



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC SUIT NO. 1453 OF 2002

CHARLES ADAVACHI MALENYA.....PLAINTIFF

VERSUS

STEPHEN G. KIARIE.....1ST DEFENDANT

NAIROBI CITY COUNCIL.....2ND DEFENDANT

THE CHIEF LAND REGISTRAR.....3RD DEFENDANT

JOSEPH NDUATI NGUGI.....4TH DEFENDANT

NANCY GATHONI.....5TH DEFENDANT

JUDGMENT

1. The Plaintiff brought this suit against the Defendants on 9th September, 2002 through a plaint dated 5th September, 2002. The plaint was amended on 28th July, 2004. In his amended plaint dated 22nd July, 2004, the Plaintiff sought the following reliefs;

- a) A declaration that the purported registration of L.R No. Nairobi/Block 63/316 was unlawful, null and void.
- b) An order directing that the said registration of L. R No. Nairobi/Block 63/316 effected on 24th September, 2001 be cancelled by the Registrar of Land.
- c) An injunction restraining the Defendants from transferring, alienating, constructing or in any manner dealing with the property until the final determination of the suit.
- d) Alternatively, and without prejudice the Defendants do compensate the Plaintiff for the full market value of the undeveloped property known as L.R No. Nairobi/Block 63/316.
- e) Costs of this suit.
- f) Such other relief as may be deemed fit.

The Plaintiff's case:

2. The Plaintiff averred that through a letter of allotment dated 10th February, 1992 he was allocated all that property known as Land Reference No.262 situated at Jamhuri Estate Phase II which upon survey and registration was given Land Reference No. Nairobi/Block 63/316 (hereinafter referred to as "the suit property").

3. The Plaintiff averred that he paid Stand Premium and Annual Rent for 1992 in accordance with the terms of the said letter of allotment and was issued with Receipt No.591070 dated 17th February 1992 by the 2nd Defendant.

4. The Plaintiff averred that he was subsequently issued with a Beacon Certificate on 25th January 2002 by the 2nd Defendant after which he executed a lease and lodged it with the 2nd Defendant for execution and registration.

5. The Plaintiff averred that on or about 20th August 2002, the 1st, 4th or 5th Defendants started digging trenches on the suit property for

purposes of carrying out construction thereon.

6. The Plaintiff averred that when the 1st, 4th and 5th Defendants started erecting a permanent structure on the suit property, he conducted a search on the suit property on 21st August, 2002 which revealed that the 1st Defendant was registered as the proprietor of the suit property and that a title had been issued to him on 24th September, 2001.

7. The Plaintiff averred further that there was also an instrument of transfer of the suit property by the 1st Defendant to the 4th and 5th defendants jointly that had been lodged for registration on 19th February, 2002 but the same had not been registered because of the caution that the Plaintiff had lodged to stop any dealings with the property.

8. The Plaintiff averred that despite the suit property having not been registered in their names, the 4th and 5th Defendants took possession thereof and continued developing the same.

9. The Plaintiff averred that the registration of the suit property in the name of the 1st Defendant was unlawful, fraudulent and void *ab initio*. The Plaintiff set out the particulars of fraud alleged against the 1st Defendant.

10. At the trial, the Plaintiff told the court that he was allocated the suit property which was then known as Plot No.262 situated at Jamhuri Estate Phase II by the 2nd Defendant on 10th February 1992 through a letter of allotment of the same date which he produced as PExh.1.

11. The Plaintiff stated that he was required under the said letter of allotment to pay Stand Premium and Annual Rent totaling Kshs. 10,800/- which he paid on 17th February, 1992. He produced the receipt that was issued to him by the 2nd Defendant as PExh.2. The plaintiff stated that he paid survey fees in the sum of Kshs. 15,000/- on 22nd January, 2002 and was subsequently issued with a Beacon Certificate on 25th January, 2002. He produced a copy of the Beacon Certificate and a copy of the receipt that were issued to him by the 2nd Defendant as PExh.3 and PExh.4.

