



REPUBLIC OF KENYA



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**Mutyaavyu v Muka Mukuu Farmers Co-operative Society Limited (Environment & Land Case 135 of 2018) [2024] KEELC 155 (KLR) (24 January 2024) (Judgment)**

Neutral citation: [2024] KEELC 155 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**  
**ENVIRONMENT & LAND CASE 135 OF 2018**  
**A NYUKURI, J**  
**JANUARY 24, 2024**

**BETWEEN**

**DONALD WAMBUA ALBERT MUTYAUVYU ..... PLAINTIFF**

**AND**

**MUKA MUKUU FARMERS CO-OPERATIVE SOCIETY LIMITED ..... DEFENDANT**

**JUDGMENT**

**Introduction**

1. By a plaint dated 10<sup>th</sup> June 2018, the plaintiff in this case sought against the defendant the following orders;
  - a. An order of injunction restraining the defendant either by itself or through its agent, servant and/or employees from trespassing, encroaching or in any other way interfering with the plaintiff's quiet possession of all those parcels of land known as plot numbers 199, 186 (part), 114, 17, 8, 167, 26, 116, 2, 103A, 47, 69, 93, 79, 197, 94, 130, 32, 163, 98, 56, 140, 90, 80, 44, 154, 131, 55, 20, 44A, 41, 60, 19, 724, 57, 177, 129, 189, 138, 195, 37, 134, 872, 13, 5A, 128, 63, 127, 267, 266, 249, 250, 230, 229, 224, 223 and 223A on its LR. Number 10967.
  - b. An order of mandatory injunction directing the defendant to issue the plaintiff with ownership documents for all those parcels of land known as plot numbers 199, 186 (part), 114, 17, 8, 167, 26, 116, 2, 103A, 47, 69, 93, 79, 197, 94, 130, 32, 163, 98, 56, 140, 90, 80, 44, 154, 131, 55, 20, 44A, 41, 60, 19, 724, 57, 177, 129, 189, 138, 195, 37, 134, 872, 13, 5A, 128, 63, 127, 267, 266, 249, 250, 230, 229, 224, 223 and 223A on its Land Reference Number 10967.
  - c. A declaration that the plaintiff lawfully acquired plot numbers 199, 186 (part), 114, 17, 8, 167, 26, 116, 2, 103A, 47, 69, 93, 79, 197, 94, 130, 32, 163, 98, 56, 140, 90, 80, 44, 154, 131, 55, 20, 44A, 41, 60, 19, 724, 57, 177, 129, 189, 138, 195, 37, 134, 872, 13, 5A, 128, 63, 127, 267,



266, 249, 250, 230, 229, 224, 223 and 223A on the defendants land reference number 10967 and he is entitled to be issued with ownership documents.

