



**Socaf & Company Limited v Njoroge & 5 others; Musyoki (Interested Party) (Environment & Land Case 4 of 2021) [2022] KEELC 4883 (KLR) (23 September 2022) (Judgment)**

Neutral citation: [2022] KEELC 4883 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KWALE  
ENVIRONMENT & LAND CASE 4 OF 2021  
AE DENA, J  
SEPTEMBER 23, 2022**

**BETWEEN**

**SOCAF & COMPANY LIMITED ..... PLAINTIFF**

**AND**

**JOHN MAINA NJOROGE ..... 1<sup>ST</sup> DEFENDANT**

**SAMCHI TELECOMMUNICATIONS LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**JAMII BORA BANK LIMITED ..... 3<sup>RD</sup> DEFENDANT**

**LAND REGISTRAR, KWALE ..... 4<sup>TH</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 5<sup>TH</sup> DEFENDANT**

**ABDALA KOMBO ABDALLA ..... 6<sup>TH</sup> DEFENDANT**

**AND**

**FRANCIS NGAU MUSYOKI ..... INTERESTED PARTY**

**JUDGMENT**

**Background**

1. By a Complaint dated 22<sup>nd</sup> October 2015 as further amended subsequently with leave of the court given on 24<sup>th</sup> March 2022, Socaf & Company Limited (the Plaintiff) prays for judgement against the six (6) defendants jointly and or severally for; -
  - a. A Declaration that the Plaintiff is the lawfully registered freehold proprietor and subsequently having lawfully acquired a Lease hold interest in all that land known as Kwale/Msambweni "Ä"/2927 is the lawfully registered Leasehold proprietor under Certificate of Lease issued to it dated 23<sup>rd</sup> March, 2001.



- b. A Declaration that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 6<sup>th</sup> Defendant's acquired no lawful interest in that land known as Kwale/ Msambweni "A"/2927.
  - c. A Declaration that all the entries in register for Kwale/Msambweni "A"/ 2927 which are inconsistencies with the Plaintiff's proprietorship as the Lessee thereof are illegal, null and void.
  - d. An Order that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants namely John Maina Njoroge and Samchi Telecommunications Limited respectively do surrender the Original Land Certificate for Kwale/Msambweni A/2927 to the 4<sup>th</sup> Defendants for purposes of cancellation and the 4<sup>th</sup> Defendant do cancel the same as being null and void.
  - e. An Order that the 4<sup>th</sup> Defendant do cancel and or deletes all entries made in the register for Kwale/ Msambweni "A"/ 2927 which are inconsistent with the Plaintiff's proprietorship as the freeholder and subsequently as Lessee thereof from the date the register was opened to the date of this Order and in particular the Green Card opened on the 2<sup>nd</sup> July, 1979 of an approximate area of 1.561Ha with names of Omari Kassim Kidato and Mohamed Kassim Kidato as proprietors in common and John Maina Njoroge be cancelled and destroyed as being a clear and obvious forgery.
  - f. An Order that the 4<sup>th</sup> Defendant does cancel and/or deletes all the entries made in the register for Kwale/ Msambweni A/ 2927 which are inconsistent with the Plaintiff's proprietorship as the Freeholder and subsequently Lessee thereof from the date the Register was opened to the date of this Order and in particular the Green Card opened on the 2<sup>nd</sup> July, 1979 of approximately 2.8 Ha with the names of Omari Kassim Kidato, Abdalla Kombo Abdalla and Samchi Telecommunication Limited be cancelled and destroyed as being a clear and obvious forgery.
  - g. An Order that the 4<sup>th</sup> defendant does reinstate the register for Kwale/ Msambweni A/2927 opened on 2<sup>nd</sup> July, 1979 for an approximate area of 2.98 Ha with the entry of the name of the Plaintiff and its directors and subsequent entry dated 23<sup>rd</sup> March, 2001 of the Leasehold interest of 99 years from the 1<sup>st</sup> July, 2000 with Peppercorn rent together with the Green Card opened on the 23<sup>rd</sup> of March, 2001 showing the County Council of Kwale as the Lessor and the Plaintiff as the Lessee under a Certificate of Lease for a term of 99 years from 1<sup>st</sup> July, 2000 and with a Peppercorn Rent.
  - h. A Permanent Injunction restraining the Defendants whether by themselves or through their servants, employees, agents or through any one deriving title through them or otherwise howsoever from entering, using, occupying, leasing, transferring, charging, selling or in any manner whatsoever in dealing adversely or in any manner with the land known as Kwale/ Msambweni A/2927.
  - i. Costs and incidentals to this suit
  - j. Any other or further orders this Honorable Court will deem fit to and or appropriate to award.
2. Those prayers arise from the contention that the plaintiff was at all material times the registered absolute proprietor of Plot No.Kwale/Msambweni "A"/2927 [suit property] since 1979. That subsequently in the year 2001 user was duly changed from agricultural to residential and suit property was leased to the Plaintiff by the County government of Kwale for a term of 99 years. It is alleged that John Maina Njoroge (the 1<sup>st</sup> Defendant), Samchi Telecommunications Limited (the 2<sup>nd</sup> defendant) and the 6<sup>th</sup> defendant had fraudulent acquired freehold titles to the suit property in their names.



3. It is stated that in the year 2006 Omari Saidi Kidato and Shehe Shughuli Hamadi were declared owners of the suit property by the Msambweni Land Disputes Tribunal and the plaintiffs title cancelled which award was subsequently quashed by the High Court in 2007 for being made ultra vires. That the 4<sup>th</sup> defendant Land Registrar, Kwale despite being a party in the High Court proceedings caused the replacement of original green card in the name of the Plaintiff with a fresh one on 27<sup>th</sup> July 1979 in the names of Omari Kasim Kidato and Mohamed Kassim Kidato as proprietors in common in equal shares. That on 12<sup>th</sup> May 1992 the registrar entered the name of John Maina Njoroge as proprietor, issued certificate of title thereof with incorrect acreage of 1.561 against 2.8 Ha. It is further alleged that on 15<sup>th</sup> August 1996 the 4<sup>th</sup> defendant prepared a separate parcel file made further entries on a separate green card cancelling the entry of 2<sup>nd</sup> July 1979 showing the plaintiff as proprietor replacing it with Omari Kassim Kidato who was issued with a title deed. That on 31<sup>st</sup> March 1998 the 6<sup>th</sup> defendant was issued with a title deed in respect of 1<sup>st</sup> defendants title. It was stated that all these entries were all illegally and unlawfully made and without consideration resulting into 3 separate parcel files for the suit property.
4. It was averred that the title deeds issued to the 1<sup>st</sup> and 6<sup>th</sup> defendants were fake relating to a freehold title which had ceased to exist on 23<sup>rd</sup> March, 2002 when the same was changed to a leasehold. That the 6<sup>th</sup> defendant in 2013 sold the suit property to the 2<sup>nd</sup> defendant with his fake title which bore the forged signature of the then registrar H. Musumiali. The second defendant charged the property to the 3<sup>rd</sup> Defendant for overvalued market sum of Kshs. 50m which the plaintiff claims to be in invalid and unenforceable. It is the plaintiffs claim that the 4<sup>th</sup> defendant being the custodian of all records on the suit property ought not have signed the titles and searches in disregard of the Plaintiff's ownership which was also intended to defraud the plaintiff of its lawful title.
5. The particulars of fraud were enumerated as follows; -
  - a. As at 2<sup>nd</sup> May, 1992, when the 1<sup>st</sup> defendant's title was issued by the 4<sup>th</sup> defendant, there already existed a freehold title issued on 9<sup>th</sup> August 1979 to the plaintiff which had not been transferred to the 1<sup>st</sup> defendant.
  - b. As at 2<sup>nd</sup> July, 1979 Omar Kassim Kidato and Mohamed Kassim Kidato had no interest capable of transfer to the 1<sup>st</sup> defendant, because there would have been no need for the Msambweni Land Disputes Tribunals order that Omar Kassim Kidato and Shehe Shughuli Hamadi be registered as proprietors of the suit property in place of the plaintiff if Omar Kassim Kidato was the registered owner since 1979.
  - c. Omari Kassim Kidato acquired no interest on 15<sup>th</sup> August, 1996 capable of being transferred to the 6<sup>th</sup> Defendant's on account of the tribunals findings as explained in (b) above and since the property was registered in the Plaintiff's name.
  - d. In view of (c) above the 6<sup>th</sup> defendant acquired no interest from Omar Kassim Kidato as the said transferee had no interest capable of being vested in the 6<sup>th</sup> defendant on 31<sup>st</sup> March 1998 and the entries made on the 6<sup>th</sup> Defendant's title as well as the green card in respect thereto all bear forged signatures of the 4<sup>th</sup> Defendant and the 6<sup>th</sup> Defendant being the beneficiary of those entries, certainly participated in the fraud.
  - e. The 2<sup>nd</sup> defendant, who purchased its purported absolute interest in 2013, acquired no interest at all as the same was at the material time vested in the Government of Kenya through the Kwale County Council and/or its predecessor which had in turn leased the same to the Plaintiff since 2001.



