



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT ELDORET**

**LAND SUITE & L NO. 287 OF 2012**

**RAMJI D. VEKARIA.....PLAINTIFF**

**-VERSUS-**

**NATHANIEL KIPTALAM LAGAT.....1<sup>ST</sup> DEFENDANT**

**SAMWEL KING'ORI MWANGI.....2<sup>ND</sup> DEFENDANT**

**THE NATIONAL LAND COMMISSION.....3<sup>RD</sup> DEFENDANT**

**THE UASIN GISHU DISTRICT LAND REGISTRAR.....4<sup>TH</sup> DEFENDANT**

**JUDGEMENT**

Ramji D. Vekaria (hereinafter referred to as Plaintiff) has come to this court against Nathaniel Kiptalam Lagat, Samwel King'ori Mwangi, the National Land Commission and the Uasin Gishu District Land Registrar (hereinafter referred to as defendants) by way of plaint claiming that by several agreements entered into between January 1989 and April 1990, the Plaintiff purchased the whole of that parcel of land known as ELDORET MUNICIPALITY BLOCK 15/238 from one Stanley Kiptoo Metto who was as the time the registered owner of the said parcel of land.

That the plaintiff claims to have been registered as the proprietor of the said parcel of land on 14<sup>th</sup> August 1990 subject to a caution by the Government of the Republic of Kenya claiming absolute possession of 1.8065 Hectares out of the said parcel of land measuring 4.854 Hectares at the time. That in or about 1991 to 1992, the Government of the Republic of Kenya carried out a survey of Eldoret Municipality Block 15/238 among other adjacent parcels of land for the purposes of curving out land that the Government had compulsory acquired or in respect of which the Government had acclaim of absolute possession.

During the said process of survey, the Government of the Republic of Kenya curved off approximately 2.00 Hectares out of the plaintiff's land leaving a balance of 2.802 Hectares. Upon conclusion of the said survey exercise, the plaintiff surrendered the original certificate of lease over land parcel Number Eldoret Municipality Block 15/238 and was in lieu thereof registered as the proprietor of the whole of that parcel of land known as Eldoret Municipality Block 15/1816.

The Plaintiff was entered in the register of land parcel number Eldoret Municipality Block 15/1816 on the 3<sup>rd</sup> of January 1996 and was issued with an original certificate of lease over the said parcel of land on 3<sup>rd</sup> January 1996. That the plaintiff has thus been the registered owner of land parcel number Eldoret Municipality Block 15/1816 for a period of over ten (10) years now and the owner of Eldoret Municipality Block 15/238 for 6 years making a total period of over 16 years. The plaintiff has paid rent, and all other statutory charges outstanding on the said parcel of land from time to time and has continued to do that todate.

In or about the month of October 2006, the plaintiff started noticing a flurry of activities going on in neighboring parcels of land whereupon the plaintiff decided to carry out various investigations to establish the registration and status of his property. Upon carrying out the inquiry the plaintiff discovered with utter shock that the 1<sup>st</sup> Defendant had ostensibly obtained registration over the plaintiff's parcel of land on 8<sup>th</sup> March 2006.

The 1<sup>st</sup> Defendant entered into an agreement with the 2<sup>nd</sup> Defendant wherefore he sold the plaintiff's land parcel number Eldoret Municipality Block 15/1816 at a consideration of Kenya shillings 10,500,000.00. The purported sale was effected on the basis of the certificate of lease issued to the 1<sup>st</sup> Defendant by the 4<sup>th</sup> Defendant and various green card entries and searches.

The plaintiff however contends that the 1<sup>st</sup> defendant's purported registration as the proprietor of land parcel number Eldoret Municipality

Block 15/1816 was procured by fraud on the part of the 1<sup>st</sup>, 3<sup>rd</sup> and the 4<sup>th</sup> Defendant and as such illegal null and void and of no legal consequences. The plaintiff contends that the 3<sup>rd</sup> and 4<sup>th</sup> Defendants being the custodians of public records acted in breach of their public duty under the law.

The plaintiff's first claim against the defendants is therefore for a declaration that he plaintiff is lawful owner of land parcel number Eldoret Municipality Block 15/1816 and that the defendants' actions amount to an interference with his proprietary rights.

The Plaintiff's second claim against the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants is for a declaration that the lease, certificate of lease and all the documents issued by the 3<sup>rd</sup> and 4<sup>th</sup> Defendants over the suit land are unlawful illegal, null and void contrary to the law.

