



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC SUIT NO. 2054 OF 2007

KENYA ANTI-CORRUPTION COMMISSION.....PLAINTIFF

VERSUS

PAUL MOSES NGETHA..... DEFENDANT

SAM N. GACHAGO (CHAIRMAN)

GEORGE MULI MWALABU (SECRETARY)

ALEXANDER JOHN OGUTU (TREASURER) Suing on behalf of

WOODLEY RESIDENTS WELFARE SOCIETY.....INTERESTED PARTY

JUDGMENT

The plaintiff brought this suit against the defendant on 31st October, 2006 by way of a plaint dated 6th October, 2006. The suit was filed in the High Court and assigned High Court Civil Case No. 1143 of 2006. It was subsequently transferred to the former Environment and Land Division of the High Court in 2007 and assigned its current case number. In its plaint, the plaintiff averred that it was a body corporate established under the Anti-Corruption and Economic Crimes Act, No. 3 of 2003 and that it had brought this suit under the provisions of the said Act.

The plaintiff averred that at all material times, Nairobi City Council (hereinafter referred to as “the council”) was the registered owner as a lessee from the Government of Kenya for a term of 99 years from 1st July, 1948 of all that parcel of land known as L. R. No. 209/13539, Grant No. I.R 76717 measuring 34.63 hectares situated in the City of Nairobi at a place commonly known as Woodley/Joseph Kangethe Estate (hereinafter referred to as “Woodley/Joseph Kangethe Estate”). The plaintiff averred that the Grant in respect of Woodley/Joseph Kangethe Estate in favour of the council was registered on 9th June, 1998.

The plaintiff averred that by an instrument of lease dated 22nd April, 1999 made between the council and the defendant, the council purported to grant a lease to the defendant in respect of a portion of Woodley/Joseph Kangethe Estate known as L.R No. 209/13539/154, Grant No. I.R 80454 measuring 0.1280 hectares (hereinafter referred to as “the suit property”) for the remainder of the term of 99 years that the council held in the original Grant and on the terms and conditions which were set out in the lease. The plaintiff averred that the council was required under the Local Government Act, Chapter 265 Laws of Kenya (now repealed) to obtain a written consent of the Minister of Local Government to a resolution to grant a lease to the defendant in respect of the suit property. The plaintiff averred further that the council was also required under the Government Lands Act, Chapter 280 Laws of Kenya (now repealed) to obtain consent of the Commissioner of Lands before granting a lease in respect of the suit property to the defendant.

The plaintiff averred that in breach of the provisions of the said statutes and the terms of the Grant that was issued to the council by the government in respect of Woodley/Joseph Kangethe Estate, the council purported to grant a lease to the defendant in respect of the suit property without obtaining the requisite consents from the Minister of Local Government and the Commissioner of Lands and caused the invalid lease to be registered against the certificate of title for Woodley/Joseph Kangethe Estate.

The plaintiff averred that by reason of the foregoing, the lease that was granted to the defendant by the council was made in excess of the council’s statutory authority and as such the same was null and void for being ultra-vires the council’s powers. The plaintiff averred that the said lease could not confer upon the defendant any estate, interest or right in the suit property. Without prejudice to the foregoing and in the alternative, the plaintiff averred that the sub-division and sub-letting of a portion of Woodley/Joseph Kangethe Estate by the council to the defendant was done fraudulently with the object of improperly alienating public land vested in the council and as such the lease purportedly made between the council and the defendant was invalid, null and void and conferred no estate, interest or right on the defendant.

The plaintiff averred that by reason of the facts aforesaid the defendant had assumed wrongful ownership and possession of the suit property

to the grave prejudice to the public. The plaintiff averred that the fraud and illegality in the process of alienation of the suit property were not discovered until the plaintiff undertook investigations in 2006 and that the suit was brought in the public interest.

The plaintiff sought judgment against the defendant for;

- (i) A declaration that the lease made on the 22nd April, 1999 between the City Council of Nairobi and the defendant in respect of L.R No. 209/13539/154 is invalid, null and void for all intents and purposes for fraud and being ultra-vires, and thus conferred no interest, right or title on the defendant;
- (ii) A declaration that the registration of the lease instrument dated 22nd April, 1999 against L.R No. 209/13539 Grant No. 76717 as entry No. 4 under presentation Book No. 1028 of 25th May, 1999 was wrongful and illegal;
- (iii) An order directing the Registrar to cancel and expunge from the register entry No. 4 on the Grant made under presentation Book No. 1028 of 25th May, 1999 so as to restore the land comprised in L.R No. 209/13539/154, I.R No. 80454 to the grantee;
- (iv) An order directing the Registrar to cancel the original lease instrument and certificate of lease issued upon registration of subdivision known as L.R No. 209/13539/154, I.R No.80454;
- (v) An injunction restraining the defendant by himself, his servants or agents or otherwise howsoever from dealing with the properties known as L.R No. 209/13539, Grant No. I.R 76717 and L.R No. 209/13539/154, I.R No. 80454 otherwise than by delivery or transfer to the council;
- (vi) Vacant possession;
- (vii) General damages;
- (viii) Costs of the suit;
- (ix) Interest on (vii) and (viii) above at court rates.

The defendant filed a statement of defence on 21st December, 2006. The defendant averred that he had been a tenant of the council on the suit property in Woodley/Joseph Kangethe Estate since 1971. The defendant averred that the council offered to sell to him the suit property at Kshs. 1,110,000/= which offer he accepted leading to the granting of a lease to him by the council in respect of the suit property. The defendant averred that the council passed the necessary resolution and obtained ministerial authority and approval before offering the suit property to him for sale. The defendant denied that any statute or condition of the Grant in respect of Woodley/Joseph Kangethe Estate was breached by the council in the sale of the suit property to him. The defendant averred that the title that was issued to him for the suit property was legal and not ultra-vires as claimed by the plaintiff.

The defendant averred further that in addition to the ministerial approval that was received by the council, the sale of the suit property to him was also made pursuant to a directive by the President of the Republic of Kenya in exercise of his constitutional and executive authority. The defendant denied that he acquired the suit property fraudulently. The defendant averred that he was neither privy to nor involved in the alleged fraud. The defendant denied that the plaintiff had *locus-standi* to bring the suit and averred that the suit was fatally defective and should be struck out.

