



Marriot Africa International Limited v Murigu & 3 others; Ukombozi Holdings Ltd (Interested Party) (Environment and Land Case 4 of 2021) [2025] KEELC 5299 (KLR) (10 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5299 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE 4 OF 2021
JO MBOYA, J
JULY 10, 2025
[FORMERLY THIKA ELC CASE NO. 115 OF 2019]**

BETWEEN

MARRIOT AFRICA INTERNATIONAL LIMITED PLAINTIFF

AND

MARGARET NYAKINYUA MURIGU 1ST DEFENDANT

MARY WANJIKU KANYOTU 2ND DEFENDANT

WILLY KIHARA 3RD DEFENDANT

KANGAITA COFFEE ESTATES LIMITED 4TH DEFENDANT

AND

UKOMBOZI HOLDINGS LTD INTERESTED PARTY

JUDGMENT

1. The Plaintiff has approached the court vide the Complaint dated 1st July 2019 and wherein the Plaintiff has sought various reliefs. The reliefs sought vide the Complaint are as hereunder;
 - i. A permanent injunction to restrain the defendants, jointly and severally, their servants and agents, employees or anyone authorized by them or acting on their behalf, from trespassing against all that parcel of land known as L.R Number 11261/76 or any sub-plot ensuing therefrom as a result of sub-division.
 - ii. A permanent injunction to restrain the defendants, jointly and severally, their servants and agents employees or anyone authorized by them or acting on their behalf from in any way placing any advertisement in any newspaper or media



or by way of any leaflet or similar advertising material claiming or purporting to claim ownership of all that parcel of land known as L.R Number 11261/76 or any sub-plot ensuing therefrom as a result of sub-division.

- iii. A permanent injunction to restrain the defendants jointly and severally, their servants and agents, employees or anyone authorized by them or acting on their behalf from evicting, threatening to evict, harassing or in any other manner interfering with the quiet enjoyment and user by the plaintiff and other occupants and or other purchasers of all that parcel of land known as L.R No. 11261/76 or any sub-plot ensuing from its subdivision or any portion thereof.
- iv. A permanent injunction restraining the defendants jointly and severally, whether by themselves, their agents, servants, employees or anyone authorized by them or acting on their behalf from registering any caveat or inhibition against the title to all that parcel of land known as L.R 11261/76 or any sub-plot ensuing from its subdivision or any portion thereof.
- v. General damages for trespass.
- vi. Costs of the suit.
- vii. Interest on (5) and (6) above.
- viii. Any other remedy that this Honourable court may deem fit to grant.

2. The 1st and 2nd Defendants duly entered appearance and thereafter filed a statement of Defence and counter-claim dated 15th July 2019; and wherein the said Defendants sought the following reliefs:

- a. An Inhibition order to be registered against any and all titles that have been issued pursuant to an alleged transfer and subsequent subdivision of L.R No. 11261/76 Ruiru, including but not limited to the plots listed in prayer 1 above.
- b. An order for cancellation of any and all titles issued pursuant to the transfer and subsequent subdivision of L.R No. 11261/76 Ruiru but not limited to plots listed in prayer 1 above.
- c. This Honourable court do issue a demolition and eviction order to be effected on all structures, houses and persons illegally on the suit premises and the said order to be enforced by the county police commandant Kiambu county.
- d. The Honourable court do award General Damages.
- e. The Honourable court do award costs of the suit and interests thereon.
- f. Any other remedy that the court may deem fit just and expedient to grant.

3. Though the 1st and 2nd Defendants filed a counter-claim, the legitimacy of the counter-claim was addressed by the court in terms of the ruling rendered by Lady Justice Gacheru dated 24th September 2020; and wherein the Learned Judge found and held that the 1st and 2nd Defendant[s] in their personal capacities and or as directors of the 4th Defendant could not mount a counterclaim in so far as the suit property belonged to and was registered in the name of a company.



4. For good measure, the court [differently constituted] found and held that the counterclaim under reference was premature, misconceived and incompetent. To this end, the counter-claim was struck out. [See *Marriot Africa International Ltd vs Margaret Nyakinyua Murigu & 3 others; Ukombozi Holdings Ltd (interested parties)* (2020) KEELC 1314].
5. The 3rd defendant duly entered appearance and also filed a statement of Defence. Suffice it to state that the 3rd defendant denied the claims by and on behalf of the Plaintiff. Further and in any event, the 3rd Defendant contended that the suit property belonged to the 4th Defendant and that same was never sold to and in favour of Trendsetters Investment Ltd. Moreover, the 3rd Defendant contended that the sale [if at all] to Trendsetters Investment Ltd was fraudulent, illegal and void.
6. The 4th Defendant duly entered appearance and filed a statement of Defence and counter-claim dated 12th October 2020; and wherein same sought the following reliefs:
 - a. A declaration that the parcel of land known as L.R No. 11261/76 belongs to the plaintiff herein and the alleged sale to the 1st defendant was null and void and the subsequent sale of the said parcel land to the 2nd defendant and thereafter third parties was fraudulent, illegal, null and void for all for all intents and purposes.
 - b. A declaration that the purported sale agreement dated 19th April 2012 allegedly between the plaintiff and the 1st defendant herein is illegal, null and void as it was entered contrary and in violation of the orders issued by the High court of Kenya in Nairobi H.C Succ Cause No. 1239 of 2008 in the matter of estate of James Kanyotu and registered against the title for the suit land on 7th July 2010 and 23rd November 2010 respectively and the said agreement and or contract is not enforceable before any court of law for illegality.
 - c. A declaration that the court order emanating from Nairobi Milimani Commercial & Admiralty Division Misc Application 461 of 2012 cancelling entry No's 2 & 3 in the register of L.R 11261/76 is null and void as the said court did not have jurisdiction to issue the said orders.
 - d. A declaration that the sale and transfer of L.R 11261/76 [the Suit Property] when the orders referred to in paragraphs 22 and 23 hereinabove issued in Nairobi H.C Succession Cause No. 1239 of 2008 were in force was null and void for all intent and purposes and the transfer in favour of the 1st defendant registered on 11th February 2013 is null and void.
 - e. A declaration that the entry on the title L.R 11261/76 by the 3rd defendant herein on 14th February 2013 on the adoption of file copy for as the official record by the 4th defendant was used to perpetuate fraud and the same is illegal and null and void.
 - f. An order directing the 4th and 5th Defendants to cancel all the entries relating to the above-mentioned transactions and to revoke all the subdivisions and amendments affected by the 3rd & 4th defendants in the lands office and the survey office and restore the original records accordingly.



- g. An order of Permanent injunction against the defendants from interfering, selling, disposing, charging and or dealing with L.R 11261/76 of any of the resultant subdivision of the said property in any manner whatsoever.
 - h. An order of Eviction as against the defendants, their agents, servants and or persons claiming proprietorship under any of the defendants herein.
 - i. Costs of the suit and Counter-claim.
7. The Plaintiff to the main suit and the 2nd defendant to the counter-claim filed various replies to the statement of Defence and defence to the counterclaim, dated 6th May 2021; and wherein same denied the averments by the 4th Defendant/counter-claimer.
 8. Furthermore, the Plaintiff/2nd defendant to the counterclaim contended that the suit property was lawfully sold and transferred to the Plaintiff/2nd defendant to the counterclaim. Moreover, it was averred that by the time the suit property was being sold to and in favour of the Plaintiff, there were no encumbrance [s] and or restrictions [s] reflected in the register of the suit property.
 9. Additionally, the Plaintiff also filed a reply to the statement of defence by the 1st and 2nd defendants dated 6th May 2021; and a reply to the 3rd defendant's statement of defence dated 6th May 2021. Suffice it to state that the Plaintiff/2nd defendant to the counterclaim maintained that the suit property was lawfully and legally transferred and registered in its name. Moreover, it has been contended that by the time of the sale and transfer of the suit property unto itself, the vendor [Trendsetters Investments Ltd] possessed a clean title. In addition, it has also been contended that the plaintiff is a bonafide purchaser for value without notice.
 10. The 1st Defendant to the counterclaim also filed a statement of defence to the counterclaim and denied the claims by the 4th Defendant to the counterclaim. Furthermore, the 1st defendant to the counterclaim contended that the suit property was lawfully sold by the 4th defendant. In this regard, the 1st defendant to the counterclaim has referenced various resolution [s] that were made by the 4th Defendant, including the resolution [s] of 21st March 2012, which led to the execution of the sale agreement dated 19th April 2012.
 11. The 3rd Defendant to the Counter-claim also entered appearance and filed a statement of defence. Instructively, the 3rd Defendant to the counterclaim contended that same lawfully entered into and executed a sale agreement with the Plaintiff to the main suit over and in respect of the suit property. In addition, it was contended that the suit property has since been subdivided into various sub-plots, some of which were reported to have been sold to Third Parties.
 12. The 4th and 5th Defendants to the Counter-claim also entered appearance and filed a statement of defence denying the claims at the foot of the Plaint. However, the 4th and 5th defendants to the counterclaim filed a List and Bundle of Document[s] and Witness Statement, but same were struck out by the Honourable vide Ruling rendered on the 20th day of March 2025. any list and bundle of documents, lists of witnesses or witness statements.
 13. The instant suit came up for case conference on various date [s] resting with the 24th July 2023, whereupon the parties confirmed that same had duly filed all their requisite documents. To this end, the matter was confirmed to be ready for hearing.
 14. The Plaintiff's case is premised on the evidence of two witnesses, namely; Abdul Dawood Hassan and Ken Njau. Same testified as PW 1 and PW 2, respectively.



