



**Republic v Commissioner of Lands & Settlement & 3 others; Mwaura & 2 others (Interested Parties); Samuru Gituto Farmers Co-Operative Society Limited (Exparte) (Environment and Land Judicial Review Case 1 of 2022) [2023] KEELC 21559 (KLR) (14 November 2023) (Judgment)**

Neutral citation: [2023] KEELC 21559 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ENVIRONMENT AND LAND JUDICIAL REVIEW CASE 1 OF 2022**

**AA OMOLLO, J**

**NOVEMBER 14, 2023**

**(FORMELY JR. NO. 815 OF 2008)**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW  
ORDER OF CERTIORARI: MANDAMUS AND PROHIBITION**

**IN THE MATTER OF SECTION 8 & 9 OF THE LAW REFORM ACT CAP 26 AND  
ORDER LIII OF THE CIVIL PROCEDURE RULES CAP 21 LAWS OF KENYA**

**IN THE MATTER OF CO-OPERATIVE SOCIETIES ACT NO. 12 OF 1997  
AS AMENDED BY ACT NO. 2 OF 2004 AND NOW REVISED AS CAP 490**

**THE LAWS OF KENYA**

**AND**

**IN THE MATTER OF THE REGISTRATION OF TITLES ACT CAP 281 LAWS OF KENYA**

**IN THE MATTER OF ISSUANCE OF CERTIFIED COPIES OF  
DEED PLANS OR NEW CERTIFIED DEED PLANS FOR LR  
10743 SAMURU GITUTO FARMERS CO-OPERATIVE SOCIETY**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**COMMISSIONER OF LANDS & SETTLEMENT ..... 1<sup>ST</sup> RESPONDENT**

**DIRECTOR OF SURVEYS ..... 2<sup>ND</sup> RESPONDENT**

**CHIEF REGISTRAR OF TITLES ..... 3<sup>RD</sup> RESPONDENT**

**COMMISSIONER FOR CO-OPERATIVE DEVELOPMENT AND**

**MARKETING ..... 4<sup>TH</sup> RESPONDENT**

**AND**



FRANCIS NDUNGU MWAURA ..... INTERESTED PARTY  
PETER NDUATI MBAU ..... INTERESTED PARTY  
SIMON NGURE KUNG’U ..... INTERESTED PARTY

AND

SAMURU GITUTO FARMERS CO-OPERATIVE SOCIETY LIMITED EXPARTE

## JUDGMENT

1. The Applicant filed notice of motion dated 12<sup>th</sup> January 2009 seeking for the following orders;
  1. Spent
  2.
    - (a) An order of certiorari to bring to court for quashing:
      - i. The decision/directive of the 1<sup>st</sup> Respondent contained in a letter dated 13<sup>th</sup> November 2008 by Land Officer a Mr. R.O. Olundo to issue.
      - ii. The decision/directive of the Director of survey contained in a letter dated 19<sup>th</sup> November and posted on 27<sup>th</sup> November 2008 by a Mr. B.N Owino to issue.
      - iii. The certified copies of the deed plans issued on 25<sup>th</sup> November 2008 by the Director of Survey to issue.
    - (b) An order of mandamus directed to the
      - i. 1<sup>st</sup> Respondent to issue a duplicate title for LR.10743
      - ii. 2<sup>nd</sup> Respondent to issue to cancel the certified copies of the deed plans issued on 25<sup>th</sup> November 2008.
      - iii. 3<sup>rd</sup> Respondent to produce before court the certified copies of the deed plans issued by him/them on 25<sup>th</sup> November 2008.
    - (c) An order of prohibition directed to the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents from effecting and/or registering any documents, transferring, alienating, disposing or in any manner whatsoever dealing with the land parcel number LR 10743 belonging to the Applicant Society by the Interested Parties.
  3. That this Honourable Court do make such other or further orders as it may deem fit.
  4. That the costs of this application be provided for by the Respondents in any event.

