr. Syedna Mohamed Burhanudin Saheb & 2 Others versus Banja Properties & 2 Others (2007)eKLR, Bubaki Investments Co Ltd versus National Land Commission & 2 Others (2015)eKLR and Ali Mohamed Dagani versus Hagar Abshir & Another Garisa (2021)eKLR, respectively.
89. Lastly, Learned counsel for the Defendants has submitted that the Plaintiff herein cannot lay a claim to compensation arising from and/or attendant to the suit property, insofar as the title to the suit property was illegally and unlawfully procured.
90. Further and in any event, Learned counsel for the Defendants has submitted that the claim for compensation and/or indemnity by the Plaintiff herein, if awarded, shall amount to rewarding an illegality.
91. In a nutshell, Learned counsel for the Defendants has implored the Honourable court to find and hold that the Plaintiff herein did not acquire any lawful rights and or interests over and in respect of the suit



property or at all. Consequently and in this regard, counsel has contended that the Plaintiff's suit is thus unmeritorious and same ought to be Dismissed with costs.

Issues For Determination

92. Having reviewed the Plaintiff filed by and on behalf of the Plaintiff and having reviewed the Statement of Defense and Counter-claim by and on behalf of the Defendants and upon consideration of the evidence tendered by the Parties; and finally, upon taking into account the submissions filed by the Parties, the following issues do arise and are thus germane for determination;
 - i. Whether or not what constitutes the suit property formed part and parcel of Ngong Road forest Reserve and if so; whether the area comprising of the suit property was lawfully degazetted from the Forest.
 - ii. Whether the terms of the Letter of allotment were duly complied with by the Plaintiff and if not; what is the legal implication of failure to comply with the terms of a Letter of allotment.
 - iii. Whether the Certificate of Title to and in favor of the Plaintiff is lawful, legal and legitimate; or otherwise.
 - iv. What Reliefs ought to be granted.

Analysis and Determination

Issue Number 1. Whether or not what constitutes the suit property formed part and parcel of Ngong Road Forest Reserve and if so; whether the area comprising of the suit property was lawfully degazetted from the Forest.

93. DW1, being the witness who was summoned and called by the Defendants herein testified before the Honourable court and averred that Ngong Road Forest Reserve was duly gazetted/proclaimed as a Forest Reserve vide Proclamation Number 44 of 1932, which proclamation showed the area of the Forest Reserve to comprise of 2,926.2 Ha.
94. Furthermore, it was also the testimony of DW1 that the area of Ngong Forest Reserve was further amplified vide Legal Notice Number 174 of 20th May 1974, which underscored the acreage therein.
95. Nevertheless, it was the further testimony of the witness that the acreage of what comprises and constitutes Ngong Forest Reserve was however reduced albeit illegally and fraudulently when various parcel of lands, inter-alia, the suit property, were hived and curved out therefrom.
96. Be that as it may, the witness testified that despite the hiving of and curving out of parcels of land from Ngong Forest Reserve, the impugned parcels of land were unlawfully created and hence the resultant titles are invalid.
97. Further and at any rate, DW1 testified that if there was need to de-gazette any portion of the Forest Land, it was incumbent upon the Minister for Environment and Natural Resources to issue a Legal Notice in accordance with Section 4 of the Forest Act, Chapter 385 Laws of Kenya and thereafter to declare the designated portion of the Forest Land as unalienated Government Land, prior to and before any such land can become available for allotment.
98. According to DW1, the suit property falls within and forms part of Ngong Forest Reserve which has not been lawfully degazetted or otherwise. For good measure, DW1 produced Exhibits D3 which is the Ngong Road Forest Resource Map and which document clearly shows that the suit property is situate right within the Forest reserve.



