



REPUBLIC OF KENYA



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**Karuri v Chege (Environment & Land Case E335 of 2022)
[2024] KEELC 3361 (KLR) (24 April 2024) (Judgment)**

Neutral citation: [2024] KEELC 3361 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E335 OF 2022**

EM WASHE, J

APRIL 24, 2024

BETWEEN

SILAS IRUNGU KARURI PLAINTIFF

AND

PETER NGANGA CHEGE DEFENDANT

JUDGMENT

1. The Plaintiff herein approached this Honourable Court by way of a Plaint dated 11.10.2022 seeking the following Orders against the Defendant herein; -
 - a. A declaration that the Plaintiff Silas Irungu Karuri is the legal owner of the Land Title Number I.R.177379/1 on LR.No.15400/317.
 - b. An Order of eviction against the Defendant.
 - c. A permanent injunction to restrain the 1st Defendant either through himself or through any person whomsoever from entering into, cultivating, fencing, building, selling, developing, disposing, transferring and or in any other way interfering with the Land Title Number IR.177379/1 on LR.No.15400/317.
 - d. Damages for trespass against the Defendant to be assessed by the Court with interest at court rates from the date of the judgement.
 - e. In any of the foregoing events, the costs of the suit.
2. The facts in support of the above prayers are contained in the body of the Plaint and can be summarised as follows; -
 - a. The Plaintiff is the genuine and valid owner of the property known as LR.No.15400/317 (IR.No.177379/1).



- b. However, Defendant without any justification and valid legal document invaded and/or trespassed into the said property known as LR.No.15400/317 (IR.No. 177379/1/) and began constructing the same to the detriment of the Plaintiff.
 - c. The Plaintiff is of the view that the purported documents which the Defendant seeks to assert ownership of the property known as LR.No.15400/317 (IR.NO.177379/1) are forged and fraudulent.
 - d. In essence therefore, the Plaintiff seeks for orders that the Defendant be declared a trespasser and thereafter evicted from the property known as LR.No.15400/317 (IR.NO.177379/1).
 - e. In addition to the above, the Plaintiff is seeking to be compensated by the Defendant for the illegal damage and/or degradation of the property known as LR.No.15400/317 (IR.NO.177379/1) through the purported construction undertaken as well as costs of this suit.
3. The Plaintiff was then served on the Defendant who responded by filing a Statement of Defence dated 08.05.2023.
 4. The Defendant through his Statement of Defence dated 08.05.2023 outlined the following facts in opposition of the Plaintiff's claim; -
 - a. The Defendant pleaded that the property known as LR.No.15400/317(IR.No.177379/1) is registered in the name of Kiambu Dandora Farmers Company Limited.
 - b. The Defendant further pleaded that Kiambu Dandora Farmers Company Limited are the ones that allocated and/or bestowed ownership of the property wrongfully known as LR.No.15400/317 (IR.No.177379/1) hence he was the legitimate owner of the said property.
 - c. Consequently, the Defendant denied ever trespassing on the Plaintiff's property known as LR.No.15400/317 (IR.No.177379/1) and stated that his occupation on the said property was based on his legitimate and genuine ownership.
 - d. The Defendant specifically denied undertaking any fraudulent acts, invasion and or trespass against the Plaintiff's property as alleged.
 - e. In conclusion, the Defendant sought to have the Plaintiff's suit to be dismissed with costs.
 5. Upon filing of the Statement of Defence, the pleadings closed and the matter was then set for hearing.

Plaintiff's Case.

6. The hearing commenced on the 11.10.2023 with the Plaintiff testifying as the first witness and was marked as PW 1.
7. The Plaintiff informed the Honourable Court that he had prepared and executed a witness statement dated 11.10.2022 of which he adopted as his evidence in chief.
8. Further to the above, the Plaintiff produced the following documents as his exhibits in support of his case;-

Plaintiff Exhibit 1- Certificate of Title for LR.No.15400/317 (IR.No.177379).

Plaintiff Exhibit 2- Letter of Offer dated 21.02.2012 from Amboseli Court Limited to the Plaintiff.



