



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC NO. 1135 OF 2013**

**MICHAEL NJAU WANGO.....PLAINTIFF**

**VERSUS**

**MARGARET WAIRIMU KAIRU.....1<sup>ST</sup> DEFENDANT**

**SUPER MACRO VENTURES COMPANY LTD.....2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

**Background.**

At all material times, there was and still is an entity known as Super Micro Venture Self Help Group. The group was formed for the purposes of buying and selling land to the members and third parties. In the year 2010 a dispute arose between the members of the group and some of the officials of Super Micro Venture Self Help Group left and formed a limited liability company known as Super Macro Ventures Company Limited, the 2<sup>nd</sup> defendant herein on 14<sup>th</sup> September, 2010. As at the time of this split, Super Micro Venture Self Help Group had acquired a number of properties some of which it had sold to members and third parties while the purchase and sale of some of them were in the process of being completed.

As a result of the split that was not amicable, some of the properties which had been purchased by Super Micro Venture Self Help Group and were in the process of being transferred to the group some of which had been sold by the group to its members and third parties were taken over by the 2<sup>nd</sup> defendant. Members of Super Micro Venture Self Help Group and third parties who purchased land from the group and who had not obtained titles found themselves in a very precarious position following this development particularly those whose parcels of land were taken over by the 2<sup>nd</sup> defendant. Super Micro Venture Self Help Group from which they purchased their parcels of land no longer owned the said parcels of land and as such could not transfer the same to them while the 2<sup>nd</sup> defendant which was now the new owner of the said parcels of land had no contractual relationship with them. The 2<sup>nd</sup> defendant having acquired the said parcels of land, sold a number of them again to members of the public who were not aware of the previous transactions involving the same parcels of land. In the process, a number of people who purchased land from Super Micro Venture Self Help Group were left without land or a refund of the payments that they had made to the group.

Those who lost money and land following the split in Super Micro Venture Self Help Group filed a suit before this court in 2012 namely, ELC Civil Suit No. 720 of 2012 seeking several reliefs against among others the former officials of Super Micro Venture Self Help Group and the officials of the 2<sup>nd</sup> defendant. The suit was transferred to the Environment and Land Court at Kajiado on 24<sup>th</sup> May, 2018 and registered as Kajiado ELC No. 81 of 2018. From the evidence that was tendered before this court, that suit is still pending.

**The present suit.**

The plaintiff brought this suit against the defendants on 24<sup>th</sup> September, 2013 regarding all that parcel of land known Ruiru/ Kiu Block 2/9041(hereinafter referred to only as “the suit property”). In his plaint dated 23<sup>rd</sup> September, 2013, the plaintiff averred that sometimes in the year 2010, he purchased the suit property from the 2<sup>nd</sup> defendant which thereafter transferred the property to him. The plaintiff averred that he was subsequently issued with a title deed for the suit property. The plaintiff averred that he went to the suit property on 14<sup>th</sup> September, 2013 and found the 1<sup>st</sup> defendant constructing a permanent house thereon claiming that the property belonged to her.

The plaintiff averred that the entry of the 1<sup>st</sup> defendant on the suit property was unlawful and that the same was carried out in collusion with the 2<sup>nd</sup> defendant with a view to deprive the plaintiff of the property. The plaintiff sought judgment against the defendants for; an order of a permanent injunction restraining the 1<sup>st</sup> defendant from entering, trespassing, interfering, constructing and/or dealing in whatsoever manner

with the suit property and a declaration that the suit property belongs to the plaintiff.

