



Gatimu (Suing on behalf of Godfrey Gitonga & 58 others being part of the allottees, owners of 104 parcels of land being L.R No. 25821 to 25922 of one-acre each) v Global Holdings Limited & 2 others (Environment & Land Case 129 of 2018) [2022] KEELC 15379 (KLR) (19 December 2022) (Judgment)

Neutral citation: [2022] KEELC 15379 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE 129 OF 2018
CA OCHIENG, J
DECEMBER 19, 2022

BETWEEN

CHARLES MUNENE GATIMU (SUING ON BEHALF OF GODFREY GITONGA & 58 OTHERS BEING PART OF THE ALLOTEES, OWNERS OF 104 PARCELS OF LAND BEING L.R.NO. 25821 TO 25922 OF ONE-ACRE EACH) PLAINTIFF

AND

GLOBAL HOLDINGS LIMITED 1ST RESPONDENT
NATIONAL LAND COMMISSION 2ND RESPONDENT
KIJIJI PROPERTIES LIMITED 3RD RESPONDENT

JUDGMENT

1. By a further amended amended Plaintiff filed on February 25, 2019, the Plaintiffs pray for Judgment against the Defendants for;
2.
 - a) A temporary Injunction restraining the Defendants herein and/or their Agents and/or Servants from encroaching, trespassing, constructing, digging and/or any other way interfering with the Plaintiff and the Allotees and/or owners of 104 Parcels of Land being Land Reference Numbers 25821 to 25922 one Acre each situate in Mavoko Municipality In Machakos District pending the Hearing and determination of this suit.
 - b) A Permanent Injunction restraining the Defendants herein and/or their Agents and/or Servants from encroaching, trespassing, constructing, digging and/or any other way interfering with the Plaintiff and the Allotees and/or owners of 104 Parcels of Land being Land Reference



Numbers 25821 to 25922 one Acre each situate in Mavoko Municipality in Machakos District pending the Hearing and determination of this suit.

- c) A declaration that the Plaintiffs are the Bonafide Grantees of the various Grants in respect of the said parcel of Land.
 - d. Costs of this suit.
 - e) Any other or further relief that this Honourable Court deems fit and just and just to grant.
3. The 3rd Defendant filed its amended Statement of Defence denying the averments in the Plaint except the descriptive and jurisdiction of the court. It disputes that the Plaintiffs were allocated 104 parcels of land of one acre each. It insists that in 2009 when the suit commenced, the Plaintiffs did not have Title Deeds to their respective parcels of land. It avers that the Plaintiffs Letters of Allotment lapsed on February 1, 2000. It contends that the few Title Deeds produced by some of the Plaintiffs were processed after title to LR No21215 hereinafter referred to as the 'suit land' had been processed in favour of Baywater Investments Limited which was the first registered owner. Further, that the said Plaintiffs never asserted title, nor took possession of the suit land or developed the same. It explains that there are no records of the 104 parcels of land at the Ministry of Lands and Urban Development. It reiterates that it acquired proprietary rights over the suit land wherein it has erected a permanent wall, drilled a borehole while other developments are still ongoing. It reaffirms that at the point it purchased the suit land there were no encumbrances registered against it. Further, that it is a stranger to the allegations of fraud and particulars of misrepresentation as pleaded in the Plaint. It made reference to Misc Judicial Review Application No285 of 2016 Republic v National Land Commission Ex parte Kijiji Properties Limited & Others where the court had dealt with issues of title to the suit land.

