



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ENVIRONMENTAL AND LAND DIVISION
ELC CIVIL NO. 476 OF 2012

KHIMJI BHIMJI SEYANI.....1ST PLAINTIFF
HIRJI SEYANI2ND PLAINTIFF
KARSAN KHIMJI SEYANI3RD PLAINTIFF

VERSUS

THE HON. ATTORNEY GENERAL..... DEFENDANT

JUDGMENT

Introduction and brief facts

The Plaintiff by a plaint dated 1st August 2012 and filed in court on 6th August, 2012 claim to have purchased from one **Peter Kipchichir Magut** land parcel land Reference Number **209/3217** being the premises comprised in a Grant registered at Nairobi as **L.R No. 67617/1** and being the property more particularly delineated on Land Survey Plan Number 200146 for the consideration of Kshs.5,000,000/=. The property was duly transferred to the Plaintiffs vide a transfer dated 6th October 1999 which was registered and endorsed against the Grant on 13th December 2000 as **I.R.67617/2**. The Plaintiffs claim that their efforts to take possession of the property were frustrated by one **Mr. Winston Orege**, who was in occupation and claimed to have been allocated the suit property by the Ministry of Lands.

The Ministry nonetheless took possession of the suit property sometime in 2008 and constructed blocks of apartments thereon without any notice and/or any compensation to the Plaintiffs who were the registered and rightful owners of the suit property. The act by the Ministry of Housing was analogous to the Ministry of Housing compulsorily acquiring the suit property except that the laid down procedure for compulsory acquisition was not adhered to or followed as the relevant Minister and or the Commissioner of Lands never issued any notices to the Plaintiffs of any intention to acquire the suit property compulsorily.

The Plaintiff by the Plaint seeks Judgment against the Defendants for:-

- a) A Declaration that the plaintiffs are the lawful owners of property **L.R No. 209/3217**.
- b) Compensation for compulsory acquisition of the property **L.R No. 209/3217** at Kshs.210 million as pleaded under paragraph 16 of the plaint.

- c) Costs of the suit together with interest.
- d) Any other relief that the Honourable Court may deem fit to grant.

The Defendant filed a statement of defence dated 24th September 2012 filed in Court on the 26th September 2012. The Defendant denied the Plaintiffs were at any time legally and/or at all registered as proprietor of the suit property as pleaded in the Plaint and averred that the plaintiffs were not entitled to possession and/or quiet enjoyment of the property. In the alternative the Defendant avers that the Plaintiff have never had any proprietary interest in the suit property and states that any transaction, transfer and/or alienation that may have taken place in the manner stated in the plaint is illegal and incapable of taking effect. The Defendant further avers any documents of title the plaintiffs may hold in respect of **L.R No. 209/3217** are not genuine and are not reflected in the records held by the Lands office and the same were not regularly obtained or made.

Apart from the pleadings the parties filed lists and bundles of documents together with witness statements. For the plaintiff the following documents were filed:-

- a) Witness statement sworn by **Hirji Seyani** on 1st August 2012,
- b) Plaintiff's list and bundle of documents dated 1st August 2012,
- c) Plaintiff's Supplementary list and bundle of documents dated 10th July, 2013,
- d) Plaintiff's supplementary list and bundle of document dated 24th July 2013 and filed in court on 26th July 2013 and
- e) Plaintiff's 2nd further supplementary list and bundle of documents dated 4th October 2013 and filed in court on 9th October 2013.

For the Defendant the following documents were filed:-

- a) Witness Statement by **Julius Gichohi Wairagu** dated 28th January 2013 and filed in court on 29th January 2013,
- b) Witness Statement by **Teresia Wambui Kimondiu** dated 8th July 2013 and filed in Court on 9th July 2013,
- c) Defendant's list of Documents dated 9th July 2013 and filed in court on 10th July 2013, and
- d) Defendant's list and bundle of documents dated 5th June 2014 and field in court on the same day.