- d. Costs of this suit.
  - e. Any other relief this court may deem just and expedient.
2. The plaintiff averred that he was a member of Muka Mukuu Farmers Cooperative Society Limited, the defendant herein. That the defendant was the registered owner of LR. No. 10967 situated in Donyo Sabuk bordering Donyo Sabuk National Park in Machakos County (suit property). That as at 23<sup>rd</sup> November 1995, the plaintiff was entitled to 16 plots each measuring 1.2 acres from the defendant by virtue of his membership which he obtained through balloting and got plot numbers 20, 55, 63, 79, 80, 93, 94, 127, 128, 129, 130, 131, 156, 163, 177 and 189.
  3. The plaintiff further averred that he also purchased 36 plots from members, namely plot Nos. 91, 93, 107, 96, 164, 90, 243, 63, 59, 45, 190, 68, 9, 316, 23, 227, 238, 33, 199, 80, 81, 103, 300, 69, 132, 135, 145, 231, 232, 233, 234, 6 plots purchased from the defendant and unidentified plot purchased from one Regina Mbeke. He also stated that he was supposed to get additional five shares equivalent to 6 acres as compensation for accepting to be allocated plots in rocky unarable part of the land, as per the defendants policy. According to the plaintiff, he had a total of 59 plots.
  4. He stated that after completion of allocation of shares, the defendant allowed the plaintiff to settle on the upper and rocky part of the land and with the defendant's permission, the plaintiff established boundaries of the land settled upon by the plaintiff which is equivalent to 70.8 acres. According to the plaintiff, upon survey, it emerged that the plaintiff had settled on plot numbers 199, part of 186, 14, 17, 8, 167, 26, 116, 2, 103A, 47, 69, 93, 79, 197, 94, 130, 32, 163, 98, 56, 140, 90, 80, 44, 154, 131, 55, 20, 44A, 41, 60, 19, 724, 57, 177, 129, 189, 138, 195, 37, 134, 872, 13, 5A, 128, 63, 127, 267, 266, 249, 250, 230, 229, 224, 223 and 223A.
  5. The plaintiff's complaint was that the defendant had embarked on a fresh exercise of allocation of the plots which will interfere with the plaintiff's development and result in damage to his structures and developments.
  6. In a defence dated 30<sup>th</sup> August 2019, the defendant denied the plaintiff's claim and averred that the plaintiff only owns 18 plots being plot numbers 63, 177, 189, 55, 163, 129, 128, 94, 249, 156, 119, 80, 199, 135, 132 and 41 each measuring 1.2 acres.
  7. The matter proceeded to hearing by way of viva voce evidence. The plaintiff presented one witness while the defendant presented four witnesses.

### **Plaintiff's evidence**

8. PW1 was Donald Wambua, the plaintiff herein who testified on 7<sup>th</sup> July 2022. The plaintiff adopted his witness statement dated 12<sup>th</sup> June 2018 as his evidence in chief, and produced documents dated even date as exhibits. It was PW1's testimony that he became a member of the defendant in 1995, by purchasing shares in the defendant company which is a land buying company. He stated that the defendant is the registered proprietor of the parcel of land number 10967 situated in Donyo Sabuk area.
9. He stated that according to the resolution by the defendant, it was passed that members shall be allocated plots measuring 1.2 acres per share. He stated that on 23<sup>rd</sup> November 1995, balloting for allocation of plots to members was conducted whereof he picked 16 ballots for Plot numbers 20, 55, 63, 79, 80, 93, 94, 127, 128, 129, 130, 131, 156, 163, 177 and 189.