The plaintiff's third claim against the 1<sup>st</sup> and 2<sup>nd</sup> defendants is for a declaration that the sale agreement entered into between the 1<sup>st</sup> and 2<sup>nd</sup> defendants over the plaintiff's land parcel number Eldoret Municipality Block 15/1816 is illegal, null and void and of no legal consequence.

The Plaintiff's fourth claim against the 1<sup>st</sup> defendant is for an order directing the 1<sup>st</sup> defendant to immediately surrender back to the 3<sup>rd</sup> and the 4<sup>th</sup> Defendants the original lease, certificate of title and all the other documents in possession relating to the plaintiff's land parcel number Eldoret Municipality Block 15/1816.

The Plaintiff's fifth claim against the 3<sup>rd</sup> and 4<sup>th</sup> Defendants is for an order directing the 3<sup>rd</sup> and 4<sup>th</sup> Defendants to immediately cancel the registration effected in favour of the 1<sup>st</sup> defendant over land parcel number ELDORET MUNICIPALITY BLOCK 15/1816 and any other documents issued and/or held by the 3<sup>rd</sup> and the 4<sup>th</sup> defendants over the plaintiff's land.

The plaintiff also prays for a permanent injunction to restrain the 1<sup>st</sup> and the 2<sup>nd</sup> Defendants from selling, charging, leasing and/or otherwise encumbering and taking possession of land parcel number ELDORET MUNICIPALITY BLOCK 15/1816. The plaintiff additionally claims for general damages against the Defendants jointly and severally and costs of this suit.

The 1<sup>st</sup> Defendant filed a defence whose import is that the plaintiff entered agreements with one Stanley Metto as stated in paragraph 6 of the plaint, but does deny that the plaintiff ever bought that land known as L.R. Number Eldoret Municipality Block 15/238 from the said Stanley K. Metto, and in 1989-1990, or anyone else ever at all.

The first defendant in turn pleads that he was a partner in common with the purchasers of that land originally known as L.R. NO. 10492, bought in 1965 from a colonial settler, and measuring 3236 acres. The land was then described as "all that land situate West of Eldoret Municipality in the Uasin Gishu District (now the Sirikwa Country)..." In due course the land was subdivided among the partners, each being allocated 220 hectares.

The first defendant's share comprised what then became L.R. NO. 10492/2, measuring 184 hectares and another measuring 36 hectares was also allotted to him, in order to cover the difference. The aforesaid 36 acres fall within the municipality of Eldoret, in consequence whereof the first defendant in 1981 sought and obtained change of user from agricultural to commercial use as indicated on the R.I.M. map Ref N. A. 36/X/09(89/3). The parcel was subsequently registered as L.R. Number 12429 under the new grant made to the first defendant.

In due course, the land was subdivided to form Eldoret Municipality Block 15/12, 15/237, 15/238 and 15/239. On 21.9.1983, the President of the Republic of Kenya leased that parcel of land known as Eldoret municipality/Block 15/239 measuring 21.454 Ha to His Excellency Daniel Toroitich arap Moi for a term of 925 years 3 months.

In 1987 or thereabout, the government exercised compulsory acquisition pursuant to the Land Acquisition Act over portions of Block 15/237, 15/238 and 15/12 for purposes of Kenya Ports Authority Inland container depot. The first defendant severally sought due compensation, which was withheld and which, despite continuous demand, has not been paid to him.

When the land was demarcated in situ, it encroached on adjoining parcels of land. It is the first defendant's case that His Excellency Daniel Toroitich Arap Moi aforesaid had entered a transaction to acquire 21.454 Ha, from the late Noah Kipng'eny arap Chelugui, one of the first defendant's partners in the original acquisition, whose parcel was separated from the first defendant's by the Uganda Highway.

As a result of the mistaken demarcation of L.R. number 10429 at the instance of the third and fourth defendants, land belonging to the first defendant was unlawfully, maliciously, fraudulently and wrongfully demarcated, subdivided registered and alienated, without being properly represented and/or delineated.

As a result of the foregoing, the first defendant sought contribution and indemnity out of the third and fourth defendants, and out of His Excellency Daniel Toroitich arap Moi.

The plaintiff can therefore not hold any valid title, interest, property or any claim whatsoever in L.R. Number 10429, or its cadastral derivatives, including Eldoret Municipality/Block 15/1816, and any such title, interest, property or other claim he purports to hold therein is fraudulent, and was fraudulently acquired. The 1<sup>st</sup> defendant prays that the plaintiff's suit be dismissed.

