



**Dasahe Investments Limited v Mugo (Environment & Land Case  
1020 of 2016) [2024] KEELC 1583 (KLR) (22 February 2024) (Judgment)**

Neutral citation: [2024] KEELC 1583 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 1020 OF 2016  
EK WABWOTO, J  
FEBRUARY 22, 2024**

**BETWEEN**

**DASAHE INVESTMENTS LIMITED ..... PLAINTIFF**

**AND**

**EDITOR IRIMA MUGO ..... DEFENDANT**

**JUDGMENT**

1. By a Plaint dated 22<sup>nd</sup> August, 2016, the Plaintiff sought the following reliefs against the Defendant.
  - a. an order of specific performance do issue compelling the Defendant to transfer all that parcel of land known as Land Reference Number 9084- Nairobi.
  - b. General damages.
  - c. In the alternative and without prejudice to Prayer (a) above, a refund equivalent to the current market price of all that parcel of land known as Land Reference Number 9084 – Nairobi.
  - d. Costs and interest.
2. The suit was contested by the Defendant who filed a statement of defence and Counter-claim dated 22<sup>nd</sup> May, 2018. The Defendant denied the contents of the Plaint and further sought the following reliefs in the Counter-claim:
  - i. An order to give vacant possession of the land known as L.R. No. 9084 situate within Nairobi County.
  - ii. An order of permanent injunction restraining the Plaintiff, his agents, servants, legal representatives, employees and or any other person acting for or though the Plaintiff from ever trespassing on L.R. No. 9084.



- iii. A declaration that the sale of land agreement dated 14<sup>th</sup> October, 2009 is invalid and unenforceable.
- iv. An order compelling the Plaintiff to return the Certificate of title to Land Parcel No. L.R. No. 9084 to the Defendant.
- v. Costs of the Defendant's counterclaim.

**The Plaintiff's case**

- 3. The Plaintiff averred that the Defendant was an allottee of a grant in respect to L.R. No. 9084 situate within the City County of Nairobi and on or about the 14<sup>th</sup> October, 2009, it entered into an agreement with the Defendant in respect of the said allotted parcel for a consideration of Kshs 1,500,000/=.
- 4. It was averred that it was an express term of the sale agreement that the Plaintiff was to pay a deposit of Kshs 500,000/= to the Defendant upon execution of the agreement and the balance of Kshs 1,000,000/= upon successful transfer of the said property in favour of the Plaintiff and that the Plaintiff was to take vacant possession of the suit property upon payment of the deposit of the purchase price.
- 5. It was the Plaintiff's case that upon making payment of the sum of Kshs 500,000/=. It took possession of the suit property. The Plaintiff also averred that in breach of the sale agreement, the Defendant failed, neglected and refused to process the issuance of the title document to facilitate the transfer as a Consequence which the Plaintiff paid all the prerequisite charges to the Ministry of Lands and relevant authorities to facilitate the issuance of the title document. The payment made was particularized as follows:
  - a. Approval and Planning Kshs 197,430.00
  - b. Land Rent Kshs 541,160.00
  - c. Land rates Kshs 80,580.00
  - d. Clearance Certificate Kshs 10,000.00

-----

Total Kshs 801,590.00

.....
- 6. The Plaintiff also pleaded the following particulars of breach in respect to the sale agreement between the parties:
  - i. Failure to supply the Plaintiff with completion documents.
  - ii. Failing to execute a transfer in favour of the Plaintiff.
  - iii. Failing to collect the balance of the purchase price.
  - iv. Failing to respond to Correspondences sent to her by the Plaintiff's former Counsel.
  - v. Failing to pay prerequisite charges to procure the Certificate of Title.
  - vi. Failing to refund to the Plaintiff monies paid in procuring the Certificate of Title.
- 7. During trial, three witnesses testified on behalf of the Plaintiff. David Some Barno, a director of the Plaintiff's Company testified as PW1. He relied on his witness statement dated 22<sup>nd</sup> August, 2016. He



