

vREPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT ELDORET
ELC CASE No. 254 OF 2016

JOHN NGANGA NDUCHI1ST PLAINTIFF
BENJAMIN KIPKULEI KIPLAGAT2ND PLAINTIFF
GEOFFREY NGANGA GATHAIYA3RD PLAINTIFF

VERSUS

FRANCIS PIUS NYABERI 1ST
DEFENDANT

COUNTY LAND REGISTRAR, UASIN GISHU.....2ND
DEFENDANT

COUNTY GOVERNMENT OF UASIN GISHU3RD
DEFENDANT

THE ATTORNEY GENERAL 4TH
DEFENDANT

THE NATIONAL LAND COMMISSION 5TH
DEFENDANT

J U D G E M E N T

1. The 1st Defendant (hereinafter referred to as **“the Counter-Claimer”**) did file a Counter-Claim dated 25.11.2016 (hereinafter referred to as **“the present suit”**) against the 1st to the 3rd Plaintiffs (hereinafter referred to as **“the Defendants to the Counter-Claim”**) seeking the following Orders; -

(a) A declaration that the 1st Defendant is the registered owner of land parcel No. Eldoret/Municipality Block 1/194 and any documents

in possession of the plaintiffs in respect to the said parcel were acquired fraudulently and that the same be revoked and or cancelled at the Land Registry records and be changed to reflect the 1st Defendant as the registered owner.

(b) An order do issue restraining the Plaintiffs either by themselves, their servants, agents, assigns and or employees by way an injunction from ingressing, carrying on any operations and/or activities of any nature and or doing any acts/omissions in any nature whatsoever on that parcel of land namely ELDORET/MUN/BLOCK 1/194 situated in Shauri Yako Estate.

(c) General damages for aggravated damages for trespass, encroachment, obstructing, developing and fraudulently alienating them to 3rd parties.

(d) An eviction Order.

(e) Costs and interest incidental to the suit.

(f) Any such other or further relief as this Honourable Court may deem fit and just to grant.

2. The grounds and/or facts in support of the prayers sought in the present suit can be summarised as follows; -

i) The Counter-Claimer states that the portion of land which is contained in the Title known as LR.NO.ELDORET MUNICIPALITY BLOCK 1/194 (hereinafter referred to as **“the suit property”**) was allocated to him by the Uasin Gishu District Allocation Committee in the year 1997.

- ii) Upon allocation, the Counter-Claimer did comply with the terms and conditions of allocation by paying a sum of Kenya Shillings One Hundred and Twenty Thousand (KShs.120,000/-) thereof.
 - iii) At the time of allocation, the portion of land allocated to the Counter-Claimer was contained in PDP 17/91/16 A SUB-PLOT D.
 - iv) The Counter-Claimer has since allocation and taking possession been paying the approved rates to the 3rd Defendant.
 - v) In essence therefore, the Counter-Claimer did plead that the properties being claimed by the Defendants to the Counter-Claim namely PLOT.NO.29,30,34, 35 AND 36 within PDP/17/96/65 on ZONE G were fraudulent and illegal.
 - vi) The Counter-Claimer then did proceed to outline the Particulars of Fraud on the part of the Defendants to the Counter-Claim thereof.
3. The present suit was served on the Defendants to the Counter-Claim herein.
4. The Defendants to the Counter-Claim did oppose the present suit by way of a Defence to Counter-Claim filed on 07.12.2016.
5. In the Defence to the Counter-Claim filed on the 07.12.2016, the Defendants to the Counter-Claim did oppose the present suit on the following grounds; -

- a) The Defendants to the Counter-Claim were the lawful owners of the properties known as PLOT.NO.29,30,34 and 35 WITHIN ZONE G ON THE PDP/17/96/65.
 - b) As such, the allocation and registration of the Counter-Claimer as the registered owner of the property known as LR.NO.ELDORET MUNICIPALITY BLOCK 1/194 fraudulent, illegal and unlawful.
 - c) The Defendants to the Counter-Claim did deny the particulars of the Fraud pleaded by the Counter-Claimer in the present suit.
 - d) In essence thereof, the Defendants to the Counter-Claim did object to the prayers sought in the present suit.
6. Upon service of the Defence to the Counter-Claim dated 07.12.2016, the Counter-Claimer did not file any Reply to Defence on the Counter-Claim.

