



THE REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. 537 OF 2009

WILLIAM THITAI NGATIA.....PLAINTIFF

=VERSUS=

REV JOSHUA KATUA T/A JESUS VICTORY EXPLOSION CENTRE....1ST DEFENDANT

THE NATIONAL LAND COMMISSION.....2ND DEFENDANT

JUDGMENT

Background

1. The Plaintiff, William Thitai Ngatia, initiated this suit on 21/10/2009 through a plaint of even date. He subsequently amended the plaint on 26/3/2012. He further amended the plaint on 29/9/2014. Through the re-amended plaint dated 29/9/2014, he sought the following verbatim orders against the defendant:

a) An injunction to restrain the 1st defendant, his servants or agents or members of his church restraining them from interfering, encroaching, alienating, stopping construction or in any way interfering with the plaintiff's peaceful and quiet enjoyment of the suit premises Plot No A11-2 UMOJA INNERCORES now Land Reference Number NAI/BLOCK 83/14/78 or development thereof whatsoever pending the hearing and determination of this suit . (sic)

(i) An order nullifying and/or revoking the certificate of lease in favour of Simon Wachira and directing the rectification of the register accordingly.

b) General damages

c) Costs of this suit

d) Interest on (b) & (c) at court's rates

2. In summary, the plaintiff's case was that he was the legitimate proprietor of a piece of land situated in Umoja Innercore, previously designated as **Plot No A11-2 Umoja Innercore**, and subsequently surveyed as **Land Parcel Number Nairobi/Block 83/14/78** (hereinafter referred to as **the suit property**). He bought the suit property from one Andrew Mwangi Chui through a sale agreement dated 24/4/2009. He paid the agreed purchase price of Kshs 800,000 and all the original documents relating to the land were surrendered to him. When he subsequently went to the suit property with an architect with a view to initiating developments plans, the 1st defendant stopped them, claiming that the suit property belonged to him. The plaintiff contended that the title held by the 1st defendant relating to the suit property was procured fraudulently. Consequently, he urged the court to grant him the reliefs sought in the re-amended plaint.

3. The 1st defendant filed a statement of defence and counterclaim dated 30/11/2009. He subsequently filed an amended statement of defence and counter-claim dated 2/4/2012. His case was that, together with one **Raphael Mugenge Kahi**, they purchased the suit property from one **Simon Wachira** on 31/8/2007. The suit property was at the time of purchase registered in the name of **Simon Wachira**. They were at the stage of procuring conveyance of the title into their names when the plaintiff went to the suit property. He contended that they were the legitimate owners of the suit property. By way of counter-claim, he sought the following verbatim orders against the plaintiff:

a) A declaration that the 1st defendant and Raphael Mugenge Kahi are the lawful owners of the suit premises known as Nairobi Block/83/14/78

b) A permanent injunction restraining the plaintiff his and/or his agents from trespassing excavating. Constructing, interfering

in any way with the 1st defendant's enjoyment of the suit premises Nairobi Block/83/14/78

c) Damages for trespass

d) Costs of this suit

e) Interest on (c) and (d) above

f) Any other relief this court may deem fit to grant

4. The 2nd defendant neither entered appearance nor filed defence. They did not participate in the trial.

Evidence

5. Trial commenced before me on 16/9/2019 and closed on 4/3/2021. The plaintiff testified as **PW1** and called four other witnesses. The defendant testified as DW1 and did not lead further evidence.

6. **PW1** (the plaintiff) adopted his written witness statement dated 27/2/2012 as part of his sworn evidence-in-chief. He produced 38 documents contained in his bundles of documents dated 7/5/2010 and 23/2/2012 respectively. In summary, his evidence was that, upon conducting due diligence at City Council Offices he purchased the suit property from Andrew Mwangi Chui through a sale agreement dated 24/4/2009. He paid the agreed purchase price of Kshs 800,000. Mr. Chui surrendered to him all the original documents relating to the suit property. All monies payable to the City Council of Nairobi were remitted and the Council instructed its advocates, M/s Musyoka Annan & Co Advocates, to process title in his name. He paid the requisite conveyance fees. He was issued with a beacon certificate. When he went to the suit property to commence developments, the 1st defendant confronted him and stopped him from undertaking developments on the suit property. He complained to the City Council office and the City Council convened a meeting and invited parties to attend the meeting. Parties were asked to carry their title documents. The 1st defendant declined to attend. Upon inquiry, the Council confirmed that he [the plaintiff] was the legitimate owner of the suit property, having purchased it from the previous owner.

