



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CIVIL CASE NO. 1478 OF 2013 AS CONSOLIDATED WITH ELC 140 OF 2014 (OS)

STEPHEN MOCHU MIRU.....PLAINTIFF

VERSUS

PETER KINYUA MIANO.....DEFENDNANT

AND

ELC CIVIL CASE NO. 1478 OF 2013 AS CONSOLIDATED WITH ELC 140 OF 2014

PETER KINYUA MIANO.....PLAINTIFF

VERSUS

STEPHEN MOCHU MIRU.....DEFENDNANT

JUDGMENT

INTRODUCTION

1. This judgment relates to two files, namely, ELC No. 1478 of 2013 and ELC No. 140 of 2014 (Originating Summons), which matters were ordered and/or directed to be heard together, albeit without a direct Order for Consolidation.

2. In respect of ELC 1478 of 2013, the Plaintiff seeks the following Reliefs:

I. An Eviction order to be issued against the defendant, his agents or servants from L.R No. NGECHA/KABUKU/T120 and together with removal of his structure.

II. Costs of the suit.

3. On the other hand, the Plaintiff in respect of ELC 140 of 2014 has sought for the following Reliefs:

I. Upon whom and in what manner shall this summons be served.

II. Has the Plaintiff acquired title to the said parcel of land L.R No. NGECHA/KABUKU/T.120 by reason of adverse possession thereof since the year 1967.

III. Was the Defendant's title to the said parcel of land L.R No. NGECHA/KABUKU/T120 extinguished upon expiration of a period of 12 years since the Plaintiff took possession in the year 1967.

IV. Does the defendant hold title of the parcel of land in trust thereof for the Plaintiff.

V. Is the Plaintiff entitled to an order of this honourable court that he be registered as the proprietor of the said parcel of land L.R No. NGECHA/KABUKU/T120.

VI. Who, as between the defendant whose title was extinguished and a person authorized should execute the transfer and in what

form, if any is necessary, of the said parcel of land known as L.R No. NGECHA/KABUKU/T120 to effectuate the registration of the Plaintiff as the proprietor thereof.

VII. *Who shall bear the costs of this Originating summons*

4. Following the filing of the Plaintiff in respect of the first matter herein, the defendant duly entered appearance and thereafter filed a statement of defense whereby same denied the claim mounted by the Plaintiff and essentially, the claim that the Plaintiff herein is entitled to vacant possession and/or eviction.

5. Besides, the Defendant also averred and/or contended that same entered upon and commenced occupation of the suit property, namely L.R No. NGECHA/KABUKU/T120, in the year 1967 and that same has been in occupation and/or possession of the suit property to date. Consequently, the Defendant has thus sought for an order that the plaintiff's title to and/or in respect of the suit property, has lapsed and/or stands extinguished.

6. On the other hand, upon filing the Originating summons dated the 24th September 2012, albeit, filed on the 13th February 2014, the Defendant to the said originating summons, (*who is the Plaintiff herein*) duly entered appearance and thereafter filed a Replying affidavit sworn on the 12th March 2014, to which the Defendant has annexed and/or attached various annexures.

7. On or about the 19th November 2019, the Originating Summons came up for hearing and on which day, the honourable court issued directions to the effect that ELC No. 1478 of 2013 and ELC No. 140 of 2014 (O.S), be heard together. In this regard, the two files have been tied together.

PLEADINGS AND AVERMENTS BY THE PARTIES:

PLAINTIFF'S CASE:

8. The Plaintiff in respect of ELC Case No. 1478 of 2013, filed the plaint dated the 2nd December 2013 and in respect of which same has stated that he (plaintiff) entered into a land sale agreement with one Eliud Njoroge, who thereby sold and transferred to and in favor of the Plaintiff the entire of the property otherwise known as L.R No. NGECHA/KABUKU/T120.

9. It was further averred that upon the transfer of the suit property, to and in favor of the Plaintiff, the vendor of the suit property left and/or assigned the duty of pointing out the location and/or position of the suit property to the defendant herein, who was stated to be a brother of the vendor.

10. It was further averred, that the Defendant herein proceeded to and pointed out to the plaintiff, a parcel of land, which the Defendant imagined to be the suit property, namely L.R No. NGECHA/KABUKU/T120.

