



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CASE NO. 924 OF 2014

SWISSCOM LOGISTICS LIMITED.....PLAINTIFF

=VERSUS=

PAUL NAKACHII ERENG.....DEFENDANT

JUDGMENT

Background

1. The dispute in this suit relates to a piece of land situated in Karen within the City of Nairobi, measuring approximately 0.3824 hectares. The plaintiff contends that it owns the suit land pursuant to a Grant from the Government of Kenya, Grant Number IR 144196, which he contends was registered on 26/4/2013 and in which Land Reference Number 13815 is comprised (**the suit land**). It is further contended by the plaintiff that the said Grant has since been sub-divided into Title Numbers 154431 and 154432 in which Land Reference Numbers 13815/2 and 13815/3 are comprised, both registered on 1/4/2014. It is not clear if there is a third registered sub-division out of the original Grant.
2. The defendant lays claim to the suit land pursuant to Grant Number IR 52888 which he contends was registered on 18/6/1991. He contends that he purchased the said title from Peter Gabriel Atambo . It is further contended by the defendant that in July 2013, the Grant Number of the title he is holding was changed to read IR 52887 instead of IR 52888. The land reference number in the defendant's title is similarly 13815.

Plaintiff's Case

3. The plaintiff company initiated this suit through a plaint dated 4/7/2014. It contended that it was the registered proprietor of the suit land. It alleged that the defendant, through his agents, had illegally trespassed onto the suit land, vandalized its structures on the land, and looted its goods. Its case was that its director, Paul Mecha Kipchumba, applied for and was allocated the suit land on 14/4/1997. He complied with the conditions of the allotment and took possession of the land. Mr Mecha subsequently incorporated the plaintiff company as a family company and procured an informal transfer of the property to the plaintiff company. Subsequently, the Grant was processed and issued in the name of the plaintiff company as Grant Number 144196 comprising of Land Reference Number 13815. It subsequently caused the suit land to be sub-divided into Land Reference Numbers 13815/2 and 13815/3 comprised in Title Numbers IR 154431 and IR 154432 respectively. Aggrieved by the defendant's subsequent actions, he brought this suit seeking the following verbatim orders:

a) The defendant whether by himself, agents, servants, employees or otherwise howsoever be restrained from remaining upon, entering upon, trespassing upon and/or interfering with the plaintiff's quiet possession of the suit properties known as Land Reference Number 13815/2 and Land Reference Number 13815/3

b) An injunction against the defendant prohibiting whether by himself, servants, officers or agents from entering upon, remaining upon, transferring, occupying, leasing, charging, mortgaging, assigning or interfering with the plaintiff's quiet possession of the suit properties namely Land Reference Number 13815/2 and Land Reference Number 13815/3

c) A mandatory injunction do issue compelling the defendant, his servants and/or agents and any other person occupying Land Reference Number 13815/2 and Land Reference Number 13815/3 to vacate unconditionally and remove any materials deposited or erected thereon at their own cost.

d) A declaration that the plaintiff is the lawful, legal, absolute and registered owner of the suit properties, namely Land Reference Number 13815/2 and Land Reference Number 13815/3

e) Damages for trespass against the defendant

f) Costs of this suit together with interest thereon for such period and at such rate as this honourable court may deem appropriate

g) Any such other or further relief as this honourable court may deem appropriate

Defendant's Case

4. The defendant responded to the suit through a defence and counterclaim dated 4/8/2014. His case was that he purchased the suit land as Grant Number 52888 from one Peter Gabriel Atambo who transferred the suit land to him in 1996. The conveyance was done by an advocate by the name Muoki. Later, he learnt that the title he held related to another property situated in North of Kijabe in Nyandarua County. In July 2013, he caused the Title Number to be changed to read IR 52887 instead of IR 52888. He contended that he was the legitimate proprietor of the suit land and dismissed the plaintiff's titles as forgeries. By way of counterclaim, he sought the following verbatim orders against the plaintiff:

i. A declaration that the defendant is the owner of the suit premises, Title No LR 13815 and IR Number 52887.

ii. An order compelling the Registrar of Titles, Nairobi Land/Central Registry to cancel the plaintiff's titles – 13815/1, 13815/2 and 13815/3 all being sub-divisions of Title No LR 13815.

iii. A permanent injunction to restrain the plaintiff by themselves, servants and or their agents from interfering in any way with the defendant's possession and proprietorship of title No LR 13815.

