



**Okoth v Nairobi City County Governmentt & 2 others (Environment & Land  
Case 17 of 2016) [2024] KEELC 7319 (KLR) (30 October 2024) (Judgment)**

Neutral citation: [2024] KEELC 7319 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 17 OF 2016  
LN MBUGUA, J  
OCTOBER 30, 2024**

**BETWEEN**

**MONICA AKINYI OKOTH ..... PLAINTIFF**

**AND**

**NAIROBI CITY COUNTY GOVERNMENT ..... 1<sup>ST</sup> DEFENDANT**

**DAVID WAMBUA KAMULI ..... 2<sup>ND</sup> DEFENDANT**

**JEREMIAH GAKURU NG'ANG'A ..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. Vide a plaint dated 13.1.2016, the plaintiff contends that she is the registered proprietor of the parcel of land known as A2-503C situated in Kayole (the suit plot) having purchased it from the 1<sup>st</sup> defendant on 12.8.1988. That she had peaceful possession thereof until the month of October 2016 when she discovered that unknown 3<sup>rd</sup> parties through the connivance of the defendants had trespassed into the suit plot and the 2<sup>nd</sup> defendant was putting up a Flat thereon with the approval of the 1<sup>st</sup> defendant.
2. The plaintiff therefore seeks the following orders;
  - a. That an injunction does issue against the defendant, its agents, servants or employees restraining it from the trespass, alienation, intermeddling and constructing on the plot of land known as A2 503C situate in Kayole or otherwise howsoever from interfering with the said plot of land.
  - b. The plaintiff prays that there be a declaration that she is the lawful exclusive owner of the Plot of land known as A2 - 503 C situate in Kayole.
  - c. The plaintiff further prays that an order does issue directed to the defendant, its agents, servants or employees to remove any or all construction put on plot of land known as A2 503C situate in Kayole.



- d. That an eviction order does issue against the defendants that they forthwith vacate the plot of land known as A2-503C situate in Kayole and /or remove the illegal developments thereon.
  - e. Costs and interest.
3. The suit is opposed by the 1<sup>st</sup> defendant vide its statement of defence dated 23.5.2016 where it denies allegations levelled against it by the plaintiff and contends that there has never been any allotment of Plots No. A2-503C to the plaintiff.
  4. The 2<sup>nd</sup> defendant opposes the suit vide his statement of defence dated 15.2. 2016 where he contends that he is the current owner of the suit plot, though the plaintiff's name appears on the records of the 1<sup>st</sup> defendant as the registered owner, adding that the latter was to alter its records to reflect the buyers who succeeded the plaintiff.
  5. The 3<sup>rd</sup> defendant's statement of defence is dated 8.7.2016 where he contends that neither the plaintiff nor the 2<sup>nd</sup> defendant's defence discloses any reasonable cause of action against him, thus the suit against him should be struck out.

### **Case for the Plaintiff**

6. The Plaintiff testified as PW1, and she adopted her witness statement dated 13.1.2016 as her evidence in chief. She produced 6 documents contained in her bundle dated 13.1.2016 as P. Exhibit1-6.
7. Her case is that she is the registered proprietor of the suit plot vide purchase from the 1<sup>st</sup> defendant on 12.8.1988. That she had peaceful occupation of the suit plot until the month of October 2016 when she discovered that unknown 3<sup>rd</sup> parties through connivance/collusion with the defendants had trespassed into the plot and the 2<sup>nd</sup> defendant was putting up a Flat with the approval of the 1<sup>st</sup> Defendant.
8. That on 5.11.2015, she caused a search to be done at the 1<sup>st</sup> defendant's offices to ascertain ownership of which the search confirmed that she was the owner of the suit plot. Vide a letter dated 19.11.2015, she raised a complaint to the 1<sup>st</sup> defendant concerning the trespass but no assistance was forthcoming.
9. On cross-examination by counsel for the 1<sup>st</sup> defendant, PW1 reiterated that she bought the suit plot from the 1<sup>st</sup> defendant at ksh.50, 000/= and was issued with a receipt and there were no allotment letters/sale agreement as it was a direct purchase. That at the time, the 1<sup>st</sup> defendant was not issuing titles though she paid for it after instituting this suit.
10. She realized that someone had trespassed unto her plot in 2015, of which she had sent her husband to pay for the plot rates and a clerk managing the records informed him that there was an attempt to change the ledger and that there were suspicious activities on the account relating to the suit plot.
11. She stated that when she took up possession of the suit plot, it was vacant, she put up a temporary fence which was pulled down sometimes, of which she reported the matter to Kayole Police Station and to the 1<sup>st</sup> Defendant but she was not assisted. She then found out that the 3<sup>rd</sup> Defendant was the one on the suit plot. She doesn't know the person identified as Stephen Muchoki.
12. On cross-examination by counsel for the 2<sup>nd</sup> defendant, PW1 stated that in 2015, after discovering that the suit plot had been encroached upon and a complete storey building had been put up, she went to court to stop transfer of the suit parcel and availed photographs of the building as at the time.
13. She produced an original receipt dated 12.8.1988 for ksh. 50,000/= for "sale of Kayole plot", adding that the plots had been advertised in the Daily Newspaper of 4.8.1988.



