



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC CASE NO. 320 OF 2008**

**(CONSOLIDATED WITH ELC CASE NO. 344 OF 2008)**

**MWAUCO LIMITED.....PLAINTIFF**

**VERSUS**

**SIMON OLE KONTE.....1<sup>ST</sup> DEFENDANT**

**TARASH ENE SARUNA.....2<sup>ND</sup> DEFENDANT**

**KANAI OLE NASARINKE.....3<sup>RD</sup> DEFENDANT**

**THE COMMISSIONER OF LANDS.....4<sup>TH</sup> DEFENDANT**

**THE PRINCIPAL REGISTRAR OF TITLES.....5<sup>TH</sup> DEFENDANT**

**EMUWUO OLARRO SELF HELP GROUP.....6<sup>TH</sup> DEFENDANT**

**KHADAR DEVELOPERS LIMITED.....7<sup>TH</sup> DEFENDANT**

**JUDGEMENT**

1. There are three claims to land reference number 13871 situated in Karen, Nairobi (“the Suit Property”). The Plaintiff filed suit on 9/7/2008 seeking a permanent injunction to restrain the 1<sup>st</sup> to 5<sup>th</sup> Defendants from dealing with the Suit Property and further sought a declaration that it was the legal owner of the Suit Property. It claimed that it was the registered proprietor of the lease over the Suit Property for 99 years from 1/8/1985, and that the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> Defendants trespassed upon the Suit Property on or about June 2008 and demolished its perimeter fence. They deposited various building materials on the Suit Property with the intention of commencing development on the land. The Plaintiff claimed that the Defendants had interfered with its quiet possession and enjoyment of the Suit property.

2. John Ngugi Mbugua, the property manager responsible for managing the Plaintiff’s property including the Suit Property gave evidence. He stated that the Plaintiff had been in exclusive and quiet possession of the Suit Property which is grant number I.R. 47885 from 7/8/1989 when the land was allocated to it. He produced a copy of the grant with deed plan number 139866 dated 10/7/1989. The Commissioner of Lands executed the title on 4/8/1989. The title was endorsed with the remarks “cancelled” as entry number 47885/1 made on 7/8/1989 at 15.49 hours and signed by the Registrar of Titles.

3. Mr. Mbugua, stated that a group of Maasai men being members of the 6<sup>th</sup> Defendant attempted to enter the Suit Property forcefully in May 2008 claiming ownership under grant IR 63949 for L.R. No. 13871 which they claimed was registered in the names of Sarone Ole Riamet, Tauta Ole Kamwasi and Pareret Ole Kuniu as tenants in common. He stated that when the police went to inquire about the grant they presented at the lands registry, the document was established to be a forgery. The group of Maasais returned with another letter of allotment dated 30/10/2007 issued by the Commissioner of Lands. The witness produced a copy of the grant issued to of Sarone Ole Riamet, Tauta Ole Kamwasi and Pareret Ole Kuniu which also has deed plan number 139866 issued on 10/7/1989. He produced a copy of the letter of allotment issued to the 6<sup>th</sup> Defendant in respect of L.R. No. 13871 together with a copy of a cheque for Kshs. 3,426,700/= dated 8/12/2007 payable to the Commissioner of Lands. He stated that the group of Maasai men trespassed on the land on 24/6/2008 and maliciously demolished the fence on the land. When he called the police the men fled. They attempted to take possession again on 7/7/2008 but left when the police went to the suit land. The Plaintiff filed suit and was granted ex-parte injunctive orders on 8/4/2010. He claimed that the Plaintiff fenced the property again.

4. On 22/7/2008 a group of Maasai men armed with crude weapons claiming to have been instructed by William Tumate Sanu and Salome Ole Riamate gained entry into the Suit Property and destroyed the new fence. They destroyed the site house and carried away the fencing

materials and other building materials which they found on the Suit Property. Mr. Mbugua reported the matter to the police. Paul Mbeti, Peter Mula, Paul Ngosera, Peter Maloi, Joseph Soyendeti, Daniel Sena, Simon Sakonyo and Joshua Tira were charged in **Kibera Chief Magistrate's Court Criminal Case Number 1954 of 2008**. He produced a copy of the judgement delivered by J. Karanja, Senior Resident Magistrate on 9/12/2010 in which the accused persons were convicted of the charges relating to malicious damage to property contrary to Section 339 of the Penal Code.

