



**Oshwal Supermarket Limited v Motuka & 7 others (Environment & Land
Case 116 of 2015) [2024] KEELC 4131 (KLR) (9 May 2024) (Judgment)**

Neutral citation: [2024] KEELC 4131 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT & LAND CASE 116 OF 2015**

M SILA, J

MAY 9, 2024

BETWEEN

OSHWAL SUPERMARKET LIMITED PLAINTIFF

AND

DAVID AMENYA MOTUKA 1ST DEFENDANT

JAMES NYAKWANA ORICHO 2ND DEFENDANT

ALICE HENRY ONGATO 3RD DEFENDANT

JAMES ONDUKO BOSANDO 4TH DEFENDANT

KENNEDY MOMANYI MATARA 5TH DEFENDANT

GISEMBA ONDIEKI ISAAC 6TH DEFENDANT

ENOCK MAUTIA MONDA 7TH DEFENDANT

ROBERT MANYANGE 8TH DEFENDANT

JUDGMENT

1. This suit was commenced through a plaint filed on 30 March 2015. In the plaint, the plaintiff has pleaded that she is the registered proprietor of the land parcel Central Kitutu/Daraja Mbili/732 (the suit land or simply parcel No. 732), having purchased it from Quasar Limited and Prime Bank Limited, the former being the erstwhile registered proprietor who had charged the land to the latter. The plaintiff pleads that through diverse acts of fraud commenced on 16 February 2010, the defendants caused a purported subdivision of the parcel No. 732 to create new registers for land parcels Central Kitutu/Daraja Mbili/3317 – 3322. The parcel No. 3317 was then further subdivided to bring forth parcel numbers 3952 – 3954; the parcel No. 3318 subdivided to bring forth the parcels No. 3409 – 3410. These subdivisions are in the names of the defendants. The plaintiff contends that the defendants



colluded with actors within the Kisii Land Registry to sneak in the Green Cards for these purported subdivisions using a forged and unregistered Mutation Form made out by the 1st defendant who purported to own the parcel No. 732 before subdivision. It is further contended that in conspiracy with the District Survey Office, the defendants caused amendment of the Registry Index Map to reflect the fictitious subdivisions. The plaintiff asserts that she continues to have title in her name for the parcel No. 732 and the purported subdivision of it is null and void ab initio. It is pleaded that as a consequence of the fraud, the defendants, in February 2010, trespassed into the land and took possession by putting up temporary and permanent structures. It is pleaded that upon discovering the scheme of the defendants the plaintiff reported to the Kisii Land Registry and the Land Registrar published a Gazette Notice, Vol CXVI No. 141 for cancellation of the fictitious titles of the defendants.

2. In the suit, the plaintiff seeks the following orders :

- a. A declaration that the purported titles held by the defendants being Central Kitutu/Daraja Mbili/3952, 3953, 3954, 3893, 3409,3410,3319, 3320,3321,3322, and 3323 are void and of no legal or proprietary effect.
- b. A declaration that the actions of the defendants in taking possession of the land parcel Central Kitutu/Daraja Mbili/732 amounts to trespass.
- c. Eviction of the defendants and all persons claiming through them from the land parcel Central Kitutu/Daraja Mbili/732.
- d. An order of permanent injunction restraining the defendants from trespassing into or interfering in any way with the land parcel Central Kitutu/Daraja Mbili/732.
- e. General Damages for trespass and diminution of value of the plaintiff's land parcel Central Kitutu/Daraja Mbili/732.
- f. Costs of the suit and interest.

