



**Shah v Kulmia & 4 others (Environment and Land Case Civil Suit  
201 of 2007) [2025] KEELC 3073 (KLR) (2 April 2025) (Judgment)**

Neutral citation: [2025] KEELC 3073 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE CIVIL SUIT 201 OF 2007**

**LN MBUGUA, J**

**APRIL 2, 2025**

**BETWEEN**

**KANTILAL MEGHJI SHAH ..... PLAINTIFF**

**AND**

**MOHAMED MAALIM KULMIA ..... 1<sup>ST</sup> DEFENDANT**

**CHIEF LAND REGISTRAR ..... 2<sup>ND</sup> DEFENDANT**

**DIRECTOR OF SURVEY ..... 3<sup>RD</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 4<sup>TH</sup> DEFENDANT**

**NATIONAL LAND COMMISSION ..... 5<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. The plaintiff commenced this suit vide a plaint dated 9.7.2007 against the 1<sup>st</sup> defendant. Pursuant to a court order of 15.11.2017, an amended dated 24.11.2017 was filed bringing on board the 2<sup>nd</sup> to 5<sup>th</sup> defendants. The plaintiff avers that he is the registered owner of parcel LR No.12325/17 under the Registration of Titles Act Cap 281, herein “ the RTA” pursuant to a transfer dated 1.2.1982. He contends that the 1<sup>st</sup> defendant purports to be the leasehold owner of the same property under a purported certificate of lease issued on 2.9.1984 under the Registered *Land Act* Cap 300 ,herein the “the RLA” for a title known as Nairobi/Block /92/157. He avers that the said title of the 1<sup>st</sup> defendant was acquired fraudulently.
2. The plaintiff therefore prays for judgement against the defendants for:
  - a. A declaration that the plaintiff is the registered leasehold proprietor of parcel of land known as LR No.12325/17 situate at Hill View Estate, Nairobi.



- b. An order that the 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> defendants do expunge from their records, the records relating to Title No. Nairobi/Block 92/157 and do destroy them.
  - c. An order that the 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> defendants do restore to their records the records relating to LR No.23325/17 and do keep them in safe custody.
  - d. A permanent injunction to restrain the 1<sup>st</sup> Defendant from entering upon, trespassing on, alienating, constructing or in any other way dealing with the said parcel of land or interfering with the plaintiff's title thereto.
  - e. General damages for trespass and fraud.
  - f. Costs of and incidental to this suit.
  - g. Any other relief or order that this Honourable Court deem fit to grant.
3. In opposition to the suit, the 1<sup>st</sup> defendant filed a statement of defence dated 31.8.2007, amended on 2.5.2008 and re-amended with a counterclaim dated 15.3.2018. He avers that he is the registered proprietor of Nairobi /Block / 92/157, his title being a first registration of 9.7.1984 under RLA, and that he is in possession of the said land where he has erected a perimeter wall around the property.
  4. In his counterclaim, the 1<sup>st</sup> defendant seeks for the dismissal of plaintiff's suit and prays for judgment in the following terms;
    - a. Declaration that title no. Nairobi/Block 92/157 in the name of the 1<sup>st</sup> defendant is the valid title to the suit property as opposed to the certificate of title, LR No.12325/17 Title No. I.R 32255 in the name of the plaintiff.
    - b. An order directing the 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> defendants to expunge and destroy any records relating to the Certificate of Title L.R. No. 12325/17 Title no I.R.32255 in the name of the plaintiff and destroy them.
    - c. A permanent injunction to restrain the plaintiff from trespassing or committing acts of trespass or acts calculated to annoy and interfere with the 1<sup>st</sup> defendant's use and enjoyment of all that parcel of land described as Title no. Nairobi /Block 92/157 situate in Nairobi Area within the Republic of Kenya
    - d. Costs of the Counterclaim.
  5. The 2<sup>nd</sup>-4<sup>th</sup> defendants filed a statement of defence dated 19.11.2018 where they aver that the records held at the Ministry of Lands and Physical Planning reflect the plaintiff to be the owner of the suit land I.R 32255 LR 12325/17, of which the certificate of title was registered as I.R 32255/1 on 30.6.1978 in favour of Nalinkumar Ladhu Shah and Shushila Nalinkumar Shah and that on 1.2.1982, a transfer was effected in favor of the plaintiff.
  6. The 5<sup>th</sup> defendant also filed a statement of defence dated 14.6.2018 denying allegations levelled against it in the plaint and contended that the subject parcel is private property of which, it had no mandate over such land. The 5<sup>th</sup> defendant was however "a no show during the hearing".