5. He also produced the determination made by the National Land Commission (NLC) on 28/4/2017 in which the Kenya African National Union (KANU) had complained that other parties had encroached on which had been allocated to KANU. The Plaintiff and 6<sup>th</sup> Defendant were listed as interested parties in the suit. The determination shows the hearing was held on 20/4/2017. NLC upheld the pdp in favour of KANU and ordered that a letter of allotment would be processed in favour of KANU by the Director of Land Administration. The Chief Land Registrar was instructed to process a title in favour of KANU. The Plaintiff and 6<sup>th</sup> Defendant were to pursue the case in court.

6. On cross examination Mr. Mbugua stated that he did not know why there was an entry stating "cancelled" on the copy of the Plaintiff's title. He did not have a copy of the letter of allotment. He did not know of other claimants except the 6<sup>th</sup> Defendant. He had never heard of Allure Limited or Khadar Limited who lay claim on the suit land. He maintained that the Plaintiff was in possession of the land and that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 6<sup>th</sup> Defendants were not on the Suit Property.

7. The 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> Defendants filed a defence and counterclaim on 7/6/2018 denying the Plaintiff's claim. They averred that the proper legal procedure was not adhered to by the Plaintiff when it got the suit land registered in its name. They maintained that they had an overriding interest over the Suit Property. They claimed that they owned the Suit Property based on their historical unregistered interest over the land. They averred that the Plaintiff procured title over the Suit Property in a fraudulent manner and faulted the issuance of three title documents over the same Suit Property. They urged the court to revoke the Plaintiff's title and declare that the 1<sup>st</sup> to 3<sup>rd</sup> Defendants were the *bona fide* owners of the Suit Property or portions of it and contended that they were legitimately entitled to ownership of the Suit Property by virtue of their historical claim.

8. Talash Ene Saruni gave evidence on behalf of the 1<sup>st</sup> to 3<sup>rd</sup> Defendants. She stated that she lives in a manyatta in Karen and asserted that the Suit Property was created out of the subdivision of L.R. No. 11641 Karen which originally belonged to Mrs. Halles who left the farm under the care of A.J Faulkner. She stated that the land originally measured 640 acres. Mr. Faulkner moved with livestock and members of his staff from Kitale to Karen. His staff was mainly made up of individuals and families from the Maasai community. She stated that when Mr. Faulkner relocated to England in 1982 he wrote a letter to the Permanent Secretary regarding the settlement of his employees on the land.

9. The community of Maasais living on the land grew and a school and church were constructed for them on the Suit Property. The government constructed a stone toilet for the Maasais living in the area through the Constituency Development Fund. Some members of the community constructed permanent residential stone houses on the land. She stated that the Maasai community lived peacefully on the land from the 1970's up to 2004 when they were attacked by unknown assailants. They formed Emuwuo Olarro Self Help Group, which is the 6<sup>th</sup> Defendant in the suit in December 2004. She produced copies of the letters written to government agencies after they were attacked. She produced a copy of the letter of allotment issued to the 6<sup>th</sup> Defendant on 30/11/2006 and the certificate of registration for the 6<sup>th</sup> Defendant. She stated that the land was allocated to the 6<sup>th</sup> Defendant and that they paid Kshs. 3,426,700/= vide cheque to the Deputy Commissioner of Lands.

10. They came to know of the Plaintiff in 2008 when John Ngugi Mbugua went to the Suit Property accompanied by police officers to serve a court order requiring them to vacate the land. They informed them that the orders were addressed to three Maasais who were not members of their group and showed them their own letter of allotment.

11. Members of the 5<sup>th</sup> Defendant assumed the matter was settled until a gang of three hundred men raided the manyattas and caused damage to people and their property. She stated that of the eight men charged in the criminal case only two were members of the 6<sup>th</sup> Defendant while the rest did not participate in the proceedings. She stated that they came to learn that other persons were claiming ownership of the Suit Property through the numerous visits by brokers and interested purchasers. Title documents belonging to Allure Limited came to the fore. Kardar Limited also claimed the land belonged to it and tried to evict the Maasais from the land without success. They also learnt of Ole Riamat's claim to the suit land but maintained that he was not a member of the 6<sup>th</sup> Defendant.

12. Talash stated that she was born in 1978 in Kajiado. She could not recall when they moved to Karen Plains but claimed that they have been on the land for 48 years and that her husband worked for the European who lived on the Suit Property. She also stated that she worked for A.J. Faulkner for thirty (30) years and that it was Mr. Faulkner who gave them the land. Before Mr. Faulkner left the country, he informed the Maasais to apply for a title to be issued to them. She clarified that there was no dispute among the 6<sup>th</sup> Defendant's members and that the officials had changed.