7. The plaintiff added that when his title was subsequently processed, he realized that the title number was the same as the number in Simon Wachira's name. Because the 1st defendant persisted with the interference, he brought this suit, seeking the remedies set out in the plaint.

8. He added that he had since fully developed the suit property and rented it to various tenants. It was his evidence that the title (certificate of lease) which he holds was procedurally obtained from the City Council on the basis of the Council's documentation which he had placed before the court. Lastly, he stated that he was withdrawing the prayer relating to general damages.

9. In cross-examination, he stated that the suit property was vacant at the time of purchase. He added that Plot A-11-2 Umoja Innercore, upon survey, mutated to **Nairobi Block 83/14/78**. He admitted that his certificate of lease was issued on 6/10/2010.

10. Andrew Mwangi Chui testified as PW2. He adopted his witness statement dated 27/2/2012 as part of his sworn evidence-in-chief. In summary, his evidence was that he was a farmer based in Kandara, Muranga County. He was aged 82 at the time of testifying. He sold the suit property to the plaintiff through a sale agreement dated 24/4/2009. The plaintiff paid him the agreed purchase price of Kshs 800,000. He surrendered to the plaintiff all original documents relating to the suit property. He later learnt that the 1st defendant who had previously approached him and requested him to sell to him the suit property was claiming to have acquired the suit property from a third party and had blocked the plaintiff from developing the suit property. Together with the plaintiff, they went to the City Council Offices to seek a resolution of the issue. The 1st defendant failed to attend the meeting convened by the Council. Upon inquiry, the Council established that he was the legitimate owner and seller of the suit property. PW2 added that Jennifer Wanjiru who was the original allottee of the suit property was his daughter and she had signed an assignment dated 28/8/1995 in his favour.

11. In cross-examination, he stated that he sold to the plaintiff a plot in Umoja Innercore 2, Number 11A. His daughter Jennifer Wanjiru, was married. In 1990, she was 21 years old.

12. John Mwangi Thaa Testified as PW3. He stated that he was a surveyor working in the Lands Department of the Nairobi City County Government. He had attended court in response to the witness summons served on the Director of the Department where he worked. The director had asked him to attend court and testify on behalf of the Directorate in relation to Plot A11-2 Umoja Innercore. The said plot had since been surveyed and registered as Title Number **Nairobi Block 83/14/78**.

13. PW3 further testified that according to the records held by the County Government, the original allottee of the suit property was Jennifer Wanjiru. The suit property was in 1995 sold to Edward Mwangi Chui (sic) who in turn sold it to William Thitai Ngatia in 2009. According to the records held by the County Government, Mr Ngatia was the proprietor of the suit property. He produced the original County Government file relating to the suit property. He added that the proprietor known to the County Government was Mr William Thitai Ngatia and the said proprietor had complied with all the requirements of the Council. He further confirmed that the lease exhibited by the plaintiff was issued by the Council. Lastly, he testified that from the records held by the County Government, Simon Wachira was not the lessee of the suit property.

14. In cross-examination by counsel for the 1st defendant, he stated that the original assignment and clearance certificates were issued to the proprietor of the suit property. The plot number changed upon survey and the survey number was issued by Survey of Kenya.

15. Gildine Karani testified as PW4. She first testified on 2/10/2019 and was stood down to allow her time to avail relevant records. She stated that she was a Land Registrar attached to the Chief Land Registrar's Office at Ardhi House. She had been delegated by the Chief Land

Registrar to attend court in response to the witness summons served on the Chief Land Registrar. In summary, her initial testimony was that, according to the records held by the Lands Registry, there was only one registered proprietor of the suit property, Simon Wachira of P. O Box 30075 Nairobi. He was registered on 24/5/2006. A certificate of lease was issued to him on 24/5/2006. There were no encumbrances on the title. The parcel register was opened on the basis of a lease to Simon Wachira by the City Council of Nairobi. She was not able to avail a copy of the lease because the relevant correspondence file was missing. She produced the parcel register and the official search. At that point, at her request, she was stood down to avail relevant records relating to the certificates of lease in the name of Simon Wachira.

16. When she subsequently testified on 7/10/2019, she stated that the certificate of lease held by the plaintiff had been availed to her but the certificate of lease held by the 1st defendant (in the name of Simon Wachira) had not been availed to her. She added that she was able to verify that the title held by the plaintiff was a genuine certificate of lease issued by the Lands Registry. She was however not able to trace the records file relating to the plaintiff's title. She produced the booking register (presentation book) relating to the plaintiff's title, indicating that the title was booked for processing and subsequently issued by the Lands Registry. She added that the booking register (presentation book) relating to the title held by the 1st defendant [in the name of Simon Wachira] was not available in the Registry.

