



Case Number:	Environment and Land Case 30 of 2015
Date Delivered:	28 Mar 2022
Case Class:	Civil
Court:	Environment and Land Court at Kitale
Case Action:	Judgment
Judge:	Fred Ongarora Nyagaka
Citation:	Simon Mbugua v County Government of Trans-Nzoia & 2 others [2022] eKLR
Advocates:	-
Case Summary:	-
Court Division:	Environment and Land
History Magistrates:	-
County:	Trans Nzoia
Docket Number:	-
History Docket Number:	-
Case Outcome:	Suit ordered
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**ELC NO. 30 OF 2015**

SIMON MBUGUA.....**PL**  
PLAINTIFF

VERSUS

COUNTY GOVERNMENT OF TRANS-NZOIA.....**1<sup>ST</sup> DEFENDANT**

COUNTY EXECUTIVE OFFICER, LAND,

HOUSING AND URBAN DEVELOPMENT.....**2<sup>ND</sup> DEFENDANT**

PHYSICAL PLANNER, TRANS-NZOIA COUNTY.....**3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. By a Plaintiff dated 6/03/2015 filed on an even date, the Plaintiff sought the following orders:

- (a) A declaration that the Plaintiff is entitled as the registered owner to the exclusive and unimpeded right of use, possession and occupation of the property.
- (b) A permanent injunction restraining the defendants, their agents, employees, assigns and/or any other person (s) from trespassing, claiming, accessing, constructing and/or in any other way interfering and/or dealing with the suit property.
- (c) Costs of the suit and
- (d) Interest on (a) and (b) above court rates.

**THE PLAINT**

2. It was the plaintiff's claim that he was the registered, legitimate owner of all that parcel of land comprised in **Kitale Municipality Block 4/487** measuring approximately **0. 1000 Ha.** (Herein known as the "*suit land*"). His claim was that he acquired the land in the year **2002**.

3. He claimed further that soon after acquisition, he took actual possession of the suit land and has been in occupation since then. He averred that sometimes in **February 2015**, without his consent and lawfully authority, the defendants through their agents, workers illegally entered and/or trespassed into the suit land, fenced it off and deposited building stones and other construction materials on the suit land.

4. The Plaintiff averred that due to the defendants' unlawful actions, he was denied quiet, peaceful, uninterrupted suffered and/or exclusive possession and use of the suit land. These actions therefore occasioned him loss and he continued to suffer damage.

5. He pleaded that to date the defendants refused to stop the trespass and continued to do so despite demand that they desist. For that reason, the instant suit was instituted.

**THE DEFENCE**

6. The defendants filed a joint statement of defence and counterclaim on the **19/5/2015**. It was dated **12/5/2015**. They denied all the averments contained in the Plaintiff. They averred that the suit land formed part of a plot situated along the Makasembo Street in Kitale town, measuring **0.37 Ha** and was bordered with lanes developed from Physical Plan **ELD/10/81/1 of 17/3/1981** dated **2/10/1982** of **Ref No. ELD/10/82/4**. Further they stated that the parcel was planned and earmarked for Kitale Fire Station.

7. They stated that the Plan was presented to the Commissioner of Lands for approval vide a letter dated **24/2/1993** as approval No. **117**. Their claim was that although the Plaintiff claimed ownership of the suit land, he did not explain the process he followed to obtain the title thereto as a title deed is the end product of a process.

8. Their defence was that the suit land was and is still a public utility land earmarked for the construction of a fire station. Further, if the suit land was allocated, the said allocation was illegal, null and void *ab initio*. They claim that the suit land was public land therefore it was not available for allocation then.