13. The 3<sup>rd</sup> Defendant gave evidence along the same lines as the 2<sup>nd</sup> Defendant. He stated that he was born in Kajiado and that he worked for Mr. Faulkner. On being cross examined about rearing animals on the suit land, he conceded that he did not have a license to rear animals in Karen and explained that Maasais do not require licenses to keep livestock. He stated that they did not get approval to construct houses on the Suit Property. He stated that the house in which Faulkner lived was still there. He could not remember when the Maasais went to the Suit Property and added that they have been on the land for about forty years. There is a church and manyattas which are semi-permanent structures on the land. There are toilets on the land. He stated that the letter which Falkner gave to the Maasais got burnt when their house was razed down. The Maasais contributed the money to pay for the allocation of the land.

14. The 4<sup>th</sup> and 5<sup>th</sup> Defendants filed a reply to the defence and counterclaim of the 1<sup>st</sup> 2<sup>nd</sup> 3<sup>rd</sup> and 6<sup>th</sup> Defendants. They averred that D. M. Hillman Hale surrendered L.R. No. 2259/3/24, 10134 and 10135 in exchange for a new grant for L.R. No. 11641 measuring 595 acres which was situated between Ngong Road, Karen Road and Langata Road. The government acquired L.R. No. 11641 vide a gazette notice in 1976.

Before acquiring the land, the government required people with interest to make representations on their claims to the land. The 1<sup>st</sup> 2<sup>nd</sup> 3<sup>rd</sup> and 6<sup>th</sup> did not make any representations. L.R. No. 11641 was subjected to government planning, use and allocation through various survey plans.

15. The 4<sup>th</sup> and 5<sup>th</sup> Defendants averred that the government has never made any grant to the 1<sup>st</sup> 2<sup>nd</sup> 3<sup>rd</sup> and 6<sup>th</sup> Defendants. They denied that these Defendants were allocated the suit land by Faulkner while maintaining that L.R. No. 11641 was government land and not private land. The government started allocating the plots created from the subdivision of its land from 1985. The Plaintiff's plot was unoccupied at the time of allocation. The 4<sup>th</sup> and 5<sup>th</sup> Defendants averred that the plot allocated to the Plaintiff was surveyed in accordance with the law and that none of the 1<sup>st</sup> 2<sup>nd</sup> 3<sup>rd</sup> and 6<sup>th</sup> Defendants applied for allocation of the plots. The Suit Property was surveyed in 1989 and a grant issued to the Plaintiff. The two Defendants maintained that the Plaintiff was the indefeasible owner of the Suit Property. They added that the Attorney General prosecuted the criminal case in the Kibera Chief Magistrates court and confirmed that the land records showed that the Plaintiff was the registered proprietor of the Suit Property.

16. Edwin Wafula gave evidence on behalf of the 4<sup>th</sup> and 5<sup>th</sup> Defendants. He stated that they held no records of the claim by the 1<sup>st</sup> 2<sup>nd</sup> 3<sup>rd</sup> and 6<sup>th</sup> Defendants over the Suit Property or that it was ever registered in the name of Faulkner. He produced various documents showing the history of the land including gazette notices dated 1/2/1966; F/R No. 106/30 prepared in 1965 over L.R. No. 11641; gazette notice dated 2/1/1976 giving the government's intentions to acquire L.R. No. 11641; survey plans F/R No. 160/93 prepared in 1982 for L.R. No. 12445 as well as other surveyed plans in respect of the suit land. He also produced survey plans for L.R. Nos. 13867-76 showing the Suit Property measuring approximately 2.226 ha. He also produced other gazette notices on the alienation of the government land including the Suit Property and the letter dated 22/2/2008 confirming that the Suit Property was registered in the Plaintiff's name.

17. On cross examination, he conceded that the deed plan attached to the title for the 6<sup>th</sup> Defendant was similar to the one attached to the Plaintiff's title. He maintained that the cancellation of the Plaintiff's title did not mean that it was defective. He clarified that the cancellation was for the wrong entries and conceded that there were no other entries against that title. He did not find a copy of the letter of allotment issued to the 6<sup>th</sup> Defendant in the lands records.

18. The 6<sup>th</sup> Defendant filed a defence on 8/5/2018 denying the Plaintiff's claim and averred that the Maasais living on that land have been in uninterrupted occupation of the suit land since 1970 and that they have raised their children on the same land as well as their livestock. Further, that this was the only home that their families knew. Members of the 6<sup>th</sup> Defendant started receiving threats of eviction from unknown parties in 2004 which prompted them to contact various authorities to intervene on their behalf. They wrote to the Commissioner of Lands and were issued a letter of allotment dated 30/10/2007 for the Suit Property as a step towards being issued with title. They paid Kshs. 3,426,700/= on 8/12/2007. Three months after issuing the cheque, it was returned to them through their advocate without any explanation. He claimed that the money had not been refunded to them to date. He claimed that the Plaintiff through its agents accompanied with police officers entered the Suit Property sometime in late 2008 or early 2009 and destroyed their property by erecting a fence around the land while demanding that the 6<sup>th</sup> Defendant leave the suit property. The 6<sup>th</sup> Defendant maintained that its members were still in occupation of the land.

