



**REPUBLIC OF KENYA**

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

**ELC SUIT NO. 1476 OF 2016**

**ANNAH AGNES NDUTA.....PLAINTIFF**

**VERSUS**

**JENIFFER OGAMBLA.....DEFENDANT**

**JUDGMENT**

1. The Plaintiff brought this suit against the Defendant on 25<sup>th</sup> November, 2016 through a plaint of the same date seeking the following reliefs;

a) A permanent injunction restraining the Defendant by herself, her agents, servants, relatives, or any persons working under her instructions from encroaching, fencing, trespassing, damaging, wasting, digging, constructing any houses or structures, destroying boundaries, removing beacons, transferring, planting or fencing or in any way acting in disturbance of the Plaintiff's enjoyment of the legally acquired property known as Land Parcel No. NAIROBI/BLOCK 126/877(hereinafter referred to as "the suit property").

b) Costs of the suit.

**The Plaintiff's case:**

2. The Plaintiff averred that she was the absolute proprietor of the suit property measuring approximately 0.0224 hectares having purchased the same from one, Francis Kyalo Mutuku after conducting due diligence. The Plaintiff averred that after paying the full purchase price, she was issued with among other documents, a title deed for the suit property and a certificate of official search by the said Francis Kyalo Mutuku (hereinafter referred to as "the vendor").

3. The Plaintiff averred that she was thereafter given vacant possession of the suit property and she made substantive arrangements to put up her residence thereon with the intention of settling on the property with her family. The Plaintiff averred that on 4<sup>th</sup> September, 2016, she was surprised to find her fence around the property removed and a new fence erected by the Defendant who claimed to have bought the suit property.

4. At the trial, one, Sophia Wacu Ndirangu(PW1) gave evidence on behalf of the plaintiff. PW1 told the court that she was the mother and attorney of the Plaintiff who was residing in Canada. PW1 adopted her witness statement filed on 1<sup>st</sup> September, 2017 as part of her evidence in chief and produced the documents attached to her list of documents dated 1<sup>st</sup> September 2017 among them a General power of attorney issued on 4<sup>th</sup> April, 2017 as exhibits.

5. PW1 told the court that the suit property belonged to the Plaintiff and that the Defendant had taken possession of the same forcefully. She stated that the Defendant had no title to the suit property and that what the Defendant paid for and which she purported to own was at Komarock and not at Ruai, Kangundo Road where the suit property is situated. She denied that the Defendant had occupied the suit property for over 20 years. PW1 stated that the Defendant entered the suit property in 2016.

6. PW1 stated that the Defendant grabbed the suit property that belonged to the Plaintiff forcefully and put up a house thereon after the Defendant discovered that the parcel of land that she purchased did not exist on the ground. She stated that she came to court immediately the Defendant started construction on the suit property and that the Defendant did not stop construction even after she was ordered to do so by the court. PW1 stated that the Defendant had completed construction. She urged the court to grant the reliefs sought by the plaintiff in her plaint.

7. After the close of evidence, the court directed the parties to make closing submissions in writing. The Plaintiff filed her submissions dated 9<sup>th</sup> November, 2020. In her submissions, the Plaintiff framed two issues for determination namely; who is the lawful owner of the suit property, and whether the Defendant is entitled to the reliefs sought in her counter-claim. The Plaintiff submitted that she had established that she was the legal owner of the suit property. The Plaintiff submitted that she had put sufficient evidence before the court in proof of this fact

which included a certificate of Lease.

8. The Plaintiff submitted that the evidence tendered by the Defendant did not establish her claim to the suit property. The Plaintiff submitted that the documents that were produced by the Defendant in evidence including the Certificate of Lease for Nairobi/Block126/47 did not have any relationship with the suit property. The Plaintiff reiterated that the suit property is situated along Kangundo Road while the parcel of land claimed by the Defendant is situated at Komarock.

9. The Plaintiff cited section 26 of the Land Registration Act, 2012 and the decisions in Margaret Njeri Wachira v Eliud Waweru Njenga [2018] eKLR and Kiplagat Shelisheli Mutarakwa v Josep Rotich Kones[2018]eKLR and submitted that a certificate of title is conclusive evidence of proprietorship of land.

10. On whether the Defendant is entitled to the reliefs sought in her counter-claim, the Plaintiff submitted that the Defendant did not have the *locus standi* to maintain the counter-claim. The Plaintiff submitted that the evidence tendered by the Defendant showed that the person who allegedly purchased the suit property from Nairobi Teachers Housing Co-operative Society Limited (hereinafter referred to as “the Sacco”) was one, Jenniffer Aoko Onyango and not the Defendant; Jenniffer Ogambla. The Plaintiff submitted further that the Defendant lacked the *locus standi* to bring the counter-claim because the suit property and the parcel of land claimed by the Defendant are not related.

