



**Kihiumwiri Farmers Company Limited v Kungu & 9 others (Environment & Land  
Case 2 of 2020) [2024] KEELC 6168 (KLR) (23 September 2024) (Judgment)**

Neutral citation: [2024] KEELC 6168 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MURANGA  
ENVIRONMENT & LAND CASE 2 OF 2020  
LN GACHERU, J  
SEPTEMBER 23, 2024**

**BETWEEN**

**KIHUIMWIRI FARMERS COMPANY LIMITED ..... PLAINTIFF**

**AND**

**MARY GATHONI KUNGU ..... 1<sup>ST</sup> DEFENDANT  
GEORGE KIHOI ..... 2<sup>ND</sup> DEFENDANT  
HANNA NJERI GICHANA ..... 3<sup>RD</sup> DEFENDANT  
PATRICIA WANJIKU WAWERU ..... 4<sup>TH</sup> DEFENDANT  
JAMES NGUGI NDIRANGU ..... 5<sup>TH</sup> DEFENDANT  
ESTHER KAWE ..... 6<sup>TH</sup> DEFENDANT  
NAOMI GOKO ..... 7<sup>TH</sup> DEFENDANT  
BAARIU JOHN ..... 8<sup>TH</sup> DEFENDANT  
JOSEPH KARIRI ..... 9<sup>TH</sup> DEFENDANT  
REUBEN GAKAMI ..... 10<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. By a Plaint dated 17<sup>th</sup> January, 2020, and filed before the Court on 13<sup>th</sup> February, 2020, the Plaintiff herein sought for Judgement against the Defendants jointly and severally for the following orders: -
  1. An eviction order against the Defendants from the suit property.
  2. A permanent injunction restraining the Defendants, their servants and/or agents.
  3. Costs of the suit.



2. It is the Plaintiff's contention that in year 2013, it became the registered owner of land parcel No. LR. No. 13866/29 (the suit property), but it mislaid the original title to the suit property whereupon, a Provisional Certificate of Title dated 11<sup>th</sup> December, 2014, was issued in its name in respect of the suit land.
3. The Plaintiff further averred that it is the proprietor of the apartments situated on the suit land, LR No. 13866/29, and it has been in occupation of the suit land since year 2013, and that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants have No legal interest whatsoever over the suit land, and are trespassers thereon. It was its further contention that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants have encroached on a portion of the suit land, and are cultivating the same without its authority.
4. Consequently, the Plaintiff urged the Court to grant eviction Orders against the Defendants to enable the Plaintiff repossess that portion of the suit land that is illegally occupied by the Defendants.

### **The Defendants' Response**

5. The 2<sup>nd</sup> Defendant opposed the suit vide a Notice of Preliminary Objection dated 25<sup>th</sup> February, 2021, which sought the dismissal of the Plaintiff's suit on the following grounds:
  - a. That the Plaintiff's claim did Not disclose a reasonable cause of action against the 2<sup>nd</sup> Defendant.
  - b. That this court lacked the pecuniary jurisdiction to entertain the suit as it concerned land parcel No. LR. No. 13866/29.
  - c. That the current suit is sub-judice, and should be stayed in view of ELC No. 293 of 2019 (Murang'a Law Courts) which suit was reportedly filed by the Plaintiff and concerns the same-subject as the suit before the Court.
6. The above Notice of Preliminary Objection was canvassed by way of written submissions and a Ruling was delivered by this Court on 9<sup>th</sup> March, 2023, which dismissed the said Preliminary Objection with costs to the Plaintiff.
7. Further, the 2<sup>nd</sup> Defendant filed a Statement of Defence and Counter-claim dated 25<sup>th</sup> February 2021, and denied all the allegations made by the Plaintiff, and averred that it was hazy and unclear as to which of the Defendants the suit was referred to.
8. The 2<sup>nd</sup> Defendant averred that he has a legal interest over the suit land, which he occupies, and it is in the interest of justice that all parties claiming ownership of the suit land are protected so as to avoid miscarriage of justice.
9. In his Counter-claim, the 2<sup>nd</sup> Defendant averred that the Plaintiff (Kihiumwiri Farmers Co. Ltd), approved the sale of part of the suit land to him, and certificates of ownership were processed and issued to him and therefore, the Plaintiff canNot claim that he is encroaching on the suit land.
10. The 2<sup>nd</sup> Defendant further averred that the instant proceedings are rendered sub-judice in view of ELC No. 293 OF 2019 (Muranga Law Courts), which suit concerns the same parties, and subject-matter as the one before this Court
11. Therefore, the 2<sup>nd</sup> Defendant urged the court to allow his Counter-claim on the following terms;-
  - a. The Survey of Kenya do facilitate the survey of the property and beacons be put in place to mark the boundaries.