Plaintiff Exhibit 3- Agreement for Sale on LR.No.15400/117 Sub-Plot. No. 27 dated 30.12.2015.

Plaintiff Exhibit 4- Transfer dated 07.09.2017 relating to LR.No.15400/317 from Amboseli Court LTD to the Plaintiff.

Plaintiff Exhibit 5- Letter dated 12.06.2018 from Amboseli Court LTD to the Plaintiff.

Plaintiff Exhibit 6- Copy of official search of the property known as LR.No.15400/317 issued on the 15.09.2022.

Plaintiff Exhibit 7 (a) (b)(c) and (d)- Copies of the Payments by the Plaintiff to Amboseli Court LTD and receipts of the payments.

Plaintiff Exhibit 8- Letter dated 10.05.2016 addressed to various parties from National Land Commission.

Plaintiff Exhibit 9- A copy of a judgement in Nairobi Judicial Review Application No. 35 of 2018 between Samuel Wachira Wanjaa & others -versus- National Land Commission & Amboseli Court LTD as Interested Parties.

Plaintiff Exhibit 10- A copy of the Ruling in the NAairobi Judicial Review Application No.35 of 2018 delivered on the 16.02.2023.

Plaintiff Exhibit 11- A copy of the Replying Affidavit dated 15.03.2019 by a Director of Amboseli Court Limited.

9. The Plaintiff concluded his evidence in chief by seeking for a declaration that he was the legal owner of the property known as LR.No.15400/317 together with costs of this suit.
10. On cross-examination, the Plaintiff was referred to the contents of Plaintiff Exhibit 9.
11. The Plaintiff in his view was that the Judgement confirmed that he was the owner of the property in issue.
12. However, there was no clear prayer and/or paragraph that specifically awarded and/or made a finding to that effect.
13. The Plaintiff stated that he was 57 years old and had never left this Country.
14. The Plaintiff recollected that sometime ago, there was a Commission known as the Ndungu Commission that was formed to look at properties that had been illegally allocated and the Plaintiff's property was among those listed as unlawfully allocated.
15. The Plaintiff admitted that he was aware the Defendant had purchased some land from Kiambu Dandora Farmers Co-operative Society LTD.
16. The Plaintiff stated that the portion purchased by the Defendant was within a larger property known as LR.No.11379/3.
17. However, the Directors of Kiambu Dandora Farmers Co-operative Society Limited had denied selling any portion of the property known as LR.No.11379/3 to Amboseli Court Limited.
18. The Plaintiff admitted that he had never done an Official Search of the property known as LR.No.11379/3.
19. The Plaintiff on being referred to the Defendant's Bundle dated 08/05/2023, he averred that his property was not mentioned therein.



20. The Plaintiff insisted that the property known as LR.No.15400 was not mentioned in the Ndungu Report.
21. The Plaintiff clarified that one parcel of land can not have two title deeds issued.
22. The Plaintiff clarified that he did not ask Amboseli Court Limited how they had acquired their title because they already had a title.
23. However, the Plaintiff was of the view that a portion of a big title cannot get a separate registrable number without going through resurvey and sub-division.
24. The Plaintiff could not demonstrate and/or produce the manner in which his property was created and/or hived off from the later property known as LR.No.11379/3.
25. The Plaintiff similarly confirmed that the title belonging to Kiambu Dandora Farmers Limited had been issued before the one issued to Amboseli Court Limited.
26. The Plaintiff averred that he had no document to confirm that the title issued to Kiambu Dandora Farmers Co-operative Limited had been tempered with in terms of sub-division.
27. The Plaintiff stated that he had not sued Amboseli Court Limited which sold him the land but, in the event they sold him a fake title, he would then seek compensation from them.
28. On re-examination, the Plaintiff reiterated that his title was not among those that were mentioned by the Ndungu Report.
29. The Plaintiff stated that his title was processed regularly and lawfully including paying for stamp duty.
30. The Plaintiff confirmed that he has an official search from the Department of Land which confirms his ownership.
31. The Plaintiff was of the view that he sued the Defendant because he had trespassed into his property.
32. The Plaintiff clarified that the suit before the Honourable Court was about occupation and not the legitimacy of the titles.
33. The Plaintiff affirmed that he had no claim against Amboseli Court Limited because they had lawfully transferred him his title.
34. The Plaintiff in concluding his testimony informed the Honourable Court that Dandora Kiambu Farmers Co-operative Society LTD had never sued him on any issue relating to his occupation and/or legitimacy of the title.
35. At the end of this re-examination, the Plaintiff was discharged from the witness box and thereafter, the Plaintiff's case was closed.

