



**Kimuyu v City Council of Nairobi (now Nairobi City County) (Environment & Land Case 170 of 2011) [2023] KEELC 16288 (KLR) (21 February 2023) (Judgment)**

Neutral citation: [2023] KEELC 16288 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 170 OF 2011  
JA MOGENI, J  
FEBRUARY 21, 2023**

**BETWEEN**

**JAMES JUMA KIMUYU ..... PLAINTIFF**

**AND**

**CITY COUNCIL OF NAIROBI (NOW NAIROBI CITY  
COUNTY) ..... DEFENDANT**

**JUDGMENT**

1. The Plaintiff has vide his Complaint dated 8/09/2010 sued the Defendant seeking the following orders:
  - a) A declaration that the Plaintiff is the beneficial owner of plot no A08 Komarock II shopping centre "A".
  - b) An order that the Defendant revokes all other allotments in respect of Plot no A08 Komarock II shopping centre "A".
  - c) An order that the Defendant removes all other persons occupying the Plaintiff's plot and puts the Plaintiff into possession.
  - d) In the alternative and without Prejudice to the prayers (a) (b) and (c) above, a declaration that the Plaintiff is entitled to compensation at the Market rate for wrongful deprivation of title and proprietary interest in plot no A08 Komarock II shopping centre "A".
  - e) Judgement be entered against the Defendant for ksh 1,735,200/=.
  - f) General damages for loss of use of Plot no A08- Komarock II shopping centre "A".
  - g) Costs of this suit.
  - h) Interest on (d), (e) and (f) above at Court rates.



- i) Any other relief the Honourable Court may deem just to grant.

### **Plaintiff's Case**

2. In his pleadings, the Plaintiff pleads that in or about the year 2008, he expressed interest to purchase plot no A08 at Komarock II Shopping Centre "A" (the suit property) and which plot had been allocated by the Defendant to one Esther Nyambura Mutua trading as North Chem who then sold the same to Winifred Njeri Karanja who now proposed to sell the same to the Plaintiff.
3. The Plaintiff avers that the said plot no A08 did not have a Title and the ownership records according to Winifred Njeri Karanja, were held and available at the offices of the Housing Development Department in Dandora, which is a department of the Defendant.
4. The Plaintiff contends that he obtained copies of the letter of allotment reference number HDD/1992/64.PA/CAM/LS and other documents from the allottee and proceeded to the Defendant's Housing Development Department offices to carry out a search.
5. The Plaintiff found that indeed plot no A08 Komarock shopping centre "A" was owned by Winifred Njeri Karanja and all dues were fully paid and an acknowledgement of full payment issued by the Defendant on 11/08/2005 in the name of the North Chem c/o Winifred Njeri Karanja.
6. The Plaintiff contends that he further found in the Defendants records a beacon Certificate showing the location and size of the said plot Number A08 issued by the City Planning Department to North Chem on 4/12/1998 and payment receipts issued by the Defendant in the name of North Chem constituting full payment of the plot dues up to 2008.
7. The Plaintiff being satisfied that plot no A08 Komarock II Shopping Centre was duly allocated to Esther Nyambura Mutua trading as North Chem who then sold the same to Winifred Njeri Karanja and that the Defendant had accepted and acknowledged full payment of the plot dues, the Plaintiff entered into a sale agreement with Winifred Njeri Karanja and bought the plot at a Consideration of ksh 1,100,000/= which sum he paid in full on 31/12/2008.
8. That pursuant to the purchase of the plot, the Plaintiff in readiness for development of a commercial building on the plot, the Plaintiff proceeded to commission an architect to prepare architectural plans at a cost of ksh 40,000/= and then proceeded to the Defendant's Housing Development Department offices where he was asked to pay ksh 30,000- and the building plans were duly approved in accordance with approved type plans on 29/10/2009.
9. The Plaintiff deposes that he was further advised by officers of the Defendant's Housing Development Department that for the purchase and transfer of the plot from Winifred Njeri Karanja to Himself to be recognised by the Defendant, it was necessary for the same to be tabled before the relevant committee for approval and the same was approved vide Minute 6 of the Housing Development committee meeting held on the 2/02/2010 and subsequently ratified by the Defendants's ordinary meeting.
10. The Plaintiff having fulfilled all requirements to enable him develop the plot, he took the contractor to site and was shocked to find some people had taken possession of his plot and they produced documents purportedly issued by the Defendant as ownership documents for portions of the Plaintiff's plot.
11. The Plaintiff obtained copies of allotment letters, a sublease and receipts which showed that in complete disregard of the Plaintiff's ownership rights, the Defendant had subdivided the same plot and allocated the same to several other persons thus depriving the Plaintiff his right to own and develop



