



**Kamau v Kinuthia & 5 others (Environment and Land Case Civil Suit  
693 of 2015) [2025] KEELC 3962 (KLR) (6 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 3962 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE CIVIL SUIT 693 OF 2015**

**JO MBOYA, J**

**MAY 6, 2025**

**BETWEEN**

**JAMES KIARIE KAMAU ..... PLAINTIFF**

**AND**

**MARGARET WAIHERA KINUTHIA ..... 1<sup>ST</sup> DEFENDANT**

**KENYA NATIONAL HIGHWAYS AUTHORITY ..... 2<sup>ND</sup> DEFENDANT**

**CHIEF LAND REGISTRAR ..... 3<sup>RD</sup> DEFENDANT**

**THE NATIONAL LAND COMMISSION ..... 4<sup>TH</sup> DEFENDANT**

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

**ABSA BANK KENYA PLC ..... 6<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. The Plaintiff herein approached the Court vide Plaintiff dated the 26<sup>th</sup> July 2013 and wherein same sought various reliefs. The Plaintiff under reference was subsequently amended, re-amended and thereafter further re-amended culminating into the Further re-amended Plaintiff dated the 21<sup>st</sup> November 2023.
2. Pursuant to the Further re-amended Plaintiff, the Plaintiff has sought the following reliefs:
  - a. That a declaration be issued to declare that the suit property was transferred to the Plaintiff in accordance with the law and applicable procedures.
  - b. That a declaration be issued to declare that notwithstanding the actions and omissions of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, the registration of the Plaintiff as the owner of the suit property on in 2013 was lawful.



- c. That a declaration be issued to declare that the Plaintiff's Title to LR NO. Kikuyu/Kikuyu Block 1/1XX3 is valid.
- d. That an order of mandatory injunction be issued to Order the 2<sup>nd</sup> Defendant to give vacant possession of the suit property LR NO. Kikuyu/Kikuyu Block 1/1XX3 to the Plaintiff.  
As an alternative to the above, the Plaintiff prays for judgment against the Defendants jointly and severally as follows:
  - e. That declaration be issued to declare that the Charge dated the 22<sup>nd</sup> July 2011 over title LR NO. Kikuyu/Kikuyu Block 1/1XX3 is illegal, null and void ab initio.
  - f. That a declaration be issued to declare that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are jointly and severally liable for the fraudulent sale of the suit property to the Plaintiff.
  - g. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants be ordered to pay the Plaintiff special damages in the sum of Kshs. 15,500,000/= only being Costs of the land and improvements thereon as at 23<sup>rd</sup> June 2013.
  - h. Special damages in the sum of Kshs. 2,325,000/= only being the Costs of in commence and relocation from the suit property be paid to the Plaintiff by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.
    - i. General damages for fraud and illegality on the part of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.
  - j. Interest on (g) and (h) above from the date of filing the suit till payment in full.
  - k. Costs of the suit.
- 3. The 1<sup>st</sup> Defendant duly entered appearance and thereafter filed a Statement of Defence dated the 26<sup>th</sup> July 2013. The Statement of Defence under reference was subsequently amended vide amended Statement of Defence and Counter-claim dated the 23<sup>rd</sup> June 2014.
- 4. Furthermore, the 1<sup>st</sup> Defendant sought and obtained leave culminating into the filing of an amended Statement of Defence and Counter-claim dated the 12<sup>th</sup> October 2022 and wherein the 1<sup>st</sup> Defendant sought the following reliefs:
  - a. An Order for compensation for the difference of what the Court finds to be the true value of the Plot and what the 1<sup>st</sup> Defendant received [if at all] the Government compulsorily acquired the suit plot and building.
  - b. Costs of the Counter-claim.
- 5. The 2<sup>nd</sup> Defendant duly entered appearance and filed a Statement of Defence dated the 28<sup>th</sup> July 2014 and wherein the 2<sup>nd</sup> Defendant denied the claims by and on behalf of the Plaintiff. Furthermore, the 2<sup>nd</sup> Defendant contended that the suit property namely, LR NO. Kikuyu/Kikuyu/ Block I/1XX3, formed part of LR NO. Kikuyu/Kikuyu/ Block I/X8, which was compulsorily acquired by and on behalf of the 2<sup>nd</sup> Defendant.
- 6. The Statement of Defence by and on behalf of the 2<sup>nd</sup> Defendant was subsequently amended culminating into the amended Statement of Defence dated the 2<sup>nd</sup> September 2020. Instructively, the amended Statement of Defence has reiterated the position hitherto contained at the foot of the Statement of Defence.
- 7. The 3<sup>rd</sup> and 5<sup>th</sup> Defendants also entered appearance and filed a Statement of Defence. For good measures, the 3<sup>rd</sup> and 5<sup>th</sup> Defendants denied the claims by the Plaintiff. In any event, the 3<sup>rd</sup> and 5<sup>th</sup>



- Defendants contended that the Certificate of Title in respect of LR NO. Kikuyu/Kikuyu/ Block I/1XX3, was illegally acquired and thus the Plaintiff herein accrued no legal rights and/or interests thereto.
8. The 6<sup>th</sup> Defendant entered Appearance and filed a Statement of Defence and wherein same contended that the Title of LR NO. Kikuyu/Kikuyu/ Block I/1XX3 was lawfully charged to and in favour of the 6<sup>th</sup> Defendant. In any event, the 6<sup>th</sup> Defendant posited that prior to the perfection of the Charge, the 6<sup>th</sup> Defendant carried out and undertook due diligence over and in respect of the Title of the suit property.
  9. The instant matter came up for case conference on various dates including the 27<sup>th</sup> July 2023 and 14<sup>th</sup> November 2023, respectively when the Advocates for the parties confirmed that same had duly filed and exchanged the relevant pleadings, list and bundle of documents and the witness statements. Moreover, the Advocates for the parties posited that the suit was ready for hearing.
  10. The Plaintiff's case is premised on the evidence of two witness namely: James Kiarie Kamau and Edgar Wekesa Lupao. Same testified as PW1 and PW2, respectively.
  11. It was the testimony of James Kiarie Kamau [PW2] that same is the Plaintiff. Furthermore, the witness averred that by virtue of being the Plaintiff, same is knowledgeable of and conversant with the facts of the case. In addition, the witness averred that same has since recorded a comprehensive witness statement dated the 21<sup>st</sup> November 2023 and which witness statement the witness sought to adopt and rely on as his evidence in chief. To this end, the witness statement under reference was duly adopted and constituted as the evidence in chief of the witness.
  12. The witness further adverted to a list and bundle of documents dated the 21<sup>st</sup> May 2014 containing various documents and which documents the witness sought to tender and produce as exhibits. There being no objection to the production of the documents, same were duly tendered and produced as exhibits P1 – P16 on behalf of the Plaintiff.
  13. It was the further testimony of the witness that same has also filed a Further re-amended Plaintiff dated the 23<sup>rd</sup> November 2023 and which further re-amended Plaintiff the witness sought to adopt and rely on. In addition, the witness also referenced the verifying Affidavit annexed thereto.
  14. It was the further testimony of the witness that same bought and/or purchased the suit property, namely, LR NO. Kikuyu/Kikuyu/ Block I/1XX3. In addition, the witness averred that prior to and before purchasing the suit property, same undertook due diligence to ascertain the status of the Title which was held by the 1<sup>st</sup> Defendant. Furthermore, the witness averred that same procured and obtained a Certificate of Official Search over and in respect of the suit property.
  15. The witness further testified that during the due diligence, it transpired that the suit property was clear of any encumbrance. In particular, the witness averred that there was no Caution or restrictions that was registered against the Title.
  16. Be that as it may, the witness testified that on or about the year 2013, officers from the 2<sup>nd</sup> Defendant [KENHA] visited the suit property and informed same that the suit property had been acquired on behalf of the 2<sup>nd</sup> Defendant. The witness further averred that same was informed that the suit property was acquired for purposes of the construction of the Southern Bypass.
  17. Additionally, the witness testified that upon receipt of the information from the 2<sup>nd</sup> Defendant, same [witness] visited the offices of the Director General of the 2<sup>nd</sup> Defendant with a view to procuring further information. Furthermore, the witness added that upon visiting the offices of the Director General, same was informed that the suit property had been the subject of compulsory acquisition.