12. The Plaintiff stated that the 2nd Defendant had instructed the firm of Mbese & Kitur Advocates to prepare conveyancing documents for the parcels of land at Jamhuri Estate Phase II that were allocated to the Plaintiff and others. The Plaintiff averred that the said advocates wrote to him on 5th February, 1998 demanding a sum of Kshs. 32,685/- comprising of their legal fees and disbursements. The Plaintiff stated that he paid to the said firm of advocates a sum of Kshs. 4000/- on 20th August, 2002 as part of legal fees, Kshs. 2000/- on 2nd September, 2002 for the preparation of a caution and Kshs. 5000/- on 28th November, 2002 for the preparation of the lease. The receipts issued by the firm of Mbese & Kitur Advocates for the said payments were produced together as PExh. 6.

13. The Plaintiff stated that after the said firm of advocates prepared the conveyancing documents, the same were forwarded to the 2nd Defendant to confirm that the same were in order after which the same were returned to Mbese & Kitur Advocates. The Plaintiff stated that Mbese & Kitur Advocates forwarded the said documents to the Ministry of Lands together with a sum of Kshs. 444,250/- for processing of titles. The Plaintiff produced a copy of the said firm's letter forwarding a cheque for the said sum of Kshs. 444,250/- to the Commissioner of Lands and a copy of the cheque as PExh.7 and PExh.8 respectively. A copy of the receipt dated 25th March, 1998 that was issued for that payment was produced as PExh.9.

14. The Plaintiff stated that the Government of Kenya issued the 2nd Defendant with a lease in respect of L.R No. Nairobi/Block 63/286 and the 2nd Defendant was to issue to the Plaintiff among others with subleases in respect of the portions of the said property that were allocated to them. The Plaintiff produced a Certificate of Lease that was issued to the 2nd Defendant on 15th February, 1994 in respect of Nairobi/Block 63/286 as PExh. 10. The Plaintiff stated that despite having made all the payments that were required by the 2nd Defendant, he was never issued with a sublease.

15. The Plaintiff stated that he used to visit the suit property from time to time and that on 20th August, 2002 when he visited the suit property, he found the 1st, 4th and 5th Defendants digging trenches on the suit property with the intention of putting up permanent structures thereon.

16. The Plaintiff stated that it was this incident that prompted him to carry out a search on the title of the suit property at the Land Registry which revealed that the suit property was registered in the name of the 1st Defendant in 2001.

17. The Plaintiff stated that upon making inquiry with the 2nd Defendant on this development, the 2nd Defendant told him that the documents that he held in respect of the suit property were in order and that the 2nd Defendant did not know under what circumstances the 1st Defendant acquired the title to the suit property.

18. The Plaintiff stated that on 18th October, 2004, the 2nd Defendant wrote to the Chief Land Registrar informing him that the leases in respect of the suit property and another land parcel Nairobi/Block 63/571 were issued irregularly to Joseph Kabubu and Nicholas Mureithi respectively. The Plaintiff produced copies of the letter dated 18th October, 2004 by the 2nd Defendant to the Chief Land Registrar and the letter dated 21st April, 2005 by the 2nd Defendant to the Plaintiff's advocates as PExh. 11 and PExh. 12 respectively.

19. The Plaintiff stated that even after the admission by the 2nd Defendant that the title held by the 1st Defendant was issued irregularly; no action was taken to correct the anomaly. The Plaintiff urged the court to grant the reliefs sought in his amended plaint.

20. In his written submissions, the Plaintiff submitted that the Defendants did not challenge the evidence that he tendered showing that the 1st

Defendant's title to the suit property was fraudulently acquired. The Plaintiff submitted that the fact that the 1st Defendant held a title did not in itself limit the powers of the court to look into the process through which the title was acquired. In support of this submission, the Plaintiff cited Alberta Mae Gacci v Attorney General & 4 others [2006]eKLR, Republic v Minister for Transport & Communication & 5 Others Ex Parte Waa Ship Garbage Collector & 15 Others [2006]1 KLR (E&L) 563 and Kenya National Highway Authority v Shalien Masood Mughai & 5 Others[2017]eKLR.

