



Kariuki & 2 others (Suing as Registered Trustees of Deliverance Church) v New Age Developers Construction Co Ltd & 8 others (Environment & Land Case 813 of 2015 & 557 of 2016 (Consolidated)) [2025] KEELC 547 (KLR) (6 February 2025) (Judgment)

Neutral citation: [2025] KEELC 547 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 813 OF 2015 & 557 OF 2016 (CONSOLIDATED)
EK WABWOTO, J
FEBRUARY 6, 2025

BETWEEN

BISHOP MARK K KARIUKI 1ST PLAINTIFF
BISHOP GEORGE GICHANA 2ND PLAINTIFF
BISHOP JOHN B MASINDE 3RD PLAINTIFF
SUING AS REGISTERED TRUSTEES OF DELIVERANCE CHURCH

AND

NEW AGE DEVELOPERS CONSTRUCTION CO LTD 1ST DEFENDANT
SAMUEL CEGE KIBUNJA 2ND DEFENDANT
CHIEF LAND REGISTRAR 3RD DEFENDANT
CHASE BANK KENYA LIMITED 4TH DEFENDANT
ATTORNEY GENERAL 5TH DEFENDANT
NEW AGE DEVELOPERS CONSTRUCTION CO. LTD 6TH DEFENDANT
SAMUEL CEGE KIBUNJA 7TH DEFENDANT
CHIEF LAND REGISTRAR 8TH DEFENDANT

AS CONSOLIDATED WITH
ENVIRONMENT & LAND CASE 557 OF 2016

BETWEEN

BALIGA LIMITED PLAINTIFF



AND

NEW AGE DEVELOPERS CONSTRUCTION CO LTD 1ST DEFENDANT
SAMUEL CEGE KIBUNJA 2ND DEFENDANT
CHIEF LAND REGISTRAR 3RD DEFENDANT

JUDGMENT

1. On 26th July 2017, Justice S. Okon’go issued directions and or orders consolidating two suits that had initially been filed relating to the suit properties herein. The first suit was Nairobi ELC No. 557 of 2016 Baliga Limited =Versus= New Age Developers Construction Company Ltd & Others wherein the Plaintiff sought the following reliefs:-
 - a. A declaration that the properties known as L.R Juja/Komo/block 1/30, (also known as L.R Juja/Komo/block 1/2079 and L.R Juja/Komo/block 1/3080) hereinafter referred to as the ‘suit property’ belong to the Plaintiff.
 - b. A permanent injunction restraining the Defendants either jointly or individually or through their agents, servants, employees and/or anyone else deriving Title from the Defendants from encroaching onto, trespassing, constructing, selling, offering for sale, transferring, wasting, taking possession of, alienating or disposing of in any manner whatsoever digging and/ or any other way interfering with the Plaintiff’s properties known as properties L.R Juja/ Komo/block 1/30, (also known as L.R. Juja/Komo/block 1/3079 and L.R. Juja/Komo/block 1/3080) all measuring about 19.17 acres situate at Ndarugo within the County of Kiambu belong to the Plaintiff;
 - c. An order that the Defendant do avail the Registers to the land parcel numbers L.R. Juja/ Komo/block 1/30 also known as L.R Juja/Komo/block 1/3079 and L.R. Juja/Komo/block 1/3080) to facilitate the transfer of the same from Baliga Limited to Deliverance Church of Kenya;
 - d. An order that the Defendant to process provisional title deeds for L.R Juja/Komo/block 1/30, (also known as L.R Juja/Komo/block 1/3070 and L.R Juja/Komo/block 1/3080) all measuring about 19.17 acres situate at Ndarugo within the county of Kiambu to facilitate the transfer of the same to the Deliverance Church;
 - e. Costs of this suit;
 - f. Interests on (d) above at court rates;
 - g. Any such other or further relief as this Honourable Court may deem appropriate.
2. The second suit was Nairobi ELC No. 813 of 2015, Bishop Mark Kariuki, Masinde Gichana (suing as Trustees of Deliverance Church) =Versus= New Age Developers Construction Co. Ltd & Others wherein the Plaintiffs sought for the following reliefs:-
 - a. A declaration that properties known as Juja/Komo block 1/30, Juja/Komo block 1/30, Juja/ Komo block 1/31, Juja/Komo block 1/32, Juja/Komo block 1/33, Juja/Komo block 1/34, Juja/Komo block 1/35, Juja/Komo block 1/36, Juja/Komo block 1/37, Juja/Komo block 1/38, Juja/Komo block 1/39, Juja/Komo block 1/40, Juja/Komo block 1/3079 and Juja/



Komo block 1/3080 all measuring 29 acres situate at Ndarugu within the county of Kiambu belongs to the Plaintiffs.

- b. A permanent injunction restraining the defendants either jointly or individually or through their agents, servants, employees and/or anyone else from driving title from the defendants from encroaching onto, trespassing, constructing, selling, offering for sale, transferring, wasting, taking possession of, alienating or disposing of in any manner whatsoever digging and/or any other way interfering with the Plaintiff's properties known as Juja/Komo block 1/30, Juja/Komo block 1/30, Juja/Komo block 1/31, Juja/Komo block 1/32, Juja/Komo block 1/33, Juja/Komo block 1/34, Juja/Komo block 1/35, Juja/Komo block 1/36, Juja/Komo block 1/37, Juja/Komo block 1/38, Juja/Komo block 1/39, Juja/Komo block 1/40, Juja/Komo block 1/3079 and Juja/Komo block 1/3080 all measuring 29 acres situate at Ndarugu within the county of Kiambu.
 - c. A mandatory injunction directing the third defendant to avail the registers for land parcels numbers Juja/Komo block 1/30, Juja/Komo block 1/30, Juja/Komo block 1/31, Juja/Komo block 1/32, Juja/Komo block 1/33, Juja/Komo block 1/34, Juja/Komo block 1/35, Juja/Komo block 1/36, Juja/Komo block 1/37, Juja/Komo block 1/38, Juja/Komo block 1/39, Juja/Komo block 1/40, Juja/Komo block 1/3079 and Juja/Komo block 1/3080 to facilitate transfer of the same to the plaintiffs.
 - d. A declaration that the subdivision of the parcel of land known as Juja/Komo/block 11/30 into Juja/Komo/block 1/3079 and Juja/Komo/block 1/3080 was unlawful, illegal, null and void.
 - e. A declaration that the registration of charge on 28.5.2015 in favour of the 4th defendant against the title to the parcel of land known as Juja Komo block 1/3090 was unlawful, illegal, null and void and that the same be removed and discharged forthwith.
 - f. Cost of the suit.
 - g. Interest on (d) above at court rates.
 - h. Any such other relief as this Honourable Court may deem appropriate.
3. After consolidation, the court directed that Nairobi ELC Suit No. 813 of 2015 be the lead file and thus allowing the parties to proceed with the hearing of the consolidated suits.
 4. The suit was contested by the Defendants. The 1st and 2nd Defendants filed an amended Statement of Defence and Counterclaim dated 2nd October 2017 seeking for the following reliefs:-
 - a. Special damages totalling to 30, 011, 508 as follows:-
 - i. Plots media and flyer advertisements costs – Kshs. 1, 721,029/=
 - (ii) Surveyors fees Kshs. 1,833,600/=
 - (iii) Valuation, architectural fees, brokerage fees, stamp duty and conveyance fees for the plots – Kshs. 9,170,062=
 - (iv) Cost of clearance of land, development of the access roads in the plots and construction of gate at the site Kshs. 656,291/=
 - (v) Staff salaries and compensation for layoffs Kshs. 789,160/=
 - (vi) Accumulated interest for 10 months paid to the charge as 31st May 2016 – Kshs. 15,839,366/=



- b. General damages.
 - c. Interest on (a) and (b) above at court rates from the date of filing of the suit.
 - d. Mesne profits.
 - e. Costs of the suit.
5. The 3rd and 5th Defendants filed an amended Statement of Defence dated 12th day of February 2018 seeking for dismissal of the suit with costs.
 6. The 4th Defendant filed an Amended Defence dated 8th July 2021 seeking for dismissal of the suit.

