



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KAJIADO**

**ELC CASE NO. 724 OF 2017**

**(Formerly Nairobi ELC Case No. 1564 of 2014)**

**THE PRESBYTERIAN FOUNDATION**

**(A COMPANY LIMITED BY GUARANTEE).....PLAINTIFF**

**VERSUS**

**BERNARD OLE MEREU.....1<sup>ST</sup> DEFENDANT**

**FRED GITHINJI.....2<sup>ND</sup> DEFENDANT**

**SAMUEL NASIB.....3<sup>RD</sup> DEFENDANT**

**PETER KARANI.....4<sup>TH</sup> DEFENDANT**

**THE CHIEF LAND REGISTRAR.....5<sup>TH</sup> DEFENDANT**

**JUDGEMENT**

By a Plaint dated the 18<sup>th</sup> December, 2014, the Plaintiff prays for judgement against the Defendant for:

- a) An order of permanent injunction to restrain the Defendants, their servants, workmen, licensees, agents or any other persons acting on their own behalf or on behalf of the Defendants from howsoever trespassing, entering, encroaching, remaining in, selling, subdividing, taking over, dispossessing, carrying any form of borehole or well drilling, alienating, reclaiming, fencing, cultivating, returning into and or harassing the Plaintiff or interfering with its peaceful entitlement and possession of Title No. Ngong/ Ngong/ 66.
- b) Costs and interest of the suit.
- c) Any other relief as the court may deem fit to grant.

On 5<sup>th</sup> May, 2015, Justice Mutungi made an Order striking out the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants from the suit. The 1<sup>st</sup> and 5<sup>th</sup> Defendants filed their Statement of Defence and Counterclaim dated the 19<sup>th</sup> May, 2015 where they denied the averments in the Plaint except for the descriptive of the parties. They contend that the suit land encompasses office of the President – Chief’s Office Kibiko Location, Administration Police, Kibiko Primary School, Kibiko Secondary School all which are public entities and institutions for the service of the community. They aver that the staff of the institutions are all employees of the government drawing a salary from the consolidated fund. They explain that the Plaintiff applied for permission to worship within the school and not to carry out activities in detriment of the community land donated by indigenous owners for the public facility. Further, the Plaintiff developed a borehole without permission from the community. They insist the community allowed the Plaintiff to have a place of worship and constructed a PCEA Church which occupies 0.01 hectares to which the community had no problem. In the counterclaim the 1<sup>st</sup> and 5<sup>th</sup> Defendants pray that the Plaintiff’s suit be dismissed with costs and judgement be entered with costs in terms of the counterclaim as follows:

- i. A declaration that the suit land is public land.
- ii. That the Plaintiff’s title be cancelled and its place be substituted in the name of the Permanent Secretary Treasury to hold in trust

for the government of Kenya.

iii. Costs of defending the suit and counterclaim.

The matter proceeded for hearing where the Plaintiff called three witnesses while the Defendants also had three witnesses.

### **Evidence of the Plaintiff**

The Plaintiff's witnesses testified that it is the owner of the suit land. They all confirmed there exists two schools, Police Post, Church and a Borehole in the suit land. The witnesses contended that the PCEA Church was the sponsor of the schools and had fundraised to develop them. They explained that the suit land was allocated to the Plaintiff in 1969 and the Certificate of Title issued in 1999. They however admitted that the teachers in the said schools were posted by the Teachers Service Commission. They insisted that the suit land was acquired legally and the 1st to 4<sup>th</sup> Defendants had trespassed thereon and attempted to install a borehole. They disputed the Defendants averments that they acquired the land illegally. They produced various documents including: Certificate of incorporation of the plaintiff no 48/73; PCEA Church exemption from registration certificate no. 1448; Title Deed in respect of Ngong/Ngong/66; Letter dated 22<sup>nd</sup> June, 2004 from Director of Water Development; Letter dated 23<sup>rd</sup> June, 2004 from Director of Water Development; Letter dated 3<sup>rd</sup> August, 2007 asking for time extension for drilling; Extension of time limit of authorization dated 13<sup>th</sup> August, 2004; Letter of authority from NEMA dated 27<sup>th</sup> September, 2012; Borehole completion record; Assorted photographs; Invoice and receipt by Sparr Drilling Co. Ltd; Letter from Kenya Power dated 9<sup>th</sup> December, 2013; Letter dated 5/3/2003 by Kibiko Secondary School (certified); Letter dated 18/3/2003 to Kibiko Primary School. (certified); Invitation for meeting on 28/3/2003 by Kibiko Secondary School (certified); Letter by Kibiko Secondary School inviting for an occasion on 11/4/2003 (certified); Letter dated 27/8/2004 inviting for a meeting on 10/9/2004 (certified); Invitations for a meeting on 21/4/2006, 12/5/2006, 16/6/2006 and 18/8/2006 by Kibiko Secondary School (certified); Letters dated 30/6/2006, 25/9/2006 by Kibiko Secondary School (certified); File copies of letters dated 4/3/2008 by the Plaintiff (file copies); Letters dated 25/2/2010 on Kibiko Primary School; Letters by Kibiko Secondary School dated 21/6/2010, 5/11/2010 and 23/11/2012 (filed copies.); Plaintiff's letter dated 18/1/2012, 24/10/2010 and 24/10/2012 (certified) ; Letter dated 31/1/2013 by Kibiko Primary School (original); Letters by the Plaintiff dated 7/2/2013, 3/4/2013 and 15/8/2013 (file copies); Certificate of registration and exemption of the plaintiff (certified) and Plaintiff's letter dated 9/8/1993 (certified) as exhibits.