The 2<sup>nd</sup> Defendant filed defence whose gravamen is that he had no knowledge of all those transactions by the plaintiff with Stanley K. Metto and the Government of Kenya as pleaded. He denies ever participating in fraud. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants filed defence whose gist is that according to available records, land Ref. Eldoret Municipality Block 15/238 was allocated to Stanley Arap Metto by Government of Kenya on 1<sup>st</sup> August 1983 for a term of 925 years. The said parcel of land measures approximately 4.85 ha was acquired vide Gazette Notice No. 5948 of 24<sup>th</sup> December, 1987 for Kenya Ports Authority Inland Container Depot.

The land owner a Mr. Stanley Arap Metto was fully compensated for 1.8065Ha of his acquired land. That from the land records L.R. No. 12439 is for land reference No. 8537 and at no time was that parcel of land been registered in the name of the 1<sup>st</sup> Defendant. That at the time of 1<sup>st</sup> Defendant acquiring the purported title of parcel No. ELDORET MUNICIPALITY BLOCK 15/1816 in March 2006 a title was already in existence for parcel No. ELDORET MUNICIPALITY BLOCK 15/1816 to 2<sup>nd</sup> defendant in this matter.

The defendants do not admit the allegations of fraud leveled against them and put the plaintiffs to strict proof of the particulars of fraud serialized as paragraph 18 (i) – (xiii) of the plaint. The defendants aver that the registration of the 1<sup>st</sup> defendant as proprietor of the suit land was done through an innocent mistake and hence in good faith and if there was any fraud the 1<sup>st</sup> defendant ought to bear liability for the same.

When the matter came up for hearing, the plaintiff gave evidence as PW1 and adopted his statement whose flow is that on or about January 1989 and April 1990 he entered into several agreements and purchased the whole of that parcel of land known as Eldoret Municipality Block 15/238 from one Stanley Kiptoo Metto who was at the time the registered owner of the said parcel of land. He was registered as the proprietor of the said parcel of land on 14<sup>th</sup> August 1990 subject to a caution by the Government of the Republic of Kenya claiming absolute possession of 1.8065 Hectares out of the said parcel of land measuring 4.854 Hectares.

In or about 1991 to 1992, the Government carried out a survey of Eldoret Municipality Block 15/238 among other adjacent parcels of land for the purposes of curving out land that the Government had compulsorily acquired in respect of the Government had a claim of absolute possession. The Government curved out 2.000 Hectares out of 4.854 Hectares leaving out 2.802 Hectares.

He surrendered the original certificate of lease over the land parcel number Eldoret Municipality Block 15/238 and was in lieu thereof registered as the proprietor of the whole of that parcel of land known as Eldoret Municipality Block 15/1816 and issued with original certificate of lease on the 3<sup>rd</sup> January 1996. He has thus been paying the land rent, rates and all other statutory charges outstanding on the said parcel of land from time to time as the registered owner for a period of over sixteen years. In or about the month of October 2006, the plaintiff started noticing a flurry of activities going on in neighboring parcels of land whereupon he decided to carry out various investigations to establish the registration and status of his property. Upon carrying out the inquiry, he discovered with utter shock that Nathaniel Kiplagat had ostensibly obtained registration over his parcel of land on 8<sup>th</sup> March 2006 purportedly that he had entered into a sale agreement with Samwel King'ori Mwangi for a consideration of Kshs. 10, 500, 000.00 over the said land parcel number ELDORET MUNICIPALITY BLOCK 15/1816 on the basis of the certificate of lease issued to the said Samwel Mwangi by the Uasin Gishu District Land Registrar. That he has neither sold his land to anybody nor executed power of attorney authorizing anyone to sale the said property, his proprietary interest in the suit land has therefor been interfered with without his knowledge.

The plaintiff therefore humbly prays that he be declared the lawful owner of and certificate of lease and all documents issued to Samuel Kingori Mwangi be declared illegally obtained, nullified and cancelled forthwith.

On cross examination by M/s Tum learned counsel for the 1<sup>st</sup> defendant, he states that he bought parcel of land Eldoret Municipality Block 15/238 from Stanley Metto. He did search which he did not produce a copy. He bought 7 acres in 1989, 1990 and 1995. He produced a certificate of lease but did not have a transfer of lease but acquired title in 1990. He did not get a consent from the Commissioner of lands. He surrendered Eldoret Municipality Block 15/238 to the government. Block 15/238 belonged to the Government. The government did a survey and took its part and gave a new lease. He gave mutation forms as he surrendered the title. He was given 15/1816 which had not been developed. He testified that he did not know Nathaniel Langat. He did not know that the Land Registrar wrote to him explain the certificate of lease. He did not know how Stanley Metto acquired the land. He did not know that Lagat had a white card. He lodged a complaint to the Land Registrar and was not given any report.