18. On cross examination by Learned Counsel for the 1<sup>st</sup> Defendant, the witness averred that same bought and/or purchased the suit property from the 1<sup>st</sup> Defendant. In addition, the witness testified that prior to and before purchasing the suit property, same undertook a search over and in respect of the suit property. Besides, the witness averred that same was issued with a Certificate of Official Search. Nevertheless, the witness acknowledged that same has not produced the Certificate of Official Search which was issued unto him.
19. It was the further testimony of the witness that upon being satisfied that the suit property was clear and available for sale, same entered into and executed a Sale Agreement dated the 14<sup>th</sup> June 2011. Moreover, the witness averred that the Sale Agreement was duly executed by both the Vendor [1<sup>st</sup> Defendant] and himself. Besides, the witness averred that the Sale Agreement contained all the terms that were agreed upon by the parties.
20. The witness further testified that the Purchase price was agreed upon and thereafter same was paid. In particular, the witness testified that the Purchase price was paid in two tranches. In addition, the witness testified that thereafter, the suit property was transferred and registered in his name. Furthermore, the witness testified that the suit property was equally Charged to and in favour of the 6<sup>th</sup> Defendant.
21. While still under cross examination, the witness averred that subsequently, same lodged a criminal complaint against the 1<sup>st</sup> Defendant. However, the witness acknowledged that no criminal complaint was lodged against the 2<sup>nd</sup> Defendant.
22. It was the further testimony of the witness that upon lodgment of the criminal complaint against the 1<sup>st</sup> Defendant, the 1<sup>st</sup> Defendant was subsequently arrested and charged with the offense of Obtaining money by false pretense. Nevertheless, the witness testified that the criminal case against the 1<sup>st</sup> Defendant was later Dismissed.
23. On cross examination by Learned counsel for the 2<sup>nd</sup> Defendant, the witness averred that a portion of LR NO. Kikuyu/Kikuyu/ Block I/X8, was compulsorily acquired. Nevertheless, the witness averred that same did not carry out any further due diligence to confirm the extent of the land that was compulsorily acquired. In addition, the witness testified that same did not visit the offices of the 2<sup>nd</sup> Defendant to ascertain whether the 2<sup>nd</sup> Defendant had any claim to the suit property.
24. The witness further testified that same has filed a Further re-amended Plaint. Furthermore, the witness averred that same has posited that the 1<sup>st</sup> Defendant did not have any legal interests over the suit land.
25. Upon being referred to page 5 of the 2<sup>nd</sup> Defendant's list and bundle of documents, the witness averred that the document in question is a copy of Gazette Notice. Furthermore, the witness testified that the Gazette Notice references various properties inter alia, LR NO. Kikuyu/Kikuyu/ Block I/X8. In addition, the witness averred that the Gazette Notice also references the acreage of the land being acquired.
26. It was the further testimony of the witness that same entered into a sale agreement after the land had vested in the Government. Moreover, the witness added that the land in question had vested in the Government. In addition, it was the testimony of the witness that the 1<sup>st</sup> Defendant was obligated to surrender the Certificate of Title to the Government.
27. While still under cross examination, the witness averred that same is not aware of the date when the 1<sup>st</sup> Defendant undertook the sub-division of the LR NO. Kikuyu/Kikuyu/ Block I/X8. Nevertheless,



- the witness testified and confirmed that the sub-division was undertaken long after the compulsory acquisition. Moreover, the witness averred that the land in question had been compulsorily acquired.
28. It was the further testimony of the witness that same subsequently wrote several letters to the 2<sup>nd</sup> Defendant. The witness added that same wrote the letters to the 2<sup>nd</sup> Defendant and indicated various facts which same [witness] had discovered after the land was sold to him.
  29. The witness further testified that same has sued the 2<sup>nd</sup> Defendant because the 2<sup>nd</sup> Defendant is part of the problem. Furthermore, the witness averred that same has sought for various relief[s] as against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. In addition, the witness averred that same has sought for payment of the value of the suit property plus 15% on account of disturbance allowance.
  30. On cross examination by Learned Counsel for the 6<sup>th</sup> Defendant, the witness averred that same procured and obtained a Banking facility from the 6<sup>th</sup> Defendant. In addition, the witness averred that the banking facility was intended to liquidate part of the Purchase price of the suit property. Besides, the witness averred that the Banking facility was duly disbursed to and or paid out in favour of the 1<sup>st</sup> Defendant.
  31. It was the further testimony of the witness that upon the payment of the loan facility, the title of the suit property was duly charged to the 6<sup>th</sup> Defendant. Besides, the witness testified that the banking facility is still outstanding.
  32. While still under cross examination, the witness testified that same has been referred to the Gazette Notice by Learned Counsel for the 2<sup>nd</sup> Defendant. However, the witness averred that the Gazette Notice under reference does not refer to the suit property. In any event, the witness averred that the Gazette Notice refers to LR NO. Kikuyu/Kikuyu/ Block I/X8.
  33. The witness further testified that same discovered the claims by the 2<sup>nd</sup> Defendant in the year 2013. In addition, the witness testified that by the time of discovering the claims by the 2<sup>nd</sup> Defendant, the suit property was already transferred and registered in his name. Furthermore, the witness averred that the property had already been charged to the 6<sup>th</sup> Defendant.
  34. It was the further testimony of the witness that the 6<sup>th</sup> Defendant undertook due diligence over and in respect of the suit property. Furthermore, the witness testified that the 6<sup>th</sup> Defendant also obtained a Consent to Charge from the Commissioner of Lands.
  35. While still under cross examination, the witness testified that the suit property was bought/purchased with a house standing thereon. In any event, the witness testified that the house is still on the suit property. However, the witness added that the house is not occupied by any one at the moment.
  36. The 2<sup>nd</sup> witness who testified on behalf of the Plaintiff was Edgar Wekesa Lupao. Same testified as PW2.
  37. It was the testimony of the witness [PW2] that same is a qualified, registered and practicing Valuer. Furthermore, the witness averred that same practices with M/S REAL APPRAISAL LIMITED. Moreover, the witness averred that same received instructions to undertake valuation over and in respect of the suit property. To this end, the witness testified that he proceeded to and inspected the suit property and thereafter prepared a Valuation Report. In addition, the witness testified that the valuation report adverts to the value of the suit property.
  38. It was the further testimony of the witness that same has also included an item called Disturbance allowance in the body of the Valuation Report. Besides, the witness testified that the valuation report was prepared at the instance and request of the 6<sup>th</sup> Defendant.



39. The witness further testified that same is aware of a letter that was written to the Bank to clarify the status of the property. To this end, the witness averred that same was instructed to revisit the suit property and to make a report to the Bank.
40. On cross examination by Learned Counsel for the 6<sup>th</sup> Defendant, the witness averred that same undertook a valuation in respect of the suit property. Furthermore, the witness testified that prior to and before undertaking the inspection and the valuation exercise, same undertook an official Search.
41. It was the further testimony of the witness that same prepared a valuation report in favour of the Bank. In addition, the witness testified that same was instructed to revisit the suit property in the year 2021. To this end, the witness averred that same indeed revisited the suit property in the year 2021 and thereafter prepared a second valuation report. In particular, the witness averred that the second report has also been tendered and produced before the Court.
42. On cross examination by Learned Counsel for the 1<sup>st</sup> Defendant, the witness testified that same valued the said property twice. The witness averred that the first valuation was undertaken in the year 2011 while the second valuation was undertaken in the year 2021. Nevertheless, the witness added that the two [2] sets of valuation were undertaken on behalf of the Bank.
43. It was the further testimony of the witness that same is aware of the contents of the letter dated the 19<sup>th</sup> July 2021. In particular, the witness averred that the letter in question was written by the Bank. Furthermore, the witness testified that the Bank sought to understand the circumstances surrounding the property. In any event, the witness averred that the letter in question was precipitated by information received from the Plaintiff relating to the claims by the 2<sup>nd</sup> Defendant.
44. On cross examination by Learned Counsel for the 2<sup>nd</sup> Defendant, the witness averred that same is the one who undertook the valuation in respect of the suit property. Furthermore, the witness testified that before undertaking the valuation, same carried out due diligence over the suit property and obtained a Certificate of Official Search.
45. It was the further testimony of the witness that subsequently same was directed to revisit the suit property in the year 2021. In particular, the witness averred that the revisit was at the instance of and request by the Bank.
46. On re-examination, the witness averred that the valuation report which has been reproduced before the Court alludes to the value of the land and the improvements thereon. Besides, the witness averred that the valuation report adverts to the methodology that was deployed and used.
47. While still under re-examination, the witness averred that same re-visited the suit property in the year 2021. The witness further testified that when he revisited the property, he found that there is a road that passes thereon. The witness averred that the road is a link-road that connects to the Southern bypass.
48. It was the further testimony of the witness that the property which same valued at the first instance did not have a road running through same. However, the witness clarified that when he revisited the land in 2021, same found a slip road that connect the main Nairobi Highway to the Southern bypass.
49. With the foregoing testimony, the Plaintiff's case was closed.
50. The 1<sup>st</sup> Defendant's case is premised on the evidence of one witness namely; Margaret Waithera Kinuthia. Same testified as DW1.
51. It was the testimony of the witness that same is the 1<sup>st</sup> Defendant. The witness further testified that by virtue of being the 1<sup>st</sup> Defendant, same is conversant with the facts of the case. Moreover, the witness