### **THE DEFENDANTS' COUNTERCLAIM**

9. The Defendants' Counterclaim was that the issuance of title deed in respect of the suit land to the plaintiff was illegal, null and void *ab initio*. The 1<sup>st</sup> defendant claimed possession, ownership and control thereof. In the Counterclaim, they sought the following orders:

a) **A nullification of the sub-division of original plot earmarked for the fire station and cancellation of the certificate of lease to title No. KITALE MUNICIPALITY BLOCK 4/487 issued on 27/9/2002.**

b) **Rectification of the Land Register to reflect that land parcel KITALE MUNICIPALITY BLOCK 4/487 is public utility land.**

c) **Costs of the suit**

d) **Any other or further relief (s) as the honourable court deemed fit to grant.**

### **THE PLAINTIFF'S EVIDENCE**

10. **PW1, one Simion Mbugua Thungu**, testified on **30/8/2016**. His testimony was that he was the owner of the suit land. It was his evidence that his elder brother, one **James Muungai Thungu** bought the suit land for him in **1993**. He testified that the original number of the plot was **LR No. 60395**. It was registered under Registration of Titles Act (now repealed) but later was converted to Registered Land Act and was issued with a new title being number **Kitale Municipality Block 4/487**. In evidence, he produced a Certificate of Lease as **P. Exhibit 1**. His evidence was that he has been paying rates to the County Government of Trans-Nzoia for the suit land and was issued with a clearance certificate. He produced certified copies of the demand for rates, payment receipts and clearance certificate as **P. Exhibit 2 (a), (b) and (c)** respectively.

11. He stated that he had an agreement dated **6/1/1996** in respect of the sale of the suit land which he purchased from one **Gerald Tarus**. His further testimony was that the said Gerald Tarus had been allotted the land. He presented a copy of a **Letter of Allotment** dated **20/5/1993** as **MFI-3**, a copy of transfer made on **19/8/1993** as **MFI-4** as well as a payment of stamp duty and certificate of stamp duty of **Kshs. 1,920/=** marked as **MFI-5 (a) and (b)**.

12. He claimed that the plot was vacant at the time of purchase. His evidence was that the County Government continued receiving rates until they **2015**. The crux of his claim is that in the year **2015**, the County Government of Trans-Nzoia erected a fence alongside his. The County Government asserted that the suit land was supposed to be a fire station. He stated that the County Government had a huge parcel of land where the county fire engines were always parked. He accused the County Government of fencing his land without consulting him and refunding the money he paid to the seller. He identified the suit land as that which was marked as **plot "C"** on the map in the defendant's list of documents.

13. He stated further that the suit land had never been public land and that if it was, he could not have bought it. He insisted that he did not grab the land but was holding a genuine title to it therefore the title should not be cancelled. He stated further that the County Government or its predecessor the Municipal Council had been receiving rates from him and that there has never been a case

between them before in respect to the suit land.

14. It was his case that he had valued the land. The valuation report stated that it was valued at **Kshs. 50,000,000/=**. He marked the valuation report as **MFI-6**. He prayed for his claim to be allowed and the defendant's case be dismissed with costs.

15. On cross-examination, he stated that he was one of the directors of Eldoret Express Company Limited, and the suit land was bought for him by his brother **James Mungai**. In reference to the sale agreement dated **1/1/1996**, he clarified that its sale value was **Kshs. 700,000/=**. He admitted that the agreement did not state that James Mungai bought the suit land on his behalf. He also admitted that it did not indicate that the plot sold was **plot "C"**. He confirmed that the title **No. LR. 60395** was issued in his name on **1/6/1993** whereas the sale agreement was dated **6/1/1996**. He also confirmed that the seller was **Michael Ndiwa** whereas the purchaser was **James Mungai**.

16. According to him, **Gerald Tarus** sold the land to **Michael Ndiwa**. He did not produce any evidence to show that the original allottee had complied with the conditions in the letter of allotment. He was particular that the payment made on **28/7/1993** was outside the stipulated **30 days** in the letter of allotment. He did not produce any document of sale between Gerald Tarus and his brother James Mungai.