99. On his part, the Plaintiff herein contended that the suit land was lawfully and legally allocated by the Commissioner of Land on the basis of the Letter of allotment dated the 26th August 1996. In any event, the Plaintiff has contended that by the time the Commissioner of Land allocated the suit property, same was lawfully convinced that the suit property was available for allotment and/or alienation.
100. Furthermore, the Plaintiff has also contended that what comprises of the suit property was also the basis of Legal Notices which were published by the Minister for Environment and Natural Resources at the foot of the gazette notice which were produced as Exhibits P18.
101. Accordingly, it is the Plaintiff's position that if at all the suit property hitherto fell within and/or formed part of Ngong Forest Reserve then same were duly de-gazetted and therefore, the suit property became available for allotment and/or alienation. For good measure, the Plaintiff invited the Honourable court to take cognizance of and to rely on the Legal Notices published vide Gazette Notice Number 2837 and 2838, which were published on the 6th June 1997, respectively.
102. Having reviewed the totality of the evidence that was tendered and placed before the court, there is no gainsaying that what constitutes the suit property indeed falls within and forms part of Ngong Road Forest Reserve. For good measure, the exact location of the suit property was shown and reflected vide Exhibit D3, whose contents were never impeached and or controverted by the Plaintiff.
103. Secondly, even though the Plaintiff procured and produced before the Honourable court Legal Notices Numbers 2837 and 2838, published on the 6th June 1997, respectively, it is important to point out that the said Legal Notices are irrelevant and inapplicable as far as the alienation of the suit property is concerned.
104. To start with, it is crystal clear and apparent that the impugned Legal Notices which were produced as Exhibit P18, on behalf of the Plaintiff relates to specific titles namely, L.R No. 21254 and 21268, respectively. Nevertheless, the suit property herein is known as L.R No. 22410; which is separate and distinct from the title numbers alluded to in the Legal notices tendered before the Honourable court.
105. Other than the foregoing, it is also important to point out that even if the two Legal notices would have referred to the suit property (which is not the case), same would still not be helpful.
106. Notably, the gazette/legal notices were being issued on the 3rd June 1997 and expressing an intention to alter the boundary lines of Ngong Road Forest Reserve, whereas the impugned Letter of allotment was issued on the 26th August 1996.
107. In the premises, even if the impugned Legal notices (which were produced as exhibit P18) were to relate to the suit property, surely same would not act retrospectively to validate a Letter of allotment which was issued long before and prior to the impugned gazette/Legal notices.
108. To my mind, the Legal/gazette notices, which were procured by and thereafter tendered in court on behalf of the Plaintiff herein have no relevance or at all. In any event, the said documents do not move and/ or carry the Plaintiffs case any inch further.
109. Instructively, the process of de-gazetting Forest Land or any portion of land which has hitherto been reserved as Forest land, Ngong Road Forest Reserve, not excepted; is well stipulated and espoused under the law.
110. In this regard, it is imperative to observe and underscore that the process of degazetting Forest Land was pronounced upon and articulated in the case of Clement Kipchirchir & 38 Others versus The Principal Secretary, Ministry of Lands, Housing and Urban Development & 3 Others (2015)eKLR, where the Court stated and observed as hereunder;



41. The other question to determine, assuming that the 34 titles are actual land titles, is whether these titles were properly acquired. It is not denied by the petitioners, and in fact it is their case, that they obtained their titles to land that was within the Mau Forest Complex. It is their position that the land that they acquired is among the parcels of land which comprised the degazetted forest in Legal Notice No. 142 of 8 October 2001. The said Legal Notice apparently excised about 35,301.01 hectares of land adjoining the western, northern and eastern boundaries of Eastern Mau Forest. Now, if it is the petitioners' case, that the titles they obtained formed part of what was excised in Legal Notice No. 142 of 8 October 2001, it follows that the petitioners obtained titles even before the forest was degazetted. They clearly could not have properly obtained titles to land that was still part of the forest without first there being a declaration that the said land no longer forms part of the forest. The forest first needed to be properly degazetted before titles could be issued.
42. That is indeed what was provided for by The Forests Act (CAP 385) (now repealed by the Forests Act, Act No. 7 of 2005) which was then in operation at the time that the forest herein was purportedly allocated. Section 4 of the said statute provided as follows :-

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- (1) The Minister, may from time to time, by notice in the Gazette :-
- (a) declare any unalienated Government land to be a forest area;
 - (b) declare the boundaries of a forest and from time to time alter those boundaries;
 - (c) declare that a forest area shall cease to be a forest area.
- (2) Before a declaration is made under paragraph (b) or paragraph (c) of subsection (1), twenty-eight days' notice of the intention to make the declaration shall be published by the Minister in the Gazette.
43. If any titles were issued prior to the degazettement of the forest, then such titles cannot be said to be good titles for they were obtained in clear contravention of the law.

