



**Chania Logistics Limited v Wathigo & 3 others (Environment & Land
Case 31 of 2020) [2022] KEELC 3884 (KLR) (28 July 2022) (Judgment)**

Neutral citation: [2022] KEELC 3884 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 31 OF 2020**

**JM MUTUNGI, J
JULY 28, 2022**

BETWEEN

CHANIA LOGISTICS LIMITED PLAINTIFF

AND

JOSEPH NJAU WATHIGO 1ST DEFENDANT

SOLOMON BOIT 2ND DEFENDANT

CHIEF LAND REGISTRAR 3RD DEFENDANT

JENIPHER KOSITANY 4TH DEFENDANT

JUDGMENT

1. The plaintiff instituted the instant suit by way of a plaint dated May 4, 2020 which was subsequently amended on June 3, 2021. The plaintiff claims that it is the lawfully registered proprietor of property known as land reference No Njoro/Ngata Block 27/21 (“the suit property”). The plaintiff vide the amended plaint prays for judgment against the defendants for:-
 - (a) A declaration be and is hereby issued that the plaintiff is lawfully registered as the proprietor of the property known as land reference number Njoro/Ngata Block 27/21 situated in Nakuru County within the Republic of Kenya.
 - (b) A permanent injunction be issued restraining the defendants either by themselves, their agents or servants or otherwise howsoever from interfering with the plaintiff’s quiet and peaceful possession and occupation of the suit property known as land reference number Njoro/Ngata 27/21 in Nakuru County.
 - (c) A permanent injunction against the defendants prohibiting them whether by themselves, their agents or servants from entering upon, remaining upon, transferring, occupying, leasing,



charging, assigning or interfering with the plaintiff's quiet possession of the suit property known as land reference number Njoro/Ngata Block 27/21 in Nakuru County; and

- (d) A mandatory injunction be and is hereby issued directing the 3rd defendant to revoke, cancel and or annul any purported title held by the 4th defendant in respect to land reference number Njoro/Ngata Block 27/21(formerly LR No 13287/37) in Nakuru County within 7 days of the judgment
2. The 3rd defendant filed a statement of defence dated June 26, 2020. The Chief Land Registrar that according to the records held in the data capture system at the Nairobi Central Registry, the suit property was initially owned by one Caleb Kipkemei Kositany and that it was later transferred to the plaintiff herein on June 18, 2019. He further averred that the suit disclosed no cause of action against it.
 3. The 4th defendant filed a statement of defence and counter claim dated June 7, 2021 where she alleged fraud on the part of the plaintiff herein in acquiring title over the suit land. She averred that she was the lawful proprietor of the suit property. The 4th defendant sought the following orders in her counter claim:
 - (a) A declaration that she is the lawfully registered proprietor of all that parcel of land known as Land Reference No 13287/137, IR No 52023.
 - (b) A declaration that the conversion of the title to the suit land being land reference No 13287/137 IR No 52023 to Njoro/Ngata Block 27/212 was illegal and therefore null and void.
 - (c) An order for the cancellation of the certificate of lease for title No Njoro/Ngata Block 27/21 held in the name of the plaintiff.
 - (d) A declaration that the plaintiff through its agents, servants and/or employees have trespassed upon her parcel of land being land reference No 13287/137 IR No 52023.
 - (e) An order for general damages for trespass.
 - (f) An eviction order to issue against the plaintiff its agents, servants and/or employees from the suit parcel.
 - (g) Costs of the suit
 - (h) Any other relief this court may deem fit
 4. The suit was heard on July 14, 2021 and March 2, 2022. During the trial, 2 witnesses, Sgt Patrick Oyalo (PW1) and Joel Ashiachi Kusimba (PW2) testified on behalf of the plaintiff. Land Registrar Edwin Wafula (DW1) testified on behalf of the 3rd defendant and 3 witnesses testified on behalf of the 4th defendant, Ben Kemboi (DW2), Brian Kimutai (DW3) and Agola Okinyo (DW4).