- f. The 2<sup>nd</sup> Defendant, knew or ought to have known that the title it was purchasing had been unlawfully acquired by the 6<sup>th</sup> Defendant because:
- g. Kwale District Land Registry has featured in numerous cases of land fraud and going through the motions of a mere official search and identification card check cannot and does not meet the reasonable standards of a diligent purchaser.
- h. The Plaintiff is in possession of the suit property and a visit to the same by the 2<sup>nd</sup> Defendant would have revealed this fact;
- i. The various documents presented to the 2<sup>nd</sup> Defendant by the 6<sup>th</sup> Defendant alerted the 2<sup>nd</sup> Defendant or ought to have alerted them that the same were forgeries and/or irregular.
- j. The 3<sup>rd</sup> Defendant, who is a purported chargee of the absolute interest in the suit property, acquired no such interest at all as the same was at the material time vested in the Government of Kenya through the Kwale County Council and/or its predecessor which had in turn leased the same to the Plaintiff since 2001 and the said charge is null and void;
- k. The 3<sup>rd</sup> Defendant, knew or ought to have known that the title that was being offered as security had been unlawfully acquired by the 2<sup>nd</sup> Defendant and/or had been unlawfully created because.
- l. Kwale District Land Registry has featured in numerous cases of land fraud and going through the motions of a mere official search do not meet the reasonable standards of a diligent charge.
- m. The sums advanced by the 3<sup>rd</sup> defendant to the 2<sup>nd</sup> defendant were way in excess of the market value of the suit property then, which action by the 3<sup>rd</sup> defendant was not reflective of common and/or conventional banking practices;
- n. A report and valuation by a registered and licensed valuer before charging the same must have revealed to the 3<sup>rd</sup> defendant that the Plaintiff was in possession of the Suit Property and that the real value of the same was way below the advances which the property was intended to secure:

### **Responses To Suit**

- 6. The 1<sup>st</sup> defendant did not enter appearance though served by way of substituted service by way of registered post via an order of court issued on 20<sup>th</sup> February 2015 by Justice A. Omollo. The 6<sup>th</sup> defendant was served by way of advertisement in the Daily Nation Newspaper published on 1<sup>st</sup> August 2016 pursuant to leave granted on 18<sup>th</sup> July 2016. Interlocutory judgement was entered on 29<sup>th</sup> January 2020 before Yano J in terms of the amended plaint dated 22/10/2015 subject to formal proof.

### **2<sup>nd</sup> Defendants Response**

- 7. The 2<sup>nd</sup> Defendant responded to the suit through its Amended Statement of Defence dated 10<sup>th</sup> November, 2015 and filed in court on 13<sup>th</sup> November, 2015. The 2<sup>nd</sup> Defendant averred it was registered as absolute proprietor of the property having acquired the same in good faith for valuable consideration pursuant to Agreement for Sale dated the 28<sup>th</sup> March, 2013 from the 6<sup>th</sup> whom on due diligence it confirmed was the registered owner. That it adhered to due process resulting to transfer to it on 13<sup>th</sup> June 2013, registration as absolute proprietor on 25<sup>th</sup> June 2013 and title deed issued on even date which was corroborated by official search results of 26<sup>th</sup> June 2013.



8. It was further stated that following the above the 2<sup>nd</sup> defendant has been in actual possession and that its rights as a party in actual occupation cannot be abrogated being derived from a title that has not been cancelled. That it was an innocent purchaser for value without notice of the plaintiffs' claims which were not supported by the 4<sup>th</sup> defendant's property register. The allegation of acquisition of the fake and fraudulent title were denied. That the 6<sup>th</sup> defendant's title had never been impugned or restriction placed against it and therefore subsequent title to the 2<sup>nd</sup> defendant was indefeasible except on grounds of fraud.
9. The 2<sup>nd</sup> defendant stated that the suit property was properly charged to the 3<sup>rd</sup> defendant and was a valid security.

### **The 3<sup>rd</sup> Defendants Response**

10. The 3<sup>rd</sup> defendant filed amended defence on 18<sup>th</sup> November 2015 and stated that due diligence and all necessary formalities were undertaken in granting the charge dated 5<sup>th</sup> March 2014 and which was endorsed as an encumbrance against the suit property. That it was a *bonafide* lender for value without notice of any defect in title based on official search dated 29<sup>th</sup> February 2014 indicating the 3<sup>rd</sup> defendant as proprietor of the suit property. They denied participation in any fraud as alleged and stated that its joinder to the proceedings was in bad faith aimed at frustrating its right of redemption. It is the 3<sup>rd</sup> defendant's case that the suit did not disclose any cause of action against it there being no privity of contract between it and the plaintiff. The court was urged to take judicial notice that it was the government of Kenya that was the custodian and guarantor of all titles and the 3<sup>rd</sup> defendant did not engage in any act leading to the creation of the titles herein.

### **The 4<sup>th</sup> and 5<sup>th</sup> defendants Response**

11. The 4<sup>th</sup> and 5<sup>th</sup> defendant filed their Defence dated 13<sup>th</sup> March, 2015 on 19<sup>th</sup> March, 2015 and denied all the allegations of forgery, fraud and collusion allegations attributed to the 4<sup>th</sup> defendant. It was stated that the County Government of Kwale was not a party to the suit. The suit was termed incompetent for failure for want of notice under section 13 of the [Government Proceedings Act](#).

### **The Trial**

12. This matter was partly heard by my brother Justice C.K. Yano on 20<sup>th</sup> September 2017 but the witness was stood down at the instance of the plaintiff's application to file a supplementary list of documents. Leave was granted to all the parties to file and exchange further documents. Hearing resumed before the same court on 26<sup>th</sup> April 2018, 26<sup>th</sup> September 2018 and 20/3/2019 when the plaintiff closed its case. The defence hearing was conducted on 25<sup>th</sup> September 2019, and 19/11/2019 when the 3<sup>rd</sup> defendant closed its case. The matter was then fixed for further defence hearing of the 4<sup>th</sup> and 5<sup>th</sup> defendant's case on 29/1/2020 which didn't proceed. Around the same time the interested party was enjoined to the proceedings which caused a further delay details are discussed later in this judgement. Afterward there were some adjournments following the transfer of the state counsel who was handling the brief. In the intervening period Justice Yano was transferred from station and subsequently following the appointment of an ELC judge in Kwale the suit was transferred to Kwale based on territorial jurisdiction for hearing and determination. Hearing resumed on 7/02/22.

### **The Plaintiffs Case**

13. PW1 was Paul Urbaan Verleysen a director of the plaintiff who reiterated the contents of his witness statement dated 29<sup>th</sup> July 2015. He produced as part of his evidence certificate of lease issued to



the plaintiff on 9/8/1979, certificates of official dated 4/11/2010 ,24/12/1999; Letter of consent for change of user, Demand letter to the Attorney General and response thereto dated 27/10/2014. He further produced documents in the Plaintiffs supplementary list of documents filed on 6/10/18 as part of his evidence and informed the court that he had been paying rates for the suit property and would be relying on the receipts thereof as part of his evidence. All the documents were marked as exhibits in this suit.

14. PW1 stated that though there was application for subdivision the same was never effected following the death of one of the directors. He testified that a son of the previous caretaker lived in the suit property and that before filing of the suit a caveat emptor was published on 22/12/2014 in the Daily Nation through the plaintiff's lawyers.
15. Upon cross examination he stated he not aware of Kenyan law that foreigners could not own land. He conceded the he did not know the officials of the 2<sup>nd</sup> defendant by name, whether the title to the 2<sup>nd</sup> defendant was fraudulently obtained or not though he became aware of the fraud in 2014 (13 years after he became director) and confirmed the alleged fraud had not been reported to the police. That he was no aware of any restriction placed on the title as at 2013 but that there was a not for sale sign on the property whose photo was not produced. He also confirmed that when the loan was issued the title was in the 2<sup>nd</sup> defendants name and conceded that if the bank undertook a proper search they could not be faulted. He went to further state that there was a no sale sign on the property though he did not have photos of the same. He confirmed the land registrar never participated in any fraud and was the plaintiffs witness.
16. PW2 was Kassim Juma Rojo who told the court he lived in Msambweni and was a care taker employed by Adeel Haq in 2014. He adopted his witness statement dated 16<sup>th</sup> December 2017 and supplementary list of documents dated 15<sup>th</sup> December 2017 as part of the evidence in chief. He further stated that on the suit property was an unused borehole, a 4 bedroomed house which burnt down in late 2015 but was repaired in 2016 and 2017 whereupon he resumed living therein.
17. During cross examination he stated he did not know the plot number but he found it fenced, the 2<sup>nd</sup> and 3<sup>rd</sup> defendant and the plaintiff. He emphasized he was only a caretaker and denied that his evidence had been influenced. He clarified in reexamination that he also dealt with PW1 and could not confirm Adeel as the owner of the land.
18. PW3 was Harrison Stephen Wasiwasi Musumia a logistics manager with Georcard Services Limited a land surveying company. He informed the court he was retired but had served between 1991 – 2002 as land registrar in several stations including Kwale. He adopted his witness statement dated 26<sup>th</sup> July 2017 as his evidence in chief. He confirmed that he sealed, signed, stamped and registered the plaintiff's certificate of lease on 23<sup>rd</sup> March 2001. He confirmed the signature on title No. Kwale/ Msambweni /"A" / 2927 to be his signature and pointed that the signature against entry 1 on the green card (see page 11 PUA V 4 plaintiffs list) was not Mr. Mugenyi's since he was familiar with the same. He also termed Hon. William Kamoti Mwamkale's signature against entry No.2 thereof a forgery. He further identified a discrepancy in title No. Kwale/Msambweni /"A" / 2927 in the name of the 1<sup>st</sup> defendant in that while it was dated 2/5/1992 the green card which was the land register showed the registration as 12/5/1992 and land certificate issued on even date. That leasehold properties were usually registered both in the green card and white card or lease register. He informed the court he had issued the certificate of lease in 2001 after it was forwarded to him from Nairobi for registration and that upon such issuance the original freehold title is surrendered for cancellation and which was surrendered to Nairobi. He denied the signatures against all the 5 entries on the land register (see page 20 PUA V 8) to be his signatures terming them as forgeries including the the signatures on title No.