Defence Hearing.

36. The Defence hearing commenced with the testimony of the Defendant who was marked as DW 1.
37. The Defendant introduced himself as a businessman who resides in Sosian area.
38. The Defendant informed the Honourable Court that he was familiar with the Plaintiff herein.
39. The Defendant further informed the Honourable Court that he had prepared and executed a witness statement dated 08.05.2023 of which he adopted as his evidence in chief.



40. Further to that, the Defendant produced the following documents as his evidence in support;-
- Defence Exhibit 1- Copy of Title Deed for LR.No.11379/3.
 - Defence Exhibit 2- Copy of an Agreement for Sale dated 12.02.2021.
 - Defence Exhibit 3- Share Certificate No. 4226 issued by Kiambu Dandora Farmers Co-operative Society Limited in favour of the Defendant.
 - Defence Exhibit 4- Copy of a Survey Report from the Ministry of Lands dated 17.03.2021.
 - Defence Exhibit 5- A copy of a sub-division scheme approval by the Ministry of Lands dated 03.06.2022.
 - Defence Exhibit 6- Copy of a Letter of Acceptance by Kiambu Dandora Farmers Co-operative Society LTD dated 09.06.2022.
 - Defence Exhibit 7- A copy of a Banker's Cheque dated 09.06.2022.
41. The Defendant informed the Honourable Court upon purchasing a portion of the property known as LR.No.11379/3, he decided to develop the same but was stopped by an injunction obtained by the Plaintiff herein.
42. On cross-examination, the Defendant informed the Honourable Court that he bought the property through acquisition of Shares from Kiambu Dandora Farmers Co-operative Society Limited who were the registered owners of the entire property known as LR.No.11379/3.
43. The Defendant confirmed that he purchased Plot.No.498 and 435 within Zone 11 on LR.No.11379/3.
44. The Defendant stated that at the time he acquired Plot.no.498 and 435, there were no registered titles and what existed was the original LR.No.11379/3.
45. It was the Defendant's evidence that subsequently thereafter, individual purchasers were issued with Allotment Letters to enable them process their individual titles.
46. The Defendant was then referred to a Replying Affidavit dated 24.11.2022.
47. The Defendant admitted that in the Replying Affidavit dated 24.11.2022, he pleaded that the property which he owns was Nairobi/Block 173 Sosian/525.
48. However, the Defendant did not produce the Certificate of Title to the property known as Nairobi/Block 173 Sosian/525.
49. On being referred to the Defence Exhibit 6, the Defendant admitted that his letter was referring to the property known as Nairobi Block 173 Sosiani/42.
50. The Defendant clarified that usually the numbers which are issued through the Share Certificates change after the survey is undertaken by a Licensed Surveyor.
51. Consequently therefore, the initial numbers 498 and 435 contained in the original share certificates were changed to 525 and 509 after the final Survey.
52. However, the Letter of Offer from Kiambu Dandora Farmers Co-operative LTD referred to a property known as Nairobi Block 173 Sosiani/525.
53. Consequently therefore, it is the property known as LR.No.Nairobi Block 173 Sosiani/42 is what the Defendant was claiming as his legitimate property and is what he was defending.