- b. The Land Registrar Murang'a, be compelled to issue leases and title to the 2<sup>nd</sup> Defendant for the properties that were approved for transfer by the Plaintiff.
  - c. That general damages be awarded to the 2<sup>nd</sup> Defendant for the Plaintiff's misrepresentation of facts.
  - d. That the Plaintiff's suit against the 2<sup>nd</sup> Defendant be dismissed with costs to the 2<sup>nd</sup> Defendant for such period of time and at such rates as the Court may determine.
12. The 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> Defendants filed their joint Statement of Defence dated 24<sup>th</sup> June, 2021, wherein, they denied all the contents of the Plaintiff's claim, and did put it to strict proof.
  13. They contended that the Plaintiff Company was established in 1971, with the objective of purchasing land from British settlers for the benefit of its members. They further averred that as at year 2005, the Plaintiff had a membership of about 6200, and was the registered owner of 1300 Acres of land, on which it carried out large-scale coffee farming. They further contended that the Plaintiff subsequently fell into financial hardship due to massive loan debts and tax liabilities whereupon, the Plaintiff resolved to dispose some of its lands to settle its liabilities.
  14. It was the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> Defendants' further contention that the Plaintiff engaged the services of Haverest Land Investments Limited for purposes of disposing off part of its lands through bulk purchase of land from the Plaintiff, and subsequent re-sale in smaller units to individual purchasers to raise much needed funds.
  15. The 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> Defendants also contended that the Plaintiff's land parcel LR. No. 9214/7, was sold to Haverest Land Investments Limited, who in turn subdivided the said land into smaller portions, which were sold to individual purchasers including the Defendants herein, who occupied and settled thereon.
  16. Furthermore, they invited the Court to take Judicial Notice of the fact that by year 2013, eight (8) Directors of the Plaintiff had been abducted and killed, as a direct result of irregular dealings in the management of the Plaintiff and leadership contests. They further averred that a Presidential Directive was issued in response to the said killings of eight (8) Directors of the Plaintiff, which directive addressed itself to management of the Plaintiff's affairs and the distribution of its land holdings.
  17. Further, it was 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> Defendants' contention that following the issuance of the referred Presidential Directive, the Registrar of Titles took over the management of the Plaintiff's affairs, including the distribution and issuance of titles to the Plaintiff's members and other purchasers. Further, that the said distribution of the Plaintiff's land holdings is an ongoing process which is being conducted by the Ministry of Lands and Physical Planning and Haverest Land Investments Limited, did make presentations during the exercise of issuance of titles to purchasers including the Defendants, who are waiting for title deeds to be issued in respect of the same purchases.
  18. The 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> Defendants also contended that the Registrar of titles cancelled various titles held by the Plaintiff for the purpose of issuing fresh titles, subsequent to the subdivisions.
  19. They further averred that the Plaintiff's Directors were suspended on account of the Presidential Directive above mentioned, and there are No serving Directors of the Plaintiff currently in office. Further, that the present suit has been filed by imposters as the functions of the Plaintiff were assumed



- by the government in order to secure the interest of the public. They contended that they would seek the Court's leave to enjoin Haverest Land Investments Limited in the current proceedings.
20. In their bundle of documents, the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> Defendants annexed a copy of the Plaintiff's certificate of registration dated 26<sup>th</sup> May 2021, which reflects that the Plaintiff was registered as a Company on 21<sup>st</sup> January, 1970., and also annexed an extract of a Kenya Gazette Notice dated 1<sup>st</sup> April, 2016, signed by J.W. Kamuyu in his capacity as the Registrar of Lands, Nairobi.
  21. The 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> Defendants annexed a document titled Haverest Land Investments Limited And Kihiumwiri Farmers Company Limited, which document provides a history of dealings between the Plaintiff on the one hand and Haverest Land Investments Limited, and another entity known as Breeze Kenya Limited, on the other hand, regarding the disposal of the Plaintiff's land holdings.
  22. They further annexed a document titled "Acknowledgment Of Receipt" dated 20<sup>th</sup> September, 2018, which was drawn by the Law Firm of Muturi Njoroge & Company Advocates, and in respect of the disposal of Plot No.145A, situated within land parcel number block 9214(B2), wherein, a Vendor by the name of, Elizabeth Kithiira Kimathi (ID No. 346XXXX), confirmed receipt of the amount of Kshs.2,000,000/=, being the total received purchase price from the Purchaser namely Geoffrey Dickson Kangethe (ID No.4824148).
  23. The 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> Defendants also annexed a document dated 28<sup>th</sup> September, 2018, with the title "Certificate of Ownership" and bearing the Letterhead of "Haverest Land Investment Ltd", which stated that James Ngugi Ndirangu ID No. 2022XXXX (the 5<sup>th</sup> Defendant herein), is the registered owner of Plot No.145-A 9214(B2) measuring 1 Acre.
  24. They also annexed an "agreement for sale" dated 28<sup>th</sup> August, 2020 drawn by the Law Firm of Muturi Njoroge And Company Advocates, Wherein, The Vendor Catherine Wai Noi Munene ID No.9187977 disposed Plot No. 127, measuring approximately 1.25 Acres, located within land parcel number L.R.9214, situated within Kihiumwiri Estate In Muranga County to the Purchaser named therein James Ngugi Ndirangu ID No. 2022XXXX, for the total purchase price of Kshs.2,500,000/=.
  25. The 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> Defendants also annexed an "acknowledgment of receipt" dated 18<sup>th</sup> December 2020, drawn by the same Law Firm of Muturi Njoroge & Company Advocates, in which the Vendor Catherine Wai Noi Munene, confirmed having received from the Purchaser James Ngugi Ndirangu, the balance of Kshs.1,200,000/=

### **The Plaintiff's Response To The Defendants' Defence**

26. The Plaintiff filed his response to the Defendants' Defence on 22<sup>nd</sup> July, 2021, and reiterated the contents of its Plaint dated and demanded strict proof of all averments set out in the Defendants Statements of Defence.
27. After several applications, and various reasons for the delay of the matter, the suit proceeded by way of viva voce evidence and later written submissions were filed. The Plaintiff called one witness to support its case. The 2<sup>nd</sup> defendant also gave himself and called No witness. Even after filing of their Defence, the other Defendants failed to participate in this suit, and therefore, the suit proceeded in their absence.

### **The Plaintiff's Case**

28. PW1 Pharice Mwangi Njoroge, a resident of Kihiumwiri locality and the Chairman of Kihiu Mwiri Farmers Company Limited, affirmed that the Plaintiff has sued the Defendants for encroaching onto its parcel of land and settling thereon.



