



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CASE NO.354 OF 2009

ROBERT MUTISO LELLI.....PLAINTIFF

VERSUS

KENYA MEDICAL TRAINING COLLEGE.....DEFENDANT

THE ATTORNEY GENERAL.....1ST INTERESED PARTY

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

JUDGEMENT

1. In the Amended Plaint filed in court on 2/10/2009, the Plaintiff sought a permanent order to restrain the Defendant or its agents from trespassing or otherwise interfering with the Plaintiff's property known as L.R. No. 209/14272 on Matumbato Road, Nairobi pending the determination of the suit. The Plaintiff also sought general damages plus costs and interest. The Plaintiff's claim was based on the fact that it is the registered owner of the Suit Property and that the Defendant or its agents had trespassed on the suit land, built a perimeter wall around it and put up a board warning trespassers of possible prosecution. The Plaintiff contended that these acts amounted to trespass and illegal occupation of his private property. Further, that the Defendant's actions had caused him great stress, anxiety and loss and damage.

2. The Plaintiff's suit was dismissed for want of prosecution and only the Defendant's counterclaim proceeded to hearing. The Defendant filed a Defence and Counterclaim in which it denied the Plaintiff's claim and averred that the registration of the Plaintiff as the owner of the Suit Property was irregularly effected by the Commissioner of Lands and that the Suit Property was illegally hived out of the Defendant's unsurveyed land comprised in parcel number 6₁ to 6₄ measuring 12.3 ha.

3. The Defendant is a public institution and a body corporate established by the Kenya Medical Training Act to provide college education for national health manpower requirements. It pleaded that it was entitled to the allotment of the undeveloped land that was reserved for public purposes from the Commissioner of Lands. The Defendant averred that the Commissioner of Lands impugned the allotment that led to the excision of 10 plots from the Defendant's land comprised in parcel 6₁ to 6₄ measuring 12.3 ha in respect of which the title over the Suit Property was issued.

4. The Defendant averred that the Standing Committee on the Implementation of the Recommendation of Kenyatta National Hospital forwarded a letter of allotment issued by the Commissioner of Lands to the Defendant in respect of parcel numbers 6₁ to 6₄ measuring 12.3 ha within the Kenyatta National Hospital area. The Defendant averred that it has been in occupation of the land comprised in plot numbers 6₁ to 6₄ from which the Suit Property was hived since 1960. It further pleaded that once the hostels were built for the trainees within the college, the houses previously used for accommodation were allocated to the Defendant's members of staff.

5. The Defendant averred that the Plaintiff started laying claim to the Suit Property on 22/10/2001. Upon inquiry the Defendant discovered that the public land reserved for its use comprising parcel 6₁ to 6₄ had been subdivided to create 10 plots which were given new parcel numbers 209/14269 to 209/14278 and which were alienated to private individuals including the Plaintiff. The Plaintiff was allocated L.R. numbers 209/14270, 209/14271 and 209/14272.

6. The Defendant attempted to have the issue of the irregular alienation of its land resolved through its parent ministry, which is the Ministry of Health. The Defendant further averred that the Commission of Inquiry into the Illegal Allocation of Public Land ("the Ndung'u Land Commission") and the Public Investment Committee of Parliament inquired into the issue of the alienation of the Defendant's land following which the Plaintiff's claim to the land was dismissed by the Public Investment Committee of Parliament on 20/2/2007. The Committee directed the Ministry of Lands to repossess the titles for the 10 plots and have them cancelled so that the land could be reallocated to the Defendant.

7. The Defendant counterclaimed a permanent injunction to restrain the Plaintiff from dealing with the parcels of land known as L.R. No. 209/14270 and L.R. No. 209/14272 ("the Suit Property") and sought declarations that these two properties were reserved and belonged to the Defendant and that they were irregularly allocated to the Plaintiff. The Defendant further sought an order to compel the Plaintiff to surrender

the grant or title issued to him over L.R. No. 209/14270 and L.R. No. 209/14272, and a further order to cancel these two titles and for a new title to be issued to the Defendant. The Plaintiff filed a reply to defence and counterclaim on 11/11/2009 denying the Defendant's counterclaim while contending that the counterclaim was time barred.

8. The Defendant amended its defence and counterclaim in February 2012 and pleaded that having surrendered the title for L.R. No. 209/14271, the Plaintiff was estopped from denying the Defendant's ownership and interest in L.R. No. 209/14272. The Defendant added the Attorney General and Commissioner of Lands as Interested Parties to the suit when it amended its counterclaim.