21. The Plaintiff submitted further that the 1st Defendant's title having been acquired fraudulently, the same could not enjoy protection accorded by law and the same applies to the interest claimed by the 4th and 5th defendants in the property. In support of this submission, the Plaintiff cited Elijah Makeri Nyangw v Stephen Mungai Njuguna & Another [2013] eKLR.

The 2nd and 3rd Defendants' case:

22. The 2nd and 3rd Defendants filed separate statements of defence dated 26th September 2002 and 24th December 2002 respectively denying the Plaintiff's claim in its entirety. The 2nd Defendant averred that it was not a party to the alleged fraud in the transfer of the suit property to the 1st Defendant. In addition to denying the claim generally, the 3rd Defendant averred that the suit was bad in law the same having been erroneously served contrary to Section 13 of the Government Proceedings Cap. 40, Laws of Kenya. The 3rd defendant averred in the alternative that the suit contravened section 13A of the Government Proceedings Cap. 40, Laws of Kenya. The 2nd Defendant neither tendered evidence nor filed submissions. The suit against the 3rd Defendant was withdrawn on 2nd April, 2003.

The 1st, 4th and 5th Defendants' case:

23. The 1st Defendant filed his statement of defence on 10th March, 2003. The 1st Defendant averred that he was allocated the suit property by the 2nd Defendant and that he was the lawful owner of the property. The 1st Defendant averred that he held a Certificate of Lease that was issued to him following the said allocation. The 1st Defendant averred that on or about 30th January, 2002, he sold and transferred the suit property to the 4th and 5th Defendants. The 1st Defendant averred that the 4th and 5th Defendants had already taken possession and commenced construction on the suit property. The 1st Defendant denied that he acquired the suit property fraudulently. The 1st Defendant averred that the suit property was lawfully allocated to him and that he complied with all the conditions of the allotment before he was issued with a title. The 1st Defendant averred that the Plaintiff's suit was incompetent in that the same was challenging a first registration. The 1st Defendant denied that the Plaintiff had suffered any loss or damage.

24. At the trial, the 1st Defendant gave evidence as DW1. DW1 adopted his witness statement dated 9th May, 2016 as his evidence in chief. He stated that the suit property was allocated to him by the 2nd Defendant through a letter of allotment dated 12th February, 1992 and upon applying for a Certificate of Lease, the same was issued to him on 24th September, 2001.

25. DW1 stated that he thereafter sold the suit property to the 4th and 5th Defendants in 2002 and gave them possession. DW1 stated that he was later informed by the 4th and 5th Defendants that they were unable to transfer the suit property to their names because of a caveat that had been placed on the title by the Plaintiff.

26. DW1 produced the documents attached to his list of documents dated 9th May, 2016 as DExh.1. On cross examination, DW1 stated that he was aware of the process that had to be followed in acquiring land from the City Council of Nairobi. He stated that one had to apply to be allocated land and after allocation, he had to pay stand premium and annual rent. DW1 stated that he had no evidence that he accepted the allocation and paid the stand premium and annual rent.

27. DW1 stated further that he had no evidence that he paid for the preparation of the lease after the suit property was allocated to him. He stated that he did not even have a copy of the lease for the suit property. He stated that he did not also have a Beacon Certificate. DW1 stated that what he had was only the Certificate of Lease. He stated that he did not also have evidence that he paid for the said Certificate of Lease. DW1 stated that he gave many of the documents he had in relation to the suit property to the 3rd and 4th Defendants. He denied that he acquired the suit property fraudulently.

