



Ochieng v Agricultural Development Corporation & 3 others; National Land Commission (Interested Party) (Environment & Land Petition 2 of 2022) [2025] KEELC 3844 (KLR) (23 April 2025) (Judgment)

Neutral citation: [2025] KEELC 3844 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND PETITION 2 OF 2022
FO NYAGAKA, J
APRIL 23, 2025**

BETWEEN

STEPHEN OCHIENG PETITIONER

AND

AGRICULTURAL DEVELOPMENT CORPORATION 1ST RESPONDENT

THE ATTORNEY GENERAL 2ND RESPONDENT

THE CHIEF LAND REGISTRAR 3RD RESPONDENT

**THE CABINET SECRETARY, MINISTRY OF AGRICULTURE, LIVESTOCK,
FISHERIES & CO-OPERATIVE SOCIETIES 4TH RESPONDENT**

AND

NATIONAL LAND COMMISSION INTERESTED PARTY

JUDGMENT

1. The Petitioner commenced the present suit vide an amended Petition dated 31st October, 2023 seeking the following orders:
 - i. A declaration that the Respondents acted ultra-vires in promulgating the Agricultural Development Corporation (Special Farms) Rules, 2001 [L.N 37/2001, L.N 157/2003] in so far as it relates to a private land namely Grant No. I.R. 19981, Land Reference Number 2053 delineated on the land survey plan number 75869.
 - ii. A declaration that the Agricultural Development Corporation (Special Farms) Rules, 2001 [L.N 37/2001, L.N 157/2003] is illegal, null and void to the extent that it relates to Grant No. I.R. 19981, Land Reference Number 2053 delineated on the survey plan number 75869.



- iii. A declaration that the Petitioner is lawfully registered as the proprietor of the property known as Grant No. I.R 19981, Land Reference Number 2053 delineated on the land survey plan number 75869 situated in Trans Nzoia County, having acquired a lawful and legal title thereof.
 - iv. A declaration that the Petitioner is entitled to ownership, occupation and use of the property known as Grant No. I.R 19981, Land Reference Number 2053 delineated on the land survey plan number 75869 situated in Trans Nzoia County to the exclusion of the Respondents herein.
 - v. An order of prohibition prohibiting the Respondents herein from interfering with the Petitioner's right to access, use and otherwise deal with the property known as Grant No. I.R. 19981, Land Reference Number 2053 delineated on the land survey plan number 75869 situated In Trans Nzoia County.
 - vi. A declaration that that the Agricultural Development Corporation (Special Farms) Rules, 2001 [[LN 37/2001](#), L.N 157/2003] violates the Petitioner's and his predecessors in title rights to property and fair administrative action under Articles 40 and 47 of *the Constitution* respectively in so far as it relates to Grant No. 1.R 19981, Land Reference Number 2053 and is there unconstitutional, illegal, null and void to this extend.
 - vii. A declaration that the actions of the Respondents in interfering with the Petitioner's use and occupation of Grant No. I.R 19981, Land Reference Number 2053 delineated on the land survey plan number 75869 situated in Trans Nzoia County and in the promulgation of the Agricultural Development Corporation (Special Farms) Rules, 2001 [[LN 37/2001](#), [LN 157/2003](#)] violates the legitimate expectation of the Petitioner and his predecessors in title.
 - viii. A permanent injunction restraining the Respondents by themselves, their agents, assigns or representatives from alienating or interfering with the Petitioner's possession of the property known Grant No. I.R 19981, Land Reference Number 2053 delineated on the land survey plan number 75869 situated in Trans Nzoia County by forcible entry or otherwise in any manner prejudicial to the Petitioner.
 - ix. An order that the 1st Respondent pays the Petitioner such compensation as the court may deem fit for violations of his rights and fundamental freedoms under *the Constitution*.
 - x. An order for costs of this petition.
2. The petition was supported by the Petitioner's affidavit sworn on 31st October, 2023.
 3. The 1st Respondent in response to the petition through its Land Administrator one Nicholas Ayugi filed its Replying Affidavit sworn on 12th July, 2022.
 4. The 2nd, 3rd and 4th Respondent filed their grounds of opposition dated 17th January, 2023 and a response to the petition dated 10th February, 2023.
 5. The interested party filed its response to the petition dated 10th November, 2023.

Petitioner's case

6. John Charles Odhiambo Wanyanga testified as PW1 where his affidavit sworn on 24th November, 2022 was adopted as his evidence in chief. It was his testimony that in 2006, he retired as an Estates Manager in Agricultural Development Corporation (ADC). He further testified that he continued as a board



- member of Lands Limited up to 2018. He testified that the dispute involved LR No. 2053 IR No. 19981. He testified that by the time he had retired, the parcel was no longer part of ADC.
7. Upon cross-examination by Auta for the 1st Respondent, he admitted that he had not produced the letter of employment. He stated that the signatory to the agreement between Land Ltd and Mohammed Ibrahim was the Managing Director (MD) and the Corporation Secretary. He stated that the MD appointed him to be a member of the task force on allocations of land. He admitted that he did not have a copy of the letter of appointment. He confirmed that he had not produced an audit that showed the exercise took place.
 8. PW1 further stated that during the employment, he was not permitted to sign any document about land in the ADC. He testified that the original allottee Mohamed took possession of the land in 1998. He also stated that ADC used to occupy the land but that he did not know who was in occupation of the land. PW1 stated that he was obligated by ADC to apply to the Land Control Board for consent for the transaction. He stated that the representative from ADC made an application for consent by the late corporation secretary. He stated that he was not aware that the land had been gazetted as public land. He further stated that he was the board member of Lands Ltd and not ADC. He added that appointment to Lands Ltd was the prerogative of the Managing Director. He admitted that he had not filed or produced a letter of appointment to Lands Ltd. He stated that he served as a member of the Board between 2014 and 2018.
 9. Upon cross-examination by Odongo for the 2nd to 4th Respondent he stated that he was appointed as an Administrative Clerk by ADC in 1970. He stated that he was later transferred to an Accountant, then Auditor, then Senior Internal Auditor, then Deputy Chief of audit services, then a Credit Controller. He added that he was also an estate manager of ADC. PW1 stated that he served under the concept of trust as a civil servant. He also stated that ADC is a state corporation with part of revenue being from farming while the other was from borrowing. He stated that he did not know if ADC receives funding from government through ministerial allocations. He added that ADC being a state corporation, the properties it owned are public properties or government owned. He stated that the functions of the MD were to implement the decisions of the board of directors. He further stated that the decision whether to sell or buy properties rested with the Board of Directors (BOD). PW1 stated that he was not aware whether the board authorized the sale of the property. He further stated that he knew Mohamed Ibrahim Abdullah as an allottee of the suit land. He stated that he was not aware whether allocation of the land to him was with or without the authority of the Board.
 10. He stated that Lands Ltd was a company owned by ADC. He added that the parcel of land in issue was owned by Lands Ltd which had its own Board. He further stated that when ADC wanted to sell land registered by Lands Ltd, the applications would be made to the Managing Director of ADC who was also the manager of Lands Ltd. He added that the MD would then ask the corporation secretary to issue the allocation. He stated that he was not aware whether the MD consulted the Board of ADC or Lands Ltd. PW1 confirmed that the MD was to consult the Board of Directors before selling ADC land. He added that he was not aware whether it was consulted.
 11. He went on to state that he had interacted with documents that showed how Mohamed Abdulla got the allocation. He added that in 1995, he was either in the accounts or audit department. He confirmed that he was not the cashier. He also stated that during the signing of the agreements the Ministry of Agriculture was not involved. PW1 was shown PMFI-1 where he confirmed that it was a transfer instrument between Lands Ltd and Mohamed. He further confirmed that the Ministry of Agriculture was not a party. He was shown further document PMFI-11 of which he confirmed it was an agreement of sale between Issak Abdullah and the Plaintiff. He stated that the Ministry of Agriculture was not a party to the agreement. He stated that he was not aware whether the Minister promulgated Special



- Farms Rules of 2001. He added that he was not aware that the Rules prohibited sales of ADC land without Parliamentary approval.
12. Upon re-examination, PW1 stated that he was an ADC employee from 1970 to 2006. He further stated that he was the Board member of Lands Ltd from 2014-2018. He stated that he was aware that the land was sold to Mohamed Abdullah. He added that in 2006, the land was privately owned. He stated that he was aware that Mohamed Abdullah took possession of the land and that the transfer in favour of Mohamed the PMFI-1 was registered on 17th December, 1998. He stated that as an auditor, his work entailed auditing parcels that belonged to ADC. He further stated that he had interacted with records that were owned and disposed of by ADC. He admitted that he had not been shown any document that revoked the allocation to Mohamed.
 13. Stephen Ochieng the Petitioner testified as PW2 where his affidavit sworn on 3rd June, 2022 was adopted as his evidence in-chief. This Court took note of the contents thereof and granted him time to testify orally on the same. It was his testimony that he was the registered owner of the property. He produced his title registered under the Registration of Title of ordinance as PMFI-1. He went on to testify that he acquired the parcel from one Isaak Ibrahim Abdullah who had acquired from his brother Mohamed Abdullah as a gift. He testified that the vendor gave him a letter dated 15th April, 1994 that sought allocation of 200 acres of land in Trans Nzoia, situate at Katuke area. He added that Mohamed wrote to the Managing Director (MD) of Agricultural Development Corporation (ADC). PW2 produced the letter as P. Exhibit 2. He further testified that the vendor also gave him a copy of letter dated 30th April, 1998 by ADC which communicated acknowledgment of the banker's cheque. The letter was marked as PMFI-6 He also had a copy of a receipt dated 28th February, 1998 for Kshs. 879,214 which he stated was issued by Lands Ltd. It was marked as PMFI-2. He testified that the instrument of transfer between Lands Ltd and Mohamed Ibrahim was dated 8th December, 1998. He added, the transfer instrument issued by Lands Ltd, a limited Liability Company, did not bear the company seal by Lands Ltd nor the official stamp. He produced the transfer as P. Exhibit 8.
 14. PW2 had the consent dated 15th December, 1998 marked as PMFI-9. He also produced the memorandum of gift between Mohamed Ibrahim and Issak Ibrahim as P. Exhibit 10. He testified that he was aware that the mandatory consent of the Board was obtained before the interest in land went to the vendor. He produced the consent dated 22nd March, 2017 as P. Exhibit 11. He testified that Issak Abdullah sold to him the land. He added that he conducted due diligence. He executed a sale agreement on 15th December, 2021. A copy of the agreement was marked as PMFI-12. He also produced an official search dated 10th December, 2021 as P. Exhibit 13. He further testified that the land was transferred to him and that on 24th January, 2022, Issak applied for the Land Control Board consent. He produced the consent as P. Exhibit 14. He also produced a consent dated 8th December, 2022 as P. Exhibit 15.
 15. PW2 testified that he paid Kshs. 200,040/= as stamp duty for the transfer. He further testified that he applied for valuation on which was done on 17th February, 2022. He produced the application for valuation as P. Exhibit 16. He also produced the KRA e-slips and KCB payment slip as P. Exhibit 17 and P. Exhibit 18 respectively. He produced the transfer as P. Exhibit 19. He testified that the transfer was formally booked at the Lands Registry for registration. He produced the Booking form as P. Exhibit 20. He also produced the Rent Clearance Certificate as P. Exhibit 21. He testified that he conducted a post-registration search dated 24th May, 2022 and produced it as P. Exhibit 22. He testified that the search showed that on 15th March, 2022 a transfer was done in his favour for Kshs. 8,750,000/=. He further testified that the search confirmed that he was the registered owner.
 16. It was his testimony that before paying for the property and interest he visited the property. He testified that by then, Issak Abdullah was in occupation and was farming sugarcane. He testified that he was



not in occupation of the property at the moment. He went on to testify that he had sent his workers to construct a house but they were stopped by the police who stated that they there were Special Farm Rules of 2001 which provided that the property was not private land. He produced the Gazette Rules published on 10th September, 2003 and promulgated 2001 as P. Exhibit 23. PW2 testified that the search marked as P. Exhibit 13 and the other as P. Exhibit 22 in comparison when the interest was transferred to Mohamed on 17th December, 1998 showed that the interest was already owned by Ibrahim Abdulla by the time the Rules were promulgated. It was his testimony that the Chief Land Registrar was the custodian of all records and added that the Registrar had not given any other documents to the contrary. He testified that he had acquired a valid interest in the land. He further testified that the land became private land in 1998 when it was transferred to Mohamed Abdullah. It was his testimony that he was challenging the constitutionality of the Rules as relates to the suit land.