9. In his reply to the amended defence and defence to counterclaim, the Plaintiff maintained that his registration as the proprietor of the Suit Property was proper and legal because the property had never formed part of the Defendant's property. He maintained that the persons in occupation of the suit land were trespassers.

10. David Ondeng', the Defendant's Administration Officer gave evidence. He produced a copy of the letter of allotment issued to the Defendant's Principal on 24/12/1996 in respect of Land Parcel Numbers 6₁ – 6₄ measuring 12.3 ha on the Kenyatta National Hospital land area for its college. The letter requested the Defendant to pay the requisite fees within the stipulated time and to follow up with the Ministry of Lands and Settlements and process its title deed over its land. The witness stated that there is a building on the Suit Property which was put up with the assistance of the Netherlands Leprosy Relief Association. The building was previously used to accommodate the trainees and as a student's hostel before being occupied by the Defendant's staff.

11. The Plaintiff's lawyer issued a demand letter to the Defendant laying claim to the Suit Property and requiring the Defendant and its members of staff and their families to vacate the land so that the Plaintiff could demolish the structures on it to pave way for his own development. It was upon receipt of the demand letter that the Defendant learnt that its land had been subdivided into 10 plots and alienated to private individuals including the Plaintiff and, that titles had been issued to them for grant of 99 years with effect from 1/9/2000. He produced copies of the letters of allotment issued to West Link Associates, the Plaintiff, and Hope Concepts and Spirits Limited in respect of unsurveyed plot numbers A, B and H in Nairobi respectively. The letters of allotment are dated 22/8/2000. Other letters of allotment were issued to Tea Zone Properties & Saiwa View Investments and Microtech Assessment Limited.

12. Due to the constant threats by the Plaintiff, the Defendant asked its parent ministry and the Ministry of Lands to handle the dispute alongside the Ndung'u Land Commission of Inquiry. Following deliberations and hearings conducted by the Public Investment Committee of Parliament, it was established that 10 plots had been created from the land previously reserved for the Defendant even though a title had not been issued by the Commissioner of Lands to the Defendant for the land it occupied.

13. He produced a copy of the letter dated 13/7/2007 from the Commissioner of Lands requesting the Attorney General to institute legal proceedings against the persons holding titles for land which had been reserved for the Defendant's use. The letter which gave the names of the allottees showed that the Plaintiff was allocated L.R. Numbers 209/14270, 209/14271 and 209/14272. The letter stated that the 10 plots resulted from subdivision of plots which had been reserved for the Defendant even though no titles had been issued to the Defendant. The letter pointed out that the Ministry of Lands could not cancel the titles nor could it issue a title to the Defendant until the private developers surrendered the original titles granted to them in respect of the 10 plots.

14. The witness stated that 7 out of the 10 plots hived out of the Defendant's land had been recovered including parcel number 209/14271 which had been allocated to the Plaintiff. What was outstanding was parcel number 209/14277 issued to Cabin Crew Investments Limited and parcel numbers 209/14270 and 209/14272 which were registered in the Plaintiff's name. The witness also produced copies of the correspondence relating to the threatened eviction of the Defendant's members of staff from the Suit Property.

15. On cross examination the witness stated that the Plaintiff had destroyed the structures which used to be on parcel numbers 209/14270 and 209/14272 including the houses which were being used by the Defendant's members of staff. The witness stated that the Defendant was set up in 1932 but was formally operationalised by an Act of Parliament in 1991. He stated that the Kenyatta National Hospital complex land was a big piece of land owned by the government which would allocate portions of land to institutions. He confirmed that the Defendant had a title for part of its land comprising the 7 out of the 10 plots which were amalgamated including L.R. No. 209/14271 that the Plaintiff lays claim to.

16. Timothy Waiya Mwangi gave evidence for the Interested Parties. He took the court through the procedure for alienation of public land which commenced with a request for allocation being made to the Commissioner of Lands, who would then write to the Director of Physical Planning to prepare the part development plan (pdp) indicating the precise site for alienation. The pdp would be published in public reports and local dailies with nationwide circulation for purposes of inviting members of the public to make representations or objections to the pdp. If no objections were received, the Director of Physical Planning would submit the certified plans for the Minister for his approval. Upon approval, the Director of Physical Planning would assign an approved plan number to the pdp and enter the details in the register of development plans. That was the time when the approved plan would be forwarded to the Commissioner of Lands to issue a letter of allotment.