11. The Plaintiff urged the court to strike out the counter-claim. In support of her submissions on this issue, the Plaintiff cited Agnes Wambui Muia v Agnes Wang Muhia[2019]eKLR and Enaso Ene Parisue & 2 others v Joseph Bradley Waweru Gitari & 8 others[2020]eKLR. The Plaintiff submitted further that the Defendant had not demonstrated how her Plot No. 37 and 38 at Komarock turned out to be the suit property which is situated along Kangundo Road. The Plaintiff submitted that the Defendant was defrauded by the Sacco which sold to her non-existent plots in 1992.

12. The Plaintiff submitted further that the court could only cancel a title to land on grounds of fraud or misrepresentation or where the title has been acquired illegally, unprocedurally or through a corrupt scheme. The Plaintiff submitted that the Defendant did not adduce any evidence to establish the aforesaid grounds. The Plaintiff submitted that there is no basis for cancelling the title held by the Plaintiff. In support of this submission, the Plaintiff cited several cases among them, Gladys Wanjiru Ngacha v Theresa Chepsaat & 4 others [2013]eKLR.

13. The Plaintiff submitted further that the court cannot order the Chief Land Registrar to issue the Defendant with a certificate of title for the suit property since it was not made a party to the suit. The Plaintiff also wondered how the Chief Land Registrar can be ordered to issue the Defendant with a certificate of title in respect of a property that she did not own. The Plaintiff submitted that the Chief Land Registrar was a necessary party to the suit and should have been joined to the suit by the Defendant. In conclusion, the Plaintiff urged the court to enter judgment in her favour against the Defendant as prayed in the plaint.

#### The Defendant’s case:

14. The Defendant filed a defence on 21<sup>st</sup> September, 2017. The defence was amended on 10<sup>th</sup> May, 2018 to introduce a counter-claim against the Plaintiff. In her defence, the Defendant averred that she was the owner of the suit property the same having been allotted to her by Nairobi Teachers Housing Co-operative Society Limited (the Sacco).

15. The Defendant averred that suit property was a sub-division of a hitherto larger parcel of land known as NAIROBI/BLOCK 126/47 (hereinafter referred to as the “original parcel”) which was owned by the Sacco. The Defendant averred that as a member of the Sacco, she was allocated Plot No. 37 and Plot No. 38 of the original parcel which subsequently became Nairobi/Block 126/877 (the suit property) and Nairobi/Block 126/876 respectively after subdivision.

16. The Defendant averred that the sub-division of the original parcel was completed in the year 2002 and titles to the sub-plots that had been allocated to the Sacco members had not been issued as at the time of the filing of the defence although she had taken possession of the suit property and developed it.

17. The Defendant averred that she had made all the necessary payments that were required by the Sacco for processing the titles for her two plots including the suit property. The Defendant averred that neither the Plaintiff nor Francis Kyalo Mutuku was a member of the sacco and as such the title held by the Plaintiff in respect of the suit property was acquired fraudulently.

18. In her counter-claim, the Defendant reiterated the contents of her defence and sought judgment against the Plaintiff for;

- a) A declaration that the Defendant is the lawful beneficial owner of the suit property being Title Number NAIROBI/BLOCK 126/877.
- b) An order for the cancellation of the Plaintiff’s title to the suit property.
- c) An order that the Chief Land Registrar do issue a Certificate of Title for the suit property being NAIROBI/BLOCK 126/87 in favour of the Defendant.
- d) Costs of this suit and counter-claim.

19. At the trial, the Defendant gave evidence and called one witness. The Defendant who gave evidence as DW1 adopted the contents of her statement dated 16<sup>th</sup> November 2017 as her evidence in chief and produced the documents attached to her list of documents dated 17<sup>th</sup> October, 2019 as DEXh1. In her witness statement and oral testimony in court, DW1 narrated to the court how she acquired the suit property

from the Sacco. The Defendant's witness was Paul Waibochi Nyathi (DW2). DW2 told the court that he was the chairman of the sacco. He adopted his witness statement dated 20<sup>th</sup> November, 2017 as his evidence in chief. He corroborated the evidence of the Defendant. DW2 stated that the suit property was a portion of the original parcel which extended from Ruai along Kangundo road to Komarock.