17. He declined to call Gerald Tarus as his witness but rather stated that he would call his brother **James Mungai** as one. His testimony was that the clearance certificate for rates was issued in the year **2015**. In answer to the map in the defendants' list of documents, he stated that it was just a proposal and that the plot was unmarked. He stated that the Part Development Plan (**PDP**) was for **24/2/1983** and was duly approved. According to him the land he purchased was unsurveyed and that the plot in the allotment letter as well as that in the map were the same. He denied that the offer to Gerald Tarus had lapsed as at the date of payment as required by the conditions in the allotment letter.

18. On re-examination, he clarified that the sale agreement was an acknowledgement of completion of purchase of **8** properties and that the suit land was part of the **eight (8)** plots which his brother bought for him. His evidence was that the stamp duty was paid in **1993**.

19. In reference to the map attached to the defendant list of documents, he stated that it was neither stamped nor signed by the Commissioner of Lands. According to him the agreement came later because it signified completion of the purchase of the plot. His testimony was that he could not be cleared if he had not paid rates and that he had paid rates for **2016**.

20. **PW2, Peter Kiarie Ndarwa** - an Advocate of the High Court of Kenya testified on **9/7/2019**. He adopted his statement dated **16/1/2018** as evidence in-chief. His evidence was that he drew an agreement between **Michael Ndiwa** and **James Mungai** both being the **vendor** and **purchaser** respectively. His evidence was that the document he witnessed was an acknowledgment of sale and transfer of **8** plots to the purchaser and that among the **8** properties were plots No. **IR 60395** which had been sold for **Kshs. 700,000/=** and plot No. **Kitale Municipality Block 4/407** which had been sold for **Kshs. 1,200,000/=**. His evidence was that the other properties were not the subject of the suit. He produced the agreement as **P. Exhibit 7**. He stated that on **19/8/1993**, he attested a form of transfer of interest in the allotment letter by one **Gerald Tarus** to **Simon Mbugua** for a consideration of **Kshs. 150,000/=**. He stated that the original was signed by Gerald Tarus but the copy he had did not bear that. He confirmed further that it indicated that the parcel of land was unsurveyed **Plot No. "C"** allocated vide an allotment letter dated **20/5/1993** which he made reference to when he attested the transfer. He stated further that the land ought to be available for allocation.

21. Upon cross-examination, in reference to **PMFI-3**, he confirmed that it was government land. He stated that upon a party being given an offer, he or she should accept it within 30 days otherwise it lapses. He confirmed that the agreement was in respect of properties that had already been sold and transferred. His evidence was that one sells what he owns and that the agreement acknowledged that Michael Kimutai was the owner of the properties sold but he, **PW2**, had not bothered to establish if it was true that he was the owner because the properties had already been sold. In addition, he testified that **Gerald Tarus** was not a party to the agreement and that the properties were transferred to James Thungu. He confirmed that he did not know what had transpired before in respect to the parcels of land which were the subject of the acknowledgment agreement. After that, the Plaintiffs' counsel made an application that the evidence of **PW2** applies to **ELC Suit No. 31 of 2015** as they were related. The application was allowed, by consent.

22. On **4/3/2020**, **PW3, Nelson Odhiambo** testified. His evidence was that he was the Land Registrar Trans-Nzoia County. He stated that he had the records of **Kitale Municipality Block 4/487**. His evidence was that he had in possession the green card of the

land which indicated that the owner was **Simon Mbugua**. It was registered on **25/9/2002**. He stated that there was an error with respect to the dates on the green card and the white card. He pointed out the error as being in respect of the dates of entry. These were that Entry No. 1 was dated **25/9/2002** and **27/9/2002** thus there were two different dates of entry in the green card and the white card. He gave evidence that the lease certificate was issued to **Simon Mbugua** on **27/9/2002**. He produced a certified copy certificate of lease as **P. Exhibit 8** and that of the green card as **P. Exhibit 9**.

**23.** He testified further in respect to parcel No. **Kitale Municipality Block 4/407**. He had with him in Court the green card as well as the white card of the land. To him the record showed that the lease and the certificate of lease was issued to **James Mungai Thungu** on **3/3/1995**. He produced the green card as well as the white card as **P. Exhibit 10** and **11** respectively.