28. The 4th and 5th Defendants filed a joint statement of defence dated 18th October, 2004. The 4th and 5th defendants denied the Plaintiff's claim in its entirety. At the trial, the 4th Defendant gave evidence as DW2 on his own behalf and on behalf of the 5th Defendant. The 4th Defendant adopted his witness statement dated 9th May, 2016 as his evidence in chief. He also produced the documents attached to the 4th and 5th Defendants' list of documents dated 9th May, 2016 as DExh.2. DW2 testified that he conducted a search before purchasing the suit property which confirmed that the property was registered in the name of the 1st Defendant.

29. DW2 stated that they had developed the suit property with 6 apartments which brings in rental income of Ksh.150, 000/- per month. He stated that when he commenced construction of the said apartments, he was served with a demand letter by the Plaintiff to stop the development but he did not stop. He stated that the Plaintiff lost the injunction application he had brought to stop the construction. In cross-examination, he stated that he did not go beyond the 1st Defendant's title to find out how he acquired the same.

30. In their joint submission, the 1st, 4th and 5th Defendants submitted that the 3rd Defendant raised a successful preliminary objection under Section 13A of the Government Proceedings Act, Cap. 40 Laws of Kenya and had the suit against it withdrawn by the Plaintiff.

31. The 1st, 4th and 5th Defendants (hereinafter referred to only as "the Defendants") submitted that the Plaintiff did not tender evidence showing that he accepted the allotment and thereafter complied with the terms and conditions thereof. The Defendants submitted further that

the date on the alleged letter of allotment in favour of the Plaintiff was superimposed over another date namely, 10th October 1992. The Defendants submitted further that the Plaintiff did not take possession of the suit property for over 10 years and never processed a title in respect thereof.

32. The Defendants submitted that the Plaintiff's Beacon Certificate allegedly issued on 10th February, 1992 was dated 25th January, 2002. The Defendants submitted further that the said Beacon Certificate had no connection with the Certificate of Lease for L.R No. Nairobi /Block 63/286 which the Plaintiff had produced in evidence.

33. The Defendants submitted that the Plaintiff had failed to discharge the burden of proof that was on him. In support of their submission, the Defendants cited section 107, 109 and 116 of the Evidence Act, Cap. 80 Laws of Kenya, Halsbury's Laws of England, 4th Edition Volume 17 Paragraph 13 and 14, and Mbuthia Macharia v Annah Mutua Ndwiga & Another [2017]eKLR, Rajan Shah T/A Rajan S.Shah & Partners v Bipin P.Shah[2016]eKLR, Jennifer Nyambura Kamau v Humphrey Mbaka Nandi [2013]eKLR, John Kanyungu Njogu v Daniel Kimani Maingi [2000]eKLR and Miller v Minister of Pensions[1947]2 ALL ER 372.

34. The Defendants submitted further that the witness statement of Zipporah M.Wandera and the alleged correspondence between the 2nd Defendant and the Ministry of lands dated 18th October, 2004, 4th February, 1998, 18th October, 2004, 17th February, 2004 and 21st April, 2005 which the Plaintiff relied on in his submission were not admissible in that the same were not tendered in evidence at the trial. In support of this submission, the Defendants relied on Johana Kipkemei Too v Hellen Tum [2014] eKLR and Henry Tiolo Ndiema v Independent Electoral and Boundaries Commission & 2 others [2018] eKLR.

35. The Defendants submitted that they were the lawful registered proprietors of the suit property and that the Plaintiff had not proved that the property was acquired through forgery and fraud. In support of this submission, the Defendants cited Dr.Joseph Arap Ngok v Justice Moijo Ole Keiwua & 5 others, Civil Appeal No.Nai.60 of 1997, Charles Karathe Kiarie & Others v Administrators of the Estate of John Wallace Mathare (Deceased) & 5 others[2013]eKLR, Shadrack Kuria Kiman v Stephen Gitau Nganga & Another ELC Case No.489 of 2017 and Stephen Mburu & 4 Others vs Comat Merchants Ltd & Anor[2012]eKLR.

