



Omu & another v Kiso Enterprises Limited & 3 others (Environment & Land Case 3 & 134 of 2016 (Consolidated)) [2024] KEELC 5843 (KLR) (22 August 2024) (Judgment)

Neutral citation: [2024] KEELC 5843 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 3 & 134 OF 2016 (CONSOLIDATED)**

**MAO ODENY, J
AUGUST 22, 2024**

BETWEEN

AGGREY ANZALA OMU PLAINTIFF

AND

KISO ENTERPRISES LIMITED 1ST DEFENDANT

THE CHIEF LAND REGISTRAR 2ND DEFENDANT

THE HONOURABLE ATTORNEY GENERAL 3RD DEFENDANT

KETAN DOSHI 4TH DEFENDANT

**AS CONSOLIDATED WITH
ENVIRONMENT & LAND CASE 134 OF 2016**

BETWEEN

JOSHUA KIMANI PLAINTIFF

AND

KISO ENTERPRISES LIMITED 1ST DEFENDANT

KETAN DOSHI 2ND DEFENDANT

THE CHIEF LAND REGISTRAR 3RD DEFENDANT

THE HONOURABLE ATTORNEY GENERAL 4TH DEFENDANT



JUDGMENT

1. By a Further amended Plaintiff dated 6th October, 2020, the Plaintiff in ELC Case No.3 of 2016 sued the Defendants seeking the following orders:
 - a. A permanent injunction against the 1st Defendant from passing off or in any way claiming proprietary interest over Land Reference Number MN/III/4404 nor from trespassing or developing or cutting down any flora on the property.
 - b. A declaration that the plaintiff is the registered proprietor over Land Reference Number MN/III/4404 to the exclusion of the 1st Defendant.
 - c. In the alternative General Damages for passing off and fraud against the 4th Defendant's should the Plaintiff's Title be found to be invalid.
 - d. In the Alternative Special damages based on the prevailing market value of the property against the 4th Defendant at the time of Judgment should the Plaintiffs Title be found to be invalid.
 - e. Compensatory damages for the Purchase of and improvement of the property.
 - f. General Damages for Loss of Use over the Property.
 - g. Aggravated and exemplary damages against the Defendants for fraud committed against the Plaintiff.
 - h. General damages for trespass against the 1st Defendants.
 - i. Costs of this suit including interest on (c, d, e, f, g and h) above.
 - j. Such further orders as may be expedient in the interest of justice.
2. By Counter-claim dated 19th November, 2020; the 1st Defendant in ELC Case No 3 of 2016, prayed that the Plaintiff's suit be dismissed with costs and judgment be entered in the Counter-claim with interest at Court rates and sought the following orders:
 - a. A permanent injunction restraining the Plaintiff/Defendant in the counterclaim, his employees, agents, servants and/or officers from interfering, trespassing, alienating, or in any way dealing in or with the 1st Defendant/Plaintiff in the Counter-claim's property, L.R No. MN/III/2055 situate at south of Takaungu Trading Centre, Kilifi.
 - b. A declaration that the 1st Defendant/Plaintiff in the Counterclaim is the bona fide title holder of L.R No. MN/III/2055 and the Plaintiff/Defendant in the counterclaim and has no rights whatsoever over the suit property.
 - c. A declaration that the allocation and registration of the suit property to the Plaintiff/Defendant in the counterclaim as registered owner is illegal and hence null and void.
 - d. Mesne profits from 16th December, 2016 to the date of delivery of Judgement herein.
 - e. This Honourable court do Order the Plaintiff/Defendant in the counterclaim to compensate the 1st Defendant/Plaintiff in the Counterclaim for loss of use of its land from 16th September, 2016 to the date of delivery of Judgment.
 - f. Costs of this counterclaim.



- g. Interest on (d), (e) and (f) above at court rates.
3. ELC No. 3 of 2016 and ELC No. 134 of 2016 were consolidated with ELC No. 3 of 2016 being the lead file.
4. By Plaint dated 30th May, 2016, the Plaintiff in ELC Case No 134 of 2016 sued the Defendants seeking the following orders:
 - a. A permanent injunction against the Defendants from passing off or in any way claiming proprietary interest over Land Reference Number MN/III/4407 nor from trespassing or developing or cutting down any flora on the property.
 - b. General damage for trespass.
 - c. Costs of this suit including interest on (b) above.
 - d. Such further orders as may be expedient in the interest of justice.

Plaintiff's Case

5. PW1 Aggrey Omu Anzala adopted his witness statement dated 2nd December 2021 as his evidence and produced a list of documents dated 20th February, 2019 as Pex No. 1 to 4 and marked PMFI 5,6,7 and 8. PW1 testified that he bought the suit property from Ketan Doshi (the 4th Defendant) in 2005, did a search, applied for a loan to buy the land, that the bank conducted due diligence and charged the property.
6. PW1 further testified that he took possession of the suit land, did a perimeter wall, planted trees and employed a worker. It was his evidence that he had planned to develop the land by building furnished apartments.
7. PW1 testified that in 2012 his architects drew the plans but in 2016 his caretaker called him and informed him that his land had been invaded by individuals which necessitated the filing of this case. PW1 also stated that they bought the land with Dr Kimani and Dr Njagi and that the 4th Defendant asked them to give him the title back to correct some errors.
8. It was PW1's testimony that he completed repaying the loan and went to the bank to take his title. He stated that the invaders identified themselves as Kiso Enterprises Limited acting on behalf of the owner who also had a title deed to the suit land.
9. PW1 prayed for the orders as per the plaint and an alternative order of refund of the purchase price at market value as per the valuation of Kenya Shillings forty million (Ksh 40,000,000/=) if the court finds that the 4th Defendant fraudulently sold the land to him.
10. Upon cross-examination by Mr. Lakicha for the 1st Defendant, PW1 stated that he bought LR No. 4404 from the 4th Defendant in 2005 who gave them the original title and that the said title was issued in 1997. PW1 further informed the court that he cannot confirm that LR No. 4404 is for a property in Eastleigh.
11. PW1 stated that he did a search, which confirmed that the property was in Kilifi County; further that he did not return the title to the 4th Defendant as he doubted the reason for requesting for the return of the title. He confirmed that he saw the letter dated 7th March, 2016 which states that records held at the survey office indicate that the deed plan attached-219313 LR NO 209/7859/143 is located within Eastleigh in Nairobi County.