11. Pursuant to and upon the parcel of land being pointed out by the Defendant, in line with the instructions of the vendor, the Plaintiff entered upon and took possession of what was believed to be the suit property.

12. Subsequently, the Plaintiff herein commenced to and in fact carried out extensive developments on what was believed to be the suit property.

13. Nevertheless, the Plaintiff has averred that on or about February 2011, one Kamau Marige, alerted the Plaintiff that the portion of land, which same occupied was LR L.R No. NGECHA/KABUKU/T119, as opposed to the suit property, namely L.R No. NGECHA/KABUKU/T120.

14. As result of the disclosure y one Kamau Marige, the Plaintiff herein, who had previously imagined that what he was occupying was the suit property, commenced to and carried out investigations and thereby ascertained that indeed the portion of land, which same has occupied was L.R No. NGECHA/KABUKU/T119 and not the suit property.

15. Pursuant to the foregoing, the Plaintiff averred that he was thus constrained to lodge a complaint with the Land Dispute's tribunal, with a view to helping him (plaintiff), to recover vacant possession against the Defendant, over and in respect thereof.

16. It is further averred that the complaint before the land dispute's tribunal, was heard and determined, culminating into the delivery of a Judgment on 23rd November 2011, whereby it was found and held that the plaintiff is the lawful owner of the suit property. In this regard, the Defendant was ordered to vacate.

17. Be that as it may, the Defendant herein declined to comply with and/or abide by the decision of the tribunal. Consequently, the defendant proceeded to and filed Judicial Review Proceedings.

18. Following the contest by the Defendants, same proceeded to and lodged Judicial Review Proceedings, seeking to challenge and/or to quash the Decision of the Land Disputes's Tribunal, **vide Nairobi Misc. Civil Application 121 of 2017 (JR)**.

19. It is worthy to note that the Judicial Review Proceedings, which were filed and/or lodged by the Defendant was heard and disposed of, whereupon the Judicial Review Application was allowed.

20. Owing to the successful petition by way of *Judicia Review*, the Plaintiff herein was forced and/or constrained to file the subject suit, seeking for orders of vacant possession as against the Defendant.

DEFENDANT'S CASE

21. Upon being served with the summons to enter appearance, the Defendant herein proceeded to file his statement of defense, whereby the Defendant denied the plaintiff's claim.

22. It was a further averment that though the initial entry and the occupation of the suit property was informed and/or occasioned by mistake, the Defendant however, contended that same has been in occupation thereof, adversely and without the permission of the Plaintiff.

23. In the premises, the Defendant herein has now sought for an order for declaration that same has since acquired the suit Land by way of adverse possession. Consequently, the Defendant has sought for orders of Rectification of the Register and the Transfer of the suit property to and/or in his favor.

EVIDENCE BY THE PARTIES:

24. The subject matter came up for hearing on the 12th October 2021, when the Plaintiff testified and called one witness.

25. For clarity, the plaintiff testified as PW1 and same stated that on or about the year 1983, he bought and/or purchased the suit property, namely *L.R No. NGECHA/KABUKU/T120* from one Eliud Njoroge, who thereby executed the necessary transfer, culminating into the registration of the suit property, in favor of the Plaintiff.

26. It was the Plaintiffs further testimony that upon the purchase and/or acquisition of the suit property, the vendor, namely Eliud Njoroge tasked and/or mandated his brother namely (*the Defendant herein*) to point out and/or show the Plaintiff, the ground position and/or location of the suit property herein.

27. Further, the Plaintiff testified that in line with the instructions by the vendor, the Defendant herein proceeded to and pointed out, the suit property. However, what was pointed out by the Defendant, latter on transpired and/ or turned out to be *L.R No. NGECHA/KABUKU/T119*.

28. Be that as it may, the Plaintiff further testified that he nevertheless entered upon and took occupation of what was pointed out and proceeded to and developed same.

29. Notwithstanding the foregoing, the Plaintiff testified that on or about February 2011, one Kamau Marige confronted him (plaintiff) and demanded that the Plaintiff must vacate and move out of the land in which he was occupation of.

30. As a result of the foregoing, the Plaintiff testified that he was constrained to and thus carried out investigations, with a view to ascertaining the ground position and/or location of the suit property.

