



**Gathare v Ndungu & 4 others (Environment & Land Case
389 of 2012) [2024] KEELC 3363 (KLR) (11 April 2024) (Judgment)**

Neutral citation: [2024] KEELC 3363 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 389 OF 2012**

EM WASHE, J

APRIL 11, 2024

BETWEEN

JAMES KIMUNYU GATHARE PLAINTIFF

AND

VIDELIA MUTHONI NDUNGU 1ST DEFENDANT

EMBAMAKA MULITPURPOSE SOCIETY LIMITED 2ND DEFENDANT

FAITH NYAMBURA KIHU 3RD DEFENDANT

HANNAH WAMBUI WAITHIRA MWANGI 4TH DEFENDANT

MARGARET WAITHIRA MURURIA 5TH DEFENDANT

JUDGMENT

1. The Plaintiff herein through the Further Amended Plaintiff dated 26.07.2023 (hereinafter referred to as “the present suit”) is seeking the following Orders against the 1st to 5th Defendants; -
 - a. An order of injunction directed to the Defendants by themselves, agents and/or servants prohibiting them from entering, taking possession, removing beacons, sub-dividing, selling and/or transferring any portion Plots number 28 & 29 being sub-divisions of the parcel of land better known as Ruiru/ruiru East Block 2/2531 or interfering with the Plaintiff’s possession of the same.
 - b. A declaration that the Plaintiff is the bona fide purchaser and owner of all that parcel of land better known as Ruiru/ruiru East Block 2/28878 and Ruiru/ruiru East Block 2/28879.
 - c. An order of mandatory injunction directed to the District Land Registrar (Ruiru) to cancel titles for the parcels better known as Ruiru/ruiru East Block 2/28878 and Ruiru/ruiru East Block 2/28879 the name of the 3rd and 4th Defendants respectively.



- d. An order of mandatory injunction directed to the District Land Registrar (Ruiru) to issue fresh titles for the parcel better known as Ruiru/ruiru East Block 2/28878 and Ruiru/ruiru East Block 2/28879 in the name of the Plaintiff.
 - e. A mandatory injunction compelling the 2nd Defendant to process titles for the properties already allocated and occupied by the Plaintiff.
 - f. Costs of this suit.
2. The skeleton facts as pleaded by the Plaintiff in the present suit in support the prayers outlined hereinabove are as follows; -
- a. The 1st Defendant who represented herself as the Chairlady of the 2nd Defendant offered to sale portions of the property known as Lr.No.Ruiru/Ruiru East Block 2/2531 to the Plaintiff herein.
 - b. The Plaintiff indeed accepted the offer by the 1st and 2nd Defendants and purchased two Plots identified as Plot 28 & 29 of which he duly fully paid for and was issued with two share certificates to confirm ownership.
 - c. At the end of the above transaction, the Plaintiff duly took possession of both Plot No. 28 and Plot No. 29 within the property known as Lr.No.Ruiru/Ruiru East Block 2/2531 by constructing a fence and other developments on it in the year 2006.
 - d. According to the Plaintiff, the possession and use of both Plot.No.28 and Plot.No.29 have been in his exclusive use since the year 2006.
 - e. However, the 5th Defendant recently invaded the Plaintiff's private properties known as Plot.No.28 and Plot.No.29 and purported to destroy the fence and started digging new trenches as well as depositing building materials.
 - f. It is based on these actions by the 1st and 2nd Defendants that the Plaintiff would like this Honourable Court to issue an injunction to prevent any further interference of both Plot.No.28 and Plot.No.29 within Lr.No.Ruiru/Ruiru East Block 2/2531 belong to him.
 - g. Further to the above, the Plaintiff is also seeking a Mandatory Order directed to the 1st and 2nd Defendants compelling them to process and issue the Certificates of Title for The Properties Known As Plot.No.28 and Plot.No.29 in his name.
3. The suit herein was duly served on the 1st to 5th Defendants who through the Amended Defence and Counter-Claim dated 14.07.2022 opposed the prayers sought therein.
4. The 1st to 5th Defendants advanced the following facts in their Amended Defence and Counter-claim dated 14.07.2022;
- a. The 4th Defendant as a Chairlady denied ever making an representation and/or offer to sale any properties on the property known as Lr.No.Ruiru/Ruiru East Block 2/2531 registered in the name of the 2nd Defendant to the plaintiff.
 - b. The 4th Defendant further denied that the Plaintiff was ever allowed and/or permitted to take possession of Plot No.28 and Plot No.29 within the property known as Lr.No.Ruiru/Ruiru East Block 2/2531.



- c. The 4th Defendant stated that the Plot No.28 and Plot.No.29 were the legal properties of the 2nd Defendant and therefore the 4th Defendant as the Chairlady had the legal powers and/or authorities to deal with the said properties.
 - d. The 4th Defendant pleaded that the Plaintiff had no legal and/or lawful right to occupy and/or use the two properties known as Plot.No.28 and Plot.No.29 and should therefore be evicted.
 - e. Further to that, the 1st to 5th Defendants denied that The Properties Known As Plot.No.28 and Plot.No.29 were ever transferred in a fraudulent manner and put the Plaintiff to strict proof thereof.
 - f. In Conclusion therefore, the 1st to 5th Defendants sought for the further Amended Plaintiff to be dismissed with costs.
5. In addition to the Amended Defence filed by the 1st to 5th Defendants, a Counter-Claim was also filed against the Plaintiff seeking for the following Orders; -
- a. The Plaintiff's suit be dismissed with costs.
 - b. An eviction order to remove the Plaintiff from Plot No.12 and Plot.No.13 on the parcel of land known as Lr.No.Ruiru/Ruiru East Block 2/2531 (currently titled as Lr.No.Ruiru/Ruiru East Block 2/28878 and Lr.No.Ruiru/Ruiru East Block 2/28879)
 - c. Costs of the suit and the Counter-Claim.
6. The facts that give rise to the prayers sought in the Counter-Claim filed by the 1st to 5th Defendants were as follows; -
- a. The 1st Defendant pleaded that she is the rightful and legal owner of The Properties Known As Plot.No.12 & 13 within the property known as Lr.No.Ruiru/Ruiru East Block 2/2531.
 - b. As such, the Plaintiff herein had no legal right or claim of any ownership over the said known as Plots 12 & 13 on the property known as Lr.No.Ruiru/Ruiru East Block 2/2531 and/or occupy the same.
 - c. In essence therefore, if the Plaintiff was indeed in occupation of Plots NO.12 and 13, then such occupation was illegitimate and without payment of rent to the detriment of the 1st Defendant.
 - d. In other words therefore, the 1st to 5th Defendants sought this Honourable Court to declare the said occupation by the Plaintiff on the Plots No. 12 & 13 unlawful and thereafter issue an eviction order accordingly.
7. Upon closure of the pleadings, the hearing commenced on the 04.10.2023.

Plaintiff's Case

8. The Plaintiff was the first witness and was marked as PW 1.
9. The Plaintiff informed the Honourable Court that he was a resident of Ruiru.
10. The Plaintiff confirmed that he had prepared and executed a witness statement dated 05.07.2012 and a further witness statement dated 30.05.2017 of which he adopted both as his evidence in chief.
11. The Plaintiff admitted that he was familiar with the 2nd Defendant organisation.