On 19th June, 2015, Woodley Residents Welfare Society was joined in the suit as an interested party. The interested party claimed that its members had beneficial interest in the suit property in that they had been tenants of the council in Woodley/Joseph Kangethe Estate from which the suit property originated from 1950s. The interested party contended that its members had useful information on the suit property that could assist the court in adjudicating on the dispute between the plaintiff and the defendant.

At the trial, the parties called a number of witnesses. The plaintiff's first witness was Karisa Iha (PW1). PW1 was a director of legal services at the Nairobi City County at the time of giving evidence. PW1 adopted his witness statement dated 18th July, 2013 as part of his evidence in chief. PW1 told the court that Woodley/Joseph Kangethe Estate was allocated to the council by the Government of Kenya for a term of 99 years from 1st July, 1948 under Grant No. I.R 76717 issued on 8th June, 1998 and registered on 9th June, 1998. He stated that the council had constructed 210 houses in Woodley/Joseph Kangethe Estate and that the council never passed a resolution to sell the said houses.

PW1 stated that the process of selling the houses in Woodley/Joseph Kangethe Estate started after the chairman of the council at a full council meeting held on 4th August, 1992 informed the meeting of the Government of Kenya's policy of reducing unprofitable non-strategic establishments and public assets and proposed that the chief officers of the council be authorised to identify and dispose of non-essential services, properties and assets of the council with a view to improving the council's financial position. PW1 stated that the said proposal by the chairman was seconded, approved and confirmed.

PW1 stated that it was on the basis of the said address by the chairman of the council that allocation of the houses in Woodley/Joseph Kangethe Estate started. He stated that there were no records showing that the houses in Woodley/Joseph Kangethe Estate which were constructed with public funds were non-profitable or non strategic and that the council had no records showing how those who were allocated the houses were identified. PW1 stated that there were no advertisements for the sale of the said houses and no records showing that ministerial approval was obtained before the said houses were sold.

PW1 stated that although the letters of allotment for the houses in Woodley/Joseph Kangethe Estate were issued to the allottees with plot

numbers, the survey and subdivision of Woodley/Joseph Kangethe Estate was not carried out until 1998. PW1 stated that there was no council resolution to subdivide Woodley/Joseph Kangethe Estate and no records at the council's revenue office showing that any payment was made for the purchase of the houses. PW1 stated that the Grant for Woodley/Joseph Kangethe Estate had conditions providing that the same could not be subdivided or sold without the consent of the Commissioner of Lands. PW1 stated that there was no record showing that the Commissioner of Lands had consented to the subdivision of Woodley/Joseph Kangethe Estate.

PW1 stated that the council in an ordinary meeting held on 14th September, 1999 passed a resolution nullifying the sale of the houses in Woodley/Joseph Kangethe Estate on the ground that the same was irregular since no resolution had been passed by the council to sell the same and that the ministerial consent was not obtained. PW1 stated that the council had offered to refund to those who had made payments to the council for the said houses the payments they had made subject to proof of the amount paid. PW1 stated that Woodley/Joseph Kangethe Estate was still public property. PW1 stated that the procedures for disposing of public property in the hands of the council were not followed in relation to the subdivision and sale of the houses in Woodley/Joseph Kangethe Estate.

The plaintiff's second witness was Nzioki Wa Makau (PW2). PW2 told the court that before he was appointed a judge of the Industrial Court, he worked with the plaintiff as an attorney and that he was one of the investigators involved in the investigation of how 103 housing units in Woodley– Joseph Kangethe Estate were sold. He told the court that in his investigations, he found that there was no council resolution to sell the suit property to the defendant and that the Minister of Local Government had not sanctioned the sale. PW2 corroborated PW 1's evidence that the Grant issued to the council in respect of Woodley/Joseph Kangethe Estate had conditions requiring the Commissioner of Land's consent before Woodley/Joseph Kangethe Estate could be subdivided and sold.

PW2 stated that what was referred to by the defendant as a resolution by the council to sell the suit property was not a resolution but a communication from the chairman of the council. He stated that the process leading to the sale of the suit property was flawed and as such the sale was a nullity. PW2 stated further that the suit property was allocated to the defendant fraudulently.

The plaintiff's third witness was the former Minister of Local Government, the late William Ole Ntimama (PW3). He told the court that he served as a Minister of Local Government for 5 years. He told the court that the disposal of council property required a resolution by the council at a full council meeting after which the council was to seek approval from him as the Minister through the Permanent Secretary. He stated that in the disposal of the houses in Woodley–Joseph Kangethe Estate, the council did not pass a resolution and none was taken to him. He stated that as the Minister of Local Government at the material time, he did not approve the sale of the houses.

The plaintiff's next witness was Elizabeth Nyambura Gicheha (PW4). PW4 was a Senior Registrar of Titles. She joined the Ministry of Lands in 1988 as a Registrar of Titles. PW4 adopted her witness statement dated 12th September, 2012 as part of her evidence in chief. In her statement, PW4 told the court among others that Grant No. I.R 76717 that was issued to the council in respect of Woodley/Joseph Kangethe Estate on 8th June, 1998 had conditions which provided that the council could not subdivide or sell Woodley/Joseph Kangethe Estate without the consent of the Commissioner of Lands. PW4 stated that the consent of the Commissioner of Lands was mandatory. The plaintiff's last witness was Rosinah Ndila Mule (PW5). PW5 told the court that at all material times, she was working at the Land Registry as a Senior Registrar of Titles. PW 5 told the court that she registered a number of leases against the title of Woodley/Joseph Kangethe Estate.

After the close of the plaintiff's case, the interested party called its witness, Samson Njuguna Gachago (I.P1). He told the court that he was staying in Woodley/Joseph Kangethe Estate and that he had lived in the estate since 1966. He stated that he had been the interested party's chairman for 15 years and that the objective of the interested party was to champion the interests and rights of the residents of Woodley/Joseph Kangethe Estate. He told the court that the members of the interested party learnt that houses in Woodley/Joseph Kangethe Estate had been sold to those who were not tenants in the estate and that the sale took place when the tenants were in occupation of the houses.

