



REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT OF KENYA

AT MILIMANI

ELC CASE NO. 175 OF 2015

ASTER HOLDINGS LIMITED.....PLAINTIFF

=VERSUS=

THE CITY COUNCIL OF NAIROBI.....1ST DEFENDANT

THE COMMISSIONER OF LANDS.....2ND DEFENDANT

THE REGISTRAR OF TITLES.....3RD DEFENDANT

THE ATTORNEY GENERAL.....4TH DEFENDANT

CAROGET INVESTMENT LIMITED.....5TH DEFENDANT

JUDGEMENT

1. By an amended Plaint filed in Court on 25th November 2010, the Plaintiff sought the following reliefs:-

a) A declaration that the Plaintiff is the sole and lawfully registered proprietor of Land Reference Number 1870/V/6 (the suit property) by reason of it being part of LR No.1870/V/247 (the amalgamated property) over which the plaintiff has sole and valid title.

b) A declaration that the allotment of the suit property to the First Defendant on 11th April 2007 by the Commissioner of Land was unlawful, irregular and void ab initio.

c) A declaration that Grant I.R. Number 105610 (the Second Grant) issued to the First Defendant by the Third defendant on 25th April 2007 was fraudulent, unlawful, irregular and void ab initio and is otherwise a double allocation of a property already alienated to the Plaintiff.

d) A declaration that the lease dated 4th May 2007 made between the First Defendant and the Fifth Defendant in respect of Land Reference Number 1780/V/6 was irregular, unlawful and void ab initio.

e) An order directing the Third Defendant to rectify the relevant registers and documents accordingly and cancel the second Grant and the lease issued to the First Defendant and the Fifth defendant respectively.

f) A declaration that the Fifth Defendant unlawfully and illegally occupied and took possession of the suit property and that these acts amount to trespass and that the plaintiff is entitled to the sole possession thereof.

g) General damages on account of the Fifth Defendant's acts of trespass to the suit property be awarded.

h) An order directing the First and Fifth Defendant to deliver vacant possession of the suit property to the Plaintiff forthwith.

i) Costs and interests of the suit.

PLAINTIFF'S CASE

2. By two indentures dated 17th August 1993 and registered on 30th August 1993, the Plaintiff purchased two properties known as LR No.1870/V/6 and LR No.1870/V/3/1 from Nairobi Housing Development Limited for Kshs.6500,000/=and Kshs.4,500,000/= respectively. Prior to the purchase of the two properties, an application for change of user had been made. The change of user from residential to residential Hotel and apartment had been approved on certain conditions one of which was that the two properties were to be amalgamated.

3. Upon purchase of the two properties, the plaintiff pursued the issue of amalgamation which was finally granted. The two properties were amalgamated and new title being LR No. 1870/V/247 was issued to the Plaintiff in 1999. The initial lease period for the amalgamated title was 50 years. The Plaintiff applied for extension of lease in 2001. The extension was approved and the Plaintiff was granted lease of 99 years with effect from 1st July 2001.

4. In or around August 2007 the Fifth Defendant forcefully invaded part of the amalgamated property which before amalgamation was known as LR No. 1870/V/6 (suit property). The Plaintiff involved the police to assist remove the invader in vain. The Plaintiff reported the invasion to the Criminal Investigation Department. In the course of investigations, it emerged that the First Defendant had written a letter to the Commissioner of Lands claiming that the suit property belonged to it and that it had set it aside for the Fifth Defendant which was unable to develop it because the First Defendant did not have title documents. The First Defendant then requested the Second Defendant to process title documents in its favour. The Second Defendant proceeded to allot the suit property to the First Defendant which in turn transferred the leasehold interest to the Fifth Defendant.

5. The First Defendant later wrote to the Second Defendant stating that it had discovered that the deed plan which the Fifth Defendant used to acquire title to the suit property was fake. Based on this information, the Third Defendant cancelled the registration of the Fifth Defendant's title. The Fifth Defendant filed a judicial review application vide miscellaneous civil application No.30 of 2009 seeking to quash the decision of the Third Defendant. The application was allowed with the result that the decision of the Third Defendant to cancel the Fifth Defendant's title was quashed and an order made that the records be restored to reflect the Fifth Defendant as registered owner of the suit property and a provisional title issued to the Fifth Defendant. The Court's orders were complied with and this means that the plaintiff is in possession of title in respect of the amalgamated properties whereas the other records show that the Fifth Defendant is the owner of the suit property. This is what prompted the plaintiff to file this suit.

