



REPUBLIC OF KENYA

IN THE ENVIRONMENTAL AND LAND COURT

AT MOMBASA

ELC NO. 177 OF 2017

RATILAL GHELA SHAH.....PLAINTIFF

VERSUS

DARIUS MWITI KIRIMI

LAND REGISTRAR, KWALE.....DEFENDANTS

JUDGEMENT

I. PRELIMINARIES

1. This suit was instituted in this court through a Complaint dated 22nd May, 2017 by the Plaintiff against the 1st and 2nd Defendants. It was filed on 22nd May 2017. From the filed pleadings, the Plaintiff prayed for judgement to be entered jointly and severally against the 1st and 2nd Defendants herein as follows:-

- i. A permanent injunction to restrain the 1st Defendant, by himself, representatives, agents, employees, servants or whatsoever acting on his behalf, selling, alienating, letting, subdividing, transferring, charging, trespassing onto or in any other manner whatsoever interfering with the Plaintiff's ownership, use, possession and occupation of the property known as Kwale/Diani Complex/25.*
- ii. The Land Registrar be ordered to return and restore the parcel file and green card and all relevant documents relating to the register of Kwale/Diani Complex/25.*
- iii. Alternatively, the Land registrar be ordered to reconstruct the register/property file in respect of Kwale/Diani Complex/25.*
- iv. An order cancelling and nullifying the title deed issued in the name of the 1st Defendant on the 25th January 2017 on Kwale/Diani Complex/25.*
- v. An order directing the Land Registrar to rectify the register by cancelling the registration of the 1st Defendant and restoration of the register to its former status indicating the Plaintiff as the registered owner of Kwale/Diani Complex/25.*
- vi. An order to evict and remove the 1st Defendant, by himself, representatives, agents, employees, servants or whatsoever acting on his behalf from the property Kwale/Diani Complex/25.*
- vii. An order for the demolition and carting away of all and any structure erected on the Kwale/Diani Complex/25 by the 1st Defendant*
- viii. An order directing the officer commanding station (OCS) Diani to provide security, supervise and enforce the court orders granted herein.*
- ix. General damages and or mesne profits for trespass and unlawful occupation.*
- x. Interest and costs of the suit.*
- ix. Any other order as the court may deem fit and appropriate.*

The Plaintiff averred that he suffered and continued to suffer loss and damage and sought for the above injunctive orders, eviction, demolition and nullification of the Certificate of the title deed to the suit land.

II. THE PLAINTIFF'S CASE

2. The Plaintiff stated that he was the absolute and legal registered owner of all that parcel of Land Known as Land Reference numbers Kwale/Diani Complex/25 (Hereinafter referred to as "The suit property"), having had it transferred to him by a company trading in the names and style of Maltra Limited which company belonged to both Mr. Virchand Mulji Malde and the Plaintiff.

On or around 3rd May, 2017, the Plaintiff held he found out that the 1st Defendant had trespassed and acquired a Certificate of title deed to the same suit land through fraudulent, illegal means and un procedural ways. Indeed, he stated that the 1st Defendant was already in occupation clearly as a trespasser he claimed. He outlined the 1st Defendant's particulars of fraud, irregularities and illegality as follows:-

- a) *Making and forging documents that facilitated his purported transfer and registration of the suit property into his name,*
- b) *Purporting to file a non existing ELC No. 237 of 2016 between himself and Malta Limited who have no interest in the suit property in order to have undefended suit and obtained a consent order in the undefended and covered it up by causing the file to disappear from the court registry.*
- c) *Being in collusion with the 2nd Defendant caused the parcel file, green card and related documents to disappear from the land registry Kwale,*
- d) *Trespassing and unlawfully occupying and refusing to vacate and purported to sell the suit property.*
- e) *Purporting to transfer and register the suit property in his name knowing he had not acquired any registrable interest over the suit property.*

3. In the mid year of 2015, the Plaintiff lodged a complaint against the 1st Defendant with the Police on allegation of trespass and erecting unauthorized illegal structures on the suit property. Subsequently, the 1st Defendant was arrested and charges preferred against him. He was arraigned in court in the criminal case - CR 693 of 2015. According to the Plaintiff, the criminal case was later withdrawn upon the 1st Defendant offering to vacate from the suit property.

Additionally, the Plaintiff also pleaded that the 2nd Defendant committed an illegality by registering the 1st Defendant as being the legal owner to the suit property. On this aspect, the Plaintiff felt there could have been possibilities of collusion between these parties to advance the alleged fraud. The Plaintiff outlined the particulars of collusion, fraud and illegality meted and committed by the 2nd Defendant to include:

- a) *Purported to transfer and register the suit property to the 1st defendant without proper documentation and failed to verify these documentations or conduct any due diligence that would have revealed that the Plaintiff is the registered owner.*
- b) *Colluding with the 1st Defendant to do away with the parcel file, green card and relevant documents related to the suit property in order to create room for fraud to be perpetuated.*
- c) *Declined to register a caution in favour of the Plaintiff for the reason that the suit property was transferred to the 1st Defendant by a purported court order.*

The hearing of the suit began on 2nd May 2019, with the Plaintiff's case.

The Plaintiff's testimony

4. PW - 1 was the Plaintiff. He adopted his witness statement dated 22.5. 2017. As his evidence in chief, he produced the bundle of documents filed on 22nd May, 2017 and marked as the Plaintiff Exhibits 1 to 30. He testified that he was the absolute and legal registered owner of all the suit property having been transferred to him by Maltra Limited, where Mr. Virchand Mulji Malde and him were Directors. He showed court the original and produced a copy of the Certificate of title deed as evidence in his case. He stated that, at some point he went to view his property. While on the way, met with another Motor vehicle coming from the property. One of its passengers was the Family Bank, Manager whom they knew each other well. He held that the Manager told him that there was someone posing as the land owner who wanted to sell the land. He got curious. He went to the Land offices and discovered that indeed, the property's green card and register had been tampered with as they were missing from the land folio at the registry. He realized there was a problem. It was his testimony that the 1st Defendant was in occupation of the suit land.