After the parties had complied with Order 11 of the Civil Procedure Rules the matter was certified for hearing and was heard on diverse days. The 2nd Plaintiff **Hirji Seyani**, testified on behalf of himself and the 1st and 3rd Plaintiffs. The plaintiffs called **Mr. Benjamin Koge Kimani** a valuer who testified as PW2. The Defendant for their part called a **Mr. Julius Gichohi Wairagu**, an architect with the Ministry of Lands and Housing who testified as DW1 and also called **Teresia Wambui Kimondiu**, a valuer with the Ministry of Housing and Urban Development who testified as DW 2.

The Plaintiff's case

The 2nd Plaintiff testified on behalf of the Plaintiffs and this the Plaintiff's case that they are the registered proprietors of **L.R No. 209/3217** (hereinafter referred to as "**the suit property**") having purchased the

same from one **Peter Kipchichir Magut** who was the registered owner for the sum of Kshs.5,000,000/= and that the transfer in their favour was registered on 13th December 2000. PW 1 relied on the filed witness statement and the bundles of documents filed by the Plaintiffs. The bundles of documents were admitted as evidence in the suit and no objection was taken in regard to any of the documents by the defence. It was the Plaintiffs evidence that after they purchased the suit property, they were unable to obtain possession as one **Mr. Winston Orege** who was a Civil Servant and was in occupation of the house in the suit premises refused to vacate the house claiming he had been allocated the house. The plaintiffs initiated various legal proceedings against the said **Orege** to procure his vacation of the suit premises but before the suit was finalised the Plaintiffs state that the Ministry of Lands and Housing entered into possession of the suit property with the intention of commencing the construction of apartments/flats thereon. The act by the Ministry of Housing prompted the plaintiffs to file **H. C. Misc. Application Nos. 80 and 84 of 2008** seeking orders of prohibition but which applications the plaintiffs subsequently withdrew. The Plaintiff further filed **H.C Petition No. 772 of 2008** and **HC Petition No. 334 of 2009** seeking conservatory orders and declarations that they were the legal owners of the suit property but withdrew the petitions once it became apparent that they could not obtain the said orders in those proceedings particularly since the Ministry of Lands and Housing had caused to be constructed a block of flats in the suit premises. The Ministry of Housing proceeded with the construction of the flats inspite of a letter from the plaintiffs Advocates dated 18th September 2008 demanding that they cease undertaking any construction on the plaintiffs parcel of land.

The Plaintiffs through PW I testified that they were at all material times relevant to the suit the registered owners of the suit property and are still the registered owners and that their title has neither been revoked or cancelled or nullified. The Plaintiffs state they hold a valid title which is indefeasible. The Plaintiffs testified that the time the Ministry of Lands and Housing entered into occupation there was no notification to the Plaintiffs and neither was there any intimidation by the Commissioner of Lands that there was any intention to compulsorily acquire the suit property. The plaintiffs testified that they have since being registered as the owners continued to pay the requisite land rent and rates as per the payment receipt exhibited vide the bundle of documents. The witness testified it was their intention to build a block of apartments comprising of 20 units and that they expected to make a profit of Kshs.4 million per unit when they were completed and sold.

The witness under cross-examination by **Mr. Wachira** Counsel for the Defendant admitted that they had not submitted the drawings for approval for the development they intended to carry out in the suit property.

The witness further testified under cross-examination that when **Mr. Orege** vacated the suit property sometime in 2003 the Ministry of Lands took constructive possession and prevented the Plaintiffs from taking possession of the suit premises. The witness further stated that when it became apparent they would not obtain vacant possession they opted to sue for compensation as the acts of the ministry of Housing of taking over the Plaintiffs property and developing flats thereon, amounted to them compulsorily acquiring the property save that the requisite procedure for compulsory acquisition was not followed. The Plaintiffs in the circumstances seek to be granted the prayers set out in the plaint. The Plaintiffs claims the current value of the suit property and the value of the old dilapidated house that was demolished and state the current value of the vacant property to be about Kshs.140,000,000/= and the old house at about Kshs.10,000,000/=.