FIRST DEFENDANT'S CASE.

6. In a defence filed in Court on 17th January 2011, the First Defendant contended that it purchased the suit property for value and that it became the owner of the same. However, in the evidence before court presented by the Chief Valuer Mr Isaac Nyoike, the witness stated that he was sked by the Director to Legal Services of the First Defendant to go through its records and establish the position of the suit property. He perused through the records and established that the suit property had been amalgamated

with another property which became LR No. 1870/V/247. Change of user had been applied for and granted. He stated that he did not understand why the First Defendant was again claiming to own the suit property and why the Second Defendant issued a grant to the First Defendant which then leased it to the Fifth Defendant.

SECOND, THIRD AND FOURTH DEFENDANT'S CASE.

7. The Second, Third and Fourth Defendants stated their case through Priscilla Njeri Wango a Land Surveyor working with the Ministry of Land and Physical Planning Department of Survey and Edwin Munoko Wafula a Registrar of Titles. Priscilla Njeri Wango testified that LR No. 1870/V/6 and 1870/V/3/1 were two distinct parcels bordering each other. The two were later amalgamated under deed plan number 228330. The Plaintiff applied for extension of lease which extension was granted and a new deed plan number 234323 was issued.

8. Edwin Munoko Wafula gave a history of the amalgamated properties which had been private properties since 1946. He stated that the amalgamated properties were two distinct properties. The owner applied for amalgamation of the two properties which was granted. Upon the amalgamation, the two properties ceased to exist independently and a new title being LR No. 1870/V/247 was created in the name of the Plaintiff. The Plaintiff sought for extension of the lease period which was duly granted under a new deed plan number 234323.

9. On 19th December 2006, the Director of Legal Affairs of the First Defendant wrote a letter indicating that it was the owner of the suit property. A lease was subsequently issued in the name of the First Defendant. On 4th June 2007, the Director of Legal Affairs of the First Defendant wrote to the Second Defendant stating that Deed Plan No.228330 for grant IR 105610/1 was fake and advised that the title arising therefrom should be revoked. When this letter was received by the Principal Registrar of titles, the Principal Registrar directed that the title be revoked. The title in respect of the suit property was subsequently cancelled.

10. It is the Second, Third and Fourth Defendants' case that the suit property was not available for allocation to the First Defendant who leased it to the Fifth Defendant as the same was property of the plaintiff. The Fifth Defendant's attempt to transfer the suit property to White Horse Investment Limited could not succeed as the suit property ceased to exist independently upon amalgamation. Stamp Duty of Kshs.8,000,000/= which had been paid by for the aborted transfer was approved for refund to the payer.

FIFTH DEFENDANT'S CASE.

11. The Fifth Defendant stated its case through its director Hon. William Kabogo Gitau who stated that he applied for allocation of the suit property in 2007 from the First Defendant. His application was accepted by the First Defendant which granted him a lease for 99 years. The Fifth Defendant wanted to sell the suit property to White Horse Investments Limited but the transfer could not be registered. The original title documents to suit property were confiscated and shredded. The title in favour of the Fifth Defendant was cancelled forcing the Fifth Defendant to move to the High Court for Judicial Review. The High Court quashed the Third Defendant's decision to cancel the Fifth Defendants' title and ordered that a provisional title be issued to the Fifth Defendant and the entries which had been cancelled be restored. This was done and a provisional title was issued to the Fifth Defendant.

12. It is the Fifth Defendant's contention that there was no amalgamation of the suit property with any other property and that the suit property remains the property of the Fifth Defendant which has been in possession of the same since 2007. That the suit property is about 5 acres and is valued at 1.8 billion shillings.

ANALYSIS OF EVIDENCE AND ISSUES FOR DETERMINATION.

13. I have gone through the evidence adduced by the plaintiff and the Defendants in this case as well as the submissions filed by all the parties. The issues which emerge for determination are as follows:-

a. Whether the Plaintiff's suit is statute barred.

b. whether the plaintiff lawfully acquired title LR No. 1870/V/247

c. Whether the First Defendant lawfully acquired title to the suit property capable of being passed to the Fifth Defendant.

d. Whether the remedies sought are available

e. Who should bear the costs of the suit.

Whether the Plaintiff's suit is statute barred .