3. Without any formal statement of defence being filed, on 23 October 2015, the 1st to 6th defendants each filed what they termed as 'written statement.' I have nonetheless gone through them. For the 1st defendant, the statement avers that his father owned the land parcel Central Kitutu/Daraja Mbili/348 upon adjudication and that he was raised up here. He avers that his late father applied to subdivide this parcel No. 348 into the parcels No. 732 measuring 1.6 ha and No.733 measuring 1.8 ha and he transferred both of them to him. He states that about 2009 and 2005 (sic) the family decided that each member was to receive their own separate parcel of land and the family commissioned a surveyor to subdivide the land according to what each had on the ground. He states that in June 2005, he subdivided the parcel No. 733 into several plots as occupied on the ground and gave out the respective title deeds. In December 2009, he subdivided the parcel No. 732 into several plots as occupied on the ground and also issued to the occupants their title deeds and some sold their portions. He states that he has built a permanent house on the land, dug a borehole, fenced it, and planted trees, and also his other brothers have built permanent houses and some sold to purchasers who have also built permanent houses and nobody complained. He states that he was born in 1956 and he was 18 years when his father transferred the parcels of land to him. In 2014 he learnt of the Gazettement of the subdivisions on the allegation that the parcel No. 732 was owned by Quasar Limited who charged it to Prime Bank who then sold it in exercise of her statutory power of sale to the plaintiff. He avers that he filed an objection dated 23 December 2014 through M/s S.M Sagwe & Company Advocates which included objection to two other Gazette Notices. Those other notices are said to be a Gazette Notice dated 26 October 2012 where it was Gazetted that Quasar Limited, being the registered owner has lost its title and a new one would issue, and another Gazette Notice dated 4 January 2013 that the register of the title to parcel



- No. 732 is missing and a new register will be reconstructed in 60 days if there was no objection. He contends that he filed objections to these Gazette Notices but despite the objection the register was reconstructed and new title issued to the plaintiff for the parcel No. 732. He claims that it is a lie that the title was charged. He also claims that the title was discharged on 9 May 2013 but strangely the plaintiff got registered as owner on 8 May 2013. He avers that if title was discharged on 9 May 2013, it means the title deed was there and there was no need for Gazettement. He wonders how the land got registered in the name of Quasar Limited and claims that any such transfer was fraudulent. He claims that Quasar Limited is a sister company to Highland Tyres Limited and Prime Bank Limited.
4. The 'written statement' of the 2nd defendant, James Nyakwana Oricho, avers that in January 2011, he was approached by one Teresa Kemunto Miyienda, who offered to sell to him the plot Daraja Mbili/3393. He states that he did a search which was good and he bought the land for Kshs. 1,000,000/=. He lodged the transfer on 3 February 2011 and got the title deed on 4 February 2011. He also complains that he lodged objection to the Gazette Notices of the Land Registrar but they were ignored. He similarly claims that the title of the plaintiff is fraudulent and null and void on the same reasons as given by the 1st defendant.
 5. The 3rd defendant, Alice Henry Ongato's 'written statement' is to effect that she was also approached by Teresa Kemunto Miyienda in December 2010 and she offered to sell to her the plot Daraja Mbili/3410. She did a search which was fine and she bought the land 'at an agreed purchase price.' Her title was transferred to her on 20 December 2010 and she got the title deed the same day. She also learnt of the Gazette Notices of the Land Registrar and she filed objection but the Land Registrar still proceeded as he had Gazetted. She claims, on similar reasons given by the 1st defendant, that the title of the plaintiff is fraudulent.
 6. The 4th defendant, James Onduko Bosando's written statement avers that in January 2011 he was approached by Teresa Kemunto Miyienda and she offered to sell to him the plot Daraja Mbili/3409 which she bought at Kshs.1,000,000/- after doing a search. She got her title deed on 4 February 2011 after lodging the transfer the previous day. She similarly avers to have learnt of the intentions of the Land Registrar as published in the Gazette notices and she lodged objection but the Land Registrar still proceeded to issue title to the plaintiff. She believes, on the same basis as the 1st defendant, that the plaintiff's title is fraudulent.
 7. The 5th defendant's 'written statement' avers that the 5th defendant, Kennedy Momanyi Matara, was approached in June 2011 by one Benard Momanyi Matara, who offered to sell to him the land parcel Daraja Mbili/3319. He did a search which showed the title to be good and he bought the land at 'an agreed purchase price.' The title was transferred to him on 13 July 2011 and he got a title deed on the same day. He claims to have lodged objection to the Gazette Notices of the Land Registrar but they were ignored. He also alleges that the title of the plaintiff is fraudulent.
 8. The 6th defendant, Gisemba Ondieki Isaac's 'written statement' is to effect that in January 2011, he was approached by one Jared Ogecha Ong'iri, who offered to sell to him the land parcel Daraja Mbili/3322. He did a search and found the title was good. He then bought the land at 'an agreed purchase price.' He got title on 6 April 2011 and developed the land with a permanent building, a fence, and planted trees. He complains that he raised objection to issuance of title to the plaintiff and rectification of the register when the Land Registrar published the Gazette Notice but title was still issued and a new register prepared for the plaintiff. Just as the 1st defendant claimed, he claimed that the title of the plaintiff is fraudulent.
 9. The 8th defendant is Robert Manyange and he wrote a 'written statement' to effect that in January 2011, he was approached by one Teresa Kemunto Miyienda, who offered to sell to him the land parcel