12. PW1 testified that he had done several searches, which indicated that the land belonged to him. Further that the survey plan No 164720 was issued on 24th July, 1992 and a letter of allotment was issued to the 1st Defendant on 5th June, 1992 and a receipt dated 7th August, 1995 for Kenya Shillings 218,690/=.
13. Upon cross examination, PW1 stated that that the rent clearance certificate and the title are in the 1st Defendant's name and that a letter dated 9th February, 2016 indicated that it was an amalgamation of four plots of which he bought plot No. 4404 and other parties bought the other plots which were as a result of the subdivision. PW1 stated that he is in possession of the suit land and the neighboring plot belongs to Dr. Njagi and that the 1st Defendant is not in possession of the suit land.
14. Upon cross-examination by Mr. Munga, PW1 stated that he is the owner of plot Number 4404 and that he has not seen another title for the same plot. He stated that the bank financed him to buy the land and they did the due diligence.
15. Upon-reexamination by Mr. Chelule, PW1 testified that in the letter dated 7th March, 2016, the parcels that were indicated there were MN/111/2055, LR NO 209/7259/143 and it does not have any reference to his title. PW1 testified that the deed plan No. is 219313 and his deed plan No. is 253415.
16. It was PW1's testimony that the allotment letter indicates that it was issued to the 1st Defendant which does not refer to his title further that he got the land through purchase from the 4th Defendant.
17. PW2 Samuel Musyoki, a Valuation Surveyor and a Land Economist testified that he prepared a valuation report dated 20th January, 2022 in respect to LR. NO.MN/III/ 4404 Vipingo area in Kilifi County which he produced as Pex No. 8. He stated that he did a valuation of the suit property and arrived at a value of Kenya Shillings forty million by comparing similar properties in the same area whereby the first row of plots along the sea go for Kenya Shillings thirty million per acre. He testified that this being a second row plot, he gave it a value of 15 million per acre and it is slightly over 2 acres.
18. PW2 testified that they made a site visit and saw a partially built wall with a caretaker structure inside the plot. Further that they also visited plot No 4407 which is partially fenced. PW2 testified that plot No 4407 measures 3.42 acres and gave it a value of Kenya Shillings fifty million.
19. Upon cross-examination by Mr. Lakicha, PW2 stated that he did the valuation report in respect of plot No 4404, which was originally plot No. 4394/3. He stated that plot No 4404 is a resultant subdivision and he did not see the original title. PW2 informed the court that he inspected the property on 19th January, 2021 and that the plot is partially fenced and analyzed the data of the neighboring plots and came up with a value.

Defendants Case

20. DW1 Simon Ngumi a Principal Land Surveyor at Survey of Kenya testified that he had a survey plan for 1394 Mainland North Section 34394, Mainland North 2055 and a copy of the deed plan No 436/44 measuring 2.211 Hectares. DW1 further testified that according to his records, the registration district is Kilifi North of Mtwapa.
21. DW1 testified that in respect of mainland North 32055, he was only able to get the deed plan which indicates 4.49 Hectares Kilifi District, South of Takaungu county, deed plan No 219313 for LR No 209/7259/143 which is in Eastleigh Nairobi and deed plan No 164720 for plot Mainland North Section 32055. He testified that plot No 2055 was amalgamated from four portions and according to his records, it is in the second row of Vipingo area, Kilifi District, South of Takaungu.



22. It was DW1's testimony that the original survey was 88/179 before amalgamation and that the two plots are in different locations, Mtwapa North and South of Takaungu. DW1 produced survey plan No 43644 as DEX No. 1, survey plan No 88/179 as DEXH No 2, Deed plan No 164720 for LR No. Mainland North Section 3 2055 as DEXH No. 3, Deed Plan No 219313 for LR No 209/7259/143 for a property in Eastleigh as DEX NO 4 and a survey plan No 115/21 as DEX No 5.
23. Upon cross examination by Mr. Chelule, DW1 informed the court that he neither looked at the titles to Mainland North Section 3, nor the deed plan attached to the summons deed plan of 4394. He stated that the records that he has are in respect of 4394 and the registered owner is Ketan Doshi (the 4th Defendant). DW1 further stated that in respect of the deed plan for 2055, it cannot have two deed plans for one parcel number. He stated that the one attached to the title is not similar to the one that he has produced and that the reference map is similar to the documents that he had produced.
24. Upon re-examination, DW1 testified that the Deed plan No 219313 for LR No 209/7289/143 is for a property in Eastleigh Nairobi. He testified that the correct plans and the ones that he has produced are backed by other documents.
25. DW2 Shukri Osman a Licensed Registered Valuer in private practice for over 15 years testified that he was instructed to do a report in respect of Plot MN 3/2055 of which he did on 14th February 2022. He testified that he went to the property and inspected it using the survey plan and google maps.
26. DW2 further testified that he did a report after collecting data and analyzing it and came up with a market value for 11 acres as Kenya Shillings One hundred and thirty million (Ksh 130,000,000/=). He testified that in valuation practice, if one acre goes for Kenya Shillings fifteen million, then it does not follow that the 11 acres will be 15 multiplied by 11.
27. It was DW2's evidence that he zoned and valued the first 5 acres at Kenya Shillings fifteen million (Ksh 15,000,000/=) per acre, the second 5 acres was Kenya Shillings ten million (Ksh 10,000,000/=) per acre and the remaining, valued at Kenya Shillings five million (Ksh 5,000,000/=) for the remaining one acre.
28. DW 2 testified that his task was to value for loss of user and that the title was obtained in 2016 therefore he looked at the value in 2016 and used 14% as the rate of returns for 6 years which comes to Kenya Shillings 102,700,000/=. It was DW2's testimony that the loss of use is the difference between the current market value and the value as at 2016. DW2 testified that the loss of user was Kenya Shillings 27,300,000/= for the 6 years and produced the report as DEX 6.
29. Upon cross-examination by Mr. Chelule, DW2 stated that he made a site visit on the property and noticed that it is partially fenced and has permanent residential structures. He stated that he took the value of the land only and that the property was largely occupied saw gates but that was not part of his brief. DW2 further stated he did not value plot number 4407 but he got a comparable value which was Kenya Shillings 14, 630,000/=. He stated that plot 4404 was Kenya Shillings forty million which is Kenya Shillings 1,530, 000 per acre.
30. DW 3 Jaffer Sharif Omar testified that he has a Power of Attorney to represent the 1st Defendant and adopted his witness statements dated 18th February, 2016 and 16th February 2022 as part of his evidence. He also produced a list of documents dated 18th February, 2016 as DEX No 7 to 8. He stated that LR No MN/11/428/431 are mutually four plots, which were amalgamated.
31. DW3 testified that he filed a counter-claim and prayed for the orders in the counterclaim with costs and loss of user of Kenya Shillings 27,300,000 since 2016. It was DW3 evidence that when the 1st Defendant was allocated this land; its neighbor was a retired Judge who also had a problem with his parcel of land.