19. The 6<sup>th</sup> Defendant counterclaimed against the Plaintiff and the 4<sup>th</sup> and 5<sup>th</sup> Defendants for damages for the destruction of their property by the Plaintiff; judgement for Kshs. 3,426,000/= and interest at court rates from 8/12/2007. The urged the court to dismiss the Plaintiff's suit and declare the 6<sup>th</sup> Defendant the lawful owner of the Suit Property.

20. Suakei Ole Parkire gave evidence along the same lines as the 2<sup>nd</sup> and the 3<sup>rd</sup> Defendants. He confirmed that a letter of allotment was issued to the 6<sup>th</sup> Defendant over the Suit Property on 30/10/2007. When their advocate went to find out from Mr. Kahuhu, the Deputy Lands Commissioner how far he had gone with registering a title in the 6<sup>th</sup> Defendant's name, he was informed that the cheque had been returned to the 6<sup>th</sup> Defendant even though they only got a copy of the cheque and they were informed that the land belonged to the Plaintiff. He maintained that the money had never been refunded to the 6<sup>th</sup> Defendant. He produced a copy of the letter done by A. J. Faulkner and Sons Limited dated 10/11/1982 addressed to the Permanent Secretary. The letter gives the address as 24821 Nairobi 00502. The letter stated that Peter David Laparakwo, William Tumate Sialala Sano, Suakei Ole Parkire, Lempa Ole Parkire Leposo and Latoo Ene Prikanga Nchaepai and 48 other members from the Maasai community were their employees since 1971. They had been employed to look after horses, cattle and other animals on the farm. The letter stated that Mr. Faulkner was surrendering his farm and animals to the Maasai community with whom he had lived with for over 22 years in Kenya and requested the Ministry of Lands to allocate the Maasai community the land identified as L.R. No. 24968.

21. On cross examination, Mr. Parkire stated that he knew Faulkner and that Faulkner gave them the letter when he moved out of the land. He stated that they entered the land in 1971 and that they were about 40 families living on the land which goes up to the river. The Constituency Development Fund built a permanent latrine for the community and the land has a school and a church.

22. On the request of the parties, the court visited the land on 16/11/2018. The court noted that there was a community of Maasais leaving on a small portion of the land at the furthest end from Karen Plains Road. The houses were built close to the stream and extended to the adjoining piece of land. There was a church made of iron sheets on the land and toilets made of stone on the land. Most of the land was an open ground. The house which they claimed Mr. Faulkner lived in was on a different parcel of land across Karen Plains Road. Most of the land surrounding the suit plot has been developed with single dwelling houses on half acre plots.

23. Before the court could deliver its judgement, Khadar Developers Limited applied to join the proceedings as an interested party. Parties agreed on 28/2/2019 that it could be joined as the 7<sup>th</sup> Defendant to the suit and granted leave to file its defence and counterclaim within 3 days. It was further agreed that the 7<sup>th</sup> Defendant would be allowed to call evidence and the 4<sup>th</sup> and 5<sup>th</sup> Defendants would recall their witness to testify. The 7<sup>th</sup> Defendant filed a defence and counterclaim together with its witness statement on 5/3/2019. It also filed its bundle of documents. The 4<sup>th</sup> and 5<sup>th</sup> Defendants filed a further witness statement.

24. The 7<sup>th</sup> Defendant denied the Plaintiff's claim and asserted that it was the registered owner of the suit land measuring 2.226 ha. It averred that it bought this land from Mr. Tauta Ole Kamwasi and Wesley Labassoh of P. O. Box 12416 Nairobi on or about 25/2/2013. It stated that it conducted due diligence and ascertained that the title over the Suit Property was registered in the names of Tauta Ole Kamwasi and Wesley Labassoh. It completed payment of the purchase price of Kshs. 35,000,000/= and executed the transfer on 25/2/2013. The land was valued at Kshs. 97,500,000/= at the point of payment of stamp duty. The transfer was registered on 11/3/2013. The 7<sup>th</sup> Defendant maintained that from the time it purchased the Suit Property, it has constantly paid land rates and rent to the Nairobi County Government and the National Government respectively. Due to financial difficulty, the 7<sup>th</sup> Defendant could not develop the Suit Property. Tauta Ole Kamwasi, one of the sellers intimated to the 7<sup>th</sup> Defendant that he and his kinsmen were willing to continue occupying the Suit Property as the 7<sup>th</sup> Defendant reorganised its financial position.