### **Evidence of the Defendants**

The Defendants called three witnesses. In their testimonies, they contended that there were public institutions to wit: Kibiko Primary School, Kibiko Secondary School and a Kibiko Police Post and Chief's Camp which were on the suit land. They claimed the said institutions were on the suit land prior to the Plaintiff acquiring its Certificate of Title. They insisted the said registration was unprocedural and it ought to be cancelled and title reverted to the Permanent Secretary Treasury to hold in trust for the government of Kenya. They had no issue with the PCEA Church which was on the suit land.

### **Submissions**

#### **Plaintiff's Submission**

It submitted that the suit property is private land in accordance with article 64 of the Constitution and there is no evidence adduced to substantiate that the suit land is public or community land as stated in Article 62 and 63 of the Constitution. Further, no evidence was produced to show the land was registered in the name of the County Council to hold in trust for the community. It referred to the previous Constitution at section 117 which allowed a County Council to set apart land vested in it for use or occupation by a public body or authority for public purpose. It contended that if the County Council wanted to make the suit land public it would have demarcated and had it registered in its name. The Plaintiff further asserted its right to property as provided in Article 40 of the Constitution and submitted that conversion of private property to public property should be in accordance with the Constitution and statute, as well as through the National Land Commission.

In regard to the title of the suit land, the Plaintiff submitted that it held a Certificate of Title, and it is the registered proprietor of the suit land to the exclusion of other entities. It maintained the position that the title has never been challenged by the County Council in respect to ownership or the Land Registrar who is the custodian of land records. It further submitted that the title is indefeasible even if it is proved the registration was obtained by mistake, misrepresentation or fraudulently. Further, that the title was issued under the Registered Land Act Cap 300; and it proceeded to invoke sections 27(a) and 143 (1) of the aforesaid Act which states that the court may order rectification of the register by directing that any registration be cancelled or amended where it is satisfied that any registration (other than a first registration) has been obtained, made or omitted by fraud or mistake. It further relied on sections 25(1), 26 and 27(2) of the Land Registration Act.

On the Defendants' plea of fraud, mistake and illegality, it submitted that the Defendants failed to strictly prove fraud. It explained that the land was allocated to it in 1969 and title issued in 1999. The Land Registrar or the 1st Defendant had not lodged any complaint with any authority. It relied on various decisions including: **Ratlal Gordhanbhai Patel vs. Lalji Makanji civil appeal no 70 of 1956**; **The Registered Trustees of Arya Pratinidhi Vs National Land Commission (2016) eKLR**; **Isaac Gathungu Wanjohi & Another V Attorney General & 6 Others (2012) eKLR**; **Ambale vs. Masolia eKLR (1976)**; **Civil Appeal No. 86 of 1999 Hannah Wangui Ithebu & Ndambuki Musembi and African Inland Church Kenya Registered Trustees vs. Catherine Nduku and 12 others (2017) eKLR** to support its arguments.

On the issue of trespass, the Plaintiff submitted that the Defendants' admit trespass on the suit land without the Plaintiff's consent. It proceeded to assess damages worth Kshs. 5,000,000 and urged the Court to award the same to it and costs of the suit. Further, that the Court should proceed to dismiss the counterclaim with costs against the Defendants jointly and severally.