- averred that same has since recorded and filed a witness statement and which witness statement the witness sought to adopt and rely on. To this end, the witness statement dated the 5<sup>th</sup> December 2023 was adopted and constituted as the evidence in chief of the witness.
52. Furthermore, the witness adverted to and referenced a list and bundle of documents dated the 29<sup>th</sup> August 2013 containing 15 documents. The witness further sought to tender and produce the documents as exhibits before the Court. There being no objection to the production of the documents, same were duly produced as exhibits D1 – D15, respectively on behalf of the 1<sup>st</sup> Defendant.
  53. Additionally, the witness referenced the list and bundle of documents dated the 25<sup>th</sup> February 2021 and which the witness sought to rely on. Suffice it to state that the single document tendered and produced as exhibit D16 on behalf of the 1<sup>st</sup> Defendant.
  54. On cross examination by Learned Counsel for the 2<sup>nd</sup> Defendant, the witness averred that same was the registered owner and proprietor of LR NO. Kikuyu/Kikuyu/ Block I/X8. Furthermore, the witness averred that same is aware that a portion of the said property was compulsorily acquired by the Government. Besides, the witness averred that a portion of the land remained.
  55. It was the further testimony of the witness that the original parcel of land, namely, LR NO. Kikuyu/Kikuyu/ Block I/X8 was sub-divided into two portions culminating into LR NO's . Kikuyu/Kikuyu/ Block I/1242 and 1XX3, respectively.
  56. While still under cross examination and upon being referred to document number 2 at the foot of the 2<sup>nd</sup> Defendant's List and bundle of documents, the witness averred that the said document is a letter dated the 21<sup>st</sup> January 2008. Furthermore, the witness added that the letter under reference related to the intention to compulsorily acquire the remainder portion of the original land. Besides, the witness averred that the letter under reference also shows that same was copied unto her.
  57. Upon being referred to document number 5 at the foot of the 2<sup>nd</sup> Defendant's list and bundle of documents, the witness averred that the said document is a copy of the Gazette Notice. Moreover, the witness added that the Gazette Notice relates to the acquisition of the remainder portion of the original parcel of land.
  58. While still under cross examination, the witness averred that document number 7 at the foot of the 2<sup>nd</sup> Defendant's list and bundle of documents is an acknowledgement for compensation in respect of the suit land. In particular, the witness averred that the acknowledgement relates to receipt of the compensation money.
  59. Regarding document number 8 at the foot of the 2<sup>nd</sup> Defendant's list and bundle of documents, the witness averred that the document in question is the Notice of taking possession of the entire land. In particular, the witness reiterated that the contents of the Notice of taking possession are clear and explicit.
  60. While still under cross examination, the witness averred that the land in question had not been sub-divided by the time same received the payments. In any event, the witness added that the sub-division was done after the process of compulsory acquisition. For good measure, the witness reiterated that the land was sub-divided after the compulsory acquisition.
  61. It was the further testimony of the witness that the sale agreement with the Plaintiff was also entered after receipt of the compensation money.
  62. On cross examination by Learned Counsel for the 3<sup>rd</sup> and 5<sup>th</sup> Defendants, the witness averred that the entirety of LR NO. Kikuyu/Kikuyu/ Block I/X8 measured 0.109 ha. Nevertheless, the witness averred



- that the Gazette Notice No. 2410 related to the remainder of the said parcel of land. Furthermore, the witness averred that the acreage relating to the remainder of the said parcel of land is shown at the foot of the Gazette Notice.
63. It was the further testimony of the witness that it is her [witness] who sub-divided the land. In any event, the witness averred that the Surveyor who sub-divided the land was procured by herself.
  64. The witness further averred that document number 7 at the foot of the 2<sup>nd</sup> Defendant's list and bundle of documents relates to LR NO. Kikuyu/Kikuyu/ Block I/X8. Furthermore, the witness averred that the document in question was addressed to herself. It was the further testimony of the witness that the document related to payment of the sum of Kshs. 7,550,000/= .
  65. On cross examination by Learned counsel for the 6<sup>th</sup> Defendant, the witness averred that same only received one Notice for the acquisition of the portion of the original parcel of land. Furthermore, the witness clarified that the Notice under reference only related to the acquisition of portion of the original parcel of land measuring 0.02 ha.
  66. While still under cross examination the witness testified that she attended one Public hearing at the offices of the District Officer. Nevertheless, the witness averred that same mounted an Appeal as pertains to the intention to compulsorily acquire the land.
  67. The witness further testified that after mounting the Appeal, the compensation money was enhanced. Nevertheless, the witness conceded that same has not tendered and/or produced a copy of the Appeal which was lodged by herself.
  68. It was the further testimony of the witness that subsequently, the original parcel of land was sub-divided into two portions. Furthermore, the witness averred that it is herself who sold the suit property to the Plaintiff.
  69. While still under cross examination, the witness averred that same is aware that a Criminal complaint was lodged and/or mounted against her. Moreover, the witness averred that thereafter same was arrested and charged with the offense of obtaining money by false pretense.
  70. Be that as it may, the witness averred that the criminal matter was heard and concluded. Furthermore, the witness testified and averred that the criminal charges against her were dismissed.
  71. On cross examination by Learned Counsel for the Plaintiff, the witness averred that she entered into and executed a sale agreement with the Plaintiff. In particular, the witness testified that the said agreement was in respect of LR NO. Kikuyu/Kikuyu/ Block I/1XX3.
  72. It was the further testimony of the witness that LR NO. Kikuyu/Kikuyu/ Block I/1XX3 arose from the sub-division of LR NO. Kikuyu/Kikuyu/ Block I/X8.
  73. While still under cross examination, the witness averred that the document at page 36 of the Plaintiff's list and bundle of documents is a letter addressed to the Chief Engineer of Roads. In particular, the witness averred that the letter in question related to the acquisition of the reminder portion of the original parcel of land.
  74. The witness further testified that same was compensated for a portion of the original parcel of land. Nevertheless, it was the further testimony of the witness that same was paid additional money after the officers from the Commissioners of Land revisited the land. For good measures, the witness clarified that same received the subsequent payment in October 2008.



75. Furthermore, the witness testified that the additional money was received after same had lodged an Appeal against the previous award/compensation. In particular, the witness testified that same filed an Appeal. Nevertheless, the witness admitted that same has not tendered any document to show that an Appeal was lodged.
76. It was the further testimony of the witness that same received two sets of payments of account of compulsory acquisition. To this end, the witness averred that the payments under reference related to the Kshs. 845,000/= and Kshs. 5,550,000/= only.
77. On further cross examination, the witness testified that it is the 2<sup>nd</sup> Defendant who is contending that the suit property had been compulsorily acquired. However, the witness reiterated that the suit property had not been compulsorily acquired. Furthermore, the witness averred that the Title in respect of the suit property is lawful.
78. With the foregoing testimony, the 1<sup>st</sup> Defendant's case was duly closed.
79. The 2<sup>nd</sup> Defendant's case is anchored on the evidence of one witness, namely, Milka Muendo. Same testified as DW2.
80. It was the testimony of the witness that same is a Surveyor by profession. Furthermore, the witness testified that same is currently employed by the 2<sup>nd</sup> Defendant. In addition, the witness averred that by virtue of her employment with the 2<sup>nd</sup> Defendant, same is therefore conversant with the facts of the case.
81. It was the further testimony of the witness that same has since recorded a witness statement dated the 23<sup>rd</sup> June 2023 and which witness statement, the witness sought to adopt and produce before the Court. To this end, the witness statement under reference was duly constituted as the evidence in chief of the witness.
82. Additionally, the witness referenced the list and bundle of documents dated the 28<sup>th</sup> July 2014 and containing 8 documents. Furthermore, the witness sought to tender and produce the documents under reference. There being no objection to the production of the documents, same [documents] were tendered and produced as exhibits D1 – D8, respectively, on behalf of the 2<sup>nd</sup> Defendant.
83. Moreover, the witness referenced the amended Statement of Defence dated the 2<sup>nd</sup> September 2020 and thereafter sought to adopt and rely on the contents of the said amended Statement of Defence.
84. On cross examination by Learned Counsel for the 1<sup>st</sup> Defendant, the witness averred that same is indeed an employee of the 2<sup>nd</sup> Defendant. Furthermore, the witness averred that she is privy to the facts of this case.
85. Regarding the document at page 31 of the 1<sup>st</sup> Defendant's list and bundle of documents, the witness averred that the document in question is a copy of the letter dated the 26<sup>th</sup> November 2009. Moreover, the witness averred that the letter in question was written on behalf of the Commissioner of Lands.
86. While still under cross examination, the witness testified that the letter related to the Lease in respect of LR NO. Kikuyu/Kikuyu/ Block I/1XX3. In particular, the witness clarified that the letter was forwarding the Lease in respect of the suit property. Besides, the witness averred that the letter in question was also copied to her.
87. While still under cross examination, the witness averred that same is aware of the Certificate of Title issued in respect of the suit property. Nevertheless, the witness stated that she is not aware whether the said Certificate of title was lawfully issued.