I.P1 stated that the interested party sought an explanation from the Ministry of Local Government why this happened but they did not get a satisfactory answer. He stated that they learnt that the houses were to be sold to the tenants and that this did not happen as only about 10% of the houses were sold to the tenants. He stated that the town clerk of the council had asked the members of the interested party to apply for the houses through a form that was provided to them. He stated that nothing came out of the exercise. I.P1 told the court that they were not involved in the sale of the houses in Woodley/Joseph Kangethe Estate and that their Member of Parliament raised the matter in Parliament and the sale of the houses in Woodley/Joseph Kangethe Estate was declared illegal. He told the court that the interested party joined the plaintiff in this suit to ensure that the interests of its members were protected.

The defendant, Paul Moses Ngetha (DW1) was the last to give evidence. He told the court that he had been a tenant on the suit property in Woodley estate. He stated that he became a tenant in the suit property in 1971 and that he had occupied the suit property from that time and was still in occupation as at the time of his evidence. The defendant stated that the process of acquiring the suit property started when he was issued with an allotment letter by the council in 1992. He stated that the allotment letter was issued to him after he applied to be allotted the suit property. The defendant stated that he purchased the suit property from the council and paid for the same in full. He stated that the documents in his bundle of documents which he produced as exhibits supported that averment.

The defendant adopted his witness statement dated 16th February, 2012 as part of his evidence in chief. The defendant stated that he executed a sale agreement with the council and paid both the purchase price and legal fees in the sum of Kshs. 98,905/= which was inclusive of disbursements. He stated that after paying the full purchase price for the suit property, he was issued with a certificate of title. The defendant stated that the process through which he acquired the suit property was proper and lawful. He stated that in 2003, the council demanded rent from him and threatened to evict him from the suit property which forced him to sue the council and obtain an injunction to restrain the council from continuing with the interference. He stated that it was after that that the council used the plaintiff to file this suit.

After the conclusion of evidence, the parties made closing submissions in writing. The plaintiff filed its submissions on 19th June, 2019 while the defendant filed his submissions and supplementary submissions on 19th March, 2019 and 25th June, 2019 respectively. The interested party did not file submissions.

The plaintiff's submissions:

In its submissions, the plaintiff argued that the suit property was public property and that the procedure laid down in law for the disposal of public property was not followed in relation to the sale of the property to the defendant. The plaintiff submitted that the provisions of the Government Lands Act, Chapter 280 Laws of Kenya (now repealed) and the Local Government Act, Chapter 265 Laws of Kenya (now repealed) were violated in the sale of the suit property to the defendant. The plaintiff submitted that the necessary resolutions were not passed by the council and ministerial consent was not obtained in respect to the transaction. The plaintiff submitted further that the provisions of sections 12 and 13 of the Government Lands Act, Chapter 280 Laws of Kenya (now repealed) which set out the procedure for sale of public land was not adhered to in that there was no notice of the intention to sell the suit property and the suit property was not sold by public auction. The plaintiff submitted further that the consent of the Commissioner of Lands was not obtained before the sale of the suit property as required under the Grant that was issued to the council by the Government of Kenya in respect to Woodley/Joseph Kangethe Estate.

The plaintiff submitted that since the procedures set out in the Local Government Act and the Government Lands Act were not followed in the sale of the suit property to the defendant, the alleged sale of the suit property was illegal, null and void. In support of this submission, the plaintiff cited Macfoy v United Africa Company Ltd. (West Africa) [1961] 3 All ER 1169. The plaintiff submitted that since the council did not follow the procedures laid down in law for the disposal of the suit property, there was no legal basis for the agreement for lease which the council entered into with the plaintiff in respect of the suit property. The plaintiff submitted that the agreement and the subsequent lease were founded on an illegality and as such could not stand.

The plaintiff cited Snell v United Finance Ltd. [1963] 3 All ER 50 in which Diplock L. J. quoted the words of Lord Mansfield at page 59 in Holman v Johnson (1775), 1 Cowp. at page 343 where he stated that:

“The principle of public policy is this; *ex dolo malo non oritur actio*. No court will lend its aid to a man who found his cause of action upon an immoral or an illegal act.”

The plaintiff submitted that the defendant's argument that the suit property was sold to him through a presidential directive had no basis in law. The plaintiff submitted that under Section 3 of the Government Lands Act, the president could only allocate unalienated Government Land. The plaintiff submitted that Woodley/Joseph Kangethe Estate had already been alienated to the council for housing and as such, the same was not available for allocation by the president.

The plaintiff submitted further that it had proved that the defendant was involved in fraud in the acquisition of the suit property. The plaintiff submitted that the defendant gave contradictory evidence on how he became aware that the suit property was on sale and how he was identified as a beneficiary. The plaintiff submitted that the defendant claimed on the one hand that the suit property was sold to him pursuant to a resolution by the council and on the other hand that the same was sold to him pursuant to a presidential directive. The plaintiff submitted further that it had demonstrated that the defendant had altered an official council document addressed to the Assistant Director (Finance) by the Town Clerk to enable him pay the stand premium and annual ground rent by installments. The plaintiff submitted that the defendant made the alteration 5 years after the letter of allotment had been issued to him and was unable to give any explanation for the alteration. The plaintiff submitted that the said unauthorised alterations made by the defendant who was not an employee of the council was witnessed by the council's Director of City Planning and Architecture and allegedly by the Town Clerk.

The plaintiff submitted that this was a clear case of collusion and fraud. The plaintiff submitted further that it was clear from the authority to pay that was produced by the defendant in evidence that the same was not signed by the Town Clerk who had signed his letter of allotment. The plaintiff submitted that according to the letter of allotment that was accepted by the defendant, he was to make payment of the stand premium and annual rent within 30 days from the date of the allotment failure to which the offer was to be considered to have lapsed. The plaintiff submitted that the defendant testified that he paid for the suit property over a 5-year period on the basis of the authority to pay aforesaid that was amended in a fraudulent manner and which was contrary to the letter of allotment.

The plaintiff averred further that the acts of fraud on the part of the defendant were also evident from the contradictory and unsatisfactory documents that he produced in proof of the payment he allegedly made for the suit property. The plaintiff submitted that the council had no evidence that the defendant had paid for the suit property. The plaintiff submitted that the defendant did not tender proof of how he paid the stand premium of Kshs. 1,100,000/= as the receipts produced by him were contradictory as to when the payment was made and the manner of payment. The plaintiff submitted that the defendant did not pay for the suit property.