15. It was the testimony of PW 1 [Abdul Dawood Hassan] that same is a Director of the Plaintiff company. To this end, the witness averred that same is thus conversant with the affairs of the Plaintiff and in particular, the facts of the matter before the court.
16. Furthermore, it was the testimony of the witness that same has since recorded and filed a witness statement dated 1st July 2019. In this regard, the witness sought to adopt and rely on the contents of the said witness statements. Suffice it to state that the witness statement dated 1st July 2019 was thereafter adopted and constituted as the evidence in chief of the witness.
17. Additionally, the witness testified that same has equally recorded and filed another witness statement. To this end, the witness referenced the statement dated 22nd March 2023 and thereafter sought to adopt and rely on the contents thereof. For good measure, the contents of the witness statement dated 22nd March 2023, were duly adopted and constituted as further evidence of the witness.
18. Moreover, the witness adverted to the list and bundle of documents dated 1st July 2019, containing ten [10] documents and which documents the witness sought to tender and produce before the court. There being no objection to the production of the said documents, same were duly tendered and produced as exhibits P1 – P10, respectively.
19. It was the further testimony of the witness that the Plaintiff also filed a further list and bundle of documents dated 14th December 2022; containing Fourteen [14] documents. To this end, the witness sought to tender and produce the documents under reference. Suffice it to state that the said documents were duly admitted and marked as exhibits P11 – P25, respectively.
20. The witness further referenced the supplementary list and bundle of documents dated 22nd March 2023, containing Seventeen [17] documents and which documents the witness sought to tender and produce before the court. Instructively, the documents under reference were admitted and marked as Exhibits P26 – P43, respectively.
21. On the other hand, the witness adverted to the Plaint dated 1st July 2019, together with a verifying affidavit attached thereto and thereafter sought to adopt and rely on the contents thereof. Furthermore, the witness alluded to the reliefs sought at the foot of the Plaint and implored the Honourable court to grant same.
22. On cross-examination by learned counsel for the 4th Defendant the witness testified that same is a director of the Plaintiff company. In addition, the witness averred that same has been a director of the Plaintiff company for 8 years. Besides, the witness added that the company has other directors, namely; Augustino Okori, Vijiya Minbohadur and Amos Otieno.
23. It was the further testimony of the witness that same has seen the various documents filed by the 4th defendant. In particular, the witness stated that the document at page 10 of the 4th Defendant's list and bundle of documents is a CR 12 relative to the true position of the Plaintiff company. Furthermore, the witness averred that the CR 12 under reference states that the directors of the Plaintiff company are David; Joseph John and Minbhandur, Abdul Dawood Hassan. Besides, the witness averred that Amos Otieno is no longer a director of the Plaintiff company.
24. While still under cross-examination, the witness testified that the Plaintiff's offices are located at School Lane, Westlands Nairobi. Moreover, the witness testified that the Plaintiff company is engaged in buying and selling properties. In addition, the witness averred that as a director of the Plaintiff company same is tasked with the mandate of looking for various directors to invest in the company.



25. On further cross-examination, the witness averred that same is conversant with the directors of the 4th Defendant. However, the witness clarified that same is not familiar with the said directors physically. To this end, the witness averred that same can identify some of the directors. Moreover, the witness testified that same can identify Mary Wanjiku who is one of the directors of the 4th defendant.
26. It was the further testimony of the witness that the Plaintiff herein bought L.R No. 11261/76. Furthermore, the witness testified that the land in question is located at Ruiru. Besides, the witness averred that the land measures approximately 500 acres. In addition, the witness testified that the land was bought from Trendsetters Investment Ltd, namely; the First Defendant to the Counter-claim.
27. While still under cross-examination, the witness averred that the Plaintiff and Trendsetters Investment Ltd entered into and executed a sale agreement. Furthermore, the witness averred that the sale agreement was signed by himself [witnesses] and Amos Otieno on behalf of the Plaintiff. Nevertheless, the witness testified that Amos Otieno is no longer a director of the Plaintiff company.
28. On further cross-examination, the witness testified that the sale agreement was also executed by the vendor. Besides, the witness added that the Plaintiff procured and obtained a land control board consent. Furthermore, the witness averred that same has since availed and produced a copy of the land control board consent [the Consent] together with the minutes of the Plaintiff company.
29. Upon being referred to a copy of the Green card/Register of the suit property, the witness averred that entry number 2 on the said register references an order of injunction at the High Court of Kenya at Nairobi dated 7th October 2009. Furthermore, the witness averred that the order under reference highlights Nairobi Hcc succession cause No. 1239 of 2008. Furthermore, the witness testified that the order in question was restraining various persons, namely; Mary Wanjiku, Christopher Ngata Kanyotu, Andrew Peter, John Kahiga Kanyotu & Sandra Njau.
30. It was the further testimony of the witness that the suit property was subject to two [2] sets of orders of inhibition. The witness further testified that the orders of inhibition were issued by the High Court, albeit in the succession cause. Additionally, it was the testimony of the witness that at the time of the purchase of the suit property, the Plaintiff was aware of the two [2] sets of inhibitions. Nevertheless, the witness testified that the Plaintiff's advocate advised the Plaintiff that there was an order that was obtained in respect of the matter. To this end, the witness referenced an order that was issued to him by their advocate. Further and in any event, the witness testified that the order emanated from Nairobi HCC No. 461 of 2012.
31. It was the further testimony of the witness that same is aware of another case involving the suit property. To this end, the witness referenced Nairobi HCC Succ No. 1239 of 2008. Moreover, the witness clarified that there was an order of inhibition from the said suit.
32. Furthermore, the witness testified that same is familiar with the various orders that were issued by the succession cause.
33. Regarding the order issued by Honourable Justice Dulu, Judge; the witness averred that the said order restrained various persons from interfering with the suit property. Furthermore, the witness also referenced the orders issued on the 25th October 2011 by Honourable Justice D.K Maraga – Judge [as he then was] and the orders issued on the 8th November 2018 by Honourable Justice Luka Kimaru – Judge [as he then was].
34. Moreover, it was the testimony of the witness that same has availed to the court a copy of the letter of consent. To this end, the witness referenced page 208 of the Plaintiff's list and bundle of documents. Besides, the witness averred that the consent was procured from the land control board at Ruiru. In



- addition, the witness averred that same signed the application for land control board consent alongside Amos Otieno.
35. While still under cross-examination, the witness testified that same attended the land control board meeting. However, the witness quickly changed his version and stated that he did not attend the said land control board. Furthermore, the witness averred that same is aware that the land control board consent has been challenged.
 36. It was the further testimony of the witness that the suit property was bought [purchased] for the sum of Kshs.750,000,000/= only. Furthermore, the witness averred that the money in question was fully paid to the vendor. Besides the witness averred that the Plaintiff also paid stamp duty of Kshs.15,040,000/= Only.
 37. While still under cross-examination, the witness testified that the Plaintiff bought the suit property from Trendsetters Investments Ltd, namely; he First Defendant to the Counter-claim. Moreover, it was stated that by the time the plaintiff was purchasing the suit property, Trendsetters Investments Ltd [vendor] had a clean title.
 38. On cross-examination by learned counsel for the 1st Defendant, the witness testified that the property in question was acquired from Trendsetters Investments Ltd. In any event, the witness averred that the Plaintiff and Trendsetters Investment Ltd do not share the same office.
 39. It was the further testimony of the witness that the majority shareholder of the Plaintiff is from Ukraine. Furthermore, the witness testified that the majority shareholder holds a total of 601 shares in the company. As concerns the title, the witness averred that same has since tendered and produced a copy of the Certificate of title.
 40. While still under cross-examination, the witness testified that the Plaintiff was aware that the land in question also formed part of the estate of James Kanyotu. To this end, the witness averred that entry number 2 relates to the estate of James Kanyotu [now Deceased]. Be that as it may, the witness testified that before the Plaintiff could purchase property, the Plaintiff undertook due diligence. Nevertheless, the witness testified that due diligence did not include perusal of the succession file.
 41. On cross-examination by learned counsel for 3rd Defendant, the witness testified that the Plaintiff and the seller [Trendsetters Ltd] shared a common postal address. Nevertheless, the witness averred that same is not an employee of Kamlesh Pattni.
 42. While still under cross-examination, the witness testified that the suit property was sold for the sum of Kshs.750,000,000/= only. Furthermore, the witness testified that the Plaintiff bought the entire of suit property and not a portion thereof. In addition, the witness acknowledged that the sale agreement at page 86 does not have a date thereon. Nevertheless, the witness averred that the sale agreement tendered and produced by the Plaintiff does not correspond with the one produced by the 3rd defendant. In particular, the witness added that the sale agreement was prepared by the firm of M/s Odhiambo M.T Adala.
 43. Regarding the document at page 74 and 75 of the 3rd Defendants list and bundle of documents, the witness averred that same is a Report by a Forensic Document Examiner. Furthermore, the witness averred that the Examiners Report shows that the Letter of consent was a forgery.
 44. Additionally, it was the testimony of the witness that the document at page 78 of the 3rd defendant's list and bundle of documents is a copy of the register. Furthermore, the witness testified that entry number 5 relates to the transfer and registration of the suit property in favour of Trendsetters Investment Ltd. In any event, it was averred that entries numbers 4 and 5 were made on the same date. In respect of



entry number 6, the witness testified that same relates to the transfer of the suit property to the Plaintiff for the sum of Kshs.750,000,000/= only.