The Plaintiffs called **Mr. Benjamin Koge Kimani** a Valuer practising with the firm of Highland Valuers Limited as PW 2. The witness testified that in 2011 he was instructed by the 2nd Plaintiff to carry out a valuation of **L.R No. 209/3217 Kileleshwa** Nairobi and advise on the current market value. PW 2 testified that he valued the plot at Kshs.120,000,000/= and the demolished house at Kshs.10,000,000/= as per the valuation report filed with the Plaintiffs bundle of documents. The witness further testified that they were again instructed to carry out a revaluation of the same property in 2013 and he stated they re-inspected the premises and found the development on the property had been completed and generally other developments had come up in the area. He stated that they revalued the property at Kshs.140,000,000/= and when shown the Defendants valuation of the same property carried out on 2nd July 2013 and requested to comment on the same in view of the divergent opinions the witness observed

that the general background information was agreeing but he observed the value of Kshs.80,000,000/= was understated.

On cross-examination by **Mr. Wachira** Counsel for the Defendant the witness stated that he obtained the comparables that he had used from various sources but did not see the agreements in respect of the same and neither did he have any copies of the registered conveyances. The witness confirmed he did not find the bungalow (old house) when he inspected the suit premises since the same had already been demolished and that he relied on the information that he had been given to assign a value to the house.

The Defendant's case

The Defendants for their part called two witnesses **Mr. Julius Gachohi Wairagu** an architect with the Ministry of Lands and Housing who testified as DW I and he adopted his filed witness statement dated 28/1/2013 as his evidence. The witness testified that the house in the suit property was constructed in 1948 and then had a valued of Kenya pounds 300.00 (equivalent to Kshs.6000/-) The witness confirmed the house was occupied by **Mr. Orege** who was a Civil Servant and was paying rent to the government.

In cross-examination the witness confirmed that he was not aware in November 2005 when the Ministry of Lands and Housing applied to be allocated the plot that the suit premises was registered in the Plaintiff's name. The witness further under cross-examination stated that he was aware that the suit property is still registered in the name of the Plaintiffs but affirms that the government is now in occupation and houses have been constructed thereon and the same are occupied by Civil Servants.

The Defendant's second witness **Teresia Wambui Kimondiu** DW2 testified that she was a valuer with the Ministry of Housing and Urban Development. DW 2 testified that she carried a valuation of **L. R. No. 209/3217** (the suit Property) and returned a valuation of Kshs.80,000,000/=. The witness stated she used comparables to arrive at her valuation and averred that from the comparables one acre of land ranged from Kshs.100 million to Kshs.150 million. The witness explained that she used the value of Kshs.120 million per acre to arrive at the value of Kshs.80,000/- for the suit property. The witness further explained the comparables and how the values are influenced by location.

The witness while commenting on the value given by Pw2 stated that a value of Kshs.10 million for the demolished house on the suit property could not be justified and averred the value of the house could not have been more than Kshs.1 million. The witness confirmed that at the time of carrying out the valuation the suit property was registered was registered in the name of the plaintiffs as borne out by the official search.

Submissions issues and determination of issues

The parties on the directions of the court filed written submissions with the plaintiffs filing their submissions on 16th July 2014 and further response submissions on 29th September 2014. The Defendant filed their submissions on 22nd September 2014.

I have considered the pleadings of the parties, the evidence tendered and the submissions of the parties and the issues that stand to be determined are as follows:-

- (i) Whether the plaintiffs are the registered owners of the suit property,
- (ii) Whether the Defendant through the Ministry of Lands and Housing unlawfully took possession and unlawfully developed the suit property.
- (iii) Whether the plaintiffs are entitled to compensation and if so how much?
- (iv) Who bears the costs of the suit?

1. Are the plaintiffs the lawful owner of the suit property?

The plaintiffs through the evidence of Pw1 testified that they purchased the suit property from one **Peter Kipchichir Magut** who was the registered owner. The copy of the Grant NO. **I.R 67617 of L.R.NO. 209/3217** (included in the plaintiffs bundle of documents) issued on 20th November 1995 and registered as **I.R.NO.67617/1** on 23rd November 1995 shows that **Peter Kipchirchir Magut** of P.O. Box 344 Nakuru was the person who was granted this property. By a transfer dated 6th October 1999 the said **Peter Kipchirchir Magut** transferred the suit property to the plaintiffs herein and the transfer was duly registered as **I.R.67617/2** on 13th December 2000 and an entry to this effect endorsed on the original title and the memorial copy of title held at the lands office. The official search tendered by the plaintiffs and exhibited vide the plaintiffs' further supplementary list of documents dated 24TH July 2013 affirms and verifies the status and particulars of **L.R.NO. 209/3217**. The certificate of search confirms that as at 18th July 2013 the plaintiffs were the registered owners of the suit property having been so registered on 13th December 2000.