The plaintiff submitted that the onus was upon the defendant to demonstrate that he followed due process in the acquisition of the suit property. The plaintiff submitted that the defendant failed to produce evidence that the Commissioner of Lands had consented to the transaction and that he had paid Stamp Duty and council land rates. In support of this submissions, the plaintiff cited Lawrence P. Mukiri, attorney of Francis Muroki Mwaura v Attorney General & 4 Others, C. A. No. 146 of 2014 in which the court held that a purchaser who fails to keep crucial documents in a land transaction leaves a lot to be desired and demonstrates negligence and that such a purchaser cannot be termed a bona fide purchaser.

The plaintiff submitted that the defendant did not fit the description of a bona fide purchaser that was given in the Ugandan case of Katende v Haridar & Company Ltd. [2008] 2 E. A. 173. The plaintiff submitted that the defendant's conduct of applying for the suit property on 22nd June, 1992, 3 months before the suit property was offered to him, his acceptance of the offer, alteration of official council documents, production of contradictory receipts in proof of payment for the suit property did not exhibit a person who was acting in good faith. The plaintiff submitted further that the defendant was well aware of the fraudulent scheme to dispose of among others, the suit property and played part in the scheme. The plaintiff submitted that a right to own property guaranteed under Article 40 of the Constitution does not extend to a property found to have been acquired unlawfully.

In support of this submission, the plaintiff relied on the cases of Kenya National Highways Authority v Shaileen Masood Mughal & 5 Others [2017] eKLR and Arthi Highway Developers Ltd. v West End Butchery Ltd. & 6 Others [2015] eKLR. The plaintiff submitted that the

defendant was a beneficiary of public land grabbing menace that was prevalent in Kenya sometimes back and that in cases of land grabbing, the courts have ruled in favour of protecting public interest. In support of this submission, the plaintiff cited Republic v Minister for Transport & Communications & 5 Others ex-parte Waa Ship Garbage Collector & 15 Others [2006] I KLR (E & L) and Chemney Investments Ltd. v Attorney General & 2 Others, Court of Appeal Civil Appeal No. 349 of 2012. The plaintiff submitted that the sanctity of title was not meant to be a vehicle for fraud and enrichment at public expense.

On the issue as to whether the suit was competently before the court, the plaintiff submitted that it had the *locus standi* to file the suit. The plaintiff submitted that it derived the power to file the suit from section 11(1) (K) of the Ethics and Anti-Corruption Commission Act, No. 22 of 2011. The plaintiff submitted that its statutory power to institute a suit for the recovery of public land was affirmed by the Court of Appeal in Boniface Katana Kalaveri v Ethics & Anti-corruption Commission & Another [2015] eKLR. The plaintiff urged the court to enter judgment in its favour as prayed in the plaint dated 11th October, 2006.

The defendant's submissions:

In his submissions in reply dated 7th March, 2019, the defendant reiterated his evidence at the trial and submitted that his title to the suit property was not acquired in violation of the provisions of the Local Government Act, Chapter 265 Laws of Kenya (now repealed) and the Government Lands Act, Chapter 280 Laws of Kenya (now repealed). The defendant submitted that the council had authority and capacity to sell or lease its leasehold interest in the suit property to defendant. In support of this submission, the defendant cited the provisions of sections 12(3) and 144 of the Local Government Act. The defendant submitted further that the council passed a resolution on 4th August, 1992 and obtained consent of the Minister of Local Government to sell the suit property to the defendant. The defendant submitted that the Minister of Local Government gave his approval to the resolution on 10th September, 1992 by appending his signature to the letter dated 3rd September, 1992 that was written to him by the council regarding the resolution.

The defendant submitted that in addition to the ministerial approval, there was also a directive by President Daniel Arap Moi that council houses at Kenyatta Market and Woodley Estate among others be sold to the sitting tenants. The defendant submitted that that presidential directive was lawful as it was in accord with his powers under Section 3 of the Government Lands Act. The defendant submitted that the suit property was not sold to him in breach of the law as claimed by the plaintiff.

On the plaintiff's allegation that he acquired the suit property fraudulently, the defendant submitted that the allegation was baseless as the same was not based on evidence. The defendant submitted that the said allegation that was based on alleged lack of a valid resolution and consent of the Minister of Local Government had been rebutted by the evidence that the defendant had adduced showing that necessary resolution was passed and consent obtained from the minister before the suit property was sold to the defendant. The defendant submitted further that he had proved that he paid for the suit property. The defendant submitted that the allegations of fraud by the plaintiff were mere allegations without any proof. The defendant cited Bruce Joseph Bockle v Conquero Limited [2014] eKLR, Koinange & 13 others v Koinange [1968] KLR 23, Central Bank of Kenya Ltd. v Trust Bank Ltd. & 4 Others [1996] eKLR, Ndolo v Ndolo [2008] 1 KLR (G & F) 742 and Vijay Morjaria v Nansingh Madhusingh Darbar & Another [2000] eKLR in support of his submission that fraud must be specifically pleaded with the necessary particulars and proved on a degree higher than that required in ordinary civil cases. The defendant submitted that a mere mention of fraud or illegality in passing or in vague and general terms will not do.

The defendant submitted further that he was an innocent purchaser of the suit property for value without notice of any illegality committed by the council in the transaction. The defendant submitted that in the event the court finds that the council breached the law in selling the suit property, that finding should not affect his title which he acquired innocently without notice of the said illegality. In support of this submission, the defendant relied on Fletcher v Peck 10 U.S & 7 (1810) and Lawrence Mukiri v. Attorney General & 4 Others [2008] eKLR.

The defendant submitted that the suit property was offered to him by the council, he accepted the offer and fulfilled the terms of the offer. He submitted that the lease was thereafter issued in his favour by the council which was duly executed and registered resulting in a grant being issued in his favour on 25th May, 1999. The defendant submitted that he had a valid title over the suit property and was in lawful occupation thereof. The defendant submitted that the plaintiff's suit mainly challenged the process through which the council sold and transferred the suit property to the defendant but not the validity of the defendant's title to the suit property. The defendant submitted that even if there was no consent of the Minister of Local Government for the sale transaction, that was an internal administrative matter that concerned only the council and had nothing to do with the defendant who conducted due diligence on the suit property before purchasing the same and against whom no form of fraud had been established. The defendant submitted that his duty was to confirm that the council had an apparent title to the suit property. The defendant submitted that the plaintiff's witnesses PW4 and PW5 confirmed that when the leases in favour of among others, the defendant were registered, all documentation must have been in order. The defendant submitted that he had discharged the burden of proof of an innocent purchaser for value without notice.