The 1<sup>st</sup> defendant filed a defence and counter-claim on 4<sup>th</sup> October, 2013 in response to the plaintiff's claim. The 1<sup>st</sup> defendant denied that she trespassed on the suit property in collusion with the 2<sup>nd</sup> defendant or any other person. The 1<sup>st</sup> defendant averred that she was a teacher in Kiambu and that together with other teachers in that county and the directors of the 2<sup>nd</sup> defendant who were also teachers, they formed a community based organisation known as Super Micro Venture Self Help Group as a vehicle for economic empowerment through buying and selling of land. The 1<sup>st</sup> defendant averred that the directors of the of the 2<sup>nd</sup> defendant were the initial officials of Super Micro Venture Self Help Group and that they incorporated the 2<sup>nd</sup> defendant and other companies for fraudulent purposes. The 1<sup>st</sup> defendant averred that the said directors of 2<sup>nd</sup> defendant used the 2<sup>nd</sup> defendant and the other companies that they incorporated to siphon money from Super Micro Venture Self Help Group.

The 1<sup>st</sup> defendant averred that as a result of the massive fraud on the part of the directors of the 2<sup>nd</sup> defendant, the 1<sup>st</sup> defendant and other members of Super Micro Venture Self Help Group filed a suit against them and others before this court, namely, ELC Civil Suit No. 720 of 2012 which suit was pending determination. The 1<sup>st</sup> defendant averred that on 9<sup>th</sup> July, 2010, she purchased the suit property and other parcels of land from the 2<sup>nd</sup> defendant and paid for the same in full before taking possession thereof. The 1<sup>st</sup> defendant averred that the 2<sup>nd</sup> defendant wrongfully and fraudulently purported to sell the suit property to the plaintiff in 2012 with the knowledge that the property had been sold to the 1<sup>st</sup> defendant in 2010. The 1<sup>st</sup> defendant averred that the plaintiff and the 2<sup>nd</sup> defendant fraudulently colluded to deprive her of the suit property.

The 1<sup>st</sup> defendant averred that upon taking possession of the suit property, she developed the same and she was in lawful occupation thereof. The 1<sup>st</sup> defendant averred that the 2<sup>nd</sup> defendant had unlawfully refused and neglected to issue her with the title documents for the suit property. The 1<sup>st</sup> defendant reiterated the contents of her defence and sought judgment against the plaintiff and the 2<sup>nd</sup> defendant for; a declaration that the purported sale of the suit property by the 2<sup>nd</sup> defendant to the plaintiff was null and void, an order for the cancellation of the title issued in favour of the plaintiff in respect of the suit property and an order directing the Land Registrar Thika District to issue a title for the suit property in her favour. The plaintiff filed a reply to 1<sup>st</sup> defendant's defence and defence to counter-claim on 6<sup>th</sup> November, 2013.

The 2<sup>nd</sup> defendant filed its statement of defence on 5<sup>th</sup> November, 2013. The 2<sup>nd</sup> defendant denied that it sold the suit property to the plaintiff but admitted that it transferred the property to the plaintiff and that the plaintiff was issued with a title deed in respect of the property. The 2<sup>nd</sup> defendant denied that it fraudulently colluded with the 1<sup>st</sup> defendant to deprive the plaintiff of the suit property.

At the trial, the plaintiff and the 1<sup>st</sup> defendant gave evidence in support of their respective cases. The 2<sup>nd</sup> defendant did not attend court for the hearing. In his testimony the plaintiff told the court that he purchased the suit property from the 2<sup>nd</sup> defendant in 2010 at Kshs. 400,000/-. He stated that the property was vacant when the same was sold to him. He stated that after the property had been transferred to him, he visited the property in 2013 and found the same fenced and construction going on therein. He stated that upon inquiry, he learnt that it was the 1<sup>st</sup> defendant who had trespassed on the property. He stated that his demand to the 1<sup>st</sup> defendant to stop construction on the property was not heeded and that left him with no alternative but to come to court. The plaintiff produced as exhibits copies of; the transfer form executed in his favour by the 2<sup>nd</sup> defendant, the title deed for the suit property and the consent of the Land Control Board. The plaintiff urged the court to grant the payers sought in the plaint.