Both witnesses of the Defendant in their evidence confirmed that the plaintiffs were the registered owners of the suit property. The Defendant did not tender any evidence to show that the title of the plaintiffs has ever been challenged and/or revoked. The transfer of the property to the plaintiffs was never challenged and upon the registration of the same the plaintiffs became the absolute and indefeasible owners of the suit property entitled to enjoy all the rights and interest conferred by ownership under the provisions of sections 24 and 25 of the Land Registration Act NO. 3 of 2012.

Dw1 testified that the ministry of Lands and Housing was allocated the subject property in 2005 and among the Defendants list of documents is a letter of allotment issued by the Commissioner of Lands to the Permanent Secretary to the Treasury of **L.R.NO.209/3217** dated 17th January, 2006 which the Defendants rely on to claim proprietary interest to the suit premises. It is indeed intriguing that the same Commissioner of Lands who was instrumental in granting the same property to **Mr. Magut** who subsequently sold the property to the plaintiffs would purport to allot the same property to the Defendant when the Grant was still in force. There was no property under Land Reference Number **L.R. NO. 209/3217** available to be allocated to the Defendant the same having already been allocated and registered in the name of **Mr. Magut** and upon transfer on 13th December 2000 in the names of the plaintiffs. The certificate of search tendered in evidence by the plaintiffs clearly shows that by the time of the purported allocation the suit property was registered in the plaintiffs name. Dw2's valuation report dated 4th July 2013 tendered in evidence confirms that at the time of inspecting the property on 2nd July 2013 the registered owners of the suit property was **Khimji Bhimji Seyani** and others, the plaintiffs herein. The witness also indicated there was the letter of allotment dated 17th January 2006 referred to herein above. My view of the matter is that the property having already been registered in the name of the plaintiffs, the letter of allotment was ineffectual and could not confer any interest and/or rights whatsoever on the Defendants as there was no property available to be allocated.

Under the provisions of section 26 of the Land Registration Act 2012 the title of the plaintiffs following their registration as owners of the suit property is absolute and indefeasible and the same could only be impugned on the limited grounds set out under the Act if fraud is established and they are shown to have been parties and/or if the certificate of title was acquired illegally, unprocedurally or through a corrupt scheme.

Section 26 of the Act provides:-

26.(1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except:-

(a) on the ground of fraud or misrepresentation to which the person is proved to be a

party; or

(b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

(2) A certified copy of any registered instrument signed by the Registrar and sealed with the seal of the Registrar, shall be received in evidence in the same manner as the original.

The plaintiffs title has not been challenged on grounds of fraud or misrepresentation or any illegality and in my view no ground as would impugn their title under section 26 1 (a) &(b) has been established and I hold and find that the plaintiffs were validly registered as owners of the suit property and their ownership was absolute and indefeasible.

2. Was the Ministry of Lands and Housing possession and consequent development of the suit property unlawful?

Pw1 testified that sometime in 2008 the plaintiffs became aware that the Ministry of Lands and Housing had assumed possession and were intent on effecting construction of flats for residential purposes. The plaintiffs instituted various suits to forestall the Ministry from carrying out the development but to no avail. The plaintiffs withdrew the suits when it became apparent the Ministry could not be stopped from effecting the developments. The act by the Ministry of entering into possession and effecting developments in the suit property was a kin to appropriating the plaintiffs property without following the due process whereby the government would have been required to compulsorily acquire the property from the plaintiffs under the provisions of the Land Acquisition Act, Cap 295 of the Laws of Kenya (repealed).

The plaintiffs have demonstrated that as at the time the Ministry of Lands took possession and commenced development in the suit property, the plaintiffs were the registered owners pursuant to the registration of the transfer in their favour on 13th December 2000. The entry of the Ministry of Lands and Housing onto the suit property was without the consent and authority of the plaintiffs who were then the registered owners of the suit property. The purported allotment of the land by the Commissioner of Lands vide the letter of allotment dated 17th January 2006 was ineffectual as the land was unavailable for allocation, the same having already been alienated and registered in the plaintiffs name.