- X8. It was the further testimony of the witness that the land in question, namely, LR NO. Kikuyu/Kikuyu/ Block I/X8 was compulsorily acquired. Furthermore, the witness added that the Commissioner of Lands issued and served the Notice of taking possession. Besides, the witness added that the Notice was also copied to the Land Registrar – Kiambu District.
89. On further cross examination, the witness averred that the suit property is currently registered in the name of the Plaintiff. In addition, the witness testified that the land has also been charged in favour of the 6<sup>th</sup> Defendant. It was the further testimony of the witness that the entire of the land in question was surrendered to the Government. In particular, the witness testified that the land was acquired and thus same [suit property] belongs to the 2<sup>nd</sup> Defendant.
90. On cross examination by Learned Counsel for the 3<sup>rd</sup> and 5<sup>th</sup> Defendants, the witness averred that the Gazette Notice dated the 26<sup>th</sup> May 2006 related to the compulsory acquisition of a portion of LR NO. Kikuyu/Kikuyu/ Block I/X8. Besides, the witness averred that the acquisition was being done on behalf of the 2<sup>nd</sup> Defendant.
91. It was the further testimony of the witness that there was a second Gazette Notice. The witness averred that the second Gazette Notice related to the remained of LR NO. Kikuyu/Kikuyu/ Block I/X8. In this regard, the witness averred that the entirety of the original parcel of land was compulsorily acquired.
92. While still under cross examination, the witness averred that the 1<sup>st</sup> Defendant was duly paid the total monies at the foot of the compulsory acquisition. In any event, the witness testified that the payments/ compensation were duly acknowledged by the 1<sup>st</sup> Defendant.
93. On cross examination by Learned Counsel for the 6<sup>th</sup> Defendant, the witness averred that same is conversant with and knowledgeable of the process of compulsory acquisition. In particular, the witness averred that the compulsory acquisition was being undertaken on behalf of the 2<sup>nd</sup> Defendant. It was the further testimony of the witness that the Commissioner of Lands indeed issued and served the requisite Notices. Moreover, the witness testified that the Commissioner of Lands duly complied with the provisions of the Land Acquisition Act, Chapter 295, Laws of Kenya.
94. It was the further testimony of the witness that same has since tendered and produced the various Notices that were issued. Nevertheless, the witness averred that same is not aware whether the Commissioner of Lands issued the Notices required under Sections 3 and 6 of the Land Acquisition Act.
95. On further cross examination, the witness testified that same is aware of the criminal proceedings against the 1<sup>st</sup> Defendant. In addition, the witness testified that an officer of the 2<sup>nd</sup> Defendant, namely, Eliud Ngari Munene indeed testified before the Court during the Criminal prosecution.
96. It was the further testimony that the 1<sup>st</sup> Defendant herein was the accused person in the criminal prosecution. Nevertheless, the witness averred that the 1<sup>st</sup> Defendant was acquitted on the criminal charges against her. It was the further testimony of the witness that the Commissioner of Lands issued and published two Gazette Notices. However, the witness clarified that the 2<sup>nd</sup> Gazette Notice was a corrigenda. In particular, the witness averred that the corrigenda Gazette Notice was seeking to amend the contents of the previous Gazette Notice.
97. Regarding the document at page 8 of the 2<sup>nd</sup> Defendant's list and bundle of documents, the witness averred that the document in question is the Notice for taking possession of the property, namely, LR NO. Kikuyu/Kikuyu/ Block I/X8. Furthermore, the witness averred that the Notice of taking



- possession was duly served. In any event, the witness posited that the Notice for taking possession was served together with the payment cheques.
98. While still under cross examination, the witness reiterated that same has tendered and produced two sets of Gazette Notices. Moreover, the witness averred that the two sets of the Gazette Notices confirm that the entire original parcel of land, namely, LR NO. Kikuyu/Kikuyu/ Block I/X8, was compulsorily acquired.
  99. On cross examination by Learned Counsel for the Plaintiff, the witness averred that the original parcel of land, LR NO. Kikuyu/Kikuyu/ Block I/X8 was registered under the Registered Land Acts. Furthermore, the witness averred that by virtue of the registration under the Registered Land Act, the land in question would have a Green Card. Furthermore, the witness averred that one would also be able to procure and obtain an official Search.
  100. It was the further testimony of the witness that the land under reference, namely, LR NO. Kikuyu/ Kikuyu/ Block I/X8, was compulsorily acquired. Moreover, the witness added that the land thereafter vested in the 2<sup>nd</sup> Defendant. Nevertheless, the witness acknowledged that same has not availed a copy of the vesting Order before the Court.
  101. While still under cross examination, the witness averred that same is aware that the 1<sup>st</sup> Defendant was arrested and charged with a criminal offense. In addition, the witness averred that a witness from the 2<sup>nd</sup> Defendant testified before the Criminal Court.
  102. Additionally, it was the further testimony of the witness that the compensation money was duly paid to the 1<sup>st</sup> Defendant. Moreover, the witness averred that the compensation money was duly received and acknowledged by the 1<sup>st</sup> Defendant.
  103. While still under cross examination, the witness testified that same is aware that the Commissioner of land indeed issued and served a Notice of taking possession of the land. Furthermore, the witness testified that the land in question belong[s] to the 2<sup>nd</sup> Defendant.
  104. On re-examination, the witness averred that the land in question was compulsorily acquired. In addition, the witness averred that the 2<sup>nd</sup> Defendant forwarded the entire compensation to the Commissioner of Lands for onward transmission to the 1<sup>st</sup> Defendant. At any rate, the witness confirmed that the compensation money was duly remitted to and acknowledged by the 1<sup>st</sup> Defendant.
  105. While still under re-examination, the witness averred that the compulsory acquisition was undertaken in respect of two portions. In particular, the witness averred that the first portion related to 0.02 ha while the second portion related to 0.08ha. For good measure, the witness averred that the process pertaining to the compulsory acquisition was duly Gazetted.
  106. Moreover, the witness testified that subsequent to the compulsory acquisition, the Commissioner of Lands duly issued and served the Notice for taking possession of LR NO. Kikuyu/Kikuyu/ Block I/ X8. In addition, the witness averred that the Notice of taking possession related to 0.109ha [reflecting the entire acreage] of LR NO. Kikuyu/Kikuyu/ Block I/X8.
  107. It was the further testimony of the witness that the land in question vested in the Government in the year 2008. In particular, the witness clarified that the land in question vested in the Government immediately upon the issuance and service of the Notice for taking possession. Furthermore, the witness added that the land in question vested in the Government before the sub-division.
  108. With the foregoing testimony, the 2<sup>nd</sup> Defendant's case was closed.



109. The 3<sup>rd</sup> and 5<sup>th</sup> Defendants' case is premised on the evidence of one witness, namely, Charles Mutua. Same testified as DW3.
110. It was the testimony of the witness [DW3] that same is currently the Land Registrar, Kiambu County. Furthermore, the witness averred that by virtue of his office, same is tasked with the mandate of taking custody of various records pertaining to and concerning landed properties situated within Kiambu County.
111. It was the further testimony of the witness that same was Summoned by the Court to tender and produce various records relating to LR NO's. Kikuyu/Kikuyu/ Block I/X8; LR NO. Kikuyu/Kikuyu/ Block I/1242; and LR NO. Kikuyu/Kikuyu/ Block I/1XX3. Nevertheless, the witness averred that same was not able to procure records relating to LR NO. Kikuyu/Kikuyu/ Block I/X8 and LR NO. Kikuyu/Kikuyu/ Block I/1242, respectively.
112. However, the witness averred that same was able to procure and obtain a copy of the records relating to LR NO. Kikuyu/Kikuyu/ Block I/1XX3. In particular, the witness referenced the White Card. In this regard, the witness sought to tender and produce the White Card as an exhibit on behalf of the 3<sup>rd</sup> and 5<sup>th</sup> Defendants. There being no objection to the production of the White Card, same was tendered and produced as exhibit D1 on behalf of the 3<sup>rd</sup> and 5<sup>th</sup> Defendants.
113. It was the testimony of the witness that whenever a particular parcel of land is compulsorily acquired, the previous owner is obligated to surrender the Certificate of Title to the Land Registrar for cancellation. Furthermore, the witness averred that the surrender of the title ought to be registered. Nevertheless, the witness averred that in respect of the instant matter, same does not have any evidence pertaining to the registration of surrender.
114. On cross examination by Learned Counsel for the 1<sup>st</sup> Defendant, the witness averred that even though same was tasked to bring forth the records pertaining to and concerning LR NO. Kikuyu/Kikuyu/ Block I/X8; LR NO. Kikuyu/Kikuyu/ Block I/1242 and LR NO. Kikuyu/Kikuyu/ Block I/1XX3, respectively, same was not able to procure/trace the records in respect of LR NO. Kikuyu/Kikuyu/ Block I/X8.
115. It was the further testimony of the witness that the land in question was compulsorily acquired. However, the witness clarified that same has no records to that effect.
116. While still under cross examination, the witness averred that the White Card in respect of LR NO. Kikuyu/Kikuyu/ Block I/1XX3, shows that the property belongs to and is registered in the name of the Plaintiff. Furthermore, the witness averred that on the basis of the white Card, the Plaintiff is deemed to be the lawful owner of the suit property. In addition, the witness averred that the property is currently charged to the 6<sup>th</sup> Defendant.
117. On cross examination by Learned Counsel for the 6<sup>th</sup> Defendant, the witness averred that same was not able to trace the records relating to LR NO. Kikuyu/Kikuyu/ Block I/X8. Nevertheless, the witness added that same was able to trace records in respect of LR NO. Kikuyu/Kikuyu/ Block I/1XX3.
118. It was the further testimony of the witness that Searches over an in respect of LR NO. Kikuyu/Kikuyu/ Block I/1XX3, show that same is registered in the name of the Plaintiff. In any event, the witness averred that the Searches which have been produced before the Court are genuine. In particular, the witness averred that the White Card which same has produced before the Court reflects that the land belongs to the Plaintiff and same is currently Charged in favour of the 6<sup>th</sup> Defendant.