17. Upon cross examination by Ms. Auta for the 1st Respondent, PW2 confirmed that the original allottee applied for allocation on 15th April, 1994 and that ADC responded to the letter on 11th April, 1995. He also confirmed that ADC wrote again on 15th April, 1997 where it advised him on the consideration of the suit land. He stated that the allottee accepted the offer on 6th April, 1997 before it was made to him. He was referred to PMFI-5-Letter dated 6th April, 1997 which enclosed a banker's cheque. He admitted that it did not disclose the cheque number for the amount of Kshs.879,214/=. He also admitted that he had not produced any evidence that showed that the amount was debited from the original allottee to the 1st Respondent's account. He was also referred to P. Exhibit 8 - Transfer Document where he confirmed that the document purported to have been executed by two directors of Lands Ltd. He admitted that it did not show their names. He also admitted that there was no company seal that showed the document originated from Lands Ltd. He added that it did not show the official stamp for Lands Ltd. He was also referred to Consents dated 15th December, 1998 - PMFI-9 where he admitted that he had not proved by document that ADC applied for consent. He stated that from the consent, it showed that ADC made an application on 10th December, 1998. He admitted that he did not know the representatives of ADC that attended the meeting for consent. He also admitted that he had not filed minutes of the Land Control Board (LCB) that showed they deliberated and granted the consent. PW2 was referred to PMFI-10 - the Memorandum of Gift where he confirmed that the donor and donee were not witnesses in this matter. He was again referred to P. Exhibit 11 – the Land Control Board (LCB) Consent where he admitted that it did not show the acreage the donor and donee had transferred. He stated that he had acquired land from Issak Ibrahim. He was referred to PMFI-12 where he admitted that the agreement did not show the acreage he had purchased.
18. He stated that PMFI-12 the seller's ID No. as compared to the copies of ID attached as being from Mr. Isaak Ibrahim Abdullah, they did not tally. He stated that he purchased 175 acres from Isaak Abdullah for Kshs.8,750,000/=. He added that from the calculations it meant that one acre was sold at Kshs.50,000/= (fifty thousand only).
19. He stated that Issak had planted sugarcane on the land and that there was no structure on the land by Isaak Abdullah. He added that the land was at ADC Katuke. He went on to state that the land had sugarcane with the surrounding area had maize plantations. He stated that he was not certain whether ADC was in occupation. He admitted that he had not produced any bank statement which showed that the Kshs.8,750,000/= was paid from his bank account to Isaak Abdullah's. He also admitted that he had not filed any receipt which showed that Issak Abdullah received the Kshs.8,750,000/= from him. He stated that legal notices No. 37 of 2001 and 157 of 2003 were unconstitutional. He confirmed that there was no court order or any subsequent gazette notice that cancelled the two notices.
20. PW2 stated that the claim resulted from a sale agreement between himself and Issak Abdullah. He added that ADC was not a party to the agreement. He denied having sued a wrong party. He admitted



- that he took no steps to have the legal notices revoked. He confirmed that no one was in occupation of the land. He further stated that he never took possession since he had been chased away.
21. Upon cross examination by Odongo, he confirmed that he was conversant with the ADC Act and that Section 20 mandated the Minister for Agriculture to promulgate rules for the proper management of the Act. He further stated that it was pursuant to that when the Minister published the Rules called Special Farm Rules. He stated that the cause of action flowed from a sale agreement of land that is PMFI-12. He confirmed that from the agreement, the 2nd, 3rd and 4th Respondents were not parties to the contract. He added that the three were not aware of the contract between himself and the said Issak Abdullah. He further stated that if Isaak had not transferred the land to him, he would have held Issak liable for the breach and not the 2nd, 3rd or 4th Defendants.
 22. He went on to state that on 14th April, 1971, the property was registered in Lands Ltd but later lost ownership of the land in 1998 when he was about 9 years old. He stated that the history he gave was from the documents he had been supplied with. He stated that ADC disputed any agreement between Mohamed Abdullah and himself. He admitted that only ADC and the Chief Land Registrar could have explained how the title moved from ADC to Mohamed
 23. He confirmed that the letter dated 15th April, 1994 (PMFI-2) showed that the land was allocated to Mohamed Abdullah with a response-PMFI3. The witness was referred to PMFI-4 where he stated that the letter communicated to Mohamed Ibrahim Abdullah on 15th April, 1997 to make payments for his title and a payment receipt made. He was referred to PMFI-8 where he denied having been shown any transfer instrument executed differently from the one he had obtained during the transaction. He added that the consent marked PMFI-9 mentioned an application. PW2 stated that the letter was addressed to Land Ltd. He was again referred to PMFI-12 where he stated that the subject in the transaction was identified as LR 2053 IR 19981. He also stated that P. exhibit 13 referred to the acreage of the land as 175 acres. He added that the vendor's name was Issak Ibrahim Abdullah, of ID 0196245. He admitted that the identification documents that related to the vendor which he produced showed the same name as Issak Ibrahim Abdullah with identity card number 0196641. He stated that the one on the sale agreement was a typographical error.
 24. PW2 stated that the value the government assessed was 10 million. He added that he was not aware that ADC had also planted sugarcane on the property. He was referred to P. Exhibit 23 - the Special Gazette Notice where he admitted that under entry No. 4, the dispute parcel was mentioned being LR 1932/2 and 2053. He stated that the parcels were for seed maize and livestock production. He admitted that it did not mention any sugarcane production. He also stated that there was no one in occupation of the land at the time of agreement. He confirmed that Kshs.8,750,000/= was paid for consideration which receipt was acknowledged by the transferor and that the vendor confirmed receipt of the sum.
 25. He stated that he challenged the legal notice to its application to the property. He added that the reason was that by the time it was promulgated the suit land had changed hands to private property on 17th December, 1998. He stated that he wanted the court to revoke the legal notice in respect to the suit property. He went on to state that power given to the Minister to promulgate Rules did not include deprivation of private property. He added that he was not aware whether the interest acquired by Abdullah had been revoked.
 26. PW1 was recalled to testify on some questions posed by the National Land Commission, touching on his affidavit.
 27. On cross examination by Bikundo, he admitted that he could not recall the year he was appointed. He also admitted that he had not produced any minutes of ADC which showed that it used to receive



- applications for allocation of land. He added that the M.D. changed over the years. He admitted that the suit property initially belonged to ADC and that it was public land. He stated that not all land owned by corporations was public land. He admitted that he had not produced any documentary evidence which proved that Mohamed Abdulla had been allocated the land.
28. Upon re-examination, he stated that he had worked with ADC for 37 years which was from 1970 to 2006. He confirmed that interested parties would apply with allocations. He stated that the land was initially charged to ADC but was later discharged.
 29. Charles K. Ngetich the Deputy Chief Land Registrar, Migori testified as PW3 where his statement dated 19th July, 2023 was adopted as his evidence in chief. He testified that he had generated a title deed with allocation records as estate manager, Deputy Chief of Audit services and as Director of Lands Ltd. He also testified that he got to know about the allocation of Mohamed Ibrahim Abdulla. He testified that he had interacted with the payment records of Abdulla. He testified that there was a receipt from the Lands Ltd for the amount received from him. He testified that one showed the signature of the late Nzeketa. It was his testimony that the land belonged to ADC initially. He testified that he retired in 2006 and added that the land had been allocated to Mohamed Ibrahim in 1998.
 30. PW3 clarified that he handled Lands Ltd records as soon as he was employed which would be passed to him by his boss. He further clarified that in the task force, they came across the records touching those captured in their Electronic Date Management System (EDMS) and other instruments of transfer. He added that he had filed the certified copies in court and added that they all had a barcode. He clarified that the same showed that the title and instruments were generated from the system. He relied on the earlier documents as produced by PW1.
 31. Upon cross examination by Ms. Auta, he was referred to PMFI-9 - the Letter of Consent where he stated that it referred to an application dated 10th December, 1998. He admitted that he had not availed the application by the Lands Ltd. He added that he did not know the officers of Lands Ltd that applied to the LCB for consent. He confirmed that he had not produced the minutes for the meeting and added that he could not confirm the members of Lands Ltd that had attended the meeting. He admitted that the consent showed that the meeting only approved 175 acres.
 32. He stated that the land was originally private land owned by Gordon McAnther Valuy and Everlyne Valuy and was registered in 1964. He added that they transferred the land to Lands Ltd which was a subsidiary of ADC. He further stated that the land was then transferred to Mohamed Ibrahim Abdulla, the same was public land. He was referred to PMFI-1 - the Title where he stated that there was a charge registered on the land for Kshs.18 million by Agricultural Finance Corporation on 26th February, 1983, through presentation day book No. 745. He stated that the land was transferred to Mohamed Ibrahim on 17th December, 1998.
 33. He admitted that by then, the land had appreciated. He stated that the title showed that Mr. Mohamed Ibrahim paid for the land a sum of KShs. 864,000/=. He was further referred to PMFI-8 – the Transfer instrument of which he admitted that he did not know the names of the officers who transferred the land. He also admitted that there was no seal of the Lands Ltd on the transfer instrument. He confirmed that there was no record of any board resolution to sanction the transfer of land to Mohamed Ibrahim. He stated that there were only signatures. He further stated that he did due diligence to confirm the authenticity of the transfer. He stated that he was not employed when the instrument was registered.
 34. Upon cross examination by Mr. Odongo, SC., he stated that as at 14th April, 1971, the land was public property and that on 17th December, 1998 it became private property. He stated that the suit land



LR IR 19981 was sold to private individual. He further stated that the Lands Registrar office became involved only at the time of registration. He stated that a document for registration is rejected when:

1. it does not have the original title.
 2. If valuation was not done.
 3. If stamp duty is not paid.
 4. If both parties did not append signatures.
 5. The document must be drawn by an Advocate to conform with Section 35 of the Advocates' Act.
35. He also confirmed that the office could not register an instrument if there was a caution, restriction or any other inhabitation unless there was a court order. He explained that when the land was public, the Land Registrar ought to have an instrument drawn by the Advocate of the State Corporation and that the consent must be signed by a District Commissioner for the L.C.B. as per those years. He added that another way of converting public land was through allocation. He stated that the Commissioner of Lands was the one who allocated land on those days. He denied that one way of converting public land to private land was through allocation.
36. Upon cross examination by Bikundo, he confirmed that the suit land was not allocated by the Commissioner of Lands but that it was outright transfer. He stated that the Commissioner of Lands did not have power to give consent for transfer in agricultural land. He added that some directors of ADC agreed to dispose of the land. He stated that the land was once registered in the name of ADC thus public land. He went on to state that during those times of transfer, it was not necessary to put the names of signatories and IDs. He explained that it was until the year 2005 when the Chief Land Registrar gazetted for the IDs, names, photos and the clause that they appeared before an advocate. He confirmed that the process of sale of public land was not the same as sale of a private property. He stated that in 2005, it was necessary for the Advocate to certify that they saw the vendor and purchaser who appeared before them.
37. Upon re-examination, he stated that at the time, consent was signed by the D.C. Trans Nzoia. He further stated that as a company, they required both names and signatures of the persons applying for consent. He further stated that the consent showed that there was a meeting on 15th December, 1998. He admitted that he was not shown any evidence which confirmed that such a meeting never took place. He confirmed that entry No. 4 of the title showed that there was a charge in relation to the parcels being I.R. 20326 and the I.R. 19981. He added that the value of Kshs.18 Million was secured by the two parcels. He stated that there was a valuation form dated 7th February, 2022. He was referred to P. Exhibit 16 where he stated that it returned a value of Kshs.10,000,000/=. He added that there was no document that disputed the figure returned in the valuation. He was also referred to P. Exhibit 1 the title where he stated that the 3rd entry was a transfer to Lands Ltd for Kshs.624,420/= on 14th April, 1971. He went on to state that entry No. 6 was a transfer to Mohamed Ibrahim Abdulla. He added that as at 18th December, 1998, the property was private. He was referred to P. Exhibit 83 - the gazettelement of the land where he stated that it was promulgated in 2003 after the transfer to Mohamed Ibrahim. He stated that in 2005, certain changes were effected in regard to transfers one of them being the annexure of a the transferor and transferee photograph. He confirmed that P. Exhibit 19 had both the ID and PIN number of the transferor and transferee and witnessed by an Advocate, one Kiplimo Lagat.
38. PW2 was recalled where he testified that PMFI-12 was the sale agreement dated 15th December, 2021. He testified that he had the original which he produced as P. Exhibit 12. He also stated that PMFI-2,



the allocation records of the 1st allottee. He testified that he had filed a supplementary list of documents dated 25th May, 2022 which contained 3 documents. He added that the same was a letter dated 24th May, 2023 from his Advocate, Frank Karanja Advocate to the Registrar of Births and Deaths, Nairobi. He testified that earlier, there were documents marked as PMFI-2, 3, 4, 5, 6 and 7 which he produced them as his evidence. He testified that he had been stood down to avail the originals. He further testified that he did not get the originals as they were with the 1st Respondent. He testified that he only had photocopies and added that he had issued a notice dated 25th May, 2023 to have them produced. He testified that ADC did not respond, he urged the court to have the documents PMFI-2-7 being copies be admitted as such.