The Plaintiff's Case

5. PW1 Sgt Patrick Oyalo testified that he was in charge of investigations at Rongai Police station. He testified that on 31/3/2020 he was in the office at Salgaa when the DCIO requested him to see her and upon arrival, he met her with PW 2 a director of the plaintiff company who had made a report at Rongai police station that some people had trespassed into their land. He testified that he thereafter begun investigations where he visited the land, confirmed that the land existed, interviewed the 4th defendant, recorded her statement and sought clarifications from Government agencies pertaining to the subject land.



6. PW1 further testified that upon completion of his investigations he came to the conclusion that the land belonged to the plaintiff company. He testified that the land was initially allocated to Hon Kositany who later transferred the same to the plaintiff company. He produced a report exhibited in the plaintiff's bundle of documents at pages 35-71 as "PEX1". He testified that ADC confirmed that Hon Kositany was allocated the land. He further stated that the Chief Land Registrar, Nairobi wrote a letter dated June 18, 2020 indicating that the 4th defendant was the owner of the suit land, though there were no documents that were availed to support the assertion.
7. On cross examination by Mr Adaba counsel for 4th defendant, PW1 affirmed that he was the author of the report exhibited by the plaintiff which was in the nature of an inquiry. He explained that his investigations entailed interrogating various documents that he obtained from the ADC and the Land Office. He explained that he had interviewed persons from ADC, Caleb Kositany and the 4th defendant. PW1 stated after completing the investigations he formed the view that Caleb Kositany was the lawful owner of the suit land. The witness explained that he had received correspondences from Nakuru Land Registrar and the chief Land Registrar and the ADC. The ADC indicated they had no record of the 4th defendant having been allocated the suit land. He testified that the 4th defendant had indicated in her statement that she had been allocated the suit land by ADC though she did not produce any documents to prove that. PW1 stated the 4th defendant indicated she had lost the title and had been issued with a replacement title. On re examination PW1 reiterated that he authored the report and affirmed that Mr Caleb Kositany paid Kshs 58,000 for the suit land as per the receipt exhibited in the bundle of documents.
8. PW2 Joel Ashiachi Kusimba testified that he was of the plaintiff's directors and that the other director was Hon Caleb Kositany. He stated that he had been authorized to testify on behalf of the company. He testified that he was aware of the dispute before court as it related to the suit property and relied on his witness statement dated November 23, 2020 which the court adopted as part of his evidence. He relied and produced the plaintiff's bundle of documents listed 1-18 in support of the plaintiff's case and the documents were admitted as "PEX1-18".
9. On cross examination by Mr Mutai counsel for the 4th defendant, PW2 confirmed that the plaintiff had 2 directors/shareholders with a 50-50 shareholding. PW2 stated that they carried out due diligence before the plaintiff company acquired the suit property whose purchase price was Kshs 25,000,000. He confirmed that Hon Kositany was the owner of the suit property and had been in possession of the land prior to the company acquiring the same from him.
10. He testified that they had cultivated maize and kept livestock in the suit land. He explained that the transfer of the suit land to the plaintiff was done on June 18, 2019 while the conversion was done in February 2020. He added that before June 18, 2019, Mr. Kositany held a title issued to him on February 22, 1991.
11. In re examination PW2 reiterated that they conducted due diligence at Lands Office, Ardhi house and at ADC and that the transfer of the suit land to the plaintiff was effected before the conversion was done. He stated that as at the time the plaintiff acquired the land, they had no notice of the 4th defendant's claim. PW2 explained that conversion of the land from the *Land Registration Act* to registration under the *Land Registration Act, 2012* was effected at the instance of the government as per the letter dated December 17, 2019 exhibited at page 19 of the plaintiff's bundle of documents. PW2 further confirmed that the plaintiff company was in possession of the suit property. He stated there was an attempted invasion of the suit property by the 1st and 2nd defendants which was unsuccessful.



