



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KAJIADO**

**ELC CASE NO. 393 OF 2017**

**ELIAS NDWIGA NJOKA.....PLAINTIFF**

**VERSUS**

**LAND REGISTRAR KAJIADO.....1<sup>ST</sup> DEFENDANT**

**ELIUD NDUNGU MUGAMBI.....2<sup>ND</sup> DEFENDANT**

**AND**

**WANACHUO INVESTMENT LTD.....1<sup>ST</sup> INTERESTED PARTY**

**SUSAN NYAMBURA.....2<sup>ND</sup> INTERESTED PARTY**

**RULING**

What is before Court for determination is the 1<sup>st</sup> Interested Party's Notice of Motion dated the 21<sup>st</sup> March, 2019; 2<sup>nd</sup> Interested Party's application dated the 20<sup>th</sup> March, 2019 and Plaintiff's application dated 10<sup>th</sup> December, 2018. The application dated 21<sup>st</sup> March, 2019, is brought pursuant to Sections 1A, 1B, 3A and 80 of the Civil Procedure Act, Order 22 Rule 67 and Order 45 Rule 1 of the Civil Procedure Rules. The 1<sup>st</sup> Interested Party seeks orders for review and setting aside of proceedings and consequential vesting Orders made herein on 21<sup>st</sup> November, 2014. It further seeks for setting aside/vacating of orders dated the 9<sup>th</sup> July, 2018. The Application is premised on the summarized grounds that the 1<sup>st</sup> Interested Party is the registered proprietor of all that piece of land known as Kajiado/ Kisaju/ 4611, 4612, 4613, 4614 and 4615 which was previously Kajiado/ Kisaju/ 121 measuring 39.67 Ha that was transferred to it on 21<sup>st</sup> September, 2011 with a Certificate of Title issued on 16<sup>th</sup> March, 2012. The 1<sup>st</sup> Interested Party has learnt that there is a suit which was filed in Machakos vide ELC Case No. 7 of 2014 against the Defendant one Eliud Ndungu Mugambi seeking that his name be replaced in the register of the suit property and a judgement was delivered to that effect on 22<sup>nd</sup> November, 2014 by Justice Charles Kariuki granting vesting orders. Further, that the Plaintiff has commenced enforcement proceedings on the said Decree seeking the Defendant to construct the record relating to Kajiado/ Kisaju/ 121 without having to gazette his intention which orders were granted on 9<sup>th</sup> July, 2018. It denies being served with the Decree nor the Order. It claims the Plaintiff has failed to disclose to the Honourable Court material facts that there were criminal proceedings against him in respect to the suit property where the 1<sup>st</sup> Interested Party was called as a witness. Further, the Plaintiff was therefore aware of the 1<sup>st</sup> Interested Party's interest on the suit property and ought to have served all parties. The Plaintiff misled the Court by claiming that he inherited the entire suit property from his grandmother who belonged to a group of women known as Ngara East Women Group as each member in the said group only owned a portion of the suit property. Further, there is an ongoing case before this Honourable Court being ELC Case No. 380 of 2017 in which the 1<sup>st</sup> Interested Party and the Land Registrar have been sued by one Susan Nyambura Njenga who contends to be a member of the said women group and claims ownership of a portion of the suit property. The enforcement of the said Orders is contrary to public policy as it sanctions fraud, illegalities and unjust enrichment by the Plaintiff and arbitrary deprivation of the 1<sup>st</sup> Interested Party's property. The Plaintiff will not suffer any prejudice, loss or damage should the orders sought be granted.

The Application is supported by the annexed affidavit of LILIAN ATUO OPONDO who is the Advocate in conduct of the matter on behalf of the 1<sup>st</sup> Interested Party where she reiterates her claim above. She avers that the Plaintiff has filed another application dated 10<sup>th</sup> December, 2018 seeking that all records and registries regarding the suit property as a result of the survey mutations be nullified. She contends that none of the applications, pleadings and Orders have ever been served upon the 1<sup>st</sup> Interested Party contrary to the law. She claims the Plaintiff misled the Honourable Court by stating that he was the only surviving beneficiary of the members of Ngara East Women Group. She explains that Ngara East Women Group acquired the suit property Kajiado/ Kisaju/ 121 from the previous owner Joseph Silipo Ole Kepiro, after which they subdivided the said land according to the number of members as follows: Kajiado/Kisaju/ 4611; 4612; 4613; 4614 and 4615 measuring approximately 39.67 Ha. She avers that the 1<sup>st</sup> Interested Party undertook a search which confirmed that the property was owned by 'Own a Plot Limited'. Further, that the suit property Kajiado/ Kisaju/ 121 had been subdivided into various portions and consolidated into