39. The court clarified that the documents were to remain as PMFI-2-7.
40. PW2 produced the original agreement dated 15th December, 2021 as P. Exhibit 2.
41. Upon cross examination by Bikundo, PW2 was referred to the sale agreement between Isaak and Petitioner - P. Exhibit 12 where he confirmed that he signed the agreement. He confirmed that as per condition No. 1, he was to purchase the 175-acre property at Kshs. 8,750,000/= . He added that condition 2.1 showed that Kshs.8,750,000/= was to be paid at execution. He stated that it did not state how the consideration was to be paid. He further stated that at the time of purchase, he had not come across an agreement between ADC and Abdulla Mohamed. He went on to state that part of the due diligence entailed a visit to the land. He stated that he had done farming in early 2021 before he entered into the agreement. He stated that at the time he visited the land, ADC was not in occupation. He admitted that he was not in occupation of the land. He also stated that the title was transferred to him on 15th March, 2022. He admitted that he was familiar with legal notice No. 37 of 2001 and added that at the time of transfer, he had not complied with the legal notice.
42. Upon re-examination, he stated that he had purchased the land on 15th December, 2021. He stated that the land was at Kapomboi. He further stated that after the search, he found that the land was from Lands Ltd to Mohammed and from Mohammed to Issack. He stated that the due diligence from the 3rd Respondent was that the land was transferred way back in 1983 from Lands Ltd to Mohammed. He added that in 2017, Mohammed transferred the land to Isaack. He stated that the legal notice was therefore an ambush. He also stated that the land was private land from 1983. PW2 stated that he paid Kshs.8,750,000/= in respect of plot No. LR.2053, IR 19982 and that she had complied with the terms of the agreement in terms of payment. He stated that the land was currently not occupied.
43. The witness clarified to the court that the land was not in occupation because police reservists from ADC had chased out his employees who had put up a structure. He further clarified that the land was farmed by Isaac Abdulla and further, that the agreement P. Exhibit 12 was not witnessed by anyone but only attested by an advocate. He added that the agreement was signed at the advocate's office in Nairobi where he paid the consideration via R.T.G.S. He clarified that he had not produced any document to show that he paid. He also clarified that the money was to be paid to Isaack. He added that the application for consent (P. Exhibit 14) was for transfer. He also clarified that the letter of consent issued on 8th February,2022 related to the consent. He added that the L.R. number was same.
44. That marked the close of the Petitioner's case.

Defence Case

45. Nicholas Ayugi Odongo, testified as DW1 where his statement dated 3rd October, 2024 was adopted as his evidence in chief. It was his testimony that he testified that he worked with Agricultural Development Corporation (ADC). He testified that he had been the Lands Administrator for the



- Corporation for 5 years. He testified that he had authority from the Managing Director to testify in court. He produced the letter which confirmed the authority as 1st D. Exhibit 1. He testified that his National Identity Card was No. is 28155421. He testified that they had filed a certified copy of the Certificate of Title for LR No. 2053, IR 19981 which he produced as I.D. Exhibit 2.
46. He testified that he did not have the original title in court because they noted that the original was missing from their records. He testified that they had reported the loss of the original title on 7th May, 2023 and that they were issued with an OB No. which is C/CRI/1/9/306 of Kitale police station. He added that they were also issued with a Police Abstract on the same day. He testified that the company also made an advert on 10th May, 2024 in the Daily Nation and the Standard Newspaper. He further testified that the transfer of the parcel of land was made to Lands Ltd on 14th April, 1971. He added that the 1st Respondent has been in occupation since the time of acquisition AND has never relinquished interest on the parcel. He went on to testify that the last entry in their title was Entry No. 5 entered on 24th June, 1998 which was a Discharge of Charge.
47. He testified that from that date, the 1st Respondent never leased the parcel to anyone. He testified that on 20th March, 1983, a charge was registered on the land contrary to the Plaintiff's evidence that it had been transferred to Mohammed. He testified that in 1983, the suit land was still owned by Lands Ltd which is a subsidiary of Agricultural Development Corporation (ADC). He produced a certified copy of the Certificate of Incorporation as 1D Exhibit 3. He further testified that the land was gazetted as public land and that he had filed Legal Notices No. 37 of 2001 and 57 of 2003. He produced the Legal Notices as ID. Exhibit 4. He testified that the Legal Notices were still in force and that they have never been challenged in court or revoked.
48. He explained that with regards to receipt No. 16755 produced by the Petitioner stating that it had been issued to Mohammed Ibrahim by the 1st respondent was false. He testified that he had the receipt No. 16755 dated 28th July, 1997 issued to Harrison Simotwo in respect of a payment of plot No. 127 in Tall Trees. He testified that the amount was for a payment of Kshs.13,000/=. He testified that all the receipts issued were recorded in a cash book. He added that the copy of the cash book was the one he had attached to the affidavit sworn on 2nd June, 2023. He had in Court the Original of the Cashbook which he asked the Court to examine. He produced a copy of the cash book as 1st D.Exhibit 5 and the original copy of the receipt as 1D. Exhibit 6. DW1 testified that there was no money produced by Mohammed Ibrahim Abdullah. He added that the suit land was currently occupied by A.D.C.
49. Upon cross-examination by Kiptanui. He stated that he agreed with the contents of his undated statement filed on 3rd October, 2022. He confirmed that the name on the statement was Nicholas Ayugi and not Nicholas Ayugi Odongo. He further confirmed that he used the names interchangeably. DW1 stated that ADC took possession of the land in 1965. He was referred to 1D. Exhibit 2 - Title where he stated that the land was formally transferred to ADC on 14th April, 1971 as per the document. He added that prior to the transfer, the land was still registered under a private person. He confirmed that all the transactions over the land were governed by the provisions of Legal Notice No. 37 of 2001. He admitted that he was not in court when the Deputy Land Registrar attended court. He was referred to the statement of Mr. Ngetich - PW3 at paragraph 3 where he stated that the land had been transferred to ADC on 14th April, 1971 and later transferred to Mohammed Abdulla following a discharge of charge in 1998. He admitted that he had not produced the Legal Notice of rules which were applicable prior to the Legal Notice No. 37 of 2001. He further admitted that ADC relied on the Legal Notice not the Constitution of Kenya to claim the ownership of the land.
50. He admitted that he knew George Charles Odhiambo. He was referred to the Statement/Affidavit of George Charles, PW1 where he further confirmed that he used to work with the ADC. He confirmed



that at paragraph 14 he stated that he was aware that ADC charged the property on 26th February, 1983 and that during the pendency of the discharge, one Mohammed Abdulla applied for allocation. He was referred to the Title Deed D. Exhibit 2 where he stated that the discharge was registered on 24th June, 1998. He denied that ADC received the sum Kshs.879,214/= and added that the finance department could not trace the payment. He stated that the sum was never received by the Corporation. He admitted that he was not an accountant but that he was the Lands Administrator. He argued that he interacted with the records of payment and added that as per paragraph 12 of his statement, he admitted that ADC did not have the receipt quoted by the Petitioner. He stated that the company had issued receipt No. 16755 to Harrison Simatwo different from the one produced by the Petitioner. He further stated that ADC never issued any receipt to one Mohammed Ibrahim. He stated that he was the one who kept the receipts issued on behalf of Lands Ltd. He went on to state that after the finance office would issue receipts, they would be forwarded to him as the Land Administrator office for safe keeping.

51. He denied that the Petitioner was in occupation of the property since he had not complied with the mandatory provisions of the law. He was referred to PW3's Statement where he confirmed that the witness stated that the property was transferred. He further stated that he was not aware of any such transaction. He added that he did not know the Deputy Chief Land Registrar but he knew the Chief Land Registrar.
52. He admitted that the original title was missing since the title was lost. He added that the title produced was certified as an original by an advocate known as Annota Nyasae. He stated that he could not tell whether the advocate had the original when he certified the document. He stated that he noticed about the missing title shortly after he had responded to the present Petition on 12th July, 2022. He further stated that he had reported the loss on 2nd May, 2024 which was about 2 years after they had filed the response vide OB No. is 27/7/05/2024. He admitted that he had not notified the Registrar of the lost title. He further admitted that there was no gazettelement of the lost title. He also admitted that he had not produced a copy of an official search over the title. He stated that he saw the original title when he joined the Corporation as a Corporation Secretary. He stated that the Petitioner fraudulently obtained the title and that he had reported to the police. He added that investigations were still ongoing.
53. Upon cross-examination by Odongo, he stated that the assets of ADC were registered in the name of Lands Ltd as public properties. He further stated that he kept the records of previous transactions. He also stated that by law, ADC and Land Ltd were body corporates which could own and dispose of properties. He explained that before a property is disposed, there ought to be a resolution in writing by the Board of Directors (BOD). He admitted that he never came across such a resolution in their records to dispose of the suit property. He went on to state that the Minister of Agriculture now Cabinet Secretary had to also sanction the sale of the property. He confirmed that this was never the case. He stated that there were no records that on 15th April, 1994 Mohamed Abdullah applied to be allocated 200 acres of land.
54. He also stated that the Petitioner's claim that on 11/4/1995 ADC wrote to him allocating him 175 acres was false since he did not have such records. He stated that ordinarily, he was the custodian of all the ADC documents that related to the land. He denied that there was any offer. He was referred to P. Exhibit 8 - the Transfer – of which he confirmed that it was between Lands Ltd and Mohamed Abdullah. It was dated 8th December, 1998 for parcel No is LR No. 2053. He confirmed that the last page of the document showed that it was signed by two "Directors" but that it did not indicate their names. He added that it did not bear the stamp to show that the persons signed on behalf of ADC. He also stated that it did not bear a seal of the ADC or Lands Ltd. He also stated that the document was not witnessed or even attested by an advocate as required by law.



55. He was referred to PMFI-9 consent dated 15th December, 1998 where he stated that it referred to an application dated 10th December, 1998. He added that by the time the transfer dated 8th December, 1998 was done, the consent had not been issued. He stated that there was no application for consent attached to the list of documents of the Petitioner.
56. He was further referred to P. Exhibit 12 - the Agreement between the Petitioner and Isaack I. Abdullah. He stated that it referred to the parcel of land known as Grant No. I.R. 19982 and L.R. No. 2053. He further stated that he purchased parcel I.R. 19982 and L.R. 2053 which was not the same property he got title over. He explained that the one he got registered was IR No. 19981 L.R. No. 2053. He confirmed that the ADC did not have any interest in I.R. 19982 but that it had it in I.R. 19981. He further stated that it was not proper for the Petitioner to purchase property for I.R. 19982 and get title in respect of I.R. 19981. The witness was referred to the Application for Land Control Board - P. Exhibit 14 of which he confirmed that the document showed that it was an application for consent of Land Control Board dated 24th January, 2022. He confirmed that the document showed that the term indicated was “until payment in full” so that the consent could be granted. He stated that the consent granted lapsed when full payment was made as it was time-bound.
57. Upon being referred again to P. Exhibit 12 - the Agreement – he confirmed that the full payment was made during execution of the agreement on 15th December, 2021. He stated that payment was made on the same day and therefore the letter of consent ceased to exist on 8th February, 2022. He went on to state that when the consent was given it meant that it ceased to exist even when it was granted. He added that at the time of transfer of the land from Isaack to the Petitioner, the term had lapsed. He stated that the transfer was completed without a valid letter of consent.
58. Upon cross examination by Bikundo, DW1 was referred to P. Exhibit 8 - the Transfer of which he confirmed that it had not been signed Mohamed Ibrahim. He stated that the transfer had a memorandum in that it was to be done in accordance with the provisions of Government [Land Act](#), Chapter 280 Laws of Kenya. He added that the transfer was to satisfy the condition no. 7 in L.R. 19981 as contained in P. Exhibit 2. He stated that the transfer to Mohamed did not mention the adjoining land No. 1932/2 thus in breach of the said special condition. He went on to state that as per the sale agreement, the Petitioner did not purchase the adjoining land No. 1932/2 which had a sugar plantation. He stated that the Petitioner purchased land that had buildings and other developments for Kshs. 8,750,000/=.
59. He stated that the first owner of the suit property from the White Settler was the Lands Limited. The suit property was a public utility. He added that ADC was currently in occupation of the suit property. He denied having received any letter from the Petitioner asking ADC if it was the owner of the property. He stated that he had reported the loss of the title and fraud over the property. He also stated that there was no resolution from Lands Ltd disposing off the 175 acres of land to Mohamed Ibrahim.
60. Upon re-examination, he confirmed that Nicholas Ayugi and the name of Nicholas Ayugi Odongo refer to one and same person. He stated that ADC took possession of the suit land until 2022 and has never leased. He stated that receipt No. 16755 was never issued to one Mohammed Abdulla. He confirmed the only receipt issued was to Simotwo. He confirmed that the title in respect of the suit land was lost which he reported and was issued with OB No. 27/7/05/2024. He stated that the 1st Defendant took long to report about the loss because it was still searching its records just to be sure the title was not in their custody. He stated that following the report made, the police (DCI) and the Ethics and Anti-Corruption Commission commenced investigations which were still ongoing. He stated that ADC disputed the legality of the process of acquisition of the title.



61. The witness clarified to the court that the original cashbook whose original he had in Court ran from the 1st April, 1985 to 27th March, 1998. He further clarified that any payment received in respect of the land was receipted and entered in the Cashbook. He added that from the cashbook entries for the month of February, 1998 and March, 1998, there was no entry of receipt in the sum of Kshs. 879,214/= . He also clarified that there was no time limit for gazettelement of a lost tile from the time one realized it was lost.
62. After this evidence the Court proceeded to the site/ locus in quo whereat some of the witnesses who had testified were recalled to testify once more.