54. According to the Defendant, the property known as LR.No.11379/3 contained in the Defence Exhibit 1 is approximately 812 Acres.
55. The Defendant stated that according to his knowledge, the property known as LR.No.11379/3 was sub-divided to create smaller individual titles.
56. The Defendant reiterated that he had taken possession of his property known as Nairobi Block 173 Sosiani/42 and started to build.
57. However, the Defendant did not have any building approvals and/or permits from the County Government or other relevant authorities allow him develop the said property known as Nairobi Block 173 Sosiani/42.
58. On re-examination, the Defendant reiterated that he acquired his property after the sub-division of the larger property known as LR.No.11379/3 by Dandora Kiambu Farmers Co-operative Society LTD.
59. According to the Defendant, the property that he owns and occupies is known as Nairobi Block 173 Sosiani/525.
60. The Defendant confirmed that he has a valid Certificate of Title for the property known as Nairobi Block 173 Sosiani/525 which was issued even before the filing of this suit.
61. The Defendant lastly reiterated that the property known as Nairobi Block 173 Sosiani/525 was created out of the property known as LR.No.11379/3 contained in Defence Exhibit 1.
62. At the end of this re-examination, the Defendant was discharged from the witness box thereof.
63. The second Defence witness was one Joseph Mwangi Karanja (DW 2).
64. DW 2 introduced himself as a businessman and a director of Kiambu Dandora Farmers Co-operative Society LTD.
65. According to DW 2, Kiambu Dandora Farmers Co-operative Society LTD was the registered owner of the mother title known as LR.No.11379/3 which was approximately 813 acres located within Dandora area.
66. The Defendant informed the Honourable Court that the Plaintiff herein was a stranger to their entity known as Kiambu Dandora Farmers Co-operative Society LTD.
67. Similarly, DW 2 denied ever having any transaction with the entity known as Amboseli Court Limited.
68. DW 2 confirmed to the Honourable Court that the Defendant herein was their customer who purchased a portion of the original property known as LR.No.11379/3.
69. DW 2 stated that the process of purchase began with the acquisition of a Share Certificate and thereafter, a Letter of Offer would be made and finally a Lease issued.
70. Consequently therefore, it was not possible for any person to process any title documents relating to any portion of land within LR.No.11379/3 without involving the original owners known as Kiambu Dandora Farmers Co-operative Society LTD.
71. DW 2 then referred to his witness statement dated 08.05.2023 which he prepared, executed and adopted the same as his evidence in chief.
72. DW 2 further confirmed to the Honourable Court that the documents produced by the Defendant were the legitimate and true documents to be relied upon in this case.



73. According to DW 2, upon the sub-division of the original LR.No.11379/3, various registrable blocks were created which include Nairobi Block 84, Nairobi Block 107, Nairobi Block 157, Nairobi Block 173, Nairobi Block 215 and Nairobi Block 242.
74. On cross-examination, DW 2 reiterated that he is a director of Kiambu Dandora Farmers Co-operative Society LTD and there is a Certificate of Incorporation in existence for the said entity.
75. However, DW 2 admitted that he had not produced the relevant Certificate of Incorporation of Kiambu Dandora Farmers Co-operative Society Limited and/or the relevant CR 12 to confirm that he was one of the Directors therein.
76. DW 2 was then referred to Defence Exhibit 1 to which he confirmed that it was the only title deed that existed relating to the property known as LR.No.11379/3.
77. According to DW 2, the name that appeared on the Title of LR.No.11379/3 was Kiambu Dandora Farmers Company and not a Limited Liability Company.
78. Consequently therefore, DW 2 admitted that Kiambu Dandora Farmers Co-operative Society Limited did not have any title issued in its name.
79. On being referred to Plaintiff's Exhibit 9, DW 2 informed the Honourable Court that the Plaintiff's property was located on the same place as that of the Defendant.
80. DW 2 confirmed that indeed the Plaintiff's property known as LR.No.15400/417 has been registered in the Plaintiff's name.
81. However, DW 2 denied that the Defendant's property known as LR.No.15400/417 was a sub-division of LR.No.11379/3.
82. DW 2 further informed the Honourable Court that there were other proceedings namely Nairobi Judicial Review No.47 of 2011 which are ongoing with a view of cancelling the titles issued to Amboseli Court Limited.
83. However, so far the titles issued to Amboseli Court Limited had not been revoked.
84. DW 2 also mentioned that there is a government institution known as Mama Lucy Hospital which also occupies a portion of LR.No.11379/3 but this portion was voluntarily handed over to the Government.
85. On referring to Defence Exhibit 3, DW 2 confirmed that the Survey Report confirms that the property known as LR.No.11379/3 has now been sub-divided.
86. However, the mother title known as LR.No.11379/3 has not been surrendered back to facilitate the closure of the register and issuance of new sub-titles.
87. According to DW 2, the Survey Record was for the benefit of the 5 owners who were within the property known as LR.No.11379/3.
88. On re-examination, DW 2 referred to Defence Exhibit 4 whose conclusion was that there were about 20 sub-divisions that had encroached into the property known as LR.No.11379/3.
89. DW 2 therefore was of the view that if the sub-division had been done well, there would be no encroachment into the property known as LR.No.11379/3.
90. In essence therefore, DW 2 was of the opinion that the property owned by the Plaintiff was illegitimate because it had encroached into a portion of the original LR.No.11379/3.



