



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CASE NO. 292 OF 2015

JOSEPH KINYANJUI WANJIRU.....PLAINTIFF

VERSUS

SILAS MURIITHI NGUCHU.....1ST DEFENDANT

LAND REGISTRAR THIKA2ND DEFENDANT

THE HONOURABLE ATTORNEY GENERAL.....3RD DEFENDANT

JUDGMENT

Introduction

1. The dispute in this suit relates to a parcel of land situated in Ruiru. According to title documents presented by the plaintiff, the parcel of land measures 0.5000 hectares and is registered as **Ruiru East Block 1 (Githunguri)/1436**. According to the title documents held by the 1st defendant, the parcel of land is registered as **Ruiru/Ruiru East Block 1/1436**. The key issue in the suit is the question as to who between the plaintiff and the 1st defendant is the legitimate proprietor of the said parcel of land.

Plaintiff's Case's

2. The Plaintiff's Case's was contained in the plaint dated 16/3/2015 in which he averred that on 7/12/2010 he lodged a transfer at Thika Lands Office and was issued with a title deed on 31/1/2011. The 1st defendant approached him on an unspecified date claiming to be the owner of the suit property and to be holding a title to the suit property. He (the plaintiff) did not sell the suit property to anyone. Efforts to obtain an official search from the Lands Registry were in vain. The plaintiff contended that the 1stdefndnat had colluded with the 2nd defendant to defraud him the suit property.

3. Consequently, the plaintiff sought the following verbatim orders against the defendants:

i. A permanent injunction restraining the defendants, their agents, servants, employees and or assignees from further trespassing, destroying, claiming and or interfering with the plaintiff's property being LR NO RUIRU EAST BLOCK 1 (GITHUNGURI)/ 1436.

ii. A declaratory order that the plaintiff is the registered owner and proprietor of all that piece of land being LR NO RUIRU EAST BLOCK 1 (GITHUNGURI)/1436.

iii. The plaintiff therefore seeks a declaratory order that the purported transfer of parcel LR NO RUIRU EAST BLOCK 1 (GITHUNGURI) /1436 if any be declared as null and void hence the said parcel of land be reversed to the original owner, the plaintiff.

iv. General damages.

v. Costs of the suit.

vi. Any other or further relief that this honourable court may deem fit and just to grant

1st Defendant's Case

4. The case of the 1st defendant was contained in his amended defence and counterclaim dated 13/11/2017. He averred that he was the

registered owner of the suit property which he described in paragraph 3 of his defence as **Ruiru/East Block 1 (Githunguri)/1436** having been issued with a title deed to the suit property on 20/7/2011. Despite being the registered owner, the plaintiff had continuously used hired goons to lock him out of the suit property. Owing to the harassment, he filed **Nairobi ELC Case No 518 of 2011** against the plaintiff. He purchased the suit property from one **John Muiruri Ndungu** who had been issued with a title to the suit property in 2002. He added that any other title issued to the plaintiff without a transfer from John Muiruri Ndungu was issued unprocedurally and could not supersede the title he held. He added that the plaintiff took the property through use of force and hired goons.

5. Through the counter-claim, the 1st defendant alleged fraud on part of the plaintiff and prayed for the following orders:

a) *A declaration that the issue of title and transfer thereof of Title No Ruiru East Block 1(GITHUNGURI) /1436 to the plaintiff was unlawful and illegal.*

b) *An order cancelling and or revoking Title No Ruiru East Block 1 (GITHUNGURI) /1436 issued in the name of the plaintiff.*

c) *A declaration that the 1st defendant is the lawful proprietor of the suit property, Ruiru East Block 1 (GITHUNGURI) / 1436 and an order that the plaintiff should immediately vacate and hand over vacant possession of the suit property to the 1st defendant voluntarily within 30 days failure which OCS Ruiru Police Station be ordered to forcefully eject the plaintiff from the suit property.*

d) *General damages against the plaintiff for illegal occupation of the suit property.*

e) *Costs.*

Case of the 2nd and 3rd Defendants

6. The 2nd and 3rd defendants filed a defence dated 21/5/2015 in which they denied the plaintiff's claim. They contended that the suit against them should be struck out with costs because the plaint did not disclose any cause of action against them.