111. Furthermore, it is imperative to state and underscore that what constitutes Ngong Road Forest Reserve, amounts to Public land which has already been reserved for a designated purpose and thus same is no longer unalienated Government land, capable of allotment or further alienation. For good measure, reservation of land for a particular purpose constitutes and amounts to alienation.
112. Additionally, by the time the Commissioner of Land was purporting to generate and issue the impugned Letter of allotment dated the 26th August 1996, over and in respect of the suit property, the ground under reference was unavailable, insofar as same had hitherto been proclaimed and reserved as part of Ngong Road Forest Reserve.
113. In the premises, when the Commissioner of Land was issuing the impugned Letter of allotment dated the 26th August 1996; same was only engaged in paper games, but which were incapable of conveying any Legal rights and/or interests to the beneficiary of the impugned Letter of allotment.
114. To underscore the fact that once Land has been reserved, same ceases to be unalienated Government land, it is imperative to take cognizance of and to reiterate the succinct holding of the Court in the case



of Kenya Anti-Corruption Commission versus Online Omega Enterprises Ltd (2019)eKLR, where the court stated and held thus;

“Under the Government Lands Act (Cap 280, Laws of Kenya) the Commissioner of Lands can only make grants or dispositions of any estates, interests or rights in over unalienated government land. (Section 3). In the instant case, the two parcels of land among others had been alienated and designated for particular purposes. It was not open for the Commissioner of Lands to re-alienate the same. So the alienated was void ab initio.”

115. Other than the foregoing position, the fact that land which has already been allocated, alienated and reserved for a purpose becomes unavailable for allocation was re-visited and elaborated upon by the Court of Appeal in the case of Benja Properties Limited versus Syedna Mohammed Burhannudin Sahed & 4 others [2015] eKLR, where the court held thus;

25. In arriving at our decision, we note that an interest in land cannot be allotted, alienated or transferred when the specific parcel of land allotted is not in existence. Allotment of an interest in land is a transaction in rem attaching to and running with a specific parcel of land. In the instant case, the allotment by the Commissioner of Land to the original allottees did not attach in rem to any land since there was no parcel upon which the allotment could attach. What the 5th respondent, the appellant and the original allottees did was to engage in paper transactions without a parcel of land upon which any interest in land would attach and vest – it was paper transactions without any parcel of land as its substratum.

116. From the foregoing analysis, I come to inevitable and inescapable conclusion that the portion of land, comprising of the suit property fell within Ngong Road Forest Reserve, which had hitherto been proclaimed and reserved as part of Ngong Forest.

117. Consequently and in the premises, the portion of land comprising the suit property; was therefore not unalienated Government land that could be alienated and/or allocated by the Commissioner of Land or otherwise, in the manner same purported to do at the foot of the impugned Letter of allotment dated the 26th August 1996.

Issue Number 2:

Whether the terms of the Letter of allotment were duly complied with by the Plaintiff and if not; what is the legal implication of failure to comply with the terms of a letter of allotment.

118. Notwithstanding the fact that the court has come to the conclusion that the suit property fell within and formed part of Ngong Road Forest Reserve; which was therefore land incapable of being alienated, there is still need to interrogate the propriety and validity of the impugned Letter of allotment.

119. Consequently and in this respect, I shall endeavor to discuss the importance of a Part Development Plan (PDP) towards and in the process of allotment/alienation of Public land.

120. To start with, there is no gainsaying that prior to and before any unalienated Government/Public land could be allocated to and in favor of anyone, the Plaintiff herein not excepted, it was incumbent upon the Commissioner of Land to requisition for the preparation of a Part Development Plan (PDP) by the Director of Physical Planning.

121. Notably, the preparation, issuance and ultimate approval of the Part Development Plan in accordance with the Physical Planning Act, now repealed, would clearly establish and confirm, that the ground which is the subject of intended alienation is indeed available for such allotment and/or alienation.



