



REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT  
AT NAIROBI

ELC CASE NO.848 OF 2014

DAVID MAINA KANYORO.....PLAINTIFF

VERSUS

NELSON KARORI GATHIMA.....1<sup>ST</sup> DEFENDANT

SOLOMON GATHIMA.....2<sup>ND</sup> DEFENDANT

MAHIIRA HOUSING COMPANY LIMITED....3<sup>RD</sup> DEFENDANT

JUDGEMENT

1. By a plaint dated 26<sup>th</sup> June 2014 and amended on 6<sup>th</sup> November 2014, the Plaintiff seeks judgment against the Defendants jointly and severally for:-

a. A declaration that land known either as plot 277 in the subdivision scheme of LR Numbers 10901/36 & 10901/37 or title No.RUIRU/KIU BLOCK 10/538 belongs to the Plaintiff.

b. A permanent injunction to restrain the Defendants whether by themselves, their employees, agents, servants or any person acting under their authority from interfering with the Plaintiff's quiet possession of land known either as plot 277 in the subdivision scheme of LR Numbers 10901/36 & 10901/37 or title No.RUIRU/KIU BLOCK 10/538.

c. An order directed to the 1<sup>st</sup> and 2<sup>nd</sup> Defendant whether by themselves or their agent or employees or servant or any other person acting under their authority to remove themselves and any structure they have erected thereon from land known either as plot 277 in the subdivision scheme of LR Numbers 10901/36 & 10901/37 or title No.RUIRU/KIU BLOCK 10/538.

d. An order directing the Land Registrar Thika Land Registry to cancel title number Ruiru/Kiu Block 10/538 in the name of the 1<sup>st</sup> Defendant and to re-issue the same in the name of the Plaintiff.

e. Damages for trespass to land.

f. Costs of this suit and interest on (d) and (e).

2. The Plaintiff's case is that he is the beneficial owner of the suit property. He contended that by virtue of being a shareholder and/or member of the 3<sup>rd</sup> Defendant, he was allocated two (2) plots being plot 277 and 256 in the subdivision scheme known as LR NO.S 10901/36& 10901/37.He contended that he paid for and was issued with a title deed for plot No. 556 being **RUIRU/KIU BLOCK 10/669** but despite payment of the requisite charges, the 3<sup>rd</sup> Defendant failed, refused or neglected to process title deed for the suit property being plot 227.He stated that he has been in occupation of the plots since 1987.

3. The Plaintiff contended that on the 1<sup>st</sup> Defendant lays claim on the suit plot by virtue of alleged sale from the 3<sup>rd</sup> Defendant. He claims that the Defendants conspired to fraudulently defraud him of the suit property.

**The Defendants' case**

4. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants were represented by the firm of Arusei & Company Advocates though they filed separate statements of defence.

5. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants amended statement of defence is dated 10<sup>th</sup> February 2015. The 1<sup>st</sup> Defendant contended that he purchased the parcel of land known as **Plot Number RUIRU/KIU BLOCK 10(MAHIIRA) 538** from the 3<sup>rd</sup> Defendant and he has been issued with a title deed by the Thika District Land Registrar. He added that his parcel of land is different from the Plaintiff's land known as Plot **No. RUIRU/KIU BLOCK /10/669**.

6. He also contended that by a certified map of survey issued by the Director of Survey on the 14<sup>th</sup> day of July 2014, the map clearly and conclusively shows the two plots, their respective locations and the distance between them and consequently the two plots are separate and distinct.

7. The 3<sup>rd</sup> Defendant's amended statement of defence is dated 10<sup>th</sup> February 2015. The 3<sup>rd</sup> Defendant contended that the Plaintiff's parcel of land as per its records is **RUIRU/KIU/BLOCK 10 (Mahiira) 669** and not **RUIRU/KIU/BLOCK 10 (Mahiira)/538**. It further contended that the Plaintiff has his own parcel of land available on the map and different from the 1<sup>st</sup> Defendant's parcel of land.

#### **The Plaintiff's evidence.**

8. PW1, David Maina Kanyoro, the Plaintiff, testified on 27<sup>th</sup> January 2020. His witness statement dated 26<sup>th</sup> June 2014 and further witness statement dated 13<sup>th</sup> March 2019 were adopted as part of his evidence.