On cross examination by Mr. Mbugua learned counsel for the 2<sup>nd</sup> defendant, he states that he was carrying on business in plot no. 44. He had the certificate of registration but he had not shown to the court. That the business name was registered on 15/11/1979. That when the plaintiff was buying the land, the area was planned but not surveyed. The plan is not stamped. It was proposed and not surveyed. He bought the land before survey. Eldoret Municipality Block 15/238 was a total of 4.834Ha and he bought 7 acres. He never saw the lease signed between the Commissioner of Lands and Mr Metto. He engaged Irene Chelule who was a private surveyor. She did not prepare survey plans.

On re-examination by Mr. Aceso he states that the certificate of change of name is dated 25/4/1987. The agreements were made after the 25/4/1987. Vishva Builders was registered on 15/11/1979. He was changing the area of operation to Mombasa. He bought the property from A.G.N Kamau on 21/11/1995. He bought one acre from him and cleared the land rent. The land was Block 15/1816 and had a land clearance certificate.

The 1<sup>st</sup> defendant testified as DW1, that his land was originally block 15/10 but currently block 15/1816. Originally it was L.R NO 10492 that was bought by five partners from a white man known as Jacobus Hendrich Englebalt hereinafter referred to as the vendor. The vendor then transferred to them the land measuring about Three Thousand Three Hundred and Thirty-Six (3236) acres. The transfer was by way of purchase and they were to hold the same as Tenants in common in equal shares. The transfer is dated 28<sup>th</sup> June, 1965 and was registered at the Lands Registry as I.R. 17542/3/ on 28<sup>th</sup> June 1965. The land was subdivided among the partners each being allocated 220 Hectares. His share comprised what then became L.R. No. 10492/2 measuring 184 Hectares and another measuring Thirty-Six (36) acres. The land was later subdivided to form Eldoret Municipality Block 15/10, 15/238 and 15/239. In 1983, the President of Kenya then, his Excellency Daniel Toroitich Arap Moi was allocated by the Government of Kenya Eldoret Municipality Block 15/239 a portion measuring 21.45 Hectares. The Government further exercised compulsory acquisition over portions of Block 15/237, 15/238 and 15/10 for purposes of Kenya Ports Authority Inland Container Depot.

At the instance of the Third and Fourth Defendants the 1<sup>st</sup> Defendant's land was unlawfully, maliciously, fraudulently and wrongfully demarcated, subdivided, registered and alienated without any colour of right and proper presentation. As a result, the 1<sup>st</sup> Defendant's land was fraudulently allocated to one Stanley K. Metto. As a further result of the fraudulent transaction, the parcel which is the subject matter of

this suit and being Eldoret Municipality block 15/1816 has caused the dispute herein.

It is a result of the above that the 1<sup>st</sup> Defendant made several complaints to the Lands Registry and he was issued with a certificate of lease in 2006 and the lease itself in 1991 on the parcel of land in dispute now.

The plaintiff cannot therefore, hold any valid title, lease, interest, property or any claim whatsoever in L.R. No. 10429 or its cadastral derivatives including Eldoret Municipality/Block 15/1816 and any title he purportedly holds is fraudulent and was fraudulently acquired. He prayed that the plaintiff's suit be dismissed with costs.

On cross examination by Mr. Aceso, he states that they bought land and they were former partners in 1965. The whole land was 3000 acres and he got 600 acres and that within his group they were 30 people. His portion was L.R 10492/1. The land was 39Ha. The land was subdivided into 3 parcels of land illegally. 237 was 9.3 Ha. It was given to Noah Chelugui, 238 was given to Stanley Metto It is 4.665 Ha. 235 was given to Daniel Toroitich Arap Moi. The 1<sup>st</sup> defendant was claiming 237,238 and 239. 238 was subdivided into 3. 1814 and 1815 were acquired by the Government. Metto had no land. Eldoret Municipality/Block 15/1816 was given to the 1<sup>st</sup> defendant but Metto had been given title. He sold to Vakaria.