10. He stated that beside the shares allocated, he bought shares (plots) from other members of the defendant, which purchase was consented to by the defendant. That these are plot numbers 91, 93, 107, 96, 164, 90, 243, 63, 59, 45, 190, 68, 9, 316, 23, 227, 238, 33, 199, 80, 81, 103, 300, 69, 132, 135, 145, 231, 232, 233 and 234, six plots from the defendant and an unidentified plot from one Regina Mbeke. That the defendant's surveyor gave him beacon certificates for the allocated and purchased plots.
11. PW1 testified that for some reason and for economical liability, the defendant made a decision, that members were free to settle in their preferred area and consolidate their plots to be adjacent to each other. That consequently he chose and has settled in a rocky unarable and hilly area where other members were unwilling to settle. According to him, all the plots he bought were to be annexed to the portion where he had settled. He stated that the plot he bought from Regina Mbeke and the six plots he bought from the defendant were to be adjacent to the plot where he settled, as acknowledged by the defendant. He further stated that the defendant resolved that members who got plots in the unarable and rocky part, would get extra plots as compensation and that in that regard he was entitled to additional five shares equivalent to six acres. That therefore his land including the compensation was 68.4 acres.
12. He stated that the defendant allowed him to settle on the aforesaid land and the defendant's surveyor established his boundary which showed that he had settled on plot numbers 199, part of 186, 114, 17, 8, 167, 26, 116, 2, 103A, 47, 69, 93, 79, 197, 94, 130, 32, 163, 98, 56, 140, 90, 80, 44, 154, 131, 55, 20, 44A, 41, 60, 19, 724, 57, 177, 129, 189, 138, 195, 37, 134, 872, 13, 5A, 128, 63, 127, 267, 266, 249, 250, 230, 229, 224, 223 and 223A.
13. He complained that the defendant had reneged on their land and wanted to take several of his plots on allegations that there is no evidence of supportive transactions. He stated that the defendant had embarked on a fresh allocation of plots which will interfere with his developments and settlement. That on 29<sup>th</sup> August 2017, the defendant instructed their surveyor to show the boundaries of plot numbers 7 and 114 to one Mathews Kiriago Nyaaga, which would deprive the plaintiff plot number 114 which is within his home. Further that on 19<sup>th</sup> May 2018, the defendant indicated that plot number 199 belonged to one Dishon Kivuva Malinda despite the fact that the said Dishon sold that plot to the plaintiff. That the defendant wrote similar letters in regard to six other members. He stated that the defendant had threatened to exclude his name in the list to be forwarded to the land registry for purposes of processing of title.
14. It was PW1's testimony that the defendant's actions are unjustified as they have intentions of evicting him from his land having seen that he has turned the rejected plots into good and habitable land. He also stated that the defendant allowed members who got plots where he has settled to consolidate their plots elsewhere and that all the other parts of the land are occupied and no member has complained that the is on their land. That those who sold him land have not denied that fact and that the defendant intend to grab his land.
15. He produced a banner announcing balloting on 23<sup>rd</sup> November 1995; ballot papers for 16 plots; bundle of receipts, agreements and consent forms; letters dated 3<sup>rd</sup> December 1998 and 3<sup>rd</sup> May 2001 and receipt number 26 of 8<sup>th</sup> January 2003; survey plan for LR. Number 10967; letters dated 29<sup>th</sup> May 2018 and 20<sup>th</sup> March 2018 and photographs of the suit property.
16. In cross-examination, he stated that he is not a member of the defendant and has never been a member. He stated that he bought shares. He stated that he has no membership number and none was transferred to him by any of the members of the defendant. He stated that it was not true that



swapping of plots only occurred between persons who had been involved in the balloting. He stated further that swapping did not mean that you surrender your plot. He stated that he was not claiming plot number 7 and that he had no document to show he purchased plot number 114 although he was claiming for it. He further stated that he had no agreement for plot numbers 186, 17, 57 and 114. He stated that he was not aware if the defendant had an arbitration committee to resolve members issues.

17. The witness also stated that all he needs to get title are the transfer form, transfer and survey fees to have title processed. He stated that a member could only be shown the plot he balloted for and that he bought several plots from members who did not know where their plots were and that none of those members showed him the plots they were selling to him. In re-examination, he stated that balloting was for both members and non members as long as a person had bought the plot. That marked the close of the plaintiff's case.

### **Defendant's evidence**

18. DW1 was Peter N. Mulili. He adopted the contents of his witness statement filed on 24<sup>th</sup> August 2020 as his evidence in chief. His evidence was that he was the vice chairperson of the defendant. He stated that the defendant is a registered cooperative society with the mandate of acquiring, managing and developing land for the benefit of its members. He stated that from the defendant's records, the plaintiff owns 18 plots only; namely plot numbers 63, 177, 189, 55, 163, 129, 128, 94, 249, 156, 119, 80, 175, 199, 135, 132 and 41; each measuring approximately 1.2 acres. He maintained that the other plots claimed by the plaintiff belong to other members and that the defendant is in the process of processing title deeds for its members which they are undertaking in a manner that is above board. He stated that the plaintiff has never been a member of the defendant and that the plaintiff has fenced his 18 plots. He produced documents listed on the defendant's list of documents dated 2<sup>nd</sup> September 2019, namely, certificate of registration of the defendant; defendant's by laws; document for plaintiff's additional plot verification; and plot allocation records for member numbers 1599, 388, 1191, 1666, 1906, 2033, 1082, 911, 2063, 1342, 1084 and 1032.
19. On cross-examination, he stated that although an arbitration panel dealt with the instant dispute, he had no evidence to prove the same. He stated that the criteria for plot allocation was balloting and that he does not know how the plaintiff got his plots in one place. He stated that they had 2616 members and that he had no record of when the plaintiff became the owner of 18 plots. He confirmed that the bundle of receipts, agreements and consent forms were from the defendant. He also confirmed that the beacon certificate produced by the plaintiff was from the defendant. In re-examination, he stated that their records showed the plaintiff owns 18 plots but that he had taken possession of 36 plots and that the plaintiff was not a member of the defendant but only purchased plots from members. He also stated that a beacon certificate was not evidence of ownership.
20. DW2 was Mathews Kiriengo Nyaanga. He adopted the contents of his witness statement dated 1<sup>st</sup> August 2020 as his evidence in chief. He stated that he was the defendant's member number 2001 and was allocated additional plot no. 114 which he has never sold to anyone. He stated that he bought the said plot from one Michael Nzuki Mutunga after conducting search with the defendant.
21. In cross-examination, he stated that he had no sale agreement to show that he bought plot number 114 and that he had no evidence to show he was allocated the said plot.
22. DW3 was John Mutua Kioko. He also adopted his witness statement as his evidence in chief. He stated that he was a member of the defendant being number 2269, and that he was allocated additional plot no. 57 which he has never sold to anyone. He stated that he had no documents to show ownership of the said plot and no beacon certificate was given to him.