45. While still under cross-examination, the witness testified that the sale agreement between the Plaintiff and the Trendsetters Investment Ltd was entered into on the 5th February 2014. Furthermore, the witness averred that the sale agreement was lawfully entered into and executed. For good measure, the witness posited that there was nothing suspicious about the transfer being done on the same day.
46. As pertains to the sale of the suit property to Ukombozi Holdings Ltd, the witness averred that same has not produced a copy of the said sale agreement. Nevertheless, the witness averred that same has attached 1002 titles arising from the subdivisions of the suit property. In any event, the witness testified that the titles reads the name of the Plaintiff. In addition, the witness testified that it is the Plaintiff who sells the suit properties to various buyers.
47. On cross-examination by learned counsel for the Interested party/3rd Defendant to the counterclaim, the witness averred that the Plaintiff has since sold the land in question to the interested party [Ukombozi Holdings Ltd]. Furthermore, the witness stated that the suit property was sold at Kshs.3,000,000/= or 4,000,000/= or thereabout. In addition, the witness averred that even though the Plaintiff sold the suit property to Ukombozi Holdings Ltd same [witness] has not seen the Certificate of title in the name of Ukombozi Holdings Ltd.
48. Additionally. the witness averred that Ukombozi Ltd has since transferred the sub-plots arising from the suit property to various purchasers. While still under cross-examination, the witness averred that Ukombozi Holdings Ltd is now the registered owner of the property. In any event, the witness testified that Ukombozi Holdings Ltd has not paid the entire purchase price of the suit property.
49. Moreover, it was the testimony of the witness that the Plaintiff and Ukombozi holdings Ltd had an agreement whereby Ukombozi Holding Ltd was to sell the plot[s] and thereafter remit the payments to the Plaintiff. Nevertheless, the witness averred that the Plaintiff does not play any role in the same of the property.
50. On further cross-examination, the witness averred that the suit property was bought/purchased from Trendsetters Investment Ltd. Furthermore, it was averred that at the time of the sale of the land to the Plaintiff, there was no order, inhibition or restriction[s] stopping the transfer of the suit property. On the contrary, the witness averred that there was an order that was issued in Nairobi HCC NO. 461 of 2012. Furthermore, the witness testified that same does not know whether the said order has since been varied and or set aside.
51. It was the further testimony of the witness that the suit property currently belongs to Ukombozi Holdings Ltd [the Interested Party/ Third Defendant to the Counter-Claim] and not the Plaintiff.
52. On cross-examination by Learned counsel for the 4th & 5th Defendants to the counterclaim, the witness averred that the Plaintiff sold the land to Ukombozi Holdings Ltd. However, the witness added that same does not know the purchase price that was paid by Ukombozi Holdings Ltd to the Plaintiff. Furthermore, the witness testified that the suit property was subsequently subdivided into various plots and that half of the subdivided plots have since been sold.
53. It was the further testimony of the witness that the Plaintiff has since transferred the suit property to Ukombozi Ltd. However, the witness clarified that same [Witness] does not recall the date when the suit property was transferred to Ukombozi Holdings Ltd.



54. While still under cross-examination, the witness testified that the land in question was agricultural and commercial. To this end, the witness averred that there was need to procure and obtain a land control board consent.
55. Regarding the document at page 85 of the Plaintiff's bundle of documents, the witness averred that the said document is the letter of consent. Moreover, the witness averred that the letter of consent is dated 6th May 2014. However, the witness testified that the letter makes reference to a meeting that was held [sic] on the 6th June 2014. In this regard, it was the testimony of the witness that the meeting appears to have been held after more than one [1] month from the date of the Letter of consent.
56. It was the further testimony of the witness that even though the consent was procured and obtained, same [witness] did not attend the meeting.
57. Regarding the documents at pages 12 – 14 of the Plaintiff's bundle of documents, the witness averred that the said document relates to the sale agreement between Trendsetters Investments Ltd and the Plaintiff. Furthermore, the witness averred that the Plaintiff lawfully acquired the suit property.
58. Upon being referred to entry number 4 of the Register of the suit property, the witness averred that the said entry relates to an order in respect of Nairobi HCC No. 461 of 2012. Regarding the order issued on 27th July 2012, the witness averred that same is familiar with the said order. However, the witness added that same does not know whether the order has since been set aside and or quashed.
59. While still under cross-examination, the witness averred that the Plaintiff herein is not related to the seller [Trendsetters Investment Ltd]. However, the witness acknowledged that the Plaintiff and Trendsetters Investment Ltd have their offices in the same building. Furthermore, the witness added that the Plaintiff and Trendsetters Ltd have the same postal address.
60. It was the further testimony of the witness that the suit property was lawfully transferred to and registered in the name of the Plaintiff. In addition, the witness averred that the Plaintiff paid the sum of Kshs.15,040,000/= only on account of stamp duty.
61. The witness further averred that prior to and before purchasing the suit property, the Plaintiff carried out and undertook due diligence to ascertain ownership thereof. Furthermore, the witness added that at the time of the purchase of the suit property, the property was registered in the name of the 1st defendant to the counterclaim [Trendsetters Investment Ltd].
62. The Second witness who testified on behalf of the Plaintiff was Kenneth Peter Njau. Same testified as PW 2.
63. It was the testimony of the said witness that same is conversant with the facts of this matter. Furthermore, the witness averred that same is a director of the 4th Defendant. In addition, the witness testified that same has since recorded a witness statement dated 22nd March 2023 and which witness statement the witness sought to adopt and rely on. Suffice it to state that the witness statement was thereafter adopted and constituted as the evidence in chief of the witness.
64. On cross-examination by Learned counsel for the 3rd Defendant, the witness averred that same is a director of the 4th defendant. Moreover, the witness averred that same became a director of the same defendant in the year 2011. In addition, the witness averred that before the year 2011, same was not a director of the 4th Defendant.



65. While under further cross-examination, the witness testified that same is not aware whether James Kanyotu [now deceased] was the majority shareholder in the 4th defendant before he joined the company as a director.
66. Regarding the document at page 28 of the 3rd Defendant's list and bundle of documents, the witness averred that same is the search from the registrar of companies. Furthermore, the witness averred that same could see the name of James Kanyotu [now Deceased] and it was shown that the said James Kanyotu had more than 4000 shares.
67. It was the further testimony of the witness that same was married to Sandra Gathoni Kanyotu. However, the witness clarified that he is not a beneficiary of the estate of James Kanyotu. Furthermore, the witness testified that same is aware that there is a succession cause involving the estates of James Kanyotu. Nevertheless, the witness averred that same is not aware of any order that bars him from dealing with the estate of James Kanyotu [now deceased] and in particular, the suit property.
68. Regarding the documents at pages 24 to 31 of the 3rd Defendant's list and bundle of documents, the witness stated that the documents relate to a court order which bars and prohibits any dealings with the affairs of the 4th Defendant and in particular, the suit property. Furthermore, the witness added that same has also seen an order directing the preservation of the affairs of the estate of James Kanyotu in the suit property.
69. Upon being referred to pages 26 and 27 of the 3rd defendant's lists and bundle of documents, the witness averred that same relates to entries on the register of the suit property barring various persons, including himself, witness from dealing with the suit property.
70. While still under cross-examination, the witness testified that though same is aware of the sale agreement between the 4th Defendant and Trendsetters Investments Ltd, same was not a signatory of the sale agreement. However, the witness clarified that same is a signatory of the bank accounts of the 4th Defendant. In any event, the witness averred that the 4th defendant has various bank accounts in Family Bank and Equity Bank, respectively.
71. On cross-examination by learned counsel of the 4th Defendant, the witness stated that same became a director of the 4th Defendant from the year 2009. Furthermore, the witness averred that in 2009, the succession cause in respect of the estate of James Kanyotu [now deceased] had already been filed and was ongoing. Besides the witness averred that same is aware that Mary Wanjiku Kanyotu [the 2nd defendant] is one of the administrators of the estate of the deceased. Furthermore, the witness testified that there was a board meeting and resolutions were passed to sell the suit property. Nevertheless, the witness testified that same was aware of a court order that was restraining the sale of the Kipipiri farm.
72. While still under cross-examination, the witness averred that same is not aware whether the court has since constituted anyone as interim directors of the 4th Defendant. Furthermore, the witness added that same is not aware whether the administrators of the deceased are the only directors of the 4th defendants.
73. It was the further testimony of the witness that same is aware of the orders of Honourable Lady Justice Nambuye, Judge; [as she then was] concerning the affair of the estate of James Kanyotu [now deceased] and the affairs of the 4th defendant. Further and in any event, the witness testified that the court order also directed that the sale of any property could only be undertaken with the consent of the court.
74. It was the further testimony of the witness that same is aware that the sale of the property which belonged to James Kanyotu [now deceased] could not be undertaken without the sanction of the court.