29. He adopted his Witness Statement as his evidence in chief and produced a list of documents marked as P exhibits 1-3. He also produced a further list of documents as follows; -
- (1) A Certificate of Incorporation issued in the name of the Plaintiff;
  - (2) A Title Deed in respect of land parcel No. I.R.No.14/896;
  - (3) A Title Deed in respect of land parcel No. I.R.No.14/896/1; and,
  - (4) A Title Deed in respect of land parcel No. L.R.No.13866/29.
30. PW1 testified that the Defendants entered onto the suit property without the Plaintiff's permission who is the registered proprietor of the said land, and who is in occupation of the same, thus preventing the exercise of sub-dividing the said land. He urged the Court to allow the Plaintiff's claim and grant an Order of eviction against the Defendants.
31. On cross-examination by Counsel for the 2<sup>nd</sup> Defendant, PW1 testified that he assumed the position of Chairman of the Plaintiff Company following the killing of his predecessor namely, Peter Kimani Kuria. Further, that three (3) other Directors of the Plaintiff Company were also killed, which left four (4) Directors including PW1 to run the Plaintiff's affairs.
32. He further testified that the other three (3) Directors are Not party to these proceedings, and that the Plaintiff's Board of Directors resolved to file the instant suit. He admitted that he did Not produce a copy of the said resolution to the Court. Further, that a committee was convened by the Directors of the Plaintiff including himself, and that he did Not provide a copy of the minutes of the meeting of the Plaintiff's Board of Directors, wherein, it was resolved that the instant suit be filed.
33. PW1 also testified that the Plaintiff Company is duly registered by the Registrar of Companies, and he admitted to Not having produced a CR12 Form in respect of the Plaintiff, and that the same was Not part of his bundle of documents. It was his further testimony that the Plaintiff's Advocate is the custodian of its CR12 Form, while he is the Chairman of the Plaintiff.
34. He reiterated the averment that the Plaintiff's Directors resolved to present the instant suit and admitted that he did Not produce the said resolution as exhibit in court.
35. PW1 also testified that he was authorized by the Plaintiff to commence the present suit and the names of the Plaintiff's members were availed to the Court. He further stated that the suit property is registered as LR. No.13866/29, and it measures approximately 64 Acres. It was his further testimony that the Defendants invaded about 64 Acres of the suit property, and he was Not aware of the actual acreage occupied by George Kihoi (the 2<sup>nd</sup> Defendant herein), as he did Not ascertain the size of the same.
36. PW1 further stated that George Kihoi (the 2<sup>nd</sup> Defendant herein), has built a Water Tank on the suit property, and that the said George Kihoi (the 2<sup>nd</sup> Defendant herein), wanted the subject suit to be stayed to allow him an opportunity to find out the identity of the people who defrauded him. Further he stated that Haverest Company does Not own the suit land, and the suit land belongs to the Plaintiff. It was his testimony that Haverest Company defrauded the Defendants, and that the suit property has Not been subdivided into smaller portions.
37. Further, PW1 admitted that the Defendants are in occupation of the suit property, and that if there are other persons occupying the suit land, they must have entered the same after the Defendants were already settled thereon. He admitted that he could specify the portions of the suit property occupied by each of the Defendants individually.



38. It was his further testimony that the Plaintiff Company belongs to its members, and it has a membership of about 3600 persons, who are the designated beneficiaries of the Plaintiff's land holdings. Further, that the Plaintiff is the proprietor of land measuring approximately 1285 Acres, out of which 64 Acres has been encroached upon by the Defendants.
39. PW1 stated that some of the Plaintiff's members were recipients of parcels of land previously belonging to the Plaintiff, but refuted the claim that the Title Deeds held by the Plaintiff's members were cancelled. He added that each member received a title deed individually in respect of Plots allocated to them, and have Not disposed of the same.
40. He also testified that he does Not kNow the 2<sup>nd</sup> Defendant personally, and was unaware of the section of the suit land occupied by the 2<sup>nd</sup> Defendant. Further, that he was Not aware when the 2<sup>nd</sup> Defendant entered into the suit land and he has never engaged in any business transaction with the 2<sup>nd</sup> Defendant.
41. On re-examination, PW1 testified that the total acreage occupied by the Defendants is 64 Acres, and that the Plaintiff has sued the persons occupying the suit property. He further testified that the government did Not share out the 64 Acres in question, and that No evidence has been presented from the Survey of Kenya to demonstrate the sub-division of the land in question. He also stated that the 2<sup>nd</sup> Defendant is Not an official of the Survey of Kenya, and that HAVEREST Company is Not related to the Plaintiff.

#### **The 2<sup>nd</sup> Defendant's Case**

42. DW1 George Wachira Kihoi, a businessman based in Nairobi, affirmed that he is the 2<sup>nd</sup> Defendant herein. He confirmed that he understood that the Plaintiff was seeking his eviction from the suit land, and he adopted his Witness Statement dated 21<sup>st</sup> February, 2021 as his evidence in chief. He also produced his list of documents dated 25<sup>th</sup> February 2021, as D. exhibits 1-15.
43. DW1 testified that he does Not occupy 64 Acres out of the Plaintiff's land, and disclaimed being a beneficiary of the Plaintiff's land holdings. He testified that he is only aware of Kenyatta Farm. It was his testimony that he purchased land from the said Kenyatta Farm, and that he purchased land from other people who themselves had bought land from Haverest Company Limited between the years 2012 and 2013.
44. It was DW1's further testimony that he moved into the land immediately after purchasing the same and settled thereon. He added that the land in question is subdivided and occupied by about 120 persons. DW1 expressed surprise at the Plaintiff's decision to commence the present suit against only 12 Defendants, whereas the suit property is occupied by about 120 persons. Further, that he kNows only the 1<sup>st</sup> Defendant personally.
45. DW1 denied ever receiving a Demand Notice from the Plaintiff with respect to the suit land, and he stated that it was only through the present suit that he was made aware of the Plaintiff's claim against his ownership of the suit property.
46. It was his further testimony that, initially, the Plaintiff's claim was against two Defendants, while in the present suit there are eleven other Defendants. He affirmed having seen the Title Deed to the suit land as well as the Gazette Notice. He denied the Plaintiff's claim that he invaded the suit property, and stated that he has filed a Counter-Claim against the Plaintiff, and urged the Court to allow the same.
47. DW1 testified that the Plaintiff ceased to exist, and he urged the Court to come to the aid of all the Defendants so that they can obtain Title Deeds for their respective parcels of land. He refuted the Plaintiff's contention that he is a trespasser onto the suit property, and that the Plaintiff ought to have



sued Haverest Company Limited, and Not the Defendants, who purchased their parcels of land from the said Company.