### **Case for the plaintiff**

7. The plaintiff, Kantilal Meghji Shah (PW1) testified as the sole witness for his case where he adopted his witness dated 28.2.2011 as his evidence in chief. Vide a consent captured in the proceedings of 7.3.2019, plaintiff's 11 documents in his original list running from page 62-to page 86 of his Trial



bundle were produced as P- Exhibits 1-11, while the ones in the supplementary list running from page 11 to 61 of the same bundle were produced as P- Exhibits 12-61.

8. PW1 testified that he purchased the suit property (LR No. 12325/17) from Nalin and Sushila for Ksh.95,000/= on 1.2.1982. He gave a history of the land, that parcel LR No.12325 comprised in Grant No.L.R 31891 was subdivided into 82 subplots by Stanley Githunguri, of which the suit land was given Land Reference Number 12325/17, and that this is the land which was sold to Nalin Kumar Shah and Shushila Nahukmar Shah. He further stated that he had the original approved subdivision survey, adding that the suit property is ½ of an acre.
9. He explained that he did not fence the suit parcel, but the adjacent parcels were fenced including one occupied by Ramesh Shah whom he had known for many years. He has been paying land rents and rates in respect of the suit property, thus he is the true owner of the said land.
10. He was to learn that a Mr. Benson Makendo was trying to sell his property to a Mr. Bhrat Patel, following which he put a caveat emptor Notice in the Daily Nation and had the parcel surveyed by Toplands Engineering Surveys on his lawyer's advice adding that he has never sold his land or surrendered his title.
11. On cross –examination by counsel for the 1<sup>st</sup> defendant, PW1 stated that he does not live on the suit property, that he has not developed it and that he is not the one who built the perimeter wall around it. He was not aware of the registration regime of the neighboring properties, and he was not aware of change of registration regime.
12. On cross-examination by counsel for the 2<sup>nd</sup>-4<sup>th</sup> defendants, Pw1 insisted that the suit land has been vacant and undeveloped from 1982 until 2007 when someone tried to develop a wall but he stopped him.
13. In re-examination, Pw1 claimed that he had not been able to develop the suit land because he lost his wife in 1983. He has never been invited to surrender his title to have it converted to RLA. He learnt from the District officer that the 1<sup>st</sup> defendant was the one constructing a wall on the suit parcel

#### **Case for the 1<sup>st</sup> defendant**

14. The 1<sup>st</sup> defendant Mohamed Maalim Kulmia ( DW1) testified as the sole witness for his case. He adopted his witness statement dated 15.10.2012 as his evidence in chief. Just as in the case of the plaintiff, the 1<sup>st</sup> defendant produced by consent, his 9 documents in his bundle filed on 14.5.2009 as his D-exhibits 1-9, ( page 9-26 of his 1<sup>st</sup> Trial bundle) and 2 documents in his further list dated 2.3.2011 as D- exhibits 10 and 11 respectively ( page 27 to 31 of the aforementioned Trial Bundle). In his oral testimony, Dw1 produced 14 documents from his list dated 8.10.2020 as D. Exhibit 12-26.
15. He states that he is the registered proprietor of the property known as Nairobi /Block / 92/157, having been registered as a lessee on 9.7.1984. That he took possession thereof and erected a permanent perimeter fence and did not find anyone on site claiming ownership. Thus he had quiet uninterrupted possession of the suit property since 1984, for about 28 years until 8.6.2006 when he received a letter from plaintiff's advocate in which the plaintiff was claiming ownership of the said land, yet a search at the lands registry revealed that he was the registered owner of the suit property.
16. The 1<sup>st</sup> defendant did present his original title issued on 9.7.1984 to the court for observation and it was then returned back to him. He contends that plaintiff has no legitimate claim against him.
17. On cross-examination by counsel for the plaintiff, Dw1 stated that he had kept a watchman on the suit land from year 2007 and that he built the perimeter wall in 1984. He further stated that he got an



allotment on 1.7.1978 but he did not know that the land had been sold by 1.6.1978. He learnt that the plaintiff had another title in 2007, adding that that he paid rates though he would do so after a while.

18. In cross-examination by counsel for the 2<sup>nd</sup> -4<sup>th</sup> defendants, Dw1 stated that he applied for the suit parcel, and he has been in possession of the same for a period spanning 30-38 years since 1984 and that he only came to know about the plaintiff in year 2007.
19. In re-examination, Dw1 reiterated his evidence tendered during cross- examination.