14. She denies having sold the plot to one Stephen Muchoki, as she has never seen him and she did not sign the special power of attorney purportedly donating him power to deal with the suit plot. She further stated that the Identity Card number indicated to be hers on the said power of attorney belongs to her husband, Hiram Ogumo Okoth and to her knowledge, her husband has never lost his Identity Card. Additionally, that the said document does not have her signature. She did inquire from her husband as to why his ID number appeared in the said power of attorney and city council documents. She however ruled out that her husband could have drawn that power of attorney though she used to send him to pay rates for her and he would also sign.
15. When referred to a receipt at page 27 of the 2<sup>nd</sup> defendant's list dated 15.2.2016 issued to the Plaintiff, she stated that it is a receipt whose content looks similar to her receipt for purchase of the suit parcel issued by the 1<sup>st</sup> defendant. The court observed that the said document is an original receipt dated 12.8.1988 with payment of ksh. 50,000/= for "sale of Kayole plots".
16. She stated that she had not been issued with a beacon certificate, thus after purchasing the plot, they were taken to the ground by an employee of the 1<sup>st</sup> defendant who had a map of the area.
17. She was surprised that the 2<sup>nd</sup> defendant had all those documents contained in his list of documents including a certificate of occupation indicating that by May 2015, tenants had already occupied the building erected on the suit plot.
18. When referred to the special power of attorney between Stephen Muchoki Mwangi and the 3<sup>rd</sup> defendant as well as the sale agreement for the suit plot between them, she reiterated that she did not sell the suit plot and neither did her husband.
19. On cross-examination by counsel for the 3<sup>rd</sup> defendant, PW1 stated that the Flats she saw on the suit land do not belong to the 3<sup>rd</sup> defendant, thus she has no claim against the 3<sup>rd</sup> defendant.
20. In re-examination, PW1 reiterated that the plots were advertised on 4.8.1988 and that they were purchases and not allotments. That after the purchase, which has never been cancelled by the 1<sup>st</sup> defendant, she has been paying rates to date.
21. She stated that while the 2<sup>nd</sup> defendant has a receipt for purchase of the suit plot dated 12.8.1988 which is similar to hers, she has never lost her original receipt.
22. PW2, Hiram Victor Ogumo Okoth, is the spouse of the plaintiff. He adopted his witness statement dated 15.8.2016 as his evidence in chief. He states that on several occasions, the plaintiff used to send him to pay for the suit plot rates at the 1<sup>st</sup> defendant's Dandora office where official receipts are issued after payments. That together with the plaintiff, they had been inspecting the suit plot at intervals, the last time being towards the end of 2014 when they found it intact and vacant.
23. He states that on 6.10.2015, the Plaintiff sent him to pay for rates but the officer checking the ledger book flagged out some suspicious entries relating to rates paid, beacon identification fees, search fees, plan approval fees and there was an attempt to change entries, thus PW2 was not allowed to pay the rates, instead he was referred to a supervisor.
24. That the said supervisor demanded that he produces his identification and the original purchase receipt as proof of ownership which he did and it was authenticated by the supervisor as genuine. Subsequently, she authorized that he pays for the rates for the years 2013 to 2015 and he was issued with a receipt on 6.10.2015.
25. That on 10.10.2015, he visited the suit plot with the plaintiff and found that a storied building had been put up by unknown persons. On 5.11.2015, the plaintiff authorized him to undertake an "official