With regard to the interested party's claim, the defendant submitted that the interested party had not demonstrated its interest in the suit property. The defendant submitted that the interested party was registered after the council had offered the suit property for sale and that the members of the interested party applied for houses that the council had offered for sale 2 years after the said offer. The defendant submitted that the interested party had no proprietary interest in the suit property that was sold by the council to the defendant who was a sitting tenant in the same.

In his supplementary submissions dated 25th June, 2019, the defendant reiterated that the necessary resolution was passed by the council and ministerial consent obtained before the suit property was transferred to the defendant. The defendant reiterated further that he paid the stand premium in full in the sum of Kshs. 1,100,000/=. With reference to the plaintiff's submissions that the provisions of sections 12 and 13 of the Government Lands Act on the disposal of public land was not followed, the defendant submitted that it was not necessary to sell the suit property by public auction because section 12 of the Government Lands Act provided that it was not necessary to sell leases of town plots by public auction where the president had ordered otherwise. The defendant averred that in this particular case, the president had directed that the houses in Woodley/Joseph Kangethe Estate which included the suit property be sold to the sitting tenants.

With regard to the plaintiff's contention that the defendant allegedly made payment 5 years after accepting the offer, the defendant submitted

that after he accepted the offer he had to wait for further directions to be given to him before making payment which directions did not come until after a lapse of 5 years from the date of the offer. The defendant reiterated that the plaintiff's suit was without merit.

I have considered the pleadings, the evidence tendered and the submissions by the advocates for the parties. The parties filed separate statements of issues. In its statement of issues filed on 12th September, 2013, the plaintiff framed a total of 16 issues for determination. The defendant on the other hand filed a statement of issues on 18th October, 2013 in which he framed a total of 21 issues. From the pleadings and the issues framed by the parties, I will summarise the issues arising for determination in this suit as follows;

1. Whether the plaintiff's suit is competent;
2. Whether the defendant acquired the suit property lawfully;
3. Whether the defendant has a valid title over the suit property;
4. Whether the plaintiff is entitled to the reliefs sought in plaint;
5. Who is liable for the costs of the suit?

I will consider these issues in the manner in which I have set them out.

Whether the plaintiff's suit is competent?

In his statement of defence, the defendant had contended that the plaintiff had no *locus standi* to bring this suit and that the suit as drawn was fatally defective. The defendant did not address these issues in his submissions. On the issue of *locus standi*, I am in agreement with the plaintiff that it had *locus standi* to sue for the recovery of public land. There is no dispute that the suit property was public land before the same was sold to the defendant and that the present suit was brought by the plaintiff to recover the land from the defendant on behalf of the public. I am of the view that this issue was laid to rest by the Court of Appeal in Boniface Katana Kalaveri v Ethics & Anti-Corruption Commission & Another [2015] eKLR in which the court held that Section 7 (h) of the Anti-Corruption & Economic Crimes Act No. 3 of 2003 gave the plaintiff power to among others, institute civil proceedings against any person for the recovery of public property or compensation for any loss or damage to the said property. The court also held that Section 11(1) (K) of the Ethics and Anti-Corruption Commission Act No. 22 of 2011 which came into operation on 5th November, 2011 also gave the plaintiff power to institute and conduct proceedings in court for the purposes of recovery or protection of public property. For the foregoing reasons, I find no merit in the defendant's contention that the plaintiff had no *locus standi* to institute this suit. On the defendant's contention that the plaint was defective on account of the form in which it was drawn, the defendant did not point out any defect in the plaint that would render the suit defective. That objection is also overruled.

Whether the defendant acquired the suit property lawfully.

In Nairobi High Court Civil Suit No. 1024 of 2005(O.S), Milankumar Shah & 2 others v The City Council of Nairobi & another, a 3 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”.

In the Court of Appeal case of Munyu Maina v Hiram Gathiha Maina [2013] eKLR, the court stated 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.... 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....”

It was not disputed that Woodley/Joseph Kangethe Estate that was sub-divided and a portion thereof (the suit property) sold to the defendant was owned by the council. Woodley/Joseph Kangethe Estate was granted to the council by the government for a term of 99 years with effect from 1st July, 1948 under Grant No. I.R 76717. The said Grant that was issued under the Registration of Titles Act, Chapter 281 Laws of Kenya (now repealed) was subject to the provisions of the Government Lands Act Chapter 280 Laws of Kenya (now repealed) and the special conditions that were set out therein. The council was established and administered in accordance with the Local Government Act, Chapter 265 Laws of Kenya (now repealed). The disposal of Woodley/Joseph Kangethe Estate or any portion thereof had to comply with the conditions of the Grant and the provisions of the Registration of Titles Act, the Government Lands Act and the Local Government Act. The validity or otherwise of the sale of the suit property by the council to the defendant must therefore be considered in light of the said conditions of the Grant and the provisions of the said statutes. The plaintiff's case as highlighted earlier was that the suit property was sold to the defendant in violation of the terms and conditions of the Grant by the government to the council and the provisions of the statutes I have referred to above.

On the issue of compliance with the special conditions of the Grant No. I.R 76717, it was not disputed that special conditions 7 and 10 of the said Grant provided that Woodley/Joseph Kangethe Estate could only be sub-divided and/or sold with prior written consent of the Commissioner of Lands. The plaintiff had contended that Woodley/Joseph Kangethe Estate was subdivided to give rise to among others, the

suit property without the consent of the Commissioner of Lands. PW1 told the court that from the records held at the council, no consent was given by the Commissioner of Lands to the council to subdivide and sell portions of Woodley/Joseph Kangethe Estate. PW2 also told the court that his investigations into the transaction revealed that no consent was obtained by the council to subdivide Woodley/Joseph Kangethe Estate and sell portions thereof.

On the issue of compliance with the provisions of the Local Government Act, the plaintiff had contended that under Section 144 (3) of the Local Government Act, consent of the Minister of Local Government was required before the suit property could be sold to the defendant. The plaintiff contended also that a valid resolution of the council to sell the suit property was required. The plaintiff contended that the council never passed a resolution to sell the suit property and that consent of the Minister of Local Government was not obtained. PW2 who was the plaintiff's investigator told the court that it was his finding that the council did not pass a resolution to sell the suit property and that ministerial consent was not obtained for the transaction. PW3 who was the Minister of Local Government at the material time testified that he did not approve the sale of the suit property and that there was no resolution passed by the council to sell the property. With regard to the violation of the Government Lands Act, the plaintiff contended that Sections 12 and 13 thereof obligated the council to advertise and sell the suit property by public auction and that was not done.