### **Applicant’s case**

3. The application was based on the grounds set out in the motion, the verifying affidavit sworn on 12<sup>th</sup> January 2009 by Hiram Kamau Ng’ang’a, as Chairman of the Applicant society elected on 21<sup>st</sup> June 2005 and two supplementary affidavits sworn by George Kuria Njuguna the current Chairman of the Applicant on 15<sup>th</sup> March 2023 and 5<sup>th</sup> April 2023 respectively. It was also accompanied by a statutory statement.



4. The Applicant stated that it is a registered cooperative society with over 4,500 members with an elected management committee entrusted with its day to day running and management. They stated that the applicant is the registered owner of land parcel known as LR.10743 measuring 543 acres situated within the Municipality of Thika Township herein after referred to as “the suit land.”
5. The Applicant averred that it was established with the basic objective of farming but when the International coffee prices fell worldwide, the society was unable to meet its target and the members decided that it be wound up and in a general meeting resolved to sell the suit land and settle an outstanding debt of Kshs.15,000,000 owed to the Co-operative Bank of Kenya which held the original title documents after charging the suit land and the extra proceedings be paid to the members as dividends.
6. The Applicant stated that it contracted a Surveyor by the name Z.R Muritu who did the survey work and divided the land into several parcels some of which were sold by the Co-operative Bank of Kenya; LR 10743/1; LR 10743/2-sold (not transferred); LR 10743/3; LR 10743/4-sold; LR 10743/5-sold; LR 10743/6; LR 10743/7-sold; LR 10743/8; LR 10743/9; LR 10743/10; LR 10743/11.
7. That through its lawyers, the applicants negotiated with the bank to write off the balance of Kshs.5 M which the bank agreed and released the following documents to their mutual advocates Ms Gitonga Muriuki Advocates; the original title deed, original counterpart of Charge dated 30<sup>th</sup> January 1974, the original counterpart of Charge by Agricultural Finance Corporation, Discharge of charge by Agricultural Finance Corporation, Discharge of Charge dated 23<sup>rd</sup> February 1976, transfer documents, Deed plan No.233617 over LR No.10743/10,233616 over LR No.10743/9,233610 over LR No 10743/3 and 2336173 over LR No.10743/6.
8. The Applicant explained that after the release of the title documents, they noticed that two of the deed plans for LR 10743/233609 and LR 10743/233618 were missing and requested the bank to avail them but the bank could not find them. The bank through their lawyer started the process of replacement by presenting the affidavit and letter from the surveyor to the Commissioner for Lands and the Commissioner wrote to the Director of Survey to issue certified copies of the missing deed plans.
9. That the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Interested Parties’ Advocates Mr. G.M Muhoro presented themselves to the firm of Gitonga Muriuki & Co. Advocates as new officials, using a letter dated 1<sup>st</sup> August 2008 by the 4<sup>th</sup> Respondent and stated that they needed the documents. That the 1<sup>st</sup>,2<sup>nd</sup> and 3<sup>rd</sup> Interested parties who are not members of the Applicant society have represented themselves as its bonafide and elected officials and have further made representation to the 1<sup>st</sup> ,2<sup>nd</sup> and 3<sup>rd</sup> Respondents that they should be issued with new leases for the subdivided suit land.
10. The Applicant further stated that the 4<sup>th</sup> Respondent has since disowned the letter of 1<sup>st</sup> August, 2008 and has lodged a complaint over the same with the District Criminal Investigations Offices, Thika.
11. The Applicant stated that the 1<sup>st</sup> ,2<sup>nd</sup> and 3<sup>rd</sup> Interested parties have made documents to procure certified copies of the deed plans with a view of getting new titles and leases. That the 1<sup>st</sup>,2<sup>nd</sup> and 3<sup>rd</sup> Respondents have also recommended, approved, directed and issued certified copies of deed plan with the 2<sup>nd</sup> Respondent threatening to cancel the original deed plans in possession of the Applicant, despite the protest by the Applicant and 4<sup>th</sup> Respondent.
12. The Applicant stated that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Interested Parties have committed the society in many and serious economic transaction that might have very adverse ratification and effects in future considering that they have not signed any indemnity contract with it. That there are pending criminal investigations



with the Directorate of Criminal Investigations headquarters with regard to the stolen title of the suit land.