32. Upon cross-examination by Mr. Munga, DW3 stated that the current owner is the 1st Defendant and they have constructed a fence. He stated that they did a search and have a title in their name.
33. Upon cross-examination by Mr. Chelule, DW3 stated that the directors gave him a Power of Attorney to prosecute the case on their behalf due to financial difficulties and that they would give him a portion of the land. He further stated that the property was allocated to the 1st Defendant on 5th June, 1992 and that the significant development is a perimeter fence and coral stones. It was his evidence that they did not submit any building plans and that the caretaker on the suit plot has been employed since 1993.
34. Upon re-examination, DW3 testified that the directors are retired civil servants who are sickly and very old. He testified that there were improvements but they were stopped by the court and that the owner of the suit plot is Kiso Enterprises (the 1st Defendant).
35. PW4 Wilson Kibichi testified that he works in the Ministry of Lands at the Survey Department as an Assistant Director in-charge of Geospatial Data management which involves maintenance and updating of survey records. He testified that he is aware of parcel LR MN/ 111/4894 and that they are a resultant of LR MN/111/4407 and LR MN/111/4405.
36. DW4 further testified that according to the records that he has, the subdivision that resulted to the titles in survey plan FR 566/20 and the LR Number are MN/111/9876 to 9884 are in South Takaungu trading center and that the two resultant titles are not reflected in their records. DW4 further stated that they issue a deed plan after a survey plan has been prepared and that deed plans in this case are questionable. He testified that the proper deed plans are the ones that were issued from the sub-division reflected in the survey plan 566/20.
37. DW4 produced the survey plans FR No 88/179, FR No 224/179 566/20 as DEX No 6, 7 and 8 which survey plans capture the sub-divisions as MN/111/9876 to 9884.
38. Upon cross-examination by Mr. Lakicha, DW4 stated that what is on the title is different from the deed plans and the survey plan that he has. He further stated that the deed plan No 164720 was not available in the records.
39. Upon cross-examination by Mr. Karega, DW4 stated that he has brought the survey plan for FR 566/20 and upon being shown the grant in the list of documents dated 17th June, 2016, he stated that the grant is MN/111/4394 in the name of Ketan K. Doshi (the 4th Defendant) and it is in survey plan FR No 224/179. DW4 stated that in respect of MN/111/2055 when they checked in their documents, the FR No in the registration card was referring to FR No 224/179 and the LR number is not there.
40. DW4 stated that the LR numbers that they have are MN/111/493 and their records do not support MN/111/494 and MN/111/2055. DW4 further referred to the letter of allotment dated 5th June, 1992 referring to MN/111/428 to 431 and stated that he has not seen any survey plan that amalgamated the plots as referred in the letter of allotment.
41. DW4 was shown a letter dated 7th March, 2016 and he stated he knows a person by the name B. Siro who works for Survey of Kenya in charge of deed plan drawing office and that they have a referencing system and the letter has reference CR 268/10/38/39 which letter contradicts what he has said.
42. DW4 further informed court that in their language, they say authentication and not authentication that makes the letter look suspicious. DW4 also stated that he did not find deed plan No 164720 in their office but they found a property in their register and checked but it was referring to FR No 224/79, which is not correct.



43. It was DW4's testimony that they have a proposed sub-division scheme by Edward Kiguro Land Surveyors which refers to FR No. 224/29 that has not been approved by any authority. DW4 stated that the proposed sub-division scheme refers to a different survey plan and one of the conditions in the letter of offer dated 5th June, 1992 is acceptance and payment of premium within 30 days' failure to which the offer lapses.
44. He stated that the payment of Kenya Shillings 218,602/= was done on 7th August, 1995 for processing of the deed plan which only starts after payment has been made. He stated that the deed plan was issued on 24th July, 1992 but payment was received in 1995.
45. Upon cross-examination by Mr. Chelule, DW4 stated that he did not carry out a search for LR No MN/4404 and MM 4394. He stated that he knows Simon Ngumi who is their legal officer and that he does not know whether he relied on the survey plan or the data by a person by the name B. Siro. DW4 stated that the LR numbers began from MM/117/428 to 435, the survey was done in 1959, and that he could not trace a copy of the deed plan No 164720.
46. DW5 Samuel Kariuki a Land Registrar at the Ministry of Lands and Physical Planning at Mombasa Land Registry adopted his witness statement dated 1st September, 2021 as part of his evidence and stated that the two parcels of land namely MN /111 /4394 and MN 111 2055 are registered with two distinct titles registered as land grants being first occupants of land allocated from the government.
47. He testified that parcel No MN 111 2055 registered in the name of the 1st Defendant has never been subdivided and was registered on 12th February, 1996. He stated that the title is active and has no encumbrance. DW5 testified that the Plaintiff's title came as a result of subdivisions arising from MN 111 4394 and that the title was registered on 23rd December, 2003 in the name of Ketan Doshi (the 4th Defendant).
48. DW5 testified that on 1st July, 2004, subdivisions were done which gave rise to new subdivision MM 111 4402 to MN 111 4407 with six subdivisions in total which were registered as title Nos CR 38031 to CR 38036 and that the Plaintiff, Aggrey Anzala, is the registered owner of the subdivisions MN 111/4404 under title No 38033.
49. It was DW5's evidence that the 2nd Plaintiff is the registered owner of subdivisions No MN/111/4407 under title No 38036 and that Kiso Enterprises (the 1st Defendant) was registered first and has never been impeached and it is active. DW5 produced a bundle of documents as DW5 Exhibits 1 to 20.
50. Upon cross-examination by Mr. Lakicha, DW5 stated that the title for the 1st Defendant was issued on 12th February, 1996 from the office of the Commissioner of Lands with a forwarding letter which was properly registered in the land registry in Mombasa on the same date. DW5 stated that in respect of MN 111/4394, he can only confirm the registration particulars as per the copy of the title at page 2.
51. DW5 stated that they could not get any trace of correspondence file as to how and when it was received at the lands office in Mombasa this being after registration of former government land which involves opening of a file and a forwarding letter. He stated that he could not account for the full authentication of the process.
52. DW5 referred to page 8 of the bundle which is a letter dated 3rd March, 1992 and stated that he might not have the custody of the shareholding of Kiso Enterprises (the 1st Defendant) and that he is aware that there were rectifications which were done on the sub-divisions arising from titles MN 111 4394 but such rectifications have not been done on the titles held by the Plaintiff.