23. On cross-examination, he stated that he cannot remember when he became a member of the defendant and that he had no documents to prove his membership. He stated that he was present during the balloting which process he participated in. He stated that he paid the survey fees but another person is on his plot, claiming it is his. He stated that he had no documents to prove his allegations, and had never reported a case of trespass in regard to his plot.
24. DW4 was George Kavita Muniyoli. He adopted the contents of his witness statement dated 26<sup>th</sup> March 2021 as his testimony in chief. His evidence was that he was the defendant's member number 386 and was allocated additional plot number 17 which he has never sold to anyone. In cross examination, he stated that he had no documents to show ownership of the plot number 17 and that he does not use it. He stated that he had no documents to show he transacted with the defendant, and that the plaintiff was a stranger to him. That marked the close of the defence case.
25. Consequently, parties were granted the liberty to file written submissions in support of their respective cases. On record are the plaintiff's submissions filed on 17<sup>th</sup> April 2023 and defendant's submissions filed on 13<sup>th</sup> April 2023.

### **Plaintiff's submissions**

26. Counsel for the plaintiff submitted that it is not disputed that the plaintiff bought and owns plots on the suit property and that the only issue is the number of plots owned by the plaintiff. Counsel argued that the plaintiff claims for 57 plots while the defendant admits to 18 plots but lists only 17 plots. Counsel argued that the defendant included plot numbers 119, 156, 175, 131 and 132 when the plaintiff had no claim over the same as the defendant kept manipulating and changing the ground plan and numbering of the plots. Counsel maintained that the plaintiff's testimony clearly demonstrated how he acquired all his plots. They further submitted that the defendant had not denied that balloting happened on 23<sup>rd</sup> November 1995 or that the ballots produced by the plaintiff are not their documents.
27. It was further submitted for the plaintiff that the defence witnesses did not dispute the beacon certificates produced by the plaintiff which shows 40 plots and not 18 as stated by the defence. Counsel argued that the plaintiff had developed the plots he bought and that no objection to the development was raised by the defendant. Counsel also argued that the map produced by the plaintiff showed that the plots claimed by the plaintiff are all in one place. Counsel argued that the defence witness did not deny that there was a resolution to consolidate members' plots.
28. It was also contended for the plaintiff that the documents produced by the defendant are in regard to plots not claimed by the plaintiff. Regarding plot nos. 114 and 17, counsel submitted that DW1 and DW3 confirmed that the plaintiff was in occupation of the same and that they had not claimed the same from the plaintiff. As regards the list of verification of additional plots by the plaintiff, counsel submitted that the same had 13 plots and adding that to 18 plots as admitted by the defence, it makes a total of 31 plots. Counsel faulted the defendant's failure to disclose owners of the other 26 plots yet those plots are occupied by the plaintiff.
29. Counsel submitted that the plaintiff produced receipts, agreements and consents to show he purchased the plots from the defendant and their members, and that those agreements were not challenged in any way. Counsel relied on the case of Paul Musembi Mutungi v. Anthony Kimuli Muthuva [2005] eKLR for the proposition that the court should not allow a party to blow hot and cold at the same time. Counsel took issue with the fact that none of the defence witnesses who were said to own some of the plots had documents to support their allegations. Counsel argued that the defendant's allegations that the plaintiff intended to grab land belonging to others was baseless as no complaint had been filed by any of the defendant's members complaining of the plaintiff's occupation.