The Plaintiffs case in ELC 813 of 2015

7. It was the Plaintiffs case that they are the registered owners of parcel of land known as L.R. Juja/Komo/ block 1/30 – 40 all measuring 29 acres situate at Ndarugo in Juja measuring about 19 acres.
8. It was also the Plaintiffs case that on or about 11th September 2008, the Plaintiffs entered into a written agreement where they contracted to purchase from Baliga Limited and Belline Wachuka Gatonye 29 acres being the suit property collectively for Kshs. 13,775,000/= A sum of Kshs. 6,500,000/= was paid as deposit and another sum of Kshs. 7,285,000/= later paid leaving only a balance of Kshs. 500,000/=
9. It was averred that the Plaintiffs were unable to take vacant possession since the suit property was not transferred into their names. The 1st and 2nd Defendants illegally moved into the suit property on or about 20th August 2015 and they later found out that the 1st Defendant had been issued with a title deed on 4th June 2015.
10. During the trial, Margaret Wanjiru Muchai and Bishop Mark Kariuki testified on behalf of the Plaintiffs in ELC Case No. 813 of 2015. They both relied and adopted their respective witness statements and bundle of documents filed in support of the Plaintiffs case in their evidence in chief.
11. On cross-examination of Rev. Margret Wanjiru Muchai by Counsel for the 1st Defendant she stated that she is not a Trustee of the Church but an agent. The Plaintiffs have always been the owners of the land, they had a sale agreement confirming its purchase. They never took any action for 8 years because the land belonged to them.
12. When cross-examined by Counsel for the 4th Defendant, she stated that the trustees did not have a title for block 30 and that the bank is not to blame.
13. When cross-examined by Counsel for the Plaintiff in ELC No. 557 of 2016, she stated that the church is not new to this property. The entire block initially belonged to Mumo Estates Limited. They have titles for Nos. 31 – 40 and No. 30 belonged to Baliga Limited. She does not know how the 1st and 2nd Defendants acquired the suit property.
14. On cross-examination of Bishop Mark Kariuki by Counsel by Counsel for 1st Defendant he stated that he is the Trustee of the church and they purchased the property from Baliga Limited and the same was properly acquired. The 1st and 2nd Defendants are not known to him personally. They have never paid land rates. They never took any action for 8 years. He also stated that suit property No. 3080 was charged to the bank.
15. Upon cross-examination by Counsel for the 3rd Defendant, he stated that they purchased land from Mr. Waweru Gatonye S. C and Baliga Limited. The transfer was never completed because the titles had been lost and they kept following up on the issue.



16. On re-examination, he stated that block 30 – 40 was part of the sale agreement and they have titles for the 10 acres since only 19 acres had no titles.

The case of the Plaintiff in ELC Case No. 557 of 2016

17. It was its case that since 31st July, 1971 Mumo Estates Limited was the registered proprietor of all pieces of land known as:
- (i) Land Reference No. 7198 (IR 4208/23) measuring about 76.28Ha.
 - (ii) Land Reference No. 9936 (IR No. 15238) measuring about 283.69Ha and
 - (iii) Parcel IR 5843 measuring 3.403Ha.
18. In meeting held on 31st July 1995 the said owner contracted a surveyor by the name Gabriel Marita of Werugia and Associates Licensed Land Surveyors to amalgamate, survey and subdivide all the three aforementioned parcels to allow members to be allocated their respective portions commensurate with their shareholding.
19. The three parcels of land were registered as leaseholds but the said original owners Mumo Estates Limited subsequently applied to the Government for not only their amalgamation but also conversion vide a Gazette Notice No. 2193 dated 2nd May 1997 to freehold.
20. The amalgamated land was later divided by the said owners Mumo Estates Limited into 94 portions of varying acreage and each shareholder allocated their respective portions. Part of the 94 portions was portion No. 30 comprising about 19 acres (7.759 hectares) and known as L.R Juja/Komo/block 1/30 registered in the name of Baliga Limited. It was set aside and sold by Mumo Estate to Baliga Limited to enable the said Mumo Estates limited pay off a loan it had with the Kenya Planters Cooperative Union (KPCU).
21. In addition to the above, Bellina Gatonye who is also a director of Baliga Limited was allocated a further 11 acres known as Juja Komo block 31-40 comprising 10 plots of 0.045 Ha each. It was next to L.R Juja/Komo/block 1/30.
22. On or about 11th September 2008 the Plaintiff entered into an agreement with Deliverance Church of Kenya for the sale of all the aforesaid land L.R Juja/Komo/block 1/30 and L.R Juja/Komo/block 1/31-40 for the price of Kshs. 13,775,000/=. However, the Plaintiff was not able to transfer the suit property to the Purchaser because its title documents had been misplaced and the Plaintiff was to apply for the duplicate title deeds.
23. Subsequently on 24th January 2012, the Plaintiff wrote to the Land Registrar, Thika District, requesting a duplicate Title Deed. On 23rd February 2012 the Plaintiff wrote to the Registrar once again. The Registrar did not respond to these letters. On 25th August 2015 the 1st and 2nd Defendants, their agents and/or servants unlawfully and illegally moved into the Plaintiff's land and began digging trenches, attempted to put up a permanent wall to fence off the land and issued brochures advertising the property for sale. At the same time, the registers for LR. Juja/Komo/block 1/30 could not be traced at Thika Land Office or elsewhere. The 3rd Defendant failed to produce the register/file that contains information on the parcel of land in order to facilitate the Plaintiff's transfer to the purchaser.

Additionally, the 3rd Defendant intermeddled with the property LR. Juja/Komo/block 1/30 by subdividing it into two equal portions, each allegedly measuring 4.75 Hectares, without the Plaintiff's consent. Consequently, the said L.R Juja/Komo/block 1/30 has now been divided into two portions namely LR. Juja/Komo/block 1/3079 and LR Juja/Komo/block 1/3080.



24. During trial Mr. Charles Waweru Gatonye, SC testified on oath on behalf of Baliga Limited, the Plaintiff herein and adopted his witness statement dated 1st December 2021. The witness also produced the Plaintiff's list and bundle of documents dated 25th February 2022 and the Plaintiff's supplementary list and bundle of documents dated 12th May 2022 as the documentary exhibits in support of the Plaintiff's case. Through his testimony and the aforementioned witness statement, list and bundle of documents and oral testimony, the testimony, the witness gave a brief historical background of the title and how his company acquired his portion which was well corroborated by the witnesses of the Deliverance Church who is the Plaintiff in 813 of 2015.
25. On cross-examination, he stated that the properties were not transferred to the church because some titles were lost when they were relocating offices and they had no issue with the 10 acres which was transferred to the church. He also stated that the claim by the church is only limited to the 20 acres. He also stated that he was aware that the church lodged a caution on 30th June 2015 to protect their interest to the properties.
26. On further examination, he stated that the bank interest in the matter is only in respect to block 1/30. He also stated that the bank did not have a legitimate claim because the documents to the title were forged.
27. On re-examination, he stated that block 1/30 was divided into two portions 3079 and 3080. They never sold the said land to any other person other than the church. They never gave any instructions for the land to be subdivided.