- relied on his witness statement dated 22<sup>nd</sup> August, 2016 as his evidence in Chief. He also adopted and relied on the Plaintiff's bundle and supplementary bundle of documents dated 22<sup>nd</sup> August, 2016 and 18<sup>th</sup> January, 2020 respectively in his evidence in Chief.
8. On cross-examination, he stated that the Plaintiff's Company was registered even though he did not have the CR 12 in Court. He also stated that there was a Company resolution that was made prior to the commencement of the transaction. He also stated that the allotment letter showed the size of the land as being 1 acre. He further stated that he paid for the approval and planning, land rates and clearance together with stand premium of Kshs 163,000/=. It was also stated that the funds were received from Editor who was the wife to Mugo, the one who had sold the land.
  9. On further cross-examination, he stated that the Completion date was 90 days but he could not remember whether the agreement had a Clause for extension of the Completion date. He also stated that he did not have the written agreement for extension of the Completion date. He also stated that he was the one who engaged the lawyer who acted for both parties in the transaction. He also confirmed having the receipt of payment for the land rent of the property which were made on 31<sup>st</sup> August, 2015 and that the same were paid so that the title to the property could be processed. He also stated that the payment was made 90 days after the execution of the sale agreement.
  10. He further stated in cross-examination, that he had in his custody the title deed of the suit property which had been issued in the names of Editor Irina Mugo. He also stated that the same was issued to him because he is the one who went to collect it from the Lands Registry after following up on the same. He also stated that the parties had agreed for an alternative plot should their transaction fail.
  11. When re-examined, he stated that he accepted to process the title because there were other properties which they had with Mugo. He also confirmed that he had paid Kshs 500,000/= through the defendant's lawyers and he also paid another sum of Ksh 1,000,000/= through the same lawyers. He also confirmed that the title was released to him on 16<sup>th</sup> September, 2016. He also stated that the process of obtaining the title took longer than expected. He further stated that he never received any letter from the defendant on whether or not the Sale Agreement had been cancelled.
  12. The next to testify on behalf of the Plaintiff was Amsa Jerotich Keittany. She relied and adopted her witness statement dated 26<sup>th</sup> February, 2018 as her evidence in Chief.
  13. When cross-examined, she stated that she was not sure of the L.R. Number of the suit property and that she did not know if the company had any transaction.
  14. On further cross-examination, she stated that she was aware that PW1 was buying land from Plaintiff because he had borrowed money from her to go buy the land. She also stated that Mr. Mugo is the one who received the payment made. She also stated that she had given a total of Kshs 300,000/= even though she did not have evidence to confirm the same. She also stated that Editor Mugo never instructed her to pay any money to Mr. Mugo. She also stated that she never informed the Advocate when payment was made. She also stated that she did not know if the purchase price balance was ever cleared.
  15. When re-examined, she clarified that whatever she paid did not change in respect to the sum of Kshs 1,000,000/= that had been retained by the lawyer. She also stated that it was Mr. Some who had asked her to pay Mr. Mugo because Mr. Mugo had a problem and needed the money.
  16. The third witness to testify on behalf of the Plaintiff was Julius Migos Ogamba, an Advocate of the High Court of Kenya. He adopted his witness statement dated 26<sup>th</sup> February, 2018 as his evidence in Chief. He testified that he prepared the sale agreement in 2009. He stated that he has appeared in Court



in respect to the suit property in other matters and has also recorded a statement with EACC on the same. He stated that according to him, the title is genuine and valid.

17. When cross-examined, he stated that he acted for both the Plaintiff and the defendant in the said transaction. When asked about whether he saw the CR12 of the Plaintiff's Company, he stated that he never saw any at the time of preparation of the sale agreement. He also stated that he did not see the Company resolution.
18. When asked about the purchase price, he stated that David Some, a Director of the Plaintiff Company paid the purchase price which was acknowledged. He also stated that the two parties paid his fees. He also stated that he had never met the defendant prior to this transaction. He further stated that at the time of the transaction, the land had not been registered.
19. When asked about the Completion period, he stated that the Completion period was 90 days and that clause 9.1 of the Sale Agreement required the Purchaser to process title within 90 days from the date of the agreement. When asked about the meaning of the word "undertake" he stated that it meant to take "responsibility". He also stated that the purchaser was to process documents and the completion was to be done by the Vendor.
20. When asked whether he felt conflicted by the fact that he drafted the sale agreement and acted for both parties, he stated that he was not conflicted in any way. He also stated that after 90 days, he never took any action. He also stated that the sale agreement did not have any clause waiving the LSK Conditions of sale. He also stated that the vendor had a duty to sign the documents before the title was released. He also stated that the title was issued in 2015.
21. When asked about the balance of the purchase price, he stated that the balance of the purchase price was paid to him and payment was made in cash. He also stated that he wrote to the defendant to confirm receipt of the balance and that he had a copy of the said letter. He also stated that the other monies was paid to the Vendor and that he witnessed payment of Kshs 600,000/= being paid directly to the Vendor. He also stated that the Plaintiff paid land rates.
22. When re-examined, he stated that as an Advocate, his testimony is beneficial to all the parties. He also stated that the Plaintiff is an entity that exists. He also stated that this was not the only transaction that he had acted for the Plaintiff. He stated that the sale agreement was premised on a letter of allotment. He also stated that the process of obtaining a title required approvals and payments to and from various offices.
23. On further reexamination, he stated that this was not a normal transaction since the rates were to be paid by the purchaser. He also stated that the parties were not required to give any notices after the expiry of 90 days. He also stated that the letter of allotment was in the names of the Defendant. He further stated that the Plaintiff had clean hands in respect to the transaction since he had made payments as and when they were required. He also stated that the Defendant never responded to his letters including the demand letter that was sent prior to the filing of the instant suit.