Evidence During Site Visit

63. The Plaintiff's case was reopened by consent. PW2 was recalled and testified on the dimensions of the suit land. He testified that the parcel, at which the Court was at the time, stretched from the bridge to the West, with a straight line/ boundary stretching to the North side. He added that it also covered the South area at a corner with straight line to the point next to the bridge next to where the Court stood. The parcel of land was the shape of a trapezium. He further testified that the barbed wire adjacent to the road ran along the road all the way to the corner at the South, a corner which was at the Gate point. He also testified that the Northern side of fence ran adjacent to the land owned by the Kenya Broadcasting Corporation (KBC). He explained that the land between KBC and the suit land was bordered by a road that was in between the two fences running along the North side.
64. He testified that by the time he wanted to take up possession, Isaak Ibrahim had harvested sugarcane on part of the land. He added that the sugar care then was planted started from where the court stood. He added that it was not planted on the entire land but on the portion on which maize had since been planted and was ready for harvest. He testified that the uncultivated part was about half of the land to the North side of the land. He also testified that the land was not demarcated inside it.
65. Upon cross examination by Auta, he confirmed that the suit land extended across the road from where the Court stood to the point just beyond electricity supply lines that ran along the fence in the South. He added that the electricity lines went all the way along the South to the corner at the North side (adjacent to the KBC land). He confirmed that the bridge was within the land, and the river ran or flowed along the Western part of the boundary. He stated that the crop on the land had been planted by Mr. Ibrahim. He admitted that he was not aware if Ibrahim did any farming. He also stated that he knew that it was Ibrahim who had planted the cane on the land since he (Ibrahim) harvested the sugarcane when he was present. But he admitted that he had no evidence to confirm that Ibrahim planted and harvested the case. He added that the harvest by Isaac was in August of 2021.
66. Upon cross examination by Odongo S.C., PW2 stated that adjacent to the road the Court stood on was a barbed wire fence that went all the way to the corner at the north side where the suit land met the KBC land parcel. He further stated that there was a barbed wire along the north side and a path that separated the KBC land with the suit land.
67. He admitted that he did not know the person who had erected the barbed wire around the suit property and the side adjacent to KBC land. He confirmed that crops had been planted on the suit land. He stated that upon filing of the suit, the land was vacant. He stated that the signboard on the land showed that the crop was planted by the ADC.
68. Upon cross-examination by Bikundo, he stated that Isaack Ibrahim was present when he harvested the sugar cane. He further stated that he had been told by Isaack that he was the one who planted



the sugarcane. But he admitted that he was not present when the sugarcane was planted. He further confirmed that the river which ran along the western side was part of the property.

69. That marked the close of the Petitioner's case.
70. Edward Ojode also testified as DW2 at the site. He adopted as his evidence in-chief his statement dated 3rd October, 2022. He added that there was a beacon at the corner between the west side of the land after the bridge and the border/boundary that ran all the way along the southern side and next to the river. He further testified that the fence ran along the electricity powerline. He also testified that the flooded area was outside the boundary along the west side of the land all the way to the north corner. He added that the boundary ran all straight to the end at north part.
71. He testified that ADC had three fields on the suit land. The entire land stretched to the furthest end at the northside almost 10kms from where the Court stood until the end on the Eastern side. It then ran straight to the Eastern end corner, by about 6kms.
72. He testified that there were developments on the suit land and temporary settlements. He added that the barbed wire was put along the road by ADC. He further testified that the maize was commercial variety known as ADC 623A on 50 acres approximately. He admitted that it was planted on the portion of the land where sugarcane used to be planted between 2018 and 2021. He went on to testify that the sugarcane initially grown was a trial crop which did not do well due to flooding hence ADC stopped planting it and continued with maize planting.
73. He testified that towards the western end near the north part were blue gums while in the middle were temporary settlements. He testified that the sugarcane was planted in 2018 and harvested in 2021 through a joint venture with ADC and a company known as Panacol Ltd. He testified that the middle part of the land was a research plot for breeder seed maize.
74. The court observed that the road only ran from the west side of the land about ten/fifteen metres on the land, from the beacon and boundary line on the south. Further, the land curved to the south after about 50 or 100 metres and ran along the fence and the electricity power lines at the southern part of the boundary all the way to the corner with KBC land, and past it. The KBC land was adjacent from the corner point at the north side the south boundary ends. It went on to point out that was slightly in the suit land before the corner beacons. There was a murrum road about 7-10 metres inside on the suit land from the corner it branched at the north left corner to the left and ran on the suit land towards the western end. It also pointed out that there was a barrier erected at the junction point between the south and north, at the north. It was manned by security guards employed by the ADC. Adjacent to the T-junction point was a small market centre of shops. The road running along the north side was about 6 metres wide, while the one that ran along the southern part was about 12 metres. Further, that the distance between the western end of the land where the court made its first stop all the way to the barrier was exactly 2kms. The southern boundary was about 2.2 km long.
75. It also noted that the barrier was a small iron sheet structure green in colour, erected by the ADC for watchmen. It also noted that the barrier to 3rd stoop was about 1.3 kms adjacent. Along the road from the barrier towards the western part were planted cypress and eucalyptus trees planted on either side that ran almost 900 meters.
76. The court observed that there was an electricity powerline which ran from the corner between the north and east boundaries of the land. It formed a T-shape from the one that ran along the road along the southern side boundary of the suit land. Further, trees were planted where there was a demarcation of the suit land into two at the northern side and made a corner, to southern part slightly about 100 metres shy of where the temporary settlements were. From the barrier at the south-north corner



- junction along the road in between the set of two lines of trees along the northern side of the land was a portion on which grew Boma Roads grass. Next to the quadrant into the middle of the portion but adjacent to where maize was growing was a large herd of cows owned by the ADC.
77. When the court moved to some point, about one kilometre along the northern side, it once more reopened the Petitioner's case by consent. PW2 testified that his land stretched from the barrier all the way to just past the trees point to where there was a green bush.
 78. Upon cross examination by Odongo, PW1 admitted that he had never ascertained the acreage of his land. He added that he referred to the acreage only as it was written in the agreement.
 79. Upon cross examination by Bikundo, he confirmed that the entire land was 175 acres. He admitted that he had never subdivided the parcel of land.
 80. That marked the close of the Petitioner's case once more.
 81. DW2 testified that the boundary he referred to at the beginning was for the entire Katuke Farm. He added that he had not picked up the boundary sizes of the parcel L.R. 2053. He testified that L. R. 2053 was the smallest of all farms of ADC in the region with only five fields. The boundary for the entire Katuke farm went all the way to the boundary with Koronga Farm. He was not certain where the boundary of L.R. 2053 ended next to the entire Katuke Farm. It was his testimony that the adjacent parcel to LR. 2053 was owned by ADC. DW2 testified that the acreage of Katuke Farm was 3641 acres. He added that there were fields and subdivisions on LR. 2053 with the temporary houses on LR. 2053.
 82. Using the odometer of vehicle No. GKC 330A, the court measured the distance along the northern boundary from where the Petitioner claimed to be his end of the land where to barrier was. It confirmed that the distance was exactly 1 km.
 83. DW2 was later recalled where he was referred to 1st D/Exhibit 4(e) being the [Legal Notice No. 37/2001](#). He testified that the acreage for Katuke Farm was 3641 acres. He further testified that it was combined as LR. 2053 and I.R.1932/2.
 84. Upon cross examination by Kiptanui, he confirmed that he was the Regional Manager of ADC for the said region. He did not have the documents to show that he was authorized to testify on behalf of ADC Farms. He stated that the documents were kept in Nairobi, the headquarters. He further stated that ADC had been in occupation of the suit land since 1965. Further, parcel No. L.R. 2053 was located adjacent to the barrier and road leading to Koronga boundary. He admitted that he did not know its exact acreage. He stated that LR. 2053 was located where the boma roads grass was planted, to the rest of the area adjacent to grass.
 85. DW2 retracted his earlier testimony that LR. 2053 was the largest and stated that it was in fact the smallest. He admitted he did not know where it lay between its boundary and that of L.R. 1932/2. Similarly, he did not have any document to identify himself as the Regional Manager. He stated that he did a search of the suit land at the Lands office but admitted that he did not have it in court. He did not have any document to show that the sugarcane plantation was joint venture. He stated that the Petitioner did not follow the rules enacted in 2003 in acquiring of the suit property. He confirmed that ADC was the owner of the property between 1998 and 2003 when the Rules were enacted. He added that in the event the land was owned privately prior to the enactment of the Rules, the Petitioner did not have to comply with the Rules. He admitted that he was not certain if the Lands Ltd had the authority to sell land if a buyer complied with the law.
 86. Upon cross examination by Odongo, DW2 confirmed that he had been employed by ADC in August 2004 with his first posting in Nai Farm within Trans Nzoia as the Regional Manager. He stated that



he oversaw 8 Farms and 2 service units including Katuke Farm. He added that the ADC planted the trees that marked the boundary of ADC land with KBC. He further stated that the Cyprus trees had been planted in 2006 on right side of road adjacent to boundary with KBC land. He stated that the ornamental tree that was in front of them was planted in 1984 by the then Manager Mr. Agar who was an ADC worker. He also stated that the eucalyptus trees next to barrier and along road next to the shops were planted by Mr. Ayabei in 2005. He added that the cyprus trees on the left side that is on the inner side of the road and land of ADC were planted in 2006 by the then Manager Mr. Morogo who also worked for ADC. He went on to state that ADC started using the suit land in 1971 after having been granted permission by the white settler. He stated that to date it still occupied the land. He stated that at no point had ADC relinquished the firm to a private person or farmer. He denied that the Petitioner was present when ADC and Panacol harvested the sugarcane. He further denied that police reservists were organized by ADC to chase the Petitioner from the farm. He stated that on parcel No. LR. 2053, they have rough grazing area, a water pump, boma roads grass.

87. Upon cross examination by Bikundo, he confirmed that the herd of cows on the suit land belonged to ADC. He further confirmed that ADC was currently in occupation of the suit land. That the same could be confirmed from the trees planted by ADC, the cows, the security people of the ADC and the National Police who are on the land 24/7 on behalf of ADC. He added that there were Anti-Stock Theft Unit police on the land to guard its animals, and maize plantations, together with the ADC workers who resided on the land.
88. Upon re-examination, he stated that he was a Unit Farm Manager of a number of Farms including Nai Farm, Olugatongo, Namandala, Feed Mill, Katuke and Molo Farm in Nakuru. He stated that a unit manager oversaw the operation of each Unit while a Regional Manager oversaw the operations of all the Farms under him. He represented the Managing Director in the said region. He was a Unit Manager of Katule Farm between 2009 and 2013. He went on to state that at the time, he never received any complaint about the suit land occupation and ownership. Mohamed Ibrahim never came to the office to complain about ADC's ownership and occupation. He was referred to D. Exhibit 4 (a) - (c) – about which he stated that it was the [Legal Notice No. 157/2003](#) and 37 of 2001 which were special rules enacted concerning the suit land. He further stated that the parcels that made up the Katuke Farm were L.R. 1932/2 and L.R. 2053 with a total acreage of 3641 acres. He confirmed that the acreage for L.R. 2053 was not indicated in the legal notice. He stated that no other person had ever cultivated the suit land from 1971 apart from ADC. He added that ADC never relinquished its interest on the suit land.
89. That marked the close of the 1st Respondent's case.
90. By the consent of all counsel the 2nd to 4th Respondents adopted the evidence of the 1st Respondent's witnesses and closed their cases. Similarly, counsel for the Interested Party also adopted the 1st Respondent's evidence and closed their case.
91. By consent of all parties the Petitioner's case was once again opened for purposes of the Advocate who prepared the Agreement for the Petitioner and the vendor to testify.
92. Ham Kiplimo Lagat testified as PW4. He adopted as his evidence in-chief the deposition in his affidavit sworn on 31st October, 2024. He testified that he was an Advocate of the High Court of Kenya and practiced as Ham and Hamsley Advocates. He testified that his P105 No. was P105. 8768/11. He added that his law firm prepared the Sale Agreement in respect of parcel No. LR. 2053. He testified that he did the conveyance. Thereafter, the title ownership process was completed, after the full consideration of the purchase price had been received.
93. Upon cross examination by Auta, he confirmed that he prepared the sale agreement dated 15th December, 2021. He further confirmed that the vendor's and purchaser's identity cards were at his



- disposal. He stated that the vendor's ID was 0196641. He denied that the vendor was the holder of Identity Card No. 01962245 as in the agreement. He further denied that the vendor was not the holder of ID Card No. 0196245 as captured in the acknowledgements dated 15th December, 2021 and 15th March, 2022 annexed to the affidavit. He stated that the parcel of land sold was as per the agreement and it was 1998. as captured in paragraph (a) of the agreement. He further stated that Kshs. 8,750,000/= was to be paid at execution of the agreement. He stated that the said amount was paid to his client's account whose account was governed by Confidentiality and Data Protection Rules.
94. He admitted that his law firm was not registered with the Data Protection Commissioner. He explained that under the Data Protection Act, the data controller or data processor was required to use personal data for a purpose which is lawful. He confirmed that under the court's order, he was obligated to furnish the court with the client's bank account and R.T.G.S.
95. He stated that he was not aware that processing of personal data was exempted from provisions of the Data Protection Act of the disclosure was required by an order of the court. He stated that he had verbally informed the Petitioner that his personal data was required by an order of the court but stated that the Petitioner objected to it. He admitted that he had not availed any evidence to confirm that the Petitioner objected to his data being used by court.
96. He stated that the bank account and R.T.G.S. of the Petitioner were personal and sensitive data. He further stated that if the two documents were to be used in this case, it would prejudice the Petitioner. He added that the prejudice was that he had objected to its production hence he (the witness) did not have consent to reveal it. He confirmed that as per his affidavit he stated that he withdrew a sum of Kshs.4,375,000/= and paid to the vendor in cash. He added that he was issued with a receipt from the bank which showed the transaction. He admitted that he had not annexed the receipt.
97. Upon cross examination by Odongo, he confirmed that as per Clause 2(1) of the Agreement, Kshs.8,750,000/= was to be paid at the execution of the agreement. He stated that the Clause did not disclose the mode of payment. He added that the clause did not provide for payment by way of instalments. He stated that it was the only agreement he made between the purchaser and the vendor.
98. Upon re-examination, he stated that the Identity Cards were presented to him by the parties. He confirmed that he had annexed the copies to the agreement. He stated that there was a typo error in the identity cards number. He confirmed that the parties had presented their identity cards. He further stated that he had not given the bank account since it was against his confidentiality position as an Advocate to reveal the same. He added that it was against the Data Protection Act and Section 134 of the *Evidence Act*. He stated that if he revealed it, it could have exposed other clients who worked in his law firm if he had revealed it without their permission. He stated that the parties had agreed on a mode of payment and subsequently complied with the terms.
99. That marked the close of the Petitioner's case.