53. DW5 stated that he has the benefit of counter-checking the records captured on the respective deed plans and he stated that the parcels fall squarely on the same ground and further that there is evidence of coordinates sharing the same neighboring plots.
54. DW5 further testified that when allocation of these titles are done by the government, there might have been irregularity in allocation of one of the titles and that unless the first registered title is impeached on the ground of fraud, mistake or irregularity, the first registration takes precedence over the subsequent title.
55. DW5 stated that the title by the 1st Defendant is active, verifiable and further that according to the substantive documents, the deeds were rectifying the LR numbers and deed plan numbers of the titles on record.
56. Upon cross-examination by Mr. Karega, DW5 stated that when the documents are in their office for registration, they do not go to the physical location to confirm and that they rely on trust that the documents forwarded to them are authentic. He stated that is why there are provisions in the law for cancellation of owner's entries. DW5 referred to the deed from page 2 of the bundle and stated that the deed plan number is 219313 and the adjacent plot at the bottom is 4393 and at the top is MN 111/4394.
57. DW5 stated that document number 5 deed plan No 164720 at the bottom is MN/111/432 and at the top is MN111/424 and that they emanate from their office. It was his evidence that the grant is signed otherwise, it could not have been registered further that the letter dated 3rd March, 1992 does not have a plot number and it only indicates it is approved.
58. It was DW5's testimony that the letter of allotment dated 5th June, 1992 does not make any reference to the 1st Defendants MN/111/2055 and that the documents from page 8 to 14 were brought to their attention by virtue of a dispute in his office involving parcel No 4393 and parcel No MN 111/432-435 but that the documents came later and not at the registration.
59. Upon cross-examination by Mr. Chelule, DW5 referred to document No 3 in the bundle and stated that the registered owner of the title is Joshua Kimani. He stated that the title is charged to Barclays Bank for Kenya Shillings 2,100,000/= and a further charge of Kenya shillings 4,900,000/= million which records are in their office.
60. DW5 stated that they have records of 4404 and the registered owner is Aggrey Omu Anzala which was a sub-division of 4394 and registered at the Land Registry in Mombasa. DW5 stated that if a person does a search, one gets the record of ownership of the suit property and that there were other sub-divisions a total of six and a transfer to different individuals. He stated that all were from Ketan Doshi and all are on the same location on the ground.
61. Upon re-examination, DW5 testified that the title in respect of Plot No MN 111/2055 in the name of the 1st defendant was allocated together with parcel No MN 111/432 to 435. He testified that the applicants were Charles P Chemutot and J. Kimani as per the allotment letter which has a survey sketch plan which is document No 10 in the bundle. DW5 testified that the area was initially captured as MN/111/425 to MN/111/435 it is noted that Somba Kivalya was the beneficiary of plots No 428 to 435, the same were consolidated to give rise to plot No 2055 in 1996.
62. DW6 Benjamin Siro testified that he works at the Ministry of Lands, department of survey where he checks, draws and verifies deed plans for registration. DW6 testified that he is aware of a letter dated 7th March, 2016 but he could not trace the original and that he is the one who wrote the letter. DW6



- testified that he has three deed plans MN 111/2055 which is in Kilifi South of Takaungu deed plan No 164720 and deed plan No 219313 for LR No 209/7259/143 in Eastleigh in Nairobi.
63. Upon cross-examination by Mr. Lakicha, DW6 stated that MN 111/2055 corresponds with the records in their office and it is deed plan No 164720 and it was prepared on 4th July, 1992. He stated that deed plan No 219313 is for LR No 209/7259/143, which is land in Eastleigh Nairobi. He further stated that it is not procedural to have the same number for a deed plan in a different locality and that this can only happen if there is a mistake and when it is brought to their attention it is cancelled and counter-signed and that it depends on who has discovered the mistake. He stated that a private licensed surveyor did the survey by the name Edward Kiguru.
 64. Upon cross-examination by Mr. Karega, DW6 stated that his duties are to check and verify deed plans and it entails ensuring that the deed plan details correspond with the survey records. He stated that where there is an error, they have to check and verify from the survey records and that the survey record is the source of amalgamation and subdivision together with the survey plan.
 65. DW6 stated that the deed plan 164720 and the plot at the top of the deed plan is MN 111/424 and at the bottom is MN 111/432. DW6 referred to the survey plan number 88/179 and that the plot No 432 is in FR No 88179, further that there is a survey plan that is cross referenced FR No 224/179.
 66. It was DW6's evidence that he cannot see any amalgamation indicated to create MN 111/2055 from survey plan 224/179 as it is not reflected on the survey plan, further that the register does not correspond to the survey plan in respect of this plot and that the adjacent plot does not appear in the survey plan 224/179 and that it is not correct the plot No 2055 came from FR No 224/179.
 67. He stated that duplication of deed plans rarely happen and that the deed plan for Nairobi was issued on 12th August, 1998 and that the other deed plan on the register was issued on 24th July, 1998.
 68. Upon cross-examination by Mr. Chelule, DW6 stated that once the deed plans leave their survey office, they do not come back for verification as there is no department office in Mombasa for verification. DW6 further informed the court that a title can be prepared without verifying the deed plans.
 69. DW7 Ketan Doshi adopted his witness statement dated 22nd June, 2018 as part of his evidence and produced the list of documents dated 29th August, 2016 as DEX No 1 to 12.
 70. DW7 testified that he was allocated the suit land in 1997, paid via bankers cheque and was issued with a title deeds in 2003 in respect of plots Nos 4393 and 4394. He testified that he continued paying land rent and rates and sub-divided the property and sold all of them and transferred the properties to new owners from MN 111/4400 to 4407.
 71. Upon cross-examination by Mr. Lakicha, DW7 stated that he was allotted the parcels of land in 1997 but neither has a letter of allotment nor the payment receipts in the list of documents. DW7 was referred to the letter of allotment dated 5th June, 1992 to Kiso Enterprises and confirmed that the standard premium was Kenya Shillings 218,690/= and a receipt dated 7th August, 1995 for Kenya Shillings 218 690 vide cheque number 852264.
 72. DW7 also confirmed that there is a letter dated 11th January, 1995 forwarding a grant copied to Kiso Enterprises Limited and further that vide a letter dated 3rd March 1992 being an application for allocation of land which was approved by Daniel Moi, the former President, to Charles Chemutut and G. K Somba Kivalya. He stated that title No MN/111/4393 deed plan No 219312 issued on 24th July, 1998 and his title was issued on 23rd December, 2003 and that the 1st Defendant's title was issued on 12th February, 1996 and deed plan issued on 24th July, 1992.