- and use the plot despite the Defendant having received all the plot dues, approved the transfer of the plot to the Plaintiff and even approved development plans.
12. The Plaintiff has made several attempts to get an explanation from the Defendant on the serious infringement of his rights to the plot but all the written enquiries have not been responded to.
  13. The Plaintiff avers that the Defendant has a statutory and fiduciary duty to hold in trust and protect the Plaintiff's right interest and Title to the plot pending processing of the sublease but the Defendant has in breach of the said duty allocated the plot to several other persons thus depriving the Plaintiff his interest and right and title to the plot.
  14. The Plaintiff listed the particulars of the Defendant's breach of duty as follows; Subdividing the Plaintiff's plot and issuing allotment letters to other persons, Receiving payments in respect of the plot from other persons and at the same time from the Plaintiff, Issuing parallel or other ownership documents in respect of the plot to other persons other than the Plaintiff, Continuing to grant approvals to the Plaintiff while having the knowledge or while it ought to have knowledge that other persons have been issued with documents of ownership of the plot and Failing to ensure that the Plaintiff enjoys the benefits of ownership, possession and development of the plot.
  15. Pursuant to the Defendant's illegal actions, the Plaintiff has incurred serious financial hardships, loss and damage and great mental anguish for which he is entitled to compensation.
  16. The Plaintiff avers that the Defendant has aggravated the Plaintiff's suffering and loss by failing to respond to the Plaintiff's written complaints yet the defendant has a duty to respond to and resolve the Plaintiff's genuine complaint as required by Law.
  17. The Plaintiff states that he has already spent over ksh 1,735,200/= made up as follows: -
    - a. Purchasing the plot – ksh 1,100,000.00
    - b. Commission agency fees – ksh 100,000.00
    - c. Rates and ground rent for 2009 – ksh 5,200.00
    - d. Legal and transfer fees – ksh 10,000.00
    - e. Building plan fee – ksh 40,000.00
    - f. Building plan approval – ksh 30,000.00
    - g. Providing security – ksh 20,000.00
    - h. Materials and labour – ksh 30,000.00
    - i. Interest on loan – ksh 400,000.00
  18. That the Plaintiff shall claim the said sum of ksh 1,735,200/= as special damages and interest on the same.
  19. The Plaintiff avers that the current and market value of the plot is over ksh 3,000,000/= and that he is entitled to compensation at the current market rates, general and aggravated damages for unlawful deprivation of property, mental anguish interest and costs.
  20. The Plaintiff's efforts to pay the ground rent and rates for the year 2010 has been frustrated by the sudden disappearance of the property file at the Defendant's Housing Development Department offices and the Plaintiff is apprehensive that the Defendant may use non payment of the said ground rent and rates as an excuse to justify repossession of the Plaintiff's plot.



21. Despite written complaints and demands and notice of intention to sue being served on the Defendant, the Defendant has neglected, failed and/or refused to respond and/or resolve the matter and/or give the Plaintiff vacant possession of the plot hence necessitating the filing of this suit.

**Defendant's Case: -**

22. The Defendant entered appearance on 19/10/2010 and filed a statement of defence dated 29/10/2010.
23. In its defence, the Defendant denies the contents of the Plaintiff dated 8/09/2010.
24. The Defendant avers that without prejudice, the defendant avers that if it allocated the plot to the plaintiff as purported (which is denied) then it was the plaintiff's duty to safeguard his own private property and the particulars of breach of duty in paragraph (a) to (e) are denied.
25. The defendant also denies the particulars of special damages.

**Plaintiff's Evidence: -**

26. The Plaintiff only called one witness. pw1 – James Juma Kimuyu confirmed that he is the Plaintiff in this suit. He adopted his witness statement dated 4/03/2015 as his evidence in chief. He produced three bundles of documents. The first is dated 27/02/2015 nos 1-21 which was marked as pw1exh1-21, the second one is dated 25/04/2017 which contains the minutes of the defendant which was marked as pw1exh22 and there is a supplementary list dated 5/05/2017 which has the approved plan for construction of the plot, the same is marked pw1exh23. It was pw1's testimony that he is asking the court to grant the prayers in the Plaintiff dated 8/09/2010 based on the documents.
27. After hearing the testimony of this witness, the Plaintiff's case was closed.