### **The Defendant's case**

24. The Defendant filed a statement of defence and counterclaim dated 22<sup>nd</sup> May, 2018. The Defendant denied the averments and contents of the Plaintiff's allegation in the Plaintiff. It was pleaded that the Plaintiff has misrepresented that the Defendant was in breach of the contract whereas contrary to the same, the Plaintiff is clearly in breach from the onset for failure to process the certificate of title within 90 days as per the sale agreement. It was averred that the Plaintiff has misrepresented facts that the Defendant failed or refused to process the issuance of the title document to facilitate the transfer



whereas it was agreed in the sale agreement that the same facilitation would be done by the Plaintiff therefore the failure and or refusal squarely lies on the Plaintiff. it was also averred that the Plaintiff had misrepresented facts that land rates and clearance certificate were paid by the Plaintiff whereas the true facts are that it was paid by the Defendant. it was averred that the Plaintiff deliberately misrepresented the fact that the said title was issued to the Defendant whereas the Defendant has never come into possession of the same.

25. The Defendant also pleaded the following particulars of breach by the Plaintiff:-
  - a. Failure to process the Certificate of title to the property within 90 days.
  - b. Failure to pay the Standard premium, land rent and rates.
  - c. Failure to rescind the Contract when the same was breached.
26. In respect to the counter-claim, the Defendant sought for the following reliefs:
  - i. An order to give vacant possession of the land known as L.R. No. 9084 situate within Nairobi County.
  - ii. An order of permanent injunction restraining the Plaintiff, his agents, servants, legal representatives, employees and/or any other person acting for or through the Plaintiff from ever trespassing on L.R. No. 9084.
  - iii. A declaration that the sale agreement dated 14<sup>th</sup> October, 2009 is invalid and unenforceable.
  - iv. An order compelling the Plaintiff to return the Certificate of title to land Parcel L.R. No. 9084 to the Defendant.
  - v. Costs of the Defendant's Counterclaim.
27. During trial, John Mugo Njeru testified on behalf of the Defendant and as the sole defence witness. He stated that he was the husband to the Plaintiff and had a power of attorney dated 8<sup>th</sup> December, 2020 which authorizes him to testify on behalf of the Defendant. He also relied on his witness statement and bundle of documents dated 22<sup>nd</sup> May, 2018 as his evidence in chief.
28. When cross-examined, he stated that he is a journalist by profession and that Mr. David Some is known to him since he is a Politician. He also stated that he has known David Some for a long period of time. He stated that Mr. Some approached him so that he could get the plot since he had an interest in acquiring the same. He also stated that the plot was given to him by the former Commissioner of Lands Mr. Gchanja who was his in law. He also stated that the letter of allotment is dated 1<sup>st</sup> July, 1999 and that he took time before making payment since he was not staying in Nairobi at the time of its allocation.
29. When asked whether he had any evidence of payment made by himself, he stated that he did not have any bank statements to confirm that he made the said payment. He also stated that he had no evidence showing that his wife made payment of the said property.
30. He also stated that Mr. Ogamba Advocate acted for both parties in the transaction. He further stated that he later felt that the Advocate was conflicted acting for both parties in the transaction.
31. When asked about the 90 days Completion period, he stated that there was no notice issued despite him asking the Advocate on the same. He also stated that his wife received Kshs 500,000/= from Mr. Some. He also stated that he has not refunded any money used to process the title. He also stated that he has appeared before the Parliamentary Committee in respect to the suit property to Complain about Compensation issues by National Land Commission. He also stated that he had attended NLC



hearings but the Compensation of the property had been put on hold because of the competing interest between the Plaintiff and Defendant.