9. He told the court that he was allocated 2 plots in Mahiira Housing Company Limited being plot number 277 and 556 but he was given a title for plot 556 and a share certificate for plot number 277 issued in 1987.

10. He added that he started paying for plot number 277 but the receipts were written plot No.556 but he has a letter from the Defendant to show that he had two plots. He also stated that in 2014, his son took building materials to the plot but he was stopped by one Nelson Karori Gathima who claimed to own it. He prayed that the 1<sup>st</sup> Defendant's title be cancelled and the plot be registered in his name.

11. When cross-examined, he stated that he has receipts in respect of plot 277 and that that his plot 277 was taken by the 1<sup>st</sup> Defendant as **BLOCK 10/538 (Mahiira)**. He further stated that he has a letter from the Director of Survey to show that plot 277 is now block 10/538.

#### **The Defendant's evidence.**

12. DW1, Nelson Karori Gathima the 1<sup>st</sup> Defendant testified on 1<sup>st</sup> October 2020. His witness statement dated 14<sup>th</sup> July 2017 was adopted as part of his evidence in chief. He told the court that he went to the offices of Mahiira Housing Company Limited in 2013 and expressed his interest in buying a plot and that he was shown several vacant plots on the ground.

13. He stated that he chose **RUIRU/KIU BLOCK 10/538** and paid kshs.650, 000/= for it and a further Kshs.20, 000/= for title deed processing which he paid and he was issued with a title. He produced the title processing receipts and a copy of title as exhibits in this case.

14. He stated that on 25<sup>th</sup> January 2014, his brother Solomon Gathima saw people digging trenches on his plot and he stopped them. He further stated that he reported the Plaintiff to Mahiira Company Limited who told the Plaintiff that plot 538 was not his as his plot per the records was 669.

15. When referred to the Amended plaint, he stated that it does not show how plot 277 became 538 as from the survey map, 538 is so far from 669; they are not close to each other.

16. When cross-examined, he stated that he visited Mahiira Housing Company Limited but he could not recall what is written in their offices. He stated that he spoke to Mr. Gathuka who was one of the officials of the company and whom he found in the offices.

17. He also stated that he paid kshs.650, 000/= which he withdrew from Equity bank and gave it to Mr. Githuka in cash and he did not sign any sale agreement with the said Mr. Githuka or the 3<sup>rd</sup> Defendant but he has a title deed to the land. He was not issued with a receipt for kshs.650, 000/=. Mr. Githuka is the one who issued him with receipts when he paid for title deed processing.

18. He further stated that he became a member of the 3<sup>rd</sup> Defendant after purchasing the suit property in 2013 and that he did not know any other members of the 3<sup>rd</sup> Defendant.

19. He also stated that only members were given the plots which they balloted for in 1987. When referred to the survey map produced in evidence, he stated that he got it from survey of Kenya but he did not have receipts to show that it was from survey of Kenya. He stated that plot 538 and plot 277 are not the same.

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

20. They are dated 13<sup>th</sup> August 2021. The Plaintiff raised the following issues for determination:-

**a. Whether the Plaintiff was a member of the 3<sup>rd</sup> Defendant Company entitled to two plots.**

**b. Whether the suit property belongs to the Plaintiff.**

**c. Whether the 1<sup>st</sup> Defendant has a good title to the suit property.**

**d. Whether the title deed held by the 1<sup>st</sup> Defendant over the suit property should be cancelled.**

**e. Which party should bear costs of this suit?**

21. The Plaintiff submitted that he had established that he was a member of the 3<sup>rd</sup> Defendant and that he was issued two plots namely 277 and 556 through the letters produced in evidence. He added that the 3<sup>rd</sup> Defendant does not dispute that it allocated him two (2) plots since it did not call any evidence to controvert that fact.

22. He also submitted that the 1<sup>st</sup> Defendant's claim that he bought the suit property on 10<sup>th</sup> October 2013 cannot stand for lack of a written agreement which offends provisions of Section 3(3) of The Law of Contract Act Cap 23 Laws of Kenya and Section 38(c) of the Land Act 2012 which provides that a contract for the sale of land must be in writing. He relied on the case of **Daudi Ledama Morintat v Mary Christine Karie & 2 others [2017] e KLR**.