31. Owing to the foregoing, the plaintiff testified that he was able to identify the true position and/or location of the suit property and it transpired that the suit property, is the one which was under the occupation of the Defendant herein.

32. The Plaintiff further testified that upon the discovery that what he was occupying was not the suit property and that the suit property was indeed what the Defendant was occupying, same proceeded to and filed Complaint at the Land Disputes Tribunal, seeking to evict the Defendant.

33. The Plaintiff further averred that after the filing of the complaint, same was heard and concluded, culminating into a decision being rendered by the tribunal on the 23rd November 2011, whereby it was declared that the suit property lawfully belonged to the Plaintiff.

34. Nevertheless, the Plaintiff further testified that upon the delivery of the award by the tribunal, the Defendant herein filed *Judicial Review Proceedings* challenging the validity and/or propriety of the award and thus sought for the award to be set aside.

35. It was the plaintiff's further testimony that after the hearing of the judicial review proceedings, a judgment was entered whereupon the judicial review proceedings were allowed and the award of the land disputes tribunal was Quashed, varied and/ or otherwise set aside. set aside.

36. Following the quashing of the award, the Plaintiff stated that he was thus constrained to file the subject suit, whereby same is seeking recovery of vacant possession and eviction of the defendant.

37. On the other hand, the Plaintiff called one Eliud Njoroge, who testified as PW2. According to PW2, he sold to and transferred in favor of the Plaintiff the entire of the suit property, which was immediately transferred and registered in the Plaintiff's name.

38. It was PW2's further testimony that after same had transfered the suit property to the Plaintiff, he requested the Defendant herein to show the plaintiff the ground position pertaining to and/or in respect of the subject matter.

39. PW2 further averred that after the sale of the suit property, he moved out and acquired land in Subukia, wherein same has been living to date.

40. As concerns the dispute between the Plaintiff and the Defendant, the witness testified that same arose in the year 2011, when it was discovered that what was supposed to be the suit property was actually a different parcel of land, while the suit property was actually under the occupation of the Defendant.

41. Be that as it may, PW2 testified that the occupation of the Defendant on the suit property was based on an error and/or mistake, because the Defendant had imagined that what he was occupying was indeed *L.R No. NGECHA/KABUKU/T119*.

42. As pertains to the claim by the Defendant to have acquired adverse possession over and in respect of the suit property, same testified that no such rights had accrued, because it is the Defendant that had created or caused the mistake. In this regard, the witness disputed the Defendants claim.

43. Suffice it to note, that the witnesses herein, were never cross examined, even though the Defendant's counsel was present. For clarity, the Defendant's counsel informed the court that he has no question for the witness.

44. With the foregoing, the Plaintiff's case was closed.

DEFENDANT'S CASE:

45. Though the Defendant was aware and was duly knowledgeable of the hearing date, same did not attend court and thus no evidence was adduced for and on behalf of the Defendant.

46. It is also worthy to note, that the Defendant's counsel who was present and participated in the hearing intimated to the court that same did not have any evidence to offer and consequently same proceeded to close the Defendant's case.

SUBMISSIONS BY THE PARTIES:

47. Following the close of the Plaintiff's and defendant's case respectively, the court ordered and directed that the parties do file written submissions.

48. Pursuant to and in line with the directions of the court, the Plaintiff herein filed and/or lodged his submissions on the 25th October 2021.

49. On the other hand, the Defendant though aware of the liberty to file submissions, same has not filed any.

50. Be that as it may, the short submissions which were filed by the Plaintiff herein are part of the record and the court is thus enjoined to consider same.

ISSUES FOR DETERMINATION:

51. Having considered and/or evaluated the Plaint dated 2nd December 2013, the witness statement attached thereto as well as the exhibits, coupled with oral testimonies tendered before the court, together with the written submissions, on one hand and upon considering the originating summons and the supporting affidavit thereto, the issues that arise for determination are as hereunder;

I. Whether the Plaintiff is the lawful and legitimate proprietor of the suit property.

II. Whether the Defendant is a trespasser and if so, whether the same ought to be Evicted.

III. Whether the Defendant has acquired adverse possessory rights over and in respect of the suit property.

IV. What Reliefs ought to be granted

ANALYSIS AND DETERMINATION:

ISSUE NUMBER ONE:

52. The Plaintiff herein offered and/or tendered evidence showing that same entered into and/or executed a land sale agreement with one Eliud Njoroge, namely PW2, whereby the latter sold to and/or in favor of the Plaintiff the entire of the suit property, namely *L.R No. NGECHA/KABUKU/T120*.