13. Further the Applicant stated that Interested Parties through misrepresentation obtained ex parte orders against them from the Chief Magistrate Civil Suit No.792 of 2006. Therefore, they (applicants) instituted a Constitutional application recalling the proceedings at the subordinate court vide High Court Constitutional application 30 of 2009. That after hearing the application, Wendoh J. the same was dismissed their application resulting in the filing of an appeal to the Court of appeal vide Civil Appeal No. 300 of 2010.
14. The Applicant stated that their appeal was allowed, and orders issued inter alia; reinstating the prohibitory and injunctive orders against the subdivisions of the suit land, cancellation of the illegal and unlawful orders in the proceedings before magistrate's Court; a finding that the purported transferors were fraudsters and persons without authority and capacity; and the instruments used in the transaction and in particular the certified copies of deed plans were forgeries.
15. The 1<sup>st</sup> to 3<sup>rd</sup> Respondents have not opposed the present application. The application was supported by an affidavit sworn by Mr. Fredrick F Odhiambo on 20<sup>th</sup> April 2009 on behalf of the 4<sup>th</sup> Respondent.
16. The Interested Parties swore a joint replying affidavit dated 28<sup>th</sup> April 2009 in opposition to the grant of orders of judicial review sought. They deposed that they were elected as officials of the Applicant on 21<sup>st</sup> October 2006 and confirmed by the order of the Court issued in Thika CMCC 792 of 2006. That the order in the stated case had not been appealed other than the filing of the Constitutional application dated 22<sup>nd</sup> January 2009.
17. The Interested Parties swore that they were given mandate by the members of the Applicant to sell the suit land which mandate they had carried out. They denied the allegations of theft and forgery of the title documents. They added that they obtained the consent of the LCB for their purposes after filing the necessary applications. It is their averment that they were strangers to the allegations of people who had purchased the suit property since there was no caveat registered on the title and further denied that they have not been sued as Respondents or the persons referred to as the 5<sup>th</sup> and 6<sup>th</sup> Respondents.
18. The Interested Parties asserted that they acted above board as no legal impediments were placed before them by the applicants to stop them from fulfilling their mandate as given by the membership of Samuro Gatuto F.C.S Ltd. They urged this court to dismiss the application with costs to them.

### **Submissions**

19. The Applicant filed submissions dated 20<sup>th</sup> April 2009 and further written submissions dated 8<sup>th</sup> June 2023 and the Interested parties filed their submissions dated 28<sup>th</sup> April 2009 and supplementary submissions dated 15<sup>th</sup> March 2023.
20. The Applicant submitted that the suit was filed to address the issue of the abuse of powers on the part of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents and also deal with the forged letter which the interested parties used to secure issuance of title documents from the 1<sup>st</sup>-3<sup>rd</sup> Respondents. They added that the focus of enquiry in this suit is the process which the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents employed to process documents used by the interested parties to exercise powers of the management Committee of the Applicant.
21. The Applicant submitted that for their application to succeed they must establish on a balance of probabilities that the orders of certiorari, mandamus and prohibition ought to issue as set out in the case of *Kenya National Examination Council V Republic*, Court of Appeal at Nairobi Civil Appeal No.266 of 1996.



