



Maina v Kenya National Highway Authority & 3 others (Environment and Land Case Civil Suit 650 of 2017) [2024] KEELC 4550 (KLR) (5 June 2024) (Judgment)

Neutral citation: [2024] KEELC 4550 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT 650 OF 2017**

EM WASHE, J

JUNE 5, 2024

BETWEEN

JOSEPH MWANGI MAINA PLAINTIFF

AND

KENYA NATIONAL HIGHWAY AUTHORITY 1ST DEFENDANT

THE MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING & URBAN DEVELOPMENT 2ND DEFENDANT

THE HON.ATTORNEY GENERAL 3RD DEFENDANT

NATIONAL LAND COMMISSION 4TH DEFENDANT

JUDGMENT

1. The Plaintiff herein filed a Plaint dated 09.10.2017 (hereinafter referred to as “the present suit”) against the 1st to 4th Defendants seeking for the following Orders; -
 - a. Compensation in the sum of KShs 78,200,000/- for the 0.5487 Hectares hived off from Nairobi Block 37/155 and compulsorily acquired by the Defendant.
 - b. Interest on (a) above at Court rates from 4th July 2009 till payment in full.
 - c. Costs of the suit.
 - d. Any other relief that this Honourable Court may deem fit to grant.
2. The facts pleaded by the Plaintiff in the Plaint dated 09.10.2017 in support of the prayers above can be summarised as follows; -
 - a. The Plaintiff is the registered owner of the parcel known as LR.No.Nairobi Block 37/155 measuring approximately 2.067 Hectares (hereinafter referred as “the suit property”) which



was hived off from a larger property known as LR.No.209/6599 having acquired the same from the defunct City Council of Nairobi through issuance of a Lease dated 16.05.2002.

- b. However, on or about 2009, a portion of the Plaintiff's suit property measuring approximately 0.5487 Hectares (hereinafter referred to as "the disputed portion") was compulsorily acquired by the 1st and 2nd Defendants Vide a Gazette Notices No. 6034 and 6035 both dated 11th July 2008 and another Gazette Notice No. 1396 dated 20.02.2009 to pave way for the expansion and rehabilitation of the Nairobi-Thika Highway within Pangani area.
 - c. The Plaintiff further stated that based on the undertaking to compensate him for the disputed portion within the suit property, the 1st and 2nd Defendants were granted possession of the land of which they have utilised it by constructing on the same.
 - d. According to the Plaintiff, the Government Valuation of the disputed portion was a sum of KShs 78,200,000/- as provided in the Valuation Report dated 20.11.2009.
 - e. Unfortunately, the 1st to 4th Defendants have without any good justifications and/or reasons failed, refused and/or neglected to settle the sum of KShs 78,200,000/- payable to the Plaintiff as a compensation of the acquired portion within the suit property as is expected of them under the Land Acquisition Act Cap 295.
 - f. In essence therefore, the Plaintiff seeks to be compensated the sum of KShs 78,200,000/- together with interest and costs of the present suit.
3. The Plaintiff's present suit was served on all the Defendants who opposed the same by filing their respective Defences.
 4. The 1st Defendant filed a Statement of Defence dated 19.12.2017 to which he pleaded the following facts in opposition to the present suit; -
 - a. The 1st Defendant identified the suit property to be one that falls within the Nairobi- Thika (A2) Highway.
 - b. According to the 1st Defendant, the suit property is located within Pangani Roundabout abutting the Cemetery Plot (LR.No.209/1211) and is part of the larger land known as LR.No.209/6559 which was later titled as LR.No.209/13385 and is commonly known as the City Park.
 - c. The property known as LR.No.209/13385 commonly known as City Park was subsequently through the Gazette Notice No. 1396 dated 20.02.2009 converted to the title LR.No.Nairobi Block 37/155.
 - d. In an effort to verify the Plaintiff's title to the suit property for purposes of compensation, the 1st Defendant made various discoveries regarding the creation of the Plaintiff's title to the suit property; -
 - I. The Plaintiff herein had been issued with a title known as LR.No.209/1385 from the property known as LR.No.Nairobi Block 37/155 (previously known as LR.No.209/13385) commonly known as City Park.
 - II. A second title had been issued to Pillar Concretes Company Limited.
 - III. A third title known as LR.No.209/14339 had also been issued to persons known as Jennifer Chepkemio Terer, Ernest Kipngeno Sigei and George Mwai Mburu as joint tenants.



- IV. Lastly, the entire property known as LR.No.209/6559 was being claimed by an entity known Friends Of City Park to be held in trust by the defunct City Council of Nairobi .
- e. Based on the above sub-divisions and/or creation of private titles within the property known as LR.No.Nairobi Block 37/ 155 (Formerly LR.No.209/6559 AND 209/13385), the 4th Defendant degazetted the entire property known as LR.No.209/6559 through a Gazette Notice issued on the 21.01.2011.
- f. Consequently thereafter, the 4th Defendant herein proceeded to inform the general public and in particular the beneficiaries of the sub-divisions within the former property known as LR.No.209/6559 (LR.No.209/13385) now titled as LR.No.Nairobi/Block 37/155 that all the said sub-divisions and/or resultant titles were irregular and illegal before the eyes of the law through a public notice issued in the Daily Nation dated 10.07.2013.
- g. The 4th Defendant similarly published another notice in the Daily Nation on the 07.07.2014 informing the general public and in particular the beneficiaries of the sub-divisions emanating and/or created out of the property known as LR.No.209/6559 (LR.No.209/13385) that their resultant titles had been revoked and/or cancelled.
- h. In essence therefore, the Plaintiff's title having been a sub-division and/or creation from the property known as LR.No.209/6559 (LR.No.209/13385) now titled as LR.No.Nairobi/Block 37/155, the same was illegitimate and illegal hence not entitled to any compensation under the Compensatory Acquisition Act.
5. The 2nd and 3rd Defendants also filed their Statement of Defence dated 02.07.2018 wherein they also opposed the present suit on the following facts; -
- a. To begin with, the 2nd & 3rd Defendants reiterated that the property known as LR.No.209/13385 or LR.No.209/6559 or LR.No.Nairobi Block 37/155 refer to one and the same piece of land.
- b. The property known as LR.No.209/13385 or LR.No.209/6559 or LR.No.Nairobi Block 37/155 is currently being claimed by various persons and the Plaintiff was therefore put to strict proof on whether or not he is the legitimate and/or lawful owner of the said property.
- c. The 2nd and 3rd Defendants pleaded that on or about 07.07.2014, the 3rd Defendant published a Public Notice in the Daily Newspaper informing the general public as well as the beneficiaries of the sub-divisions and/or properties emanating from the property known as LR.No.209/6559 (LR.No.209/13385) now titled as LR.No.Nairobi Block 37/155 that their titles were illegitimate and therefore revoked by the 4th Defendant.
- d. In essence, none of the resultant properties emanating from the property known as LR.No.209/6559 (LR.No.209/13385) now titled as LR.No.Nairobi Block 37/155 were entitled to compensation.
- e. Lastly, the 2nd and 3rd Defendant denied that the property known as LR.No.209/6559 (LR.No.209/13385) now titled as LR.No.Nairobi/Block 37/155 was ever listed as one of the properties that is entitled to compensation by the 1st Defendant and therefore the Plaintiff and/or any other person within the said property is not entitled to any compensation thereof.
- f. The 2nd and 3rd Defendant sought this Court to dismiss the present suit with costs.