#### **Case for the 2<sup>nd</sup> - 4<sup>th</sup> defendants**

20. The case for the above mentioned defendants was advanced by 3 witnesses, all of them working at the ministry of Lands, Public Works, Housing and Urban Development namely; Wilfred Muchai Kabue –an Assistant Director of Survey ( DW2), Ojwang Omollo Patroba, an Assistant Director Land Administration at Directorate of Land Administration ( DW3) and Charles Kipkurui Ngetich, a Deputy Chief Land Registrar (DW4).
21. DW2 Wilfred Muchai adopted his witness statement dated 6.2.2024 as his evidence. He produced the documents nos 10, 11 and 12 in their list of documents dated 19.11.2018 as his exhibits, while in their bundle dated 21.1.2019, he produced item no 21 as his exhibit too.
22. Dw2 avers that as per the records maintained by the Director Survey of Kenya in Ruaraka, the suit property LR No.12325/17 was surveyed on 12.8.1976 as per survey plan F/R 133/42 and that the parcels depicted under the said survey plan were converted to Nairobi Block 92 (Lake View Registration Block).
23. That ideally, the holder of the RTA title aforementioned should have surrendered his title to be issued with a certificate of lease No. Nairobi/Block 92/157 as the new parcel number and that upon conversion, holder of title LR No.12325/17 was the one entitled to the certificate of lease upon the conversion, adding that any new entrant to the register would be grossly irregular and unprocedural. That from where he sits, conversion was undertaken procedurally and the numbers upon conversion are clearly depicted on the Registry Index Map for Nairobi Block 92 (Lake View).
24. On cross-examination by counsel for the plaintiff, Dw2 stated that they only have 1 file for purposes of conversion as no new file was created for NRB/ Block/ 92. He contends that while the 1<sup>st</sup> defendant's letter of allotment indicates unsurveyed plot, the suit parcel had been surveyed in 1978.
25. He pointed out that the conversion process just entails converting parcels from RTA regime to RLA and it was just an assignment of new numbers in respect of land parcels that had been surveyed before under the RTA registration regime. He explained that the process entails; the preparation by director of survey of a conversion list indicating the old parcel numbers, the new assigned parcel numbers, reference survey plan numbers, and a registry index map known as RIM which captures the location of the new parcels and thereafter it is published and the old titles are surrendered.
26. In reference to the RIM, he stated that conversion occurred in 1981 and the entries existing were 1-3, while entry 4-18 are resultant amendments parcels of the RIM. That after publication, any subsequent parcel placed in the RIM is an amendment. He averred that LR No.12325/17 existed as entry No.1 as at the time of publication of the RIM and that it is the latest entry and it indicates old numbers as parcel 139 giving rise to new parcels as 140-221 adding that the subject parcel is No.157 (for the new numbers).



27. He informed the court that the original parcel to the suit land started as 8444 (prior to subdivision and change of user) and after subdivision, it gave rise to 12325/17 amongst 81 other parcels, adding that he was sure there was correspondence with owners of RTA titles during conversion.
28. On cross-examination by counsel for the 1<sup>st</sup> defendant, Dw2 reiterated that the conversion to RTA was done in 1981 and that one cannot have 2 parallel titles under 2 different registration regimes as once conversion was done, there is a discretionary application of surrender of the old title for issuance of a new one but it is only after surrender that one is issued with a new title.
29. He averred that prior to the commencement of the conversion process, there was a gazette notice whose period was 90 days. The purposes was to call upon registered owners to confirm details of the parcels in respect to LR Nos and acreage, which verification is undertaken by the Chief Lands Registrar adding that the process continues even if owners don't show up to verify. New details are then given with new LR No's and a publication of the RIM is undertaken, adding that the cadastral plan does not change during conversion, it would have the old numbers even after publication of RIM.
30. That for LR No.12325/17, it is the old number (RTA) which is reflected in the cadastral map and after conversion, it became parcel 157 and it borders parcel 110,112 and 155 to the further south. He added that after conversion from RTA to RLA, there was no vice versa conversion from RLA to RTA as the process was a one way from RTA to RLA.
31. In re-examination, Dw2 confirmed that NB Block 92/157 exists as a conversion parcel and that its old number is LR 12325/17 and reiterated that conversion can only be done from RTA to RLA in so far as those previous regimes were concerned.
32. DW3 Ojwang Patroba adopted his witness statement dated 6.2.2024 as his evidence in chief. He produced documents in the list dated 2.10.2019 (10 items) as their D.Exhibits 5-14. His evidence is that the suit land came about as a result of subdivision of parcel LR 8444 and the subsequent change of user from agricultural user to residential user. That the said land (L.R 8444) was initially registered in the name of M/S Feneast Nominee Limited, of which the government would later acquire a portion thereof surveyed as L.R.No. 8444/1 for purposes of a road development and the remainder, parcel LR8444/2 was transferred to Stanley Munga Githunguri on 13.5.1976.
33. That upon compliance with conditions of approval of subdivision, consent to transfer Sub-plots forming part of LR 12325 -namely LR No.12325/2 upto LR12325/81 was issued by the Commissioner of Lands.
34. He avers that he had seen a copy of a letter of allotment dated 1.6.1978, receipt dated 16.8.1978 and copy of certificate of lease for parcel Nairobi/Block 92/257 as filed by the 1<sup>st</sup> defendant. That from records held at their registry in respect of the aforementioned parcel; the white card was opened on 9.7.1994 where the lessee is the 1<sup>st</sup> defendant and the said lease was issued on 9.7.1984.
35. On cross-examination by counsel for the plaintiff, Dw3 stated that he had given the history of parcel 12325 from the time it was subdivided from parcel 8444, adding that he does not have an exhaustive history of NB Block 92/157 like that of parcel 8444, adding that the only document he has for the block number is the one mentioned at paragraph 24 of his witness statement that is the white card opened on 9.7.1984. He further stated that parcel 92/157 could not have been surveyed as at the time the white card was opened given the history of parcel 12325.
36. On cross-examination by counsel for the 1<sup>st</sup> defendant, Dw3 stated that one can only have 1 title for either of the regimes, adding that holding a title under the RTA and not surrendering it for conversion does not invalidate the title.