**24.** His evidence was that leases form part of public land. They do not constitute private land. He testified further that the government could allocate land to specific individuals and give them ownership of 99 years through a Certificate of Lease. His evidence was that **James** and **Simon** were the first to be issued with certificate of lease and that the suit land was now private land.

**25.** On cross-examination, he confirmed that the land was and is still public land. He denied being a Land Officer. He also denied knowledge of the procedure of allocation of land. He confirmed that the land was governed by the Registered Land Act (RLA) and that it might have been governed under the Registration of Titles Act (RTA) before allocation. He denied having seen any letter of allotment in relation to the suit land. He stated that the file in respect of the parcels was in Nairobi. In relation to **PMFI-1**, he confirmed that it had the name of **Maina Kamau**. He stated that his office dealt with registered documents only. He confirmed that the name appearing on the letter of allotment was not similar as that in the certificate of lease. Shown Clause **2** of the allotment letter and questioned about it, he stated that it was dated **28/1/1994** and that offer would lapse after **30** days. He then admitted that he did not travel to Nairobi to see the file. He testified further that he had not seen the allotment letter or the application for land or the P.D.P by Physical Planning office before coming to court because it was not his concern. He clarified that he did not know how the registered owners in respect to the land parcels acquired titles to it. He acknowledged he knew there was no protection for public land acquired irregularly. He also stated that he did not know if fresh letters of allotment were made after the lapse of the initial letters of allotment. He then admitted that there was no executed lease or payment receipt for the lease in respect to parcel No. **487**.

**26.** He clarified that if there was any irregularity in obtaining the title, then the claimants should not retain the land. He stated that he was not aware that the land was reserved for a fire station. He admitted having not seen the pleadings and that he did not know **James** and **Simon** - the plaintiffs in **ELC Suit No. 30** and **31** of **2015**. To him, he only came to Court in obedience to witness summons to produce the documents that were in his possession in respect to the cases. He confirmed further that a certificate of lease is an end of the process and the process is open to scrutiny.

**27.** After the testimony of **PW3** the Plaintiff closed his case. At that point, his learned counsel urged the court to rely on the evidence of **PW3** in **ELC No. 31** of **2015** as applicable. The application was granted, again by consent. He closed the Plaintiff's case in the instant case as well as that of **ELC No. 31** of **2015**.

#### **THE DEFENCE CASE**

**28.** The matter came for defence hearing on **8/12/2021**. Before the defence could adduce evidence, upon an application and by consent of the parties, it was agreed that the evidence in this lead file would apply to **ELC No. 31** of **2015**.

**29.** **DW1**, one **Pius Munialo** testified on **8/12/2021**. He was the **County Chief Officer** at the time of giving evidence but previously he was the Assistant County Secretary. He adopted his statement dated **19/5/2015** as his evidence in chief. He stated that he was conversant with the issues of the suit. He stated that he knew Simon Mbugua and James Mungai Thungu, the Plaintiff in **ELC No. 31** of **2015**. He clarified that his statement was identical to that in **ELC No. 31** of **2015**.

**30.** His testimony was that the two plots in issue in the two cases **No. 30** and **31** of **2015** that is, **Kitale Municipality Block 4/487** and **Kitale Municipality Block 4/407** were meant for the County Fire Station. He testified that to date, the fire station had not been established because the Plaintiffs were in occupation of the two parcels of land. His evidence was that the plots were owned by the County Government of Trans Nzoia. He questioned the manner in which the plots were acquired. His evidence was that the plaintiffs acquired them unprocedurally. He pointed out that according to the P.D.P approved on **24/2/1983**, the suit land was set aside for a fire station which was a public utility and therefore was not available for private allocation. He produced the **P.D.P** as **D. Exhibit 1**. He stated that the area of the plots as indicated was **0.37 Ha**. He testified that the parcels were highlighted on the map and they touched Makasembo Street. He stated that on the map they were named as "proposed site for Municipal Council of Kitale

Fire Station.” His evidence was that the two parcels of land fell within the highlighted/marked on the map. He urged the court to dismiss the suits and allow the prayers in the Counterclaim.