On her part, the 1<sup>st</sup> defendant adopted her witness statement dated 3<sup>rd</sup> October, 2013 as her evidence in chief. The 1<sup>st</sup> defendant testified that she met the officials of Super Micro Venture Self Help Group in 2009 after she was referred to them by a friend. She stated that the members of Super Micro Venture Self Help Group were teachers like her. She stated that she purchased portions of land known as Plot Nos. 1 to 5 within land parcel, Ruiru Kiu Block 2/2956. The 1<sup>st</sup> defendant stated that this parcel of land was referred to by Super Micro Venture Self Help Group as Phase 19A. The 1<sup>st</sup> defendant stated that she purchased the said portions of land at Kshs. 875,000/- which she paid in full.

The 1<sup>st</sup> defendant stated that she paid Kshs. 600,000/- before she entered into a written agreement with Super Micro Venture Self Help Group. She stated that in the written agreement, she was given 90 days to pay the balance of the purchase price in the sum of Kshs. 290,000/- which she paid within that prescribed period. The 1<sup>st</sup> defendant stated that after paying the balance of the purchase price for the five plots, the chairman of Super Micro Venture Self Help Group informed her that they had registered the 2<sup>nd</sup> defendant and that the officials of the 2<sup>nd</sup> defendant were the former officials of Super Micro Venture Self Help Group save for the secretary.

The 1<sup>st</sup> defendant stated that this development brought misery to those who had purchased land from Super Micro Venture Self Help Group in that the title documents for the land that had been purchased by Super Micro Venture Self Help Group and sold to members and third parties remained in the custody of the former officials of Super Micro Venture Self Help Group who had now moved to the 2<sup>nd</sup> defendant. She stated that the former officials of Super Micro Venture Self Help Group who were now the directors of the 2<sup>nd</sup> defendant started selling the same parcels of land to unsuspecting members of the public. The 1<sup>st</sup> defendant stated that the said former officials of Super Micro Venture Self Help Group who moved to the 2<sup>nd</sup> defendant defrauded those who had purchased land from Super Micro Venture Self Help Group of their money.

The 1<sup>st</sup> defendant stated that when she followed up the titles for the parcels of land that she had purchased from Super Micro Venture Self Help Group with the 2<sup>nd</sup> defendant, the 2<sup>nd</sup> defendant claimed that it had no dealings with her as it was not Super Micro Venture Self Help Group. The 1<sup>st</sup> defendant stated that she then went to pursue the matter with the former secretary of Super Micro Venture Self Help Group one, Margaret Wanjiru Ndehi who was the only former official of Super Micro Venture Self Help Group that remained in the office. The 1<sup>st</sup> defendant stated that the said Margaret Wanjiru Ndehi told her to sign some documents to enable Margaret Wanjiru Ndehi process her titles for the plots that she had purchased from Super Micro Venture Self Help Group. She stated that Margaret Wanjiru Ndehi asked her in the meantime to take possession of her plots. The 1<sup>st</sup> defendant stated that it was at that stage that she took possession of the suit property which

was one of the five plots that she had purchased and started developing the same. The 1<sup>st</sup> defendant stated that she received no opposition to her occupation of the suit property until the present suit was filed. The 1<sup>st</sup> defendant stated that the suit property belonged to her and not to the plaintiff. She denied that she was a trespasser on the suit property.

The 1<sup>st</sup> defendant stated that members of Super Micro Venture Self Help Group who were aggrieved with the fraudulent manner in which the officials of the 2<sup>nd</sup> defendant dealt with them filed a suit against them. The 1<sup>st</sup> defendant stated that the officials of the 2<sup>nd</sup> defendant had an obligation to give her a title for the suit property. The 1<sup>st</sup> defendant urged the court to allow her counter-claim. She produced in evidence as exhibits copies of; the agreement for sale she entered into with Super Micro Venture Self Help Group, the receipts that were issued to her for the payments that she made for the five plots that she purchased and a list containing the names of the persons who purchased the various parcels of land that were owned by Super Micro Venture Self Help Group.