12. The Plaintiff informed the Honourable Court that Faith Nyambura Kihu who is the 3rd Defendant was his wife of over 20 years.
13. The 4th Defendant known as Hannah Wamboi Mwangi was a friend and came from the same village as the Plaintiff herein.
14. Similarly, the 4th Defendant was the current chair of the 2nd Defendant entity.
15. The Plaintiff began his testimony by indicating that he purchased two parcels of land known as Plot No. 28 & 29 within Lr.No.Ruiru/Ruiru East Block 2/2531 which was owned by the 2nd Defendant.
16. According to the Plaintiff, each of the parcel was being sold at KShs 38,200/-.
17. The Plaintiff informed the Honourable Court that the first payment was done on the 06.06.2005 and the final payment was on the 29.08.2005.
18. After fully paying for the two parcels of land, the Plaintiff was given two Share Certificates by the 2nd Defendant to confirm his ownership over Plots NO. 28 and 29.
19. The 2nd Defendant issued the Share Certificate No. 022 for Plot No. 28 while Share Certificate No. 028 was for the Plot. No. 29.
20. Later on, the 4th Defendant wrote a letter to the Plaintiff disputing the Plaintiff's ownership over the two parcels of land and demanded that the Plaintiff vacates The Properties Known As Plot.No.28 and Plot.No.29.
21. According to the Plaintiff, the original property known as Lr.No.Ruiru/Ruiru East Block 2/2531 was registered in the names of the 4th Defendant, one Elizabeth Waruiru Mbugua (Treasurer) and Priscilla Adogo (Secretary) as officials of the 2nd Defendant.
22. Later on, the original property known as Lr.No.Ruiru/Ruiru East Block 2/2531 was sub-divided and the titles to the new sub-divisions were registered in the names of the 4th Defendant, Joseph Kuria Mwangi and Peter Marera Gakere as Trustees of the 2nd Defendant.
23. The Plaintiff testified that the parcels known as Plot No.28 and Plot No.29 were titled as Lr.No.Ruiru/Ruiru East Block 2/28878 and Lr.No.Ruiru/Ruiru East Block 2/28879 respectively.
24. After the two Certificates of Titles were issued, the Plaintiff requested and was given copies of the same to enable him process the necessary transfers to his name.
25. Unfortunately, when the Plaintiff went to undertake an official search of the two Certificates of Titles known as Lr.No.Ruiru/Ruiru East Block 2/28878 & 28879, he discovered that the same were registered in the name of the 4th Defendant and the 3rd Defendant without his knowledge and/or consent.
26. Thereafter, the 4th Defendant transferred the property known as Lr.No.Ruiru/Ruiru East Block 2/28878 to the 5th Defendant.
27. However, on the ground, both properties known as Lr.No.Ruiru/Ruiru East Block 2/28878 & 28879 are occupied by the Plaintiff and who has developed the same.
28. As regards the Counter-Claim, the Plaintiff reiterated that he is the lawful owner of the property known as Lr.No.Ruiru/Ruiru East Block 2/28878 and not the 5th Defendant.



29. In essence therefore, the name of the 5th Defendant which appears on the Certificate of Title of Lr.No.Ruiru/Ruiru East Block 2/28878 should be cancelled and another Certificate of Title issued in the name of the Plaintiff.
30. The Plaintiff in support of his testimony produced the following documents as his exhibits; -
- Plaintiff Exhibit 1- Copies of Receipts from the 2nd Defendant for the payment made by the Plaintiff on the 06.06.2005.
- Plaintiff Exhibit 2- Copies of Receipts of payments to the 2nd Defendant made by the Plaintiff on the 25.08.2005.
- Plaintiff Exhibit 3- Copy of Share Certificates No. 022 for the Plot No. 28 issued by the 2nd Defendant in favour of the Plaintiff on 06.06.2005.
- Plaintiff Exhibit 4- Copy of Share Certificate No. 028 for the Plot.No.29 issued by the 2nd Defendant in favour of the Plaintiff on 29.08.2005.
- Plaintiff Exhibit 5- Copy of Demand letter from the 1st Defendant to the Plaintiff dated 18.05.2011.
- Plaintiff Exhibit 6- Copy of the reply to the Demand letter by the Plaintiff through his Counsel dated 29.11.2011.
- Plaintiff Exhibit 7- Copy of an official search of the property known as Lr.No.Ruiru/Ruiru East Block 2/2581 dated 11.01.2010.
- Plaintiff Exhibit 8- Copy of an official search of the property known as Lr.No.Ruiru/Ruiru East Block 2/533 dated 11.01.2010.
- Plaintiff Exhibit 9- Copy of Ruling dated 07.10.2010 in the proceedings known as NAIROBI ELC NO. 58 OF 2010.
- Plaintiff Exhibit 10- Copy of the Certificate of Title for the property known as Lr.No.Ruiru/Ruiru East Block 2/28878 dated 16.10.2018.
- Plaintiff Exhibit 11- Copy of the Certificate of Title for the property known as Lr.No.Ruiru/Ruiru East Block 2/28879 dated 16.10.2018.
- Plaintiff Exhibit 12- Copy of an official search for the property known as Lr.No.Ruiru/Ruiru East Block 2/28878 dated 29.06.2021.
- Plaintiff Exhibit 13- Copy of an official search for the property known as Lr.No.Ruiru/Ruiru East Block 2/28879 dated 29.06.2021.
- Plaintiff Exhibit 14- Copy of an order dated 05.07.2012 issued by this Honourable Court.
- Plaintiff Exhibit 15- Copy of a Green Card to the property known as Lr.No.Ruiru/Ruiru East Block 2/28878 issued on the 19.08.2021.
- Plaintiff Exhibit 16- Copy of a Green card to the property known as Lr.No.Ruiru/Ruiru East Block 2/28879 issued on the 18.08.2021.
- Plaintiff Exhibit 17- Copy of the pleadings in NAIROBI ELC CASE NO. 58 OF 2010.
- Plaintiff Exhibit 18- Copy of an Application for inhibition in respect of The Properties Known As Lr.No.Ruiru/Ruiru East Block 2/28878 and 28879 dated 22.06.2021.



31. The Plaintiff informed the Honourable Court that after the issuance of the titles known as Lr.No.Ruiru/Ruiru East Block 2/28878 & 28879, he was arrested and charged with forceful retainer in the proceedings known as Thika Criminal Case No. 1299 OF 2012 but was acquitted.
32. The Plaintiff completed his evidence in chief by stating that the Defendants have been filing numerous cases against him so that he can be put in custody and they take possession of the two properties which he has occupied.
33. On cross-examination, the Plaintiff admitted to be familiar with the 1st to 4th Defendants.
34. The Plaintiff stated that he was not a member of the 2nd Defendant but had bought shares.
35. During the purchase of the two parcels of land from the 2nd Defendant, there was no Agreements for sale executed save for the Share Certificates issued.
36. The Plaintiff informed the Honourable Court that he visited the two parcels of land on the guidance of one Kuria Mwangi who the son of the 4th Defendant.
37. The Plaintiff stated that the 2nd Defendant was an entity whose membership was drawn from the former Nairobi City Council.
38. However, the Plaintiff could not confirm that the 1st Defendant was an employee of Nairobi City Council.
39. On being referred to Plaintiff's Exhibit 1 & 2, the Plaintiff stated that the two receipts were issued in the names James Kimunyu Gathare & Faith Nyambura.
40. Faith Nyambura is the 3rd Defendant in this proceeding.
41. Similarly, the Share Certificates produced as Plaintiff's Exhibit 3 & 4 were also issued in the name of the Plaintiff and the 3rd Defendant.
42. The parcels that were referred to in Plaintiff's Exhibit 1, 2, 3 & 4 referred to Plot No. 28 & 29.
43. The Plaintiff clarified that at the time he acquired the two parcels of land, the same had not been registered and/or issued with Certificates of Titles.
44. According to the Plaintiff, the 2nd Defendant had two properties namely Lr.No.Ruiru/Ruiru East Block 2531 & 2532.
45. However, the two parcels of land known as Plot.No.28 & 29 were to be sub-divisions within Lr.No.Ruiru/Ruiru East Block 2/2531.
46. The Plaintiff nevertheless did not have the sub-division scheme of the property known as Lr.No.Ruiru/Ruiru East Block 2/2531 to confirm the same.
47. On being referred to Plaintiff Exhibit 17- the Plaintiff indicated that there were proceedings that had he had filed earlier in the Lower Court.
48. According to the Plaintiff, this suit is seeking for orders that he be issued with the relevant Certificate of Title to his parcels of land.
49. However, this Case in the Lower Court has stalled because he came to discover that the titles to the two parcels had already been issued.