25. The 7<sup>th</sup> Defendant claimed that it did not know about the pending suits over the Suit Property or any other persons claiming ownership of the suit land. It maintained that it was the *bona fide* purchaser for value of the suit land without any notice or any defect in the title and added that the 5<sup>th</sup> Defendant duly ratified its ownership of the land. The 7<sup>th</sup> Defendant was aware that there were individuals occupying the land as licensees of the Plaintiff or the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 6<sup>th</sup> Defendants and urged that their continued occupation of the land was illegal.

26. In the counterclaim dated 5/3/2019, the 7<sup>th</sup> Defendant sought to be declared the lawful owner of the Suit Property; a permanent injunction to restrain the Plaintiff together with the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 6<sup>th</sup> Defendants or their agents from dealing with the suit land. It also sought a mandatory injunction to compel the Plaintiff together with 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 6<sup>th</sup> Defendants to vacate the Suit Property and remove any structures erected on it, general damages for trespass and costs of the suit.

27. Asha Hersie Moghe gave evidence on behalf of the 7<sup>th</sup> Defendant. She stated that the 7<sup>th</sup> Defendant was the registered owner of L.R. No. 13871 (IR 141305) situated in Karen, Nairobi measuring 2.226 ha which bought from Tauta Ole Kamwasi on 25/2/2013. The 7<sup>th</sup> Defendant was represented by the firm of Sagana Biriq and Company Advocates in the sale transaction and that this firm carried out due diligence on the land and confirmed from the searches that the title was genuine and registered in the names of those owners.

28. The advocates for the other party objected to the production of documents by this witness who did not have the originals in court and the court adjourned the hearing to 3/10/2019 to enable the 7<sup>th</sup> Defendant produce the original documents. Mr. Change informed the court that the original title deed was with the other director in Uganda and they needed a day to bring it to court. Mr. Change informed the court on 3/10/2019 that he needed a court order to obtain the original title deed from Diamond Trust Bank. The court declined his application and the witness continued to give her evidence. She produced the originals for the documents in the 7<sup>th</sup> Defendants bundle except the title deed.

29. She produced copies of various documents including the 7<sup>th</sup> Defendant's certificate of incorporation showing that it was incorporated on 17/7/2012; the cheque dated 16/5/2012 drawn in favour of the Commissioner of Lands for L.R. No. 13871 for Kshs. 584,200/=; the application for registration dated 11/12/2012; payment request for rates issued on 25/1/2013 to Tauta Ole Kamwasi and Lesley Labassoh for L.R. No. 13871; together with the rates clearance certificate issued to Tauta Ole Kamwasi and Lesley Labassoh on 28/1/2013. She also produced a copy of the sale agreement dated 25/1/2013 that the 7<sup>th</sup> Defendant entered into with Tauta Ole Kamwasi and Lesley Kiprotich Labassoh; a copy of the stamp duty assessment form dated 8/3/2013; land rates payment receipts issued by the Nairobi City County dated 29/3/2018 and other requests dated 11/5/2016 and 24/3/2015.

30. She stated that she learned in February 2019 that there was a suit in court involving the Suit Property. She stated that the 7<sup>th</sup> Defendant had asked valuers to scout around for land for it to buy. She stated that the people who sold the land to the 7<sup>th</sup> Defendants had a letter of allotment but she did not bring a copy to court. She did not have evidence of the payment the 7<sup>th</sup> Defendant made for the land of Kshs. 35,000,000/=. She stated that the 7<sup>th</sup> Defendant deposited the money in the bank and also did bank transfers and cheques. She confirmed that the copy of the title indicated that the transfer was for Kshs. 97,500,000/=. She also produced copies of letters written by the Ministry of Lands, Housing and Urban Development to Sagana Biriq and Company Advocates dated 2/4/2019 and 12/6/2019 which confirmed that L.R. No. 13871 (IR 141305/1) was registered in the 7<sup>th</sup> Defendant's name from March 2013. She maintained that the 7<sup>th</sup> Defendant's title had not been challenged.