Kwale/Msambweni / “A” / 2927 which was in the name of the 6<sup>th</sup> defendant. That there was a typo on the certificate of official search dated 24/12/1999 referring to title No. Kwale/Msambweni /“B” / 2927 instead of ‘A’. He confirmed that the plaintiff was the duly registered owner of the suit property as at 4<sup>th</sup> November 2010. He produced as part of his evidence documents in the plaintiff’s list and supplementary list of documents which were marked as one exhibit.

19. On cross examination he indicated Mr. Amos Mathias Mughenyi retired but could not confirm whether he was still alive. He conceded he was not a document examiner and did not report the alleged forgery of his signature to the police. That an innocent purchaser was only required to do a search and did not require to do a background search of the title. He confirmed that results of official search are issued by the government and that before a charge is registered ownership must be verified. That a caution can be made to restrict registration of entries that are improper but none were registered against the title herein.
20. With the above the plaintiff closed its case.

### **2<sup>nd</sup> Defendants Evidence**

21. The 2<sup>nd</sup> defendant called its director Sammy Munyua Mucheni, as its witness. He told the court he was familiar with the suit property which was acquired by the defendant in 2013 after a valid sale agreement dated 28<sup>th</sup> March 2013 at a consideration of Kshs.49 million from the 6<sup>th</sup> defendant. That he was one of the directors who signed the agreement and transfer whereupon title was issued on 25<sup>th</sup> June 2013. That the defendant verified the seller’s ID card as well as a search which confirmed the suit property belonged to the 6<sup>th</sup> defendant. That the property was vacant. He went to state further that he had not interacted with the 6<sup>th</sup> defendant prior to the transaction and that everything done by the 2<sup>nd</sup> defendant above board. He denied that they were accessory to any fraud. He confirmed they obtained a facility from the 3<sup>rd</sup> defendant which they were still servicing and denied knowing the 1<sup>st</sup> defendant. He produced the 2<sup>nd</sup> defendants list of documents dated 15<sup>th</sup> May, 2015 which were marked as exhibits.
22. DW2 was also cross examined which I will refer to later in this judgement.

### **3<sup>rd</sup> Defendants Oral Evidence**

23. Samuel Macharia Murimi debt recovery Manager gave evidence on behalf of the 3<sup>rd</sup> defendant. He adopted his witness statement dated 11/11/2019 as his evidence in chief and produced the documents listed in the 3<sup>rd</sup> defendants list of documents as part of the evidence in support of the 3<sup>rd</sup> defendant’s case which were marked as exhibits. He testified that the bank did due diligence, that the charge document was genuine upon which the bank advanced the Kshs.50m loan herein.
24. During cross examination he explained the procedure and assessment for grant of loan and discounting. That no valuation report was produced as evidence. That the land control board consent for the sale transaction though necessary was not considered by the Bank. That the purchase price for the suit property was never disclosed neither was it considered by the bank. That it was possible to advance a loan higher than the value of the property especially where there were other securities. The rest of the cross-examination is referred to elsewhere in this judgement.
25. With the above the 3<sup>rd</sup> defendant closed its case.

### **4<sup>th</sup> and 5<sup>th</sup> Defendants Evidence**

26. Widad Alamin Deputy Registrar II was the Land Registrar stationed at Kwale at the time of the hearing and gave evidence on behalf of the 4<sup>th</sup> defendant. She produced the parcel file for Title Number



- Kwale/Msambweni “A” / 2927. She gave the history starting with adjudication record which showed the land initially belonged to the plaintiff. That in 1979 a register was opened for the plaintiff and a land certificate issued; A lease for 99 years was registered in 2001 in favor of the plaintiff, white card opened and certificate of lease issued followed on 17/04/2015 by injunction; On 24/08/2015 an order preserving the suit property under HCC 25 of 2015 was lodged by Anjarwalla & Khanna which was the last entry under this register. She told the court she was not sure of what necessitated the change from freehold to leasehold but deduced that it was the change of law barring foreigners from owning land on freehold since the directors were foreigners. She stated that at the time director details were not a requirement.
27. She went on to add that there were two other registers where one was cancelled through while the other bore the 1<sup>st</sup> defendants’ names. That one further register showing in 2/7/1979 Omar Kassim Kidato and Mohammed Kassim Kidato were 1<sup>st</sup> owners in common in equal shares also an entry dated 2/5/92 showing 1<sup>st</sup> defendant as owner and land certificate issued. She started a 4<sup>th</sup> green card listed Abdalla Kombo Abdalla as 1<sup>st</sup> proprietor in 2/7/1979 with title issued same day; an entry dated 25/6/2013 in favor of 2<sup>nd</sup> defendant and a charge for Kshs 50M under the encumbrance section registered on 7/03/2014. She pointed there were 3 green cards and 1 white card for the lease. That the green card for Omar Salim Kidato with transfer to 1<sup>st</sup> defendant was cancelled, the one in respect of Abdalla Kombo transfer to 2<sup>nd</sup> defendant was cancelled and marked ‘forgery’. She guessed the cancellation was due to the fact that they did not look genuine. She stated that upon registration of a charge the original which was franked was retained in the register but was not available in the file. That she did not have copies of the certificate but had the lease and according to her it was good practice to keep the certificates but could not confirm if it was a mandatory legal requirement. That it was not normal to have multiple green cards which was usually because of fraudsters. That according to her there was tampering. Missing documents could be misplaced or in the hands of the fraudsters.
28. She further stated that in her opinion the owner of the suit property was the plaintiff since the register was clear and all the supporting documents from adjudication were in the file. She produced the documents in the parcel file as part of her evidence and were admitted as such.
29. This witness was cross examined at length. Briefly she confirmed that most of the plaintiff’s ownership documents tallied with what was in the parcel file. She further stated that the limitation on ownership of land by foreigners did not apply in 2001 since the Constitution of Kenya 2010 was not yet in force. She stated the change of user from agricultural to residential was a good reason to change title which was supported by the related correspondence exchanged. That some documents were missing from the interested party’s bundle dated 27/02/2020 indicative that the register may have been opened without authority. She conceded she owed a duty of care to the public to ensure proper records though fraud happened possibly perpetuated by the defendants the registrar being a defendant in the suit including staff at the registry. That no forensic expert had confirmed Mr. Marwangas signature and that as a matter of good practice the entry marked forgery ought to have been countersigned which she clarified in reexamination was not mandatory. She admitted the procedure for cancellation was through notification to the parties or court order and she had no proof of such notification. That though the charge was not in the file it was not the same as saying it did not exist and that there was no communication to show they were retrieved by the owners. She confirmed the registry issued the search dated 7/03/2014 relied upon by the bank to issue the loan and that there were no records informing the bank of the alleged cancellation neither were there court orders for cancellation of the entries and lifting the charge. In reexamination she stated the registrar is human and can err thus the provision for rectification yet no application for rectification was received. The rest of the cross examination is referred to later.



30. With the above the 4<sup>th</sup> and 5<sup>th</sup> Defendants' Case was marked as closed.

### Submissions

31. Parties filed and exchanged written submissions and were also given an opportunity to orally highlight.

### The Plaintiffs Submissions

32. The plaintiff's submissions were filed on 8<sup>th</sup> March 2022. Mr. Khanna submitted that the plaintiff has been the lawful registered owner of the suit property since 2<sup>nd</sup> July 1979. That the title was duly converted to leasehold, to date the white card opened reflects the plaintiff as the lawful registered owner.
33. Relying on Interested Party's witness statement dated 26/2/2020 and list of documents to show the history of the purchase of the suit property by the plaintiff, it was revealed that the suit property was a subdivision of Kwale/Msambweni/1376 adjudicated to one Mohamed Juma Nyuni (which resulted into plots 2894 and 2927). That from the adjudication record produced by Ms. Alamin, the plaintiff purchased both subdivisions from Luke Musomba Mutio who had purchased it from the said Mohamed Juma Nyuni following which Land Adjudication Officer cancelled Mr. Mutio's name and registered the plaintiff therein. Counsel submitted that the interested party's documents also showed that the land registrar issued titles to the plaintiff to both subdivisions on 9<sup>th</sup> August 1979 (pg 103 and 187) and that the green card thereof dated 2/7/1979 issued (pg 191). That upon the death of Flavio Sogno in 1/09/995 a limited grant was issued to the wife (pg. 101 and 102). Details of how the user was changed including change to leasehold were also enumerated and the relevant supporting exhibits cited in the plaintiffs supplementary list of documents.
34. According to counsel there was no other explanation for the filing of the cases in the Land Dispute Tribunal by the Kidato's if they were owners of the suit property other than that they were not. That this was supported by Ms. Alamin who testified that the green card issued to the 1<sup>st</sup> defendant was cancelled since it was issued fraudulently and PW3 testimony that the 1<sup>st</sup> defendant's title was fake having been issued 13 years after the plaintiff was already the registered owner of the suit property. It was counsel's belief that the 1<sup>st</sup> defendant's failure to appear despite service was deliberate for fear of being exposed.
35. It was submitted that the 1<sup>st</sup> 2<sup>nd</sup> and 6<sup>th</sup> defendant's titles to the suit property were fake documents illegally and fraudulently issued to them by the 4<sup>th</sup> defendant and which are null and void. That consequently the said defendants acquired no land or interest therein over which title could be issued conferring any proprietary interests.
36. Counsel relied extensively on facts, evidence and law applied by the court of appeal in Civil Appeal No. 4 of 2016 consolidated with Civil Appeal No.32 of 2016 *Estate Sonrisa Ltd & Another v Samuel Kamau Macharia & 2 Others* (2020) eKLR and wherein the District Land Registrar Kwale referred to rampant cases of fraud in the land registry at Kwale which had also been confirmed by Ms Alamin herein.
37. Citing section 32 of the *Registered Land Act* (repealed) it was further submitted that legally only one title or certificate could issue and the plaintiffs being first in time was the valid and lawful title. That since the loan herein was based on the 2<sup>nd</sup> defendant's fake title, the charge was not a valid security for the loan against which a statutory power of sale can be exercised.
38. Relying on the witness statements, oral testimony of PW2 Kassim Juma Rojo and the photos of the house he resided in built in the suit property it was denied that the 2<sup>nd</sup> defendant was in possession