23. He further submitted that the 1<sup>st</sup> Defendant's testimony that he paid kshs.650, 000/= as purchase price to one Mr. Githuka; an alleged director of the 3<sup>rd</sup> Defendant was not supported by evidence of any receipts acknowledging payments or any agreement in writing. He added that the 1<sup>st</sup> Defendant's claim that Mr. Githuka passed away cannot hold since the 3<sup>rd</sup> Defendant is a limited Liability Company which could avail evidence of the alleged sale to the 1<sup>st</sup> Defendant.

24. He also submitted that the 1<sup>st</sup> Defendant could not produce any document to show that he was a shareholder/member of the 3<sup>rd</sup> Defendant and the contention that he bought the suit property in in 2013 cannot hold water as there is ample evidence that the 1<sup>st</sup> Defendant distributed its land to shareholders in 1987 thus there was nothing to distribute in 2013.

25. He submitted that under Section 37 of the Land Registration Act 2012, interest in land can only be transferred through an instrument of transfer which should be registered at the lands registry yet the 1<sup>st</sup> Defendant did not produce any instruments of transfer duly registered at Thika Land Registry or any proof of payment of stamp duty.

26. He relied on the Court of Appeal's decision in **Munyu Maina v Hiram Gathiha Maina [2013] e KLR** to submit that the 1<sup>st</sup> defendant needed to show the root of his title but since he failed to do so, it can only be concluded that the title deed held by the 1<sup>st</sup> Defendant is fraudulent or was procured illegally, unprocedurally or through a corrupt scheme; thus the 1<sup>st</sup> Defendant does not have a good title.

27. He also submitted that since he has demonstrated that he is the legitimate owner of the suit property and the 1<sup>st</sup> Defendant had failed to discharge the burden of proof required under Section 112 of the Evidence Act of how he acquired the title deed to the suit property, the title held by the 1<sup>st</sup> defendant should be cancelled and the Plaintiff registered as the legitimate owner thereof.

28. He further submitted that the basis for cancellation is provided for under Section 26 of the Land Registration Act 2012 and under Section 80(1) of the Land Registration Act, the court has powers to order cancellation of a fraudulent title deed procured illegally, unprocedurally, or through a corrupt scheme. He relied on the case of **Samuel Odhiambo Oludhe & 2 Others vs Jubilee Jumbo Hardware Limited & Another [2018] e KLR**.

#### **The Defendants' submissions**

29. They are dated 31<sup>st</sup> August 2021. The Defendants submitted on the following issues;

**a. Whether the allegations on fraud were proven.**

**b. Does the Plaintiff's claim to land have any paper trail?**

**c. Who is the legitimate and/or legal owner of RUIRU/KIU BLOCK10 (MAHIIRA)/538?**

30. The Defendants submitted that Section 109 of Evidence Act, cap 80 provides that the burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence. They further submitted that the onus was on Plaintiff to prove ownership of the suit land and fraud on the part of the Defendants but he failed to discharge the duty.

31. They relied on the cases of **R.G Patel vs Ialji Makanji [1957] EA 314** and **Vijay Morjaria vs Nansingh Madhusing Darbar & Another [2000] e KLR** to submit that the law on fraud is that fraud must be pleaded and proved to the required standard by anyone who alleges fraud. They further submitted that the allegation on fraud is pleaded against the 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> Defendant but particular of fraud are only alleged on the part of the 3<sup>rd</sup> Defendant.

32. They also submitted that title in regard to **RUIRU/KIU BLOCK10 (MAHIIRA)/538** was issued to the 1<sup>st</sup> Defendant by Thika Land Registry and not the 3<sup>rd</sup> Defendant but the Land Registrar was not enjoined in the suit yet the said registrar is required to cancel the title issued to the 1<sup>st</sup> Defendant re-issue it to the Plaintiff according to prayer (d) of the plaint.

33. They submitted that the title issued to the 1<sup>st</sup> Defendant is genuine and no evidence has been laid out to demonstrate that the title was issued fraudulently and through a corrupt scheme and /or unprocedurally as provided by Article 40(30) of the Constitution of Kenya, 2010 and as such, it is protected under section 24, 25, 26 of the Land Registration Act No. 3 of 2012.