The 3rd Defendant's Case

12. The 3rd defendant gave evidence through the Registrar of Titles, Edwin Wafula (DW1) who relied on his witness statement dated October 29, 2020 and the bundle of documents filed by the 3rd defendant dated July 27, 2020. DW1 in cross examination by Mr Rapando advocate for the plaintiff affirmed that he was aware of the provisional title held by the 4th defendant that was issued on February 22, 1991. DW2 was referred to Gazette Notice dated August 10, 2018 exhibited at page 7 of 3rd defendant's bundle of documents and he affirmed that where there was an objection to a request for reconstruction, a register cannot be reconstructed. He stated the plaintiff's letter dated August 27, 2018 exhibited in the documents plaintiff's bundle at page 27 where the plaintiff objected to the reconstruction of the register of LR No 13287/137 on the application of the 4th defendant *vide* Gazette No 8140 of August 10, 2018 was received at the ministry of lands. He testified that it would be irregular if the reconstruction was done when there was an objection.
13. DW1 was also referred to Gazette Notice dated November 23, 2018 exhibited at page 6 of the 3rd defendant's bundle of documents which related to issuance of a provisional title and invited any objections to be made within 60 days. The witness affirmed that a letter dated December 6, 2018 exhibited at page 31 of plaintiffs' bundle of documents making objection to the issuance of a provisional title was received by the Ministry on December 7, 2018. He testified that if the provisional title was issued, when an objection had been lodged, it was irregular. He explained that it is a requirement that an original title is availed by the proprietor before a register can be reconstructed when the records are unavailable. He explained that the provisional certificate of title was issued on February 25, 2019 and that the Land Register was reconstructed on the same date.
14. The witness stated that since the 4th defendant had reported the loss of the original title as per the exhibited police abstract, it followed that the original title was not available at the time of reconstruction. DW1 added that the suit property belonged to ADC and confirmed that there was no transfer from ADC to the 4th defendant. He further testified that Caleb Kositany acquired the suit land on February 22, 1991 and confirmed that there was a transfer from ADC to Caleb Kositany and consent of the Land Control Board had been given for the transaction.
15. DW1 was cross examined by Mr Mutai advocate for 4th defendant. He testified that he knew one Kimutai, of the Lands Ministry but was not familiar with the letter dated June 18, 2020 authored by the said Kimutai. DW1 was referred to a letter dated December 17, 2019 from Director of Surveys on conversion of titles and stated that the suit land had not been included among the titles to be converted.

4th Defendant's Case

16. Ben Kemboi Komen (DW2) testified on behalf of the 4th defendant *vide* a power of attorney dated January 13, 2022 and registered on January 14, 2022. He testified that he made a witness statement dated February 9, 2022 which he relied on as part of his evidence. He testified that he relied on the list of documents dated November 2, 2020 filed by the interested party and the list of documents dated February 25, 2020 as his evidence. DW2 testified that he knew about the suit land since his father was the caretaker. He testified that he conducted a search at Ardhi House on February 18, 2022 which indicated that the 4th defendant was still the registered owner. He urged the court to grant the 4th defendant the prayers as sought in the counterclaim, and that the title issued to the plaintiff be cancelled and the plaintiff be evicted from the suit property.
17. On cross examination by Mr Rapando counsel for the plaintiff, DW2 stated that the 4th defendant purchased the suit land from ADC for Kshs 58,000 but stated that he had no sale agreement or receipt



of payment. He confirmed that he was aware that the suit land was Agricultural land but he didn't have any consent from the land control Board. He also confirmed that he had no allotment letter from ADC. The witness was referred to list of documents dated February 25, 2022 and he confirmed that he had not made the application or paid for the search but testified that the search confirmed that the 4th defendant is the owner of the suit land. DW2 testified that the records relating to the 4th defendant's ownership were reconstructed in 2018 when the 4th defendant applied for the reconstruction since she had lost the original title and was issued with a provisional title in January 2019. The witness denied the letter dated May 4, 2020 exhibited at page 34 in the plaintiff's bundle of documents signed by the 4th defendant. In re-examination DW2 stated that the 4th defendant obtained the land by way of transfer as per entry No 94 on the abstract of search and that she was allocated the land by ADC. He reiterated that he did the search on the property though he had not filed the search application.