122. Further and in addition, the Part Development Plan (PDP), would also clarify whether the intended portion of land, which is the subject of intended alienation is otherwise reserved for some public/utility purpose or not.
123. Additionally, once a Part Development Plan shall have been prepared, checked and approved, then same shall be assigned a Part Development Plan Number which number would thereafter be extrapolated into the Letter of allotment, with a view to designate and clearly delineate the portion of land that is indeed being allocated.
124. However, in respect of the suit property herein, there is no gainsaying that the impugned Letter of allotment did not reflect and or reveal the Part Development Plan Number, if at all, there was such a PDP that was ever prepared.
125. To my mind, the absence of a Part Development Plan Number connotes that there was no PDP that was ever prepared or otherwise. In this regard, it is instructive to point out that a critical step and process in the alienation of Government land was therefore not complied with and/ or adhered to.
126. Secondly, it is important to point out that had the Commissioner of Land requisitioned from the preparation and approval of the requisite Part Development Plan, prior to and before generating the impugned Letter of allotment dated the 26th August 1996, no doubt the Commissioner of Land would have appraised himself that the portion of land which was purportedly being allocated was indeed right in the Forest and thus not available for allocation.
127. Without belaboring the point, it is instructive to repeat and reiterate the elaborate pronouncement at the foot of the decision in the case of Nelson Kazungu Chai & 9 Others versus Pwani University [2014] eKLR as follows:

“...It is trite law that under the repealed Government Lands Act, a Part Development Plan must be drawn and approved by the Commissioner of Lands or the Minister for lands before any un-alienated Government land could be allocated. After a Part Development Plan (PDP) has been drawn, a letter of allotment based on the approved PDP is then issued to the allottees.

131. It is only after the issuance of the letter of allotment, and the compliance of the terms therein, that a cadastral survey can be conducted for the purpose of issuance of a certificate of lease. This procedural requirement was confirmed by the surveyor, PW3. The process was also reinstated in the case of African Line Transport Co. Ltd vs. The Hon. Attorney General, Mombasa HCCC No. 276 of 2013 where Njagi J. held as follows: “Secondly, all the defence witnesses were unanimous that in the normal course of events, planning comes first, then surveying follows. A letter of allotment is invariably accompanied by a PDP with a definite number. These are then taken to the department of survey, who undertake the surveying. Once the surveying is complete, it is then referred to the Director of Surveys for authentication and approval. Thereafter, a land reference number is issued in respect of the plot.¹³² A part development plan (PDP) can only be prepared in respect to Government land that has not been alienated or surveyed...”
128. Nevertheless, even assuming that indeed the requisite Part Development Plan had been generated, prepared and approved (which is not the case), it is still important to point out that the beneficiary of



the Letter of allotment would have been called upon to comply with and/or abide by the terms of the Letter of allotment within the stipulated timelines/duration.

129. Evidently, the impugned Letter of allotment dated the 26th August 1996 had called upon the Plaintiff to comply with the terms thereof within 30 days from the date of the offer and furthermore, the Letter of allotment signaled that in the event of non-compliance with the terms thereof within 30 days; then the Letter will be considered to have lapsed.
130. Despite the clear and unequivocal terms of the Letter of offer, there is no dispute that the Plaintiff herein neither generated any Letter of acceptance nor made payments within the requisite 30 days period.
131. Admittedly, the payment that was generated by the Plaintiff was at the foot of a Bankers cheque dated the 9th March 2000 and which was (sic) paid to and in favor of the Commissioner of Land on the 26th April 2000.
132. Clearly, by the time the Plaintiff herein was purporting to make the payments on account of the stand premium and the various statutory levies, the Letter of allotment dated the 26th August 1996; had long lapsed and thus ceased to exist.
133. To my mind, there was no more Letter of allotment, which the Plaintiff by any stretch of imagination, could purport to be accepting and/or honoring by making payments on the 26th April 2000.
134. In a nutshell, it is my humble finding and holding that the impugned payments which were made by and on behalf of the Plaintiff, allegedly on account of the Letter of allotment, was an exercise in futility and/or vanity. Nevertheless, the impugned payments could not revive and/or resuscitate a Letter of allotment which was long dead and if anything, long buried.
135. To this end, I reiterate the position that this Honourable court held and adopted in the case of Joseph Kamau Muhoro versus Attorney General & another [2021] eKLR, where it was held thus:
 34. Besides, I also hold the humble opinion that having not formally accepted the Letter of Allotment, [in writing as required], the Letter of Allotment, on which the Plaintiff/Applicant has premised his claim, was rendered void and non-existent.
 35. In support of the foregoing holdings, it is important to take cognizance of the Decision in the case of Dr. Syedna Mohammed Burhannuddin Saheb & 2 others vs Benja Properties & 2 others [2007] eKLR;