22. They submitted that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents who are creatures of statute have acted in excess of jurisdiction in that they have assisted members who have no authority of the Applicant to transact business in its name. That the said public officers have power only to facilitate transactions which are presented to them in accordance with the law. It is the Applicant's submission that the orders of certiorari and prohibition will issue where a public authority is acting arbitrarily and referred to the case of *Republic v Commissioner of Co-operatives Ex parte Kirinyaga Tea Growers Cooperative Savings and Credit Society Ltd.* 1999 1EACA- 245.
23. They further stated that the 1<sup>st</sup> Respondent's office is created by Section 5 of the Government Lands Act thus limited by the statutory powers, the Chief Land Registrar is a creature of the Registration of Titles Act and does not have power to process documents of people who have stolen them from their owners and similarly the 3<sup>rd</sup> Respondent is a creature of Section 3 of the [Survey Act](#) in which duties of the director of survey in relation to land where survey is required are outlined in Section 23. They explained that it is assumed that there is an owner of the land who invites the director of survey to survey it and where the director is not invited by the owner of the land, he commits trespass to land if he enters it and relied in the description of trespass as given in 17<sup>th</sup> Edition of [Salmond on the Law of Tort](#) at page 91.
24. The Applicant also submitted that the 1<sup>st</sup> -3<sup>rd</sup> Respondents having not opposed to the motion, it is deemed that they have accepted the facts as brought out in the pleadings. They support this argument with the case of *Pradan v Attorney General & another* (2002) 1 KLR 1 which held thus;
- “As the attorney general has neither filed a replying affidavit nor indicated that the document requested for could not be disclosed because it would, in the opinion of the minister be injurious to the public interest, the Court would proceed on the footing that it was not so injurious to public interest and that the document could be supplied to the applicant and to anybody else.”
25. The Applicant stated that the 4<sup>th</sup> Respondent who is entrusted in the day to day management of the Cooperative Society has stated that the letter used by the Interested Parties dated 1<sup>st</sup> August 2008 is a forgery not written by the District Co-operative Officer Thika. Further that the Interested parties have been subsequently charged in court in criminal cases over forgery. The Applicant further submitted that the interested parties used the forged document in Court deceiving it that it is genuine and obtained an order which the 1<sup>st</sup> -3<sup>rd</sup> Respondents used to process documents to enable them sell the suit land.
26. The Applicant submitted that the 1<sup>st</sup> -3<sup>rd</sup> Respondents had no business dealing with the interested parties who were not elected by the Applicant thus anything done by them is ultra vires and this court is called to invoke the orders of certiorari and bring for quashing any action or decision of the 1<sup>st</sup> -3<sup>rd</sup> Respondents and in particular the 1<sup>st</sup> Respondent's letter dated 13<sup>th</sup> November 2008 by Mr. R.O. Olundo addressed to the director of survey.
27. In the further submissions, the Applicant placed reliance on the legal principle that Equity Does Not Aid a Wrongdoer as captured by the equity maxim that he who comes into equity must come with clean hands. In support they cited the case of [Aliaza P Saul](#) (Civil Appeal 134 of 2017) [2022] KECA 583 (KLR) (24 June 2022), [Siteyia v Gitome & 3 others](#) [2015] eKLR
28. They submitted that the Interested Parties are wrongdoers and that they are in these proceedings with unclean hands as they orchestrated the thievery of the original title that was in possession of Counsel



for the Applicant, mischievously obtained final orders ex parte at the Thika Law Courts based on lies and falsehood and forged documents.