Submissions

100. Counsel for the Petitioner filed his submissions dated 15th November, 2024 where he gave a summary of the evidence and identified four issues for determination. The first issue was who was the current owner of the parcel of land. He submits that the Petitioner demonstrated that he was the lawful and registered owner of the suit land L.R No. 2053 as exhibited in the Certificate of Title. He submits that the Petitioner also produced official search certificates obtained prior to the transfer as well as post registration. It was his submission that PW3 confirmed that the transfer of interest to the Petitioner was effected after compliance with the mandatory provisions of law and payment of the requisite fees. Counsel submits that the Petitioner was a bona fide purchaser for value. He relied on the case of James



- Muigai Thungu V County Government of Trans Nzoia & 2 Others [2022] eKLR and Said V Shume & 2 Others (Civil Appeal E050 of 2023) (2024) KECA 866 (KLR). It was counsel's submission that PW1 demonstrated that the land had been converted to private land in 1998 following the registration of transfer in favour of Ibrahim Abdullah.
101. He further submitted that PW4 confirmed that he oversaw the transaction and registered the transfer instrument. Counsel argued that PW4 had to maintain advocate-client confidentiality and not provide the bank statement as it would reveal other client details. He cited the case of Patrick Simiyu Khaemba V Kenya Electricity Transmission & Another [2021] eKLR. He submitted that there was no evidence that showed any dispute between the Petitioner and Vendor on the sale transaction. He added that the Land Registrar adduced evidence that showed compliance and that the registration was proper. He submitted that the 1st Respondent failed to call the Chief Land Registrar to controvert the Petitioner's evidence. He relied on the case of Philemon L. Wamba V Gaitano Lusitsa Mukofu & 2 Others [2019] eKLR which quoted with approval the case of Solomon Omwenga Omache & Another V Zachery O. Ayieko & 2 Others (2016) eKLR. He submits that the Petitioner is the duly registered owner of parcel no. IR No. 19981 LR No 2053.
 102. The second issue was whether the 1st Respondent properly pleaded and demonstrated fraud and illegality in the manner of acquisition of the suit property by Mohamed Abdullah in 1998 and subsequent transfers of interests to the Vendor and the Petitioner as a purchaser for value. He relied on the Court of Appeal case in Moses Parantai & Peris Wanjiku Mukuru suing as the legal representatives of the estate of the late Sospeter Mukuru Mbere (deceased) V Stephen Njoroge Macharia (2020) eKLR and submits that fraud ought to have been specifically pleaded and proved. He argued that the same must never be left to the court to infer in the absence of contingent evidence. He denied any form of fraud or illegality in acquiring of the suit land. He submitted that the 1st Defendant claimed ownership without proof of documentary evidence. It was his submission that the Respondent did not produce any search or documentary evidence in compliance with the provisions of a lost title. He submitted that there was no pleading filed in where the allegations of fraud had been particularized. He further submitted that no substantive response to the petition was made or allegations of fraud pleaded. Counsel submits that the Petitioner's interest remained unrebutted but that it was corroborated with PW1's evidence and the Petitioner's own account.
 103. The third issue was whether regulations vide legal Notice No. 157 of 2003 were applicable to the suit property. Counsel while submitting in the negative argues that the said legal notice was not applicable in the suit parcel since it was already private land having been transferred to Mohamed Abdullah in 1998 as confirmed by PW1 and PW3. He submits that PW2, DW1 and DW2 confirmed that as at 2021 the land was being utilized for the cultivation of sugarcane. That DW1 and DW2's evidence was misleading since the claim that the sugar case was cultivated by the 1st Respondent was not supported by the regulations. He submits that there was no justification that there was a joint venture to cultivate the land. He submits that laws were retroactive and not retrospective. He relied on the Court of Appeal case of Robert Tom Martin Kibisu C Republic (2014) eKLR. He further relied on the Supreme Court case of Torino Enterprises Limited Attorney General (Petition 5 (E006) of 2022) [2023] KESC 79 (KLR) and submits that the suit land fulfilled the conditions of alienated land.
 104. The final issue on the prayers that ought to be granted, counsel submits that the court finds that the Petitioner was the lawful registered owner of the suit land. He urges the court to grant the Petitioner the prayers as sought in the Amended Petition.
 105. Counsel for the 1st Respondent on the other hand filed his submissions dated 2nd December, 2024 where he identified three issues for determination. The first issue was whether the Petition meets the threshold of a constitutional petition. While submitting in the negative, he relied on the case of Anarita



- Karimi Njeru V Republic (1979) eKLR affirmed by the Court of Appeal case in Mumo Matemo V Trusted Society of Human Rights Alliance & 5 Others. He submits that the Petitioner enumerated various Articles of *the constitution* such as 20, 23, and 40, among others, but failed to give clarity on how the same had been violated and its extent. It was his submission that the claim arose from a sale agreement dated 15th December, 2021 the Petitioner entered into with Isaak Ibrahim Abdullah. He submits that the sale agreement failed to confer rights that could be enforced by way of a constitutional petition as it was a private commercial contract breached by the Vendor. He relied on the case of Grays (sic) Jepkemoi Kiplagat V Zakayo Chepkoga Cheruiyot [2021] eKLR and submits that the sale agreement was a nullity as the suit land was public land at the time he purportedly bought the same.
106. The second issue was whether holding an instrument of title is sufficient proof of ownership of the suit land by the Petitioner. Counsel submits in the negative and relied on the Supreme Court case in Dina Management Limited V County Government of Mombasa & 5 Others [2023] eKLR and argues that the Petitioner alleged that he bought the suit land from Isaak Ibrahim Abdullah who had been gifted by Mohammed Ibrahim Abdullah. He went on to argue that neither of the said persons testified so as to substantiate the process followed. He further submits that the Petitioner failed to produce the original allottee's application letter to Lands Limited that sought for allocation of the suit land.
107. It was counsel's submission that there was no evidence to prove that the allottee bought the suit property for value. He argues that the receipt produced by the Petitioner was contested by the 1st Respondent and that DW1 testified that the cash book in their records indicated that the said receipt had been issued to one Harrison Simotwo upon receipt of Kshs. 13,000 in July, 1997. It was counsel's submission that the transfer instrument between Lands Limited and the original allottee was false since there was no board resolution to prove that Lands Limited sanctioned the sale of the suit land. He went on to submit that the company seal was not affixed, that the two directors that allegedly affixed their signature did not indicate their names, ID and PIN numbers as well as the passport photos.
108. Counsel argued that the transfer instrument did not emanate from Lands Limited as it was a fraudulent allocation of the 1st Respondent's land to a private individual thus did not bind Lands Limited. It was counsel's submission that PW3 the Chief Land Registrar testified that he did not know the identities of the officers and or directors from Lands Limited that attended the Land Control Board meeting. He further submits that DW3 during cross examination confirmed that he had not produced the application dated 10th December, 1998 and added that he did not have the minutes from the Land Control Board meeting held on 15th December, 1998. It was counsel's submission that the said discrepancies rendered the transfer null and urged the court to find that the title was illegally transferred to the original allottee and thus could not be protected under Article 40 of *the Constitution*. He cited the case of Funzi Development Ltd & Others V County Council of Kwale Mombasa Civil Appeal No, 252 of 2005 [2014] eKLR.
109. He added that the evidence tendered by the Petitioner was not sufficient to support that he was a bona fide purchaser as his case was laced with a lot of inconsistencies. He argues that by the time the Petitioner allegedly bought the land, it had already been gazetted as public land vide legal notice 37 of 2001 and 157 of 2003. He submits that the Petitioner ought to have exercised his due diligence. Counsel also argued that the Petitioner failed to prove that he bought the land for valuable consideration. Counsel argues that PW2 contradicted himself by giving two different accounts on the mode of payment of the purchase price of Kshs. 8,750,000/=.
110. It was his submission that it had been paid in cash and months later after having been stood down, testified that he paid the same via RTGS which was never produced. He argued that the Petitioner took cover under Section 18(1) of the Data Protection Act which provides for advocate client



confidentiality. He argued that that pursuant to the court's order issued on 30th October, 2024, PW4 was under a legal obligation to furnish the court with a copy of the RTGS receipt. He argues that processing of personal data was exempt when disclosure was required by court. He urges the court to find that the entries on the title from number 6, 7 and 8 were fraudulently made and thus no valid title passed from the original allottee to Isaak Abdullah hence the Petitioner's title ought to be invalidated.

111. Counsel cited the case in *Christine Daisy Wood & 16 Others V Commissioner General, Kenya Prisons Service & Another* [2024] eKLR and *Republic V Minister for Transport & Communication & 5 Others ex parte Waa Ship Garbage Collector & 15 Others Mombasa* [2006] eKLR.
112. The final issue was whether the reliefs sought should be granted or not, counsel submitted in the negative and relied on Article 40 of *the constitution* which limits the right to property which has been illegally acquired. He submits that the suit land has never been available for allocation as the 1st Respondent has been in occupation since 1971. It was his submission that the site visit established that the land was occupied by the 1st Respondent. He further submits that the 1st Respondent reported for lost title upon their discovery when preparing for the present case. He relied on the case in *Alberta Mae Gacii V Attorney General & 4 Others* (2006) eKLR and submits that the Petitioner obtained the suit property from fraudulent persons who had no claim on the suit property. He urged the court to dismiss the petition with costs to the 1st Respondent.

Analysis and Determination

113. Having carefully read the pleadings and considered the evidence on record and rival submissions, I do find the issues for determination are as follows:
 - a. Who the lawful owner of the suit property was
 - b. Whether the Petitioner acquired a valid title over land parcel, namely, Grant No. I.R. 19981, L.R. No. 2053 delineated on the land survey plan number 75869
 - c. Whether the Petitioner was a bona fide purchaser for value of the suit land
 - d. Whether the Agricultural Development Corporation (Special Farms) Rules, 2001 [L.N 37/2001, L.N 157/2003] violated the Petitioner's and his predecessor's right to property
 - e. Whether the Petitioner is entitled to the prayers sought in his petition
 - f. Who should bare the costs of the petition
114. In the preliminary, it is important to clarify the 1st Respondent's claim on whether the petition met the threshold for a constitutional petition. I am guided by the case of *Nicholus V Attorney General & 7 Others; National Environmental Complaints Committee & 5 Others (Interested parties) (Petition E007 of 2023)* [2023] KESC 113 (KLR) where the supreme court held as follows:

“From our finding in *The Munya 1* case the focus should not therefore solely be on the explicit mention of a constitutional provision but also the overall context and impact of the Court's reasoning in relation to constitutional matters. In *John Florence Maritime Service*, supra, we added that the Court should not have a narrow mind when evaluating whether a matter raises a constitutional issue, and that the search for constitutional issues should extend beyond specific constitutional provisions. It was our determination in that regard that:

“(34) It therefore emerges that in evaluating whether a matter raises a constitutional issue of interpretation and/or application, this Court should not be narrow-



mindful in its inquiry. The quest for discovery should not start and stop with a determination of whether or not there is a specific provision of *the Constitution* that was at issue before the Superior courts. Instead, there is need for a holistic inquiry of all the various facets of the law as pleaded by the parties if they do indeed raise a constitutional question. This is the constitutional trajectory that requires a look at a Court(s)' reasoning and even the processes and procedures adopted by a court in its proceedings."