DIVISION - Evidence of the Plaintiffs

4. The Plaintiffs' claim is that in the year 2000 they were allotted Parcels of Land being L.R Numbers 25821 to 25922 being one acre each from the then Mulinge Scheme in Mavoko Municipality in Machakos District. They state that pursuant to being shown the Survey Map including the Mutation Map, they proceeded to pay for each parcel of land and after obtaining the Rent Clearance Certificates, they were issued with Title Deeds. They state that on August 20, 2009 the 1st Defendant illegally moved into their parcels of land and started developing the same and obtained a Grant without following due process of law. PW1 who was the sole witness testified that he had sued on behalf of all the Plaintiffs and also the persons not represented in this matter. He confirmed that he did not have Minutes from the Ministry of Lands creating the Mulinge scheme and neither had he brought the Part Development Plan. He contended that they had titles to the suit land but he had not filed some of them in his List of Documents. He further testified that the 104 parcels of land were overlapped in the 3rd Defendant's Plot as indicated in the survey map. Further, that the Survey Report was with the surveyors who undertook the said survey. PW1 explained that they never sued Baywater Investments Limited even though it was the initial Allottee of the suit land. He confirmed that they had no issue with the 3rd Defendant until they found their land had been invaded and reported the same to the Chief Registrar as well as the National Land Commission. Further, when the NLC conducted their investigations they found that IR No84780 and the suit land Katani LR No21215 was entered into the Land Records through forgery and that is why they did not bother to look for Baywater Investments Limited. He was not aware of the NLC report dated the 4th January, 2018 and insisted he had seen it in court for the first time. PW1 denied knowledge of a lawsuit where the 3rd Defendant had sued him and contended that he had just seen a ruling delivered by Justice Angote dated the 30th June, 2017 vide Misc. No285 of 2016 and was unable to comment on the same. He reiterated that the subdivision undertaken on the suit land was illegal. The Plaintiffs produced the following documents as exhibits: Various Letters of



Allotment; Various Certificate of Title; Several receipts; various correspondence; Petition; Copies of Deed Plans; Copy of Rent Clearance Certificate; Copies of Bankers Cheques and Replying Affidavit by Silas Mburugu.

Evidence of the Defendants

5. DW1 who represented the 3rd Defendant stated that he is a business man and developer. It was his testimony that he had not seen a survey report indicating his land overlapped with another parcel of land. Further, that the Director of Survey was not a party to this suit. He argued that the National Land Commission (NLC), Chief Land Registrar and Commissioner of Lands were also not parties and to the suit yet they should have been included herein. He contended that they are the beneficial owners of the suit land since they purchased the same from the 1st Defendant after undertaking due diligence. He explained that the first owners of the suit land, Baywater Investments Limited were also not a party to the suit and he did not have any information on how they acquired the said land. He testified that he only met the 1st Plaintiff in court and had never seen him before. Further, that they purchased the suit land in 2011 and had a Sale Agreement including transfer to that effect. It was his testimony that by the time the 3rd Defendant was acquiring the suit, they were not aware of any encumbrance against it and had no knowledge of any pending case. He confirmed that he filed proceedings at the NLC to challenge the proceedings before them, after which NLC upheld its title. He was not aware of the period when the Plaintiffs' acquired proprietary interest over their land and neither did he have knowledge that the said land formed part of the Mulinge Scheme. The 3rd Defendant produced the following documents as exhibits: 3rd Defendants list of documents: Agreement of Sale dated February 22, 2011; Transfer dated June 14, 2011; Search Certificate for L.R. No21215 dated May 12, 2011, Search Certificate for L.R. No21215 dated July 13, 2011; Search Certificate for L.R. No21215 dated July 29, 2011; Consent to transfer land dated June 9, 2011; Rent payment receipt issued by the Kenya Revenue Authority; Invoice/demand for Rates payment from Mavoko Municipal Council dated March 9, 2011; Payment receipt for rates dated August 19, 2011; Rent Clearance Certificate dated April 5, 2011; Rates Clearance Certificate dated January 4, 2012; Demand for rates dated January 4, 2012; A copy of the Certificate of Title for parcel of land known as L.R. No 21215 Mavoko; A copy of the official search for parcel of land known as L.R. No 21215 Mavoko; A copy of Certificate of CR-12 for Global Holdings Limited; A copy of the Agreement for Sale dated 22nd February, 2011 between Global Holdings Limited and Kijiji Properties Limited; A copy of the Transfer dated June 14, 2011 and registered on July 4, 2011; A copy of Land Rent payment advise issued by KRA dated March 25, 2011; A copy of Land Rent Clearance Certificate dated April 5, 2011; A copy of consent to transfer L.R. No 21215; A copy of Invoice from Mavoko Municipal Council for payment of rate; A copy of Rates payment receipt from Mavoko Municipal Council; A Copy of Rates Clearance Certificate dated March 17, 2011; A copy of the Invoice of payment of land rate from the Municipal Council of Mavoko dated January 4, 2012; A copy of Rates Clearance Certificate for the year 2012 dated January 4, 2012; A copy of the letter dated July 18, 2011 from the Municipal Council of Mavoko on notification of approval of development permission; A copy of the excerpt of the Daily Nation of December 14, 2011; A copy of the letter dated March 1, 2013 Form PPA 2 from the Town Planner on notification of approval of development permission; A copy of letter dated June 11, 2013 from the County Surveyor Machakos County approving the proposal change of user from residential to comprehensive residential development; A copy of letter dated June 11, 2013 from the County Physical Planning Officer Machakos County approving the proposal change of user from residential to comprehensive residential development; A copy of letter dated June 11, 2013 from the Chief Land Administration Officer approving the proposal change of user from residential to comprehensive residential development; A copy of the letter dated December 21, 2015 from the Ministry of Lands Housing and Urban Development approving the proposal change of user