20. In her submissions dated 10<sup>th</sup> December, 2020, the Defendant framed three issues for determination by the court namely, whether the Plaintiff's attorney, PW1 had the *locus standi* to sustain the suit, whether the suit property was fraudulently and illegally transferred to the Plaintiff and whether the court has power to cancel the Plaintiff's title. The Defendant submitted that the power of attorney that was relied on by PW1 while giving evidence on behalf of the Plaintiff was not registered and as such the same was invalid.

21. The Defendant submitted that an invalid power of attorney could not empower PW1 to give evidence on behalf of the Plaintiff. The Defendant urged the court to disregard the evidence of PW1. In support of this submission, the Defendant cited Francis Mwangi Mugo v David Kamau Gachago[2017]eKLR and Sanjay Varma & 2 others v Jackson Ashiwani Likoye & 7 others [2020]eKLR. The Defendant submitted that PW1 was a busy body who had no capacity to prosecute the suit on behalf of the Plaintiff.

22. On whether the suit property was fraudulently and illegally transferred to the Plaintiff, the Defendant submitted that a title can be challenged on the grounds of fraud and illegality. The Defendant submitted that when the root of a title is under challenge, it is not sufficient to produce the same title as proof of its validity. In support of this submission, the Defendant cited among others, Munyu Maina v Hiran Gathiha Maina, Civil Appeal No. 239 of 2009 and Daudi Kiptugen v Commissioner of Lands & 4 others [2015]eKLR. The Defendant submitted that the Plaintiff was obliged to produce evidence on how she acquired the suit property. The Defendant submitted that the Plaintiff did not produce a sale agreement or the instrument of transfer pursuant to which the property was transferred to her.

23. The Defendant submitted that she placed evidence before the court showing that the suit property was a portion of the original parcel whose title was obtained by the Sacco in 1993. The Defendant submitted that the Sacco subsequently subdivided the original parcel and allocated portions thereof including the suit property to its members. The Defendant submitted that neither the Plaintiff nor her alleged predecessor in title, Francis Kyalo Mutuku were members of the Sacco. The Defendant submitted that there was no way the Plaintiff's said successor in title could have been allocated the suit property by the Sacco a fact that the Sacco denied. The Defendant submitted that she produced evidence of her membership of the Sacco, the allocation of the suit property to her and the payment that she made in respect thereof.

24. The Defendant submitted further that the process of subdividing the original parcel was completed in 2002 and the Sacco surrendered the original title for the said property in exchange for the titles for the sub-plots in 2009. The Defendant submitted that there was no way the Plaintiff's predecessor could have acquired a portion of the original parcel in 2000 prior to the completion of the subdivision and surrender of the title for the original parcel in 2009. The Defendant cited Elijah Makeri Nyangwara v Stephen Mungai Njuguna[2013]eKLR and submitted that under section 26(1)(b) of the Land Registration Act, 2012, a title of an innocent purchaser can be impeached so long as the title was obtained illegally, unprocedurally or through a corrupt scheme.

25. The Defendant submitted that the Plaintiff's title resulted from acts of fraud and that although the Plaintiff may be an innocent purchaser, that does not confer upon her a better title than that of the real owner of the suit property.

26. On whether the court has power to cancel the title held by the Plaintiff, the Defendant submitted that non-joinder of the Land Registrar to the suit cannot defeat her counter-claim. In this regard, the Defendant relied on Order 1 Rule 9 of the Civil Procedure Rules. The Defendant submitted that having proved the existence of fraud in the acquisition of the title held by the Plaintiff in respect of the suit property, the court has power under section 80(1) of the Land Registration Act, 2012 to cancel the title.

#### Determination:

27. I have considered the evidence on record and the submissions by the advocates for the parties. The parties have raised several technical objections to each other's claim. I will ignore all those objections because the same were not raised in the pleadings as required under Order 2 Rule 4 of the Civil Procedure Rules or at the hearing by way of a preliminary objection. In my view, the substantive issues arising for determination in this suit are the following;

- a) As between the Plaintiff and the Defendant, who is the lawful owner of the suit property?
- b) Whether the Plaintiff is entitled to the reliefs sought in the plaint.
- c) Whether the Defendant is entitled to the reliefs sought in the counter-claim.
- d) Who is liable for the cost of the suit and the counter-claim?

As between the Plaintiff and the Defendant, who is the lawful owner of the suit property?