The case of the 3rd Defendant

28. It was the 3rd Defendant's case that the suit properties are registered in the names of Baliga Limited and Bellina Wachuka Gatonye as per their records. It was also averred that a caution was registered in the suit land by the church on 30th June 2015 claiming purchasing interest.
29. The 3rd Defendant denied breaching any of its statutory duty as stipulated.
30. During trial, Bernard Leitich a Land Registrar testified on behalf of the 3rd Defendant. He adopted and relied on his witness statement dated 12th February 2018 and the 3rd Defendant's bundle of even date during his evidence in chief. He also stated that he had no records for Juja/Komo 1/30 because it was closed upon subdivision.
31. On cross-examination by Mr. Munyalo Counsel for the Plaintiff's in ELC No. 557 of 2016, he stated that the original owners of the properties were Mumo Estates Limited and Baliga Limited was the current registered owner. He also stated that he has never seen any document for Wilson Ndirangu. The transfer to Wilson Ndirangu was done before he went to Thika. He also stated that he signed the title to New Age Developers on 4th June 2019 in respect to block 3080 and that the 4th Defendant had done all that was required in respect to the charge.
32. When cross-examined by Mr. Mbaabu Counsel for the church, he stated that there is a specific process that has to be followed before land is transferred and titles issued.
33. On cross-examination by Mr. Waigwa for the 1st Defendant, he stated that the church has never owned Juja/Komo/block 1/30. He did not see any transfer to Wilson Ndirangu and he was not aware of any cancellation of the title.
34. On cross-examination by Ms. Wainaina for the 4th Defendant, he stated that he was at Thika when the charge was registered and he believes the bank did its due diligence.



35. When re-examined, he stated that there is a search issued on 17th October 2011 showing Baliga Limited as the owners of the property.

The case of the 4th Defendant

36. It was the 4th Defendant's case that the charge in respect to Juja/Komo block 1/3080 was duly executed in accordance with the law and the loan contract is between the 1st and 4th Defendants.
37. It was also averred that the 1st Defendant defaulted on the loan repayment and the 4th Defendant was entitled to exercise its statutory power of sale since it failed to regularize the default.
38. It was also averred that the 4th Defendant should be allowed to proceed with the realisation of the security since the 1st Defendant defaulted and it had done its due diligence prior to charging the same.
39. During trial, Kevin Kimani testified on behalf of the 4th Defendant and he relied on his witness statement dated 2nd April 2018 and the 4th Defendant's bundle and supplementary bundle of documents that were on record in his evidence in chief. He added that the 4th Defendant was not involved in the acquisition of the property but it did due diligence before charging the same. He also stated that according to the bank the property belonged to New Age Developers Limited. The charge was created on 4th June 2015 the same day the title was issued and the loan was disbursed on 29th June 2015. He also stated that the charge was legitimate.
40. On cross-examination by Mr. Waigwa Advocate for the 1st Defendant, he stated that the bank did its due diligence as the financier. The bank did not carry out a search. None of its documents were rejected at the lands registry. Stamp duty was paid. The original title should be in the custody of the bank. He is not aware of any criminal prosecution.
41. Upon cross-examination by Mr. Muniyalo Advocate for Baliga Limited, he stated that the bank did an official search and a valuation of the property. The valuation report was dated 28th June 2017. He also stated that the bank did not have a historical search of the property and they do not know who was the original owner before the subdivision. The details of the guarantors were not provided before court. The 1st Defendant defaulted on the facility.
42. On cross-examination by Mr. Motari Advocate for the 3rd Defendant, he stated that he joined the bank on 1st April 2014 and he was already at the bank when the transaction was done. He stated that the bank did not approve the subdivision. There were some condition precedent to the registration of the charge. The bank was to execute the personal guarantee for recovery of the loan which was not done. The bank has not taken any action for recovery as per the debenture. The loan fell due in 2017. He does not have any documents before court showing that the company had the ability to repay the facility.
43. On cross-examination, he stated that SBM Bank took over the liabilities and assets of Chase Bank. He also stated that there could have been some fraudulent dealing in this transaction. He also stated that he was not aware of any criminal investigations by the DCI in respect to the property and the transaction.
44. On cross-examination by Mbaabu Advocate for the Registered Trustees of Deliverance Church, he stated that the principal amount was disbursed on 29th June 2015. The loan was only re-paid for 6 months before default. There could have been some fraudulent dealings. He does not have a registered debenture before court. He did have the valuation report that was done before issuing of the loan. He did not have the monthly repayments schedule.



45. When re-examined he stated that the bank was not involved in LR. 3079. The Land Registrar may have been involved in some fraudulent dealings in respect to the property. He could not ascertain if New Age Developers were unable to pay for the land.

The case of the 2nd Defendant

46. Samuel Cege Kibunja testified on behalf of the 2nd Defendant. He relied on his witness statement dated 23rd May 2016 and bundle of documents dated 27th May 2016 in his evidence in chief.
47. On cross-examination, he stated that his property was 3079 which he bought in 2001 and later sold to the 1st Defendant who paid a deposit of Kshs. 19,000,000/= to Wilson Ndirangu since they had bought the land together with him. He also stated that the said land was sold in 2015. He denied ever interacting with the Plaintiffs herein prior to the filing of this case. He also stated that the land has not been developed to date.
48. On further cross-examination, he stated that he did not have the agreement in court. He did not have the search. He did not have documents confirming payment.

The case of the 1st Defendant

49. It was the 1st Defendant's case that the property known as Juja/Komo/block 30 was registered jointly in the names of Wilson Ndirangu and the 2nd Defendant until February 2014 or thereabouts when the said property was lawfully subdivided into two properties block 3079 and 3080 which were registered in the names of the 2nd Defendant and Wilson Irungu respectively.
50. It was also averred that after the said subdivision the property known as Juja/Komo block 1/30 ceased to exist and no reliefs can be sought in respect to the same.
51. It was stated that the 1st Defendant lawfully acquired the property known as Juja/Komo block 1/3080 from Wilson Ndirangu Irungu and holds an indefeasible title in respect to the same while the 2nd Defendant holds an indefeasible title in respect to 3079 issued on 27th August 2015.
52. It was further averred that any sale agreement in respect to Juja/Komo block 1/30 between Baliga Limited and or Bellina Wachuka Gatonye and the church was illegal and unlawful.
53. It was further averred that the 1st Defendant incurred substantial loss amounting to Kshs. 30,011,508/= which was sought in the counter claim dated 2nd October 2017.
54. During trial, Peter Muthee a Director of the 1st Defendant testified on its behalf. He relied and adopted his witness statement dated 23rd May 2016 and bundle of documents dated 23rd May 2016 in his evidence in chief.
55. On cross-examination, by Counsel for the 4th Defendant he stated that the property that was charged to the bank belonged to them. The 1st Defendant was not able to pay back the facility. The bank is not liable for any fraud.
56. On cross-examination by Counsel for Baliga Limited he stated that they bought the property from Wilson Ndirangu after conducting a search. The search is dated 13th April 2016. The title issued to Wilson Ndirangu was issued on 27th August 2014. He did not have the historical background of the property. He bought the said property on 24th June 2016. The purchase price was Kshs. 62Million wherein a sum of Kshs. 19,000,000/= was paid from its own sources and the bank financed Kshs. 43,000,000/=



57. On further cross-examination, he stated that he did not have evidence of payment of the purchase price neither did he have receipt for payment of stamp duty. He also stated that the bank was aware that the property was being subdivided.
58. On cross-examination by Counsel for the church he stated that the charge was registered on 28th May 2015 and he received the title on 4th June 2015. He did not have the consent form.
59. On cross-examination by Learned Counsel Mr. Motari he stated that he did not have evidence of payment of Kshs. 19,000,000/= and neither did he have the copy of the sale agreement. They did not buy the land from Samuel Cege Kibunja. He did not have evidence of any payments made for the advertising and architectural services. He did not have the valuation report and neither did he have the mutation forms.
60. On re-examination he stated that the land was vacant upon purchase and they have occupied it from 4th June 2015. He also stated that he was not aware if the bank did a search.

