



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC SUIT NO. 667 OF 1996

SAMUEL NGANDU WAWERU

T/A NGANDU BEE KEEPING FARMING INDUSTRY..... PLAINTIFF

VERSUS

ABUJAR INVESTMENT LIMITED.....1ST DEFENDANT

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

HALAIKI LIMITED.....3RD DEFENDANT

JUDGMENT

Through further amended plaint dated 19th April, 2004, the Plaintiff sought the following reliefs against the Defendants jointly and severally;

(i) A permanent injunction to restrain the Defendants from trespassing into and/or interfering with the quiet possession and enjoyment by the Plaintiff of all that parcel of land situated at Thika Municipality known as L.R No. 4953/2805 (formerly un-surveyed industrial plot) (hereinafter referred to as “the suit property”).

(ii) A declaration that the Plaintiff is the rightful owner of the suit property.

(iii) Revocation and cancelation of a letter of allotment dated 21st July, 1995 and Grant No. I.R 666521 dated 23rd August, 1995.

(iv) General and special damages.

The Plaintiff averred that through a letter of allotment dated 14th May, 1982, the 2nd Defendant allocated to the Plaintiff the suit property on terms and conditions which were set out in the said letter. The Plaintiff took possession of the suit property and developed the same. The Plaintiff thereafter paid to the 2nd Defendant stand premium and other charges which were set out in the said letter of allotment. In July, 1995, the 2nd Defendant purported to withdraw the said allotment without notice and to re-allocate the suit property to the 1st Defendant. The 1st Defendant subsequently transferred the suit property to the 3rd Defendant on 20th December, 1995 at a consideration of Kshs. 6,500,000/-.

The Plaintiff averred that the allotment of the suit property by the 2nd Defendant to the 1st Defendant was illegal and fraudulent. The Plaintiff averred further that the subsequent transfer of the suit property by the

1st Defendant to the 3rd Defendant was similarly fraudulent and was aimed at defeating the Plaintiff's interest in the property. The Plaintiff averred that the 1st Defendant did not have a good title to the property that it could pass to the 3rd Defendant. The Plaintiff averred that the suit property was not transferred to the 3rd defendant in good faith. The Plaintiff averred that from November, 1995 the Defendants through their agents and/or servants with intent to forcibly evict the Plaintiff from the suit property have unlawfully entered the suit property from time to time and caused extensive damage and loss to the Plaintiff thereby interfering with the Plaintiff's quiet possession of the property.

The Plaintiff averred that the 2nd defendant subsequently realized the alleged fraudulent acts referred to above and asked the 1st Defendant to surrender the title for the suit property for cancellation. The Plaintiff averred that he was at all material times the owner of the suit property and was in occupation of the same. The Plaintiff averred that he would suffer irreparable loss and damage unless the Defendants were restrained from claiming ownership and/or committing acts of trespass and waste on the suit property.

The 1st and 3rd Defendants entered appearance and filed a statement of defence on 22nd June, 2004. The 1st and 3rd Defendants (hereinafter jointly referred to as "the defendants" where the context so admits) denied that the Plaintiff was allocated the suit property. In the alternative, they averred that if at all the Plaintiff was allocated the suit property, the Plaintiff was obliged to accept the allotment within 30 days failure to which the same would lapse. The Defendants averred that by a letter of allotment dated 21st July, 1995 the 2nd Defendant allocated to the 1st Defendant the suit property. The 1st Defendant accepted the allotment and paid to the 2nd Defendant the stand premium and other charges which were set out in the letter of allotment. The 2nd Defendant thereafter issued the 1st Defendant with a title for the suit property on 23rd August, 1995 which title was registered on 24th August, 1995. The 1st Defendant subsequently transferred the suit property to the 3rd Defendant on 20th December, 1995 following an agreement for sale between them. The Defendants averred that pursuant to the said transfer, the 3rd defendant acquired indefeasible title over the suit property. The Defendants averred that by an order which was issued in Nairobi HCCC No. 983 of 1997, the Plaintiff was ordered to vacate the suit property. The Plaintiff disobeyed the said order and was forcefully evicted on 28th March, 2003. With regard to the payments which the Plaintiff claimed to have made, the Defendants averred that the same were made on 11th September, 1995 after the title for the suit property had been issued to the 1st Defendant. The Defendants denied having acquired the suit property illegally and fraudulently as contended by the Plaintiff. The Defendants admitted receiving letters of demand from the 2nd Defendant to surrender the title for the suit property for cancellation. They denied however that the said demand letters were made on the basis of fraud which the 2nd Defendant had discovered. The Defendants averred further that the title for the suit property having been issued in their favour, the said letters were of no effect. The Defendants denied that the plaintiff was entitled to the reliefs sought and urged the court to dismiss the Plaintiff's claim.