of the suit property. In addition, it was submitted that the plaintiff was making payment in respect of the Municipal and County rates on the suit property whose evidence had been produced both by the plaintiff and interested party. Counsel prayed for judgement to be entered against the defendant as prayed in the amended plaint.

## 2<sup>nd</sup> Defendants Submissions.

39. The 2<sup>nd</sup> defendant filed its submissions on 28<sup>th</sup> April 2022 and which addressed Whether the 2<sup>nd</sup> Defendant was a *Bona fide* Purchaser; Whether the Plaintiff managed to prove that the 2<sup>nd</sup> Defendant was involved in the fraudulent acquisition of the suit property; Whether the Title held by the 2<sup>nd</sup> Defendant was tainted with illegalities and is thus impeachable; Whether the 2<sup>nd</sup> Defendant held lawful possession of the suit property and Whether the Plaintiff has established a *prima facie* case.
40. On whether the 2<sup>nd</sup> Defendant was a *Bona fide* Purchaser citing *Black's Law Dictionary 8<sup>th</sup> Edition* and *Lawrence Mukiri v The Attorney General & 4 others* (2013) eKLR on the definition of a *bona fide* purchaser and what they must prove respectively, it was submitted that the 2<sup>nd</sup> defendant lawfully acquired the suit property from the 6<sup>th</sup> Defendant (as the then lawful registered absolute proprietor) for valuable consideration. That the Sale agreement herein demonstrated that the 2<sup>nd</sup> defendant was a *bona fide* innocent purchaser for value without notice of any claims by the plaintiff and the Interested Party. That there was no court order registered against the suit property in respect of any pending litigation as alluded to by the Interested Party. It was submitted that this had not been challenged by way of evidence or otherwise by the plaintiff.
41. It was submitted that the 2<sup>nd</sup> defendant had thereby acquired an indefeasible right. This court was referred to the case of *Eunice Grace Njambi Kamau & Anor v The Hon. Attorney General & 5 others* ELC Case NO.976 of 2012, which cited the case of *Fletcher v Peck* 10 U.S 87 (1810) to illustrate other jurisdictions had found in favor of innocent purchasers regardless of the guilt of others and equity will not subject an innocent purchaser to the penalties attached to that guilt also reinforced by Justice Professor Joel Ngugi in *Peterson Kirengo & 2 Others v Kariuki Thuo* (2012) eKLR. Further reliance was placed on HCCC No. 88 of 2004 *Mary Chelangat Chesirsir v Charles Ruto & Others* where it was held that in Kenya, once a party produces a title to a parcel of land in evidence, unless otherwise established the said title is 'a *prima facie* proof that such party is the owner of the said parcel and land.'
42. On whether the plaintiff had proved that the 2<sup>nd</sup> defendant was involved in the alleged fraudulent acquisition of the suit property with the intention of defrauding the plaintiff, it was submitted that the burden of proof and which was higher in cases was not discharged since the alleged forgery of the land registrars signature was not proved by a Document Examiner / Handwriting. That if title was acquired by fraud, misrepresentation, illegally and un-procedurally, the same happened before the 2<sup>nd</sup> defendant came into the scene. Further that the plaintiff did not make a formal complaint with the DCI's office to enable proper investigations on the allegations. On standard of proof the case of *Umilla w/o Mahendra Shah v Barclays Bank International Limited & Anor* (1979) KLR and *Central Bank of Kenya Limited v Trust Bank Limited & 4 Others* (1996)eKLR were relied upon while *Davy v Garette* (1878) 7 ch. 47 at Pg 489 and *Vijav Morjaria v Nansingh Madhusingh Darbar & Anor* (2000) eKLR were cited to buttress that fraud must be distinctly proved and cannot be inferred from the facts.
43. Counsels contention on whether the title held by the 2<sup>nd</sup> defendant was tainted with illegalities thus impeachable was that the plaintiff did not adduce any evidence to demonstrate that the title held by the 2<sup>nd</sup> defendant was impeachable and liable to be defeated on grounds of fraud, illegal and unprocedural transfer process. No evidence was led to show that the 2<sup>nd</sup> defendant failed to adhere to due process in



acquisition of the suit property including the evidence of Ms. Widad Alamin, the Kwale County Land Registrar. Further that no report was made to the Land Registrar of fraud, forgery.

44. It was contended that there having been no notification by the Land registrar to the 2<sup>nd</sup> defendant that the title was fake requiring cancellation, the registrar was liable for any inaccuracy in the land register as the repository of all land records in Kenya. That Ms. Alamin had failed to demonstrate that her office had discharged its statutory mandate of maintaining, managing and keeping clean land records.
45. It was also urged that the 2<sup>nd</sup> defendant being the party in occupation should continue enjoying the same as the registered true owner, the plaintiff having neither occupied nor developed the suit property over the years. Further that the plaintiff could not legally as foreigners hold freehold title in land. Citing the Supreme Court in Rutongot Farm Ltd v Kenya Forest Service & 3 others (2018) eKLR, it was submitted that once proprietary interest has been lawfully acquired, it cannot be arbitrarily taken since it was guaranteed under Article 40 of the Constitution.
46. On whether the plaintiffs had established a *prima facie* case it was the 2<sup>nd</sup> defendant's contention that the plaintiff did not tender evidence in proof that the titles issued to the 6<sup>th</sup> and 2<sup>nd</sup> defendants were fake to warrant cancellation and rectification of the register. Counsel pointed that Ms. Alamin was also not able to pinpoint which party committed the alleged fraud nor demonstrate which title was superimposed over the genuine title and therefore her evidence could not assist the court reach a fair determination on the rival and competing interests in respect to the suit property. It was submitted that the Land registrars purported unilateral cancellation of the green cards with the word "cancelled" was without the sanction of due process lacked jurisdiction denting the credibility of the 4<sup>th</sup> Defendants evidence.

### Submissions of the 3<sup>rd</sup> Defendant

47. The 3<sup>rd</sup> defendant filed its submissions on 23<sup>rd</sup> March 2022 where it was urged that the 2<sup>nd</sup> and 3<sup>rd</sup> defendants acquired interests in the suit property in 2013 and 2014 respectively thus Section 26 (1) of the Land Registration Act 2012 guaranteeing the indefeasibility of registered title except on grounds of fraud, omission or mistake applied. Citing section 80 (2) thereof it was submitted that the court shall not order cancellation or rectification of the title if the property is charged to a Bank unless it is shown that the bank had knowledge of the omission fraud or mistake or substantially contributed to it by any act, neglect or default. It was Counsel's position the burden of proof rested with the plaintiff pursuant to section 107 of the Evidence Act which was not discharged.
48. Relying on the Court of Appeal in Charles Karathe Kiarie & 2 Others v Administrators Of The Estate Of John Wallace Mathare (Deceased) & 5 Others [2013] eKLR it was submitted that the purpose of Torrens Land title system was to save persons dealing with registered proprietors from the trouble and expense of going behind the register in order to investigate the history of their author's title and satisfy themselves of its validity. That there was no proof of fraud or misrepresentation or knowledge thereof by the 3<sup>rd</sup> defendant which was confirmed by Ms. Alamin when she testified that the Certificate of Official Searches produced by the 3<sup>rd</sup> Defendant were issued by her predecessor Mr. Ngetich that the Charge was received at the Land Registry and registered and that the Post Registration Search produced emanated from the Kwale Land Registry and in fact it was signed by a land Registrar known to her. That in any case the 3<sup>rd</sup> Defendant relied on the records at the land registry as confirmed by the various searches.
49. It was also submitted that while Ms. Alamin suggested that the 2<sup>nd</sup> defendant and the charge registered on the property by the 3<sup>rd</sup> Defendant were all cancelled, she conceded that such cancellation could not be done without notification of the 2<sup>nd</sup> and 3<sup>rd</sup> defendants. Further that the power to cancel title was



only vested in the court and not the Land Registrar. Citing Lord Denning in *McJoy v Africa co. Ltd* (1961) 3 ALL ER 1169 AT 1172 it was argued that the cancellation done without jurisdiction was thus null and void. It was also contended that the 2<sup>nd</sup> and 3<sup>rd</sup> defendants were condemned unheard contrary to Article 47 of the *Constitution* rendering the registrar's actions unconstitutional. Reliance was placed in *Sceneries Limited v National Land Commission* (2017) eKLR and *Republic v Registrar of Titles Mombasa & 4 others Ex-Parte A.K. Abdulgani Limited* [2018]1eKLR.