On cross examination by Mr. Mbugua he states that he never sold the land to another person. He sold Block 15/1816 to Samwel Kingori Mwangi. He sold the land for 10,500,000. He received 2 million. No one stayed in the land. Vekaria was not in the land. He has not constructed on the land. He has never sold land to Vekaria. He never sold land to Stanley Metto. He was given Block Eldoret Municipality/Block 15/1816. The 1<sup>ST</sup> defendant does not know whether the lease was registered. The certificate of lease was issued on 8/3/2006 and the original was with the 2<sup>nd</sup> Defendant. On cross examination by Mr. Odongo state counsel he states that Block 15/238 has never been in his name. Block 15/238 was in the names of Stanley Metto. He has never sued Stanley Metto.

On re-examination by M/s Tum, he states that he now had original certificate of lease which he was given in 1993 and was produced as 1<sup>ST</sup> DEX6. He did not know Stanley Metto had sold his land. He did not know Stanley Metto. He never witnessed Stanley Metto signing the lease. He never appeared before Stanley Metto. He was not given an allotment on Eldoret Municipality/Block 15/1816.

The plaintiff submits that the sole issue to be dealt with is who between the plaintiff and the 1<sup>st</sup> defendant is the legal proprietor of parcel of land known as Eldoret Municipality Block 15/1816. According to the plaintiff, Ramji Devji Vekaria in his evidence indicated that he initially traded as Vishva Builders; this was evidenced by the Certificate of Registration of Change of Particulars dated 25/04/1987 and it is through this that he purchased the suit land. His evidence was that on or about January 1989 and April 1990 he entered into several agreements and purchased the whole of that parcel of land known as Eldoret Municipality Block 15/238 from one Stanley Metto who was the then registered owner. He was subsequently registered as the proprietor on 14/08/1990 subject to a caution by the Government claiming absolute possession of 2.1 hectares out of the 4.854 hectares. In or about the year 1991 to 1992, the Government carried out a survey of Eldoret Municipality Block 15/238 among other adjacent parcels for the purposes of curving out land to be acquired by it for Kenya Ports Authority Inland Container Depot.

The government curved out about 2.1 hectares out of the 4.854 hectares leaving the plaintiff with about 2.802 hectares, who surrendered the original Certificate of lease to Eldoret Municipality Block 15/238 and was in lieu registered as the proprietor of Eldoret Municipality Block 15/1816 and issued with a certificate of lease on 03/01/1996.

Stanley Metto has not disputed selling any of his property to the plaintiff and therefore the plaintiff submits that under the doctrine of privity of contract, the transactions between Stanley Metto and Ramji Vekaria as himself or trading as Vishva Builders are un-impeached. According to Mr Aceso, the plaintiff has also demonstrated that he has exclusively been paying land rent, rates and all other statutory charges outstanding on the parcel of land known as Eldoret Municipality Block 15/1816 since his registration as the owner in 1996 – a period of close to 25 years. Rent Clearance Certificate dated 21/12/2018 for the suit land as paid by him as well as rates receipts were produced as exhibits. This in sharp contrast to Nathaniel Kiptalam Lagat, the 1<sup>st</sup> defendant, who has not provided any proof of ownership or possession other than a purported green Card which has been impugned by the Land Registrar.

The plaintiff submits that the 3<sup>rd</sup> and 4<sup>th</sup> defendant's witness (the Land Registrar) testified that vide a surrender instrument together with a sub-divisional plan, an area list and member's register, the proprietors of LR No. 10492 through their advocate and private surveyor surrendered LR No. 10492 in consideration of leasehold titles for the parcel of land falling within Eldoret Municipality and freehold titles for land outside Eldoret Municipality and vide Eldoret CACA No. 51 of 2016, it was found that the surrender was voluntary, lawful, legal and proper in the circumstances.

Her further evidence was that as per the surrender, one of the titles issued to the original proprietors (N.K. Lagat & Partners) was Eldoret Municipality Block 15/1 which was also surrendered to the Government for Kenya in 1983 by the said proprietors in consideration of a scheme plan and register that resulted in land parcels Eldoret Municipality Block 15/237, 15/238 and 15/239. The witness also stated that in pursuance of the surrender of parcel number Eldoret Municipality Block 15/1;

The plaintiff's counsel submits that Sections 27 and 28 of the Registered Land Act (repealed) provide for the sanctity of title. The title subject matter of this suit having been registered in 1990 is subject to these provisions. The sanctity and validity of Stanley Metto's title as the original owner and vendor, and subsequently of Ramji Vekaria as the current proprietor has further been verified by the evidence of the Land Registrar as the keeper of the master record of all land in Kenya on behalf of the Attorney General.