#### **1<sup>st</sup> and 4<sup>th</sup> Defendants' Submissions**

The 1<sup>st</sup> and 4<sup>th</sup> Defendants submitted that the suit land is public land and therein lies public structures. In regards to the title of the suit land, it submitted that the Plaintiff is a private entity and they hold a fraudulent title obtained in secrecy. The Plaintiff illegally registered the suit land in 1999, and ought to have disclosed that there were public utilities thereon, non-disclosure of material information invalidates the title. Further, the Plaintiff does not draw any income, manage and collect money from the government utilities therein. They insisted that evidence was not tendered to prove purchase of the suit land and it never laid a claim or protested the government developments in the land for public interest. They implored the Court that the Plaintiff's title should be cancelled and the same reverted to the Permanent Secretary, Treasury to hold in trust for the Ministry of Education. They relied on section 26 of the Land Registration Act which provides that a title can be impeached on the grounds of the same having been acquired fraudulently, through misrepresentation or illegally or un-procedurally. They took issue with the letter dated 4th March 2008 which purported to apportion part of the suit land for the Police Post and insisted the said Police Post had been in existence since 1992 before the Letter of excision came into existence thus it takes the form of an acknowledgment letter. On the issue of trespass, they submitted that no evidence was tendered to demonstrate how the 1<sup>st</sup> to 4<sup>th</sup> defendants trespassed on the suit land which is public land, and the 1st Defendant is an area chief who was carrying out his lawful duties. On the issue of misrepresentation, they submitted that the Plaintiff applied for allocation of the suit land without disclosing that the said land was reserved for public school and there existed public utilities thereon. They sought for the Plaintiff's case to be dismissed with costs and the court to enter judgment as prayed in the defence and counterclaim. They relied on various decisions including **Republic Vs Minister for Transport & Communication & 5 others Ex parte Waa Ship Garbage Collector & 15 Others (2006) 1 KLR (E & L) 563**; **Mureithi & 2 Others (For Mbari Ya Murathimi Clan) V Attorney General & 5 Others (2006) 1 KLR**; **Chemei Investments Limited Vs Attorney General & Others Nairobi Petition No. 94 of 2005**; **Denis Noel Mukhulo & Another Vs Elizabeth Murungari Njoroge & Another CA No. 298 of 2013**; **Joseph Arap Ngok Vs Justice Moiwo ole Keiwua & 5 Others, Civil Appeal no. Nai 60 of 1997**; **Kenya Anti-Corruption Commission vs. Online Enterprise Limited Kisumu ELC number 708 of 2015 and Republic vs Registrar of Lands in Kilifi ex parte Daniel Ricci, Malindi HC JR No. 6 of 2013** to buttress their averments.

### Analysis and Determination

Upon consideration of the Pleadings filed herein including the Plaintiff, Defence and Counterclaim, Witnesses' testimonies and rivalling submissions, the following are the issues for determination:

- Whether the Plaintiff adhered to the proper legal process to acquire title to the suit land.
- Whether the Plaintiff is entitled to the Orders sought in the Plaintiff.
- Whether the 1<sup>st</sup> and 4<sup>th</sup> Defendants are entitled to the Orders sought in the Counterclaim

As to whether the Plaintiff adhered to the proper legal process to acquire title to the suit land.

The Plaintiff claims to be the registered proprietor of the suit land having acquired a Certificate of Title in 1999. The Plaintiff produced a Letter dated 1969 and various minutes from the Ol Kejuado County Council including the Transfer Form to prove it legally

acquired the title to the suit land. It is not in dispute that there are various public entities on the suit land including Kibiko Primary School, Kibiko Secondary School, Police Post and Chief's Office. The Plaintiff's witnesses claimed they had undertaken fundraising to put up the primary and secondary schools therein and allowed the Police Post to be constructed. As to whether the Plaintiff adhered to the proper legal procedure to acquire the suit land, I will proceed to analyse the evidence before me. PW1 admitted that the teachers in the two schools are posted by the Teachers Service Commission and not paid by PCEA. On perusal of the Green Card which was produced as an exhibit, I note the suit land was initially registered in the name of the Ol Kejuado County Council in 1964. PW1 claimed by the time he retired in 1990, the suit land was registered in the name of the Church which was contrary to the date in the Certificate of Title. PW1 confirmed that at the point of demarcation there was land set aside for the school. PW2 said the suit land was given to the PCEA by the County Council to undertake developments thereon. Further, that the government agreed to build a Police Post and Chief's Office thereon. PW3 explained that the Plaintiff holds property for the PCEA Church that sponsors the schools but clarified that there is no identity indicating the PCEA indeed sponsors the two schools.