37. He stated that the Commissioner of Lands was the custodian of correspondence of land transitions under the Government Lands Act and Trust Land Acts which were previously crown land irrespective of whether they were leasehold/freehold.
38. He stated that the Chief Land Registrar would know if there is a register of surrender as he is in charge of gazettment and he also issues new titles upon conversion.
39. He averred that his department deals with allocation records such that under the regime of the Commissioner of lands, they dealt with alienation of land, allotment letters, processing of leases, development controls and land control boards records which are all kept in a general and correspondence file. That for NBI Block 92, the Chief Land Registrar would know if a register is kept.
40. Dw3 further stated that he only saw the letter of allotment ( at page 29 of the 1<sup>st</sup> defendant's bundle) in that bundle and averred that the same was fraudulently issued as the date, 1<sup>st</sup> June 1978 fell on a public holiday adding that the letter was not traceable in the alienation file of their records.
41. He averred that a title would have to be supported by root documents beginning from office of Commissioner of Lands, Department of Survey and chief land registrar who would issue title, it cannot just fly to Chief Land Registrar's office.
42. Dw3 also stated that conversion is initiated by a gazette notice issued by Chief Land Registrar informing holders of titles under old regimes that titles under new regimes would be available upon surrender of the old titles, but the proprietor can request for conversion in writing addressed to the Chief Land Registrar who then liaises with the Director of Survey who would then give a new converted number, He was not aware as to who had initiated conversions in respect of NBI/BLK /92 and he could not confirm when the new titles were prepared.
43. Dw3 gave two scenarios which leads to a title. That scenario 1 relates to an allocation for a surveyed or unsurveyed parcel of land by the Commissioner of Lands. In such a case, the Commissioner of Lands would process a lease under RLA (Cap 300) and the records of such an allocation and processing of the lease would be kept by the Commissioner of Lands in correspondence file.
44. In scenario 2, if there was conversion done after the parcels were already registered under an old regime like Cap 281, the proprietor would surrender the original grant directly to the Chief Land Registrar, and a new certificate of lease would be issued directly to the proprietor by the Chief Land Registrar bearing a corresponding or converted number.
45. In cross-examination by the court, Dw3 stated that the rights and interest in land do not change during conversion.
46. On re-examination, Dw3 reiterated that conversion doesn't nullify a title held under the converted regime and that the Directorate of Land Administration doesn't play any role in the conversion process. He further stated that a party laying claim to NRB/Block/92/157 must have had a title under the old regime as the land was private so one could not claim via alienation process, adding that documents produced by the 1<sup>st</sup> defendant in support of his claim to the suit land do not form part of their records at land administration department.
47. DW4 Charles Kipkurui adopted his witness statement dated 27.7.2023 as his evidence. He produced documents 1-9 from their list dated 19.11.2018 as D.Exhibit 15-23. He avers that the 1<sup>st</sup> document in the aforementioned list is a certificate of title I.R No.32255 LR No.12325/17 registered on 30.6.1978 where entry no.3 was a transfer registered on 1.2.1982 and forms part of the records held in their office. That from those records, the certificate of title I.R 32255 L.R 12325/17 in favour of Nalinkumar



Ladhu Shah and Sushila Nalinkumar Shah as joint tenants was registered on 30/6/1978. The said of title was a subdivision of grant I.R 31891/1 pursuant to a transfer registered as I.R 31891/53. The grant I.R 32255 was for a term of 99 years from 1.3.1978.

