



**Nakel Investments Limited v Ministry of Transport, Infrastructure,
Housing and Urban Development & another (Environment and Land Case
E016 of 2020) [2024] KEELC 3971 (KLR) (30 April 2024) (Judgment)**

Neutral citation: [2024] KEELC 3971 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND CASE E016 OF 2020**

**A OMBWAYO, J
APRIL 30, 2024**

BETWEEN

NAKEL INVESTMENTS LIMITED PLAINTIFF

AND

**MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING AND URBAN
DEVELOPMENT 1ST DEFENDANT**

NATIONAL BANK OF KENYA 2ND DEFENDANT

JUDGMENT

1. Nakel Investments Limited (hereinafter referred to as the plaintiff) vide its further amended plaint dated 12th November, 2020 has sued the Ministry of Transport, Infrastructure, Housing And Urban Development And The National Bank of Kenya (hereinafter referred to as the defendants) averring that she is the owner of house No. Nakuru/Hou/MG/37 that is on land parcel No. Nakuru Municipality Block 5/295. It also averred that it had purchased the said property from Albert Kipkosgei Lessonet vide the purchase agreement dated 20th December, 2012. The plaintiff further avers that on 29th November, 2020, it received a notice requiring it to vacate the suit house and yet the house on the suit property had already been validated via the letter dated 24th December, 2015. The plaintiff sought the following orders;
 - a. A declaration that the subject property being house No. Nakuru/Hou/MG/37 situate at Block 5/295 Nakuru Municipality is a private property legitimately acquired and legally belongs to the Plaintiff.
 - b. A declaration that the notice dated 29th November 2020 requiring the plaintiff to vacate the subject premises is illegal, null and void ab initio.



- c. A permanent injunction restraining or prohibiting the defendants either by themselves or acting through their (sic) or agents or employees or any other persons acting on their behalf or upon their authority or instruction from evicting or causing the plaintiff or its assigns to be evicted from the subject premises known as Nakuru/Hou/MG/37 situate at Block 5/295 Nakuru Municipality.
 - d. Costs of the suit with interest at court rates from the date of judgement to the date of payment in full.
2. The 1st Defendant filed its statement of defence on 25th February, 2021 where it denied the averments in the Plaint and averred that the notice to vacate that was issued to the plaintiff was valid because the suit property is public property that had been set aside for public housing. In its counterclaim, the 1st Defendant stated that the plaintiff was illegally in possession of land parcel No. Nakuru/Municipality Block 5/295 as the title was obtained through fraudulent means. The 1st Defendant also stated that the houses known as Naku/Hou/Mg/31 and Naku/Hou/Mg/32 that were on the suit property are public properties that belong to the Ministry of Housing. The 1st Defendant further stated that the plaintiff charged the suit property to the 2nd defendant with full knowledge that it did not have proper title.
3. The 1st defendant set out particulars of negligence on the part of the 2nd defendant and particulars of fraud on the part of the plaintiff and seeks the following prayers;
 - a. An order of declaration that Naku/Hou/Mg/31 and Naku/Hou/Mg/32 situate on Block 5/295 Nakuru Municipality are public properties which belong to the 2nd plaintiff in the counterclaim.
 - b. An order for surrender to the District Land Registrar Nakuru (sic) for cancellation of any title document of Nakuru Municipality Block 5/295 registered in the name of the 1st Defendant in the counterclaim.
 - c. An order of declaration that the defendant is illegally in possession of the suit properties.
 - d. An order of declaration that the 1st defendant in the counterclaim should pay the rent to the plaintiff in the counterclaim from the time it took possession of the property.
 - e. A declaration to the effect that the charge on plot No. Nakuru Municipality Block 5/295 for Kshs. 80,600,000 is a nullity in law and illegal ab initio and an order directing the 2nd Defendant to surrender the same forthwith and unconditionally to the Land Registrar Nakuru for purposes of having the same cancelled.
 - f. An order of mandatory injunction compelling the defendant either by itself or acting through its agents or employees to vacate the suit premises known as Naku/Hou/Mg/31 and Naku/Hou/Mg/32 situate on Block 5/295 Nakuru Municipality.
 - g. Any other order this honourable court may deem fit to grant.
 - h. Costs of the suit with interest at Court rates.
4. The 2nd Defendant filed its statement of defence on 11th January, 2022 where it denied the averments in the Plaint.