Daraja Mbili/3323. He did a search and found that the title was good. He then bought the land for Kshs. 1,000,000/= and transfer was effected to him and he got a title deed on 4 February 2011. He has since developed the plot. In December 2014, he learnt of the intended cancellation of his title through the Gazette Notice and he filed objection. He avers that despite his objection a new title deed was issued to the plaintiff and the register reconstructed. He has also claimed in similar fashion to the 1st defendant's statement that the title of the plaintiff was fraudulently acquired.

10. I did not see anything filed by the 7th defendant.
11. As I have said earlier, despite these 'written statements' no defence was filed save that on 13 July 2022, the 1st defendant filed defence and counterclaim. It is more or less a repetition of what was contained in the 'written statement.' In his counterclaim he wants the plaintiff's suit dismissed and his title to be retained.
12. PW-1 was Haria Kalpesh Nemchandbhai. He is the Area Manager of the plaintiff. His evidence as contained in his witness statement, the oral evidence in court, and the documents produced is that the plaintiff purchased the land parcel No. 732 from Quasar Limited and Prime Bank. He elaborated that the property belonged to Quasar Limited who had charged it to Prime Bank. In August 2010, they learnt that the parcel No. 732 was on sale to recover the money owed to the bank. They entered into a private treaty sale agreement to buy the property at Kshs. 3,000,000/=. A discharge of charge and transfer dated 13 April 2011 were drawn, and Land Board consent was procured. They also paid stamp duty on 16 May 2011 but when they went to register the documents they found the register (Green Card) missing. They followed up with the Land Registrar who reconstructed the register after posting it in the Kenya Gazette. After the reconstruction of the register, the plaintiff managed to register its documents on 8 May 2013 and a title deed was issued in her name. It came to the notice of the plaintiff that in the period between sale of the land and transfer, some people hived the land and took occupation with fake titles. He stated that the Land Registrar put up a Gazette Notice for cancellation of the fraudulent titles of the defendants and proceeded to cancel them. He testified that the title of Quasar Limited shows that it is in Map Sheet No. 4 but the defendants purported to subdivide the land as if it was in Map Sheet 5 using a mutation form dated 24 December 2009 in name of the 1st defendant. That mutation form shows the suit land being subdivided by the 1st defendant into the parcels No. 3317, 3318, 3319, 3320, 3321, 3322, and 3323. Subsequently, parcel No. 3317 was transferred to the 2nd defendant. Parcel No. 3318 was transferred to Teresa Kemunto Miyienda and James Onduko Bosando, parcel No. 3319 was transferred to Benard Omare Nyakundi; parcel No. 3320 remained in name of the 1st defendant; parcel No. 3321 was transferred to Jarech Ongencha Ongiri, then to Rose Nyabone Mosomi, then to Enock Mautia Monda, the 7th defendant, who charged it to Cooperative Bank Limited. Parcel No. 3322 was transferred to Nobert Maera Ongiri, then to Jared Ongeta Ongiri, then to Gesamba Ondieki Isaac, the 6th defendant. He averred that the titles purported to show that they were subdivisions of a land parcel No. 282.
13. He testified that the parcel No. 3317 was further subdivided to give rise to parcels No. 3892 and 3893 respectively in the names of the 1st defendant and the 2nd defendant. The 1st defendant then subdivided the parcel No. 3892 to bring forth the parcels No. 3953 and 3954 both in his names.
14. He displayed the original title deed of the parcel No. 732 and also exhibited photographs showing the occupation of the land by the defendants.
15. Cross-examined, he testified that he does not know the history of the land prior to the ownership of Quasar Limited.