Reply and Defence to Counter-claim

7. The plaintiff filed a reply to 1st defendant's defence and a defence to the 1st defendant's counterclaim. He joined issues with the 1st defendant's amended defence. He denied hiring or using goons. He added that he was not aware of **Nairobi ELC 518 of 2011** because he had never been served with pleadings relating to the said suit. He further averred that he learnt about the suit when he was served with the defendant's documents in this suit. He reiterated being the legitimate owner of the suit property, having purchased it on 27 October 2007. He denied the 1st defendant's counter-claim and reiterated that he was the legitimate proprietor of the suit property.

Plaintiff's Evidence

8. Hearing commenced on 23/5/2017. The plaintiff testified as **PW1**. He adopted his written statement dated 16/3/2015 as part of his evidence- in-chief. He produced the 7 documents in his bundle as Plaintiff Exhibits 1 to 7. In summary, his evidence was that he bought the suit property from Patrick Mburu and Lydia Ngui Mburu on 27/10/2007. At the time of purchase, the suit property did not have a separate title; it was part of a bigger parcel of land belonging to Githunguri Constituency Ranching Company Limited (**the Company**). The title document for the land at that time was a share certificate from the Company. He conducted a search at the Company. Upon purchase, internal transfer was effected at Githunguri Constituency Ranching Company Limited and the Company issued him with receipts, clearance certificate and share certificate. He subsequently proceeded to Thika Lands Registry and a title was subsequently processed in his name in January 2011. He has lived on the suit property since October 2007 when he purchased it. When the 1st defendant went to the suit property laying claim to it, they both went to the Company and they established that he was the legitimate owner of the suit property. He reported the matter to the Police who, upon investigations, charged the 1st defendant with fraud.

9. During cross-examination by counsel for the 1st defendant, the plaintiff stated that the suit property initially belonged to the vendors' deceased grandmother. Upon purchase, he was given the ballot card share certificate and receipts. The Company subsequently issued him with a clearance certificate which expired before the transfer was effected. He obtained a second clearance certificate from the Company in 2010. The first title document issued to him by the Lands Registry omitted one digit of his ID Number and he asked for correction. The second title document had an error in respect of his postal address and he similarly asked for correction. He fenced the suit property in 2011. While at the Police Station, he was shown two green cards; one reflecting the Company as the first registered proprietor, and the second one reflecting the Government of Kenya as the first registered proprietor.

10. **John Maina Mburu** testified as **PW2**. His testimony was that he was the chairman of Githunguri Constituency Ranching Company Limited (**the Company**). The suit property originally belonged to the Company. It was allocated to Lucy Wanjiku Kiuna vide Ballot Number 692. Children of Lucy Wanjiku Kiuna subsequently sold the land to the plaintiff and the land was transferred to the plaintiff on 27/10/2007. The plaintiff paid to the Company the requisite fees. The plaintiff was issued with an official company receipt and clearance certificate. The property has never been allocated to any other person. The Company processed the transfer to the plaintiff.

11. During cross examination by counsel for the 1st defendant, he stated that the documents held by the Company did not show that the property was transferred from Lucy Wanjiku Kiuna to her children. The transfer to the plaintiff was effected in October 2007 and was an internal transfer within the records of the Company. The suit property did not have a registered title prior to 2007. Clearance certificates expire when a new board of directors is elected. Titles relating to land in that particular scheme bear the word "**Githunguri**". He was called by the Police to record a statement at Ruiru Police Station. During Cross-examination by Ms Nyawira for the 2nd and 3rd defendant, he stated that the Land Registrar processes a title on the basis of a clearance certificate from the company and a duly executed transfer. During re-examination, he stated that an internal transfer is effected if the family of a deceased member does not have any dispute. He added that

John Muiruri Ndungu has never been a member of the Company.

12. Corporal Thomas Kareithi testified as **PW3**. His testimony was that he was attached to Land Fraud Unit at CID Headquarters. The plaintiff made a complaint alleging that he was the owner of the suit property but the suit property had been illegally transferred without his knowledge. The Land Fraud Unit took a statement from the complainant (plaintiff). They did letters to various offices, including Githunguri Constituency Company Limited (the Company). They established from the Company that the complainant was the initial owner of the suit property. They also retrieved documents from the Thika Land Registry. The deed file showed that Joseph Kinyanjui was the registered proprietor. In the same deed file, there was a parallel register (green card) in the name of one John Muiruri Ndungu indicating that he had transferred the suit property to Silas Muriithi (the defendant). They established from the Company that it did not have records of ownership of the suit property by John Muiruri Ndungu or Silas Muriithi.

