



**Kinyanjui v Karumi; Osoro & 2 others (Interested Parties) (Environment & Land Case 126 of 2013) [2025] KEELC 309 (KLR) (31 January 2025) (Judgment)**

Neutral citation: [2025] KEELC 309 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 126 OF 2013  
EK WABWOTO, J  
JANUARY 31, 2025**

**BETWEEN**

**EUNICE NJERI KINYANJUI ..... PLAINTIFF**

**AND**

**PETERSON MAINA KARUMI ..... DEFENDANT**

**AND**

**THOMAS ACHACHI OSORO ..... INTERESTED PARTY**

**FELISTA MUTHONI MBUTH ..... INTERESTED PARTY**

**SUNCUS GITONGA NDEGWA ..... INTERESTED PARTY**

**JUDGMENT**

1. The Plaintiff instituted this suit vide a plaint dated 25<sup>th</sup> January 2013 which was later amended on 22<sup>nd</sup> February 2023 seeking for the following reliefs:-
  - a. The Defendant, either by himself, his agent, servants, representatives and or any other person claiming under him be restrained by an order of permanent injunction from entering, occupying, trespassing into or in any other way interfering with the Plaintiff's use and occupation of her Plot No. 46 and Plot No. 4 in Komarock Community Shopping Centre in Nairobi and the Officer Commanding Kayole Police Station to ensure compliance.
  - b. A declaration that Plot No. 46 and Plot No. 4 Komarock Community Centre in Nairobi belong to the Plaintiff and the Defendant has no legal right to interfere with the Plaintiff's lawful use and occupation thereof.
  - c. An order be issued compelling the 3<sup>rd</sup> Interested party to vacate from Plot No. 47 Komarock Community Shopping Centre forthwith and remove all the illegal structures he has erected therein, failure of which he be forcefully evicted there from.



- d. Costs of the suit and interest thereof.
  - e. Any other relief that this Honourable Court may deem fit and just to grant.
2. The suit was contested by the Defendant and the Interested Parties herein. The Defendant filed a Defence and Counterclaim dated 12<sup>th</sup> April 2013 claiming ownership of the two plots in question and also sought the dismissal of the suit and judgment be entered in his favour as prayed for in his counterclaim.
  3. The 1<sup>st</sup> Interested Party filed a Defence and Counterclaim dated 8<sup>th</sup> March 2016 and seeking for judgment to be entered against the Plaintiff, Defendant and 2<sup>nd</sup> Interested Party jointly and severally for:-
    - a. A declaration that the 1<sup>st</sup> Interested Party that is the legal and or lawful and or registered owner of all that plot known as Plot No. 4 Komarock Community Shopping Centre in the County Government of Nairobi which took over the assets and liabilities of the Nairobi City Council which was before then the Nairobi City Commission.
    - b. Costs of the suit.
    - c. Any other or just relief the court may deem just to grant.
  4. The 2<sup>nd</sup> Interested party filed a statement of defence and counterclaim dated 4<sup>th</sup> January 2016. The following reliefs were sought in her counterclaim;
    - a. An order of injunction as pleaded at paragraph 10 of the 2<sup>nd</sup> Defendant's counterclaim.
    - b. Damages, Interest and costs of the counterclaim.
    - c. A declaration that plot number 47 Komarock shopping centre belong to the 2<sup>nd</sup> Interested Party as the sole allottee from the defunct Nairobi City Council and the cancellation of all the subsequent allotments touching on Plot No. 47 Komarock Shopping Centre.
    - d. Any other relief that this Court may deem fit to grant.
  5. The 3<sup>rd</sup> Interested party equally filed a Statement of Defence and Counterclaim dated 19<sup>th</sup> July 2021. The following reliefs were sought in his counterclaim;
    - a. A declaration that the 3<sup>rd</sup> Interested Party is the legal and lawful proprietor of the parcel of land know as Plot No. 47 Komarock Shopping Centre having acquired legal and equitable title after purchase from the 2<sup>nd</sup> Interested party.
    - b. An order directing the Nairobi City County to rectify its records to reflect the 3<sup>rd</sup> Interested party as proprietor of the parcel of land known as Plot No. 47 Komarock Shopping Centre.
    - c. Costs of the suit
    - d. Any other relief that the court may deem just and expedient to grant.