16. PW -2 was Steve Mokaya, the then Land Registrar, Kisii. He testified in Chief on 9 May 2022 and was stood down for cross-examination. He was however shortly thereafter transferred before he could be cross-examined. His evidence was subsequently vacated with the plaintiff presenting the current Land Registrar as her witness. She is Oswera Cecilia Harriet who testified as PW-3.
17. Her evidence was that the suit land emanated from a subdivision of the parcel No. 348 which belonged to Yuvinalis Motuka Mogeke. He subdivided it into the land parcels No. 732 and 733. Yuvinalis was thus the first proprietor of the suit land having obtained registration on 21 February 1974. He was sued by Nyakoe Quarry Limited in the case Kisii Civil Suit No. 82 of 1974. This land was then attached through a prohibition order registered on 9 September 1981 to satisfy the decree. Subsequently Nyakoe Quarry Limited became registered as proprietor. They were succeeded by Lutafali Jiwa Rajwani who purchased the land for Kshs. 81,000/= and became registered as proprietor on 14 August 1987. The transfer to Lutafali Jiwa is dated 10 August 1987 and was signed by the Executive Officer, Kisii Law Courts arising from the decree in Kisii Civil Case No. 82 of 1974. She produced the original vesting order to Lutafali Jiwa. The land was then charged to National Bank of Kenya Limited for Kshs. 2 million and discharged on 22 May 2003. The property was subsequently charged to Prime Bank Limited. On 8 May 2013 the property was discharged and transferred to Oshwal Supermarket Limited, the plaintiff. She testified that at the moment it is the plaintiff who is the registered proprietor.
18. She testified that she found some Green Cards purporting to be subdivisions of the suit land. The initial subdivision was to parcels No. 3317 – 3322. She could not find any Green Card in the name of the 1st defendant and she testified that it could not have been possible for him to subdivide the land parcel No. 732. She could see that the Green Cards for the parcel No. 3317, 3319, 3320, 3321, and 3322, show that they emanated from a parcel No. 282 and not No. 732. She could also see that the Green Cards appeared altered to remove ‘7’ and inset ‘2’ so that they read 232 instead of 732. Only the Green Card of parcel No. 3318 shows that it is a subdivision of the parcel No. 732. Of the subdivisions No. 3317 – 3322 the parcels No. 3319, 3320, 3321 and 3322 are retained but the parcels No. 3317 and 3318 are subdivided. The parcel No. 3317 is subdivided into the parcels No. 3892 – 3895. The parcel No. 3318 is subdivided into the parcels No. 3409 – 3410. She had with her the file for the land parcel No. 282. She could see that it was opened in the name of Nyabutwa Mogaka on 9 August 1973 and it was subdivided on 29 June 1981 to bring forth the parcels No. 1141 – 1143. The 1st defendant was never proprietor of the parcel No. 282 nor the parcel No. 732. She could not tell the source of the documents of the defendants. She added that parcel No. 282 is in Sheet No. 11 whereas the parcel No. 732 is in Sheet No. 5.
19. She produced documents showing that the land was transferred from Lutafali Jiwa to Highlands Limited then to Quasar Limited. She did not see any supporting documents in favour of the 1st defendant. Cross-examined, she stated that she reported at Kisii Land Registry in 2021 and was not there when the transactions were done. She was giving evidence based on the records that she found. She maintained that there is no subdivision of the land parcel No. 732 and she had no records of survey for it. She testified that the defendants’ titles could not have come from either parcel No. 732 or No. 232.
20. PW – 4 was David Lemaiyan, a surveyor working with the Ministry of Lands and based in Kisii. He testified that the parcel No. 732 no longer features in Map Sheet No. 5 as several amendments have been done to affect it. He stated that there was first creation of the parcel numbers 3317 – 3323 and subsequently the parcels No. 3853, 3854, 3892, 3893 , 3409 and 3410, which occupy the land that parcel No. 732 occupied. He testified that there was a mutation form that first subdivided the parcel No. 732 into the parcels No. 3317 – 3323. There were also mutation forms subdividing parcel No. 3317 to parcels No. 3892-3895; mutation subdividing parcel No. 3318 into parcels No. 3409 and 3410;