14. The Fifth Defendant contends that the plaintiff's claim of fraud levelled against the First to Fourth Defendants was not brought within one year of accrual of the cause of action and is therefore barred by Section 3 of the Public Authorities Limitation Act Cap 39 Laws of Kenya and Section 26 of the Government Proceedings Act Cap 40 Laws of Kenya. The Fifth Defendant also contends that claims of fraud against it are statute barred because the plaintiff did not bring its claim against it within three years from the date of accrual of the cause of action contrary to Section 136(1) of the Government Lands Act, Cap 280 Laws of Kenya and Section 4 of the Limitation of Actions Act Cap 22 Laws of Kenya.

15. All the above issues on Limitation were raised as preliminary points of law by the Fifth Defendant and were decided upon by Justice Mwilu as she then was in a Ruling delivered on 26th September 2011. There was no appeal preferred against the ruling of the Court and the same issues cannot be raised herein on the ground that those were preliminary issues determined before evidence had been adduced. I will therefore not revisit an issue which had been determined and from which no appeal was preferred by the Fifth Defendant.

Whether the plaintiff lawfully acquired title LR No. 1870/V/247.

16. There is evidence that the plaintiff purchased LR No. 1870/V/6 and LR No. 1870/V/3/1 from Nairobi Housing Development Limited. The two properties were conveyed through indentures dated 17th August 1993 and registered on 30th August 1993. Prior to the purchase of these two properties, an application for change of user from residential to residential Hotel and apartments had been made and approval given vide letter dated 14th July 1988. The change of user was approved subject to among other conditions amalgamation of the two properties.

17. The two properties were amalgamated and one title that is LR No. 1870/V/247 issued. The Plaintiff later applied for extension of lease which extension was approved. As a condition for the extended lease, the plaintiff was expected to surrender the old grant for issuance of a new one. This was done by a deed of surrender dated 2nd August 2001 and registered on 13th August 2001. A new grant being I.R number 86672 dated 2nd August 2001 was issued as I.R No. 86672/1 with a new deed plan No. 234323 for the amalgamated property. The process was confirmed by Edwin Wafula Munoko a Registrar of Titles and Priscilla Njeri Wango from the survey Department.

18. The Fifth Defendant's claim that the documents relied upon by the Plaintiff were backdated has no basis. The plaintiff's acquisition of the two properties which were later amalgamated was lawful. If there was any anomaly in the manner in which the properties were transferred as conceded by the Registrar of Titles in the 70's, that anomaly cannot be attributed to the plaintiff who had not acquired the two properties by then. I find that the two properties were lawfully acquired by the plaintiff and subsequently lawfully amalgamated into what is now known as LR No. 1870/V/247.

Whether the First Defendant lawfully acquired title to the suit property capable of being passed to the Fifth Defendant.

19. The Fifth Defendant is claiming the suit property on the strength of transfer of the same from the First Defendant for valuable consideration. It is important to note that the suit property was not available for allocation to the First Defendant. The suit property had already been purchase by the plaintiff and the same had already been amalgamated with another property.

20. The scheme to have the suit property given to the Fifth Defendant began in or around 2006. In a letter dated 19th December 2006, the Director of Legal Affairs of the First Defendant wrote to the Commissioner of Lands claiming that the First Defendant owned the suit property and that it had not been registered in its name. In the same letter, the First Defendant indicated that it had committed the suit property to the Fifth Defendant for residential development but that the Fifth Defendant was unable to develop it because there was no title. The First Defendant asked that title be given to it. The Commissioner of Lands allocated the suit property to the first defendant who leased it to the Fifth Defendant for 99 years.

21. The Fifth Defendant's director in his evidence claimed that he applied for the suit property in 2007. This was not the case because the letter of 19th December 2006 shows that the Fifth Defendant was aware of the suit property before 2007. The First Defendant transferred the suit property to the Fifth Defendant on 11th May 2007. The Fifth Defendant soon thereafter took possession of the suit property after chasing away the guards of the plaintiff. When the plaintiff lodged a complaint with the CID and Kenya Anti-Corruption Commission, the First Defendant wrote a letter dated 4th June 2007 advising the Commissioner of Lands that it had discovered that the deed plan which the Fifth Defendant used in respect of the suit property was fake. The First Defendant recommended that the title should be revoked.

