REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC SUIT NO. 439 OF 2009

BENCASTER INVESTMENTS LTD..PLAINTIFF

VERSUS

JOHN MURITHI..1ST DEFENDANT

SANTINO BENEDETHINO...2ND DEFENDANT

JOHN NJOROGE CHEGE..3RD DEFENDANT

JOSEPH NG'ANG'A CHEGE..4TH DEFENDANT

ATTORNEY GENERAL....................................1ST INTERESTED PARTY

COMMISSIONER OF LANDS........................2ND INTERESTED PARTY

LAND REGISTRAR-NAIROBI......................3RD INTERESTED PARTY

CITY CHICKEN & EGGS DEALERS

CO-OPERATIVE SOCIETY LTD...................4TH INTERESTED PARTY

REGISTERED TRUSTEES OF CHRIST

IS THE ANSWER MINISTRIES(Sued through its officers,

DAVID OGINDE, MARGARET HUTCHINNSON and

KARIUKI KIGO)...5TH INTERESTED PARTY

NAIROBI COUNTY GOVERNMENT.............6TH INTERESTED PARTY

JUDGMENT

The plaintiff brought this suit against the defendants on 3rd September, 2009 seeking;

(i) A permanent injunction restraining the defendants from entering and/or interfering with the plaintiff's user and enjoyment of all that parcel of land known as Nairobi/Block 122/39 (hereinafter referred to as "Plot No. 122/39").

(ii) Damages.

(iii) Costs of the suit and interest.

The plaintiff averred that at all material times it was and still was the sole registered and absolute proprietor of Plot No. 122/39 which is situated at Kasarani, Nairobi. The plaintiff averred that on diverse dates in 2009, the defendants by themselves, their servants and others on their behest and prompting wrongfully entered Plot No. 122/39 and obstructed and/or prevented the plaintiff from dealing and/or accessing

the same. The plaintiff averred that on 17th August, 2009, the defendants accompanied by a mob of hooligans, goons and other miscreants all armed with machetes and assortment of weapons violently entered and trespassed onto the said parcel of land and; physically and violently chased and drove away the plaintiff's workers; demolished the perimeter wall and fence; carried away building materials related to the works that were being undertaken on the property; installed themselves as the owners of the suit property and overwhelmed and chased away police officers who had responded to the plaintiff's request for help.

The plaintiff averred that by reason of the foregoing, the plaintiff had been deprived of the use and quiet enjoyment of Plot No. 122/39 and had thereby suffered loss and damage. The plaintiff averred that the defendants had threatened and intended unless restrained by the court to continue trespassing on the said property and preventing the plaintiff from exercising its right of use, possession and quiet enjoyment thereof.

The defendants filed a defence and counter-claim against the plaintiff on 2nd October, 2009. The defendants' defence and counter-claim was amended on 13th June, 2011, Re-amended on 21st June, 2012 and Further Re-amended on 10th April, 2013. The 1st to 4th interested parties were added to the suit on 18th June, 2010 on application by the defendants. The 5th interested party was similarly added to the suit on 9th July, 2012. The 6th interested party was added to the suit on 30th January, 2019 on its own application for joinder.

In their Further Re-amended defence and counter-claim, the defendants denied the plaintiff's claim in its entirety. The defendants denied that the plaintiff held a legitimate and legal title to Plot No. 122/39. The defendants averred that Plot No. 122/39 was a public utility plot that was reserved as a playing field for children and a community centre and as such no valid title could be issued in respect thereof in favour of an individual for private use. The defendants averred that the plaintiff did not hold a genuine title to the said parcel of land that could confer ownership thereof upon the plaintiff.

In their counter-claim, the defendants averred that Plot No. 122/39 was at all material times held in trust by the 4th interested party for public use as a children's playing field and a community centre. The defendants averred that they reside in the precincts of Plot No. 122/39 and are members of City Chicken Farm Development Group which is a neighbourhood residents' association whose members and their families had a direct interest in the protection of public utilities in the area including Plot No. 122/39. The defendants averred that Plot No. 122/39 was part and parcel of their respective parcels of land. The defendants averred that one, Benjamin Mwangi Shem who was a director of both, the plaintiff and City Chicken & Eggs Dealers Co-operative Society Ltd., the 4th interested party herein, illegally, unlawfully and fraudulently converted parcels of land known as Nairobi Block 122/39, Nairobi Block 122/32 and Nairobi Block 122/42 which were meant for; a playing field and community centre, church and nursery school, and a primary school respectively into private use without the knowledge, consent and authority of the residents of the area and ultimate users and beneficiaries thereof.

The defendants averred that the residents of the area where the said parcels of land are situated stood to suffer immensely if the said public utility plots were converted to private use and more particularly the residents who were residing close to the said plots who were also likely to be affected by the private developments. The defendants averred that if at all the titles in respect of Nairobi Block 122/39, Nairobi Block 122/32 and Nairobi Block 122/42 (hereinafter together referred to as "the suit properties" and individually as "Plot No. 122/39", "Plot No. 122/32" and "Plot No. 122/42" respectively) were issued to the plaintiff, the same were issued fraudulently and illegally by the 2nd and 3rd interested parties and the same should be cancelled and the plots reverted to public use as initially intended.

The defendants averred that the 4th interested party breached the trust that was bestowed upon it and colluded with the plaintiff to transfer to the plaintiff the suit properties which were reserved for public use. The defendants averred further that the plaintiff unlawfully purported to sell and transfer Plot No. 122/42 to the 5th interested party with full knowledge that the said parcel of land was reserved for public use. The defendants averred that the 5th interested party knew or ought to have known with reasonable diligence that Plot No. 122/42 was reserved for public use.

The defendants urged the court to dismiss the plaintiff's suit against them and to enter judgment against the plaintiff for:

> (i) A permanent injunction restraining the plaintiff and any person claiming under the plaintiff together with the 5th interested party from selling, transferring, disposing of, altering, developing, using or in any other way interfering with Nairobi Block 122/39 and Nairobi Block 122/42.
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> (ii) An order cancelling and/or nullifying the titles in respect of Nairobi Block 122/32, Nairobi Block 122/39 and Nairobi Block 122/42 which were irregularly issued to the plaintiff and that of Nairobi Block 122/42 which was unlawfully transferred to the 5th interested party and reverting the properties to public use as originally intended.
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> (iii) Costs of the suit.

The plaintiff filed a reply to defence and defence to the defendants' counter-claim on 8th October, 2009 which was amended on 9th July, 2014. In its amended reply to defence and defence to counter-claim, the plaintiff joined issue with the defendants in their defence and averred that the defence was not properly before the court and that the same constituted general denials. The plaintiff averred that the defendants had no business pleading for and/or representing the public. In its defence to the counter-claim, the plaintiff averred that the 4th interested party was not a party to this suit and that City Chicken Farm Development Group was an amorphous body that was not capable of suing or being sued. The plaintiff averred further that Nairobi Block 122/32 and Nairobi Block 122/42(Plot No. 122/32 and Plot No. 122/42) were not in dispute in this suit. The plaintiff averred that Plot No. 122/32 was derived from a third party while Plot No. 122/42 was owned by a third party. The plaintiff reiterated that it had absolute and unimpeachable title to the suit properties and that the defendants were busy bodies intent on creating and/or perpetuating anarchy by depriving the plaintiff of quiet and peaceful enjoyment of the said properties. The plaintiff averred further that no order could issue against the 2nd and 3rd interested parties.

The plaintiff denied that it acquired the suit properties fraudulently and illegally as claimed by the defendants. The plaintiff averred that in

the event that its titles to the suit properties were vitiated for any reason whatsoever, it would claim that it was a bona fide purchaser for value and that in any event, it would seek indemnity from the interested parties jointly and severally. The plaintiff denied that Plot No. 122/39 was a public utility plot reserved as a playground for children and a community centre. The plaintiff also denied that no valid title could be issued to an individual or corporate body in respect of that property for private use. The plaintiff reiterated that it was the registered proprietor of Plot No. 122/39 and challenged the defendants to prove the contrary. The plaintiff denied that the 4th interested party held Plot No. 122/39 in trust for public use. The plaintiff also denied that the defendants own land in the neighbourhood of Plot No. 122/39. The plaintiff denied that the defendants were at any time members of the 4th interested party. The plaintiff admitted that Benjamin Mwangi Shem was a director of the plaintiff but denied that he illegally and fraudulently colluded with the 4th interested party to have Plot No. 122/39 transferred to the plaintiff. The plaintiff averred that the suit properties were sold to the said Benjamin Mwangi Shem by the 4th interested party in an open and transparent manner and with the full knowledge and approval of the members of the 4th interested party. The plaintiff averred that no member of the 4th interested party had complained about the transaction. The plaintiff urged the court to dismiss the defendants' counter-claim and to enter judgment for the plaintiff as prayed in the plaint.

The 1st, 2nd and 3rd interested parties filed a reply to the defendants' counter-claim on 18th July, 2011. The 1st, 2nd and 3rd interested parties denied that the suit properties were held by the 4th interested party in trust. The 1st, 2nd and 3rd interested parties denied that they committed any act of fraud or illegality in the process of acquisition of the suit properties by the plaintiff. The 1st, 2nd and 3rd interested parties averred that proper procedures were followed in the transfer and registration of the suit properties in favour of the plaintiff. The 1st, 2nd and 3rd interested parties averred that they had no power to cancel the titles that were issued to the plaintiff in respect of the suit properties. The 1st, 2nd and 3rd interested parties averred that the defendants' counter-claim as against them had no basis.