50. On being referred to Plaintiff Exhibit 14- the Plaintiff informed that Honourable Court that he was issued with an Injunctive Order pending the hearing and determination of the said Lower Court matter.
51. The Plaintiff denied knowledge of any Ground Report that was filed by the 2nd Defendant to resolve the issues in the proceedings before the Lower Court.
52. The Plaintiff reiterated that he was given copies of the Title Deeds to the two parcels of land he is in occupation but has not managed to process the same to his name.
53. The main reason why the Plaintiff has been unable to process the two titles into his name is because the 4th Defendant is claiming ownership of the same.
54. The Plaintiff insisted that the 3rd Defendant who is the wife did not make any payments to purchase the said two parcels of land.
55. The Plaintiff referred to that Plaintiff's Exhibit 1-4 and stated that he was the one who paid for the two parcels of land but registered the same in the name of the 3rd Defendant and himself.
56. According to the Plaintiff, the intention was to develop and occupy the two parcels of land with his wife the 3rd Defendant.
57. Unfortunately, after their disagreements, the 3rd Defendant attempted to evict him on the 18.03.2021 using strangers.
58. This acts by the 3rd Defendant prompted the Plaintiff to make a report at Ndeti Police Station which report was recorded as OB NO.15/09/03/2021.
59. The Plaintiff further informed the Honourable Court that the 5th Defendant was also claiming one of the two parcels of land.
60. The Plaintiff stated that the beacons of Plot No.28 & 29 were placed by a licensed surveyor in his presence.
61. The Plaintiff informed the Honourable Court that once the Share Certificates were issued, he handed them over to the 3rd Respondent as his wife to keep them.
62. However, the 3rd Defendant without his knowledge proceeded to return the said Share Certificates to the 2nd Defendant and transacted with the same without the Plaintiff's knowledge.
63. The Plaintiff admitted that one would only get the Title Deed upon the Share Certificates being returned.
64. According to the Plaintiff, the Plot No.28 was issued with a Title Deed known as Lr.No.Ruiru/Ruiru East Block 2/28878 while Plot.No.29 was issued with a Title Deed known as Lr.No.Ruiru/Ruiru East Block 2/28879.
65. Upon issuance of the two Title Deeds mentioned hereinabove, Lr.No.Ruiru/Ruiru East Block 2/28878 was transferred to the 3rd Defendant while Lr.No.Ruiru/Ruiru East Block 2/28879 was transferred to the 4th Defendant.
66. The Plaintiff therefore sought to have the registration of the 3rd and 5th Defendants cancelled from The Properties Known As Lr.No.Ruiru/Ruiru East Block 2/28878 and Lr.No.Ruiru/Ruiru East Block 2/28879.



67. The Plaintiff further insisted that his properties were known as Plot.28 & 29 and not Plot No.12 & 13.
68. On re-examination, the Plaintiff confirmed that the reason he filed this proceeding was to claim his ownership on The Properties Known As Plot.No.28 & 29.
69. It was the Plot.No.28 & 29 that subsequently were processed as Lr.No.Ruiru/Ruiru East Block 2/28878 & 28879.
70. The Plaintiff indicated that the 2nd Defendant had never substituted or given different Share Certificates apart from Share Certificate No. 022 or 028.
71. The Plaintiff reiterated that Plot.No.28 was titled as Lr.No.Ruiru/Ruiru East Block 2/28878 and was registered in the name of the 4th Defendant.
72. The issuance of the title known as Lr.No.Ruiru/Ruiru East Block 2/28878 in the name of the 4th Defendant was fraudulent because the same belonged to the Plaintiff and the 4th Defendant was fully aware of the same.
73. The Plaintiff confirmed that when he collected the copies of the two Title Deeds, the same were still in the names of the Trustees to the 2nd Defendant.
74. However, later on after the Plaintiff fell out with his wife the 3rd Defendant, the same was fraudulently transferred to other people's names.
75. In essence therefore, the Plaintiff sought this Honourable Court to have the 3rd, 4th and 5th Defendants names cancelled and his name to be registered as the lawful and rightful owner of the two properties known as Lr.No.Ruiru/Ruiru East Block 2/28878 & 28879.
76. At the end of this re-examination, the Plaintiff was discharged from the witness box thereof.
77. The Plaintiff's second witness was Serah Nyokabi Wanjiko (PW 2).
78. PW 2 introduced herself a resident of RUIRU and a retired Nairobi City Council employee.
79. PW 2 confirmed that he is the one that prepared and executed the witness statement dated 04.07.2023 of which she adopted as her evidence in chief.
80. PW 2 admitted to be familiar with the 2nd Defendant's organisation as she was the Organising Secretary.
81. On cross-examination, PW 2 confirmed that the 3rd Defendant was a wife to the Plaintiff herein.
82. PW 2 stated that at the time the Plaintiff purchased the Plot.No.28 & 29, she was one of the Committee members of the 2nd Defendant.
83. PW 2 indicated that she came to know the Plaintiff when he was purchasing and making payments for the two parcels known as Plot.No.28 & 29.
84. PW 2 confirmed that the person who first contacted the 2nd Defendant was the Plaintiff.
85. Thereafter, the Plaintiff introduced the 3rd Defendant as his wife.
86. PW 2 informed the Honourable Court that the Plaintiffs parcel of land neighbour her parcels which are Plot.No.31 & 32.
87. PW 2 stated that he has not yet collected her title deeds for the two parcels known as Plot.No.31 & 32.



88. According to PW 2, her parcels known as Plot.No.31 & 32 are sub-divisions of the original Lr.No.Ruiru/Ruiru East Block 2/2531.
89. PW 2 admitted that the 2nd Defendant had two properties for sub-division which are Lr.No.Ruiru/Ruiru East Block 2/2531 & 2532.
90. Each of these two properties created 16 sub-divisions giving a total of 32 sub-divisions.
91. However, because Lr.No.Ruiru/Ruiru East Block 2/2531 & 2532 were next to each other, the sub-divisions were numbered from 1-32.
92. PW 2 could not remember if there was any re-survey that was ever done and the Plots re-issued.
93. Once the survey was done, the sub-divisions were registered and issued with Title Deeds.
94. On re-examination, PW 2 reiterated that her parcels were No.31 and 32.
95. PW 2 informed the Honourable Court that she took possession of Plot 31 & 32 in the year 2016 and currently stays there.
96. PW 2 confirmed that the Plaintiff herein had purchased Plot.No.28 & 29 of which he still occupies until now.
97. PW 2 stated that during the Balloting of the 2nd Defendants, some parcels remained and therefore, it was agreed that they can be sold to outsiders and this is how the Plaintiff managed to get the two parcels known as PLT.NO.28 & 29.
98. At the end of this re-examination, PW 2 was discharged from the witness box and the Plaintiff closed his case.

Defence Case.

99. The Defence 1st witness was Hannah Wambui Waithira Mwangi (DW 1).
100. The 1st Defence witness is also the 4th Defendant in this proceeding.
101. The 4th Defendant informed the Honourable Court that she was a retired Nairobi City Council employee.
102. The 4th Defendant further stated that she is the Chair of the 2nd Defendant herein.
103. The 4th Defendant also admitted that she was familiar with the Plaintiff.
104. The 4th Defendant confirmed that she had prepared a witness statement dated 07.10.2013 of which she adopted as her evidence in chief.
105. In addition to the above witness statement dated 07.10.2013, the 4th Defendant further produced the documents contained in the List of Documents dated 07.10.2013 as her exhibits thereof.
Defence Exhibit 1- Copy of Share Certificate of Plot.No.28 & 29 in the name of the 1st Defendant.
Defence Exhibit 2- Copy of Share Certificate of Plot No.12 & 13 in the name of the 1st Defendant.
Defence Exhibit 3- Copy of the 2nd Defendant's Ground Report to the Deputy Registrar dated 08.04.2013.
Defence Exhibit 4(A)&(B) – Photographs of PLT.NO.12 & 13 in the name of the 1st Defendant.



Defence Exhibit 5 – Copies of the Ballot No. 28 & 29 in the name of the 1st Defendant.

Defence Exhibit 6- A copy of the Clearance letter for Plots NO.12 & 13 in the name of the 1st Defendant.