5. PW – 1 stated that in the Company for the Officer In Charge of Police Station, they went to the land and found the wife to the 1st Defendant on it. They found the steel gates having been broken down and stolen. The wife to the 1st Defendant indicated if given a sum of Kenya Shillings One Thousand (Kshs. 1,000.00/=) she would immediately vacate the land. Although PW -1 gave her the cash as requested, she still persistent on occupying it for reasons known to her. In the course of time, the 1st Defendant was arrested and arraigned in court and charges of forcible detainer contrary to the provisions of Section 91 of the Penal Code preferred against him in Criminal case 693 of 2015. But according to the PW – 1, he only learnt that the criminal case was withdrawn and closed. He did not know what exactly happened. He

later on received a letter dated 6th May 2015 stating that the 1st Defendant was claiming to have been the Plaintiff's Caretaker. PW – 1 refuted this fact. The PW -1 never responded to the letter. He denied that the 1st Defendant was in the suit land as he had already fenced it off with a perimeter wall. He asked court to grant the prayers sought in the Plaintiff.

6. On being cross examined by Mr. Shimaka, the Learned Counsel for the 1st Defendant, PW – 1 reiterated being the owner to the suit property having bought it from Maltra Limited, where he was a director together with Virchaand Mulji Walde, his brother in law but who was now deceased. He responded by stating that upon buying the property, he ceased being a director. Unfortunately, he could neither produce the documents showing he was a director of the company nor from whom Maltra Limited had bought the land. He stated that in the year 2017 when he visited the land it was undeveloped but there was a wall. But when he later on visited it, he found a lady on the land whom he paid her some cash as per her request to enable her vacate from the land but she was not one of the Defendants herein.

He testified that the 1st Defendant's criminal case might have been dismissed. He acknowledged that neither the cheque payable to County Government of Kwale bore his name nor the receipt. He stated that the receipt was issued in the name of Gilbert Kimbio his manager. He was not cross examined by Mr. Wachira, the Learned Counsel for the 2nd Defendant.

7. On re - examination, he stated that the documents for Maltra Limited were with his Co - director, and that he got the property as part of his share while his Co - Director got the next plot. The witness testified that both Mr. Malde and Mr. Doshi were now both deceased so he never had any documents on him to support these assertions. At this juncture, the Plaintiff closed his case.

III THE 1ST DEFENDANT'S CASE

8. On 10th October 2017, the 1st Defendant filed a statement of Defence. He denied that the Plaintiff was the legal and registered owner to the suit property. He further denied being a trespasser to the land having acquired it through fraud, irregular and illegal means as alleged by the Plaintiff. He denied the Plaintiff had suffered any loss or damage as he was not its owner. While admitting being arrested and charged in the criminal case bearing numbers – CR 639 of 2015, he disputed the charges of trespass as instead they were the offence of forcible detainer contrary to Section 91 of the Penal Code, which he admitted was withdrawn by the Plaintiff for lack of sufficient evidence to support the offence. He urged court to have the suit instituted by the Plaintiff against him be dismissed with costs.

The 2nd Defendants' testimony

11. On 3rd March 2020, Mary Ndale Kai as DW – 1 testified and adapted her witness statement filed on 30th April 2019 as her evidence in chief. It was her testimony that she worked at Land Registry Kwale from the year 2006 and retired in the year 2010. She recollected a transfer of the suit property on 8th August 2006 booked in the presentation book as 013/8/2006. She testified that the following documents were presented for registration; transfer dated 27th July 2006, Letter of Consent obtained from the Land Control Board dated 14th February, 2006, clearance certificate dated 2nd August 2006, stamp duty declaration for No. 0172581 which she assessed on 2nd August 2006 and an official payment receipt. She then effected the transfer from Maltra Limited (the original allottee) to the Plaintiff on 8th August 2006 as Entry No. 4 and 5. She confirmed that she was the Land Registrar who signed the green card, as well as her signature that appears in the register after the two entries, which is a caveat issued to the Plaintiff. She further testified that after registration she issued a post registration official title that indicated the Plaintiff as the owner. She attested that at the time of her retirement in 2010, it was the Plaintiff who was registered as the owner of the suit land.

12. The witness produced the transfer form dated 24th September 1992 marked as Defence - exhibit 1, which transferred title from the Government of Kenya to Maltra Limited, title issued on 24th September 1992 and later transferred to the plaintiff. She also produced copy of the register showing Entry No 4 and 5 Marked as Defence - exhibit 2, a Letter of Consent obtained from the Land control board Msambweni to transfer the suit land from Maltra Limited to the Plaintiff Marked as Defence - exhibit 3, the stamp duty Entry declaration form Marked as Defence - exhibit 4 and the clearance form from the County Council of Kwale marked as Defence - exhibit 5. She also produced and marked as Defence-exhibit 6 a letter dated 18th January 1994 from the District Commissioner Kwale to the Commissioner of lands, which was a list of 860 allottee or squatters who were to be allocated land. She also indicated that Maltra Limited was the allottee No. 27 on the list among the allottees in Diani Complex. It was her testimony that while she was the Land Registrar, no one had come to claim the suit property, including the 1st Defendant. She clarified that she had never seen any document to support the ownership claim over the suit land meted by the 1st Defendant as who also had not registered any caveat of inhibition on the land.

The Case of the 2nd Defendant

13. On 29th April, 2019, the 2nd Defendant – the Land Registrar, represented by the Honorable Attorney General filed a statement of Defence. The Land Registrar relied on the correspondence file in her possession. She stated that the suit property was initially registered to Malta Limited as the first registered Owner on 24th September 1992 having gotten it from the Government of Kenya when the Diani Complex was created. It further pleaded that on the 8th August 2006, after being presented with the relevant completion documents, the 2nd Defendant registered the suit property in the Plaintiff's name under Entries numbers 4 and 5 respectively. The 2nd Defendant maintained that the Certificate of title was issued to the Plaintiff without any errors or reservations. The 2nd Defendant distanced itself from the claim made out by the 1st Defendant. It averred that, the 1st Defendant was not an allottee when land was being allotted under the Kwale Diani Complex. It was also pleaded that the 1st Defendant's claim to the ownership of the suit property was not substantiated. In addition, the 2nd Defendant denied ever issuing the 1st Defendant with any Certificate of title deed to the suit property as alleged. The 2nd Defendant contended that even if the title had indeed been issued to the 1st Defendant, it was done based on the documents delivered and sustained by the acts of the 2nd Defendants and were in good faith with any intentions of collusion with the 1st Defendant. The 2nd Defendant closed his case by asking court to grant the prayers as sought out by the Plaintiff in the Plaintiff as against the 1st Defendant.