31. Edwin Wafula was recalled to give evidence. He maintained that L.R. No. 13871 (IR No. 47885) was registered in the Plaintiff's name on 7/8/1989 and that it had no encumbrances. Having been allocated to the Plaintiff, this land was not available for allocation to any other party. He relied on the court order issued on 9/7/2009 by Lady Justice Sitati restraining dealings with the Suit Property. He maintained that the title to the 7<sup>th</sup> Defendant was issued on 13/12/2012 in violation of the court's orders which were binding on the 4<sup>th</sup> and 5<sup>th</sup> Defendants. He made reference to the decision and proceedings in **Kibera Chief Magistrates Criminal Case Number 1954 of 2008** in which the Registrar of Titles confirmed that L.R. No. 13871 grant number IR 47885 was granted to the Plaintiff on 7/8/1989.

32. Mr. Wafula added that the 7<sup>th</sup> Defendant's title was not valid since no stand premium was paid by the 7<sup>th</sup> Defendant. He stated that the receipt produced by the 7<sup>th</sup> Defendant was in respect of a parcel of land under correspondence file number 192266 which relates to L.R. No. 23181 being a subdivision of L.R. No. 13870 and not L.R. No. 13871. He added that grant number 14375 for L.R. No. 13871 could not have taken effect from 1/6/1999 because L.R. No. 13871 was surveyed alongside ten other parcels of land being L.R. Nos. 13867 to 13876 under survey plan F/R No. 189/10 dated 1/8/1985.

33. He asserted that each parcel of land has a unique correspondence file and that receipt number 2779373 for payment of the stamp duty by the 7<sup>th</sup> Defendant and the consent to transfer show that the transaction file was number 192266. From the lands records, this file was in respect of L.R. No. 23181 allocated to Sarah M. Kenduywa. Mr. Wafula had correspondence file number 19226 in court and confirmed that it did not relate to L.R. No. 13871.

34. Parties filed submissions which the court has considered. The Plaintiff submitted that it had been in possession of the suit land from 1989

and that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and the 6<sup>th</sup> Defendants were merely trespassers who it submitted were in contempt of the orders issued by the court restraining dealings with the Suit Property. It accused the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and the 6<sup>th</sup> Defendants of taking the law into their own hands. It submitted that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and the 6<sup>th</sup> Defendants had put forth contradictory and conflicting claims which were not supported by any evidence. The 6<sup>th</sup> Defendant claimed that it held a valid allotment from the Commissioner of Lands and in its counterclaim maintained that their land was uninhabited. The members of the 6<sup>th</sup> Defendant also claimed that Mr. Faulkner left the Suit Property to them and that they had a historical and unregistered claim over the land.

35. The Plaintiff challenged the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 6<sup>th</sup> Defendants' evidence that the land was given to them by Mr. Faulkner and that they had lived on the land since 1971. Some of the discrepancies in the evidence included the fact that the 2<sup>nd</sup> Defendant was born in 1978 in Kajiado and could not recall when she moved to the suit land. The 3<sup>rd</sup> Defendant was also born in Kajiado and could not recall when he came to the suit property. None of the witnesses had been to Kitale from where they claimed Faulkner farmed before moving to Karen. The Plaintiff pointed out that the letter dated 10/11/1982 related to L.R. No. 24968 and not L.R. No. 13871. The Plaintiff maintained that Mr. Faulkner had never owned the Suit Property and that the house which the 2<sup>nd</sup> and 3<sup>rd</sup> Defendant claimed Mr. Faulkner lived in was not on the disputed land. The Plaintiff submitted that the 6<sup>th</sup> Defendant could not maintain the suits it filed in its own name since it was not a legal person. The Plaintiff concluded its submissions by stating that the Defendants had failed to prove their claims to the suit land.

36. The 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Defendants submitted that the Plaintiff's title which bore the words "cancelled" cannot be called a good title and faulted the Plaintiff for not producing a letter of allotment and for failing to show that due process was followed when it acquired the grant over the Suit Property. They maintained that they were properly allocated the Suit Property alongside members of the 6<sup>th</sup> Defendant and that they paid for the land. They submitted that under the Governments Land Act and compulsorily acquired land could only be set aside by gazettelement and could not be alienated in the manner in which the Plaintiff's title was allocated.

37. The 4<sup>th</sup> and 5<sup>th</sup> Defendants submitted that the suit land was a direct allocation by the government and had no nexus with L.R. No. 24968 or to A. J. Faulkner and Sons Limited from whom the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 6<sup>th</sup> Defendants claimed they derived their title. The 4<sup>th</sup> and 5<sup>th</sup> Defendants submitted that according to the government lands records the Plaintiff was the registered proprietor of L.R. No. 13871 under grant IR No. 47885 and deed plan number 139866. They submitted that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 6<sup>th</sup> Defendants trespassed onto the Suit Property in July 2008. The 4<sup>th</sup> and 5<sup>th</sup> Defendants filed further submissions in which they submitted that the 7<sup>th</sup> Defendant claim to the suit land was frivolous and vexatious. They denied that the 7<sup>th</sup> Defendant was a *bona fide* purchaser for value of the Suit Property having produced no evidence of payment of the purchase price besides the fact that the correspondence file used to register the transfer in favour of the 7<sup>th</sup> Defendant related to a different parcel of land.