The 4th interested party filed its reply to the defendants counter-claim on 13th July, 2011. The 4th interested party averred that the suit properties were part of its private land known as Nairobi/ Block 122(hereinafter referred to as "the parent plot" where the context so permits). The 4th interested party averred that in 1990 when a decision was made by the 4th interested party to share out the parent plot amongst its members, it was agreed that the suit properties be reserved for a primary school, a nursery school and a commercial centre for the benefit of the 4th interested party's members who would settle on the portions of the parent plot that was being allocated to them. The 4th interested party averred further that it was also resolved that the suit properties be surrendered to the Government for the sole purpose of developing the said nursery school, primary school and a commercial centre.

The 4th interested party averred that it realized after sometime that the Government had no plans or intention of developing the suit properties in accordance with the resolution by the members of the 4th interested party. The 4th interested party averred that in view of this development, the 4th interested party requested the Government to return the suit properties back to the 4th interested party so that it could develop the said properties as it had planned. The 4th interested party averred that the Government openly and willingly re-allocated the suit properties to the 4th interested party by issuing the 4th interested party with letters of sub-division approval in respect of the said properties whose user was retained. The 4th interested party averred that it paid to the Government Kshs. 367,680/- that was demanded in the said letters of sub-division approval. The 4th interested party averred that following that payment, the 4th interested party was issued with leasehold titles for the suit properties.

The 4th interested party averred that due to financial constraints, the 4th interested party was unable to develop the suit properties and resolved to look for a private developer who could purchase the suit properties and develop the same strictly in accordance with the users set out in their leasehold titles. The 4th interested party averred that after considering several offers, they found the plaintiff's offer more responsive and the 4th interested party resolved to sell the suit properties to the plaintiff. The 4th interested party averred that the suit properties were sold to the plaintiff for value, openly and in good faith. The 4th interested party averred that during the sale of the suit properties to the plaintiff, consent of the commissioner of lands was sought and obtained. The 4th interested party averred that the allegations of fraud, illegality, collusion and breach of trust made against it in the defendants' counter-claim were malicious, unjustified, unfounded and without any basis. The 4th interested party averred that none of the defendants were members of the 4th interested party and as such the defendants had no *locus standi* to challenge the internal decisions of the 4th interested party concerning its properties.

The 5th interested party filed its reply to the defendants' counter-claim on 22nd August, 2012. The 5th interested party denied that Plot No. 122/42 was transferred to it. The 5th interested party averred that the reliefs sought against it in the counter-claim could not issue. In the alternative, the 5th interested party denied that Plot No. 122/42 was reserved for public use and that the 5th interested party knew of this fact or ought to have known the same with reasonable diligence. The 5th interested party denied all the allegations of fraud and illegality pleaded against it in the counter-claim. The 5th interested party averred that proper procedures relating to registration and transfer of Plot No. 122/42 were followed and that the transfer of the said property to its current owner was lawful. The 5th interested party averred that the defendants had no *locus standi* to file a counter-claim against the 5th interested party.

The evidence tendered by the parties.

The hearing of this suit commenced before Nyamweya J. on 16th September, 2013. Nyamweya J. took the evidence of the plaintiff's witnesses, the 1st, 2nd and 3rd interested parties' witness and the 4th interested party's witness before she was transferred. On 7th December, 2015, the parties agreed that the hearing of the suit proceeds before me from where it had reached before Nyamweya J. I took the evidence of the 5th interested party and the defendants' witnesses. The 6th interested party which joined the suit after the hearing had commenced did not tender evidence.

The plaintiff called two (2) witnesses. The first witness was the plaintiff's director, Benjamin Mwangi Shem(PW1). He told the court that on 16th August, 2009, he engaged some people to fence for him Plot No. 122/39. He stated that on 17th August, 2009 the fencing work commenced and that at around 11.00am, a group of young men numbering about 50 invaded the said property and chased away the workers

claiming that the land was grabbed. PW1 stated that the invaders were sent by the defendants. He stated that he reported the invasion to the police and that when about 5 policemen arrived at the scene, they were overwhelmed. PW1 told the court that Plot No. 122/39 belonged to the plaintiff. He stated that the said parcel of land together with Plot No. 122/32 and Plot No. 122/42 (the suit properties) were sold to the plaintiff by the 4th interested party at a total sum of Kshs. 4,500,000/-. PW1 produced as a bundle the documents attached to the plaintiff's list of documents dated 17th May, 2011 as P. Exh.1. PW1 denied that the suit properties were reserved for public use. He stated that the suit properties were given to the Government by the 4th interested Party in 1990 for the development of a nursery school, a primary school and a commercial centre. PW1 stated that since the Government was not developing the suit properties, the 4th interested party asked the Government to return the same to the 4th interested party which request was accepted by the Government. PW1 stated that the 4th interested party thereafter requested the commissioner of lands for consent to sell the suit properties to the plaintiff which request was once again granted. PW1 stated that the sale of the suit properties to the plaintiff was lawful. He stated that Plot No. 122/32 and Plot No. 122/39 were still in the name of the plaintiff while Plot No. 122/42 had been sold to the 5th interested party. He stated that the user of the suit properties had not changed. He urged the court to restrain the defendants from interfering with the plaintiff's activities on the suit properties.

The plaintiff's last witness was Brighton Kirui (PW2). He told the court that he was a corporal with the administration police and that he could recall the events of 17th August, 2009. He stated that on that day at around 11.00am he and other officers were on patrol duties in Mwingo area of Kasarani when they met PW1 who told them that a group of young people had invaded his farm. He stated that they went to the farm which was pointed out to them by PW1 and tried to confront the invaders but they were overpowered by the invaders who were pelting them with stones.

Next to give evidence was the 4th interested party's witness. The 4th interested party's witness was, Ibrahim Hussein Maingi (4th I.PW1). The 4th I.PW1's evidence was as follows: He was a member and a secretary of the 4th interested party. He was also a member of the 4th interested party's management committee. The 4th interested party bought a parcel of land from a white man in 1960. The members of the 4th interested party used to keep chicken on the land which was known as Nairobi Block 122. The 4th interested party subdivided the said parcel of land and allocated to each member 3 portions thereof. The 4th interested party reserved some portions of the original parcel for a nursery school, a primary school and shops. The 4th interested party had 90 members. Some of the members who were allocated land by the 4th interested party sold their land to non-members of the 4th interested party. Those who purchased land from members of the 4th interested party did not become members of the 4th interested party. The 4th interested party was still a going concern even after subdividing land parcel Nairobi Block 122 and allocating the same to its members. The 4th interested party had other properties apart from Nairobi Block 122.

The plots that were reserved for a nursery school, shops and a primary school were, Plot No. 122/32, Plot No. 122/39 and Plot No. 122/42 respectively. The 4th interested party surrendered these parcels of land to the Ministry of Lands. The Government did not build schools and shops. The 4th interested party asked the Government to return the three parcels of land to the 4th interested party. The Government agreed with the request and allocated the said parcels of land to the 4th interested party. The 4th interested party paid the allocation fees after which the 4th interested party was issued with leases in respect of the three plots.

The 4th interested party could sell the suit properties with the consent of the Commissioner of Lands. The 4th interested party was unable to develop the suit properties because it had no money for that purpose. The 4th interested party sought and obtained consent of the Commissioner of Lands to sell the suit properties to the plaintiff which consent was duly granted. The 4th interested party did not commit any illegality or fraud in selling the suit properties to the plaintiff. If the suit properties had not been surrendered back to the 4th interested party, the Government would have allocated the same to another private developer. The 4th interested party sold the suit properties to PW1 who was a member of the 4th interested party's management committee because the 4th interested party could not get a better offer for the same. The 4th I.PW1 produced the 4th interested party's bundle of documents as an exhibit.

The next to give evidence was the 1st to 3rd interested party's witness, Gordon Ochieng (1st-3rd I.PW1). Gordon Ochieng who told the court that he was a principal land administration officer testified as follows: He was aware of the suit properties. Plot No. 122/42 was registered in the name of the 5th interested party while Plot No. 122/32 and Plot No. 122/39 were registered in the name of the plaintiff. The suit properties were acquired for valuable consideration and all the formalities were followed according to the records held by the 3rd interested party. The suit properties were part of Nairobi/ Bock 122 that was owned by the 4th interested party. The 4th interested party sought and obtained permission from the Nairobi City Commission to subdivide Nairobi/Block 122. During the subdivision, the suit properties were reserved for public utility. Plot No. 122/32 was reserved for a nursery school, Plot No. 122/39 for a commercial centre and Plot No. 122/42 for a primary school. The reservation of the suit properties for public utility and surrender of the same to the Government for that purpose was a condition for the subdivision approval. It was assumed that upon acceptance of the subdivision conditions, the suit properties would automatically revert to the Government and become Government land. The Government did not develop the suit properties for the public. The 4th interested party subsequently made an application to the Commissioner of Lands to be re-granted these public utility plots on the grounds that the same had remained idle. The application was allowed and the suit properties were re-allocated to the 4th interested party on condition that the same would be utilized for the same purposes for which they had been planned.

When the suit properties were sold and transferred to the plaintiff, the user thereof remained the same. All the necessary approvals and consents were obtained during the transfer of the suit properties to the plaintiff. The suit properties were not public land since the same were created from private land. There was a difference between public land and private land surrendered for public utility. The process of surrender of the suit properties to the Government and the registration thereof had not been completed as at the time the 4th interested party made an application for re-allocation to it of the said parcels of land. The 2nd and 3rd interested party acted in good faith and there was no fraud involved in the allocation of the suit properties and transfer of the same.