The written submissions of Baliga Limited

61. Baliga Limited the Plaintiff in ELC 557 of 2016 filed written submissions dated 16th day of September 2024 through the firm of Waweru Gatonye & Company Advocates. Counsel submitted on the following issues:-
 - (i) Whether a declaration should issue to the effect that the Plaintiff is the registered bona fide owner of the suit property.
 - (ii) Whether the acquisition of the title by the 1st and 2nd Defendants of the suit property legally belonging to the Plaintiff was regular and whether the 1st and 2nd Defendant discharged the burden of proof on how they acquired the suit premises.
 - (iii) Whether the charging of the title by the 1st Defendant was irregular and cannot cure the fraudulent acquisition.
 - (iv) The laws of the church to the suit and withdrawal of HCCC EC 155/2015.
 - (v) Whether the 1st Defendant is entitled to the Counterclaim and special damages as sought in its defence and Counterclaim.
 - (vi) Who should bear the costs of the suit.
62. Citing the case of Elizabeth Wambui Githinji & 29 Others =Versus= Kenya Urban roads Authority & 4 Others (2019) eKLR it was submitted that the doctrine of sanctity of title has been enshrined in both statutory and judicial precedents.
63. It was submitted that the Plaintiff lawfully acquired title over L.R Juja/Komo/block 1/30 from Mumo Estates who are the historical owners of the land. It is not in dispute that Bellina Gatonye was the registered owner of Juja/Komo block 1/31 and the Plaintiff was the registered owner of Juja/Komo block 1/30 which was also confirmed by the Chief Land Registrar.
64. Counsel urged the court to declare that the Plaintiff as the bonafide owner of the suit property having proved the same to the required standards.
65. On whether the acquisition of the title by the 1st and 2nd Defendants was regular and whether the 1st and 2nd Defendants have discharged the burden of proof on how they acquired the suit premises, it was submitted that the whole land initially belonged to Mumo Estates Ltd who subdivided the land



- to 94 beneficiaries of which the 1st and 2nd Defendants were not listed therein. It was further submitted that the 1st and 2nd Defendants had not satisfactorily explained during trial of how they acquired Juja/Komo block 1/30.
66. It was submitted that the 1st and 2nd Defendants purported search was a forgery and not genuine for the reasons that the copy of the said search did not have any search seal, the same showed Cege Kibunja and Wilson Ndirangu as the owners of the property yet Baliga Limited never sold to them.
 67. It was further submitted that the 1st and 2nd Defendants could not even explain how and from whom they alleged to have bought the property. The alleged sale agreement for Juja/Komo block 1/30 between Zackary Michuki Kamondo to Samuel Kibunja and Wilson Irungu Ndirangu was allegedly made on 16th February 2001.
 68. It was further submitted that the 1st and 2nd Defendants did not have the original title as per the alleged search of 13th April 2006.
 69. It was also submitted that Zachary Michuki Kamondo the purported vendor did not have a copy of the title deed he held before selling to them, he did not testify in the matter and did not have any documents of transfer, conveyance, stamp duty and it could not be explained how he acquired the title since he was not part of the Mumo Estates Ltd.
 70. In respect to the testimony of Wilson Irungu Ndirangu, it was submitted that he did not produce any evidence of payment of the purchase price nor transfer, no evidence of payment of stamp duty and neither did he produce any bank statements to support the transactions.
 71. It was further submitted that the 1st and 2nd Defendants had failed to present a cogent argument or evidence challenging the Plaintiff's title. The cases of Margaret Njoki Kamau =Versus= Reuben Ndiro Mwangi (2021) eKLR and Dina Management Limited =Versus= County Government of Mombasa & 5 Others (2023) eKLR were cited in support.
 72. In respect to the charge by the 4th Defendant, it was submitted that the bank did not do due diligence before charging the property and releasing the funds. It was contended that using portion No. 3080 as security was marred with irregularities and illegalities hence Chase Bank lacks the authority to dispose of the said property. It was also submitted that the said charge was not lawfully executed to secure the loan advanced to the 1st Defendant.
 73. It was further submitted that the 1st and 2nd Defendants titles to the property which was irregularly acquired cannot be shielded by the protection of indefeasibility under Section 26 of the [Land Registration Act](#).
 74. The Plaintiff also submitted that pursuant to Section 80 of the [Land Registration Act](#), the court should proceed to cancel the title held by the 1st and 2nd Defendants. The case of Ngugi =Versus= Kamau & Another (Environment Land Case No. 36 of 2020 (2022) KEELC 2261 (KLR) was cited in support.
 75. As to whether Deliverance Church has locus to the suit and rightfully withdrew ELC 155 of 2015 against the Vendor, it was argued that allegations that the current suit is res judicata are baseless since ELC No. 155 of 2015 was withdrawn and was never heard on merits.
 76. As to whether the 1st Defendant is entitled to the reliefs sought in the Counterclaim, it was submitted that no receipts or documents was produced during trial to support any of the alleged expenses. The court was urged to grant the prayers sought in the plaint dated 25th May 2016.



The submissions of the Registered Trustees of Deliverance Church

77. The submissions were dated 20th September 2024 and were filed by Kinyua Mbaabu & Company Advocates. Their submission focussed on the following issues:-
- (i) Whether the Plaintiffs have locus to institute the suit.
 - (ii) Whether the title obtained by the parties was proper.
 - (iii) Whether the charge held by the 4th Defendant is valid.
 - (iv) Whether the Counterclaim is merited.
78. In respect to locus, it was submitted that the church had produced in evidence a sale agreement dated 11th September 2008 between themselves and Baliga Limited and Bellina Wacuka Gatonye for the sale of land at Kshs. 13,775,000/= and the same was proof of ownership since the parties had given effect to the intentions as contained in the agreement. It was also submitted that the church had paid a substantial amount of the purchase price and as such the church had indeed a legitimate cause of action against the Defendants.
79. In respect to the authenticity of the title obtained by the parties, it was argued that the 3rd Defendant who is the custodian of the lands records had confirmed that Baliga Limited was the registered proprietor of the suit property which they had transferred to the church after acquiring the same from Mumo Estates Limited.
80. In respect of the title by the 2nd Defendant Samuel Kibunja, it was argued that the 2nd Defendant did not tender any evidence showing that he did due diligence when purchasing the suit property from the alleged Zachary, the Vendor. He did not produce any allotment to Zachary, pre-registration search or green card to prove his acquisition of the sale land, nor payment of the purchase price and other relevant document to confirm how he acquired the property.
81. In respect to the 1st Defendant, New Age Limited, it was submitted that the acquisition of the said property was irregular and unlawful and no Land Control Board consent was obtained.
82. Citing the case of Dina Management Limited =Versus= County Government of Mombasa (2023) eKLR, it was argued that the 1st Defendant was not an innocent purchaser for value since the entire process of acquisition of the said property was flawed.
83. As to whether the 4th Defendant's charge is valid, it was submitted that during trial, the 4th Defendant did not produce the entire offer letter, no valuation report and the necessary documentation confirming that indeed funds were credited to the 1st Defendant. It was also submitted that the 4th Defendant did not register the other forms of security and hence the said charge was not validly registered against the said property. The case of Daniel Kipruto Motto =Versus= Chase Bank (Kenya) Limited (2018) eKLR was cited in support.
84. In respect to the Counterclaim, it was argued that no receipt and evidence had been tendered to support the same. The court was urged to dismiss the same with costs and grant the reliefs sought in the Plaintiff's amended plaint dated 7th September 2017.