iv. An order compelling the plaintiff and or his agents to move out and give possession of LR Number 13815 immediately

v. General damages for illegal occupation of the defendant's property

vi. Pecuniary damages

vii. Costs and interest of this charge

Plaintiff's Evidence

5. Hearing commenced on 13/11/2018. The plaintiff called two witnesses: (i) Julius Chacha Maroa (PW 1); and (ii) Paul Mecha Kipchumba (PW2). PW1 stated that he was a Senior Lands Registration Officer based at Ardhi House. He testified that the Chief Land Registrar received witness summons and delegated him to attend court and present records relating to Land Reference Number 14912/2 contained in Title Number 52888 and Land Reference Number 15029 contained in Title Number IR 53467. He stated that the two titles related to the same property situated in Kijabe, Nyandarua County. He added that one title was issued after surrender and cancellation of the other title.

6. PW1 added that the letter forwarding the court witness summons specified that the titles in dispute related to Land Reference Numbers 13815/2, 13815/3 and 13815. He added that he was able to trace the correspondence file relating to Land Reference Number 13815 (**the suit land**) which was a mother title. The correspondence file number is 206235. He was however not able to trace the deed file for the Title which is IR 144196. He was also able to get the deed file for Title Number 52888. He stated that the land comprised in Title Number 52888 is located in North of Kijabe Town in Nyandarua and measures 0.202 hectares. It was previously registered in the names of Stephen Kinyanjui Kibunja and Joseph Kamau Ngethe. The land comprised in Title

Number 52888 was surveyed as Land Reference Number 14912/2. The parcel was surrendered to the Government of Kenya in 1991 in exchange for a new Grant, Title Number IR 53467. He added that from the records held by the Chief Land Registrar, Title Number IR 52888 is not in any way related to Land Reference Number 13815.

7. PW1 further testified that although he was not able to trace the deed files for Land Reference Number 13815/2 and 13815/3, from the digital records held by the Chief Land Registrar, Land Reference Number 13815/2 is comprised in Title Number IR 154431 and is currently registered in the name of Swisscom Logistics Limited. The piece of land is situated in the City of Nairobi and measures 0.1692 hectares. The Title is a sub-division out of Title Number 144196 in which Land Reference Number 13815 was comprised. From digital records held by the Chief Land Registrar, Land Reference Number 13815/3 is comprised in Title Number 154432 and measures approximately 0.1727 hectares. It is similarly a sub-division out of Title Number 144196 comprised in Land Reference Number 13815 and it is registered in the name of Swisscom Logistics Limited.

8. It was PW1's further evidence that the correspondence file relating to Land Reference Number 13815 indicates that the property was allocated to Paul Kipchumba Mecha on 10/4/1997 under Allotment Letter Reference Number 33408/VI. The said Paul Kipchumba Mecha, vide a letter dated 12/7/2011, requested for change of the details of the allottee to reflect the name of the company in which he and his wife were directors and the request was granted and a memorandum of transfer was prepared. Subsequently, Grant Number 144196 was prepared and registered on 26/4/2013. The Land Parcel comprised in the said Grant Number IR 144196 is Land Reference Number 13815. He added that the correspondence file relating to the said title also contains approvals for sub-division of Land Reference Number 13815 into two sub-divisions; Land Reference Numbers 13815/2 and 13815/3. Lastly, PW1 testified that from the documents held by the Lands Registry, Land Reference Number 13815 was allocated to Paul Kipchumba Mecha and there is nothing to suggest that the property was allocated to Gabriel Peter Atambo.

9. PW1 produced certified copies of the following documents: (i) Correspondence File Number CF 206235 relating to Land Reference

Number 13815; (ii) Deed File Number IR 52888; (iii) Digital copies of Title Number 154431 relating to Land Reference Number 13815/2; (iv) Digital copy of Title Number 154432 relating to Land Reference Number 13815/3. In cross-examination, counsel for the defendant put to the witness various documents in the defendant's bundle and asked the witness to read and interpret the contents of the various documents in the defendant's bundle.