34. They submitted that the 1<sup>st</sup> Defendant's title is not subject to challenge. They relied on the case of **Kimanthi Kilonzo vs Susan Wangari Kiiru & Another [2019] e KLR**. They added that allegations of fraud were not proved to the required standard against the Defendants thus the Plaintiff's claim is bound to fail as no documents were produced to enable the court to deduce fraud and forgery. They added that the Plaintiff ought to have demonstrated that there was fraud and 2<sup>ndly</sup> that the 1<sup>st</sup> Defendant was party to it.

35. They relied on the case of **W.W vs Severin Kinyanjui Njoroge & Another [2021] e KLR** and **Samuel Obare Migosi vs Kennedy Obae [2015]** to submit that the Plaintiff had failed to trace the root of his claim to land.

36. They also submitted that the Plaintiff did not even remotely demonstrate any nexus between plot No. 277 and **L.R RUIRU/KIU BLOCK10 (MAHIIRA)/538** by way of a paper trail since he did not call the evidence of the Director of Surveys & Thika Land Registrar and there is nothing on record justifying any conclusion that the suit property belongs to the Plaintiff.

37. They submitted that 1<sup>st</sup> Defendant is the legal owner of the suit plot since he exhibited a title deed, a certificate of search and photographs showing his occupation of the suit property and on the other hand, the Plaintiff exhibited a plot certificate for plot No. 277 issued on 21<sup>st</sup> February 1987, receipts illustrating payments for the title deed for plot No. 277 which is a sum of KShs. 5000/= and KShs. 7500 but he did not exhibit receipts demonstrating purchase/processing of title in respect of RUIRU/KIU BLOCK10(MAHIIRA)/538.

38. They also submitted that there is no evidence to demonstrate the correlation and /or the nexus between plot No. 277 and land parcel known as **RUIRU/KIU BLOCK10 (MAHIIRA)/538** except the 1<sup>st</sup> Defendant's survey map from surveys of Kenya illustrating the physical location of the land known as **RUIRU/KIU BLOCK10 (MAHIIRA)/538**.

39. He also submitted that the 1<sup>st</sup> Defendant was a purchaser of land for value without notice of fraud as he was not party to any fraud.

40. He submitted that the 3<sup>rd</sup> Defendant is a land buying company and it operates within its memorandum & Articles of Association thus provisions of Section 3(3) of the Law of Contract Act and Section 38 of the Land Act do not apply as the manner in which the 3<sup>rd</sup> Defendant deals with its membership is to issue them with plot certificates and subsequently title deeds.

41. I have considered the pleadings and the evidence on record. I have considered the written submissions filed on behalf of the parties and the authorities cited. The issues for determination: -

**i. Whether Plot number 277 is the same as Ruiru/Kiu Block 10 (Mahiira)/538.**

**ii. Who is the lawful owner of the suit property.**

**iii. Was the 1<sup>st</sup> Defendant's title acquired lawfully?**

**iv. Is the Plaintiff entitled to the reliefs sought?**

**v. Who should bear costs of this suit?**

42. It is the Plaintiff's case that he was allocated Plot numbers 277 and 556 by the 3<sup>rd</sup> Defendant in 1987. His claim is over Plot No 277. The plaintiff produced a plot certificate No. 277 from the 3<sup>rd</sup> Defendant dated 21<sup>st</sup> February 1987. The same is sealed with the 3<sup>rd</sup> Defendant's seal and signed by the three officials of the 3<sup>rd</sup> Defendant being the Chairman, Secretary and Treasurer. He also produced a plot certificate number 556 dated 7<sup>th</sup> October 1987. The same is duly sealed with the 3<sup>rd</sup> Defendant's seal and is signed by the three officials of the company

43. It is the Plaintiff's case that he was issued with a title deed for Plot number 556 being Ruiru/Kiu Block 10/ 669 (Mahiira). The Plaintiff has produced letters from the 3<sup>rd</sup> Defendant to confirm that he was a member and shareholder and had been allocated Plot numbers 277 and 556. He has also produced receipts showing the payments he made in respect of the two plots.

44. The Plaintiff also produced a letter dated 22<sup>nd</sup> October 1997 from the 3<sup>rd</sup> Defendant reminding him to pay up the title processing fees over Plot No 277. He also produced receipts showing payments for processing of title for Plot number 277. The Plaintiff stated that he was shown Plot number 277 in 1987 and he took possession. He stated that in 2014, he instructed his son to take building materials to the plot but was surprised when there was someone else claimed the plot.