The 1st Defendant's submissions

85. The 1st Defendant filed written submissions dated 10th October 2024 through the firm of CM Advocates LLP and submitted on the following issues:-



- i. Whether a suit against Chase Bank Limited (in liquidation) can be sustained.
 - ii. Whether the Registered Trustees of Deliverance Church have any legal or proprietary interest in the properties.
 - iii. Whether the Registered Trustees of Deliverance Church can seek orders in relation to Juja/Komo/block 1/31-40, Juja/Komo/block 1/3079, Juja/Komo/block 1/3080 in this suit.
 - iv. Whether the 1st and 2nd Defendants hold valid and absolute titles to the properties in quest (LR Juja/Komo/block 1/3079 and L.R Juja/Komo/block 1/3080).
 - v. Whether the Plaintiffs should reimburse the damages suffered by the 1st and 2nd Defendants due to the law suit.
86. It was submitted that pursuant to Section 25 of the Kenya Depositors *Insurance Act* and Section 432(2) of the *Insolvency Act* no action or proceedings should be commenced or continued against a company in liquidation without the leave of the court.
87. On whether the Registered Trustees of Deliverance Church have any legal or proprietary interest in the properties they claim, it was submitted that the trustees are not the registered proprietors of the suit property and their claim is statutory time barred since 8 years have lapsed when they purchased the property.
88. On whether the Registered Trustees of the Church can seek orders in respect to Juja/Komo/block 1/31-40, Juja/Komo/block 1/3079 and Juja/Komo/block 1/3080 in the suit, it was submitted that the same is not registered in their names nor the Defendants and further that the same may be owned by 3rd Parties who are not parties to the suit and thus they may be condemned unheard. Reliance was placed on several cases including; Ruth Wanja Mwangi =Versus= Samuel Mwaura Njuguna (2017) eKLR, J.M.K =Versus= M.W.M & Another (2015) eKLR among others.
89. As to whether the 1st and 2nd Defendants hold valid and absolute titles to the properties in question (L.R Juja/Komo/block 1/3079 and 3080, it was submitted that the 1st and 2nd Defendants hold absolute titles to the properties in question and that the 1st Defendant is a bonafide purchaser for value with no notice of fraud.
90. It was submitted that Charles Gatonye S.C did not explain how he had not taken action for so long regarding the lost title nor had he explained why and how for eight years he did not attempt to transfer to the buyer.
91. It was also submitted that the 1st and 2nd Defendants had taken possession of the suit property and as such they are the legitimate owners in view of Section 116 of the *Evidence Act* and the cases of Benja Properties Limited =Versus= Syenda Mohamed Burhamudin Sahed & 4 Others (2015) eKLR.
92. In respect to the reimbursement of damages suffered, it was argued that the 1st and 2nd defendants had incurred a total of Kshs. 30,011,508/= as a result of direct financial out lays made in anticipation of selling the developed plots and also due to the delay interest had accrued to Kshs. 15,839,366/= which was sought in the Counterclaim that ought to be paid.
93. The court was urged to dismiss the suit and allow the Counterclaim.

The 3rd Defendant's submissions

94. The 3rd Defendant filed written submissions dated 22nd October 2024 through J. Motari Matunda Principal State Counsel. Counsel submitted on the following issues; whether the Plaintiff in Nairobi



ELC 557 of 2016 was the registered owner of the parcels of land Juja Komo block 1/30-40, whether the 3rd Defendant neglected, delayed and failed to transfer the suit parcels Juja Komo block 1/31-40, whether the 1st Defendant is the lawful owner of the land parcel Juja Komo block 1/3080, whether the 1st Defendant is entitled to Counterclaim and the special damages claimed, whether the 4th Defendant is entitled to any relief and who should bear costs of the suit.

95. It was argued that Baliga Limited had produced documents that demonstrated that they indeed purchased the suit land from Mumo Estates Limited being various blocks of land which was later sold to the church but transfer could not be effected because the title had been misplaced and or lost. It was further submitted that relying on the evidence produced before court by the Plaintiff Baliga Limited, it indeed proved that it is the registered owner of the parcel of land including Juja Komo block 1/30 and its subdivisions which were illegal and are entitled to an order of a declaration that the title Juja Komo block 1/30 belongs to the Plaintiff which will be later transferred to the church. Reliance was placed on Section 26 of the *Land Registration Act*.
96. As to whether the 1st Defendant acquired lawful title in the said suit land block 1/3080 it was argued that the 1st Defendant had confirmed during hearing that it did not do due diligence before purchase. It was also submitted that the 1st Defendant did not lead any evidence of payment of a sum of Kshs. 19Million being put on the purchase price and that upon acquiring the alleged loan, did not pay the said money and hence it was clearly a fraudulent scheme intended to acquire property fraudulently and also obtain money from the 4th Defendants fraudulently.
97. It was further submitted that the 1st Defendant was supposed to provide a personal bank guarantee, none was produced by the 4th Defendant nor the 1st Defendant during trial. It was also not controverted that at the time of hearing the 1st Defendant had removed his Co-Director from the company which led to inference that indeed there was intent to commit fraud and indeed fraud was committed. It was also submitted that based on that the 1st Defendant cannot be an innocent purchaser for value. The case of Samuel Kaimere =Versus= Land Registrar (2015) eKLR was cited in support.
98. On whether the 1st Defendant is entitled to any damages, it was argued that the 1st Defendant did not produce any receipt for payment of the money claimed under special damages and as such the same cannot be granted.
99. As to whether the 4th Defendant is entitled to any relief, Counsel argued that the 4th Defendant had conceded during hearing that it did not carry out due diligence in the securitization of the charge and as such it is not entitled to any reliefs.

The 4th Defendant's written submissions

100. The 4th Defendant filed written submissions dated 6th November 2024 through the law file of KOMM Advocates. Counsel submitted on whether the 1st and 2nd Defendants titles are indefeasible.
101. It was submitted that the 1st and 2nd Defendants had during trial proved beyond reasonable doubt that they were bona fide purchasers for value without notice of fraud. It was also submitted that the Plaintiffs had failed to prove any fraud on the part of the Defendants. The 2nd Defendant and Mr. Irungu took possession of the suit property in 2001 upon completion of the purchase and the possession remained uninterrupted until 2015 when Deliverance Church laid a claim on the suit property.
102. The 4th Defendant concluded its submissions by urging the court to dismiss the Plaintiffs suit and find that the legal charge registered in favour of the 4th Defendant is valid.



Analysis and Determination

103. The court has considered the pleadings, evidence adduced and written submissions filed and the following are the salient issues for determination herein:
- i. Whether Bishop Mark Kariuki, Bishop John B. Masinde and Bishop George Gichana (suing as the Trustees of Deliverance Church) have any locus to institute the suit and any cause of action as against the Defendants herein.
 - ii. Whether the 1st and 2nd Defendants hold valid and absolute titles to the properties known as L.R Juja/Komo/block 1/3079 and LR Juja/Komo/block/3080.
 - iii. Whether the charge held by the charge held by the 4th Defendant is valid.
 - iv. Whether the Plaintiffs in the consolidated suits are entitled to the reliefs sought.
 - v. Whether the 1st Defendant is entitled to the reliefs sought in the Counterclaim.
 - vi. What orders should issue as to costs of the suit and Counterclaim.
104. The court shall now analyse and dispose the said issues in the above order.