18. Land Registrar, Brian Kimutai (DW3) in his evidence affirmed that he authored the letter dated June 18, 2020 exhibited in the interested party's list of documents as document No 3. He explained that in reconstruction, the applicant is required to avail the documents in his/her possession to support the reconstruction. He stated the contents of the letter he wrote were self-explanatory and relied on the same. In cross examination, DW3 stated that he was aware that a Land Registrar (DW1) had already testified in the matter. DW3 affirmed he was currently not in charge of any registry as he was attached to the Cabinet Secretary's office working as a legal advisor. He testified that his letter of June 18, 2020 was a response to a letter from the DCI. He affirmed that he had no letter that authorized him to respond to the letter from the DCI and further confirmed that the documents he forwarded to the DCI were those on the reconstructed file and that they were the same documents the 4th defendant had availed and were used to reconstruct the register. He admitted that in the letter, he stated that the surrendered title was a forgery though he provided no basis for the said conclusion. The witness testified that the loss of the 4th defendant's title was gazetted on the August 10, 2018. He denied that he saw the plaintiff's letter dated August 27, 2018 objecting to the reconstruction of the register of the suit land.
19. DW3 further affirmed that there were no records at Lands Office relating to the suit land and that the plaintiff had objected to issuance of a provisional title vide a letter dated December 6, 2018 exhibited at page 31 of the plaintiff's bundle of documents which he admitted not to have forwarded to the DCI. In re-examination DW1 stated that he was employed as a land registrar and that all documents are kept in the registry which he has access to. He added that at the time he forwarded the documents to DCI, the letter of objection for reconstruction was not in the deed file.
20. Agola Okinyo (DW4) testified that he was a retiree from ADC where he had worked for 14 years. He stated that he retired in December 2021 and that whilst he was at ADC he supplied some documents to DCI which were appended to his report and exhibited in the plaintiff's bundle of documents.
21. Though the 1st defendant entered appearance and filed a statement of defence he never participated in the proceedings. The 2nd defendant on the other hand did not enter appearance or participate in the proceedings despite being with summons to enter appearance.

Submissions By The Parties

22. The plaintiff in its submissions dated March 28, 2022 reiterated the evidence adduced by the parties and identified the following issues for determination:
 - (a) Does the plaintiff hold a valid title over Njoro/Ngata Block 27/21 (formerly LR No 13287/137)?
 - (b) Does the 4th defendant hold any valid interest over the suit property?



- (c) Whether the reconstruction of the land register and issuance of a provisional title at the behest of the 4th defendant was valid?
- (d) Whether the alleged fraud on the part of the plaintiff (defendants in the counterclaim) has been proved to the required standard?
- (e) Who should bear the costs?
23. On the first issue, the plaintiff relied on the Court of Appeal case of *Wreck Motors Enterprises v Commissioner of Lands & 3 others* Civil Appeal No 71 of 1997 [1997] eKLR and submitted that on the basis of the evidence it had demonstrated that the suit property was validly allocated to Caleb Kositany by ADC which he purchased and had title processed and registered in his favour. He acquired a good title which he passed to the plaintiff upon sale and transfer. On the second issue, the plaintiff submitted that the purported acquisition of the suit property by way of purchase, sale and transfer to the 4th defendant by ADC was null and void on account of being unprocedural. There was no documentation to support the transaction and no consent of the Land Control Board was exhibited. The plaintiff argued that the 4th defendant had merely dangled an alleged provisional title without providing any evidence of how the suit property was acquired by her. The plaintiff argued that the mere possession of title could not constitute proof of ownership and urged the court to dismiss the 4th defendant's counterclaim as it was devoid of merit.
24. Regarding the third issue, the plaintiff relied on section 33 of the *Land Registration Act, 2012* which provides;
- “The Registrar shall have the powers to reconstruct any lost or destroyed land register after making such enquires as may be necessary and after giving notice of sixty days in the gazette.”
- The plaintiff contended that the purported reconstruction of the land register and issuance of the provisional title at the behest of the 4th defendant without considering the objections that the plaintiff had lodged was illegal, null and void. On the fourth issue, the plaintiff relied on the Court of Appeal case of *Kinyanjui Kamau v George Kamau Njoroge* [2015] eKLR where the court held that in cases where fraud was alleged, it was not enough to simply infer fraud from the facts. The plaintiff submitted that the allegation of forgery in the defence and counterclaim was without basis, contrary to law and should be rejected by the court. The plaintiff contended the allegations of fraud by the 4th defendant against the plaintiff had not been proved and remained mere allegations.
25. The 3rd defendant filed its submissions dated April 6, 2022 on April 13, 2022 where it identified two issues for determination:
- (a) Who is the lawful owner of land parcel number Njoro/Ngata Block27/21?
- (b) Who should pay the costs as regards the 3rd defendant's case?
26. On the first issue, the 3rd defendant cited the case of *Funzi Island Development Limited & 2 others v County Council of Kwale & 2 others* [2014] eKLR and submitted that unlike the 4th defendant, the plaintiff demonstrated the procedure through which its title was acquired. The 3rd defendant further argued that there was no evidence presented by the 4th defendant to show what process was followed before her acquisition of the suit property and therefore submitted that the said title held by the 4th defendant was a nullity. Regarding the issue of costs the 3rd defendant submitted that the plaintiff's suit did not raise any cause of action against it and there was no evidence adduced by the plaintiff pointing