53. Following the entry into and execution of the sale agreement, coupled with the transfer and registration of the suit property in favor of the Plaintiff, the Plaintiff was duly and lawfully issued with a title over the suit property. For clarity, the title in respect of the suit property was produced as P exhibit 1 together with a certificate of official search.

54. In any event, even the Defendant herein has confirmed and acknowledged that indeed the suit property belongs to and is registered in the name of the Plaintiff and thus the claim for adverse possession.

55. In the premises, it is common ground that the Plaintiff herein is the registered proprietor and/or owner of the suit property, which

registration is denoted by the title as well as the certificate of official search.

56. In a nutshell, I therefore find and hold that the Plaintiff is the lawful and legitimate proprietor of the suit property. Consequently, the Plaintiff is entitled to benefit from and/or partake of the rights attendant to such ownership in line with the provision of Section 24 and 25 of the Land Registration act, 2012, which provides as hereunder;

24. *Interest conferred by registration 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. *Rights of a proprietor*

(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.

ISSUE NUMBER TWO [2]

57. Having found and held that the Plaintiff is the lawful and registered proprietor over and in respect of the suit property, the question then remains as to whether any third party can enter upon and/or remain in occupation of the Plaintiff's land, without the permission or consent of the plaintiff.

58. In respect of the instant matter, it is important to note that the Defendant herein, has not denied occupation of the suit property. However, same contends that his occupation thereof, has extinguished the Plaintiff's rights thereto.

59. Be that as it may, it is important to note that the Plaintiff herein has neither authorized nor consented to the entry and/or occupation of the suit property. Consequently, the entry onto the suit property has thus been carried out and perfected without the authority of the plaintiff.

60. To the contrary, evidence has been tendered and/or adduced by the Plaintiff showing the circumstances under which the Defendant entered upon and took possession of the suit property. For clarity, it was stated that the Defendant entered upon the suit property under the guise and/or assumption that same was *L.R No. NGECHA/KABUKU/T119*.

61. Nevertheless, the correct position as to the details of the land which was under occupation by the Defendant, became apparent in the year 2011, when it transpired that what was under the Defendant's occupation was actually the suit property and not *L.R No. NGECHA/KABUKU/T119*.

62. Upon the discovery, that what was under the Defendant's occupation was the suit property and not otherwise, the Defendant herein thus required the permission and/or consent of the Plaintiff to continue occupying and/or possessing the suit property.

63. However, no such consent was ever sought for nor granted and in this regard the actions and/or activities by the Defendant therefore amounted to trespass. For clarity, trespass has been defined vide Section 3(1) of the Trespass Act Chapter 294 to mean as hereunder;

Trespass

10. Section 3 (1) of the Trespass Act, Cap 294 provides that:

"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."

64. Based on the foregoing definition, any entry upon and/or intrusion by a person onto to the land belonging to another, without the permission and/or consent of the registered owner therefore amount to trespass.

65. In respect of the subject matter, the Plaintiff has led evidence to show that indeed the Defendant misled same into believing that the land which was pointed out to the Plaintiff was the suit property, yet it latter turned out not to be.

66. On the contrary, the Defendant herein has not controverted and/or challenged the evidence tendered by the Plaintiff. In this regard, the Plaintiff evidence thus remains uncontroverted and same is therefore believable.

67. In support of the foregoing position, I adopt and subscribe to the decision in the case of **Fedrick Joshua Ony'iego v Robert Sanganyi (2014) eKLR, where the honourable court** observed *inter-alia*;

The plaintiff's claim against the defendant is based on the tort of trespass. I am satisfied that the plaintiff has proved his claim against the defendant on a balance of probability. The plaintiff has proved that he is the registered proprietor of the suit property. The plaintiff has proved that the defendant entered the suit property and has remained in occupation of the suit property without the plaintiff's permission. The defendant has admitted that he is in occupation of the suit property. Although the defendant claims to have purchased the suit property from one, Cremencia Onyiego, the defendant did not tender any evidence in proof of his title over the suit property. The plaintiff's evidence regarding his proprietorship of the suit property has therefore not been controverted. It is therefore my finding that the plaintiff is the registered and lawful owner of the suit property. The defendant has not shown any lawful cause or justification for his entry and remainder in occupation of the suit property. In the circumstances, I am in agreement with the plaintiff that the defendant is a trespasser on the suit property. Due to the foregoing, I am satisfied that the plaintiff has proved his case against the defendant and that the plaintiff is entitled to the reliefs sought save for his claim for general damages in respect of which no proper basis was laid.