17. He denied that pdp number 42/15/94/13 was part of the records held by the Director or Physical Planning and clarified that pdp number 42/21/95/04A dated 1/8/1995 which was approved on 11/12/1995 was what formed part of their records and that it had been assigned approved development plan number 171. The pdp number 42/21/95/04A denoted that plot numbers 6₁ – 6₄ had been reserved for the Defendant. He stated that having been assigned a function or use during planning, parcel number 6₁ to 6₄ was not available for alienation and a letter of reservation should have been issued by the Commissioner of Lands to the Defendant. He further stated that the Commissioner of Lands did not write to the Director of Physical Planning to amend pdp number 42/21/95/04A which designated the plan used for the Suit Properties. He produced a copy of pdp number 42/21/95/04A approved as development plan number 171 which shows the location of parcel numbers 6₁ to 6₄. He also produced a copy of the pdp showing the triangular piece of land comprising parcel numbers 6₃ and 6₄. He stated that the records held by the Physical Planning Department did not show approvals which were given for subdivision of part of the KNH complex land into 10 portions.

18. Gordon Odeka Ochieng, a Senior Assistant Director of Land Administration also gave evidence for the Interested Parties. He stated that the Plaintiff was allocated an unsurveyed residential plot number D in Nairobi vide the letter of allotment reference 185788/32 dated 22/8/2000 as an alternative to an earlier allocation of plot number 9707 in Malindi which was found to fall in the Indian Ocean. He confirmed that the Plaintiff commissioned a licensed surveyor who undertook the survey work that resulted in L.R. No. 209/14272 with deed plan number 233132 dated 21/12/2000. The title over this piece of land was registered on 21/8/2001.
19. He further stated that there was no indication that at the time of allocation there were existing developments on the suit land which were occupied by the Defendant's employees. He stated that it later turned out that the land allocated to the Plaintiff fell on an area which was previously occupied by Kenya Police officers before they were relocated and the entire area re-planned vide development plan number 42/21/95/04A dated 1/8/1995. He stated that L.R. No. 209/14272 fell on the zone marked 6₃ – 6₄ which was reserved for the Defendant. In compliance with the directives from the Public Investment Committee Parliament requiring the Plaintiff's titles to be cancelled alongside the other plots so that the land could be reallocated to Kenya Medical College, the Commissioner of Lands issued letters of allotment reference numbers 142393/13, 142393/14, 142393/15 dated 10/7/2010. He stated that the Defendant accepted the offer and made the necessary payments before amalgamating L.R. numbers 209/14269, 209/14271, 209/14273, 209/14274, 209/14275, 209/14276 to create L.R. No. 209/18535. The Defendant was registered as the proprietor of L.R. No 209/18535 on 14/10/2009.
20. He produced a copy of the caveat registered against L.R. No. 209/14270 dated 8/4/2009 forbidding registration of dealings with this land. He also produced a copy of the Plaintiff's title together with copies of the letters of allotment issued to the Plaintiff and the correspondence exchanged on the acquisition of the suit land. He stated that the Ministry of Lands had no knowledge that the land was occupied when it prepared the grant in favour of the Plaintiff. He also confirmed that plot number 209/14271 which had been allocated to the Plaintiff had been surrendered and amalgamated with the other 6 plots to form L.R. No 209/18535 being title which was issued to the Defendant. He maintained that the Plaintiff gave the Commissioner of Lands wrong information at the time the land was allocated to him.
21. Priscilla Njeri Wango, who works for the Ministry of Lands and Physical Planning as a land surveyor also gave evidence. She confirmed that from the survey records, survey plan number F/R 301/84 surveyed parcel numbers L.R. No. 209/14269 – 209/14278. The purpose of the survey was for new grant and was conducted pursuant to the authority of the Commissioner of Lands contained in the letter of 25/8/2000 reference number 185788/24. She confirmed that from pdp number 42/21/95/04A dated 1/8/1995, parcel numbers 6₃ and 6₄ were reserved for the Defendant and were therefore not available for alienation even though the Defendant had not carried out a survey of its land.