mutation of parcel No. 3892 into parcels No. 3952-3954; mutation subdividing parcel No. 3952 to parcels No. 7284 – 7286. He testified that what is reflected in the mutation should also be reflected in the Green Cards. He testified that to subdivide there needs to be consent to subdivide but the mutation forms did not have any consent attached. He elaborated that the new numbers need to be registered and fees paid. The registration is done by the Land Registrar. He explained that mutation forms are done in triplicate. The survey office retains one original and the Land Registry keeps the other two. What he had was what was retained in the survey office and he could not tell whether the other two ever reached the Land Registrar. He affirmed that it is the owner of the land who does the mutation and he attaches a copy of his ID Card, PIN, consent to subdivide and he executes the mutation form. All these documents go to the Land Registrar for registration of the mutation form. As to the parcel No. 282, he affirmed that it was subdivided into the land parcels No. 1141 – 1143. He had the index card for the parcel No. 732 showing that it is closed on mutation. He could not see any receipt paid for amendment of the Registry Index Map.

21. With the above evidence the plaintiff closed his case.
22. DW – 1 was Gisemba Ondieki Isaac, the 6th defendant. He testified that he purchased land from Jared Ogecha Ongiri and got title to the land parcel Central Kitutu/Daraja Mbili/3322. He produced a sale agreement and copy of title. He stated that before the purchase he did a search. He has lived on the land since 2014 and has constructed a house, planted trees, and sunk a borehole.
23. Cross-examined, he testified that he does not know the 1st defendant. He stated that he bought the land for Kshs. 880,000/= . He first paid Kshs.700,000/= and later the balance of Kshs. 180,000/=. He had inspected the land before purchase and found some fencing which he reinforced. The person he purchased the land from did not tell him how he got it. He did not have with him the search that he conducted before buying the land. He did not have a copy of the title of his predecessor.
24. DW – 2 was David Ameyia Motuka, the 1st defendant. He stated that he is the son of Yuvinalis Motuka who is now deceased. He stated that his father owned the land parcels No. 732 and 733. He added that on 21 February 1974 his father gave him land from both parcels No. 732 and 733 and took him to the Land Control Board and he later transferred the title to him. He then subdivided the parcel No. 732 to his three brothers and sister and remained with some land for himself. He could not however recall what his parcel number is. He also divided the parcel No. 733 to his siblings. Some sold their portions. Cross-examined, he testified that the 8th defendant is his elder brother but the other defendants are purchasers. He stated that he has not built any house on the land but has only planted trees. He did not have the transfer form used to transfer the land to him from his father as he claimed. Neither did he have the consent of the Land Control Board. He confirmed that he was born in 1956 but could not tell the month (he would have been 17 or 18 years in 1974 depending on his month of birth). He stated that it was in 2014 that he subdivided the parcel No. 732 though the mutation form bore the date 24 December 2009. He testified that the first subdivisions i.e No. 3317 – 3323, he distributed to his brothers. He could not recall which parcel he gave to which brother or sister nor the parcel number that he kept for himself. He was not aware that his father had a case with Nyakoe Quarry Limited. He could not explain how some of the Green Cards to the subdivisions showed that they originated from parcels No. 282 his answer being that he cannot remember. He could not remember that in his statement he had questioned how the plaintiff got title.
25. With the above evidence the 1st defendant closed his case.
26. Counsel for the 2nd – 6th defendants applied for adjournment which I did not find merit in and declined to adjourn. I ordered for the close of the hearing and directed counsel to file submissions which they did. I have taken note of these before arriving at my decision.