The next to give evidence was the 5th interested party's witness, Prof. Margaret Chesang Hutchinson (5th I.PW1). 5th I.PW1 testified as follows: At all material times, she was a deacon and a church secretary of the 5th interested party. In that capacity, she was one of the registered officers of the 5th interested party. She was the one in charge of the administrative functions of the 5th interested party. With regard

to the dispute before the court, her role with the other members of the deacon board was to identify a suitable lawyer to handle the transaction that involved the acquisition of Plot No. 122/42 and to disburse the funds to the owner thereof. They engaged Onduso & Company advocates who handled the transaction on their behalf successfully and they obtained a title for the property in 2009. The 5th interested party paid Kshs. 11,500,000/- for the suit property. The 5th interested party intended to construct a school and a church building on the property. The transaction was above board.

The 5th interested party's next witness was Paul Chapia Onduso (5th I.PW2). He testified as follows: He was an advocate of the High Court of Kenya. In 2008, he was approached by the 5th interested party to act for it in the purchase of a property that the 5th interested party had identified. As at the time of his instructions, the 5th interested party and the vendor had agreed on a purchase price of Kshs. 11,500,000/-. He accepted the instructions. After obtaining a copy of the title for the property that was being purchased by the 5th interested party, he conducted a search. The search revealed that the title had no encumbrances. The parties thereafter executed an agreement for sale and after the 5th interested party paid the balance of the purchase price, the property namely, Plot No. 122/42 was registered in its name. The vendor was the plaintiff who was the registered owner of the property as at the time of the transaction. He had no reason to doubt the validity of the plaintiff's title after a search did not reveal any encumbrance on the title.

The defendants called two witnesses. The first witness was the 1st defendant, John Jediel Muriithi(DW1). DW1 told the court that he was a resident of City Chicken Farm, Kasarani. He stated that the plaintiff was known to him and that the suit relates to the suit properties which are situated in City Chicken Farm. He stated that the suit properties were reserved as public utility plots. He stated that he owned a parcel of land in City Chicken Farm known as L.R No. 122/82(hereinafter referred to only as Plot No. 122/82). He purchased the parcel of land in 1989. After he purchased the plot, he became a member of the 4th interested party. He stated that Plot No. 122/32 was reserved for a nursery school, Plot No. 122/39 for a commercial use and Plot No. 122/42 for a primary school. He stated that the leases for the suit properties were given to the 4th interested party and that the properties were supposed to be surrendered to the City Commission. He stated that he was not sure if the properties were surrendered to the City Commission.

He stated that the suit properties were sold by the 4th interested party to the plaintiff at Kshs. 4,500,000/-. He stated that the plaintiff's managing director was a committee member of the 4th interested party. He stated that he was not informed of the sale of the suit properties and that the issue was not discussed at the 4th interested party's AGM. He stated that the plaintiff subsequently sold Plot No. 122/42 to the 5th interested party. DW1 stated that the suit properties had not been developed and that the same were being used as playgrounds and for church meetings. He stated that there were several schools in the neighbourhood. DW1 urged the court to dismiss the plaintiffs suit and to cancel the titles that had been issued in respect of the suit properties. DW1 stated that he purchased a plot in City Chicken Farm because he knew there were playgrounds and open spaces that could be used by children who go to the neighboring schools. He stated that the suit properties should be returned to the residents. DW1 produced the defendants' various bundles of documents as exhibits.

The defendants' last witness was the 4th defendant, Joseph Ng'ang'a Chege(DW2). DW2 adopted his witness statement dated 26th January, 2012 as his evidence in chief. In his statement, DW2 repeated most of the evidence that was given DW1. He stated that his co-defendants and he were residents of City Chicken Estate, Kasarani, Nairobi occupying portions of land that was formerly owned by the 4th interested party. He stated that the suit properties were reserved for public utility and that no valid titles could be issued in respect thereof. He stated that the suit properties were converted from public land to private land without the knowledge, consent or authority of the residents who were the users and beneficiaries thereof.

The submissions by the parties.

After the close of evidence, the parties were directed to make closing submissions in writing. The plaintiff filed its submissions and supplementary submissions on 29th November, 2019 and 18th May, 2020 respectively. The defendants filed their submissions on 23rd January, 2020. The 1st, 2nd and 3rd interested parties, the 4th interested party, the 5th interested party, and the 6th interested party filed their submissions on 27th January, 2020, 29th November, 2019, 13th December, 2019 and 29th January, 2020 respectively. The 1st, 2nd and 3rd interested parties filed supplementary submissions on 27th January, 2020.

In its submissions, the plaintiff argued that the suit properties were not public land. The plaintiff submitted that the suit properties were never surrendered to the Government by the 4th interested party in accordance with section 63(1) of the Registered Land Act, Chapter 300 Laws of Kenya (now repealed) and as such the same remained private land owned by the 4th interested party. The plaintiff submitted further that since the suit properties were never surrendered to the Government, the ownership of the same was not transferred to the Government and as such the properties did not become public property. The plaintiff submitted that since the suit properties were not public land, the defendants' counter-claim was founded on a false premise.

The plaintiff submitted further that as at the time the 4th interested party transferred the suit properties to the plaintiff, the 4th interested party was the lawful and legitimate owner thereof. The plaintiff submitted that the 4th interested party passed a good title to the plaintiff in respect of the suit properties. The plaintiff submitted further that the defendants did not prove the allegations of fraud levelled against the plaintiff and the interested parties in the defence and counter-claim. The plaintiff submitted that the defendants were not shareholders of the 4th interested party and that no shareholder of the 4th interested party had complained against the transaction.

In their submissions in reply, the defendants submitted that they had the *locus standi* to bring this suit and that the issue of their standing was settled by this court in a ruling delivered on 18th June, 2010 that was not appealed. The defendants submitted that the Commissioner of Lands had granted subdivision approval to the 4th interested party's subdivision scheme that gave rise to the suit properties on several conditions which were set out in a letter dated 20th May, 1991. The defendants submitted that one of the conditions was that public utility plots that were reserved for a primary school, playing field/community center were to be surrendered to the City Commission free of cost. The defendants submitted that neither the 4th interested party nor the 1st to 3rd interested parties gave an explanation why the public utility

plots which are the subject of this suit were never surrendered to the City Commission as per the conditions that were set out in the letter of subdivision approval dated 20th May, 1991 which were not varied, set aside or reviewed. The defendants submitted that the admission by the 4th interested party and the 1st to 3rd interested parties that the suit properties were never surrendered to the City Commission was a vindication of the defendants as to the illegalities alleged against the said parties.

The defendants submitted that the 4th interested party in collusion with the 2nd and 3rd interested parties illegally and fraudulently ensured that the suit properties were not surrendered to the City Commission for public use. The defendants submitted that in furtherance of the unlawful scheme, the 4th interested party in collusion with the 2nd and 3rd interested parties obtained titles for the suit properties and with the consent of the 2nd interested party, transferred the properties to the plaintiff whose director was a member of the management committee of the 4th interested party. The defendants submitted that the failure by the 2nd interested party to ensure that the conditions for subdivision approval were met was itself illegal and an abdication of his fiduciary duty and responsibility to the defendants and the residents of Kasarani area.

The defendants submitted that if the suit properties were never surrendered to the Government and as such remained private property as contended by the 4th interested party then it was not necessary for the 4th interested party to apply to the 2nd interested party to be re-granted its own plots. The defendants submitted further that if the suit properties were Government land that the 2nd interested party was capable of allocating then the 2nd interested party was to comply with the provisions of the Government Land Act, Chapter 280 Laws of Kenya (now repealed) on the disposal of Government land. The defendants submitted that the provisions of that Act were not followed in the allocation or re-grant of the suit properties to the 4th interested party and as such the whole process was unlawful and a nullity.

In support of this submission, the defendants relied on Said Bin Seif *v* Sharriff Mohamed Shatry (1940) 19 (1) KLR 9. The defendants submitted that the 2nd interested party had no authority to re-grant to the 4th interested party land that did not belong to the Government and as such the purported re-granting of the suit properties to the 4th interested party was a nullity. The defendants averred that in any event, if the suit properties were Government land, the purported re-granting of the same by the 2nd interested party to the 4th interested party contrary to the provisions of the Government Lands Act, Chapter 280 Laws of Kenya (now repealed) rendered the act illegal. The defendants submitted that the City Commission which was a local authority was legally mandated to hold unalienated land within its jurisdiction in trust and this explains why the 4th interested party was required to surrender the suit properties to the City Commission free of cost.

The defendants submitted that the 4th interested party was to surrender the suit properties to the City Commission with effect from 20th May, 1991 and that on 13th May, 1998, the 4th interested party purported to apply to be re-granted the properties under the guise that it wanted to develop the same for the intended purposes and in particular for the benefit of the residents of the area where they are situated. The defendants submitted that even after being purportedly re-granted the suit properties, the 4th interested party never developed the same for the benefit of the said residents but instead sold the same to the plaintiff thereby depriving the residents of Kasarani of essential facilities. The defendants submitted that they had proved the illegalities and fraud pleaded against the plaintiff and the interested parties in their defence and counter-claim through the evidence that was given by the defendants, the plaintiff and the interested parties. The defendants submitted that after selling the suit properties to the plaintiff at Kshs. 4,500,000/-, the 4th interested party shared the proceeds thereof amongst its members in disregard of the residents of Kasarani who were meant to be the beneficiaries of the said public utility plots. The defendants submitted that soon thereafter the plaintiff purported to sell a single plot for Kshs. 11,500,000/- to the 5th interested party.