The defendant responded to all these allegations. As concerns the alleged breach of the special conditions of the Grant, the defendant contended that these were internal administrative issues for the council which he was not supposed to be concerned with having ascertained that the council had an apparent title to the suit property. The defendant contended further that the evidence of PW4 and PW5 supported the defendant's contention that all consents were obtained. The defendant contended that PW5 who registered the lease in favour of the defendant had confirmed that she could not have registered the lease if the documentation was not in order.

With regard to the council resolution and the ministerial consent, the defendant contended that the resolution was passed and approved by the minister. The defendant produced in evidence the resolutions that were made by the council on 4th August, 1992 which he claimed authorised the sale of the suit property to him. He also produced in evidence a copy of a letter dated 3rd September, 1992 addressed to the Minister of Local Government by the Town Clerk of the council seeking approval to the said resolution and in which letter he claimed that the Minister had appended his approval on 10th September, 1992. In response to PW3's claim that he did not approve the transaction, the defendant produced a copy of the Hansard and newspaper reports in which he claimed PW3 was reported to have approved the sale of the houses in Woodley/Joseph Kangethe Estate which included the suit property.

With regard to the alleged breach of sections 12 and 13 of the Government Lands Act relating to the disposal of leases of town plots, the defendant contended that in the circumstances of this case, it was not necessary to sell the suit property by public auction. The defendant contended that section 12 of the Government Lands Act had a proviso excluding from the requirements of sale by public auction those town plots in respect of which the president had directed another mode of disposal. The defendant contended that in this case, President Daniel Arap Moi had directed that the houses in Woodley/Joseph Kangethe Estate be sold to the sitting tenants. The defendant contended that in view of that directive, it was not necessary to sell the suit property by public auction. In support of this contention, the defendant placed in evidence what he termed as President Daniel Arap Moi's directive that the houses be sold to the sitting tenants.

I have considered the evidence adduced by the parties in support of their positions on the issues discussed above. From the evidence that is before the court, I am not satisfied that conditions 7 and 10 of the Grant that was issued to the council by the government in respect of Woodley/Joseph Kangethe Estate was complied with in the transaction that led to the sale of the suit property to the defendant. There is no evidence before the court showing that the Commissioner of Lands consented to the subdivision of Woodley/Joseph Kangethe Estate and the sale of portions thereof including the suit property. This court takes judicial notice of the fact that the Commissioner of Lands normally gives consent in writing. None was placed before the court and no explanation was given why it was not produced if it ever existed. I decline to accept the invitation by the defendant to assume that merely because his lease was registered, all the requisite consents were obtained.

I am also not in agreement with the contention by the defendant that the issue of the consent of the Commissioner of Lands was an internal matter for the council which the defendant needed not bother about. In my view, the defendant had a duty to protect his own interest in the transaction. He could not take whatever was given to him by the council. Since his acquisition of the suit property was subject to the said consents being obtained, he had a duty to inquire whether indeed the same were obtained and if the same were not obtained he was at liberty to rescind the transaction. In this case, it appears that the defendant did not bother to establish the validity of the title that the council was conveying to him. The issue as to whether or not a vendor has complied with the conditions of the title which it intends to convey to a purchaser cannot be termed by a purchaser as an internal matter for the vendor because any breach of the said conditions will have effect on his title. Due to the foregoing, it is my finding that the council did not obtain consent of the Commissioner of Lands to subdivide Woodley/Joseph Kangethe Estate and to sell a portion thereof to the defendant.

On the issue of the resolution by the council, I do not think that the resolution passed on 4th August, 1992 and the consent/approval of 10th September, 1992 met the threshold that was required for the disposal of land owned by the council. I have carefully perused the minutes of the council meeting held on 4th August, 1992. There is no indication that the proposed sale of Woodley/ Joseph Kangethe Estate was in the agenda for that day's meeting. The resolution that was passed and which was used as a basis for the disposal of Woodley/Joseph Kangethe Estate was as a result of a "communication from the chair" on "Improving Commission's Financial Management-Disposal of Unprofitable and Non-Essential Properties and Assets."

According to the minutes, the chairman of the commission that was running the council then communicated to the meeting the government's policy of reducing the number of unprofitable non-strategic establishments and public assets and urged the commission to employ the same financial management technique. The council then resolved to authorise its Chief Officers "to identify and dispose of such unprofitable, non-essential services, properties and assets with a view to improving the commission's financial position."

In the same minutes, it can be seen that the council resolved on the same day to have the common seal of the council appended on a number of leases, agreements for lease and assignments between various persons and the council. See resolution No.18. For those leases, agreements to lease and assignments on which the seal was to be appended, the particulars of the persons who were dealing with the council and of the parcels of land concerned were set out. It is inconceivable in the circumstances that it could have been the honest intention of the

council to pass a resolution to sell over 100 houses in Woodley/Joseph Kangethe Estate owned by the council without giving the particulars of the houses and the persons to whom they were to be sold.

The events before and after the sale of the houses in Woodley/Joseph Kangethe Estate of which the suit property forms part leave no doubt that the Nairobi City Commission then running the council and the Chief Officers of the council had hatched an elaborate scheme to dispose of the houses in the estate with minimal public scrutiny to achieve selfish aims. If the council intended to discuss the sale of the houses in Woodley/Joseph Kangethe Estate, that should have been an agenda item for the meeting of 4th August, 1992. Section 76 (2) of the Local Government Act prohibited business being transacted at a meeting of the council other than for which a notice had been given. Putting the sale of houses in Woodley/Joseph Kangethe Estate in the agenda for the day would have brought it to the attention of the public before the meeting and the mischievous scheme would have come to light.

In the resolution made by the council on 4th August, 1992, there was no mention of the so called “properties and assets” which the council’s Chief Officers were authorised “to identify and dispose of”. The intention seems to have been to leave it open to the Chief Officers and the Commissioners to sell whatever assets or properties belonging to the council that they wished to put up for sale.