10. PW2 adopted his written statement dated 14/7/2014 and further statement dated 29/8/2014. In summary, his testimony was that on 4/2/1992, he applied to the Commissioner of Lands to be allocated the suit land. The Commissioner of Lands acknowledged receipt of his application on 21/11/1995. On 14/4/1997, the Commissioner of Lands notified him that he had been allocated the suit land. He accepted the allotment and made the stipulated payments. He was issued with a receipt. He thereafter took possession of the suit land in June 1997. Prior to the processing of the title to the suit land, he incorporated the plaintiff company as a family company and requested the Commissioner of Lands to transfer the letter of allotment to the plaintiff company. The Commissioner of Lands agreed and the informal transfer was effected. Subsequently, a Grant was prepared in the name of the plaintiff company and registered on 26/4/2013. The plaintiff company subsequently sought and obtained approval for sub-division of the suit land. The suit land was subsequently sub-divided into Land Reference Number 13815/2 and Land Reference Number 13815/3.

11. PW2 added that on 9/5/2014, his servant, Paul Mburu, who resided on the suit property informed him that police officers acting on instructions from the defendant descended on the suit land, arrested his servants, took them to Langata Police Station and booked them for malicious damage to property. On 10/3/2014, he went to the suit land and found that unknown men had trespassed on the suit land. On 11/5/2014, he went to the suit land and found that the semi-permanent structures which the plaintiff had erected on the suit land had been vandalized. He took pictures and reported the matter to the police at Karen Police Station. Apprehensive that the defendant would continue with the trespass, the plaintiff company initiated this suit. PW 2 produced a total of 53 documents, among them: (i) Allotment Letter Reference Number 33408/VI dated 10/4/1997; (ii) Receipt Number 185236 dated 29/5/1997; (iii) Grant Number 144196; (iv) Title Number 154431; (v) Title Number 154432; and (vi) Sub-divisions approvals.

Defendant's Evidence

12. The defendant testified as DW1 and called Joseph Gicovi Sammy who testified as DW 2. The defendant stated that he relocated to the United States of America in 2003. He adopted his written statement as part of his sworn evidence in chief. His testimony was that he owned Land Reference Number 13815 comprised in Title Number 52888 having bought it from Gabriel Peter Atambo. He lodged a transfer to effect registration of Title Number 52888 into his name on 2/8/1996. The transfer was registered and he was issued with a title. Sometime in 2012, his land rent records in the Department of Lands changed without his knowledge and one Abdul Malik Abdi was designated as the land rent payer. He later came to learn that the said Mr Abdi attempted to alter the lands records by preparing fake Title Number 86858. He stated that he was the registered rates payer until 2012.

13. DW1 added that in 2012, he applied for an official search and he learnt that his land had been surrendered to the Government. This prompted him to file a case against the Attorney General. He learnt from documents filed in the case that his land shared a title number with a piece of land in Kijabe, Nyandarua County. He returned his title to the Registrar of Titles for rectification and it was rectified.

14. The defendant further testified that in May 2014, a gang of people descended on the suit property, destroyed the caretaker's house, and ejected the caretaker from the suit property. His caretaker was subsequently arraigned in court and charged with a criminal offence relating to selling of cannabis on the suit land. He added that the police, in their line of investigations, wrote to the Department of Lands requesting for particulars of Land Reference Number 13815 and they subsequently confirmed that Title Number 52887 belonged to him. He stated that sub-division of the suit land into three parcels was illegal. He produced a total of 31 documents, among them: (i) Title Number 52888; (ii) Undated and unregistered transfer instrument drawn by Muoki & Company advocates; (iii) Gazette Notice Number 3352 dated May 2016; and (iv) Gazette Notice Number 7113 dated 25/9/2015.

15. In cross-examination, he testified that his purchase of the title he holds was brokered by a Mr Stephen Gichuhi. He bought the land at Kshs 1,200,000. He did not have a sale agreement relating to the suit property. The transfer he was relying on was undated and indicated that the purchase price was Kshs 2,000,000. There was no evidence of assessment or payment of stamp duty. The transfer did not bear any day book number relating to its booking. There was no evidence of registration of the transfer. He did not have a copy of the letter of allotment in the name of Mr Gabriel Peter Atambo. He did not have an official search to show that the land belonged to Mr Atambo when he purchased it in 1996. He lost his title in 2016.

16. DW2 adopted his written statement dated 31/10/2017. His testimony was that he was an estate agent and the defendant was his client. He was the one who brokered sale of Title Number 52888 to the defendant. The title related to land situated in Karen. The seller was Col Atambo. The seller gave him copies of the letter of allotment and documents relating to the land. He then advertised the land in the newspaper. The purchase price was Kshs 1,200,000. He was the one who processed the title. After the defendant paid the deposit, Mr Atambo told him to use part of the deposit to process the transfer documents. He was the one who applied for consent to transfer.