13. PW3 further testified that they confirmed from the registers relating to the scheme that the land registers relating to parcels in the scheme always had Githunguri constituency Ranching Company Limited as the first registered proprietor followed by entries relating to subsequent proprietors. They further established the only title which had passed all the registration processes was that of the complainant (plaintiff). He added that they obtained from the Registrar of Persons details of all identity card numbers used in the registration of the transfer in favour of the two parties. The details relating to the complainant were tallying. They noticed the following discrepancies in relation to the identity card numbers used in the transfer to Silas Muriithi: (i) the ID Number captured in the sale agreement (8652325) was not the same as the ID Number captured in the transfer (08652327); (ii) the age of the transferor at the time of effecting the transfer was 18 years because the year of birth in the ID was 1983; and (iii) the green card in respect of John Muiruri Ndungu showed that he was registered as proprietor on 7/5/2002, the same day the Government of Kenya was registered as proprietor of the same piece of land. They pieced together the evidence and charged the defendant. He produced the following documents (i) Letter dated 5/9/2011 from Githunguri Constituency Ranching Company; (ii) Register (green card) in the name of the plaintiff; (iii) Register in the name of the defendant (green card); (iv) Register from Githunguri Constituency Ranching Company Limited; (v) Letter and details of ID Cards from the Registrar of Persons; and (vi) Charge sheet. PW3 added that they established that the suit property was not the property of the Government of Kenya in 2002 when the Register in the name of Muiruri was purportedly opened; the property belonged to Githunguri Constituency Ranching Company Limited.

1st Defendant's Evidence

14. The 1st defendant testified as DW1. He adopted his witness statement dated 5/10/2015 as part of his sworn evidence-in-chief. In summary, his evidence was that he identified the suit property in 2008 and started negotiating for purchase of the property with John Muiruri Ndung'u. A sale agreement was drawn by M/s Roy Ouma & Company Advocates and executed. He conducted due diligence and established that Githunguri Constituency Ranching Company Limited had transferred the suit property to John Muiruri Ndung'u. Upon payment of Kshs 300,000 as purchase price, the vendor executed the application for consent on 7/7/2009. They obtained the consent. He took possession of the suit property and instructed his advocates to lodge the transfer and have a title deed processed and issued in his favour. He was issued with a title deed on 20/7/2011. The plaintiff fenced the suit property claiming ownership of the suit property. He carried out a second search which did not show that the plaintiff was the registered owner of the suit property. The plaintiff lodged a complaint at Ruiru Police Station and he was summoned. He was again summoned on 26/9/2011 and asked to carry and hand over the original title deed but he did not honour the summons. He then instructed his advocates to institute a suit against the plaintiff and Nairobi HCCC No 518 of 2011 was filed. He produced a bundle of 24 documents.

15. He referred to a certificate of official search which showed that he was the registered owner. With regard to the title deed issued to John Muiruri Ndungu, he stated that the said title was cancelled when the suit property was transferred to him. He stated that the title deed contains ID Number 8652325 instead of 8652327. He said the error was rectified. He further stated that as at 31/1/2011, he was already in possession of the suit property. He added that the ID issued to Muiruri in 2008 was a duplicate. He met Mr Muiruri through a broker who has since died. Lastly, he said that the criminal case against him was still pending.

16. During cross examination by Ms Nyawira, State Counsel, for the 2nd and 3rd defendants, he stated that he conducted a search before he purchased the suit property. They appeared before the Land Control Board in July 2009. He confirmed the application for consent which he had produced was not dated. Muiruri informed him that he acquired the suit property through inheritance. He signed the transfer on 15/7/2011 and the same was registered on 18/7/2011. He paid stamp duty on 28/8/2009. He booked the registration of the documents on 27/8/2009. He got a copy of the cancelled title in the name of Mr Muiruri at the Police Station. He did not sign any form to show that he had returned the title in the name of Mr Muiruri for rectification. The register (green card) still reads the wrong ID Number.