**Defendant's Evidence: -**

28. The Defendant did not appear to defend its case despite service. This is evidenced by the Plaintiff's return of service dated 28/10/2022. In fact, the last time the Defendant appeared in this Court in this matter was on 31/01/2022.

**Submissions:-**

29. At the close of hearing on 31/10/2022, the Court gave directions on filing of written submissions. The Plaintiff submitted and I have considered the same. The Plaintiff's submissions are dated 18/11/2022 and filed on the even date. The Defendant did not file any written submissions.

**Analysis And Determination: -**

30. Having carefully read and considered the pleadings, the Plaintiff's submissions and the evidence adduced by the Plaintiff, the Court finds the issues for determination are as follows.
- i. Whether the Plaintiff is the beneficial owner of the suit property?
  - ii. Whether the Plaintiff is entitled to the orders sought.
  - iii. Who should bear the costs of this suit?

**Whether the Plaintiff is the beneficial owner of the suit property.**

31. The main issue between the antagonists herein is the sort that consistently emerges in cases involving unregistered land. It concerns proof of ownership. Unlike in the case of registered land where the



register easily and on a *prima facie* basis reveals the owner, the burden and task is always heavier for the court to carry when the court has to trace the true owner of the unregistered parcel of land. The parties are never co-proprietors and neither do they so will. The court has to perform the rather delicate task of sorting out a muddle which has potentially long-term serious consequences as only one party is to be determined as having the better title. It was the burden of the plaintiff to prove on a balance of probabilities that he owned the suit property.

32. 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.
33. The simple reason is that unregistered titles exist only in the form of chains of documentary records. The court has to perform the delicate task of ascertaining that the documents availed by the parties are not only genuine but also lead to a good root of title minus any break in the chain. It is the delivery of deeds or documents which assist in proving not only dominion of unregistered land but also ownership. The deeds must establish an unbroken chain that leads to a good root of title or title paramount. A good compilation of the documents or deeds relating to the property and concerning the claimant as well as any previous owners leading to the title paramount certainly proves ownership. It is such documents which are basically ‘the essential *indicia* of title to unregistered land’: per Nourse LJ in *Sen v Headley* [1991] Ch 425 at 437.
34. The documents in my view are limitless. It could be one, they could be several. They must however establish the claimant’s beneficial interest in the property. Examples of the deed or documents include, at least in the Kenyan context: sale agreements, Plot cards, Lease agreements, allotment letters, payment receipts for outgoings, confirmations by the title paramount, notices, et al.
35. The instant case is no exception. It is for the Court to interrogate the evidence, especially documentary evidence and ascertain who between the two antagonists that is to say the Plaintiff on the one hand and the Defendant on the other hand, is the true owner of the suit plot. For the court to conduct this rather wearisome and intricate task, it is proper that the documents unless otherwise agreed are produced in their original form or format.
36. To begin with, I note that the Defendant failed to come to court and defend its suit on 31/10/2022 when the suit was set down for hearing. The Defendant only filed a statement of defence in this suit. Odunga J. in *Linus Nganga Kiongo & 3 Others v Town Council of Kikuyu* [2012] eKLR, stated as follows on the consequences of failure by a party to call evidence:

“What are the consequences of a party failing to adduce evidence? In the case of *Motex Knitwear Limited v Gopitex Knitwear Mills Limited* Nairobi (Milimani) HCCC no 834 of 2002 Justice Lesiit, citing the case of *Autar Singh Bahra and another v Raju Govindji*, HCCC no 548 of 1998 stated:

“Although the Defendant has denied liability in an amended Defence and Counterclaim, no witness was called to give evidence on his behalf. That means that not only does the defence rendered by the 1<sup>st</sup> Plaintiff’s case stand unchallenged but also that the claims made by the Defendant in his Defence and Counter-claim are unsubstantiated. In the circumstances, the Counter-claim must fail.”