106. On cross-examination, the 4th Defendant denied knowledge of the Plaintiff.
107. The 4th Defendant stated that she only came to know about the Plaintiff after this proceeding had been instituted.
108. The 4th Defendant recognised the Plaintiff's Counsel as the same one that represented the Plaintiff in the criminal proceedings undertaken in Thika.
109. The 4th Defendant further denied the allegations that she came from the same village as the Plaintiff herein.
110. However, the 4th Defendant admitted that MR.KURIA was her first born son but was not aware that they went to the same school with the Plaintiff.
111. The 4th Defendant confirmed that the original properties owned by the 2nd Defendant were 2 Acres in total and were sub-divided into 32 parcels which were later titled.
112. The 4th Defendant clarified that he was the Chair but not a trustee of the 2nd Defendant.
113. The other officials of the 2nd Defendant was Priscillah as Secretary and Elizabeth as Treasurer.
114. However, in the Titles, the names that appeared on behalf of the 2nd Defendant were those of Peter Kuria (her son), Peter Mawera and the 4th Defendant.
115. By virtue of being the people on the titles, they would be able to transfer the titles as they found necessary.
116. According to DW 4, the 1st Defendant was the person who owned Plot.No.28 & 29.
117. The 4th Defendant admitted to being familiar with the 3rd Defendant as the owner of Plot.No.28 & 29.
118. The 4th Defendant stated that the parcels known as Plot.No.28 & 29 had a double allocation which was rectified.
119. Consequently therefore, the two parcels Plot.No.28 & 29 were not processed with any titles.
120. The 4th Defendant stated that he purchased the property known as Lr.No.Ruiru/Ruiru East Block 2/28878 from the 3rd Defendant herein for a consideration of KShs 780,000/-.
121. However, the 4th Defendant did not have any Agreement For Sale over the property known as Lr.No.Ruiru/Ruiru East Block 2/28878 with the 3rd Defendant.
122. The 4th Defendant informed the Honourable Court that she was not there when the Share Certificates of Plot.No.28 & 29 were issued.
123. The 4th Defendant nevertheless confirmed that every Share Certificate is usually signed by the Chair and the Secretary.
124. The 4th Defendant admitted that the property known as Lr.No.Ruiru/Ruiru East Block 2/28878 had now been sold to the 5th Defendant.
125. The 4th Defendant acknowledged that PW 2 was indeed the Organising Secretary of the 2nd Defendant.



126. On re-examination, the 4th Defendant stated that the correct documents that enabled the issuance of the titles known as Lr.No.Ruiru/Ruiru East Block 2/28878 & 28879 were the Share Certificates of Plot.No.12 & 13.
127. The 4th Defendant indicated that the Share Certificates of Plot.No.12 & 13 are supported by the Clearance Letters which enable the processing of the Title Deeds.
128. The 4th Defendant stated that the original two properties known as Lr.No.Ruiru/Ruiru East Block 2/2531 & 2532 were re-surveyed and each produced sub-divisions No. 1-16 only.
129. It is this new sub-divisions that were used to process the current title deeds issued to the land owners.
130. Nevertheless, there was no parcel of land that was ever lost during the re-surveying.
131. In reference to Defence Exhibit 4 (A) & (B), the 4th Defendant stated that the developments therein were built by the 3rd Defendant.
132. The 4th Defendant could not however confirm if the 3rd Defendant stays with the Plaintiff.
133. The 4th Defendant reiterated that she did not have the Agreement For Sale relating to the property known as Lr.No.Ruiru/Ruiru East Block 2/28878.
134. However, the 4th Defendant confirmed that she was the one that sold the same to the 5th Defendant herein.
135. The 4th Defendant indicated that the 3rd Defendant had no claim against her and that the 3rd Defendant is the one that gave the 4th Defendant the Share Certificate and Clearance Letter that enabled her process the Title Deed known as Lr.No.Ruiru/Ruiru East Block 2/28878.
136. At the end of this re-examination, the 4th Defendant was discharged from the witness box.
137. The second Defence witness was Videlia Muthoni Ndungu (DW 2).
138. DW 2 introduced herself as the 1st Defendant and a former employee of Nairobi City Council.
139. DW 2 informed the Honourable Court that she had prepared and executed a witness statement which is contained in Page 42 of the Defence Bundle dated 14.12.2022.
140. DW 2 therefore adopted the said witness statement and further relied on the Defence Exhibits 1-6.
141. DW 2 confirmed that the Defence Exhibit 1 contained Share Certificates of Plot.No.28 & 29.
142. According to DW 2, Plot No. 28 & 29 were both located within the property known as Lr.No.Ruiru/Ruiru East Block 2/2531.
143. DW 2 informed the Honourable Court that the Defence Exhibit 2 were copies of Share Certificates for Plot.No.12 & 13 within the original property known as Lr.No.Ruiru/Ruiru East Block 2/2531.
144. DW 2 clarified that the structures contained in the Defence Exhibit 4 (a) (b) were developed by her.
145. However, the structures contained in Defence Exhibit 4(a) (b) were subsequently removed.
146. DW 2 stated that the structures contained in Defence Exhibit 4 (a) (b) were actually on Plot.No.12 & 13.
147. DW 2 informed the Honourable Court that she moved out of Plot.No.12 & 13 upon an agreement with the 3rd Defendant who had also claimed ownership of the same.



148. DW 2 confirmed to the Honourable Court that the original Plot No.28 & 29 had been allocated twice.
149. Due to this double allocation, DW 2 surrendered Plot.No.28 & 29 which were later renamed as Plot.No.12 & 13 in favour of the 3rd Defendant.
150. DW 2 was then relocated to another parcel which was then titled as Lr.No.Ruiru/Ruiru East Block 2/37276.
151. DW 2 admitted being familiar with the Plaintiff herein who was the husband to the 3rd Defendant.
152. However, DW 2 denied ever participating in any fraud and that it was the 3rd Defendant that requested her to surrender Plot.No.28 & 29 which were later renamed as Plot.No.12 & 13.
153. DW 2 was of the considered view that the Plot.No.28 & 29 which were later renamed as Plot.No.12 & 13 belonged jointly in favour of the Plaintiff and the 3rd Defendant.
154. DW 2 stated that she was not sure why she had been sued.
155. DW 2 informed the Honourable Court that the Clearance Certificate produced was not the one she used to process her title with.
156. In concluding her evidence in chief, DW 2 confirmed that discussions have been done to resolve this issue but unfortunately that exercise has not been successful.
157. On cross-examination, DW 2 informed the Honourable Court that she was the complainant in Thika Criminal Case No. 3114 OF 2012 which related to malicious damage.
158. Similarly, DW 2 admitted that there was another CRIMINAL CASE NO. 2924/2012 which related to forcible retainer against the 3rd Defendant.
159. However, DW 2 stated that she was no longer interested in these proceedings because she no longer had any interest in Plot.No.12 & 13.
160. DW 2 reiterated that according to her view, the Plot.No.12 & 13 belonged to the Plaintiff and the 3rd Defendant.
161. DW 2 confirmed that she still had the original Share Certificates of Plot.No.12 & 13 but was ready to surrender the same after the Conclusion of this suit.
162. DW 2 denied that she was the one that procured and/or signed the Clearance Certificate that had been produced as Defence Exhibit 6.
163. DW 2 further admitted that during the discussions with the 3rd Defendant about Plot.No.12 & 13, the Plaintiff was not present and/or involved.
164. As regards the Counter-Claim contained in the Amended Defence, DW 2 denied ever giving consent for the filing of the Counter-claim and therefore was not interested of the eviction orders being sought therein.
165. According to DW 2, she no longer had any interest in Plot.No.12 & 13 as she had surrendered the same to the 3rd Defendant who took possession thereof.
166. DW 2 however could not confirm if the 3rd Defendant was ever given other Share Certificates of Plot.No.12 & 13 or if she had sold them to other persons.
167. On re-examination, DW 2 stated that her Share Certificates were issued on the 10.09.2009.