The 2nd Defendant neither entered appearance nor filed a statement of defence. The suit came up for hearing on 10th November, 2016 when the Plaintiff gave evidence and closed his case. The Defendants advocate informed the court that the Defendants did not wish to tender any evidence. In his testimony, the Plaintiff adopted his witness statement which was filed in court on 28th October, 2015. The Plaintiff produced in evidence as exhibits the documents which were attached to his list of documents dated 16th September, 2013 and his further list of documents dated 8th November, 2016. In his witness statement dated 27th October, 2015 filed in court on 28th October, 2015, the Plaintiff stated as follows:

1. *"I am the Plaintiff herein and I have been trading in the name and of style of Ngandu Beekeeping Farming Industries Ex 1.*
2. *That I filed the suit against the Defendants in respect of L.R No. 4953/2805 grant No. IR 666521.*

3. That I had approached the Municipal Council of Thika for plot allocation and the Municipal confirmed viability of the Bee Keeping Project and availability of the project plot within Thika Municipality as shown in their letter dated 30th March, 1982 and survey plan which are self-explanatory Ex 2.
4. That the land was legally allocated to me vide allotment letter reference number 106034/4 dated 14th May, 1982 Ex 3.
5. That I have been in occupation of the suit premises until 28th March, 2003 when I was evicted purportedly in execution of an Order of Justice Mulwa issued on 20th November, 1998 though determination by way of an interlocutory application.
6. That the Ruling of Hon. Justice Mulwa did not determine the substantive issue in respect of ownership and validity of Title notwithstanding the pendency of this suit. That the Ruling is produced as Ex 4.
7. That also produced is the Order of eviction issued pursuant to the said Ruling Ex 5.
8. That the Defendant though aware that this current suit was pending and having been served, filed H.C.C No. 983 of 1997 seeking to be reinstated into the suit premises and possession thereof produced hereto is the said Notice of Motion marked Ex 6.
9. The Plaintiff's case is that I was allocated the said parcel by the Commissioner of Lands on behalf of the Government of Kenya, the property being situated in the Municipality of Thika. That the plot was described as unsurveyed industrial plot and identified as Plan No. 106034/2A measuring 2.1 hectares.
10. That upon receipt of the allotment letter, I took possession and started beekeeping farming which was financed by Industrial Credit and Development Corporation and Ministry of Finance, Livestock Development and Non-Governmental Organizations funded projects through Action Aid Kenya, Care International Kenya, Kenya Freedom from Hunger, Kenya Wildlife Service and Plan International among others.
11. That I have been supplying bee hives to farmers in partnership with Non-Governmental Organizations to uplift the economic status of ordinary Kenyans.
12. That I have been serving many bee farmers by providing Bee Hives as a cottage industry.
13. That I also paid the stand premium demanded by the 2nd Defendant and I was astonished when I later learnt that even as I (sic) the fees required, the 1st Defendant has(sic) purportedly been allocated the same land through fraudulent means as I was still in possession and my allotment had not been revoked.
14. That the allotment to the 1st Defendant was made in July, 1995. That to try and defeat my allotment, the Plaintiff(sic) swiftly transferred the title to Halaiki Limited on 3rd December, 1995 for a sum of Kshs. 6,500,000/=.
15. That the 1st Plaintiff(sic) caused the land to be secretly surveyed and obtained Deed Plan and Title illegally.
16. That when I learnt of the illegal process and fraud, I complained to the 2nd Defendant who wrote various letters as follows;

(a) Letter dated 20th November, 1995 addressed to the Commissioner of Lands.