#### **The Plaintiff's case**

6. It was the Plaintiff's case that she is the owner of Plot No. 46 and Plot No. 47 at Komarock Community Shopping Centre having been allocated the same on or about 18<sup>th</sup> day of January 1994. Upon allocation, he paid all the necessary and requisite fees to the then City Council of Nairobi, Survey was done and a beacon certificate issued to her. It was further averred that sometime in July 2012 or



thereabout the Defendant unlawfully, illegally and without justification purported to erect a perimeter wall around the said plot while claiming ownership of the same.

7. During trial, the Plaintiff herein Eunice Njeri Kinyanjui testified as the sole Plaintiff's witness in support of her case. She relied on her witness statement and bundle of documents dated 25<sup>th</sup> January 2019 together with a further bundle dated 6<sup>th</sup> June 2023 in her evidence in chief.
8. When cross-examined by Counsel for the Defendant, she stated that she was issued with the allotment letter in 1995 by Nairobi City Council. She also stated that when the dispute arose, her workers were chased away from the site and later the Director confirmed that she was the true owner of the plot.
9. She also stated in cross-examination that she was issued with a beacon certificate and allotment letters in respect to Plot No. 46 and Plot No. 47. She also stated that she has been paying rates and last payment was made in 2012. She also stated that he was not currently occupation of the suit property.

### **The case of the Defendant**

10. The Defendant filed a Defence and Counterclaim dated 11<sup>th</sup> April 2013 claiming ownership of the plot and seeking for dismissal of the Plaintiff's case.
11. It was the Defendant's case that he is the owner of Plot No. 46 and 47 which was allocated to him by Nairobi City Council on 22<sup>nd</sup> November 1993. It was also averred that he had a building plan approved by City Council and the same was registered in the Land Register on the 19<sup>th</sup> September 2012 and the Power of Attorney was issued by the Land Registrar. In respect to Plot No. 47 it was averred that the same was issued to his wife Beth Wangari.
12. During trial, two witnesses testified on behalf of the Defendant; Peterson Maina Karumi the Defendant testified as DW1 and Margaret Ombiro Nyakundi testified as DW2.
13. DW1 relied on his witness statement dated 11<sup>th</sup> April 2013 and bundle of documents dated 9<sup>th</sup> March 2016 in his evidence in chief. He also stated that his house was demolished and he reported the issue to EACC and County Government and he is seeking damages for the same and access to the plot.
14. On cross-examination by Counsel for the Plaintiff he stated that he is claiming both Plot 46 and 47. Plot 46 is registered in his name while Plot 47 is registered in the name of his wife. He also stated that he sold Plot No. 46 in 2011 to Mr. Ombio though the transfer was not effected. He also stated that Ms. Ombiro commenced construction on the said property in the year 2012 but later received a notice from Nairobi City Council stopping the construction. He also stated that nobody was charged in respect to the said demolition.
15. On further cross-examination, he stated that the plot was later charged from Plot No. 46 to 47 and Plot 45 became No. 46. The changes were done by Nairobi City Council. He also stated that he complained about the said issue and the Nairobi City Council agreed with him
16. On cross-examination by Counsel for the Interested Party, he stated that the City Council never gave him any letter to put up the temporary structure which he had put it up in 1990. He also stated that he was given the plot in 1993. He also stated that he did not comply with the conditions within 30 days. He stated that he paid Kshs. 14,400/= and Kshs. 20,000/= for the approved plans and that City Council has all the documents. He also stated that he had not produced any beacon certificate in court. He also stated that Plot No. 47 does not belong to Thomas Osoro. His plot was for commercial use and his plans were for commercial buildings.