After the conclusion of evidence, the parties made closing submissions in writing. The plaintiff filed his submissions on 26<sup>th</sup> March, 2019 while the 1<sup>st</sup> defendant filed her submissions on 11<sup>th</sup> February, 2019. The 2<sup>nd</sup> defendant did not file submissions. I have considered the evidence tendered by the parties and the submissions of counsels. The parties did not file a statement of agreed issues for determination by the court. From the pleadings the following in my view are the issues arising for determination in this suit:

1. Who as between the plaintiff and the 1<sup>st</sup> defendant is the owner of all that parcel of land known as Ruiru/Kiu Block 2/9041(the suit property)?
2. Whether the 1<sup>st</sup> defendant is a trespasser on the suit property.
3. Whether the plaintiff is entitled to the reliefs sought in the plaint.
4. Whether the 1<sup>st</sup> defendant is entitled to the reliefs sought in the counter-claim.
5. Who is liable for the costs of the suit?

Who as between the plaintiff and the 1<sup>st</sup> defendant is the owner of all that parcel of land known as Ruiru/Kiu Block 2/9041(the suit property).

From the pleadings and the evidence before the court, the sale transaction between the plaintiff and the 2<sup>nd</sup> defendant in respect of the suit property took place in 2010 before the coming to effect of the Land Registration Act, 2012 on 2<sup>nd</sup> May, 2012. The suit property was registered under the Registered Land Act, Chapter 300 Laws of Kenya (now repealed). Sections 27 and 28 of the said Act provides as follows:

**“27. Subject to this Act-**

**(a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto;**

**(b) the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied and expressed agreements, liabilities and incidents of the lease.**

**28. The rights of a proprietor, whether acquired on first registration or whether acquired subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject –**

**(a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and**

**(b) unless the contrary is expressed in the register, to such liabilities, rights and interests as affect the same and are declared by section 30 not to require noting on the register:**

**Provided that nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which he is subject as a trustee.”**

The two sections have been reproduced in sections 24 and 25 of the Land Registration Act, 2012 as follows:

**“24. Subject to this Act—**

**(a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and**

**(b) the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.**

25. (1) The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject—

(a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and

(b) to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.

(2) Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee”.

In the case of George Mbiti Kiebia & Another v Isaya Theuri M’lintari & Another (2014) eKLR the Court of Appeal stated that:

**“Under Section 112 of the Evidence Act, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving that fact is upon him. How the appellant got registered as proprietor of Land Parcel No. 70 is a fact within the knowledge of the appellant and it was incumbent upon the appellant to dislodge the notion that Land Parcel No. 70 was ancestral clan land and refute that he was not registered as proprietor as a representative of the family of the late M’Kiebia.”**

In the same case the court stated further as follows;

**“We state that when a registered proprietor’s root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title which is in challenge and the registered proprietor must go beyond the instrument and rebut the notion that the property is not free from any encumbrances including any and all interests which need not be noted in the register.”**

The same reasoning was adopted in the case of Daudi Kiptugen v Commissioner of Lands & 4 Others [2015] eKLR where the court stated that:

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

As I stated earlier, the plaintiff testified that he purchased the suit property from the 2<sup>nd</sup> defendant in 2010 for Kshs. 400,000/-. The plaintiff did not produce a copy of the agreement for sale between him and the 2<sup>nd</sup> defendant. In its defence, the 2<sup>nd</sup> defendant denied that it entered into any agreement for sale with the plaintiff. According to the title deed for the suit property that was produced in evidence by the plaintiff as PExh.1, the property came into existence on 29<sup>th</sup> December, 211. This means that if the plaintiff purchased the suit property in 2010, he could not have purchased it as, Ruiru Kiu Block 2/9041. The plaintiff did not also tender any evidence before the court showing that he paid the alleged purchase price of Kshs. 400,000/- to the 2<sup>nd</sup> defendant. What the plaintiff placed before the court in proof of the agreement that he had with the 2<sup>nd</sup> defendant was a purported instrument of transfer (PExh.2). The purported transfer is not dated. The same is also not stamped or registered. In addition, the document does not bear the consideration that was given by the plaintiff for the suit property.