Section 107 of the Evidence Act places the burden of the person alleging the existence of certain facts to prove those facts. It provides thus:

**“(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.**

**(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”**

Section 108 on the other hand states that 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.

This position has been restated by this Court in Jacob Nyakwa Ojwang v Nathwalal Narishidas Ghelani & 5 others [2021] eKLR.

Mr Asesso submits that the plaintiff is a bona fide purchaser for value without notice of any defect to title having purchased the same from the initial registered proprietor- Stanley Metto for valuable consideration. The claim over this title has not been impeached by either the 1<sup>st</sup> or 2<sup>nd</sup> defendants; indeed it has been affirmed by the 3<sup>rd</sup> and 4<sup>th</sup> defendants.

Mr Asesso relies on the case of Katende v Haridar & Company Limited (2008) 2 E.A. 173 the court held as follows in determining who a bona fide purchaser for value is, and stated inter alia:

***“For the purposes of this appeal, it suffices to describe a bona fide purchaser as a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly. For a purchaser to successfully rely on the bona fide doctrine, (he) must prove that: he holds a certificate of title; he purchased the property in good faith; he had no knowledge of the fraud; he purchased for valuable consideration; the vendors had apparent valid title; he purchased without notice of any fraud; he was not party to any fraud.”***

The plaintiff testified that as stated in evidence and from documents adduced, at the time of purchase, title to Eldoret Municipality Block 15/238 was held by Stanley Metto. The plaintiff later had it registered in his name proper to subdivision and compulsory acquisition by the Government of Kenya, he purchased the property in good faith and for valuable as evidenced by the Sale Agreements dated 03/01/1989, 04/12/1989, 09/04/1990 and 21/11/1995 (all produced as exhibits) and neither Stanley Metto nor his estate have disputed the sale.

The purchase in good faith and subsequent possession is also demonstrable by the actions by the plaintiff to pay and continue paying land rent and rates even as the present case is ongoing.

**ANALYSIS AND DETERMINATION**

I have considered the pleadings and evidence on record including the rival submissions of parties and do come to the conclusion that the main issue for determination is who the legal owner of the suit property is. To begin with this court finds that there are two registers in respect of the suit properties namely, edition 1 opened on the 28<sup>th</sup> of September 1983 in the registration section of Eldoret Municipality Block 15 parcel number 1816 measuring 2.802 Hectares in the registration map sheet of Block 15. THE Lessor is the Government of Kenya whereas the Lessee is Stanley Arap Metto. The term of the lease is 925 years from the 1<sup>st</sup> of August 1983 and the annual rent was kshs. 35,000. On the 3<sup>rd</sup> of January 1996, the property was registered in the names of Ramji Devji Vekaria and a certificate issued in his name. The property is not encumbered.

The department of lands opened another register on the 8<sup>th</sup> of March 2006 in the same registration section in respect of the same parcel of land and the same registry map sheet number block 15 and wherein the Lessor was the Government of Kenya and the lessee was Nathaniel Kiptalam Lagat for a term of 99 years from the 1<sup>st</sup> of November 1991. The 1<sup>st</sup> entry in the register was made on the 8<sup>th</sup> of March 2006 and the property was registered in the names of Nathaniel Kiptalam Lagat of P.O BOX 2793 Kitale and a certificate of lease was issued on the same date.

The Land Registrar testified that that there was a surrender instrument together with a sub-divisional plan, an area list and member's register, wherein the proprietors of LR No. 10492 through their advocate and private surveyor surrendered LR No. 10492 in consideration of leasehold titles for the parcel of land falling within Eldoret Municipality and freehold titles for land outside Eldoret Municipality and the court of Appeal in Eldoret CACA No. 51 of 2016 where the 1<sup>st</sup> defendant was a party, found that the surrender was voluntary, lawful, legal and proper in the circumstances.

The Land registrar further gave evidence that as per the surrender, one of the titles issued to the original proprietors (N.K. Lagat & Partners) was Eldoret Municipality Block 15/1 which was also surrendered to the Government for Kenya in 1983 by the said proprietors in consideration of a scheme plan and register that resulted in land parcels Eldoret Municipality Block 15/237, 15/238 and 15/239. She further stated that in pursuance of the surrender of parcel number Eldoret Municipality Block 15/1; LR No. Eldoret Municipality Block 15/237, measuring 9.665 Hectares, was allocated to and registered in the name of Noah Kipng'eny Arap Chelugui (the 1<sup>st</sup> defendant) and a Certificate of Lease issued.