Plaintiff's Evidence

5. Yusuf Suraw Isaac testified as PW1. It was his evidence that he was one of three directors of the Plaintiff and adopted his witness statement as part of his evidence. He produced the following documents as exhibits;
 1. The resolution was produced as PEX 1.
 2. Notice to vacate as PEX 2.
 3. Sale Exhibit as PEX 3.
 4. Transfer of Lease as PEX 4.
 5. Valuation letter as PEX 5.
 6. Payment Receipts as PEX 6.
 7. Validation Certificate as PEX 7.
 8. Loan receipts as PEX 8.
 9. White card was marked for identification.
 10. Certificate of official search as PEX 10.
 11. Certificate of Lease as PEX 11.
 12. Land rent records as PEX 12.
 13. Bundle of documents filed on 26th November 2022 as PEX 13.
6. It was also his evidence that the suit property was situated along Oginga Odinga road behind Naivas Supermarket. It was further his evidence that he had lived on the suit property since the year 2012 after he had purchased it from Lessonet. He testified that the suit property was initially government property before it was transferred to Wilson Kiprono Chepkwony who in turn sold it to Michael Koskey Kurere. It was then transferred to Albert Kipkosgei Lessonet. He also testified that he paid Kshs. 2,800,000/= to validate the two houses on the suit property after he was given a certificate of valuation by the Ministry of Housing. He reiterated that the he was not a civil servant and that even though it was Albert Lessonet who applied to have the houses validated, he was the one who paid. It was his evidence that he made the payments in the year 2012 for houses MG 31 and MG 32. It was also his evidence that they had purchased the house from a government officer known as Chepkwony. He admitted that he had taken a loan of Kshs. 80,000,000/= on 21st December, 2012 from the 2nd defendant.
7. Upon cross examination he stated that the plaintiff purchased the suit property from Lessonet for Kshs. 5,000,000/= on 20th December, 2012. He also stated that his witness statement had an error as it had indicated that he had bought house No. 37 but he had bought house No's 31 and 32. When he was referred to the letter dated 15th January, 2013 he admitted that he had done a search to show that the land belonged to him. He also admitted that he did not have the original white card as he only had the valuation. He further admitted that he did not have any receipts for land rates and that he only had a receipt for Kshs. 43,200/= as payment for land rent.
8. He confirmed that he was not aware of how Albert got the land but he got it from Michael Kipkoskey Kurere. He admitted that he had paid Kshs.2,800,000/= for validation to the Ministry of Housing. He