The defendants submitted that the plaintiff was not an innocent purchaser of the suit properties since its director colluded to have the suit properties illegally and fraudulently transferred to the plaintiff. The defendants averred that since the plaintiff's titles to the suit properties were tainted with fraud and illegality, the plaintiff had no valid title in Plot No. 122/42 that it could pass to the 5th interested party. The defendants averred further that the instrument of lease for Plot No. 122/42 stated that the user of the property was a school. The defendants submitted that this should have made the 5th interested party to be more vigilant in their due diligence. The defendants submitted further that DW1 met the officials of the 5th interested party and warned them that Plot No. 122/42 that they wanted to purchase was a public utility plot. The defendants submitted that the 5th interested party was not an innocent purchaser of Plot No. 122/42 in the circumstances. The defendants submitted further that a title that has been unlawfully and/or illegally acquired cannot enjoy the protection of the law. The defendants submitted that the principle of indefeasibility of title cannot be of assistance to the 4th interested party and the plaintiff. The defendants submitted further that the 4th interested party was a trustee of the suit properties and as such section 28(c) of the Registered Land Act, Chapter 300, Laws of Kenya (now repealed) barred it from dealing with the properties in breach of that trust. The defendants cited a number of decided cases in support of these submissions. The defendants submitted further that the 4th interested party should not be allowed to benefit from its own wrong having illegally and fraudulently sold the suit properties in breach of its fiduciary duty to the residents of Kasarani.

The defendants urged the court to stamp its authority and protect land reserved for public use from encroachment by greedy private individuals. The defendants urged the court to dismiss the plaintiff's suit with costs and to enter judgment for the defendants as prayed in their Further Re-Amended Defence and Counter-Claim.

In their submissions, the 1st to 3rd interested parties submitted that the suit properties were not public land in that the same were not surrendered by the 4th interested party to the Government in accordance with section 63(1) of the Registered Land Act, Chapter 300 Laws of Kenya (now repealed). The 1st to 3rd interested party submitted that the 6th interested party cannot be heard to claim that the suit properties are public land since it had religiously been receiving land rates in respect thereof over the years from the plaintiff. In support of this submission, the 1st to 3rd interested parties cited Anthony Milimu Lubulellah *v* County Governmnet of Kakamega & Another [2019]eKLR. The 1st to 3rd interested parties submitted that the suit properties were lawfully registered in the name of the plaintiff after the same was lawfully re-allocated to the 4th interested party who sold and transferred the same to the plaintiff. The 1st to 3rd interested parties submitted further that the plaintiff's titles to the suit properties were protected by law. The 1st to 3rd interested parties cited a number of decided cases in support of their submissions on this issue. On whether there was fraud in the allocation of the suit properties to the 4th interested party and

the sale of the same to the plaintiff, the 1st to 3rd interested parties submitted that none was proved. Finally, the 1st to 3rd interested parties submitted that the defendants had no *locus standi* to bring this suit since they had no identifiable interest in the suit properties capable of enforcement by the court.

In its submission, the 4th interested party submitted that the suit properties were not public land. The 4th interested party submitted that the reservation of the suit properties for public utility did not convert the same to public land as claimed by the defendants. The 4th interested party submitted that only two of the suit properties were to be surrendered to the Government and that the surrender was never done in accordance with section 63(1) of the Registered Land Act, Chapter 300 Laws of Kenya (now repealed). The 4th interested party submitted that an intention to surrender did not amount to a surrender. The 4th interested party submitted that the court cannot be called upon to treat the agreement by the 4th interested party to surrender the suit properties to the Government as a surrender. The 4th interested party submitted that the 4th interested party did not convert public property to private use. The 4th interested party submitted that there was no public property to be converted to private use. The 4th interested party submitted that the 4th interested party was always ready and willing to surrender the suit properties to the Government but the process was overtaken by events when the 4th interested party applied to be re-granted the plots which application was allowed.

The 4th interested party submitted that there was no fraud involved in the re-granting of the suit properties to the 4th interested party. The 4th interested party submitted further that it did not contravene the conditions that were set out in the subdivision approval as claimed by the defendants. The 4th interested party submitted that it did comply with all the conditions. The 4th interested party also denied that it illegally and fraudulently interfered with the survey maps and secretly converted public property to private property without the consent of the beneficiaries. The 4th interested party reiterated that the process of converting the suit properties to public land was never completed and that even if the suit properties were public land, the same were lawfully re-allocated to the 4th interested party.

The 4th interested party submitted that the re-allocation of the suit properties to the 4th interested party was finalized on 14th May, 2001 and that the allegations of fraud and illegalities on the part of the 4th interested party were raised in 2009; more than 8 years later. The 4th interested party submitted that if the defendants had any genuine grievance, they would have raised the same earlier.

The 5th interested party adopted the submissions by the plaintiff, the 1st to 3rd interested parties and the 4th interested party. The 5th interested party submitted that it was a bona fide purchaser for value of Plot No. 122/42 and that it was not involved in the process through which the title of the property was created. The 5th interested party submitted that the defendants did not prove that the transfer of the said property to the 5th interested party was unlawful. The 5th interested party submitted that while purchasing the property, it was aware that the land was private but the use was public utility being a school and that it was ready and willing to comply with the user condition. The 5th interested party submitted that it acquired a good title to private and not public land. The 5th interested party submitted that Plot No. 122/42 was never surrendered to the Government and as such it remained private land. The 5th interested party submitted further that the fact that the property was reserved for public utility could not prevent the same from being lawfully transferred to the 5th interested party. The 5th interested party submitted further that the allegations of fraud and illegality leveled against the 5th interested party had no basis. The 5th interested party submitted that the defendants had no *locus standi* to bring this suit and that it was a bona fide purchaser of Plot No. 122/42 without notice. Finally, the 5th interested party submitted that its title to Plot No. 122/42 was indefeasible.

In its submissions, the 6th interested party, argued that by applying to the Commissioner of Lands for the suit properties to be re-allocated to it, the 4th interested party acknowledged that the said properties had been surrendered pursuant to the conditions that were given by the Commissioner of Lands while approving the subdivision scheme for Nairobi Block 122. The 6th interested party submitted that in the circumstances, it was not open to the 4th interested party to argue that the suit properties were not surrendered to the Government. In support of this submission, the 6th interested party relied on this court's decision in National Land Commission *v* Afrison Export Import Limited & 10 others [2019]eKLR. The 6th interested party submitted that if the 4th interested party was dissatisfied with the conditions that were imposed by the Commissioner of Lands while granting the subdivision approval, it had 30 days to appeal against the same under the provisions of Regulation 21 of The Development and Use of Land (planning) Regulations of 1961 that were in force pursuant to the provisions of the Land Planning Act, 1968. The 6th interested party submitted further that since the suit properties came into being following subdivision of parcels of land that were registered under the Registration of Titles Act, Chapter 281 Laws of Kenya (now repealed), the surrender of the properties could be effected by an instrument under section 44(1) of the said Act or by operation of law. In support of this submission, the 6th interested party relied on Mwinyi Hamisi Ali *v* Attorney General & Another [1997]eKLR and Erick Omondi Anyanga *v* National Social Security Fund Board[2003]eKLR.

The 6th interested party submitted that the express surrender of the suit property under section 44(1) of the Registration of Titles Act, Chapter 281 Laws of Kenya (now repealed) or section 63(1) of the Registered Land Act, Chapter 300 Laws of Kenya (now repealed) could only take place after the 4th interested party had released to the Commissioner of Lands the titles for the said parcels of land. The 6th interested party submitted that the 2nd interested party and the plaintiff admitted that the process of surrender of the suit properties to the Government was not completed. The 6th interested party submitted that there was a scheme to deprive the 6th interested party of the suit properties. The 6th interested party submitted that failure by the 4th interested party to surrender the suit properties to the Government and failure by the 2nd interested party to ensure that it was done was intentional. The 6th interested party submitted that attempts by the 4th interested party in collusion with the 3rd interested party to dispose of the suit properties were contrary to the provisions of the Registered Land Act, Chapter 300 Laws of Kenya (now repealed) and as such were ineffectual to transfer or effect any estate, right or interest in the suit properties. The 6th interested party submitted that the burden was on the 4th interested party, the plaintiff and the 3rd interested party to prove that the acquisition of the suit properties and alienation thereof was lawful. The 6th interested party reiterated that even if the 4th interested party failed to execute the necessary documents to surrender the suit properties to the Government, the said properties were deemed to have been surrendered by operation of law. In support of this submission, the 6th interested party relied on National Land Commission *v* Afrison Export Import Limited & 10 others (supra). The 6th interested party submitted further that the suit properties were not alienated to the 4th interested party in

accordance with the procedure that was set out in the Government Land Act, Chapter 280 Laws of Kenya (now repealed) for the disposal of public land. The 6th interested party submitted that since the suit properties were not alienated in accordance with the law then in force, the same remained public land held by the 2nd interested party in trust for the public for the purposes for which they were planned. In support of this submission, the 6th interested party relied on Kenya Industrial Estates Limited *v* Anne Chepsiror & 5 others [2015] eKLR and Republic *v* Commissioner of Lands & 4 others ex parte Associated Steel Limited, High Court at Nairobi, Misc. Civil suit No. 273 of 2007.