from residential to comprehensive residential development; A copy of the letter dated January 25, 2016 Ministry of Lands Housing and Urban Development addressed to the 3rd Defendant; A copy of the letter dated July 4, 2013 from the Town Administrator Form PPA. 2 on notification of approval of development permission; A copy of the letter dated July 11, 2013 from County Physical Planner approving the proposed subdivision on L.R. No 21215; A copy of the letter dated July 11, 2013 from Chief Land Administration Officer approving the proposed subdivision on L.R. No 21215; A copy of the letter dated July 11, 2013 from the District Surveyor; A copy of the letter dated August 9, 2013 from the National Land Commission; A bunch of copies of Certificate of Titles known as I.R. Nos. 187524, 187525, 187526, 187527, 187528, 187529, 187530, 187531 and 187532; A copy of letter dated December 22, 2013 addressed to the National Land Commission; A copy of letter dated January 17, 2014 addressed to the 3rd Defendant by the National Land Commission; and A copy of letter dated March 7, 2014 addressed to Director of Survey by the National Land Commission.

Submissions

SUBDIVISION - Plaintiffs' Submissions

6. The Plaintiffs in their submissions contended that a cursory glimpse of the pleadings including the Verifying Affidavit sworn by the 1st Plaintiff which they filed indicate that they were all compliant with Order 4 Rule 1 of the *Civil Procedure Rules*. Further, the absence of authorization from the other Plaintiffs did not render the suit defective. On whether they had established being bona fide Grantees of the suit land, they submitted that the Affidavit by the NLC showed that the title acquired by Baywater Investments Limited through allotment, transferred to the 1st Defendant and later to the 3rd Defendant was tainted by fraud and illegality. They argued that they had successfully proved that it is in the best interest of justice that the court admits the contents of the said Affidavit as evidence. On validity of the 3rd Defendant's title, they stated that the regularity of the title held by the 3rd Defendant having been impeached and the 3rd Defendant barred from claiming to be an innocent purchaser for value without notice, it then only follows that such title cannot be held to be prima facie evidence of conclusive ownership by it. They reiterated that having successfully established that they are the bona fide allottees of the suit land, the court ought to give a declaration to that effect. Further, such declaration would warrant the cancellation of the title held by the 3rd Defendant. To buttress their averments, they relied on the following decisions: *Republic v National Land Commission Ex-Parte Kijiji Properties Limited & others* [2017] eKLR Machakos ELC JR 285/2016; *Hezekia Kipkorir Maritim & 10 Others v Philip Kipkoeh Tenai & 2 Others* [2016] eKLR; *Shaban Athuman & Alex Furaha Charo (suing on behalf of the Wamwanyundo Clan) v M/s Karsan Ramji & Sons Ltd & 6 others* [2022] eKLR; *Simon Mbugua v County Government of Trans Nzoia & 2 others* [2022] eKLR; *Tushar Shah & Another v John Mariana Kingotho & Another; John Munge (Interested Party)* [2021] eKLR; *William Kabogo Gitau v George Thuo & 2 Others* [2010] eKLR; *Palace Investment Limited v Geoffrey Kariuki Mwendwa & Another* [2015] eKLR; *Munyu Maina v Hiram Gathiba Maina* [2013] eKLR; *Kawaljeet Singh Rekhi v Peter Wainaina Kamau & 2 others* [2016] eKLR; *Housing Finance Company of Kenya v J. N Wafubwa* [2014] eKLR and *National Land Commission v Manubi & 4 Others* Civil Appeal 248 of 2020 [2022] KECA 391 (KLR) (Civ) (4 March 2022) (Judgment)