- search” of which he paid ksh. 5,000/= to the 1<sup>st</sup> defendant and the search results signed by the 1<sup>st</sup> defendant’s assistant director (site & services schemes) confirmed that the rightful owner to the suit plot is the plaintiff.
26. He avers that the sale agreement purporting to have been executed between the Plaintiff and one Stephen Muchoki Mwangi in relation to the suit parcel in which document his ID number has been inserted as that belonging to the plaintiff is forged as he has never authorized anyone to do so. He avers that together with the plaintiff, they reported the fraud to Kayole Divisional Headquarters under OB No. 36/20/11/15 on 20.11.2015.
  27. On cross-examination by counsel for the 2<sup>nd</sup> defendant, PW2 stated that he has never lost his ID card and that the cheque of ksh.50,000/= used for purchase of the suit plot was from a joint savings account drawn by Home mortgages in the name of the 1<sup>st</sup> defendant.
  28. He stated that that he has a right to the suit plot, thus if they were to sell it, they would have to agree but he allowed PW1 to be registered as owner and he is not the one who sold the said plot.
  29. When referred to the receipt for sale of the suit parcel issued to the plaintiff on 12.8.1988 in contrast with a similar one at page 27 of the defendant’s bundle, he stated that while the content in both receipts appears to be the same, the writings on the defendant’s document are not similar to the one issued to the plaintiff who never lost the receipt.
  30. He stated that in the year 2009, they lived along Dennis Pritt Road in Nairobi while the suit plot is located at Kayole, so they visited the plot occasionally, which could be 4 times from 2009-2013. And towards the end of year 2014, they had found the plot intact. But on 10.10.2015, they found a complete building.
  31. On cross-examination by counsel for the 1<sup>st</sup> Defendant, PW2 stated that he did not have evidence of follow-up of title and that though they bought the suit plot in 1988, they did a search in 2015. They reported the matter of the trespass to the police because they didn’t want to take the matter into their own hands.
  32. When cross-examined by counsel for the 3<sup>rd</sup> Defendant, PW2 reiterated that after buying the suit plot, they were shown beacons.
  33. In re-examination, PW2 stated that the plaintiff is the registered owner of the suit plot and that the 1<sup>st</sup> defendant confirmed ownership on 5.11.2015 as per its search.

#### **Case for the 3rd Defendant.**

34. The 3<sup>rd</sup> Defendant testified as DW1 and he adopted his witness statement dated 16.2.2017 as his evidence in chief. He produced 6 documents contained in his list dated 14.7.2017 as D. Exhibit 1-6.
35. His case is that on or about 25.1.2013, he acquired the suit plot from Stephen Muchoki Mwangi for ksh.1.8 million, of which the said Stephen executed a specific power of attorney in his favour on 9.4.2013. That at the time of purchase, the said Stephen presented to him a sale agreement and a specific power of attorney dated 4.7.2009 entered into between himself and the plaintiff.
36. He states that on 25.10.2013, he sold the suit plot to the 2<sup>nd</sup> defendant at ksh.2.3 million which was paid into his Equity bank account and he handed over the suit plot documents to the 2<sup>nd</sup> defendant. He consequently executed a power of attorney in favour of the 2<sup>nd</sup> defendant. He believes that the transactions between the plaintiff and Stephen Muchoki were bonafide. Thus his acquisition of the suit plot was lawful and he passed good title to the 2<sup>nd</sup> defendant without notice of any fraud/irregularity.



37. On cross-examination by counsel for the plaintiff, DW1 stated that he has no counterclaim and that Stephen Muchoki Mwangi whom he bought the suit plot from is not a witness. He stated that he did a search before purchase but he did not have it in court. He stated that in Eastlands, they do not have titles, they have allotment letters but he did not have one, he only had 2 sale agreements and both do not indicate who prepared them and no stamp duty was paid in respect to both.
38. On cross-examination by counsel for the 2<sup>nd</sup> defendant, DW1 stated that he joined the proceedings following an application by the 2<sup>nd</sup> defendant. He stated that he did not know Stephen Muchoki Mwangi before they entered into a sale agreement. However, after the case was filed, he looked for him by going to the broker who introduced him, but he found that the broker had died, thus he did not take further steps to find Stephen Muchoki.
39. On cross-examination by counsel for the 1<sup>st</sup> defendant, DW1 stated that he paid ksh.1.8 million to Stephen Muchoki who acknowledged receipt and that he has no interest in the suit plot having sold it.