73. Upon cross-examination by Mr. Chelule, DW7 stated that he was allocated the property in 1997, contacted the area chief, took possession on 1st January 2004 and got his title on 23rd December 2023. He stated that there were some squatters on the land whom he compensated.
74. DW7 stated that the 1st Defendant was not in possession and they used barbed wire and poles to fence. He further stated that they were never denied access by the 1st Defendant and only knew about it in 2016 when this case was filed.
75. It was DW7's evidence that he sub-divided the land into 8 plots and sold the plots to Dr. Joshua Kimani, Dr. Aggrey Anzala and Dr. Njagi, gave them possession and transferred the suit parcels of land. He stated that he was notified by one of the users that there was an issue with the deed plans because they overlapped. That the same were rectified and given new survey and deed plans.
76. Upon re-examination by Mr. Karega, DW7 testified that his title was issued in 2003 and the suit was filed in 2016 more than 13 years. It was his evidence that he does not have most of the documents after selling the properties as he gave them to the purchasers. DW7 stated that the acceptance of the letter of allotment dated 5th June 1992 was not done within 30 days hence it had lapsed when payment was done on 7th August, 1995 which was outside the 30 days period.
77. DW7 referred to document number 5 in the Land Registrar's bundle LR No MN/111/2055 and stated that the letter of allotment dated 5th June, 1992 is not in respect of LR No MN/111/2055 and that the transfers were registered on 20th December, 2005 to Aggrey Anzala Omar and Joshua Kimani on 16th November, 2005. Further that nobody came to claim possession until 2016 when this suit was filed.

Plaintiff's Submissions

78. Counsel for the Plaintiff identified the following issues for determination:
 - a. Whether the Plaintiffs have proved their cases against the Defendants?
 - b. Whether the Plaintiffs are Innocent Purchasers of Value over the properties?
 - c. Whether the 1st Defendant's Title to the Property has been extinguished by virtue of the *limitation of actions act* (Cap 22 Laws of Kenya)?
 - d. Whether the Plaintiffs are entitled to the relief sought?
 - e. Who should bare the costs of the suit
79. Counsel relied on Section 26 (1) of the *Land Registration Act* and submitted that the Plaintiff has proved his case against the 1st Defendant to warrant the cancellation of their title.
80. Counsel further submitted that in the alternative, the Plaintiff has proved his case against the 2nd and 4th Defendants to warrant his indemnification against loss should their titles be cancelled by the court.
81. It was counsel's submission that the 1st Defendant's Certificate of Title is impeachable for being illegally obtained as they obtained the same without paying for its allocation in time and the Deed plan was prepared prior to them paying for the same which points to a corrupt scheme on their part.
82. Mr. Chelule submitted that the Plaintiff qualifies as an innocent purchaser for value as he holds certificates of title over the properties, that he purchased the property in good faith for valuable consideration without notice of any fraud and that he was not a party to the fraud, that the vendor



- had an apparent valid title, and that he was in occupation of the property. Counsel further relied on the case of *Katende v Haridar & Company Limited* [2008] 2 E. A. 173.
83. Counsel further submitted that the 1st Defendant was guilty of laches and is thus estopped from exercising his rights over the property by virtue of the Section 7 of the Limitations of Actions Act Cap 22 and the Registration of *Land Act*, No 6 of 2012.
 84. It was Mr. Chelule's submission that the 1st Defendant has in its defense stated that it was allocated the property on 5th June, 1992 and their title registered on 12th February, 1996 but they have however not tendered any substantive evidence to show that they took any steps to occupy the property after obtaining title over it. That the 4th Defendant has however tendered evidence that he took action to occupy the property after allocation in 1997, and placed the Plaintiffs in occupation of the suit land in 2005 after they purchased it and thereafter the Plaintiffs had uninterrupted occupation over the property until December 2015 when the 1st Defendant showed up through an agent Mr. Jaffer Sharif.
 85. Counsel relied on Section 13 of the Limitation of Action and submitted that the right accrued to the Plaintiffs from the time that the 4th Defendant took possession over the property in 1997, and further when he obtained title in 2003, by the time this suit was instituted in the year 2016, 19 years had lapsed since 1997 and 14 years had lapsed since the year 2003 when the 4th Defendant obtained title over the property.
 86. Counsel therefore submitted that the plaintiffs have proved that they are innocent Purchasers of value and the order of injunction should be granted against the 1st Defendant from interfering with the right and occupation of the properties by the plaintiffs. Counsel further submitted that the Plaintiffs' alternative claim for indemnification for loss at the existing current market value of the properties should be allowed as per section 81 of the *Land Registration Act*.
 87. Counsel relied on the cases of *Abiero v Thabiti Finance Company Ltd & Another* (2001) eKLR and *Stelco Properties Limited & another v Njugi Ventures Limited & another* [2021] eKLR and submitted that the court should order for special damages of the value of the land as per the valuation reports produced valued at Ksh 40,000,000/= and Ksh 50,000,000/= respectively against the 2nd and 4th Defendants . Counsel also prayed for Ksh 20,000,000/= as exemplary damages against the 4th Defendant should the court order for the invalidation of their titles plus costs of the suit.

1ST Defendant's Submissions

88. Counsel for the 1st Defendant identified the following issues for determination:
 - a. Whether the Plaintiff is a bonafide owner of the suit property?
 - b. Whether the 1st Defendant is the lawful owner of the suit property?
 - c. Whether the suit property was available for allocation to the Plaintiff?
 - d. Whether upon allocation of the suit property to the 1st Defendant, the same was available for re-allocation to the 4th Defendant and the Plaintiff?
 - e. Whether the 4th Defendant had a good title to pass to the Plaintiff?
 - f. Whether the Plaintiff acquired the suit property lawfully, regularly and procedurally?
 - g. Whether the sale and transfer of the suit property by the 4th Defendant to the Plaintiff was procured by fraud and/or irregularity?