17. During cross examination by counsel for the plaintiff, he stated that he was not aware that the title deed returned was supposed to be destroyed. He got a copy of the incorrect title bearing ID Number 8652327 at the Police Station. He did not have his original title in his possession. Muiruri did not give him a clearance certificate from the Company. He visited Githunguri Constituency Ranching Company Limited but he was informed that there were no documents relating to the suit property. The suit property was vacant at the time of purchase. He did not have any receipt showing payment to the Land Control Board or a receipt from the bank confirming payment of stamp duty in relation to the transfer. He was not aware that the original share certificate was supposed to be surrendered to the Lands Office. John Muiruri only gave him a copy of his ID card. The title and register (green card) relating to John Muiruri do not bear his ID card number. The original owner of the suit property was Githunguri Constituency Ranching Company Limited. He bought the suit property at Kshs 300,000. The broker who introduced him to Muiruri was called Kahiu. He paid the broker Kshs 250,000 as brokerage fee. The advocate who witnessed the transfer is alive.

18. During re-examination, he stated that the application for consent was dated 7/7/2009. He gave the broker the transfer documents to process the transfer. The last search he conducted in November 2016 showed that he was the registered proprietor. The transfer bore the correct ID number.

19. Robert Mbuba testified as DW2. He stated that he was a Land Registrar stationed at Ruiru Lands Registry. He adopted his written statement dated 11/11/2019 as his sworn evidence-in-chief. In summary, his evidence was that there were two green cards for the suit property in the parcel deed file. The first green card was opened on 4/1/2011 and Githunguri Constituency Ranching Company Limited was registered as the first proprietor. It shows that the land was subsequently transferred to the plaintiff on the same date and the title was issued

on 31/1/2011. The registration was pursuant to presentation of a clearance certificate, certificate by Githunguri Constituency Ranching Company Limited, sale agreement dated 27/10/20017 and payment receipts. The 2nd green card was opened on 7/5/2002 and showed that the land was first registered in the name of the Government of Kenya. It was then transferred to John Muiruri Ndungu on the same day and tile was issued. It was again transferred to Silas Muriithi Nguchu on 18/7/2011 and he was issued with a title on 20/7/2011. However, there were no documents to support the transactions relating to the green card in the name of the 1st defendant. He produced a bundle of 8 documents.

20. During cross examination by Mr Laichena for the plaintiff, he stated that before registration of any title, the Registrar must ensure that the accompanying documents are in place. He confirmed that the suit property was an allocation from Githunguri Constituency Ranching Company Limited. It was a subdivision of a larger parcel of land owned by the Company. Up to 2010, Githunguri Constituency Ranching Company Limited would forward the names of allottees for preparation of the transfers. Once prepared, the Ministry would forward the transfers to the allottees for execution. Before 2010, the first entry in the green card would be the Government of Kenya. In 2010, the company sought approval from the Chief Land Registrar and it was allowed to sign their forms. The first entry after 2010 was in the name of the Company.

21. During cross examination by counsel for the 1st defendant, he stated that the crucial documents for preparing a title deed were: (i) a clearance certificate; (ii) certified copy of ID; (iii) PIN of the allottee; and (iv) transfer executed by the company. He added that there were two clearance certificates signed by different people; the first one was signed by a Mr Kairianjaa and the second one was signed by John Maina. A sale agreement was not a requirement for registration purposes. The Registrar did not keep a list of the initial allottees. There was the issue of duplication at Githunguri Ranching Scheme. He did not know how Patrick Mburu and Lydia Njoki Mburu got to sell the land to the plaintiff. The first green card bears **Ruiru East Block 1 (Githunguri)/1436**. The registry map shows **Block 1**. The second green card does not have “Githunguri”. The word “Githunguri” denotes the company allocating the land. A green card is not prepared without documentation. The title deed issued in the names of John Muiruri Ndung’u correspond with the green card. When a transfer is effected, the previous title is cancelled and kept in the parcel file. They did not have the original title relating to the green card in the name of the 1st defendant. The application for consent is not in the parcel file. Documents in the 1st defendant’s bundle were certified by a Land Registrar by the name I N Kamau. Transfer was booked on 18/7/2011 and the title was issued on 20/7/2011. The documents were presented for assessment on 12/7/2011. On 15/7/2011 they were presented for franking and execution. The transfer in favour of the 1st defendant was registered on 18/7/2011. If a genuine title was issued in 2002, no other title should have been issued in 2011.