### **Case for the 2nd Defendant**

40. The 2<sup>nd</sup> defendant testified as DW2 and he adopted his witness statement dated 15.2.2016 as his evidence in chief. He produced the 16 documents in his list dated 15.2.2016 as D exhibit 1-16, 1 item from his further list dated 2.12.2016 as D. Exhibit 17 and 1 document from his supplementary list dated 5.10.2018 as p. Exhibit 18.
41. He states that he owns the suit plot even though the Plaintiff's name appears on the records of the 1<sup>st</sup> Defendant as the registered proprietor. He gives a chronology of how the suit plot has changed hands as follows; that the plaintiff sold the suit plot to one Stephen Muchoki on 4.7.2009 for Ksh. 550 000, of which the plaintiff executed a special power of attorney in favour of Stephen, and the same was registered on 6.7.2009. Stephen then sold the suit plot to the 3<sup>rd</sup> defendant on 25.1.2013 for sh.1.8 million, and the seller similarly executed a power of attorney. Then the 3<sup>rd</sup> defendant sold the suit plot to him (DW2) on 25.10.2013 for Ksh. 2.3 million, and also executed a similar power of attorney.
42. He states that he took possession of the plot and commenced development forthwith by first having his development plans approved by the 1<sup>st</sup> defendant and he also paid for beacons to be established for the suit plot. He completed constructing a 4 storey commercial building in the year 2014 and handed it over to M/s Alphomar Agencies to manage it and collect rent on his behalf.
43. Upon cross-examination by counsel for the plaintiff, DW2 stated that he does not know Stephen Muchoki and that all documents relating to the sale between the said Stephen and the plaintiff were given to him by the 3<sup>rd</sup> defendant to show that he had acquired the property. He contends that he signed the sale agreement between him and the 3<sup>rd</sup> defendant in the presence of one Muranga, the 1<sup>st</sup> Defendant's lawyer at his office at city hall.
44. He averred that he did not sign the beacon certificate at page 23 of his bundle which bears the Plaintiff's name as owner of the suit plot, but he wrote the letter dated 13.11.2013 applying to be issued with a beacon certificate as owner (page 24 of his bundle). That further, the receipt issued to the plaintiff on 8.8.2013 by Nairobi City County was given to him by the 3<sup>rd</sup> defendant and not the plaintiff. Further, the handwritten note at page 26 of his bundle was not drawn by the plaintiff.
45. On cross-examination by counsel for the 1<sup>st</sup> defendant, DW2 reiterated his evidence of acquisition of the suit plot and admitted that he was aware that the suit plot was not in his name and that the original file relating to the suit plot is not in his name either.



46. Upon cross examination by counsel for the 3<sup>rd</sup> defendant, DW2 stated that at the time he got the suit plot from the 3<sup>rd</sup> defendant, it was vacant but he took possession immediately and completed construction by end of year 2014 without any queries being raised.
47. The 1<sup>st</sup> defendant did not tender any evidence.

### **Submissions**

48. The Plaintiff's submissions are dated 24.5.2024 and 18.6.2024 where she reiterates that she is the registered owner of the suit plot. It is submitted that all the evidence shows collusion between the defendants and one Stephen Muchoki Mwangi and that even if the plaintiff had donated a power of attorney to the said Muchoki, the same is not registered in terms of the provisions of Section 4 and 9 of the Registration of Documents Act.
49. It is pointed out that the Identity card number of PW2 quoted in the power of attorney purportedly from the plaintiff to Stephen Muchoki Mwangi cannot be used to allege that PW2 sold the plot as an agent of the plaintiff as a principal cannot delegate except with express permission.
50. It is submitted that the 2<sup>nd</sup> and 3<sup>rd</sup> defendants failed to show that they carried out any due diligence prior to acquisition of the suit plot, hence they are not bona fide purchasers.
51. In support of her case, the plaintiff relied on the cases of Republic v Minister for Transport & Communication & 5 Others Ex Parte Waa Ship Garbage Collector & 15 Others Mombasa HCMCA No. 617 of 2003 [2006] 1 KLR (E & L) 563, Munyu Maina v Hiram Gathiha Maina [2013] eKLR as well as the case of Samuel Kamere v Lands Registrar, Kajiado [2015] eKLR.
52. The 1<sup>st</sup> defendant's submissions are dated 28.5.2024, where it contends that it did not allot the suit property to the plaintiff, and that there is no allotment letter. To this end the case of Joseph N.K Arap Ng'ok v Moijo Ole Keiwua & 4 Others [1997] eKLR is relied upon.
53. It is further submitted that the copies of receipts and documentation proffered by the plaintiff to have been received from the 1<sup>st</sup> defendant do not bear any stamp /seal of the 1<sup>st</sup> defendant and no reasonable cause of action against the 1<sup>st</sup> defendant was disclosed, thus the plaintiff failed to prove her case against them (1<sup>st</sup> defendant).
54. The 2<sup>nd</sup> defendant's submissions are dated 5.6.2024, where the evidence of DW2 has been rehashed. It is also submitted that although the plaintiff claims that she did not sell the suit land, her conduct indicates otherwise. It is pointed out that the plaintiff did not explain how the Identity card of PW2 was on the sale agreement and the power of attorney between the plaintiff and Stephen Muchoki.
55. It is also pointed out that the fact that the 2<sup>nd</sup> defendant constructed on the suit plot without interference and the plaintiff was unbothered when the 2<sup>nd</sup> defendant paid rates for the suit plot is conduct indicating that the plaintiff had surrendered ownership and possession of her property, thus the filing of this suit is just an afterthought.
56. The 3<sup>rd</sup> defendant filed submissions dated 3.7.2024 where it is argued that there is no reasonable cause of action and /or claim against him, hence the suit against him should be dismissed.
57. It is also submitted that the plaintiff did not acquire absolute and indefeasible title as the suit plot has never been allocated to her as other than the payment receipt and search certificate, she has no other documents to sustain her claim of ownership. To this end, the case of Joseph N.K Arap Ng'ok v Moijo Ole Keiwua & 4 Others (Supra), Torino Enterprises Limited v Attorney General (Petition 5 (E006) OF 2022 [2023] KESC 79 KLR (22<sup>nd</sup> September) Judgment as well as the case of Dina Management