6. The Plaintiff on being served with the 1st Defendant's Statement of Defence filed a Reply to Defence dated 30.01.2018.
7. In Reply to Defence, the Plaintiff reiterated the facts in the Plaint and further pleaded as follows:-
 - a. The property known as LR.No.209/6559 which was registered under the Registered [Land Act](#), Cap was converted to the property known as LR.No.Nairobi Block 37/155 under the [Land Registration Act](#), No. 3 of 2012.
 - b. The Plaintiff stated that LR.No.209/13385 is a Survey Plan Number and therefore is not a registrable parcel number as LR.No.209/6559.
 - c. The Plaintiff claimed that he is the lawful and legitimate owner of the property known as LR.No.209/6559 contained in the Certificate of Lease dated 16.05.2002.
 - d. In essence, the ownership of any other person claiming the same parcel of land and in particular Pillar Concrete Company Limited and/or Jennifer Chepkemoi Terer, Ernest Kingeno Sigei & George Mwai Mburu is and/or was illegitimate and/or irregular and cannot dislodge the Plaintiff's rightful ownership of his property known as LR.No.Nairobi Block 37/155 (LR.No.209/6559).
 - e. The Plaintiff further pleaded that the Gazette Notice of 21.01.2011 related to a property known as LR.No.209/6559 which was not in existence at that particular time.
 - f. The Plaintiff stated that the property known as LR.No.Nairobi Block 37/155 has never been revoked and he is the bona fide owner of the same hence entitled to be compensated for the construction by the 1st Defendant.
8. The Plaintiff also upon service of the 2nd and 3rd Defendants Statement of Defence filed a Reply to the same dated 20.07.2018.
9. The Reply to the 2nd and 3rd Defendants Statement of Defence was a copy and paste of the Reply to the 1st Defendant's Statement of Defence.
10. The 4th Defendant unfortunately did not file any Statement of Defence in response to the Plaintiff's suit.
11. The present suit was then certified ready for hearing and same began on the 11.10.2023.

Plaintiff's Case.

12. The Plaintiff was the 1st witness marked as PW1.
13. The Plaintiff confirmed that he is the one that filed the present suit together with the witness statement dated 09.10.2017 of which he adopted as his evidence in chief.
14. The Plaintiff also sought to rely on the documents contained in the Further List of Documents dated 11.10.203.
15. The Plaintiff produced the following documents in support of his witness statement dated 09.10.2017;
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Plaintiff's Exhibit 1- Copy of a Letter dated 04.07.2009 from the Plaintiff to the Commissioner of Lands.



Plaintiff's Exhibit 2- Copy of a Lease dated 22.09.1998 and registered on the 16.05.2022 in favour of the Plaintiff.

Plaintiff's Exhibit 3- Copy of the Certificate of Lease of LR.No. Nairobi Block 37/155 in favour of the Plaintiff trading as Suleimm Consult dated 16.05.2002.

Plaintiff's Exhibit 4- Copy of the Gazette Notice No. 1396 dated 12.02.2009 by the Commissioner of Lands.

Plaintiff's Exhibit 5- Copy of Letter dated 12.11.2009 from the City Council of Nairobi to the Commissioner of Lands.

Plaintiff's Exhibit 6- Rates Demand Note from City Council of Nairobi addressed to the Plaintiff dated 10.12.2015.

Plaintiff's Exhibit 7- A copy of the Valuation Report by the Government Valuer dated 20.11.2009 to the Chief Engineer in the 2nd Defendant's office.

Plaintiff's Exhibit 8- Copy of a Letter dated 16.11.2011 from the Director of Survey to the Chief Engineer in the 2nd Defendant's office.

Plaintiff's Exhibit 9- Copy of a Letter dated 19.10.2013 from the 4th Defendant to the Director General of the 2nd Defendant.

Plaintiff's Exhibit 10- Copy of a letter dated 04.12.2013 from the 4th Defendant to the 1st Defendant.

Plaintiff's Exhibit 11- Copy of a letter dated 11.08.2014 from the 1st Defendant to the Plaintiff.

Plaintiff's Exhibit 12- Copy of a letter dated 28.10.2014 from the Plaintiff to the 1st Defendant.

Plaintiff's Exhibit 13- Copy of a Notice under the [Government Proceedings Act](#) to the 3rd Defendant received on August 2010.

Plaintiff's Exhibit 14- A copy of a Certificate of Official Search dated 25.02.2014.

Plaintiff's Exhibit 15- A copy of a Certificate of Official Search dated 24.01.2023.

16. The Plaintiff confirmed that his property is the one known as LR.No.209/6559 now titled as LR.No.Nairobi Block 37/155.
17. The Plaintiff disclosed that he acquired the same from the City Council of Nairobi in the year 1998 and was issued with a title on the 16.05.2002.
18. The Plaintiff testified that in the year 2009, the same was compulsory acquired for the building of the Pangani Inter-Change within the Nairobi-Thika Highway.
19. The portion of the suit property acquired was approximately 0.5487 Hectares and was valued at Kenya Shillings 78,200,000/- in the year 2009.
20. The Plaintiff's prayer was that the Defendants do compensate him the value of KShs 78,200,000/- which was the assessed value of the 0.5487 Hectares acquired by the Government from his suit property.
21. The Plaintiff further sought for interest on the value of compensation as well costs of the suit.