168. DW 2 confirmed that the Criminal proceedings were mostly in the year 2012 and at that time, Plot No.28 & 29 had already been cancelled.
169. DW 2 admitted that the Plaintiff was never involved in the discussions relating to Plot.No.12 & 13.
170. The 3rd Defence witness was Faith Nyambura Kihu (DW3).
171. DW 3 introduced herself as the 3rd Defendant and a wife to the Plaintiff herein.
172. DW 3 informed the Honourable Court that she had prepared and executed a witness statement dated 11.11.2022 of which she adopted as her evidence in chief.
173. Further to the witness statement dated 11.11.2022, DW 3 also sought to reply on the Defence Bundle of Documents dated 14.12.2022.
174. DW 3 informed the Honourable Court that the payment receipts of the original Plot.No.28 & 29 were issued in the name of the Plaintiff and the 3rd Defendant.
175. Similarly, the Share Certificates of Plot.No.28 & 29 were also issued in the names of the Plaintiff and the 3rd Defendant.
176. DW 3 informed the Honourable Court that later on, the Plot.No.28 & 29 were changed to Plot.No.12 & 13.
177. DW 3 explained that the Plot.No.12 & 13 had been double allocated but the issue was rectified and Plot.No.12 & 13 were allocated to them.
178. DW 3 confirmed to the Honourable Court that the Plaintiff was her husband but they had separated.
179. DW 3 stated that the name of the Plaintiff was removed from the Share Certificates of Plot.No.12 & 13 because he did not contribute to the purchase price thereof.
180. DW 3 also claimed that the structures on former Plot.No.28 & 29 now Plot.No.12 & 13 had been developed by her.
181. DW 3 nevertheless admitted that the Plaintiff and herself occupied and/or lived on the two Plots as husband and wife but now wants the Plaintiff who is the husband evicted thereof.
182. The main reason DW 3 wanted to evict the Plaintiff was because he had refused to contribute to the purchase price of the two Plots.
183. DW 3 confirmed that the original Share Certificates of Plot.No.28 & 29 had been in her possession and not with the Plaintiff.
184. DW 3 therefore denied being involved in any fraud against the Plaintiff and the subsequent issuance of the new Share Certificates of Plot.No.12 & 13 in her sole name was lawful.
185. DW 3 admitted that Plot.No.12 & 13 were titled and she was the one that sold one of the properties to the 4th Defendant who paid for it.
186. The remaining one property known as Lr.No.Ruiru/Ruiru East Block 2/28879 was retained in the name of the 3rd Defendant.
187. Currently, the other property known as Lr.No.Ruiru/Ruiru East Block 2/28878 was sold to the 4th Defendant who in turn sold it to the 5th Defendant.



188. Nevertheless although Lr.No.Ruiru/Ruiru East Block 2/28878 was in the name of the 5th Defendant, both properties were in the possession of the 3rd Defendant.
189. In essence therefore, the 3rd Defendant prayer was that the Plaintiff's suit be dismissed and the restrictions placed on the titles be removed.
190. DW 3 stated that she was the one that had directed the 2nd Defendant to record the name of the Plaintiff on the Receipts and Share Certificates thereof.
191. DW 3 confirmed that both properties were available and none had been lost.
192. On cross-examination, DW 3 affirmed that she is the one that prepared and executed the witness statement dated 11.11.2022.
193. DW 3 stated that initially, the 2nd Defendant had informed DW 3 that titles to the two Plots would be issued after the case filed in the lower court would be determined.
194. DW 3 informed the Honourable Court that in the Lower Court cases, the 1st Defendant wanted vacant possession of the Plots but this issue was subsequently resolved by the 2nd Defendant.
195. DW 3 confirmed that the particulars in the Receipts and the Share Certificates of Plot.No.28 & 29 (now Plot.No.12 & 13) were changed after a dispute arose with the Plaintiff.
196. DW 3 affirmed that the original Receipts and Share Certificates of Plot.No.28 & 29 were issued by the 2nd Defendant.
197. However, when the Share Certificates were being changed from Plot.No.28 & 29 to Plot.No.12 & 13, the name of the Plaintiff was removed and only the name of the 3rd Defendant recorded.
198. DW 3 stated that it was after the issuance of the new Share Certificates for Plot.No.12 & 13 that she sold one to the 4th Defendant.
199. However, DW 3 did not have any Agreement For Sale with the 4th Defendant over the property known as Lr.No.Ruiru/Ruiru East Block 2/28878 or the necessary Land Control Board Consent.
200. Similarly, there was no evidence of any consideration made by the 4th Defendant to the 3rd Defendant upon executing the purported Agreement For Sale.
201. DW 3 informed the Honourable Court that she was aware the 4th Defendant sold the property known as Lr.No.Ruiru/Ruiru East Block 2/28878 to the 5th Defendant.
202. However, the 5th Defendant has never taken possession of the property known as Lr.No.Ruiru/Ruiru East Block 2/28878 or developed on the same.
203. DW 3 admitted that MR. JOSEPH KURIA was the son to the 4th Defendant.
204. DW 3 denied ever attempting to demolish the house developed on the two properties but stated that she only went back to pick her clothes.
205. DW 3 also stated that she was not aware if this Honourable Court had visited the suit property.
206. DW 3 admitted that the Share Certificates of Plot.No.28 & 29 were not signed by her when they were issued.
207. DW 3 confirmed that the person who had signed on the original Share Certificates of Plot.No.28 & 29 was the Plaintiff herein.



208. DW 3 stated that she did not secure a spousal consent when selling the property known as Lr.No.Ruiru/Ruiru East Block 2/28878 because there was no marriage certificate with the Plaintiff.
209. On re-examination, DW 3 reiterated that she did not have any Agreement for Sale of the property known as Lr.No.Ruiru/Ruiru East Block 2/28878 to the 4th Defendant.
210. Similarly, DW 3 did not have any acknowledgement receipt and/or proof of payment of any purchase price from the 4th Defendant relating to the property known as Lr.No.Ruiru/Ruiru East Block 2/28878.
211. DW 3 informed the Honourable Court that the 4th Defendant was of the opinion that the Plot.No.12 would be directly titled into the name of the 4th Defendant without involving the Plaintiff and/or an Agreement For Sale.
212. Consequently therefore, it was only the Plot.No.13 which is now known as Lr.No.Ruiru/Ruiru East Block 2/28879 that was processed in the name of the 3rd Defendant alone.
213. DW 3 confirmed that she never attended any Land Control Board meeting to transfer the property known as Lr.No.Ruiru/Ruiru East Block 2/28878 in favour of the 4th Defendant.
214. DW 3 concluded her re-examination by stating that the suit before this Honourable Court was not about sub-division of the properties and/or matrimonial issues.
215. At the end of this re-examination, DW 3 was discharged from the witness box thereof.
216. The 4th Defence witness was MARGARET WAITHIRA MURURA (DW 4).
217. DW 4 introduced herself as a business lady and the 5th Defendant in this suit.
218. DW 4 informed the Honourable Court that she had prepared a witness statement dated 02.10.2023 of which she adopted as her evidence in chief.
219. DW 4 further sought to rely on the Bundle of Document dated 02.10.2023 and the documents contained therein.
220. On reference to Defence Exhibit 1- DW 4 confirmed that the property known as Lr.No.Ruiru/Ruiru East Block 2/28878 was issued with a title on the 06.05.2021.
221. Similarly, the Defence Exhibit 2 which is a copy of an Official Search of the property known as Lr.No.Ruiru/Ruiru East Block 2/28878 confirms the particulars of the registered owner.
222. Both the Defence Exhibit 1 & 2 confirm that DW 4 is the legal and registered owner of the property known as Lr.No.Ruiru/Ruiru East Block 2/28878.
223. However, the Official Search of the property known as Lr.No.Ruiru/Ruiru East Block 2/28878 shows an inhibition registered on the basis of a Court Order issued on the 11.06.2021.
224. The Inhibition was recorded about 1 month after the title to the property known as Lr.No.Ruiru/Ruiru East Block 2/28878 was issued.
225. DW 4 confirmed that the property known as Lr.No.Ruiru/Ruiru East Block 2/28878 was sold to her by the 4th Defendant upon undertaking proper due diligence.
226. DW 4 stated that there was an Agreement For Sale between the 4th and 5th Defendant but she did not have it in Court.