22. The First Defendant is the one which obtained allocation of the suit property which was registered in its name before the same was transferred to the Fifth Defendant. The First Defendant has since disowned that title and recommended for its revocation. Though the First Defendant has been pretending to be innocent in the whole scheme, it has not come out clearly on the position it has taken in the matter. In its defence the First Defendant claims to own the suit property which it purchased for valuable consideration. In its evidence in court, it completely changed the story and indicated that the suit property belonged to the Plaintiff. In High Court Miscellaneous Civil Application No. 30 of 2009 one of its officers swore an affidavit which supported the claim by the Fifth Defendant who had applied for Judicial Review. In its submissions, the Fifth Defendant claims that it was under a mistaken belief that the suit property belonged to it and that this mistaken belief was fuelled by the issuance of title to it by the commissioner of Lands.

23. The First Defendant is trying to feign ignorance of what was going on. The letter of 19th December 2006 is clear that the First Defendant and Fifth Defendant had hatched a fraudulent scheme to have the suit property taken by the fifth defendant. The deed plan which the Fifth Defendant presented was forged. Priscilla Njeri wango pointed out that in the deed plan presented by the Fifth Defendant, the acreage was shown as 2.105 hectares whereas the one which had been given for the amalgamated properties had an acreage of 3.069 hectares.

24. The parcel file for the suit property was at all material times indexed as file no. 34027 and all transactions pertaining to the suit property before and after amalgamation referred to file no. 34027. When the scheme to take the suit property started, this file went missing. A temporary file no. 34067 was opened and all correspondences were now being done in file no. 34067. This is typical of schemes to illegally acquire properties which are already registered in other person's names.

25. Despite the First Defendant recommending for revocation of title in respect of the suit property, the successor of the First Defendant still went on to receive rates from the Fifth Defendant in respect of the suit property. Receipts were being issued even on Sunday when the offices are not ordinarily open. An example is a receipt issued on 4th March 2017 which was on a Sunday. There was no explanation given why the County Government issued a receipt on a Sunday.

26. A temporary file was opened by the Commissioner of Lands. This file is file No. 259341. This was opened because the original file No. 34025 had gone missing. The missing file would have aroused the

suspicion of the Commissioner of lands that all was not right but it appears that the Commissioner turned a blind eye to this. The commissioner of Lands only acted when the fraudulent scheme was uncovered following investigations.

27. Section 26 (1) of the Land Registration Act of 2012 provides as follows:-

“The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon 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.

28. It is clear that even before the suit property was purportedly allocated to the First Defendant, the same had been committed to the Fifth Defendant. When the first defendant was registered as owner of the suit property, it transferred it to the Fifth Defendant. When the fraud was uncovered, the First Defendant recommended that the title be revoked which was actually done. The title was later restored to the Fifth Defendant after an application for Judicial Review. The title was not restored because the suit property legally belonged to the Fifth Defendant but because the Fifth Defendant was not given an opportunity before the cancellation. It is therefore clear that the First Defendant had no good title capable of being passed to the Fifth Defendant.

29. The Fifth Defendant in its submissions claim that the plaintiff did not prove that the deed plan it presented was forged as alleged. There is evidence that deed plan No. 228330 which had been presented by the Fifth Defendant was similar to the one which the plaintiff presented on amalgamation of the suit property, except that the deed plan presented by the Fifth Defendant had an acreage of 2.105 hectares whereas that presented by the plaintiff was 3.069 hectares yet the two bore the same dates but part of amalgamated property had been hived off. Though the person who prepared the two deed plans was neither called as a witness nor his signature subjected to forensic examination, the difference in acreage was enough to make a finding that the one presented by the Fifth Defendant was a forgery. This is because the suit property had been amalgamated with another one and one deed plan was prepared indicating that the acreage of the amalgamated property was 3.069 hectares. The Fifth Defendant's deed plan showing that the suit property was 2.105 hectares was therefore a forgery`.

30. The standard of proof in cases where fraud is alleged is above balance of probabilities but not beyond reasonable doubt. Expecting the plaintiff to have called forensic evidence in the face of this clear evidence of fraud was to require the plaintiff to prove its case beyond reasonable doubt which is not the standard of proof for civil cases where fraud is alleged. Furthermore the First Defendant who transferred the suit property to the Fifth Defendant had owned up that the suit property which it transferred to the Fifth Defendant was not its property. The Fifth Defendant cannot therefore maintain that it has good title which it obtained from the First Defendant.