22. On cross-examination by the 1st Defendant, the Plaintiff was referred to the Plaintiff's Exhibit 4.
23. The Plaintiff stated that one of the properties indicated as revoked was the property known as LR.No.209/6559.
24. The Plaintiff was then referred to the 1st Defendant's Bundle of Documents dated 19.12.2017.
25. On perusal of the Defendant's Bundle dated 19.12.2017, the Plaintiff denied any knowledge of the Public Gazette Notice dated 10.07.2013.
26. The Plaintiff clarified that the property known as LR.No.Nairobi Block 37/155 emanated from the property known as LR.No.209/6559.
27. On being referred to that Plaintiff's Exhibit 10 & 11, the Plaintiff was of the opinion that the property known as LR.No.Nairobi Block 37/155 could not directly be created from the property known as LR.No.209/6559.
28. The Plaintiff stated that the 1st Defendant through their letter dated 11.08.2014 had advanced 3 main grounds on why compensation could not be undertaken on the property known as LR.No.Nairobi/Block 37/155 (LR.No.209/6559).
29. The Plaintiff admitted that indeed there was no Gazette Notice to compulsory acquire the property known as LR.No.Nairobi Block 37/155 or any portion thereof.
30. On cross-examination by the 2nd & 3rd Defendants, the Plaintiff denied knowledge of any other persons and/or entity that were also claiming the property known as LR.No.Nairobi/Block 37/155 (LR.No.209/6559).
31. The Plaintiff claimed that he was the one in occupation of the property known as LR.No.Nairobi Block 37/155 (LR.No.209/6559) and there was no other person that had come to claim possession and/or ownership of the same.
32. The Plaintiff referred to the Plaintiff's Exhibit 9 which was a confirmation by the 4th Defendant that he was the legitimate and lawful owner of the suit property.
33. The Plaintiff then referred to the 1st Defendant's bundle of Documents and in particular the Gazette Notice issued on the 19.12.2017.
34. According to the Plaintiff, the Gazette Notice issued on the 19.12.2017 referred to a property known as LR.No.209/13385 which at that time did not exist and therefore the said Notice was illegitimate and unlawful.
35. The Plaintiff admitted that there was no Notice To Acquired issued specifically touching on the property known as LR.No.Nairobi Block 37/155.
36. Nevertheless, according to the Plaintiff, the property known as LR.No.Nairobi Block 37/155 has never been a road reserve and/or cemetery although the 1st Defendant has now constructed an Inter-change of the Nairobi-Thika highway on a portion of it.
37. The Plaintiff was further cross-examined by the 4th Defendant Counsel.
38. The Plaintiff was referred to the Plaintiff's Exhibit 9 & 10 which are dated 09.10.2013 and 04.12.2013 respectively.
39. The Plaintiff confirmed that both letters referred to the property known as LR.No.209/6559 and LR.No.209/13385.



40. The Plaintiff admitted that in the letter produced as Plaintiff's Exhibit 10, the property known as LR.No.209/13385 is what was converted to LR.No.Nairobi Block 37/155 after the repealing of the Registered Titles Act.
41. The Plaintiff affirmed that the contents of the Plaintiff's Exhibit 10 were true and correct.
42. The Plaintiff on being referred to the 1st Defendant's Bundle of Documents (Page 18) confirmed that indeed the property known as LR.No.209/13385 was listed as one of the parcels which had been unlawful and irregularly acquired hence revoked by the 4th Defendant.
43. The Plaintiff accepted that he had never challenged the revocation of the property known as LR.No.209/13385 which was communicated on the 07.07.2014.
44. The Plaintiff stated that the Public Notice dated 10.07.2013 was issued before the letters produced as Plaintiff's Exhibit 9 & 10 were written.
45. On re-examination by the Plaintiff's Counsel, the Plaintiff denied being aware of the public notices dated 10.07.2013 and 07.07.2014 by the 4th Defendant.
46. The Plaintiff informed the Court that he had never challenged the Gazette Notice dated 07.07.2014 by the 4th Defendant because his property is LR.No.Nairobi Block 37/155 which is still intact up to date.
47. On being referred to the Plaintiff's Exhibit 8, the Plaintiff admitted that the property known as LR.No.209/13385 is actually the same property known as LR.No.209/6559 and currently registered as LR.No.Nairobi Block 37/155.
48. The Plaintiff clarified that the issuance of the various Land Reference Numbers was not his mistake as a person.
49. On being referred to the Plaintiff's Exhibit 10, the Plaintiff stated that he was aware other persons and/or entitles were also claiming ownership of the same property known as LR.No.Nairobi Block 37/155 using other titles as well.
50. Nevertheless, the Plaintiff insisted that his title was the first one to be issued and registered in the year 2002.
51. The Plaintiff informed the Court that in the year 2009, a public road was constructed on a portion of the present LR.No.Nairobi Block 37/155 yet it was a private property with no provision of a road reserve.
52. On essence therefore, the Plaintiff sought the Court to order the Defendants to compensate him for the value of the 0.5487 Hectare utilised by the 1st Defendant in construction of the public road on his property known as LR.No.Nairobi Block 37/155.
53. The Plaintiff also sought for damages and costs of the suit.
54. At the end of this re-examination, the Plaintiff was discharged from the witness stand and the Plaintiff closed his case thereafter.

1st Defence Case

55. The 1st Defendant's witness was one Daniel Mbuteti who was marked as DW 1.
56. DW 1 introduced himself as a Senior Surveyor with the 1st Defendant entity having been employed in the year 2009 and therefore familiar with the facts of the present suit.



57. DW 1 informed the Court that he had prepared a detailed witness statement dated 11.02.2022 of which he adopted the same as his evidence in chief.
58. In addition to the above, DW 1 also sought to reply on the Bundle of Documents filed by the 1st Defendant dated 11.10.2022 to support his testimony.
59. DW 1 produced the following documents in support of the 1st Defendant's case;-
- Defence Exhibit 1- A copy of the Gazette Notice No. 1396 dated 20.02.2009.
 - Defence Exhibit 2- A copy of the Certificate of Lease dated 16.05.2002 in the name of the Plaintiff.
 - Defence Exhibit 3- A copy of the Certificate of Lease dated 10.07.2002 in the name of Pillar Concrete Company Limited .
 - Defence Exhibit 4- A copy of a Title Deed registered in the name of Jennifer Terer, Ernest Sigei & George Mburu issued on 01.06.1999.
 - Defence Exhibit 5- A copy of a Letter from W.F.Hine dated 28.09.2009 to the Commissioner For Lands.
 - Defence Exhibit 6- A copy of a letter from W.F.Hine to the Commissioner of Lands dated 16.12.2011.
 - Defence Exhibit 7- A copy of Public Notice dated 10.07.2013 by the 4th Defendant.
 - Defence Exhibit 8- A copy of a Public Notice dated 07.07.2014 by the 4th Defendant.
 - Defence Exhibit 9- A copy of the Kenya Gazette Notice No. 3022 dated 18.07.2014 by the 4th Defendant.
 - Defence Exhibit 10- A copy of the Survey Plan No. 105/4.
 - Defence Exhibit 11- Copy of the Survey Plan No. FR.316/167.
 - Defence Exhibit 12- Drawing of the layout of the suit property converted to Nairobi Block 37/155 formerly LR.No.209/6559 and LR.No.209/14339.
60. DW 1 confirmed to the Court that he was familiar with the Plaintiff's claim in the present suit.
61. According to DW 1, the Plaintiff herein was claiming ownership of the property known as LR.No.209/13385 now known as LR.No.Nairobi Block 37/155.
62. Unfortunately, DW 1 was of the opinion that the Plaintiff did not have any lawful right and/or claim over the property known as LR.No.Nairobi Block 37/155.
63. DW 1 informed the Court that in the year 2009, the 1st Defendant embarked on expanding the Nairobi-Thika Road to a Super Highway.
64. The expansion affected various properties including LR.No. 209/13385 which was contained in a Survey Plan No. FR 316/167.
65. However, when the personnel from the 1st Defendant visited the ground of LR.No.209/13385, it was discovered that there were various beacons which were encroaching on the Road Reserve mainly around Pangani Road-about.