DW1 who was the 1<sup>st</sup> Defendant and a retired chief confirmed that the Chief's Office is within the suit land. He stated that the Chief's office was built around the year 2000 while the Police Post was built around 1998 when the Church was already on suit land but there was no borehole. He explained that the Secondary School was built in the 1980s while Primary School was built in 1967. He insisted the suit land belonged to the Community. He was not aware there was a Certificate of Title to the suit land until the time they wanted to put up a borehole. He contended that the suit land was reserved for public utility and that as per the various letters produced by the Plaintiff, there is no proof the Plaintiff was allocated nor purchased it. DW2 stated that when they were given the suit land they built a church and primary school. He confirmed that he had been a chairman for Kibiko projects and they undertook several fundraising initiatives to build the schools. It was his testimony that the land had been subdivided into portions and the Church allocated six (6) acres.

PW1 in cross examination admitted that as per the letter dated the 5<sup>th</sup> March, 2003, it did not explain anything to do with acquisition of suit land but only demonstrated a history of the Plaintiff and the school. He stated that the Church donated land for the building of the Police. From a perusal of the Green Card which was attached to the Transfer Form it indicated that the suit land was first registered in the name of the Ol Kejuado County Council on 17<sup>th</sup> August, 1964 and this is contrary to the Plaintiff's submissions that the land had never been allocated to the County Council. In the easement section of the said Green Card it indicated that it had been reserved for the use of Kibiko Apostolic Faith Mission School. The Plaintiff's witnesses claimed that in 1969 the suit land was allocated to them but I note none of them produced a Letter of Allotment to that effect. The Plaintiff's witnesses produced various correspondence between itself and the Ol Kejuado County Council to prove they legally acquired the suit land. In the letter dated the 15<sup>th</sup> February, 1969, the PCEA Church had written to the Ol Kejuado County Council when it informed them that certain parcels of land including the suit land were registered in their names. As per the letter dated the 19<sup>th</sup> June, 1970 from the Clerk to the Ol Kejuado County Council addressed to the Parish Minister, in respect to the suit land, he stated as follows:

**‘ 7. Kibiko School. Please note that under the Council registration – this one was set aside for the educational purpose under previous Joshua Organization which is going to be rectified with the total acreage of 46 acres.....Church areas as such are not legally constituted in these areas and you are required to be definite of the area required for churches as ½ may not be accepted for example in Ongata Ronkai the total area is 152 acres then ½ is 50 acres. ’**

Yet, as per the letter dated the 9<sup>th</sup> August, 1993 from the Plaintiff to the Ol Kejuado County Council, it was seeking documents of title in respect to the suit land among other parcels of land.

The Plaintiff produced minutes from the Council meetings held on 31<sup>st</sup> March, 1999 and undated one and various letters between the Ol Kejuado County Council dated the 26<sup>th</sup> April, 1999 and 28<sup>th</sup> May, 1999, letter from the Ministry of Local Authorities dated 11<sup>th</sup> August, 1999 and one from Ministry of Lands and Settlement dated 8<sup>th</sup> December, 1999 forwarding duly executed transfers.

It is interesting to note that at the time the PCEA Church was seeking the said title and Ol Kejuado Council deliberating on the issuance of the same, the two schools, Police Post and Chief’s Office were already operating on the suit land but the Plaintiff failed to inform them of this position. Further, I note that at the time of issuance of the Certificate of Title on 15<sup>th</sup> December, 1999, all public entities were already on the suit land. From the Transfer of Land Form dated the 7<sup>th</sup> December, 1999, it was not signed by the Ol Kejuado County Council which was the local authority that was registered as proprietor of the suit land but instead it was signed by the Commissioner of Lands. The repealed Government Lands Act made specific provisions on the process to be adhered to in the acquisition of public land and enumerated that there had to be a Letter of Allotment and an accompanying Deed Plan; payment of requisite fees but the Plaintiff never provided evidence to this effect. Further, section 117 of the Old Constitution stipulated that it was only the County Council that held public land in trust for the community and could set aside a portion for public utilities. From the various correspondence in respect to the school, it is evident that the two schools on the suit land are indeed public entities and not owned by the PCEA Church. Except for the invitations to the BOG meetings and nominating persons to the Board, the Plaintiff failed to prove if they managed the school. The Plaintiff in its submission insist the suit land has never been public land but this is contrary to the entry in the Green Card which is clear that the same had been registered in the name of the Ol Kejuado County Council. To my mind, I find that the Plaintiff proceeded to acquire title to the suit land through misrepresentation and failed to inform the County Council of the existence of the public schools thereon. Further, there was no Letter of Allotment issued by the County Council nor a Deed Plan prepared prior to the issuance of the said Certificate of Title.