14. In addition, on the 29th April, 2019 the 2nd Defendant also filed a Notice of Claim against the 1st Defendant, dated 29th April, 2019 under the provision of Order 1 Rule 24 of the Civil Procedure Rules 2010. It claimed against the 1st Defendant full indemnity for all claims made by the Plaintiff against the 1st Defendant, all damages, loss and expense of the suit as well as any other relief that the court may grant. The 2nd Defendant claimed that the 1st Defendant was the author of all the illegalities that led to the transfer and registration of the suit property in his name. The 2nd Defendant stated that the 1st Defendant was aware that he had not acquired any registerable interest over the suit property and hence had forged the transfer documents for registration. It was further claimed that the 1st Defendant deliberately misled the 2nd Defendant which led the Plaintiff to suffer considerable loss and damages necessitating him to institute this suit.

15. During the cross examination by Mr. K'Bahati the Learned Counsel for the Plaintiff, she confirmed the suit land was government land, and that Maltra Limited was the first registered owner from the Government of Kenya. Under the Entry No. 1 was the Government of Kenya while Entry No. 2 was Maltra Limited that was registered on 24 September 1992, Entry no. 3 was the issuance of title deed, Entry No 4 and 5 was transfer by Maltra Limited to the Plaintiff and the issuance of title to the Plaintiff respectively. She further testified that according to the green card, Entry No 5 was the last entry made out on 8th August 2006, thus the 1st Defendant was not registered anywhere. She confirmed that there some similarities of the Maltra's directors on the transfer dated 15th September 1992 and the one dated 8th August 2006. The witness stated that she had left the 2nd Defendant's office by the time the 1st Defendant was allegedly and ostensibly issued with a Certificate of title deed on 25th January 2017. She questioned the entries on the 1st Defendant's green card as the 1st entry showed the names of the 1st Defendant names while the 2nd entry showed the issuance of the Certificate of the title in his names. Taking that the suit land was government land, hence the 1st entry ought to be the government while the second entry the allottee and the third issuance of title in that sequential order. She explained that from the records of the settlement scheme and even adjudication section there was a list of allottees. Unfortunately, from the said records, they did not include the names of the 1st Defendant. She concluded that neither the official search nor the green card made any reference on it being the government land.

14. On cross examination by Mr. Shimaka, the Learned Counsel for the 1st Defendant, she could not recollect the date she recorded her witness statement or a statement at the DCI Kwale. She reiterated that she was the Land Registrar Kwale for four (4) years from the years 2006 to 2010. She stated that someone else was charged with the Land Adjudication and Settlement Section. She stated that she was not the one who drafted the letter marked as Defence - exhibit 6 dated 18th January 1994, since she had not been at Kwale by then. She also stated that on the list, parcel No.25 was for Mr. Hassan Hamadi Mwafrika and Parcel No. 27 was for Maltra Limited. The witness explained that documents were first booked before being assessed. In this case, the documents were booked on 8th August 2006 and provided with the day Book No. 013/8/2006. She further explained that when documents upon presentation, the documents were provided with a registration number. However, in the instant case, she could not remember the registration number. It was further her testimony that the transfer between Maltra limited and the Plaintiff was not indicated in monetary figures, but as the services rendered to the firm by the Plaintiff to Maltra limited. The witness expounded on the fact that since the suit land was freehold, they were supplied with a Letter of Consent from the Chairman of the Land Control board. In this case, no consent was required from the County Council of Kwale since the land was not leasehold. On the transfer of land form dated 15th September 1992 and registered on 24th September 1992, she stated that it was neither witnessed by an advocate nor was it assessed for stamp duty and that though booked as 0185/9/1992. She testified that she acknowledged entry No. 5 as the last entry, and claimed that the 1st Defendant could not be entry No. 1 which ought to be the Government of Kenya as the first registered owners of the suit land. She completely distanced herself from the manner in which the 1st Defendant had gotten the Certificate of the title deed to the suit land.

15. On re - examination by her Learned Counsels, she stated that stamp duty paid upon the purchase of the suit land was based on the declaration of the purchase price made for a sum of Kenya Shillings Three hundred Thousand (Kshs 300,000/=) and 2% of it, which amounted at a sum of Kenya Shillings Six Thousand (Kshs 6,000/=). It was paid upon the assessment conducted on 2nd August 2006. On 8th August 2006 they presented the documents for registration. She confirmed that though Defence - exhibit 2 was not certified, it contained her signature and a copy of the original which she signed. She also admitted that she received the title surrendered by Maltra Limited and the Plaintiff issued with a new title deed. She intimated that there may have been an exchange of numbers for Maltra Limited to be under Parcel No. 27 while in the Land Register it was registered as No. 25.

16. DW - 2 was Dick James Safari. He stated that he was the Land Registrar, Kwale. He adopted his witness statement dated 22nd May 2018 as his evidence in chief. The witness was cross examined by Mr. Shimaka. He referred to the transfer form dated 27th July 2006 and stated that it indicated that Maltra Limited had transferred the suit land to the Plaintiff. Further, it appeared to him that there was a previous transfer from the Government of Kenya to Maltra Limited. He stated that the suit property was under Registered Land Act Cap 300 (Repealed), to his knowledge it was registered as a scheme, which is Diani Complex.

17. He referred to Several court orders made out in these cases being ELC No. 177 of 2017, ELC No. 237 of 2016 and Kwale CMCC No. 51 of 2019 respectively, which he was not sure if they were filed. As indicated in the Green card, the witness affirmed that his office issued a title deed on 25th January 2017 following a court order issued in ELC 237 of 2016. He further stated that was the last entry on the green card and that he had not received any order vacating the orders in the case of ELC No. 237 of 2016. It was the testimony of the witness that the date on the Letter of consent from the Land Control Board dated 14th February 2006 was from Maltra limited to the Plaintiff. It was not clear. The Letter of Consent was not also certified. The witness testified that the Defence - exhibit No.2, the green card stopped at Entry No. 5 and there was no other entries after it. He clarified that the 1st Defendant was issued with a title pursuant to a court order which was entered as Entry No. 1 and 2 of the green card. He also confirmed that there were two parallel green cards indicating two different owners of the suit land, one which was opened pursuant to a court order. With regard to the Defence - exhibit No. 5 being a clearance certificate from County Government of Kwale dated 2nd August 2006, described the property as being L.R No. 25. He claimed that there was a difference between Diani Complex and Diani Settlement Scheme. To him the suit land was registered under a settlement scheme. The witness indicated that he had power to settle a boundary dispute and to cancel a title only in certain circumstances, but stated that he had never visited the property. He claimed that the matter had already been before court by the time he joined the land registry and clarified that he did not act on allegations of fraud insinuated by the Plaintiff. He held that if he was to issue a search it would show the 1st Defendant and a court order registered restraining any dealings.