68. With the foregoing, I came to the conclusion that the entry upon and continued occupation of the suit property by the defendant amounts to trespass.

ISSUE NUMBER THREE [3]

69. According to the Defendant herein same has averred that under common mistake and/or by virtue of an oversight on his part, same entered upon and took possession of an adjacent parcel of land L.R No. NGECHA/KABUKU/T120, believing it to be his title number L.R No. NGECHA/KABUKU/T119 and has similarly fully developed the land. See paragraph 5 of the supporting affidavit to the originating summons sworn on the 24th September 2012.

70. On the other hand, the Defendant has further averred that because he had no title deed of the said land, namely the land that he was occupying and which he believed was his, same made numerous bids to pursue the issue of title through courts as against one Gichana Karanja, who had sold the piece of land namely L.R No. NGECHA/KABUKU/T119 unto him, See paragraph 7 of the affidavit in support of the originating summons.

71. From the Defendant's own deposition, it is evident and/or apparent that the Defendant's entry into, occupation of and/or continued use of the suit property, was based on the knowledge and/or assumption that the land which he was occupying was L.R No. NGECHA/KABUKU/T119.

72. Indeed the knowledge and assumption by the Defendant that same was occupying L.R No. NGECHA/KABUKU/T119, was only affected in the year 2011, when the plaintiff discovered that what the Plaintiff was occupying was L.R No. NGECHA/KABUKU/T119, belonging to Kamau Marige, whilst what was the Defendant was occupying was L.R No. NGECHA/KABUKU/T120, belonging to the Plaintiff.

73. In view of the foregoing, the Defendant cannot lay a claim for adverse possession to the suit property, for the entire duration when same knew and/or believed that the land belonged to him. For clarity, adverse possession cannot arise where the claimant believes he owned the land

74. In support of the foregoing position, I adopt and restate the position of the law as was captured in the decision in the case of **Catherine Koriko & 3 Others v Evaline Rosa (2020) eKLR, where the court observed as hereunder;**

A claim for adverse possession is inconsistent with the claim for being a beneficiary of the estate of a deceased person. In the original suit, the appellants did not concede that indeed the respondent was the true owner of the suit property.

75. Similarly, one cannot also lay a claim for adverse possession when he is contending that the title of the adverse party was procured and/or obtained by fraud. For clarity, a claim for adverse possession can only arise where the claimant concedes that the title belongs to the adverse party and that the title of the adverse party is not being challenged on whatever ground save for and on the basis adverse possession.

76. In support of the foregoing position, I share in and subscribe to the findings of the court in case of **Haro Yonda Juaje -v- Sadaka Dzeno Mbauro & Another (2014) eKLR** it was stated:

[29] One cannot succeed in a claim for adverse possession before conceding that indeed the registered proprietor of the land is the true owner of the said land. It does not lie in the mouth of a claimant to aver that the title held by the registered proprietor was fraudulently acquired and then claim the same parcel of land under the doctrine of adverse possession. If the Plaintiff's averment is that the title which was issued to the Defendant was fraudulently acquired, then his cause of action would be for the rectification of title by cancellation pursuant to the provisions of Section 143 of the Registered Land Act and not adverse possession. He cannot use the doctrine of adverse possession to go around the decision of the Minister.

77. In a nutshell, the Defendant herein having *hitherto* believed that the suit property belonged to him, same cannot turn around and lay a

claim on account of adverse possession. **Such a claim is contradictory and self defeating.**

78. But even assuming, that the Defendant could raise a claim for adverse possession, time for claiming adverse possession was interrupted by the filing of the proceedings before the land Dispute's tribunal which were filed in October 2011, and thereby defeating and/or interrupting the running of time.