91. However, DW 2 stated that the best person to confirm the legitimacy of all the titles and/or their location was the Registrar of Titles.
92. DW 2 further informed the Honourable Court that the property known as LR.No.11379/3 was and/or has never been acquired by the Government up to date.
93. DW 2 also clarified that in the Judicial Review proceedings ongoing, the issue of ownership of LR.No.11379/3 is not an issue for determination at all.
94. DW 2 stated that if indeed the property known as LR.No.11379/3 was ever acquired compulsory by the Government, then there would be no private developments on the same.
95. Consequently therefore, DW 2 confirmed to the Honourable Court that the Government has never acquired and/or paid for the property known as LR.No.11379/3.
96. At the end of this re-examination, DW 2 was discharged from the witness box and Defence closed its case thereof.
97. The Plaintiff and Defendant then proceeded to prepare and file their respective submissions dated 07.12.2023 and 22.01.2024 respectively.
98. The Honourable Court has indeed perused the pleadings herein, looked at the testimonies of the parties and the documentary evidence adduced in Court and the issues for determination can be summarised as follows;-

Issue No.1- Who is the legal & beneficial owner of LR.No.15400/317 (IR.No.177379)

Issue No.2- Has the Defendant herein encroached into the property known as LR.No.15400/317 (IR.No.177379)?

Issue No.3- Is the Plaintiff entitled to an order of eviction against the defendant as relates the property known as LR.No.15400/317 (IR.No.177379)?

Issue No.4- Is the Plaintiff entitled to a permanent injunction against the defendant over the property known as LR.No.15400/317 (IR.No.177379/1)

Issue No.5- Is the plaintiff entitled to an order of damages emanating from the encroachment of LR.No.15400/317 (IR.No.177379/1) from the Defendant Herein?

Issue No. 6- Who bears the costs of this suit?

99. The issues for determination having been duly outlined hereinabove, the same will now be discussed hereinbelow.

Issue No.1- Who is the Legal & Beneficial Owner of LR.No.15400/317 (IR.No.177379)

100. The first issue for determination in this suit is the ownership of the property known as LR.No.15400/317 (IR.No.177379).
101. According to the Plaintiff, the property known as LR.No.15400/317 (IR.No.177379/1) is duly registered in his name.
102. To verify his ownership of the property known as LR.No.15400/317 (IR.No.177379/1), the Plaintiff has produced a Certificate of Lease registered on the 19.02.2021 as Plaintiff's Exhibit 1.