66. DW 1 stated that if the Plaintiff would erect a fence around the beacons of his property known as LR.No.Nairobi Block 37/155, then he would have within the Road Reserve.
67. DW 1 identified various public utility facilities like a public toilet and a public nature park which had been provided for but not yet developed.
68. DW 1 testified that the 1st Defendant proceeded to mark the portion that would be taken up for expansion of the Nairobi-Thika Highway and gazetted the same for compulsory acquisition.
69. According to the Kenya Gazette Notice published, the property identified for compensation was LR.No.209/6995.
70. The 1st Defendant therefore was of the considered opinion that the Plaintiff's property known as LR.No.Nairobi Block 37/155 (Formerly LR.No.209/6559) was an alienation from public land.
71. Based on this conclusion, the 4th Defendant proceeded to publish in the Kenya Gazette Notice No. 1396 dated 12.02.2009 degazetting the Plaintiff's property known as LR.No.209/13385 now titled as LR.No.Nairobi Block 37/155.
72. DW 1 further informed the Court that the piece of land being claimed by the Plaintiff had also two other titles namely LR.No.209/11385 and LR.No.209/14339 which were registered in the names of Pillar Concrete Company Limited and Jennifer Terer, Ernest Sigei & George Mburu respectively.
73. DW 1 referred to the Defence Exhibit 6 & 7 and stated that according to the evidence produced, the Plaintiff's property known as LR.No.Nairobi Block 37/155 (Formerly LR.No.209/6559) had been fraudulently sub-divided and/or hived from another mother title.
74. Consequently, the sub-divisions and/or Deed Plans that created and/or were used to register the Plaintiff's property known as LR.No.209/13385 belonging to the Plaintiff as well as the other two titles were not legitimate.
75. DW 1 concluded his testimony in chief by requesting the Court to dismiss the present suit and also revoke and/or cancel the Survey Plan No. FR.316/176 that created the property known as LR.No.Nairobi Block 37/155 (Formerly LR.No.209/6559) belonging to the Plaintiff.
76. On cross-examination, DW 1 clarified that the property known as LR.No.209/6559 and LR.No.209/13385 are different parcels of land.
77. DW 1 stated that LR.No.209/6559 was a large parcel of land measuring approximately 223.0 Hectares contained in the Survey Plan No. FR 105/4 and belongs to City Park.
78. On the other hand, LR.No.209/13385 is approximately 2.091 Hectares and is contained in the Survey Plain No. FR.316/167 currently registered in the name of the Plaintiff.
79. DW 1 was referred to the Plaintiff's Exhibit 8 which was a letter from the Ministry of Lands.
80. DW 1 expressly informed the Court that the contents of the said letter were erroneous and did not reflect the true facts of the matter.
81. Unfortunately, DW 1 did not have any letter that was written to correct the position contained in the letter produced as Plaintiff's Exhibit 8.
82. DW 1 informed the Court that survey Maps are actually public documents which can be procured from the Director of Survey's office.



83. DW 1 however could not produce any receipts to confirm if the Survey Maps produced as Defence Exhibits were from the Director of Survey.
84. DW 1 admitted that the Plaintiff's property known as LR.No.209/13885 was indeed listed in the Kenya Gazette Notice published in the year 2008 notifying the owners of the intention to acquire the same.
85. Once the Gazette Notice of an Intention to Acquire has been published, then a period for public inquiries with the date and place of such inquiries is pronounced.
86. DW 1 also affirmed that once the Kenya Gazette Notice pronouncing the intention to acquire is published, the 1st Defendant also does site visits to confirm the status of the ground.
87. According to DW 1, the land which is contained in the Plaintiff's title known as LR.No.Nairobi Block 37/155 had not been occupied on the ground.
88. DW 1 confirmed that the Public Inquiries were duly done although he did not have the relevant material including the Notices to the Owners and/or the feedback documents.
89. Nevertheless, it came out clear in the Public Inquiries that the Plaintiff's property known as LR.No.Nairobi Block 37/155 (Formerly LR.No.209/13385) and also been titled under two other registration numbers to two other different persons and/or entity.
90. Once the 1st Defendant discovered this multiple registration of the same parcel of land, the issue was forwarded to the Ministry of Lands for verification.
91. DW 1 reiterated that the Plaintiff's property known as LR.No.Nairobi Block 37/155 was in their view illegally acquired from a public property and therefore no lawful valuation could be undertaken for purposes of compensation.
92. DW 1 denied any knowledge of whether the Plaintiff's title had been challenged by other people or not.
93. On being referred to Plaintiff's Exhibit 7, DW 1 testified that the property that was valued was LR.No.209/6559 which belongs to City Park.
94. DW 1 confirmed that the value of the 0.5487 Hectares to be acquired was KShs 78,000,000/-.
95. DW 1 affirmed that in the notice of 20.11.2009, the property known as LR.No.209/6559 was registered in the name of City Park.
96. DW 1 informed the Court that on the ground, the Plaintiff's property had a foot bridge, the Pangani Inter-Change and a wall.
97. On being referred to Plaintiff's Exhibit 15, DW 1 admitted that it was an Official Search of the property known as LR.No.Nairobi Block 37/155 issued on the 24.01.2023 and the Plaintiff was the registered owner thereof.
98. However, DW 1 stated that LR.No.Nairobi Block 37/155 was formerly registered as LR.No.209/13385.
99. However, the Mother Title known as LR.No.209/6559 which is what is suppose to be sub-divided and create LR.No.209/13385 was still intact and no sub-division had been registered against its Survey Plan.