29. The Applicants stated that the first instance of abuse of power in these proceedings is the letter of Mr R.O Olundo, dated 13<sup>th</sup> November 2008 done on behalf of the 1<sup>st</sup> Respondent, who pressured the Director of Surveys to issue the Interested Parties with certified copies of Deed Plans, in spite of the fact that the same had been issued. Further, that the said officer went ahead to lie that the Chief Magistrates Court at Thika had signed the transfer forms for the properties.
30. The Applicant contended that in his letter dated 19<sup>th</sup> November 2008, Mr. B. N. Owino writing on behalf of the Director of Surveys, threatened to cancel the Applicant's lawfully issued Deed Plans and irregularly issue a deed plan to the Interested Parties.
31. The Applicant aver that the Interested Parties do not controvert any of the serious allegations of fraud, perversion of the course of justice and irregular dealings with public officials levelled against them, as such these facts remain unopposed. Further, the Court of Appeal in Civil Appeal No. 300 of 2010 between the parties herein did reinforce and confirm its finding that the Interested Parties are indeed fraudsters masquerading as leaders of the Applicant and occasioning pain and hardship to members of the Applicant through their mischief and fraudulent activities.
32. The Interested parties submitted that the orders sought by the Applicant cannot be enforced because the issues have not been properly considered and a lot of necessary details omitted in the pleadings filed. They stated that the Applicant has failed to name the proper parties in the suit and that it is a cardinal rule that the proper party must be before the court and must be given proper description. That the officers sued as 1<sup>st</sup> and 3<sup>rd</sup> Respondents are named as "Commissioner of Lands and Settlement" and "Chief Registrar of Titles" respectively which according to the Interested Parties are offices that do not exist. Hence, the court should not act in vain by giving orders which it cannot enforce.
33. The Interested parties submitted that although they are on the face of application sued as interested parties, there is no evidence produced by the Applicant linking them with the allegations of fraud levelled as against the 5<sup>th</sup> and 6<sup>th</sup> Respondents whose particulars have not been given.
34. They submitted that the suit land which is the subject matter of the application does not exist as the same was subdivided into eleven (11) independent and separate portions with their own deed plans and capable of having separate title deeds. Thus no meaningful orders for preservation can be issued. These parties submit that at the time of swearing the affidavit, four (4) portions had been sold and separate titles issued and that a blanket cover for LR 10743 would do injustice to the buyers.
35. The Interested parties argued that the application is bound to fail because the Applicants did not act diligently and have not explained why they never protected their interest through a caveat as provided for under Section 57 of the Registration of Titles Act. Further, it is submitted for the Interested parties that the suit land is Agricultural Land within the meaning of the *Land Control Act* and that throughout the period of alleged fraudulent deals, the applicants never made any effort to appear before the relevant Land Board and lodge complaints on the application for consents obtained.
36. They aver that the application was made prematurely and against the wrong Government officials because the matters raised consist of actions of the Registrar General for which a notice was required to be served on him so that he would give reasons for so acting. They added that such notice having not been served, the court has no jurisdiction to entertain this application.
37. In the supplementary submissions the Interested parties highlighted the issues raised in the supplementary affidavit by the Applicant on the Court of Appeal decision and submitted that the



Court of Appeal in the judgment (in Civil Appeal 300 of 2010) made a statement on this case (which was previously JR. 815 of 2008) at paragraph 57 as follows,

“ 57. The next matter was JR 815/08 which the trial court, again erroneously, stated had not been disclosed. It was indeed disclosed in the affidavit of Hiram and the Judge herself had made an order staying further hearing until the constitutional application was finalised. The context before taking out the JR was that the executive trio had embarked on a campaign to fraudulently obtain' duplicate Deed plans for the Society's land on the false pretext that the originals were lost when, in fact and to their knowledge, they had been handed over to, and were held by the Society's lawyers. According to the supplementary record of appeal, a report was made to the police and warrants of arrest were issued against the executive trio. The JR was directed at the Government offices that were being pressurized by the executive trio to hand over the Deed plans, that is to say: the Commissioner of Lands, Director of Surveys, Chief Registrar of Titles, the Commissioner of Cooperative Development & Marketing. Necessarily, it enjoined the executive trio who were instrumental in pushing the land agenda. Conservatory orders were necessary to stop alienation of the Society land and were issued accordingly. Surprisingly, despite the court orders, and numerous complaints laid before the Government offices who were reluctant to register the court orders and caveats against the Titles, the supplementary record shows that Duplicate Deed plans were issued and sales of the Society land were processed. ”

38. The Interested parties submitted that the Court of Appeal further declared the orders made by P.K. Kariuki, Esq. R.M. on 20<sup>th</sup> and 29<sup>th</sup> August, 2008 and the orders made by Mrs. L.W. Wachira, SRM on 9<sup>th</sup> December, 2008 in CMCC 792 of 2006 null, which grounds were relied on by the respondents in taking the impugned acts thus null and void ab initio and the same are therefore amenable to being quashed as prayed by the exparte applicant.