17. When re-examined, he stated that his plots are No. 46 and 47 and he wants them back. He also stated that the delay in making payment of the allotment letter was due to the City Councils delay in telling them when to pay. He also stated that he made his first payment when City Council allowed him to pay and when he paid they never declined his payment.
18. He also stated that he had previously sued Nairobi City Council because they had changed Plot 45 to 46 and Plot 46 to 48. He also stated that he was never informed that his plot had been allocated to someone else.
19. Margaret Nyakundi testified as DW2. She relied on her witness statement dated 17<sup>th</sup> October 2023 in her evidence in chief. She stated that she bought the suit property with her late husband. She also stated that Plot 146 was bought at the same time even though her statement refers to Plot No. 45 and 46. She also stated that there was a structure on the property which was demolished.
20. On cross-examination she stated that she did not have a copy of sale agreement of Plot 145. The construction was being undertaken at Plot 145. She got approval of the same from County Government before she commenced the said construction. The structure was demolished in 2012. She also stated that she was aware that the City Council had given an enforcement notice to demolish the said structure. She also stated that she did not know when the name of her husband was changed. She also stated that she was not a party to the case but just a witness.
21. When re-examined, she stated that she was never served with any enforcement notice from the County. Her plot was 45 and 46 and not 146 and 147. They bought the land from the Defendant

#### **The case of the 1<sup>st</sup> Interested Party**

22. The 1<sup>st</sup> Interested Party filed a Statement of Defence and Counterclaim dated 8<sup>th</sup> March 2016 praying for a judgment to be entered against the Plaintiff, Defendant and 2<sup>nd</sup> Interested Party jointly and severally for:-
  - a. A declaration that the 1<sup>st</sup> Interested Party is the legal and or lawful and or registered owner of all that plot known as Plot No. 47 Komarock Community Shopping Centre in the County of Nairobi and that the Plaintiff, Defendant and the 2<sup>nd</sup> Interested Party be allocated another plot and or be compensated by the Nairobi City Council which was before then the Nairobi City Commission.
  - b. Costs of the suit.
  - c. Any other or just relief the court may deem fit to grant.
23. It was averred that the 1<sup>st</sup> Interested Party was allocated Plot No. 47 Komarock Community Shopping by the Nairobi City Commission on or about 18<sup>th</sup> January 1994 and made all the requisite payments to the then Nairobi City Commission.
24. It was averred that upon allocation of the said property the 1<sup>st</sup> Interested Party paid the said premium and rent and has also been making all the payments as and when they become due to the Nairobi City Commission and now County Government of Nairobi.
25. During trial, the 1<sup>st</sup> Interested Party Thomas Achachi Osoro testified as the sole witness in support of his case. He relied on his witness statement dated 8<sup>th</sup> March 2016 in his evidence in chief. He also produced and relied on the 1<sup>st</sup> Interested Party's bundle at documents dated 8<sup>th</sup> March 2016.



26. It was his testimony that he was given an allotment letter and he complied with all the conditions. He was taken to the site by the Surveyor and was shown the beacons. The plot was vacant at that time and was he given a beacon certificate. He also stated that he took possession and did foundation on the same but was later informed that someone was building on the said land. He reported the issue to the area chief and was referred to the Dandora Housing Department of City Council Offices upon which he was informed of the existing cases. He also stated that the Plaintiff did not make payment of her allocated plot within the 30 days as was required.
27. On cross-examination by the Defendant's Counsel, he stated that he paid for the stand premium on 19<sup>th</sup> May 1994. He paid for the ground rent on the same date and beacons on 5<sup>th</sup> July 1994.
28. Upon cross-examination by the Plaintiff's Counsel, he stated that he was allocated the plot sometimes in 18<sup>th</sup> January 1994 and he did not comply within the 30 days period when making his payment. He also stated that he did not have the approval from the County. He has not been on the plot recently and he never applied to stop the construction.
29. When re-examined, he stated that his allotment letter is dated 18<sup>th</sup> January 1994. He made payment on 19<sup>th</sup> May 1994.