100. In other words, the creation of a Survey Plan and subsequent registration of the property known as LR.No.209/13385 could not be legitimate without a reduction of the Survey Plan for the property known as LR.No.209/6559 being recorded and/or the Survey Plan being amended.
101. DW 1 insisted that if the Plaintiff's property known as LR.No.Nairobi/Block 37/155 was demarcated on the ground, it would then fall within the Road Reserve, the Public Toilets and a portion of the Public Park.
102. DW 1 clarified that the valuation which the Plaintiff is seeking to rely upon was in relation to the property known as LR.No.209/6559 which was the entire land and not the portion registered as LR.No.209/13385 (now Titled as LR.No.Nairobi Block 37/155) owned by the Plaintiff.
103. In essence therefore, the reason the Plaintiff was not compensated was because there was dispute relating to the true owner of the portion being acquired.
104. DW 1 clarified that the 1st Defendant only makes payments once the Ministry of Lands and the 4th Defendants have approved the ownership of the land being acquired and the true value of the same.
105. Referring to the Plaintiff's Exhibit 11, DW 1 explained that the 1st Defendant's letter to the Plaintiff explains the reasons why they could not compensate him for the portion of which they had developed.
106. One of the reasons the 1st Defendant communicated to the Plaintiff was that the property known as LR.No.Nairobi Block 37/155 (Formerly LR.No.209/13385) had been degazetted and revoked by the 4th Defendant.
107. DW 1 referred to the Plaintiff's Exhibit 8 which was a Public Notice by the 4th Defendant notifying the owners of the properties listed therein that an investigation of their titles was being undertaken.
108. However, the notice produced as Plaintiff's Exhibit 8 did not revoke the ownership and/or legitimacy of the titles therein.
109. DW 1 further referred to the Plaintiff's Exhibit 9 which is the one that informed all the owners of the listed properties about the outcome of the inquiries undertaken after the publication produced as Plaintiff's Exhibit 8.
110. The Plaintiff's Exhibit 9 showed that the Plaintiff's property known as LR.No.209/13385 now titled as LR.No.Nairobi Block 37/155 had been revoked.
111. However, DW 1 could not confirm if the 4th Defendant actually issued a Kenya Gazette Notice to officially cancel the properties listed as revoked.
112. On being referred to Defence Exhibit 3, the document shows that the Plaintiff was registered as the owner of the property known as LR.No.Nairobi Block 37/155 (Formerly LR.No.209/13385) on the 16.05.2002 while that of Pillar Concrete Company Limited was issued on the 10.07.2002 which was only 2 months apart.
113. On referring to the Plaintiff's Exhibit 9 & 10, DW 1 confirmed that the 4th Defendant was of the view that the Plaintiff was the duly registered owner of the property known as LR.No.Nairobi Block 37/155.
114. On cross-examination by Counsel for the 2nd and 3rd Defendants, DW 1 reiterated that the ownership of the property known as LR.No.Nairobi Block 37/155 is still in doubt.
115. DW 1 confirmed that no compensation had been processed to any person including City Park which is the registered owner of the mother title.



116. DW 1 denied any valuation exercise was ever done on the portion measuring 0.5437 Hectares being claimed by the Plaintiff because the title was in doubt.
117. DW 1 lamented that it was wrong for the Director of Survey to create and issue a registration number of a piece of land in favour of the Plaintiff because it was on a road reserve.
118. DW 1 affirmed that if the Plaintiff was successful, the 1st Defendant was the entity that would avail funds for compensation.
119. The 4th Defendant also cross-examined the DW 1.
120. DW 1 stated that if any payment was to be done, it would be paid out by the 4th Defendant on behalf of the 1st Defendant.
121. On re-examination, DW 1 confirmed that the Survey Plans produced by the Defence were legitimate and issued by the Director of Survey.
122. DW 1 requested the Court to issue an Order cancelling the Plaintiff's Survey Plan No. 316/167.
123. DW 1 insisted that if the Plaintiff's property known as LR.No.Nairobi Block 37/155 was to be fenced off, then a portion of the Nairobi-Thika Highway would be Block ed.
124. DW 1 informed the Court that the first letter from the Plaintiff to the 1st Defendant was on the 04.07.2009.
125. In this letter dated 04.07.2009, the Plaintiff was demanding to be compensated a sum of KShs 86,250,000/-.
126. However, the cancellation of the property known as LR.No.209/13385 now LR.No.Nairobi Block 37/155 was done on the 12.02.2009 which was before the demand letter was received.
127. DW 1 further stated that in the Gazette Notice declaring the Intention to Acquire, the Plaintiff was never declared as an owner of any property.
128. DW 1 referred to the Plaintiff's Exhibit 15 and testified that the property known as LR.No.Nairobi Block 37/155 had not been gazetted to be among the properties to be compulsory acquired.
129. In essence, DW 1 was of the considered view that the contents in the Plaintiff's Exhibit 9 & 10 were confusing and not reflective of the true position.
130. In DW 1 position was that any dealings of the property known as LR.No.209/13385 after the Gazettement of 12.02.2009 was irregular.
131. DW 1 nevertheless confirmed that the Defence Exhibit 9 was a Public Notice confirming that indeed the property known as LR.No.209/13385 had been revoked and/or cancelled by the 4th Defendant.
132. At the end of this re-examination, DW 1 was discharged from the witness box and the 1st Defendant closed its case.
133. The 2nd and 3rd Defendants despite filing a Statement of Defence elected not to call any witnesses and closed their case.
134. The 4th Defendant similarly closed its case without calling any witness(es) and/or producing any documents.
135. Parties were then directed to file their final written submissions for the Court's consideration.



136. The Court has gone through the pleadings by the parties herein, the testimonies of the witnesses, the exhibits produced and the final submissions of the parties and the issues for determination can be outlined as follows; -

Issue No.1- Whether or not the properties known as LR.No.209/6559 & LR.No.Nairobi Block 37/155 (Formerly LR.No.209/13385) are one & the same?

Issue No.2- Whether or not the plaintiff's property known as LR.No.Nairobi Block 37/155 (Formerly LR.No.209/13385) is entitled to compensation by the defendants?

Issue No.3- Is the plaintiff entitled to the prayers sought in the present suit?

Issue No.4- Who bears the costs of the present suit?

137. The issues for determinations having been duly identified hereinabove, the same will now be discussed as provided below.

Issue No.1- Whether or not the properties known as LR.No.209/6559 & LR.No.Nairobi Block 37/155 (Formerly LR.No.209/13385) are one & the same?

138. The first issue for determination is to understand the interlink between the properties known as LR.No.209/6559 and the Plaintiff's property known as LR.NO Nairobi Block 37/155(Formerly LR.No.209/13385)

139. The main reason for understanding this interlink is by extension to establish the true and genuine ownership of the two properties which seem to have been affected by the development of the Nairobi-Thika Highway.

140. According to the Plaintiff, the portion of 0.5487 Hectares which was utilised by the 1st Defendant to expand the Nairobi-Thika Highway falls within the property known as LR.No.Nairobi Block 37/155 (Formerly LR.No.209/13385).

141. The Plaintiff has produced a Copy of the of Lease dated 22.09.1998 relating to the LR.No. Nairobi Block 37/155 (Formerly LR.No.209/13385) and registered on the 16.05.2022 together with the Certificate of Lease dated 16.05.2002 as Plaintiff's Exhibit 2 & 3.