The other document that was produced by the plaintiff in evidence was the Letter of Consent of the Land Control Board dated 14<sup>th</sup> February, 2012. On its face, the consent was applied for on 14<sup>th</sup> February, 2012 and issued on the same day. The same was issued over one year after the plaintiff is said to have purchased the suit property contrary to the provisions of the Land Control Act, Chapter 302 Laws of Kenya. From what I have set out above the only evidence that the plaintiff has placed before the court in proof of his ownership of the suit property is the title deed dated 10<sup>th</sup> October, 2012 which shows that he was registered as the owner of the suit property on 9<sup>th</sup> October, 2012.

The 1<sup>st</sup> defendant had contended that the suit property was sold to her on 9<sup>th</sup> October, 2010 by Super Micro Venture Self Help Group as Plot No. 1, Phase 19A. The 1<sup>st</sup> defendant produced evidence showing that Phase 19 was also referred to as Ruiru Kiu Block 2/2956 (See DExh. 3). The 1<sup>st</sup> defendant placed evidence before the court showing that she purchased Plot Nos. 1 to 5 in Phase 19 also known as Ruiru Kiu Block 2/2956. The material that was placed before the court by the plaintiff shows that land parcel Ruiru Kiu Block 2/2956 was subdivided into ten (10) portions namely, Ruiru Kiu Block 2/9041 to 9050. The 1<sup>st</sup> defendant contended that the first five plots were the ones that were purchased by her from Super Micro Venture Self Help Group. The 1<sup>st</sup> defendant contended that the first plot namely, Ruiru Kiu Block 2/9041 (the suit property) is the one that she purchased from Super Micro Venture Self Help Group as Plot No. 1, Phase 19. The 1<sup>st</sup> defendant produced evidence showing that she made payment of the purchase price for the plots that she purchased from Super Micro Venture Self Help Group which included the suit property.

The 1<sup>st</sup> defendant contended that the officials of Super Micro Venture Self Help Group who sold the suit property to her are the same ones who sold the same property to the plaintiff now as directors of the 2<sup>nd</sup> defendant. I have noted that the purported instrument of transfer of the suit property in favour of the plaintiff by the 2<sup>nd</sup> defendant was signed by Andrew Muthee Gatimu and Henry Karanja Ngugi as trustees of the 2<sup>nd</sup> defendant. One of those who signed the said instrument of transfer, namely Henry Karanja Ngugi was among those who signed the agreement for sale between the 1<sup>st</sup> defendant and Super Micro Venture Self Help Group. He signed the said agreement as the chairman of Super Micro Venture Self Help Group. This means that when the 2<sup>nd</sup> defendant was transferring the suit property to the plaintiff some of its

officials who had been officials of Super Micro Venture Self Help Group were aware that the same property had been sold to the 1<sup>st</sup> defendant through Super Micro Venture Self Help Group. The plaintiff testified in cross-examination that when he went to purchase the suit property he was introduced to among others the said Henry Ngugi who after discussion confirmed to him that the suit property was available for sale.

There is no doubt from the foregoing that there was an element of fraud in the sale of the suit property to both the 1<sup>st</sup> defendant and the plaintiff. What is not clear is how the fraud was undertaken and the persons who were involved. The plaintiff purchased the suit property from the 2<sup>nd</sup> defendant while the 1<sup>st</sup> defendant purchased the same property from Super Micro Venture Self Help Group. There is no doubt that the property that gave rise to the suit property namely, Phase 19 that was also known as Ruiru Kiu Block 2/2956 belonged to Super Micro Venture Self Help Group when the suit property was sold to the 1<sup>st</sup> defendant. It is not clear how Ruiru Kiu Block 2/2956 changed hands to the 2<sup>nd</sup> defendant thereby giving room for another round of sale of portions of that parcel of land that had already been sold.