18. On re - examination, he admitted that he had never seen the original copy of the court order in ELC No. 237 of 2016 neither had he seen a certified copy. He also acknowledged that he did not know of any proceedings in the case of No. 237 of 2016 and claimed that they were documents he found in the parcel file. The documents were the court order accompanied by an application form and a letter from the Learned Counsel Shimaka Advocate. He confirmed that there were no court proceedings. With that, Mr. Wachira closed the 2nd Defendant's case.

Interestingly, at this juncture, Mr Shimaka, the Learned Counsel for the 1st Defendant informed court that he did not wish to continue representing the 1st Defendant anymore. The Honorable Court granted him time to consult with his client on the same. Thereafter, the Learned Counsel and his client, the 1st Defendant agreed that, the 1st Defendant would from now moving forward would be appearing for himself – acting in person. The 1st Defendant confirmed to court that he would be ready to act for himself and proceed with on the hearing.

19. DW - 3 was Darius Mwithi Kirimi. He testified that the suit land belonged to Maltra Limited. He was employed there from the year 1996 as the caretaker of the property. It was the testimony of the witness that in the year 2000 the owner got sick and elderly and promised him that he would give him Plot No.25 as a reward for the services he had rendered the company. He claimed that the owner caused the property to be registered in his name. He was issued with a title deed, which he claimed it later got lost. He stated that later on, the police arrested him on the allegations he was trespassing the land. While at the police station, he met the Plaintiff who told him he would not pursue the case. He stated that he informed the Plaintiff that having lost the title. He later went to Mr. Marende Advocate seeking legal advise and representation. They filed a case on his behalf and obtained a court order. He stated that he was told the parcel file was missing at the land registry which prompted him to get a court order that was used to open a fresh green card in his favour. He stated that later on he found the original title in the name of Maltra Limited among his documents.

20. On cross examination by Mr. K'Bahati he stated that he started living on the suit land in the year 1996 having come from Meru. He stated that he was employed by Mr. Maltra from the year 1996. He could not remember his second name. He testified that he was paid a sum of Kenya Shillings Ten Thousand (Kshs. 10,000/=) from the year 1996 for about 9-10 year. He had no evidence of the alleged payment. He confirmed being charged for forcible detainer, as Mr. Shah had stated the land was his, but he had never vacated the suit land. The witness stated that in 2015 he did not have the title in his name. It was after filing the suit that he managed to obtain the Certificate of title deed. He had no documents related to the case and claimed that they were with his advocate. He claimed that he had sued the person who sold him the land as the land was his having been left to him. He stated that he was represented by an advocate but could not remember the court that the case was in. He further stated that he had not transferred it from Maltra to himself neither had he have an agreement. He admitted that he had not paid rates but was waiting to pay. He claimed that it was the advocate who obtained the title and still retained the original title.

21. He reiterated that he still lived on the suit land with his family. He claimed that his advocate gave him the court order and he took it to the Land Registrar. He stated that he was never told the land was registered in the name of the Plaintiff and that all he knew was that the registered owner was this employer. He further claimed to have his title deed which was with the advocate for safe keeping and that when he got it he wanted to sell. He testified that the court order that granted him title did not state that he should pay stamp duty. He also stated that he did not pay registration fees, he actually confirmed he did not make any payments. On cross examination by Mr. Wachira, he stated that the advocate collected the title deed in his name from the Land Registrar in the year 2017. He confirmed that he was charged with forcible detainer. He admitted that when the title got lost he never reported. In reference to Defence - Exhibit 1, he stated that the person who gave him the land was not among whose passport photos that were fixed on the transfer form. He stated that he could not remember when he was given the land. He also stated that Maltra gave him the title while at Diani Complex, and he never went to the land registry as there were no issues with the land. He sought legal service from his Advocate, Mr. Shimaka after the Plaintiff withdrew the case but he could not remember the year. He stated that he had built a semi-permanent house made of timber and iron sheet and had lived on the suit land before the year 1996. With that the court closed the 1st Defendant's case.

SUBMISSIONS

22. Upon the closure of both the Plaintiff and the Defendants case, the honorable court directed parties to file their final submissions and they are fully complied accordingly. On 10th September 2021 the law firm of Messrs. K'Bahati advocates, filed their written submissions on behalf of the Plaintiffs. The Learned Counsel submitted that the Plaintiff had produced sufficient evidence as pertaining to the ownership of the suit property, which had been backed by the testimony of DW - 1 and the completion documents that effected transfer of title from Maltra Limited to the Plaintiff. The Learned Counsel stated that the evidence was overwhelming and it proved that the Plaintiff was the lawful registered owner of the suit property.

23. The Learned Counsel claimed that the 1st Defendant never filed any witness statements nor list of documents to back his case. He only relied on his oral testimony and which was not backed up with any documentary proof. They were rather mere allegations that could not be sustained. The Learned Counsel casted doubt on the 1st Defendant's title, which was processed and obtained without him going through the due process apart from a copy of an alleged court order and even to the land registry. It was later collected by his advocate. The Learned Counsel argued that the fact that the 1st Defendant could not produce any documentation relating to the purported court case being ELC No. 237 of 2016 where the said orders were allegedly granted was another inconsistency in the manner in which he obtained his title. The Learned Counsel emphasized on the testimony of DW - 2, who confirmed that he neither saw an original nor certified copy of the order or proceedings of the said court case. The Learned Counsel concluded that the said case never existed and if it did, the 1st Defendant had destroyed it as it remained untraceable at the court registry. The Learned Counsel maintained that the Plaintiff had proved that the 1st Defendant had acquired a Certificate of title deed through an illegal and fraudulent manner.

24. The Counsel submitted that though the 2nd Defendant claimed to have been misled by the 1st Defendant to register him based on forged transfer forms and a court order, it seemed that the occupant of the said office at the time did not conduct proper due diligence on the matter. The Learned Counsel argued that the Land Registrar at the time of registering the 1st Defendant colluded with the 1st Defendant for the reason that he created a new green card and registered the 1st Defendant using unverified copy of a purported court order. The Learned Counsel argued that it was unlawful for the land registrar to have created a new green card yet there existed another one, despite the existing records that showed the Plaintiff was the registered owner. The Learned Advocate maintained that the destruction of these existing records

and creation of the new ones pointed out to fraud and collusion meted on part of the officers of the 2nd Defendant.