“In any event, the letter of allotment relied upon by the Defendant had itself expired, and was therefore invalid. I do not accept Mr. Kirundi, Counsel for Defendant’s argument, that the expired letter, when acted upon, had been “revived” through conduct. The letter had expired. It was dead. There was nothing to “revive”.
136. Furthermore, the legal implication and consequences attendant to failure to act in accordance with the terms and conditions alluded to at the foot of a Letter of allotment, if any and in particular, the effect of lapse of time on a Letter of allotment was also the subject of determination by the court in the case of Bubaki Investment Ltd versus The National Land Commission (2016)eKLR, where the court stated and held thus;

“My view is that no acceptance and/or payment was made in accordance with the letter of allotment and therefore there was no compliance with the conditions of the letter of allotment. The petitioner acknowledges that allotment of the same property was made to



a 3rd party presumably who is the 3rd Respondent but contends that this allotment to the 3rd party was made after the allocation to the petitioner. The petitioner has not furnished any evidence to show that the allotment to the 3rd party was made after the allocation to it. Indeed not even a search has been exhibited to show the current status of the property and the court is being asked to be presumptuous and accept that the 3rd Respondent is the registered proprietor of the suit property and that his allocation was after the property had already been allocated to the petitioner. Where is the evidence to support this? The cardinal rule of evidence is that he who asserts and/or alleges must prove. I do not think the petitioner has proved its allocation of the suit property was earlier in time that the allocation to the 3rd Respondent and I hold that the petitioner has not proved that fact.

Thus in my view the petitioner did not comply with the terms and conditions of the letter of allotment dated 30th May 1997 and that as at the time the petitioner made payment of the charges stipulated under the letter of allotment the offer had lapsed and was therefore in ineffectual.

137. Based on the foregoing, it is my humble albeit considered position that even the impugned Letter of allotment was a nullity and hence same did not bestow upon and/ or vest in the Plaintiff any legitimate rights and or interests which could be leveraged upon to obtain title to the suit property.

Issue Number 3

Whether the Certificate of Title to and in favor of the Plaintiff is Lawful, Legal and Legitimate; or otherwise.

138. Whilst discussing issue number two, this Honourable court has since found and established that the impugned Letter of allotment, which was issued to and allegedly acted upon by the Plaintiff, was itself fatally defective and otherwise a nullity.
139. Nevertheless, despite the evident and apparent defects, whose details have been elaborated upon in the preceding paragraphs, the impugned Letter of allotment was magically acted upon culminating into the issuance of a Certificate of title on the 15th April 2016.
140. Consequently, the question that now needs to be interrogated and addressed relates to whether or not the certificate of lease/title which was issued and which arose from the impugned Letter of allotment, is a lawful and legitimate Legal instrument capable of conveying interests in favor of the beneficiary.
141. Before venturing to answer the question herein, it is imperative to underscore that the mere issuance and holding of a Certificate of Title does not by itself make the document legitimate. For good measure, the title can only be legitimate if same was lawfully, procedurally and legally procured and obtained.
142. To this end, it is worth restating and reiterating the holding of the Court of Appeal in the case of *Munyu Maina versus Hiram Gathiha Maina* (2013)eKLR, where the court stated and held thus;

“We state that when a registered proprietor’s root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which need not be noted on the register. It is our considered view that the respondent did not go this extra mile that is



required of him and no evidence was led to rebut the appellant's testimony. We find that a trust exists in relation to the suit property”.