48. That on 8.8.1980 a caveat under presentation No. 253 was registered by the East African Power and Lighting Co. Ltd claiming a grant of easement by virtue of an agreement dated 6.5.1980. Then on 1.2.1982, a transfer to Kantilal Meghji Shah for Kshs. 95,000 subject to the caveat was registered under presentation No. 22. That from the records, the suit land I.R 32255 is registered in the name of Kantilal Meghji Shah.
49. Dw4 also stated that upon conversion of the suit land to Nairobi /Block 92/257, the plaintiff should have surrendered the title under the RTA in order to be issued with a certificate of lease under the RLA.
50. He further stated that for Nairobi block 92/157, the white card was opened on 9.7.1984, the Government of Kenya being the lessor while the 1<sup>st</sup> defendant is indicated as the lessee for a term of 999 years from 1.6.1978. That the records indicate that a purported lease was issued on 9.7.1984 and the same is indicated to be a suspected forgery.
51. On cross-examination by counsel for the plaintiff, Dw4 reiterated that the plaintiff is the current registered owner of parcel 12325/17 and that upon conversion from RTA, the same owner would be the one eligible to be registered in the new converted regime. He averred that he never found anything to show that plaintiff transferred the suit land to the 1<sup>st</sup> defendant and that in a proper conversion, the old owner would own the new title, thus it is a suspected forgery if the lease is prepared on top of another.
52. On cross-examination by counsel for the 1<sup>st</sup> defendant, Dw4 averred that he did not have the gazette notice for the subject conversion in court as it was not necessary since titles had already been issued.
53. He also stated that there is a register for all new leases issued that is maintained, but he did not present the same and similarly, there is a register of the surrendered converted titles. He added that the particular area where the suit land is situated was only registered under the regime of RTA Cap 281. Adding that for the suit land, it was not a first registration under Cap 300, since there was registration under Cap 281, hence it was a migratory or conversion of registration.
54. He stated that a green card indicates that the government is the head lessor (or the County Government) while the white card indicates proprietorship on the 1<sup>st</sup> page and encumbrances on the 2<sup>nd</sup> one. That in the white card opened on 9.7.1984 in the bundle dated 19.11.2018 (document no.9), the lessor is the Government of Kenya and the lessee is the 1<sup>st</sup> defendant. He further stated that the conversion list came before the white card on 12.2.1981. He also stated that the said white card was issued without backup of Land Reference Number, thus it was a case of double allocation.
55. He confirmed that there is a file for the lease issued on 9.7.1984 at the Ministry of Lands but it had been flagged by one Joseph Kamuyu (a Land Registrar) as “suspected forgery”. He further stated that there is a file for Block 92/157 but, what he availed was a certificate of title. Still there is another title under RTA for the original owner which was surrendered so as to be issued with RLA title, and this occurred a long time ago in years 1980-1981.
56. He averred that he did not find the letter of allotment contained in the 1<sup>st</sup> defendant’s documents at the Ministry of Lands records and that allocations were dealt with by the Commissioner of Lands who was replaced by the National Land Commission in 2010.
57. Dw4 claimed that it is the plaintiff who requested for conversion and that documents to that regard should be in their records.



58. In cross-examination by the court, Dw4 stated that it is not the entire Block 92 which was converted from RTA to RLA, it was pieces by pieces.
59. In re-examination, Dw4 clarified that he did not come across any request for conversion by the plaintiff nor a title pursuant to a conversion of LR 12325/17, adding that the suit land was not available for allocation.
60. The 5<sup>th</sup> defendant did not call any witness.

### **Submissions**

61. On 5.12.2024 the court gave directions on the filing of submissions and also gave a judgment date on 5.3.2025. Come the date of 3.5.2025, and counsel for the 1<sup>st</sup> defendant as well as the one for the 2<sup>nd</sup> -4<sup>th</sup> defendants informed the court that they had not filed submissions, they wanted more time of which the court extended time to file and serve submissions by 19.3.2025. The court also gave a date for judgment as 2.4.2025. However, there was no compliance on the part of the aforementioned defendants. Thus, the only submissions to be considered are those of the plaintiff filed on 20.12.2024.
62. The plaintiff has addressed the following issues for determination; (i) Has the plaintiff established the root of his title and does he hold the same lawfully? (ii) Is the 1<sup>st</sup> defendant's title good? Was it issued lawfully? (iii) Does the 1<sup>st</sup> defendant's defence of limitation apply?
63. On the 1<sup>st</sup> issue, it is submitted that the plaintiff proved that he could trace the root of his title as required under Section 26 (1) (b) of the *Land Registration Act* and that he had also paid land rent and rates regularly. The case of Hubert L Martin & 2 others v Margaret J. Kamar & 5 others [2016] eKLR was put forward to buttress the above point.
64. On the 2<sup>nd</sup> issue, it is submitted that the defendant's title is born out of suspected forgery and fraud as the allotment of the suit parcel to the 1<sup>st</sup> defendant on 1.6.1978 came about when the said property had already been allocated to someone else. That DW2 –DW4 were clear that if a conversion to the RLA happened, then the new title for the converted parcel could only lawfully be held by the plaintiff who would have been required to surrender his old title in exchange of the new one. To this end, the case of Benja properties Limited v Syedna Mohammed Burhannudin Sahed & 4 Others ( 2015) Eklr was relied upon.
65. On the 3<sup>rd</sup> issue, it is submitted that despite pleading limitation of actions at paragraph 15A of his re-amended defence dated 15.3.2018, the 1<sup>st</sup> defendant never made a case as to how the plaintiff's claim is time barred, adding that under Section 9(1) of the *Limitation of Actions Act*, the plaintiff's cause of action accrued on the date of dispossession/discontinuance of possession which was 7.7.2007.