COUNTER-CLAIMER'S TESTIMONY AND DOCUMENTARY EVIDENCE

7. The first witness was the Counter-Claimer who was marked as PW 1.
8. The Counter-Claimer did introduce himself as a businessman within Uasin Gishu County.
9. Thereafter, the Counter-Claimer did inform the Court that he had prepared and executed a witness statement dated 25.11.2016.

10. The Counter-Claimer then did proceed to produce the following documents in support of his evidence in chief; -

PW 1 EXHIBIT 1- A Copy of the Certificate of Lease dated 23.07.2003 relating to the property known as LR.NO.ELDORET MUNICIPALITY BLOCK 1/194 in the name of the Counter-Claimer.

PW1 EXHIBIT 2- A Copy of Letter of Allotment dated 16.02.1997 in the name of the Counter-Claimer.

PW1 EXHIBIT 3 - Copy of the Premium Payment Receipt dated 6.05.1999.

PW1 EXHIBIT 4 - Copy of the Lease dated 26.06.2003 between the Counter-Claimer and Eldoret Municipal Council over the suit property.

PW1 EXHIBIT 5 - Copy of Demand Invoices issued by Eldoret Municipality to the Counter-Claimer dated 25.11.2009

PW1 EXHIBIT 6 - Copy of the approved Survey Map of the suit property on the 27.10.2016

PW1 EXHIBIT 7 - Copy of a letter dated 11.12.2012 from Eldoret Municipality to DCIO confirming ownership of the Counter-Claimer.

PW1 EXHIBIT 8 - Copy of a letter dated 19.09.2012 from Eldoret Municipality to the general public not to develop without approval.

PW1 EXHIBIT 9 - Copy of a letter dated 27.10.2016 from County Surveyor to the DCIO confirming the existence of Survey Maps.

PW1 EXHIBIT 10 - Copy of Beacon certificates dated 27.10.2026 relating to the suit property

PW1 EXHIBIT 11 - Copy of a letter dated 13.04.2016 from County Government of Uasin Gishu to DCIO in relation to the suit property.

PW1 EXHIBIT 12 - Copy of a Receipt dated 19.09.2016 issued by the County for re-establishment of the beacons

PW1 EXHIBIT 13 - Copy of a demand letter dated 25.01.2016 to the NLC

11. The Counter-Claimer did testify before the Court that the Defendants to the Counter-Claim were the ones in actual possession and occupation of the suit property.

12. The Counter-Claimer did inform the Court that the Defendants to the Counter-Claim had erected a number of temporary structures on the suit property without his consent.
13. In essence, the Counter-Claimer did seek for a declaration that he is the lawful registered owner of the suit property and an eviction Order against the Defendants to the Counter-Claim herein.
14. Further to the foregoing, the Counter-Claimer did also seek for damages against the Defendants to the Counter-Claim as well as a Permanent Injunction prohibiting any further dealing with the suit property herein.
15. At the end of this testimony in chief, the Counter-Claimer was duly discharged from the witness box and thereafter his case was closed.

THE TESTIMONIES & DOCUMENTARY EVIDENCE BY THE DEFENDANTS TO THE COUNTER-CLAIM.

16. The Defendants to the Counter-Claim despite being served with notice of the hearing did not attend Court to prosecute their case.
17. Consequently, the Defendants to the Counter-Claim's case was closed due to lack of prosecution and/or Court attendance.
18. The Court then did direct parties to file their final submissions and in compliance the Counter-Claimer did file his submissions dated 17.11.2025.

19. On the other hand, the Defendants to the Counter-Claim did not file any submissions in opposition to the Counterclaim.
20. This Court has perused the pleadings by the Plaintiff and the Defendants herein, considered the witness testimonies and documentary evidence placed before it, as well as the submissions filed herein and in its considered view, the following issues arise for determination: -

ISSUE NO.1- IS THE COUNTER-CLAIMER THE LAWFUL REGISTERED OWNER OF THE SUIT PROPERTY?