103. In addition to the above, the Plaintiff also produced a Copy of an Official Search for the property known as LR.No.15400/317 (IR.No.177379/1) generated on the 15.09.2022 confirming his ownership as Plaintiff Exhibit 6.
104. On the other hand, the Defendant in his Statement of Defence does not deny the existence of the Plaintiff's property known as LR.No.15400/317 (IR.No.177379/1).
105. However, the Defendant's averment in the Statement of Defence is that the creation and/or registration of the property known as LR.No.15400/317 (IR.No.177379/1) was irregular and/or illegitimate because the actual location where it is located is within the property known as LR.No.11379/1 which is registered in the name of Kiambu Dandora Farmers Co-operative Society Limited.
106. The Defendant further testified in his evidence that the portion which the Plaintiff's property known as LR.No.15400/317 (IR.No.177379/1) is situated has also been sub-divided and assigned LR.No.Nairobi Block 173 (Sosiani)/525 currently offered to the Defendant as contained in the Letter dated 03.06.2022 and produced as Defence Exhibit 5.
107. DW 2 further collaborated the evidence of the Defendant during his testimony.
108. DW 2 informed the Honourable Court that the property known as LR.No.11379/3 was lawfully sub-divided into various registrable blocks which were Nairobi Block 84, Nairobi Block 107, Nairobi Block 157, Nairobi Block 173, Nairobi Block 215 and Nairobi Block 242.
109. DW 2 further testified that the Defendant purchased a number of Plots within the property known as LR.No.11379/3 which after the sub-division, the Defendant's portion was assigned the number LR.No.Nairobi Block 173 (sosiani)/525.
110. Consequently therefore, according to DW 2, the portion within which LR.No.15400/317(IR.No.177379/1) occupies rightfully belongs to the Defendant under the registerable number LR.No.Nairobi Block 173(sosiani)/525.
111. The issue of ownership in land is rather a straight forward one keeping in mind the provisions of the [*Land Registration Act*](#), No. 3 of 2012.
112. Section 24 and 25 of the [*Land Registration Act*](#), No. 3 of 2012 expressly provided that the proprietorship of any piece of land shall vest in the name of the person who has been registered as the lawful owner of such a property to the exclusion of any other person.
113. Section 30 (3) of the [*Land Registration Act*](#), No.3 of 2012 further provides that a Certificate of Title or Certificate of Lease shall be prima facie evidence of the registered owner(s) shown in the Certificate, and the land or Lease shall be subject to all entries in the register.
114. In this particular case, the Plaintiff has produced a Certificate of Lease which confirms his registration as the owner in entry no.2 on the 19.02.2021 as Plaintiff Exhibit 1.
115. Further to that, the Plaintiff also produced a copy of an official search over the property known as LR.No.15400/317(IR.No.177379) issued on 15.09.2022 confirming him as the lawful owner as Plaintiff Exhibit 6.
116. The Defendant and/or DW 2 in this Honourable Court's view did not deny the registration of the Plaintiff as the lawful owner of the property known as LR.No.15400/317 (IR.No.177379) but only raised an issue of the actual location and/or the property that created the said property owned by the Plaintiff.



117. In essence therefore, this Honourable Court is satisfied that the Plaintiff herein is the lawful registered owner of the property known as LR.No.15400/317 (IR.No.177379) as contained in the Certificate of Title issued on the 19.02.2021.

Issue No.2- Has the Defendant Herein Encroached Into the Property Known As LR.No.15400/317 (IR.NO.177379)?

118. The second issue for determination is whether or not the Defendant herein has encroached and/or trespassed into the Plaintiff's property known as LR.No.15400/317 (IR.No.177379) or not.

119. According to the Plaintiff, the Defendant herein unlawfully entered, encroached and/or trespassed into the property known as LR.No.15400/317 (IR.No.177379) and commenced construction on the same to the detriment of the lawful registered owner.

120. The Plaintiff being aggrieved by the Defendant's actions filed this suit and obtained injunctive orders against the Defendant stopping any further development on the property known as LR.No.15400/317 (IR.No.177379) pending the hearing and determination of this suit.

121. In the application for an injunction filed by the Plaintiff dated 11.10.2022, the Plaintiff attached various pictures of the developments undertaken by the Defendant on the property known as LR.No.15400/317 (IR.No.177379).

122. The Defendant on the other hand denied constructing on the Plaintiff's property known as LR.No.15400/317 (IR.no.177379).

123. The Defendant pleaded and testified that the portion which he was constructing was the property known as LR.No.Nairobi Block 173 (Sosiani)/525 of which who had been given a Letter of offer dated 03.06.2022.

124. According to the Defendant and DW 2, the location which the Plaintiff's property known as LR.No.15400/317 (IR.No.177379) is situated is within the property known as LR.no.11379/3 registered in the name of Kiambu Dandora Farmers Co-Operative Society LTD.

125. In essence therefore, the Plaintiff's property known as LR.No.15400/317 (IR.No.177379) was an illegal sub-division and/or an encroachment into the property known as LR.no.11379/3 or directly affected the Defendant's property known as LR.No.Nairobi Block 173 (Sosiani)/525.