### **Determination**

66. Before delving into the issues for determination, I note that the 1<sup>st</sup> defendant has proffered a defence of limitation in respect of plaintiff's claim at paragraph 15A of his defence. However, and as rightly submitted by the plaintiff this averment was not supported by any evidence. Courts have held that pleadings are mere allegations unless proved. See Netah Njoki Kamau & another v Eliud Mburu Mwaniki [2021] eKLR. I will say no more on that issue save to add that the plaintiff has pleaded and adduced evidence to the effect that he learnt of interference with the suit property in December 2006, and he filed the case in year 2007.
67. Back to the two competing claims. As things stand, the plaintiff and the 1<sup>st</sup> defendant have titles to the suit land registered under different regimes with different numbers. For the plaintiff, his title is number



- L.R.No. 12325/17 registered under the Registration of Titles Act Cap 281 (RTA-now repealed). He alleges to have acquired the same through purchase of which the registration in his favor took place on 1.2.1982. On the other hand, the 1<sup>st</sup> defendant's title was registered on 9.7.1984 under the Registered Lands Act Cap 300 (RLA-also repealed). He traces his claim to an allotment letter dated 1.6.1978.
68. It is also quite apparent that the plaintiff never used the land, while the 1<sup>st</sup> defendant apparently built a perimeter wall around the suit property. The issue therefore falling for determination is; Which of the two competing claims is valid, and what reliefs are available in the circumstances.
69. The titles held by the two protagonists, the plaintiff and the 1<sup>st</sup> defendant are under challenge, thus each one has to trace the root of their title and demonstrate that the acquisition of their rights and interests thereof was valid. In the case of *Munyua Maina –Vs- Hiram Gathiba Maina, Court of Appeal Civil Appeal No. 239 of 2009*, the court had this to say in relation to a challenged title;
- “We state that when a registered proprietor's root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove how he acquire the title and show that the acquisition was legal.....”.
70. In *Hubert L. Martin & 2 others v Margaret J. Kamar & 5 others*[2016] eKLR, the court stated that;
- “A court when faced with a case of two or more titles over the same land has to make an investigation so that it can be discovered which of the two titles should be upheld. This investigation must start at the root of the title and follow all processes and procedures that brought forth the two titles at hand. It follows that the title that is to be upheld is that which conformed to procedure and can properly trace its root without a break in the chain.
71. The plaintiff has given an account of how he acquired the suit land. That he bought the land on 1.2.1982 from Nalin and Sushila, and he knew that the land was a subdivision of a bigger portion which was owned by Mr. Githunguri. His evidence is buttressed by his documents, starting with the Certificate of title at page 69 of his Trial bundle. The same indicates that parcel I.R 32255 LR No.12325/17 was registered in favor of Nalin and Sushila under the RTA regime on 13.6.1978. Entry no.2 is a caveat of an easement by the East African Power and Lighting Company registered on 8.8.1980, while entry no. 3 is the registration of the suit land to the plaintiff by way of a transfer on 1.2.1982.
72. The evidence of the plaintiff is in tandem with the evidence tendered by DW2-DW4, who averred that the suit parcel No.12325/17 traces its roots from parcel LR 8444 initially registered in the name of M/ S Feneast Nominee Limited on 1.6.1954, whereby a portion thereof was acquired by the government for the development of a road and became LR 844/1 as per a survey of 3.10.1975.
73. The remaining parcel became LR 8444/2 which was transferred to Stanley Munga Githunguri on 13.5.1976 who then subdivided it into several Sub-plots forming part of LR 12325 -namely LR No.12325/2 up to LR12325/81, thus the suit parcel LR 12325/17 was amongst these subplots. Githunguri then sold the suit parcel to Nalin Kumar Shah and Shushila Nahukmar Shah who eventually transferred the same to the plaintiff on 1.2. 1982. The aforementioned evidence is buttressed by the documents produced by the 2<sup>nd</sup> -4<sup>th</sup> defendants.
74. It also came out in evidence that title NB Block 92/157 exists as a conversion parcel and that its old number is LR 12325/17, of which the conversion was done in 1981.



