



**Muinde v Munyasya (Environment & Land Case 19 of 2020)
[2024] KEELC 518 (KLR) (31 January 2024) (Judgment)**

Neutral citation: [2024] KEELC 518 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT & LAND CASE 19 OF 2020
TW MURIGI, J
JANUARY 31, 2024**

BETWEEN

EDITH MUENI MUINDE PLAINTIFF

AND

MUTISO NASON MUNYASYA DEFENDANT

JUDGMENT

1. By a plaint dated 7th August 2020, the plaintiff prays against defendant for:-
 - a. A permanent order against the Defendant whether by himself, his agents and/or servants from trespassing, wasting, constructing on, alienating, transferring/disposing, selling or otherwise interfering or dealing with parcel of land title number Makueni/UNOA/2183
 - b. Costs of this suit.
 - c. Any other relief the court deems fit to grant.
2. The Defendant filed a statement of defence and counterclaim dated 26th September 2020 in which he denied the Plaintiff's claim. In the counterclaim, the Defendant prays for judgment against the Plaintiff for-
 - a. An order nullifying the Plaintiff's title number Makueni/Unoa/2183
 - b. A permanent injunction to restrain the Plaintiff from interfering with the Defendant's occupation and use of Makueni Unoa 1899 measuring 0.067 Ha.
 - c. Costs of this suit.
3. The Plaintiff filed a reply to the defence and reiterated the contents in the Plaint. In her defence to the counterclaim, the Plaintiff denied the Defendant's claim and urged the court to dismiss the Defendant's claim with costs.



The Plaintiff's Case

4. The Plaintiff called three witnesses in support of her case.
5. PW1 Gabriel Maingi a Land Surveyor testified that upon conducting a site visit on 06/08/2020, he established that land parcel No. Makueni/Unoa/1899 measuring 0.067 hectares belongs to Nason Mutiso while land parcel No. Makueni/Unoa/2183 measuring 0.022 Ha belongs to Edith Mueni Muinde. He told the court that the size of Plot No. 1899 was 40ft x 100ft while Plot No. 2183 was 20ft x 100ft in size. He stated that the measurements of the plots tallied on the map as well as on the ground. He testified that during the site visit, he found ongoing construction on Plot No 2183. It was his testimony that when two plots are combined, the green card shows where the resultant number came from and the original number is closed upon combination. According to PW1, the suit property exists on the ground as well as on the map.
6. On cross examination, he testified that he was an independent Land Surveyor as at the time when he was instructed to prepare the report. He stated that the Defendant's title was issued on 25/3/09 while the Plaintiff's title was issued on 3/12/2018. He asserted that he used the map to establish that the size of the suit property.
7. On re-examination by Mr Makundi, he testified that his report was on a government letter head and reiterated that he used the map to compile his report. He testified that he did not call the Defendant during his site visit because he was not aware that there was a case pending in court.
8. PW2 Samuel Maina, a Land Registrar based in Makueni County produced the green cards in respect of land parcel numbers Makueni/Unoa/465, Makueni/Unoa/1899 and Makueni/Unoa/2183. He informed the court that according to the green card for land parcel No. 2183 measuring 0.021 hectares, Edith Mueni Muinde is the registered proprietor having acquired the title from Benard Nthenge while according to the green card for land parcel No. Makueni/Unoa/1899 measuring 0.067 hectares, Nason Mutiso is the registered proprietor of the property having acquired the title from Benard Maithya Mutiso. He testified that there were three charges registered against the title No. Makueni/Unoa.1899. He stated that there was a note in pencil by Mrs Karen Nyakundi a former land Registrar stating "no dealing the ground does not tally with this title seeking services of a government surveyor". He testified that there must have been a difference in the acreage between what was in the green card and what was on the ground. He narrated the process in correcting errors in respect of acreage on a title deed. He testified that the measurements for plot No. 1899 were different from what the Surveyor found on the ground. It was his testimony that according to the green card there was no amalgamation leading to creation of plot No.1899. He told the court that plot No. 1899 arose from the subdivision of Land Parcel No. Makueni/Unoa/465.
9. It was his further testimony that land parcel No. Makueni/Unoa/465 was closed on 4/11/2008 upon being subdivided into title numbers 1899 to 1916. He went on to state that land parcel No.2183 was arose from the subdivision of land parcel No. 1916 which was created from the subdivision of land parcel No. Makueni/Unoa/465. It was his testimony that land parcels No. 2183 and 1899 are separate parcels of land which border each other. He stated that land parcel No.1899 came into existence on 4/11/2008 while land parcel No. 2183 came into existence on 16/09/2009. He testified that according to Map No. 6, land parcel parcels Nos. 2183 and 1899 exists and there could be a possibility of an overlap.
10. On cross examination by Mr. Otieno, he reiterated that land parcel No. Makueni/Unoa/2183 was transferred to the Plaintiff by Benard Maithya the original owner while land parcel No. Makueni/Unoa/1899 came into existence on 4/11/2008. He testified that after Benard subdivided his land, the