50. Referring to the witness Statement of Harrison Stephen Wasiwasi Musumia which stated the plaintiff was registered as owner of the suit property on 9<sup>th</sup> August, 1979 and Omar Kassim Kidato and Mohamed Kassim Kidato on 2<sup>nd</sup> July, 1979 it was urged that the latter title was first registration. That in the absence of any court order canceling that title any purported cancellation was null and void.
51. The 3<sup>rd</sup> defendants contended that the plaintiff could not have purchased any interest in the suit property before adjudication since the interest in land had not been ascertained then. Citing Section 3(1)(b) and 13 of the *Land Adjudication Act* Cap. 284 of the Laws of Kenya, it was pointed that had the plaintiff purchased after adjudication its name could not be in the adjudication register as the plaintiff did not previously own or occupy the suit property which and therefore showing fraud and illegality on the part of the plaintiff and officers from the Land Registry. Further that it is Mohammed Juma Nyuni's name the plaintiff's vendor that ought to have appeared in the Adjudication Record No. 33949 for Plot No. 2972 yet this was not the case a clear case of fraud on the part of the Plaintiff and the officers at the Land Registry.
52. It was submitted that the documents and statements by the Interested Party relied upon in the plaintiff's submissions were worthless inadmissible hearsay evidence since the Interested party was not a witness in the suit and their mere filing did not mean the same were admissible as evidence. The Court of Appeal decision in Civil Appeal No. 140 of 2008, *Kenneth Nyaga Mwise v Austin Kiguta & 2 Others* [2015]eKLR and *Kenya Commercial Bank Ltd v Thomas Wandera Otieno* [2005] eKLR including Section 63 of the *Evidence Act* (Cap. 80) of the Laws of Kenya as it relates to direct evidence were relied upon to buttress this point. The court was invited to expunge the documents from its records.
53. Pursuant to the provisions of section 80 (2) of the *Land Registration Act* 2012 this court was urged to decline issuing the orders sought in the Plaintiff.

#### **The 4<sup>th</sup> and 5<sup>th</sup> Defendants Submissions**

54. The 4<sup>th</sup> and 5<sup>th</sup> defendants' submissions were filed on 4<sup>th</sup> May 2022 wherein it was submitted that the plaintiff was the rightful registered owner of the suit property since the plaintiff's records were clearly being supported by documentation in the parcel file as produced by Ms. Alamin which was also supported by history on how the property moved from one state to another beginning with adjudication, change to leasehold unlike the other titles herein.
55. It was submitted that since the registers depicting Omar Kassim Kidato and Mohamed Kassim Kidato, Abdalla Kombo Abdalla as proprietors show they were cancelled, there was no basis of their existence. That while the registrar was the custodian of the documents the possibility of fraudsters sneaking in documents could not be ruled out thus the Land registrar in performing his mandate had the duty to ensure forged documents were expunged from the records. In addition, it was pointed that no complaint had been lodged with the 4<sup>th</sup> defendant disputing the cancellation and only the plaintiff seems to have taken action to protect the suit property.



56. Counsels contention was that the transaction conducted by the fraudsters including the transfer/ sale to the other defendants including the charge herein were not supported by the records produced in court by Ms. Alamin. They did not exist and the conclusion to be drawn was that the fraudsters wanted to defraud the defendants and later on plucked the forged documents off the record. That there has been no investigations or criminal proceedings against the 4<sup>th</sup> defendant herein.
57. Counsel prayed that the allegations on illegality and fraud against the 4<sup>th</sup> defendant should be dismissed.

### **Interested Party's Submissions**

58. The Interested Party adopted the issues identified by the plaintiff. The interested party upon reviewing the evidence and documentation relating to the issuance of an absolute title deed to the plaintiff in 1979, the change from absolute title to leasehold title, certificate of official searches filed by the plaintiff, the payment of land rates by the plaintiff, the previous litigation HCC 753 of 2006 at Mombasa, physical possession of the suit property and the defendants testimony in regard to the plaintiffs title, submitted that the evidence before this court supported a finding that the plaintiff is a properly registered proprietor of the suit property.
59. On the validity of titles acquired by the 1<sup>st</sup> and 6<sup>th</sup> defendant it was submitted that the plaintiff failed to call a handwriting expert to verify the alleged forgery of the signatures of Mr. Mugenyi and Kamoti Mwamkale former land registrars in respect of the freehold green card naming the 1<sup>st</sup> defendant as proprietor. That documents produced by the Interested Party demonstrate that on three separate occasions between April 2012 and January 2013 the Land registrar Kwale affirmed the 1<sup>st</sup> defendant was the registered proprietor. It was also contended that the two lines drawn across the face of the green card in the name of the 1<sup>st</sup> defendant were not reflected in the copies of the same document produced by both the plaintiff and the Interested Party and which Ms. Wildad Alamin could not in cross examination explain as to who and when they were drawn and therefore must have been added after the filing of this suit. That the registrar lacked authority to cancel the document and should the deed in the name of the 1<sup>st</sup> defendant be found by this court to have been obtained fraudulently then a formal court order should be issued to cancel the same.
60. On the 6<sup>th</sup> defendants title it was contended that the absence of the original or copy of the green card showing the 6<sup>th</sup> defendant as proprietor in the Land parcel file was a confirmation that the said green card was a forgery that was not properly registered. That failure by the 1<sup>st</sup> and 6<sup>th</sup> defendants to defend their titles confirmed their lack of financial interest in the suit property. Further reliance was placed on the provisions of section 26 of the *Land Registration* to impeach these titles and the decisions in *Zephania Ngaira Angwere v Rodgers Senaji Mulemi & Ano*. (2021) eKLR; *Samuel Odhiambo Oludhe & 2 Others v Jubilee Jumbo Hardware Ltd & Ano*. (2018) eKLR and *Shimoni Resort v Registrar of Titles & 5 Others* (2016) eKLR to urge for cancellation of the said titles on the basis that on a balance of probabilities, these deeds were acquired by fraud, unprocedurally and illegally.
61. As to whether the 2<sup>nd</sup> and 3<sup>rd</sup> defendants acquired any lawful interest in the suit property, it was submitted that the conveyance from the 6<sup>th</sup> defendant to the 2<sup>nd</sup> defendant was in breach of the court order issued in ELC 12 of 2013 at Mombasa which barred the 6<sup>th</sup> and 4<sup>th</sup> defendants from transacting in the title deed in the name of the 6<sup>th</sup> defendant. Enumerating the necessary proof and steps in a valid conveyance and various unexplained gaps it was stated that the sale agreement between the 2<sup>nd</sup> and 6<sup>th</sup> defendants was not a valid sale since they were an extension of fraud and unprocedural land title registration noting that the process of acquisition of title is as good as the resulting title.



62. On the charge of the title herein it was submitted that the same was irregular or unprocedural consequently the 3<sup>rd</sup> defendant did not acquire a valid interest. Relying on Court of Appeal dictum in *Zephania Ngaira Angwere v Rodgers Senaji Mulemi & Ano.* (2021) eKLR) it was submitted the registration of the charge was contrary to the provisions of section 26(1)(b) of the *Land Registration Act* and was not properly recorded on the title since it was not available in the parcel file to authenticate its valid registration. Further the purpose of the loan was misrepresented and did not comply to the provisions of Section 56(4) of the *Land Registration Act*. That a fraudulent mortgage cannot be enforced against an innocent title holder
63. On whether the plaintiff was entitled to the prayers sought it was submitted on behalf of the Interested party it was submitted that it was not for want of proof of its valid registration with the Registrar of Companies. The Interested Party also sought for reservation of judgement herein to await the outcome of ELC 159 of 2021 (Kwale) where parties who aided and abetted the fraud herein and who did not participate in this suit are scheduled to testify regarding the instant transactions which evidence will be beneficial to the administration of justice.
64. In the alternative counsel urged should judgement not be reserved the court be persuaded to enter judgement as follows;
- a. A declaration that the title of the 1<sup>st</sup> Defendant is void and cancelled
  - b. A declaration that the title of the 2<sup>nd</sup> Defendant is void and cancelled
  - c. A declaration that the title of the 6<sup>th</sup> Defendant is void and cancelled
  - d. A declaration that the charge of the suit property to the 3<sup>rd</sup> Defendant is void and cancelled
  - e. A declaration that the Plaintiff is the *bonafide* proprietor of the suit property subject to correct and complete registration of the Plaintiff as per relevant provisions of the *Companies Act* and *Land Registration Act*. To ensure proper registration, the court be pleased to order a restriction remain in title of Socaf & Co Ltd until a CR12 is filed before this court in ELC 159 OF 2021. The Plaintiff not to dispose or deal with the title of suit property in any manner until the final decision of the court in ELC 159 of 2021.