In conclusion, the 6th interested party submitted that the suit properties were surrendered to the Government in terms of the subdivision scheme approved on 11th November, 1991 and since the said properties were Government land, the same could not be alienated otherwise than in accordance with the provisions of the Government Lands Act, Chapter 280 Laws of Kenya (now repealed). The 6th interested party urged the court to enter judgment in favor of the defendants and for the dismissal of the plaintiff's suit with costs.

In its supplementary submissions, the plaintiff submitted that there was no evidence that the plaintiff colluded with the 2nd interested party to ensure that the suit properties were not surrendered to the City Commission. The plaintiff submitted further that there was nothing unusual in re-allocating public utility plots back to the owners where the Government was unable to develop the same. In response to the 6th interested party's submissions that the surrender of the disputed plots could be effected either by an instrument of surrender or by operation of law, the plaintiff submitted that the argument was based on the erroneous assumption that the suit properties were registered under the Registration of Titles Act, Chapter 281 Laws of Kenya. The plaintiff submitted that the suit properties were registered under the Registered Land Act, Chapter 300 Laws of Kenya and that section 63(1) of that Act dealing with surrender is worded in mandatory terms. The plaintiff also distinguished the cases that were cited by the 6th interested party in support of its submission. In conclusion, the plaintiff submitted that the land that was reserved for nursery school/church that was registered as Plot No. 122/32 was not to be surrendered to the City Commission but was only to be developed to the satisfaction of the commission. The plaintiff submitted that there was no need of including Plot No. 122/32 in this suit in the circumstances.

In their supplementary submissions, the 1st to 3rd interested parties reiterated the contents of their submissions dated 9th December, 2019. The 1st to 3rd interested parties reiterated that the suit properties were private properties since the same were not surrendered to the Government either as provided in the statute or by operation of law. The 1st to 3rd interested parties submitted that the titles for the suit properties did not pass either to the Government or to any local authority. The 1st to 3rd interested parties submitted that the cases cited by the 6th interested party in support of its submission on the issue of surrender were distinguishable in that in those cases, the surrender was done but the proper procedure was not followed. The 1st to 3rd interested parties reiterated that the defendants had failed to prove acts of fraud alleged against the plaintiff and the interested parties. The 1st to 3rd interested parties urged the court to enter judgment in favour of the plaintiffs.

Determination:

I have considered the evidence tendered by the parties in support of their respective cases and the submissions of counsels. The parties did not agree on the issues to be determined by the court. In my view the issues arising for determination in the suit and the counter-claim by the defendants are the following;

1. **Whether the 4th interested party was registered on 13th September, 2006 as the leasehold proprietor of all those parcels of land known as Nairobi Block 122/32, Nairobi Block 122/39 and Nairobi Block 122/42 (the suit properties) lawfully and as such held valid titles over the said properties.**

2. **Whether the sale and transfer of the suit properties by the 4th interested party to the plaintiff was lawful.**

3. **Whether the sale and transfer of the parcel of land known as Nairobi Block 122/42 by the plaintiff to the 5th interested party was lawful.**

4. **Whether the defendants trespassed on the parcel of land known as Nairobi Block 122/39.**

5. **Whether the plaintiff is entitled to the reliefs sought in the plaint.**

6. **Whether the defendants are entitled to the reliefs sought in their counter-claim.**

7. **Who is liable for the costs of the suit?**

Whether the 4th interested party was registered on 13th September, 2006 as the leasehold proprietor of all those parcels of land known as Nairobi Block 122/32, Nairobi Block 122/39 and Nairobi Block 122/42 (the suit properties) lawfully and as such held valid titles over the said properties.

There is no dispute on how the suit properties came into existence. The 4th interested party owned three parcels of land at Kasarani, Nairobi known as L.R No. 8469/1, L.R 1012/63 and L.R No. 8461/1. In 1991, the 4th interested party sought to subdivide and amalgamate the said parcels of land for the purposes of distributing the same to its members. The 4th interested party presented to the Commissioner of Lands a subdivision and amalgamation scheme for approval. In the subdivision and amalgamation scheme, the 4th interested party set a part plots to be used for public purposes. The said plots were reserved for a primary school, a playing field/community centre and a church/nursery school. The Commissioner of Lands gave a provisional approval to the 4th interested party's subdivision and amalgamation scheme through a letter dated 20th May, 1991.

The approval was conditional. Among the conditions that the Commissioner of Lands had imposed while granting his approval was that the public purposes plots that were reserved for a primary school and a playing field/community centre were to be surrendered to the Nairobi City Commission free of cost while the plot that was reserved for a church/nursery school was to be developed to the satisfaction of the Nairobi City Commission. The said subdivision and amalgamation scheme was given final approval on the same terms by the Commissioner of Lands through a letter dated 11th November, 1991. The 4th interested party did not challenge the terms under which its subdivision and amalgamation scheme was approved. Following the final approval aforesaid, the 4th interested party carried out the subdivision and amalgamation of L.R No. 8469/1, L.R 1012/63 and L.R No. 8461/1. After subdivision and amalgamation, the three parcels of land which were registered under the Registration of Titles Act, Chapter 281 Laws of Kenya (now repealed) were converted to Registered Land Act, Chapter 300 Laws of Kenya (now repealed) and became known as Nairobi Block122. The plots that were reserved for church/nursery school, playing field/community centre and primary school were given title numbers, Nairobi Block 122/32, Nairobi Block 122/39 and Nairobi Block 122/42 respectively. These are the suit properties herein.

After the subdivision and amalgamation process was completed, the 4th interested party allocated the subplots to its members. The subplots that were allocated to the 4th interested party's members were over 200. During the allocation, the 4th interested party retained in its name the public purposes plots namely, Nairobi Block 122/32, Nairobi Block 122/39 and Nairobi Block 122/42. It is important to mention at this stage that many of the members of 4th interested party who were allocated portions of Nairobi Block 122 sold their plots to non-members. Among the non-members who purchased plots from the members of the 4th interested party were the 1st and 4th defendants. The 4th interested party has contended that it did not surrender to the Nairobi City Commission, Nairobi Block 122/39 and Nairobi Block 122/42 that were reserved for a playing field/community centre and primary school respectively in accordance with the terms under which its subdivision and amalgamation scheme was approved. The 4th interested party did not also develop Nairobi Block 122/32 that was reserved for a church/nursery school in accordance with the said terms.

On 13th May, 1998, several years after the completion of the subdivision, amalgamation and the allocation of the subplots of Nairobi Block 122 to its members some of whom had already sold their plots to third parties, the 4th interested party wrote to the Commissioner of Lands requesting that the plots that had been reserved for public purposes that it was supposed to surrender to the Nairobi City Commission be re-allocated to it for development. The 4th interested party proposed three entities to which the allocation was to be done. I reproduce below the contents of the said letter of 13th May, 1998:

> "**CITY CHICKEN & EGGS CO-OP. SOCIETY,**
>
> **P.O. BOX 16091**
>
> **NAIROBI.**
>
> **13th May, 1998**
>
> **The Commissioner of Lands,**
>
> **P.O.BOX 30089**
>
> **NAIROBI.**
>
> **Dear Sir,**
>
> **<u>RE: SUBDIVISION SCHEME OF L.R NO. 1012/63 KASARANI</u>**
>
> **We refer to the above subject and have to inform you that one of the conditions of subdivision was that the plots meant for Primary school, Nursery School and Community Centre be surrendered to the Government free of cost. We now wish to develop these facilities ourselves and we would like them to be re-allocated to us for such developments. In the circumstances we would like you to allocate them as hereunder:**
>
> **Nursery School-------------Joseka Enterprises**
>
> **Primary School------------Vumilia Education Services**
>
> **Community Centre---------Mamukaka Developers**
>
> **We hope and trust that the re-allocation will be effected so that we can develop them for the benefit of all the residents of the area.**
>
> **We thank you in anticipation.**
>
> **Yours faithfully,**
>
> **Sgn.**

For: CITY CHICKEN & EGGS CO-OP. SOCIETY"

Evidence was led by the 4th interested party that the Commissioner of Lands, the 2nd interested party herein, approved the 4th interested party's request above through a letter dated 17th July, 1998. None of the parties to this suit including the 2nd and 4th interested parties placed before the court a copy of the said letter dated 17th July, 1998 through which the 4th interested party's application to be re-allocated the public purpose plots was approved by the 2nd interested party to enable the court to appreciate the reasons for such approval and the terms if any on which the approval was granted.

What followed were three (3) letters all dated 14th May, 2001 from the 2nd interested party informing the 4th interested party that following Government approval of the subdivision of L.R No. 1012/63 and L.R No. 8469/1, the issuance of the leases for Nairobi Block 122/32, Nairobi Block 122/39 and Nairobi Block 122/42 in the 4th interested party's favour would be undertaken as soon as the 4th interested party had accepted the conditions and made the payments of the charges that were set out in the said letters and subject to surrender of the original titles. There was no mention in the said letters dated 14th May, 2001 of the application that the 4th interested party had made for the re-allocation of the said parcels of land or what became of the entities whose names had been given by the 4th interested party for the purposes of allocation of the said parcels of land. According the evidence adduced by the 4th interested party, the 4th interested party accepted the terms that were set out in the 2nd interested party's letters dated 14th May, 2001 on 29th September, 2005 and paid the charges that were set out in the said letters totaling Kshs. 367,680/- on 8th November, 2005. This sum of Kshs. 367,680/- was paid on behalf of the 4th interested party by Benjamin Mwangi Shem. That fact is captured in the agreement of sale dated 12th January, 2006 between the 4th interested party and the said Benjamin Mwangi Shem. Benjamin Mwangi Shem is a director of the plaintiff herein. As at the time Benjamin Mwangi Shem paid the said sum of Kshs. 367,680/- to the 2nd interested party on behalf of the 4th interested party, the 4th interested party had already made a decision to sell the three parcels of land, Nairobi Block 122/32, Nairobi Block 122/39 and Nairobi Block 122/42(the suit properties) to him according to the report by the chairman of the 4th interested party that was given at the 4th interested party's Annual General Meeting that was held on 26th January, 2006. What this means is that even when the 4th interested party was purportedly applying to the 2nd interested party to be re-allocated the suit properties for development, it had no money to do so and as at the time it made payment for the alleged re-allocation, the 4th interested party had already made a decision to sell the suit properties.