Defendants' Submissions

3rd Defendant's Submissions

7. The 3rd Defendant submitted that the Plaintiff's suit is bad in law as it was filed as a representative one yet no leave had been obtained at the time of its institution. It argued that the 1st Plaintiff lacks *locus standi* to act on behalf of all the other persons named as Plaintiffs. On whether the Plaintiffs



alleged portions of land are encompassed into the suit land, it stated that the allegation could only be substantiated by producing survey plans for the two plots that were authenticated by the Director of Surveys. He insisted that no survey plans were produced to support the Plaintiffs' allegation. On whether or not its title is legal, it submitted that throughout the proceedings there was no sufficient evidence that was led by the Plaintiffs to impeach the proprietary including legality of its title and it was thus a purchaser for value holding an indefeasible title over the suit land. On whether the Plaintiffs were entitled to the reliefs sought, it submitted that throughout the proceedings there was no cause of action that was pleaded or proved against it. Further, there was also no cause of action established against the National Land Commission. It argued that the proper cause of action should have been directed to the Commissioner of Lands whose successor was the Chief Land Registrar. In conclusion it submitted that the Plaintiffs had not proved their case to the required standard and sought for it, to be dismissed with costs. To buttress its arguments, it relied on the following decisions: *Ruth Wamboi Muturi v Joseph Karisa Katsoma & 4 Others* [2007] eKLR; *Bugere Coffee Growers Ltd v Sebaduka & Another* High Court of Uganda at Kampala Civil Suit No 546 of 1968; *Affordable Homes Africa limited v Ian Henderson & 2 Others* [2004] 2KLR 474; *Brager and Kern Limited v Bavaria Holdings (k) Limited* Civil case No 267 of 2010; *David Peterson Kiengo & 2 Others v Kariuki* [2012] eKLR; *Shimon Resort v Registrar of Titles & 5 Others* [2016] eKLR; *Elizabeth Wambui Githinji & 29 Others v Kenya Urban Roads Authority & 4 Others* [2019] eKLR; *M'bita Ntiro v Mbae Mwirichia & Another* [2018] eKLR; *Kinyanjui Kamau v George Kamau* [2015] eKLR; *Pop In (Kenya) Limited & 3 Others v Habib Bank AG Zurich* [1990] KLR 609; *Henderson v Henderson* [1843] Hare 100, 115; *Michael Munene Njogu & 2 Others v Bernard Githinji & 2 Others* [2013] eKLR; *Adolfo Guzzini & Another v Emmanuel Charo Tinga* [2006] eKLR; *Independent Electoral and Boundaries Commission & Another v Stephen Mutinda Mule & 3 Others* [2014] eKLR (Civil Appeal No 219 of 2013); *Elizabeth o. Odhiambo v South Nyanza Sugar Co. Ltd* [2019] eKLR; *Jackton Nyanungo Ranguma v IEBC & 2 Others* [2017] eKLR; *Lesirma Simeon Samanga v Independent and Electoral Boundaries Commission & Another* [2018] eKLR and *Mabamud Mubumed Sirat v Ali Hassan Abdirahman & 2 Others* Nairobi EP No 15 of 2018 [2010] eKLR.

