



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ENVIRONMENT AND LAND COURT
MILIMANI LAW COURTS
ELC.NO.569 OF 2011

ANTONIE KUBONDO MURUNGA.....PLAINTIFF

-VERSUS-

ATTORNEY GENERAL.....1ST DEFENDANT

PHOEBE JEPCHIRCHIR NYANGWESO.....2ND DEFENDANT

STARBRIGHT PROPERTIES LIMITED.....3RD DEFENDANT

MELODY KARIUKI.....4TH DEFENDANT

JUDGEMENT

By an *Amended Complaint* dated 20th March 2012, the Plaintiff herein *Antonie Kubondo Murunga*, has sought for various orders against the Defendants. The prayers sought are:-

1) An order against the 1st Defendant to provide the Plaintiff with a parcel of land equivalent in value and location to the parcel of land shown on the Plaintiff's deed plan attached to Grant number I.R.65409.

or

2) (i) In the alternative an Order against the 2nd Defendant to refund to the Plaintiff the full current market value of a parcel of land as the one she purported to sell to the Plaintiff.

or

(ii) In the alternative an Order against the 3rd and 4th Defendants of ejecting them from the part they encroached on the Plaintiff's parcel of land or pay equivalent current price for the part taken by each one of them.

3) General damages against all Defendants severally and jointly.

4) Special damaged of Kshs.147,046/= against all Defendants severally and jointly.

5) *Cost of this suit*

6) *Any other remedy or relief deemed appropriate by this Honourable Court.*

The Plaintiff had alleged that he purchased for valuable consideration and became the registered proprietor and entitled to immediate possession of all that parcel of land known as **LR. No.209/12312**, situated in the City of Nairobi and measuring **0.0956 Hectares** or thereabouts which was and is specially indicated on a deed plan attached to the **Grant Number I.R.65409**. He further alleged that he bought the said parcel of land on the strength of the dimensions endorsed on the deed plan attached to the Grant and the fact that the said parcel of land was and is registered in the Government Lands Inland Registry and intended to use it to construct a godown for his business. The Plaintiff further alleged that he later discovered to his utter surprise that although he had the title deed to the said parcel of land, and his name entered in the register at the Government Lands Inland Registry as the owner of the said parcel of land, pieces of the land were also registered in the names of other people namely the 3rd and 4th Defendants who have already taken possession and therefore the said parcel of land does not exist on the ground and the Plaintiff is unable to take possession of the said parcel of land. He also claimed that the 3rd Defendant who purports to be the registered proprietor of the parcel of land known as **LR. No. 14721** being **Grant Number I.R.67961**, which is supposed to measure 0.1040 Hectares or thereabouts and whose boundaries are supposed to be on **Land Survey Plan Number 201890**, deposited in the Survey Records Office, Nairobi has encroached on the Plaintiff's parcel of land taking just about half of the said parcel of land. Further that the 4th Defendant who purports to be the registered proprietor of the parcel of land known as **LR. No.14720** has encroached on the remaining half of the Plaintiff's said parcel of land.

The Plaintiff therefore averred that the encroachment by the 3rd and 4th Defendants on his parcel of land has had the effect of completely erasing the said parcel of land thus completely dispossessing the Plaintiff of the said parcel of land. It was the Plaintiff's contention that the Government Departments of Land surveys and Land Registry in the Ministry of Lands who are charged with the responsibility of ensuring the inviolability and sanctify of a title deed acted negligently and in breach of trust in purporting to grant a title deed to the said parcel of land and at the same time or soon thereafter granted title deeds to pieces of land which swallowed up the said parcel of land and which has now become the property of other people namely the 3rd and 4th Defendants.

It was the Plaintiff's further contention that the 2nd Defendant purported to sell to him the parcel of land that had been taken by the 3rd and 4th Defendants and therefore she had no parcel of land to sell and that the 3rd and 4th Defendants have illegally encroached and trespassed upon the Plaintiff's parcel of land. Further that all this confusion and the erasure of the Plaintiff's parcel of land was caused by fraud and/or negligence of the Government Departments of Survey and Lands. He particularized the said fraud on paragraph 7(c) of the Plaint and particulars of special damages to the tune of **Kshs.147,000/=**. The Plaintiff urged the Court to allow his claim.