- towards any wrongdoing on the part of the 3rd defendant. On that account the 3rd defendant argued the plaintiff ought to be ordered to pay the 3rd defendant costs of the suit.
27. The 4th defendant in her submissions dated April 1, 2022 identified the following issues for determination:
- (a) Has the 4th defendant demonstrated the validity of her interest over the suit property?
 - (b) Was the reconstruction of the 4th defendant's deed file and issuance of a provisional certificate of lease lawfully undertaken?
 - (c) Has the 4th defendant demonstrated she was in actual possession and occupation of the suit property from 1990 up to 2020?
 - (d) Has the plaintiff demonstrated the validity of its alleged claim over the suit property?
 - (e) Whether the 4th defendant's counterclaim is merited?
 - (f) Who should bear the costs of the suit?
28. On the first issue the 4th defendant submitted that from the evidence and documents tendered, she had demonstrated that she acquired genuine interest over the suit property by way of purchase from ADC. The 4th defendant relied on the case of *Peter Njoroge Ng'ang'a v Kenya Reinsurance Corporation Limited & another* [2018] eKLR where the court held that the absence of a sale agreement and consent of the Land Control Board cannot necessarily be a ground to negate a party's title and that there would be need to consider other attendant circumstances that led to the issue of the title. As regard to the second issue, the 4th defendant relied on provisions of section 33 of the *Land Registration Act, 2012* and rule 28 of the *Land Registration (General) Regulations, 2017* and submitted that the reconstruction of her deed file was done in accordance with the law. She further submitted that the Ministry of Lands and Physical Planning published gazette notices and that no objections were received within the 60 days and reconstruction was done.
29. On the 3rd issue the 4th defendant submitted that she had proved that she was in actual possession and occupation of the suit property from 1990 to about May 2020 when the plaintiff through concealment of material facts approached the court and obtained ex- parte orders. The 4th defendant regarding the 4th issue submitted that the plaintiff did not hold any valid interest over the suit property and that the current occupation it enjoyed was an act of illegality. The 4th defendant further contended that Hon. Kositany never held any legal interest in the suit property capable of being transferred to any 3rd party. She submitted that the alleged conversion of the property was done with the sole intention of dispossessing her of the suit property. On the last two issues, the 4th defendant submitted that she was the only one with any valid interest over the suit property capable of legal protection and that she should be awarded the costs of the suit and the counterclaim.

Analysis, Evaluation And Determination

30. After reviewing and considering the pleadings, the evidence adduced and the submissions of the parties, the issues for determination are as follows: -
- (i) Who between the plaintiff and the 4th defendant is the lawful owner of Njoro/Ngata Block 27/21.
 - ii. Whether the 4th defendant's counter claim is merited.
 - iii. Whether the plaintiff is entitled to the reliefs sought in the plaint?