48. On cross-examination by Mr. Gitari for the Plaintiff, DW1 also stated that the Plaintiff does Not own any parcel of land, and that the Plaintiff's land holdings are the property of its members. DW stated that he owns the land in question and is occupying the same and does Not understand why he has been sued by the Plaintiff. He further testified that he is Not a trespasser onto the suit property. He added that he purchased several parcels of land from different persons, who had bought the said land earlier on from Haverest Company Limited.
49. DW1 further stated that upon purchase of his Plots from the suit land in question, he was issued with the relevant Certificates, and that he did Not produce any evidence before the Court to demonstrate a link between the Plaintiff and Haverest Company Limited, and that it was Not his obligation to supply such evidence. He reiterated the claim that he purchased the suit land in year 2012, while others made their purchases in year 2013.
50. DW1 further testified that he is the owner of the parcels of land in contention, and he has provided the respective numbers of those Plots in his list of documents. He admitted that he is Not a member of the Plaintiff and that he was unaware of whether the Plaintiff owns land in the locality in question. He also stated that he owns about 6 Acres, but he was Not very sure about the acreage. He admitted to have seen the Plaintiff's documents, and that the said documents do reveal that the suit land is intact. He also testified that Haverest Company Limited, sub-divided the suit land, and has a membership of 110 members.
51. The Court, on being satisfied that the other Defendants had been served with Hearing Notices but did Not attend Court, directed that the Plaintiff and 2<sup>nd</sup> Defendant do file and exchange written submissions in support of their claim.

### **The Plaintiff's Submissions**

52. The Plaintiff filed its written submissions on 6<sup>th</sup> February, 2024, through the Law Firm of Muturi Njoroge And Company Advocates, and submitted that the Plaintiff is the bona fide proprietor of the apartments situate on the suit land, which is registered as land parcel number LR No. 13866/29, being land reference number 9214/7, within Murang'a County. It was the Plaintiff's further submission that it was issued with a Provisional title on 11<sup>th</sup> December, 2014, upon loss of the original title to the suit property.
53. The Plaintiff further submitted that the Defendants have settled on and are cultivating the suit land without its authority. The Plaintiff refuted the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> Defendants' claim, as set out in their joint Statement of Defence dated 23<sup>rd</sup> June, 2021, to the effect that they purchased their individual parcels of land from Haverest Land Investments Company Limited, who in turn had earlier on purchased land in bulk from the Plaintiff.
54. The Plaintiff further stated that 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> Defendants failed to enjoin Haverest Land Investments Company Limited, in these proceedings to shed some light on whether the latter Company purchased land in bulk from the Plaintiff, and sub-divided and sold the same to the said Defendants.
55. The Plaintiff identified two (2) issues for determination by the Court, as follows:
  - (i) Whether the Plaintiff is the bonafide owner of land reference number 9214/7?
  - (ii) Who bears the costs of the suit?



56. The Plaintiff cited the provisions of Section 26 (1) (a) and (b) of the *Land Registration Act*, to buttress the position that the Courts consider the Certificate of Title issued by the Registrar upon registration as prima facie evidence that the person named therein as the proprietor of the land is the absolute and indefeasible owner thereof, and whose title is Not subject to challenge except on grounds of fraud or misrepresentation to which that person is proven to be a party, or, the aforesaid certificate was procured illegally, unprocedurally or through a corrupt scheme.
57. Reliance was sought in the holding of the Court in the case of *Elijah Makeri Nyangwara vs Stephen Mungai Njuguna & ANother (2013) Eklr*, in support of the proposition that since the Defendants have failed to impeach the Plaintiff's title to the suit property, then this Court is enjoined to afford the Plaintiff the protections related to the right to own property; and the Court should draw the conclusion that the Plaintiff's title is legitimate.
58. The Plaintiff referred to a copy of the Provisional Certificate of Title (I.R. 141896) dated 11<sup>th</sup> December, 2015, annexed in its bundle of documents as well as a copy of the original Title to the suit land, and the Plaintiff's Certificate of Incorporation. It was submitted that the Plaintiff has been in possession of the suit property since year 2013, when the same was registered in its name. The Plaintiff refuted the Defendants' claim that it authorized a third party to dispose its land holdings to them. It was further submitted that the Defendants failed to establish that they purchased any parcels of land from the Plaintiff.
59. Reliance was sought in the holding of the court in the case of *Munyu Maina V Hiram Gathiba Maina (Civil Appeal No.239 of 2009)*, to anchor the proposition that once a registered owner's title is challenged, he must go beyond the instrument of title to show how that the land in question was acquired legally, formally and free from any encumbrances including any and all interests which would Not be Noted in the register.
60. It was further submitted that Defendants failed to supply the following important documents to the Court: Land Board Consent form duly executed by the Plaintiff in their favour, the Original Title Deed to the suit property, Valuation Reports, Sale Agreemenst executed by the Plaintiff in respect of the suit land, duly executed transfer forms by the Plaintiff in the Defendants favour, the Plaintiff's KRA PIN certificate and certificates testifying to the payment of land rates and land rent by the Defendants.
61. The Plaintiff relied on the provisions of Section 30 (f) of the Registered *Land Act*, to anchor the argument that as it is in occupation of the suit property, it holds an overriding interest in the said land. The Plaintiff reiterated the argument that due to the Plaintiff's failure to enjoin HAVEREST LAND INVESTMENTS COMPANY LIMITED, in the suit, the Defendants' contention that they purchased land from that Company is unsubstantiated.
62. On the question of costs, the Plaintiff relied on the provisions of Section 27 of the *Civil Procedure Act*, and submitted that costs should be awarded to a successful party in a suit and the Plaintiff is entitled to the same.