Issue No. 1 Locus standi and cause of action against the Defendants by the Plaintiffs

105. The 1st and 2nd Defendants pleaded at paragraph 10 of their Amended Defence and Counterclaim dated 2nd October 2017 that the Plaintiffs claim by Bishop Mark K. Kariuki, Bishop John B. Masinde and Bishop George Gichana being the Registered Trustees of Deliverance Church is defective and bad in law and discloses no reasonable cause of action in law against the 1st and 2nd Defendants on the following grounds:-
- i. The cause of action in the Amended plaint is unenforceable in law and statute barred by the Limitation of Actions Act having been filed over 6 years since the date of sale agreement dated 11th September 2008.
 - ii. The sale agreement dated 11th September 2008 and basis of the Plaintiff's claim is a nullity, void and unenforceable in law for lack of the Land Control Board's consent which is a mandatory requirement of the Land Control Act.
 - iii. The alleged vendors of the sale agreement dated 11th September 2008 had no legal and proprietary interest in the alleged property known as Juja/Komo block 1/30 hence incompetent parties in law to sell the property.
 - iv. The Plaintiffs have no registered interest over the 1st and 2nd Defendants properties herein as Juja/Komo block 1/30 hence lack capacity to institute a suit or seek reliefs purported in the plaint against the 1st and 2nd Defendants.
 - v. A sale agreement for land on its own does not convey any interest over land in law.
106. On this particular issue the 1st Defendant submitted that the Trustees of Deliverance Church have admittedly never been registered as proprietors of the suit property and hence they lack capacity to bring claims against the Defendants. It was submitted that Baliga Limited and Deliverance Church cannot simultaneously assert claims to the same title. It was also submitted that if the Trustees of Deliverance Church have any claim to the property then that claim ought to have been directed to



- Baliga Limited. It was also submitted that Deliverance Church knew that it was statutorily time barred as it went to slumber for 8 years and thus decided to try its luck in the suit.
107. In responding to this issue, Deliverance Church submitted that during trial they had produced a sale agreement dated 11th September 2008 between the Plaintiff's and Baliga Limited and Bellina Wacuka Gatonye for the sale of land at Kshs. 13,775,000/= They had already paid a substantial sum of the purchase price save for Kshs. 500,000/= which was payable upon completion and it was a term of the sale agreement that they would take vacant possession of the property immediately awaiting unencumbered documents of title.
 108. It was also submitted that Deliverance Church took possession of the land after payment of the purchase price and had even properties Juja/Komo block 1/31-40 transferred to them vide the sale agreement dated 11th September 2008 and as such the Deliverance Church has locus and cause of action against the Defendants as they claim ownership over the properties. The case of Kimani Njeri & 3 Others (Environment and Land Case No. 10 of 2022 (2023) was cited in support.
 109. Baliga Limited in supporting the position taken by Deliverance Church on the said issue submitted that Deliverance Church had every reason to pursue the wrong doer and the earlier case ELC No. 155 of 2015 was withdrawn before it could be heard on merit for the reasons that the church realized that the rightful owner Baliga Limited had nothing to do with the encroachment. It was also submitted that the issue of res judicata cannot arise since the current Defendants were not parties to the previous suit.
 110. A "cause of action" refers to the set of facts that legally justify a person to bring a lawsuit against another, essentially the legal wrong that creates the right to sue, and includes all essential elements the plaintiff must prove to succeed in court; it's the factual situation that entitles someone to seek a remedy from the court against another party.
 111. In the Court of Appeal case of Attorney General & another v Andrew Maina Githinji & Another [2016] eKLR Waki JA. held that,

“A cause of action is an act on the part of the defendant, which gives the plaintiff his cause of complaint.”

That definition was given by Pearson J. in the case of Drummond Jackson vs Britain Medical Association (1970) 2 WLR 688 at pg 616. In an earlier case, Read vs Brown (1889), 22 QBD 128, Lord Esher, M.R. had defined it as: -

“Every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgement of the court.”

Lord Diplock, for his part in Letang vs Cooper [1964] 2 All ER 929 at 934 rendered the following definition: -

“A cause of action is simply a factual situation the existence of which entitles one person to obtain from the court a remedy against another person.”
 112. Locus standi means the right to appear before and be heard in a court of law. Without it, even when a party has a meritorious case, he cannot be heard because of that. Locus standi is so important that in its absence, party has no basis to claim anything before the Court.
 113. In the instant case, the church has sufficiently demonstrated its stake and interest in the matter. From the evidence that was adduced during trial, the church entered into an agreement with Baliga Limited and Bellina Wacuka Gatonye which agreement was dated 11th September 2008 and was produced in evidence. It was also evident that the Church paid a deposit of Kshs. 6,500,000/= and another payment



of Kshs. 7,275,000/= leaving a balance of Kshs. 500,000/= which was to be paid on completion. However, completion was not effected since Baliga Limited had misplaced the title documents and also the 1st and 2nd Defendants claimed ownership of the said property. In view of the foregoing it is the finding of this court that the church has the requisite locus standi and a justifiable cause of action to institute this suit as against the Defendants herein.

Issue No. 2 Whether the 1st and 2nd Defendants hold valid and absolute titles to the properties known as LR No. Juja/Komo/block 1/3079 and LR Juja/Komo/block 3080.

114. It was the case of the Plaintiffs that the 1st and 2nd Defendants fraudulently acquired the property known as L.R Juja/Komo/block 1/30 (now allegedly known as L.R Juja/Komo/block 1/3079 and LR Juja/Komo/block 1/3080 when they were aware that the Baliga Limited was the bonafide owner having bought the same from the original owners Mumo Estates Limited.
115. The 1st and 2nd Defendants on the other hand pleaded that the said property was initially registered in the joint names of Wilson Ndirangu Irungu and the 2nd Defendant until February 2014 or thereabouts when the said property was lawfully subdivided into two properties known as Juja/Komo block 1/3079 and Juja/Komo block 1/3080 registered in the names of the 2nd Defendant and Wilson Ndirangu Irungu respectively. It was also pleaded that by reason of the said subdivision the property known as Juja/Komo block 1/30 ceased to exist.
116. It was the 1st Defendant's case that it lawfully acquired the said property Juja/Komo/block 1/3080 from Wilson Ndirangu Irungu and holds an indefeasible title deed issued on 4th June 2015. As for the 2nd Defendant it was pleaded that he holds an indefeasible title deed to the property known as Juja/Komo block 1/3079 issued on 27th August 2015.
117. It is trite law that whoever alleges must prove. Section 107 (1) of the *Evidence Act*, Cap 80 Laws of Kenya provides that:

‘Whoever desires any court to give judgment as to any legal right or liability dependant on the existence of facts which he asserts must prove that those facts exist.’

118. On evidentiary burden of proof, Sections 109 and 112 of the *Evidence Act* provide as follows:

“109. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of the fact shall lie on any particular person.”

112. in civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving the fact is upon him.”

The two provisions were dealt with in the case of Anne Wambui Ndiritu –vs- Joseph Kiprono Ropkoi & Another [2005] 1 EA 334, in which the Court of Appeal held that:

“As a general proposition under Section 107 (1) of the *Evidence Act*, Cap 80, the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. There is however the evidential burden, that is, placed upon a party..... the burden of proving any particular fact which he desires



the court to believe in its existence which is captured in Sections 109 and 112 of the Act.”

119. Where a court is faced with two or more competing interests over the same suit property, it must look into the root of ownership of the suit said. This approach was well appreciated in the case of *Hubert L. Martin & 2 Others vs Margaret J. Kamar & 5 Others* [2016] eKLR. Equally in the case of *Nairobi High Court Civil Suit No. 1024 of 2005(O.S), Milankumar Shah & 2 others v The City Council of Nairobi & another*, the court stated as follows:

“We hold that the registration of title to land is absolute and indefeasible to the extent firstly that the creation of such title was in accord with the applicable law and secondly where it is demonstrated to a degree higher than the balance of probability that such registration was not procured through fraud and misrepresentation to which the person or body which claims and relies on that principle has not himself or itself been part of a cartel which schemed to disregard the applicable law, and the public interest”.