The Defendants have all opposed the Plaintiff's claim. The 1st Defendant in its Defence alleged that the issue in dispute is a boundary one and not over ownership. Further that the Plaintiff failed to exercise his duty of due diligence while purchasing the suit property from the 2nd Defendant to ascertain the size, beacons positions and encroachments. Further the 1st Defendant denied the particulars of fraud and averred that the Plaintiff's only recourse is to ascertain the boundaries of the parties herein.

The 2nd Defendant filed her Statement of Defence and also denied all the allegations made by the Plaintiff. The 2nd Defendant admitted that she sold the suit property to the Plaintiff, and further averred that this was after the Plaintiff had done due diligence and was satisfied with what he was buying. The 2nd Defendant further averred that she sold to the Plaintiff an actual parcel of land known as **LR.No.209/12312**, and the Plaintiff took possession thereof immediately upon sale. Further that if indeed there is an issue herein actionable in law, it is between the Plaintiff and third parties, not the 2nd Defendant. It was her contention that to hold the 2nd Defendant liable in the circumstances of this case is

to demand that the 2nd Defendant be the custodian of the Plaintiff's right to property even long after property passed. Therefore the 2nd Defendant alleged that the Amended Plaint did not disclose any cause of action against her and also urged the Court to dismiss the Plaintiff's suit with costs.

The 3rd Defendant also filed its Defence on **4th June 2012**, and denied the Plaintiff's claim. Further the 3rd Defendant averred that it is the registered proprietor of the validly registered parcel of land known as **Land Reference No. 14721** being **Grant No. I.R.67961** which measures **0.1040 Hectares** or thereabouts and whose boundaries are on **Land Survey Plan Number 201890**, deposited in the Survey Recorder Office Nairobi, having purchased it for value, and has put up a building thereon and it is fully occupied and prays that its possession and occupation is not disturbed. Further the 3rd Defendant denied that it encroached on the Plaintiff's purported parcel of land thereby erasing the Plaintiff's alleged land and dispossessing the Plaintiff of his land.

It was the 3rd Defendant's contention that its sister **Company Starbright Services Limited** purchased the suit land for value and transferred the said parcel of land to the 3rd Defendant for ease of acquiring financing for construction purposes. The said purchase for value was done without notice of anything to the contrary and especially fraud or negligence as pleaded in the Amended Plaint. Therefore the 3rd Defendant urged the Court to dismiss the Plaintiff's suit with costs.

The 4th Defendant did not enter appearance nor file Defence. The Plaintiff therefore applied for **Interlocutory Judgement** against the **4th Defendant** and the same was **entered on 2nd July 2013**.

The matter commenced for *viva voce* evidence on **28th October 2013**, wherein the Plaintiff gave evidence for himself and called one more witness. The Plaintiff relied entirely on his witness statement and the bundle of documents filed on. He testified that he purchased the suit property from **Phoebe Chepchirchir Nyangweso**, the 2nd Defendant herein. It was his testimony that he was shown the suit property by the husband of the 2nd Defendant. The 2nd Defendant had even taken a loan from Barclays Bank of Kenya and charged the suit property. The loan arrears of **kshs.210,000/=** was paid from the purchase price and the charge was discharged. Thereafter the parties signed the Transfer and the suit property was registered in his name on **23rd October 2005**. It was his testimony that before the purchase, he had an opportunity to see the survey map and he saw how the whole area had been planned out. Further that the title deed had a **Deed Plan** attached to it. He also testified that he purchased the suit property for **Kshs.1.7 Million**, which he paid in full and he had intention of putting up a Godown. He produced receipts to show the expenses he incurred to the tune of **Kshs.147,046/=**.

He also testified that later the suit property was encroached by the 3rd Defendant and he complained to the Ministry of Lands as he suspected there was fraud on the part of the Ministry of Lands. He contended that his plot has now disappeared as it was swallowed by **plots no.14720** and **14721**, and the problem was caused by the negligence on the Department of Survey. To him, he was an innocent purchaser and he did what was required of him and he confirmed the land was in existence as he had done due diligence. He urged the Court to enter Judgement in his favour as prayed in the Plaint.

PW2 – Stephen Mutiso Mutuku stated that he is a property valuer. That he prepared a Valuation Report for the Plaintiff and valued the suit land at **Kshs.15 Million** which was the market value. The Valuation Report was produced as exhibit No.18.