22. She also confirmed that survey plan F/R 474/60 was prepared on 23/10/2003 as a new grant survey under the authority of the letter dated 10/7/2007 as a result of which L.R. No. 209/18535 measuring 0.8487 ha was created with deed plan number 290385 was issued to the Defendant on 28/10/2008. She reiterated that this parcel of land covers a smaller area than what was initially reserved for the Defendant due to the fact that L.R. Numbers 209/14270, 209/14272 and 209/14277 were curved out as shown by F/R No. 301/84. She also confirmed that even though L.R. Numbers 209/14269, 209/14271, 209/14273, 209/14274, 209/14275, 209/14276 and 209/14278 had been surveyed earlier on through survey plan F/R 301/84, the deed plans in respect of these parcels of land were surrendered to the Director of Surveys and cancelled. The deed plans in respect of L.R. No. 209/14270, 209/14272 and 209/14277 have not been cancelled because they have not been surrendered to the Director of Surveys. She produced copies of survey plan numbers F/R 301/84 and 474/60. She confirmed that the authority used for the survey shows that plot numbers 209/14269 to 209/14278 were created from parcel number 6₁ to 6₄.
23. The Plaintiff gave evidence in defence to the counterclaim filed by the Defendant. He stated that he is the registered owner of the Suit Property which he claims was allocated to him as part compensation to settle **HCCC No. 1354 of 1998**. He stated that since the compensation and subsequent issuance of the title, the Defendant or its agents have occupied the Suit Property illegally and that his efforts to get them out did not bear fruit. He stated that despite informing the Defendant that the Suit Property belonged to him, the Defendant put up a perimeter wall around it and erected a board warning trespassers that they would be prosecuted.
24. He stated that he was prosecuted in **Criminal Case no. 7060 of 2002** for nuisance on the Suit Property and ordered to demolish the structures on the land which had been condemned by the City Council of Nairobi but the Defendant and its agents denied him access to the Suit Property. He urged the court to come to his rescue since the Defendant had remained defiant and arrogant and he feared that he may lose his property to the Defendant who he claims is using illegal and unlawful means. He produced a copy of the title deed issued to him in December 2000 for L.R. No. 209/14270. He also produced a copy of a letter of allotment dated 22/8/2000 which stated that he was allocated plot number D Nairobi as an alternative to portion 9707 Malindi. He also produced a copy of the title for L.R. No. 209/14272. He produced a copy of the Defendant's letter dated 11/4/2002 which asked its officers to make arrangements to find alternative accommodation since the land was in dispute. He also produced a copy of letter dated 11/4/2003 and letters written by the Ministry of Health.
25. The Plaintiff confirmed that he was allocated three plots but did not have a copy of the title for L.R. No. 209/14271 in court. He stated that he first visited the Suit Property in 2001 when it was allocated to him and found that it dilapidated houses on it.
26. Parties filed submissions which the court has considered. The main issue for determination is whether the Plaintiff acquired the Suit Property irregularly and illegally and whether the titles it holds over the two parcels of land should be revoked. The Plaintiff maintains that the registration of the three parcels of land in his name was regular and legal. He submitted that the Interested Parties were admitting that they made a mistake when they allocated to him the parcels of land which were reserved for the Defendant. The Plaintiff argued that there were no irregularities or illegalities when the land was allocated to him and that there was no mistake made as the 2nd Interested Party submitted. The Plaintiff relied on the fact that there were several part development plans prepared for the same piece of land.
27. The Plaintiff submitted further and correctly so, that the law applicable was the land laws under the old regime. He relied on Section 23 of the repealed Registration of Titles Act in urging that the court could only interfere with his title on grounds of fraud and misrepresentation that he participated in. He further urged that under Order II Rule 4 of the Civil Procedure Rules the Defendant ought to have pleaded particulars of fraud or misrepresentation in the acquisition of the suit land. He relied on Section 143 of the repealed Registered Land Act in urging that the court lacks jurisdiction to rectify his title since it is a first registration. He relied on the case of **Mbothu and 8 others v Waitimu and 11 others [1986] KLR 171** on the protection afforded by registration under Section 23 of the Registration's Titles Act. He cited the case of **Obiero v Opiyo and others [1972] EA 227** in support of the position that his title was indefeasible since it was a first registration even if fraud had been proved.

28. He reiterated that when his title was registered, it was free from encumbrances and the Defendant cannot therefore challenge his title. He further stated that the court lacked jurisdiction to interfere with the register in respect of Suit Property and cannot order rectification of the register.