- (b) Letter dated 17th January, 1997
- (c) Letter dated 16th February, 1998
- (d) Letter dated 4th January, 1999
- (e) Letter dated 11th January, 2000
- (f) Letter dated 14th February, 2001 by Permanent Secretary, Ministry of Lands.
- (g) Letter dated 16th April, 2003 by Personal Assistant to the Ministry of Lands
- (h) Letter dated 27th October, 1997 by the Director of Survey to Commissioner of Lands.
- (i) Letter dated 14th August, 2002.
- (j) Letter dated 6th July, 2000.

17. That the 1st and 2nd Defendants acted fraudulently in making an allotment letter dated 21st July, 1995 notwithstanding (sic) I had a valid letter of allotment dated 14th May, 1982.

18. That the 1st Defendant upon obtaining the allotment in July, 1995 quickly transferred the title to the 3rd Defendant on 23rd August and a Grant issued in favour of the 3rd Defendant.

19. That notwithstanding requests in writing by the Commissioner of Lands, the 2nd Defendant (sic) to surrender the title for cancellation, the 1st and 3rd Defendants declined to do so in disregard of the Rule of Law and thereby perpetuating the fraud and impunity.

20. That I am pleading with the court for the following Orders;-

(i) A permanent injunction restraining the 1st, 2nd and 3rd Defendants, their servants and/or agents from trespassing and/or interfering with the suit premises and enjoyment of quiet possession thereof.

(ii) A revocation and cancellation of allotment dated 21st July, 1995 and grant No. I.R 666521 dated 23rd August, 1995.”

In cross-examination, the Plaintiff stated as follows. He was issued with a letter of allotment dated 14th May, 1982 by the 2nd Defendant and he was supposed to pay Kshs.134,413.35 for the allotment. The payment was to be made within 30 days. He made the payment on 11th September, 1995. The 1st defendant was allocated the suit property in July 1995. The 1st Defendant was allocated the suit property fraudulently while the Plaintiff still held an earlier letter of allotment dated 14th May, 1982. Although he was aware that the 1st Defendant had filed a case against him, he was not aware that he had been ordered to vacate the suit property. He was evicted from the suit property on 23rd March, 2003 pursuant to an interlocutory order made by Mulwa J. His properties however remained on the suit property. The eviction order was issued in Nairobi HCCC No. 983 of 1997 which was filed while the present case was pending. He filed an application dated 12th May, 2004 in that case to stay the said order by Mulwa J. He did not appeal against the said order but sought a review of the same. His review application was not heard.

The parties did not agree on the issues for determination. I have perused the pleadings and the evidence on record. I am of the view that the following are the issues which arise for determination in this suit:-

- 1) Whether the suit property was allocated to the Plaintiff and if so, whether the allotment lapsed?
- 2) Whether the allotment of the suit property to the 1st defendant and subsequent sale of the suit property by the 1st Defendant to the 3rd Defendant were illegal and fraudulent?
- 3) Whether the Plaintiff is entitled to the reliefs sought in the further amended plaint?
- 4) Who should bear the costs of the suit?