142. In addition to the above two ownership documents, the Plaintiff also produced two copies of Official Searches for the property known as LR.No.Nairobi Block 37/155 (Formerly LR.No.209/13385) dated 25.02.2014 and 25.02.2014 as Plaintiff's Exhibit 14 & 15.

143. On the other hand, the 1st Defendant through their witness DW 1 pleaded and testified that the property known as LR.No.Nairobi Block 37/155 (Formerly LR.No.209/13385) belonging to the Plaintiff is not the same as LR.No.209/6559.

144. According to DW 1, the Plaintiff's property known as LR.No.Nairobi Block 37/155 (Formerly LR.No.209/13385) measuring approximately 2.091 Hectares is a sub-division of the LR.No.209/6559 measuring approximately 223.0 Hectares.

145. DW 1 further informed the Court that the property known as LR.No.Nairobi Block 37/155 (Formerly LR.No.209/13385) was demarcated and/or sub-divided from the Mother Title known as LR.No.209/6559 using the Survey Plan No. FR 316/167 which was produced as Defence Exhibit 11.

146. In essence therefore, the property known as LR.No.Nairobi Block 37/155 (Formerly LR.No.209/13385) is identified on the ground using the purported Survey Plan No. FR 316/167



while the Mother Title Known as LR.No.209/6559 is identified on the Ground using the Survey Plan No. FR.105/4.

147. A perusal of the Plaintiff's pleading and in particular Paragraph 6 of the Plaint dated 9.10.2017, states as follows; -

“ 6. The Plaintiff is the registered owner of the parcel of land known as Nairobi Block 37/155 measuring approximately 2.067 Hectares which was hived off from the larger portion LR.No.209/6559 Nairobi-City Park having acquired the same from the then City Council of Nairobi vide a Lease dated 22.09.1998 and registered on the 16.05.2002.”

148. Based on the testimony of the DW 1 and the Plaintiff's own pleadings, it is this Court's finding that the properties known as LR.No.Nairobi Block 37/155 (Formerly LR.No.209/13385) belonging to the Plaintiff and the property known as LR.No.209/6559 are two separate and distinct properties with different ownership.

Issue No.2- Whether or not the plaintiff's property known as LR.No.Nairobi Block 37/155 (Formerly LR.No.209/13385) is entitled to compensation by the defendants?

149. Having confirmed that the property known as LR.No.Nairobi Block 37/155 (Formerly LR.No.209/13385) is separate and distinct with the property known as LR.No.209/6559, the second issue now seeks to discuss whether or not the Plaintiff is entitled to compensation from the Defendants for the portion of 0.5487 within the property known as LR.No.Nairobi Block 37/155 (Formerly Lr.no.209/13385).

150. The Plaintiff in Paragraph 8 of the Plaint dated 09.10.2017 states as follows; -

“ 8. On or about the year 2009 part of the Plaintiff's said parcel of land measuring 0.5487 Hectares was compulsorily acquired by the 1st and 2nd Defendants vide Gazette Notice No. 6034 and 6035 of 11.07.2008 and 1396 of 20.02.2009 to pave way for the expansion and rehabilitation of the Nairobi-thika Highway (pangani).”

151. The Plaintiff in support of the above pleading produced a number of letters as Plaintiff's Exhibit 1 and thereafter Plaintiff's Exhibit S 5-12 showing the various discussions that had taken place between the himself and the various Government Departments regarding his compensation.

152. It is important for this Court to carefully peruse the Exhibits produced by the Plaintiff to appreciate the background of this dispute.

153. The first letter for the Court's consideration is the Plaintiff's Exhibit 1 which is a letter dated 04.07.2009 to the Commissioner of Lands from the Plaintiff.

154. The subject matter in the Plaintiff's Exhibit 1 is “Claim On Block 37/155 Formerly 209/6559.”

155. In this letter dated 04.07.2009, the Plaintiff is seeking to be compensated as the owner of LR.No.Block 37/155 which was formerly LR.No.209/6559.

156. However, as earlier determined, the property known as LR.No.Nairobi Block 37/155 is not the same as LR.No.209/6559.



157. In other words, the Plaintiff in his letter dated 04.07.2009 and produced as Plaintiff's Exhibit 1 did not give the true facts of the property which was to be compensated by the Commissioner of Lands.
158. The next document which this Court finds necessary to analyse is the Plaintiff's Exhibit 7 which contains a Valuation Report by the Government Valuer dated 20.11.2009 submitted to the Engineer in the Ministry of Roads.
159. In this Valuation Report, the Plaintiff is seeking to rely on the Valuation contained in Entry No. 2 giving a sum of KShs 78,200,000/- as the true and correct value for the compensation of the 0.5487 Hectares to be compulsorily acquired.
160. However, the Valuation Report dated 20.11.2009 from the Government Valuer to the Engineer in the Ministry of Roads was for the property known as LR.No.209/6559 and not the Plaintiff's property known as LR.No.Nairobi Block 37/155 (Formerly LR.No.209/13385).
161. In essence, this Court does not find any Valuation undertaken by the Government Valuer within the property known as LR.No.Nairobi Block 37/155 (Formerly LR.No.209/13385) which valued the portion measuring approximately 0.5487 Hectares to be KShs 78,200,000/-.
162. The next Letter produced by the Plaintiff was the Plaintiff's Exhibit 8 dated 16.11.2011.
163. In this letter, the Director of Surveys was writing to the Chief Engineer of Roads on the subject "Land Acquisition-nairobi/Thika Highway Road Project LR.No.209/6559 (Now LR.No.Nairobi Block 37/155).
164. The Director of Surveys in the body of the letter dated 16.11.2011 informed the Chief Engineer of Roads that there were various excisions from the original property known as LR.No.209/6559.
165. The Director of Surveys stated as follows in Clause 4 of the letter under reference; -

"Therefore LR.No.209/13385 (which was wrongly given as LR.No.209/6559) and Nairobi Block 37/155 measuring 2.067 Ha (approx.) are one and the same thing."

166. The interpretation and understanding of this Court as regard the Letter dated 16.11.2011 produced as Plaintiff's Exhibit 8 is that the Plaintiff's property known as LR.No.Nairobi Block 37/155 (Formerly LR.No.209/13385) had been wrongly assigned registrable No. LR.No.209/6559.
167. In other words, the correct property belonging to the Plaintiff was LR.No.Nairobi Block 37/155 (Formerly LR.No.209/13385) contained in the Survey Plan FR.NO.316/167 and not property known as LR.No.209/6559.
168. As regards the Plaintiff's Exhibit 9 &10, the Plaintiff sought to rely on the letters dated 09.10.2013 and 04.12.2013 from the 4th Defendant to the 1st Defendant.
169. In the letter dated 09.10.2013, the 4th Defendant was writing to the 1st Defendant informing him that the property known as LR.No.209/6559 is the same property as LR.No.209/13385 now registered as LR.No.Nairobi Block 37/155 and belongs to the Plaintiff.
170. However, in the subsequent letter dated 04.12.2013 and produced as Plaintiff's Exhibit 10, the 4th Defendant rectified the contents of the letter dated 09.10.2013 produced as Plaintiff's Exhibit 9 by stating as follows; -

"On perusing our records, it has come out clearly that Land Ref NRB/Block 37/155 was formerly LR.No.209/13385. This number changed from LR.No.209/13385 to NRB/



Block 37/155 when the whole of LR.No.209/6559 together with other sub-plots hived from it were converted from RTA Cap 281 to RLA Cap 300 (Copy of R.I.M attached.)