### **The 2<sup>nd</sup> Defendant's Submissions**

63. The 2<sup>nd</sup> Defendant filed written submissions dated 20<sup>th</sup> February, 2024, through the Law Firm of Ileri And Company Advocates ,and set out the history of the instant matter, and reiterated the averments contained in his Statement of Defence, and Counter-Claim dated 25<sup>th</sup> February 2021. It was submitted that the 2<sup>nd</sup> Defendant is the holder of Certificates of Ownership over the relevant parcels of the suit land, which constitute proof of ownership, and remain so until such a time as Haverest Land Investments Company Limited, will process title deeds in favour of the 2<sup>nd</sup> Defendant.



64. The 2<sup>nd</sup> Defendant also submitted that he enjoyed quiet possession of the his portion of the suit property since year 2013, until the filing of this suit. He rebutted the Plaintiff's contention that he is a trespasser on the suit land. He identified two issues for determination by the Court as follows:
1. Whether the 2<sup>nd</sup> Defendant is the legal and bonafide owner of land parcels Nos.  
 Plot No.9214/B2/111&112,  
 Plot No. No.9214/B2/132,  
 Plot No. No.9214/B2/125,  
 Plot No. No.9214/B2/84&85,  
 Plot No. No.9214/B2/03,  
 Plot No. No.9214/B2/153(03),  
 Plot No. No.9214/B2/133,  
 Plot No. No.9214/B2/228,  
 Plot No. No.9214/B/153/18,  
 Plot No. No.9214/095/0961.
  2. Whether the 2<sup>nd</sup> Defendant is entitled to the Orders sought in the Counter-Claim; and,
  3. Whether the Plaintiff is entitled to the Orders sought.
65. The 2<sup>nd</sup> Defendant further submitted that he purchased the mentioned parcels of land from Haverest Land Investments Company Limited, with the Plaintiff's approval and was issued with the relevant Certificates of Ownership. Reliance was sought in the items numbered 1 to 15 in the 2<sup>nd</sup> Defendants Bundle of Documents. The 2<sup>nd</sup> Defendant also submitted that he is the bonafide owner of the said parcels of land, and therefore deserving of the protection set out under Article 40 of *the Constitution*.
66. It was further submitted that the 2<sup>nd</sup> Defendant settled and has enjoyed quiet possession of the said parcel of land since year 2013, thereby acquiring legal and equitable rights over the same. Reliance was placed in the case of *Mwangi & ANother V Mwangi (1986) KLR 328*.
67. On the question of the merits of his Counter-Claim, the 2<sup>nd</sup> Defendant submitted that the Plaintiff has established reputation for failing to issue title deeds to its members, and other bonafide purchasers of its land holdings. Further, that he acquired the land in question lawfully having made the necessary payments in full to Haverest Land Investments Company Limited, with the Plaintiff's concurrence.
68. He sought reliance in the said Certificates of Ownership, the Plaintiff's awareness of the same, as well as his occupation of the parcels of land in question. He further submitted that he is a victim of the Plaintiff's well-kNown Notorious activities that have victimized inNocent purchasers of the Plaintiff's land holdings and which led to State intervention.
69. It was submitted that the Plaintiff has Not approached the Court with clean hands as he is seeking to dispossess the 2<sup>nd</sup> Defendant of the parcels of land in question, which parcels were acquired with the Plaintiff's full kNnowledge and consent.
70. The 2<sup>nd</sup> Defendant relied on the holding of the Court in the case of *Giella v Cassman Brown (1973) E.A. 368* to buttress the argument that the Plaintiff has failed to satisfy the conditions for the grant of injunctive Orders by this Court. Further, that because the Plaintiff approved the disposal of the parcels



of land in contention, and it is precluded from claiming that the 2<sup>nd</sup> Defendant is encroaching on its property.

71. It was 2<sup>nd</sup> Defendant's further submissions that the Plaintiff failed to adduce evidence to demonstrate that it is the registered proprietor of land parcel number L.R. No. 138669/29, thereby, failing to establish its ownership over the suit land.
72. Therefore, the 2<sup>nd</sup> Defendant urged the court Not to allow the injunctive Orders sought by the Plaintiff as it would endanger the 2<sup>nd</sup> Defendant's constitutional rights in respect of the parcels of land in question.
73. The 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> Defendants did Not adduce any evidence Nor file any written submissions, the Court, therefore, will only make reference to their joint Statement of Defence on record.
74. The court has carefully considered the above pleadings, the evidence adduced in court, the written submissions for the Plaintiff and 2<sup>nd</sup> Defendant and finds the issues for determination are;-
  - I. Whether the Plaintiff's witness, PW1 possess the requisite authority to institute and prosecute the present suit on behalf of the Plaintiff?
  - II. Whether the Plaintiff is a Non-existent entity, lacking capacity to institute this suit?
  - III. Whether the Plaintiff is the registered owner of the suit land
  - IV. Whether the cancellation of the Plaintiff's title to the suit land as per the Gazette Notice dated 1<sup>st</sup> April, 2016 was lawful?
  - V. Whether the 2<sup>nd</sup> Defendant's Counter-Claim merited?
  - VI. Who should bear costs of this suit.

**7). Whether the Plaintiff's witness, PW1 possess the requisite authority to institute and prosecute the present suit on behalf of the Plaintiff?**

75. The 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> Defendants averred in their pleadings that the present suit has been filed by imposters as the functions of the Plaintiff were assumed by the government in order to secure the interest of the public.
76. However, PW1 argued that he is the Chairman of the Plaintiff Company, and he is possessed of the requisite capacity to initiate the present suit. In his evidence in court, PW1 did Not tender any evidence attesting to his position in the Plaintiff Company. Further, PW1 failed to present evidence of a resolution having been passed by the Plaintiff's Board of Director authorizing him to initiate the current suit.
77. However, be that as it may, the Court takes further Judicial Notice of the fact that in the case Republic v Joseph Thiongo Waweru & 17 others [2019] eKLR, PW1 testified and gave evidence in his capacity as the Chairman/Director of the Plaintiff. Further, this Court (differently constituted) in the case of Kihiumwiri Farmers Company Limited v Breeze Investments Company Ltd & 3 others [2020] eKLR – Murang'a Environment & Land Case 103 of 2017, did allow PW1 to bring a suit on behalf of the Plaintiff in his capacity as a Director/Chairman of the same.
78. Consequently, this Court takes Judicial Notice of the Judgment of the Court in the case of Republic v Joseph Thiongo Waweru & 17 others [2019] eKLR, which suit involved the trial of persons accused of the murder of the following four (4) Directors of the Plaintiff, namely: Peter Kimani Kuria murdered



on 10/05/2016; Paul Muhuhi Bernard murdered on 28/06/2015; Josphat Kibe Nyoike murdered on 29/07/2015; and Zakary Chege Kiratu murdered on 29/07/2015, respectively.