### **Plaintiffs responses to the submissions**

65. The plaintiff responded to the submissions herein which I have considered.

### **Analysis and Determination**

66. After a careful consideration of the pleadings, the testimonies, documentary evidence, submissions and case law relied upon to support the positions of the parties the following issues fall for this court's consideration; -
- a. Whether the Plaintiff is the lawful registered owner of the suit property.
  - b. Whether the 2<sup>nd</sup> defendant was a *bonafide* purchaser.
  - c. Whether the 2<sup>nd</sup> and 3<sup>rd</sup> defendants acquired valid interests over the suit property
  - d. Whether the Interested Party's list of documents and submissions should be expunged from the record
  - e. Whether the plaintiff is entitled to the reliefs sought



- f. Who should bear the costs of this suit.
67. In determining whether the Plaintiff is the lawful registered owner of the suit property this court was guided and persuaded by the following dictum of Munyao J in *Daudi Kiptugen v Commissioner of Lands & Others* (2015) eKLR where he stated; -

‘In order to determine the question whether the lease held by the plaintiff is valid, it must be demonstrated that it was properly acquired. It is not enough that one waves a Lease or a Certificate of Lease and assert that he has good title by the mere possession of the Lease or Certificate of Lease. Where there is contention that a Lease or Certificate of Lease held by an individual was improperly acquired, then the holder thereof, must demonstrate, through evidence, that the Lease or Certificate of Lease that he holds, was properly acquired. The acquisition of title cannot be construed only in the end result; the process of acquisition is material. It follows that if a document of title was not acquired through the proper process, the title itself cannot be said to be a good title. If this were not the position, then all one would need to do is to manufacture a Lease or Certificate of Title, at a backyard or the corner of a dingy street, and by virtue thereof, claim to be the rightful proprietor of the land indicated therein. It is therefore necessary for this court to determine how the plaintiff ended up having a Lease and Certificate of Lease in his name, and further determine if the Government did intend to issue the plaintiff with a Lease over the suit land.’

68. It is the plaintiff's case and evidence that it acquired the suit property in 1979 on freehold basis and subsequently leasehold term of 99 years from County Council of Kwale in 2001. In support of the freehold interest Paul Urbaan Verleysen a director of the Plaintiff (PW1) tendered a copy of Land certificate issued to the Plaintiff on 9<sup>th</sup> August 1979 and a copy of the register of the suit property opened on 2<sup>nd</sup> July 1979 and for the leasehold, copies of certificate of lease issued to the Plaintiff on 23<sup>rd</sup> March 2001, Lease for the suit property between the Plaintiff and the County Council of Kwale registered on 23<sup>rd</sup> March 2001, leasehold register opened on 23<sup>rd</sup> March 2001, letter of consent issued by Msambweni Land Control Board 780/387, Certificate of official searches issued on 24<sup>th</sup> December 1999 and 4<sup>th</sup> November 2010, Letters dated 27<sup>th</sup> April 2000 from the Commissioner of Lands, 7<sup>th</sup> April 1988 from Provincial Physical planning Coast Province, 28<sup>th</sup> March 2000 from Land Officer Mombasa/Kwale and 30<sup>th</sup> July 2014 from Hime & Zimmerlin Surveyors. PW3 Harrison Stephen Wasiwasi Musumia confirmed he was the registrar who registered and issued the plaintiffs certificate of lease on 23<sup>rd</sup> March 2001 and confirmed the signature thereof to belong to him including the related entries. He also confirmed that the plaintiff were the duly registered owners of the suit property as at 4<sup>th</sup> November 2010.
69. The evidence of both PW1 and 3 found corroboration in the evidence of Ms. Alamin the Land registrar, who traced the history of the ownership of the suit property to the Plaintiff from the time of adjudication to the opening of the absolute register in 1979 and the opening of the register (white card) in respect of the leasehold and issue of the certificate of lease. She presented the Adjudication Record (33949) dated 28<sup>th</sup> January 1978 for adjudication section Msambweni 'A' for parcel no. 2927 with approximate size of 2.8 Ha. This information from my observation tallied with the description of the suit property herein and the directors named. The adjudication record also revealed Luke Mussomba Mutio as the previous owner. Ms. Alamin when cross examined by Mr. Wafula testified that it was possible the plaintiff may have acquired the property from someone on the ground. Though she conceded there was no such agreement presented in court, this court noted that Maraga J (as he then was) in the ruling in HC. Misc.Civil Application No. 753 of 2006 in his summation of the facts stated that according to the proceedings in the Msambweni Land Disputes Tribunal the exparte applicant



- in that suit (who is the plaintiff herein) had purchased the suit property from one Luke Musomba Mutio following adjudication in 1974. In any event the source of the information in the tribunal proceedings emanated from the complainants therein one being Omar Kassim Kidato who features as a proprietor in common with Mohamed Kassim Kidato in one of the green cards presented before this court. Ms. Alamin also produced the register or green card showing the Plaintiff entered in entry No.1 as registered proprietor on 2<sup>nd</sup> July 1979 and Land certificate issued on 9<sup>th</sup> August 1979 which she also confirmed during cross examination by Mr. Wafula that all the green cards presented reflected 1<sup>st</sup> registration was in 1979.
70. With regard to change of the freehold to leasehold Ms. Alamin produced Lease by the County Council of Kwale to the Plaintiff which revealed it was in pursuance of a surrender for a term of 99 years from 1<sup>st</sup> July 2000, duly executed, franked and registered on 23<sup>rd</sup> March 2001. Upon cross examination by Mr. Khanna Ms. Alamin stated the suit property was leasehold and upon being shown the original certificate of lease she confirmed it tallied with the copy she held as registrar and that the searches carried out tallied with the white card.
71. Upto this point this court was satisfied there were no unexplained gaps in how the Plaintiff acquired the absolute and later the leasehold interest in the suit property. But what about the other purported absolute titles? It was PW1 evidence that the 1<sup>st</sup> and 2<sup>nd</sup> defendant had been issued with separate freehold titles and he produced two registers in this regard. The first register (see page 11 PUA4) had Omar Kassim Kidato and Mohamed Kassim Kidato (the Kidato's) as proprietors in common in equal shares as at July 1979 which entry was struck through. The next entry was John Maina Njoroge (the 1<sup>st</sup> defendant) as registered proprietor as at 2<sup>nd</sup> May 1992 who was issued with a certificate of title on the same date (see page 12 PUAV5). A certificate of official search dated 17<sup>th</sup> September 2012 (page 19 PUAV 7) confirmed the 1<sup>st</sup> defendant as the proprietor. The second register (see page 20 PUAV 8) showed the Plaintiff as proprietor as at 2<sup>nd</sup> July 1979 it is struck through, then Omar Kassim Kidato as proprietor as at 15<sup>th</sup> August 1996 with title deed issued on the same date, followed by Abdalla Kombo Abdalla as proprietor as at 31<sup>st</sup> March 1998.
72. I keenly reviewed the above registers and made several observations. The first register showed an acreage of 1.561 yet Ms Alamin during cross examination by Mr. Khanna told this court the official size of the suit property was 2.8 ha. I noted that no title was issued to the said Kidato's which as per practice would ordinarily be the next entry. The entry is struck through signifying there was a transfer however in the absence of a title the Kidato's would not be able to transfer their interest to Mr. John Maina Njoroge. Mrs Waswa for the 4<sup>th</sup> and 5<sup>th</sup> defendant correctly stated that it was not clear how the register for John Njuguna came about. This register was also submitted as evidence from the parcel file by Ms. Alamin and it echoed the same entries except that in the parcel file this register had double diagonal lines drawn on its face. PW3 told this court that both Mr. Amos Mathias Mugenyi and Mr. Kamoti Mwamkale's signature on the respective entries were forged. Though he admitted in cross examination that he was not a document examiner he stated he was familiar with the signatures. For me even in the absence of a document examiners opinion, I found no reason to doubt that the signatures were forged based on the evidence of PW3 who had interacted with these signatures for many years.
73. I draw confidence on the above from the Court of appeal in Civil Appeal No. 4 of 2016 consolidated with Civil Appeal No.32 of 2016 *Estate Sonrisa Ltd & Another and Samuel Kamau Macharia & 2 Others* (2020) eKLR cited by counsel for the Plaintiff. I picked from the judgement some similarities



with the present case, in the evidence of the land registrar therein (Charles Kipkurui Ngetich, the District Land Registrar, Kwale) in the following extract in the judgement of the Court of Appeal;-

“This title was signed on 23<sup>rd</sup> May, 2007 by one Mary Kaai. She used to be the Registrar in Kwale. I suspect the title to be a forgery. Signature of Mary Kaai is too long.....

The reason why Muses’ (the 2<sup>nd</sup> appellant) is a forgery you look at the features; signature of Registrar and handwriting of Assistant Registrars.....I am not a handwriting expert but as a Registrar I am familiar to (sic) signatures of other

Registrars.”

The Court of Appeal went on to state that; -

Subjecting this testimony along with the other relevant evidence to the standard of proof in a civil case, we are persuaded that the witness was able to distinguish the signatures of his colleagues from imitations of those signatures.