22. During re-examination, he stated that the plaintiff lodged a caution which was not registered because the suit property was registered in the 1st defendant’s name. The said caution was presented in relation to the green card opened in 2002. There were no records of documents exhibited by the 1st defendant; meaning they were never filed. The date of the transfer instrument should come before the date of assessment of stamp duty. The date of presentation should be after the date of the document. Presentation of the document comes before registration. He could not confirm that the 1st defendant’s documents were certified.

Submissions

23. The plaintiff filed written submissions dated 12/3/2020 through the firm of Laichena Mugambi & Company Advocates. Two issues were framed for determination by the court: (i) whether the plaintiff was the lawful and bonafide owner of the suit property; and (ii) what remedy should the court grant. On the first issue, counsel submitted that the evidence before court showed that the plaintiff was the registered owner of the suit property. Relying on the case of **Hubert Martin & 2 others v Margaret J Kamar & 5 others [2016] eKLR**, counsel submitted that where there are two titles, the court has a duty to investigate the root of the titles. It was argued that the Land Registrar testified that there were no documents to support the transactions relating to the title of the 1st defendant. Counsel contended that the plaintiff had acquired the suit property legally. He added that PW2 confirmed that John Muiruri Ndungu was not a shareholder of Githunguri Constituency Ranching Company Limited. Counsel further argued that PW2 had confirmed that upon the death of a member, property would be transferred to the surviving children. Counsel added that the transfer by the 1st defendant was marred with the following irregularities: (i) ID Numbers were not tallying; (ii) KRA PIN was not indicated in the transfer; and (iii) the transfer was not endorsed with the stamp of the Land Registrar. Counsel added that the following chronological events did not add up: (i) the transfer was dated 15/7/2011 but was received in the registry on 12/7/2011, (ii) valuation was done on the same day but stamp duty was paid on 28/8/2009, registration was booked on 27/8/2009 and the title was issued on 18/7/2011. It was submitted that the 1st defendant acquired the suit property by fraudulent means and the title held was null and void ab initio. Reliance was placed on **Elijah Makeri Nyag’wa v Stephen Mungai Njuguna & another [2013] eKLR**. On the second issue, counsel submitted that the 1st defendant’s title was unlawfully and fraudulently acquired and the same should be cancelled and have the suit property transferred to the plaintiff.

24. The 1st defendant filed written submissions dated 27/5/2020 through the firm of Njonjo, Okello & Company Advocates. Counsel submitted that the transfer of the suit property to Patrick Mburu and Lydia Mburu was unprocedural because the Law of Succession Act was not followed. Counsel further submitted that the transfer of the suit property to the plaintiff was null and void because consent of the Land Control Board was not sought. He added that John Muiruri Ndung’u had an ID at the time of purchase of the suit property. He argued that the ID issued in 2008 was a duplicate. Counsel submitted that the documents relating to the green card of the 1st defendant could have been misplaced because there was no way a title would be issued without consent to transfer, signed transfer, and evidence of payment of the necessary transfer fees.

25. The 2nd and 3rd defendants, through Rose Nyawira, State Counsel, filed written submissions dated 6/5/2020. Counsel submitted that where there are two titles relating to the same property, the court should go beyond the instrument to establish the legality of how the titles were acquired. Reliance was placed on **Munyu Maina v Hiram Gathitha Maina 2013] eKLR and Hubert L Martin & 2 others v Margaret J Kamar & 5 others [2016] eKLR**. Counsel submitted that in the present dispute, the plaintiff had proved that he was the legal owner of the suit property, having bought the same from Patrick Mburu and Lydia Njuhi Mburu who were members of Githunguri Constituency Company Limited. She added that sale agreement, receipts, share certificate, clearance certificate and transfer by the original owner had been produced to support the plaintiffs’ claim. Counsel further submitted that PW2 confirmed that the suit property belonged to Lucy Wanjiku Kiuna who transferred it to her children before it was then transferred to the plaintiff who was issued with a share certificate and a clearance certificate. Counsel further argued that PW2 had demonstrated to the court that the plaintiff’s title was procedurally issued.