119. The witness further testified that the suit property was compulsorily acquired. Furthermore, the witness averred that the Certificate of Title in respect of LR NO. Kikuyu/Kikuyu/ Block I/1XX3, was issued for the area that was already compulsorily acquired.
120. On cross examination by Learned Counsel for the Plaintiff, the witness averred that the 1<sup>st</sup> Defendant was obligated to surrender the Certificate of Title. In particular, the witness clarified that it was the duty of the 1<sup>st</sup> Defendant to surrender the Certificate of Title to the Chief Land Registrar.
121. While still under cross examination, the witness averred that same has brought forth a copy of the White Card. Furthermore, the witness averred that the White Card shows that the suit property belongs to the Plaintiff. In any event, the witness averred that the registration of the land in favour of the Plaintiff was properly done. In addition, the witness reiterated that the land is still registered in the name of the Plaintiff.
122. With the foregoing, testimony, the case for the 3<sup>rd</sup> and the 5<sup>th</sup> Defendants was closed.
123. The case for the 6<sup>th</sup> Defendant is premised on the evidence of one witness, namely Samwel Njuguna. The witness testified as DW4.
124. It was the testimony of the witness that same is currently a Legal officer in charge of collections and recoveries. Furthermore, the witness averred that same is an employee of the 6<sup>th</sup> Defendant.
125. It was the further testimony of the witness that by virtue of his employment with the 6<sup>th</sup> Defendant, same [witness] is conversant with the facts of this case. In addition, the witness averred that same has since recorded and filed a witness statement dated the 3<sup>rd</sup> May 2023 and which witness statement the witness sought to adopt. The witness statement under reference was thereafter adopted and constituted as the evidence in chief of the witness.
126. Additionally, the witness referenced the list and bundle of documents dated the 3<sup>rd</sup> May 2023 and which contains 8 documents. Furthermore, the witness sought to tender and produce the documents as exhibits before the Court. There being no objection to the production of the documents, same were produced as exhibits D1 – D6, respectively on behalf of the 6<sup>th</sup> Defendant.
127. On cross examination by Learned Counsel for the 1<sup>st</sup> Defendant, the witness averred that the 6<sup>th</sup> Defendant issued a letter of offer dated the 14<sup>th</sup> July 2011. Furthermore, the witness averred that the letter of offer was in respect of a banking facility in the sum of Kshs. 10,350,000/= only.
128. It was the further testimony of the witness that the Banking facility was sought by the Plaintiff to facilitate the Purchase of a residential house. Furthermore, the witness averred that the residential house was situated on LR NO. Kikuyu/Kikuyu/ Block I/1XX3.
129. It was the further testimony of the witness that following the requisition of the Banking facility, the 6<sup>th</sup> Defendant undertook due diligence over an in respect of the suit property and thereafter procured Certificate of Official Search. In addition, the witness averred that the Certificate of Official Search shows that the property was registered in the name of the 1<sup>st</sup> Defendant.
130. The witness further testified that subsequently, the 6<sup>th</sup> Defendant facilitated the release of the Banking facility to and in favour of the 1<sup>st</sup> Defendant on account of payment of part of the purchase price. Furthermore, the witness averred that the Title of the suit property, which had been transferred and registered in the name of the Plaintiff was duly charged in favour of the 6<sup>th</sup> Defendant.



131. On cross examination by Learned Counsel for the 2<sup>nd</sup> Defendant, the witness averred that the 6<sup>th</sup> Defendant undertook and carried out due diligence. In any event, the witness averred that same is not aware whether the 1<sup>st</sup> Defendant had received any compensation from the 2<sup>nd</sup> Defendant.
132. On cross examination by Learned Counsel for the Plaintiff, the witness averred that the Plaintiff herein sought and obtained a Banking facility from the 6<sup>th</sup> Defendant. Moreover, the witness added that the Banking facility was secured on the basis of the Certificate of title of the suit property.
133. While under further cross examination, the witness averred that the Banking facility was extended to and in favour of the Plaintiff to facilitate the purchase/acquisition of a residential house. In addition, the witness averred that the residential house in question was situated on the suit property.
134. The witness further testified that the 6<sup>th</sup> Defendant was not aware of any compulsory acquisition of the suit property. In any event, the witness added that there was no record of compulsory acquisition as at the time when the Charge was registered against the suit property.
135. With the foregoing testimony, the case for the 6<sup>th</sup> Defendant was closed.
136. Upon the close of the hearing, the Advocates for the parties sought to file and exchange written submissions. To this end, the Court proceeded to and granted the directions pertaining to the filing and exchanging the submissions. Furthermore, the court circumscribed the timelines for the written submissions.
137. Thereafter the parties proceeded to and filed written submissions. In particular, the Plaintiff filed written submissions and wherein same has highlighted four [4] salient issues, namely, that the suit property was lawfully sold to and in favour of the Plaintiff; the Plaintiff acquired lawful rights to and in respect of the suit property; the 2<sup>nd</sup> Defendant has no lawful rights to the suit property and finally that if the Court were to find that the suit property was compulsorily acquired, then the Court ought to decree recompense in favour of the Plaintiff.
138. The 1<sup>st</sup> Defendant filed written submissions dated the 23<sup>rd</sup> January 2025 and wherein same has highlighted and canvassed three [3] issues for consideration. The issues highlighted by the 1<sup>st</sup> Defendant are namely, what was the lawful procedure applicable then for the Government and/or the 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Defendants to compulsorily acquire Title LR NO. Kikuyu/Kikuyu/ Block I/X8 and/or the suit property; whether the title issued by the 3<sup>rd</sup> Defendant to the 1<sup>st</sup> Defendant is a valid Title being the subject suit property [LR NO. Kikuyu/Kikuyu/ Block I/1XX3]; and whether the 1<sup>st</sup> Defendant passed a good Title to the Plaintiff.
139. The 2<sup>nd</sup> Defendant filed written submissions and wherein same has highlighted two [2] main issues, namely, whether the entirety of LR NO. Kikuyu/Kikuyu/ Block I/X8 was compulsorily acquired on behalf of the 2<sup>nd</sup> Defendant or otherwise; and whether the Title of the suit property is lawful or otherwise.
140. The 3<sup>rd</sup> and 5<sup>th</sup> Defendants have also filed written submissions and wherein same have also highlighted two [2] pertinent issues. For good measure, the issues raised by the 3<sup>rd</sup> and 5<sup>th</sup> Defendants replicate the ones canvassed by the 2<sup>nd</sup> Defendant.
141. Similarly, the 6<sup>th</sup> Defendant filed written submissions and wherein same has canvassed two [2] pertinent issues, namely, that the Title in respect of the suit property [LR NO. Kikuyu/Kikuyu/ Block I/1XX3] is lawful; and that the Charge registered against the Title of the suit property is valid.



142. Having reviewed the pleadings; the evidence tendered [both oral and documentary] and upon consideration of the written submissions filed on behalf of the respective parties, I come to the conclusion that the determination of the subject matter turns on four [4] key issues, namely, whether the property, to wit LR NO. Kikuyu/Kikuyu/ Block I/X8 was compulsorily acquired in its entirety or otherwise; whether the Certificate of Title in respect of the suit property [LR NO. Kikuyu/Kikuyu/ Block I/1XX3] is lawful and valid or otherwise; whether the Plaintiff acquired any lawful and legal rights to the suit property; and what reliefs [if any] ought to issue.
143. Regarding the first issue, namely; whether the property, to wit LR NO. Kikuyu/Kikuyu/ Block I/X8 was compulsorily acquired in its entirety or otherwise, it is instructive to recall that the dispute beforehand touches on and/or concerns the legality and validity of the Certificate of Title in respect of LR NO. Kikuyu/Kikuyu/ Block I/1XX3 {the suit Property herein). Notably, the suit Property arose from and is thus a sub-division of LR NO. Kikuyu/Kikuyu/ Block I/X8.
144. Arising from the foregoing, it is therefore common ground that in an endeavor to track down and/or otherwise ascertain the legality of the Certificate of Title in respect of the suit Property, one must start the journey from discerning whether or not the compulsory acquisition touched on and/or concerned the entirety of LR NO. Kikuyu/Kikuyu/ Block I/X8 {hereinafter referred to as the original parcel of land}, or better still, a portion thereof.
145. To start with, there is no dispute that the Commissioner of Lands {now defunct} generated and issued a Notice of intention to acquire a portion of the original parcel of land. The notice of intention to compulsorily acquire a portion of the original parcel of land was duly gazetted vide Gazette Notices Numbers 37X8 and 3789 of the 26<sup>th</sup> day of May 2006.
146. Furthermore, it is important to underscore that as pertains to the original parcel of land, the Commissioner of Lands published and declared an intention to acquire a portion measuring 0.0200 Ha. The registered owner of the original parcel of land which the Commissioner sought to acquire the named portion was clearly captured as the 1<sup>st</sup> Defendant herein.
147. Subsequently, the Commissioner of Lands [now defunct] thereafter called for and convened the requisite Public hearing [Inquiry] culminating into an Award being issued. The award was dated the 15<sup>th</sup> day of November 2006 and same is in respect of the portion measuring 0.0200 Ha. For good measure, a copy of the said award was duly tendered and produced as Exhibit D2 on behalf of the 1<sup>st</sup> Defendant. In any event, it is imperative to observe that the said award is a common document, insofar as a copy of the same was also produced by the 2<sup>nd</sup> Defendant.
148. Even though the Commissioner of Lands had initially gazetted an intention to acquire a portion measuring 0.0200 Ha from the original parcel of land, it is evident that the Chief Engineer Roads realized and observed that the house and the remainder portion of the original parcel of land would be adversely affected by the road works. To this end, the Chief Engineer of Roads, wrote to the Commissioner of Lands intimating an intention that the remainder portion of the original parcel of land be acquired. [See letter dated 21<sup>st</sup> January 2008].
149. Following the request by the Chief Engineer of Roads, the Commissioner of Lands [now defunct] obliged and thereafter proceeded to and caused the publication of an additional Gazette Notice. The Gazette Notice was number 2410 of 28<sup>th</sup> March 2008 and same sought to acquire the remainder portion of the original parcel of land. For good measure the remainder portion captured at the foot of the second Gazette Notice relate[s] to a portion measuring 0.0809 Ha.