## Defendant's submissions

30. Counsel for the defendant submitted that acquisition of land from the defendant was through subscription of shares or purchase from the defendant's members. Counsel argued that the plaintiff's averment in the plaint that additional plots were given to members as compensation for accepting plots in certain areas was denied by the defendant and no evidence was given by the plaintiff to support that allegation.
31. Counsel argued that the defendant's position is that the plaintiff owns 27 plots in different areas, which are plot numbers 63, 177, 189, 55, 163, 129, 128, 94, 249, 156, 119, 199, 175, 80, 135, 132, 41, 130, 20, 131, 16, MITC 132, KITC 152, 26 Athi RM 772 and MTC 224, and that however out of these, the plaintiff claims 17 of them. Counsel further submitted that in cross examination, the plaintiff conceded not having sale agreements for 12 plots which belonged to Carolyn Gacheri, Katumbi Pius, Rebecca Kameli, Wilson Muindi, Anthony Michael, Michael Nzuki, Dishon Kivuva and Peter Gatira; the said plots being plot numbers 186, 170, 19, 11, 167, 199, 144, 7, 11 and 6.
32. It was further submitted by counsel for the defendant that the ballot papers produced by the plaintiff are 15 and are not contested by the defendant. Counsel hastened to add that the plaintiff had not adduced evidence to show how he acquired plot numbers 186, 114, 17, 8, 167, 116, 2, 103A, 47, 69, 197, 32, 98, 56, 140, 90, 44, 154, 44A, 60, 19, 724, 57, 138, 195, 37, 134, 872, 13, 5A, 68, 127, 267, 266, 250, 230, 229 and 223. Counsel argued that the plaintiff had produced documents showing the owners of some of the plots and that the defendant produced documents showing that plot numbers 69, 167 and 98 belong to Joseph Gitumbi Kinyumu, Benson Kisaka and Makau Muia.
33. Regarding beacon certificates, counsel argued that unless one is invoking the doctrine of adverse possession, they cannot get ownership through occupation and that a beacon certificate is not evidence of ownership.
34. Relying on Sections 107, 108 and 109 of the *Evidence Act*, counsel submitted that the burden of proof of the plaintiff's claim that he owns all the listed plots rests on him. Counsel submitted that the fact that plot ownership by members or owners was through balloting means that a person got the plot whose ballot they picked and that he could only have purchased plots from members who had balloted and that he must have known where his plots were. Counsel argued that the evidence on record showed that plots balloted by the plaintiffs are in the same area in the map he produced and there is no evidence that he surrendered the same for alternatives. Counsel further argued that if the plaintiff wanted his plots adjoining each other, he ought not have purchased from people with scattered plots but from those near his portion. Counsel observed that although the plaintiff alleged in paragraph 9 of the plaint to have bought 30 plots, the said plots are not part of plots sought by the plaintiff.
35. Reliance was placed on provisions of Order 2 Rule 6 of the Civil Procedure Rules 2010, for the proposition that a party should not make inconsistent averments in their pleadings and that parties are bound by their pleadings as held in the case of *Stephen Ndolo Wambua v. Beatrice Mbula Mutilu & 2 Others* [2019] eKLR. Counsel contended that the plaintiff failed to demonstrate the nexus between the plots listed in paragraph 9 of the plaint which he said he purchased and the plots he has sought to be awarded.
36. Counsel referred to the case of *Alberta Mae Gacci v. Attorney General & 4 Others* [2006] eKLR and argued that there was inconsistency in the plaintiff's evidence as he alleges to own 68.4 acres of land but in paragraph 11 of the plaint, he refers to 70.8 acres. Counsel concluded by maintaining that the plaintiff was only entitled to 25 plots namely 63, 177, 189, 55, 163, 129, 128, 94, 249, 156, 119, 199, 175, 80, 135, 13, 2, 41, 130, 20, 131, 16 and 26.