Kajiado/ Kisaju/ 4610 and later subdivided into Kajiado/ Kisaju/ 4611; 4612; 4613; 4614 and 4615. She insists 'Own a Plot Limited' provided the 1<sup>st</sup> Interested Party with all the completion documents necessary for registration of the titles to it. Further, that in December, 2012, the 1<sup>st</sup> Interested Party undertook a Search which revealed that the suit property is registered in its name. She reiterates that all the aforementioned transactions took place before the Machakos ELC No. 4 of 2014 was filed and contends that all documents produced by the Plaintiff are a fraud. She further states that the 1<sup>st</sup> Interested Party learnt of the Decree from the Defendant after making inquiries as to the progress of the ELC 380 of 2017 vide their letter dated the 4<sup>th</sup> March, 2019 and hence brought this application without undue delay.

In the application dated the 20<sup>th</sup> March, 2019 which is brought pursuant to Order 45 rule 1 and 5 of the Civil Procedure Rules as well as Sections 3A, 63 ( e) and 80 of the Civil Procedure Rules; the 2<sup>nd</sup> Interested Party seeks for orders of stay of execution of the judgment; stay of proceedings and setting aside of the judgment herein. The Application is premised on the summarized grounds that the 2<sup>nd</sup> Interested Party is the owner of land parcel number Kajiado/ Kisaju/ 1794 which she acquired through Ngara Women's Group that had initially purchased Kajiado/ Kisaju/ 121, which was later subdivided to its members including herself. Further, that after sometime, most of the members sold their subdivided parcels of land to third parties while she remained with her land. In 2014, the 2<sup>nd</sup> Interested Party conducted a search and discovered that her land was registered in the name of Wanachuo Investment Limited. The 2<sup>nd</sup> Interested Party discovered that Wanachuo Investment Limited had purchased properties that formerly belonged to the members of Ngara East Women Group that were adjacent to her land with the said Women Group applying for consolidation of all the properties including her land despite the fact that she never sold hers. This prompted the 2<sup>nd</sup> Interested Party to institute Machakos ELC No 184 of 2014 against Wanachuo Investment Limited where she was issued with restraining orders against the Defendants therein from transferring or interfering with her possession of her land. The 2<sup>nd</sup> Interested Party further learnt that there was a judgment regarding the suit property in question.

The application is supported by the affidavit of SUSAN NYAMBURA NJENGA the 2<sup>nd</sup> Interested Party herein where she reiterates her claim above.

The two applications are opposed by the Plaintiff who filed a replying affidavit sworn by ELIAS NJOKA NDWIGA where he avers that he is the registered proprietor of land parcel number Kajiado/ Kisaju/ 121 which has never been genuinely subdivided into portions. He contends that if any party has the Registry Index Map (RIM) showing Kajiado /Kisaju /121 was subdivided into Kajiado/ Kisaju / 4611; 4612; 4613; 4614 and 4615, he challenged them to produce the same. He claims that Kajiado /Kisaju / 121 was interfered with around 2013 as there were several fraudulent registers in respect of the said land culminating in the matter being handled by the police vide criminal case no. 82 of 2013 where Vivian N. Waithaka, the Company Secretary for Wanachuo Investment Limited testified. He contends that the Applicants failed to take the easiest opportunity to be enjoined in ELC Case No 393 of 2017. He claims when he reported the matter to the Police and the Survey of Kenya, the matter was thoroughly investigated and it was revealed that mutation numbers 074955 and 360643 were forgery hence subsequent mutations done to produce KAJIADO/KISAJU 4610 and later KAJIADO/KISAJU/ 4611; 4612; 4613; 4614; and 4615 were fraudulent. He insists there were persons at the Lands office who created the purported registers without any survey being carried out and the titles displayed in the supporting affidavit do not show the relevant Sheet Number. He reiterates that the whole exercise of fraudulent mutations was a plan meant to dupe the 1<sup>st</sup> Interested Party into entering an agreement of buying non-existent land from 'Own a plot Limited'. He sought for the application by 1<sup>st</sup> Interested party to be dismissed as it lacks merit.