1st Defendant's Case

The 1st Defendant called one witness; **DW1 Edwin Wafula Munoki**, who relied entirely on his witness statement that was filed on **22nd July 2013**. He confirmed that the Plaintiff is the registered owner of the land parcel known as **LR.No.209/12312**, having purchased the same from the 2nd Defendant. Further he stated that the 3rd and 4th Defendants are not registered as owners of the said parcel of land. It was his testimony that the dispute in this suit is one of boundaries and not ownership. He alleged that the Plaintiff

knows his land and he cannot purport to state that the 1st Defendant registered other people on this parcel of land. The witness also stated that the Plaintiff had a duty to identify the location of his parcel of land before purchasing the same, but the Plaintiff herein failed to ascertain the same. It was therefore his testimony that the Government does not have any land where the Plaintiff purchased his stated land to compensate him and the only recourse lies on ascertaining the boundaries of the respective parties herein. Further that since the Plaintiff purchased the suit property from the 2nd Defendant, he should seek compensation from the 2nd Defendant and not the 1st Defendant.

2nd Defendant's Case

DW2 – Phoebe Chepchichir Nyangweso testified in Court on **21st July 2014** and confirmed that she sold **LR.No.209/12312** to the Plaintiff herein. She admitted that she sold the land to the Plaintiff in **July 2008** and they entered into a **Sale Agreement** and the Plaintiff paid the full purchase price. She further testified that when she was in possession of the suit property, she had fenced it and had even taken a loan and used the title as security and there was no complaint. That before the Plaintiff purchased the suit land, her husband had shown the Plaintiff the suit land. She urged the Court to dismiss the suit against her.

DW3 – Reuben Nyangweso stated that the 2nd Defendant is his wife. That his wife sold the suit land to the Plaintiff and DW3 took the Plaintiff to the suit land and showed him the physical location of the same. He also testified that the 2nd Defendant acquired the land in **1995** and it was in fact a family land. He therefore knew where the land was and the same was fenced and beacons were present.

3rd Defendant's Case

DW4 – Ishmael Gichonge Muturi stated that he is a Director of the 3rd Defendant and he relied on his witness statement and list of documents produced therein. It was his evidence that they purchased the suit property after carrying a search and obtained a survey map. That a private Surveyor had identified the plot and the Vendor pointed out the plot to him. He was also shown the Beacons and the private surveyor re-confirmed the Beacons to him. Further that his plot was **No.14721**, and is registered in the name of the 3rd Defendant. He also testified that they have constructed on the suit property and the building is occupied by tenants. They have also charged the property to Finance Company Limited after taking a loan of **Kshs.36 Million**, which they are still paying. He denied that their plot has encroached on the Plaintiff's plot. He therefore urged the Court to dismiss the Plaintiff's case.

After the close of the *viva voce* evidence, the Court directed that a Government Surveyor do visit the disputed property and prepare a report in the presence of all the parties and the Deputy Registrar of the Court. This visit was done on **5th June 2015**, and the Government Surveyor and the Deputy Registrar of this Court prepared their respective reports.

The Surveyor, **Mr. Wilson Francis Ojunju**, produced his **Special Report** in Court on **25th May 2016**, and was cross-examined by the respective advocates. In his report, the Surveyor stated that the confusion in the Surveys of **F/R/199/56**, *visa vi* **F/R 249/49** and **F/R 266/129**, was due to two surveys carried out on plans consisting of **40 plots** and **45 plots** for the same area. Further that titles could have been issued emanating from the three surveys and this caused more confusion and therefore only the Court can cancel such titles.

Thereafter, the parties herein filed their respective written submissions which this Court has carefully read and considered. The Court has also considered the evidence in general, the exhibits herein, the cited authorities and the relevant provisions of law and it will render itself as follow:

There is no doubt that the Plaintiff herein **Antonie Kubondo Murunga** purchased the suit property **LR No.209/12312**, from the 2nd Defendant on **28th July 2008** as is evident from the Transfer document produced by the Plaintiff. This Transfer was received and registered at the Ministry of Lands on **23rd October 2008**. It is also evident that this suit property **LR.No.209/12312 IR65409**, was granted to the

2nd Defendant on **1st June 1994**, for a term of **99 years**. A Certificate of title was registered in favour of 2nd Defendant on **2nd March 1995**. So for all intents and purposes, the 2nd Defendant was the registered owner of the suit property **LR.No.209/12312** as at **2nd March 1995**. The Certificate of title is a document issued by the Ministry of Lands which is a Government Ministry. Further it is evident that there exist a **Deed Plan No.190535**, for this parcel of land that was issued on **21st October 1994**, and was signed for the Director of Surveys. This Deed Plan was prepared by one **J.O.Ogato**, a licenced Surveyor. The 1st Defendant has not disputed that such a Deed Plan was issued. This suit property was registered under the regime of **'The Registration of Titles Act Cap 281** (now repealed) and by dint of Section 23 of the said Act, then the 2nd Defendant was deemed to be the absolute and indefeasible owner of this suit property. The said Section 23 of Cap 281 (repealed) provides as follows:

“the certificate of title issued by the registrar to a purchaser of land upon transfer or transmission by the proprietor thereof shall be taken by all courts as conclusive evidence that the person named therein as the proprietor of the land is the absolute and indefeasible owner thereof subject to the encumbrances, easements, restrictions and conditions contained therein or endorsed thereon”

It is also evident that the 2nd Defendant charged the suit property to Barclays Bank of Kenya on **11th September 1995**. By charging the suit property, it is evident that the said Chargee must have visited the suit property and confirmed its existence before allowing the said Certificate of title to be used as security.

Therefore, the 2nd Defendant being the absolute and indefeasible owner of the suit property had a right to deal with her property as she wished. Consequently, she sold the suit property to the Plaintiff and the Ministry of Lands did register the said transfer in favour of the Plaintiff on **23rd October 2008**. The Plaintiff had alleged that before he purchased the suit property he visited the said property in the presence of DW3, **Reuben Nyangweso**, the husband to the 2nd Defendant and confirmed the existence of the Property on the ground. Further, by being registered as the proprietor of the suit property and issued with a Certificate of title by the Land Registrar, the Plaintiff was also deemed to be the absolute and indefeasible owner of this suit property as provided by Section 23 of Cap 281 (now repealed). The provisions of Section 23 have been imported into Section 26(1) of the Land Registration Act which provides as follows:-

“The certificate of title issued by the registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, 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***

Therefore, the Plaintiff being the absolute and indefeasible owner of the suit property had his right of ownership protected by dint of Article 40 of the Constitution of Kenya 2010. There was no evidence adduced to the effect that the Plaintiff nor 2nd Defendant had acquired this suit property illegally, unprocedurally or through fraud. Therefore the provisions of Article 40 Sub-rule 6 do not apply herein.

It is also evident that the Plaintiff's suit property though existing on the ground at the time of purchase, does not exist now as it was swallowed by creation of two other land parcels being **LR.No. 14720** and **14721**. Therefore by having the Plaintiff's land swallowed by other parcels of land which were created by an act of confusion by the Ministry of Lands and Department of Survey, then the Plaintiff was

deprived of his property. This is against the spirit of Article 40 Rule 3 which provides as follows:-

“The state shall not deprive a person of property of any description, or in any interest in, or right over property of any description, unless the deprivation:-

a) results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or

b) is for public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that:-

i. requires prompt payment in full, of just compensation to the person; and

ii. allows any person who has an interest in, or right over, that property a right of access to a court of law.

There is also no doubt that the 3rd Defendant herein ***Starbright Properties Limited***, through its sister Company ***Starbright Services Limited*** is the registered proprietor of ***LR.No.14721 IR 67961*** which was registered in its name on ***22nd February 2008***. ***DW4-Ishmael Gichonge Muturi***, had alleged in his testimony in court that ***Starbright Services Limited*** had purchased this property from ***Jonathan Ayodi Ligure*** in the ***year 2008***. It is indeed evident that ***Jonathan Ayodi Ligure*** was granted the suit property herein on ***1st July 1994***, for a ***term of 99 years***. A Certificate of title was issued in favour of the said ***Jonathan Ayodi Ligure*** on ***21st December 1995***. Since the suit property was registered under Cap 281 (now repealed), by dint of Section 23 of the said ***Registration of Titles Act***, the said ***Jonathan Ayodi Ligure*** became the absolute and indefeasible owner of the suit property. As an absolute owner, the said proprietor had a right to deal with the said property as he wished. Consequently, he charged the suit property twice.

The Certificate of title was issued by the Ministry of Lands and that is after the survey work had been done. It is also evident that the said ***Jonathan Ayodi Ligure***, sold the suit property to the ***Starbright Services Limited***, who were registered as a proprietor on ***22nd February 2008***. Therefore as a registered proprietor, the said ***Starbright Services Limited*** became the absolute and indefeasible owner of the suit property. There was no evidence at all that the 3rd Defendant herein obtained the said registration through fraud or irregularity. Their registration was effected by the Ministry of Lands and therefore by dint of Section 23 of Cap 281 (now repealed) and later Section 26(1) of the Land Registration Act, the 3rd Defendant is the absolute and indefeasible owner of the property known as ***LR.No.14721***.