31. There was uncontroverted evidence that indeed the plaintiff was allocated the suit property by ADC as evidenced from the letter dated April 18, 1990. The testimony by PW1 was that one of the plaintiff's directors, Caleb Kositany applied to ADC to be allocated the suit property vide his letter dated March 14, 1990. The plaintiff produced in evidence two letters dated June 3, 1991 from ADC demanding Kshs 58,236.55 being payment of the purchase price of the suit land and other conveyancing fees, and letter dated June 11, 1991 forwarding to ADC a banker's cheque No 334068 for Kshs 58,236.55 being charges as set out in the letter of allotment. There is also on record a letter dated June 19, 1991 through which ADC acknowledged receipt of the payment from Caleb Kositany. On the other hand, DW2 on behalf of the 4th defendant testified that the 4th defendant purchased the suit land from ADC for Kshs 58,000 but stated that he had no sale agreement or receipt evidencing payment of the amount to ADC. The 4th defendant did not have any letter of allotment from the ADC but she somehow acquired title to the suit property. However, it was her evidence that the title got lost and she applied for the reconstruction of the land register which was effected on November 9, 2018 and a provisional certificate of title issued in her favour on January 25, 2019.
32. The court notes that the 4th defendant called DW4 a retired officer from ADC as one of her witnesses but the witness did not tender any evidence that would have gone to show how the 4th defendant was allocated the suit property by ADC. The witness instead gave evidence that he supplied DCI (PW1) with documents from ADC which were annexed to PW1's report and formed part of the plaintiff's bundle of documents. If the ADC had any documents relating to allotment of the suit land to the 4th defendant, no doubt DW4 would have passed them to the DCI.
33. In the present matter we have an instance where we have two competing titles held by two separate individuals over the same parcel of land. Where such a scenario arises, a court trying the matter must go beyond the titles being exhibited and inquire how each of the parties acquired the title they hold to the disputed parcel of land. The process and procedure through which the title was acquired becomes of great significance. Where there is lack of due process being followed, that could be a pointer to such title having been unlawfully, unprocedurally and/or irregularly acquired. Where due process was shown to have been followed in the acquisition of the title, that could also be a pointer to the title having been lawfully and /or validly acquired. It is therefore not enough where there is challenge to the title, to waive a title and claim indefeasibility of the title simply because you hold a registered title. Section 26(1) of the [Land Registration Act, 2012](#), whereas, on the one hand it embodies the sanctity and indefeasibility of title, it does equally acknowledge that a title of a registered proprietor may be challenged on grounds of fraud or misrepresentation or where the title is shown to have been acquired illegally, unprocedurally or through a corrupt scheme.

Section 26(1) of the [Act](#) provides as follows:-

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

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

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



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

34. In the instant matter, it was therefore not going to be sufficient for either the plaintiff and/or the 4th defendant, to just produce the title they each held to prove ownership of the disputed parcel of land. It was incumbent upon each of them to establish the root of their respective titles by showing the process of how they acquired the titles they held. If a party fraudulently causes a title to be issued to him or her, that cannot make one the owner of the property they may have acquired title to merely because they now hold a title as there will be the real and bonafide owner of such land.
35. The court of Appeal in the case of *Munyu Maina v Hiram Gathiba Maina* [2013] eKLR in an instance where a proprietor's title was under challenge stated as follows:-

“We stated 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 is in challenge and the registered proprietor must go beyond the instrument and prove legality of how he acquired title and show that the acquisition was legal, formal and free from any incumbarances including any and all interests which need not be noted on the register. It is our considered view that the respondent did not go this extra mile that is required of him and no evidence was led to rebut the appellants testimony!!

36. On the evidence adduced by the plaintiff there is clear evidence as to how Hon Caleb Kositany acquired the title to the suit property before he sold and transferred the property to the plaintiff company. The plaintiff exhibited documents to show that Caleb Kipkemei Kositany applied to ADC vide a letter dated March 14, 1990 to be allocated land parcel LR No 13287/137- E-Ngata; the ADC vide a letter dated April 18, 1990 wrote to Caleb Kositany notifying him he had been allocated LR No.13287/137- E -Ngata measuring 19.64 Hectares; on August 14, 1990 an application was made to Nakuru Land Control Board to transfer the Land LR No.13287/137 to Caleb Kositany; consent was duly given on August 15, 1990 and a transfer dated January 21, 1991 was registered as I.R 40236/94 on February 22, 1991.
37. On June 3, 1991 the ADC wrote to Mr Caleb Kositany notifying him his documents of title had been registered and requested him to pay the sum of Kshs 58,236.55 to enable the documents to be released to him. The letter was in the following terms: -

Dear sir,

LR No 13287/137- Ex-Ngata

We write to inform you that your documents have not been received back duly registered. They will be released to you upon receipt of shs 58,236.55 made up as hereunder:-

1. Purchase price - 45,516.55
2. Survey fees - 5,700 .00
3. Conveyancing fees - 4,000.00
4. Stamp duty - 2,320.00
5. Registration fees and Certificate of titles - 350.00
6. Disbursements - 300.00



7. Consent fee - 50.00

58,236.55

Do revert to us with your payment.