The 1<sup>st</sup> defendant led evidence that there is a pending suit namely, ELC Civil Suit No. 720 of 2012 in which the issues regarding the manner in which the former directors of Super Micro Venture Self Help Group defrauded those who purchased land from Super Micro Venture Self Help Group by the formation of the 2<sup>nd</sup> defendant and other companies would be determined.

From the totality of the evidence and other material before the court, it is my finding that the plaintiff is the registered owner of the suit property. However, I am unable to determine whether the suit property was sold and transferred by the 2<sup>nd</sup> defendant to the plaintiff lawfully due to lack of clarity on how the plaintiff got registered as the owner of the suit property. That said, the onus of proof was on the 1<sup>st</sup> defendant. The 1<sup>st</sup> defendant had the burden of proving that the plaintiff acquired the suit property illegally and fraudulently and that the property belong to her.

It was not disputed that the 1<sup>st</sup> defendant is not registered as the owner of the suit property. From the evidence on record, the 1<sup>st</sup> defendant purchased the suit property from Super Micro Venture Self Help Group but before a title was issued in her favour, the parcel of land, Ruiru Kiu Block 2/2956 of which the suit property formed part was taken over by the 2<sup>nd</sup> defendant. As I have stated earlier, the circumstances under which the 2<sup>nd</sup> defendant acquired Ruiru Kiu Block 2/2956 are not clear. The issue is the subject of other proceedings pending before another court. It is not clear to the court as to the nature of proprietary interest that Super Micro Venture Self Help Group had in Ruiru Kiu Block 2/2956 when it sold the suit property to the 1<sup>st</sup> defendant. Super Micro Venture Self Help Group is not a party to this suit. The court is unable to determine whether or not it transferred that interest to the 2<sup>nd</sup> defendant. It is only upon the court determining the interest that Super Micro Venture Self Help Group had on Ruiru Kiu Block 2/2956 and whether or not it was transferred to the 2<sup>nd</sup> defendant that the court can ascertain the 1<sup>st</sup> defendant's interest in the suit property *vis-a-vis* the 2<sup>nd</sup> and 3<sup>rd</sup> defendants. Since Super Micro Venture Self Help Group was not made a party to this suit by any of the parties, the court cannot determine the nature of the interest it had in the suit property and whether or not it was conveyed to the 2<sup>nd</sup> defendant. In the circumstances, I am unable to establish the legality of the root of the title being claimed by the 1<sup>st</sup> defendant. It follows therefore that the 1<sup>st</sup> defendant has failed to discharge her burden of proof of ownership of the suit property. In the circumstances, I have no alternative but to hold that the suit property is owned by the plaintiff.

#### Whether the 1<sup>st</sup> defendant is a trespasser on the suit property.

The plaintiff's claim against the 1<sup>st</sup> defendant is based on trespass. Trespass has been defined as any intrusion by a person on the land in the possession of another without any justifiable cause. See, Clerk & Lindsell on Torts, 18<sup>th</sup> Edition, page. 923, paragraph, 18-01. In Gitwany Investments Limited v Tajmal Limited & 3 others [2006] eKLR, it was held that title to land carries with it legal possession. As I have stated above, the plaintiff is the registered owner of the suit property. It follows that although he is not in possession, he is entitled to possession of the property. The question that the court needs to answer is whether the 1<sup>st</sup> defendant who has developed the suit property and who is in possession thereof has any justifiable cause for continuing to be in possession of the property. From the evidence on record, the 1<sup>st</sup> defendant did not enter the suit property forcefully. She was given possession of the suit property by Super Micro Venture Self Help Group. The court having held that the 1<sup>st</sup> defendant has no title to the suit property and that the interest that Super Micro Venture Self Help Group had in the suit property cannot be established, I am of the view that the continued occupation of the suit property by the 1<sup>st</sup> defendant is not justified. The only remedy available to the 1<sup>st</sup> defendant is to recover from Super Micro Venture Self Help Group the payment that she made to them for the suit property. That I believe the subject of the pending suit.