#### **The testimony of Cecilia Koigu, Chief Land Surveyor, Nairobi County**

30. It was her testimony that she was in court pursuant to witness summons issued by the court requiring her to testify in the matter. She stated that the allocation list was done in 1993 and 1994. She stated that the same shows that Plot No. 46 was allocated to George Waweru and Plot No. 4 was allocated to Thomas Osoro on 18<sup>th</sup> January 1994.
31. When cross-examined by Counsel for the Plaintiff she stated that her list did not have any evidence of any other subsequent transactions of the said properties. An approval plan cannot be granted if you are not a legitimate owner.
32. On cross-examination by Counsel for the Defendant he stated that she does not sign any allotment letters. There are many cases of double allocation. She did not have the original records in court. One cannot be issued with an approval plan without legitimate and genuine document. She did not have any records showing if George Waweru had paid any rates. She has not personally visited the property.
33. When re-examined, she reiterated that Plot No. 46 and 47 belong to George Waweru and Thomas Osoro respectively. The property file shows the history of the transactions.

#### **The case of the 2<sup>nd</sup> Interested Party**

34. The 2<sup>nd</sup> Interested Party filed a Defence and Counterclaim dated 4<sup>th</sup> February 2016 seeking the following reliefs:-
  - a. An injunction.
  - b. Damages, interest and costs of the Counterclaim.
  - c. A declaration that Plot 47 Komarock Shopping Centre belong to the 2<sup>nd</sup> Interested Party as the sole allottee from the defunct Nairobi City Council and the cancellation of all the subsequent allotment touching on Plot No. 47 Komarock Shopping Center.
  - d. Any other or further relief that this Honourable Court may deem fit to grant.



35. It was averred that the 2<sup>nd</sup> Interested Party was allocated the plot and issued with an allotment letter on 22<sup>nd</sup> November 1993 and has been paying rates diligently.
36. However, during trial, no witness testified on her behalf.

### **The case of the 3<sup>rd</sup> Interested Party**

37. The 3<sup>rd</sup> Interested Party filed a statement of Defence and Counterclaim dated 19<sup>th</sup> July 2021 seeking for the following reliefs:-
  - a. A declaration that the 3<sup>rd</sup> Interested Party is the legal and lawful owner of Plot No. 47.
  - b. An order directing Nairobi City County to rectify its records to reflect the 3<sup>rd</sup> Interested Party as the proprietor.
  - c. Costs of the suit.
  - d. Any other relief the court may deem fit and just to grant.
38. It was averred that the 3<sup>rd</sup> Interested Party purchased the Plot No. 4 from the 2<sup>nd</sup> Interested Party vide a sale agreement dated 29<sup>th</sup> October 2018.
39. However, during trial, no witness was called to testify on his behalf.

### **The Plaintiff's submissions**

40. The Plaintiff filed written submissions dated 29<sup>th</sup> October 2024. It was submitted that the Plaintiff was the allottee in respect to Plot No. 46 and Plot No. 47 in Komarock Community Shopping Centre by virtue of a letter of allotment dated 18<sup>th</sup> day of January 1994 duly signed by the then Town Clerk, City Council of Nairobi. The Plaintiff complied with the terms and conditions of the allotment by paying the requisite stand premium, rent and rates to the Nairobi City Council.
41. It was further submitted that the Plaintiff was issued with an Approved Development Plan on 14<sup>th</sup> day of January 2013 and she paid the requisite fees, the approving authority having satisfied itself that the Plaintiff was the genuine owner of the plots therein.
42. In respect to the testimony tendered by Cecilia Koigu, it was submitted that for one to be able to pay for ground rate and rates to the Local Authority in respect to the plot, a revenue file had to be opened in the name of the person applying and it was therefore her evidence that the Plaintiff had a revenue file through which she paid the requisite ground rent and the rates as exhibited through receipts.
43. The Plaintiff concluded her submissions by urging the court to find that she has proved her case to the required standard and to grant her the reliefs sought and to dismiss the Counterclaim filed by the Defendant and the Interested Parties.