120. Equally it is not automatic that simply accepting titles as conclusive, incontestable and indefeasible or the concomitant argument that in the face of two or more competing titles, the first in time automatically prevails. It is not enough to wave an instrument of title or rest easy on the former rock of chronological primacy. What must now be established by he who would prevail is the solidity of the root of title. No flowery foliage, absent a sturdy and settled root speaking to a regular and legal process preceding the product that is the title, will avail the holder. That much is now the law pronounced in a lengthening line of authorities such as *Munyu Maina vs Hiram Gathiha Maina (Supra) And Funzi Development Ltd & Others vs Country Council Of Kwale* [2014] eKLR, and by the Supreme Court in its authoritative and all-binding decision of *Dina Management Limited vs County Government of Mombasa & 5 Others* [2023] eKLR

121. As earlier stated and without appearing to be repetitive, a court when faced with a case of two or more titles and interests over the same land has to make an investigation so that it can be discovered who is the bonafide and lawful owner. This investigation must start at the root of the title and follow all processes and procedures that brought forth the interests of each party to the land. 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. The parties to such litigation must always bear in mind that their title is under scrutiny and they need to demonstrate how they got their title starting with its root. No party should take it for granted that simply because they have a title deed or Certificate of Lease, then they have a right over the property. The other party also has a similar document and there is therefore no advantage in hinging one case solely on the title document that they hold. Every party must show that their title has a good foundation and passed properly to the current title holder. With the nature of case at hand, I will need to embark on investigating the chain of processes of the root of each title which a view of ascertaining who is the bonafide owner.

122. The Court of Appeal in the case of *Jacob Wekesa Bokoko Balongo vs. Kincho Olokio Adeya & another* [2020] eKLR held as follows on the importance of deciphering the historical acquisition of title:

“The historical background to the acquisition of the title is as good as the title itself. How else, for example, can a person seeking to impugn or impeach the title on the grounds of fraud, misrepresentation or it having been obtained unprocedurally or through corrupt means do so without placing the title in its historical context? On the ground of indefeasibility of title, it was urged that the trial judge erred in failing to find that the appellant’s title to the suit land was indefeasible... In the persuasive case of *Fahiye & 2 others – v- Omar & 4 others*



[201] 2KLR, 224, it was held that indefeasibility of title is not absolute particularly where the whole transaction was void. In *Milankumar Shah and 2 Others vs. City Council of Nairobi & Attorney General* (Nairobi HCC Suit No. 1024 of 2005 (05), it was correctly pointed out that: “The concept of absolute and indefeasible ownership of land cannot be clothed with legal and constitutional protection if the interest was acquired through fraud, misrepresentation, illegality, unprocedural ways or corrupt schemes. This concept cannot be used to sanitize the commissioner if it allocates or issues title in such manner. In the case of *Champaklal Ramji Shah & 3 Anors –v- AG & Anor*, HCCC No. 145 of 1997, it was held that the court has a duty to examine the process of acquisition of such title and if it determines that there is an illegality, should nullify the titles as required.”

123. The apex court also shed light on the relevance of a historical background analysis insofar as acquisition of title is concerned restating that the ownership of land whose title was not acquired regularly is not protected under Article 40 of *the Constitution* on the protection of right to property. It held as follows in *Dina Management Limited vs. County Government of Mombasa & 5 others* (supra):

“Where the registered proprietor’s root title was under challenge, it was not enough to dangle the instrument of title as proof of ownership. It was the instrument that was in challenge and therefore the registered proprietor must go beyond the instrument and prove the legality of the title and show that the acquisition was legal, formal and free from any encumbrance including interests which would not be noted in the register.”

124. Section 26 of the *Land Registration Act, Act No. 3 of 2012*, provides that a title which was acquired by way of fraud or misrepresentation, where a person is proved to be a party can be attacked. So too a title which was acquired illegally, procedurally or through a corrupt scheme. The said Section is drawn as follows: -

“26.

- (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.
- (2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original.”

125. From the evidence that was adduced herein, it was evident that the entire land within the suit premises was previously owned by Mumo Estates Ltd as which owned land comprising of the following:



LR No. 7178(IR 4208/23) measuring 76.28Ha, L.R No. 9936 (IR 15283) measuring 283.89Ha and IR 5843 measuring 3.403Ha. It was also evident that Mumo Estate Ltd sometimes in 1996 applied to consolidate all its three titles. After consolidation, the company got a Surveyor by the name Gabriel Marita Mbego to subdivide the parcel and all members to be allocated their respective portion commensurate with their shareholding. The property was thus amalgamated and converted to freehold and later subdivided in 1997 into 94 portions.

126. It was also evident that Baliga Ltd and Bellina Wacuka Gatonye did not sell any land to any other person other than the trustees of Deliverance Church.
127. The 1st and 2nd Defendant were not listed as shareholders by Mumo Estates Limited who were the original allottees of the said land. No evidence was adduced during trial showing movement of the property from Samuel Cege Kibunja, Wilson Irungu Ndirangu to New Age Developers Construction Company Ltd. No agreement, transfers, consent or any evidence or confirmation of any consideration was adduced before court.
128. The 1st and 2nd Defendants were unable to explain how and from who they alleged to have bought the property. No evidence nor documentation was adduced in respect to the alleged sale agreement for Juja/Komo/block 1/30 between Zachary Michuki Kamondo to Samuel Kibunja and Wilson Irungu Ndirangu was allegedly made on 16th February 2001.
129. Wilson Irungu Ndirangu who testified herein that he purportedly owned Juja/Komo block 1/3080 and that he transferred the same to the 1st Defendant could not provide any evidence of payment of the purchase price nor the transfer.
130. It was evident that the 1st Defendant did not do due diligence prior to purchase of the suit property. The 1st Defendant did not lead any evidence of payment of a sum of Kshs. 19 Million being part or purchase price and upon acquiring the loan, it did not repay the same and this could only have been a fraudulent scheme intended to acquire property fraudulently are also obtain money from the 4th Defendants fraudulently.
131. The Land Registrar who testified herein equally confirmed that there was no title for Juja/Komo block 1/30 in Thika Lands Registry save for a subdivision scheme which was doubtful in the name of the 1st Defendant and which was not supported by purchase by Samuel Kibunja from the seller. It was also evident that at the time the 2nd Defendant was transferring there was no records in Thika Lands Registry that would have created a doubt as to ownership by the Plaintiff.
132. In view of the foregoing, it is the finding of this court that the 1st and 2nd Defendant's hold no valid and absolute titles in respect to properties L.R Juja/Komo/block 1/3079 and LR Juja/Komo/block 1/3080.

Issue No. (iii) Whether the Plaintiffs herein are entitled to the reliefs sought in their respective plaints

133. This court having found that the 1st and 2nd defendants do not hold valid and absolute titles in respect to LR Juja/Komo/block 1/3079 and LR Juja/Komo/block 1/3080 it therefore follows that the Plaintiffs are entitled to the reliefs sought as enumerated in their plaint and the same are for granting. The court shall proceed to pronounce itself on their appropriate reliefs at the end of this judgment.

Issue No. (iv) Validity of the charge held by the 4th Defendant

134. It was the 4th defendant's case that vide a letter of offer dated 16th March 2017, the 4th Defendant at the behest of the 1st Defendant agreed to advance to the 1st Defendant a sum of Kshs. 43,605,000.00. To



secure the advances, a legal charge over title Number Juja/Komo block 1/3080 was created in favour of the 4th Defendant since according to the 4th Defendant the registered owner of the said property at that time was the 1st Defendant. It was also the 4th Defendant's case that it conducted due diligence leading up to the registration of the legal charge.