25. The Learned Counsel stated that once the Plaintiff proved ownership of the suit land, 1st Defendant ought to have proved consent to enter, use, and retain on it. The Learned Counsel submitted that the Plaintiff did not know the 1st Defendant nor had he employed him at all leave alone as the caretaker of the suit land as alleged by him. This position was affirmed by the 1st Defendant who stated that the Plaintiff was not his employer but an unnamed person. The Counsel Advocate argued that the 1st Defendant lacked consent to be on the land which was evident by the criminal case that was brought against him by the Plaintiff. The Counsel Advocate urged court to find that the 1st Defendant was a trespasser who had deprived the Plaintiff of the use and occupation of the suit land.

26. On whether the Plaintiff was entitled to general damages and mesne profits for trespass and unlawful occupation, the Learned Counsel submitted that trespass is actionable per se without proof of actual loss or damage and relied on the case of **Nakuru Industries Limited – Vs - SS Mehta & Sons (2016)eKLR**. The Learned Counsel argued that the Plaintiff had suffered actual damages in the form of actual physical entry and use of his property, which the Plaintiff admitted to have built dwelling houses on the suit land. Counsel contended that court ought to grant general damages taking into consideration that the 1st Defendant had profited by living rent free on the suit land and also the costs that the Plaintiff would incur in restoring the suit land in its former state. Counsel urged court to grant the Plaintiff general damages of Kenya Shillings Two Thousand and Twenty Five (Kshs. 2,500,000/=) and all the prayers sought in the Plaintiff.

The 2nd Defendant's Submissions

27. On 1st October, 2021 the Honorable Attorney General filed submissions on behalf of the 2nd Defendant. The Learned Counsel submitted that from the evidence on record it was certain that the Plaintiff was the absolute owner of the suit land. That the 1st Defendant misled and misrepresented the court in order to obtain court order that would be used to facilitate the transfer. His acts amounted to fraud, which is a ground for cancellation of title. Under provisions of Section 25 of the Land Registration Act as well as stated in the case of **Benina Wathuma Kamau – Vs - Nahashon Gichangi Macharia & 5 others (2021)eKLR**. Counsel submitted the 1st Defendant's registration ought to be cancelled and new registration entered in favour of the Plaintiff because there is sufficient proof that the 1st Defendant's title was illegally obtained. Counsel submitted that the 2nd Defendant's Notice of Claim against the 1st Defendant was not opposed by the 1st Defendant, ought to be taken as an admission of facts. He urged court to grant the prayers in the 2nd Defendant's Notice of claim as against the 1st Defendant and also find the 1st Defendant solely liable for the damage caused to the Plaintiff as well as the costs of the suit.

28. The 1st Defendant, who was acting in person did not file written submissions in court.

ANALYSIS AND DETERMINATION.

29. I have carefully read and considered all the pleadings, evidence adduced in court and the articulate written submissions made by the parties. In order to arrive at an informed, just and fair decision in this matter, this court has framed the following salient issues for determination. These are:-

- a) *Whether the Plaintiff is the legal and absolute registered owner of the suit property and hence vested with all the indefeasible rights, title and interest over it.*
- b) *Whether the Plaintiff has pleaded and proved the allegation fraud meted against the 1st and 2nd Defendants.*
- c) *Whether the Plaintiff is entitled to the prayers sought in the Plaintiff.*
- d) *Who is to bear the cost of the suit?*

ISSUE NO.

a). **Whether the Plaintiff is the legal and absolute registered owner of the suit property and hence vested with all the indefeasible rights, title and interest over it.**

30. The facts of the case are rather straight forward. The Plaintiff case is centered on the ownership of the suit land. He stated that he was the registered owner of all that parcel of land known as LR. No. Kwale/Diani Complex/25 and to prove ownership he produced a title deed, on it was entry numbers 4 and 5 that showed he was issued with a Certificate of title deed on 8th August 2006. The Plaintiff also produced the transfer of land registered on 8th August 2006 that demonstrated the suit property was transferred by Maltra Limited to himself for the services rendered to the firm as a director. The Plaintiff's case was interestingly backed up by DW - 1, who was the Land Registrar at the time the transfer was registered and title issued. DW - 1 produced a transfer dated 27th July 2006, Copy of the green card that showed entry No. 4 and 5, Consent from the Land Control Board dated 14th February 2006, Clearance Certificate dated 2nd August 2006 and a Stamp Duty declaration form. She affirmed receipt of the documents that were her basis for granting the Plaintiff title to the suit land, title deed which she confirmed that she signed on it together with the green card.

31. The 1st Defendant also laid claim to the suit land, he stated that it was gifted to him by its owner Mr. Maltra for the services he had rendered as its caretaker. The 1st Defendant's testimony was contradicting as to how he came to own the suit land. In examination in chief he stated "he caused the property to be registered in my name and I was issued with title deed. I later lost the title"; during cross examination by Mr. K'bahati he said "the advocate obtained the title. The original title is with my advocate". During cross examination he acknowledged that he neither had a transfer form from Maltra to himself nor had the original title, he claimed that his advocate (who ceased acting just

before the 1st defendant could give his testimony) had the title for safe keeping. He was at pains to explain to court how he got a court order in a court case being ELC No. 237 of 2016 that was the basis of obtaining a new green card that was used to register him as the owner of the suit property. I should firmly state that the 1st Defendant did not file any written witness statements that could have been admitted into evidence by court nor did he file a list of documents that he could produce to support his claim over the suit land.

32. Though the Defendant admitted to court in cross examination he had no title to produce as it was with his advocate, the Plaintiff produced a title deed dated 27th September 2017 and a certificate of official search dated 13th February 2017 bearing the name of the 1st Defendant. DW - 2, the current land registrar admitted to court that he created the new green card that bore the name of the 1st Defendant out of a court order; however on cross examination he acknowledged that he neither saw the original court order or its certified copy directing him to register the 1st Defendant. These facts led to the question at the epicenter of this case, who is the lawful registered proprietor of the suit land?