### **The Defendant's submissions**

44. The Defendant filed written submissions dated 8<sup>th</sup> November 2024. It was submitted that the Plaintiff has not discharged their burden of proof and had not provided sufficient evidence to prove that the Defendant's allotment in 1993 was void and that the allotment was erroneously issued to the Defendant and his wife in regard to Plot No. 46 and 47. Reliance was placed on Article 40 of *the Constitution* and Section 27 and 28 of the Registered *Land Act* (Now repealed). Several cases were also cited including the cases of Bubaki Investment Company Ltd =Versus= National Land Commission &



2 Others (2015) eKLR, Lucy Njeri =Versus= Isaac Wangoya Obo =Versus= Kenya Airport Authority (2013) eKLR among others.

45. The court was urged to dismiss the Plaintiff's suit with costs and allow the Defendant's Counterclaim.

### **The 1<sup>st</sup> Interested Party's submissions**

46. The 1<sup>st</sup> Interested Party filed written submissions dated 17<sup>th</sup> December 2024. Counsel submitted on the following issues; was the Plaintiff allocated the suit plot, was the Defendant allocated the suit plot, was the 2<sup>nd</sup> Interested Party allocated the suit plot and was the 1<sup>st</sup> Interested Party allocated the suit plot.

47. It was submitted that the 1<sup>st</sup> Interested Party had proved that he was allocated the suit property on 18<sup>th</sup> January 1994 and he paid the stand premium on 19<sup>th</sup> May 1994 and therefore fulfilled all the required conditions. The case of Beija Properties Limited =Versus= Syedna Mohamed Burhanduni Sahed & 4 Others (2015) eKLR was cited in support.

48. In respect to the 2<sup>nd</sup> Interested Party, it was submitted that the 2<sup>nd</sup> Interested Party did not testify to prove her case and hence cannot be considered its owner.

49. In respect to the Defendant. It was submitted that the Defendant paid the stand premium in two instalments being on 4<sup>th</sup> May 2010 and 31<sup>st</sup> December 2010 which was 17 years after the purported allotment and as such the purported allotment letter had lapsed.

50. In respect to the Plaintiff it was submitted that while the Plaintiff claimed to have been allocated the land on 18<sup>th</sup> January 1994, she did comply with the conditions of the allotment within the stipulated time.

### **Analysis and Determination**

51. The court has considered the pleadings, submissions filed and the evidence adduced by the parties and is of the view that the following are the salient issues for determination herein: -

- i. Who is the bonafide and legitimate owner of the suit properties.
- ii. What are the appropriate reliefs to grant herein.

### **Issue no. 1**

#### **Who is the bonafide and legitimate owner of the suit properties.**

52. All the parties herein claim to have acquired the suit properties by way of allotment at different times from the then Nairobi City Council.

53. Now, this case represents the theatre of the absurd that has become the classical cases of land matters in Kenya where parties go to all lengths to lay claim to a title even if they are just holding onto one reed at the farthest corner of the land. In this case this court has been tasked to tell the parties who is the true owner of the suit properties since it is being claimed by several parties.

54. It is trite law that he who alleges must prove. This is set out under Section 107(1)(2) of the *Evidence Act*, which provides as follows:

- “(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.



- (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”

Sections 109 and 112 of the same Act states;

“109. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

“112. In civil proceedings, 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.”

55. In discussing the standard of proof in civil liability claims in this jurisdiction, the Court of Appeal in *Mumbi M’Nabea vs David M. Wachira* [2016] eKLR stated as follows:

“In our jurisdiction, the standard of proof in civil liability claims is that of the balance of probabilities. This means that the Court will assess the oral, documentary and real evidence advanced by each party and decide which case is more probable. To put it another way, on the evidence, which occurrence of the event was more likely to happen than not.