- Nevertheless, the witness testified that the suit property is however registered in the name of the 4th defendant and not James Kanyotu [deceased].
75. On further cross-examination, the witness testified that same did not procure and obtain the consent of the court to sell the suit property because the suit property did not belong to James Kanyotu. To this end, the witness averred that the consent of the court was not necessary. In addition, the witness testified that same knows the 1st defendant. Furthermore, the witness testified that the 1st defendant [Margaret Nyakinyua Murigu] did not receive any portion of the proceeds of the sale of the property.
 76. It was the further testimony of the witness that the issue of the land control board consent was left to the advocate for the 4th defendant namely, Mr. Odhiambo Adala. Furthermore, the witness testified that same did not attend the land control board meeting.
 77. Regarding the document on page 87 of the 4th Defendant's list and bundle of documents, the witness testified that the document in question is a Letter from Ruiru Land Control Board. Furthermore, the witness testified that the letter in question relates to the circumstance[s] surrounding the issuance of the letter of consent.
 78. Regarding the document at page 16 of the 4th Defendant's lists and bundle of documents, the witness testified that the document is a court order that was issued by Hon. Justice D.K Maraga, Judge; [as he then was].
 79. On cross-examination by learned counsel for the 4th Defendant, the witness testified that the sale of the suit property was sanctioned by the Board of directors of the 4th Defendant. Moreover, the witness averred that the purchase price was agreed in the sum of Kshs.700,000,000/= only. However, upon being referred to entry number 5 in the register of the suit property, the witness stated that the consideration [Purchase price] shown is Kshs. 350,000,000/= only.
 80. Upon being pressed to explain the difference between the agreed purchase price of Kshs.700,000,000/= at the foot of the sale agreement and the figures shown at the foot of entry number 5 in the register, the witness said he has no reason for the variation between the purchase shown on the sale agreement and the details of the Consideration captured at the foot of entry number 5.
 81. Furthermore, the witness also confirmed that the Letter of consent also referenced the consideration of Kshs.350,000,000/=only, which admittedly was different from the purchase price shown at the foot of the Sale Agreement.
 82. On cross-examination by learned counsel for the 3rd Defendant to the counterclaim, the witness testified that same is aware that the 4th defendant has since authorized the filing of a counterclaim. Furthermore, the witness added that same is aware that a counterclaim has already been filed.
 83. It was the testimony of the witness that by the time the suit property was sold to Trendsetters Investment Ltd, there were no orders barring the sale. In addition, the witness testified that the orders restraining the sale of the suit property had been vacated vide another order.
 84. On further cross-examination by learned counsel for the interested party/3rd defendant to the counterclaim, the witness testified that same is aware that the suit property belonged to and was registered in the name of the 4th Defendant. Moreover, the witness averred that it is the 4th defendant herein who sold the land to the 1st defendant to the counterclaim, namely, Trendsetters Investments Limited. In addition, the witness averred that the sale of the suit property was sanctioned by the board of directors of the 4th defendant.



85. While still under cross-examination, the witness testified that there was a resolution of the company authorizing the sale of the suit property. However, the witness averred that same is not one of the persons who was given the authority to execute the sale agreement.
86. It was the testimony of the witness that the sale agreement that was entered into between the 4th defendant and the 1st defendant to the counterclaim was lawful. Furthermore, the witness testified that same is aware that the suit property has since been sold to the Plaintiff herein. Besides the witness testified that he is also aware that the Plaintiff has since entered into a sale agreement with members of the Interested party. Nevertheless, the witness averred that same is not aware whether the Interested Party has since procured any Certificate of title in respect of the suit property.
87. On cross-examination by learned counsel for the 4th and 5th defendant[s] to the counterclaim, the witness averred that same is testifying before the court as a director of the 4th Defendant. Furthermore, the witness stated that same is aware that the dispute as pertains to the directorship of the 4th defendant is currently pending before the court. Nevertheless, the witness testified as at 2016, same [witness] was a director of the 4th defendant.
88. Regarding CR 12 dated 8th October 2020, the witness stated that the said CR 12 relates to the directorship of the 4th defendant. However, the witness submitted that the CR 12 under reference does not capture his name as one of the directors of the 4th defendant. Nevertheless, it was the testimony of the witness that same has not ceased to be a director of the 4th defendant.
89. Upon being referred to the court order issued in 2009, the witness averred that the said order restrained various persons, including himself, from interfering with the affairs of the 4th defendant. Furthermore, the witness testified that the court order directed that the affairs and properties of the 4th defendant be preserved.
90. While still under cross-examination, the witness testified that same was not a director of the 4th defendant company as at 13th February 2008. Besides, the witness testified that same is not able to confirm who was the majority shareholder of the 4th defendant.
91. It was the further testimony of the witness that the 4th defendant entered into a sale agreement with Trendsetters Investments Ltd on the 19th April 2012. Furthermore, the witness clarified that the sale agreement was duly signed on behalf of the 4th defendant by Mary Wanjiku Kanyotu and Christopher Ngata Kanyotu, respectively.
92. As to whether same was aware of the orders issued by Honourable Justice D.K Maraga, Judge; and whether the said orders prohibited dealings with the suit property, the witness testified that same was not aware of the said order.
93. Nevertheless, it was the further testimony of the witness that the said order concerned various properties, including the suit property. In addition, the witness averred that same is not aware of any orders that are varied and discharged the orders of Hon. Justice Maraga, Judge.
94. Regarding the document at page 394 of the Plaintiffs' list and bundle of document, the witness averred that the said document is the shareholders' portfolio for the 4th Defendant. In particular, the witness testified that the name of James Kanyotu is duly reflected thereunder. Moreover, the witness testified that James Kanyotu [now Deceased] held a total of 4995 shares out of the shareholding of the company which was 5000 shares.



95. It was the further testimony of the witness that the shareholding portfolio of the 4th defendant company was enhanced and or upgraded in the years 2009/2010. To this end, the witness testified that the shareholding portfolio of the 4th Defendant company was enhanced.
96. On further cross-examination, the witness testified that same is aware that the 4th defendant convened a board meeting on 21st March 2012. It was stated that the meeting under reference was held at Ruiru at the offices of the 4th defendant. Furthermore, the witness testified that the board meeting passed a resolution sanctioning the sale of the suit property. Moreover, the witness testified that same was privy to the sale agreement which was entered into between the 4th Defendant and the 1st defendant to the counterclaim, namely; Trendsetters Investments Limited.
97. Additionally, the witness testified that the sale agreement contained various terms including the requirement to pay a stakeholder sum of Kshs.70,000,000/= only. Nevertheless, the witness averred that same cannot recall the date when the stakeholder's sum was paid/deposited. However, the witness clarified that the said stakeholder sum [Deposit] must have been paid at the time of the execution of the sale agreement.
98. It was the further testimony of the witness that there was a board resolution which authorized the manner for disbursing the consideration. In particular, it was averred that the monies were disbursed to various beneficiaries to the estate of the deceased. Nevertheless, the witness testified that same is not able to state when the disbursements were done.
99. Regarding the document at page 29 of the Plaintiff's list and bundle of documents, the witness testified that same is a copy of the certificate of title of the suit property. It was the further testimony of the witness that the suit property was said to have been sold in the sum of Kshs.350,000,000/= Only. However, the witness confirmed that the agreed purchase price was Kshs.700,000,000/=only, as shown in the Sale Agreement.
100. While under further cross examination, the witness said that even though he is aware of a counterclaim filed by the 4th defendant same does not know the contents of the said counterclaim. Furthermore, the witness testified that it is him who was tasked with the duty of obtaining the Land Control Board consent. However, the witness averred that he did not attend the Land Control Board meeting. For good measure, it was the testimony of the witness that the Land Control board consent was granted to the advocate [Mr. Odhiambo Adala].
101. With the foregoing testimony, the plaintiff's case was closed.
102. The First defendant's case revolves around the evidence of one witness, namely; Margaret Nyakinyua Murigu. Same testified as DW 1.
103. It was the testimony of the witness that same is the 1st defendant herein. Furthermore, the witness stated that same is conversant with the facts of this case. In addition, it was the evidence of the witness that same is one of the widows of the late James Kanyotu [now deceased]. Besides, the witness averred that she is also one of the interim administrators [Administratrix] of the estates of the deceased.
104. The witness further testified that same has since recorded a witness statement dated 19th January 2023; and which witness statement the witness sought to adopt and rely on as her evidence in chief. Instructively, the witness statement dated 19th January, 2023 was duly adopted and constituted as the evidence in chief of the witness.
105. Additionally, the witness referenced another witness statement dated 14th October 2022 and which witness statement the witness sought to adopt and rely on as her evidence in chief. suffice it to state



- that the witness statement dated 14th October 2022 was equally adopted and constituted as the further evidence of the witness.
106. On the other hand, the witness adverted to the list and bundle of documents dated 14th October 2022, containing six [6] documents and which documents the witness sought to adopt and produce before the court as exhibits on behalf of the 1st defendant. There being no objection to the production of the document, same were duly admitted as exhibits D1 – D6 on behalf of the 1st Defendant.
 107. Moreover, the witness referenced the statement of Defence dated 15th July 2019; and thereafter sought to adopt and rely on the contents of the said Statement of Defence. Suffice it to state that the witness implored the court to dismiss the Plaintiff's claim.
 108. On cross-examination by learned counsel for the 3rd Defendant, the witness averred that same is one of the widows of the late James Kanyotu [now deceased]. Furthermore, the witness testified that Mary Wanjiku Kanyotu, Jane Gathoni Muraya Kanyotu and herself witness were constituted as the interim administrators of the estate of James Kanyotu [Deceased].
 109. It was the further testimony of the witness that same is aware of the suit property. The witness added that the Certificate of the title of the suit property was under the custody of Mary Wanjiku Kanyotu [2nd defendant]. In addition, the witness testified that same is aware that the 2nd defendant handed over the title of the suit property to Kamlesh Pattni. In any event, the witness testified that Kamlesh Pattni is associated to the 1st defendant of the counterclaim [Trendsetters Investment Ltd].
 110. On cross-examination by learned counsel for the 4th and 5th defendants to the counterclaim, the witness testified that same is a director of the 4th defendant. Furthermore, the witness averred that same has been a director of the 4th defendant since the year 2010. It was the further testimony of the witness that even though same is a director of the 4th defendant, same was not aware of the sale of the suit property. Besides the witness averred that same was not consulted over the sale of the suit property.
 111. While still under cross-examination, the witness testified that same did not receive any portion of the purchase price from the sale of the suit property. Moreover, the witness added that she is not interested in the proceeds of the sale of the suit property.
 112. Additionally, it was the testimony of the Witness that no Land Control Board consent was procured to facilitate the sale of the suit property. Furthermore, the witness also averred that the 4th defendant did not authorize/sanction the sale of the suit property.
 113. It was the further testimony of the witness that Mary Wanjiku Kanyotu is the 1st wife of James Kanyotu [now Deceased]. Furthermore, the witness testified that Mary Wanjiku Kanyotu was not a party to the sale of the suit property. However, the witness clarified that Mary Wanjiku Kanyotu was merely taken documents to sign.
 114. On cross-examination by learned counsel for the Plaintiff, the witness averred that Trendsetters Investment Ltd did not have any rights to sell the land. Furthermore, the witness reiterated that the sale of the land to Trendsetters Investments Ltd was fraudulent.
 115. Regarding the sale agreement between the 4th Defendant and Trendsetters Ltd, the witness averred that same is indicated to have been executed by Mary Wanjiku Kanyotu and Christopher Kanyotu. However, the witness reiterated that Mary Wanjiku Kanyotu did not sign the said sale agreement. In addition, the witness averred that Mary Wanjiku Kanyotu has variously denied having signed the sale agreement.