From the evidence given by the defendant, it appears that the sale of the houses in Woodley/Joseph Kangethe Estate was planned and the persons to whom the same were to be sold identified even before the purported resolution by the council on 4th August, 1992. The defendant produced in evidence a copy a letter dated 22nd June, 1992 that he wrote to the council requesting that he be considered during the sale of the Woodley/Joseph Kangethe Estate houses. In the letter he stated that “This time there is a talk that Woodley Estate houses, are going to be sold. Kindly consider my request.”

This letter was written about 1 ½ months before the purported resolution by the council on 4th August, 1992. I have also noted from the evidence on record that the defendant was allocated the suit property on 24th August, 1992 about 3 weeks after the purported resolution by the council. How the council’s chief officers were able within a period of 3 weeks to inspect all assets owned by the council in Nairobi and determine that Woodley/ Joseph Kangethe Estate houses were unprofitable and non-essential to the council was a demonstration of an exemplary level of efficiency that the council was not known for during that period in time unless there were private interests at play.

I have also noted that by the time the suit property was allocated to the defendant on 24th August, 1992, the ministerial consent allegedly granted to the council on 10th September, 1992 had not been given. The defendant led evidence that he accepted the offer on 28th August, 1992. What this means is that when the suit property was offered and accepted by the defendant, the council had not obtained the purported consent to sell the suit property from the Minister of Local Government.

On the same issue of ministerial consent, I am in agreement with the plaintiff that there was no consent by the Minister of Local Government to sell the houses in Woodley/Joseph Kangethe Estate. In my view, the consent if any was given was not for the sale of the said houses. The defendant produced in evidence a copy of a letter dated 3rd September, 1992 that was addressed to the Minister of Local Government seeking approval to the resolution that was passed by the council on 4th August, 1992 for the Chief Officers of the council to identify and dispose of unprofitable non-essential services, properties and assets of the council. The defendant contended that the then Minister of Local Government approved the said resolution on 10th September, 1992 by writing the words “Approved” on the said letter dated 3rd September, 1992 that was addressed to him.

As I have held above, the resolution that was passed by the council on 4th August, 1992 did not meet the legal threshold for the sale of land owned by the council. It follows therefore that even if the Minister of Local Government had approved the resolution, the approval could not be said to be for the sale of houses in Woodley/Joseph Kangethe Estate. The then Minister of Local Government, the late Hon. William Ole Ntimama (PW3) gave evidence and denied that he gave the approval for the sale of the houses in Woodley/Joseph Kangethe Estate. In my view, the evidence of PW3 was not shaken in cross-examination.

The defendant placed various newspaper reports and Hansard to prove that indeed PW3 approved the sale of the houses in Woodley/Joseph Kangethe Estate. I have perused all that material. I have not come across anywhere in which PW3 admitted to having approved the sale of the houses in Woodley/Joseph Kangethe Estate. What I have gathered from the newspaper cuttings and the Hansard that were produced by the defendant are reports of condemnation that was directed at PW3 over the grabbing of public land and other assets that was taking place in the council at the material time and his defence to the same. Even when he was defending himself in and out of Parliament, PW3 did not admit that he approved the sale of the houses in Woodley/Joseph Kangethe Estate.

There is no dispute that the council had power under sections 144 and 145 of the Local Government Act to dispose of land through sale or lease. Section 144 (3) and (6) of the Local Government Act however imposed conditions to that right. The sale could only be done with the consent of the Minister of local Government. I am of the view that the purported approval given by the Minister of Local Government on 10th September, 1992 did not satisfy the conditions of section 144(6) of the Local Government Act with regard to the disposal of the houses in Woodley/ Joseph Kangethe Estate. As I have held above, the council did not pass a resolution to sell the houses as there is no mention of any land in the resolution of the council of 4th August, 1992. The purported approval by the Minister of Local Government of the said resolution could not therefore be taken as a consent to sell land under section 144(6) of the Local Government Act. I wonder how the Minister could be said to have consented to the sale of land when no particulars of such land was given in the resolution. Authority or consent to generally sell “properties and assets” of the council could not in my view be deemed to be authority to sell land under section 144(6) of the Local Government Act. It is my finding therefore that the sale of the suit property to the defendant was not consented to by the Minister of Local Government as required under Section 144 (6) of the Local Government Act.

The defendant had also contended that the suit property was sold to him under section 3 of the Government Lands Act, Chapter 280 Laws of Kenya pursuant to a presidential directive. The defendant did not exhibit a letter of allotment that was issued to him by the Commissioner of Lands allocating the suit property to him under section 3 of the Government Lands Act. The defendant’s letter of allotment dated 24th August, 1992 was issued by the council. I see no merit in this argument. In any event, the suit property had already been alienated to the

council by the government. The same was therefore not available for alienation to the defendant under section 3 of the Government Lands Act.

As mentioned earlier in the judgment, the Grant that was issued by the government to the council in respect of Woodley/Joseph Kangethe Estate was subject to the Government Lands Act. The sale of the suit property which formed part of Woodley/Joseph Kangethe Estate was therefore subject to Part III of the Government Lands Act dealing with the disposal of land within townships. Section 12 of the Government Lands Act provided that unless the president ordered otherwise, town plots were to be sold by public auction. The plaintiff had contended that the suit property was sold contrary to section 12 of the Government Lands Act. The defendant's response as I have mentioned earlier was that it was not necessary to sell the suit property by public auction because the president had directed that the houses in Woodley/Joseph Kangethe Estate be sold to the sitting tenants. In proof of this directive by the president, the defendant produced some write-up from Presidential Press Service on what President Daniel Arap Moi said while he was touring development projects in Nairobi. According to the document, the president had directed that tenants renting council houses be given first priority in case the council was to sell them.

The defendant invited the court to take this roadside declaration as a directive under section 12 of the Government Lands Act. The court is not inclined to give this directive a force of law. If the president intended to give directive under section 12 of the Government Lands Act, he should have done so through a formal communication to the council or the Minister of Local Government. It is my finding that no lawful directive was given by the president under section 12 of the Government Lands Act. In the circumstances, the sale of the suit property did not comply with section 12 of the Government Lands Act. Arising from the findings above, I am in agreement with the plaintiff that the process through which the suit property was sold to the defendant was legally flawed.