79. On the other hand, it is also important to note that the claim of adverse possession was filed and/or lodged on the 1st January 2014, long after the suit for eviction had been lodged on the 4th December 2013. Clearly, by the time of lodging the claim for adverse possession, the time and duration had been interrupted and thus no claim for adverse possession can arise and/ or accrue during the pendency of the subject proceedings.

80. In support of the foregoing submissions, it is important to take cognizance of the decision of the court in the case of **Njuguna Ndatho v Masai Itumo & 2 Others [2002]eKLR**, it was stated as hereunder;

"The passage from Cheshire's Modern Law of Real property to which Potter JA made reference in Githua v Ndeete is important and deserves to be read in full. It is at page 894 Section VI under the rubric THE METHODS BY WHICH TIME MAY BE PREVENTED FROM RUNNING and the learned author says -

"Time which has begun to run under the Act is stopped either when the owner asserts his right or when his right is admitted by the adverse possessor. Assertion of right occurs when the owner takes legal proceedings or makes an effective entry into the land. The old rule was that a merely formal entry was sufficient to vest possession in the true owner and to prevent time from running against him. Such a nominal entry, even though it was secret, entitles him to bring an action within a year afterwards, and as it was possible to make such an entry every year, in this case called continual claim, the title to land might be in doubt for longer than the period of limitation. It was therefore provided by the Real Property Limitation Act 1833, in a section which has been repeated in the Limitation Act 1939, that a person shall not be deemed to have been in possession merely because he has made an entry on the land. He must either make a peaceable and effective entry, or sue for recovery of the land.'

I agree that the mere filing of a suit for recovery of possession may not disrupt the possession of the adverse possessor, it being a physical thing, but as regards the stopping of time for the purposes of the Act, I would fully subscribe to the position expounded by Potter JA in Githu v Ndeete, and which has solid backing in the passage I have read from Cheshire. It is the sensible step to take instead of going into the disputed land armed to dislodge the adverse possessor, an act which can only result in a serious breach of the peace or even loss of life. It may well be true that in India the position as set out by Kneller JA in Muthoni v Wanduru does work, but I do not regard it as a practical approach to take in land disputes in Kenya. As there are authorities of this Court going both ways I am free to decide which way to go. An on this particular point I will go with the Potter JA. The only reason I can think of for the apparent contradiction in the decisions I have discussed is the total absence of law reports during the period under review, a calamity which has yet to be redressed."

81. The period for which the Defendant could lay a claim for adverse possession, was interrupted and/or terminated by the filing of ELC No. 1478 of 2013. Consequently, the filing of the Originating Summons, which came after the Eviction case, can not thus confer any legitimate right to the Defendant.

NATURE OF RELIEFS/ FINAL DISPOSITION:

82. From the foregoing analysis, it must have become evident that the plaintiff herein has proved and/or satisfied the burden of proof, to warrant the grant of the reliefs at the foot of the Plaintiff.

83. Conversely, the Defendant herein, has not laid before the honourable court any basis to warrant Declaration of adverse possession. In any event, the claim for adverse possession cannot lie where the claimant believes that the land under which he is occupying belonged to him.

84. In the premises, I now make the following orders;

- a. The Plaintiff herein be and is hereby declared to be the lawful and registered proprietor of *L.R No. NGECHA/KABUKU/T120*.
- b. The Defendant herein shall vacate and move out of the suit property within 90 days from the date of this Judgment.
- c. In default of moving out and/or vacating from the suit property within the stipulated 90 days, the Plaintiff shall be at liberty to forcibly and/ or forcefully, Evict the Defendant from *L.R No. NGECHA/KABUKU/T120* and to demolish any illegal structures standing thereon.
- d. The Defendant's originating summons dated the 24th September 2012, but filed in court on the 13th February 2014, **vide ELC Number 140 of 2014**, be and is hereby Dismissed.
- e. The Plaintiff shall have the costs of the suit, as well as the Originating Summons.

85. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 22ND DAY OF NOVEMBER 2021.

HON. JUSTICE OGUTTU MBOYA,

JUDGE,

ENVIROMENT AND LAND COURT,

MILIMANI.

In the Presence of;

June Nafula Court Assistant

.....For the Plaintiff.

.....For the Defendant.