32. He also stated that he had no evidence to confirm whether he had given the Advocate instructions to terminate the agreement. He also stated that if he was to be asked to refund the sum of Kshs 500,000/= that was paid to him, he would refund even today though he was not sure of the current value of the property.
33. When re-examined, he stated that he had evidence of payment of land rates and premium which were paid by his wife on 25<sup>th</sup> November, 2015. He also stated that there was no forfeiture or exit clause in the agreement. He also stated that he was never asked to refund the sum of Kshs 500,000/= and that if he had been asked to do so, he would have refunded the same.
34. He stated that he never received Kshs 600,000/= neither did he receive any notice to terminate the agreement. He stated that the Notice was to be issued by the Advocate who was acting for both parties. He also stated that the Plaintiff had no authority to collect the title of the suit property from the Lands Registry in the manner which he did. He also stated that he was ready and willing to participate in the Completion process had the Plaintiff honoured its obligations.

### **The Plaintiff's submissions**

35. The Plaintiff filed written dated 17<sup>th</sup> October, 2023 through Kidenda Onyango and Anami & Associates. Counsel submitted on the following three issues:
  - a. Did the Contract between the parties terminate upon expiry at ninety (90) days stipulated in Clause 9.1?
  - b. Is the Plaintiff entitled to an order of specific performance?
  - c. Who should bear the Costs of the suit?
36. It was submitted that the Contract did not terminate upon expiry upon expiry of the ninety days as stated in Clause 9.1 of the agreement and is therefore valid and enforceable. It was contended that the Defendant sold a property to the Plaintiff knowing very well that to obtain title to Property will be a process not in the Control of the Plaintiff. It was contended that there was no evidence led by the Defendants that the Plaintiff did not undertake its obligations as required in the sale agreement.
37. It was submitted that all payments save for Standard Premium and Charges from the letter of allotment amounting to Kshs 197,430/= were paid many months /years after the 90 days stipulated under Clause 9.1 had lapsed. It was submitted that the Defendant had not presented any proof to show that she expended any efforts in fulfilling her singular obligation under the agreement. Reliance was made to the following cases; Housing Company of East Africa Limited -vs- Board of Trustees national Security Fund & 2 others [2018] eKLR, Bernard Allred Wekesa -vs- John Muriithi Kariuki & 2 others [200] eKLR and Anne Murambi -vs- John Munyao Nyamu & Another [2018] eKLR.
38. In respect to the Order of Specific Performance that was sought, it was submitted that the Plaintiff fully discharged its obligations as per Contract and that is why the title to the suit property was issued. It was also submitted that Julius Migos Ogamba Advocate who testified as PW3 had confirmed that vide two letters dated 25<sup>th</sup> November, 2015 and 20<sup>th</sup> January 2016, he issued general notices to the Defendant requesting them to fulfil their obligations under the Sale agreement but the same had not been answered. The Court was urged to grant the order of specific performance that was sought and reliance was made to the following cases: Thrift Homes Ltd -vs- Kays Investment Ltd [2015] eKLR,



Guarder Sign Birdi & Narinder Singh Ghatora as Trustees of Ramgharia Institute of Mombasa -vs- Abubakar Madhubuti [1997] eKLR and Thomas Openda –vs- Peter Martin Ahn [1984] eKLR.

39. In respect to Costs, the Plaintiff submitted that it was entitled to Costs of the suit since the Defendant has not proved her case as pleaded in her defence and Counter-claim.

### **The Defendant's submissions**

40. The Defendant filed written submissions dated 7<sup>th</sup> November, 2023 through the firm of Ndegwa and Ndegwa Advocates. Counsel submitted on the following two issues:
- a. Whether there was a sale agreement.
  - b. Whether the letter of allotment dated 1<sup>st</sup> July, 1999 and described as No. 51776/XVII/52 could actually pass or convey upon the Plaintiff herein any Interest in land.
41. It was submitted that the Property was sold pursuant to the Letter of allotment dated 1<sup>st</sup> July, 1999. It was argued that the Letter of allotment herein could not have conveyed any interest in land and reference was made to the Supreme Court Case of Torino Enterprises Ltd -vs- Attorney General [Petition No. 5 (E006 of 2022) [2023] KESC 79 (KLR) (22 September, 2023) Judgment.
42. Counsel submitted that in view of the foregoing, there was nothing to be sold since the purported allotment letter forming the subject of sale was a nullity.