33. All said and done, this court underscores the fact that land in Kenya is a very emotive and sensitive matter. It is the source of livelihood to many and hence was relied on immensely thus any land dispute has to be handled with vast circumspect to avert creating any chaos or disarray situation arising. Under the provision of Article 61 of the Constitution of Kenya, land has been classified into three (3) categories. These are Public, Community or Private land. First and foremost there is need to appreciate the legal framework on land in Kenya. From the time of attaining independence of the Country, there has been very clear methods and procedures of the acquisition of land to public, individual and community categories. The Provisions of Section 7 of the Land Act No. 6 of 2012 provides the said methods as follows:

S. 7 Title to land may be acquired through:-

i. Allocations;

ii. Land Adjudication process;

iii. Compulsory acquisition;

iv. Prescription;

v. Settlement programs;

vi. Transmissions;

vii. Transfers;

viii. Long term leases exceeding Twenty one years created out private land; or

ix. Any other manner prescribed in the Act of Parliament.

In this case, the 1st Defendant has held it acquired its land from an innocent bona fide purchaser for value on notice and consideration which I shall be assessing in more depth hereinbelow. .

In Kenya, the effect of the Registration of Lands is founded in the provisions of Section 24 of **“The Land Registration Act’** which provides as follows:-

“Subject to this Act – 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 appurtenances thereto and;

34. To advance on this legal proposition, the efficacy, legitimacy and legality of the rights of the legal land proprietor is created through registration. The Certificate of Title and in this case Lease is deemed to be the *“prima facie”* evidence of the stated registration. The Certificate of Lease held by the land owner is protected under the Provisions of Law- Sections 25 (1) and 26 (1) of **“The Land Registration Act” No. 3 of 2012** provides as follows:-

“The right 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 interest and claims whatsoever.....”

This fact is strengthened by the following decisions - **“ELC (Nku) No. 272 of 2015 (OS) – Masek Ole Timukoi & 3 others –Versus- Kenya Grain Growers Ltd & 2 others and “ELC (Chuka) No. 110 of 2017 – M’Mbaoni M’Thaara – Versus- James Mbaka.** And in **Civil Appeal 60 of 1992 – ‘Dr. Joseph M. K. Arap Ngok –Versus- Justice Moijo Ole Keiwua’** where courts has held that:-

‘It is trite law that land property can only come into existence after issuance of a letter of allotment, meeting the conditions stated in such letter and actual issuance thereafter of title document pursuant to Provisions in the Act under the property is held.’

Whether the Plaintiff is entitled to the relief sought

35. In the instant case, I have set out the exact facts as to how each party obtained their respective Certificates title deeds. Having considered them in totality I find that the Plaintiff obtained good title that should be protected by the Provision of Section 26 of the Land Registration Act. In my view, the green card that was produced by DW - 1 as D-exhibit 4 demonstrated to court that the Maltra Limited passed good title to the Plaintiff on 8th August 2006. The green card also established that Maltra Limited had acquired title from the Government of Kenya on 24 September 1992. The 1st Defendant failed to substantiate how he acquired title to the suit land, he admitted that he had no transfer to demonstrate that Maltra Limited transferred the suit land for the services rendered. The 1st Defendant also failed to produce the court order issued in ELC No. 237 of 2016 that purported to direct the 2nd Defendant to register the suit property in his favour. In final settlement of the question of ownership of the suit land, I hold that the lawfully registered proprietor of title to all that parcel of land known as LR. No. Kwale/Diani Complex/25 is the Plaintiff for the reasons I have articulated above.

ISSUE NO.

b). Whether the Plaintiff has pleaded and proved the fraud meted against the 1st and 2nd Defendants.

36. I now turn to consider whether the Plaintiff has given cogent evidence of fraud, illegality and collusion on part of the Defendants. The Plaintiff has particularized fraud on part of the 1st and 2nd Defendants, his Counsel submitted that the 1st Defendant admitted that the Certificate of title deed was proceed without him going to the land registry or picking the title, which was collected and was kept by his advocate. The Learned Counsel claimed that the failure by the 1st Defendant to produce the proceedings let alone the court order in alleged ELC No. 237 of 2016 as another indication that the 1st Defendant did not want his fraudulent ways to be discovered by court. This was affirmed by the evidence of DW - 2, the current Land Registrar who admitted during Re-Examination that he created a new green card without ever seeing the original or certified copies of the court order, thus:- *“I have never seen the original copy of the court order in Case No. 237 of 2016, neither have I seen a certified copy. I do not know any proceedings in Case No. 237 of 2016. These are documents I found in the parcel file.”* DW - 2 distanced himself from the glaring illegal, irregular and fraudulent activities. He stated that the matter was before court by the time he joined the land registry and that he did not act on the allegations of fraud that were raised by the Plaintiff. It's worthwhile to mention at this point, that the 2nd Defendant made a Notice of Claim against the 1st Defendant for indemnification for all the claims made by the Plaintiff against the 2nd Defendant but the 1st Defendant never responded to the Notice, it remains undefended.

37. The Plaintiff maintained that the occupant of the office of the Land Registrar at the time the 1st Defendant was registered colluded with the 1st Defendant to delete the history of the suit land and ensured that the physical file that was available at the registry was the one he had illegally created. Counsel for the Plaintiff argued that the creation of a new green card in order to register the 1st Defendant on the basis of unverified court order was unprocedural and unlawful on the part of the land registrar. The Learned Counsel contended that the existence of two green cards on the same parcel of land was an admission of fraud on part of the 2nd Defendant to defeat the Plaintiff's title to the suit land. I have also noted that during the pendency of this proceedings, the Advocate representing the 1st Defendant openly in court opted to cease acting for him whereby he opted to continue acting in person. From the demeanor, that gesture imputed an element of mistrust.