Plaintiff's Submissions

17. Mr Rapando, counsel for the plaintiff, submitted that the evidential burden of both the plaintiff and the defendant was to demonstrate that the provisions of the Government Lands Act were followed in the alienation of the suit land and in the subsequent registration of the suit land in their respective names. Counsel argued that the testimonies of PW1 and PW2 made it clear that the plaintiff's title over the suit land came into existence after a letter of allotment was issued to its director, Paul Kipchumba Mecha, Mr Mecha complied with the conditions set out in the letter of allotment and the title document was subsequently processed and issued. Relying on the decision in **Wreck Motor Enterprises v Commission of Land & 3 others (1997)eKLR**, counsel urged the court to find that the plaintiff holds a valid title that should be protected through the grant of the orders sought in the plaint.

18. On whether or not the defendant's title is valid, counsel for the plaintiff submitted that both DW1 and DW2 were unable to explain the contradiction relating to the purchase price which the defendant paid. It was further submitted that the letter dated 14/9/1989 which the

defendant produced as an exhibit at page 21 of the defendant's bundle of documents demonstrated that if indeed there was a letter of allotment issued to Mr Atambo, there was no compliance with the conditions in the letter of allotment.

19. Counsel for the plaintiff further submitted that the transfer which is purported to have vested the suit property in the plaintiff was neither dated nor stamped. It was similarly not booked and registered before the defendant's title was generated. Counsel added that both DW1 and DW2 confirmed that there was no evidence to demonstrate that the property was valued for purposes of stamp duty before the defendant's title was generated.

20. On whether the title held by the defendant was lawful, counsel for the plaintiff submitted that the defendant had failed to demonstrate that the suit property was allocated to Mr Atambo or that Mr Atambo satisfied the normal conditions in a letter of allotment. Relying on **Munyu Maina v Hiram Gathina Maina (2013)eKLR**, counsel for the plaintiff argued that the defendant had an obligation to demonstrate to the court that due process was followed in the procurement of the title he is dangling. Counsel added that although the defendant alleged that he purchased the suit property from Mr Atambo, he neither produced the sale agreement nor called Mr Atambo as a witness. It was contended that Mr Atambo did not have a good title to pass to the defendant and that the glaring irregularities in the procurement of the defendant's title demonstrated that the defendant did not have a good title.

21. Lastly, counsel for the plaintiff submitted that the plaintiff had demonstrated that the Government allocated the suit property to Paul Mecha Kipchumba; the conditions in the letter of allotment were complied with, and Title Number 144196 was processed and issued in favour of the plaintiff. Counsel added that the plaintiff's case was corroborated by the Chief Land Registrar. He added that it had been further confirmed that the suit land had since been sub-divided. Counsel urged the court to grant the plaintiff the prayers sought in the plaint.

Defendant's Submissions

22. Mr Njonjo, counsel for the defendant, submitted that PW2 had confirmed that the suit property was sold to the defendant by Mr Atambo. Counsel added that in 2012, the plaintiff sued the Attorney General in Nairobi HCCC No 414 of 2012 after a search relating to the title held by the defendant revealed that the defendant's title had been surrendered. It was further argued by counsel that the Attorney General had filed a replying affidavit in the said suit in which it was indicated that Title Number 52888 related to a parcel of land situated in Kijabe, Nyandarua County.

23. Counsel for the defendant further submitted that the defendant had demonstrated that the anomaly in his title was subsequently rectified. Counsel argued that the suit land was titled and was not available for allocation to the plaintiff's director. Counsel relied on the letter from the Department of Criminal Investigation Department and submitted that the suit land belonged to the defendant. Counsel contended that the plaintiff had not mentioned the mother title which was sub-divided. Mr Njonjo submitted that issuance of the provisional title held by the defendant would not have happened if the defendant did not hold a valid title.

24. Lastly, it was submitted that the defendant had proved that he purchased the suit land from Col Peter Atambo in 1996, his agent had been in occupation of the suit property since 1996 and he holds a title to the suit land. He urged the court to dismiss the plaintiff's suit and grant the defendant the prayers sought in the counterclaim.