## Analysis and determination

37. I have carefully considered the pleadings, evidence and rival submissions. In my considered view, the issue that arise for determination is whether the plaintiff has proved his claim.
38. The parties agree that the plaintiff was not a member of the defendant but that he acquired from the defendant 16 plots through balloting namely plot numbers 20, 55, 63, 79, 80, 94, 127, 128, 129, 130, 131, 156, 163, 177 and 189. It is also not disputed that the plaintiff purchased additional plots from members. What is disputed is the numbers and identity of the plots bought and whether there was swapping of plots. The defendant concedes to the plaintiff purchasing 18 plots which they list as plot numbers 63, 177, 189, 55, 163, 129, 128, 94, 249, 156, 119, 80, 175, 199, 135, 132 and 41. On the other hand, the plaintiff alleges to have bought plot numbers 91, 93, 107, 96, 164, 90, 243, 63, 59, 45, 190, 68, 9, 316, 23, 227, 238, 33, 199, 80, 81, 103, 300, 69, 132, 135, 145, 231, 232, 233, 234, one unidentified plot from Regina Mbeke and six plots from the defendant.
39. The burden of proof in any suit lies with the plaintiff. Section 107 of the *Evidence Act* provides as follows;
1. Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
  2. When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.
40. Under Article 40 (1) and (6) of *the Constitution* of Kenya, the right to acquire and own property is protected, and the said provisions provides as follows;
40. (1) Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property —
- a. of any description; and
  - b. in any part of Kenya.
6. The rights under this Article do not extend to any property that has been found to have been unlawfully acquired.
41. Therefore legal protection to proprietary right is restricted to property that is lawfully acquired and whose acquisition can be explained. Having considered the evidence produced, it is clear that the plaintiff lawfully acquired 16 plots he balloted for on 23<sup>rd</sup> November 1999 as conceded by the defence witness. However in the plaint, the plaintiff only sought 3 out of those 16 plots; namely; plot numbers 79, 163 and 129. Regarding what he purchased, the defendant conceded to 18 plots, nine of which are listed by the plaintiff as having been acquired through balloting, which are plot numbers 63, 177, 189, 55, 165, 129, 128, 94 and 80. The defendant also allege that plot number 132 was purchased by the plaintiff, an allegation conceded to by the plaintiff and 7 other plots which do not appear in the plaintiff's lists of purchased or balloted plots. These are plot numbers 249, 156, 119, 175, 199, 135 and 41. Out of these 7 plots, only plot numbers 199 and 249 are plots claimed by the plaintiff in his prayers in the plaint.
42. A party is bound by their pleadings, and the court cannot grant that which a party has not sought. In addition, once a party has pleaded to existence of facts, they bear the burden of proving what they have alleged in their pleadings. Therefore, this dispute turns on whether the plaintiff has proved to have lawfully acquired the plots sought in the plaint. The plaintiff pleaded and testified that he acquired



his plots by balloting and purchasing from the defendants members. This position was confirmed by the defence witness. As there was balloting; this therefore means that allocation of plots was random and no person who balloted for more than one plot was guaranteed that their plots would be next to each other. The plaintiff having acquired by balloting 16 plots, where the members were said to be over 2000, the chances of the 16 plots being adjacent to each other were remote. Regarding this matter, the plaintiff testified that for economic sense, the defendant resolved that owners of scattered plots were allowed to consolidate them in one place by swapping plots with other members. However the plaintiff did not tender any evidence to prove such resolution by the defendant. It is therefore the finding of this court that there is no evidence to show that the defendant resolved and or allowed plot owners to consolidate their plots in one place by swapping.