75. On the other hand, the 1<sup>st</sup> defendant produced a letter of allotment dated 1.6.1978, and a receipt dated 16.8.1978 as the roots of his certificate of lease for parcel Nairobi/Block 92/257. DW2 –DW4 were unanimous that these root documents were not available at the Ministry of Lands records, save the white card. Further, according to Dw2, the suit parcel had been surveyed on 12.8.1976, thus it was not available for allocation to the 1<sup>st</sup> defendant in 1978. Dw2 produced the said survey plan F/R 133/42 as an exhibit (item II in the bundle dated 19.11.2018).
76. In so far as the dispute is concerned, DW3 an officer at the Ministry of Lands Land Administration Department which deals with land allocation records gave the two scenarios that could lead to issuance of the two titles. That in scenario 1, allocation of surveyed or unsurveyed land was done by the Commissioner of Lands, leading to issuance of a lease even under RLA ( Cap 300) and the documentary records would be kept in a correspondence file. While in scenario 2 conversion of the titling system for land already registered under RTA Cap 281 would require the proprietor to surrender the original grant directly to the Chief Land Registrar, and that proprietor would be issued with a new converted title.
77. What resonates from the evidence adduced is that any acquisition of rights and interests in the land had to be anchored in law. A keen look at the allotment letter of 1.6.1978 reveals that the allocation was for an undefined parcel of land, simply indicated as “unsurveyed residential plot”. It is worthy to note that such allocation could only happen in cases of unalienated government land governed by the legal regimes of the day namely; The Government lands Act or the Trust *Land Act* as outlined by Dw3 (both now repealed).
78. When Dw1 was cross examined by counsel for the 2<sup>nd</sup>- 4<sup>th</sup> defendants as to how he came to learn that the suit land was available for allocation, he responded that; “ I am the one who applied to get the land. When one is in town you get to know these things and what is available..”. There is however not the slightest evidence to indicate that the suit land was available for allocation as an un-alienated government land.
79. To this end, I make reference to the cases of; Dina Management Limited *v County government of Mombasa & 5 Others (Petition 8 (E010 of 2021))* [2023] KESC 30 (KLR) (Constitutional and Human Rights) (21 April 2023) (Judgment), Sunshine Villas Limited v County Government of Kisumu & another; Ethics and Anti Corruption Commission (Interested Party) (Environment and Land Case Civil Suit 23 of 2018) [2023] KEELC 21601 (KLR) (16 November 2023) (Judgment) Neutral citation: [2023] KEELC 21601 (KLR) and Registered Trustees of Sheik Bayed Bin Sultan Al Nahyan v Pelican Engineering & Construction Company Limited & 4 others (Environment & Land Case 639 of 2015) [2024] KEELC 6534 (KLR) (3 October 2024) (Judgment) Neutral citation: [2024] KEELC 6534 (KLR)
80. As it were, the land was already private land registered to Nalin and Sushila who sold the same to the plaintiff. Thus the suit land was not available for allocation to the 1<sup>st</sup> defendant. It follows that the root of 1<sup>st</sup> defendants title is tainted with illegality and is hence null and void.
81. It is quite apparent that there was further illegality and irregularity at the point of conversion or migration of the registration regimes. Dw2 avers that the conversion process itself was done procedurally and the numbers upon conversion are clearly depicted in the Registry Index Map for Nairobi Block 92 (Lake view). He also stated in re-examination that the cadastral plan doesn't change during conversion. I have perused the cadastral plan (last document in the bundle dated 19.11.2018 of the 2<sup>nd</sup> – 4<sup>th</sup> defendants) and it captures parcel 12325/17 shaded slightly in green. That parcel can clearly be discerned in the Registry Index Map for Nairobi Block 92 (lake view) as No. 157.