Limited v County Government of Mombasa & 5 Other (Petition 8 (E10) OF 2021) [2023] KESC 30 (KLR) (21 April 2023) (Judgment) were relied upon.

58. It is also submitted that despite pleading fraud, the Plaintiff failed to particularize the same and failed to prove the allegations to the required standard. To this end, the case of PWM V JMM & 3 Others [2019] eKLR is relied upon.
59. It is argued that if the Plaintiff had good title, she sold it to Stephen Muchoki who in turn sold the plot to the 3<sup>rd</sup> defendant who subsequently sold to the same to the 2<sup>nd</sup> defendant.
60. The 3<sup>rd</sup> defendant also relies on the case of *Bandi v Dzomo & 76 Others (Civil Appeal 16 of 2020)* [2022] KECA 584 (KLR) (24 June 2022) 9 Judgment) to submit that since the Plaintiff has no better title than the 2<sup>nd</sup> defendant, then benefit should be afforded to the 2<sup>nd</sup> defendant who is in possession.

### Determination

61. The issue falling for determination is ;Who between the Plaintiff and the 2<sup>nd</sup> Defendant owns the suit plot A2-503c?. The plaintiff contends that she owns the suit plot having purchased the same from the 1<sup>st</sup> defendant. The 2<sup>nd</sup> and 3<sup>rd</sup> defendants do not refute that claim to the extent that the plaintiff once owned the suit plot. They however contend that the plaintiff sold the suit plot to one Stephen Muchoki, who then sold the same to the 3<sup>rd</sup> defendant who in turn sold the said plot to the 2<sup>nd</sup> defendant. Thus the crux of the dispute is; Whether the Plaintiff sold the suit plot to one Stephen Muchoki.
62. There is no controversy that the 2<sup>nd</sup> defendant has developed the suit plot with a storied commercial building which is occupied by tenants. It is also quite apparent that none of the protagonists have a title to the suit property. To this end, DW2 stated that there are no titles in the Eastlands part of Nairobi County.
63. In the case *Caroline Awinja Ochieng & Another vs Jane Anne Mbithe Gitau & 2 Others* [2015] eKLR cited in *Beatrice Wambui Maina v Embakasi Ranching Company Ltd & Another* [2022] eKLR, the court had this to say in relation to claims of unregistered land;

“In determining the above issue it would perhaps be appropriate to first state that tracing ownership of unregistered land is dependent on tracing the root of title. Unlike registered land where ownership is domiciled and founded in the register of titles, ownership of unregistered land and the ascertainment or confirmation thereof involves the intricate journey of wading through documentary history.....”.

Also see *Danson Kimani Gacina & Another v Embakasi Ranching Company Ltd* [2014] eKLR.