Following the said payments that were made by Benjamin Mwangi Shem on behalf of the 4th interested party on 8th November, 2005, the 2nd interested party issued leases in favour of the 4th interested party in respect of the suit properties on 19th April, 2006, 8th March, 2006 and 19th April, 2006 for Nairobi Block 122/32, Nairobi Block 122/39 and Nairobi Block 122/42 respectively. In the instruments of lease; the user for Nairobi Block 122/32 was indicated as "Primary School Purposes"; the user for Nairobi Block 122/39 was indicated as "shops, offices and flats (Excluding the sale of petrol and motor oils)" while the user for Nairobi Block 122/42 was indicated as "educational purposes and the accommodation for the headmaster/principal". I find it strange that the user for Nairobi Block 122/39 was indicated in the lease instrument as shops, offices and flats. There was completely no basis for this. According to the subdivision and amalgamation scheme that was presented by the 4th interested party to the 2nd interested party, Nairobi Block 122/39 was reserved for a playing field/community centre. The approval of the subdivision and amalgamation scheme was given on that basis and the 2nd interested party stated expressly that the subplot that was marked playing field/community centre be surrendered to the City Commission. It is not clear as where the 4th interested party and the 2nd interested party got the idea that the parcel of land was reserved for commercial use. In land use planning, commercial use cannot by any means be a public purpose for which Nairobi Block 122/39 was reserved. I will revisit the issue later in the judgment.

The leases for the suit properties were registered on 13th September, 2006 and certificates of leases in respect thereof issued to the 4th interested party on the same date. By letters dated 31st August, 2006, the 4th interested party applied to the 2nd interested party for consent to transfer the suit properties to the plaintiff herein. As at the time of this application, the suit properties had not been registered in the name of the 4th interested party. The 2nd interested party gave his consent to the transfer of the suit properties by the 4th interested party to the plaintiff on 2nd October, 2006. I have noted from the material on record that as at 2nd October, 2006 when the said consent was granted, the plaintiff had not been incorporated. From a copy of the certificate of incorporation on record, the plaintiff was incorporated on 27th October, 2006 some weeks after the consent had been issued by the 2nd interested party. It is a wonder how the plaintiff entered into an agreement of sale with the 4th interested party in respect of the suit properties which had been sold to Benjamin Mwangi Shem and managed to obtain consent for the said properties to be transferred to it before it was incorporated. Nairobi Block 122/39 was ultimately transferred to the plaintiff on 18th May, 2007 while Nairobi Block 122/42 was transferred to the plaintiff on 24th August, 2007. It is not clear from the evidence on record as to when Nairobi Block 122/32 was transferred to the plaintiff. The plaintiff transferred Nairobi Block 122/42 to the 5th interested party on 29th July, 2009 at a consideration of Kshs. 11,500,000/-.

Having set out the background of the suit properties and the roles played by the various parties before the court in their acquisition and disposal, I will now go back to the issue that I had set out to determine, namely, whether the 4th interested party was registered as the proprietor of the suit properties on 13th September, 2006 lawfully and held valid titles in respect thereof before disposing of the properties to the plaintiff. It is clear from what I have set out above that the suit properties came about as a result of the subdivision and amalgamation of L.R No. 8469/1, L.R No. 1012/63 and L.R No. 8461/1. The three parcels of land gave rise to Nairobi Block 122 which upon subdivision resulted in among other subplots, the suit properties. It is also clear beyond doubt that the suit properties were reserved by the 4th interested party for public purposes for the benefit of the residents of the subplots that resulted from the subdivision of Nairobi/Block 122 and that the 4th interested party's subdivision scheme was approved on condition that two of the properties namely, L. R No. 122/39 and L.R No. 122/42 that were reserved for a playing field/community centre and primary school respectively were to be surrendered to the Nairobi City Commission that was running the City of Nairobi at that time free of cost and that Nairobi Block 122/32 that was reserved for a church/nursery school was to be developed by the 4th interested party to the satisfaction of the Nairobi City Commission. The legality or otherwise of the titles that were held by the 4th interested party in the suit properties must be discerned first from the law that was regulating development and use of land before it is subjected to the substantive land law.

As was correctly submitted by the 6th interested party, the land use planning legislation that was in force at the time when the 4th interested

party applied for and obtained approval for its subdivision and amalgamation scheme was Town Planning Act, Chapter 134 Laws of Kenya and Land Planning Act, Chapter 303 Laws of Kenya (both now repealed) together with the rules and regulations that were made thereunder. Regulation 11 of the Development and Use of Land (planning) Regulations of 1961 under the Land Planning Act provided as follows:

> **"11. (1). Every person requiring consent for development shall make application to the interim planning authority for the area in which the land concerned is situated or where no such authority exists for the area, to the Central Authority in such form and such manner as may be prescribed and shall include such plans and particulars as are necessary to indicate the intention of the applicant.**
>
> **(2) In particular such application shall show the use and density proposed and the land which the applicant intends to surrender for the purposes of -**
>
> > **(a) principal and secondary means of access to any subdivisions within the area included in the application and to adjoining land, and**
> >
> > **(b) public purposes consequent upon the proposed development.**
>
> **(3) For the purpose of this regulation "public purpose" means any non-profit-making purpose which may be declared by the Minister to be a public purpose and includes -**
>
> > **(a) educational, medical and religious purposes;**
> >
> > **(b) public open spaces and car parks;**
> >
> > **(c) Government and local government purposes."**

Under regulation 11(2) above of the Development and Use of Land (planning) Regulations of 1961 (hereinafter referred to only as "the Regulations"), the 4th interested party was under an obligation to indicate in its application for approval of its subdivision and amalgamation scheme the land that it was going to surrender for public purposes. Public purposes is defined as "any non-profit making purpose" and includes educational, medical and religious purposes; public open spaces and car parks; and Government and local government purposes.

Regulation 16 of the Regulations provided as follows:

> **"16. (1) Conditions imposed in granting consent to a planning application may require the doing of things, or may require that things shall not be done in relation to land or buildings or any part thereof, or may be of such other character as the Central Authority or interim planning authority, as the case may be, may think proper, and the Central Authority or the interim planning authority, as the case may be, may require the applicant to enter into an undertaking in such form as may be prescribed, to observe the conditions imposed and may require the applicant (except in the case of unalienated Government land) to furnish security, whether by bond or otherwise, in such sum as the Central Authority or the interim planning authority, as the case may be, may think fit, for the due observance of the conditions.**
>
> **(2) Where in the opinion of the Central Authority or the interim planning authority, as the case may be, insufficient land is surrendered in the application for the purposes specified under regulation 11 (2) of these Regulations or such land is, for any reason, unsatisfactory, the authority may disapprove the application or may inform the applicant that the application will be approved if additional land or satisfactory land, as the case may be, is surrendered:**
>
> **Provided that -**
>
> > **(i) the authority shall not request the surrender of additional land for public purposes if, having regard to the nature and amount of the development proposed in the application, the land surrendered for such purposes represents an appropriate contribution of the total land required for public purposes to serve the area as a whole;**
> >
> > **(ii) the authority shall not disapprove an application under this paragraph where the owner surrenders an area of land for public purposes equal to 20 per cent or more of the area of land included in the application;**
> >
> > **(iii) land surrendered for the public purposes specified under regulation 11 (2) of these Regulations shall be freely surrendered to the Government and subject to the approval of the Minister the land surrendered shall be made available for public purposes related to the area generally, as and when required;**
> >
> > **(iv) where it is shown to the satisfaction of the Minister that other more suitable land is required for a public purpose, the Minister may, with the consent of the President and on such terms in regard to the use and development thereof as he may, in consultation with the Central Authority, or the interim planning authority, as the case may be, specify, dispose of the surrendered land and use the proceeds for the purpose of purchasing such other land;**
> >
> > **(v) in the case of land obtained for public purposes before the date of the coming into force of these Regulations where it is shown to the satisfaction of the Minister that other more suitable land is required, the Government may, with the consent of the President, dispose of such land for the purpose of obtaining the new land for a public purpose in accordance with the provisions of the foregoing paragraph.**

(3) The Government shall not be bound by any condition imposed under paragraph (2) of this regulation.

(4) For the purpose of this regulation "public purpose" has the meaning assigned to it by regulation 11 (3) of these Regulations.

Regulation 16(1) above provided that while granting approval, the interim planning authority or Central Authority could impose conditions requiring certain things to be done and certain things not to be done in relation to land or buildings or any part thereof. Proviso (iii) to Regulation 16(1) made it mandatory for land surrendered for public purposes to be surrendered to the Government free of charge and subject to the approval of the Minister the land could be made available for public purposes related to the area.

Regulations 21 and 25 provided as follows:

"21. (1) An applicant aggrieved by a decision of the Central Authority or an interim planning authority, as the case may be, may, within 30 days of receipt by him of notification of such decision, appeal to the Minister in writing against the decision in such manner as may be prescribed."