### **Analysis and determination**

43. The Plaintiff herein filed a statement and or list of issues dated 6<sup>th</sup> June, 2018 which had 11 issues, however this Court after considering the pleadings, evidence adduced by the parties and written submissions filed has framed the following salient issues for consideration herein:
- i. Whether the Contract between the parties terminated upon expiry of ninety (90) days pursuant to Clause 9.1 of the agreement dated 14<sup>th</sup> October, 2009.
  - ii. Whether the letter of allotment dated 1<sup>st</sup> July, 1999 Conveyed any interest on the Plaintiff.
  - iii. Whether the Plaintiff is entitled to the reliefs sought in in its plaint.
  - iv. Whether the Defendant is entitled to the reliefs sought in the Counter-claim.
- This court shall now proceed to address all the issues sequentially,

### **Issue No. I**

#### **Whether the Contract between the parties terminated upon expiry of the 90 days as stipulated in Clause 9.1 of the agreement?**

44. It was the Defendant's case that the sale agreement dated 14<sup>th</sup> October, 2009 for purchase of the suit property L.R. No. 9084 provided under Clause 9.1 that the Purchaser was to undertake the processing of the title to the property within 90 days. It was also averred that under Clause 10.2 of the same agreement, the Purchaser was to pay the standard premium land rent and rates upto the completion date and the same was to be done within 90 days of the date of the agreement.
45. The Plaintiff on the other hand maintained that there was no provision in the agreement detailing the Consequence of not processing the title within ninety (90) days of the agreement, the sale agreement did not specify that time was of the essence and there was no Completion notice issued by the



Defendant at any time, to date indicating the Plaintiff was in breach of Clause 9.1 and demanding the Completion of the transaction as per the Law Society Conditions of Sale (1989) Edition.

46. In addressing this issue, the Court has considered the evidence that was tendered herein. It was evident that the transaction herein was never completed within 90 days from the date of execution of the Sale Agreement. The Court has also considered the sale agreement which was produced in evidence by the parties. It is indeed evident that the sale agreement was silent on the completion notice. The sale agreement did not also specifically state that time was of the essence. There was also no completion notice issued by the Defendant. One Julius Migos Ogamba Advocate who acted for both parties in the transaction confirmed in his testimony that no notice was issued. In the circumstances and being guided by the Court of Appeal Case of Housing Company of East Africa Limited -vs- Board of Trustees National Social Security Fund & 2 others [2018], It is the finding of this Court that the agreement herein did not terminate after 90 days as stated in Clause 9.1 of the sale Agreement and therefore remained valid and enforceable.

## Issue No. II

### Whether the Letter of allotment dated 1<sup>st</sup> July, 1999 conveyed any interest on the Plaintiff?

47. The Defendant contended that the letter of allotment did not convey any interest to the Plaintiff and that was the basis upon which the sale agreement was based upon. The Defendant while making reference to the Cases of Torino Enterprises -vs- the Attorney General [Petition 5 (E006 of 2022) and E2023] KESC 79 and Dr. Joseph N.K. Arap N'gor -vs- Justice Moiyo Ole Kilya & 4 others C.A. 60 of 1997 (unreported) submitted that the letter of allotment cannot confer any interest in land if it is not processed.
48. While the Court may agree with the Defendant's submissions that the letter of allotment is incapable of conferring any interest on land unless processed or complied with the conditions specified therein, in the instant case, the parties herein entered into a sale agreement being clearly aware that the vendor was the legal owner of the letter of allotment dated 1<sup>st</sup> July, 1999. The parties herein also had full knowledge that the title to the suit property was to be obtained and or processed. In view of the foregoing, it is rather mischievous for the Defendant having executed and agreed to the terms of the sale agreement dated 14<sup>th</sup> October, 2009 to come back after the suit had been filed and seek to change her position to the effect that the letter of allotment is not valid and not binding to the parties.
49. It is trite law that Courts cannot rewrite the terms of the agreement between the parties neither can they create a new contract between the parties and have to simply rely on the terms and conditions of the agreement as agreed between the parties while deciding a dispute between those parties. This was emphasized in the cases of National Bank of Kenya Ltd vs. Pipe Plastic Samkolit (K) Ltd (2002) 2 E.A. 503, (2011) eKLR the Court of Appeal at page 507 stated as follows: -

“A court of law cannot rewrite a contract between the parties. The parties are bound by the terms of their contract, unless coercion, fraud or undue influence are pleaded and proved.”