79. In the above named case, all accused persons were acquitted by the Court on account of insufficient evidence by the prosecution linking them to the murders of the Plaintiff's officers. In the said Criminal case, PW1, testified that he assumed the position of Chairman of the Plaintiff Company following the killing of his predecessor namely, Peter Kimani Kuria.
80. Courts of law are supposed to have certainty, and should Not be inconsistent in their decisions. Taking judicial Notice of the fact that PW1, was recognized as the Chairman of the Plaintiff Company in the previous proceedings, this court will Not depart from that holding. Consequently, this Court is satisfied that PW1 is Not a busybody or an imposter, and he is possessed of the necessary legal capacity to commence the instant suit for and on behalf of the Plaintiff.

### **Whether the Plaintiff is a Non-existent entity and lacking the capacity to file the instant suit?**

81. Both the Plaintiff and 2<sup>nd</sup> Defendant supplied evidence attesting to the registration of the Plaintiff Company, and these documents were; a Certificate of Incorporation issued in the Plaintiff's name, while the 2<sup>nd</sup> Defendant tendered a CR12 form in respect of the Plaintiff. No evidence was tendered by the Defendants to demonstrate that the Plaintiff is No longer in existence. The Gazette Notice dated 1<sup>st</sup> April 2016, that was produced by the 2<sup>nd</sup> Defendant did Not indicate that the Plaintiff Company ceased to exist or became the subject of the process of Winding up process.
82. Therefore, it is the finding and holding of this Court that the Defendants have Not provided the sufficient evidence to prove that the Plaintiff Company is Non-existent. It is trite that he who alleges must proof, and this proof is done by calling sufficient evidence. See the case of Muriungi KaNoru Jeremiah vs Stephen Ungu M'mwarabua [2015] eKLR where the court held as follows;

“As I have already stated, in law, the burden of proving the claim was the appellant's including the allegation that the respondent did Not pay the sum claimed as agreed; i.e. into the account provided.....The trial magistrate was absolutely correct in so holding and did Not shift any legal burden to the appellant.....The appellant was obliged in law to prove that allegation; after the legal adage that he who asserts or alleges must prove.... In the circumstances of this case, the respondent bore No burden of proof whatsoever in relation to the debt claimed.”

83. Having failed to call sufficient evidence to proof the allegation that the Plaintiff Company is a Non-existent entity, this court finds and holds that it is an existent entity, and thus capable of suing and being sued. See the case of Maurice Ooko Otieno v Mater Misericordiae Hospital (2004) eKLR

“The law requires that a suit be brought against a legal entity. This is an individual, a limited liability company, the Attorney General – on behalf of government department, certain parastatals and or co-operations. Mater Misericordiae Hospital has Not been described as a limited liability company. It therefore has No legal capacity to be sued. The plaintiff required to find out what the status of the said hospital is. If it is a business name or a firm then order 29 CPR requires to be complied with. If it deals with trustees, Executors and administrators then order 30 CPR required to be looked into.”



### Whether the Plaintiff is the registered owner of the suit land?

84. From the Plaintiff's bundle of documents, it is evident that the Plaintiff is a holder of Provisional Certificate of title that was issued in its name on 23<sup>rd</sup> January 2013, under the Registration of Title Act, Cap 281(repealed). This Certificate of Title is in respect of land parcel No. LR.13866/29, the suit property.

85. Under section 23 of the said Cap 281(Now repealed) the registration of a person as the holder of a certificate of title confers absolute and indefeasible ownership of the said land. See also the case of *Dr Joseph Arap Ngok vs Justice Moiwo Ole Keiwua & 5 others, Civil Appeal No. 60 of 1997*, where the court held;

“Section 23(1) of the Act gives absolute and indefeasible title to the owner of the property. The title of such an owner can only be subject to challenge on grounds of fraud or misrepresentation to which the owner is

proved to be a party. Such is the sanctity of title bestowed upon the title holder under the Act. It is our law and law takes precedence over all other alleged equitable rights of title, in fact, the Act is meant to give such sanctity of title, otherwise the whole process of registration of titles and the entire system in relation to ownership of property in Kenya would be placed in jeopardy”.

86. The above provisions of law are Now mirrored in *Land Registration Act*, of 2012. Section 24(a) of the said Act of 2012, gives the registered proprietor absolute rights over land, it provides;

“Subject to this Act—

(a) The registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and

87. Further, Section 26 (1) of the said *Land Registration Act* 2012, provides as follows:

“The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all Courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall Not be subject to challenge, except— (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

88. As stated above, the Plaintiff herein annexed a copy of the original title to the suit property dated 23<sup>rd</sup> January, 2013, issued in its name and which title reportedly was mislaid. However, the copy of the Provisional Certificate of Title is annexed as part of the Plaintiff's bundle of documents and which refers to land parcel number IR 141896/1, and is different from the suit property which is registered as land parcel No. LR. No. 13866/29. It is Not clear whether land parcel number IR 141896/1, is the same as land parcel No. LR. No. 13866/29

89. The transfer document annexed by the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> Defendants in their bundle of documents dated 28<sup>th</sup> September, 2018, bears the Letterhead of “Haverest Land Investment



Ltd”, which name differs from that of “Haverest Land Investments Limited”. There is No Affidavit on record by the Defendants verifying that the two mentioned Companies are one and the same.