From the explanation given by the Director of Survey vide letter ref CT.160/ Vol.4/169, copy attached, LR.209/13385 was wrongly given LR.No.209/6559 otherwise LR.No.209/13385 is only a sub-plot of 209/6559 and the one subject to this matter”

171. Once again, from the Plaintiff’s Exhibit 9 & 10, the 4th Defendant clearly ascertained the issue that the Plaintiff’s property known as LR.No.Nairobi Block 37/155 (Formerly LR.No.209/13385) was not the same as the property known as LR.No.209/6559.
172. The Court having gone through the Plaintiff’s Exhibit S 1 then Plaintiff’s Exhibit S 5 to 10, the question that now needs to be answered is on what basis is the Plaintiff claiming compensation from the Defendants.
173. To answer this question, the Court refers to the Plaintiff’s Exhibit NO. 4 which is the Kenya Gazette Notice No. 1396 dated 12.02.2009.
174. The same Kenya Gazette Notice No. 1396 dated 12.02.2009 has also been produced by the 1st Defendant through the witness marked as DW 1.
175. With the promulgation of the 2010 Kenyan Constitution, the Land Acquisition Act, Cap 295 was repealed and replaced with the Land Act No. 6 of 2012.
176. In essence, the process and manner in which the Government acquires land for public use is captured in the part VIII of the Land Act No. 6 of 2012.
177. The Kenya Gazette Notice No. 1396 dated 12.02.2009 is an official notice Under Section 6 of the Land Acquisition Act, Cap 295 (now provided for under Section 107 (5) of the Land Act Cap No.6 of 2012) to the general public and specifically persons registered as the owners of the various parcels outlined therein to attend the public inquiries.
178. Under Section 112 of the Land Act Cap 6 of 2012, the 4th Defendant is required to undertake an inquiry at least 30 days after the publication of the Notice of Intention to Acquire.
179. In particular, Section 112 (3) of the Land Act, No. 6 of 2012 provides as follows:-
 - “(3) (3) At the hearing, the Commission shall-
 - a. Make full inquiry into and determine who are the persons interested in the land; and
 - b. Receive written claims of compensation from those interested in the land.”
180. Based on the above provisions which came into force on 2nd May, 2012, the Plaintiff was required to present a written claim for compensation to the 4th Defendant to assert his claim for compensation for any portion of land which was to be compulsorily acquired.
181. Throughout the hearing, the Plaintiff did not produce any written claim of compensation that he ever lodged with the 4th Defendant for the portion of 0.5487 on his property known as LR.No. Nairobi Block 37/155.



182. The main purpose of the inquiry under Section 112 of the Land Act, No. 6 of 2012 is to enable the 4th Defendant decide on who is the rightful owner of the property being compulsorily acquired and issue an award of compensation as provided for under Section 113 of the Land Act, No. 6 of 2012.
183. The provisions of Section 113 of the Land Act, No. 6 of 2012 provides as follows:-
- “(1) Upon the conclusion of the inquiry, the Commission shall prepare a written award, in which the Commission shall make a separate award of compensation for every person whom the Commission has determined to have an interest in the land.
 2. Subject to Article 40(2) of the Constitution and Section 122 and 128 of this Act, an award-
 - a. Shall be final and conclusive evidence of-
 - i. The size of the land to be acquired;
 - ii. The value, in the opinion of the Commission, of the land;
 - iii. The form of the compensation payable, whether the persons interested in the land have or have not appeared at the inquiry and
 - b. Shall not being validated by reason only of a discrepancy which may thereafter be found to exist between the area specified in the award and the actual area of the land.
184. According to the Kenya Gazette Notice No. 1396 dated 12.02.2009, the property which had been gazetted for acquisition was the property known as LR. NO. 209/6559 belonging to City Park.
185. In view of the fact that the Kenya Gazette Notice No.1396 dated 12.02.2009 identified the portion measuring 0.5487 to be within LR. NO.209/6559, the Plaintiff had an obligation under Section 112 to present a written claim of compensation for his property known as LR. NO. Nairobi Block 37/155 (Formerly LR. NO. 209/13385) to the 4th Defendant during the inquiry for a determination on who is the rightful person to be compensated.
186. The Plaintiff's letter to the 4th Defendant dated 04.07.2009 produced as Plaintiff's Exhibit 1 was seeking for compensation of a property known as LR. NO. Nairobi Block 37/155 which was formerly known as LR. NO. 209/6559.
187. The Plaintiff's property known as LR. NO. Nairobi Block 37/155 is not the same as LR. NO. 209/6559 which had been gazetted as one of the properties to be acquired.
188. It is therefore this Honourable Court's finding that the Plaintiff's property known as LR. NO. Nairobi Block 37/155 (Formerly LR. NO. 13385) had not been gazetted for acquisition and the only way out for the Plaintiff was to present a claim of compensation specifically for his property to be considered by the 4th Defendant.
189. Unfortunately, the Plaintiff did not present any claim for compensation for the property known as LR. NO. Nairobi Block 37/155 (Formerly LR. NO. 13385) but relied on the mistake done by the Director of Survey in assigning the number LR. NO. 209/6559 to the Plaintiff's property known as LR. NO. 209/13385 which error was rectified in line with the Plaintiff's Exhibit 9 which is a letter dated 19.10.2013.