115. In view of the above, it is this court's opinion that the present case revolves around the issue of ownership of the suit land which is provided for under *the constitution*. I shall therefore proceed to determine the matter on merit.

a. Who the lawful owner of the suit land was

116. Going to the first issue for determination, it is was the Petitioner's case that he purchased the suit property Grant No. I.R 19982, L.R No. 2053 from one Mr. Isaak Ibrahim Abdullah who had been gifted by Mohammed Ibrahim Abdullah the original allottee. It was his case that he purchased the same at a consideration of Kshs. 8,750,000/= vide the sale agreement dated 15th December, 2021. It was also the Petitioner's case that the original allottee of the suit land was Mohammed Abdullah who had applied and was allotted by the 1st Respondent. This was evidenced by the letter dated 11th April, 1995. It was his claim that Mohammed Abdullah paid a consideration of Kshs. 879,214/= on 28th February, 1998 and the same was later transferred to him on 8th December, 1998. It was further his case that Mohammed Abdullah gifted Isaak Ibrahim Abdullah as evidenced by the Memorandum of a Gift dated 7th March, 2017. It was thereafter that the Petitioner allegedly bought the property from Isaak Abdullah where he produced a Certificate of title as proof of ownership.

117. The 1st Respondent on the other hand contends that the suit land was never allotted to Mohammed Abdullah as the same has always been public land. It was its case that the documents including the receipt of payment by the original allottee to the transfer, purchase and entry of the Petitioner's name in the suit land was fraudulently done. It was the 1st Respondent's contention that the whole process to acquiring the certificate of title for the suit land was marred with a lot of inconsistencies. The 2nd, 3rd and 4th Respondents contend that there were not part of the transaction involving issuance of the title in the Petitioner's name.

118. In the case of Korir V Njoki *☞ another (Civil Appeal 34 of 2020)* [2023] KECA 439 (KLR) the court held as follows:

"In this case, the appellant's title was being challenged on the ground that the proprietors of the suit land were not aware of the circumstances under which he allegedly acquired interest thereunder. It was that very title whose authenticity was in dispute. In those circumstances he could not just come to court and place the very same title before the court and claim that the evidence was sufficient. He ought to have gone further and explained the process by which he obtained the said title. In this case there was no such evidence and since he was not physically involved in the transaction, he ought to have called the person who transacted on his behalf even if he could not call the alleged seller."

119. It is this court's view that the duty was upon the Petitioner to clearly explain the root of his title. In addition, Section 107 (1) and 108 of the *Evidence Act* places the burden of proof squarely on the party that alleges. In the present case, the burden thus lay on the Petitioner to prove that indeed he legally acquired the suit property.



120. PW1, a retired estate manager, of the 1st Respondent confirmed that the Board was in charge of allocation of the suit land. He also confirmed that he was not aware that the suit property had been gazetted as public land. He further admitted that he was not certain whether the board had in fact allocated the suit land to Mohammed Abdullah. He testified that the 1st Respondent used to receive applications for allocation of land. He however admitted that he had no minutes to confirm that the 1st Respondent allocated the land to Mohammed Abdullah. He also admitted that he could not confirm the date he had appointed as a farm manager of the 1st Respondent. PW2 the Petitioner admitted that the original allottee Mohammed Abdullah did make payment for allocation of the suit land even before the 1st Respondent had in fact confirmed in writing allocating him the property. The Petitioner admitted that there was a legal notice 37 of 2021 touching on the suit land terming it as public land which he filed a case to have it revoked. He however admitted that he did not have any documentary evidence that confirmed that the same had been revoked. He also admitted that the sale agreement was only signed by the directors but lacked the company seal of Lands Limited. PW3 the Chief Land Registrar confirmed that the suit land was public land at the time it was transferred to Mohammed Abdullah. He confirmed that regarding transfer of public land, the Land Registrar ought to have an instrument drawn by the Advocate of the State Corporation and that the consent must be signed by a District Commissioner for the L.C.B. He admitted that public land could be converted to private land through allocation by the Commissioner of Lands. He however admitted that the suit land was not allocated by the Commissioner of Lands but that it was outright transfer. He also admitted that the Commissioner of Lands did not have power to give consent for transfer in agricultural land. PW3 also admitted that he did not have the minutes for the LCB meeting or even the officials of the 1st Respondent that attended the same.
121. In the case of *Munyu Maina V Hiram Gathiha Maina* [2013] KECA 94 (KLR) the court held as follows:
- “We state that when a registered proprietor’s root of title is under challenge: it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that it is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which would not be noted in the register.”
122. The Court of Appeal in the case of *Elizabeth Wanjiru Githinji and 29 Others V Kenya Urban Roads Authority* [2019] eKLR, Justice Otieno Odek, JA, [as he then was] held as follows:
- “I am convinced and persuaded by the merits and reasoning in the local and comparative jurisprudence that a title under the Torrens system is defeasible on account of mistake, misrepresentation, fraud and illegality. For this reason, it is not sufficient for the appellants to wave an RLA or RTA title and assert indefeasibility.
- If a mistake is proved or total failure of consideration or other vitiating constitutional or statutory factors, an RLA or RTA title is defeasible.”
123. The Land Administrator for the 1st Respondent confirmed that the suit land was governed under Legal Notices No. 37 of 2001 and that it was public land. He also confirmed that there was no resolution from the Board of Directors from the 4th Respondent allocating the suit property to Mohammed Abdullah. PW3 also denied that the receipt number 16755 for Kshs. 879, 214 was issued by the 1st Respondent or that it executed the transfer. It was his case that he was the custodian of the cash book



record for the 1st Respondent. He confirmed that the only receipt they issued with that number in was dated 28th July, 1997 to Harrison Simotwo in respect of a payment of plot No. 127 in Tall Trees for Kshs.13,000/=. I have perused the receipt produced as Defence exhibit and it is not in dispute that it was issued to the said Simotwo and not Mohammed Abdullah and the Petitioner never challenge the receipt. It is trite law that where a company is a party to a contract, it ought to be signed by two directors or one director and a secretary and has to have a company seal. It is a fact that this was not the case as per the transfer dated 8th December, 1998 between Lands Limited and Mohammed Abdullah and therefore this court cannot conclude that the suit land was lawfully transferred.

124. It is my opinion that with all the evidence adduced, the Petitioner's case was marred with various inconsistencies as he failed to properly explain the root of his title. In addition, this court conducted a site visit which from the evidence, it was clear that the Petitioner could not identify the exact acreage of his land as alleged. Furthermore, PW4, the advocate responsible for the sale agreement between Issak Mohammed failed to assist Petitioner's case despite the court giving him an opportunity to testify despite the Petitioner's case having already been closed. He raised the issue of Advocate client confidentiality which in my opinion was rather a misplaced argument by virtue of the stakes that was at play. PW4 claimed that disclosing the Petitioner's bank statement would prejudice the Petitioner since he had not agreed to it being produced. It is this court's view that the payment of the purchase price was a very critical aspect in the Petitioner's case since PW4 alleged that the sum of Kshs. 8,750,000/= was paid via RTGS the court needed to establish that and by failing to produce the bank statement, this court cannot conclusively find that the purchase price was indeed paid. It was PW4's case that since the sale agreement did not stipulate the mode of payment, the parties had agreed between themselves their mode of payment and had the same paid by cash.
125. It is noteworthy that under Section 29 of the *Proceeds of Crime and Anti-Money Laundering Act* (POCAMLA) 2009, it mandates banking institutions to file reports of cash equal to or exceeding Kshs. 1,000,000/= as prescribed under schedule 4 of the Act. The Petitioner therefore cannot claim that he paid the purchase price of Kshs. 8,750,000/= by cash since it was way over the capped figure of Kshs. 1,000,000/=.
126. It is this court's humble view that the Petitioner having the opportunity to justify the legality of his title, failed to successfully prove the same. It is also this court's view that the Petitioner's case could only succeed on the strength of his case and not on the weakness of the Respondent's case. I thus find and hold that the title registered in the Petitioner's name, was clearly procured and obtained in an unlawful manner and tainted with illegality. Conversely, the 1st Respondent tendered sufficient evidence to show that indeed the suit property belonged to it, and this evidence was never controverted.
127. In the Court of Appeal case of Sammy Mwangangi & 10 others V Commissioner of Lands & 3 others [2018] eKLR the court held as follows:
- “ 47. It is thus our considered view that the respondents have successfully shown how they acquired their title by produce all the documents that must be in place a Grant could be issued and registered in their favour.
48. the 3rd and the 4th respondent have sufficient evidence to prove that they acquired the suit property lawfully. Indeed, we agree with the learned judge that no evidence was called by the appellants to show the 3rd and 4th respondents acquired the titles unlawfully to enable this court order for their cancellation.



50. having found that the respondents were allocated the suit property lawfully, their titles cannot be impeached. In view of the fact that the appellants failed to prove the allegations of fraud in the acquisition of the title, consequently they failed to prove their case on a balance of probabilities. For all the foregoing reasons,. Having re – evaluated the evidence before us, we are not persuaded that the learned Judge erred in arriving at the conclusion she made. The judgment now impugned was now based on sound law and evidence, and the same cannot be impeached (Emphasis added).”

128. It is this Court’s finding that in regard to the chain of the ownership of the suit land, the entries on the title P.Exhibit 1 or 1st D. Exhibit 2 as also evidenced by the Official Search – P.Exhibit 13, the Entries up to No. 5 show that proprietorship of the Grant I.R. 19981 for a terms of 964 years and 1 month from 1.6.1959 and known as L.R. No. 2053 as delineated on the Survey Plan No. 75869 remained in with the Lands Limited which received registration as such on 14th April 1971. With the above issue now determined, this Court turns to determining whether Petitioner acquired a valid title to suit land.

b. Whether the Petitioner acquired a valid title over land parcel, namely, Grant No. I.R. 19981, L.R. No. 2053 delineated on the land survey plan number 75869

129. The Petitioner testified that he bought the parcel of land in question from Issak Ibrahim Abdullah, on 15th December, 2021. He supported this vide the Sale Agreement, P.Exhibit 12, executed the same date between him and the vendor, before learned counsel Ham Kiplimo Lagat of M/S Ham & Hamsley Advocates who drafted the same. He added that the vendor had received the ownership of the land from his brother, one Mohammed Ibrahim Abdullah by way of a gift. He produced as P.Exhibit 10, the copy of the Memorandum of Gift, dated 07/03/2017. It was drafted by Terer Kibii & Co. Advocates. He testified further that the said Mohammed Ibrahim Abdullah had applied for and was allocated the parcel of land by the Agricultural Development Corporation (ADC) through a transfer executed by the Lands Limited. He evidenced this by the Transfer Instrument executed, according to him, by the Lands Limited. He produced a copy as P.Exhibit 8.

130. The question that needs to be answered in relation to this chain of transactions is, did Mohammed Ibrahim acquire the suit land validly so as to be capable of passing it to Issak Ibrahim Abdullah as a gift which the latter would then sell to the Petitioner? Put differently, three sub-issues emerge from the pleadings and evidence. One is whether the Petitioner adduced evidence to demonstrate that the previous owner(s) rightly acquired the land so as to transfer good title to him, in the manner he alleged to have bought it. Two, whether the Petitioner demonstrated that he bought the land from the previous registered owner. Third, whether the Petitioner was an innocent purchaser for value. These questions and answer have their foundation in Section 26(1) of the *Land Registration Act*. If Mohammed Ibrahim Abdullah obtained the ownership of the land validly from the previous owner, Lands Limited then he would rightly pass it as a gift to Issak Ibrahim Abdullah, and the latter would rightly sell it to the Petitioner.

131. On the first sub-issue, it is important for any party whose title is challenged to always establish its root and prove that indeed the root was proper. It is not enough for a party to wave a title to the world and court and claim, while so doing, that he is the rightful owner by the mere fact that he has his name on it or the records of ownership that generated the said title. Of itself a title is only prima facie evidence of ownership, subject to the validity or otherwise of the process of one being registered as such.