- also admitted that when he paid the Kshs. 2,800,000/= the suit property was already in his name and that the lease commenced on 1st June, 1994 for 99 years.
9. Upon further cross examination, he admitted that he had gotten documents from the lands office which show that the suit property belongs to the Plaintiff. He also admitted that when he took a loan from National bank, he gave the certificate of lease as security for the loan. He further admitted that he had never seen any documents by the defendants.
 11. Upon re-examination, he reiterated that when he paid for validation, he was already the registered owner of the suit property and in possession. He stated that Albert had applied for validation before he sold the suit property to the plaintiff which validation came after he had already purchased the land.
 12. Sammy Mbuca Kamanja testified as PW2. It was his evidence that he retired as a civil servant in the year 2016 from the position of Acting Director Estates in the Ministry of Lands. It was also his evidence that his personal number was 198141449. It was further his evidence that his duties included allocation of government houses, rent collection, maintenance of government buildings, validation of irregularly alienated properties among other duties.
 13. He testified that the Ndung'u Commission of inquiry contained a list of irregularly acquired or alienated government properties. He also testified that he had in court a letter dated 24th December, 2015 which was a validation of Nakuru Municipality Block 5/295 as it was an estate department. He admitted to writing and signing the said letter and testified that the letter stated that the owner had paid Kshs. 2,800,000/= for the plot to the Ministry of Land, Housing and Urban Development. The addressee of the letter was the Chief Land Registrar and that there was also a receipt serial number 01579 that had been issued by the Ministry of Housing.
 14. It was his evidence that the document showed that an equal amount was deposited in the Civil Service Housing Fund and that it was written upon receipt of the money. It was also his evidence that he was familiar with the circular dated 30th June, 2003 that was derived from a 1st March 1958 circular. It was also his evidence that Tirop Kosgey wrote the letter dated 24th January 2007. It was on the sale of non-strategic government owned houses. He testified that a non-strategic government house is one that does not affect core services or have an institution importance. He also testified that from the documents filed, the house was non-strategic and that item 92 read Block 5/295. The valuation amount was Ksh. 1,400,000/= for the market price and that item No. 93 was Block 5/295. He further testified that from the circular, the suit property was non-strategic and that it was dealing with specific houses. It was also his evidence a part of the letter dealt with validation and stated that sale of houses was different from validation.
 15. It was further his evidence that validation was for irregularly obtained plots. He testified that a lease was issued to Wilson Kiprono of Iten on 12th October 1996 who was a senior Civil Servant. He also testified that the suit property was private land as it had been validated by various documents including the circular dated 2nd March, 2007, the letter he wrote dated 19th November, 2007 and the letter dated 12th February 2008 by D.M Nzulli.
 16. Upon cross examination, he confirmed that the suit property was private property and it could be charged. Upon further cross examination, he reiterated that he had the authority to validate and that even though he did not have it with him in court, it was in the file. He admitted that he was not aware of when the suit property was sold and that it became private property when the validation was done. He confirmed that the suit property became private property in the year 2015 when the payment was done. He admitted that the suit property was not boarded and stated that he was not aware if they had standing to sell.



17. He stated that in the present matter, it was not a case for sale but one of validation as validation was done when one acquired the land irregularly. He also stated that government properties did not have title documents and that before valuation was done, they had to ensure that due process was undertaken. He further stated that the suit properties were alienated in the year 1998 while the validation was done in the year 2015 for the sale amount of Kshs. 1,400,000/=.
18. Upon re-examination he stated that the circular dated 28th July, 2008 did not cancel validation. He also stated that the said letter did not state that validation was cancelled and that it was lawful for the validation to continue. He reiterated that it was his mandate to validate houses and he stated that the suit property became private property on 12th October, 1998.
19. Erick Nyamu testified as PW3 and produced a bundle of documents as PEX 14. He testified that he was the Senior Land Registrar in Nakuru. It was his evidence that the certificate of search showed that the owner of the suit property was Nakel Investment Limited. It was also his evidence that the suit property was registered to a private person on 12th October, 1998. It was registered to William Kiprono Chepkurus and after that the property changed ownership three more times. He emphasized that the suit property belonged to the Plaintiff.
20. Upon cross examination he stated that the National Bank of Kenya had a charge over the suit property that was registered on 20th January, 2014 for Kshs. 80,600,000/=.
21. Upon further cross examination, he stated that he had the entire parcel file in court and that it had receipts issued in Nairobi and that their office created the white card. A certificate of lease was issued by the Ministry of Lands which lease he received and registered. He admitted that he had the transfer from Albert to the Plaintiff and that he did not question the lease that was forwarded to him. Upon re-examination he stated that he certified the documents he produced on 12th October, 2023 and emphasized that the suit property belonged to the Plaintiff. The Plaintiff's case was then closed.