- Land Registrar effected the transfers. He asserted that if there was any dispute that Benard never sold the suit property to the Plaintiff, the dispute should be referred to court.
11. On re-examination, he testified that Benard Nthenge had not complained to their office that he never transferred land parcel No. Makueni/Unao/2183 to Edith Muinde. He went on to state that no restriction has been registered against title No. Makueni/Unao/2183 or a report on fraud lodged against the same. He testified that land parcel No. Makueni/Unao/1916 gave rise to land parcel numbers 2160 to 2246. He testified that he did not have a sale agreement to demonstrate how Benard transferred land parcel No. 1899 to Nason Mutiso.
 12. PW3 Justus Muinde adopted his statement dated 22/2/2021 as his evidence in chief. He also produced the documents in the list of documents dated 23/4/2021 as exhibits in support of his evidence.
 13. He informed the court that he is the father to Edith Mueni the Plaintiff herein. It was his testimony that Benard Maithya Nthenge sold and transferred the suit property to the Plaintiff who took possession thereof. That sometime in the year 2020, the Defendant encroached on the Plaintiff's land and erected a fence around it.
 14. On cross examination he testified that he had not availed a sale agreement or any document to show that the Plaintiff purchased the suit property from Benard Maithya Nthenge. He testified that he was not aware that Benard Maithya had denied selling the suit property to the Plaintiff.
 15. On re-examination, he testified that the Plaintiff and Benard Maithya Nthenge executed a sale agreement and that he witnessed Benard Maithya receiving part of the purchase price.
 16. The Plaintiff testified as PW4. She adopted her statement filed in court on 10/5/2020 as her evidence in chief. She also produced the documents in the list of documents dated 7/08/2020 and a further list dated 23/04/2021 as exhibits in support of her case.
 17. The Plaintiff informed the court that she purchased the suit property from Benard Kyatha Nthenge Maitha. That prior to the sale, she conducted an official search and visited the plot in the company of her father and established that the plot was 20ft x 100ft in size. She testified that they executed a sale agreement, signed the transfer forms and was subsequently issued with the title for the suit property in the year 2018. That later on, her parents visited the plot because she wanted to develop the same and found that it had been fenced off which was not the case before. That after she instructed her people to remove the fence, the Defendant showed up and claimed ownership over the suit property. It was her testimony that she called the wife of the seller who assured her that she was the owner of the suit property. She stated that the Defendant has encroached on her property and was carrying out construction activities day and night. She informed the court that Agnes Nthamba was initially her witness but later withdrew from being her witness. She denied that she acquired the suit property fraudulently.
 18. According to the Plaintiff, Benard Nthenge and his wife have never accused her of forging their signatures. She testified that she got to learn that Benard Nthenge and his wife were dishonest people when they sold to her a plot which had issues. She testified that she had not seen any document where the Defendant has alleged that he had purchased the suit property. She urged the court to grant the orders as sought in the plaint.
 19. On cross examination she testified that she purchased the suit property from Benard Maitha for Kshs 160,000/= and that he acknowledged receipt of payment for the same. She admitted that she had not attached the payment receipts in her list of documents. She reiterated that prior to the purchase, she conducted an official search and inspected the suit property. It was her testimony that Benard Maitha



had previously sold to her five other properties. She admitted that land parcel No 1899 was registered earlier than the suit property.

19. On re-examination, she testified that she did not sue Benard Maitha because she has no issue with him. She testified that she had sued the Defendant because he had encroached on her property.