...The position was re-affirmed by the Court of Appeal in *Maria Ciabaitaru M’airanyi & Others v Blue Shield Insurance Company Limited -Civil Appeal No. 101 of 2000* [2005] 1 EA 280 where it was held that:

“Whereas under section 107 of the *Evidence Act*, (which deals with the evidentiary burden of proof), the burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue, section 109 of the same Act recognizes that the burden of proof as to any particular fact may be cast on the person who wishes the Court to believe in its existence.”

56. With respect to the burden of proof, the learned Judges of Appeal in the case of *Palace Investments Limited vs Geoffrey Kariuki Mwenda & another* [2015] eKLR, posited thus:

“Denning J, in *Miller –vs- Minister of Pensions* [1947] 2 All ER 372 discussing the burden of proof had this to say; -

“That degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that a tribunal can say: we think it more probable than not; the burden is discharged, but, if the probabilities are equal it is not.

This, burden on a balance or preponderance of probabilities means a win however narrow. A draw is not enough. So, in any case in which the tribunal cannot decide one way or the other which evidence to accept where both parties...are equally (un) convincing, the party bearing the burden of proof will lose because the requisite standard will not have been attained.”

57. The Court will be guided by the aforementioned provisions and cases.
58. From the evidence that was tendered herein during trial which the court has analyzed, the Plaintiff was allocated the plots on or about 18<sup>th</sup> day of January 1994. Upon allocation, she paid all the necessary and requisite fees to the then City Council of Nairobi, Survey was done and a beacon certificate issued to



her. It was further averred that sometime in July 2012 or thereabout the Defendant unlawfully, illegally and without justification purported to erect a perimeter wall around the said plot while claiming ownership of the same.

59. The Defendant and his wife were allocated the Plots by Nairobi City Council on 22<sup>nd</sup> November 1993 but did not adduce any evidence confirming that they indeed complied with the stipulated conditions of the allotment letter. It also emerged that the Defendant had sold plot No. 46 to Benjamin Nyakundi Ombiro which transaction had not been rescinded not revoked and as such he did not have any right to claim any rights over the same.
60. In respect to the 1<sup>st</sup> interested party, he conceded in cross examination that he was allocated the plot sometimes in 18<sup>th</sup> January 1994 and he did not comply within the 30 days period when making his payment. He also stated that he did not have the approval from the County and as such he cannot claim to have acquired any legitimate interest to the said properties.
61. The 2<sup>nd</sup> and 3<sup>rd</sup> Interested parties did not adduce any evidence during trial neither did they call any witnesses to testify on their behalf and as such their claim to the suit parcel remain unproven.
62. It therefore follows that once the original allottee was allotted the said land no one else could be allotted. See the case of Rukaya Ali Mohamed vs David Gikonyo Nambacha & Another (Kisumu HCCA No. 9 of 2009):-

“Once (an) allotment letter is issued and the allottee meets the conditions therein, the land in question is no longer available for allotment, since a letter of allotment confers (an) absolute right of ownership or proprietorship unless it is challenged by the allotting authority or is acquired through fraud, mistake or misrepresentation, or that the allotment was out rightly illegal or it was against the public interest.”

63. In other words, where land has been allocated, the same land cannot be reallocated unless the first allocation is validly and lawfully cancelled.
64. In view of the foregoing, it is the finding of this Court that the Plaintiff herein is the lawful and bonafide owner of Plots No. 46 and 47 Komarock Community Shopping Centre.