The 3rd Defendant as the absolute proprietor has its rights protected under Section 24 and 25 of the Land Registration Act. As provided by Section 25 of the Land Registration Act, this right can only be defeated by operation of law. Further Article 40 Rule 3 of the Constitution protect the 3rd Defendant from being deprived of his property. It is also not in doubt that the 3rd Defendant had built on the stated ***LR.No.14721*** and even leased it out to third parties as is evident from the ***Lease Agreement*** between 3rd Defendant and Logistics Link Limited entered on 1st January 2012.

Further, the 3rd Defendant has charged this property to ***Business Partners International Kenya SME Fund***. It was also evident from the Report of the ***Government Surveyor, Wilson Ojunju***, that the creation of parcels of land varying from ***14707 – 14746***, caused confusion on the ground. Out of that confusion, the Plaintiff's parcel of land ***LR.No.209/12312***, was swallowed by the 3rd and 4th Defendants parcels of land being ***LR.No.14720*** and ***14721***. It was also the evidence of the said Surveyor that the confusion was caused by commissioning of three surveys of the area by the Commissioner of Lands. The first survey was the ***survey plan No.F/R/199/56***, which was authenticated on ***12th September 1990***, and out of this 40 plots were created and given reference numbers from ***14707 – 14746***.

The second survey was under **survey plan No.F/R 2461/49**, which was authenticated on **21st July 1994**. This survey was done with the instructions of Commissioner of Lands and it was undertaken without cancelling the first survey plan. This 2nd survey created **45 plots** and the suit property was created out of this second survey. He testified that the Plaintiff's plot fall under the second survey and its boundaries overlapped the two parcels owned by the 3rd and 4th Defendant. This confusion and problem was therefore created by the Ministry of Lands.

The Surveyor further testified that a third survey was authenticated on **21st October 1994**, and it was **survey plan No.F/R 266/129**, and it covered the same area therefore causing more confusion.

It is therefore evident that though the Plaintiff has a Certificate of title issued by the Government and which has not been cancelled, his stated land does not exist on the ground as it overlapped the boundaries of the earlier created parcels of land and thus swallowed. The present situation was caused by the negligence on the part of the Ministry of Lands and thus the Government.

Though the Plaintiff has in his possession a Certificate of title and he is deemed to be the absolute and indefeasible owner of the said property, he cannot enjoy the rights of an absolute proprietor as provided by Section 24 and 25 of the Land Registration Act. The situation that the Plaintiff finds himself in is not through the actions, commission or omissions of either the Plaintiff, 2nd Defendant, 3rd or 4th Defendants. It is through the negligence act of the Ministry of Lands who is an agent of the 1st Defendant. The blame herein falls squarely on the feet of the 1st Defendant.

From the above analysis of facts, the Court finds that the issue for determination is whether the Plaintiff herein is entitled to the orders sought.

It is evident that the Plaintiff has a valid Certificate of title validly issued by the Government. However, **he has no land** to attach to the said title because **his land was literally swallowed or was overlapped** by two other parcels of land being **LR.No.14720 and 14721** which parcels of land are owned by the 3rd and 4th Defendants herein.

It is evident that the survey plan that produced land parcels numbers **14707 to 14746** was the first one to be authenticated. Then it should be the one to prevail. In the case of **Gitwany Investment Limited-Vs-Tajmal Limited & 3 others, Nairobi HCCC No.1114 of 2002(2006) eKLR**, the Court held that:-

"...like equity keeps teaching us, the first in time prevails so that in the event such as this one where by mistake that is admitted, the Commissioner of Lands issues two titles in respect of the same parcel of land, then if both are apparently and on the face of them issued regularly and procedurally without fraud save for the mistake, then the first in time must prevail. It must prevail because without cancellation of the original title, it retains its sanctity".

Equally, the Court finds that the Plaintiff and the 3rd and 4th Defendants have Certificates of titles which were regularly issued by the Commissioner of Lands. However, the process that led to the issuance of the Plaintiff's title was a mistake as it was done out of the negligence act of the Commissioner of Lands. Therefore the Court finds that the **title deeds** that were **issued out of the first survey plan** authenticated on **12th September 1990 must prevail**.

Having found that the process that led to the issuance of the **title held by Plaintiff was irregular**, the Court finds that it has no option but to **annul that process and cancel the title deed** held by the Plaintiff herein.