- h. Whether the Plaintiff is entitled to the orders sought?
 - i. Whether the 1st Defendant is entitled to the orders sought in the Counter-claim?
89. Counsel for the 1st Defendant submitted that by the letter of allotment dated 5th June, 1992, the 1st Defendant was allotted, Land Reference No MN/III/428-431 measuring approximately 11.11 Acres for a term of Ninety Nine (99) Years commencing 1st June, 1992 at a standard premium of Ksh 185,000/= with an annual rent of Ksh 37,000/= and was subsequently issued with a valid title to the suit property and therefore the Plaintiff and the 4th Defendant's alleged ownership or any other evidence of lawful possession of the 1st Defendant's suit property is misplaced, null and void.
90. Counsel for the 1st Defendant submitted that the 1st Defendant was the first one to be registered owner and the Plaintiff's Title if at all was registered, was purportedly done on 1st July, 2004 about Twelve (12 years) after the suit property was allocated to the 1st Defendant and that the 1st Defendant was the absolute registered proprietor of the suit property and therefore entitled to exclusive use and quiet enjoyment of the suit property.
91. Counsel further submitted that the purported second allotment to the 4th Defendant of the suit property and the subsequent sale of the property was marred by fraud and misrepresentation as the 1st Defendant's allotment and the Certificate of title was the first in time hence the Plaintiff is not entitled to the orders sought as the Plaintiff's suit does not disclose any cause of action against the 1st Defendant.
92. Counsel relied on the cases of *Asbmi Investment Limited v Riakina Limited & Another (Civil Appeal 384 of 2019)* [2021] KECA 184, Charles P. *Chemutut v Peter Walker & 5 others & 2 others (Malindi ELC CASE NO 136 OF 2018)*, Martha Chelal & Another v Elijah Kipkemoi Boiywo & 2 others [2019] eKLR, Arthi Highway Developers Limited vs West End Butchery Limited & 6 others, Court of Appeal at Nairobi, Civil Appeal No 246 of 2013 [2015] eKLR, Mary Wanjiru Kihugu & 6 others v Regency Co-operative Savings and Credit Society Limited [2021] eKLR, Vijay Morjaria v Nansingh Madhusingh Darbar & Another [2000] eKLR, Hudani v Mukunya & 5 others (Civil Appeal 353 of 2018) [2022] KECA 93 (KLR) and *Wambui v Mwangi & 3 others (Civil Appeal 465 of 2019)* [2021] KECA 144 (KLR) and urged the court to dismiss the Plaintiff's case and allow the 1st Defendant's counterclaim as prayed.

2nd And 3rd Defendants' Submissions

93. Counsel for the 2nd and 3rd Defendants identified the following issues for determination:
- a. Who is the legal owner of the suit land?
 - b. Whether the Plaintiffs are entitled to the reliefs sought?
94. Counsel submitted that the title deed issued to the 1st Defendant was registered in 1996 and therefore issued first in time compared to the one issued to the 4th Defendant which was registered in 2003. It was counsel's submission that according to the evidence by DW1 and DW4 plot no MN/III/4394 is on survey plan No. 436/11 measuring 2.211 hectares and registration district is Kilifi in Mtwapa and on the other hand plot no MN/III/2055 measures 4.4 ha and registration district is Kilifi in Takaungu. Further that the deed plan for plot no L.R. MN/III/2055 is No 164720 from original survey plan 88/179 and is situated on the second row from the beach south of Takaungu and that the deed plan for plot no LR MN/III/4394 is indicated as no 219313 but the property is situated in Eastleigh in Nairobi County.



95. Counsel relied on the cases of *Davis Mwashao Jome v Damaris Karanja & another* [2021] eKLR and *Munyu Maina vs Hiram Gathiha Maina* [2013] eKLR and submitted that from the foregoing, the 1st Defendant has proved that he is the legal owner of the suit land having acquired it lawfully.
96. Mr. Munga also submitted that the process of issuing title to the 4th Defendant did not confer proprietary interest to him since the land was not available for allocation thus the same applies to any transfer to third parties. Counsel therefore submitted that the Plaint is devoid of merit and should be dismissed with costs.

4th Defendant's Submissions

97. Counsel for the 4th Defendant identified the following issues for determination:
- a. Whether any fraud or misrepresentation has been proved against the 4th Defendant as relates to the process of acquiring and subsequent sale of the properties to the Plaintiffs.
 - b. Whether the Plaintiffs obtained and acquired valid title from the 4th Defendant.
 - c. Whether the 1st Defendant's land reference number MN/III/2055 exists in any survey plan and if it does not, what is the legal status of the 1st Defendant's title CR. 28078?
 - d. Whether the failure by the 1st Defendant to comply with the conditions under the allotment letter nullifies the grant issued to the 1st Defendant and to that extent, whether the 1st Defendant's title though issued first in time is valid?
 - e. Whether in any event, the claim for indemnity is available to the Plaintiffs as against the 4th Defendant.
 - f. Who should bear the costs of this application?
98. Counsel relied on the cases of *Davis Mwashao Jome v Damaris Karanja & Another* [2021] eKLR, *Macfoy vs United African Co. Ltd* [1961] 3 ALL ER 1166, *DR Joseph N.K Arap Ng'ok vs Moiyo Ole Kiewua & 4 others Nairobi Civil Appeal No 60 of 1997* (unreported), *Rukaya Ali Mohamed vs David Gikonyo Nambacha & another* (Kisumu HCCA No 9 of 2009), *John Ngata vs Attorney General* [2022] eKLR, *Gitwany Investment Limited v Tajmal Limited & 3 others* [2006] eKLR.
99. Counsel submitted that the 4th Defendant has on a balance of probabilities demonstrated that he was allotted LR Nos MN/III/4394 by the Commissioner of lands and further that the grants and titles issued by the Commissioner of Lands as well as the Land Registrar were genuine and legally acquired.
100. Counsel relied on the case of *Demutila Nanyama Pururmu v Salim Mohamed Salim* [2021] eKLR and submitted that the absence of a letter of allotment does not in itself prove that the land was not allotted to the 4th Defendant just as the absence of a sale agreement in that case did not draw an inference that there was no sale.
101. Counsel submitted that the 4th Defendant did not fraudulently acquire LR NO MN/III/4394 and that the Plaintiff's claim for fraud has not been proved to the required standard as the onus of proving the particulars of fraud as pleaded was upon the Plaintiffs which they have failed to prove.
102. Counsel relied on Section 107-109 of the *Evidence Act* and the case of *Vijay Morjaria vs Nansingh Madhusingh Darbar & Another* [2000] eKLR and submitted that the mere fact that the 4th Defendant did not produce his allotment letter cannot lead to a conclusion that he fraudulently acquired his property.