17. In cross-examination by counsel for the 1st defendant, she stated that the correspondence file and the presentation book relating to the title held by the 1st defendant were missing from the Lands Office. At the request of counsel for the 1st defendant, PW4 was stood down for the second time, to avail documents relating to the title held by the 1st defendants.

18. In her subsequent testimony, PW4 stated that she had managed to trace the presentation book (booking register) for 24/5/2006 (the date when the title bearing the name of Simon Wachira was registered). She added that the relevant page relating to 24/5/2006 was missing and that all the bookings made in the month of June 2006 were missing. Lastly, she stated that she had drawn the attention of Sarah Mwenda (the then Acting Chief Land Registrar) to the fact that there were two parallel titles relating to the suit property.

19. John Musyoka Annan testified as PW5. In summary, his testimony was that he was a practising advocate who signed the Roll of Advocates in 1977. His law firm was instructed by the City Council of Nairobi to prepare leases between plot owners in Umoja Innercore and the City Council of Nairobi and procure certificates of leases in the names of the lessees. Each plot owner was required to furnish his firm with the letter of allotment. In the vent of change of ownership through sale or death, the plot owner was required to furnish his firm with a deed of assignment and appropriate succession documents, respectively. Further, his firm required proof from the City Council that the allottee was up to date on payments due to the Council.

20. He added that his law firm received the relevant documents relating to the suit property from the plaintiff. He subsequently prepared a lease relating to the suit property. He wrote to the Council on 22/7/2010 forwarding the lease to the Council for execution. He witnessed execution of the lease by the Council. The duly executed lease was forwarded to the Lands Registry and a certificate of lease was registered in the name of the plaintiff. The certificate of lease was subsequently issued in the name of the plaintiff. It was his evidence that the plaintiff followed the required procedure and was duly issued with the title he holds. He added that it was not possible for an allottee to process a title outside their office because they were the sole law firm processing City Council leases and titles relating to Umoja Innercore.

21. In cross-examination by counsel for the 1st defendant, he stated that the City Council did not provide him with an official list of plot owners in Umoja Innercore. He added that they were the sole law firm processing leases and titles for Umoja Inner Core Scheme. He was not aware that the Council had allocated the suit property to someone else.

22. The 1st defendant testified as DW1. He adopted his witness statement dated 16/1/2019 as part of his sworn evidence-in-chief. In summary, his evidence was that on 31/5/2007, together with one Raphael Mugenge Kahi, he entered into a sale agreement with one Simon Kiago Wachira, pursuant to which the latter sold to them **Land Parcel Number Nairobi Block 83/14/78**. Prior to signing the sale agreement, they sent one John Ndirangu to conduct a search at the Ministry of Lands and the search confirmed that Simon Kiago Wachira was the registered proprietor of the suit property. Upon signing the agreement, Mr. Wachira availed to them the original title; a rates demand note dated 5/5/2008; rates clearance certificate dated 5/5/2008; and a duly executed transfer. They presented the documents for valuation but the documents were thereafter misplaced and went missing. He had not procured a conveyance into their names because the documents were still missing.

23. He added that on or about 12/10/2009, a group of people left an enforcement notice in his office which was adjacent to the suit property. On 15/10/2009, he learnt that a group of hooligans purporting to have been sent by the plaintiff went to the suit property and brought down the chain link fence which he had put up. He further learnt that on 17/10/2009, the plaintiff together with a group of people entered the suit property and started excavating the ground despite protests from his (the 1st defendant's) church followers. He reported the matter to the police. Further, he filed **Nairobi ELC No 536 of 2009** which he subsequently withdrew upon being served with court papers relating to the present suit. It was his evidence that they bought the suit property from Simon Kiago Wachira with a view to expanding the church land. They had been unable to utilize the suit property because the plaintiff embarked on construction in 2009. He contended that the plot number of the property which the plaintiff purchased differed with the parcel number of the suit property. He faulted the plaintiff for relying on documents which were obtained after filing of this suit. He urged the court to make a finding in his favour.