132. First, documents relating to ownership of the suit land by the Petitioner were photocopies of a number of letters and a receipt issued by the Lands Limited and an instrument of Transfer and letter of consent



to transfer the same. This is besides the original title document which evidenced the transfer to him through the Entry No. 6 thereon. It is apt to state that all the documents referring the transactions relate to public records, given that the Agricultural Development Corporation is a public institution. The Petitioner endeavoured to lay the basis for the production of photocopies thereof and not originals or certified copies as provided for under Sections 80 and 81 of the *Evidence Act*, Chapter 80 Laws of Kenya. They were finally not produced. It means that all the evidence which was given orally by the party seeking to rely on the documents marked for identification, production and proof but are neither produced nor proved is mere inadmissible hearsay. The best the Court can do is to disregard it. Therefore, in terms of the decision of *Kenneth Nyaga Mwige v Austin Kiguta & 2 others* [2015] eKLR any testimony that is from and on the contents of a document which is unsupported by document because it is not produced is inadmissible. The Court of Appeal expressed itself in the *Kenneth Mwige* (supra) held as follows;

- “ 18. The mere marking of a document for identification does not dispense with the formal proof thereof. How does a document become part of the evidence for the case? Any document filed and/or marked for identification by either party, passes through three stages before it is held proved or disproved. First, when the document is filed, the document though on file does not become part of the judicial record. Second, when the documents are tendered or produced in evidence as an exhibit by either party and the court admits the documents in evidence, it becomes part of the judicial record of the case and constitutes evidence; mere admission of a document in evidence does not amount to its proof; admission of a document in evidence as an exhibit should not be confused with proof of the document. Third, the document becomes proved, not proved or disproved when the court applies its judicial mind to determine the relevance and veracity of the contents - this is at the final hearing of the case. When the court is called upon to examine the admissibility of a document, it concentrates only on the document. When called upon to form a judicial opinion whether a document has been proved or disproved or not proved, the Court would look not at the document alone but it would take into consideration all facts and evidence on record.
19. The marking of a document is only for purposes of identification and is not proof of the contents of the document. The reason for marking is that while reading the record, the parties and the court should be able to identify and know which was the document before the witness. The marking of a document for identification has no relation to its proof; a document is not proved merely because it has been marked for identification.
20. Once a document has been marked for identification, it must be proved. A witness must produce the document and tender it in evidence as an exhibit and lay foundation for its authenticity and relevance to the facts of the case. Once this foundation is laid, the witness must move the court to have the document produced as an exhibit and be part of the court record. If the document is not marked as an exhibit, it is not part of the record. If admitted into evidence and not formally produced and proved, the document would only be hearsay, untested and an unauthenticated account.
21. In *Des Raj Sharma -v- Reginam* (1953) 19 EACA 310, it was held that there is a distinction between exhibits and articles marked for identification; and that



the term “exhibit” should be confined to articles which have been formally proved and admitted in evidence. In the Nigerian case of Michael Hausa -v- The State (1994) 7-8 SCNJ 144, it was held that if a document is not admitted in evidence but is marked for identification only, then it is not part of the evidence that is properly before the trial judge and the judge cannot use the document as evidence.”

133. With the issue regarding the origin of the transfer of ownership of the suit land from Lands Limited to Mohammed Ibrahim Abdullah settled, it leaves his registration as owner hanging on no evidence. Even if this Court were to be wrong in making the finding that the marking for identification of the letters and other documents not produced by the Petitioner, this court notes in passing that the contents in the marked documents actually evidenced fraud and irregularity in the entire process leading to the Petitioner’s registration as owners. For instance, each of the letters was written in the month of April of different years, that is to say, the Application for allocation was made on 15th April 1994 and purportedly received on 19th April 1994; the letter of allocation for parcel No. L.R. No. 2053 consisting of 175 acres was issued by the ADC , a year later on 11th April 1995 and directed that payment of the sum of Kshs 864,000/= be made to Lands Limited was dated; another one dated 15th April 1997 written by the ADC two years after the allocation requested for the payment of the sum of Kshs 879,214/= within 30 days; and Mr. Mohammed Ibrahim Abdullah’s acknowledgement of the letters dated 11th April 1997 and 15th April 1997 and which forwarded a cheque for KShs 879,214/= to ADC was written on 06th April 1997 which date curiously was nine (9) days before the ADC purportedly issued request for the payment; further a letter dated 30th April 1998 issued by the ADC forwarding a receipt No. 16755 dated 28th February 1997 for the sum of Kshs 879,214/=. The activities surrounding these transactions were too coincidental to be a usual way of communication between Mohammed Ibrahim and the ADC, and if they did occur then there must have been a carefully planned or choreographed arrangement by both the Mohammed Ibrahim Abdullah and some official(s) in the ADC to always avail himself and act in the month of April to engineer some fraudulent activity. But the failure of the Plaintiff to even certify the photocopies of the alleged communication from the ADC regarding those dates referred to made it more suspicious. But all that evidence is neither here nor there as it was hearsay.
134. Be that as it may, the Petitioner produced as P. Exhibit 8 an instrument of Transfer dated 8th December 1998. It predated a purported consent issued by the land control board (LCB) on 15th December 1998, PMFI – 9, for the transfer of the suit land. First of all, even if the consent could have been produced in evidence to support the transfer it is clear that the Lands Limited applied for the consent to transfer on 10th December 1998 which was two days after the transfer had been purportedly made by the Lands Limited.
135. Furthermore, the Transfer was not signed by the Purchaser, allottee or transferee the said Mohamed Ibrahim Abdullah as required by law. Additionally, the said instrument of Transfer was neither witnessed not attested by any Advocate as the law requires. It was thus fundamentally defective and could not form the basis of a legal transfer of land. Thus, the transaction, if at all it was sanctioned by the Lands Limited or the ADC, was irregular and could not stand validity.
136. Moreover, the Petitioner did not prove that the ADC or Lands Limited applied for the consent although the PMFI-9 showed that ADC (sic) made an application on 10/12/1998. In any event, he did not know which representatives of ADC (Lands Limited) attended the meeting for the rant of the Land Control Board (LCB) consent. He also did not produce any minutes to prove that indeed the consent was granted as claimed by him.



137. Of serious legal shortcoming was the fact that the Transfer (P. Exhibit 8, purportedly registered as LR. 19981/6 on 17th December 1998 at 10:45 hours in the Land Titles Registry in Nairobi, was only signed by some two unidentified persons who claimed to be directors of Lands Limited (as per the document). It did not bear the seal of the company to authenticate it as a document sanctioned by it or emanating from the company. This was contrary to Section 58(4) of the Registration of Titles Act, Chapter 281 Laws of Kenya which was one of the Memorandums referred to in the Transfer. The provision reads that;

“An instrument executed by a company within the meaning of the Companies Act shall be executed by means of the company’s common seal affixed in accordance with the memorandum and articles of association.”

In this case, DW1 testified that, Lands Limited was a wholly owned subsidiary of the ADC. ADC which was mandated by government to manage agricultural lands in Kenya as per the Agricultural Development Corporation regulations was a public company capable of suing and being sued. Additionally, it wholly owned the Lands Limited which was established under the Companies Act to buy and manage land from the then departing white settlers. The Company did not affix its seal to the instrument of transfer of the suit land. Thus, P.Exhibit 8 was not executed by the Lands Limited (company) hence was an instrument incapable of disposing of an interest in the suit land. Therefore, the Mohammed Ibrahim Abdullah could not transfer any good title to his brother since he did not acquire any from the Lands Limited. The purported gift which Mohammed Ibrahim Abdullah made to Issak Ibrahim Abdullah was inconsequential regarding any interest in the suit land.

138. Furthermore, both the ADC and Lands Limited were separate entities which were bodies corporate and capable of entering into transactions separately, through decisions by their Boards of Directors and members’ resolutions. DW1 testified that there are procedures to be followed before properties of the ADC and its subsidiary are disposed of. He stated that there must be a resolution by the Board of Directors (BOD), and it must be in writing. He added that in the instant case there had never been any since the company’s records contained no such resolution to dispose of the suit property. He stated further that besides the resolution of the BOD, the Minister of Agriculture - now Cabinet Secretary – was also to sanction the sale of the property. He did not do so regarding the sale of the property to Mr. Mohamed Abdullah.

139. Furthermore, in regard to the legality of the agreement dated 15th December 2021, the law regarding the transaction on the sale of the suit land to the Petitioner by the vendor was not adhered to. Section 3(3) of the Law of Contract Act provides that

“No suit shall be brought upon a contract for the disposition of an interest in land unless—

- (a) the contract upon which the suit is founded—
 - (i) is in writing;
 - (ii) is signed by all the parties thereto; and
- (b) the signature of each party signing has been attested by a witness who is present when the contract was signed by such party:”

140. This Court has carefully scrutinized the sale agreement between the Petitioner and Issak Ibrahim Abdullah, P. Exhibit 12. It is executed by only the parties. There is no witness thereto. It is then attested by the Advocate. In my view that is a fundamental defect which too goes to impugn the title of the Petitioner to the suit land.



141. Lastly, the agreement entered into between the Petitioner and the purported vendor, Issak Ibrahim Abdullah, was in relation to a different parcel of land known as the L.R. 2053, Grant I.R. 19982 and not L.R. 2053, Grant I.R. 19981. Whereas he stated orally that the land he purchased was the suit land he was clear in the said testimony and even from the sale agreement that the parcel of land he purchased was different from the suit land but when the transfer of ownership was made, it was done in regard to land parcel No. L.R. 2053 I.R. 19981, which was an error that was never corrected prior to that transfer. Moreover, the Identity of the vendor too was questionable because in the sale agreement it was indicated that he was identified by ID Card No. 0196245 while the copy of Identity Card attached to the Sale Agreement between them purchaser and the vendor showed that Issak Ibrahim Abdullah who was born on 01/01/1960 was of ID No. 0196641.
142. The testimony that makes the transaction in relation to the purchase of the suit land more suspect and fraudulent was that of his counsel who drew the agreement, P. Exhibit 12. He, Ham Kiplimo Advocate, besides failing to disclose how the payments, if any, for the purchase price were made refused to show receipt and even the R.T.G.S. to evidence that indeed the Petitioner ever paid money for the transaction. Worse, in terms of the evidence adduced, was that contrary to the Plaintiff's oral testimony and also through the Sale Agreement made on 15th December, 2021, whose Clause 2 was clear that the sum of KShs 8,750,000/= was to be paid upon execution of the agreement, which was done the same date, he, the Advocate, testified that the payment was made in two instalments made through his offices, as captured in the acknowledgements dated 15th December, 2021 and 15th March, 2022 annexed to the affidavit. At no point in time did the Petitioner ever state that he made the payment to his lawyer's account for onward transfer to the said Issak Ibrahim. This was a sharp contradiction of evidence.
143. Furthermore, the two annexures of acknowledgements whose originals were never produced in evidence showed stated that the vendor's ID was No. 0196245 and not No. 0196641 as shown in the Copy of the ID Card referred to above. The advocate denied further that the vendor was not the holder of ID Card No. 0196245 as shown. It is not possible that if the agreement had a typographical error regarding the vendor's Identity Card it would be replicated in the handwritten acknowledgement made separately by hand and again that it could be made three months later, on 15th March 2022 regarding another acknowledgement. In my humble view these documents were cooked to suit the Petitioner's narrative that he paid for the land. Even if he could have made the payments, then they contradicted the express provisions of clause 2 of the sale agreement.
144. In any event, once the land became registered in the name of Lands Limited which was a subsidiary of the ADC it became public land, and as DW1 and DW2 testified and proved through 1st D.Exhibit 4, the Legal Notices No. 37 of 2001 and 57 of 2003, it was subject to the process of de-gazettement and Cabinet approval in order for it to be available for alienation to private individuals as private land. Additionally, it did not give evidence to show that indeed the land was degazetted before allocation, if all. In essence, the Plaintiff failed to show the process of acquisition of the land to establish the legal root thereof.
145. Even so, in *Dina Management Limited v County Government of Mombasa & 5 others* (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR) (Constitutional and Human Rights) (21 April 2023) (Judgment), it was held that,

“As held by the Court of Appeal in *Munyu Maina v Hiram Gathiha Maina* Civil Appeal No 239 of 2009 [2013] eKLR, where the registered proprietor's root title is under challenge, it is not enough to dangle the instrument of title as proof of ownership. It is the instrument that is in challenge and therefore the registered proprietor must go beyond the instrument



and prove the legality of the title and show that the acquisition was legal, formal and free from any encumbrance including interests which would not be noted in the register.”

146. Further, Section 26(1) of the *Land Registration Act*, Chapter 3 of 2012 provides that a title is prima facie evidence of ownership of land. It stipulates that,

“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.”

147. This Court is of the humble view that the Petitioner’s ownership as per the title – P. Exhibit 10 and 1st D. Exhibit 2 – was only prima facie evidence of ownership. However, since it was challenged, the Plaintiff needed to go beyond dangling it as evidence of ownership. The Petitioner failed to bring himself within the conditions of the provision as to entitle it to be declared the lawful owner for reason of several sub-issues not successfully proven.

148. Furthermore, the Petitioner relied on P.Exhibit 14 – the Application for the LCB consent. It was dated 24th January 2022. It referred to land parcel No. LR. 2053 and indicated that it was approved on 08th February 2022. The acreage of the parcel of land for which the consent to transfer was made was for 175 Ha, which is 175 hectares. The nature of the transaction was “Transfer”. The Petitioner also produced as P.Exhibit 15 the consent granted upon the application being made. The contents of the consent show that it was granted pursuant to an application for it dated 07th February 2022. The nature of the transaction sought was for Charge & Transfer”.

149. When the two documents are compared, it is clear that the nature of transaction on either was different. Further the acreage of land sought to be transferred, as described at paragraph 5 of the document, was 175 hectares yet the sale agreement was for 175 acres which parcels of land are so diverse in sizes that it could not be possible for any reasonable LCB exercising its mind properly would grant a consent thereto which such a glaring discrepancy. Hence the it is doubtful whether the application dated 24th January 2022 was ever granted. In any event, the consent (PEXh. 15) related to an application dated 07th February, 2022. That was totally different from the application for transfer. The two documents cannot form the basis for this Court to agree with the Petitioner that he applied to the LCB for consent to transfer to himself the suit land and it was granted. In any event the consent granted was only “until payment in full” (of the “charge and transfer”). I reject the entire evidence on application for and the grant of consent to transfer.