The plaintiffs upon being registered as owners of the suit property were vested with rights of ownership which could not be defeated except in accordance with the law.

Section 24 of the Land Registration Act provides thus:-

24. subject to this Act:-

(a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto,

(b) the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.

Section 25(1) of the Act provides:-

25.(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.

As I have held and found above the plaintiffs were validly registered as the proprietors of the suit land and for as long as that registration persisted and remained the Commissioner of Lands and/or indeed any other person could not deal with the suit land in any manner that was prejudicial to the rights and interests of the owners without inviting liability. The Ministry of Lands and Housing had no right to enter into possession of the suit land and consequently they are liable to the plaintiffs for the unlawful entry and possession of the suit property.

3. Are the plaintiffs entitled to compensation?

The court has found and held that the plaintiffs were the lawful owners of the suit property being the registered owners and their registration as the owners having not been legally challenged on any grounds. The court has equally found and held that the Ministry of Lands and Housing entry onto the suit land and carrying developments was unlawful and there was no compliance with the provisions of the Land Acquisition Act, Cap 295 Laws of Kenya which would have enabled the government to compulsorily acquire the land from the plaintiffs.

From the evidence tendered by both the plaintiffs and the Defendant it is clear that the Ministry of Lands and Housing did not only take possession of the suit property but also went ahead and constructed a block of apartments which they have either allocated and/or sold to tenants who are now in occupation and thus the suit property is not available to the plaintiffs even though they hold the documents of ownership to the property.

The property rights of every person is protected under the law and as observed earlier in this judgment the only instances where title to property is not protected is as set out under section 26 1(a) & (b) of the Land Registration Act 2012 where fraud, misrepresentation or illegality in the acquisition of the title is established. The protection of property is further fortified under Article 40 of the Constitution.

Article 40 of the Constitution provides in part:-

40.(2) Parliament shall not enact a law that permits the state or any person:-

(a) to arbitrarily deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation:-

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

Or

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

(i) requires prompt payment in full, of just compensation to the person, and

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

The court agrees with the plaintiffs submission that the acts of the Defendant through the Ministry of

Lands and Housing amounted to compulsorily acquiring the plaintiffs parcel of land save that the acquisition procedure and process as then outlined in the Land Acquisition Act, Cap 295 Laws of Kenya were never followed and/or complied with. The Land Acquisition Act under section 6 required that a Notice of acquisition be given by the relevant Minister to the Commissioner of Lands who would then publish a Notice of the Governments intention to acquire the subject land where upon inquiry would be made as to the compensation that would be payable to the person whose land is the subject of the acquisition. In the case of the plaintiffs herein this was not done and in my view the acts of the Ministry was in contravention of the provisions of Article 40 (3) of the constitution as it amounted to depriving the plaintiffs of their property without **“prompt payment in full of just compensation”**. There can be no contest that where property has been compulsorily acquired compensation must be paid. See the cases of **Eunice Grace Njambi Kambi Kamau & another –vs- Attorney General & 5 others (2013) eKLR**, **Isaac Gathungu Wanjohi & Another –vs- Attorney General & Others (2012) eKLR** **Virenda Ramji Gudka & 3 others –vs- Attorney General & others (2014) eKLR** where the courts considered the application of Article 40 (3) of the constitution and the provisions of the Land Acquisition Act (repealed) but now re enacted as sections 107 to 133 of the Land Act 2012. The courts held due compensation ought to be paid on compulsory acquisition in compliance with Article 40(3) of the Constitution.

In the circumstances of this case I hold that the plaintiffs have been deprived of their property and it would not be practical to restore the property back to them in view of the developments that the Defendant has effected thereon. I further hold that the plaintiffs are entitled to compensation for their property which they have been deprived the use of by the acts of the Defendant.