In Pius Kimaiyo Langat vs. Co-operative Bank of Kenya Ltd (2017) eKLR the Court of Appeal further stated that: -

“We are alive to the hallowed legal maxim that it is not the business of Courts to rewrite contracts between parties, they are bound by the terms of their contracts, unless coercion, fraud or undue influence are pleaded and proved.”



50. In the case herein, the parties clearly agreed in the sale agreement that the interest being conveyed was pursuant to a letter of allotment dated 1<sup>st</sup> July, 1999. It was evident that the parties being aware of the Letter of Allotment agreed on the need to have the title of the suit property being processed. In the circumstances, it is the finding of this Court that the Defendant is estopped from rescinding the sale agreement dated 14<sup>th</sup> October, 2009 on the basis that the letter of allotment did not confer any interest in the suit property to the Plaintiff.

### **Issue No. III**

#### **Whether the Plaintiff is entitled to the reliefs sought?**

51. The Plaintiff sought for an order of Specific Performance compelling the Defendant to transfer all that parcel of land known as Land Reference Number 9084 – Nairobi.
52. The Plaintiff also sought general damages and an alternative prayer of a refund equivalent to the current market price of the suit property.
53. In respect to specific performance it is worth noting that the remedy of specific performance is an equitable remedy which is granted where it is demonstrated that the Plaintiff has done all that he was expected to do under the contract or that he is ready and willing to perform his part. In *Gurdev Singh Birdi & Another Vs Abubakar ( 1997) eKLR* the Court of Appeal held as follows:-

“It cannot be gainsaid that the underlying principle in granting the equitable relief of specific performance has always been under all the obtaining circumstances in the particular case, it is just and equitable to do with a view to doing more perfect and complete justice. Indeed, as is set out in paragraph 487 of volume 44 of Halsbury’s Laws of England, fourth Edition a Plaintiff seeking the equitable remedy of specific performance of a contract must show that he has performed all the terms of the contract which he has undertaken to perform whether expressly or by implication and which he ought to have performed at the date of the writ in the action...”

54. The evidence adduced herein clearly confirmed that the Plaintiff discharged its obligations as per the sale agreement, and in the circumstances, the remedy of specific performance as prayed for by the Plaintiff is the most equitable and legally sound remedy to be issued in the case. The Plaintiff is clearly entitled to an order of specific performance.
55. In respect to the relief of general damages that was sought herein, none was proved and the Court is unable to grant the same.

### **Issue No. IV**

#### **Whether the Defendant is entitled to the orders sought in the counter-claim.**

56. A counterclaim is a suit and it ought to be proven to the required standard just like any other claim. The Defendant sought a number of orders as enumerated in her counter-claim. This Court having found the sale agreement entered into by the parties was valid and enforceable and further this Court having found that the Plaintiff is entitled to the order of specific performance that was sought herein, this Court cannot grant the reliefs sought in the counter-claim as there is no basis in granting the same.



## **Issue No. V**

### **What orders should issue as to costs?**

57. The Court is granted discretion under Section 27 of the Civil Procedure to award Costs. Ordinarily costs usually follow the event unless special circumstances present themselves. In the instant case having considered the circumstances of this matter, this Court proceeds to direct that each party shall bear own costs of the suit and counter-claim.

### **Final Orders**

58. In conclusion, it is the finding of this Court that having carefully considered and analyzed the evidence adduced herein, the Plaintiff has been able to prove its case to the required standard on a balance of probability. The Plaintiff's suit and the Defendant's counter-claim is therefore disposed of as follows:
- a. An order of specific performance is hereby issued compelling the Plaintiff to transfer all that parcel of land known Land Reference Number 9084 – Nairobi.
  - b. The Counter-claim by the Defendant is dismissed.
  - c. Each party to bear own costs of the suit and counter-claim.

Judgment accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 22<sup>ND</sup> DAY OF FEBRUARY, 2024.**

**E.K. WABWOTO**

**JUDGE**

**In the virtual presence of:**

Mr. Anami for Plaintiff.

No appearance for Defendant.

Court Assistant: Caroline Nafuna.