116. While under further cross-examination the witness averred that same was made a director of the 4th defendant by virtue of a court order. Nevertheless, upon being shown a CR 12 for the 4th defendant, the witness averred that her name does not appear in the said CR 12. It was the further testimony of the witness that the sale agreement between the 4th defendant and Trendsetters Investments Ltd is said to have been entered into on the 19th April 2012.
117. On further cross-examination, the witness averred that same has produced before the court a copy of the order issued by Justice Luka Kimaru, Judge; which constituted her as a director of the 4th defendant. Furthermore, the witness added that the order in question was issued vide the Nairobi HCC Succession cause No. 1239 of 2008. In addition, the witness testified that the order was issued on the 13th March 2014.
118. However, the witness clarified that the suit property is reported to have been transferred to the 1st defendant to the counterclaim on 11th February 2013. To this end, the witness conceded that the order was issued after the transfer of the suit property had taken effect.
119. On further cross-examination, the witness testified that there were various court orders which prohibited the sale of the suit property. In this regard, the witness averred that the sale of the suit property was illegal. Besides, the witness testified that the court orders barred the sale of the suit property. In particular, the witness testified that the court orders related to various properties where the deceased was a majority shareholder. Furthermore, the witness added that the deceased was a majority shareholder in the 4th defendant.
120. It was the further testimony of the witness that the suit property was sold at an undervalue. However, the witness acknowledged that same has not produced any valuation report. Moreover, the witness testified that one Kamlesh Pattni has tried to reach out to her and tried to persuade her to leave the case herein. Furthermore, the witness testified that same has even been offered Kshs.50,000,000/= Only. However, the witness averred that same declined the offer of 50,000,000/=Only.
121. Upon being referred to the affidavit sworn by Mary Wanjiku Kanyotu on the 29th December 2016, the witness averred that the said affidavit relates to the suit property. Furthermore, the witness averred that the affidavit is said to have been signed by Mary Wanjiku Kanyotu.
122. On cross-examination by learned counsel for the 3rd Defendant, the witness averred that same has been a director of the 4th defendant since 2010. In particular, the witness testified that same became a director by virtue of a court order. In any event, the witness testified that same has since availed the court orders confirming her appointment as a director of the 4th defendant. Moreover, the witness testified that she is present before the court both in her personal capacity and also as a director of the 4th Defendant.
123. It was the further testimony of the witness that same is one of the administrators [Administratrix] of the estate of the deceased. However, the witness testified that even though she is one of the administrators of the estate of the deceased, same was not involved in the sale of the suit property.
124. On cross-examination by the learned counsel for the 1st defendant to the counterclaim, the witness testified that the suit property belonged to and was registered in the name of the 4th defendant. Furthermore, the witness averred that same has seen a copy of the sale agreement that is said to have been entered into between the 4th defendant and Trendsetters Investments Ltd. However, the witness averred that the said sale agreement was not lawful. In addition, the witness averred that the sale agreement was fraudulent.



125. Regarding the document at page 371 of the plaintiff's list and bundle of documents, the witness stated that the document contains the seal of the 4th defendant. Nevertheless, the witness averred that the 2nd defendant has never been a director of the 4th defendant.
126. Regarding the document at page 364 of the Plaintiffs' list and bundle of documents, the witness averred that same is a letter from the registrar of companies. Furthermore, the witness testified that the letter in question touches on the directorship of the 4th defendant. It was the further testimony of the witness that the name of the 2nd defendant is shown on the letter as one of the directors of the 4th Defendant. Furthermore, the witness testified that the late James Kanyotu [now Deceased] was a shareholder in the 4th Defendant.
127. While still under cross-examination, the witness testified that same was not a director of the 4th defendant from the onset. However, the witness added that same became a director of the 4th defendant after the death of James Kanyotu and on the basis of a court order.
128. It was the further testimony of the witness that same is aware of the orders that were issued by Justice Luka Kimaru, Judge; on the 8th November 2013. In particular, the witness testified that the orders of the Judge barred any sale of any property of the deceased. In this regard, the witness reiterated that the sale of the property was undertaken on the face of the existing court orders.
129. Regarding the document at page 20 of the Plaintiff's bundle of document, the witness averred that same is a copy of the sale agreement between the 1st defendant to the counterclaim [Trendsetters Investment Ltd] and the Plaintiff herein. Nevertheless, the witness averred that the two companies are one and the same. Furthermore, the witness testified that the directors of the two companies are also the same.
130. With the foregoing testimony, the 1st Defendant's case was closed.
131. The 3rd Defendant's case is premised on the evidence of three [3] witnesses, namely; Chief Inspector Bernard Cheruiyot; Chief Inspector Vincent Chelongo; and Willy Kihara Njoki Kanyotu. Same testified as DW 2, DW 3 and DW 4, respectively.
132. It was the testimony of DW 2 [chief inspector Bernard Cheruiyot] that same is currently attached to the National Forensic Laboratory as a Document Examiner. Furthermore, the witness testified that same is aware of a forensic document report dated 18th November 2021. To this end, the witness sought to tender and produce the report as an exhibit before the court. The production of the report under reference was objected to by learned counsel for the Plaintiff; Interested Party/3rd defendant to the counterclaim; and the 1st defendant to the counterclaim.
133. To this end, the court was called upon to render a ruling. Suffice it to state that the objection was overruled and the document was duly tendered and produced as an exhibit on behalf of the 3rd defendant.
134. On cross-examination by learned counsel for the 4th Defendant, the witness testified that the report before the court relates to the letter of consent dated 26th July 2012. Furthermore, the witness averred that the report also touches on the letter of consent dated 6th May 2014. Besides, the witness avers that the report relates to the examination of the two letters of consent with a view to ascertaining their validity.
135. It was the further testimony of the witness that the consent was not signed by one Juliana Nyaga. Furthermore, the witness clarified that the conclusions are duly minuted and reflected at the foot of the Forensic Document Examination Report.



136. On cross-examination by learned counsel for the 4th and 5th defendants to the counterclaim, the witness testified that same had worked with Chief Inspector Daniel Guto for a duration of more than 11 years. Moreover, the witness testified that same participated in the preparation of the report.
137. On cross-examination by learned counsel for the interested party/third defendant to the counterclaim, the witness testified that same participated in the preparation and review of the document examiner's report produced before the court. Furthermore, the witness averred that same reviewed the conclusions that were arrived at, at the foot of the report. In addition, the witness averred that the report in question was a result of a thorough process undertaken by Chief inspector Guto and himself.
138. While still under cross-examination, the witness averred that the findings at the foot of the report confirmed that the consents were not signed by the purported authors.
139. On cross-examination by learned counsel for the 1st Defendant to the counterclaim, the witness averred that same undertook what is known as peer review on the Forensic Document Examiners' report. Furthermore, the witness averred that the report under reference contains the finding and the conclusions that were arrived at. In particular, the witness averred that the letters of consent were not signed by the purported authors.
140. On cross-examination by learned counsel for the Plaintiff, the witness testified that same relied on the documents that were brought to him by the investigator. In addition, the witness testified that he relied on the specimen signature[s] of the designated persons. Besides, the witness averred that same returned a finding that Juliana and Mercy did not sign the disputed consents. In this regard, the witness testified that same came to the conclusion that the letters of consent were forgeries.
141. Regarding the letter at page 359 of the Plaintiff's list and bundle of documents, the witness averred that the said document is a letter from the Directorate of Criminal Investigation. However, the witness averred that even though the letter is indicated to have come from the directorate of criminal investigation, same is not privy to its authenticity. Furthermore, the witness averred that the letter in question did not reference the document examination report which same [witness] has produced before the court.
142. The next witness who testified on behalf of the 3rd Defendant was Chief Inspector Vincent Chelongo. Same testified as DW 3.
143. It was the testimony of the witness that same is a forensic document examiner. Furthermore, the witness averred that same prepared a document examination report dated 10th January 2022 and which report the witness sought to tender as an exhibit before the court. There being no objection to the production of the report same was tendered and produced as exhibit D10 on behalf of the 3rd Defendant.
144. On cross-examination by learned counsel for the 1st Defendant, the witness averred that same is a Police officer. Furthermore, the witness added that same is a document examiner and thus possessed of sufficient knowledge and expertise in document examination. In addition, the witness testified that same received various documents which were forwarded vide exhibit memo form.
145. It was the further testimony of the witness that same examined the signatures on the documents and thereafter formed an opinion that the signature[s] on document A1 resembles the signatures on B1 and C1, respectively.
146. On cross-examination by learned counsel for the 4th Defendant, the witness averred that same was given the document for examination by Willy Kihara Kanyotu. Upon being referred to the letter dated 28th