In the application dated the 10<sup>th</sup> December, 2018, the Plaintiff has brought it pursuant to Order 51 Rule 1 of the Civil Procedure Rules as well as sections 3 and 3A of the Civil Procedure Rules. He seeks for orders that all records, registers and appurtenant entries made regarding land parcel number Kajiado/ Kisaju/ 121 as a result of the survey mutations, serial numbers 074955 dated the 6<sup>th</sup> May, 1999; 360640 dated the 27<sup>th</sup> May, 2010 and 360643 dated 31<sup>st</sup> May, 2010 respectively be quashed and/ or nullified. It is premised on the grounds that the first mutation form No. 074955 is a forgery as the said mutation was not registered. Consequently, all mutations are illegal.

The application is supported by the affidavit of ELIAS NDWIGA NJOKA the Plaintiff herein where he avers that the court ordered that he be issued with a title on 9<sup>th</sup> July, 2018, which orders he submitted for registration on 18<sup>th</sup> July, 2018. He states that when he went to collect the Certificate of Title, he was informed that there were other parallel records in respect of Kajiado/ Kisaju/ 121. He insists that the title Kajiado/ Kisaju/ 121 was never subdivided. Further, that he was shown a mutation form No. 074955 dated 6<sup>th</sup> May, 1999 purporting to have subdivided the land and it had a stamp including signature of GEOMATICS SERVICES LTD as the surveyors. He contends that on 26<sup>th</sup> September, 2018, he was informed by the said GEOMATICS SERVICES LTD that the purported survey was a forgery and even the other mutations No, 360643 were not genuine. He insists in the records for GEOMATICS SERVICES LTD, Mutation Form No. 074955 was for parcel number Kajiado /Kitengela / 7452. He avers that all subsequent attempts to combine, amalgamate and register the suit lands were simply fraudulent. He reiterates that the Police found Mutation No. 074955 and all subsequent Mutations were fraudulent.

The 1<sup>st</sup> Defendant/Respondent opposed the application and filed a replying affidavit sworn by SHEILA NANDAKO a Land Registrar based at Kajiado Lands Registry where she avers that the Plaintiff filed Machakos ELC No. 7 of 2014 where ex parte judgment was entered directing the Land Registrar, Kajiado to cancel entry in register Kajiado/ Kisaju/ 121 containing the name of 2<sup>nd</sup> Defendant herein and thereby enter his name. She deposes that the 1<sup>st</sup> Defendant was never served with pleadings to this suit and thus was not aware, hence did not participate in it. She confirms that they were only served with a court order for compliance. She explains that on checking their records, they discovered that there was in existence three (3) green cards in respect of land parcel number Kajiado/ Kisaju/ 121. Further, that the first green card has four entries while the name of the Plaintiff appears at entry number 3 following a transfer from Joseph Silipo Ole Kepiro. As for the second green card, it has six entries with the name of the Plaintiff appearing at entry no. 3 following transfer from Joseph Silipo Ole Kepiro. While the third green card contains eight entries with the name of the Plaintiff appearing at entry no. 5 following a transfer from Ngara East Women Group, and there is subsequent transfer from the Plaintiff to the 2<sup>nd</sup> Defendant. She insists in all the abovementioned green cards there is an indication of suspected forgery or fraud. She avers that as per their records, the original proprietor of land parcel number Kajiado/ Kisaju/ 121 was Joseph Silipo Ole Kepiro. Further, that they have documents in their possession supporting the transfer from Joseph Silipo Ole Kepiro to Ngara East Women Group. She contends that there are no documents to prove transfer from Ngara East Women Group to the Plaintiff or documents to support transfer from Plaintiff to 2<sup>nd</sup> Defendant. Further, there are no documents in their records to support transfer from Joseph Silipo Ole Kepiro to Plaintiff. She confirms that due to the suspected fraud, the Land Registrar forwarded the suspicious green cards to the Directorate of Criminal Investigation for investigation. Further, that criminal proceeding were instituted against the Plaintiff and

one James Thimba vide Ngong Criminal Case No. 82 of 2013 but they were acquitted under section 215 of the Criminal Procedure Code. She states that it has now come to their attention that there is another suit Kajiado ELC No. 380 of 2017 Susan Nyambura Vs Wanachuo Investment Ltd, where Wanachuo Investment Ltd claim to have purchased the suit property from a company called ‘ Own a Plot Limited. She reiterates that the orders sought by the Plaintiff are likely to affect a large number of people who are not parties to the instant application.