227. DW 4 further affirmed that the relevant Consent from the Land Control Board was also procured together with all other requirements to effect a lawful transfer.
228. Consequently, the registration of the 5th Defendant on the property known as Lr.No.Ruiru/Ruiru East Block 2/28878 was not fraudulent.
229. The 4th Defendant was a legitimate owner of the property known as Lr.No.Ruiru/Ruiru East Block 2/28878 who passed good time to the DW 4.
230. DW 4 informed the Honourable Court that she did not know the Plaintiff herein and only came to know about his claim in the Court proceedings.
231. DW 4 stated that the Plaintiff's name has never been registered and/or recorded either in the Title or the Green Card of Lr.No.Ruiru/Ruiru East Block 2/28878.
232. In essence therefore, DW 4 sought for this case to be dismissed and the caution on the property known as Lr.No.Ruiru/Ruiru East Block 2/28878 should be removed.
233. DW 4 confirmed that when she went to inspect the property known as Lr.No.Ruiru/Ruiru East Block 2/28878, the same was already fenced.
234. DW 4 informed the Honourable Court that currently, the property known as Lr.No.Ruiru/Ruiru East Block 2/28878 is vacant.
235. On cross-examination, DW 4 informed the Honourable Court that the 4th Defendant told her that she had been allocated the property known as Lr.No.Ruiru/Ruiru East Block 2/28878 by the 2nd Defendant.
236. Consequently therefore, the DW 4 was of the view that the property known as Lr.No.Ruiru/Ruiru East Block 2/28878 was initially owned by the 2nd Defendant who passed it to the 4th Defendant.
237. DW 4 stated that during the purchase process, the 4th Defendant presented a Title of the property known as Lr.No.Ruiru/Ruiru East Block 2/28878 but a copy of the said Title has not been presented to the Honourable Court.
238. DW 4 insisted that she attended a Land Control Board session who the Chair was the Land Registrar and the relevant consent was issued.
239. DW 4 confirmed to the Honourable Court that she paid a sum of KShs 1,100,000/- to the 4th Defendant as consideration of the property known as Lr.No.Ruiru/Ruiru East Block 2/28878.
240. DW 4 however did not have any proof that the sum of KShs 1,100,000/- was indeed paid and/or received by the 4th Defendant.
241. DW 4 stated that she did inspected the property known as Lr.No.Ruiru/Ruiru East Block 2/28878 but there were no beacons which were pointed to her.
242. DW 4 confirmed that her father's name was JULIOUS MURURIA.
243. However, DW 4 denied any knowledge that her father called the Plaintiff with a view of amicably settling this matter.
244. At the time of purchasing the property known as Lr.No.Ruiru/Ruiru East Block 2/28878, DW 4 did not know that the property had a court case.



245. DW 4 insisted that she did not see the Plaintiff on the property known as Lr.No.Ruiru/Ruiru East Block 2/28878.
246. In Conclusion therefore, DW 4 sought to have the Plaintiff's Case dismissed.
247. On re-examination, DW 4 reiterated that the Land Control Board was issued in her favour by the Chairman.
248. DW 4 reconfirmed that during inspection of the property known as Lr.No.Ruiru/Ruiru East Block 2/28878 it was fenced but vacant.
249. DW 4 stated that the neighbouring property was developed and occupied.
250. DW 4 further clarified that there was no sign post on the property known as Lr.No.Ruiru/Ruiru East Block 2/28878 prohibiting the general public from purchasing it.
251. DW 4 denied knowledge of any communication between his father and the Plaintiff.
252. In Conclusion therefore, DW 4 sought this Honourable Court to dismiss the Plaint herein and grant the prayers sought in the Counter-Claim.
253. At the end of DW 4 testimony, the Defendants closed their case as well.
254. At the close of the Defence Case, the Honourable Court directed the parties to file their written submissions and in compliance therefore, the Plaintiff filed his submissions on the 06.02.2024 while the Defendants filed their submissions on dated 16.01.2024.
255. Indeed the Honourable Court has perused the pleadings herein, the Defence & Counter-Claim, the testimonies of the witnesses and the evidence produced at the trial and identify the following issues for determination in this suit;-
- Issue No. 1- Did Plot No. 28 & 29 Exist Within The 2Nd Defendant's Property Known As Lr.No.Ruiru/Ruiru East Block 2/2531?
- Issue No. 2- Who Were The Beneficial Owners Of Plot.No.28 & 29 Within The 2Nd Defendant's Property Known As Lr.No.Ruiru/Ruiru East Block 2/2531?
- Issue No. 3- Were Plot.No.28 & 29 Within The 2Nd Defendant's Property Known As Lr.No.Ruiru/Ruiru East Block 2/2531 The Same As Plot.No.12 & 13 Within Lr.No.Ruiru/Ruiru East Block 2/2531?
- Issue No. 4- Was The Registration Of The Property Known As Lr.No.Ruiru/Ruiru East Block 2/28878 In The Name Of The 4Th Defendant & 5Th Defendant Lawful & Legal?
- Issue No.5-Was The Registration Of The Property Known As Lr.No.Ruiru/Ruiru East Block 2/28879 In The Name Of The 3Rd Defendant Lawful And Legal?
- Issue No. 6- Is The Plaintiff Entitled To The Prayers Sought In The Further Amended Plaint Dated 26.07.2023?
- Issue No. 7- Are The Defendants Entitled To The Prayers Sought In The Counter-Claim 24.09.2013?
- Issue No. 8- Who Bears The Costs Of This Suit?
256. The Honourable Court having duly identified the issues for determination, the same will now be discussed as outlined hereinbelow.



Issue No. 1- Did Plot No. 28 & 29 Exist Within The 2nd Defendant's Property Known AS Lr.No.Ruiru/Ruiru East Block 2/2531?

257. The first issue for determination is whether or not the Plot.No 28 & 29 ever existed on the 2nd Defendant's property known as Lr.No.Ruiru/Ruiru East Block 2/2531.
258. According to the testimony of the Plaintiff, he approached the 2nd Defendant with an interest to purchase two portions of land within the property known as Lr.No.Ruiru/Ruiru East Block 2/2531.
259. The Plaintiff informed the Honourable Court that the 2nd Defendant offered two Plots namely Plot.No.28 & 29 which he duly paid for and was given Receipts and the Share Certificates thereof.
260. The Plaintiff produced the payment receipts and the Share Certificates issued by the 2nd Defendant as Plaintiff's Exhibit 1-4.
261. In all these exhibits, the 2nd Defendant confirms that the properties under sale and/or purchase by the Plaintiff and the 3rd Defendant were Plot.No.28 & 29.
262. The 4th Defendant on the other hand disputed the existence of Plot.No.28 & 29 within Lr.No.Ruiru/Ruiru East Block 2/2531.
263. According to the 4th Defendant, the 2nd Defendant owned two properties known as Lr.No.Ruiru/Ruiru East Block 2/2531 & 2532.
264. During the sub-division process, each of the two properties only produced Plot.No.1-16 and therefore there was no Plots given NO.28 & 29.
265. The 1st Defendant who testified as DW 2 also commented on the issue of Plot.No.28 & 29.
266. According to the 1st Defendant, she had also been allocated Plot.No.28 & 29 within the property known as Lr.No.Ruiru/Ruiru East Block 2/2531.
267. DW 2 produced two Share Certificates in her names as Defence Exhibit 1 in her own name.
268. In essence therefore, it is clear that both the Plaintiff and 3rd Defendants as well as the 1st Defendant all had Share Certificates of the same Plots. No. 28 & 29.
269. The 4th Defendant who is the Chair of the 2nd Defendant did not dispute the validity of the Share Certificates issued to the 1st Defendant.
270. The Share Certificates held by the 1st Defendants clearly indicated that they were for Plots. NO.28 & 29.
271. It is therefore clear in the mind of this Honourable Court that Plots.NO.28 & 29 indeed existed within the property known as Lr.No.Ruiru/Ruiru East Block 2/2531 and had in fact been allocated twice to the 1st Defendant as well as the Plaintiff and the 3rd Defendant.

Issue No. 2- Who Were The Beneficial Owners Of Plot.No.28 & 29 Within The 2nd Defendant's Property Known As Lr.No.Ruiru/Ruiru East Block 2/2531?

272. The Honourable Court having satisfied itself that Plot.No.28 & 29 existed on the property known as Lr.No.Ruiru/Ruiru East Block 2/2531, the second issue is who is the legitimate owner of the two Plots.