24. In cross-examination, he stated that he requested Mr Simon Wachira to attend court and give evidence relating to the title he sold to them but the latter told him that he had been involved in accident and could not attend court. He added that he had been unable to trace Mr Wachira since then. Mr Wachira did not give them the original allotment letter issued by the City Council. Under the sale agreement, they were to pay deposit of Kshs 100,000 and the balance of the purchase price [Kshs 200,000] was to be paid upon successful registration of the transfer. He added that during interlocutory proceedings, they had presented to the court a sale agreement indicating that the purchase price was Kshs 300,000. He stated that the actual purchase price was Kshs 1,000,000.

Submissions

25. The Plaintiff filed written submissions dated 1/4/2021 through the firm of *Muchangi Nduati and Co Advocates*. He further filed rejoinder submissions dated 25/5/2021. Counsel for the plaintiff submitted that the following were the key issues falling for determination in

this suit: (i) *Whether the contract of alleged purchase between the 1st defendant and Simon Wachira was proved;* (ii) *Whether the 1st defendant has a case which can impeach the plaintiff's title to the suit property;* (iii) *Whether the plaintiff has proved his case on a balance of probabilities;* and (iv) *Which of the two competing claims over the suit property is probable and acceptable in the circumstances.*

26. On the first identified issue, counsel submitted that there were many discrepancies in the documents exhibited by the 1st defendant. Counsel contended that owing to the discrepancies, it was apparent that the 1st defendant had failed to prove the existence of the alleged contract of sale between them and Simon Wachira.

27. On the second identified issue, counsel submitted that he who alleges must prove. He added that the 1st defendant had presented to the court two different sale agreements with varying purchase prices. He further submitted that the defendant's contention that they purchased the suit property was not corroborated and that he had nothing to support the title he was relying on. Counsel contended that the 1st defendant did not have a case which would impeach the plaintiff's title.

28. On the third identified issue, counsel submitted that the plaintiff had proved his case on a balance of probabilities because he had demonstrated the root of his title while the 1st defendant had failed to avail supportive allocation documents from the City Council to demonstrate the root of the title held in the name of Simon Wachira.

29. On the fourth identified issue, counsel submitted that the plaintiff's claim stood to succeed because the root of his title had been established. Counsel contended that the 1st defendant had failed to demonstrate how he obtained the title upon which his claim was founded.

30. The 1st defendant filed written submissions dated 12/5/2021 through the firm of *M/s M N Oonge & Company advocates*. Counsel identified the following as the two issues falling for determination in this suit: (i) *Who between the plaintiff and the 1st defendant is the lawful owner of the suit property;* and (ii) *Whether the plaintiff is entitled to the reliefs sought.*

31. On the first identified issue, counsel submitted that the 1st defendant entered into a sale agreement with Simon Wachira after conducting due diligence which revealed that Simon Wachira was the registered proprietor of the suit property. Counsel contended that the 1st defendant followed due process hence his claim to the suit property was valid and should be upheld. Counsel added that the registration of Simon Wachira as proprietor of the suit property vested in him absolute ownership of the suit property. Counsel contended that because Mr Wachira's registration preceded that of the plaintiff, the plaintiff's registration was invalid.

32. On the 1st defendant's failure to lead evidence by Mr Simon Wachira and Mr Raphael Mugenge Kahi, counsel of the 1st defendant submitted that the 1st defendant had adequately explained the reasons why the two were not available. Counsel added that the 1st defendant was an innocent purchaser for value because they purchased the suit property without any knowledge of illegalities or defects in the title relating to the suit property. Reliance was placed on the decision in **Civil Appeal No 291 of 2013; Weston Gitonga & 10 Others v Peter Rugu Gikanga & Another [2017] eKLR** and the decision in the Ugandan case of **Katende v Havindar & Compnay Limited [2008] 2 EA 173**.

33. On whether the plaintiff was entitled to the reliefs sought, counsel for the 1st defendant submitted that the plaintiff had failed to prove fraud on part of the 1st defendant as particularized in the re-amended plaint. Relying on the decision in **R G Patel v Lalji MA Kanji (1957) EA 314**, counsel submitted that the plaintiff was required to prove beyond the balance of probabilities that the 1st defendant was privy to the alleged fraudulent registration of Simon Wachira as proprietor of the suit property. Counsel contended that, in the circumstances, the plaintiff was not entitled to the reliefs sought in the re-amended plaint. Counsel urged the court to dismiss the plaintiff's suit and grant the prayers sought in the counterclaim

Analysis & Determination.