135. The Plaintiffs on the other hand maintained that the said charge was invalid for want of compliance with the law and the procedures.
136. It is trite law that any challenge on the validity of a charge places a heavy duty on the party doing so to bring forth any such evidence that may displace the presumption that a charge is valid since the statutory instruments have been complied with. This was stated in the case of *Equip Agencies Ltd =Versus= I&M Bank Ltd (2017) eKLR* where it was held:-

“That Section 56 of the *Land Registration Act*, deals with the form and effect of registration of a charge and no legal charge can be registered unless the Registrar is satisfied that all the necessary consents and requirements have been fulfilled.”
137. The court in the aforementioned case relied on earlier sentiments expressed in *Coast Brick Tiles & tiles =Versus= Premchand & Another (1964) EA 187* where it was held:

“By Section 32 upon registration the land specified becomes liable as security. In view of these provisions I think that anyone who challenges the validity of a duly registered instrument (if he can do so at all) must discharge a substantial onus...”
138. The reason why the provisions of Section 56 of the *Land Registration Act* are germane to the understanding of Section 90 of the *Land Act* as read with Section 82 and Section 83 and restrictions under Section 87 of the *Land Act* is to ensure that parties keep straight and the narrow.
139. In the instant case, the court having analysed the evidence adduced during trial noted that the 4th Defendant did not make any effort to establish the relationship between the company and the persons who signed the charge, who the directors of the borrower were nor did the 4th Defendant require for any guarantees from the directors as security and none was produced in evidence.
140. No evidence was adduced confirming that any valuation and pre-search was done before charging the property. The offer letter that was produced in evidence was incomplete. There was no evidence of disbursement of funds which was produced in evidence and equally no evidence of any confirmation of receipt of the funds by the nor any documentation that they were released from any undertaking was produced in evidence.
141. The aforementioned scenario only confirms that the bank did not do due diligence as per the law before charging the said property. Equally the 1st Defendant did not have any valid title upon which the property could be charged.
142. In view of the foregoing, it is the finding of this court that the charge was not validly registered and the same remains invalid.

Issue No. (v) Whether the Counterclaim by the 1st Defendant is merited

143. The 1st and 2nd Defendants filed an amended statement of defence and Counterclaim dated 2nd October 2017 and sought the following reliefs against the Plaintiffs:-
 - i. General damages.



- ii. Special damages of Kshs. 30,011,508/=
 - iii. Interest.
 - iv. Costs of the suit.
 - v. Any other relief that this court may deem just to grant.
144. The 1st and 2nd Defendants also filed a Notice of Claim against the 5th Defendant and sought the following reliefs:-
- i. Special damages of Kshs. 30,011,508/=
 - ii. General damages.
 - iii. Interest.
 - iv. Mesne profits.
 - v. Costs.
145. A counter claim is just like a suit which ought to be proved to the required standard.
146. This court having found that the 1st and 2nd Defendants title was not obtained lawfully cannot proceed to grant any reliefs sought in respect to the said Counterclaim.
147. In respect to special damages, it is now trite law that special damages must first be pleaded and then strictly proved. There is a long line of authorities to that effect. During trial, the 1st Defendant did not produce any receipts for payment of the money claimed under special damages and as such the same cannot be granted.
148. In the circumstances it is the finding of this court that the same was not proved and cannot be granted. In conclusion on this issue the court finds that the 1st and 2nd Defendants counterclaim is not merited and the same is for dismissal.

Issue No. (vi) What orders should issue as to costs

149. On the issue of costs, the general rule is that costs follow the event in accordance with the provisions of Section 27 of the *Civil Procedure Act* (Cap.21). A successful party should ordinarily be awarded costs of an action unless for good reason the court directs otherwise. I find no reason to hold otherwise. The Plaintiffs in the consolidated suits are hereby awarded costs of the suit and the counterclaim. The said costs of the suit and counterclaim shall be paid by the 1st, 2nd and 4th Defendants.

Final Orders

150. In conclusion it is the finding of this court that the Plaintiffs in the consolidated suits have been able to prove their cases to the required standard and as such they are entitled to the reliefs sought.
151. Consequently and in the premises, the court proceeds to enter judgment in the following terms:-
- a. A declaration be and is hereby issued that properties known as Juja/Komo block 1/30, Juja/Komo block 1/30, Juja/Komo block 1/31, Juja/Komo block 1/32, Juja/Komo block 1/33, Juja/Komo block 1/34, Juja/Komo block 1/35, Juja/Komo block 1/36, Juja/Komo block 1/37, Juja/Komo block 1/38, Juja/Komo block 1/39, Juja/Komo block 1/40, Juja/Komo block 1/3079 and Juja/Komo block 1/3080 all measuring 29 acres situate at Ndarug within the County of Kiambu belongs to the Plaintiffs.



- b. A permanent injunction be and is hereby issued restraining the Defendants either jointly or individually or through their agents, servants, employees and/or anyone else from driving title from the Defendants from encroaching into, trespassing, constructing, selling, offering for sale, transferring, wasting, taking possession of, alienating or disposing of in any manner whatsoever digging and or any other way interfering with the Plaintiff's properties known as Juja/Komo block 1/30, Juja/Komo block 1/30, Juja/Komo block 1/31, Juja/Komo block 1/32, Juja/Komo block 1/33, Juja/Komo block 1/34, Juja/Komo block 1/35, Juja/Komo block 1/36, Juja/Komo block 1/37, Juja/Komo block 1/38, Juja/Komo block 1/39, Juja/Komo block 1/40, Juja/Komo block 1/3079 and Juja/Komo block 1/3080 all measuring 29 acres situate at Ndarugo within the County of Kiambu.
- c. A mandatory injunction be and is hereby issued directing the 3rd Defendants to avail the registers for land parcel numbers known as Juja/Komo block 1/30, Juja/Komo block 1/30, Juja/Komo block 1/31, Juja/Komo block 1/32, Juja/Komo block 1/33, Juja/Komo block 1/34, Juja/Komo block 1/35, Juja/Komo block 1/36, Juja/Komo block 1/37, Juja/Komo block 1/38, Juja/Komo block 1/39, Juja/Komo block 1/40, Juja/Komo block 1/3079 and Juja/Komo block 1/3080 to facilitate of the same to the Registered Trustees of Deliverance Church.
- d. A declaration be and is hereby issued that the subdivision of the parcel of land known as Juja/Komo/block 1/30 into Juja/Komo/block 1/3079 and Juja/Komo/block 1/3080 was unlawful, illegal, null and void.
- e. An order be and is hereby issued directing the 3rd Defendant to process provisional title deeds for LR Juja/Komo/block 1/30 (also known as LR Juja/Komo/block 1/3079 and LR Juja/Komo/block 1/3080) all measuring 19.17 acres situate at Ndarugo within the County of Kiambu to facilitate the transfer of the same to the Registered Trustees of Deliverance Church.
- f. A declaration be and is hereby issued that the registration of the charge on 28th May 2015 in favour of the 4th Defendant against the title to the parcel of land known as Juja/Komo block 1/3080 was unlawful, illegal, null and void and the same be and is hereby reversed and discharged forthwith.
- g. The 1st and 2nd Defendants Counterclaim dated 2nd October 2017 be and is hereby dismissed.
- h. The costs of the suit and Counterclaim are hereby awarded to the Plaintiffs (Baliga Limited and Registered Trustees of Deliverance Church) which costs shall be paid by the 1st, 2nd and 4th Defendants.

Judgment accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI THIS 6TH FEBRUARY 2025.

E. K. WABWOTO

JUDGE

In the presence of:-

Mr. Mbaabu for the Plaintiffs in ELC Case No. 813 of 2015.

Ms. Gichuhi holding brief for Mr. Munyalo for Plaintiff in ELC Case No. 557 of 2016.

Mr. Motari for 3rd Defendant in both ELC Case No. 813 of 2015 and ELC Case No. 557 of 2016.

No appearance for other parties.



Court Assistants: Mary Ngoira and Norah Chao.