The first issue:

In his testimony, the Plaintiff stated that he approached the then Municipal Council of Thika to be allocated land within Thika Municipality for a Bee Keeping project which he was undertaking. He stated that the Municipal Council of Thika confirmed the viability of his project and the availability of land for the same within the Municipality which they proposed to the Commissioner of Lands for allocation to the Plaintiff. The parcel of land which the Municipal Council of Thika identified and recommended for allocation to the Plaintiff measured 2.1 ha. The Plaintiff stated that the said parcel of land was subsequently allocated to him by the Commissioner of Lands through a letter of allotment dated 14th May, 1982. The Plaintiff produced the letter of allotment in evidence as Plaintiff's Exhibit 1. The Plaintiff stated that after the said parcel of land was allocated to him, he took possession thereof and remained in occupation until 28th March, 2003 when he was evicted therefrom pursuant to an interlocutory order which was issued in favour of the 1st and 2nd Defendant herein by Mulwa J. in Nairobi HCCC No. 983 of 1997 which was instituted while this suit was pending. The Plaintiff stated that the said parcel of land was described in the letter of allotment as Un-surveyed Industrial Plot. For identification purposes, the plot was edged in red in Plan No. 106034/2A which was attached to the letter of allotment. The Plaintiff stated that while he was in occupation of the said parcel of land on which he was carrying out bee keeping business on a large scale, he learnt that the 2nd Defendant had purportedly allocated the same parcel of land to the 1st Defendant in July, 1995 while the allotment of the said parcel of land to him was still subsisting. The Plaintiff stated that with a view to defeat his interest in the suit property, the 1st Defendant moved with haste and transferred the property to the 3rd Defendant after the land was surveyed and issued with a title, L.R No. 4953/2805, I.R No. 666521. The Plaintiff stated that after he learnt of what he termed as illegal and fraudulent process, he lodged a complaint with the 2nd Defendant and what followed were a chain of correspondence asking the 1st and 3rd Defendants to surrender the title for the suit property, L.R No. 4953/2805 for cancellation on the ground that the same was issued to the 1st Defendant by mistake. These letters were produced in evidence by the Plaintiff as Plaintiff's Exhibit 4. Although the 1st and 3rd Defendants denied in their defence that the suit property had been allocated to the Plaintiff earlier, the 1st and 3rd Defendants did not adduce any evidence to controvert the evidence that was tendered in court by the Plaintiff to the effect that the parcel of land that was allocated to him as Un-surveyed Industrial Plot – Thika Municipality, on 14th May, 1982 is the same parcel of land which was allocated to the 1st Defendant on 21st July, 1995 and in respect of which the 1st Defendant was issued with a title, L.R No. 4953/2805 (I.R No. 666521) (“the suit property”). The 1st and 3rd Defendants did not place any evidence before the court showing that the suit property originated from a parcel of land different from the un-surveyed Industrial Plot – Thika Municipality which was allocated to the Plaintiff on 14th May, 1982. From the evidence before me, I am satisfied that the suit property, L.R No. 4953/2805 is the same parcel of land which was allocated to the Plaintiff on 14th May, 1982 and which was subsequently allocated to the 1st Defendant on 21st July, 1995. Due to the foregoing, my answer to the issue as to whether the suit property was allocated to the Plaintiff is in the affirmative.

On whether the allotment to the Plaintiff lapsed before the suit property was re-allocated to the 1st Defendant, I will refer to the terms of the letter of allotment dated 14th May, 1982. The 1st and 3rd Defendants submitted that the Plaintiff was required to accept the offer by the Commissioner of Lands to allocate the suit property to him and to pay a sum of Kshs.134,413.35 within 30 days from the date of the