103. It was counsel's submission that the 4th Defendant proved that he took possession of the property after compensating squatters who had invaded the suit land, subdivided the same and subsequently sold and transferred the subdivisions which are registered in the names of the current owners being the Plaintiffs in this case.
104. Counsel further submitted that the current subdivisions are backed by an existing survey plan F/R which were produced in evidence and that the Plaintiffs' plots are located south of Takaungu whilst it is not clear where the 1st Defendant's property is located.
105. Counsel for the 4th Defendant submitted that the 1st Defendant's current title for LR Nos MN/III/2055 and Deed plan No 164720 were obtained through a corrupt scheme and fraud, relied on the case of Torino Enterprises Limited vs Attorney General (Petition 5 (E006 OF 2022) [2023] KESC 79 (KLR) and submitted that since the conditions in the letter of offer issued to the 1st Defendant were not met, the offer lapsed and all purported subsequent actions in relation to the lapsed allotment were a nullity in law.

Analysis And Determination

106. The issues for determination are as follows:
 - a. Whether the 4th Defendant had a good title to pass to the Plaintiffs?
 - b. Whether the 1st Defendant is the lawful owner of the suit property?
 - c. Whether upon allocation of the suit property to the 1st Defendant, the same was available for re-allocation to the 4th Defendant?
 - d. Whether the Plaintiffs are entitled to the orders sought?
 - e. Whether the 1st Defendant is entitled to the orders sought in the Counter-claim?
107. It is the Plaintiffs case that they identified plot numbers MN/III/4404 (measuring approximately 2.5 acres) and MN/III/4407 (measuring approximately 3.5 acres) and agreed to purchase the said properties, from the 4th Defendant whereby Mr. Aggrey Anzala paid a consideration of Ksh 1,800,000/= for MN/III/4404 while Mr. Joshua Kimani paid Ksh 2,300,000/= for MN/III/4407.
108. It is also the Plaintiffs case that they carried out searches over the respective properties and confirmed that the 4th Defendant was registered as proprietor of the suit parcels having subdivided the properties from Land Title MN/III/4394. The Plaintiffs further stated that they took possession and enjoyed quiet, uninterrupted possession until sometime 2015 when the 1st Defendant through its agent Mr. Jaffer Sharif Omar invaded the property claiming ownership.
109. The Plaintiffs averred that in case their titles are found to be invalid then they should be indemnified for their loss by the 4th Defendant who sold the property to them. The Plaintiffs called a valuer Mr. Samuel N. Musyoki who testified that the properties MN/III/4404 belonging to Mr. Aggrey Anzala has a current value of Ksh 40,000,000/= while that of Joshua Kimani, MN/III/4407 with a current market value of Ksh 50,000,000/= both values being corroborated by the 1st Defendant's valuer Mr. Shukri Osman (DW2) who gave the same valuation over the property.
110. The 1st Defendant's case was that by a Letter of Allotment dated 5th June, 1992, the 1st Defendant was duly allocated, Land Reference No MN/III/428-431 measuring approximately 11.11 Acres for a term of 99 years commencing 1st June 1992 at a standard premium of Ksh 185,000/= with an annual rent of Ksh 37,000/= and was subsequently issued with a valid title to the suit property.



111. The 1st Defendant further stated that it was allotted the suit land and issued with a certificate of title in 1992 while the 4th Defendant's alleged allotment to the suit land was done in the year 1997 thus the 1st Defendant's certificate of title was first in time and must prevail because without any cancellation by the Commissioner of Land of the original title, the 1st Defendant's certificate of Title still retains its sanctity. The 1st Defendant prayed for the orders sought in its counter-claim and urged the court to dismiss the Plaintiffs suit with costs.
112. The 2nd and 3rd Defendants submitted that the 1st Defendant had proved that it is the legal owner of the suit property and that it had acquired it lawfully. Further that the 4th Defendant did not pass a good title to the plaintiffs as the process of allocation was flawed for failure to establish the root of the title.
113. The 4th Defendant also claimed to have been allocated the suit parcels lawfully and sold to the plaintiffs and other third parties. It was his case that the instruments of transfer were registered on 20th December, 2005 and 16th November, 2005 for title No CR 38033 and CR 38036 respectively.
114. It was also the 4th Defendant's case that the letter of allotment issued to the 1st Defendant was neither accepted nor payments made within the stipulated time hence the all purported subsequent actions in relation to the lapsed allotment were a nullity in law.
115. This case hinges on one important question, which is whether the 4th Defendant had a good title to pass to the Plaintiffs. Once this question is answered either in the affirmative or in the negative, then the other issues will fall into place.
116. The Plaintiffs' claim is that they bought the suit parcels of land from the 4th Defendant and paid the full purchase price after he had subdivided the parcels. It is not in dispute that the plaintiffs bought the suit parcels from the 4th Defendant, this is a fact that is admitted by the parties in dispute. What is in dispute is whether the 4th Defendant had a good title to pass to the plaintiffs.
117. The parties have enumerated detailed evidence on how they got the parcels of land in the proceedings above and the submissions. The Plaintiffs indicated that they entered into sale agreements with the 4th defendant, carried out searches, 1st Plaintiff took a bank loan, charged the suit property and paid the purchase price in full. Mr. Anzala paid Kshs. 1,800,000/ and Mr. Joshua Kimani paid Kshs. 2,300,000/ only.
118. The evidence on record shows that the 4th Defendant claimed to have been allocated the land by the Commissioner of Land in 1997 and later subdivided and sold to the Plaintiffs. The 4th Defendant admitted that he neither produced the application for allotment nor the allotment letter. He also admitted that the 1st defendant's allotment letter was issued on 5th June 1992 before the 4th Defendant's registration which was done on 23rd December 2003.
119. The 1st defendant gave a chronology of the process of his allotment of the suit parcel of land and produced documentation, namely, the application for allotment, the allotment letter, payment receipts, copy of title, searches, and rent payment receipts. The 4th Defendant was not able to produce the documents to prove the root of his title.
120. Courts have stated in many decisions that where there is a dispute over the ownership of property and particularly where there is a land parcel with two titles the court need to go to the root of the title to



establish the true owner of the suit land parcel as was held in the case of Hubert L. Martin & 2 Others Vs Margaret J. Kamar & 5 Others [2016] eKLR, as follows:

“A court when faced with a case of two or more titles over the same land has to make an investigation so that it can be discovered which of the two titles should be upheld. This investigation must start at the root of the title and follow all processes and procedures that brought forth the two titles at hand. It follows that the title that is to be upheld is that which conformed to procedure and can properly trace its root without a break in the chain. The parties to such litigation must always bear in mind that their title is under scrutiny and they need to demonstrate how they got their title starting with its root.”

121. Similarly, in the case of Munyu Maina Vs. Hiram Gathiha Maina [2013] eKLR the court held that:

“We state that when a registered proprietor’s root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which would not be noted in the register”.