Defendants Evidence

22. Julius Waweru Mwangi testified as DW1. He stated that he used to work at the State Department of Housing and Urban Development and that he had retired in June 2023. He adopted his witness statement dated 9th February 2021 as part of his evidence and produced his bundle of documents as DEX 1.
23. It was his evidence that he knew house No's MG 31 and 32 which were on Nakuru Municipality Block 5/295 as they were constructed by the government in the years 1949 and 1956 on public land. It was also his evidence that upon completion, the houses were registered and entered in the register of government buildings and have been occupied by the Civil servants since then up to 2015- 2016.
24. It was further his evidence that the house was allocated to Mr. Francis Ndungu Kirathe. The procedure for disposal of government houses was dealt by 2 circulars. The first one was issued in 1958 and it outlines the process which starts by outlining the reasons for boarding. In Nakuru, the process was done accordingly. One of the reasons for boarding was when it was uneconomical to maintain and repair the houses or when there was a change of user or conversion. Other reasons were if the houses were required for sale or when they had been damaged or in the event new development was to be undertaken.
25. He testified that the circular dated 24th January, 2007 advertised for sale of government houses in Nairobi and that there was another circular dated 2nd March, 2007 that was in respect of other houses. The circular dated 24th January, 2007 also dealt with validation for irregularly alienated houses.



- Validation was meant for properties that had already been alienated. Some of the said properties were listed by the Ndungu Commission and the Ministry had opened a window to validated the already acquired houses.
26. He also testified that validation was not a day to day process and that it was to be used in the context of a sale. The sale was advertised in the earlier mentioned circular dated 24th January, 2007 which sale was later cancelled by the government through a notice issued on 30th July, 2008. The sale was to commence on 1st February 2007 and since it was cancelled, no sale was done. The 2,800,000/= that was paid by the Plaintiff could not have been for validation. It was his evidence that the lease was issued by Commissioner of Lands who did not have the authority to allocate land. It was also his evidence that the houses were on government land and they were registered to the government. It was further his evidence that even though the Commissioner of Lands had the authority to allocate unalienated land, the suit property was alienated and was therefore not available for alienation.
 27. He testified that validation was done through a committee and that in the present matter, there was no authority to validate and therefore the validation was irregular. He then sought that the Plaint be dismissed and the title cancelled as it was acquired irregularly.
 28. Upon cross examination, he admitted that he did not have any document to show that he used to work for the government and neither did he have in court any document to show that he was authorized to testify. He also admitted that issues of fraud are reported to the police for investigation. He further admitted that he did not have any report of fraud and no evidence of prosecution. He confirmed that he had proceedings for case No. 3978 of 2016 where the plot number was similar to the plot number in the present case.
 29. He admitted that he was not aware of how the plaintiff acquired the suit property and also admitted that he did not investigate how the suit property was acquired. He confirmed that when he retired, he was a director Slum Upgrading. He also confirmed that Mr. S. M Kamanja was the Director Estates who he used to report to. He further confirmed that Mr. S. M Kamanja had testified the previous day. He conceded that Mr Kamanja had not lied when he stated that the letter of validation had been issued. He confirmed that Mr Kamanja was acting well within the law when he wrote the letter that the suit property had been validated.
 30. He also confirmed that at the time the circular dated 28th July, 2008 was issued, the suit property was already registered in the name of the Wilson Kiprono Chepkwony. He further confirmed that the circular had a list of non-strategic government houses and it had a list where the suit properties were listed under item No's 91 and 92. The circular issued on 2nd March 2007 had a list of houses for sale and validation where some houses were transferred for sale to validation. He admitted that the circular did not state that validation had been cancelled. He also admitted that the cancellation of 2008 did not affect the sale before 2007. He further admitted that the title was issued in 1998 and that they were seeking that the said title be cancelled.
 31. Upon further cross examination he stated that the suit property was not in the Ndung'u Report and admitted that the Ministry had not registered a caution or restriction on the suit property. He confirmed that searches were done in the Land Registry and that the houses on the suit property had tenants. He stated that the bank did not conduct due diligence and that tenant in the house on the suit property was a government officer.
 32. Upon re-examination he stated the properties in the district were for sale and where there had been irregular allocation, the properties were validated. The Attorney General then closed its case.