Determination:

36. The parties did not agree on the issues for determination by the Court. In my view, the following are the issues arising for determination in this suit which I will consider together;

- a) Whether the registration of the suit property in the name of the 1st Defendant was unlawful, fraudulent null and void.
- b) Whether the 1st defendant acquired a valid title over the suit property.
- c) Whether the sale of the suit property by the 1st defendant to the 4th and 5th defendants was lawful and whether the 4th and 5th Defendants acquired a valid interest in the suit property.
- d) Who is the lawful proprietor of the suit property?
- e) Whether the Plaintiff is entitled to the reliefs sought.
- f) Who should bear the costs of the suit?

37. I am persuaded that the Plaintiff was allocated the suit property by the Nairobi City Commission on 10th February, 1992. The 1st, 4th and 5th Defendants(Defendants) had contended that the Plaintiff's letter of allotment may have been issued on 10th October, 1992 and backdated to 10th February, 1992. The date of 10th February, 1992 is in my view consistent with the payments that the Plaintiff made for the allotment. The payment was made on 17th February, 1992. The Plaintiff produced in evidence a copy of an official receipt bearing that date which bore evidence that the payment of Kshs. 10,800/- was received by the Nairobi City Commission on 17th February, 1992. It would not have been possible for the Plaintiff to pay for the allotment made on 10th October, 1992 on 17th February, 1992. The fact that the suit property was allocated to the Plaintiff on 10th October, 1992 is further reinforced by the Beacon Certificate which also bears 10th October, 1992 as the date when the suit property was allocated to the Plaintiff.

38. The 1st Defendant also contended that the suit property was allocated to him by the Nairobi City Commission on 12th February, 1992. The 1st Defendant produced in evidence a copy of his letter of allotment dated 12th February, 1992. The 1st Defendant did not however tender evidence of payment of the stand premium and annual rent that was to be paid for the allotment within 30 days from the date of his letter of allotment. The Plaintiff's letter of allotment and the 1st Defendant's letter of allotment are said to have been signed Mrs. Z.M. Wandera who was the town clerk of the 2nd defendant at the material time. Ms. Wandera had recorded a witness statement on 17th December, 2012 that was filed in court on 10th May, 2016 in which she confirmed that the suit property was allocated to the plaintiff on 10th February, 1992. Mrs. Wandera had passed on as at the time the suit came up for hearing and as such she never gave evidence.

39. From the dates on the two letters of allotment, it is not in dispute that the Plaintiff's letter of allotment was the first in time. It is also not disputed that the Plaintiff accepted the allotment and paid the stand premium and the annual rent that were set out in the said letter of allotment within the prescribed time. In Suleiman Murunga v Nilestar Holdings Limited and Another [2014] eKLR and Rukiya Ali Mohamed v David Gikonyo Nambacha & Another Kisumu HCCA No. 9 of 2004 it was held that once a letter of allotment has been issued and the allottee meets the conditions therein, the land the subject of the letter of allotment is no longer available for allocation to any other person unless the first allotment has been cancelled or revoked by the allotting authority.

40. It follows therefore that the suit property was not available for allocation to the 1st Defendant unless the allotment of the same property to the Plaintiff was cancelled. There is no evidence that the letter of allotment dated 10th February, 1992 to the Plaintiff in respect of the suit property was cancelled by the 2nd Defendant or the Nairobi City Commission. It follows therefore that the purported allotment of the suit property by the Nairobi City Commission to the 1st Defendant was irregular and unlawful. The letter of allotment dated 12th February, 1992 could not therefore confer any valid interest on the 1st Defendant in respect of the suit property.

41. Apart from the Certificate of Lease, the 1st Defendant produced in evidence no other document of title in respect of the suit property. The 1st Defendant did not even produce the lease on the strength of which he was issued with the said Certificate of Lease. The said Certificate of Lease in favour of the 1st Defendant dated 24th September, 2001 derived its validity from the letter of allotment dated 12th February, 1992. As I have held above, the said letter of allotment was invalid and as such could not confer any proprietary interest upon the 1st Defendant in respect of the suit property. The lease if there was any and the Certificate of Lease dated 24th September, 2001 that were issued pursuant to that letter of allotment were in the circumstances invalid as they were anchored on an illegality. It is my finding therefore that the said letter of allotment dated 12th February, 1992 and the Certificate of lease dated 24th September, 2001 on which the 1st Defendant based his claim to the suit property were invalid null and void.