122. This court also dealt with a similar case involving the same parcels of land and the 4th Defendant who had sold the resultant subdivisions to third parties. In the case of *Chemutut v Walker & 5 others; Doshi & another (Third party) (Environment & Land Case 136 of 2018)* [2023] KEELC 776 (KLR) (15 February 2023) (Judgment) the court held that:

“The 1st third party did not prove that he had acquired a good title to pass to the 1st and 2nd Defendants as he was not able to ascertain the root of the title through application and allocation of the suit land. It follows that the 1st Third party’s title was unprocedurally obtained as there was already an allocation to the Plaintiff which was valid and has been confirmed by the court in the JR application.

103. The issuance of a grant to the 1st Third Party was therefore null and void ab initio and ineffectual to confer any right, interest or title upon the 1st Third Party. The net result is that all downstream transactions emanating therefrom are null and void as the 1st Third Party did not have a good title to pass.

104. The only remedy is to indemnify the 1st and 2nd Defendants with a refund of the purchase price and interest at court rates. At the time the 1st Third party was purportedly allocated the land, the same was not available for alienation. How did the 1st Third party get allocated land that already had an owner?”

123. The 4th Defendant was the 1st Third Party in the above case involving the same parcel of land which he subdivided and sold to the plaintiffs and other third parties. The court therefore finds that the 4th defendant could not pass a good title to the plaintiffs hence the transfers were null and void.

124. Having answered the question whether the 4th Defendant has capacity to pass a good title to the plaintiffs in the negative, the issues that need to be determined are who is the rightful owner of the suit land and what are the remedies available for the plaintiffs in the circumstances.

125. The 4th Defendant admitted that he subdivided the parcel of land and sold to the plaintiffs at a consideration of Kshs 1,800,000/ and Kshs 2,300,000/ respectively. The Plaintiffs and the defendant



produced valuation reports which valued the properties at Kshs 40,000,000/ and 50,000,000/ respectively which amounts were not controverted by any other alternative valuations.

126. The plaintiffs had prayed for an alternative remedy for compensation should the court find that the 4th Defendant did not have a good title to pass to them. The court has already found that the 4th Defendant did not have a good title to pass to them. It follows that the only remedy for the plaintiffs is compensation and refund of the purchase price as per the valuation reports.

127. The 4th Defendant raised an issue of limitation of actions, that the claim was time barred. Section 26 of the *Limitation of Actions Act* provides that time will not begin to run until a party has discovered the fraud or mistake. That section reads:

Extension of limitation period in case of fraud or mistake

Where, in the case of an action for which a period of limitation is prescribed, either—

- a. the action is based upon the fraud of the defendant or his agent, or of any person through whom he claims or his agent; or
- b. the right of action is concealed by the fraud of any such person as aforesaid; or
- c. the action is for relief from the consequences of a mistake, the period of limitation does not begin to run until the plaintiff has discovered the fraud or the mistake or could with reasonable diligence have discovered it:

Provided that this section does not enable an action to be brought to recover, or enforce any mortgage upon, or set aside any transaction affecting, any property which—

- i. in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know or have reason to believe that any fraud had been committed; or
- ii. in the case of mistake, has been purchased for valuable consideration, after the transaction in which the mistake was made, by a person who did not know or have reason to believe that the mistake had been made.

128. In a case where there is fraud or mistake, when does the time start running? It is evident that the plaintiffs and the 1st defendant only discovered the mistake or anomaly of the 4th Defendant's title when this suit was filed in 2016. In the circumstances, I find that the plaintiffs' claim for indemnity against the 4th Defendant is valid and justified.

129. On the issue as to who is the rightful owner of the suit land, the 1st Defendant gave evidence on the process of allocation and the root of its title which was corroborated by the defence witnesses from the Ministry of Lands and confirmed the authenticity of the title. The 1st Defendant complied with the terms in the allotment letter by payment of the stand premium and the requisite fees leading to the issuance of title to the suit land.

130. The suit land having been allocated to the 1st defendant was not available for allocation to anybody else including the 4th Defendant unless the first allocation was lawfully and validly cancelled as was held in the case of *Republic v City Council of Nairobi & 3 Others* (2014) eKLR that:

“Once allotment letter is issued and the allottee meets the conditions therein, the land in question is no longer available for allotment since a letter of allotment confers absolute right of ownership or proprietorship unless it is challenged by the allotting authority or is acquired through fraud mistake or misrepresentation or that the allotment was out rightly



illegal or it was against public interest. In other words, where land has been allocated, the same land cannot be reallocated unless the first allocation is validly and lawfully cancelled.”

131. There was no evidence that the allotting authority canceled the allotment letter and further there was no proof that the suit properties were acquired irregularly, by fraud or by misrepresentation by the 1st Defendant.
132. The court having found that the 1st defendant is the rightful owner of the suit land, it therefore follows that the Plaintiffs are not entitled to any damages for trespass, mesne profits and exemplary damages against the 1st and 2nd Defendants.
133. Section 80 of the [Land Registration Act, 2012](#) gives this Court power to order for cancellation of title. That provision reads:
- (1) Subject to subsection (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.
 - (2) The register shall not be rectified to affect the title of a proprietor who is in possession and had acquired the land, lease or charge for valuable consideration, unless the proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by any act, neglect or default.
134. I have considered the pleadings in the two consolidated cases, the evidence, the submissions by counsel and the relevant judicial authorities and find that the 1st Defendant has proved that it is the rightful owner of the suit land and I therefore enter judgment in the following terms:
- a. A permanent injunction is hereby issued restraining the Plaintiffs, their employees, agents, servants and/or officers from interfering, trespassing, alienating, or in any way dealing in or with the 1st Defendant’s property, L.R No. MN/III/2055 situate at south of Takaungu Trading Centre, Kilifi.
 - b. A declaration is hereby made that the 1st Defendant is the bona fide title holder of L.R No. MN/III/2055 and the Plaintiffs have no rights whatsoever over the suit property.
 - c. A declaration is hereby made that the allocation and registration of the suit property to the Plaintiffs as registered owners are illegal and hence null and void.
 - d. An order directing the Land Registrar to cancel the Plaintiffs’ titles to the suit land or any that emanated from the suit parcels of land.
 - e. An order that the 4th Defendant indemnifies the Plaintiffs Aggrey Anzala Omu and Joshua Kimani by compensating them the value of the properties as per the valuation report at Kshs. 40,000,000/ and Kshs. 50,000,000/ respectively together with interest and costs at court rates from the date of Judgment.
 - f. Costs of the 1st defendant’s counterclaim to be paid by the 4th Defendant.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 22ND DAY OF AUGUST 2024.

M. A. ODENY

JUDGE