27. The case of the plaintiff is that she remains the owner of the land parcel No. 732 and any purported subdivision of it is fraudulent. The case of the 1st defendant is that this land parcel No. 732 was transferred to him by his father in 1974 and he became the registered proprietor. He then proceeded to subdivide the land to his siblings in 2009 or thereabouts. The first beneficiaries then sold their parcels of land to other people.
28. The allegations of the 1st defendant cannot be true. First, it cannot be true that the land parcel No. 732 was transferred to him by his father in 1974 as he claims or at all. The Land Registrar gave very elaborate evidence on the history of the land and she produced all the requisite documentary evidence that is contained in the land parcel file at the Lands Registry. The evidence is stark and overwhelming that it was on 21 February 1974 that the father of the 1st defendant, not the 1st defendant, who got registered as proprietor of the land parcel No. 732 after he had subdivided the original land parcel No. 348 to bring forth the land parcels No. 732 and 733. The evidence is also stark that the father of the 1st defendant had a case with Nyakoe Quarry Limited which case was resolved in favour of Nyakoe Quarry Limited. As a result, and in order to satisfy the decree, the land parcel No. 732 was attached and a prohibitory order registered on 9 September 1981. The property was then sold to Lutafali Jiwa Rajwani, who bought it for Kshs. 81,000/= and got registered as proprietor on 14 August 1987. This transfer to Lutafali Jiwa was done by the court through the Court's Executive Officer and it is thus apparent that it was upon a sale to satisfy the decree. The land was then transferred to Highland Tyres Limited on 14 June 1995, then to Quasar Limited on 25 May 2003. Quasar Limited charged the property to Prime Bank on 11 November 2004. Quasar Limited and Prime Bank subsequently agreed to have the property sold to the plaintiff in order to satisfy the loan borrowed by Quasar Limited. The sale agreement was indeed produced. There was a delay in processing the transfer as the title could not be traced and there is evidence given of Gazettement of the lost title and intention to reconstruct the register which were done. This paved way for the registration of the parcel No. 732 in name of the plaintiff on 8 May 2013.
29. Despite the 1st defendant claiming that this land was transferred to him on 21 February 1974, he provided zero evidence of the alleged transfer. He brought no consent to transfer, no transfer instrument, and no receipt to demonstrate payment of transfer fees to himself in 1974. He brought no title deed or copy of title deed in his name that was issued in 1974. The fact of the matter is that the 1st defendant never got registered as proprietor of this land in 1974 as he claims. He somehow mysteriously managed to obtain a title to the suit land sometime in 2009 or thereabout at which time the land was clearly in the ownership of Quasar Limited and had been charged to Prime Bank Limited. He then proceeded to purport to subdivide this land. The evidence displayed shows that this was just a paper subdivision not backed up by any proper mutation forms. First, he could not execute mutation forms to the land parcel No. 732 because he was not the proprietor. But even then, the mutation forms that caused the subdivision of the parcel No. 732 into the land parcels No. 3317 – 3323 were never registered. There is certainly no evidence of any registration of the mutation forms and the Land Registrar was categorical that they have never received nor registered any mutation form to subdivide the parcel No. 732. There was also no evidence of registration of the other mutation forms that brought forth subsequent subdivisions. According to the Land Registrar, the land parcel No. 732 is intact and has never been subdivided and this evidence is clear. The Land Registrar's evidence was also clear that the purported Green Cards showing subdivision of the land parcel No. 732 are not genuine. Some of the subdivisions purport that they came from the parcel No. 282 but the parcel No. 282 was never subdivided in the manner claimed.
30. It is clear beyond peradventure and there is no doubt in the court's mind that the purported subdivision of the parcel No. 732 was nothing but a fraud and a scheme to steal the land of the plaintiff. The reality of the matter is that there was never any subdivision of the land parcel No. 732 and it remains