273. The Plaintiff herein testified that Plot.No.28 & 29 were duly acquired by him and the 3rd Defendant as evidenced in the Plaintiff's Exhibit 1-4.
274. The 1st Defendant on the other hand also made a claim that Plot.No.28 & 29 had also been allocated to her by virtue of the Share Certificate issued in her name.
275. The 1st Defendant admitted that indeed there was a double allocation of Plot.No.28 & 29 BEING claimed by herself as well as the Plaintiff and the 3rd Defendant.
276. The 4th Defendant who is the Chair of the 2nd Defendant confirmed in her testimony that Plots NO.28 & 29 had been allocated to the 1st Defendant who they worked together at the Nairobi City Council.
277. The 4th Defendant further admitted that the same Plot.No.28 & 29 were allocated to the 3rd Defendant hence creating a double allocation.
278. However, the 1st Defendant in her testimony informed the Honourable Court that the issue of double allocation on Plot.No.28 & 29 was resolved by the 4th Defendant on behalf of the 2nd Defendant.
279. The 1st Defendant who testified as DW 2 stated that she surrendered both Plot.No.28 & 29 to the 3rd Defendant and was allocated other Plots by the 4th Defendant.
280. The 1st Defendant further confirmed that she no longer had any interest on Plot.No.28 & 29 or the resultant titles known as Lr.No.Ruiru/Ruiru East Block 2/28878 & Lr.No.Ruiru/Ruiru East Block 2/28879.
281. It is therefore this Honourable Court's considered opinion that based on the admission of the 1st Defendant, there is no doubt that both Plots.NO.28 & 29 were surrendered to the 3rd Defendant in an effort to resolve the issue of double allocation.
282. In essence therefore, it is this Honourable Court's finding that Plot.No.28 & 29 were surrendered back to the 3rd Defendant based on the Receipts and Share Certificates produced as Plaintiff's Exhibit 1-4.

Issue No. 3- Were Plot.No.28 & 29 Within The 2nd Defendant's Property Known As Lr.No.Ruiru/Ruiru East Block 2/2531 The Same As Plot.No.12 & 13?

283. The third issue for determination is whether or not the Plots.NO.28 & 29 within Lr.No.Ruiru/Ruiru East Block 2/2531 is The Same As Plot.No.12 & 13.
284. According to the Plaintiff, the properties he purchased were Plot.No.28 & 29 within Lr.No.Ruiru/Ruiru East Block 2/2531 and not Plot.No.12 & 13.
285. The Plaintiff was very categorical that he was not familiar with the purported Plots NO.12 & 13 and those are not the ones that were contained in the Share Certificates that were issued by the 2nd Defendant.
286. The 4th Defendant on the other hand stated that there were no properties known as Plot.No.28 & 29 within the property known as Lr.No.Ruiru/Ruiru East Block 2/2531.
287. The 4th Defendant informed the Honourable Court that indeed, the 2nd Defendant has two properties known as Lr.No.Ruiru/Ruiru East Block 2/2531 & 2532.
288. The two properties known as Lr.No.Ruiru/Ruiru East Block 2/2531 & 2532 were sub-divided into 32 Plots.



289. However, during the titling process, each of the two properties were sub-divided into 16 Plots and therefore it was not possible to have Plot.No.28 & 29 as alleged by the Plaintiff.
290. The 4th Defendant therefore stated that the Plots contained in the Share Certificates produced by the Plaintiff as Exhibits 3 & 4 did not exist and can not produce any titles as alleged.
291. The 1st Defendant who was also DW 2 extensively discussed the issue of Plots NO.28 & 29 as well as Plot.No.12 & 13.
292. The 1st Defendant testified that she was initially allocated Share Certificates of Plot.No.28 & 29 within Lr.No.Ruiru/Ruiru East Block 2/2531 and produced the said Share Certificates as Defence Exhibit 1.
293. Thereafter, the 1st Defendant further stated that The Properties Known As Plot.No.28 & 29 within the property known as Lr.No.Ruiru/Ruiru East Block 2/2531 were changed and given Plot.No.12 & 13 of which she also produced the Share Certificates as Defence Exhibit 2.
294. In essence therefore, the 1st Defendant confirmed that the Plot.No.28 & 29 within Lr.No.Ruiru/Ruiru East Block 2/2531 were the same ones that were numbered as Plot.No.12 & 13 within Lr.No.Ruiru/Ruiru East Block 2/2531.
295. The 1st Defendant further testified that the properties which she surrendered to the 3rd Defendant were the same parcels known as Plot.No.28 & 29 which had changed to Plot.No.12 & 13 within Lr.No.Ruiru/Ruiru East Block 2/2531.
296. In view of the 1st Defendant's evidence and in particular the Defence Exhibit 2, this Honourable Court is satisfied that the parcels known as Plot.No.28 & 29 within Lr.No.Ruiru/Ruiru East Block 2/2531 were the same parcels that were renamed Plot.No.12 & 13 within Lr.No.Ruiru/Ruiru East Block 2/2531.

Issue No. 4- Was The Registration Of The Property Known As Lr.No.Ruiru/Ruiru East Block 2/28878 In The Name Of The 4th Defendant & 5th Defendant Lawful & Legal?

297. The next issue is whether the registration of the 4th and 5th Defendants on the property known as Lr.No.Ruiru/Ruiru East Block 2/28878 was lawful and legitimate.
298. According to the evidence of the 1st Defendant, the two parcels known as Plot No.28 & 29 which were later renumbered as Plot.No.12 & 13 were surrendered to the 3rd Defendant on the intervention of the 4th Defendant.
299. According to the testimony of the 4th Defendant, the parcel known as Plot.No.12 was titled as Lr.No.Ruiru/Ruiru East Block 2/28878.
300. The 4th Defendant informed the Honourable Court that she purchased the Share Certificate for Plot.No.12 from the 3rd Defendant which was later processed the title known as Lr.No.Ruiru/Ruiru East Block 2/28878.
301. However, the 4th Defendant did not have any Agreement For Sale between herself and the 3rd Defendant who is alleged to have been the Vendor.
302. Similarly, the 4th Defendant did not produce any proof of payment of the Purchase Price paid to the 3rd Defendant as consideration for the purchase of the parcel known as Plot.No.12 now titled as Lr.No.Ruiru/Ruiru East Block 2/28878.
303. The 3rd Defendant who testified as DW 3 reiterated the evidence of the 4th Defendant.



304. The 3rd Defendant confirmed that Plot No. 28 was renumbered as Plot No.12 and finally titled as Lr.No.Ruiru/Ruiru East Block 2/28878.
305. The 3rd Defendant disclosed in cross-examination that the new Share Certificate of Plot.No.12 was issued in her sole name and in exclusion of the Plaintiff's name which appeared in the original Share Certificate which had been issued for Plot.No.28.
306. Upon securing the Share Certificate of Plot.No.12 in her sole name, the 3rd Defendant sold the same to the 4th Defendant who then processed the title known as Lr.No.Ruiru/Ruiru East Block 2/28878.
307. The 3rd Defendant explained to the Honourable Court that the main reason the new Share Certificate of Plot.No.12 was issued in her sole name was because she was the one that paid the purchase price and only included the name of the Plaintiff because he was her husband.
308. The expectation of the 3rd Defendant was that the Plaintiff would either contribute and/or refund her the purchase price but he failed to do so hence her decision to remove his name from the new Share Certificate of Plot.No.12.
309. Looking at the testimonies and evidence placed before this Honourable Court, there is no doubt that the original Share Certificates relating to Plot.No.28 & 29 issued by the 2nd Defendant were in the names of the Plaintiff and the 3rd Defendant.
310. In other words, the parcels known as Plot.No.28 & 29 within Lr.No.Ruiru/Ruiru East Block 2/2531 were joint and/or commonly owned by the Plaintiff and the 3rd Defendant.
311. This being the case, the subsequent Share Certificates issued after the renumbering of Plot.No. 28 & 29 to Plot.No.12 & 13 within Lr.No.Ruiru/Ruiru East Block 2/2531 were to be issued in the names of both the Plaintiff and the 3rd Defendant.
312. Unfortunately, in this case, the 3rd and 4th Defendant unilaterally and without any legal basis proceeded to reissue the Share Certificate of Plot No.28 now Plot No.12 without the name of the Plaintiff herein who was also a registered owner jointly with the 3rd Defendant.
313. This act by the 3rd and 4th Defendant was in the opinion of this Honourable Court unlawful, fraudulent and illegal because it extinguished the Plaintiff's ownership on the parcel known as Plot.No.12 now titled as Lr.No.Ruiru/Ruiru East Block 2/28878 without following any due process.
314. In essence therefore, the issuance of the Share Certificate of Plot.12 in the sole name of the 3rd Defendant was fraudulent, illegal and unlawful.
315. Similarly, the subsequent alleged sale of the Share Certificate for Plot.No.12 which was to be jointly owned by the Plaintiff and the 3rd Defendant was unlawful, illegal and illegitimate as the 3rd Defendant did not have the exclusive proprietary rights to dispose off the same without the express consent of the Plaintiff whether they were separated and/or still together as husband and wife.
316. Consequently, the purported Sale of the Share Certificate for Plot.No.12 by the 3rd Defendant without the express consent of the Plaintiff did not pass any good title to the 4th Defendant and therefore the 4th Defendant's ownership is null and void.
317. By extension of the above finding, the 4th Defendant could also not pass any lawful title over the property known as Lr.No.Ruiru/Ruiru East Block 2/28878 to the 5th Defendant and as such, the 5th Defendant's registration is also null and void.