143. Having taken note of the foregoing excerpt, it is instructive to state and underscore that the impugned Certificate of Lease which was issued to and in favor of the Plaintiff was indeed issued in vacuum and in contravention of the law which was obtaining and governing issuance of Certificate(s) of title.

144. Clearly, there is no gainsaying that the circumstances under which the impugned Certificate of title was issued falls squarely within the four corners of prescription envisioned and espoused by dint of Section 26 (1) (b) of the [Land Registration Act, 2012](#).

145. For ease of reference, Section 26 (1) (b) of the [Land Registration Act, 2012](#) stipulates as hereunder;
26.

- (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.

146. Finally, it is not lost on this Honourable court that though a certificate of lease was ultimately processed and issued in favor of the Plaintiff, same was however processed in a manner that was unacceptable and which calculated to alienate reserved Forest land.

147. Notably and in any event, having found and held that the impugned land was not available for allocation, the resultant certificate of title, no doubt, arose out of nothing. Consequently, this is a fit and proper case to invoke and apply the Doctrine of Ex-nihilo Nihil Fit.

148. In this respect, it is appropriate to adopt and reiterate the position taken by the Court of Appeal in the case of Caroget Investment Limited versus Aster Holdings Limited & 4 others [2019] eKLR, where the court stated succinctly thus;

From the Council to the appellant and from the appellant to White Horse no title could be passed because ex nihilo nihil fit – out of nothing comes nothing.

Issue Number 4

What Reliefs ought to be granted

149. The Plaintiff herein has sought for a plethora of reliefs, whose details were captured and enumerated at the onset of this Judgment. Nevertheless, it is instructive to note and observe that whilst dealing with issues numbers 1, 2 and 3 herein before, the Honourable Court has found and established that what comprises of the suit property was indeed alienated/ Reserved forest land, which was thus not available for further alienation or at all.



150. On the other hand, it is also worthy to recall that the Honourable court also calibrated and addressed the legal propriety of the Letter of allotment which was issued to and in favor of the Plaintiff. No doubt, the court found and held that the impugned Letter of allotment was invalid and thus a nullity.
151. Arising from the foregoing position, the question that does arise is whether or not the Plaintiff herein acquired and/or accrued any valid Certificate of lease over and in respect of the suit property.
152. However, it is my humble position that insofar as the suit property was illegally and unlawfully acquired; the Plaintiff herein cannot contend and or be heard to contend that same is the lawful and legitimate proprietor of the suit property. In the absence of any legitimacy to the certificate of title, it then means that the Declaratory orders and the claims for recompense, alluded to at the foot of the Plaint cannot issue and/or be granted.
153. On the other hand, the Plaintiff herein also sought for an order in the alternative, whereby same implored the Honourable court to find and hold that in the unlikely event that the court is not inclined to declare the Plaintiff as the owner of the suit property; then the court should proceed and decree compensation on account of the full value of the property at the current market value.
154. To my mind, what I hear the Plaintiff to be seeking is that in lieu of a declaration of ownership of land, the Honorable court should award and decree Indemnity premised on the basis of Section 81 of the [*Land Registration Act*, 2012](#).
155. Nevertheless, it is imperative to state and observe that the question of indemnity and/or compensation can only be gone into and/or addressed, if the Plaintiff herein could establish and demonstrate that the title to the suit property was lawfully Issued, save for a mistake committed by a Government department.
156. However, it is my humble view that where the issuance of the impugned title was itself a nullity and an illegality, no rights and/or interests could attach thereto or at all. In this respect, it is instructive to underscore that the Plaintiff before the court did not acquire any scintilla of interests and/ or Rights capable of compensation.
157. In any event, to proceed and decree any compensation to and in favor of the Plaintiff, would be tantamount to rewarding an illegality. Clearly, such an order, if any were to issue; would amount to absurdity.
158. Further and in addition, it is also not lost on this Honourable court that even if the court were to assume that the Plaintiff would be entitled to indemnity (which is not the case) then it is worth stating that a claim for indemnity is a liquidated claim which ought to have been particularly pleaded and thereafter specifically proved, most probably on the basis of a valuation report.
159. Notably, the Plaintiff herein neither pleaded any amount on account of compensation and neither did same tender or produce any evidence to assist the court to arrive at any award of compensation.
160. In my humble view, it is not the business of the court to go out of the adversarial legal system with a view to (sic) procuring evidence for a party. In this respect, this Court has no business engaging with the Question of recompense, or at all.
161. Simply put, even the claim for compensation and/or indemnity was not suitably pleaded or otherwise. Consequently, even on the merits of the claim for compensation; same would still have failed.