4. What compensation is payable to the plaintiffs?

Both Pw2 and Dw2 presented valuation reports on the suit property. Pw2 carried out two valuations the first one dated 17/6/2011 placed the value of the property at Kshs.120,000,000/- and value of the demolished bungalow at Kshs.10,000,000/-. The second valuation report is dated 20th September 2013 where Pw2 placed the value at Kshs.140,000,000/- explaining that the later valuation was an update of the 1st one and it took account of the price escalation owing to passage of time.

Dw2 set the valuation of the suit premises at Kshs.80,000,000/- explaining that she relied on comparables from which she established an acre of land within the area was going for about Kshs.100,000,000/- to Kshs.120,000,000/- depending on the location of the land. An appendix of comparables was tendered in evidence which showed the price of the land varied depending on where the land was located.

Upon an evaluation of the valuation reports as presented before the court it is clear that the valuers could not arrive at an agreed valuation. The valuation reports constitute opinions by the respective valuation experts. The report by Dw2 in my view appeared well justified having regard to the comparables that were tendered which represented actual conveyances registered and in respect of which valuations had been done by the Government Valuer and stamp duty paid as per the assessments. Pw2 did not furnish any evidence of any comparables which he relied on in coming to his assessment. Having regard to the evidence by Pw2 and Dw2 I would place a value of Kshs.100,000,000/- to the suit property.

As relates to the demolished bungalow on the suit premises Pw2 confirmed he never had occasion to see the house as it had been demolished by the time he inspected the property and thus the value of Kshs.10,000,000/- he placed on it is really without any basis. Dw2 explained that in respect to the comparables where there were old houses in one case a value of Kshs.5,000,000/- had been given to the house and in another a value of Kshs.4,000,000/- had been given. In regard to the old house in the suit property she stated having regard to the age and nature of the house its value could not be more than Kshs.1,000,000/-. I take note that the bungalow on the property was constructed in 1948 and at any rate the property was intended for redevelopment as per the evidence of the plaintiffs and was at any rate for demolition. I will not assign any value to it.

The plaintiffs have additionally claimed damages for the projected profit they would have made if they constructed the 20 housing units which they intended to develop on the suit premises. The plaintiffs state they would have made a profit of Kshs. 4 million per unit making in all a total of Kshs.80,000,000/-. The

plaintiffs however admit they did not have any approved architectural drawings for the development they intended to undertake. The plaintiffs therefore could not have had any bills of quantities to give an indication of the cost of the units. There also was no evidence as to what the selling price of the units would have been. How then did the plaintiffs arrive at the amount of Kshs.4,000,000/- as the profit they would make for every unit? A claim for loss of profit is in the nature of special damages which would need to be not only pleaded but also specifically proved. I do not think the plaintiffs have proved damages under the head of projected profit and in my view the amount claimed is speculative and I decline to award any damages under this head.

The property the subject of the suit was not acquired by the Ministry of Housing under the provisions of the Land Acquisition Act and for that reason I do not think that section 4 of the schedule to the Act that allows for the compensation determined under the Act to be increased by 15% would be applicable in the circumstances of this case. I hold that the schedule would be inapplicable since the process of compulsory acquisition was not adhered to in computing the compensation.

Having evaluated all the material evidence adduced by the parties in this matter I am satisfied that the plaintiffs have proved their case on a balance of probabilities and are entitled to judgment against the Defendant. I accordingly enter judgment in favour of the plaintiffs as against the Defendant in the following terms:

(i) That the plaintiffs were the lawful owners of land parcel L.R.NO.209/3217 as at September 2008 when the Ministry of Lands and Housing took possession of the land and commenced development thereon.

(ii) That the plaintiffs are entitled to be compensated the market value of L.R.NO.209/3217 whereupon the title registered in their names should be cancelled and issued in the Defendant's name or Nominee.

(iii) The plaintiff is hereby awarded compensation being the value of L.R.NO.209/3217 in the sum of Kshs.100,000,000/- with interest thereon at court rates from the date of this Judgment until payment in full.

(iv) Costs of the suit and interest thereon at court rates to the plaintiffs.

Judgment dated, signed and delivered at Nairobi this...**13th**day of...**March**....2015.

J. M. MUTUNGI

JUDGE

In the presence of:

Mrs Gitonga..... For the Plaintiffs

Mr. Kamau..... For the Defendant