#### **Determination:**

39. I have read and considered the pleadings as filed and the submissions rendered. I raise three questions for determination of this dispute;

- i. Whether the application is defective for not properly describing the Respondents
- ii. Whether the application is merited
- iii. Whether the orders sought if granted will be in vain.

40. The Interested Parties pleaded and submitted that the Applicants did not properly describe the 1<sup>st</sup> and 3<sup>rd</sup> Respondents and gave no names for the 5<sup>th</sup> and 6<sup>th</sup> Respondents. In so far as the names of the 1<sup>st</sup> and 3<sup>rd</sup> Respondents, the I. Parties quoted section 5 which gave the name as the Commissioner for Lands. In my view, addition of the word Settlement does not go to the root of the matter as depending on each government of the day, the department of lands would sometimes be merged with the department of settlement to read ministry of lands and settlement. In 2009, there existed *Registration of Titles Act* cap 281 (repealed) which under section 2 described the registrar to mean Principal registrar or registrar of titles appointed under the Act. I find nothing wrong with reference to the 3<sup>rd</sup> Respondent as the Chief Registrar of Titles.



41. On the face of the application, the orders sought are against the 1<sup>st</sup> to 4<sup>th</sup> Respondents whose names are already given under the heading of the application. The reference to the Interested Parties as 4<sup>th</sup> to 6<sup>th</sup> Respondents in the Verifying affidavit is a technical error which can be cured as they were aware that their advocate was Mr. G.M Muhoro who wrote to the bank asking for the documents in question. They have answered to those allegations and will not suffer any prejudice. Hence, it is unfounded to submit that if any orders are issued, such orders will be in vain.

42. Turning to the merit of this application, I take note of the Court of appeal's findings in civil appeal number 300 of 2010 where the parties are the same as the parties in this application and which findings in my view resolved the issues in contention in this application. At paragraph 63 and 67(i) & (iii)(b) of their judgement, the Court of Appeal stated thus;

63. The process was based on a purported letter written by the DCO on 1<sup>st</sup> August, 2008 which the DCO himself disclaimed and there is evidence of criminal proceedings relating to that letter. The criminal proceedings commenced in February, 2009 and it is a sad commentary on our criminal justice system that the case has not been concluded 10 years hence. Despite the presumption of innocence which the law imports in criminal matters, a civil court is entitled to examine and evaluate the documents presented before it on a balance of probability. The controversy surrounding the letter had not been resolved before it was used to obtain court orders and Deed Plans which have endangered the existence of the Society land and the rights of 4,500 members.

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(i). The Orders made by P. K. Kariuki Esq. R.M on 20<sup>th</sup> and 29<sup>th</sup> August, 2008, and the orders made by Mrs. L. W. Wachira, S.R.M, on 9<sup>th</sup> December, 2008 in CMCC 792/06, are declared a nullity and are hereby set aside. The proceedings in that case shall proceed in the manner and procedure prescribed by law.

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(iii)

(b): The Registrar of Titles from entertaining and or making of any entries affecting the appellants' proprietary interests in LR 10743 Thika measuring 301 acres, or any sub-division thereof, on the strength of the orders made by Hon. Kariuki, R.M on 20<sup>th</sup> and 29<sup>th</sup> August, 2008 in Chief Magistrates Court Thika in Civil Suit No. 792 of 2006 – Samuru Gituto Farmers' Co-operative Society Limited versus John Mbau, Monica Wambui, Joseph Karumba, Hannah Marugu, Simon Ngugi Kamau, Paul Wanyoike, Joan Njeri, Boniface Mwana and Commissioner of Co-operative Development.