150. Furthermore, the fact that the remainder portion was also gazetted for acquisition was adverted to and conceded by the 1<sup>st</sup> Defendant. To this end, it is instructive to revert to and take cognizance of the evidence of DW1 while under cross-examination by learned Counsel for the 2<sup>nd</sup> Defendant.
151. The witness testified as hereunder;
- “Referred to Document number 2 at the foot of the 2<sup>nd</sup> Defendant’s List and Bundle of Documents and the witness states that the Document is a letter dated 21<sup>st</sup> January 2008. The contents of the letter relates to the intention to compulsorily acquire the remainder portion of the original land. The letter in question is said to have been copied to me.
152. While still under cross-examination, DW 1 stated thus;-
- “Referred to Document number 5 and the witness states that the document is a Gazette Notice. I do confirm that the remainder of the land was gazetted for acquisition. Referred to document number 7 at the foot of the 2<sup>nd</sup> Defendant’s List and Bundle of Documents and the witness states that the document is an acknowledgement for compensation for the suit land.
153. What I hear the 1<sup>st</sup> Defendant {DW1} to be stating is to the effect that the Commissioner of Lands indeed gazetted the intention to acquire the remainder portion of the original parcel of land. In addition, the witness is also confirming that same indeed received the compensation in respect of the suit land.
154. To my mind, the 1<sup>st</sup> Defendant cannot now feign ignorance and purport that same was not privy to and/or knowledge of the acquisition of the remainder portion of the original parcel of land. Quite clearly, the acquisition of the remainder portion of land was not only gazetted but the compensation thereof was duly remitted, paid to and acknowledged by the 1<sup>st</sup> Defendant.
155. It is also apparent that after the publication of the second Gazette Notice, namely, Gazette Notice Number 2410 of 28<sup>th</sup> March 2008, the Commissioner of Lands proceeded to and undertook the necessary inquiry culminating into an award in the sum of Kshs.7, 550, 000/= only, which related to the value of the remainder portion of the original parcel of land.
156. Nevertheless, it is worthy to recall and reiterate that the previous portion, namely, the portion measuring 0.0200 Ha, had been subjected to the requisite inquiry, culminating into the award of Kshs.844, 376/= only {See the notice of award dated the 15<sup>th</sup> day of November 2006}. In this regard, there is no gainsaying that there were two (2) sets of awards that were made over and in respect of the original parcel of land.
157. Moreover, it is important to underscore that the 1<sup>st</sup> Defendant {who testified as DW 1} confirmed that same received two (2) sets of payments. For good measure, the two sets of payments could not have been in respect of one acquisition. For ease of appreciation, it is imperative to take cognizance of the evidence of DW1 while being cross-examined by learned Counsel for the Plaintiff.
158. The witness {DW1} stated as hereunder;-
- “Referred to page 36 of the Plaintiff’s Documents and the witness states that the document is a letter addressed to the Chief Engineer of Roads. The letter relates to the intention to acquire the remainder of the original parcel of land. I do confirm that I had received a prior sum of Kshs.845, 000/= only. I do wish to state that I was compensated for a portion of



the original parcel of land. I do wish to state that I was paid the additional monies after the officers from the Commissioner of Lands visited the land. I received the subsequent payment in October 2008.

159. Pertinently, the 1<sup>st</sup> Defendant is indeed confirming the fact that there were two sets of payments. To my mind, the two sets of payments relate to and concern the two segments of the original land which were acquired at the foot of the two separate gazette notices. In any event, if the First Defendant had objected to the initial award and [sic] filed an appeal [ which is not the case] same would not have accepted and received the initial payment[s].
160. Additionally, it is also important to highlight the fact that upon the compulsory acquisition, the Commissioner of Lands generated and issued a notice for the taking of possession of the entirety of the original parcel of land. For good measure, the notice of the taking of possession did not relate to a portion of the suit Property.
161. While under cross-examination by learned Counsel for the 2<sup>nd</sup> Defendant DW 1 is on record stating as hereunder;-

“ Referred to the document number 8 at the foot of the 2<sup>nd</sup> Defendant’s List and Bundle of Documents and the witness states that the document is the notice of taking possession of the entire land. I do confirm that the document herein relates to the taking of possession of the entire land. I do also wish to add that the contents of the letter are explicit.

162. Other than the testimony of DW1 as pertains to the nature of the notice of taking possession, it is also important to underscore that the notice itself was tendered and produced before the Court. Same was produced as Exhibit D8 on behalf of the 2<sup>nd</sup> Defendant. Instructively, the notice relates to and concerns LR NO. Kikuyu/Kikuyu/ Block I/X8.
163. Moreover, the acreage of LR NO. Kikuyu/Kikuyu/ Block I/X8 which is spoken to and captured at the foot of the notice of taking possession of the original parcel of land highlights 0.1009 Ha. Evidently, the acreage shown reflects the entirety of the acreage of the original parcel of land.
164. Suffice to underscore that upon the issuance of the notice of taking possession and vesting of the land, the land in question {namely the land the subject of compulsory acquisition} is deemed to have vested in the Government. In this regard, the previous owner whose land has been acquired ceases to have any legal rights and/or interest over the land in question.
165. This position was highlighted in the Supreme Court decision of Town Council of Awendo v Onyango & 13 others; Mohamed & 178 others (Interested Parties) [2019] KESC 38 (KLR) at paragraph 42 whereby the court stated that,

‘...For purposes of argument in this Appeal, we shall treat the 1st to 13th Respondents as the original owners of the suit land. (We say for purposes of argument, because some of the respondents were not the original owners). They had acquired title to their various parcels of land most likely, through registration pursuant to the necessary land adjudication processes.

However, their titles to those parcels of land became extinguished upon compulsory acquisition. Upon the compulsory acquisition, their estates in the land (whether fee simple or absolute proprietorship) ceased to exist and became fused with the States’ superior title. Their parcels of land now became public land, having been compulsorily acquired for a public purpose in accordance with *the Constitution* and the law. The respondents were compensated for the loss of their land to the public interest...’



166. Furthermore, the notice of taking of possession and vesting of the land which has been compulsorily acquired is underpinned by the provision of Section 19 of the Land Acquisition Act, Chapter 295, Laws of Kenya {now repealed}. For ease of appreciation the provisions under reference are reproduced as hereunder; -

19. (1) After the award has been made, the Commissioner shall take possession of the land by serving on every person interested in the land a notice that on a specified day, which shall not be later than sixty days after the award has been made, possession of the land and the title to the land will vest in the Government.

(2) In cases of urgency, the Minister may direct the Commissioner to take possession of uncultivated or pasture or arable land upon the expiration of thirty days from the date of publication of the notice of intention to acquire, and on the expiration of that time the Commissioner, notwithstanding that no award has been made, shall take possession of that land in the manner prescribed by subsection (1).

(3) Upon taking possession of land under subsection (1) or subsection (2), the Commissioner shall also serve upon—

(a) the registered proprietor of the land; and

(b) the Registrar, a notice that possession of the land has been taken and that the land has vested in the Government.

(4) Upon taking of possession, the land shall vest in the Government absolutely free from encumbrances.

167. Besides, the legal position herein was underscored in the case of *Town Council of Awendo v Onyango & 13 others; Mohamed & 178 others (Interested Parties)* [2019] KESC 38 (KLR) at paragraph 43 whereby the court held that,

‘...Given this scenario, what rights or interests if any, could the Respondents be said to have retained following the compulsory acquisition of their parcels of land? As the law stood then, it is clear that the Respondents did not retain any interests in the land, capable of protection or resuscitation by the law. Section 19(1) of the Land Acquisition Act (now repealed) provides that:

“After the award has been made, the Commissioner shall take possession of the land by serving on every person in the land notice that on a specified day which shall not be later than sixty days after the award has been made, possession of the land and title the land will vest in the Government.”

And Sub-Section 4 of the said section provides:

“Upon taking possession, the land shall vest in the Government absolutely free from encumbrances.”

168. It is also worthy to highlight that even though the Commissioner of Lands now defunct issued and served the notice of taking of possession, the legal import and tenor of the said notice was never challenged by the 1<sup>st</sup> Defendant. To this end, there is no gainsaying that the 1<sup>st</sup> Defendant was comfortable and indeed remained comfortable with the contents of the notice of taking of possession. For good measure, the 1<sup>st</sup> Defendant, who testified as DW1 is on record confirming that the contents of the notice of taking possession are explicit.



169. Moreover, the fact that the entirety of the original parcel of land was compulsorily acquired was adverted to by PW1. For coherence, PW1 was the Plaintiff. While under cross-examination by learned Counsel for the 2<sup>nd</sup> Defendant, the witness is on record stating as hereunder; -

“I have indicated that the 1<sup>st</sup> Defendant did not have any legal interest over the land. I wish to add that the 1<sup>st</sup> Defendant did not have any rights over the land. Referred to page 5 of the 2<sup>nd</sup> Defendant’s List and Bundle of Documents and the witness states that the document is a gazette Notice.

170. Furthermore, the witness ventured forward and stated thus;

“Referred to page number 1 of the 2<sup>nd</sup> Defendant’s List and Bundle of Documents and witness states that the land that has been gazetted is LR NO. Kikuyu/Kikuyu/ Block I/X8. The land that has been gazetted has an acreage. The land that was gazetted at the foot of page 5 of the 2<sup>nd</sup> Defendant’s List and Bundle of Documents relate to LR NO. Kikuyu/ Kikuyu/ Block I/X8. I entered into the sale agreement long after the land had vested in the Government. I do confirm that the land in question had already vested in the Government. I do confirm that the 1<sup>st</sup> Defendant was obliged to surrender the Certificate of Title to the Government.