31. The Fifth Defendant has in its submissions argued that the First Defendant should not be allowed to approbate and reprobate. This is because the first defendant in its defence claimed that it owned the suit land. That in miscellaneous civil application No. 30 of 2009, the First Defendant was in support of the Fifth Defendant's case and that during the hearing of this case, the First Defendant changed positions and supported the plaintiffs' case. What the First Defendant was trying to do was to defend what was indefensible. The First Defendant was trying to extricate itself from the mess which it entered into by purporting to claim ownership of a property which it never owned. This only shows that the First Defendant was dishonest in its pleadings and they cannot be forced to stand with a position which they cannot defend. To this extent, the case of **Fursys (K) Ltd Vs Southern Credit Banking Corporation Limited (2015) eKLR** cited by the Fifth Defendant is of no assistance to the Fifth Defendant's case.

32. The Fifth Defendant in its submissions argued that there were negotiations which were going on with a view to settling the case out of Court. The Fifth Defendant therefore argues that there would have been no such negotiations if the Fifth Defendant did not have any interest in the suit property. I have looked at the correspondence touching on the said negotiations. These negotiations were done on a “**without prejudice**” basis. Evidence of such negotiations cannot be brought in evidence. The correspondence would have been admitted if the same resulted in an agreement. This was not the case as the negotiations broke down as confirmed in the letter dated 15th May 2014 by the Fifth Defendant’s Advocates. Negotiations on a “**without prejudice**” basis ought to be protected as they help in disposal of claims without having to resort to litigation. Where such negotiations do not culminate in an agreement, no party can be allowed to rely on the correspondence in evidence. The Fifth Defendant cannot therefore be heard to base its claim on these negotiations which were on “**without prejudice**” basis.

33. From the evidence adduced herein and the documents produced in this case, it is clear that the title by the First Defendant which was subsequently transferred to the Fifth Defendant was obtained illegally, unprocedurally and through a corrupt scheme. I have demonstrated herein above that the Fifth Defendant was part of this illegal scheme from the beginning. The title to the suit property had ceased to exist as an independent title upon amalgamation. The action of resurrecting the title to the suit property was therefore illegal and this was done fraudulently. The Fifth Defendant’s claim that the plaintiff’s documents were backdated have no basis. The suit property was not available for allocation to the First Defendant and subsequent transfer to the Fifth Defendant.

34. The position in law is that once land has been allotted to an individual or an entity, that land is no longer available for alienation to a third party. What happened in this case was not a case of double allocation. What happened was actually an illegal allocation of a property which had already been alienated. In the case of **Benja properties Limited Vs H.H Dr Syedna Mohammed Burhannudin Sahed & 4 others (2015) eKLR** the Court of Appeal judges had this to say:-

“...we hasten to add that the issue in this case is not a question of double allotment of land. Double allotment occurs when a specific un-alienated government land is allotted to two different persons. In this case, there is no un-alienated government land to be allotted. What we have is a purported allotment of private property land that is neither government land nor un-alienated government land”.

35. The suit property’s history is that it had been in private ownership since 1946. It ceased to be government land and was therefore not available for alienation by the Commissioner of Lands. The suit property never reverted back to the government as to be available for re-allocation. There is an unbroken chain of private ownership of the suit property since 1946.

36. The Fifth Defendant entered the suit property in August 2007. It has remained in the suit property since then. Despite the First Defendant disowning the title which it transferred to the Fifth Defendant, the Fifth Defendant has adamantly remained in possession of the suit property. In submissions by the Fifth Defendant, the Fifth Defendant contends that the plaintiff had never occupied the suit property since it allegedly bought it and that it has remained undeveloped since that time. Contrary to the claim by the Fifth Defendant, the plaintiff’s director Mr Nayan Patel testified that when they took over the two properties which they had purchased, there were some houses and tenants on the properties. They agreed with tenants who were occupying the houses to move out. The houses were then demolished in preparation for development as per the approved change of user. The plaintiff had its guards which were guarding the property. These guards were chased away by the Fifth Defendant who forcefully invaded the suit property. The Fifth Defendant claims that no criminal charges were brought against the company or its directors. There is evidence that the plaintiff complained about the forceful invasion of its property but the police were unwilling to help. It is these same police who refused to assist who investigated the matter and found that there was forgery of the deed plan. They are the same officers who did not see any need for criminal prosecution instead advising the plaintiff to pursue civil remedies.