38. It is trite law that fraud is a serious allegation that can lead to cancellation of a title, to be precise Section 26 (1) of the Land Registration Act states that a certificate of title can be challenged on the ground of fraud or misrepresentation to which the person is proved to be party to. The Court of Appeal of Uganda held in **Katende – Vs - Haridas and Company Limited (2008) EA 173** that *“for a party to plead fraud in registration of land a party must first prove fraud was attributed to the transferee. It must attribute either directly or by necessary implications that is, the transferee must be guilty of some fraudulent act or must have known such act by someone else and taken advantage of such act. Fraud can be participatory that is, the party participates in the fraudulent dealings. Fraud can also be imputed on a person, that is, when he or she was aware of the fraud and condoned it, or benefited from it or used it to deprive another person of his rights. All those people who actually participate in the fraudulent transactions and who had knowledge of it are privy and hade notice of fraud.”*

39. The Plaintiff must specifically plead fraud and prove it, since it's a question of evidence as stated in Section 109 of the Evidence Act. In **R. G Patel – Vs - Lalji Makanji (1957) EA 314** it was stated *“Allegations of fraud must be strictly proved: although the standard of proof may not be so heavy as to require proof beyond reasonable doubt, something more than a mere balance of probabilities is required.”* The evidence placed before this court supports the particulars of fraud that were pleaded by the Plaintiff. The 1st Defendant could not explain to court with certainty how he acquired title to the suit land, neither could he produce documentary evidence to proof ownership. He claimed that a person he referred to as Mr. Maltra who ostensibly was his employer and owner of the suit land had gifted him the land for the services he rendered as a caretaker. However he admitted not to have any transfer form from the Mr. Maltra. Perhaps, the more convincing evidence before court of fraud was the fact that the 1st Defendant could not produce the court order in ELC No. 237 of 2016 that was used to create a new green card and subsequent his registration. On cross examination he stated that he filed the suit. However, he could not provide any concrete details on the same only stating that his lawyer was in possession of all the documents pertaining to the case.

40. The 1st Defendant's evidence was full of contradictions and inconsistencies. At one point he stated that Mr. Maltra effected registration, then he stated he is the one who took the court order to the land registry and later he stated that it's his advocate who did the registration and collected the title. In further reference to the Ugandan case of **Katende - Vs - Haridas and Company Limited (supra)** where it was held *“the appellant case is not one of only irregularities in the early stages. This was a case tainted with fraud and forgeries throughout. Fraud went to the roof of the title. The original record having disappeared a substitute certificate of title was compiled from whatever documents could be found. However a false entry of the proprietor was made. The name of Mugenyi Asooka alleged to the predecessor in title was removed from another property. The substitute file and the instrument of transfer were all null and void.”* To the mind of court, there is no doubt that the 1st Defendant acquired title to the suit property using fraudulent means, and as such the title is void.

41. The question that begs to be answered is whether the 2nd Defendant colluded with the 1st Defendant in the commission of fraud. The Plaintiff has pleaded particulars of fraud on part of the 2nd Defendant for colluding with the 1st Defendant to defeat his title. The 2nd Defendant in turn filed a Notice of Claim against the 1st Defendant claiming that he presented forged documents and deliberately misled the 2nd Defendant into transferring and registering the suit land into his name. DW - 1, The Registrar who registered the Plaintiff's title,

distanced herself from any allegation of fraud, and stated that at the time of her retirement in 2010 the Plaintiff was the only registered owner of the suit property. DW - 2 the current Land Registrar who admitted to creating the second green card that registered the 1st Defendant is without verifying the court order. On cross examination he claimed that the order was accompanied by a letter from Mr. Shimaka the 1st Defendant's counsel and denied any allegation of fraud. He simply stated that he found the letter and the court order in the parcel file, which sounds to court as negligence on part of DW2. I refer to the case of **Gitwany Investment Limited – Vs - Taj Mall Limited and 3 others (2006) eKLR where Lenaola J** stated “*all documents leading to the issuance of title are not prepared, kept nor issued by any other party than that office, sometimes in conjunction with the directorate of survey. Any change in L.R or in acreage is a matter that is always in the hands of those officers and even if a private person in a professional capacity undertakes those tasks then those offices must always approve and thereafter take responsibility for those actions.*”

42. In my view, the 2nd Defendant could not simply wish away the responsibility of securing the sanctity of title, otherwise the whole process of registration of titles and the entire system in relation to ownership of title in Kenya would be placed in jeopardy. I find that there is evidence to show that the Plaintiff got assistance from some officials from the land registry to interfere with the records with the intention of depriving the Plaintiff of his title to the suit property. It is hard for this court to believe that any Land Registrar handling a land transaction that involved a court order would fail to verify the existence of that court order or even notice the glaring irregularities before creating a new green card and issuing a title deed. Land is very valuable and the 2nd Defendant ought to have thoroughly investigated the origin existence and authenticity of the court order before creating a new green card and registering the 2nd Defendant. Though I find the 2nd Defendant in particular DW - 2, acted recklessly and negligently by registering the 1st Defendant as the owner of the suit land, the Plaintiff has not placed before me convincing evidence that he was the mastermind behind the forged court order. As I have stated above, fraud has to be imputed on a particular person, that person has to be aware of the fraud and condoned it. The Plaintiff has failed to pinpoint the particular officer or officers of the 2nd Defendant who actually participated in, had knowledge of and benefited from the fraudulent transaction.

DETERMINATION

43. I now turn to make a quick determination on the 2nd Defendant's Notice of Claim against the 1st Defendant dated 29th April 2019 brought under Order 1 Rule 24 of the Civil Procedure Rules. The rule states:

(1) Where a Defendant desires to claim against another person who is already a party to the suit—

(a) that he is entitled to contribution or indemnity; or that he is entitled to any relief or remedy relating to or connected with the original subject-matter of the action which is substantially the same as some relief or remedy claimed by the Plaintiff; or

(b) that any question or issue relating to or connected with the said subject-matter is substantially the same as some question or issue arising between the Plaintiff and the Defendant and should properly be determined not only as between the Plaintiff and the Defendant but as between the Plaintiff and the Defendant and such other person or between any or either of them, the defendant may without leave issue and serve on such other person a notice making such claim or specifying such question or issue.

(2) No appearance to such notice shall be necessary but there shall be adopted for the determination of such claim, question or issue the same procedure as if such other person were a third party under this Order.

(3) Nothing contained in this rule shall operate or be construed so as to prejudice the rights of the plaintiff against any defendant to the action.

44. Sub rule (2) provides the procedure for determination of such a claim to be the same procedure adopted in third party proceedings, which are provided by Order 1 Rule 15. In the case of **Jeffrey L. Brown (suing on his own behalf and as administrator of the Estate of Sharon Mary Brown & MCB) – Vs - Castle Forest Lodge Limited & 2 others [2018] eKLR** it was held that “*Order 1 rule 24 which formed the basis of a notice of claim against the 2nd and 3rd defendants further provides in sub rule (2) thereof that the procedure for determination of the claim shall be the same procedure adopted in third party proceedings; in other words, once included in the suit, the Defendants ought to have been treated as third parties as understood under Order 1 Rule 15(1) of the Rules. The specific procedure is found in Order 1 rule 22 which is to the effect that where a third party enters appearance pursuant to a third-party notice, the Defendant giving the notice may apply to court by summons in chambers for directions on determination of the question of liability as between the Defendant and the third party. In the instant case no application was made or directions issued for determination of the question of liability between the 1st defendant and the 2nd and 3rd Defendants.*” The 2nd Defendant did not follow the laid down procedure and as such, failed to prove to court the liability between itself and the 1st Defendant.