34. I have considered the pleadings, evidence and submissions before court. I have also considered the relevant legal frameworks and jurisprudence. The plaintiff and the 1st defendant filed a statement of agreed issues dated 25/5/2010 in which they itemized the following as the thirteen (13) issues falling for determination in this suit:

- i. Whether the plaintiff is the lawful purchaser and owner of Plot No A-11-2 Umoja Inncore, the suit premises herein?*
- ii. Whether the defendant's title Nairobi Block 83/14/78 has any relation to the suit plot as alleged in the defence? If so was the said title fraudulently obtained, is a nullity in law and ought to be revoked as stated in the reply to defence and counter-claim?*
- iii. Whether when the plaintiff commenced development on the suit premises the defendant stopped construction works to the plaintiff's prejudice as stated in the plaint?*
- iv. Whether the defendant's action has caused the plaintiff great inconveniences and damages as stated in the plaint?*
- v. Whether the defendant was given enough time by the relevant authorities to produce documents of alleged ownership and he never produced the same as stated in the plaint?*
- vi. Was the defendant given the required notice to remove the fence erected on the suit premises by the relevant authorities or the plaintiff and whether the same was removed by the City Council of Nairobi as stated in the Plaint.*
- vii. Whether the defendant's interference with the suit premises was malicious and without reasonable or probable cause? Are the particulars of malice, loss and damage true as stated in the plaint?*

viii. Whether it is the plaintiff or his agents who removed the chain link fence from the suit premises as alleged in the defence and counter-claim?

ix. Has the plaintiff or the alleged seller Andrew Mwangi Chui ever occupied the suit. (sic)

x. Has the defendant suffered any loss or damage by the removal of the fence as alleged in the defence?

xi. Are the particulars of loss and damages pleaded in the defence and counter-claim true?

xii. Whether the plaintiff is entitled to the prayers sought in the plaint.

xiii. Is the defendant entitled to the prayers sought in the defence and counter-claim?

35. Upon conclusion of trial, counsel for the plaintiff filed written submissions dated 1/4/2021 in which he identified the following as the four issues falling for determination in this suit:

a) Whether the contract of alleged purchase between the 1st defendant and Simon Wachira was proved?

b) Whether the 1st defendant has a case which can impeach the plaintiff's title to the suit property?

c) Whether the plaintiff has proved his case on a balance of probabilities?

d) Which of the two competing claims over the suit property is probable and acceptable in the circumstances?

36. On his part, counsel for the 1st defendant filed written submissions dated 12/5/2021 in which he identified the following as the two issues falling for determination in this suit:

i. Who between the plaintiff and the 1st defendant is the lawful owner of the suit property

ii. whether the plaintiff is entitled to the reliefs sought.

37. It has emerged at the conclusion of trial and submissions that the lessor of the suit property is the City Council of Nairobi. It has also emerged that the 1st defendant's claim of ownership of the suit property is premised on a sale agreement between him and Raphael Mugenge Kahi (as purchasers) on one part and one Simon Wachira (as vendor) on the other part. The 1st defendant contends that the said Simon Wachira was the registered proprietor (lessee) of the suit property at the time he sold it to them and was still the registered proprietor at the time of trial. The plaintiff's claim of ownership is premised on a sale agreement dated 24/4/2009 between him and Andrew Mwangi Chui. During the pendency of the suit, the plaintiff procured a certificate of lease relating to the suit property.

38. PW4 Gildine Karani, confirmed that a parcel register exists in the Lands Registry bearing the name of Simon Wachira as proprietor. The corresponding correspondence file relating to the said parcel register is missing. She further confirmed that she had verified from the Lands Office that the certificate of lease held by the plaintiff was a genuine title emanating from the Lands Registry.

39. Given the above circumstances, and given the nature of some of the reliefs sought in the primary suit and in the counter-claim, it was necessary that Simon Wachira and the Chief Land Registrar be joined as substantive parties to this suit. I say so because the certificate and the parcel register in respect of which the plaintiff seeks nullification and rectification orders are in the name of Simon Wachira. Simon Wachira was therefore a relevant party who ought to have been joined in either the primary suit or the counter-claim.

40. Similarly, the Chief Land Registrar was a necessary party because no single parcel of land is supposed to bear double registrations or parallel titles. She ought to have been made a party to the suit to explain the existence of parallel registers/titles.