45. I find that the Plaintiff has demonstrated that he bought two plots from the 3<sup>rd</sup> Defendant in 1987. He was given a title deed for one but not for plot number 277.

46. The 1<sup>st</sup> Defendant contends that he is the registered owner of Ruiru/Kiu Block 10 (Mahiira)/538. He said he bought the plot from the 3<sup>rd</sup> Defendant in 2013. It is his evidence that he walked into the offices of the 3<sup>rd</sup> Defendant and was shown five vacant plots. He settled on the suit property.

47. The Plaintiff has given a history of how he acquired the said plot. The exhibits produced confirm that he bought two plots from the 3<sup>rd</sup> Defendant. Where did the other plot go? I am satisfied that the Plaintiff is the lawful owner of the suit property.

48. It is his evidence that what the 1<sup>st</sup> Defendant claims as Ruiru/Kiu Block 10 (Mahiira)/538 is his plot number 277. He stated that he knew the plot as he was shown and he took possession in 1987. The 1<sup>st</sup> Defendant's case is that there is no nexus between plot number 277 and his plot Ruiru/Kiu Block 10 (Mahiira)/538. In the absence of any evidence by the 3<sup>rd</sup> Defendant, his claim cannot stand. I find that the Plaintiff has demonstrated that Plot number 277 and Ruiru/Kiu Block 10 (Mahiira)/538 are one and the same.

49. The 1<sup>st</sup> Defendant told the court that he bought the suit property from the 3<sup>rd</sup> Defendant in October 2013. He stated that he walked to the offices of the 3<sup>rd</sup> Defendant and was shown five vacant plots. He said he chose 538. He further, stated that on 24<sup>th</sup> October 2013 he paid Kshs.650,000/- to a Mr. Githuka who was the Chairman and an official of the 3<sup>rd</sup> Defendant. He said he withdrew the cash from Equity Bank Githurai branch and handed over to Mr. Githuka. He also gave him Kshs.20,000 for processing of the title. He said he later got a title which he produced as exhibit D1.

50. It is not in dispute that the 1<sup>st</sup> Defendant did not produce any sale agreement between him and the 3<sup>rd</sup> Defendant. He did not produce any withdrawal slips and/or bank statements to confirm that he paid the 3<sup>rd</sup> Defendant for the plot. He was not able to explain how he came to be registered as the owner of Ruiru/Kiu Block 10 (Mahiira)/538. He produced no receipts to support his claim that he paid Kshs.650,000 for the plot or Kshs.20,000 for processing of title. His title was issued on 11<sup>th</sup> November 2013 a month after he claimed to have purchased the said plot. There is no evidence of any transfer from the 3<sup>rd</sup> Defendant to his name.

51. **Section 3(3)** of the Laws of Contract Act (Cap 23 Laws of Kenya) provides that:-

**“(3) No suit shall be brought upon a contract for the disposition of an interest in land unless—**

**a) the contract upon which the suit is founded—**

**i. is in writing;**

**ii. is signed by all the parties thereto; and**

**b) the signature of each party signing has been attested by a witness who is present when the contract was signed by such party:**

**Provided that this subsection shall not apply to a contract made in the course of a public auction by an auctioneer within the meaning of the Auctioneers Act (Cap. 526), nor shall anything in it affect the creation of a resulting, implied or constructive trust.”**

52. The 1<sup>st</sup> Defendant is unable to explain the root of his title. He was not a member of the 3<sup>rd</sup> Defendant. I find that the 1<sup>st</sup> Defendant has failed to demonstrate that he acquired his title lawfully.

53. He did not call the said Githuka as his witness. It was said that he passed on. He was not able to prove that the said Githuka was an official of the 3<sup>rd</sup> Defendant. In any case the 3<sup>rd</sup> Defendant being a limited liability is still in existence. Nothing could have been easier than for the 1<sup>st</sup> Defendant to avail a witness from the company to confirm that he bought a plot from them. The 3<sup>rd</sup> Defendant was a party to this suit and chose not to avail any witness. The conclusion that can be drawn is that the 1<sup>st</sup> Defendant did not buy any plot from the 3<sup>rd</sup> Defendant.