The Defence Case

20. The Defendant called two witness in support of his case.
21. DW1 Agnes Nthamba adopted her statement dated 13/05/2021 as her evidence in chief. She informed the court that she is the wife to Benard Maithya Nthenge the registered proprietor of LR. No. Makueni/Unoa/465. She testified that Benard Maithya excised a portion a land measuring 60ft x 100ft from land parcel No. Makuweni/Unoa/465 and sold it to Mbithi Nguuwe alias Kisenge. That Mbithi Nguuwe alias Kisenge thereafter sold land measuring 40ft x 100ft to Kisau Farmers and the remaining land measuring 20ft x 100ft to Mutuku Malonza. It was her testimony that Kisau Farmers and Mutuku Malonza sold their respective parcels of land to the Defendant who in turn requested her husband to issue him with a title deed. That upon subdivision of land parcel No. Makueni/Unoa/465, the Defendant was issued with a title in the year 2009 for land parcel No. Makueni/Unoa/1899 measuring 0.067Ha.
22. She further testified that they sold two plots to the Plaintiff which are not adjacent to the Defendant's property. She denied having sold the suit property to the Plaintiff.
23. On cross examination, she testified that she sold and transferred a plot to the Plaintiff. She testified that her husband sold a plot to the Defendant measuring 40 x 60. She reiterated that Kisenge Nguuwe had purchased a plot measuring 40 x 60 from her husband but later on sold it to the Defendant. She stated that on 4/11/2008, land parcel No. Makueni/Unoa/465 was subdivided to create land parcel No. Makueni/Unoa/1899. She testified that land parcel No. Makueni/Unoa/1916 was created on 4/11/2008 and that upon its subdivision, it gave rise to land parcel No. 2183 on 16/-9/2009.
24. On cross examination she reiterated that the Plaintiff's parcel of land is not adjacent to the Defendant parcel of land. It was her testimony that her son had encroached on the Plaintiff's land. She denied recording a statement in support of the Plaintiff's case.
25. The Defendant Nason Mutiso Munyasya testified as DW2. He adopted his statement dated 26/09/2020 as his evidence in chief. He also produced the documents in the list of documents as exhibits in support of his case.
26. He informed the court that he is the registered owner of land parcel No. Makueni/Unoa/1899 measuring 0.067 Ha. He stated that he purchased two plots, one from Kisau Farmers measuring 40ft x 100ft and the one from Mutuku Malonza measuring 20ft x 100ft.
27. That since the two parcels were situated within land parcel No. Makueni/Unoa/465, he requested Benard Nthenge the registered owner to release the title for purposes of subdivision. He testified that the two plots were amalgamated and upon subdivision, he was issued with his title.
28. He testified that he had developed one side of his property and was in the process of developing the other part, when Plaintiff sought to restrain him from developing the same. He testified that he learnt that the Plaintiff caused herself to be registered on his property which was already registered in his name. He urged the court to nullify the Plaintiff's title because her claim over his property was fraudulent.



29. On cross examination, he reiterated that he purchased two parcels of land in the year 2009, one from Mutuku Malonza and the one from Kisoa farmers and proceeded to combined the two parcels even though the land was in registered in Maithya's name. He went on to state that he did not have any evidence to demonstrate that the two plots were amalgamated. It was his testimony that he attended the board with Benard Nthenge and his wife though he did not have the consent or transfer from Benard Nthenge. He testified that he had developed the plot by constructing a foundation and a toilet therein. He testified that he did not know that his title differs on the ground and on the map
30. On re-examination, he reiterated that he purchased his land from Mututku Malonza and Kisoa Farmers and that Benard transferred the same to his name
31. He testified that due to financial constraints he was unable to construct the entire plot. He testified that his title does not have an error and that he has documents to show how he acquired his land.
32. After the close of the hearing, the parties agreed to file and exchange their written submissions.

The Plaintiff's Submissions

33. The Plaintiff's submissions were filed on 22nd January 2023.
34. On her behalf, Counsel outlined the following issues for the court's determination:-
 - a. Whether there are two plots of land existing on the ground as Makueni/UNOA/1899 & Makueni/UNOA/2183
 - b. Whether the Plaintiff is the proprietor of the plot/parcel of land known as Makueni/UNOA/2183
 - c. Whether the Plaintiff has established that the Defendant has encroached onto her parcel of land.
 - d. Whether the Plaintiff is entitled to the reliefs sought.
 - e. Who should bear the costs of the suit.
35. On the first issue, Counsel submitted that the Plaintiff is the bona fide and registered Proprietor of the suit property as demonstrated by the evidence of PW2 and PW3 together with the exhibits. Counsel submitted that the Defendant averment that Benard Maithya did not sell the suit property to the Plaintiff does not hold water as the affidavit was admitted without calling the maker.
36. According to Counsel the Defendant conspired with his witness who was initially their witness to deny the Plaintiff her land. Counsel submitted that PW1 and PW3 confirmed that the suit property exists on the ground as well as on the map
37. Counsel asserted that the Surveyor's Report produced by the Defendant indicates the existence of land parcel No. Makueni/Unoa/2183.
38. On the second issue, Counsel submitted that the Plaintiff is the registered proprietor of the suit property having purchased the same from Benard Maithya Nthenge. It was submitted that Benard Maithya had previously sold to the Plaintiff five other plots prior to the sale of the suit.
39. In addition, Counsel submitted that the Defendant admitted in his pleadings that the suit property exists and is registered in the name of the Plaintiff.