- April 2021, and which is contained in the 3rd defendant's list and bundle of documents, the witness averred that same is not privy to the contents of the said letter.
147. While still under cross-examination, the witness testified that same prepared the forensic document examination report and the report was collected by Inspector Khaemba from Serious Crime Unit. Furthermore, the witness added that the said Inspector Khaemba also collected the original exhibits. Nevertheless, the witness testified that same is not aware whether any criminal charges have since been preferred against anyone arising out of the investigations.
 148. On cross-examination by learned counsel for the Interested party/3rd Defendant to the counterclaim, the witness averred that the original report does not contain the various documents that same has referenced. In addition, the witness testified that same has not tendered the original copy of the report. Besides, the witness averred that what he had produced before the court is a certified copy of the report.
 149. It was the further testimony of the witness that same had given his opinion at the foot of the report.
 150. On cross-examination by learned counsel for the 1st Defendant to the counterclaim, the witness testified that same has been a document examiner for more than 10 years. The witness further stated that the documents which same examined were forwarded vide exhibit memo form. In addition, the witness averred that the exhibits were ably described at the foot of the report which same has tendered and produced before the court.
 151. On cross-examination by learned counsel for the plaintiff, the witness averred that same is the one who prepared the report before the court. Moreover, the witness averred that same prepared the report after examining the letter dated 11th January 2017.
 152. Additionally, the witness testified that same has not been requested to testify in any criminal case. Nevertheless, it was the testimony of the witness that he is not the decision maker as to whether to prosecute or otherwise. In any event, the witness averred that same stands by the conclusions enumerated in the body of the report which he has produced before the court.
 153. The next witness who testified on behalf of the 3rd Defendant was Willy Kihara Njoki Kanyotu. Same testified as DW 4. It was the testimony of the witness that same is the 3rd Defendant in this case. To this end, the witness averred that same is therefore conversant with the facts of the case. Furthermore, the witness testified that same has since recorded a witness statement dated 20th September 2022 and which witness statement the witness sought to adopt and rely on. Suffice it to state that the witness statement was thereafter adopted and constituted as the evidence in chief of the witness.
 154. Moreover, the witness adverted to a list and bundle of documents dated 20th September 2022 containing 12 documents. Thereafter, the witness sought to tender and produce the documents before the court. There being no objection to the production of the documents, same were produced and admitted as exhibits D1 – D12 on behalf of the 3rd Defendant.
 155. Additionally, the witness referenced the statement of defence dated 23rd July 2019 and whose contents the witness sought to adopt and rely on. In addition, the witness implored the court to dismiss the Plaintiff's case.
 156. On cross-examination by learned counsel for the 1st defendant, the witness averred that same has never been a director of the 4th defendant. Nevertheless, the witness testified that same is a beneficiary of the estate of James Kanyotu [now deceased].
 157. While still under cross-examination, the witness testified that same has never been called to any meeting by the administrators of the estate. Furthermore, the witness averred that same was never informed



- about any resolution authorizing the sale of the suit property. Moreover, the witness averred that same was not aware of the sale of the suit property.
158. On further cross-examination by learned counsel for the 4th Defendant, the witness averred that the land in question is located within Ruiru Town. In addition, the witness testified that the land was a coffee farm belonging to James Kanyotu [now deceased].
 159. It was the further testimony of the witness that the late James Kanyotu [now Deceased] was a director cum shareholder in the 4th Defendant. In addition, the witness averred that James Kanyotu held 4995 shares whereas John Kanyotu had 1 share, Stephen Njau Kanyotu had 1 share; Christopher Ngata Kanyotu had 1 share; Sandra Gathoni Kanyotu 1 share and Kahawa Kanja 1 share. Furthermore, the witness averred that there was yet another director namely; Tropical Registrars.
 160. While still under cross-examination, the witness averred that same was aware of the succession cause relating to the estate of James Kanyotu [deceased]. To this end the witness referenced Nairobi HCC Succession Cause No. 1239 of 2008. Moreover, the witness averred that a grant of letters of administration was issued in the said cause on the 20th July 2020. Nevertheless, the witness testified that the grant in question has not addressed the sharing of the shares of the 4th Defendant.
 161. On further cross-examination, the witness testified that same has met one Abdul Dawood. It was the testimony of the witness that same met Abdul Dawood with a view to discussing the dispute over the suit property. Besides, the witness also averred that same has also met another director of Trendsetters Ltd namely; Mr. Mashru.
 162. Regarding the sale agreement dated 19th April 2012, the witness averred that the said agreement shows that same was signed by Mary Wanjiku Kanyotu and John Kariuki Kanyotu in the year 2011. On the other hand, the witness averred that the said sale agreement also shows that same was executed on behalf of Trendsetters Ltd in the year 2012. Nevertheless, the witness testified that Mary Wanjiku Kanyotu was not a director of the 4th Defendant. In this regard, the witness testified that Mary Wanjiku Kanyotu could not sign the sale agreement as a director in the year 2011.
 163. Additionally, the witness testified that at the time when the sale agreement is said to have been signed, there were three [3] court orders that had been issued and which restrained/ prohibited the sale of the suit property. In particular, the witness referred to the orders of Hon. Justice D.K Maraga, Justice Dulu and Justice Kimaru. For good measure, the witness averred that the impugned sale was contrary to the orders of the court.
 164. On cross-examination by learned counsel for the 4th and 5th Defendants to the counterclaim, the witness testified that the suit property is one of the properties that was being dealt with vide the succession cause. Besides, the witness averred that by the time the suit property was being sold, no partial grant had been issued and or confirmed. In particular, the witness averred that the confirmed partial grant was issued in 2020. To this end, the witness testified that the suit property was sold before the issuance of the confirmed Grant of Letters of Administration.
 165. Upon being referred to the sale agreement between the 4th Defendant and Trendsetters Investment Ltd, the witness averred that the said sale agreement is indicated to have been signed by Mary Wanjiku Kanyotu and John Kariuki Kanyotu. However, the witness averred that there was no resolution passed by the 4th Defendant to authorize the sale of the suit property. Furthermore, the witness testified that there were orders which had been issued by the High Court in the succession file and which prohibited any dealings in respect of the suit property.



166. While still under cross-examination, the witness averred that the suit property was agricultural land. Nevertheless, the witness testified that same was not aware of any Land Control Board consent to sell the suit property to Trendsetters Investment Ltd. To this end, the witness averred that the sale of the suit property was illegal and same was undertaken in contravention of lawful court orders.
167. On cross-examination by learned counsel for the Interested Party/Third Defendants to the counterclaim, the witness averred that the person who has been selling the land is Ukombozi Holdings Ltd. However, the witness added that Ukombozi Holdings Ltd is selling the land on behalf of Kamlesh Pattni.
168. It was the further testimony of the witness that there were orders which were issued in the succession cause. Furthermore, the witness averred that the orders were registered against the title of the suit property. In addition, it was contended that though the orders that were issued were subsequently vacated, their vacation was irregular and unlawful.
169. While still under cross-examination, the witness testified that though the suit property was sold, the 4th Defendant did not sell the suit property. On the contrary, it was averred that the people who sold the suit property did not have the authority of the 4th Defendant to sell the property. Furthermore, the witness averred that there was no genuine land control board consent that was issued.
170. On cross-examination by learned counsel by 1st defendant to the counterclaim, the witness testified that the matter herein was first filed at Thika. However, the witness averred that the matter was subsequently transferred to Milimani- Nairobi.
171. While still under cross-examination, the witness testified that same is conversant with the facts of this matter. Furthermore, the witness averred that same has never received any money out of the sale of the suit property.
172. Regarding the document at page 84 of the Plaintiff's and bundle of documents, the witness averred that the document is a Letter dated 11th January 2017. Furthermore, the witness testified that the letter is on the letterhead of Trendsetters Investments Ltd. Besides, the witness averred that the letter in reference is said to be addressed to one Willy Kihara. However, the witness testified that the letter under reference was a forgery. In this regard, the witness averred that same lodged a complaint with the Directorate of Criminal Investigations [DCI] for purposes of investigations into the letter.
173. On cross-examination, the learned counsel for the Plaintiff averred that same is the 3rd Defendant in respect of the instant matter. Furthermore, the witness testified that same is also a beneficiary of the estate of James Kanyotu [deceased]. To this end, the witness averred that by virtue of being one of the beneficiaries of James Kanyotu, same has an interest in the suit property. In any event, the witness averred that the suit property comprised of part of the estate of James Kanyotu [deceased] who was the majority shareholder in the 4th Defendant.
174. It was the further testimony of the witness that the Grant in respect of the estate of James Kanyotu was confirmed on 20th July 2020. Nevertheless, the witness added that what was confirmed was a partial grant. Besides, the witness testified that the partial grant came long after the filing of the instant suit.
175. While still under cross-examination, the witness testified that same was involved in the distribution of the caveats on behalf of the 1st Defendant herein. To this end, the witness averred that same was a messenger of Margaret Nyakinyua Murigu [the 1st defendant]. Besides, it was the testimony of the witness that the caveats that same was distributing on the suit property arose out of an order issued by Hon. Justice Luka Kimaru.