54. In the case of **Daudi Ledama Morintant vs Mary Christine Karie & 2 Others [2017] eKLR**; the court held that **“no suit can stand if there is no written contract for the sale of land. It therefore follows that the 1<sup>st</sup> Defendant's defence cannot stand for offending express provisions of the law. Without proof of purchase of the suit property, the 1<sup>st</sup> Defendant's title is without legs and cannot stand.”**

55. I find that the Plaintiff is entitled to the reliefs sought. He has proved that he is the legitimate owner of the suit property. **Section 26(1)** of the Land Registration Act, 2012 provides that:-

**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.”**

56. The 1<sup>st</sup> Defendant obtained the title to the suit property unprocedurally, his title cannot be protected. He is trespassing on the Plaintiff's plot. In **Clerk & Lindsell on Tort (17<sup>th</sup> Edition) paragraph 17-01**

Trespass is defined thus:-

**“An unjustifiable entry by one person upon the land in possession of another.....”**

The tort of trespass is actionable without proof of any damage. In the case of **Philip Aluchio vs Chrispinus Ngayo [2014] eKLR J. E. Obaga** held as follows:-

**“.....The Plaintiff is entitled to general damages for trespass. The issue which arises is as to what is the measure of such damage. It has been held that the measure of damages for trespass is the difference in the value of the Plaintiffs property immediately after the trespass or the cost of restoration whichever is less.....”**

I award Kshs.300,000/- which I think is reasonable.

57. **Section 80** of the Land Registration Act, Act provides that:-

**1. Subject to subsection (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.**

**2. The register shall not be rectified to affect the title of a proprietor who is in possession and had acquired the land, lease or charge for valuable consideration, unless the 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 any act, neglect or default.**

58. The 1<sup>st</sup> Defendant’s title ought to be cancelled. I rely on the case of **Samuel Odhiambo Oludhe vs 2 Others vs Jubilee Jumbo Hardware Limited & Another [2018]**. It was held thus:

**“It will be seen from the above that title is protected, but the protection is removed and title can be impeached, if it is procured through fraud or misrepresentation, to which the person is proved to be a party; or where it is procured illegally, unprocedurally, or through a corrupt scheme. Where one intends to impeach title on the basis that the title has been procured by fraud or misrepresentation, then he needs to prove that the title holder was party to the fraud or misrepresentation”.**

I find that the 1<sup>st</sup> Defendant failed to demonstrate that he got his title procedurally.

59. In conclusion, I find that the Plaintiff has proved his case as against the Defendants on a balance of probabilities. I enter judgment in his favour as follows:-

**a. That a declaration is hereby issued that land known as plot 277 in the subdivision scheme of LR Numbers 10901/36 & 10901/37 or title number Ruiru/Kiu Block 10/538 belongs to the Plaintiff.**

**b. That a permanent injunction is hereby issued restraining the Defendants whether by themselves, their employees, agents, servants or any person acting under their authority from interfering with the Plaintiff’s quiet possession of land known either as plot 277 in the subdivision scheme of LR Numbers 10901/36 & 10901/37 or title number Ruiru/Kiu Block 10/538.**

**c. That an order is hereby issued directing the 1<sup>st</sup> and 2<sup>nd</sup> Defendant whether by themselves or their agent or employees or servant or any other person acting under their authority to remove themselves and any structure they have erected thereon from land known r as plot 277 in the subdivision scheme of LR Numbers 10901/36 & 10901/37 or title number Ruiru/Kiu Block 10/538.**

**d. That an order is hereby issued directing the Land Registrar Thika Land Registry to cancel the title issued to the 1<sup>st</sup> Defendant being Ruiru/Kiu Block 10 (Mahiira)/538 and the same be registered in the Plaintiff’s name.**

**e. Damages for trespass Kshs.300,000/-**

**f. Costs of this suit and interest.**

It is so ordered.

**DATED, SIGNED AND DELIVERED IN NAIROBI ON THIS 25<sup>TH</sup> DAY OF NOVEMBER, 2021**

.....

**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

Mr. Thuku for the Plaintiff

Ms Martin for Mr. Arusei for the Defendants

Steve - Court Assistant