Analysis and Determination

25. I have considered the parties' respective pleadings, evidence and submissions. I have also considered the relevant legal frameworks, the relevant jurisprudence, and the authorities cited by parties to this suit to advance their respective cases. There is common ground that the suit land was surveyed as Land Reference Number 13815. The plaintiff contends that the said land was allocated to its director, Paul Mecha Kipchumba in 1997. Mr Kipchumba in turn caused an informal transfer of the land to be made in favour of the plaintiff. According to the plaintiff, the land was comprised in Title Number IR 144196 registered on 26/4/2013 and has since been sub-divided into Title Numbers IR 154431 and IR 154432. According to the defendant, the suit land was comprised in Title Number 52888 registered on 18/6/1991 and the Title Number subsequently changed to IR 52887. The defendant contends that the suit land is still intact. Two key issues fall for determination in this suit. The first issue is who between the plaintiff and the defendant holds valid title documents to the suit land? The second issue is what orders should be granted upon determination of issue number 1 above. I will sequentially analyze and make findings on the two issues in the above order.

26. This suit was commenced by the plaintiff on 14/7/2014. Among the prayers sought is a declaration that the plaintiff is the "lawful, legal, absolute and registered owner" of the suit land. The defendant filed a defence and counter-claim. Among the prayers sought in the counter-claim is a declaration that the defendant is the owner of the suit land. The two protagonists are waving parallel titles. Each is challenging the legality of the other's title.

27. There is no gain-saying that Kenya's land registration regimes did not and do not countenance the registration of more than one title in respect of the same piece of land. Our courts are, however, from time to time, confronted with disputes where litigants, like in the present suit, wave parallel titles and challenge the validity of each other's title. The Court of Appeal in **Munyu Maina v Hiram Gathina Maina (2013) eKLR** outlined the following principle as an appropriate adjudication approach in a scenario where a registered proprietor's title is under challenge:

"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."

28. Both parties contend that the suit land was alienated under the Government Lands Act and the parallel titles were subsequently registered

and issued under the Registration of Titles Act. The two statutes were repealed by the Land Registration Act of 2012. Determination of the question of validity of the parallel titles will therefore be guided by the framework in the three statutes.

29. Evidence on record in support of the plaintiff's case indicate that its director, Paul Mecha Kipchumba, was allocated the suit land as a surveyed piece of land in 1997. He duly complied with the conditions set out in the letter of allotment and took possession of the land. He subsequently incorporated the plaintiff company as a family company and applied to the Commissioner of Lands to effect an informal transfer in favour of the plaintiff company. The request was granted. Title Number IR 144196 was subsequently processed and issued in the name of the plaintiff company. Mr Kipchumba and the plaintiff company contend that they have been in possession of the suit property since 1997 when the allotment was accepted by Mr Kipchumba. The plaintiff has exhibited: (i) Application Letter dated 4/2/1992; (ii) Letter of Allotment Reference 33408/V dated 10/4/1997, (iii) Acceptance Letter dated 28/5/1997; (iv) Receipt for Kshs 38910 dated 29/5/1997, (v) Grant Number 144196 registered on 26/4/2013; (vi) Sub-division Title Number 154431 and 154432 both registered on 1/4/2014; (vii) Subdivision Approvals; and (viii) Sub-division survey plans.

30. The Chief Land Registrar was summoned to come and testify in relation to the parallel titles. He delegated Julius Chacha Maroa, Senior Lands Registration Officer, who testified as PW1. PW 1 produced the Correspondence File relating to the suit property and testified that the suit land was allocated to Paul Mecha Kipchumba in 1997 and an informal transfer was subsequently made at his request in favour of the plaintiff company. Subsequently, Grant Number 144196 was processed and issued in the name of the plaintiff. It was the Senior Land Registrar's evidence that there was nothing in the Lands records to suggest that Land Reference Number was allocated to Gabriel Peter Atambo.

31. Although the defendant's title is said to have been generated as a product of an allotment letter issued to Gabriel Atambo, no evidential material relating to the allotment such as a letter of allotment and an acceptance of the allotment were produced. Secondly, although the 1st defendant claims to have acquired his title through purchase, no copy of the sale agreement was produced. Thirdly, the transfer which the defendant relies upon as the instrument which vested the suit land in him is undated, unstamped, unrepresented (unbooked) and unregistered. Fourthly, the said transfer related to Title Number 52888.