The Plaintiff filed a further affidavit sworn by ELIAS NDWIGA NJOKA where he reiterates his claim and deposes that the Machakos ELC No. 7 of 2014 concerned records that were manufactured and changed at the Kajiado Land’s Office in respect of the suit property. He insists the Land Registrar was duly served as the Court had no issue with the service. He avers that in Machakos ELC Case No. 7 of 2014 it was rightly noted that in 2012 when a search was made, the suit property was registered in his name. He claims the persons making false green card entries had access to the land registry, hence the disappearance of all the records relating to the suit property. He explains that he sought reconstruction of other records and the Land Registry raised an issue of integrity of records as there were other parallel records, which are fraudulent.

All the parties filed their respective submissions, which were highlighted on 15<sup>th</sup> May, 2019.

### **Analysis and Determination**

Upon consideration of the three Notice of Motions dated the 20<sup>th</sup> March 2019, 21<sup>st</sup> March 2019 and 10<sup>th</sup> December, 2018 respectively including the supporting plus replying affidavits as well as parties’ submissions, the following are the issues for determination:

- Whether the Judgment and Vesting Orders made on 21<sup>st</sup> November, 2014 should be reviewed and or set aside.
- Whether the Orders of the court dated 9<sup>th</sup> July, 2018 should be set aside/ vacated.
- Whether all the records, registers and appurtenant entries made regarding land parcel number Kajiado/ Kisaju/ 121 as a result of the survey mutations, serial numbers 074955 dated the 6<sup>th</sup> May, 1999; 360640 dated the 27<sup>th</sup> May, 2010 and 360643 dated 31<sup>st</sup> May, 2010 should be quashed and/ or nullified.

As to whether the Judgment and Vesting Orders made on 21<sup>st</sup> November, 2014 should be reviewed and or set aside. The 1<sup>st</sup> Defendant as well as the Interested Parties’ sought for the judgment delivered on 21<sup>st</sup> November, 2014 to be reviewed and or set aside. The 1<sup>st</sup> Defendant claimed it was not served while the Interested Parties’ were not parties to the suit. Further, that it was in the interest of justice if the judgement was set aside and the matter proceeded for hearing since there was a related matter ELC No. 380 of 2017. The Plaintiff opposed the two applications and insisted that the judgment was validly entered as it is the owner of the suit property. Further, that all the other titles in respect of the suit property were a forgery since the said land had never been subdivided and the mutations used being a fraud. He submitted that the 1<sup>st</sup> Defendant was properly served.

The 1<sup>st</sup> Defendant and the Interested parties’ submitted that they had established a basis for review as there was an error apparent on the face record since there are two related matters in respect of the suit property with the instant suit having a judgment while in the other suit No. 380 of 2017, the 2<sup>nd</sup> Interested party was granted injunctive orders to restrain any party from interfering with the suit land pending the outcome of the suit. They further submitted that the Plaintiff had failed to disclose material facts to the court and they only discovered the existence of the judgment in the current suit recently. They relied on the cases of **Shanzu Investments Limited V Commissioner of Lands ( Civil Appeal No. 100 of 1993) Auto Selection (K) Ltd & 2 Others Vs John Namasak Famba (2016) eKLR; Republic Vs Chairman District Alcoholic Drinks Regulation Committee & 4 Others Ex parte Detlef Heier & Another (2013) eKLR; Harman Singh And others Vs Mistri (1971) EA 122 and Stephen Somek Takwenyi & Another Vs David Mbuthis Githare & 2 Others Nairobi (Milimani) HCC No. 363 of 2009** to buttress their arguments for review/setting aside of judgment and order made on 9<sup>th</sup> July, 2018. The 1<sup>st</sup> Defendant relied on the cases of **Wachira Karani Vs Bildad Wachira (2016) eKLR; and Patel Vs East Africa Cargo Handling Services** to support her arguments that it was not duly served with summons to enter appearance hence failure to defend the instant suit. In the current scenario, I note the 1<sup>st</sup> Defendant is a government agency and service upon it, is governed by the provisions of Order 5 Rule 9 as well as section 13 of the Government Proceedings Act. Section 13 of the Government Proceedings Act provides that:’ **All documents required to be served on the Government for the purpose of or in connection with any civil proceedings by or against the Government in accordance with the provisions of this Act shall be served on the Attorney General.** ‘