29. The Attorney General submitted that the Suit Property comprised in parcel 63 and 64 was reserved for the Defendant and was not available for alienation or allotment to any person since it was already alienated through the approved pdp. The Interested Parties relied on the case of **Nelson Kazungu Chai and 9 others v Pwani University [2014] eKLR** in which the court held that the Commissioner of Lands could not allocate government land reserved for public purposes to individuals for their private use under the repealed Government Lands Act. The power to make grants or disposition or interest in unalienated government land vested in the President under Section 3 of that Act. Plots which were not required for public purposes could be disposed of under Section 9 of that Act.

30. The Interested Party urged the court to take cognisance of the fact that 7 of the 10 parcels created at the same time with the Suit Property were surrendered and deed plans in respect of the plots cancelled. One of these plots is the one that had been allocated to the Plaintiff. The Attorney General submitted that it is in the public interest that the remaining three parcels of land are recovered and the court should therefore cancel the titles held by the Plaintiff.

31. The Interested Parties cited the case of **Mureithi and 2 others (For Mbari ya Murathimi Clan) v Attorney General and 5 others [2006] 1 KLR 443** in which Nyamu J. decried land cartels and speculators who acquire public land for their personal benefit. The judge observed that when courts are appropriately moved after the process of tracing the origin of the title they should ensure those who have acquired public utility land are made to disgorge the proceeds.

32. On the claim that the Suit Properties were allocated to the Plaintiff as a settlement for a court order in respect of property erroneously allocated to him in Malindi, the Attorney General submitted that the Suit Property was not available for allocation to the Plaintiff and that if anything the judgement did not expressly specify that the suit land would be the one to satisfy the settlement and that in any event if public interest had been taken into consideration the Commissioner would not have arrived at such a decision.

33. Further, the Attorney General submitted that the Plaintiff cannot seek refuge under Article 40 of the Constitution and claim that his title is indefeasible since the land was already reserved for public use and was not available for alienation to him. The Interested Parties relied on the case of **Munyu Maina v Hiram Gathiha Maina [2013] eKLR** in which the court stated that when a registered proprietor's root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. The registered owner must prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including those interests which need not be noted on the register. These would include the rights of the person in occupation. The Plaintiff admitted that the Defendant was in occupation of the suit land at the time it was allocated to him.

34. The Defendant submitted that it was incumbent upon the Plaintiff to prove that the alienation of the Suit property was done in compliance with the law based on Sections 107, 108 and 112 of the Evidence Act which places the burden of proof on the Plaintiff. The Defendant further urged that it was the President who had power to alienate unalienated government land under Section 3 of the Government Lands Act and not the Commissioner of Lands. The Defendant urged that the Suit Property was allocated to the Plaintiff through the direct intervention of the Commissioner of Lands without him being directed by the President as envisaged by Sections 3 and 7 of the Government Lands Act.

35. The Defendant relied on the case of **Henry Muthee Kathurima v Commissioner of Lands and another [2015] eKLR** where the court observed that there was nothing on record to show that the President had authorised the Commissioner of Lands to alienate the suit land. The court examined Sections 3, 7, 9 and 12 of the Government Lands Act and was satisfied that the Commissioner of Lands had no power or authority to alienate the Suit Property and issue the certificate of lease. The court went further to state that the rights of a person in possession or occupation of land are rights which are binding on land and that the 2nd Respondent having been in possession since 1989, its rights were binding on the Suit Property and were overriding those of the Appellant.

36. The Defendant argued that having surrendered the title over L.R. No 209/14271 for cancellation, the Plaintiff is estopped by his conduct from contending that the titles he holds over L.R. No. 209/14270 and 209/14272 are valid.

37. This dispute revolves around the propriety of the allocation of L.R. No. 209/14270 and 209/14272 to the Plaintiff by the Commissioner of Lands. The Commissioner of Lands could only have allocated land in strict adherence to the provisions of the Government Lands Act. Section 3 of the Government Lands Act empowered the President to make grants over unalienated government land.

38. The court has looked at the Plaintiff's demand letter dated 6/4/1998 to the Attorney General. The letter stated that the claimants were the registered proprietors of grant number 28433 L.R. No. 9797 Malindi and that they were claiming Kshs. 21,500,000/= owing to the negligence or recklessness on the part of the Commissioner of Lands, the Registrar of Titles and the Director of Surveys in issuing a title in respect of a fictitious property. The claimants made an alternative claim for an alternative plot.