37. Again, the learned Judge in the case of *Trust Bank Ltd & 2 others v Paramount Universal Bank Ltd & 2 Others* Nairobi (Milimani) HCCS no 1243 of 2001 stated that:-

“It is trite law that where a party fails to call evidence in support of its case, that party’s pleadings remain mere statements of facts since in so doing the party fails to substantiate its pleadings. In the same vein the failure to adduce any evidence means that the evidence adduced by the Plaintiff against them is uncontroverted and therefore unchallenged.”

38. There is no reason to belabour the point here. Where a party fails to adduce evidence and has had opportunity to test and verify the same through cross examination, the court may properly rely on the evidence adduced subject to the usual rules as to relevance and probative value.

39. Furthermore, the fact that the suit has not been defended means that the Plaintiffs’ evidence remained unchallenged and uncontroverted. However, the Court will not just enter Judgment without interrogating the veracity of the evidence placed before it as the Plaintiffs are still required to prove their case on the required standard of balance of probabilities. See the cases of *Shaneebal Limited v County Government of Machakos* [2018] eKLR and *Karuru Munyororo v Joseph Ndumia Murage & another*, Nyeri HCCC no 95 of 1988.

40. Proof of ownership of land is found in documentary evidence which lead to the root of title. There must be shown an unbroken chain of documents showing the true owner. Once proof of ownership is tendered then the holder of the documents is entitled to the protection of the law. There is no doubt that such proof will be on a balance of probabilities, but the court must be left in no doubt that the holder of the documents proved is the one entitled to the property.

41. The Plaintiff testified that the suit property does not have a certificate of title. On the substance of the case, it was Plaintiff’s case that he purchased the suit property from one Winifred Njeri Karanja vide Sale Agreement dated 31/12/2008 for a consideration of ksh 1,100,000.00 in which the vendor acknowledged receipt of the said payment as at the time the said agreement was being executed. He explains that the suit property/plot had initially been allocated by the Defendant to one Esther Nyambura Mutua trading as North Chem who then sold the same to Winifred Njeri Karanja. It contends that he obtained copies of the ownership records and proceeded to the Defendant’s Housing Development Department offices to carry out a search and later found that indeed the plot no A08 was registered under Winifred Karanja and that all the dues were fully paid and an acknowledgment of same was issued by the Defendant on 11/08/2005.

42. The Plaintiff contends that he further found in the Defendants records a beacon Certificate showing the location and size of the said plot Number A08 issued by the City planning Department to North Chem on 4/12/1998 and payment receipts issued by the Defendant in the name of North Chem constituting full payment of the plot dues up to 2008. That pursuant to the purchase of the plot, the Plaintiff in readiness for development of a commercial building on the plot, the Plaintiff proceeded to commission an architect to prepare architectural plans at a cost of ksh 40,000/= and then proceeded to the Defendant’s Housing Development Department offices where he was asked to pay ksh 30,000.00 and the building plans were duly approved in accordance with approved type plans on 29/10/2009. Lastly, the Plaintiff avers that when he fulfilled all requirements to enable him to develop the plot, he took the contractor to site and was shocked to find some people had taken possession of his plot and they produced documents purportedly issued by the Defendant as ownership documents for portions of the Plaintiffs plot.

43. The documents relied on by the Plaintiff include cheque no 03-001 dated 31/12/2008 for ksh 1,000,000.00, sale agreement dated 31/12/2008 between Winifred Karanja and the Plaintiff, power



of attorney dated 27/11/2007, letter dated 11/08/2005 confirming payment clearance on the suit plot as at 31/12/2005, sale agreement dated 30/11/1998 between Esther Nyambura Mutua and Winifred Karanja for the sale of the suit property, affidavit of Esther Mutua t/a North Chem sworn on 1/12/1998 confirming that she is the same person trading as North Chem and that she sold the suit property to Winifred Karanja, beacon certificate dated 4/12/1998 for North Chem in favor of the suit plot, power of attorney dated 30/11/1998, letter of allotment dated 18/01/1994 to North Chem, various receipts issued by Nairobi City Council confirming payments made by North Chem from page 29-35, approved development plan dated 29/10/2009 and minutes of the Defendant held on 2/02/2010.

44. The Court, in the case of *Rukaya Ali Mohamed v David Gikonyo Nambacha & another* (Kisumu HCCA no 9 of 2009), held that:-

“Once (an) 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 (an) 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 the public interest.”