While Order 5 Rule 9 of the Civil Procedure Rules provides that:’ **(1) The provisions of this Order shall have effect subject to section 13 of the Government Proceedings Act (Cap. 40), which provides for the service of documents on the Government for the purpose of or in connection with civil proceedings by or against the Government. (2) Service of a document in accordance with the said section 13 shall be effected— (a) by leaving the document within the prescribed hours at the office of the Attorney-General, or of any agent whom he has nominated for the purpose, but in either case with a person belonging to the office where the document is left; or (b) by posting it in a prepaid registered envelope addressed to the Attorney- General or any such agent as aforesaid, and where service under this rule is made by post the time at which the document so posted would be delivered in the ordinary course of post shall be considered as the time of service thereof. (3) All documents to be served on the Government for the purpose of or in connection with any civil proceedings shall be treated for the purposes of these Rules as documents in respect of which personal service is not requisite. (4) In this rule, “document” includes writs, notices, pleadings, orders, summonses, warrants and other documents, proceedings and written communications.**’

From the Court records, the Plaintiff served summons via substituted service in the Newspaper but failed to serve the 1<sup>st</sup> Defendant’s offices personally. To my mind this cannot be deemed to be proper service as stipulated within the above cited legal provisions. I opine that the office of the District Land Registrar, Kajiado as well as the Attorney General’s chambers are permanent structures, which any process server cannot miss. In the circumstances, I find that the 1<sup>st</sup> Defendant was not duly served with the summons to enter appearance hence the inability to defend the suit.

I note the Interested Parties' were not parties to the suit at the time the judgment was entered herein. They have sought for stay of execution as well as review and setting aside of the judgement. From the proceedings above, it is clear that as a result of the criminal case where the 1<sup>st</sup> Interested party's representative testified, the Plaintiff was well aware that there were other parties interested in the suit property and any orders made therein would affect them but he still failed to include them in the suit and also failed to personally serve the 1<sup>st</sup> Defendant who is the custodian of all records to land. Secondly, based on the averments of the 1<sup>st</sup> Defendant that there are three green cards in respect of the suit land, this is a red flag as to the integrity of the title which the Plaintiff is claiming which as a Court I cannot ignore nor wish away. From the Plaintiff's averments, he claims to have inherited the land from his grandmother but as per the records at the Land's Registry, there is no indication that he obtained the said land from her. Further, the Plaintiff himself has admitted that there was interference of records and alleged fraud on the part of the Defendants and Interested parties'. He has also claimed that there were forged mutations as per the Surveyors' reports but did not furnish Court with affidavits sworn by the Surveyors nor the DCI to corroborate the said averments. I opine that the veracity of all the parties' allegations should be tested by the court to determine the true owner of the suit land.

Section 80 of the Civil Procedure Act provides: -**"Any person who considers himself aggrieved— (a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or (b) by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit."**

Further, Order 45, rule 1 (1) of the Civil Procedure Rules provides as follows: **' Any person considering himself aggrieved— (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or (b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.'**

The 1<sup>st</sup> Defendant including the Interested parties' have alleged they never defended the suit culminating in the ex parte judgment as they were not served and learnt of the suit and judgment much later on. I note from the affidavit of the 1<sup>st</sup> Interested party that once it established there was another suit, they proceeded to apply to enjoin the same, stay the proceedings as well as set aside the ex parte judgment that had already been entered therein. It is evident that the 1<sup>st</sup> Interested Party also holds titles to resultant subdivisions of the suit property. As per the Court records, the Plaintiff obtained ex parte judgment, having served the two Defendants via substituted service. It is clear that all the parties herein are alleging fraud in respect of the titles each one holds. It is trite law that where there are allegations of fraud, the same has to be proved. This cannot be proved without the matter being set down for hearing.