## **Issue No. ii**

### **What are the appropriate reliefs to grant herein.**

65. It is imperative to note and recall that all the parties have sought for reliefs touching on and concerning ownership of the suit properties. The Plaintiff herein has laid and placed before Court credible, plausible and cogent evidence and documents demonstrating the manner in which she acquired the suit properties herein.
66. In respect to the prayer of permanent Injunction that was sought, it is worth noting that a permanent injunction fully determines the right of the parties before the court and is normally meant to perpetually restrain the commission of an act by the Defendant in order for the rights of the Plaintiff to be protected. Regarding the prayer for an order of permanent injunction, I align with the holding in the case of Kenya Power & Lightning Company Ltd –vs- Sheriff Molana Habib (2018) eKLR, where the court made the following pronouncement as regards a perpetual permanent injunction;

“A permanent injunction also known as a perpetual injunction is granted upon the hearing of the suit. It fully determines the rights of the parties before the court and is thus a decree of



the court. The injunction is granted upon the merits of the case after evidence in support of and against the claim has been tendered. A permanent injunction perpetually restrains the commission of an act by the defendant in order for the rights of the Plaintiff to be protected.”

67. In the instance case, the plaintiff has made a case for issuance of an order of Permanent injunction in favour and to the extent that the Plaintiff has ably demonstrated her entitlement to the suit properties. The Plaintiff is deserving of the said relief and this court shall proceed to grant the same. To the extent that the Plaintiff has established and proved her case as pertains to ownership of the suit properties, there is no gainsaying that the Plaintiff is entitled to the assorted reliefs sought for and enumerated at her amended plaint.
68. The Court having addressed itself on the earlier issues and having found that the Plaintiff is the bonafide owner of the suit parcels, it cannot be gainsaid that the Plaintiff herein has proved her case to the required standard and is entitled to the said reliefs.
69. Consequently, and in view of the foregoing, this Court concludes that even though the Plaintiff herein has duly proved and established her claim to and in respect of the suit properties, she is thus entitled to the requisite protection of the law in the manner highlighted vide the decision in the case of Mohansons (Kenya) Limited v Registrar of Titles & 2 others [2017] eKLR.
70. In respect to costs, the costs are at a discretion of the court. As a general rule costs follow the event unless the Court for good reason orders otherwise. In the present case, the Plaintiff having succeeded in her claim she is entitled to costs of the suit and counterclaim.

#### **Final Orders**

71. In conclusion, it is the finding of this court that the Plaintiff has proved her case to the required standard and to the satisfaction of this court and this court proceeds to enter judgment in her favour as follows: -
  - a. The Defendant’s Counterclaim dated 11<sup>th</sup> April 2013 is hereby dismissed.
  - b. The 1<sup>st</sup> Interested Party’s Counterclaim dated 8<sup>th</sup> March 2016 is hereby dismissed.
  - c. The 2<sup>nd</sup> Interested Party’s Counterclaim dated 4<sup>th</sup> April 2016 is hereby dismissed.
  - d. The 3<sup>rd</sup> Interested Party’s Counterclaim dated 19<sup>th</sup> July 2021 is hereby dismissed.
  - e. An order of permanent injunction is hereby issued restraining the Defendant and the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Interested Parties whether by themselves, their agents, servants, representatives or any other person claiming from under them from entering, occupying, trespassing into or in any other way interfering with the Plaintiff’s use and occupation of her Plot No. 46 and No 47 in Komarock Community Shopping Centre in Nairobi.
  - f. A declaration is hereby issued that Plots No. 46 and Plot No. 47 Komarock Community Shopping Centre belong to the Plaintiff. The Defendant and the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Interested Parties herein have no right to interfere with the Plaintiff’s lawful use and occupation thereof.
  - g. The 3<sup>rd</sup> Interested Party is hereby ordered to vacate from Plot No. 47 Komarock Shopping Center and remove all the illegal structures within 30 days from the date of service of the decree herein failure of which an eviction order shall issue.
  - h. Costs of the suit and the Counterclaim of the Defendant, 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Interested Parties are hereby awarded to the Plaintiff.

Judgment accordingly.



**DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI THIS 31<sup>ST</sup> DAY OF JANUARY 2025.**

**E. K. WABWOTO**

**JUDGE**

In the presence of:-

Mr. Mwangi for the Plaintiff.

Mr. Ondieki for Defendant.

Mr. Omwenga for the 1<sup>st</sup> Interested party.

Court Assistant: Mary Ngoira.