28. The suit property is registered under the Registered Land Act, Chapter 300 Laws of Kenya (now repealed). Sections 27 and 28 of the Registered Land 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.**

29. Section 143(1) and (2) of the Registered Land Act provides as follows:

**(1) Subject to subsection (2), the court may order rectification of the register by directing that any registration be cancelled or amended where it is satisfied that any registration (other than a first registration) has been obtained, made or omitted by fraud or mistake.**

**(2) The register shall not be rectified so as to affect the title of a proprietor who is in possession and acquired the land, lease or charge for valuable consideration, unless such proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by his act, neglect or default.**

30. Section 24, 25 and 26 of the Land Registration Act, 2012 provides 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.**

**26. (1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—**

**(a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or**

**(b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.**

31. Both under the Registered Land Act and the Land Registration Act, 2012, the registration of a person as the proprietor of land or lease confers upon that person the absolute ownership of the land and in the case of a lease, the leasehold interest in the land. Under the Registered Land Act which is the statute under which the suit property was registered, a register of land may be rectified by the cancellation of any entry therein where such registration has been obtained by fraud or mistake.

32. It is not disputed that the Plaintiff is the registered proprietor of the suit property. The Plaintiff was registered as the leasehold proprietor of the suit property on 9<sup>th</sup> February, 2000. By virtue of being the registered proprietor of the suit property, the Plaintiff is presumed as the lawful owner thereof and her title can only be impeached on account of fraud or mistake or where the title was acquired illegally or through misrepresentation or a corrupt scheme. The burden was upon the Defendant to establish any of the factors that can vitiate the Plaintiff's title to the suit property.

33. The Defendant has contended that she is the owner of the suit property having acquired the same from the Sacco and that the same was acquired by the Plaintiff or the person from whom she acquired the same illegally and fraudulently. From the evidence adduced by the Defendant, I am satisfied that the Defendant has established the following facts:

34. The suit property is a portion of land parcel Nairobi/Block126/47(the original parcel). The original parcel was at all material times owned by Nairobi Teachers Housing Sacco Limited(the Sacco). The Sacco was registered as the owner of the original parcel on 25<sup>th</sup> June, 1993. The original parcel was subdivided on 22<sup>nd</sup> October, 2002 through Survey Plan Folio No.285/72 which subdivision gave rise to Nairobi/Block126/825-881. Land parcel number Nairobi/Block126/877(the suit property) is among the parcels of land that came into existence on 22<sup>nd</sup> October, 2002 following the said subdivision. The Defendant was a teacher. The Defendant joined the Sacco which was mainly for teachers on 1<sup>st</sup> September, 1990. The Defendant was allocated Plot No. 37 and Plot No. 38 within the original parcel before formal subdivision. The Defendant paid the purchase price for the two plots in full. Upon subdivision, Plot No. 37 was given title number Nairobi/Block 126/877(the suit property). The Defendant took possession of the suit property and has since developed the same.

35. The evidence tendered by the Defendant cast doubt on the legality of the Plaintiff's title. This shifted the burden to the Plaintiff to prove that she acquired the suit property legally. There is no much information as to how the Plaintiff acquired the suit property. What the Plaintiff placed before the court in proof of her ownership of the suit property was a lease dated 18<sup>th</sup> August, 1999 registered on 9<sup>th</sup> February, 2000 and a certificate of lease dated 9<sup>th</sup> February, 2000. The suit property was registered in the name of the Plaintiff on 9<sup>th</sup> February, 2000 which means that the property was registered in the name of the Plaintiff on the same date that the lease was registered.

36. The lease that was produced by the Plaintiff was in the name of one, Francis Kyalo Mutuku(the seller). It is not clear how a lease that was in the name of the seller was registered in the name of the Plaintiff. The Plaintiff did not place before the court any evidence showing that the property was registered first in the name of the seller and that the same was subsequently transferred to her. The Plaintiff did not produce an agreement of sale or a transfer executed by the seller in her favour.

37. In Munyu Maina v Hiram Gathiha Maina(supra), the Court of Appeal stated that:

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

38. The Plaintiff did not prove her title beyond the Certificate of Lease since the instrument of lease itself was not in her name. I am in agreement with the Defendant that the Plaintiff in addition to producing her certificate of title and search certificate should also have produced; the sale agreement between her and the seller, evidence of payment for the suit property, the instrument of transfer and evidence of payment of Stamp Duty on the transfer.

39. As I have mentioned earlier, the suit property came into existence on 22<sup>nd</sup> October, 2002. The property was not in existence on 11<sup>th</sup> August, 1999 when a lease in respect thereof was purportedly issued in favour of the seller and when the same was registered on 9<sup>th</sup> February, 2000. It is also worth noting that the suit property was at all material times owned by the Sacco. The Defendant placed evidence before the court showing that the original parcel in respect of which the suit property is a subdivision was registered in the name of the Sacco on 25<sup>th</sup> June, 1993. The original parcel and similarly the suit property were not government land available to the Commissioner of Lands for allocation. There was no way the Commissioner of Lands could have allocated the suit property that belonged to the Sacco to the seller. There is no evidence on record how the seller who was not a teacher or a member of the Sacco came to own the suit property.