ISSUE NO.2- ARE THE DEFENDANTS TO THE COUNTER-CLAIM LEGALLY IN OCCUPATION OF THE SUIT PROPERTY?

ISSUE NO.3- IS THE COUNTER-CLAIMER ENTITLED TO THE PRAYERS SOUGHT IN THE COUNTER-CLAIM?

ISSUE NO.4- WHO BEARS THE COSTS OF THE COUNTER-CLAIM?

21. Having identified the above issues, the court will now proceed to determine them as herein-below.

ISSUE NO.1- IS THE COUNTER-CLAIMER THE LAWFUL REGISTERED OWNER OF THE SUIT PROPERTY?

22. The first issue for determination is who is the lawful registered owner of the suit property.

23. The Counter-Claimer did plead and testify before the Court that he was the lawful registered owner of the suit property.
24. During the hearing, the Counter-Claimer did produce a Letter of Allotment dated 16.02.2017 which was marked as PW 1 EXHIBIT 2, the Lease Agreement dated 26.06.2003 marked as PW 1 EXHIBIT 4 and the resultant Certificate of Lease dated 23.07.2003 which was marked as PW 1 EXHIBIT 1.
25. All the above documents show that the Counter-Claimer herein is the lawful owner of the suit property herein.
26. The Defendants to the Counter-Claim in their Defence filed on 07.12.2016 did challenge the registration of the Counter-Claimer on the grounds of fraud as contained in Paragraph 10 (b) therein.
27. However, the particulars of fraud perpetuated by the Counter-Claimer in obtaining his registration as the owner of the suit property were never particularised in the Defence to the Counter-claim filed on the 07.12.2016.
28. Similarly, none of the Defendants to the Counter-Claim did attend court for the hearing of their case dispute proper service of the hearing notice being served on them.
29. The provisions of Section 26 of the Land Registration Act, No. 3 of 2012 provides that the Court should take the name appearing on the Certificate of Title as prima facie evidence of the lawful registered owner of the property in issue.
30. In this instance, the name that appears on the proprietorship section of the Certificate of Lease relating to the suit property is that of the Counter-Claimer herein.

31. Although the proprietorship of a registered owner can be challenged through the grounds provided under Section 26 (1) (a) and (b), the party seeking to do so must specifically plead the particulars of either fraud, misrepresentation and/or corrupt acts in their pleadings.
32. Thereafter, the party seeking to prove fraud, misrepresentation and/or corrupt acts must prove the same at the hearing through oral evidence and/or documentary evidence.
33. Unfortunately, the Defendants to the Counter-claim did not plead any particulars of the fraud perpetrated by the Counter-Claimer in procuring the Certificate of Title and/or attend Court to tender the relevant evidence.
34. As such, their allegation that the Certificate of Lease issued to the Counter-Claimer was fraudulent is a mere denial and cannot impeach the name recorded on the same.
35. In conclusion, this Court is of the considered finding that the Counter-Claimer herein is the lawful registered owner of the suit property before the Court.

ISSUE NO.2- ARE THE DEFENDANTS TO THE COUNTER-CLAIM IN OCCUPATION OF THE SUIT PROPERTY?

36. The second issue for determination is whether the Defendants in the Counter-Claim are in occupation the suit property before Court.

37. The Counter-Claimer in the Counter-Claim did plead that the Defendants to the Counter-Claim were in occupation of the suit property without his consent and/or authority.
38. During the hearing, the Counter-Claimer did testify that the Defendants to the Counter-Claim has occupied the suit property by constructing temporary structures which they were using for business.
39. The Counter-Claimer therefore sought for an order of eviction against the Defendants to the Counter-claim herein.
40. The Defendants to the Counter-Claim in their Defence filed on the 07.12.2016 did not deny occupation of the suit property herein.
41. The Defendants to the Counter-Claim however did plead that their occupation was on PLOTS 29,30,34 AND 35 within PDP/17/96/65 located in ZONE G.
42. The Counter-Claimer did produce a Beacon Certificate dated 27.10.2026 confirming the boundaries of the suit property.
43. Clearly therefore, the Counter-Claimer apart from being the lawful registered owner of the suit property was also able to identify the location of the suit property.
44. The Counter-Claimer's position is that anyone within the location of the suit property is a trespasser and therefore should be removed from the said location.
45. The Defendants in the Counter-Claim were supposed to present their Mutations and/or beacon certificates to counter this allegation that they are within the suit property registered in the name of the Counter-Claimer.