In the case of **Denis Noel Mukhulo Ochwada & another v Elizabeth Murungari Njoroge & another [2018] eKLR**, the Court of Appeal held that: **‘ While we agree with the appellants that title registered under the Registered Land Act was sacrosanct, we are not able to agree that the Act protected title registered under it in all and sundry cases, irrespective of how the title was acquired. By section 27 of the Act, the registration of a person as a proprietor of land vested in him the absolute ownership of the land together with all rights and privileges belonging or appurtenant thereto, while section 28 of the Act insulated the rights of a proprietor from challenge except in the manner set out in the Act, which really does not afford the blanket protection that the appellants claim it did.’**

While in the case of **Mako Abdi Dolal v Ali Duane & 2 others [2019] eKLR** the Judge while dealing with the issuance of a Certificate of Title without a Letter of Allotment held as follows: **‘ Being the subject of alienation of a Government Land, the provisions of the Government Lands Act (Cap. 280) Laws of Kenya (repealed) should have been observed. Under that Act, only the President or the Commissioner of Lands could sign documents for the alienation of Government Land. The same Act gave the President authority to delegate his powers to the Commissioner of Lands. Part III of the Government Lands Act (repealed) provides as follows:“....The Commissioner may cause any portion of a township which is not required for public purposes to be divided into plots suitable for the erection of buildings for business or residential purposes, and such plots may from time to time be disposed of in the prescribed manner”Again, section 7 of the same Act provides as follows: “7. The Commissioner or an officer of the Lands Department may, subject to any general or special directions from the President, Execute for and on behalf of the President any conveyance, lease or licence of or for the occupation of Government Lands, and do any act or thing, exercise any power and give any order or direction and sign or give any document, which may be done, exercised, given or signed by the President under this Act.....”.**The Plaintiff in his case has not produced any letter of allotment from the President or the Commissioner of Lands or any Officer attached to the Lands Office authorized by the President to execute documents on his behalf. The two letters produced by the Plaintiff dated 23<sup>rd</sup> March, 2009 and 25<sup>th</sup> November, 2014 does not disclose how the Plaintiff acquired the suit property.

From the evidence before me, it is trite that acquisition of title to land is a process and a party cannot claim indefeasibility of title if the process was flawed especially in instances where there are public institutions on the said land. Further, it is trite that public interest in land supersedes private interest. In the circumstances as well as associating myself with the decisions cited above, I find that the Plaintiff failed to adhere to the proper legal process to acquire title to the suit land and will proceed to hold that the said title was obtained by mistake, illegally and unprocedurally.

Whether the Plaintiff is entitled to the Orders sought in the Plaintiff.

The Plaintiff sought for orders of permanent injunction against the Defendants in respect to the suit land as well as costs. From the Plaintiff’s witnesses’ testimonies, they failed to demonstrate how the government institutions on the suit land were actually illegal structures. I note the 1<sup>st</sup> Defendant was the local chief and from the Plaintiff’s witnesses’ averments, they did not demonstrate how he had trespassed on the suit land. I opine that the burden of proof was upon the Plaintiff to prove trespass which it failed. Further, based on my findings that it did not acquire the title to the suit land legally as well as procedurally, I find that it is not entitled to the orders sought in the Plaintiff.

As to whether the 1<sup>st</sup> and 4<sup>th</sup> Defendants are entitled to the Orders sought in the Counterclaim. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants sought for a declaration that the suit land is public land and for the said title to be cancelled and its place be substituted in the name of the Permanent Secretary Treasury to hold in trust for the Government of Kenya. Since I have already held that the Certificate of Title was acquired unprocedurally as there existed public utilities on the land, I will proceed to declare that the suit land is indeed public land. On the issue of cancellation of title, I wish to make reference to various legal provisions governing the same in the Land Registration Act and the repealed Registered Land Act which was in place when the Plaintiff acquired its title.