45. I am also guided by the case of *Republic v City Council of Nairobi & 3 Others* [2014] eKLR, where the Court held 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 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.”

46. In other words, where land has been allocated, the same land cannot be reallocated unless the first allocation is validly and lawfully cancelled. There was no evidence availed by the Defendant to prove that the Plaintiff acquired the suit land illegally. However, the Plaintiff has proved on the required standard what it had alleged – that the suit property belongs to him.

47. In this instant the plaintiff has been able to prove that the initial allottee was allotted the suit property and that she further met the conditions. The minutes of the Defendant held on 2/02/2010 also demonstrate the history of allotment of Plot no A08. There is no evidence adduced that allotment was ever cancelled and it is not in doubt that only the allotting authority can cancel the allocation. The above coupled with the fact that the defendant only filed a defence that was a general denial of the allegations made in the Plaint and further, the Defendant did not adduce any evidence and failed to appear in Court during hearing, the Court finds and holds that the plaintiff has satisfactorily proved his root of title and therefore he is the absolute and indefeasible owner of the suit property.

48. All the evidence point towards the plaintiff being the owner of the suit property. The plaintiff has tendered evidence that shows an unbroken chain of the root of title. The plaintiff's evidence was not rebutted as the defendant filed a defence that was a general denial of the Plaintiff's contentions in the Plaint, they did not file any witness statement and therefore they did not produce any evidence in court. The plaintiff's evidence remains uncontroverted.

49. Ultimately, this Court finds and holds that the Plaintiff stands in better stead. He has provided sufficient evidence to prove ownership. I am inclined to find that the Plaintiff has discharged the



burden of proving his case on a balance of probabilities as required in law. My final word in this regard is that the Plaintiff is the beneficial owner of Plot no A08 Komarock II Shopping Centre “A”, for the reasons I have attempted to articulate above. I shall therefore grant prayer (a) of the Plaintiff dated 8/09/2010.

### **Whether the Plaintiff is entitled to the orders sought**

50. Having found that the Plaintiff is the beneficial owner of Plot no A08 Komarock II Shopping Centre “A”, I shall now focus on the prayers sought in the Plaintiff.
51. Prayer (a) relates to a declaration that the Plaintiff is the beneficial owner of Plot no A08. I have already effectively granted this prayer and I see no reason to return to it. Regarding (b) and (c), since I have already held that the Plaintiff is the beneficial owner of the suit property, he is therefore entitled to vacant possession of the suit property, it follows that no party save for the Plaintiff should have any right to enter therein. The minutes of the Defendant of meeting held on 2/02/2010 demonstrated that the Plot was allotted to one Ruth Asulunda who then transferred the plot to one Michael Sebastian. This can be seen at page 1004 of the minutes. The minutes are marked as pw1exh.22. The Defendant has the mandate to revoke all other allotments in respect to Plot no A08. As such, these prayers are meritorious. Further since I have granted the said prayers, I see no need to grant prayer (d) in the alternative.
52. Prayer (e) relates to judgment to be entered against the Defendant for ksh 1,735,200.00. The Plaintiff pleaded that the said amount is special damages. I however note that a prayer for special damages has not been sought for in the Plaintiff. Special damages must be specifically pleaded and proved. The Plaintiff did not lead sufficient evidence to show what he had spent or to prove the actual value of the loss suffered. The Plaintiff claimed to have spent ksh 1,735,200.00. The Plaintiff listed how much he spent on various things regarding the purchase of the suit plot. He only adduced a cheque for ksh 1 million being payment of the suit property, an approved development plan, pw1exh. 23, which showed that he actually paid ksh 30,000.00 for the approval and a receipt no 100872/100672 (the same was not clear) dated 26/07/2009 demonstrating that ksh 5,200.00 was paid in 2009 as claimed. I opine that the same do not constitute proof of special damages. At length, I find that the claim for special damages was not strictly pleaded and proved as required by the law: see *Ouma v Nairobi City Council* [1976] KLR 297, *Kenya Bus Services v Mayenda* [1991] 2 KAR 242 and the recent Court of Appeal decision of *Paul N.Njoroge v Abdul Sabuni Sabonyo* [2015] eKLR.
53. With regard to prayer (f) regarding general damages for loss of use, I note that the Plaintiff alleged that he had fulfilled all requirements to enable him to develop the plot as it is a commercial plot. I have also noted that the development approval was only valid for 24 months and the same has since lapsed. The Plaintiff also alleges that he has incurred serious financial hardships, loss and damage and great mental anguish for which he is entitled to compensation. Once again, the only evidence I can rely on is a cheque for ksh 1 million being payment of the suit property, an approved development plan, pw1exh. 23, which showed that the Plaintiff actually paid ksh 30,000.00 for the approval and a receipt no 100872/100672 (the same was not clear) dated 26/07/2009 demonstrating that ksh 5,200.00 was paid in 2009 as claimed. However, it is clear that the Plaintiff is the beneficial owner of the suit property. He alleges that the Defendant had subdivided the plot and allocated the same to several other persons thus depriving the Plaintiff his right to own and develop and use of the plot. It is this loss of use and all the incidental rights that have been infringed by the defendants that the plaintiff now seeks compensation for.