46. However, the Counter-Claimers did not present any Mutations and/or Beacon Certificates of the portions allocated to them by the 3rd Defendant.
47. As such, this Court is of the considered view and finding that any occupation by the Defendants to the Counter-Claim on the suit property is illegal and amounts to trespass thereof.

**ISSUE NO.3- IS THE COUNTER-CLAIMER ENTITLED TO
THE PRAYERS SOUGHT IN THE COUNTER-
CLAIM?**

48. The third issue is what are the prayers sought by the Counter-Claimer that can be granted by this Court.
49. The first prayer is a declaration that the Counter-Claimer is the legal registered owner of the suit property herein.
50. In addition to the foregoing, the Counter-Claimer did seek for an Order directed to the Land Registry Uasin Gishu to cancel any registration of the Defendants in the Counter-Claim as the owners of the suit property herein.
51. On the first aspect of the first prayer, this Court in Issue No.1 did make a finding that the Counter-Claimer is the lawful registered owner of the suit property.
52. Based on this finding, the Court is of the finding that the Counter-Claimer is entitled to a declaration that he is the lawful registered owner of the suit property herein.
53. On the second aspect of the first prayer which is to make an order of the cancellation of the names belonging to the

Defendants to the Counter-Claim at the Land Registry in Uasin Gishu, the Counter-Claimer did not present any documents either by way of ownership documents and/or a Certified copy of the Register commonly known as the White Card which had the names of the Defendants in the Counter-Claim on it.

54. As such, there is no record available to the Court that would require the cancellation of the names belonging to the Defendants in the Counter-Claim at the Land Registry in Uasin Gishu.
55. In essence, this aspect of Prayer No. 1 is not granted to the Counter-Claimer.
56. The third prayer in the Counter-Claim is an Order of Permanent Injunction against the Defendants in the Counter-Claim from ingressing, carrying on any operations and/or activities of any nature and or doing any acts and/or omissions in any nature whatsoever on the suit property situated in Shauri Yako Estate.
57. Based on the finding in Issue No.2, the Court did make a finding that the occupation of the Defendants in the Counter-Claim on the suit property was without the consent and/or authority of the Counter-Claimer.
58. Clearly therefore, the occupation of the Defendants to the Counter-Claim on the suit property amounts to trespass and the Court is of the finding that the Order of Permanent Injunction sought herein is merited to restore the Counter-Claimer's rights of use as provided under Section 25 of the Land Registration Act, No. 3 of 2012.
59. The third prayer is one seeking for General Damages against the Defendants in the Counter-Claim for the trespass,

encroachment and/or unlawful use of the suit property belonging to the Counter-Claimer.

60. Based on the findings in Issue No.1 and 2, it is clear that the Defendants in the Counter-Claim were in occupation and use of the suit property without the authority and/or consent of the Counter-Claimer.
61. However, the Counter-Claimer did not state the period of time which the Defendants in the Counter-Claim had been in occupation of the suit property without the consent and/or authority of the Counter-Claimer.
62. In the absence of such information, it is difficult to award general damages in favour of the Counter-Claimer.
63. However, keeping in mind that the suit was filed in 2016, the Court is of the view and finding that general damages of Kenya Shillings Five Hundred Thousand (KShs.500,000/-) for each of the Defendants in the Counter-Claim is sufficient to compensate the Counter-Claimer for the unlawful use of the property between the year 2016 when the case began to date.
64. The fourth prayer in the Counter-Claim is for an Order of eviction against the Defendants in the Counter-Claim.
65. Based on the finding in Issue No.2 to the effect that the occupation of the Defendants in the Counter-Claim is without the consent and authority of the Counter-Claimer, then an Order of Eviction must be issued to ensure the suit property is available for the use and enjoyment by the Counter-Claimer in line with the provisions of Section 25 of the Land Registration Act, No. 3 of 2012.