The defendant had contended that he purchased the suit property in good faith for valuable consideration without notice of the defect if any in the council's title and as such his title to the suit property was indefeasible. From the evidence on record, I am not satisfied that the defendant was completely innocent of the procedural lapses and violations of the law that the council engaged in while selling the houses in Woodley/Joseph Kangethe Estate. Everyone is presumed to know the law. Ignorance of the law is not an excuse for failure to adhere to the law. As a purchaser of the suit property, the defendant had a duty to confirm that the council had obtained all the requisite consents to sell the suit property since the said consents had effect on the validity of his title.

I have also noted that according to the letter of allotment dated 24th August, 1992, the defendant was to pay a total of Kshs. 1,110,000/= for the allocation of the suit property comprising of a stand premium and annual rent within 30 days from 24th August, 1992. From the evidence on record, it is not clear how the said amount was paid. There is no doubt however that the payment of the said amount was not completed until after 5 years from the date of the letter of allotment. There is no evidence that the defendant who was a tenant of the council on the suit property was paying rent during this 5-year period. No evidence of such payment was produced in court. The circumstances under which the defendant was allowed to pay the allocation dues that was payable within 30 days over a 5-year period was not clearly explained.

The defendant had claimed that after he was issued with a letter of allotment, he was waiting for further directions from the council before making payment. There is no evidence of any communication between the defendant and the council on this issue. The letter of allotment was very clear in its terms. The defendant was to pay the said sum of Kshs. 1,110,000/= within 30 days and a payment voucher for that amount was provided for the defendant's use when making payment. The documents produced by the defendant in evidence to prove that he was allowed to pay the allocation dues by installment were altered by the defendant and the alterations were not explained. The same were therefore not reliable. See the documents at pages 59 to 61 of the defendant's exhibit 1.

Due to the foregoing, I am not convinced that the defendant was an innocent purchaser of the suit property for value without notice. Even if the defendant had acquired the suit property innocently without notice of the illegal process through which the council went about in selling the houses at Woodley/Joseph Kangethe Estate, I do not think that that would have validated his title to the suit property. In my view, a title created through an illegal process is a nullity. The title for the suit property came about as a result of an illegal process that was undertaken by the council. That process did not confer upon the council a valid interest in the suit property that it could convey to the defendant. An illegal and flawed process could not give rise to a valid title. This court cannot endorse a title created illegally. See, Snell v Unity Finance Ltd. [1963] 3 All E.R. that was cited by the plaintiff in which the court stated that no court will lend its aid to a man who founds his cause of action upon an immoral or illegal act.

From the foregoing analysis and findings, I have come to the conclusion that the plaintiff did not acquire the suit property lawfully. The second issue is therefore answered in the negative.

Whether the defendant has a valid title to the suit property.

This issue has been partly answered above. What I can add is that a title is not an end in itself. It is a creature of a process. If the process through which a title is created is flawed, the title cannot stand. In Daudi Kiptugen v Commissioner of Lands & 4 Others [2015] eKLR the court stated that:

“...the acquisition of title cannot be construed only in the end result; the process of acquisition is material. It follows that if a document of title was not acquired through a proper process, the title itself cannot be a good title. If this were not the position then all one would need to do is to manufacture a Lease or a Certificate of title at a backyard or the corner of a dingy street, and by virtue thereof, claim to be the rightful proprietor of the land indicated therein.”

As I have mentioned above, the council violated various provisions of the law in the process of creating among others the suit property. The end result of such illegal action cannot be valid. In Macfoy v United Africa Company Ltd. [1961] 3 ALL ER 1169 Lord Denning stated as follows at page 1172:

“... If an act is void, then it is in law a nullity. It is not only bad, but incurably bad.... And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will

collapse.”

It is my finding that the title that the defendant acquired from the council was a nullity. The defendant does not therefore have a valid title over the suit property. The defendant had argued that he was not supposed to be bothered with the council's internal processes and that his concern was to ensure that the council had an apparent title as stated earlier. My take on this is that the council was not an ordinary property dealer. The council was a creature of a statute and had a duty to operate under the law in its dealings with the property held by it. As I mentioned earlier, anyone who was dealing with the council in any transaction had a duty to ascertain that the council had complied with the law as relates to the transaction. The land held by the council was so held in trust for the public. The law regulating the council's dealings with land was put in place to ensure that the public interest was protected in all land dispositions. Due to the foregoing, I disagree with the defendant's contention that the duty of the council to comply with the law relating to disposition of land was administrative in nature and an internal affair of the council in respect of which those dealing with the council needed not to concern themselves with.

Whether the plaintiff is entitled to the reliefs sought:

As I stated earlier in this judgment, the plaintiff sought several reliefs against the defendant. I am satisfied that the plaintiff has proved its case against the defendant and that it is entitled to prayers (a) to (d) of the plaint. The plaintiff is however not entitled to prayers (e), (f) and (g) of the plaint. The evidence adduced before the court shows that the defendant was a tenant of the council on the house which is comprised in the suit property before the same was purportedly sold to him by the council. The defendant therefore had a right under the tenancy agreement between him and the council to occupy the house. After nullifying the purported sale, it would only be fair that the parties revert to the status quo prior to the purported sale. The court will not therefore grant an injunction restraining the defendant from dealing with the said house. The defendant shall remain in possession of the house as a tenant of the Nairobi City County, the successor in title to the council in respect of the said house unless his tenancy is lawfully terminated. For the same reason, an order for vacant possession is not available to the plaintiff.

With regard to general damages, no evidence was led by the plaintiff on the damages if any that was suffered by council as a result of the sale of the suit property to the defendant. No basis was therefore laid for claim.

Who is liable for the costs of the suit?

In the circumstances of this case, I am of the view that the council was largely to blame for the circumstances that led to the filing of this suit. For that reason, although the plaintiff has succeeded in its claim and would in normal circumstances be entitled to costs, it would be unfair to condemn the defendant to pay the costs of the suit. A fair order would be for each party to bear its own costs of the suit.

Conclusion:

In conclusion, judgment is entered for the plaintiff against the defendant in terms of prayers (a), (b), (c) and (d) of the plaint dated 6th October, 2006. Each party shall bear its own costs of the suit.

Delivered and Dated at Nairobi this 27th Day of February, 2020

S. OKONG'O

JUDGE

Judgment read in open court in the presence of:

Dr. Ojiambo SC, Mrs. Rotich and Ms. Mbuthia for the Plaintiff

Mr. Mbiti h/b for Mrs. Shamalla for the Defendant

N/A for the Interested Party

Ms. C. Nyokabi-Court Assistant