43. The Interested Parties deposed that they were elected as officials of the Applicant Society on 21<sup>st</sup> October 2006 and their election confirmed in CMCC 792 of 2006. As shown in the preceding paragraph, the order of the Magistrate was declared null and void so that the only document sustaining the actions of the Interested Parties is the letter dated 1<sup>st</sup> August 2008 authored by the 4<sup>th</sup> Respondent and now under challenge by the Applicants. The 4<sup>th</sup> Respondent supported the application and stated that they took steps against the issuance of the impugned letter by lodging a complaint with the DCI. That the Interested Parties were arrested and charged for falsifying the said letter of 1<sup>st</sup> August 2008.

44. It is pleaded that the 1<sup>st</sup> to 3<sup>rd</sup> Respondents acted on the basis of the impugned letter dated 1<sup>st</sup> August 2008 and proceeded to issue the letters dated 13<sup>th</sup> November, and 27<sup>th</sup> November 2008. By a letter



dated 19<sup>th</sup> November 2008, B.N. Owino for 2<sup>nd</sup> Respondent wrote a letter to Gitonga, Muriuki & Co Advocates in response to the advocates letter dated 7<sup>th</sup> November 2008 requesting that their clients hand over the deed plans to the new Management. In the letter of 13<sup>th</sup> November 2008, R.O Olundo wrote to the Director of Surveys stating that the Court Order (which has since been nullified) had awarded the new management authority to transact business for the society and all the documents should be under their custody.

45. I already stated in paragraph 43 herein above that I am bound by the finding of the court of appeal on the matters in dispute. Since the letter of 13<sup>th</sup> Nov 2008 for the 1<sup>st</sup> Respondent was made on the strength of the order issued in 792 of 2006, it becomes a candidate for quashing on the basis of the said order having been nullified. The same fate applies to all the actions undertaken by the 1<sup>st</sup> to 3<sup>rd</sup> Respondents as they were done under the guise of implementing the Magistrate's order of 29<sup>th</sup> August 2008.

46. For instance, in a letter dated 23<sup>rd</sup> December 2008, ref: CMC No 792 of 2006; *Samuro Gituto F.C.S LTD v John Mbau & others* at paragraphs 3 and 4 thus;

“on 7.11.2008, I received a letter from G. M advocates requesting the Director of Surveys not to process C.T.Cs. As a result of the request, I gave instructions to stop the processing of the C.T.Cs Deed plans awaiting investigation.

On 14<sup>th</sup> November 2008, the Com. Of Lands requested the processing of the above C.T.Cs deed plans to enable implementation of a court order of 29.8.2008.

On 25.11.2008, deed plans nos 233609-10 & 233615-19 were issued to the Commissioner of Lands for further action through Director of Surveys letter CR/80/Vol 3/360 of 25<sup>th</sup> November 2008”

47. The last question is whether the orders sought can issue. The interested party contested their issuance on the basis of misdescription of the parties and also that the order Land LR 10743 was non-existent. The issue of description of the parties is already answered. On the order being blanket over a non-existent title, it is obvious from the pleadings that the application is challenging the whole process that resulted in the subdivision of LR No 10743. Going by the evidence presented that the subdivision was undertaken using the letter of 1<sup>st</sup> August 2008 from the 1<sup>st</sup> Respondent and the order from the Magistrate's Court dated 29<sup>th</sup> August 2008 which have all been quashed. It follows that the resulting subdivisions were of no legal value/effect as the land must return to its status before 1<sup>st</sup> August, 2008.

48. Whether or not some (4) of the deed plans have since changed hands does not form a justification to regularise an illegality. I am therefore persuaded to find that the orders sought can be granted and I proceed to allow the application dated 12<sup>th</sup> January 2009 as presented.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 14<sup>TH</sup> DAY OF NOVEMBER 2023**

**A. OMOLLO**

**JUDGE**