176. It was the further testimony of the witness that same is familiar with the sale of the suit property. Moreover, the witness averred that same is challenging the sale of the suit property to the 1st Defendant to the counter-claim. Further and in any event, the witness added that same is fighting to protect the interests and rights of the estate of the deceased.
177. Regarding the document at page 364 of the Plaintiff's bundle of documents, the witness averred that the documents in question is a CR 12 for the 4th Defendant. Furthermore, the witness averred that the CR 12 relates to the directorship of the 4th Defendant as at 8th July 2012. The witness stated that the directors as shown in the said CR 12 are Mary Wanjiku Kanyotu [20,000 shares] John Kariuki Kanyotu [25001 shares], Christopher Ngata Kanyotu [25001 shares], Sandra Gathoni Kanyotu [25001 shares] and Kenneth Peter Njau – Director [0 shares].
178. Nevertheless, it was the further testimony of the witness that the CR 12 which has been tendered and produced by the Plaintiff herein was cancelled vide the order of Hon. Justice Kimaru. In particular, the witness referenced the ruling delivered on 8th November 2013.
179. It was the further testimony of the witness that pursuant to the ruling of the Judge, the shareholding of the 4th Defendant reverted to the 13th February 2008, when the deceased died. The witness further averred that same has availed a copy of the orders of Honourable Justice Kimaru, Judge. In any event, the witness testified that the shareholding of James Kanyotu [now Deceased] has remained the same to date. Besides, the witness averred that James Kanyotu remained the majority shareholder as at 19th April 2012, taking into account the CR 12 at page 364 of the plaintiffs' list and bundle of documents.
180. The witness further averred that same is aware of the orders that were issued by Justice Mutava, [now retired]. Furthermore, the witness averred that same is not aware whether the orders of Judge Mutava were ever set aside. In addition, it was the testimony of the witness that same did not receive Kshs.65 million over the sale of the suit property. However, the witness admitted receipt of Kshs. 39 million, but stated that the same was not part of the proceeds of the sale of the suit property.
181. Regarding the Letter at page 84 of the Plaintiff's list and bundle of documents, the witness testified that the document is a Letter dated 11th January 2017. Furthermore, the witness testified that the letter in question references the suit property. Nevertheless, the witness averred that same did not sign the said letter.
182. Additionally, the witness testified that same lodged a complaint with the Directorate of Criminal Investigations [DCI] pertaining to the letter in question. Moreover, the witness averred that the letter in question was thereafter subjected to document examination by Chief Inspector Vincent Chelongo [DW 3]. Furthermore, the witness testified that the report by DW 3 was tendered and produced before the court.
183. On the other hand, it was the testimony of the witness that no monies were paid to and in favour of the 4th Defendant. In addition, the witness testified that the resolution at page 373 of the Plaintiff's bundle of documents relates to the manner in which the proceeds of the sale of the suit property was shared. Nevertheless, the witness averred that the proceeds of the sale were never channeled to the bank accounts of the 4th Defendant.
184. While still under cross-examination, the witness testified that the sale agreement dated 19th April 2012 suggests that only part of the property was being sold. However, the witness averred that the entire property was transferred. Furthermore, the witness averred that same has contended that the land in question could not have been sold without the land control consent. In any event, the witness testified that the issue of the land control board consent was duly addressed by the document examiner namely;



- Chief Inspector Guto. The witness reiterated that the land control board consent that was deployed by the 1st defendant to the counterclaim was fake/forged.
185. With the foregoing testimony the 3rd Defendant's case was closed.
186. The 4th Defendant's case is premised on the evidence of Margaret Nyakinyua Murigu. Same testified as DW 5.
187. It was the testimony of the witness that other than being the 1st Defendant, same is also a director of the 4th Defendant. Furthermore, the witness averred that same is aware that the 4th Defendant has since filed a counterclaim dated 12th October 2020; and which counterclaim the witness sought to adopt and rely on. In addition, the witness referenced the verifying affidavit sworn on even date.
188. Moreover, the witness averred that same has also recorded and filed a witness statement dated 19th January 2023 and which witness statement the witness sought to adopt and rely on as her evidence in chief. To this end, the witness statement was duly adopted and constituted as the evidence in chief of the witness. Furthermore, the witness also referenced the list and bundle of documents dated 19th January 2023, containing 31 documents and which the witness sought to adopt and rely on. Instructively, the documents were thereafter produced and admitted as exhibits D1 to D31 on behalf of the 4th Defendant. On cross-examination by learned counsel for the 3rd Defendant, the witness averred that same is one of the administrators of the estate of James Kanyotu [deceased]. Furthermore, the witness testified that the other directors are Mary Wanjiku Kanyotu and Jane Gathoni Muraya.
189. It was the further testimony of the witness that same was appointed as an interim director in all the companies where James Kanyotu [now deceased] was a majority shareholder. The witness averred that same was appointed after some illegalities had been effected in the companies where James Kanyotu was the majority shareholder. In particular, the witness averred that the 4th Defendant is one of the said companies.
190. While still under cross-examination, the witness averred that the illegalities complained of were effected by the children of Mary Wanjiku Kanyotu who proceeded to alter the directorship and shareholding of the 4th Defendant. However, the witness averred that the illegalities complained of were revoked by the orders of Honourable Justice Luka Kimaru.
191. Moreover, the witness testified that same did not participate in the sale of the suit properties. Furthermore, the witness averred that the sale of the suit property was illegal and unlawful. Furthermore, the witness averred that same has been called/approached by Kamlesh Pattni to be paid some money, but same has declined.
192. On cross-examination by learned counsel for the Interested Party and the 3rd Defendant to the counterclaim, the witness averred that same has appeared before the court both in her personal capacity and in her capacity as a director of the 4th Defendant. Nevertheless, the witness averred that same has not availed a CR 12 to show that she is a director of the 4th Defendant. Be that as it may, the witness testified that same was made a director of the 4th defendant pursuant to orders of the court vide the Succession Cause.
193. Regarding the document at page 4 of the 4th Defendant's list and bundle of documents, the witness averred that the said document is the resolutions of the said 4th Defendant. In particular, the witness testified that the resolutions gave her authority to act and testify on behalf of the 4th Defendant.



194. It was the further testimony of the witness that John Kariuki Kanyotu and Christopher Ngata Kanyotu are not directors of the 4th Defendant. Nevertheless, the witness averred that the said John Kariuki Kanyotu and Christopher Ngata Kanyotu each held one share in the 4th defendant.
195. Moreover, the witness testified that the sale of the suit property was illegal and unlawful. To this end, the witness averred that the 4th Defendant seeks to cancel the transfer relating to the suit property.
196. On cross-examination by learned counsel for the 4th and 5th Defendants to the counterclaim, the witness averred that same was not aware of the sale of the suit property by the 4th Defendant. Furthermore, the witness testified that same did not receive any monies from the sale of the suit property.
197. Regarding the document at pages 357 to 362 of the Plaintiff's Bundle of Documents, the witness averred that the document thereunder is the sale agreement between the 4th defendant and the 1st defendant to the counterclaim. Nevertheless, the witness testified that same is not aware of any land control board consent [Consent] that was ever issued to facilitate the transfer of the suit property.
198. While still under cross-examination, the witness testified that same does not know whether the sum of Kshs.700,000,000 Only was ever paid to the 4th Defendant. At any rate, the witness averred that no monies were paid over and in respect of the sale of the suit property.
199. On cross-examination by Learned counsel for the 1st Defendant to the counterclaim, the witness testified that same is before the court as a director of the 4th Defendant. However, the witness conceded that her name has not been included in the register of the company. Nevertheless, the witness reiterated that same was a director of the 4th Defendant on the basis of lawful court orders.
200. It was the further testimony of the witness that same is aware of Milimani HCC Succession No. 461 of 2012. However, the witness averred that the said case was filed by Trendsetters Investments Ltd against the registrar of titles and the Hon. Attorney General. Furthermore, the witness testified that the said case has since been transferred to the Environment and Land court and same was re-numbered as Milimani ELC Land No. 4 of 2023. Nevertheless, the witness clarified that the case is still pending.
201. On cross-examination by learned counsel for the Plaintiff, the witness testified that the sale of the suit property was not valid. The witness averred that the family of James Kanyotu [deceased] needed to sit down and agree on the question of sale. In any event, the witness averred that it is the three administrators [Administratrix] who were authorized to deal with the affairs of the estate, including the suit property.
202. While still under cross-examination, the witness testified that same was made an administrator following an objection that had been lodged by her. The witness testified that she was made an administrator by the orders of 14th March 2014. Furthermore, the witness averred that by the time she became an administrator, the suit property had already been transferred to Trendsetters Investment Ltd. Nevertheless, the witness clarified that same did not know about the sale of the suit property. In addition, the witness averred that same only got to know of the sale of the suit property in the year 2014.
203. In answer to a suggestion that same was a trespasser on the suit property, the witness averred that same is not a trespasser. In particular, the same stated that she is entitled to the suit property both on account of being a beneficiary of the estate of the deceased and also the administrator/director.
204. Regarding the document on page 364 of the Plaintiff's List and Bundle of documents, the witness averred that the said document is a CR 12 for the 4th Defendant. Furthermore, the witness testified that the said CR 12 references the date of 4th July 2011. However, the witness stated that the entries