Section 80 of the Land Registration Act grants the Court power to rectify the register. It provides as follows:-

"Subject to Section 2, the Court may order the rectification of the register by directing that any

registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.”

Considering the above provisions of law, the Court proceeds to annul the title held by the Plaintiff herein by ordering that the registration that led to issuance of that title be cancelled.

Having now ordered that the register be rectified by cancellation of the Plaintiff’s title, the Court finds that the mistake herein were not occasioned by the Plaintiff nor the 2nd Defendant. The Plaintiff has suffered due to the said mistake. As provided by Section 81(1) of the Land Registration Act, the Plaintiff is entitled to indemnity. This Section provides:-

81.(1) Subject to the provisions of this Act and of any written law relating to the Limitation of Actions, any person suffering damage by reason of:-

- a) any rectification of the register under this Act, or***
- b) any error in a copy of or extract from the register or in a copy of or extract from any document or plan certified under this Act shall be entitled to indemnity.***

Having found that the Plaintiff is entitled to indemnity, the Court also Takes into account the provision of Section 82 of the Land Registration Act on the amount of indemnity to be paid out. This Section provides as follows:-

82. An indemnity awarded in respect of the loss of any interest in land, shall not exceed:-

- a) the value of the interest at the time when the mistake or omission which caused the damage was made, if the register is not rectified, or***
- b) the value of the interest immediately before the time of rectification, if the register is rectified.***

The Plaintiff herein has attached a Valuation Report which was prepared in the **year 2013**. The Valuer explained how he arrived at the market value of **Kshs.15,000,000/=**. Taking into account the purpose for the purchase of the suit property and that the intention of the Plaintiff was to utilize the said property as a godown and he has not achieved the same, and taking into account the provisions of Section 82(b) of the Land Registration Act which provides that:-

“...the value of the interest immediately before the time of rectification. If the register is rectified”.

then the Court finds that the Plaintiff is entitled to the payment of indemnity as per his valuation report..

The Court has ordered that the Plaintiff’s title over **LR.No.209/12312**, be cancelled and register rectified accordingly. Therefore the Court finds that the value of **Kshs.15,000,000/=** is sufficient indemnity for the Plaintiff for the loss and damages incurred by him. The 1st Defendant alleged that it had no land to allocate to the Plaintiff at that particular area. The Court indeed finds and holds that position as viable and believe that indeed 1st Defendant has no alternative land to give to the Plaintiff. The Court therefore finds that the Plaintiff is entitled to indemnity at the prevailing market value. In the case of **Munyu Maina..Vs..Hiram Gathiha Maina,Civil Appeal No.239 of 2009**, the Court held that:-

“Where the Court finds that due process was followed before the titles were issued, the Government may be compelled to indemnify the affected party for any loss that he may have suffered.”

The affected party herein is the Plaintiff and therefore the Government must be compelled to indemnify him.

Having found that the culpable party herein is the 1st Defendant, the Court finds that no orders should attach to the other Defendants.

Consequently, the Court finds that the ***Plaintiff has proved his case on a balance of probabilities*** against the 1st Defendant herein and ***is entitled to orders sought***. For the above reasons, the Court ***enters Judgement for the Plaintiff against the 1st Defendant only for payment of:-***

i. Indemnity in the tune of Kshs.15,000,000/= as provided for in the Valuation Report produced in Court by PW2 being the prevailing market value.

ii. General damages of Kshs.2,000,000/=.

iii. Special damages of Kshs.147,046/= as the same was specifically proved through production of receipts.

iv. Costs of the suit and interest therein.

Further, the ***Plaintiff's claim against*** the other Defendants – ***2nd, 3rd & 4th Defendants*** is ***hereby dismissed with no orders as to costs.***

It is so ordered.

Dated, Signed and Delivered this **27th** day of **September, 2017**.

L. GACHERU

JUDGE

In the presence of

Mr. Gioche holding brief for Mr. Ombete for Plaintiff

No appearance for 1st Defendant

Mr. Gioche holding brief for P. K. Kamau for 2nd Defendant

M/S Kalama holding brief for Mr. Oloo for 3rd Defendant

No appearance for 4th Defendant

Lucy - Court clerk.

L. GACHERU

JUDGE

27/9/2017

Court – Judgement read in open court in the presence of above stated advocates and absence of the Representatives from the Office of Attorney General for the 1st Defendant though date was taken in open court.

L. GACHERU

JUDGE

27/9/2017