That LR No. Eldoret Municipality Block 15/238, measuring 4.854 Hectares, was allocated to Stanley Metto vide lease dated 13/09/1983 and registered on 28/09/1983 and a certificate of lease issued. This was sold to the plaintiff and another certificate of lease issued to him on 14/08/1990 after acquisition by the government.

That LR No. Eldoret Municipality Block 15/239, measuring 21.454 Hectares, was allocated to H.E. Daniel Toroitich Arap Moi vide lease dated and registered on 21/09/1983, and a certificate of lease issued. This property was later transferred to Rai Plywood (K) Limited. This particular issue was the subject of Eldoret E& L Petition No. 9 of 2014 and Eldoret CACA No. 51 of 2016.

Further evidence by the Land Registrar is the vide Kenya gazette Notice No. 5947 dated 17/12/1987, the Government of Kenya acquired 5.4 hectares, 2.1 hectares and 10.15 hectares out of Eldoret Municipality Block 15/237, 15/238, and 15/12 respectively for the Kenya Ports Authority Inland Container Depot.

Noah Kipng'eny Arap Chelugui and Stanley Metto the registered proprietors of Eldoret Municipality Block 15/237 and Eldoret Municipality Block 15/238 were subsequently compensated at Kshs. 1,303,000 and Kshs. 356,000 respectively.

Her further evidence was that following the said acquisition and compensation, Eldoret Municipality Block 15/238 was subdivided into Eldoret Municipality Block 15/1814, 1815 and 1816 registered as follows: Eldoret Municipality Block 15/1814 and Eldoret Municipality Block 15/1815 registered in the name of Kenya Pipeline Corporation Limited and Eldoret Municipality Block 15/1816 registered in the name of Ramji Devji Vekaria, the plaintiff herein.

The plaintiff herein has demonstrated that he is a bonafide purchaser for value without notice of any fraud as he produced a sale agreements detailing how he purchased the property and paid the whole purchase price as consideration. Whereas the 1<sup>st</sup> defendant has not demonstrated how the certificate of lease was issued to him without following the legal process.

It is trite law that an innocent purchaser of property who purchases for value without notice of any other party's claim against the property so long as he is a **bona fide purchaser** and properly records the transaction, he takes good title to the property despite competing adverse claims.

23. **Black's law Dictionary 8<sup>th</sup> Edition** defines "*bona fide purchaser*" as:

***"One who buys something for value without notice of another's claim to the property and without actual or constructive notice of any defects in or infirmities, claims or equities against the seller's title; one who has in good faith paid valuable consideration for property without notice of prior adverse claims."***

24. In the Ugandan case of *Katende v. Haridar & Company Limited [2008] 2 E.A.173* it was held:-

***"For the purposes of this appeal, it suffices to describe a bona fide purchaser as a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly. For a purchaser to successfully rely on the bona fide doctrine, (he) must prove that:***

- a. he holds a certificate of title;***
- b. he purchased the property in good faith;***
- c. he had no knowledge of the fraud;***
- d. he purchased for valuable consideration;***
- e. the vendors had apparent valid title;***
- f. he purchased without notice of any fraud;***
- g. he was not party to any fraud.***

***A bona fide purchaser of a legal estate without notice has absolute unqualified and answerable defence against claim of any prior equitable owner."***

In *Samwel D. Omwenga Angwenyi v National Land Commission & 2 others [2019] eKLR* the court held

***"24. In the case of Samuel Kamere -vs- Lands Registrar, Kajiado Civil Appeal Number 28 of 2005 where the Court of Appeal which held that:***

***"...in order to be considered a bona fide purchaser for value, they must prove; that they acquired a VALID and LEGAL title, secondly, they carried out the necessary due diligence to determine the lawful owner from whom they acquired a legitimate title and thirdly that they paid valuable consideration for the purchase of the suit property..."***

The case of *Elizabeth Wambui Gighinji & 29 others v Kenya Urban Roads Authority & 4 others [2019] Eklr*, the court stated:

***"The law has never intended to punish the innocent as to punish the innocent would break down all the trust and respect for the law and legal system... it has long been accepted beyond debate that the land registration process in Kenya is a product of the Torrens system...Under that system, the title of a bona fide purchaser for value without notice of fraud cannot be impeached; that the land register must mirror all currently.***

S.23(1) of the Registration of Titles Act Cap. 281 (repealed) is of assistance as the transaction took place when it was in force. The section reads as follows: -