54. In the case of *Duncan Nderitu Ndegwa v KP&C LC Limited & another* [2013] eKLR where P. Nyamweya J. held that: -

“...once a trespass to land is established it is actionable per se, and indeed no proof of damage is necessary for the court to award general damages. This court accordingly awards an amount of ksh 100,000/= as compensation of the infringement of the Plaintiff’s right to use and enjoy the suit property occasioned by the 1st and 2nd Defendants trespass”

55. In *Halsbury Laws of England* 4<sup>th</sup> Edition, Vol 45 at para 26, 1503, it is provided as follows: -

- a. If the Plaintiff proves the trespass he is entitled to recover nominal damages, even if he has not suffered any actual loss.
- b. If the trespass has caused the Plaintiff actual damage, he is entitled to receive such amount as will compensate him for his loss.
- c. Where the Defendant has made use of the Plaintiff’s land, the Plaintiff is entitled to receive by way of damages such sum as would reasonably be paid for that use.
- d. –
- e. –

56. Insofar as the Plaintiff failed to adduce sufficient evidence on the loss, he had incurred due to the Defendant’s acts on suit lands but in, associating myself with the decision cited above, I find that the Plaintiff indeed suffered damages as a result of the Defendant’s acts for those years. I will proceed and award them ksh 500,000 as general damages for loss of use.

#### **Who should bear the Costs of this Suit?**

57. It is trite law that Costs follow the event. Section 27 of the *Civil Procedure Act* gives the Court discretion to grant costs. As the successful party is always entitled to costs except in exceptional circumstances, no exceptional circumstance exists in this suit and thus the Court finds that the Plaintiff being the successful litigant is entitled to the costs of the suit.

#### **Disposal Orders**

58. Having carefully read and considered the Pleadings by the parties herein, the evidence adduced, the written submission and the provisions of law, the Court finds and holds that the Plaintiff has proved his claim against the Defendant herein on the required standard of balance of probabilities. For the above reasons, the Court finds that the Plaintiff’s claim as contained in the Plaint dated 8/09/2010 is merited.

59. Accordingly, I therefore find that the Plaintiff has proved his case. I enter judgment for the plaintiff against the defendant as follows;-

- a) A declaration that the Plaintiff is the beneficial owner of plot no A08 Komarock II shopping centre “A” be and is hereby issued.
- b) An order that the Defendant revokes all other allotments in respect of Plot no A08 Komarock II shopping centre “A” be and is hereby issued.
- c) An order that the Defendant removes all other persons occupying the Plaintiff’s plot and puts the Plaintiff into possession be and is hereby issued.



- d) That the Defendant do pay to the plaintiff ksh 500,000.00 (Kenya Shillings Five Hundred Thousand Only) as general damages for loss of use of Plot no A08- Komarock II shopping Centre "A".
- e) The Defendant to bear the costs of the suit.
- f) I award interest on (d) above at Court's rates but the same is to be computed after sixty (60) days from the date of delivery of this Judgment until payment in full.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI, THIS 21<sup>st</sup> DAY OF FEBRUARY 2023**

.....

**MOGENI J**

**JUDGE**

**In the virtual Presence of:**

**Mr Kinyua for the Plaintiff**

**No appearance for the Defendant**

**Ms. Caroline Sagina : Court Assistant.**

.....

**MOGENI J**

**JUDGE**