intact as shown in its register. It is surprising that despite there being no registered mutation forms, the Registry Index Map was amended to reflect that the parcel No. 732 was subdivided. The amendment of the Registry Index Map in so far as it purports that the land parcel No. 732 was amended was done fraudulently and is null and void.

31. It is also clear beyond peradventure that the fraudulent scheme was orchestrated by the 1st defendant. He pretended to have title to the land parcel No. 732 and purported to subdivide it into the land parcels No. 3317 – 3323. Purported titles were issued and he purported to transfer these subdivisions. There were also purported further subdivisions of some of these parcels. All these were done fraudulently. For the avoidance of doubt the titles nullified are Nos. 3317 – 3323 and all other titles purporting to have arisen from further subdivisions of these parcels of land or in any other way emanating from a purported subdivision of the land parcel No. 732.
32. I am not in doubt that all the titles of the defendants are fraudulent. They are therefore liable to be cancelled and they are all hereby cancelled. This court declares the titles purportedly held by the defendants to be null and void ab initio. This court also declares that the amendment of the Registry Index Map to remove the parcel No. 732 is fraudulent and null and void. An order is hereby issued directing the Director of Surveys to reinstate the land parcel No. 732 as it was before the purported amendment and to nullify all purported amendments made that affect the ground where the land parcel No. 732 is located.
33. It is clear from the foregoing that the person entitled to occupation of the land parcel No. 732 is the plaintiff. The defendants are trespassers on this land. I am afraid that if at all they were innocent purchasers, they bought air and not land. They should pursue whoever sold them land for relief. Being the legal owner of the parcel No. 732 and all the land that it covers, it is the plaintiff who is entitled to enjoy its use and occupation. I therefore issue an order to the defendants to give vacant possession within 14 days from the date hereof. In default the plaintiff is at liberty to appoint a court broker and proceed to evict them from the land. If eviction has to take place the Officer Commanding Kisii Central Police Station to assist the plaintiff in execution of this order. Any eviction will be at the cost of the defendants. This court also hereby issues a permanent injunction restraining the defendants from entering, being upon, utilizing or in any other way interfering with the quiet possession of the plaintiff of the land parcel No. 732.
34. In her plaint the plaintiff asked for general damages for trespass and diminution of value of her property. As I earlier mentioned the main actor in the fraud was the 1st defendant. He is also a trespasser. I will subject him to payment of Kshs. 1,000,000/= to the plaintiff as general damages for trespass. The other defendants will pay a sum of Kshs. 100,000/= each to the plaintiff for their acts of trespass.
35. The plaintiff succeeds and he will get the costs of the suit jointly and/or severally against the defendants. The defendants have failed and their counterclaim is dismissed with costs.
36. Judgment accordingly.

DATED AND DELIVERED THIS 9 DAY OF MAY 2024

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT AT KISII

Delivered in the presence of :

Mr. Nyanhoga for the plaintiff

Mr. Sagwe for the 1st defendant



**No Appearance on the part of M/s Caleb M & Co for the 2nd – 8th defendants
Court Assistant – David Ochieng'**