40. It was further submitted that the defence did not adduce any evidence of fraud or illegality against the Plaintiff in acquiring the suit property. To buttress this point reliance was placed on Section 26 of the *Land Registration Act*.
41. On the third issue, it was submitted that the Defendant has encroached on the Plaintiff land and erected an illegal fence around it where he was carrying out construction activities. Counsel submitted that the Surveyor's Report produced by the Defendant clearly shows that land parcel No. Makueni/Unoa/2183 exists with clear boundaries. Counsel submitted that the Survey Report coupled with the evidence of PW1 and PW2 clearly demonstrates that the Defendant has encroached and/or trespass on the suit property.
42. On the fourth issue, Counsel submitted that the Plaintiff is entitled to the orders sought as she had proved her case against the Defendant on a balance of probabilities as required.
43. On the issue of costs Counsel submitted that the Plaintiff is entitled to costs as she had proved her case on a balance of probabilities.
44. To buttress his submissions, Counsel relied on the Plaintiff's list of authorities dated 21st June 2023.

The Defendant's Submissions

45. The Defendant's submissions were filed on 03/07/2023.
46. On his behalf Counsel identified the following issues for the court's determination:-
 - a. Whether the Plaintiff had acquired a legitimate title over property known as Makueni/Unoa/2183?
 - b. Whether Benard Nthenge sold to the Plaintiff the subject property?
 - c. Whether the Plaintiff's title to property No. Makueni/Unoa/2183 should be voided.
 - d. Whether the registration of the Defendant as proprietor of Makueni/Unoa/2183 was legitimate?
47. On the first issue, Counsel submitted that the Plaintiff did not acquire a legitimate title over the suit property since she did not produce the sale agreement, prove of any payment or transfer forms duly signed by the vendor to support her claim.
48. On the second issue, Counsel submitted that the Plaintiff is not the legitimate owner of the suit property since she did not produce any sale agreement or proof of payment for the suit property and thus her claim must fail. Counsel submitted that the Plaintiff did not adduce any evidence to show that she legally acquired a genuine title from Mr. Nthenge.
49. On the third issue, Counsel submitted that the Plaintiff cannot be protected by the doctrine of indefeasibility of title since she has failed to demonstrate how she acquired the suit property. Counsel submitted that the Plaintiff's title and registration over the suit property was fraudulent and as such it should be voided. It was submitted that the Plaintiff fraudulently caused herself to be registered on the suit property. Counsel submitted that Mr. Nthenge never transferred or subdivided the suit property in his name. Counsel submitted that Benard Nthenge denied registering or transferring the suit property to the Plaintiff
50. It was submitted that Mr Nthenge effected a subdivision and transfer of the two plots purchased by the Plaintiff in his name. that he effected transfer of 1899 to the Defendant



51. It was submitted that land parcel No. Makueni/Unoa/1899 was registered before land parcel No. Makueni/Unoa/2183. That the second registration could not have been done on a parcel that was already registered.

Analysis And Determination

52. Having considered the pleadings, the evidence on record and the written submissions, the following issues arise for the court's determination:-
1. Whether land parcel numbers Makueni/Unoa/1899 and Benard Maithya Mueni/Unoa/2183 exist on the ground.
 2. Whether the Plaintiff fraudulently acquired the title to the suit property.
 3. Whether the Plaintiff is entitled to the orders sought in the Plaint.
 4. Whether the Defendant is entitled to the orders sought in the counterclaim.