82. It has also emerged that the rights and interests in the suit land should not change during conversion as stated by DW2-DW4, rightly so because the conversion was simply a migratory process from one registration regime (RTA ) to another ( RLA ). This view was also enunciated in the case of Kirima (Suing on Behalf of the Estate of the Late Gerishon Kamau Kirima Deceased) v Corner Place Investment Limited & 3 others (Environment & Land Petition 45 of 2017) [2023] KEELC 18788 (KLR)(13 July 2023) (Judgment) Neutral citation: [2023] KEELC 18788 (KLR) where this very court was dealing with the issue of unlawful conversion of land from Registration of Titles Act to Registered Lands Act.
83. It follows that the issuance of the title to the 1<sup>st</sup> defendant for a parcel that was converted from RTA to RLA was unlawful. Dw3 succinctly articulated this position when he stated that “a title has to be supported by root documents. One can’t fly at Chief Land Registrars office!”.
84. In Daudi Kiptugen v Commissioner of Lands & 4 Others [2015] eKLR the court stated that:
- “...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 a proper process, the title itself cannot be a good title.”
85. While in Dina Management Limited v County Government of Mombasa & 5 others (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR) (Constitutional and Human Rights) (21 April 2023) (Judgment), the Supreme Court of Kenya held that It is not enough for a party to state that they have a lease or title to the property, hence, hence courts cannot sanction illegalities and irregularities on the basis of indefeasibility of titles. Also see Samuel Kamere v Lands Registrar, Kajiado [2015] eKLR.
86. And in the case at hand, the title acquired by the 1<sup>st</sup> defendant is the one tainted with illegalities and irregularities and is therefore invalid.
87. What then are the reliefs available?. It is clear beyond peradventure that two titles should not be allowed to co exists at the same time, hence the invalid title, the one held by the 1<sup>st</sup> defendant should be cancelled as the court has no other option See; Moses Okatch Owour & Another v Attorney General & Another 2017.
88. Further, in the case of Chemey Investment Limited v Attorney General & 2 others [2018] eKLR, the Court of Appeal held thus;
- “Decisions abound where courts in this land have consistently declined to recognize and protect title to land, which has been obtained illegally or fraudulently, merely because a person is entered in the register as proprietor. See for example Niaz Mohamed Jan Mohamed v. Commissioner for Lands & 4 Others [1996] eKLR; Funzi Island Development Ltd & 2 Others v. County Council of Kwale (supra); Republic v. Minister for Transport & Communications & 5 Others ex parte Waa Ship Garbage Collectors & 15 Others KLR (E&L) 1, 563; John Peter Mureithi & 2 Others v. Attorney General & 4 Others 5 Others [2006] eKLR; Kenya National Highway Authority v. Shalien (2017) eKLR; Arthi Highway Developers Masood Mughal & Limited v. West End Butchery Limited & 6 Others [2015] eKLR: Munyu Maina v Hiram Gathiha Maina [2013] eKLR and Milan Others v. City Council of Nairobi & Others Kumarn Shah & , HCCC No. 1024 of 2005. The effect of all those decisions is that sanctity of title was never intended or understood to be a vehicle for fraud and illegalities or an avenue for unjust enrichment at public expense”



89. Since conversion was done for the entire Block 92, yet the plaintiff retained the old title and was not aware of the conversion, then he should be the beneficiary of the title in the converted regime. However, the court takes judicial notice that the registration regime under RLA has since been overtaken by the overhaul of land administration and registration in the post 2010 Constitutional reforms that brought forth the regime in Land Registration Act of year 2011 ( LRA).
90. On damages, I hesitate to give any award, the reason being that officers from the 2<sup>nd</sup>- 4<sup>th</sup> defendants as well as the Commissioner of lands must have been privy to the issuance of the illegal documents of ownership given to the 1<sup>st</sup> defendant at one time or another, seeing that his white card is domiciled at the ministry of lands.
91. However, on costs, I find that the 1<sup>st</sup> defendant was aware of plaintiffs claim as far back as year 2006 which claim is anchored on tangible documentary evidence tracing the root of the title, but he opted to put the plaintiff through the rigors of litigation for the next 18 years or so! He will therefore pay costs of the suit to the plaintiff.

### **Rendition**

1. The Counter claim of the 1<sup>st</sup> defendant is hereby dismissed.
2. The plaintiffs' suit is allowed in the following terms;
  - i. A declaration is hereby made that the plaintiff is the registered owner of parcel LR No.12325/17 situate at Hill View Estate, Nairobi.
  - ii. An order is hereby issued for cancellation of the Certificate of lease, and the white card issued to Mohamed Maalim Kulmia. To this end, the 2<sup>nd</sup>,3<sup>rd</sup> and 5<sup>th</sup> defendants are directed to expunge from their records, any records depicting the 1<sup>st</sup> defendant as the owner of parcel Nairobi/Block 92/157.
  - iii. An order is hereby issued that the 2<sup>nd</sup>,3<sup>rd</sup> and 5<sup>th</sup> defendants are to restore their records relating to LR No.12325/17, keep them in safe custody and facilitate the registration of plaintiff as the proprietor of the suit land in the regime of the Land Registration Act.
  - iv. A permanent injunction is hereby issued restraining the 1<sup>st</sup> Defendant from any interference or dealing with the suit parcel and to this end, he is given 30 days to remove any materials of construction from the suit land.
  - v. The plaintiff is at liberty to take over the suit land without any interference from the 1<sup>st</sup> defendant.
  - vi. The 1<sup>st</sup> defendant is condemned to pay to the plaintiff the costs of this suit plus interests on costs from the time of filing the suit.

**DATED, SIGNED AND DELIVERED THIS 2<sup>ND</sup> DAY OF APRIL 2025 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE-ELC NANYUKI**

In the presence of: -

Mbatai H/B for Issa for the 1<sup>st</sup> defendant

No appearance for the Plaintiff