Analysis and Determination

8. Upon consideration of the further amended amended Plaintiff, amended Defence, Testimonies of Witnesses, Exhibits and rivaling Submissions, the following are the issues for determination: Whether the 1st Plaintiff has filed this suit in a representative capacity. Whether the Plaintiffs are bona fide Allottees/Grantees of the Suit land. Whether the 3rd Defendant holds a valid title to the suit land. Whether the Plaintiffs are entitled to the orders sought.
9. As to whether the 1st Plaintiff has filed this suit in a representative capacity.
10. The 3rd Defendant contended that the Plaintiffs' suit is bad in law as it was filed as a representative suit yet no leave had been obtained at the time of its institution. It argued that the 1st Plaintiff lacks locus standi to act on behalf of all the other persons named as Plaintiffs. The Plaintiffs on the other hand insist the pleadings are compliant with Order 4 Rule 1 of the *Civil Procedure Rules*. In the case of *Hezekia Kipkorir Maritim & 10 others v Philip Kipkoech Tenai & 2 others* [2016] eKLR the Court stated thus-

“...In view of the foregoing and with regard to the competence of this suit and the instant application, it is my view that even if the 2nd to 10th Plaintiff's suit was declared a non-starter for failure to authorize the 1st Plaintiff to swear respective affidavits on their behalf, the 1st Plaintiff's claim against the Defendants shall still stand. As it was held by the Court of Appeal in the foregoing Research International East Africa Ltd Case, *ibid*, the Honourable



court has discretion and jurisdiction to allow the Plaintiffs to comply with the aforesaid requisite rules...” Emphasis Mine”

11. See also the decision in *Shaban Athuman & Alex Furaha Charo (Suing for and on behalf of the Wamwanyundo Clan) v M/S Karsan Ramji & Sons Ltd & 6 Others* [2022] eKLR.
12. In associating myself with these decisions while applying them to the circumstances at hand, I find that this suit is not incompetent as claimed and will proceed to determine it on merit.
13. As to whether the Plaintiffs are bona fide Allottees/Grantees of the Suit land.
14. The Plaintiffs contend that they were allocated 104 parcels of land of one acre each being LR No 25821 to 25922 in the year 2000. They insist that the 3rd Defendant has taken over their land and fenced it. From the evidence before Court, the suit land was initially allotted to Baywater Investments Limited for a term of 99 years from the November 1, 1995. Further, a Grant was registered in its favour on November 9, 2000. The 3rd Defendant purchased the suit land from Global Holdings Ltd (1st Defendant) and a Transfer to its favour was registered on July 4, 2011. PW1 confirmed that he did not have minutes from the Ministry of Lands creating the Mulinge scheme and neither had he furnished court with the Part Development Plan. It was his testimony that they had some titles to the suit land but he had not filed all of them in their List of Documents. Further, that the 104 parcels of land were overlapped in the 3rd Defendant’s Plot as indicated in the survey map. PW1 explained that they never sued Baywater Investments Limited even though it was the initial Allottee of the suit land. He confirmed that they had no issue with the 3rd Defendant until they found their land had been invaded and reported the same to the Chief Registrar and the National Land Commission. He insisted that when the NLC conducted their investigations they found that IR No 84780 and the suit land Katani LR No 21215 was entered into Land Records through forgery and that is why they did not bother to look for Baywater Investments Limited. However in the case of *Republic v National Land Commission Ex-Parte Kijiji Properties Limited & others* [2017] eKLR, the Court while dealing with the role of NLC in investigating the 3rd Defendant’s title, held as follows:

“Having admitted in the Affidavit of its officer that it is investigating the propriety of the Ex-parte Applicant’s title after receiving complaints from the Interested Parties, the Respondent cannot argue that the issue of ownership of the suit land is different from the issue of reviewing the legality of the Applicant’s title document. The two issues are one and the same. Having arrived at the conclusion that it is only this court, by way of Nairobi HCCC No 428 of 2009, that can interrogate the propriety of the Ex-parte Applicant’s title document, I find and hold that the Respondent does not have the locus standi to commence parallel proceedings envisaged under Section 14 of the *National Land Commission Act*. Indeed, the most that the Commission can do is to avail the evidence that is in its possession to the court for the final determination of the propriety of the Applicant’s title viz-a-viz the Interested Parties’ claim. Having found that the purported investigations by the Respondent viz-a-viz the suit land are sub-judice Nairobi HCCC No 428 of 2009, I will not address the other issues that have been raised in the Application. It is for those reasons that I allow the Ex-parte Applicant’s Application dated October 27, 2016 as prayed.”

15. I note in a letter dated the January 4, 2018 which was written by the Vice Chairperson of the National Land Commission whose subject was on determination of review of Grants and Disposition on suit land registered to the 3rd Defendant, it stated that it received complaints from Charles Gatimu (PW1), and others after which it invited parties with an interest in the said suit land for a public hearing on July 21, 2016. However, it proceeded to terminate the proceedings as it had no jurisdiction on the matter. I



note the Plaintiffs in their submissions have sought for the admission of the affidavit sworn by Mr. Silas Mburugu, Principal Land Administration Office sworn on December 14, 2016 and filed in Machakos ELC Miscellaneous JR No 285 of 2016, where he stated that the title to Bay Water Investments Limited was fraudulent due to lack of requisite documents. However, at this juncture, I wish to decline to admit this affidavit as part of evidence as the Vice Chairperson of NLC on 4th January, 2018 confirmed that it terminated proceedings investigating the 3rd Defendant's title, on lack of jurisdiction. Further, in this suit, the NLC sued as the 2nd Defendant never filed any response to support the Plaintiffs' claim and neither did the Plaintiffs summon the said witness to produce his affidavit as required by the Law of Evidence. I note the NLC vide its letter dated March 7, 2014 addressed to the Director of Surveys, confirmed the 3rd Defendant's ownership of the suit land.

16. It is worth noting that the Court in Machakos ELC Miscellaneous JR No 285 of 2016, had issued orders of Certiorari and Prohibition quashing the proceedings at NLC that was investigating the 3rd Defendant's title.
17. Further, Sections 107 and 109 of the *Evidence Act* are explicit and the burden of proof was upon the Plaintiffs to prove the deponent could not be found; and that the 3rd Defendant fraudulently acquired title to the suit land which they failed to discharge. From a perusal of the Letters of Allotment produced by the Plaintiffs, I note they were all issued on 5th January, 1999 after allotment had been issued to Baywater Investment Limited but it does not indicate it was issued on behalf of which County Council. Further, I note a few of the Plaintiffs have produced titles which were purportedly issued after the title to the suit land had been issued to Baywater Investments Limited. To my mind, I find that the burden of proof was upon the Plaintiffs to tender evidence confirming that the said land was still available for allotment. Further, they ought to have produced Survey Plans from the Director of Surveys including Land Records from the Ministry of Lands and Physical Planning to confirm the establishment of the alleged Mulinge Scheme, its size, parcel numbers and their owners but they did not. Even on perusal of the few Certificates of Title produced by the Plaintiffs, it is worth noting that the Survey Plan Numbers indicated therein are all different. In the circumstances, I find that the Plaintiffs have failed to prove that there are indeed bona fide allottees/Grantees of 104 Parcels of Land being Land Reference numbers 25821 to 25922 of one Acre each situate in Mavoko Municipality which have overlapped in the suit land.