66. In essence, the Court hereby makes a finding that the prayers sought by the Counter-Claimer in the Counter-Claim are merited and should therefore be granted.

ISSUE NO.4- WHO BEARS THE COSTS OF THE COUNTER-CLAIM?

67. Costs are usually awarded to a winning party.

68. Based on the findings in Issues No.1,2 and 3, the Counter-Claimer in the present suit has been able to successfully prosecute his case against the Defendants in the Counter-claim and is therefore entitled to costs herein.

CONCLUSION

69. In conclusion, this Court hereby makes the following Orders in relation to the Counter-Claim dated 25.11.2016; -

A. THE COUNTER-CLAIM DATED 25.11.2016 IS MERITED.

B. A DECLARATION BE AND IS HEREBY MADE TO THE EFFECT THAT THE COUNTER-CLAIMER FRANCIS PIUS NYABERI IS THE LAWFUL REGISTERED OWNER OF THE PROPERTY KNOWN AS LR.NO.ELDORET MUNICIPALITY BLOCK 1/194.

C. THE DEFENDANTS IN THE COUNTER-CLAIM NAMELY JOHN NGANGA NDUCHI, BENJAMIN KIPKULEI KIPLAGAT AND GEOFFREY NGANGA GATHAIYA BE AND ARE HEREBY DIRECTED TO YIELD VACANT POSSESSION ON THE PROPERTY KNOWN AS ELDORET MUNICIPALITY BLOCK 1/194 WITHIN A PERIOD OF 60 DAYS FROM THE DATE OF THIS JUDGEMENT.

D. IN THE EVENT THAT THE DEFENDANTS IN THE COUNTER-CLAIM NAMELY JOHN NGANGA NDUCHI, BENJAMIN KIPKULEI KIPLAGAT AND GEOFFREY NGANGA GATHAIYA FAIL TO COMPLY AND/OR ABIDE WITH ORDER C HEREINABOVE, THE DEPUTY REGISTRAR OF THE ENVIRONMENT & LAND COURT ELDORET IS HEREBY DIRECTED TO ISSUE AN EVICITON ORDER AGAINST THE DEFENDANTS IN THE COUNTER-CLAIM NAMELY JOHN NGANGA NDUCHI, BENJAMIN KIPKULEI KIPLAGAT AND GEOFFREY NGANGA GATHAIYA DIRECTING OVER THE PROPERTY KNOWN AS ELDORET MUNICIPALITY BLOCK 1/194 THEREOF.

E. THE COUNTER-CLAIMER FRANCIS PIUS NYABERI IS AWARDED GENERAL DAMAGES OF KENYA SHILLINGS FIVE HUNDRED THOUSAND (KSHS 500,000/-) FROM EACH OF THE DEFENDANTS IN THE COUNTER-CLAIM NAMELY JOHN NGANGA NDUCHI, BENJAMIN KIPKULEI KIPLAGAT AND GEOFFREY NGANGA GATHAIYA FOR THE UNLAWFUL USE OF THE PROPERTY KNOWN AS ELDORET MUNICIPALITY BLOCK 1/194.

F. THE DEFENDANTS IN THE COUNTER-CLAIM NAMELY JOHN NGANGA NDUCHI, BENJAMIN KIPKULEI KIPLAGAT AND GEOFFREY NGANGA GATHAIYA ARE HEREBY CONDEMNED TO PAY COSTS OF THE COUNTER-CLAIM ONLY TO THE COUNTER-CLAIMER FRANCIS PIUS NYABERI.

DATED, SIGNED and DELIVERED at ELDORET this on this 23RD DAY OF APRIL, 2026.

EMMANUEL.M. WASHE

JUDGE

IN THE PRESENCE OF:

Court Assistant: Brian

Advocate for Counter-Claimer: Ms. Chepkiyen holding brief for Mr. Nyamweya

Advocate for Defendants In The Counter-Claim: Mr. Murgor for the Defendant in the Counter-Claim