25. Any person who knowingly makes any false statement in any application or appeal under these Regulations, or who knowingly gives any false information to any person in the course of the determination of any application or appeal under these Regulations shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term of six months or to both such fine and imprisonment.

I am of the view that the 4th interested party having indicated in its application for approval of its subdivision and amalgamation scheme that it was going to surrender the suit properties for public purposes, once the scheme was approved on condition that the suit properties were to be surrendered or dealt with in a particular manner, the 4th interested party had no discretion on the matter. The land that had to be surrendered to the Government had to be surrendered and that which was to be developed in a particular way or manner had to be so developed. The 4th interested party had a right under Regulation 21 to appeal to the Minister in case it was not satisfied with the conditions that were imposed by the Central Authority whose Chairman was the 2nd interested party. In my view, it would amount to making of a false statement in an application for development approval for the 4th interested party to state that it was going to surrender the suit properties for public purposes and for it to fail to do so once the approval was granted. Under Regulation 21, making of a false statement in an application for development approval is a criminal offence.

It is my finding from the foregoing that once the 4th interested party's subdivision and amalgamation scheme was approved on condition that the suit properties were reserved for public purposes and that Nairobi Block 122/39 and Nairobi Block 122/42 were to be surrendered to the Nairobi City Commission and the 4th interested party was to develop Nairobi Block 122/32 to the satisfaction of the Nairobi City Commission, the suit properties remained so reserved and had to be dealt with in accordance with the subdivision and amalgamation approval aforesaid. It follows therefore that the 4th interested party could not deal with Nairobi Block 122/39 and Nairobi Block 122/42 in any other manner save for surrendering the same to the Nairobi City Commission. It was after the two parcels of land had been surrendered that the Nairobi City Commission as the owner thereof could decide on the development of the same. On the other hand, Nairobi Block 122/32 was to be developed by the 4th interested party for the public purpose for which it was reserved.

The plaintiff, the 1st to the 3rd interested parties and the 4th interested party were unanimous that the 4th interested party did not surrender the suit properties to either the Nairobi City Commission or the Government. The suit properties were registered under the Registered Land Act, Chapter 300 Laws of Kenya (now repealed). If the 4th interested party was to surrender the same to the Government or the Nairobi City Commission, section 63(1) of that Act had to be complied with. No evidence was placed before the court showing that any attempt was made to comply with section 63(1) of the Act. Since by their own admission, they did not surrender Nairobi Block 122/39 and Nairobi Block 122/42 to the Nairobi City Commission, the 4th interested violated the provisions of the Planning Act, Chapter 303 Laws of Kenya (now repealed). I am of the view that so long as the 4th interested party was holding the two parcels of land in breach of the law, they had no valid title in respect thereof. In my view they held the two parcels of land in trust for the Nairobi City Commission which was to use the same for public purposes for which they were reserved.

The purported application for re-allocation and a purported re-allocation of the suit properties to the 4th interested party was a sham. The 4th interested party could not apply to the 2nd interested party to be re-allocated land that it never surrendered to the Government. How could the government re-allocate what was not surrendered to it in the first place? There was no re-allocation in that sense of the word. In my view, since the 4th interested party owned Nairobi Block 122 which gave rise to the suit properties upon subdivision, the 2nd interested party simply issued the 4th interested party with the leases for the suit properties as the owners thereof instead of having the same surrendered to the Nairobi City Commission. In the 4th interested party's bundle of exhibits, there is a letter dated 22nd October, 1999 by the 4th interested party addressed to the 2nd interested party giving the names of its members to whom leases were to be issued. The 4th interested party also gave the particulars of the subplots that were allocated to each of the members in the list it had provided. It is clear from that letter that the 4th interested party sought to be issued with leases in respect of the suit properties. This is exactly what the 2nd interested party did through the three (3) subdivision scheme approval letters dated 14th May, 2001 which are alleged to be the letters of re-allocation of the suit properties to the 4th interested party. Another issue that a rises is how the 2nd interested party could have re-allocated land that was to be surrendered to the Nairobi City Commission without the permission or consent of the commission. There is no evidence that the Nairobi City Commission was involved in the purported re-allocation of the suit properties to the 4th interested party. I am also in agreement with the defendants and the 6th interested party that even if it is assumed that the suit properties were surrendered to the Government and could be re-allocated, the allocation had to comply with the provisions of the Government Lands Act, Chapter 280 Laws of Kenya (now repealed). There was no dispute that in the purported re-allocation of the suit properties to the 4th interested party, the provisions of the Government Lands Act on the disposal of public land were not followed. In any event, the suit properties; at least two of them had already been alienated to the Nairobi

City Commission and reserved for public purposes. The same were not available for further alienation. The 4th interested party and the 1st to 3rd interested parties argued vehemently that the suit properties were not public land. They however failed to explain how the Government could have allocated land that was not public land. The plaintiff and the 1st to 5th interested parties submitted at length that the defendants had failed to prove fraud alleged against them. I have pointed out herein above how the 4th interested party applied for re-allocation of the suit properties so that it could develop the same for the benefit of the residents while it knew that it had no money to develop the same and only wanted to sell the same for gain. I have also highlighted how the 2nd interested party purported to re-allocate to the 4th interested party the suit properties that had not been surrendered by the 4th interested party to the Government. The 2nd interested party also proceeded to grant consent to the 4th interested party to sell the suit properties to the plaintiff even before the plaintiff was incorporated. With all these illegalities and irregularities, fraud on the part of those who were involved cannot be ruled out.

It is my finding therefore that the purported re-allocation or re-grant of the suit properties to the 4th interested party did not confer any valid title upon the 4th interested party in respect thereof. The 4th interested party could have obtained a title for Nairobi Block 122/32 in the normal way following the subdivision of Nairobi Block 122 since the parcel of land was not supposed to be surrendered. It was not necessary to engage in circus of the magnitude that it got involved in to get the title. 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."**

In Nairobi High Court Civil Suit No. 1024 of 2005(O.S), Milankumar Shah & 2 others *v* The City Council of Nairobi & another, the court 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".**

My answer to the first issue is that the registration of the 4th interested party as the proprietor of Nairobi Block 122/39 and Nairobi Block 122/42 on 13th September, 2006 was unlawful and as such the 4th interested party did not acquire any valid title or interest in the two parcels of land. The two parcels of land were to be surrendered to the Nairobi City Commission and as long as the 4th interested party held the same and refused to surrender the same as by law provided, the 4th interested party held the same in trust for the Nairobi City Commission which was to use the same for public purposes for the benefit of the residents of City Chicken Farm and their neighbours. With regard to Nairobi Block 122/32, the 4th interested party was entitled to be registered as the owner thereof. However, since the same was reserved for public purposes, the 4th interested party was supposed to hold the same in trust for the residents of City Chicken Farm for whose benefit the same was reserved.

I wish to disabuse the 4th interested party from its erroneous stance that since the defendants were not members of the 4th interested party, they were not entitled to benefit from the public purpose plots. When the 4th interested party purported to apply to be re-allocated the suit properties, it stated that it wanted to develop the said properties for the benefit of the residents and not its members. It should be understood that when a developer, a land buying company or a co-operative Society buys land which it then subdivides and allocates to its members or sells to third parties, the plots reserved for public purposes in the subdivision schemes are for the benefit of the residents of the subplots arising from the subdivisions and not the developers or their members. A dangerous trend is developing in this country whereby developers are revisiting the developments which they completed several years ago and sold and seizing public utility plots which they never surrendered and either selling them or developing them contrary to the purposes for which they were reserved. This practice that was encouraged by the 2nd interested party must be discouraged. The defendants led evidence that was uncontroverted that 98% of the residents of City Chicken Farm were not shareholders or original members of the 4th interested party and that explained why the 4th interested party did not see anything wrong with selling of the public utility plots and sharing the proceeds with its shareholders. Land once reserved for public purpose is for the benefit of the residents of the area where it is situated who must at all times be consulted in case the land is to change hands or is to be put in any use other than that for which it was reserved. I am therefore in agreement with the defendants that the 4th interested party held the suit properties as a trustee and not as the owner thereof.

Whether the sale and transfer of the suit properties by the 4th interested party to the plaintiff was lawful.