Sections 26 (1) (b) of the Land Registration Act states that: “The certificate of title issued by the Registrar upon registration or to a purchaser of land upon a transfer ... shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner ... and the title of that proprietor shall not be subject to challenge, except –

- (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
- (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

Section 143 of the Registered Land Act (repealed) provides that :’ (1) Subject to subsection (2), the court may order rectification of the register by directing that any registration be cancelled or amended where it is satisfied that any registration (other than a first registration) has been obtained, made or omitted by fraud or mistake. (2) The register shall not be rectified so as to affect the title of a proprietor who is in possession and acquired the land, lease or charge for valuable consideration, unless such proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by his act, neglect or default.’ These provisions are replicated in section 80 of the Land Registration Act which provides that: ‘(1) Subject to subsection (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.

(2) The register shall not be rectified to affect the title of a proprietor who is in possession and had acquired the land, lease or charge for valuable consideration, unless the proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by any act, neglect or default.’

In the case of **Munyu Maina Vs Hiram Gathiha Maina, Civil Appeal No.239 of 2009**, the Court of Appeal held that:- “We have stated that when a registered proprietor root of title is challenged, it is not sufficient to dangle the instrument of title as proof of ownership. It is that instrument of title that is challenged and the registered proprietor must go beyond the instrument to prove the legality of how he acquired the title to show that the acquisition was legal, formal and free from any encumbrances including any and all interests which would not be noted in the register.”

Further in the case of **Kenya Anti-Corruption Commission vs. Online Enterprise Limited Kisumu ELC number 708 of 2015,..”** the court is also empowered under section 80 (1) of the land registration act, 2012 to order the rectification of the register by directing that any registration be cancelled or amended if its satisfied that any registration was obtained, made or omitted by fraud or mistake. I find that the defendants irregularly, fraudulently and un-procedurally registered the suit land in their names and the same should not be allowed to stand.”

While in the case of ‘ **Republic vs Registrar of Lands in Kilifi ex parte Daniel Ricci, Malindi Hc JR No. 6 of 2013** wherein it was emphasized, “ ... If the suit property was indeed set aside for public purpose, then such land cannot be available for allocation. Where public land is allocated to a private person, the court has an obligation not to recognize such title, because as it has been said time and time again, public interest in a property will always outweigh an individual right to own the same property.”

Based on my findings above, and in relying on the cited legal provisions as well as associating myself with the aforementioned decisions, I find that the 1<sup>st</sup> and 4<sup>th</sup> Defendants have indeed proved that the Plaintiff acquired its Certificate of Title to the suit land illegally as well as unprocedurally and hold that the same should be cancelled. Further, that Land Register should be rectified to replace the Plaintiff’s name with the Permanent Secretary Treasury who will hold the title in trust for the public utilities based on the said land.

As to who should bear the costs of the suit. Since costs generally follow the outcome and the 1<sup>st</sup> and 4<sup>th</sup> Defendants having been the inconvenienced parties herein, I find that they are indeed entitled to the same.

It is against the foregoing that I find the Plaintiff has not proved its case on a balance of probability and will proceed to dismiss it. I proceed to enter judgment for the 1<sup>st</sup> and 4<sup>th</sup> Defendants as per the Counterclaim and make the following final orders:

- i. A declaration be and is hereby issued that land parcel number Ngong/ Ngong/ 66 is public land.
- ii. An order be and is hereby issued for rectification of the register of all that parcel of land namely Ngong/ Ngong/ 66 directing for the cancellation of the Plaintiff’s name therefrom.
- iii. The Land Registrar, Kajiado North be and is hereby directed to register the title to land parcel No. Ngong/ Ngong/ 66 in the name of Permanent Secretary, Treasury to hold in trust for the Government of Kenya and issue it with a Certificate of Title to that effect.
- iv. The costs of the suit including the Counterclaim is awarded to the 1<sup>st</sup> and 4<sup>th</sup> Defendants.
- v. Stay of execution is granted for 90 days.

**Dated Signed and Delivered via email this 22<sup>nd</sup> Day of June 2020.**

**CHRISTINE OCHIENG -JUDGE**

**JUDGE**