41. Given the failure by the plaintiff and the 1st defendant to join Simon Wachira and the Chief Land Registrar as parties to this suit, I will not pronounce myself on the legality of the parcel register or title held in the name of Simon Wachira. The plaintiff will be at liberty, if he so elects, to bring a proper suit against Simon Wachira and seek orders nullifying and rectifying the title and parcel register that exists in the name of Simon Wachira. To annul the parcel register and the title purportedly held in the name of Simon Wachira without giving him a hearing would be against the rules of natural justice.

42. Having taken the above position, and having considered the pleadings before me together with the statements of agreed issues and the subsequent issues identified by the plaintiff and the 1st defendant in their respective submissions, only two issues fall for determination as between the plaintiff and the 1st defendant. The first issue is who between the plaintiff and the 1st defendant is entitled to possession of the suit property? The second issue is what relief, if any, should be granted in the circumstances. In pronouncing myself on the two issues, I will remain alive to the fact that Simon Wachira in whose name a parallel title and a parallel parcel register are said to exist is not a party to this suit and has not been accorded the opportunity to explain how he procured the parallel parcel register and title.

43. The interest in the suit property is a lease from the City Council of Nairobi. The Council was succeeded by the Nairobi City County Government. The plaintiff led evidence to the effect that the suit property was allocated to Jenifer Wanjiru in 1978. She subsequently assigned the suit property to Andrew Mwangi Chui (her father). The latter subsequently sold the suit property to the plaintiff. The County Government, through PW3, confirmed this position and further confirmed that according to the records held by the County Government, the plaintiff was still the lessee (owner) of the suit property. There was also evidence demonstrating that the Council, through M/s Musyoka

Annan and Company Advocates, processed a certificate of lease in the name of the plaintiff and the plaintiff was subsequently issued with the certificate of lease.

44. On part of the 1st defendant, besides waving contradictory sale agreements, he was not able to explain how Simon Wachira procured the parcel register which he (the 1st defendant) was relying on. He did not call Simon Wachira as a witness to explain how he procured a registration of the suit property in his name. The relevant correspondence file was missing in the Lands Registry. Although counsel for the 1st defendant contended that the 1st defendant was protected under the doctrine of innocent purchaser for value, there was no evidence to suggest that the 1st defendant was a registered proprietor of the suit property.

45. It is therefore clear from the evidence before court that the plaintiff has been able to explain the root of the lease interest he claims in the suit property. The plaintiff has developed the suit property and he is in possession. In the circumstances, the court finds that, as between the plaintiff and the 1st defendant, the plaintiff is entitled to possession of the suit property, **Title Number Nairobi Block 83/14/78**, previously designated as Plot No A11-2, Umoja Innercore, Nairobi. The 1st defendant's counter-claim fails wholly.

46. The second issue relates to the appropriate reliefs available in the circumstances of this suit. Prayer (a) of the re-amended plaint was a plea for an injunction pending the hearing and determination of the suit. It is therefore spent. Prayer (a)(i) is a plea for nullification of Simon Wachira's title and rectification of the corresponding parcel register. The plea cannot be granted in the absence of a suit against Simon Wachira. Prayer (b) is a plea for general damages and was abandoned by the plaintiff in his evidence-in-chief.

47. No evidence was led to demonstrate the basis of the suit against the National Land Commission. Similarly no submissions were made in relation to the suit against the Commission. In the circumstances, there will be no order against the National Land Commission.

48. Because parties to the primary suit and to the counter-claim failed to join necessary parties to this suit and there is likely to ensue a second suit relating to the plea for orders of nullification/rectification, I will not make any award relating to costs of this suit.

Disposal Orders

49. Taking into account the findings of the court on the key issues that fell for determination in this suit; and further taking into account the reliefs sought in the primary suit and in the counter-claim, I make the following disposal orders:

a) As between the plaintiff and the 1st defendant, the plaintiff is entitled to possession of the suit property, Title Number Nairobi Blok 83/14/78, previously designated as Plot No A11-2 Umoja Innercore.

b) The 1st defendant's counter-claim is dismissed for lack of merit

c) Parties shall bear their respective costs of the primary suit and the counter-claim herein.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 20TH DAY OF SEPTEMBER 2021

B M EBOSO

JUDGE

In the Presence of: -

Mr Nduati for the Plaintiff

Ms Obiria holding brief for Mr Oonge for the 1st Defendant

Court Assistant: Lucy Muthoni

NOTE:

This suit was heard and a judgment date fixed while I was serving at Nairobi (Milimani) Environment and Land Court Station. Due to the subsequent transfer, I have delivered the Judgment virtually at Thika Environment and Land Court Station.

B M EBOSO

JUDGE