33. Judy Chege testified as DW2. She stated that she worked with National Bank as the Manager Reconciliation Recoveries. She adopted her witness statement dated 7th January, 2022 as part of her evidence and produced the documents in her bundle of documents as DEX 2.
34. It was her evidence that the plaintiff had charged the suit property to National Bank for a mortgage loan of Kshs. 80,600,000/= . The plaintiff's director one Suleiman Ibrahim Sango produced the title as security and that as per the bank statements, the plaintiff had been repaying its loan. She testified that the outstanding loan balance was Kshs. 21, 860, 408.98 as at 29th January 2024. She testified that no defect on the title was disclosed and that if the court finds there is any defect, then they would deal with the plaintiff. But in the event, the entire loan is repaid, they would have no problem.
35. Upon cross examination, she stated that a valuation was conducted before the suit property was charged. She also stated that it was confirmed that the plaintiff was in occupation of the suit property. She further stated that they obtained a search at the Lands Registry together with a white card which showed that the plaintiff was the registered owner of the suit property. She emphasized that the bank had a valid charge.
36. Upon further cross examination she stated that there was a ground report by the valuer which she admitted did not state who was the occupier of the suit property. The 2nd defendant's case was then closed.

Submissions

37. The plaintiff filed its submissions on 8th March, 2024 while the 1st Defendant filed its submissions on 18th March 2024. The plaintiff in its submissions gave a summary of the evidence by the parties and submitted on the following issues;
 1. Did the circular dated 28th July, 2008 and the notice contained in Standard Newspaper edition of 30th July 2003 cancel validation of the suit property?
 2. Whether the suit property was validated within the meaning of the circulars dated 24th January 2007 and 2nd March 2007.
 3. Whether the certificate of lease held by the 1st Defendant is indefeasible.
 4. Whether the 1st and 2nd defendant have contravened the plaintiff's right to fair administrative action and legitimate expectation.
 5. Who should bear costs.
38. On the first issue, the plaintiff relied on the cases of *Imperial Bank of Kenya vs Kariuki Construction Company Limited & 2 Others* [2015] eKLR, *Oduor & 3 Others vs Magistrates and Judges Vetting Board & another* [2021] eKLR and submitted that the sale of non-strategic government houses that was rescinded in the circular dated 28th July, 2008 and the notice in the Standard Newspaper dated 30th July 2008 did not imply that the validation had been cancelled.
39. On the second issue, the plaintiff relied on the case of *Ngobit Estate Limited vs Carnegie Civil Appeal No. 57 of 1991* and submitted that since the suit property was alienated to a civil servant on 12th October 1998, when the certificate of lease was issued, subsequent owners of the suit properties were innocent purchasers for value. The plaintiff submitted that it produced a letter dated 24th December 2015 which made it clear that the plaintiff had paid the requisite fee for validation and that the said letter was not challenged.