38. The 6<sup>th</sup> Defendant submitted that the registration of the Suit Property in the Plaintiff's name was procured illegally, unprocedurally and through a corrupt system. Further, that there was no public participation in order to establish the historical, customary, community or other interests that had accrued to the members of the 6<sup>th</sup> Defendant over the Suit Property. They urged that they were granted the land by their former employer and it could not have been vacant for the government to acquire it.

39. The 7<sup>th</sup> Defendant filed submissions. It submitted that it was the absolute and indefeasible owner of the Suit Property and relied on Sections 24, 25 and 26 of the Land Registration Act. Further that none of the parties had proved that its title was obtained through fraud in which the 7<sup>th</sup> Defendant participated. It urged that the copy of the title produced by the 4<sup>th</sup> Defendant's witness was not a scanned document. It contended that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants allegations of adverse possession had no basis since the 7<sup>th</sup> Defendant through its caretaker remained in possession of the Suit Property. It submitted that the 6<sup>th</sup> Defendant not being a legal entity, lacked capacity to own any property.

40. This suit is a classic example depicting the dishonesty and unreliability of the Ministry of Lands officials on the land records they hold yet strictly speaking they are supposed to be the custodians of credible and authentic land records which everyone can rely on when transacting over a piece of land and for the sanctity of the title one holds over a piece of land. Due to the slovenly manner in which the lands officials handled the transactions over the suit land, the court is faced with the arduous task of determining who between the Plaintiff, the 6<sup>th</sup> Defendant and the 7<sup>th</sup> Defendants has a superior claim to the Suit Property.

41. The difficulty in establishing who the true owner of the suit land stems from the fact that the Ministry of Lands issued titles over the Suit Property to various persons including the Plaintiff, Tauta Ole Kamwasi jointly with Wesley Labassoh, the 7<sup>th</sup> Defendant and a letter of allotment over the same land to the 6<sup>th</sup> Defendant. The Plaintiff's witness testified that NLC had made a determination on 28/4/2017 that KANU had a legitimate claim to the Suit Property and was to be issued a letter of allotment over the Suit Property.

42. In determining this suit, the court is alive to the fact that there are other claims over the Suit Property which were not canvassed in this suit. Talash Ene Saruni who gave evidence on behalf of the 1<sup>st</sup> to 3<sup>rd</sup> Defendants stated that there were other persons claiming ownership of the Suit Property from the numerous visits by brokers and interested purchasers who went to the suit land. Talash claimed that attempts had been made by various persons to evict the Maasais from the suit land without success. She mentioned the claims to the land made by Ole Riamat, Allure Limited and Khardar Limited. She gave evidence before Khardar Limited joined the proceedings as the 7<sup>th</sup> Defendant.

43. The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 6<sup>th</sup> Defendants claimed in their evidence that the land belonged to Mr. Faulkner and that he left it to them when he left the country in 1982. The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 6<sup>th</sup> Defendants failed to ascertain the exact date when they moved into the Suit property. The court is inclined to believe that they moved onto the land after 2007. The 2<sup>nd</sup> Defendant who was born in Kajiado in 1978 cannot possibly have worked for Mr. Faulkner for thirty years as she claimed in her evidence. By the time it is alleged Mr. Faulkner left Kenya in 1982, she would have been four years old and could not have been married yet she claimed that her husband worked for Mr. Faulkner and that they had lived on the Suit Property for forty eight years. She cannot possibly have worked for Mr. Faulkner for thirty years as she claimed.

44. If indeed Mr. Faulkner left his land to his staff made up of the Maasais in 1982, then it would have been L.R. No. 24968. No evidence was led to show the nexus between L.R. No. 24968 mentioned in Mr. Faulkner's letter and the Suit Property which is L.R. No. 13871. The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 6<sup>th</sup> Defendants did not give any explanation as to why it took them very long from 1982 when they claim Mr. Faulkner gave them the land, until 2007 when they sought to be allocated the suit land. They were issued a letter of allotment dated 30/10/2007 for the Suit Property and paid Kshs. 3,426,700/= on 8/12/2007. The court finds that from the evidence of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 6<sup>th</sup> Defendants, members of the 6<sup>th</sup> Defendant and those currently residing on the Suit Property moved onto the land sometime in 2007. This is buttressed by the Plaintiff's evidence that it attempted to evict them from the land in 2007 and 2008.