42. The suit property was registered under the Registered Land Act, Chapter 300 Laws of Kenya (now repealed). Under section 143 of the Registered Land Act, this court has power to rectify the register if it finds that the registration was made by fraud or through a mistake. Under section 26 of the Land Registration Act, 2012, the conclusiveness of proprietorship of land or lease conferred upon registration can be challenged on the grounds of fraud or misrepresentation to which the registered proprietor is proved to be a party or where the title has been acquired illegally, unprocedurally or through a corrupt scheme. Article 40(6) of the Constitution provides that protection accorded to right to property does not extend to property found to have been acquired unlawfully.

43. In Henry Muthee Kathurima v Commissioner of Lands & Another (2015) eKLR, the Court of Appeal stated that:

“We have considered the provisions of Section 26 of the Land Registration Act in light of the provisions of Article 40(6) of the Constitution and it is our considered view that the concept of indefeasibility of title is subject to Article 40(6) of the Constitution. Guided by Article 40 (6) of the Constitution, we hold that the concept of indefeasibility or conclusive nature of title is inapplicable to the extent that the title to the property was unlawfully acquired.”

44. In Nairobi High Court Civil Suit No. 1024 of 2005(O.S), Milan Kumar Shah & 2 others v City Council of Nairobi & another, a three judge bench stated as follows:

“We hold that the registration of title to land is absolute and indefeasible to the extent firstly that the creation of such title was in accord with the applicable law and secondly where it is demonstrated to a degree higher than the balance of probability that such registration was not procured through fraud and misrepresentation to which the person or body which claims and relies on that principle has not himself or itself been part of a cartel which schemed to disregard the applicable law, and the public interest”.

45. In Munyu Maina v Hiram Gathiha Maina, Civil Appeal No. 239 of 2009, the Court of Appeal stated that:

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

46. The Plaintiff has demonstrated that the 1st Defendant acquired the suit property unlawfully. I am satisfied that even the fraud alleged against the 1st Defendant cannot be ruled out. Once the Plaintiff established that he was the first one to be allocated the suit property and that he accepted the allotment and paid the requisite charges to the Nairobi City Commission for the property, the burden shifted to the 1st Defendant to establish that his acquisition of the property was regular and lawful. As I have stated earlier, the only documents produced in evidence in support of the 1st Defendant’s claim to the suit property were a letter of allotment that was purportedly issued to him after the property had been allocated to the Plaintiff and a Certificate of Lease.

47. The 1st Defendant admitted in cross-examination that acquisition of land from the 2nd Defendant was a process. The 1st Defendant did not produce any evidence showing that he accepted the allotment in respect of the suit property and paid the requisite charges. The 1st Defendant was at pains to explain how he acquired the Certificate of Lease. He did not produce any evidence that he paid for the lease preparation. He did not even have a copy of the lease that purportedly gave rise to his Certificate of Lease.

48. The 1st Defendant claimed that he gave most of the documents relating to the suit property to the 4th and 5th Defendants. The 4th and 5th Defendants did not produce any such documents. In the absence of evidence that the 1st Defendant accepted the allotment, paid the requisite charges and was issued with a lease by the 2nd Defendant, the Certificate of Lease held by the 2nd Defendant can only be fraudulent the same having been issued without due process. The Plaintiff having proved that the 1st Defendant acquired the suit property illegally and fraudulently, the title held by the 1st Defendant is not protected by law. The same is null and void.