In the case of MUYODI v INDUSTRIAL AND COMMERCIAL DEVELOPMENT CORPORATION AND ANOTHER EALR (2006) EA 243, the Court of Appeal while describing an error apparent on the face of record, held as follows: **" In Nyamogo & Nyamogo -vs- Kogo (2001) EA 174 this Court said that an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case. There is real distinction between a mere erroneous decision and an error apparent on the face of record. Where an error on a substantial point of law stares one in the face, and there could reasonably be no two opinions, a clear case of error apparent on the face of the record would be made out. An error which has to be established by long drawn process of reasoning or on points where there may conceivably be two opinions, can hardly be said to be an error apparent on the face of the record. Again, if a view adopted by the court in the original record is a possible one, it cannot be an error or wrong view is certainly no ground for a review although it may be for an appeal. This laid down principle of law is indeed applicable in the matter before us."**

In relying on this Court of Appeal decision and applying it to the current scenario, I opine that there are glaring errors apparent on the face of record since it is the same Judge that granted an injunction restraining any party from interfering with the 2<sup>nd</sup> interested Party's land while also granting judgment in respect of the said land. A cursory look at the documents that the Applicants had presented earlier, I find that with the respective land records, it would be an injustice if any party who holds title to the suit property or a portion thereof was condemned unheard. Further, the fact that the Plaintiff was well aware of other interests in the suit land but failed to include them in the suit is a clear non disclosure of material facts.

It is against the foregoing that I find that the 1<sup>st</sup> Defendant including Interested parties' have met the threshold of review and will proceed to set aside the ex parte judgment delivered on 14<sup>th</sup> November, 2014 as well as the Decree and Vesting Orders issued thereafter.

As to whether the Orders of the court dated 9<sup>th</sup> July, 2018 should be set aside/ vacated. I note the said orders were granted by consent. In the case of Samuel Mbugua Ikumbu v Barclays Bank of Kenya Limited [2015] eKLR, the Court of Appeal in laying down the basis for setting aside a consent judgement stated as follow: **' The law on variation of a consent judgment is now settled. The variation of a consent judgment can only be on grounds that would allow for a contract to be vitiated. These grounds include but are not limited to fraud, collusion, illegality, mistake, an agreement being contrary to the policy of the court, absence of sufficient material facts and ignorance of material facts. Hancox JA (as he then was) in the case of Flora Wasike v. Destimo Wamboko (1982 -1988)1 KAR 625, said in his judgment at page 626 -"It is now settled law that a consent judgement or order has contractual effect and can only be set aside on grounds which would justify setting a contract aside, or if certain conditions remain to be fulfilled, which are not carried out." See the decision of this Court in J.M. Mwakio v. Kenya Commercial Bank Ltd Civ. Apps 28 of 1982 and 69 of 1983, This Court in the case of Brooke Bond Liebig v. Mallya 1975 E.A. 266 held:- "A consent judgment may only be set aside for fraud collusion, or for any reason which would enable the court to set aside an agreement."**

Insofar as the Plaintiff and a representative of the 1<sup>st</sup> Defendant entered into a consent to reconstruct the Green Card without gazetting it, I opine that since the Plaintiff was well aware that some parties were claiming the suit property, the said Green Card should have been gazetted. But since he sought the contrary, this is a clear case of failure to disclose material facts to court. The provisions of sections 80 of Civil Procedure Act and Order 45 of the Civil Procedure Rules are clear on when a party can seek a review of an order, which to me has

been proved. From the foregoing, I indeed concur with the 1<sup>st</sup> Defendant as well as the Interested parties' that the consent order dated 9<sup>th</sup> July, 2018 should be set aside and will proceed to do so.

As to whether all the records, registers and appurtenant entries made regarding land parcel number Kajiado/ Kisaju/ 121 as a result of the survey mutations, serial numbers 074955 dated the 6<sup>th</sup> May, 1999; 360640 dated the 27<sup>th</sup> May, 2010 and 360643 dated 31<sup>st</sup> May, 2010 should be quashed and/ or nullified. Since I have already set aside the judgment entered on 21<sup>st</sup> November, 2014 and the Orders made on 9<sup>th</sup> July, 2018, I will decline to quash or nullify all the records, registers and appurtenant entries made regarding land parcel number Kajiado/ Kisaju/ 121 as a result of the survey mutations, serial numbers 074955 dated the 6<sup>th</sup> May, 1999; 360640 dated the 27<sup>th</sup> May, 2010 and 360643 dated 31<sup>st</sup> May, 2010 until this suit is heard and determined on its merits.

Based on my analysis and findings above, I find the applications dated the 20<sup>th</sup> March 2019 and 21<sup>st</sup> March 2019 merited and will proceed to allow them. I however find the application dated 10<sup>th</sup> December, 2018 unmerited and will proceed to disallow it.

Costs will be in the cause.

**Dated signed and delivered in open court at Kajiado this 16<sup>th</sup> day of September, 2019**

**CHRISTINE OCHIENG**

**JUDGE**