74. With regard to the second green card likewise there was no entry to show that a title was issued to the Plaintiff and this court’s earlier arguments apply. Secondly as at 2<sup>nd</sup> July 1979 the Kidato’s were allegedly already proprietors in common yet only one of them (Omar Kassim Kidato) was registered as proprietor later in 1996 without any history or evidence as to how the common proprietorship ceased. Thirdly like in the previous card it was not evident how the suit property changed hands from the Plaintiff to Omar Kasim Kidato and later to Abdalla Kombo Abdalla. In addition, all the five entries were transacted by the same registrar as the same signature appears against them which raised my curiosity on the possibility of a registrar who held office in 1979 signing entries in the years 1996 and 1998. PW3 during his oral testimony told this court he was appointed in 1991 and served in Kwale land registry until June 2002. He denied the signatures against all the 5 entries on the said register to be his signatures including that on the title to Abdalla Kombo and which he emphatically termed as forgeries. Even Ms. Alamin who upon being shown Mr. Musumia’s witness statement stated that the entry for 1979 could not be Mr. Musumia’s since he was appointed land registrar in 1991 to June 2002 and which was not controverted by any of the parties. On being shown by Mr. Khanna the signatures on the said register she stated they did not resemble Mr Musumia’s.
75. Additionally, due to the unexplained departure from the normal conveyancing practice as is evident from my observation, there can be only one plausible conclusion, that of malpractice, forgery or fraud. The above green cards clearly were tainted and cannot be sustained or relied upon to defeat the plaintiffs title.
76. Ms. Alamin further submitted to the court a register showing the approximate area as 2.8Ha, entry No.1 of 2<sup>nd</sup> July 1979 with Abdalla Kombo Abdalla (the 6<sup>th</sup> defendant) as registered proprietor, entry No.2 title deed issued to him on the same day, entry No. 3 dated 26<sup>th</sup> June 2013 with Samchi Telecommunications Limited (the 2<sup>nd</sup> defendant) as proprietor, Entry No 4 dated 26/6/2013 is title deed issued on the same date to the said 2<sup>nd</sup> defendant and below it a note referring to charge C-1 reserving rights under 70 of the RLA. Like the earlier green card, the entries bear double diagonal lines but also marked ‘forgery’. This document did not form part of the plaintiffs exhibits. However, it was produced as part of the 3<sup>rd</sup> defendants evidence in the list of documents dated 3<sup>rd</sup> August 2015. Ms Alamin who upon being referred by Mr. Khanna to (pages 6-10 VO6) in the Replying affidavit of Ms. Velma Okoth the 3<sup>rd</sup> defendants acting chief legal advisor filed on 24/3/2015 confirmed the exhibit to be the same register in her custody that had been struck out and marked forgery. Ms. Alamin’s opinion on cross examination by Mr. Gikaria for the 2<sup>nd</sup> defendant was that the entry No. 3 in this register



was a forgery. My observations on the 1<sup>st</sup> entry showing Abdalla Kombo Abdalla as proprietor was that the entry appears to have been made by the same registrar who made entries No.1 and 2 in favor of the plaintiff in the register produced as page 11 PUA 4 herein, which was also produced by Ms. Alamin. In my mind it was not possible for the same registrar to make entries in respect of two different proprietors on the same date however forgetful they could have been.

77. The existence of the multiple green cards with conflicting overlapping details as enumerated in the above analysis including the unexplained gaps departing from ordinary conveyancing registration practice was to me strange and out of the ordinary. Ms. Alamin in her evidence in chief stated that it is not normal to have multiple green cards and that there appears to have been some tampering by fraudsters. Based on the analysis of the foregoing green cards my conviction was that they were all illegal, unlawful and of no legal consequence. For me it was more probable than not that a fraud occurred and it did not matter that the forgeries were not reported to the police or that no one was charged. I'm guided by the approach taken by the court of appeal in this regard in *Estate Sonrisa Ltd & Another and Samuel Kamau Macharia & 2 Others* (*supra*). *Prima facie* there was no doubt in my mind that the Plaintiff had on a balance of probabilities demonstrated it was the valid first registered owner of the suit property including the leasehold interest. It is noteworthy that PW3 who had a wealth of experience having worked as land registrar for at least 15 years and Ms. Alamin being land registrars did not fault the process under which the Plaintiff acquired its ownership of the suit property nor the authenticity of the ownership documents and the related registers. Both were of the opinion that from the records the Plaintiff was the registered owner of the suit property. This court makes a finding therefore that the plaintiff is the lawful registered owner of the suit property. Where does this conclusion place the 2<sup>nd</sup> defendants claim?
78. Following the above finding this court had to determine whether the 2<sup>nd</sup> defendant was a bonafide purchaser and if yes did it acquire a valid interest over the suit property. It was the 2<sup>nd</sup> defendants' case and testimony that it too is the legal registered owner of the suit property having purchased the same in vacant possession for valuable consideration from Abdalla Kombo Abdalla the 6<sup>th</sup> defendant. DW1 Sammy Kinyua Muchemi produced in support of the 2<sup>nd</sup> defendants alleged proprietorship copies of Agreement for sale dated 28<sup>th</sup> March 2013, title deed issued to Abdalla Kombo Abdalla on 31<sup>st</sup> March 1998 and official search results thereto, official verification results from Director of National registration of even date together with National ID card, transfer of land dated 13<sup>th</sup> June 2013, title deed issued to the 2<sup>nd</sup> defendant on 25<sup>th</sup> June 2013 and official search results. He denied that the 2<sup>nd</sup> defendant was an accessory to any fraud and stated that everything done by the 2<sup>nd</sup> defendant was above board. It is the plaintiff's case that it was an innocent purchaser for value without notice who following due diligence showing the 6<sup>th</sup> defendant as the registered owner of the suit property and which title had never been impugned, was indefeasible in law including the title to the 2<sup>nd</sup> defendant.
79. The title used in the sale between the 2<sup>nd</sup> defendant and the 6<sup>th</sup> defendant was the one dated 31<sup>st</sup> March 1998 and which was also presented by PW1 alongside an official search dated 24/03/2014 showing the 2<sup>nd</sup> defendant as the registered proprietor of the absolute interest as at 26<sup>th</sup> June 2013. My answer to this puzzle still lies in my earlier analysis. This title was issued in 1998 when PW3 was land registrar and as stated earlier he denied the signature thereof to be his signature and termed it as a forgery. But is this not the same Abdalla Kombo Abdalla who also featured as a proprietor in 1979 and was now having a title issued in 1998. Could the 2<sup>nd</sup> defendant have been duped? DW1 during cross examination by Mr. Khanna reiterated they were approached by an agent whose name he could not remember and that he signed the sale agreement in Nairobi before Paul Njoki Advocate but never met the vendor though they were shown a copy of the title deed and his identity card. The question I posed was is this how a diligent *bonafide* purchaser behaves. This admission clearly meant that DW1 could not authenticate



the vendors photo on the transfer document herein or even confirm that he was the one who signed the sale agreement. This was compounded by the fact that M/s Robson Harris who prepared the said agreement were never called to shed more light on it. This casual approach towards a sale transaction of KShs.49 million which was not small money then and even today worried me a lot. It cast a doubt in my mind if at all such consideration changed hands which was emboldened by the fact that the 2<sup>nd</sup> defendant did not lead any evidence to demonstrate how and to whom the consideration of KShs.49 million was paid. My suspicions were further grounded when DW2 Samuel Macharia Murimi the 3<sup>rd</sup> defendant's witness during cross examination by Mr. Khana stated that the purchase price for the suit property was never disclosed to the Bank and it was not considered in the absence of evidence as to valuation. Ms. Alamin in re-examination clarified she did not have stamp duty records for the transfer to 2<sup>nd</sup> defendant as well as copies of the sale agreement.

80. The 2<sup>nd</sup> defendant also placed reliance on possession to cement its alleged ownership of the suit property. DW1 testified that the 2<sup>nd</sup> defendant was in possession to date but he contradicted himself during cross examination when he admitted that he was not aware if they had taken physical possession. On the other hand, the Plaintiff demonstrated that they had possession. PW2 Kassim Juma Rojo told this court he was the caretaker of the suit property having taken over from his father. He produced photos of a house built on the property. This court failed to understand the failure by the 2<sup>nd</sup> defendant to lead any proof of their possession of the suit property. I was not convinced that they were in possession of the suit property in light of the evidence and facts presented.
81. In view of the foregoing this court found it difficult to hold the 2<sup>nd</sup> defendant a *bonafide* purchaser. Assuming I'm wrong on this then I will proceed from the perspective of the legality of its title against my earlier finding that the 6<sup>th</sup> Defendant's title was a fraud. The sale started on a wrong footing, having been premised on the 6<sup>th</sup> defendant's title which this court has found was illegal. As long as the 6<sup>th</sup> defendant's title was bad there cannot have been a valid transfer of the property to the 2<sup>nd</sup> defendant. A nullity is a nullity; it cannot be salvaged not even on the basis of indefeasibility. Such was the position taken by Lord Denning in *Macfoy v United Africa Limited* (1961) ALL FR 1169 and which has been adopted in many instances in our courts. In *Athi Highway Developers v West End Butchery & 6 Others* (2015) the court of appeal held that the transfer of title by a vendor possessing a fake/fraudulent title cannot pass good title. It was stated thus; -

‘It is our finding that as between West End and Arthi, no valid Title passed and the one exhibited by Arthi before the trial court was an irredeemable fake. It follows that Arthi had no Title to pass to subsequent purchasers, and therefore KMAH, Yamin and Gachoni cannot purport to have purchased the disputed land or portions thereof.’

82. The 2<sup>nd</sup> defendant relied extensively on the provisions of section 26 of the [Land Registration Act](#), No. 3 of 2012 which embodied the principle and doctrine of indefeasibility of title as established under the Torrens System of Registration. The doctrine is to the effect that the title of a registered proprietor remains indefeasible unless it is shown the title was obtained through fraud or misrepresentation to which the title holder is proved to have been a party to. It was submitted that the 2<sup>nd</sup> defendant being an innocent purchaser the penalties attached to the guilt of the vendors should not be visited upon it and that in Kenya once a party produces a title it is *prima facie* proof they are owners of the said property. Section 26 (1) of the [Land Registration Act](#) provides: -

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- (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.