90. In the above mentioned document dated 28<sup>th</sup> September, 2018, one Elizabeth Kithiira Kimathi (ID No. 346XXXX), is named as the Vendor of Plot No. 9214 (B2) 145-A, which parcel of land is expressed as transferred by the Vendor to James Ngugi Ndirangu ID No. 2022XXXX (the Purchaser). The consideration for the foregoing transfer of land is Not stated in the transfer document. The transfer dated 28<sup>th</sup> September, 2018, is in respect of Plot No.145A, situated within land parcel number BLOCK 9214(B2), which parcel of land was the subject of the Acknowledgment Of Receipt” dated 20<sup>th</sup> September, 2018, between Elizabeth Kithiira Kimathi (ID No. 346XXXX) as the Vendor and Geoffrey Dickson Kangethe (ID No.4824148), in the role of Purchaser. From the foregoing, it is Noteworthy that the same Vendor is conveying the same parcel of land to two different buyers separately on 20<sup>th</sup> September, 2018 and 28<sup>th</sup> September, 2018.
91. The 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> Defendants also annexed a document titled Haverest Land Investments Limited And Kihiumwiri Farmers Company Limited, which document does Not indicate the name of its maker and is unsigned. Further, the said document does Not conform to the usual format contracts, whereby the obligations of each party are set out, rather, it is crafted in the manner of a report.
92. Upon careful perusal of the said document, the Court is satisfied that the same does Not indicate the name and signature of the Director/Officer who signed on behalf of the Plaintiff. Therefore, this Court holds and finds that from the above mentioned document, there is No basis to support the inference that the Plaintiff was a party to the said transaction. Further, it is the holding of this Court that the Defendants have failed to draw any nexus between the Plaintiff and Haverest Land Investments Limited.
93. This court has Noted that it was the Defendants’ contention that Haverest Land Investments Limited, was contracted by the Plaintiff to purchase the Plaintiff’s land holding in bulk for subsequent sub-division, and re-sale to individual purchasers who included the Defendants.
94. Having made such an allegation, the Defendants needed to call sufficient evidence to proof the said allegation. Section 107 of the Evidence Act provides as follows:
- “ (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
- (2) When a person is bound to prove the existence of any facts it is said that the burden of proof lies on that person.”
95. Further, Sections 109 and 112 of the Evidence Act (CAP. 80) state as follows:
- S.109. “The burden of proof as to any particular fact lies on the person who wishes the court to believe in the existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”
- S.112 “In civil proceedings, when any fact is especially within the kNowledge of any party to those proceedings, the burden of proving or disproving that fact is upon him”.
96. Therefore, it was incumbent upon the Defendants to present sufficient evidence attesting to the above mentioned contract between Haverest Land Investments Limited and the Plaintiff to dispose of the



latter's land holdings in bulk for subsequent re-sale to individual purchasers and the Defendants have failed do so.

97. Failure to call that sufficient evidence meant that the allegation was Not proved and it just remained an allegation which is Not sufficient to controvert the Plaintiff's evidence. See the case of *Shaneebal Limited...Vs...County Government of Machakos* (2018)eKLR, where the Court cited the case of *Janet Kaphiphe Ouma & ANo...Vs...Marie Stopes International (Kenya)*, Kisumu HCC No.68 of 2007, where the Court held that:-

“In this matter apart from filing its statement of Defence, the defendant did Not adduce any evidence in support of assertions made therein. The evidence of the 1<sup>st</sup> Plaintiff and that of the witness remain uncontroverted and the statement in the defence therefore remains mere allegations.... Section 107 and 108 of the *Evidence Act* are clear that he who asserts or pleads must support the same.”

**) . Whether the cancellation of the Plaintiff's title to the suit land as per the Gazette Notice dated 1<sup>st</sup> April, 2016 was lawful?**

98. The following title deeds were reported by the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> Defendants to have been cancelled by the Principal Registrar of Titles: (1) LR No.9214/3; (2) LR.No9214/5; (3) LR No.9214/6, and, (4) LR No 9214/7.

In their Statement of Defence, the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> Defendants averred that the following four (4) title deeds were registered as: (1) I.R. 141893/1; (2) I.R. 1411894/1; (3) I.R. 141895/1; and, (4) I.R. 141896/1 and were all the subject of cancellation by the Principal Registrar of Titles.

99. In the Gazette Notice dated 1<sup>st</sup> April, 2016, produced as exhibit, the Registrar of Lands, Nairobi called for the holders of both the original and Provisional Certificates of Title in respect of (1) I.R. 141893/1; (2) I.R. 1411894/1; (3) I.R. 141895/1; and, (4) I.R. 141896/1 to surrender the same to his/her office failure to which the aforesaid Certificates of Title would stand cancelled after the lapse of fourteen days from 1<sup>st</sup> April, 2016.
100. It is Not evident whether the Titles Deeds addressed in the foregoing Gazette Notice are the same as the following land parcel numbers, that is: (1) LR No.9214/3; (2) LR.No9214/5; (3) LR No.9214/6, and, (4) LR No 9214/7.
101. During the trial, the Plaintiff did Not offer any evidence in rebuttal of the Defendants' claim that the title to suit land was cancelled as per the Gazette Notice issued on 1<sup>st</sup> April, 2016.
102. However, the Court of Appeal in *Mombasa Appeal No. 98 of 2016 Super Nova Properties Limited & aNother v District Land Registrar Mombasa & 2 others; Kenya Anti-Corruption Commission & 2 others (Interested Parties)* [2018] eKLR, upheld the holding of the trial Court:

“The only institution with mandate to cancel a title to land on the basis of fraud or illegality is a Court of law”.



103. Similarly, the Court in *Kisumu Misc No. 80 of 2008 Republic V Kisumu District Lands Officer & Another* [2010] eKLR, reasoned as follows:

“it is clear that it is only the Court that can cancel or amend if where the Court is of the view that registration has been obtained, made or omitted through fraud or mistake and only where it is Not a first registration.”