190. The upshot of the above provisions of the Land Act, Cap 6 of 2012 and the facts placed before the Court, it is clear that the Plaintiff has never obtained an award of compensation under Section 113 of the Land Act No. 6 of 2012 to crystallize his claim for compensation.
191. The Plaintiff failed to secure a very crucial document known as the Award for Compensation issued by the 4th Defendant and in the absence of this Award of Compensation, this Court cannot usurp the powers bestowed on the 4th Defendant to declare the Plaintiff as the person to be compensated without an Award of Compensation having been issued and registered accordingly.
192. Similarly, in the absence of an Award for Compensation under Section 113 of the Land Act, No. 6 of 2012, then a suit against the Government for compensation is pre-mature and misguided.
193. In conclusion, this Court hereby makes a determination that the Plaintiff herein is not entitled to compensation for any portion of his property known as LR.No.Nairobi Block 37/155 (Formerly LR.No.209/13385) as no such right has been ascertained by the 4th Defendant as provided for under Section 113 of the Land Act, No. 6 of 2012.
194. Notwithstanding the determination hereinabove, it is important to mention another issue raised by the 1st to 4th Defendants in their pleadings, testimonies and exhibits produced at the hearing.
195. The issue raised by the Defendants was that the Plaintiff's title known as LR.No.Nairobi Block 37/155 (Formerly LR.No.209/13385) was in fact cancelled through the Kenya Gazette Notice No. 3022 published by the 4th Defendant on the 18.07.2014 and produced as Defence Exhibit 9.
196. Prior to the publication of the Kenya Gazette Notice No. 3022 dated 18.07.2014 by the 4th Defendant, there were two other Public Notices that had been published relating to the validity of the Plaintiff's ownership of the property known as LR.No.Nairobi Block 37/155 (Formerly LR.No.209/13385.)
197. The two Public Notices by the 4th Defendants were advertisements in the Daily Newspaper dated 10.07.2013 and 07.07.2014 produced as Defence Exhibit S 7 & 8 respectively.
198. In the Public Notice published on the 10.07.2013 and produced as Defence Exhibit 7, the 4th Defendant was calling on the owners of the properties listed therein to come and defend their ownership documents which were under investigation pursuant to Section 14 (1) of the National Land Commission Act, 2012.
199. The properties listed in the Public Notice published on the 10.07.2013 and produced as Plaintiff's Exhibit 7 included the Plaintiff's property known as LR.No.209/13385 which was being investigated for being illegally being created and/or hived from a public property.
200. The Plaintiff in his testimony denied coming across the above Public Notice published on the 10.07.2013 or ever receiving any summons to attend such investigation.
201. On the 07.07.2014, the 4th Defendant published the outcome of its investigations which Public Notice in the Daily Nation produced as Defence Exhibit 8.
202. In the Public Notice dated 07.07.2014, the 4th Defendant notified that the Plaintiff and the general public that the property Formerly known as LR.No.209/13385 (Currently LR.No.Nairobi Block 37/155) had been revoked.
203. Further to that, the 4th Defendant through the Kenya Gazette Notice No. 5022 dated 01.07.2014 and produced as Defence Exhibit 9 officially declared the Plaintiff's property known as LR.No.209/13385 (NOW LR.No.Nairobi Block 37/155) as revoked.



204. The Plaintiff in his submissions opposed the powers of the 4th Defendant to revoke the ownership of the property known as LR.No.Nairobi Block 37/155 (Formerly LR.No.209.13385.)
205. The Plaintiff's position was that he was the lawful owner of the property known LR.No.Nairobi Block 37/155 (Formerly LR.No.209/13385) and therefore Section 24, 25 and 26 of the Land Registration Act, No. 3 of 2012 as well as Article 40 of the Kenyan Constitution, 2010 protected his ownership.
206. The Plaintiff further submitted that even if the 4th Defendant made a finding to the effect that the property known as LR.No.Nairobi Block 37/155 (Formerly LR.No.209/13385) was illegally acquired, the only lawful step to take would be to write a recommendation to the Commissioner of Land to cancel the said title.
207. However, so far, no such recommendation has been written by the 4th Defendant and therefore the Plaintiff's property known as LR.No.Nairobi Block 37/155 (Formerly LR.No.209/1385) is still valid and entitled to compensation.
208. Looking at the pleadings filed by the parties herein, there is a difficulty in the determination of the legality of the Plaintiff's property known as LR.No.Nairobi Block 37/155 (Formerly LR.No.209/13385).
209. First and foremost, the Plaintiff filed the present suit on the assumption that his title was valid and clean before the eye of the law hence did not seek for a declaration that the property known as LR.No.Nairobi Block 37/155 (Formerly LR.No.209/13385) was legitimate and lawful.
210. On the other hand, the Defendant challenged the validity of the Plaintiff's property known as LR.No.Nairobi Block 37/155 (Formerly LR.No.209/13385) but failed to seek a cancellation of the said title through a Counter-Claim.
211. Although the issue of validity of the Plaintiff's title known as LR.No.Nairobi Block 37/13385 (LR.No.209/13385) was testified upon, there was no prayer by the Plaintiff and or the Defendants seeking this Court to make a declaration of whether the said property and title are legitimate or not.
212. Consequently therefore, parties are bound by their own pleadings and in the circumstances, this Court will not make any determination as to the validity and/or legality of the Plaintiff's property known as LR.No.Nairobi Block 37/155 (LR.No.209/13385) in the absence of such a prayer by the parties therein.
213. Nevertheless, it is important to remind the different Government Departments that this dispute has been fuelled by the lack of communications and/or implementation of decisions within the Defendants.
214. While the Plaintiff's property formerly known as LR.No.209/13385 now LR.No.Nairobi Block 37/155 was revoked through the Kenya Gazette Notice No. 5052 dated 01.07.2014 by the 4th Defendant, the Ministry of Lands on the other hand still recognises the said property to be legitimate and lawful to the extend of generating an official search dated 24.01.2023.
215. This kind of confusion within the Government Departments is something that must be urgently addressed as it creates uncertainty and/or loopholes within Government Records which can facilitate illegal, illegitimate and unlawful transactions aimed at defrauding the general public and/or even the Government itself.

Issue No.3- Is the plaintiff entitled to the prayers sought in the present suit?



216. The third issue for determination in the present suit is whether or not the Plaintiff is entitled to the prayers sought herein.
217. Based on the determination of Issue No. 2, the court is of the considered view that the Plaintiff does not have any Award of Compensation as provided Under Section 113 of the Land Act, No. 6 of 2012 and therefore a prayer cannot be granted in favour of the Plaintiff.
218. Consequently therefore, the Plaintiff's prayers in the present suit are not merited and therefore dismissed accordingly.

Issue No.4- Who bears the costs of the present suit?

219. On the issue of costs, it is an established principle that costs follow the event.
220. In the present suit, the Plaintiff's claim has not been successful and will now bear the costs accordingly.

Conclusion.

221. In conclusion therefore, this Court hereby makes the following Orders in determination of the present suit; -
- A. The plaint dated 09.10.2017 be and is hereby dismissed.
- B. The plaintiff is further condemned to pay the costs of this suit.

DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON 5TH OF JUNE 2024.

EMMANUEL.M.WASHE

JUDGE

In the presence of:

Court Assistant: Mr Ngeno

Advocate for the Plaintiff: Mr. Nyamu

Advocate for the Defendants: Mr. Mumo H/b Ndirangu for 1st Defendant & Ms. Masinde for the 4th Defendant