45. Do the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 6<sup>th</sup> Defendants have a legitimate claim to the land? The court thinks not. They claim they were given a letter of allotment over the Suit Property dated 30/10/2007 as a step towards being issued a title over this land. They paid Kshs. 3,426,700/= on 8/12/2007 which was returned to their advocates three months after the cheque was issued. They did not therefore acquire any title over the Suit Property.

46. What is not disputed by the Plaintiff, the 4<sup>th</sup>, 5<sup>th</sup> and 7<sup>th</sup> Defendants is that the Suit Property belonged to the Government of Kenya and that it was the government that allocated the Suit property. The witness called by the 4<sup>th</sup> and 5<sup>th</sup> Defendants led evidence to show how the Suit Property which formed part of the land acquired by the government was surveyed and the Suit Property created. The witness maintained that the Suit Property belonged to the Plaintiff in spite of the cancellation of the Plaintiff's title.

47. The court agrees with the submissions of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants that a cancelled title cannot confer ownership over land. Mr. Wafula insisted that the cancellation of the Plaintiff's title was in respect of wrong entries and then conceded that there were no other entries against that title which means it was the Plaintiff's title that was cancelled by the Land Registrar. If indeed the land belonged to the Plaintiff and the cancellation of its title had no legal effect as Mr. Wafula wished the court to believe, the Ministry of Lands could have issued another title over the Suit Property to the Plaintiff without the entry stating that it was cancelled.

48. Had Mr. Wafula furnished the court with a copy of the letter of allotment issued to the Plaintiff or to any other claimant from the lands records it would have helped the court establish that the proper procedure was followed in allocating the Suit Property to the Plaintiff. The procedure for selling town plots owned by the government was set out in the Government Lands Act which was repealed in 2012. No evidence was led to demonstrate that that procedure was adhered to in the allocation of the Suit Property to the Plaintiff or to any other party. In the court's view, the Suit Property belonged to the Government of Kenya and the Government could only have allocated the land in accordance with the procedure set out in the Government Lands Act.

49. Turning to the claim by the 7<sup>th</sup> Defendant, the court notes that it did not call Tauta Ole Kamwasi and Lesley Labassoh who it claimed sold the land to it to give evidence on how the land was allocated to them by the government in 2012 and to corroborate its evidence that Tauta Ole Kamwasi and his kinsmen were to continue occupying the Suit Property as the 7<sup>th</sup> Defendant reorganised its financial position.

50. The 7<sup>th</sup> Defendant did not adduce evidence to show that it paid the purchase price of Kshs. 35,000,000/= to the vendors. The title document gives the consideration for the Suit property as Kshs. 97,500,000/= yet no evidence was tendered to show the stamp duty was paid pegged on this sum. The variance between the two sums is too great for the court to believe that the 7<sup>th</sup> Defendant purchased the land valued at Kshs. 97,500,000/= for Kshs. 35,000,000/=.

51. Mr. Wafula stated that the documents relied on by the 7<sup>th</sup> Defendant related to a parcel of land under correspondence file number 192266, which is in respect of L.R. No. 23181 being a subdivision of L.R. No. 13870 and not L.R. No. 13871. This raises doubt as to the authenticity of the 7<sup>th</sup> Defendant's title over the suit land. In addition, the 7<sup>th</sup> Defendant failed to call the Ministry of Lands officials who wrote the letters dated 2/4/2019 and 12/6/2019 confirming that the Suit Property was registered in its name from March 2013 to give evidence and verify the authenticity of its title.

52. The 6<sup>th</sup> and 7<sup>th</sup> Defendants failed to prove their claims to the suit land, their counterclaims are dismissed. The court declines to grant the orders sought by the Plaintiff. Each party will bear its own costs.

**Dated and delivered at Nairobi this 13<sup>th</sup> day of December, 2019.**

**K. BOR**

**JUDGE**

**In the presence of:-**

Mr. M. Ouma for the Plaintiff

Mr. A. Kamau for the 4<sup>th</sup> and 5<sup>th</sup> Defendants

Ms. B. Olemba holding brief for Mr. Kounah for the 6<sup>th</sup> Defendant

Mr. R. Otieno holding brief for Mr. J. Change for the 7<sup>th</sup> Defendant

Mr. V. Owuor- Court Assistant

No appearance for the 1<sup>st</sup> to 3<sup>rd</sup> Defendants