Whether Land Parcels Numbers Makueni/UNOA/1899 And Makueni/Unoa/2183 Exist On The Ground

53. The Plaintiff testified that she is the registered owner of the suit property having purchased the same from Benard Maithya.
54. The Defendant on the hand testified that he is the registered proprietor of land parcel No. Makueni/Unoa/. He told the court that he purchased plot from Kisau farmers measuring 60x 100ft and another from Mutuku Malonza measuring 20ft x100ft situated within land parcel No. Makueni/Unoa/465. That the two parcels were amalgamated to create land parcel No. MakueniUnoa/1899. In this regard, he produced the sale agreements (DEX 4 and 5), copy of a title deed DEX2 and certificate of official search DEX7.
55. According to the Defendant the Plaintiff fraudulently caused herself to be registered on his property as land parcel No Makueni/UNOA/2183. He asserted that the land was not available for registration since it was already registered in his name as land parcel No. Makueni/Unoa/1899.
56. PW1 testified that he conducted a site visit on the two properties and established that the two plots exist in their rightful position on the ground and on the map. In this regard he produced the certificate of official search, the titles and the map.
57. The Land Registrar produced the green cards in respect of land parcels numbers Makueni/Unoa/465(PEX6), Makueni/Unoa/1899(PEX5) and Makueni/Unoa/2183 (PEX4)
58. According to the green card land parcel No. Makueni/Unoa/1899 it is clear that it arose from the subdivision of Land Parcel No.Makueni/Unoa/465 on 4/11/2008. The green card for land Parcel No. Makueni/Unoa/465 PEX6, was opened on 16/6/1977 and a title deed was issued in the name of Maitha Nthenge. According to the green card, a restriction registered against the title by Wala Welfare Association was lifted by the court on 16/10/2006. The title was closed upon subdivision giving rise to parcel no 1899-1916. Parcel 1899 was created on 4/11/08. Entry No. 3 of the green card shows that Benard Nthenge transferred the parcel of land on 25/3/09 for a consideration of Kshs.150000/=. The green card corroborates the evidence of the Land Registrar and DW2 who testified that land parcel No. Makueni/Unoa/1899 was created out of the subdivision of land parcel No. Makueni/Unoa/465.
59. With regards to the suit property, the green card PEX4 shows that Benard Nthenge was the first registered owner. It is also clear that land Parcel No. Makueni/Unoa/1916 was created from the



subdivision of land parcel No. Makueni/Unoa/465 and was registered in the name of Benard Maithya Nthenge. Title number 2183 arose from the subdivision of land parcel No. Makueni/Unoa/1916. Entry No. 2 of the green card indicates that Benard Maithya Nthenge transferred the suit property to the Plaintiff for a consideration of Kshs 300,000/=. Again the green corroborates the evidence of the Land Registrar and that of the Plaintiff. It is crystal clear that the Plaintiff acquired her title from Benard Maithya Nthenge. The RIM clearly demonstrates that the two parcels are distinct and separate of each other.

60. The Defendant asserted that his parcels of land were amalgamated to create land parcel No. Makueni/Unao/1899. PW1 testified that if there was any amalgamation it should have been captured in the green card. PW2 testified that there was no evidence of amalgamation. From the evidence on record, there is nothing to show that the Defendant's parcels were amalgamated to create parcel No. Makueni/Unoa/1899. It is crystal clear from the green cards that Land Parcel No. Makueni/Unoa/1899 arose from the subdivision of land parcel No. Makueni/Unoa/465 which was originally registered in the name of Benard Maithya. The evidence of the Land Surveyor, Land Registrar coupled with the documentary evidence confirms that indeed Land parcel Nos. Makueni/Unoa/1899 and Makueni/Unoa/2183 exist on the ground and are separate from each other. There is no evidence that parcel No. Makueni/UNOA/2183 was created over Parcel No. Makueni/Unoa/1899. It is crystal clear that the suit property arose from the subdivision of land parcel No. Makueni/Unao/2183.

Whether The Plaintiff Fraudulently Acquired The Title To The Suit Property.

61. The Plaintiff testified that she is the bona fide owner of the suit property. It was her testimony that she purchased the suit property from Benard Maithya. In this regard she produced the certificate of title for the suit property. The Land Registrar testified that according to the green card the Plaintiff is the registered owner of the suit property having acquired the title from Benard Maithya.
62. The Defendant testified that the Plaintiff fraudulently acquired the title to the suit property and as such the same should be voided. It was his testimony that the Plaintiff fraudulently acquired the title over his property which is registered in his name. He insisted that the Plaintiff did not have any document to demonstrate that she purchased the suit property from Benard Maithya. DW1 denied having sold the suit property to the Plaintiff. According to DW1, the properties they sold to the Plaintiff were not adjacent to the Defendant's property.
63. The Defendant pleaded and particularised the grounds of fraud as follows:-
1. Alleging to have bought the said property from Benard Nthenge when she knows very well that Benard Nthenge never sold the said property.
 2. Registering herself as the owner of the property that had already been demarcated and registered in the name of the Plaintiff in 2009.
 3. Acting to illegally dispossess the Plaintiff of his property.
64. As regards the standard of proof, the Court of Appeal in the case of *Kinyanjui Kamau Vs George Kamau* [2015] eKLR expressed itself as follows:-