I have held that the 4th interested party held land parcels, Nairobi Block122/39 and Nairobi Block 122/42 in breach of the provisions of the Planning Act, Chapter 303 Laws of Kenya (now repealed) and the Regulations made thereunder. I have also held that the 4th interested party held Nairobi Block 122/39 and Nairobi Block122/42 in trust for the Nairobi City Commission and the residents of City Chicken Farm, Kasarani and Nairobi Block 122/32 in trust for the residents of City Chicken Farm. In John Gitiba Buruna & Another *v* Jackson Rioba Buruna, Court of Appeal at Kisumu, Civil Appeal No. 89 of 2003, the court stated as follows:

> **"Although the rights of a registered proprietor of land are indefeasible under section 28 of the Registered Land act, such registration does not as the proviso to section 28 states relieve a proprietor from any duty or obligation to which he is subject as a trustee."**

In Juletabi African Adventure Limited & another *v* Christopher Michael Lockley [2017] eKLR, the Court of Appeal stated as follows:

“ 27. In ***Twalib Hatayan Twalib Hatayan & Anor vs. Said Saggar Ahmed Al-Heidy & Others [2015] eKLR***, this Court examined and stated the law on trusts as follows:

“According to the Black’s Law Dictionary, 9th Edition; a trust is defined as

> **“1. The right, enforceable solely in equity, to the beneficial enjoyment of property to which another holds legal title; a property interest held by one person (trustee) at the request of another (settlor) for the benefit of a third party (beneficiary).”**

Under the Trustee Act, “… the expressions “trust” and “trustee” extend to implied and constructive trust, and cases where the trustee has a beneficial interest in the trust property…”

In the absence of an express trust, we have trusts created by operation of the law. These fall within two categories; constructive and resulting trusts. Given that the two are closely interlinked, it is perhaps pertinent to look at each of them in relation to the matter at hand. A constructive trust is an equitable remedy imposed by the court against one who has acquired property by wrong doing. … It arises where the intention of the parties cannot be ascertained. If the circumstances of the case are such as would demand that equity treats the legal owner as a trustee, the law will impose a trust. A constructive trust will thus automatically arise where a person who is already a trustee takes advantage of his position for his own benefit (see Halsbury’s Laws of England supra at para 1453). As earlier stated, with constructive trusts, proof of parties’ intention is immaterial; for the trust will nonetheless be imposed by the law for the benefit of the settlor. Imposition of a constructive trust is thus meant to guard against unjust enrichment. …”

For the reason that the 4th interested party held titles to Nairobi Block 122/39 and Nairobi Block122/42 illegally having refused to surrender the same to the Nairobi City Commission and also held the same in trust, the 4th interested party did not have a valid legal title in the two parcels of land that it could pass to the plaintiff. With regard to Nairobi Block 122/32, the same was reserved for public purposes. The 4th interested party was in the circumstances supposed to hold the same in trust for the residents of City Chicken Farm, Kasarani. As a trustee of the said parcel of land, the 4th interested party had no legal title in the same that it could transfer to the plaintiff. For the forgoing reasons, it is my finding that the plaintiff did not acquire valid titles from the 4th interested party in respect of the suit properties. The 4th interested party could not transfer to the plaintiff a valid title that it did not have.

Whether the sale and transfer of the parcel of land known as Nairobi Block 122/42 by the plaintiff to the 5th interested party was lawful.

I have already held that the plaintiff acquired no valid title from the 4th interested party in respect of the parcel of land known as Nairobi Block122/42. It follows therefore that the plaintiff similarly had no valid title in the property that it could convey to the 5th interested party. In other words, the plaintiff being a holder of an invalid title could not transfer a better title to the 5th interested party. In Macfoy *v* United Africa Co. Ltd. (1961) 3 ALL E.R 1169 at page 1172, Lord Denning stated as follows:

> **“If an act is void then it is in law a nullity. It is not only bad but incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void without much ado, though it is sometimes convenient to have the court to declare it to be so. 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.”**

In African Line Transport Co. Ltd. *v* The Hon. Attorney General, Mombasa HCCC No. 276 of 2003(unreported), where Njagi J. dealing with a similar case stated as follows:

> **“On the contrary, by a letter dated 30th June, 2006, the Commissioner of Lands states that there was no proof in her record that this allocation was authorized by the President. In the absence of such proof, one can draw only one conclusion-that the grant to Mr. Omari was null and void for not having been executed by the President. And if the grant to Mr. Omari was null and void ab initio, it conferred no interest in Mr.Omari. By extension of the principle of nemo dat quod non habet, if Mr. Omari acquired no interest in the property, then he had no interest to transfer to the plaintiff. And that is the plaintiff’s lot. There was a gross irregularity which went to the very root of the title to the suit property, and the plaintiff acquired no interest out of it.”**

The 5th interested party had argued that it was an innocent purchaser for value without notice of the defect if any in the plaintiff’s title. From the evidence on record, I do not think that this was the case. DW1 gave uncontroverted evidence that before the 5th interested party purchased Nairobi Block 122/42, he had a meeting with officials of the 5th interested party whom he informed that the said parcel of land was reserved for public purposes and that they ignored him and went ahead to purchase the suit property from the plaintiff. In any event, I am of the view that the doctrine of an innocent purchaser cannot convert an invalid title that was passed to the 5th interested party by the plaintiff into a valid one.

Whether the defendants trespassed on the parcel of land known as Nairobi Block 122/39.

The plaintiff’s claim against the defendants is based on trespass. Trespass has been defined as any intrusion by a person on the land in the possession of another without any justifiable cause. See, Clerk & Lindsell on Torts, 18th Edition, page, 923, paragraph, 18-01. In Gitway Investments Limited *v* Tajmal Limited & 3 others [2006] eKLR, it was held that title to land carries with it legal possession. I have held above that although the plaintiff is the registered owner of Nairobi Block 122/39, the title held by the plaintiff is not valid. With an invalid

title, the plaintiff is not entitled to possession of the said parcel of land and as such cannot maintain an action for trespass. In any event, I am not satisfied from the evidence on record that the defendants trespassed on the suit property. The plaintiff claimed that the defendants entered the suit property with a group of goons and chased away his workers and that he reported the incident to the police. The defendants on the other hand claimed that the persons who chased away the plaintiff's workers from Nairobi Block 122/39 were youth who used to play football on the said parcel of land. I am not convinced that the defendants were involved in the alleged acts of trespass. The defendants gave evidence that they were residents of the area where the said parcel of land is situated. If in deed they were involved in the fracas to the extent that they overpowered and chased away policemen who came to the aid of the plaintiff, I wonder why they were not arrested and charged. It is my finding therefore that the plaintiff's claim is not proved.

Whether the plaintiff is entitled to the reliefs sought in the plaint.

As I have stated in the preceding paragraph, the plaintiff's claim was based trespass. I have held that trespass has not been proved. The plaintiff had sought an order of injunction and damages for trespass against the defendants. Since trespass was not proved, the plaintiff is not entitled to these reliefs sought in the plaint.

Whether the defendants are entitled to the reliefs sought in their counter-claim.

In their counter-claim against the plaintiff and the interested parties, the defendants sought a permanent injunction restraining the plaintiff from selling, transferring, developing, using or in any way interfering with the parcel of land known as Nairobi Block 122/39. The defendants also sought a similar injunctive relief against the 5th interested party in relation to Nairobi Block 122/42. In addition, the defendants sought an order compelling the 2nd and 3rd interested parties to cancel the titles in respect of Nairobi Block 122/32, Nairobi Block 122/39 and Nairobi Block 122/ 42 that were irregularly issued to the plaintiff and the transfer of Nairobi Block 122/ 42 to the 5th interested party. The defendants have established that they have an interest in the suit properties and that the same were illegally sold and transferred to the plaintiff. The defendants have also established that Nairobi Block 122/42 was transferred by the plaintiff to the 5th interested party illegally. I am satisfied therefore that the defendants have established their claim against the defendants and the interested parties and as such they are entitled to the reliefs sought in their counter-claim dated 4th April, 2013.

Who is liable for the costs of the suit?

As a general rule, costs follow the event unless the court for good cause orders otherwise. The plaintiffs have failed in their claim against the defendants. The defendants on the other hand have succeeded in their claim against the plaintiffs. No reason has been given why the defendants should be denied the costs of this suit and that of the counter-claim. The defendants shall have the costs of the suit and the counter-claim.

Conclusion:

In conclusion, I hereby make the following orders;

1. The plaintiff's suit is dismissed.

2. A permanent injunction is issued restraining the plaintiff its agents or employees or any one claiming through it from selling, transferring, developing, using or in any other way interfering with all that parcel of land known as Nairobi Block/122/39.

3. A permanent injunction is issued restraining the 5th interested party its agents or employees or any one claiming through it from selling, transferring, developing, using or in any other way interfering with all that parcel of land known as Nairobi Block/122/42.

4. The National Land Commission, the successor of the Commissioner of Lands and the Chief Land Registrar shall cancel the registration of the plaintiff on 18th May, 2007 as the proprietor of the parcels of land known as Nairobi Block/122/32 and Nairobi Block/122/39 and the certificates of leases that were issued to it on the same date so that the properties revert to the name of the 4th interested party.

5. The National Land Commission, the successor of the Commissioner of Lands and the Chief Land Registrar shall cancel the registration of the plaintiff on 24th August, 2007(entry No. 3) and the registration of the 5th interested party on 29th July, 2009(entry No. 5) as proprietors of Nairobi Block/122/42 and the certificate of lease that was issued to the 5th interested party on the same date (entry No. 6) in respect thereof so that the property reverts to the name of the 4th interested party.

6. The 4th interested party shall surrender the parcels of land known as Nairobi Block/122/39 and Nairobi Block 122/42 to the Nairobi County Government free of charge as soon as the two parcels of land are reverted to its name and the Nairobi County Government shall hold the same in trust for the residents of City Chicken Farm, Kasarani for public purposes for which they were reserved.

7. The 4th interested party shall hold the parcel of land known as Nairobi Block/122/32 in trust for the residents of City Chicken Farm, Kasarani and shall develop the same for the purposes for which it was reserved.

8. The defendants shall have the costs of the suit and the counter-claim to be paid by the plaintiff and the 4th interested party jointly and severally.

Delivered and Dated at Nairobi this 30th Day of July 2020

S. OKONG'O

JUDGE

Judgment read through Microsoft Teams video conferencing platform in in the presence of;

Mr. Kangatta for the Plaintiffs

Mr. Mwangi for the Defendants

Mr. Kamau for the 1st to 3rd Interested parties

Ms.Juma h/b for Mr. Gichuhi for the 4th Interested party

N/A for the 5th Interested party

Mr. Ombati for the 6th Interested party

Ms. C.Nyokabi-Court Assistant