***"The certificate of title issued by the registrar to a purchaser of land upon a transfer or transmission by the proprietor***

**thereof shall be taken by all courts as conclusive evidence that the person named therein as proprietor of the land is the absolute and indefeasible owner thereof, subject to the encumbrances, easements restrictions and conditions contained therein or endorsed thereon, and the title of that proprietor shall not be subject to challenge, except on the ground of fraud or misrepresentation to which he is proved to be a party.”**

The court finds that the plaintiff was an innocent purchaser for value without notice having purchased the property from Mr Metto whereas the 1<sup>st</sup> defendant's title is questionable having been granted on the basis of a green card opened on the 8<sup>th</sup> of March 2006 in the same registration section in respect of the same parcel of land and the same registry map sheet number block 15 and wherein the Lessor was the Government of Kenya and the lessee was the 1<sup>st</sup> defendant for a term of 99 years from the 1<sup>st</sup> of November 1991 and yet the same parcel of land, thus Municipality Block 15 parcel number 1816 measuring 2.802 Hectares had been allocated to Stanley Metto on the 28<sup>th</sup> of September 1983 in the same registration section of Eldoret in the registration map sheet of Block 15. The Lessor being the Government of Kenya whereas the Lessee is Stanley Arap Meto. The term of the lease being 925 years from the 1<sup>st</sup> of August 1983 and the annual rent was Kshs. 35,000.

On the 3<sup>rd</sup> of January 1996, the property had been registered in the names of Ramji Devji Vekaria and a certificate issued in his name. The second registration was an illegality and therefore not recognized in law as it was superimposed on an existing title and that the lease was not even registered and that no allotment letter was issued. It appears that the 1<sup>st</sup> defendant just went to the land Registrar who issued him with a certificate of lease without following the right procedure albeit the Land Registrar testified that the certificate of lease issued to the 1<sup>st</sup> defendant was not genuine and that it was issued through an honest mistake.

This court has a duty to uphold the Law with regard to the plaintiff's rights, as a registered proprietor, under sections 27 and 28 of the Registered Land Act as then applicable to the suit property (now section 25 of the Land Registration Act, 2012), until fraud shall have been established in accordance with section 26 (1) of the Land Registration Act 2012 which provides as follows:

**“26. Certificate of title to be held as conclusive evidence of proprietorship**

*(1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—*

**(a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or**

**(b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”**

The upshot of the above is that the plaintiff has proved his case on a balance of probabilities and therefore I do grant judgment thus a declaration that the plaintiff is the lawful owner of land parcel number Eldoret Municipality Block 15/1816 and that the defendants' actions amount to an interference with his proprietary rights.

Moreover, I do grant a declaration that the lease, certificate of lease and all the documents issued by the 3<sup>rd</sup> and 4<sup>th</sup> Defendants to the 1<sup>st</sup> and the 2<sup>nd</sup> defendants over the suit land are unlawful, illegal, null and void and contrary to the law and that the sale agreement entered into between the 1<sup>st</sup> and 2<sup>nd</sup> defendants over the plaintiff's land parcel number ELDORET MUNICIPALITY BLOCK 15/1816 is illegal, null and void and of no legal consequences.

Ultimately I do order that the 1<sup>st</sup> defendant to immediately give back to the 3<sup>rd</sup> and the 4<sup>th</sup> Defendants the original lease, certificate of title and all the other documents in his possession relating to the plaintiff's land parcel number ELDORET MUNICIPALITY BLOCK 15/1816 and the 3<sup>rd</sup> and the 4<sup>th</sup> defendants to immediately cancel the registration effected in favour of the 1<sup>st</sup> defendant over land parcel number ELDORET MUNICIPALITY BLOCK 15/1816 and any other documents and or held by the 3<sup>rd</sup> and the 4<sup>th</sup> defendants over the plaintiff's land.

Last but not least, I do grant a permanent injunction to restrain the 1<sup>st</sup> and the 2<sup>nd</sup> defendants from selling, charging, leasing and or otherwise encumbering and taking possession of land parcel number ELDORET MUNICIPALITY BLOCK 15/1816. I do finally grant cost of this suit to the plaintiff against the defendants.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 18<sup>th</sup> DAY OF MARCH, 2022**

**ANTONY OMBWAYO**

**JUDGE**

*This Judgment has been delivered to the parties by electronic mail due to measures restricting court operations due to the COVID-19 pandemic and in the light of the directions issued by his Lordship, the Chief Justice on 15<sup>th</sup> March 2020.*