letter of allotment. The 1st and 3rd Defendants submitted that the Plaintiff did not accept the allotment and did not pay the said sum of Kshs. 134,413.35 until 13 years later on 17th August, 1995 when he submitted a cheque for the said amount to the Commissioner of Lands and was issued with a receipt dated 11th September, 1995. The 1st and 3rd Defendants submitted that the suit property was allocated to the 1st Defendant after the Plaintiff failed to accept the allocation and to pay the requisite charges within the prescribed time. The 1st and 3rd Defendants submitted that upon being issued with a letter of allotment, the 1st Defendant duly complied with the terms thereof and was issued with a certificate of title in respect of the suit property on 23rd August, 1995. The 1st Defendant thereafter transferred its interest in the suit property to the 3rd Defendant who obtained a court order on 20th November 1998 to evict the Plaintiff from the suit property. The 1st and 3rd Defendants submitted that the Plaintiff was ultimately evicted from the suit property on 28th March, 2003. The 1st and 3rd Defendants submitted that as at the time the Plaintiff purported to accept and pay for the allotment that was made to him on 14th May, 1982 on 17th August, 1995, the offer had lapsed and there was no land which was capable of being allocated to him.

The material portion of the letter of offer dated 14th May, 1982 provided as follows:-

“If acceptance and payment respectively are not received within 30 days from the date hereof the offer herein contained will be considered to have lapsed.”

From the evidence on record, the payment which the Plaintiff was required to make was Kshs.134,413.35. It is not in dispute that the Plaintiff made the payment of Kshs. 134,413.35 to the 2nd Defendant on 17th August, 1995 several years after the expiry of 30 days within which the said payment was supposed to be made. The question that I need to answer is whether the offer that was made to the Plaintiff for the allotment of the suit property lapsed within 30 days from 14th May, 1982 when the Plaintiff failed to pay the said sum of Kshs. 134,413.35. From my reading of the portion of the letter of offer set out above, the lapsing of the offer for non-acceptance or non-payment of the amount that was set out in the letter of offer was not automatic. It was at the discretion of the 2nd Defendant. The language used namely, “...*the offer herein contained will be considered to have lapsed (emphasis added)*” is permissive. In my view what this means is that after the lapse of 30 days from 14th May, 1982 the offer to the Plaintiff did not automatically lapse. The 2nd Defendant had the discretion to deem the offer to have lapsed depending on the circumstances surrounding the transaction. It is not disputed that on 21st July, 1995, the 2nd Defendant re-allocated the suit property to the 1st Defendant. This re-allocation was done before the plaintiff accepted the allotment of the suit property and paid the charges that were set out in the letter of allotment. This move showed that the 2nd Defendant considered the offer it had made to the Plaintiff to have lapsed. The letter dated 20th November, 1995 by Municipal Council of Thika which was produced in evidence by the plaintiff as part of Plaintiff’s exhibit 5 shows that the 2nd Defendant sent to the Plaintiff a letter dated 20th July, 1995 informing him that the offer it had made to the plaintiff in respect of the suit property had been withdrawn. The suit property was subsequently allocated to the 1st defendant on 21st July, 1995. Due to the foregoing, it is my finding that as at the time the suit property was allocated to the 1st defendant, the offer of allotment of the suit property that had been made to the plaintiff by the 2nd Defendant on 14th May, 1982 had lapsed and had been withdrawn.

The second issue:

It is not disputed that on 21st July, 1995, the 2nd Defendant re-allocated the suit property to the 1st Defendant. As I have already held above, as at the time the suit property was allocated to the 1st Defendant, the allotment of the said property to the Plaintiff had lapsed. I am in agreement with the 1st and 3rd Defendants submission that after the offer to the Plaintiff lapsed and was withdrawn by the 2nd Defendant, the 2nd Defendant had a right to allocate the suit property to the 1st Defendant or any other person.

In the case of, Virani t/a Kisumu Beach Resort –vs- Phoenix of East Africa Assurance Co. Ltd [2004] 2 E.A KLR 269, the court of appeal held that:

“Fraud is a serious quasi-criminal imputation and it requires more than proof on a balance of probability though not beyond reasonable doubt”.