As to whether the 3rd Defendant holds a valid title to the suit land.

18. The 3rd Defendant tendered evidence confirming that it is the registered proprietor of the suit land. The Plaintiffs claimed the 3rd Defendant obtained its title fraudulently since there were no documents supporting the acquisition of the suit land by the initial owner Baywater Investments Limited. I note there was no evidence tendered by the Chief Land Registrar to prove the Plaintiffs' averments that the title held by the 3rd Defendant was obtained fraudulently. I note neither Baywater Investments Limited, nor Global Holdings who were previously registered as proprietors of the suit land have challenged the 3rd Defendant's title. Except for the Plaintiffs' challenging this title claiming that a representative from NLC one Silas Mburugu contended it was fake as there were not supporting documents, I opine that they should have produced in court Survey Plans from the Director of Surveys as well as Land Records from the Ministry of Lands and Physical Planning to confirm this position. The 3rd Defendant however produced various documents including Sale Agreement, Certificate of Title and Searches to confirm ownership of suit land. From the evidence of PW1 he did not produce any approved PDP and only attempted to rely on the affidavit of Silas Mburugu to prove there was an overlap of their land with the 3rd Defendant's land. However, the deponent never came to court to testify and produce his affidavit hence I am unable to rely on the averments therein. The Plaintiffs alleged that the 3rd



Defendant acquired the land fraudulently but from the evidence of PW1, I find that they failed to prove this point.

19. On proof of ownership of land, I wish to make reference to Sections 24 (a) and 26(1) of the [Land Registration Act](#). Section 24(a) of the [Land Registration Act](#) states thus:

“Subject to this Act, the registration of a person as a proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto...”

While Section 26(1) of the [Land Registration Act](#) stipulates thus:

“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.”

20. In the case of [Willy Kipsongok Morogo v Albert K. Morogo](#) [2017] eKLR the Court held as follows:

“The evidence on record shows that the suit parcel of land is registered in the names of the Plaintiff and therefore is entitled to the protection under Sections 24, 25 and 26 of the [Land Registration Act](#).”

21. While in the case of [Joseph N.K. Arap Ng'ok V Moiyo Ole Keiwua & 4 Others](#) [1997] eKLR, the Court of Appeal held that:

“once one is registered as an owner of land, he has absolute and indefeasible title which can only be challenged on grounds of fraud or misrepresentation and such is the sanctity of the title bestowed upon the title holder.”

22. Further, in Civil Appeal No 246 of 2013 [Arthi Highway Developers Limited v West End Butchery Limited and Others](#), the Court of Appeal expressly stated thus:

“Section 23(1) of the then Registration of Titles Act (now reproduced substantially as Sections 25 and 26 of the [Land Registration Act](#) set out below) gives an absolute and indefeasible title to the owner of the property. The title of such an owner can only be subject to challenge on grounds of fraud or misrepresentation to which the owner is proved to be a party. Such is the sanctity of title bestowed upon the title holder under the Act. It is our law and law takes precedence over all other alleged equitable rights of title. In fact the Act is meant to give such sanctity of title, otherwise the whole process of registration of Titles and the entire system in relation to ownership of property in Kenya would be placed in jeopardy.”



23. Based on the evidence before me while associating myself with the cited decisions as well as the legal provisions quoted above, since the Plaintiffs never demonstrated that the 3rd Defendant acquired the suit land illegally or fraudulently from the 1st Defendant, I find that the 3rd Defendant is indeed the absolute proprietor of land parcel number LR No 21215 and hence entitled to protection of the law in accordance with the provisions of Sections 24, 25 and 26 of the *Land Registration Act*.
24. Based on my findings above, I find that the Plaintiffs are not entitled to the orders as sought.
25. In the foregoing, I find that the Plaintiffs have not proved their case on a balance of probability and will proceed to dismiss it with costs to the 3rd Defendant.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 19TH DAY OF DECEMBER, 2022

CHRISTINE OCHIENG

JUDGE