26. Counsel further submitted that during cross examination, it was noted that the ID numbers in the 1st defendant's documents did not tally and the share certificate produced in the name of John Muiruri was disowned by the Chairman of Githunguri Constituency Ranching Company Limited (PW2). She further argued that it had been established that John Muiruri was not a shareholder in the Company. Counsel observed the following contradictions in the 1st defendant's documents: (i) ID numbers did not tally; (ii) registration of the transfer was done allegedly before the transfer was booked for registration; and (iii) stamp duty was allegedly paid before it was assessed. It was further submitted that the Land Registrar testified that there was no documentation in respect of the green card issued in relation to of the 1st defendant's title. Relying on the case of **James Njoroge Gitau v Lucy Chepkirui Kimutai [2018] eKLR**, counsel submitted that from the evidence before this court, the plaintiff was the rightful owner of the suit property because the origin of his title can be traced.

Analysis and Determination

27. I have considered the parties' respective pleadings, evidence and submissions. I have also considered the relevant legal frameworks and jurisprudence on the key issues in this suit. Two key issues fall for determination in this suit. The first issue is the question as to who between the plaintiff and the 1st defendant is the legitimate proprietor of the suit property and which of their respective title documents are legitimate. The second issue relates to the appropriate orders available upon making a finding on the first issue.

28. The plaintiff and the 1st defendant are waving what I would call parallel titles relating to the same piece of land. There is common ground that the suit property is a subdivision out of what hitherto existed as a large parcel of land acquired by Githunguri Constituency Ranching Company Limited (**the Company**). The Company sub-divided the land into smaller portions and allotted the subdivisions to its shareholders. The allotment documents were the ballot card and the share certificate. Upon allotment, the company would issue a clearance certificate to facilitate processing of title in the name of the allottee.

29. Both PW4 (Land Registrar) and PW3 (CID Officer) testified that there are two parcel registers (green cards) in the deed file relating to the suit property. The plaintiff and the 1st defendant are waving parallel titles founded on the two parallel registers (green card) contained in the same parcel deed file.

30. The plaintiff and the 1st defendant are challenging each other's title instruments. Our courts have been categorical that when the validity of a title is challenged, the holder of the challenged title has an obligation to demonstrate to the court the root of the title he is waving. The Court of Appeal underscored this principle in **Munyu Maina v Hiram Gahitha Maina [2013] eKLR**:

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

31. The plaintiff testified that he bought the suit property from Patrick Mburu and Lydia Njuhi Mburu, grandson and granddaughter respectively, of Lucy Wanjiku Kiuna. He produced a sale agreement dated 27/10/2007. He also produced documents to demonstrate that upon purchase of the suit property, the sellers fulfilled the requirements of the Company and an internal transfer of the suit property was effected at the Company. Further, he was issued with a clearance certificate and the Company executed necessary documents leading to the generation of the title he holds.

32. PW2 who was the Chairman of Githunguri Constituency Ranching Company corroborated the plaintiff's evidence and asserted that the suit property neither belonged to John Muiruri Ndungu nor to Silas Muriithi (the 1st defendant). He confirmed that the original registered owner (Githunguri Constituency Ranching Company Limited) duly transferred the suit property to the plaintiff.

33. The 1st defendant relies on an undated sale agreement indicating that he purchased the suit property on an unspecified day in November 2008 from John Muiruri Ndungu of ID Card Number 22992993. The ID Card number is not in the parcel register relating to the title held by the 1st defendant. Records from the Registrar of Persons indicate that the said John Muiruri was born in 1983 and was therefore aged 18 years in 2002 when he purportedly procured the title he allegedly conveyed to the 1st defendant. The same records indicate that the ID Card of Muiruri had not been issued in 2002. Evidence by the Chairman of the Company indicates that the said John Muiruri Ndungu has never been a shareholder of the company. The said John Muiruri Ndungu was not called as a witness to shed light on the origin of the title he allegedly conveyed to the 1st defendant. Similarly, the broker whom the 1st defendant said introduced him to Muiruri and processed the transfer in favour of the 1st defendant was not called as a witness.