40. On the third issue, the plaintiff relied on Sections 24 and 26 of the *Land Registration Act*, the case of *Alice Chemutai Too vs Nickson Kipkurui Korir & 2 Others* [2015] eKLR and submitted that even though the defendants allege that it acquired the certificate of lease fraudulently, no evidence in support of the said allegations was produced. The plaintiff also relied on the case of *Fanikiwa Limited & 3 Others vs Sirikwa Squatters Group & Others* [2023] eKLR among other cases in support of its arguments.
41. With regard to the fourth issue, the plaintiff relied on the case of *Republic v Kenya Revenue Authority & another* [2022] eKLR and submitted that it relied on the circulars dated 24th January 2007 and 3rd March 2007 in purchasing the suit property with the expectation that upon registration as the owner, its ownership would be validated and protected in law. The plaintiff also relied on the case of *John Mukora Wachini vs Minister for Lands & 6 Others* [2013] eKLR in support of its arguments. The plaintiff then sought that the orders in its plaint be granted.
42. The 1st defendant in its submissions identified the following issues for determination;
- I. Whether the circular dated 24th January 2007 and the subsequent circular dated 2nd March 2007 referring to sale and validation of government houses at the districts were fully cancelled vide the circular dated 28th July 2008.
 - II. Whether the suit property was available for allocation by the Commissioner of Lands.
 - III. Whether the plaintiff acquired good title to the suit property.
 - IV. Whether the plaintiff acted fraudulently in the acquisition of the suit property.
 - V. Who should bear the costs of the suit.
42. With regard to the 1st issue, the 1st defendant submitted that the circular dated 24th January 2007 provided for the sale of non-strategic houses in districts that was to commence on 1st February 2007 but did not provide for validation. A subsequent notice was issued on 30th July 2008 which cancelled the circular dated 24th January 2007. It was the 1st defendant's submissions that the plaintiff acknowledged that the suit properties were government land and he was not therefore an innocent purchaser for value.
43. On the second issue, the 1st defendant submitted that the suit property was not available for allocation as it was already surveyed and developed by the Ministry of Transport, Infrastructure, Housing and Urban Development. The 1st defendant relied on the cases of James Joram Nyaga & another vs Attorney General & another Nairobi HC Misc. Civil Application No. 1732 of 2004, *Paul Nderitu Ndung'u & 20 Others vs Pashito Holdings Limited & another* Nairobi HCC No. 3063 of 1996 among other cases in support of its submissions.
44. With regard to the third issue, the 1st defendant reiterated that the house on land parcel No. Nakuru Municipality Block 5/295 was alienated and therefore not available for allocation to private individuals. The 1st defendant relied on Article 62 of *the Constitution* of Kenya, Section 3 of the *Physical Planning Act*, the cases of *Kenya Anti-corruption Commission vs Onyango & 4 others* (citation not given) in support of its submissions.
45. The 1st defendant also relied on Section 26 of the *Land Registration Act* and submitted that even though evidence as to the ownership of the suit property was adduced, the process of acquisition of the suit property was not demonstrated. The 1st defendant also relied on the cases of *Dina Management Limited vs County Government of Mombasa & 5 Others (Petition 8(E010) of 2021)* [2023] KESC 30



(KLR) (21 April 2023) (Judgement), Arthi Highway Developers Limited vs West End Butchery Limited & 6 others [2015] eKLR in further support of its arguments.

46. On the fourth issue, the 1st defendant submitted that the requisite procedure was not followed in the acquisition of the suit property and that it was never validated by the Ministry of Housing. The 1st defendant submitted that the suit property was never boarded and was therefore not deleted from the building register of the ministry. The 1st defendant relied on the case of Daudi Kiptugen v Commissioner of Lands & 4 Others [2015] eKLR among other cases in support of its arguments.
47. The 1st defendant also submitted on the process boarding and validation and stated that the regulations require that before any disposal of government assets including government houses, a board of survey initiated by the officer in charge of the building is constituted and convened accordingly. The board of survey after determining the condition and reasons for boarding of the building, and the inspection report, prepares a report for the authorized officer who is the principal secretary in charge of housing. The proceedings and recommendations of the board of survey are recorded in the form F.O 58 and together with the inspection report and the minutes of its proceedings forwarded to the Accounting officer in charge of housing for approval. The approved and signed F.O 58, the inspection report and the minutes of the board of survey are forwarded to the Accounting Officer of the National Treasury. After approval by the national treasury, the house is disposed off as recommended by the board and deleted from the building register of government buildings and houses. The 1st defendant reiterated that the said process was not followed in the purchase of the suit property and it therefore sought that the plaintiff's suit be dismissed and its counterclaim allowed.