...it is trite law that any allegations of fraud must be pleaded and strictly proved. See *Ndolo Vs Ndolo* [2008] 1 KLR (G & F) 742 wherein the court stated that: "...we start by saying that it was the Respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the Respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the



burden of proof on the Respondent was certainly not one beyond a reasonable doubt as in Criminal Cases...”

65. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence.....In the present case, the Defendant having pleaded fraud on the part of the Plaintiff in acquisition of the suit property, the onus was on him to prove the same.
66. In order to determine whether the title to the suit property was fraudulently acquired, this court is called upon to determine the root of the title. In so finding I am persuaded by the case of *Munyu Maina - v - Hiram Gathiha Maina*, where it was held as follows:
67. 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 would not be noted in the register.
68. The Plaintiff testified that she purchased the suit property from Benard Maithya who in turn transferred the same to her name. The title, certificate of official search and the green card confirmed that the Plaintiff is the registered proprietor of the suit property. The Defendant on the other hand denied that the Plaintiff is the registered owner of the suit property urged the court to nullify the title as the same was obtained fraudulently. He testified that there was no sale agreement or document to confirm payment of the same.
69. The Land Registrar confirmed that his office had not received any complaint of fraud on the suit property. He further stated that no restriction had been registered against the title for the suit property. Section 26 of the *Land Registration Act* provides for instances when a title can be impeached as follows:-
70. The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer shall be taken by all the courts as prima facie evidence that the person named as the proprietor of the land is absolute and indefeasible owner and the title of that proprietor shall not be subject to challenge except;
 - a. On the ground of fraud or misrepresentation to which the person is proved to be a party or;
 - b. Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”
71. The Defendant did not adduce any evidence to demonstrate that the Plaintiff fraudulently acquired the title for the suit property. In addition, the Defendant did not prove the allegations of fraud against the Plaintiff. There was no evidence that they obtained the title through fraud or misrepresentation, illegally, un procedurally or through a corrupt scheme. Until that is done the plaintiff remains the indefeasible owner of the suit property. I find that the Defendant has not demonstrated that the title was acquired fraudulently by the Plaintiff.

Whether The Plaintiff Is Entitled To The Orders Sought.

72. The Plaintiff is seeking for a permanent order restraining the Defendant from interfering with the suit property. She informed the court that the Defendant has encroached on the suit property where he has erected a fence around and was carrying out construction activities. Her evidence was corroborated by PW1 who testified that when he conducted a site visit of the two parcels of land, he found ongoing construction on the suit property. To buttress his testimony, he annexed photographs depicting



ongoing construction on the suit property. There is evidence of development on the suit property I find that the Plaintiff has demonstrated that the Defendant has encroached on the suit property. Having established that the Plaintiff is the owner of the suit property she is entitled to the rights and privileges outlined in Section 24 and 25 of the [Land Registration Act](#). I therefore find that that the Plaintiff is entitled to the orders sought.

Whether The Defendant Is Entitled To The Orders Sought In The Counterclaim.

73. In the counterclaim, the Defendant seeking to have the Plaintiff's title nullified on the grounds that it was acquired fraudulently. Having found that the Plaintiff is the indefeasible owner of the suit property, this court finds and holds that the Defendant is not entitled to the order sought. The Defendant also sought for a permanent injunction to restrain the Plaintiff from interfering with his occupation of land parcel No. 1899. The Defendant did not adduce any evidence to demonstrate that the plaintiff has interfered with his occupation on parcel no 1899. I find that the Defendant has not proved his counter claim against the Plaintiff on a balance of probabilities and is therefore not entitled to the orders sought.

In the end the Defendants counter claim is dismissed with costs.

74. The upshot of the foregoing is that the plaintiff has proved her case on a balance of probabilities. The orders are granted as prayed with costs.

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HON. T. MURIGI
JUDGE

JUDGMENT DELIVERED ON 31ST JANUARY 2024

In the presence of Munyasya for the Plaintiff