49. Since the 1st Defendant did not have a valid title to the suit property he had no interest in the property that he could convey to the 4th and 5th Defendants by way of sale. The purported sale of the suit property by the 1st Defendant to the 4th and 5th Defendants was therefore illegal, null and void. The suit property had not been transferred to the 4th and 5th Defendants as at the time the Plaintiff brought this suit. The 4th

and 5th Defendants had notice through the Caution that the Plaintiff registered against the title of the suit property that he had an interest in the property. The 4th and 5th defendants did not in any event plead that they were innocent purchasers of the suit property without notice of the Plaintiff's interest. Their defence was a mere denial. It is my finding therefore that the 4th and 5th Defendants acquired no valid proprietary interest in the suit property from the 1st Defendant.

50. From the forgoing, I am satisfied that the Plaintiff is the lawful beneficial owner of the suit property. The suit property was lawfully allocated to the Plaintiff by the Nairobi City Commission. The Plaintiff accepted the allotment and satisfied the terms thereof. The Plaintiff paid for the survey of the suit property and the preparation of the lease. What was remaining was for the plaintiff to be issued with a sublease and certificate of lease. The process was then hijacked by the 1st Defendant at the offices of the Commissioner of Lands and he had a Certificate of Lease issued to him instead of the Plaintiff. I have held above that the said Certificate of Lease which is not supported by the relevant documentation is fraudulent null and void. Since the 1st, 4th and 5th Defendants had no valid title over the suit property, they had no right to enter and commence development thereon.

51. Under section 143 of the Registered Land Act, Chapter 300 Laws of Kenya (now repealed) and section 80 of the Land Registration Act, 2012, the court has power to rectify the register if it finds that the registration was made by fraud or through a mistake. I have made a finding that the 1st Defendant was registered as the owner of the suit property fraudulently and illegally and that the title held by him is null and void. I am satisfied that this is an appropriate case in which an order for the rectification of the register should be made. Since the Plaintiff has established that he is the bona fide owner of the suit property, the Plaintiff is also entitled to the injunction sought to restrain the Defendants from interfering with his possession and enjoyment of the suit property. The Plaintiff had sought an alternative relief for compensation based on the undeveloped market value of the suit property. This in my view would be an appropriate relief having regard to the fact that the 4th and 5th Defendants have already developed the suit property.

52. On the issue of costs, the same is at the discretion of the court. The Plaintiff has succeeded in his claim against all the Defendants. I will award the Plaintiff the costs of the suit against the 1st, 4th and 5th Defendants.

53. Conclusion:

In conclusion, I hereby enter judgment for the Plaintiff against the 1st, 2nd, 4th and 5th Defendants as follows;

1. I declare that the purported registration of L.R. No. Nairobi/Block 63/316 in the name of the 1st Defendant was unlawful, null and void.
2. The Chief Land Registrar shall forthwith rectify the register of L.R. No. Nairobi/Block 63/316 by cancelling the registration of the property in the name of the 1st Defendant that was effected on 24th September, 2001.
3. The execution of the orders given in 2 above is stayed for a period of ninety (90) days from the date hereof within which period the 1st, 4th and 5th Defendants jointly and severally shall be at liberty to pay to the Plaintiff the market value of L.R. No. Nairobi/Block 63/316 (the suit property) without developments thereon as at the date of the valuation.
4. The market value of the suit property without developments shall be agreed upon by the parties within thirty (30) days from the date hereof in default of which the same shall be determined by a valuer appointed by the Chairman of the Institution of Surveyors of Kenya at the request of any of the parties with notice to the others.
5. The stay granted in order 3 above shall lapse automatically without any further reference to the court if no payment is made to the Plaintiff in terms thereof.
6. Upon being paid the market value of the suit property in terms of order 3 above, the Plaintiff shall have no other or further claim or interest in the suit property.
7. The Plaintiff shall have the costs of the suit to be paid by the 1st, 4th and 5th Defendants.

DELIVERED AND DATED AT NAIROBI THIS 10TH DAY OF NOVEMBER 2021

S. OKONG'O

JUDGE

Judgment delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:

Ms. Wanyonyi for the Plaintiff

Mr. Munene for the 1st, 4th and 5th Defendants

N/A for the 2nd Defendant