31. On cross-examination, in reference to **D. Exhibit 1**, the witness stated that the reference number of the plots was not named on the map and that the P.D.P showed that there was another Plan of **1981**. His evidence then was that the current one indicated that it superseded the Plan No. **ELD/10/81/1 of 17/3/1981**. He confirmed that there was another Plan before but was not aware if there was another Plan that came after the one produced as **D. Exhibit 1** but he also confirmed that there could be another one after the one of **1983**. He clarified that there was no other document which was issued to the Municipal Council of Kitale apart from the P.D.P. and that the P.D.P was signed. His evidence was that the 1<sup>st</sup> signature is “prepared by” and that on the part of the Director, it had the name “J.M. Ohas” but he did not sign it and on the part of the County for Lands, it only bore the name “J.R Njenga” but he did not sign it.

32. Agreeing that there was land for the Kitale Power Station measuring approximately **1 acre**, he stated that the fire station could have larger land allocated for the fire station than that but not less than half an acre. He also confirmed that the P.D.P should have been followed by documents of transfer of land to the Kitale Municipality. However, the transfer and registration had not been done. His testimony in cross-examination was that after the proposal, the Municipal did not process the title documents because it knew that the land was set aside for public utility. He confirmed that the current fire station might not be in the Plan but could not tell if it was there or not.

33. On re-examination, he confirmed that he understood the facts of the case and those of the cases before court in respect to the suit lands. He also confirmed that he knew the conditions for conversion of public land to private. He emphasized that where the land was earmarked for the Fire Station and the proper procedure was not followed up in allocating it out. He pointed out that one of the conditions for public land to be converted to private land was a confirmation from the government agency that the land was not required for that purpose. He confirmed that the land belonged to the county government of Trans-Nzoia and was set aside for a fire station.

34. Upon examination by the court, the witness stated that he was not aware of any such time limit for a government agency can be required to complete the process of land allocated to it. At that point, that marked the close of the defence case.

#### **SUBMISSIONS**

35. The court gave directions for the parties to file their submissions. The parties filed them. The Defendants filed theirs on the **31/1/2022** while that for the Plaintiff was filed on **1/2/2022**.

#### **ANALYSIS, ISSUES AND DETERMINATION**

36. The main issues for determination are:

*(a) Who was the lawful owner of the suit land as between the Plaintiff and the Defendants"*

*(b) What orders should issue and who bears the cost of the suit"*

37. I proceed to analyze them as hereunder:

*a) Who was the lawful owner of the sui land as between the Plaintiff and the Defendants*

38. It is settled law that whosoever asserts the existence of a legal right or liability is vested with the burden to prove it except in so far as the law may expressly exempt him or her. **Section 107 of the Evidence Act Chapter 80 Laws of Kenya succinctly states:**

*“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.”*

39. Also, further, **Section 108 of the Act** states thus:

*“The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.”*

40. The Plaintiff herein claims to be the rightful owner of the Plot No. **Kitale Municipality Block 4/487**. He testified that his brother James Muigai Thungu purchased the land for him. He stated that he bought it from one Michael Ndiwa who had purchased it from the original allottee one Gerald Tarus. However, from his own evidence, it is clear that he did not produce any document or evidence to prove as much. He only produced an agreement dated **6/1/1996** which was in relation to acknowledgement of completed sales. I have perused keenly the document and found that indeed the suit land herein was NOT one of the plots that the vendor acknowledged as having been sold at a consideration of **Kshs. 700,000/=**.

41. It is plain and uncontested that the Plaintiff herein was not the purchaser of the land. Although he testified that his brother purchased the land on his behalf, there is no such evidence as a Power of Attorney to prove that he had authorized his brother to enter into any agreement, if at all, on his behalf. I find Plaintiff’s allegation to be unsupported and unconvincing.