171. My reading and understanding of the testimony of PW1 and more particularly, the excerpts which have been reproduced in the preceding paragraphs, drives me to the conclusion that the Plaintiff was indeed confirming that the entirety of the original parcel of land had been compulsorily acquired.

172. Furthermore, what I hear the witness to be confirming is that by the time same entered into and executed the Sale Agreement, the land in question had entirely vested in and thus belonged to the Government.

173. Taking into account the legal implication of the Notice of taking possession {Section 19 of the Land Acquisition Act} and coupled with the explicit evidence tendered by PW1, I come to the conclusion that the entirety of the original parcel of land { LR NO. Kikuyu/Kikuyu/ Block I/X8}, was compulsorily acquired.

174. Before departing from this issue, I beg to posit that the fact that the Commissioner of Lands may not have followed up the issue and particularly, the question of surrender of the original certificate of Title of LR NO. Kikuyu/Kikuyu/ Block I/X8, does not Ipso Facto negate the legal import of Section 19 of the Land Acquisition Act, Chapter 295, Laws of Kenya [now repealed].

175. Moreover, it is also common ground that the failure by the 1<sup>st</sup> Defendant to surrender the Certificate of Title in respect of the original parcel of land does not defeat the fact that the entire land was compulsorily acquired. Moreover, the fact of failure to surrender the Certificate of Title, or to have the surrender registered in accordance with the law does not revert ownership right[s] to the First Defendant, who had been fully paid/ compensated. In any event, the 1<sup>st</sup> Defendant cannot resort to and benefit from her default to surrender the original Certificate of Title.

176. In a nutshell, my answer to issue number one [1] is to the effect that the entirety of the original parcel of land was compulsorily acquired and all the legal rights attendant thereto vested in the Government on behalf of the 2<sup>nd</sup> Defendant.

177. As pertains to the second issue, namely, whether the Certificate of Title in respect of the suit property [LR NO. Kikuyu/Kikuyu/ Block I/1XX3] is lawful and valid or otherwise, it is imperative to recall that



- while dealing with issue number one elsewhere hereinbefore, I have found and held that the entirety of the original parcel of land was compulsorily acquired. Furthermore, I have also held that upon the issuance of the notice of taking possession and vesting, the entire original parcel of land vested in the Government.
178. Be that as it may, it is important to recall that DW 1 testified that long after she had received the compensation money, she proceeded to and facilitated the sub-division of the original parcel of land culminating into the creation of LR NO'S. Kikuyu/Kikuyu/ Block I/1242 AND 1XX3, respectively.
179. To contextualize the evidence of DW1, it is instructive to reproduce her evidence while under cross-examination by learned Counsel for the 2<sup>nd</sup> Defendant. The witness stated as hereunder;-
- “I do confirm that by the time of the compulsory acquisition the original land had not been sub-divided. I do wish to state that the land in question was later sub-divided. The land had not been sub-divided by the time of payments.
180. The witness proceeded and stated thus;-
- “I do wish to state that the sub-division was done after the process of compulsory acquisition. The land was sub-divided after the payments of the compensation money. Referred to the Sale Agreement, the witness confirms that same was entered into after receipt of the compensation money.
181. It is also on record that it is the 1<sup>st</sup> Defendant who proceeded to and procured the Surveyor who undertook the sub-division. To this end, it suffices to revert to the evidence of DW1 while under cross-examination by learned Counsel for the 3<sup>rd</sup> and 5<sup>th</sup> Defendants.
182. The witness stated as hereunder;-
- “The sub-division of Block I/X8 was initiated by myself. It was sub-divided by my Surveyor. I do confirm that I received money for the portion of land that was compulsorily acquired.
183. Instructively, it is the 1<sup>st</sup> Defendant who initiated the sub-division of the original parcel of land. Nevertheless, there is no gainsaying that the initiation of the process of sub-division was undertaken long after the 1<sup>st</sup> Defendant had received the compensation money. In addition, it is also not lost on me that the sub-division was initiated long after the notice of taking possession had accrued. [See the import and tenor of Section 19 of the Land Acquisition Act, Chapter 295, Laws of Kenya].
184. Inevitably, the sub-division of the original parcel of land by and at the instance of the 1<sup>st</sup> Defendant and no doubt, with the collusion of some of the crooked officers working for the 3<sup>rd</sup> Defendant was undertaken long after the original parcel of land had vested in the Government.
185. To my mind, the sub-division of the original parcel of land, the creation of the resultant titles, including the title of the suit property, were borne out of an illegality. In this regard, there is no gainsaying that the entire process that birthed the title of the suit Property was vitiated to the core. In any event, it is common ground that a process which is vitiated by an illegality is rendered void for all intent and purposes.
186. Further and at any rate, it is worthy to reiterate the doctrine of Ex-nihilo nihil fit {meaning, out of nothing comes nothing}. For good measure, the legal import of the said doctrine was highlighted by



the Court of Appeal in the case of CAROGET INVESTMENT LIMITED V ASTER HOLDINGS LIMITED & 4 OTHERS [2019] KECA 79 (KLR), where the Court stated thus

“From the Council to the appellant and from the appellant to White Horse no title could be passed because *ex nihilo nihil fit* – out of nothing comes nothing”.

187. Moreover, where an act, in this case the sub-division, is void anything else that is premised thereon is rendered void. In this regard, it suffices to reiterate the dictum in the case of *Macfoy vs. United Africa Co. Ltd* [1961] 3 All E.R. 1169, where Lord Denning while delivering the opinion of the Privy Council at page 1172 (1) said;

“If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the Court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the Court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.”

1X8. Likewise, it is important to reference the holding of the Court of Appeal in the case of *Wambui v Mwangi & 3 others* (Civil Appeal 465 of 2019) [2021] KECA 144 (KLR) (19 November 2021) (Judgment), where the Court stated and held as hereunder;

The jurisprudence relied upon by the appellant and which we find prudent not to replicate are as already highlighted above. We have given due consideration to them in light of the record as assessed herein by us. Our take on the same is that the jurisprudential thread running through all of them is that no court of law should sanction and pass as valid any title to property founded on: fraud; deceitfulness; a contrived decree; illegality; nullity; irregularity, unprocedural or otherwise a product of a corrupt scheme.

189. In conclusion, it is my finding and holding that the Certificate of Title that was procured by and issued in favour of the 1<sup>st</sup> Defendant, was replete with illegality and thus no legal rights accrued to and in favour of the 1<sup>st</sup> Defendant. [See also the Decision in the case of *Chemey Investments Limited versus Attorney General* [2018] eklr].

190. Regarding the third issue, namely, whether the Plaintiff acquired any lawful and legal rights to the suit property, it is imperative to underscore that the Plaintiff herein entered into and executed a Sale Agreement with the 1<sup>st</sup> Defendant. In this regard, the Plaintiff's Title stems from the Certificate of Title {if any} that vested in the 1<sup>st</sup> Defendant.

191. Be that as it may, I have since found and held that the 1<sup>st</sup> Defendant herein proceeded to and undertook the sub-division of the original parcel of land long after the original parcel of land had vested in the Government on behalf of the 2<sup>nd</sup> Defendant. In this regard, there is no gainsaying that the 1<sup>st</sup> Defendant accrued and/or acquired no legal rights to and in respect of the suit Property.

192. To the extent that the 1<sup>st</sup> Defendant did not acquire any legal or lawful rights to and in respect of the suit Property, there is no gainsaying that the said 1<sup>st</sup> Defendant could not therefore convey [pass] any legal rights to and in favour of the Plaintiff. Instructively, the doctrine of *Nemo Dat Quod Dat Habet* is relevant and apt.

193. The legal implication[s] of the doctrine under reference was calibrated upon by the Court of Appeal in the case of *Diamond Trust Bank Kenya Ltd v Said Hamad Shamisi & 2 others* [2015] KECA 717 (KLR), where the Court observed as hereunder;



Firstly, section 26 (1) and (2) are exceptions to the general rule in the sale of goods that a person who does not have title to goods cannot, without the owner's authority or consent, sell and confer a better title in the goods than he has. (Nemo dat quod non habet). These exceptions are examples of initiatives towards the protection of commercial transactions that Lord Denning famously referred to in *BISHOPSGATE MOTOR FINANCE CORPORATION LTD V. TRANSPORT BRAKES LTD* (1949) 1 KB 322, at pp. 336-337 when he stated:

“In the development of our law, two principles have striven for mastery. The first is for the protection of property: no one can give a better title than he himself possesses. The second is for the protection of commercial transactions: the person who takes in good faith and for value without notice should get a good title. The first principle has held sway for a long time, but it has been modified by the common law itself and by statute so as to meet the needs of our own times.”[ Emphasis supplied].

194. Moreover, the doctrine of Nemo Dat Quod Dat Habet was also elaborated upon in the case of *Arthi Highway Developers Limited v West End Butchery Limited & 6 others* [2015] eKLR, where the Court stated as hereunder

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

195. Bearing in mind the foregoing decisions and coupled with the fact that the doctrine of indefeasibility of title cannot be deployed to sanitize an illegality, I come to the conclusion that the Certificate of Title in favour of the Plaintiff was illegal, invalid and void.

196. Further and in any event, the moment the Certificate of Title which was issued in favour of the 1<sup>st</sup> Defendant stood vitiated, everything else that arose thereunder collapse[s] as a matter of consequence.