126. The Defence through DW 2 sought to rely on the Government Survey Report dated 17.03.2021 and produced as Defence Exhibit 4.

127. DW 2 specifically pointed out that the Survey Report confirmed the encroachment of the property known as LR.No.11379/3 by outsiders and further ascertained that the title of the property known as LR.No.11379/3 had never been closed for sub-division.

128. Clearly, the issue for determination is whether the location of the Plaintiff's property known as LR.No.15400/317 and the Defendant's property known as Nairobi Block 173 (Sosiani)/525 is either the same or one property has encroached on the other.

129. Section 15 of the [Land Registration Act](#), No. 3 of 2012 provides as follows; -

“(1) The office or authority responsible for the survey of land shall prepare and thereafter maintain a map or series of maps, to be known as the cadastral map for every registration unit.



- (2) The parcel boundaries on such maps shall be geo-referenced and surveyed to such standards as to ensure compatibility with other documents required under this Act or any other law”
130. Section 18 of the *Land Registration Act*, No. 3 of 2012 further provides as follows; -
- “(1) Except where, in accordance with Section 20, it is noted in the Register that the boundaries of a parcel have been fixed, the cadastral map and any filed Plan shall be deemed to indicate the approximate boundaries and the approximate situation only of the parcel.”
131. The interpretation of Section 15 as read with Section 18 of the *Land Registration Act*, No. 3 of 2012 is that the creation and/or identification of a registrable parcel of land must be undertaken through registered a Cadastral Map before issuance of the registrable number is undertaken under Section 24 and 25 of the *Land Registration Act*, No. 3 of 2012.
132. In addition to the above, Section 35 of the *Land Registration Act*. No. 3 of 2012 also provides as follows; -
- “(3) Every entry or note in any register, cadastral map or filed plan shall be received in all proceedings as conclusive evidence of the matter or transaction that it records.”
133. Keeping in mind these provisions mentioned hereinabove, the next exercise is to establish whether or not the Plaintiff’s boundaries to his property known as LR.No.15400/317 can be established and/or ascertained and thereafter verify if the Defendant indeed trespassed and/or encroached on the said property.
134. The first document to verify this issue is the Plaintiff’s Exhibit 1 which was the Certificate of Lease of the property known as LR.No.15400/317.
135. The Plaintiff’s Exhibit 1 contains a Cadastral Map and/or Deed Plan with the exact geo-referenced co-ordinates of the boundaries creating the property known as LR.No.15400/317.
136. Under Section 35(3) of the *Land Registration Act*, No. 3 of 2012, such a Cadastral Map as that contained in the Certificate of Lease produced as Plaintiff’s Exhibit 1 is conclusive evidence of both the approximate boundaries and situation of the parcel of land.
137. What then was expected of the Defendant is to also produce the Cadastral Map and/or Deed Plan of the property known as LR.No.Nairobi Block 173 (Sosiani)/525 in support of the Letter of Offer dated 03.06.2022 and confirm the boundaries of the said property as well as its location and/or situation.
138. Unfortunately, the Defendant only produced the Letter of Offer dated 03.06.2022 relating to LR.No.Nairobi Block 173 (Sosiani)/525 as Defence Exhibit 5 but failed to produce the registered Cadastral Map of the specific property to confirm the acceptable boundaries and/or where it is situated.
139. The Defendant should have at least presented the Registered Sub-Division Plan (Cadastral Map) of the original property known as LR.No.11379/3 which then would have given the relevant geo-references and/or boundary co-ordinates of his property known as LR.No.Nairobi Block 173 (Sosiani)/525 so that it is clear as to the boundary and/or situation of the same.
140. In the absence of the Registered Deed Plan and/or Cadastral Map of the property known as LR.No.Nairobi/Block 173 (Sosiani)/525, then there is no evidence that the Defendant’s property is



in the same location with that of the Plaintiff herein to enable him take possession and/or develop on the same.