In the case of Kampala Bottlers Ltd. vs. Damanico (UG) Ltd., East Africa Law Reports [1990-1994] E.A141(SCU), the Supreme Court of Uganda held that:

“To impeach the title of a registered proprietor of land, fraud must be attributable to the transferee either directly or by necessary implication. The transferee must be guilty of some fraudulent act or must have known of some act by somebody else and taken advantage of such act. The burden of proof must be heavier than a balance of probabilities generally applied in civil matters.”

There is no evidence placed before the court pointing at the defendants’ alleged acts of fraud. The suit property was available for allocation after the allotment in respect thereof to the Plaintiff lapsed as aforesaid. It was not disputed that after the suit property was allocated to the 1st Defendant, the 1st defendant accepted the allotment and paid the stand premium and other charges which were set out in the letter of allotment dated 21st July, 1995. The 1st Defendant was thereafter issued with a certificate of title for the suit property on 23rd August, 1995. It was also not disputed that the 1st Defendant transferred the suit property to the 3rd Defendant on 20th December, 1995 at a consideration of Kshs. 6,500,000/-. The 1st Defendant having been issued with a title for the suit property it was within its right as the proprietor of the said property to sell and transfer the property to the 3rd Defendant. The mere fact that the transfer of the suit to the 3rd Defendant was effected after a period of only five (5) months after the property was allocated to the 1st Defendant is not evidence of fraud. The Plaintiff has not proved that the allocation of the suit property to the 1st Defendant and the subsequent sale and transfer of the said property by the 1st Defendant to the 3rd Defendant were illegal and fraudulent. The Plaintiff had submitted that the 2nd Defendant had no right to allocate the suit property to the 1st Defendant before the allotment of the said property to the Plaintiff was cancelled or withdrawn. The Plaintiff cited the cases of Metian Kitaei Nkoiboni vs. Richard Salaton Torome [2011] eKLR and Salome Warware vs. George Muna & Another [2015] eKLR in support of this submission. Although I am in agreement with the decisions in the cited cases, I am of the view that the said cases are distinguishable. Unlike in the cases cited by the Plaintiff, in this case, the Plaintiff never accepted the allotment and did not fulfill the conditions of the allotment. The 2nd Defendant was entitled under the letter of allotment dated 14th May, 1982 to consider the allotment to have lapsed. No notice was required from the 2nd Defendant to terminate or cancel an allotment that had not been accepted. There was no contract between the Plaintiff and the 2nd Defendant to terminate. The Plaintiff had no proprietary interest in the suit property. In the case of Wreck Motor Enterprises vs. Commissioner of Lands and 3 Others [1997] eKLR which was cited by the 1st and 3rd Defendants, the court stated that:

“Title to a landed property normally comes into existence after issuance of letter of allotment, meeting the conditions stated in such a letter and actual issuance thereafter of a title document”.

The burden was upon the Plaintiff to prove the alleged illegalities and fraud. I am not satisfied on the material before me that the Plaintiff has discharged this burden. It is my finding therefore that the allocation of the suit property to the 1st Defendant by the 2nd Defendant and the subsequent sale of the suit property by the 1st Defendant to the 3rd Defendant were neither illegal nor fraudulent.

The third issue:

In his Further Amended Plaint dated 19th April, 2004, the Plaintiff sought a permanent injunction to restrain the Defendants from trespassing on/or interfering with his quiet possession of the suit property, a declaration that the Plaintiff is the rightful owner of the suit property, revocation of the letter of allotment

dated 21st July, 2015 and Grant Number I.R 666521 dated 23rd August, 1995 and general and special damages. Section 23(1) of the Registration of Titles Act Chapter 281 Laws of Kenya (now repealed) under which the suit property was registered provides that:

“The certificate of title issued by the registrar to a purchaser of land upon a transfer or transmission by the proprietor thereof shall be taken by all courts as conclusive evidence that the person named therein as proprietor of the land is the absolute and indefeasible owner thereof, subject to the encumbrances easements, restrictions and conditions contained therein or endorsed thereon, and the title of that proprietor shall not be subject to challenge, except on the ground of fraud or misrepresentation to which he is proved to be a party.”