104. Further, in the case of *Harrison Kiambuthi Wanjiru & Another v District Land Registrar Nairobi & 3 others* [2022] eKLR, the Court ruled that;

“the Registrar does Not therefore have the power to cancel title of a registered proprietor, unless under the express Order of the Court.”

105. In the case of *Harrison Kiambuthi Wanjiru & Another v District Land Registrar Nairobi (Supra)*, the Court underlined that the powers granted to the Registrar pursuant to the provisions of Section 79(2) of the *Land Registration Act* refers to alteration of title without consent, if it is established that the error, mistake or omission was obtained by fraud or lack of proper care, and such rectification is limited to errors, mistake or omission, which do Not materially affect the rights of registered proprietor.

106. The foregoing position was upheld in the case of *Lawrence Muriithi Mbabu v District Land Registrar, Nyeri & Another; John Githui Kinyua (Interested Party)* [2019] eKLR, where the Court reasoned as follows:

“The issue of the constitutionality of the revocation of titles by the Registrar was decided in the cases of *Kuria Greens Ltd –vs- Registrar of Titles & ANother* [2011] eKLR and *Isaac Gathungu Wanjohi & ANother –vs- Attorney General & 6 Others* [2012] eKLR, where it is Now settled law that a Registrar has No power to cancel title.”

107. Being guided as above by the case-law, it is the finding and holding of this Court that the cancellation of the Plaintiff’s title to the suit property was unlawful, and in excess of the powers of the powers conferred upon the Registrar pursuant to Section 79(2) of the *Land Registration Act*.

#### **Whether the 2<sup>nd</sup> Defendant’s Counter-Claim merited?**

108. The 2<sup>nd</sup> Defendant affirmed that he was Not a member of the Plaintiff Company, and he was claiming a share of the suit property as a purchaser of the said parcels of land. He argued and submitted that upon purchase of the parcels of the suit land in question, he was issued with the relevant Certificates of Ownership by Haverest Company Limited, which certificates attest to his ownership of the same. He admitted that he did Not produce any evidence before the Court to demonstrate any link between the Plaintiff and Haverest Company Limited. It was his argument that it was Not his obligation to supply such evidence.

109. In the case of *Kenya Akiba Micro Financing Limited V Ezekiel Chebii & 14 Others* [2012] eKLR, the Court held as follows:

“Section 112 of the *Evidence Act* Chapter 80 of the laws of Kenya provides: In civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proofing of disproving that fact is upon him.....where a party has custody or is in control of evidence which that party fails or refuses to tender or produce,



the court is entitled to make adverse inference that if such evidence was produced, it would be adverse to such a party”.

110. Similarly, the Court in the case of *David Katana Ngomba v Shafi Grewal Kaka* [2014] eKLR, reasoned as follows:

“The appellant was well aware of the need to join ICDC in the suit but failed to do so. It is a cardinal rule of evidence that where a party fails to call a critical witness, the court is free to draw an inference that the witness if called would have given adverse evidence against the party who failed to call the witness.”

111. Accordingly, this Court holds and finds that the 2<sup>nd</sup> Defendant having contended that he purchased the suit property with the Plaintiff's approval, he was under obligation to draw a nexus between the Plaintiff and Haverest Company Limited, which entity allegedly sold part of the Plaintiff's land holding to him. Therefore, it is the holding of this Court that the 2<sup>nd</sup> Defendant avoided the joinder of Haverest Company Limited, to the current proceedings to avoid the production of evidence that would have been adverse to him.

112. Consequently, this Court is compelled to draw a conclusion that with Non-joinder of Haverest Land Investment Company Limited to the instant suit by the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> Defendants who, in their joint Statement of Defence on record, had indicated that they would be seeking such joinder, then they avoided to produce evidence that would be adverse to them.

113. The 2<sup>nd</sup> Defendant having failed to draw any linkage between the Plaintiff and Haverest Company Limited, then this court finds and holds that the 2<sup>nd</sup> Defendant has Not proved his Counter-claim on the required standard of balance of probabilities.

114. For the above reasons, the Court dismisses the 2<sup>nd</sup> Defendant's Counter-Claim dated 12<sup>th</sup> April, 2023, in its entirety with costs to the Plaintiff herein for lack of sufficient evidence.

115. Further, the Court has scrutinized the Certificates of Ownership supplied by the 2<sup>nd</sup> Defendant in support of his claim of ownership over the suit property, and it holds and finds that the same are unofficial, private documents and, therefore, Not subject to the protection afforded to a registered owner of land pursuant to the provisions of Sections 24 and 26 (1) of the *Land Registration Act* 2012, which provisions have been restated hereinabove.

116. Therefore, it is the finding and holding of this Court that the said Certificates of Ownership do Not establish any nexus and/ or connection with the Plaintiff. It is the unavoidable conclusion of this Court that the said Certificates of Ownership relied upon by the 2<sup>nd</sup> Defendant are of No legal value whatsoever and do Not constitute a sufficient basis to claim ownership over any portion of the suit property.

#### **Whether the Plaintiff's claim against the Defendants merited?**

117. Having analyzed the evidence as above, this court finds and holds that the Plaintiff has proved its case against the Defendants herein on the required standard of balance of probabilities. Consequently, this court finds and holds that the Plaintiff's claim against the Defendants herein is merited. Accordingly, the Court enters Judgement for the Plaintiff against the Defendants herein jointly and severally as claimed in prayers No (1) and (2) of the Plaintiff's Plaint dated 17<sup>th</sup> January, 2020.



**Who shall bear the costs of the suit?**

118. Section 27 of the [Civil Procedure Act](#) is very clear that cost of the suit is awarded at the discretion of the court. However, costs ordinarily follow the event, and are awarded to the successful litigant. The Plaintiff herein is the successful litigant, and is thus awarded costs of this suit.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 23<sup>RD</sup> DAY OF SEPTEMBER, 2024.**

**L. GACHERU**

**JUDGE**

**23/9/2024**

Delivered online in the presence of:

Joel Njonjo - Court Assistant.

Mr Gitari for the Plaintiff

N/A for All the Defendants