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

I have at the beginning of this judgment set out the reliefs sought by the plaintiff. The first relief sought is a permanent injunction restraining the 1<sup>st</sup> defendant from entering, interfering with, constructing on and/or dealing with the suit property in any other manner whatsoever. It was not disputed that the 1<sup>st</sup> defendant has already put up a residential house on the suit property and is residing therein. What the plaintiff should have sought is either a mandatory injunction compelling the 1<sup>st</sup> defendant to vacate the suit property or an order for vacant possession. Since I have made a finding that the plaintiff is the registered owner of the suit property and that the 1<sup>st</sup> defendant has no lawful justification for occupying the property, I will grant an injunction sought. The other relief sought by the plaintiff is a declaration that the suit property belongs to the plaintiff. The plaintiff is entitled to this relief in view of the findings that the court has made herein above.

#### Whether the 1<sup>st</sup> defendant is entitled to the reliefs sought in the counter-claim.

The 1<sup>st</sup> defendant sought a declaration that the sale of the suit property by the 2<sup>nd</sup> defendant to the plaintiff was null and void, an order cancelling the plaintiff's title and the registration of the suit property in the name of the 1<sup>st</sup> defendant. The 1<sup>st</sup> defendant did not convince me that the sale of the suit property by the 2<sup>nd</sup> defendant to the plaintiff was illegal. The 1<sup>st</sup> defendant purchased the suit property from Super

Micro Venture Self Help Group. The 1<sup>st</sup> defendant did not prove that Super Micro Venture Self Help Group owned the suit property when it sold the same to her and that the 2<sup>nd</sup> defendant acquired the property fraudulently and illegally before it sold the same to the plaintiff. As I mentioned earlier in the judgment, Super Micro Venture Self Help Group is not a party to this suit and as such some of these issues could not be determined in this suit but in ELC Civil Suit No. 720 of 2012 which was filed earlier. There is no basis therefore for the court holding that the plaintiff acquired the suit property illegally from the 2<sup>nd</sup> defendant. It follows also that a case has not been made out for the cancellation of the plaintiff's title and registration of the suit property in the name of the 1<sup>st</sup> defendant. As I have stated earlier, the 1<sup>st</sup> defendant purchased the suit property from Super Micro Venture Self Help Group. That is the entity that was to transfer the property to the 1<sup>st</sup> defendant. Without a finding that the 2<sup>nd</sup> defendant acquired the suit property illegally from Super Micro Venture Self Help Group after it had been sold to the 1<sup>st</sup> defendant and sold the same to the plaintiff, there is no basis to order the plaintiff who is the current registered owner of the property to transfer the same to the 1<sup>st</sup> defendant.

Who is liable for the costs of the suit?

As a general rule costs follow the event. In the circumstances of this case, I am of the view that justice would be better served by each party bearing its own costs of the suit and the counter-claim.

Conclusion:

In conclusion, I hereby make the following orders:

1. I declare that the plaintiff is the owner of all that parcel of land known as Ruiru Kiu Block 2/9041.
2. I grant a permanent injunction restraining the 1<sup>st</sup> defendant by herself or through her agents or servants from entering, interfering with or dealing with all that parcel of land known as Ruiru Kiu Block 2/9041.
2. The execution of the order of injunction granted in paragraph two (2) above is suspended for a period of 240 days from the date hereof to give the 1<sup>st</sup> defendant time to find alternative residence and move out of Ruiru Kiu Block 2/9041.
4. The 1<sup>st</sup> defendant's counter-claim is dismissed.
5. Each party shall bear its own costs of the suit and the counter-claim.

**Delivered and Dated at Nairobi this 5<sup>th</sup> May day of May 2020**

**S. OKONG'O**

**JUDGE**

**Judgment read through Microsoft Teams Video Conferencing platform in the presence of;**

N/A for the Plaintiff

Ms. Nyabuto for the 1<sup>st</sup> defendant

N/A for the 2<sup>nd</sup> defendant

Ms. C. Nyokabi-Court Assistant