Analysis and Determination

48. After considering the pleadings and the evidence on record, it is my view that the following issues arise for determination;
- a. Whether the sale of land parcel No. Nakuru Municipality Block 5/295 was properly validated.
 - b. Whether the plaintiff is entitled to the prayers sought in the plaint.
 - c. Whether the 1st defendant is entitled to the prayers sought in the counterclaim.
 - d. Who should bear the costs of the suit.

a. Whether the Sale of Land Parcel No. Nakuru Municipality Block 5/295 was Properly Validated.

49. It is not disputed that the plaintiff is the registered owner of land parcel No. Nakuru Municipality Block 5/295 where the suit houses are located. It is also not disputed that the suit property belonged to the government before it was transferred to William Kiprono Chepkurus on 12th October 1998. It is further not disputed the suit property was transferred three more times before it was registered in the name of the plaintiff. What is disputed is whether the sale of the houses on the suit property were properly validated.
50. The plaintiff produced an undated letter written by Albert Kipkosgei Lessonet addressed to the permanent secretary, Ministry of Housing requesting for validation of Block 5/295. The plaintiff also produced copies of receipts issued by the Ministry of Housing for Kshs. 2,800,000/= for property validation. Another letter dated 24th December 2015 was produced by the plaintiff written by S.M Kamanja, Ag Director Estate Department addressed to the Chief Land Registrar, Ministry of Land, Housing and Urban Development informing him that Block 5/295 Nakuru Municipality was duly validated and was therefore private property.



51. S.M Kamanja testified as PW2 and it was his evidence that the suit property was non-strategic and was therefore alienated to a senior civil servant. It was also his evidence that the circular dated 28th July, 2008 did not affect validation of the suit property.
52. As aforementioned, the 1st defendant in its counterclaim alleged that the suit property was not procedurally validated and it sought cancellation of the plaintiff's title. Julius Waweru Mwangi gave evidence in support of the 1st defendant's case and during cross examination he admitted that he did not investigate the process of acquisition of the suit property. He also admitted that he used to work directly under S.M Kamanja who had testified as PW2. He further admitted that the suit property was duly validated.
53. It is trite law that he who alleges must prove. Section 107(i) of the Evidence Act provides as follows;
- “Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.”
54. In the present matter, it is my finding that the plaintiff has demonstrated that the suit property was properly validated as the sale and validation of the non-strategic government houses as envisaged in the circulars issued in 2007 were different and that the circular dated 28th July 2008 and the Standard Newspaper notice of 30th July 2008 did not cancel the validation exercise.

b. Whether the Plaintiff is Entitled to the Prayers Sought in the Plaintiff.

55. Given my finding on issue (a) above, the plaintiff is entitled to the prayers sought in the plaintiff and therefore I do give judgment in terms that:-
1. A declaration that the subject property being house No. Nakuru/Hou/MG/37 situate at Block 5/295 Nakuru Municipality is a private property legitimately acquired and legally belongs to the Plaintiff.
 2. A declaration that the notice dated 29th November 2020 requiring the plaintiff to vacate the subject premises is illegal, null and void ab initio.
 3. A permanent injunction restraining or prohibiting the defendants either by themselves or acting through their (sic) or agents or employees or any other persons acting on their behalf or upon their authority or instruction from evicting or causing the plaintiff or its assigns to be evicted from the subject premises known as Nakuru/Hou/MG/37 situate at Block 5/295 Nakuru Municipality.
 4. Costs of the suit with interest at court rates from the date of judgement to the date of payment in full.

c. Whether the 1st defendant is entitled to the prayers sought in its counterclaim.

55. Given my finding on issue (a) above, the 1st defendant is not entitled to the prayers sought in its counterclaim.

d. Who should bear the costs of the suit?

56. Costs are awarded to the plaintiff and the 2nd defendant.

JUDGMENT DATED, SIGNED AND DELIVERED ON 30TH APRIL 2024.

A.O. OMBWAYO



JUDGE.