43. In any event, if there was a resolution for swapping of plots, then it would follow that for an owner of a plot to get a plot next to their plot, they would have to swap another plot they own elsewhere with the plot neighboring their plot. I have considered the plaintiff's evidence and there is no evidence that the plaintiff had a specific plot which he considered to be his core plot and the starting point for joining the adjacent plots. In addition, the plaintiff did not list the plots he balloted and or purchased, that were far off from his plot of choice that he swapped with the plots next to his plot of choice. In short, the plaintiff failed to give evidence to show the plots he relinquished to others to get those close to his plot. I therefore find and hold that there is no evidence that the plaintiff swapped his plots for plots close to him.
44. On the allegation that there was a policy by the defendant that those allocated land in the rocky side would be compensation, I note that no such policy was tendered by the plaintiff to prove those allegations. Although, the plaintiff produced an agreement showing he bought 6 plots from the defendant, that agreement does not disclose the identity of the plots sold and therefore what was sold is not known. That also applies to what the plaintiff refers to as unidentified plot purchased from one Regina Mbeke on 3<sup>rd</sup> December 1998. The totality of the plaintiff's evidence is that he acquired by balloting, plot numbers a, b, c and d, purchased plot numbers e, f, g and h; but he now wants the court to give him plot numbers g, h, j, k, l and m. The plaintiff literally threw plot numbers and bundles of documents at the court and sought orders that are inconsistent with what was pleaded in the body of the plaint. He failed to precisely and systematically state his case in a clear manner that demonstrates the nexus between the identity of the plots he acquired through balloting and purchased and the identity of the plots he seeks to be granted by this court. For instance, the plaintiff has not told this court why the court should grant him say, plot numbers 17, 8, 167, 26, 116, 266, 267, 224, 223 and 229 when they are not on his own list of what he acquired by balloting or purchased. His narration of swapping plots does not assist him as he does not provide evidence of the plots he relinquished in exchange of the plots that he has sought. Therefore it is the finding of this court that the plaintiff has not proved that he is entitled to all the plots listed in prayers in the plaint.
45. To arrive at the plots the plaintiff is entitled to, the court has considered the pleadings and evidence and reconciled evidence on plots sought as against the plots alleged to have been acquired by balloting and purchased. And the plots which are common in those three aspects are plot numbers 199, 69, 93, 79, 94, 90, 80, 130, 163, 131, 55, 20, 177, 129, 189, 128, 63 and 127. I therefore order that the plaintiff is entitled to these plots.
46. I therefore enter judgment for the plaintiff against the defendant in the following terms;
  - a. An order of injunction be and is hereby granted restraining the defendant by themselves or their agents, servants or employees from trespassing, encroaching or in any other way interfering with the plaintiff's quiet possession of all those parcels of land known as plot



numbers 199, 69, 93, 79, 94, 90, 80, 130, 163, 131, 55, 20, 177, 129, 189, 128, 63 and 127 on the defendant's parcel LR. Number 10967.

- b. An order of mandatory injunction be and is hereby issued directing the defendant to issue the plaintiff with ownership documents for all those parcels of land known as plot numbers 199, 69, 93, 79, 94, 90, 80, 130, 163, 131, 55, 20, 177, 129, 189, 128, 63 and 127 on the defendant's land reference number 10967.
- c. A declaration be and is hereby made that the plaintiff lawfully acquired plot numbers 199, 69, 93, 79, 94, 90, 80, 130, 163, 131, 55, 20, 177, 129, 189, 128, 63 and 127 on the defendant's land reference number 10967 and he is entitled to be issued with ownership documents.

47. I make no order as to costs.

48. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 24<sup>TH</sup> DAY OF JANUARY, 2024 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM**

**A. NYUKURI**

**JUDGE**

In the presence of:

Mr. Munyaka for defendant

No appearance for plaintiff

Josephine - Court Assistant