42. I note that the document christened “Acknowledgement of completion of sales” was not a sale agreement. It was only an acknowledgement (of completion of sale). It cannot take the place of an agreement for or of sale as envisaged by the Law of Contract Act, Chapter **23** of the Laws of Kenya and the Law Society Conditions of Sale, **2015**. According to **PW2**, the advocate who drafted it, he confirmed that he did it with the information that sale agreements had already been entered into by the parties, that his instructions were only to draft the acknowledgement of completed sales of **8** plots from **Michael Ndiwa** to **James Muigai Thungu**. It was imperative on the Plaintiff to produce an agreement of sale between himself and the original allottee or the vendors who may have bought the land from the original allottee so as to show the trail of ownership and whether the purported seller had title that would pass to him. He needed to do this so as to even place himself within the position of an innocent purchaser of value.

43. The Plaintiff produced a certificate of lease of the suit land herein as **P Exhibit 1**. It is not in issue that the existence of a title document is *prima facie* evidence of ownership or proprietorship of the land. However, that is subject to proof of validity thereof. Where its validity comes into question, it is incumbent on the said ‘proprietor’ to prove that he acquired the title legally. This court has perused **P. Exhibit 1**. I find that the lease is registered in the name of **Simon Mbugua** - the plaintiff herein. It dates back to **1/6/1993**. The Plaintiff was duty bound to explain how he acquired the title in his name. He did not. **PW3**, confirmed that the land was government land because it was in the form of allotments and leasehold. He also confirmed that there was a procedure to be followed for the conversion of public land to private land and that procedure ought to be followed to the latter. All the witnesses were in agreement that once the allotment letter making an offer was issued to an allottee, acceptance had to be made within a period of **thirty (30)** days from the date of issue and that failure to which, the allotment would lapse automatically. That acceptance is by way of fulfilling all the conditions of the allotment. There was clear evidence that the payment made in purported compliance with the conditions on the letter of allotment was made way after the expiry of the period stipulated. That being so, the offer had already lapsed. There was nothing to be accepted hence anything that was done after the expiry of the period, absent of an extension, was neither here nor there. The case of **Dickinson v. Dodds Dickinson v Dodds (1876) 2 Ch D 463** gives a clear explanation that once an offer ceases, there is nothing to accept. The case is clear that even when the notification is by a third party that the offer has been withdrawn, that suffices as though the notice was given by the offeror. In the instant case, the condition was express about when the offer could be subsisting. The Offeree needed to do more to revive the offer than to make a payment in purport of acceptance of the non-existent offer. To cement that action as binding on the part of the government which had given the offer that lapsed would amount to forcing a contract or offer into existence.

44. Again, the Plaintiff alleged that the Certificate of Lease he owned was an end product of an allotment which was issued to one Gerald Tarus. Unfortunately, he neither produced the allotment letter nor called the said Gerald Tarus to avail it in court. Furthermore, he did not plead that the said Gerald Tarus was either deceased or could not be found. He only stated that he would not call him as witness despite allegedly marking the allotment letter which he alleged to have been issued to the said Gerald as **PMFI-3**. In the absence of the allotment letter which would have been the root of the Certificate of lease, it is practically impossible for this court to believe the plaintiff’s testimony that he acquired the land procedurally. It was important and obligatory that the letter of allotment be produced in evidence and its validity be cemented by way of further evidence to give the basis for the existence of the certificate of lease.

45. In the case of **Rukaya Ali Mohamed –vs- David Gikonyo Nambachia & another Kisumu HCCA.9/2004** Warsame Judge 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 or proprietorship unless it is challenged by the allotting*

*authority or is acquired through fraud, mistake or misrepresentation or that the allotment was out rightly illegal or it was against public interest”.*

**46.** To be clear about the non-existence of the offer of the parcel of land in question to the original allottee or subsequent one, this court has found that there was no allotment letter that was produced in evidence to support the plaintiff’s case. It was alleged that the original allottee, was issued with the allotment letter on **20/5/1993** and paid for the offer on **28/7/1993**. That translates to **68 days** later, I find that the payment if it was made at all was out of time thus the offer had already lapsed. By that time the land was unavailable for further allotment and the land reverted back to the government.