318. In Conclusion therefore, the registration of the 4th and 5th Defendants herein as the owners of the property known as Lr.No.Ruiru/Ruiru East Block 2/28878 is unlawful, null and void thereof.

Issue No.5-Was The Registration Of The Property Known As Lr.No.Ruiru/Ruiru East Block 2/28879 In The Name Of The 3Rd Defendant Lawful And Legal?

319. The other issue for determination is whether the registration of the 3rd Defendant on the property known as Lr.No.Ruiru/Ruiru East Block 2/28879 was lawful and legitimate.

320. It was determined in Issue No. 3 that the parcel known as Plot.No.29 was subsequently renumbered as Plot.No.13.

321. It is also clear that the both the Payment Receipt and the Share Certificate relating to parcel known as PLT.NO.29 produced as Plaintiff's Exhibit 2 & 4 respectively contained the names of both the Plaintiff and the 3rd Defendant.

322. However, during the reissuance of the Share Certificate from Plot.No.29 to Plot.No.13, the 4th Defendant who was the Chair of the 2nd Defendant with collusion of the 3rd Defendant without any lawful explanation and/or consent of the Plaintiff proceeded to alter the particulars of the ownership by only recording the 3rd Defendant as the sole owner of Plot.No. 13.

323. The 4th Defendant's actions in collusion with the 3rd Defendant in the Honourable Court's view were fraudulent and illegal as they dispossessed the Plaintiff of his ownership over the Plot No.13 which is now titled as Lr.No.Ruiru/Ruiru East Block 2/28879.

324. The Honourable Court reiterates that the Share Certificate of Plot.No.29 which was later renumbered as Plot.No.13 was issued to both the Plaintiff and the 3rd Defendant and therefore the resultant title known as Lr.No.Ruiru/Ruiru East Block 2/28879 should be jointly and/or commonly owned by the two persons.

325. In essence therefore, the 3rd and 4th Defendant's actions of unilaterally altering the particulars of the Share Certificate of Plot.No.29 which was later renumbered as Plot.No.13 by removing the name of the Plaintiff was fraudulent and unlawful.

326. Consequently, the registration of the 3rd Defendant was the sole owner of the property known as Lr.No.Ruiru/Ruiru East Block 2/28879 was fraudulent, null and void.

Issue No. 6- Is The Plaintiff Entitled To The Prayers Sought In The Further Amended Plaintiff Dated 26.07.2023?

327. In this issue, the Honourable Court is to decide whether or not the Plaintiff herein is entitled to the prayers sought in the Further Amended Plaintiff dated 26.07.2023.

328. Looking at the determinations in Issue 1- 5, this Honourable Court is satisfied that the 3rd and 4th Defendants undertook fraudulent actions aimed at dispossessing the Plaintiff of his ownership over the two properties now titled as Lr.No.Ruiru/Ruiru East Block 2/28878 & 28879.

329. The Plaintiff is therefore entitled to the remedies sought for in the Further Amended Plaintiff dated 26.07.2023 and any other reliefs that will ensure the justice is done.

Issue No. 7- Are The Defendants Entitled To The Prayers Sought In The Counter-Claim 24.09.2013?

330. The other issue for determination is whether the Defendants Counter-Claim should be granted or not.



331. The Defendants Counter-Claim was a claim of eviction orders and/or vacant possession of the two properties known as Lr.No.Ruiru/Ruiru East Block 2/28878 & 28879.
332. Unfortunately, the determination of this Honourable Court is that the 5th Defendant's and the 3rd Defendants ownership of the two properties known as Lr.No.Ruiru/Ruiru East Block 2/28878 & 28879 were fraudulently acquired and therefore did not bestow them with any legitimate ownership over the same.
333. To this end, the Defendants Counter-Claim can not succeed as both the 3rd, 4th and 5th Defendants registrations as owners of The Properties Known As Lr.No.Ruiru/Ruiru East Block 2/28878 & 28879 were illegitimate, null and void.

Issue No. 8- Who Bears The Costs Of This Suit?

334. The last issue for determination is who should bear the costs of this suit and the Counter-Claim.
335. It is clear that the actions of the 3rd and 4th Defendants in the manner they altered the ownership of the Share Certificates for Plot.No.28 & 29 is the main reason that this suit was instituted by the Plaintiff herein.
336. The Plaintiff having satisfied this Honourable Court that the actions of the 3rd and 4th Defendants were fraudulent to dispossess him of the ownership to the Plot.No.28 & 29, then the costs of this suit should be borne by the two Defendants.
337. Similarly, the Counter-Claim by the Defendants having been denied, it goes without saying that Costs should also be in favour of the Plaintiff.

Conclusion

338. In Conclusion therefore, this Honourable Court hereby makes the following Orders in determination of the Further Amended Plaint dated 26.07.2023; -
- A. The Properties Known As Lr.No.Ruiru/Ruiru East Block 2/28878 & Lr.No.Ruiru/Ruiru East Block 2/28879 Are The Joint Properties Of The James Kimunyu Gathare & Faith Nyambura Kihu.
- B. The Registration Of Faith Nyambura Kihu As The Sole Owner Of The Plot.No.28 & 29 Which Was Later Renumbered To Plot.No.12 & 13 By The 4th Defendant On Behalf Of The 2nd Defendant Was Fraudulent, Illegal, Null & Void.
- C. The Purported Sale Of The Plot.No.28 Which Was Later Renumbered As Plot.No.12 To Hannah Wambui Mwangi And The Subsequent Registration Of Her Name As The Owner Of Lr.No.Ruiru/Ruiru East Block 2/28878 Be & Is Hereby Declared Fraudulent, Null & Void.
- D. The Purported Transfer Of The Property Known As Lr.No.Ruiru/Ruiru East Block 2/28878 From One Hannah Wambui Mwangi To Margaret Waithira Murima Be & Is Hereby Further Declared Irregular, Null & Void.
- E. The Purported Registration Of Faith Nyambura Kihu As The Sole Owner Of The Plot.No.13 And Subsequent Registration Of Her Name As The Sole Owner Of Lr.No.Ruiru/Ruiru East Block 2/28879 Be & Is Hereby Declared Fraudulent, Null & Void.
- F. The Land Registrar, Ruiru Registry Be And Is Hereby Ordered To Cancel The Names Of Faith Nyambura Kihu & Margaret Waithira Murima As The Registered Owners



Of Lr.No.Ruiru/Ruiru East Block 2/28878 & Lr.No.Ruiru/Ruiru East Block 2/28879
Respectively Forthwith

- G. The Land Registrar, Ruiru Registry Be & Is Hereby Directed To Thereafter Register & Issue New Title Deeds In The Names Of James Kimunyu Gathare & Faith Nyambura Kihu As Joint And/Or Common Owners Of Both The Properties Known As Lr.No.Ruiru/Ruiru East Block 2/28878 & Lr.No.Ruiru/Ruiru East Block 2/28879 Forthwith.
- H. The Plaintiff Is Hereby Awarded Costs To Be Settled By The 3Rd And 4Th Defendants Herein Only.

DATED, SIGNED & DELIVERED Virtually in KILGORIS ELC Court on 11TH OF APRIL 2024.

EMMANUEL.M.WASHE

JUDGE

In The Presence Of:

Court Assistant: Mr. Ngeno

Advocate For The Plaintiff: Ms. Waweru H/b Mr.gachomo

Advocate For The Defendants: Mr.kimani (n/a)