197. Before concluding this issue, it is instructive to reiterate and underscore the holding of the Supreme Court in the case of *Dina Management Limited v County Government of Mombasa & 5 others* (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR) (Constitutional and Human Rights) (21 April 2023) (Judgment), where the Court stated thus:-

108. As we have established above, before allocation of the unalienated Government Land, there ought to have been processes to be followed prior. Further, we cannot, on the basis of indefeasibility of title, sanction irregularities and illegalities in the allocation of public land. It is not enough for a party to state that they have a lease or title to the property. In the case of *Funzi Development Ltd & others v County Council of Kwale, Mombasa Civil Appeal No 252 of 2005* [2014] eKLR the Court of Appeal, which decision this court affirmed, stated that: “a registered proprietor acquires an absolute and indefeasible title if and only if the allocation was legal, proper and regular. A court of law cannot on the basis of indefeasibility of title sanction an illegality or give its seal of approval to an illegal or irregularly obtained title.”

198. Suffice to posit that the holding by the Supreme Court in the decision [supra] applies to the Certificate of Title in favour of the Plaintiff in equal measure. Furthermore, the Certificate of Title borne by the Plaintiff equally collapses on the face of the provisions of Section 26 (1) (b) of the [Land Registration](#)



*Act*, 2012 {See also the decision of the Court of Appeal in the case of Said v Shume & 2 others (Civil Appeal E050 of 2023) [2024] KECA 866 (KLR) (26 July 2024) (Judgment)}

199. In respect of the last issue, namely, what reliefs, if any, ought to issue, it is worthy to outline that while discussing issues numbers two and three hereinbefore, this court has found and held that the Certificate of Title that was procured and obtained by the 1<sup>st</sup> Defendant was illegal and thus invalid. Furthermore, the Court has also found and held that the 1<sup>st</sup> Defendant could not convey any lawful rights and/or interests to and/or in favour of the Plaintiff or anyone else.
200. Arising from the foregoing, it is therefore common ground that the declaratory orders sought by and on behalf of the Plaintiff, particularly, that the Title of the suit Property is valid, cannot be granted.
201. On the other hand, it must have become evidently clear that the Certificate of Title which was issued to and in favour of the 1<sup>st</sup> Defendant was invalid. In this regard, the 1<sup>st</sup> Defendant had nothing to sell to and in favour of the Plaintiff.
202. Furthermore, having acquired no legal rights to and in respect of the suit Property, the Plaintiff's only remedy relies in recovery of the purchase price paid over and in respect of the suit Property as well as the value of improvements made on the suit Property. To this end, it is instructive to recall that the valuation report that was tendered and produced showed that the suit Property was valued in the sum of Kshs.15, 500, 000/= only.
203. To my mind, the Plaintiff is entitled to the said amount, namely, Kshs.15, 500, 000/= only together with interests from the date of filing the instant suit until payment in full.
204. The Plaintiff has also sought for Special Damages in the sum of Kshs.2, 325, 000/= only. Nevertheless, it is imperative to recall that the said monies have neither been pleaded nor particularized in the body of the further Re-Amended Plaint.
205. Suffice to state that the law on Special Damages is now established and settled. To this end any Party, the Plaintiff not excepted is obligated to plead and particularize the Claim for Special Damages and thereafter strictly/specifically prove same. {See the holding of the Court of Appeal in the case of Superior Homes (Kenya) PLC v Water Resources Authority & 9 others (Civil Appeal E330 of 2020) [2024] KECA 1102 (KLR) (19 August 2024) (Judgment)}
206. Moreover, it is worthy to recall that the claim in the sum of Kshs.2, 325, 000/= only is predicated on item contained in the Valuation Report and which is stated to be the disturbance allowance. Nevertheless, I beg to highlight that the 15% disturbance allowance is only an item [statutory] that is payable as pertains to matters compulsory acquisition. However, in respect of the instant matter, the Plaintiff's claim is not premised on any compulsory acquisition [but ownership] and hence the item is not payable.
207. At any rate, it is also not lost on the Court that the Plaintiff did not tender and/or produce any receipt to underpin the said claim. No receipts were produced to demonstrate the costs of what is alleged to be relocation from the suit Property. For good measure, an award of Special Damages does not issue for the mere asking.
208. The Plaintiff further sought for General Damages for fraud and illegality. I have since found and established that the 1<sup>st</sup> Defendant was knowledgeable of and privy to the fact that the original parcel of land had been compulsorily acquired by the Government. Furthermore, the 1<sup>st</sup> Defendant had also received and acknowledged the entire compensation.



209. Nevertheless, the 1<sup>st</sup> Defendant with the aid and complicity of the 3<sup>rd</sup> Defendant proceeded to and subdivided the original parcel of land irrespective of the import of Section 19 of the Land Acquisition Act, Chapter 295, Laws of Kenya {now repealed}. The conduct of the 1<sup>st</sup> Defendant was not only fraudulent, but smacked of dishonesty. Such fraud and dishonesty cannot go unpunished.
210. In this regard, I find and hold that the Plaintiff has ably demonstrated a basis for the award of General Damages for fraud and illegality as against the 1<sup>st</sup> Defendant. Nevertheless, the fraud could not have been perfected without the collusion or connivance between the 1<sup>st</sup> defendant and the 3<sup>rd</sup> Defendant, whose officer[s] acted as facilitator[s] of the fraud. To this end, I am minded to and hereby decree an award of Kshs.5, 000, 000/= only, on account of General Damages for fraud and illegality against the 1<sup>st</sup> and 3<sup>rd</sup> defendants together with interest from the date of this judgement until payment in full.
211. Regarding the validity of the Charge that was registered against the Title of the suit Property, I come to the conclusion that insofar as the Plaintiff did not accrue any legal rights to and in respect of the suit Property, same therefore had no rights capable of being pledged to the 6<sup>th</sup> Defendant.
212. Arising from the foregoing observations, there is no gainsaying that the Charge registered by the 6<sup>th</sup> Defendant over and in respect of the suit Property is rendered invalid on the basis of the illegality that inflicts [vitiates] the impugned Title.
213. In this regard, I find succor in the holding of the Court of Appeal in the case of Teleposta Pension Scheme Registered Trustees v Intercountries Exporters Limited & 5 others (Civil Appeal 293 of 2016) [2024] KECA 870 (KLR) (12 July 2024) (Judgment), where the Court stated as hereunder:
114. On the same premises, the allocation to Park Investments having been irregular and illegal, Park Investments had no valid legal interest in the suit property that it could secure to the Bank, and the Bank had no valid legal interest that it could pass to Intercountries Limited. The title held by Intercountries Limited is worthless. Its remedy can only lie against the Bank.

### **Final Disposition.**

214. Flowing from the analysis contained in the body of the Judgment, it must have come crystal clear that the Plaintiff has demonstrated that same is entitled to recovery of the purchase price/consideration that was paid to and in favour of the 1<sup>st</sup> Defendant. Furthermore, the Plaintiff has also demonstrated a basis to warrant recovery of the value of the renovations that were undertaken on the suit Property.
215. On the contrary, I have found and held that the 1<sup>st</sup> Defendant was duly and lawfully compensated for the value of the original property, namely, LR NO. Kikuyu/Kikuyu/ Block I/X8. In this regard, the purported Counter-Claim on behalf of the 1<sup>st</sup> Defendant is devoid and bereft of merit.
216. Consequently, and in the premises, the final orders that commend themselves to the Court are as hereunder; -
- i. The Plaintiff be and is hereby awarded the sum of Kshs.15, 500, 000/= only, being the costs of the land and the improvements thereon as at 23<sup>rd</sup> July 2013 together with interest at courts rate (14%) per annum from the date of filing the instant suit until payment in full.
  - ii. The award in terms of clause {i} shall be borne by the 1<sup>st</sup> Defendant only.



- iii. The Plaintiff is similarly awarded the sum of Kshs.5, 000, 000/= only, on account of General Damages for fraud and illegality as against the 1<sup>st</sup> and 3<sup>rd</sup> Defendants together with interest at courts rate (14%) per annum from the date of the judgment until payment in full.
  - iv. The Plaintiff be and is hereby awarded costs of the suit to be borne by the 1<sup>st</sup> Defendant.
  - v. The Plaintiff's suit against the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Defendants be and is hereby dismissed.
  - vi. The 6<sup>th</sup> Defendant be and is hereby awarded costs of the suit to be borne by the Plaintiff.
  - vii. The costs in favour of the 2<sup>nd</sup> Defendant shall be borne by the 1<sup>st</sup> Defendant herein and not by the Plaintiff.
  - viii. The 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants are not awarded any costs. In any event, the 3<sup>rd</sup> Defendant was complicit in the fraud that was perpetrated by the 1<sup>st</sup> Defendant.
  - ix. The 1<sup>st</sup> Defendant's Counter-Claim be and is hereby Dismissed.
  - x. Costs of the Counter-Claim be and are hereby awarded to the Plaintiff only.
217. For the avoidance of doubt, the Charge registered in respect of the suit Property, namely, LR NO. Kikuyu/Kikuyu/ Block I/1XX3, be and is hereby nullified and invalidated. Furthermore, the Certificate of Title in respect of the suit Property is equally cancelled and revoked.
218. Finally, the Chief Land Registrar {the 3<sup>rd</sup> Defendant} be and is hereby ordered to gazette the revocation of the Certificate of Title in respect of LR NO. Kikuyu/Kikuyu/ Block I/1XX3.
219. It is so Ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS...6<sup>TH</sup> DAY OF MAY 2025**

**OGUTTU MBOYA, FCIARB**

**JUDGE**