**47.** This court also considers the evidence of the defendants in that respect. The defendants argued that the suit land was set aside for a fire station in the **P.D.P** Plan of **1981** as well as that of **1983**. They argued that at the time the alleged allotment to one Gerald Tarus in **1993** was done, the land was not available for allocation. Argument was made cross-examination of the **PW2, PW3** and **DW1** on whether the P.D.Ps were signed on not. The Court considered the evidence by the witnesses and was convinced that the Plan which was issued in **1981** was indeed genuine and it had set aside the suit land for a fire station. Once land has been set aside for public use, there has to be express indication of conversion to private land. It is never available any longer for private alienation. This court finds that indeed the land was not available for allocation then, despite the plaintiff paying rates to the county government, the same was made to land that was non-existence at that time for allocation.

**48.** On the other hand, the defendant in his counterclaim claims that they are the rightful owners of the suit land. **DW1** testified that the suit land together with another which was registered in the name of James Mungai the brother to the plaintiff being Registration No. **Kitale/Municipality/4/407** belongs to the County Government.

**49.** The defendants’ case was that the Plaintiff grabbed the suit land and registered it irregularly in his name. The defendants’ evidence coupled with the discrepancies in that of the Plaintiff leaves this Court to no doubt that the plaintiff did not acquire the title and register it in his name regularly. The plaintiff did not prove how he acquired the land and caused it registered in his name. A title is the end product of a process. The process ought to be sacrosanct in order to give rise to a proper or ‘pure’ title. This court finds that the plaintiff failed to follow the process to the latter. It is immaterial that the Plaintiff paid land rates on the title. Fruits of a poisonous tree cannot be placed on the table of the living and healthy and be expected to be consumed and the people continue to live. The Plaintiff through a well-planned, illegal scheme, together with his brother James Muigai Thungu, subtly processed the titles in their names. The titles in their possession were obtained irregularly, without following the due process thus null and void for all purposes as required by law.

**50.** This court is of the considered view that the plaintiff’s title cannot be protected and or be cushioned by the law as it does not qualify to receive the protection espoused by **Article 40** of the **Constitution** of Kenya and **Sections 24, 25, and 26** of the **Land Registration Act** as the same were obtained fraudulently or what the Court may term as through a corrupt scheme.

**51.** Moreover, **PW3**, the Registrar did not produce any transfer documents in respect to the acquisition of the title in dispute. It is my considered view that he concealed material evidence that was crucial in this case. That is part of the scheme I have referred to above.

**52.** For the foregoing reasons, I find that the plaintiff failed to prove his case on a balance of probabilities. Their case is hereby dismissed with costs to the defendants. But, I find that the defendants succeed in their counterclaim on a balance of probabilities. I therefore enter judgment on the Counterclaim in favour of the Defendants against the Plaintiff as follows:

**a) An order of nullification of the sub-division of original plot earmarked for the fire station and cancellation of the Certificate of Lease to Title No. KITALE MUNICIPALITY BLOCK 4/487 issued on 27/9/2002 be and is hereby issued.**

**b) An order for the rectification of the Land Register to reflect that land parcel KITALE MUNICIPALITY BLOCK 4/487 is public utility land be and is hereby issued, and it forms part of the original lease as contained in the documents that arose from the P.D.P. made in 1981 or as amended thereafter.**

**c) An order requiring the plaintiff to remove his structures, if any, from the suit land within 30 days of this judgment, failure of which the defendants shall be at liberty to evict him at his own cost.**



53. Costs follow the event, therefore the plaintiff is hereby condemned to pay costs of this suit.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT KITALE VIA ELECTRONIC MAIL ON THIS 28TH DAY OF MARCH, 2022.**

**DR. *IUR* FRED NYAGAKA**

**JUDGE, ELC, KITALE**



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