141. The Defendant in his testimony admitted that he is the one who entered into the Plaintiff's property and began construction on the same until an injunction was issued by this Honourable Court to stop further developments.
142. Similarly, the Plaintiff in the Application dated 11.10.2022 produced various photographs of the construction being undertaken by the Defendant.
143. In the Replying Affidavit dated 24.11.2022 in opposition to the application, the Defendant did not deny that he is the one who is constructing on the Plaintiff's property known as LR.NO.15400/317.
144. It is therefore clear to this Honourable Court that the Defendant herein has encroached, trespassed and/or occupied the Plaintiff's property known as LR.NO.15400/317 without any justifiable ground whatsoever.

Issue No.3- Is the Plaintiff entitled to an order of eviction against the Defendant as relates the property known as LR.No.15400/317 (IR.No.177379)?

145. Based on the determination in Issue No. 2 hereinabove, then the Plaintiff is entitled to an order of eviction and/or vacate possession of the property known as LR.No.15400/317 (IR.NO.177379) forthwith from the Defendant herein.

Issue No.4- Is the Plaintiff entitled to a Permanent injunction against the defendant over the proPerty known aS LR.No.15400/317 (IR.No.177379/1)

146. Again, based on the determination of Issue No. 2, the PLaintiff herein is entitled to a Permanent injunction against the Defendant to Prohibit the Defendant and/or his servants, emPloyees and/or agents from interfering and/or developing the said property known as LR.No.15400/317 (IR.No.177379) henceforth.

Issue No.5- Is the Plaintiff entitled to an order of damages emanating from the encroachment of lr.no.15400/317 (ir.no.177379/1) from the Defendant herein?

147. In this issue, the Plaintiff is seeking for damages for the Defendant's unlawful entry and interference of the property known as LR.No.15400/317 (IR.No.177379).
148. However, the Plaintiff did not specify whether he is seeking general damages or special damages against the Defendant for the encroachment and/or trespass.
149. Further to the above, the Plaintiff did not also provide any testimony, evidence and/or submit on the said issue of damages.
150. In the circumstances therefore, this Honourable Court will not award any damages to the Plaintiff as the same have not been proved.
151. However, this Honourable Court takes note that from the photographs produced by the Plaintiff in the Application dated 11.10.2022 and the Defendant's own admission, it is clear that the Plaintiff's property known as LR.No.15400/317(IR.No.177379/1) was substantively interfered with and therefore it should be restored in the manner it was before the Defendant trespassed on it and/or encroached it.



152. It is only fair and justice that the Defendant restores the Plaintiff's property known as LR.NO.15400/317 (IR.NO.177379/1) to the state it was on or before the Defendant's entry into the said property.

Issue No. 6- Who bears the costs of this suit?

153. The last issue for determination is that of costs.

154. Costs usually follow the event and, in this suit, the Plaintiff is entitled to the costs of this suit having successfully prosecuted the same.

Conclusion

155. In conclusion therefore, this Honourable Court hereby makes the following Orders in determination of the Plaint dated 11.10.2022; -

- a. A declaration be and is hereby made that the plaintiff silas irungu karuri is the legal and registered owner of the property known as LR.No.15400/317 (IR.No.177379/1).
- b. An order of eviction be and is hereby issued against the defendant, his agents, employees, servants and/or any other person deriving his rights from the defendant to move out, vacate and/or hand over possession of the property known as LR.No.15400/317(IR.No.177379/1) forthwith.
- c. A permanent injunction be and is hereby issued against the defendant, his agents, employees, servants and/or any other person deriving his rights from the defendant from entering into, cultivating, fencing, building, selling, developing, disposing, transferring and/or in any other way interfering with the plaintiff's property known as LR.No.15400/317 (IR.No.177379) forthwith.
- d. The defendant be and is hereby ordered and/or directed to restore and/or take the necessary steps to return the plaintiff's property known as LR.No.15400/317 (IR.No.177379) to its original state that existed before the encroachment and/or construction within 30 days from the date of this judgement.
- e. The costs of this suit have been awarded to the Plaintiff.

DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON 24TH OF APRIL 2024.

EMMANUEL.M.WASHE

JUDGE

In the Presence of:

Court Assistant: Mr. Ngeno

Advocate for the Plaintiff: Mr. Macharia

Advocate for the Defendant: Mr. Were