40. Since the suit property belonged to the Sacco and not to the Government and the Sacco did not transfer it to the seller or the Plaintiff and in the absence of evidence of how the seller and the Plaintiff came to own the suit property, the only conclusion this court can make is that the suit property was acquired by the seller and the Plaintiff illegally and fraudulently.

41. It is my finding from the foregoing that the Defendant has established that she is the beneficial owner of the suit property and that the title held by the Plaintiff was acquired illegally and fraudulently and as such the same is null and void. I find therefore that the Defendant is the lawful beneficial owner of the suit property.

Whether the Plaintiff is entitled to the reliefs sought in the plaint.

42. Section 3 of the Trespass Act, Chapter 294 Laws of Kenya provides:

**(1) Any person who without reasonable excuse enters, is or remains upon, or erects any structure on, or cultivates or tills, or grazes stock or permits stock to be on, private land without the consent of the occupier thereof shall be guilty of an offence.**

**(2) Where any person is charged with an offence under subsection (1) of this section the burden of proving that he had reasonable excuse or the consent of the occupier shall lie upon him.**

43. 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, 18th 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. This means that even if one does not have actual possession of land, so long as he has a title to the land, that is deemed as possession for the purposes of trespass.

44. To establish trespass, the Plaintiff had to prove that she was either lawfully in possession of the suit property or was the owner thereof and that the Defendant entered and occupied the property without any justifiable cause.

45. I have held that the title held by the Plaintiff in respect of the suit property is not valid and that the Defendant is the lawful beneficial owner of the suit property. In the circumstances, the Defendant has a right to occupy the suit property. The Plaintiff has therefore failed to prove trespass against the Defendant and as such she is not entitled to the injunctive relief sought against the Defendant.

Whether the Defendant is entitled to the reliefs sought in the counter-claim.

46. I have set out earlier in this judgment, the reliefs sought by the Defendant in her counter-claim. From the findings that I have made above, the Defendant is entitled to the declaration that she is the lawful beneficial owner of the suit property and an order cancelling the title held by the Plaintiff in respect of the suit property. As for the order that the property be registered in her name, this court is not inclined to grant the order. The Defendant was allocated the suit property by the Sacco which is supposed to process her title to the suit property in the normal manner after the cancellation of the title held by the Plaintiff.

Who is liable for the costs of the suit and the counter-claim?

47. Under section 27 of the Civil Procedure Act, Chapter 21 Laws of Kenya costs of and incidental to a suit is at the discretion of the court and as a general rule, costs follow the event. In this case, the plaintiff has failed in her claim against the defendant while the Defendant has succeeded in her counter-claim. The Plaintiff shall bear the costs of the suit and the counter-claim.

48. Conclusion:

In conclusion, I hereby make the following orders;

1. The Plaintiff's suit is dismissed.
2. Judgement is entered for the Defendant against the Plaintiff as follows;
  - (i) It is declared that the Defendant is the lawful beneficial owner of all that parcel of land known as Nairobi/Block126/877.
  - (ii) The Lease dated 11<sup>th</sup> August, 1999 registered on 9<sup>th</sup> February, 2000 and the Certificate of Lease dated 9<sup>th</sup> February, 2000 issued to the Plaintiff in respect of Nairobi/Block126/877 are cancelled.
  - (iii) The register for Nairobi/Block126/877 shall be rectified by the cancellation of registration of the said Lease dated 11<sup>th</sup> August, 1999 on 9<sup>th</sup> February, 2000, the registration of the Plaintiff as the owner of Nairobi/Block126/877 on 9<sup>th</sup> February, 2000 and the issuance of a Certificate of Lease to the Plaintiff on 9<sup>th</sup> February, 2000.
  - (iv) The ownership of Nairobi/Block126/877 shall revert to Nairobi Teachers Housing Co-operative Society Limited which together with the Chief Land Registrar shall process a title in respect thereof in favour of the Defendant.
3. The Defendant shall have the costs of the suit and the counter-claim.

**DELIVERED AND DATED AT NAIROBI THIS 5TH DAY OF OCTOBER 2021**

**S. OKONG'O**

**JUDGE**

**JUDGMENT DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO  
CONFERENCING PLATFORM IN THE PRESENCE OF:**

**THE PLAINTIFF PRESENT IN PERSON**

**MR. OCHIENG FOR THE DEFENDANT**

**MS. C.NYOKABI-COURT ASSISTANT**