64. The Plaintiff availed evidence that P. Exhibit 1 is an advertisement put out by Nairobi City Commission which was selling plots at Kayole, and she also produced a receipt dated 12.8.1988 indicating that she purchased Plot No. A2-503 for ksh.50,000/=. An assortment of receipts at page 11-13 of her trial bundle indicates that she paid rates in the 90's, early 2000's until the year 2016. This far, the plaintiff was able to demonstrate the root of her claim of ownership.
65. The 2<sup>nd</sup> and 3<sup>rd</sup> defendant's evidence appears to support the Plaintiff's contention that she was the original owner of the suit plot. To this end, DW2 made the following admission in cross-examination;

“...The plot was not in my name and the original file is not in my name”



66. On his part, DW1's evidence was to the effect that every document allegedly given to him by Stephen Muchoki Mwangi indicated that the plaintiff was the owner of the suit plot. In cross examination, DW1 stated that before purchase, he conducted a search at HDD Dandora where records are kept. This far, I pose the question; Why was DW1 doing a search if it was not to ascertain ownership of the suit plot?. There is no evidence adduced by him (DW1) to indicate that the alleged sale of the land by the plaintiff to Stephen was sanctioned at the offices of the 1<sup>st</sup> defendant. There is no sufficient evidence availed by both 2<sup>nd</sup> and 3<sup>rd</sup> defendants to rebut the evidence that plaintiff was the owner of the suit plot. Even as at the time DW2 was getting approvals (see document at page 31 of 2<sup>nd</sup> defendant), the name generated in respect of the suit plot was that of the plaintiff.
67. It is also pertinent to note that the alleged sale agreement as well as the power of attorney between one Stephen Muchoki and the plaintiff were marred by irregularities that cannot lead this court to conclude that the plaintiff had sold the suit property to the said Stephen Mwangi Muchoki. To this end, if it is the Plaintiff who had sold the suit plot, then her ID number could have been indicated in place of her husband, PW2. The sale agreement though signed by one D.M Mungai Advocate, its drafter is not indicated.
68. I also find the evidence of PW2 that he had been informed that there was interference with the suit parcel believable. To this end his evidence is in tandem with that of DW2 to the extent that the latter admits that he made an application for beacon certificate vide correspondence dated 13.11.2013 and made other payments in respect of the suit parcel while it was still in the plaintiff's name. One wonders why transfer could not be effected unto the 2<sup>nd</sup> defendant's name if indeed he had genuine documents of ownership.
69. The 1<sup>st</sup> defendant claimed in its pleadings that it did not allot the suit plot to the Plaintiff, however, this entity did not tender any evidence to that effect, hence the claim of the plaintiff remains rebutted. The search certificate dated 5.11.2015 (at page 17 of plaintiffs bundle) emanating from records indicates that the plaintiff is the registered owner of the suit plot. In the circumstances, the 1<sup>st</sup> defendant's defence is devoid of any probative value.
70. In conclusion, I find that the plaintiff is entitled to all the rights of an owner. I make reference to the case of Moya Drift Farm Ltd. v. Theuri (1973) EA 114 as cited in Mohansons (Kenya) Limited v Registrar of Titles & 2 Others [2017] eKLR where it was stated that;
- “I cannot see how a person could possibly be described as “the absolute and infeasible owner” of land if he could not cause a trespasser to be evicted.....”.
71. As noted earlier in the body of this judgement, the defendants, (particularly the 2<sup>nd</sup> defendant who is currently in possession of the suit property) have no counterclaim. The hands of the court are therefore tied and the court cannot make any pronouncement with regard to his developments on the suit land. In the end, plaintiffs claim is allowed in the following terms:
- a. An order is hereby issued declaring that the Plaintiff is the owner of the suit plot A2-503C situated in Kayole.
  - b. The 2<sup>nd</sup> defendant is directed to voluntarily leave the suit property and remove his structures within 90 days from the date of delivery of this judgment failure to which, he is to be evicted from the suit property.
  - c. On costs, I find that to a great extent, the author of the mess is the 1<sup>st</sup> defendant, who was condoning the trespass upon plaintiff's land. Condemning the said party to pay costs would



mean that it is the tax payers who would ultimately meet the said costs. In the circumstances, I direct that each party shall bear their own costs of the suit.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30th DAY OF OCTOBER 2024 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

In the presence of:

Isaac Aloo for Plaintiff

Kingoo Wanjau for 2<sup>nd</sup> Defendant

Orengi for 3<sup>rd</sup> Defendant

Atieno holding brief for Koley for 1<sup>st</sup> Defendant

Court Assistant: Vena