45. On to the last issue for determination, the prayers sought in the Plaint dated 22nd May 2017, which I cluster them into the prayers of permanent injunction, cancellation of title and restoration of the Plaintiff's title, eviction of the 1st Defendant from the suit property, damages for trespass and costs of the suit. The permanent injunction relates to restraining the 1st defendant from interfering in whatsoever manner with the Plaintiff's ownership of the suit property. I have held above that the Plaintiff holds a valid title and he is therefore entitled to both ownership and possession of the suit land, no party save for himself and without his authority has any right to enter and remain on the suit property.

46. The 1st Defendant is a trespasser on the suit property, he admitted in cross examination that he has constructed a semi-permanent house made on timber and iron sheets where he resides. He stated that despite the criminal case that was brought against him, he has never vacated the suit property. In reference to the case of **Gitwany Investment Limited – Vs - Taj mall Limited and 3 others (supra)** it was held that “*In my mind the legal possession established by Gitwany entitles it to possession against all other parties that have shown no better title than its own. The 1st Defendant falls in this category and once its title is found to be invalid it can only be termed a trespasser. In Winfield and Jolewic on Tort, 16th edition 2002, the point is graphically put on page 487 para 13.3 “...it is no defence that the only reason for...entry*

was that he (the trespasser) had lost his way or even that he genuinely but erroneously believed that the land was his.” The 1st Defendant is accordingly declared to be a trespasser on the suit land as argued by the Plaintiff and I hold so.”

47. The Plaintiff prays for eviction orders to eject the 1st Defendant and demolish any structures erected on the suit land. The Plaintiff ought to take physical possession of the suit land since he has title, and for him to do so he has the right to evict the 1st Defendant and remove all the structures on it. The 1st Defendant shall meet the costs of removing all the structures currently on the suit property, whose existence amount to an act of continued trespass. I agree with the Learned Counsel for the Plaintiff that the 1st Defendant benefited by living on the suit property rent free since 1996 in his own admission, and he ought to incur the costs of removing whatever he has constructed on it at the very least.

48. The Plaintiff prays for general damages and or mesne profits for trespass and unlawful occupation. The Plaintiff neither demonstrated to court the value of the suit property nor has he established the monthly income expected from it. The Plaintiff’s counsel simply stated in his submissions that the court ought to consider the rental income the Plaintiff could have earned if he had rented out the suit property. With no valuation report produced, I have no basis to award a particular amount as mesne profits to the Plaintiff, the lack of clarity and proof has led to the failure of this claim. For general damages, counsel for the Plaintiff relied on the case of **Nakuru Industries Limited – Vs - SS Mehta & Sons (2016) eKLR**, the court awarded the defendant damages of Kshs 500,000/= for trespass. It was held “*The upshot is that this suit succeeds only in so far as the Plaintiff claim against the defendant for trespass. The tort of trespass is one which is actionable without proof of any damage.*”

49. **Obaga J, in Philip Aluchio – Vs - Crispinus Ngayo (2014) eKLR** stated “*The Plaintiff herein did not adduce any evidence as to the state of his property before and after the trespass. It therefore becomes difficult to assess general damages for trespass. There was no evidence adduced on the nature of house which the Defendant has constructed on the suit land. The court is at a disadvantaged position in reaching at a cost which might be reasonable for restoration of the property to its former state. However as I have found that the Plaintiff is entitled to general damages for trespass, I will award a nominal sum of Kshs. 100,000/= as general damages for trespass. This cost will go towards restoration of the suit land to its former state.*” Similarly, the Plaintiff has not given the value of the land before and after trespass and in the Plaintiff it is averred that the 1st Defendant trespassed on or before 3rd May 2017.

50. For avoidance of any doubt, these are the final orders of this court:-

a) **THAT a permanent injunction is hereby issued restraining the 1st Defendant, by himself, representatives, agents, employees, servants or whatsoever acting on his behalf, selling, alienating, letting, subdividing, transferring, charging or in any other manner whatsoever interfering with the Plaintiff’s ownership, use, possession and occupation of the property known as Kwale/Diani Complex/25.**

b) **THAT it is hereby declared that the Plaintiff is the absolute and legal registered bona fide proprietor of all that parcel of land known as Land Reference numbers Kwale/Diani Complex/25.**

c) **THAT the title held by and registered in the name of 1st Defendant, Darius Mwiti Kirimi Kwale/Diani Complex/25 be and is hereby declared invalid and under the provisions of Section 80 (1) & (2) of the Land Registration Act, of 2012, the Land Registrar, Kwale is hereby directed to cause its cancellation and also the Land Entries within the next 30 days from the date of this judgement.**

d) **THAT the Land Registrar, Kwale is directed to restore Kwale/Diani Complex/25 parcel file to its former status which indicated the Plaintiff as the legal and absolute registered proprietor within the next 30 days from the date of this judgement.**

e) **THAT the 1st Defendant is directed to vacate from and remove all the structures on all that parcel of Land known as Land Reference Numbers Kwale/Diani Complex/25 within the next 30 days from the date of this judgement failure to which the Plaintiff shall be at liberty to legally evict the 1st Defendant pursuant to the provision of Section 151E of the Land Act, of 2012 and demolish all the structures on all that parcel of land known as Land reference numbers Kwale/Diani Complex/25 at the 1st Defendant’s expense.**

f) **THAT the Plaintiff is awarded a sum of Kenya Shillings Five Hundred Thousand (Kshs. 500,000.00) for general damages for trespass as against the 1st Defendant.**

g) **THAT the 1st Defendant to pay the costs of the suit to the Plaintiff and the 2nd Defendant to bear its own costs.**

IT IS ORDERED.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 25TH DAY OF NOVEMBER 2021

L. L NAIKUNI

JUDGE

ENVIRONMENT AND LAND COURT

MOMBASA

IN THE PRESENCE OF YUMNA COURT ASSISTANT.

NON APPEARANCE FOR THE PLAINTIFF;

NON APPEARANCE FOR THE DEFENDANT