37. The plaintiff was desperate to have its property to an extent of trying to buy off the Fifth Defendant who had invaded its property based on fake documentation. For over ten years now, the Plaintiff has been

kept off its property. As Lord Denning said in the case of **Lazarus Estates Limited Vs Beasley (1956) 1 ALL ER 341 AT 193**, No court in this land will allow a person to keep an advantage which he has obtained by fraud. I echo the words of Lord Denning and say that the Fifth Defendant should not be allowed to keep what it illegally acquired.

38. The Fifth Defendant undertook a valuation of the suit property on 17th June 2013 through Amazon Valuers limited. The suit property then was valued at Kshs.1,800,000,000/=. As the plaintiff has been kept off its property for over 10 years, it is entitled to general damages. Over four years have passed since the valuation was done. The property may well now be over that amount. The suit property is at Westlands area off Waiyaki way. This is a prime area within the City of Nairobi. In the case of **Park Tower Vs Moses Chege & others HC Civil suit No. 1825 of 1999 (2014) eKLR** Justice Mutungi held as follows:-

“I agree with the learned judges that where trespass is proved a party needs not prove that he has suffered any specific damage or loss to be awarded damages. The court in such circumstances is under a duty to assess the damages awardable depending on the unique facts and circumstances of each case. As observed on the cases referred to there is no mathematical or scientific formula in such cases for assessment of general damages. However, in the cases before me, I consider that the suit properties are sizeable parcels sitting on nearly three quarters of an acre of land located in the central Business District. This is prime property in the city centre and any unlawful act of aggression and/or intrusion that prevents the rightful owner of the property from enjoyment of his ownership rights of possession and use is to be frowned at and is punishable by way of an award of damages”.

39. The suit property is 2.105 hectares which is about 5.2015 acres. The property is in Westlands area which is 4.8 kilometres from the city centre. The property is off Mvuli Road in Westlands and is surrounded by upmarket residential neighbourhood with executive apartments and maisonettes according to the valuation report. I have considered the fact that since 1993 when the Plaintiff had acquired the suit property, there is no development which had been undertaken for 14 years until the suit property was invaded in 2007. This however does not mean that the property would have remained undeveloped until now. Considering the location and value of the suit property I assess general damages in the sum of Kshs.100,000,000/=.

CONCLUSION

40. In conclusion, I find that the plaintiff has proved its case on a balance of probabilities. I enter Judgement in favour of the Plaintiff against the Defendants in the following terms:-

a. A declaration is hereby given that the plaintiff is the sole and lawfully registered proprietor of the suit property (LR No. 1870/V/6) by reason of it being part of LR No.1870/V/247 over which the plaintiff has sole and valid title.

b. A declaration is hereby given that the allotment of the suit property to the First Defendant on 11th April 2007 by the Commissioner of Lands was unlawful, irregular and void ab initio.

c. A declaration is hereby given that the Grant I.R number 105610 issued to the First Defendant by the Third Defendant on 25th April 2007 was fraudulent, unlawful, and irregular and void ab initio.

d. A declaration is hereby given that the lease dated 4th May 2007 made between the First Defendant and the Fifth Defendant in respect of land reference number 1870/V/6 was irregular, unlawful and void ab initio.

e. An order is hereby given directing the third defendant to rectify the relevant register and documents accordingly and cancel the second grant and the lease issued to the First Defendant and the Fifth Defendant respectively.

f. A declaration is hereby given that the Fifth Defendant unlawfully and illegally occupied and took possession of the suit property and that these acts amount to trespass and that the plaintiff is entitled to the sole possession thereof.

g. An award of Kshs.100,000,000/= general damages to be paid by the Fifth Defendant.

h. An order is hereby given directing the First and Fifth Defendants to deliver vacant possession of the suit property to the plaintiff forthwith.

i. A permanent injunction is hereby issued restraining the First and Fifth Defendants whether by themselves, their agents, employees and/or servants from charging, selling, leasing, transferring, alienating or purporting to do the same and/or dealing in any manner howsoever with Grant number 105610 or the suit property.

j. A permanent injunction is hereby issued restraining the Second and Third Defendants from accepting, acting upon or effecting any sale, lease, charge transfer or alienation and/or dealing in any manner howsoever with the suit property.

k. Costs of this suit to be borne by the First and Fifth Defendants.

Dated, Signed and delivered at **Nairobi** on this **31st** day of **October, 2017**.

E.O.OBAGA

JUDGE

In the presence of;-

Mr Cohen for Plaintiff

Mr Mudanyi for Mr Havi for 5th defendant

Court Assistant: Hilda

E.O.OBAGA

JUDGE