32. More significantly, the evidence on record reveals that Title Number 52888 which Mr Atambo sold to the defendant related to a piece of land in Kijabe, Nyandarua County. In July 2013, after the plaintiffs' title had been issued, the defendant's title number was altered through cancellation by ink pen to read IR 52887 instead of IR 52888. The Land Registration Act had come into operation by the time the said alterations are said to have been made to the title held by the defendant. There is no evidence that the elaborate procedure, including publication of notice of rectification, was adhered to as required under Section 79 of the Land Registration Act. The transfer which the defendant relies upon as having vested the suit property in him related to land situated in Kijabe, Nyandarua County. There is no evidence that the said transfer was amended and properly registered.

33. In my view, a rectification such as the one made in July 2013 at a time after the plaintiff's title had been issued in April 2013, and which was intended to enable the defendant to lay claim to the suit property, could not be made without appropriate gazette notice and notices to the affected parties, including the plaintiff. There is no evidence of any gazette notice relating to the rectification effected to change the title number from 52888 to 52887 on the register.

34. Under the legal framework in Sections 30, 31 and 70(2) of the repealed Registration of Titles Act, if a registered title were to turn out to have been erroneously registered, the procedure for cancelling the title was to cause a surrender to be executed and presented to the Registrar of Titles. The wrong title would then be cancelled through endorsement of memorials reflecting the surrender and cancellation and specifying the reason for the surrender and cancellation. The Registrar of Titles would then proceed to issue a new grant and endorse on it appropriate entries which existed on the cancelled title.

35. The provisional title which the defendant holds is number IR 52888. The said number has been casually cancelled in ink and number IR 52887 has been casually inserted in ink without any regard to the requirements of both the Land Registration Act and the repealed Registration of Titles Act. With the above glaring illegalities, irregularities and gaps relating to the procurement of the title held by the defendant, I form the view that the defendant's title is not a valid title.

36. Equally, the evidence relating to actual possession of the suit land indicates that the defendant resides in the United States of America. The plaintiff has had and is still in possession of the suit property.

37. Based on the above evidence relating to the parallel titles being waved by the two protagonists in this suit, I am persuaded that the titles held by the plaintiff are, on a balance of probabilities, legitimate. The title held by the defendant is, for the above reasons, and on a balance of probabilities, questionable. My finding on the first issue therefore is that the plaintiff holds valid title documents to suit land situated in Karen. The title documents held by the defendant relate to the land situated in Kijabe, Nyandarua County. The title allegedly conveyed to the defendant by Mr Gabriel Peter Atambo related to land situated in Kijabe and did not convey the suit land to the defendant.

38. Having come to the above findings, I will allow prayers (a) (b) (c) and (d) of the plaint. I will however not condemn the defendant to pay damages or costs because he appears to be an innocent purchaser who bought a title relating to land situated in Kijabe. The defendant's counter-claim fails wholly.

Disposal Orders

39. In light of the foregoing, I make the following disposal orders in tandem with the prayers made in the plaint and in the counter-claim:

- a) The defendant, whether by himself, his agents, servants, employees or otherwise is hereby restrained from remaining upon, entering upon, trespassing upon and/or interfering with the plaintiff's quiet possession of the suit properties known as Land Reference Number 13815/2 and Land Reference Number 13815/3***

b) An injunction hereby issues against the defendant prohibiting the defendant whether by himself, his servants, officers or agents from entering upon, remaining upon, transferring, occupying, leasing, charging, mortgaging, assigning or interfering with the plaintiff's quiet possession of the suit properties namely Land Reference Number 13815/2 and Land Reference Number 13815/3

c) A mandatory injunction hereby issues compelling the defendant, his servants and/or agents and any other person occupying Land Reference Number 13815/2 and Land Reference Number 13815/3 to vacate unconditionally and remove any materials deposited or erected thereon at their own cost.

d) It is hereby declared that the plaintiff is the lawful, legal, absolute and registered owner of the suit properties namely Land Reference Number 13815/2 and Land Reference Number 13815/3

e) The defendant's counter-claim is hereby dismissed.

f) Each party shall bear own costs of this suit.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 12TH DAY OF NOVEMBER 2019.

B M EBOSO

JUDGE

In the presence of:-

Mr Karanja holding brief for Mr Osundwa Advocate for the plaintiff

Mr Njonjo Advocate for the defendant

June Nafula - Court Clerk