83. The question I asked is should the 2<sup>nd</sup> defendant's title be protected under the law even if he was an innocent purchaser for value amidst clear facts and evidence that discloses illegalities in the acquisition of the vendor's title, in this case the 6<sup>th</sup> defendant's alleged title? My answer is in the negative based on more recent case law trends which have shown otherwise. See the Court of Appeal in *Atthi Highway Developers v West End Butchery & 6 Others* (*supra*). I'm also persuaded by Justice Munyao's dictum in *Alice Chemutai Too v Nickson Kipkurui Korir and 2 Others* (2015) eKLR that the purpose of the provisions of Section 26(1)(b) of the *Land Registration Act* was to protect the real title holders, (in the present case the Plaintiff) from subsequent transactions and it did not matter that an innocent person purchased the property later. Even in the case of *Lawrence Mukiri v The Attorney General & 4 Others* *supra* relied upon by the 2<sup>nd</sup> defendant the court of appeal confirmed the superior court finding that there was nothing in section 26(1) that would mandate the court to sanction a valid title acquired illegally, assuming I had made a finding that the 2<sup>nd</sup> defendant's title was valid. In *Lawrence P. Mukiri Mungai, Attorney of Francis Muroki Mwaura v Attorney General & 4 others* [2017] eKLR, the Court of Appeal overturned the trial court holding that the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents' title over a parcel of land known as L.R. Ruiru/Ruiru 7/13 (the suit property) was valid notwithstanding the fact that the 2<sup>nd</sup> respondent who sold and transferred title to them had acquired suit property fraudulently.

84. This court also finds backing in the provisions of section 32 of the *Registered Land Act* (repealed) and which applies by dint of section 107 of the *Land Registration Act*. It is trite that there can only be one title in respect of a suit property. As at 31<sup>st</sup> March 1998 the plaintiff was already the absolute proprietor of the suit property and has demonstrated they had not sold their interest to anyone. In *Lawrence P. Mukiri Mungai, Attorney of Francis Muroki Mwaura v Attorney General & 4 others* (*supra*) the court stated

As at the date of the trial, the appellant was still holding a valid Title Deed to the suit property, which title was issued to him in 1992. The 2<sup>nd</sup> respondent was allegedly issued with a Title Deed for the same property in 1996. A property cannot have two valid title deeds. Even assuming that the second title had been issued by mistake, the first in time prevails; see *Gitwany Investment Limited v Tajmal Limited & 3 others* [2006] eKLR. 31. ... The trial court, having established that the 2<sup>nd</sup> respondent held a valid title, and having heard how the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents obtained their title, had no basis in law to hold that the latter were innocent purchasers for value without notice.

85. Having found the 2<sup>nd</sup> defendant did not acquire a valid interest in the suit property this court must pronounce itself on the charge registered in favor of the 3<sup>rd</sup> defendant Jamii Bora Bank Ltd and whether it was a valid security in the totality of the facts herein. The 3<sup>rd</sup> defendant's case was that the 2<sup>nd</sup> defendant applied for a loan facility which the bank granted after performing its due diligence and a charge registered on the security of the suit property. It denied allegations of fraud and put the plaintiff to strict proof and stated that the suit did not disclose any cause of action against the 3<sup>rd</sup> defendant.



Documents relied upon in the transaction and its conduct were produced by Samuel Macharia Murimi during the hearing. These were Charge dated 5<sup>th</sup> March 2014, search dated 29<sup>th</sup> February 2014, Letter of consent of Land Control Board dated 21<sup>st</sup> February 2013, Resolution dated 6<sup>th</sup> August 2013, Annual Returns 2013 for Samchi Credit, Extract of Minutes and Board Resolution authorizing borrowers, Green Card entries after registration of charge, official search dated 7<sup>th</sup> March 2014, title deed dated 25<sup>th</sup> June 2013, Certificate of registration of a Mortgage dated 17<sup>th</sup> March 2014, Charge dated 5<sup>th</sup> March 2014 and statement of accounts from 2010 to March 2015. He testified that the bank undertook due diligence, that the charge document was genuine upon which the bank advanced Kshs.50 million loan. During cross examination by Mr. Khanna, Mr. Murimi on being shown documents from the plaintiffs list of documents admitted the existence of three titles in respect of the suit property, in the plaintiff's name, in the 1<sup>st</sup> defendant's name and 6<sup>th</sup> defendant names and it was his prayer that the law should take its course and the rightful owner be identified. He confirmed the original title for the 2<sup>nd</sup> defendant was presented to the bank and it was the one used to undertake the search, registration and post transaction search for the charge. I'm aware that during cross examination by Mr. Khanna there was an attempt to impugn the Charge for inter alia exaggeration of the loan amount and lack of land control board consent which Mr. Murimi admitted was neither among his list of documents nor inquired upon by the Bank. I'm also alive to the fact that it was the 3<sup>rd</sup> defendant's testimony and submission that the bank relied on the searches from the government to confirm ownership. Counsel's argument is that the 3<sup>rd</sup> defendant since they held a charge did not participate in any fraud they held a valid interest which interest was protected or indefeasible under section 80 (2) of the Land Registration Act which states; -

The register shall not be rectified to affect the title of a proprietor who is in possession and had acquired the land lease or charge for valuable consideration, unless the proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by any act, neglect.

86. In my view the validity of the charge document should be looked at from the basis of the title (security) upon which it was grounded. The question that I found appropriate to address is whether the charge can survive notwithstanding this court's finding invalidating the 2<sup>nd</sup> defendant's interest herein. The charge cannot survive based on the evidence presented as to title and the law as well and I find backing in *Macfoy v United Africa Limited* (1961) ALL FR 1169 (*supra*) and *Athi Highway Developers v West End Butchery & 6 Others* (*supra*). Also see the judgement of the Court of Appeal Nairobi Civil Appeal 465 of 2019 *Edward Ndungu Wambui v Francis Kinyanjui Mwangi & 3 Others* [2021] KECA 144 (KLR). It is therefore this court's finding that the 3<sup>rd</sup> defendant did not acquire a valid interest and the charge was not valid. Based on the 3<sup>rd</sup> Defendant's own admission of the existence of alternative security by its witness during cross examination then this is where the 3<sup>rd</sup> defendant's recourse lies including recovery as a normal debt in the event of default.
87. I will now deal with the question whether the Interested Party's list of documents and submissions should be expunged from the record, but first a brief highlight on this joinder to put things into perspective. On 14/1/2020 an application was made by the Interested Party herein Francis Ngau Musyoki seeking to be added as Defendant or Interested Party to the current proceedings. The said application was premised on the grounds that the Interested Party held equitable interest in the suit property having entered into a land sale agreement with the 1<sup>st</sup> Defendant where a total of Kshs 6 million was paid. That the suit property was a subject in ELC No 107 of 2014 where the Interested Party, 1<sup>st</sup> and 2<sup>nd</sup> defendants were parties. The application was compromised by allowing the joinder of Francis Ngau Musyoki without need for amendment of the amended plaint. The interested party was to file its documents within 30 days which he did by through a Defence and Counterclaim but



the plaintiff applied for to have them struck off. I delivered a ruling on the application on 25/10/21 allowing the application and directed that the Interested Party would participate by attending the remainder part of the hearing as an observer and be at liberty to file written submissions before judgement is delivered in this matter which the court may consider.

88. It was submitted that the documents and statements by the Interested Party relied upon in the plaintiff's submissions were worthless inadmissible hearsay evidence since the Interested party was not a witness in the suit and their mere filing did not mean the same were admissible as evidence. The court was invited to expunge the documents from the records. Mr. Khanna in response contended that the list of documents were never expunged and remained part of the record. Counsel has stated that the documents were relied upon in the submissions. I take the position of the Court of Appeal in *Daniel Toroitich Arap Moi v Mwangi Stephen Muriithi & another* [2014] eKLR where it was held that submissions cannot take the place of evidence. They are generally parties' "marketing language", each side endeavoring to convince the court that its case is the better one. Moreover, i see no harm in the court confining itself to points of law raised therein, which points have been substantively covered by the other parties. My determination herein has not been influenced by the Interested Party's documents and this court had the benefit of the other lists of documents produced by the parties herein including the parcel file documents. I'm alive to the fact that the contest is between the Plaintiff and the Defendants herein and the Interested party will have his day in ELC No 107 of 2014. I also see no justification to arrest the judgement herein and my reasons are substantiated in the ruling this court delivered on 25/10/21 which has not been appealed against.
89. Looking at the totality of all the above it is this court's finding that the Plaintiff is entitled to the prayers sought in the plaint having proved on a balance of probabilities that it is the lawful registered owner of the suit property herein. I therefore enter judgement for the Plaintiff as prayed in the Further Amended Plaint dated 26<sup>th</sup> April 2022.

Orders accordingly.

**DELIVERED AND DATED AT KWALE THIS 23<sup>RD</sup> DAY OF SEPTEMBER, 2022 BY;**

**A.E. DENA**

**JUDGE**

**Judgement delivered virtually through Microsoft teams Video Conferencing Platform in the presence of:**

Mr. Ushwin Khana H/B for Wanjiku Mohamed for the Plaintiff

N/A for 1<sup>st</sup> Defendant

Mr. Gikaria for the 2<sup>nd</sup> Defendant.

Ms. Osewe H/B for Mr. Wafula for the 3<sup>rd</sup> Defendant

Mrs. Waswa for the 4<sup>th</sup> & 5<sup>th</sup> Defendant

N/A for 6<sup>th</sup> Defendant

Mr. Musyimi for Interested Party

Mr. Dennis Mwakina – Court Assistant