150. The totality of the above analysis of the evidence tendered by the Petitioner is that the title stands on nothing in terms of documents that evidenced transfer of ownership from Lands Limited: the transfer just emerges, so to say, from nowhere. It is this Court’s humble finding that the Petitioner did not acquire a valid title to the suit land. Therefore, his claim that he bought the land from Ibrahim Abdullah cannot stand.



c. Whether the Petitioner was a bona fide purchaser for value of the suit land

151. The Petitioner claimed to have made due diligence before acquiring the land. He stated that he visited the suit land and also made a search to show that the acquisition of the land was free of any question. He claimed then he was an innocent purchaser for value. So far, the court has found that the payments purported to have been made by him were insufficiently proved to show that he actually made them hence the claim of purchase for value was seriously flawed.
152. Furthermore, while it was upon the Petitioner to prove his case on a balance of probabilities that he indeed acquired a proper title to the land, a finding which this Court has already made to the contrary, the Defendant adduced cogent evidence that the suit land was at all times its property. It is common ground that the Lands Limited was registered as owner, as per P.Exhibit 10 and 1st D.Exhibit 4. DW1 testified that it was wholly owned subsidiary of ADC.
153. While the Petitioner did not adduce any evidence as to how Mohammed Ibrahim Abdullah got to be lawfully registered as owner of the suit land, the 1st Defendant adduced evidence to show that receipt No. 16755 was neither issued to the said Mohammed Ibrahim Abdullah nor generated on 28th February 1998 but was issued on 28th July 1997 to one Harrison Simatwo for KShs 13,000/= for Tall Trees on Plot No. 127, as per the 1st D.Exhibit 6 which was a duplicate (original or primary evidence in terms of Section 65(3) of the *Evidence Act*) of the receipt issued to the said party. Further, the 1st Defendant, gave evidence through 1st D.Exhibit 5 which was an original cash book for the months of February 1998 and March 1998 to show the records of the receipt numbers of the receipts issued to various customers in the whole of the two months. The records showed that the receipts were issued sequentially, recorded as much, and ranged between numbers 17033 issued on 2nd February 1998 and those issued on various dates, and No. 17074 issued on 30th March 1998. DW1 continued with his testimony orally that the receipt of the sum claimed by the Petitioner to have been paid by Mohammed Ibrahim Abdullah was of 28th February 1998. That such a payment did not appear in the Cashbook. But when the Court compared the receipt produced as 1st D.Exhibit 6 with the entire original Cashbook which ran from the 1st April 1985 to 27th March 1998, it found that indeed it receipt was recorded against an entry of 28th July 1997 in relation to one Harrison Simatwo for KShs 13,000/=.
154. As noted elsewhere, DW1 produced the original of the Cashbook which was compared with the copy he made and was ready to leave in Court and the Court confirmed to be the same. He also produced the receipt whose number was the same as that purported to have been given to the Petitioner by the seller of the suit land. The evidence of DW1 who handled the Cashbook on behalf of the 1st Respondent as compared to that of PW1 who admitted that he never used to handle financial transactions or records of the company is credible and consisted with the records adduced in evidence.
155. When this Court compares this evidence with the disregarded one which regarded the alleged copy of a letter forwarding a bank statement for payment, it is clear that the receipt attached to the letter dated 30th April 1998, purported to relate to a banker's cheque forwarded on 06th April 1997 and receipted on 28th February 1998. The receipt purportedly issued four months and twenty-two days after the expiry of the validity (period) of the bankers' cheque issued to the ADC. It is doubtful if such a payment was ever made and honoured. In any event, as this Court has stated, there was something suspect over the transaction of payment in that Mohammed Ibrahim purported to know, accept and pay for the land nine (9) days before the letter of offer written by ADC was made. Legally he could not accept an offer before it was given. Further, there is no evidence that the cheque was ever given to the Lands Limited to which it was to be made, or even the ADC to which the letter was addressed by him.



156. In *Sugawara v Kiruti* (Sued in her Capacity as the Administratrix of the Estate of Mutarakwa Kiruti Lepaso alias Mutarakwa Kiroti Lepaso and on her Own) & 3 others (Petition (Application) E038 of 2024) [2025] KESC 9 (KLR) (21 March 2025) (Ruling), the Supreme Court of Kenya held that,

“We now opine and determine as follows: “ii...the appellant could not be considered a bona fide purchaser for value as no evidence was produced to show that she had paid valuable consideration for the suit parcels.”

157. Also, in *Dina Management Limited* (supra),

“The Black’s Law Dictionary 9th Edition defines a 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.”

92. The Court of Appeal in Uganda in *Katende v Haridar & Company Ltd* [2008] 2 EA 173, defined a bona fide purchaser for value as follows: “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:

1. he holds a certificate of title;
2. he purchased the property in good faith;
3. he had no knowledge of the fraud;
4. he purchased for valuable consideration;
5. the vendors had apparent valid title;
6. he purchased without notice of any fraud; and
7. he was not party to the fraud.”

92. On the same issue, the Court of Appeal in *Samuel Kamere v Lands Registrar, Kajiado Civil Appeal No 28 of 2005* [2015] eKLR stated as follows: “...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...”

82. Section 107(1) of the *Evidence Act*, Chapter 80 Laws of Kenya provides that,

“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.”



158. Additionally, Sub-Section 2 provides that,

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

159. It flows from the foregoing provisions and the decisions cited immediately above them that it was the duty of the Petitioner to first prove that it acquired the title lawfully, that is to say, as provided by law. The third sub-theme was whether the Petitioner was a bona fide purchaser (of the land) for value without notice (of any issues pertaining the suit land). This Court has already found that the Petitioner did not show that he acquired a valid title from the vendor. This automatically places him outside of the doctrine of a bona fide purchaser for value. This is because for such a position of the party claiming it to exist, it must be shown that valuable consideration passed between the vendor and the purchaser, and that the claimant did not have knowledge of another party in occupation of the land so that innocence can be attributed to him. The limb of bona fide purchaser is that of the purchaser being innocent of any prior defects on the title, including vacant possession. In this case the Petitioner claimed to have found Issak Ibrahim Abdullah harvesting sugarcane from the parcel of land at the time he went to take possession. The ADC on its part stated that it had never parted with possession of the suit land. Further that it has planted sugarcane at the material time and later reverted to growing if maize when the cane did not do well. This Court finds no innocence on the part of the Petitioner. He knew of the occupation and use of the parcel of land.

160. In *Dina Management Limited* (supra) the Supreme Court held further that,

“Article 40 of *the Constitution* entitled every person to the right to property, subject to the limitations set out therein. Article 40(6) limited the rights as not extending them to any property that had been found to have been unlawfully acquired. As the 1st registered owner did not acquire title regularly, the ownership of the suit property by the appellant thereafter could not therefore be protected under article 40. The root of the title having been challenged; the appellant could not benefit from the doctrine of bona fide purchaser.”

161. The totality of the above analysis that the Plaintiff did not lawfully acquire the suit parcel of land and is not entitled to lay a claim to it. Further, a title, as a finished product, will only stand on its own when it is traced to how it was created. There has to be a chain of ownership or a thread that runs from the origin to the current registered ownership. Therefore, in *Sammy Mwangangi & 10 others v Commissioner of Lands & 3 others* [2018] eKLR the Court of Appeal held,

“47. It is thus our considered view that the respondents have successfully shown how they acquired their title by producing all the documents that must be in place before a Grant could be issued and registered in their favour.

48. The 3rd and 4th respondents have sufficient evidence to prove that they acquired the suit property lawfully.”

162. Similarly, the same Court, in *Munyua Maina – versus – Hiram Gathiha Maina* [2013] eKLR, held as follows:

“We state that when a registered proprietor’s root of title is under challenge: it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that it is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free



from any encumbrances including any and all interests which would not be noted in the register.”

163. Also, in *Korir v Njoki & another (Civil Appeal 34 of 2020)* [2023] KECA 439 (KLR) (14 April 2023) (Judgment), the Court of Appeal once again held that,

“It is now law that the mere fact of issuance of a title deed does not confer the status of indefeasibility of title. Courts of this country have therefore held that they would not hesitate to nullify titles held by those who stare at the court and wave a title of a grabbed land by merely and pleading loudly the principle of the indefeasibility of title deed. In cases where the very process of acquisition of the land in question is under challenge, it is not enough to simply rely on the title.”

164. The Petitioner cannot be a bona fide purchaser for value at all. His registration as owner of the suit land cannot stand, not only for the above reasons but given that he entered into a transaction to buy the suit land when he knew well that there were the Agricultural Development Corporation (Special Farms) Rules, 2001 [L.N 37/2001, L.N 157/2003] in place which forbade any sale, subdivision or transfer of lands held by the ADC without approval of Parliament, and that any such transaction was null and void. The Rules stipulated at Paragraph 1(2) and (3) as follows

“(2) No special farm shall be sold, subdivided, transferred or otherwise disposed of without the prior approval by way of a Bill of Motion to be approved by Parliament.

(3) Any sale, subdivision, transfer or disposal of any special farm made in contravention of this rule shall be null and void, and no instrument relating to such transaction shall be registered under any written law for the time being in force requiring the registration of such instrument.”

165. The Rules above clearly barred any dealings on the land. In any event if the parcel of land was indeed not belonging to the ADC by the time the Rules were promulgated then they have no relation to the application of the parcel of land hence the Petitioner’s challenge of their constitutionality would be far-fetched, misdirected and misconceived hence still-born. But when the Petitioner knew of the existence of such Rules relating to and touching on the suit land and he proceeded to enter into an arrangement to buy the land he ventured into an illegal transaction which he now seeks to sanitize by applying that the Rules be declared unconstitutional. By first ‘buying’ the land and then purport to challenge the legality of the Rules is to put the cart before the horse and force the horse to move the cart. That would surely lead to a fatal disaster to the horse.

166. Even assuming that indeed the original ‘owner’ after the Lands Limited were to be legally an owner, there is no evidence whatsoever that he took possession of the land upon being declared as such. Instead the 1st Respondent showed that it has been in occupation all along. It means therefore that if the said party was to be declared owner, the right to recover the land and his title thereto should have been extinguished in terms of Sections 7 and 17 of the *Limitation of Actions Act*.

d. Whether the Agricultural Development Corporation (Special Farms) Rules, 2001 [L.N 37/2001, L.N 157/2003] violated the Petitioner’s and his predecessor’s right to property

167. The Petitioner pleaded that the Agricultural Development Corporation (Special Farms) Rules, 2001 [L.N 37/2001, L.N 157/2003] violated his and his predecessor’s right to property given that they were made after the suit land became private property and therefore this Court should declare them



unconstitutional. This Court finds that the Petitioner did not adduce any evidence of how the Rules violated his or others' rights. Furthermore, the Court has found that the property remained the property of the 1st Respondents throughout. The said Respondent therefore had every right to make such Rules regarding the farms they held and managed.

e. Whether the Petitioner is entitled to the prayers sought in his petition

168. Regarding the issue the merits of the prayers sought by the Petitioner, it is now obvious that there was none in them. This court having established the Petitioner's registration as owner (in the title) was illegally and unprocedurally obtained, he is therefore not entitled to the orders sought in the Petition.

169. Who to bear the costs of the Petition

170. Costs follow the event. The Petition is lost. The loser bears the costs as provided for under Section 27 of the Civil Procedure Act since this was not a public interest litigation. But since the officers represented by the 2nd to 4th Respondents seem to have acted in complicity with the Petitioner and or the persons who purported to acquire public land illegally, even though they said Respondents have also won the Petition they should not benefit from the faults they created by being awarded costs for defending their mess. It is time public officials who deliberately make decisions which cause public resources to be plundered or lost to be held accountable for such grave acts. This Court does not make such an order since it was not asked to.

171. The upshot of the foregoing is that the Petitioner failed to prove his case on a balance of probabilities. Consequently, I enter judgment for the Respondents against the Petitioner as follows:

- a) The Petition lacks merit and it is hereby dismissed in its entirety.
- b) The 1st Respondent and the National Land Commission (Interested party) is to have the costs of the Petition.
- c) I direct that the 3rd Respondent to cancel the entries numbers 6, 7 and 8 in the title.
- d) I further direct that the suit land is public property held by the 1st Respondent on behalf of the public hence the original of the title in respect of the suit land be handed over by the Deputy Registrar of the Court to the 1st Respondent for safe custody and processing of the orders of cancellation of the entries hereinabove stated.

172. Orders accordingly.

JUDGMENT DATED, SIGNED AND DELIVERED VIA THE TEAMS PLATFORM THE 23RD DAY OF APRIL 2025.

HON. DR. IUR NYAGAKA

JUDGE

In the presence of,

Ondabu h/b for Karanja for Petitioner

Odeyo for the AG for 2nd - 4th Respondents

Ms. Auta for the 1st Respondent

Ms. Obino for Interested Party.