Yours faithfully,

signed

Jayne D Otieno

For Managing Director

JDO:nao

38. On the June 11, 1991 Mr Caleb Kositany wrote to ADC acknowledging receipt of the letter of June 3, 1991 and forwarding the payment as requested. The letter to ADC was in the following terms:-

The Managing Director,

Agricultural Development Corporation

PO Box 47101

Nairobi

Dear Sir,

LR NO 13287/137- Ex-ngata

Thank you for your letter MD/68/2/C JDO of June 3, 1991. Enclosed herewith, please find my bankers cheque No 334068 of Kshs 58,236.55 in respect of the above.

I should be most grateful if you could now release the Title Deed.

Yours faithfully

Signed

Caleb Kipkemei

Encl:

39. On June 19, 1991 ADC wrote to Mr Caleb Kipkemei Kositany as follows:-

Mr Caleb Kipkemei Kositany

PO Box 3924

Nakuru

Dear Sir,

RE: LR No 13287/137

Herewith our receipt no 18426 of July 14, 1991 acknowledgment of your payment of Kshs 58,236/55.

Call on us after a week of the date hereto, to collect the documents

Yours faithfully,

Jayne D Otieno



Signed

For: Managing Director

Enclosure

JDO: nao

40. I have referred to the above letters/documents to illustrate the process through which Mr Caleb Kositany acquired the certificate of title in respect of LR 13287/137 that he subsequently transferred to the plaintiff company on June 18, 2019. I have evaluated the evidence and I am satisfied that indeed Caleb Kositany was properly and validly allocated the land the subject matter of this suit and that he was lawfully and validly registered as the owner and hence acquired a good title to the property.
41. The 4th defendant's evidence as to how she acquired ownership of the suit property in my assessment and evaluation is deficient to prove that she is the lawful owner of the disputed property. The 4th defendant has predicated her claim of ownership of the suit property on the ground that she was allocated the suit property by ADC; paid for it; had the same transferred to her; and was issued with a certificate of title No IR 52023 which was misplaced but she was issued a provisional certificate of title on January 25, 2019.
42. It is noteworthy that in regard to the 4th defendant, other than a transfer instrument dated January 21, 1991 there is no other document that show that the 4th defendant dealt with the ADC in as far as the suit property was concerned. The transfer indicates it was presented to the Lands Registry on February 22, 1991 at 12.43 hrs while the transfer of the same land in favour of Caleb Kipkemei Kositany indicates it was presented to the Lands Registry on February 22, 1991 at 12.39 hrs which was earlier in time. As the transfers related to the same property, the transfer that had been lodged earlier in time ought to have taken precedence and the later instrument ought to have been rejected. Whilst the transaction in favour of Caleb Kositany was supported by an application for allotment, an allotment offer, Land Board consent and payment of the purchase price and other conveyancing charges, the 4th defendant did not adduce any evidence to show that she had in fact been allocated the land by ADC and/or that she had paid the requisite purchase price and the other related charges. The evidence adduced by the parties leads the court to reach the irresistible conclusion that due process was followed to have Caleb Kipkemei Kositany registered as the owner of LR No 13287/137 Ex Ngata. The court finds that the registration of the 4th defendant, Jenipher Kositany as owner of the same parcel of land was irregular and unprocedural as due process was not followed. The registration and issue of title to the 4th defendant in regard to LR No 13287/137 Ex Ngata was a nullity.
43. The plaintiff and the 4th defendant submitted at considerable length about the validity and/or legality of the reconstruction of the register of LR No 13287/137 that the 4th defendant procured. I do not think much turns on this as I have found and held that the 4th defendant did not hold a valid title to the suit property. Be it as it may be, it is my view the process of reconstruction and of a provision Title was flawed. There is evidence that Caleb Kositany objected to the application for reconstruction and issuance of a provision certificate of title vide his advocates letters dated August 27, 2018 and December 6, 2018 respectively (both exhibited in the plaintiff's bundle of documents). The letters were received at the offices of the chief Land Registrar, Ministry of Lands as per the acknowledgment stamps embossed thereon. Once the objections were lodged as the Gazette Notices had invited anyone with an objection to do so, the Registrar of Titles could not properly proceed to effect the reconstruction and to issue a provisional title without giving the objector a hearing. DW3 Brian Kimutai, a Land Registrar, who testified for the 4th defendant and had a hand in the reconstruction and issue of the provisional title stated that he never saw any of the objection letters when he furnished the documents set out in his