Section 25 (1) of the Land Registration Act, 2012 provides as follows:-

(1) The rights of a proprietor whether acquired on first registration or subsequently for valuable consideration or by an order of court shall not be liable to be defeated except as provided in this Act and shall be held by the proprietor together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever but subject:

a. To the leases, charges and other encumbrances and to the conditions and restrictions if any shown in the register; and

b. To such liabilities rights and interests as affect the same and are declared by section 28 not to require noting on the register unless the contrary is expressed in the register.

It is my finding that the Plaintiff has not established any of the grounds set out above upon which this court can interfere with the 3rd Defendant's title over the suit property. In the circumstances none of the reliefs sought by the plaintiff in the amended plaint can be granted. Before I conclude this judgment, I want to comment on Nairobi HCCC No. 983 of 1997, Abuja Investment Services Limited & Another vs. Samuel Ngandu Waweru t/a Ngandu Bee Keeping Farming Industries (HCCC No. 983 of 1997). I called for and perused the court file for HCCC No. 983 of 1997. I have noted that the said case was filed by the 1st and 3rd Defendants herein against the Plaintiff on 23rd April, 1997 while this suit was pending. In the suit, the 1st and 3rd Defendants sought possession of the suit property from the Plaintiff and damages for trespass. The 1st and 3rd Defendants filed an application in that suit for summary judgment against the Plaintiff on 19th June, 1997 seeking possession of the suit property. During the hearing of the application for summary judgment before Mulwa J., the Plaintiff herein raised an objection that the suit had been brought irregularly while the present suit was pending. The Plaintiff's objection was overruled. On 20th November, 1998, the application for summary judgment was allowed and the Plaintiff was ordered by the court to hand over vacant possession of the suit property to the 1st Defendant which the court held was the owner of the suit property. The Plaintiff failed to handover vacant possession of the suit property to the 1st Defendant and on 19th December, 2003 the court gave an order for his forceful eviction from the suit property. The Plaintiff was forcefully evicted from the suit property on 28th March, 2003. The Plaintiff did not appeal against the decision of Mulwa J. that was made on 20th November, 1998. The Plaintiff's application for stay of that decision pending the hearing of this suit was dismissed by the court on 3rd November, 2004. The Plaintiff had filed a defence and counter-claim in the suit on 21st July, 1998. After summary judgment was entered against the Plaintiff and the Plaintiff's application for stay of execution was dismissed, the parties did not take any further steps with a view to proceeding with HCCC No. 983 of 1997. The suit was ultimately dismissed for want of prosecution on 18th January, 2012.

It is clear from the foregoing that the order of eviction that was issued against the Plaintiff in HCCC No. 983 of 1997 was not an interlocutory order as claimed by the Plaintiff. It was a final judgment which could only be overturned on review or appeal to the Court of Appeal. I am of the view that the Plaintiff having lost that case and having failed to appeal or to have the order reviewed should not have pursued this suit. The Plaintiff's fate as far as the issue of the ownership of the suit property is concerned was sealed in that suit. I am in agreement with the submission by the 1st and 3rd Defendants that the 1st and 3rd

Defendants having been put into possession of the suit property pursuant to a judgment made by a court of competent jurisdiction this court cannot restrain the 1st and 3rd Defendants from entering and enjoying quiet possession of the suit property. If this court was to do that, it would amount to sitting on appeal against the decision of a court of concurrent jurisdiction.

In conclusion, it is my finding that the Plaintiff has failed to prove his case to the required standard. The suit is accordingly dismissed with costs.

Delivered and Signed at Nairobi this 13th day of October 2017

S.OKONG'O

JUDGE

Judgment read in open court in the presence of:

Mr. Mc Ronald for the Plaintiff

No appearance for the 1st Defendant

No appearance for the 2nd Defendant

No appearance for the 3rd Defendant

Catherine Court Assistant