39. The Commissioner of Lands wrote to the Attorney General on 22/7/1998 regarding **HCCC No. 1354 of 1998- Robert Mutiso Lelli v AG** and confirmed that plot number 9707 Malindi purchased by the Plaintiff fell within the Indian Ocean. The Commissioner of Lands explained in the letter that he relied on technical and professional advice from other offices such as the Director of Physical Planning and the Director of Surveys in the process of alienation of land. The letter stated that the Plaintiff claimed to have been shown the plot.

40. In the letter dated 15/2/2002, the Commissioner of Lands indicated that the Plaintiff was allocated parcel numbers Msa Island/ Block XLVII/III, L.R. No. 14716, L.R. No. 209/14270, L.R. No. 14716 and L.R. No. 209/14272 in settlement of HCCC No. 1354 of 1998. There is no evidence that the 1st Defendant was involved when this settlement was reached when the Commissioner of Lands allocated the Plaintiff L.R. No. 209/14270 and L.R. No. 209/14272 with the other plots as compensation for plot no. 9707 Malindi. Had the Plaintiff carried out due diligence before purchasing plot no. 9707 Malindi, he would have discovered it fell in the Indian Ocean. There was no basis for the Commissioner of Lands to compensate the Plaintiff with the parcels of land listed since the Plaintiff's claim should have been directed at the person who sold him plot no. 9707 Malindi.

41. The conduct of the Commissioner of Lands in the allocation of the suit land to the Plaintiff shows that the greater public good and public interest in having public land protected was not given any thought at all. To protect and safeguard public property, may be it is time that public officers who illegally and irregularly deal with or alienate public land are made personally liable to compensate those who suffer loss as a result of their actions when their titles over public land are ultimately nullified by the court. Where a person buys land which is later found to be in the Indian Ocean or lake, road reserve, forest, public hospital or clinic, a public school or other public land, he should direct his claim for compensation to the person who sold him the land. A prudent person would first ascertain the physical location and beacons of land before purchasing the land.

42. It is not in dispute that the Defendant's staff were in occupation of the Suit Property. The Plaintiff admitted this, and it is confirmed by the correspondence exchanged when the Plaintiff attempted to take possession of the Suit Property. It is also not in dispute said that the suit land was previously used by police officers and forms part of the Kenyatta National Complex. The witnesses from the survey and physical planning departments of the Ministry of Lands confirmed that the suit land was carved out of parcel 61- 64 which were reserved for the Plaintiff in 1995.

43. The fact that 7 of the 10 plots excised from the land comprised in parcel 61- 64 were surrendered, resurveyed under survey plan F/R No. 474/60 and a title issued to the Defendant in October 2003 in respect of L.R. No. 209/18535 confirms that the land from which the 10 plots (including the Suit Property) were created, formed part of the Defendant's land. One of the 7 plots had been allocated to the Plaintiff. Taking into account the fact the Defendant was in occupation of the suit land at the time it was allocated to the Plaintiff, this court is of the view that land held or occupied by a government agency like the Defendant, did not constitute unalienated government land even if no title had been issued to that agency.

44. Under Section 7 of the Government Lands Act, the Commissioner of Lands was not authorised to exercise the powers conferred on the President under Sections 3, 12, 20 and 112. Section 3 gave the President power to make grants over unalienated government land while Section 12 stated that leases of town plots were to be sold by public auction unless the President ordered otherwise.

45. Looking at the provisions of the repealed Government Lands Act and the powers that the Commissioner of Lands could exercise under that Act, the court finds that the Commissioner of Lands had no power to allocate L.R. numbers 209/14270 and 209/14272 to the Plaintiff and issue grants to him. The Plaintiff did not acquire good title to these parcels of land.

46. The Plaintiff argued that its title over the Suit Property was indefeasible and protected by Section 23 of the repealed Registration of Titles Act. Under Article 40(6) of the Constitution, the protection afforded to a registered proprietor of land does not extend to land found to have been illegally acquired.

47. The court is satisfied that the Defendant has proved its counterclaim on a balance of probabilities and grants prayers (a), (b), (c) and (d) of the Amended Counterclaim dated 15/2/2012. The Defendant is awarded the costs of the counterclaim to be borne by the Plaintiff.

Dated and delivered at Nairobi this 24th day of May 2019

K.BOR

JUDGE

In the presence of: -

Mr. Mutiso Mutinda for the Plaintiff

T.T. Tiego for the Defendant

Mr. Allan Kamau for the Interested Parties

Mr. V. Owuor- Court Assistant