letter dated June 18, 2020 to the DCI. I did not think the witness was truthful in that regard. The letters objecting to the reconstruction of the deed file and the issue of a provisional title were clearly received by the office of the Chief Land Registrar as the receipt stamps on them show. The reconstruction and issue of the provisional title was unprocedural and irregular.

44. Having made a finding that Caleb Kipkemei Kositany was properly and lawfully registered as the owner of L.R No.13287/137 it follows that he had the right to transact with the plaintiff company. The transfer dated June 13, 2019 of LR No 13287/137 from Caleb Kipkemei Kositany to Chania Logistic Limited registered on June 18, 2019 was lawful and a good title was passed to the plaintiff company.
45. The 4th defendant further took issue respecting the conversion of the title of the suit property from the Registration of Titles Act, cap 281 laws of Kenya, to registration under the Land Registration Act, 2012. I find no problem with that as there is clear evidence that the Ministry of Lands and Physical Planning had embarked on the exercise of conversion as envisioned under section 105 of the Land Registration Act, 2012. In the letter dated December 17, 2019 exhibited by the plaintiff the Director of Surveys gave a schedule of parcels of land in respect of which conversion documents were available for Registration Block Njoro/Ngata Block 27 where the suit land was located. Land parcel LR No 13287/137 following conversion became Njoro/Ngata Block 27/21 as per the schedule furnished by the Director of Surveys. The acreage remained 19.64 hectares and was reflected in Map sheet 6 (FR No 207/67). The District Land Registrar, Nakuru was vide a letter dated 7th February, 2020 (Ref CLR/FL/Vol13) from the Chief Land Registrar forwarded 8 lease documents which included lease in favour of Chania Logistics Ltd for LR No Njoro/Ngata Block 27/21. On the evidence, I am satisfied the Lease in favour of Chania Logistics Limited over land parcel Njoro/Ngata Block 27/21 was properly and regularly issued and registered. I hold the certificate of lease registered on February 14, 2020 in favour of Chania Logistics Limited to be valid.
46. Having carefully considered and evaluated all the evidence adduced by the parties, I am satisfied that the plaintiff has proved its case on a balance of probabilities and is entitled to judgment. In my considered view, the 4th defendant has not proved her counterclaim on a balance of probabilities and she cannot be entitled to the reliefs she seeks in the counter-claim. I accordingly enter judgment in favour of the plaintiff and make the following final orders: -
 - i. A declaration be and is hereby issued that the plaintiff is lawfully registered as the proprietor of the property known as land reference number Njoro/Ngata Block 27/21 (formerly LR No 13287/137) situate in Nakuru County.
 - ii. A permanent injunction be and is hereby issued restraining the defendants either by themselves, their agents or servants or otherwise howsoever from interfering with the plaintiff's quiet and peaceful possession and occupation of the property known as land reference Njoro/Ngata Block 27/21 situate in Nakuru County.
 - iii. The Chief Land Registrar is hereby ordered to revoke cancel and/or annul any title held by Jenipher Kositany, the 4th defendant herein in respect of LR No 13287/137 (now LR No Njoro/Ngata Block 27/21) situate in Nakuru county.
 - iv. The 4th defendant's counterclaim is dismissed.
 - v. Parties to bear their own costs of the suit and the counter claim.

JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 28TH DAY OF JULY 2022.

JM MUTUNGI



JUDGE