34. The 1st defendant also relies on an instrument of transfer which he claims was executed by both Mr John Muiruri Ndungu and the 1st defendant on 15/7/2011. On its face, the transfer indicates that it was booked for registration in September 2011 as Instrument Number 496. It also shows that it was registered on 18/7/2011. That means it was registered about two months before it was booked for registration. The transfer instrument does not bear the Kenya Revenue Authority Personal Identification Numbers (PINS) of the parties to the transfer. Thirdly, the transfer does not bear the stamp of the Land Registrar who registered it. Confronted with questions relating to the many discrepancies in the documents allegedly used to generate the title he purports to hold, the 1st defendant said that it is his broker who handled the documents and the said broker had since died. Similarly, the 1st defendant said he was not in a position to present Muiruri as a witness.

35. The totality of the evidence on record, in my view, is that the 1st defendant has not been able to demonstrate the authenticity of the title documents he is waving. The plaintiff on the other hand has demonstrated how he got the title he holds.

36. Counsel for the 1st defendant argued that the transfer to the plaintiff was irregular because there was no compliance with The Law of Succession Act. I do not agree with that view. At the time of transferring the suit property to the plaintiff, the land was registered in the name of Githunguri Ranching Company Limited. The Land Registrar did not require succession documents to effect the transfer. Secondly, PW2 testified that the sellers satisfied the internal requirements of the Company leading to the internal transfer which was effected into the name of the plaintiff.

37. One intriguing piece of evidence was tendered by the 1st defendant in this suit. That piece of evidence is the court file relating to Nairobi ELC 518 of 2011. The plaintiff contended in his defence that the suit papers relating to the said suit were never served on him and he got to learn about it through the 1st defendant's defence in this suit in 2015. The suit was subsequently withdrawn. The middle name of the plaintiff in the said suit is "Mureithi" and not "Muriithi". What is intriguing is that on 21/9/2011, the 1st defendant secured an ex-parte injunctive order from the court. He was directed to serve and come back for *interpartes* hearing on 11/10/2011. Intriguingly, he did not enforce that order. I do not think the defendant would be alleging use of force and use of hired goons on part of the plaintiff if he had served the restraining *ex parte* order granted to him in September 2011 on 28/9/2011.

38. In light of the foregoing, my finding on the first issue in this suit is that the plaintiff, Joseph Kinyanjui Wanjiru, is the legitimate proprietor of the suit property. The purported title documents held by the 1st defendant together with the parallel documents put in the parcel deed file bearing the name of the 1st defendant are not authentic.

39. The second issue relates to the appropriate orders available upon making findings on the first issue. The available orders ought to be in tandem with the prayers made to the court. Save the plea for general damages, the prayers in the plaint are geared toward restoring the plaintiff as the undisputed proprietor of the suit property. I will therefore frame and grant appropriate disposal orders in tandem with the said prayers

40. The plaintiff made a plea for general damages but said nothing about that plea both in his evidence and in his written submissions dated 12/3/2020. I will therefore not make an award in respect of general damages.

Disposal Orders:

41. In light of the above findings, I make the following disposal orders in tandem with the prayers sought in the plaint and in the 1st defendant's counter-claim;

a) It is hereby declared that the plaintiff is the legitimate registered proprietor of Land Parcel Number Ruiru East Block 1(Githunguri)/1436.

b) It is hereby declared that the purported transfer of the said parcel of land to the 1st defendant under an instrument of transfer bearing title number Ruiru/Ruiru East Block 1/1436, and the creation of a parallel register under that number in the deed file relating to Land Parcel Number Ruiru East Block 1 (Githunguri)/1436 is null and void, and the said parallel parcel register (green card) is expunged from the said parcel deed file.

c) A permanent injunction is hereby issued restraining the 1st defendant, his agents and servants, against interfering with the plaintiff's possession and quiet enjoyment of the said parcel of land.

d) The counter-claim by the 1st defendant is hereby dismissed.

e) The 1st defendant shall bear costs of the plaintiff's suit and the counter-claim.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 9TH DAY OF JULY 2020

B M EBOSO

JUDGE

In the presence of: -

Mr Njonjo for the defendant

Mr Samuel Ayieko for the plaintiff

Court Clerk - June Nafula