162. To the contrary, the 1st Defendant herein was able to place before the Honorable court, clear and cogent and plausible evidence to demonstrate that the suit property fell right within Ngong Road Forest Reserve. For good measure, Exhibit D3 was explicit and same was never controverted.
163. Consequently and in the premises, I come to the conclusion that the Defendants herein have been able to discharge the burden of proof relating to the issues that were adverted to at the foot of the amended counterclaim dated the 26th April 2022.
164. In view of the foregoing, the claims at the foot of the amended counterclaim are duly proved and established as required by dint of sections 107, 108 and 109 of the Evidence Act, Chapter 80, Laws of Kenya.
165. Consequently, the counterclaims succeeds.

Final Disposition

166. Having addressed and analyzed the various issues which were enumerated in the body of the Judgment herein, it has become apparent and evident that the suit property, which was allegedly being allocated to and in favor of the Plaintiff, was indeed part of Ngong Forest Road Reserve, hence a portion of land that stood reserved for a designated purpose.
167. Consequently and given that the portion of land in question was no longer available for allotment and/or alienation, no doubt, the purported Letter of allotment dated the 26th August 1996; was itself a nullity and incapable of conveying any legal rights and/or interest to the Plaintiff.
168. Arising from the foregoing, there is therefore no gainsaying that the Plaintiff herein has not been able to prove the claims alluded to and enumerated at the foot of the Plaint dated the 16th February 2021. Consequently and in this regard, the Plaintiff's claim be and is hereby dismissed.
169. On the contrary, the 1st Defendant herein has been able to demonstrate and prove that the suit property constitutes and forms part of Ngong Road Forest Reserve, which is Public land and thus same ought to be protected for Inter and Intra generational posterity.
170. In a nutshell, Judgment be and is hereby entered in terms of the counterclaim dated the 26th April 2022 as hereunder;
 - a. Declaration be and is hereby issued that the issuance of title, transfer and subsequent registration of the Plaintiff in the main suit as the proprietor of L.R No. 22410, Nairobi was irregular and illegal and unlawful.
 - b. Declaration be and is hereby issued that the Defendant to the counterclaim has never had ownership or possession of the suit property known as L.R No. 22410 I.R No. 179460.
 - c. Declaration be and is hereby issued that the suit property is Public land as it forms part of Ngong Road Forest reserve.
 - d. An order be and is hereby issued directing the Chief Land Registrar to cancel the title in respect of L.R No. 22410 I.R No. 179460.
 - e. Consequently and in the premises, the Plaintiff be and is hereby ordered to surrender the title over and in respect of the suit property to the Chief Land Registrar for cancelation within 60 days from the date hereof.



- f. Nevertheless, the Chief Land Registrar shall still be at liberty to proceed and cancel the title of the suit property, even if the Plaintiff fails to surrender the said title and in the event that the title is cancelled without surrender, the Chief Land Registrar shall proceed to advertise the cancellation vide Kenya Gazette.
- g. There be and is hereby granted an order of Permanent Injunction to restrain the Defendant by himself, agents, servants and/or employees from entering upon, remaining on and/or otherwise interfering with the 1st Defendant's activities over and in respect of the suit property.

171. Finally, the Defendants be and are hereby awarded costs of the suit and the counterclaim, to be taxed and certified by the Deputy Registrar of the court.

172. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 6th DAY OF JULY 2023.

OGUTTU MBOYA

JUDGE

In the Presence of;

Benson Court Assistant

Mr. Ondabo h/b for Mr. Derrick Bruno for the Plaintiff.

Mr. Allan Kamau h/b for M/s Nyawira for the Defendants.