- contained in the said CR. 12 are illegal. Furthermore, the witness averred that those are entries which were cancelled vide the order issued by Justice Kimaru.
205. It was the further testimony of the Witness that same has tendered and produced before the court various orders which were issued by the High Court and which orders prohibited dealings over the various properties where the deceased was the majority shareholder. Furthermore, the witness testified that John Kanyotu cannot sell the property of the deceased without the authority of the administrators of the estate. In any event, the witness added that John Kanyotu is not a director of the 4th Defendant.
206. On further cross-examination, the witness averred that the sale of the suit property was illegal. In particular, the witness averred that the sale could not have had undertaken without the authority and sanction of the court. To this end, the witness contended that the people who signed the sale agreement did not have the capacity to do so.
207. Regarding the land control board consent[s], the witness testified that same were obtained without her involvement. Furthermore, the witness averred that the consents were illegal and fraudulent. As concerns the payments that were made to the 3rd Defendant, the witness averred that same was being bribed so as to remain silent and to desist from pursuing the issues in respect of the sale of the suit property.
208. Regarding the issue as to whether the suit property has since been sub-divided, the witness testified that no sub-division scheme has ever been approved. In this regard, the witness averred that an approved sub-division scheme has not been produced before the court.
209. With the foregoing testimony, the 4th Defendant's case was closed.
210. The 1st Defendant to the counterclaim called one witness, namely; Abhimanuy Garhwal. Same testified as DW 6. It was the testimony of the said witness that same is a director of Trendsetters Investments Ltd. Furthermore, the witness also averred that same is also the General Manager of the said company. In this regard, the witness posited that same is therefore conversant with the facts of this case.
211. Moreover, the witness testified that same has since recorded and filed a witness statement dated 24th April, 2023 and which witness statement the witness sought to adopt and rely on as his evidence in chief. To this end, the witness statement was duly adopted and constituted as evidence in chief of the witness.
212. Additionally, the witness referenced the list and bundle of documents dated 24th April 2023, containing 10 documents and thereafter same sought to tender and produce the documents as exhibits. There being no objection to the production of the documents, same were duly admitted as exhibits D1 – D10 on behalf of the 1st defendant. Besides, the witness also referenced the supporting affidavit sworn on 14th July 2023 and sought to rely on same together with the two [2] annexures attached thereto. There being no objection the supporting affidavit and the annexures thereto were produced as exhibits D 11 on behalf of the 1st defendant to the counterclaim. In addition, the witness referenced the statement of defence dated 30th March 2023, and thereafter sought to adopt and rely on same.
213. On cross-examination by learned counsel for the 1st Defendant, the witness testified that same is the General Manager of the 1st defendant to the counterclaim. The witness clarified that same is not a director of the 1st defendant to the counterclaim. Be that as it may, the witness averred that same has since been authorized to swear affidavit; execute documents and attend court on behalf of the 1st defendant to the counterclaim. Furthermore, the witness averred that same has since filed the authority vide the affidavit before the court.



214. While still under cross-examination, the witness averred that the authority is discernible from the affidavit. Additionally, the witness testified that the 1st Defendant to the counterclaim purchased the suit property from the 4th Defendant. Besides, the witness added that the transactional advocate was Mr. Odhiambo Adala.
215. It was the further testimony of the witness that before purchasing the suit property, the 1st defendant to the counterclaim undertook due diligence in respect of the suit property. In particular, the witness averred that the 1st defendant to the counterclaim carried out a search on the suit property. To this end, the witness referenced document number 7 at the foot of the bundle of documents filed on behalf of Trendsetters Investments Ltd. However, the witness acknowledged that the Certificate of Official search in question was issued in the year 2012/2013 or thereabout.
216. While still under cross-examination, the witness testified that the search in question includes the transfer to Trendsetters Investments Ltd. In this regard, the witness acknowledged that the search was undertaken after the transfer of the suit property and not before the transfer. Moreover, the witness also testified that Trendsetters Investments Ltd also applied for and procured a CR12 in respect of the 4th Defendant. Nevertheless, the witness conceded that the CR 12 has not been produced before the court.
217. It was the further testimony of the witness that the 1st Defendant to the counterclaim negotiated the purchase of the suit property with Mary Wanjiku; Jane Gathoni; Christopher Ngata Kanyotu and John Kanyotu. In any event, the witness averred that those persons were the true directors of the 4th Defendant. Nevertheless, the witness admitted that same has not availed a copy of the register in respect of the company prior to the purchase of the suit property.
218. As pertains to whether a land control board consent [Consent] was issued, the witness averred that the 4th defendant availed a land control board consent to facilitate the transfer of the suit property. Nevertheless, the witness stated that the consent in question has not been tendered before the court by the 1st defendant to the counterclaim. Besides, the witness averred that the 1st defendant to the counterclaim paid stamp duty at the foot of the transfer.
219. Regarding the orders of Honourable Justice Dulu; the witness testified that same was advised that the said orders had lapsed. However, the witness averred that same did not come across the orders of Honourable Justice D.K Maraga and Luka Kimaru, respectively.
220. Regarding the orders of Honourable Justice Dulu, the witness conceded that same were issued in the year 2009. Furthermore, the witness averred that the orders of Honourable Justice Kimaru appear to have been issued long after the sale of the suit property.
221. As concerns the purchase price, the witness testified that the suit property was bought for the sum of Kshs.700,000,000/= Only. Moreover, the witness averred that the entire purchase price was paid to the 4th Defendant. Moreover, the witness testified that the details of the purchase price have been alluded to at the foot of the sale agreement.
222. Regarding whether the 1st Defendant to the counterclaim bought a portion of the suit property, the witness averred that the sale agreement was in respect of the whole property. Furthermore, the witness clarified that the entire purchase price was paid to the 4th Defendant. In addition, it was stated that the scheme of payment is captured at the foot of exhibit D6. While still on the scheme of payment the witness averred that the 4th Defendant was paid the sum of Kshs.325,804,802 only.



223. Finally, the witness averred that the suit property has since been sold to the Plaintiff. Moreover, the witness clarified that the 1st Defendant to the counterclaim obtained the land control board consent before the sale of the suit property.
224. In addition, the witness averred that there were no encumbrances affecting the suit property prior to the sale of the suit property to the Plaintiff.
225. While still under cross-examination by learned counsel for the 3rd Defendant, the witness averred that same is the General Manager of Trendsetters Investment Limited. To this end, the witness averred that same is therefore an employee of the said company. In particular, the witness averred that his duties include the general management of the company. Furthermore, the witness averred that same has the authority to act for an on behalf of the company [1st Defendant to the Counter-claim].
226. It was the further testimony of the witness that same has filed the authority before the court. For good measure, the witness averred that the authority under reference is contained at the foot of an affidavit which has been filed. Nevertheless, the witness testified that same had not filed any resolutions of the company to signify the authority given unto him by the company.
227. Regarding document number 2 at the foot of the 1st defendant to the counterclaim's list and bundle of document, the witness averred that the document under reference is the sale agreement that was entered into between the 4th Defendant and the 1st defendant to the counterclaim. Moreover, the witness averred that the sale agreement under reference was entered into on the 19th April 2012. The witness further testified that the sale agreement was signed and executed by the directors of the company.
228. While still under cross-examination, the witness averred that though the sale agreement is dated 19th April 2012, there are some corrections affecting the year when the agreement was entered into. In particular, the witness averred that the letter "2" has been affixed by pen.
229. Regarding the document at page 87 of the 2nd and 3rd Defendants' list and bundle of documents, the witness testified that the document is also a copy of the same sale agreement. However, the witness averred that the sale agreement at the foot of the 2nd and 3rd defendants' list and bundle of documents does not reflect the date when the sale agreement was entered into. For good measure, the witness said that the place for the date is blank.
230. It was the further testimony of the witness that same was involved in the purchase/ acquisition of the suit property. Furthermore, the witness testified that in the course of the purchase of the suit property same [witness] dealt with the directors of the 4th Defendant. In particular, the witness averred that same dealt with directors, namely; Mary Wanjiku Kanyotu, Jane Kanyotu and Christopher Ngata Kanyotu.
231. Additionally, the witness testified that prior to the purchase of the suit property, Trendsetters Investment Limited undertook due diligence. In particular, the witness averred that same procured and obtained a certificate of search over the suit property. Nevertheless, it was the testimony of the witness that same has not availed a copy of the said certificate of official search before the court.
232. Upon being referred to Clause 6 of the sale agreement dated 19th April 2012, the witness averred that the said clause refers to part of the suit property. Besides, the witness also averred that clause 4[b] of the sale agreement also references sale of part of the suit property. Nevertheless, the witness testified that what was purchased by Trendsetters Investment Limited was the entire of the suit property and not part of the suit property.
233. Regarding document number 7 at the foot of the list and bundle of document by the 1st defendant to the counterclaim, the witness averred that the said document relates to two court orders which



- were issued by the succession court at Nairobi. Furthermore, the witness averred that the orders under reference were duly endorsed in the register of the suit property. In particular, the witness referenced entries number 2 and 3 in the register of the suit property. Nevertheless, the witness averred that entries 2 and 3 at the foot of the register were vacated vide an order issued in Nairobi HCC No. 461 of 2012. In addition, the witness testified that the said case was filed by Trendsetter Investment Limited.
234. While still under cross-examination, the witness averred that entry number 5 at the foot of the register of the suit property relates to the transfer of the suit property to Trendsetters Investment Limited. Furthermore, the witness averred that the consideration is shown as Kshs. 350,000,000 [Three Hundred and Fifty Million Only]. Besides, the witness testified that Trendsetters Investment limited duly paid stamp duty of Kshs. Seven Million only [7,000,000 Only]. Nevertheless, the witness testified that same has not produced a copy of the receipt attesting the payment of the stamp duty.
235. Regarding the document at pages 70- 80 of the 3rd Defendant's list and bundle of documents, the witness averred that the document under reference is a letter of consent dated 26th July 2012. Furthermore, the witness testified that the letter of consent is indicated to have been issued in favor of Kangaita Coffee Estate limited. Further and in addition, the witness averred that the letter of consent references the consideration as Kshs. Three hundred and fifty Million only [Kshs. 350,000,000 Only].
236. On further cross-examination by learned counsel for the 3rd Defendant, the witness averred that the purchase price was duly paid to Kangaita Coffee Estate limited. However, the witness conceded that same has not produced any Document to show that the payments were made. On the other hand, the witness testified that same is familiar with the 3rd Defendant. Moreover, the witness averred that the 3rd Defendant was paid the sum of Kes. Thirty -Nine Million or Thirty -Five Million or something like that. In any event the witness testified that the payments were made vide cheques.
237. It was the further testimony of the witness that Trendsetters Investment Limited paid the purchase price to Mary Wanjiku Kanyotu; John Kanyotu and Christopher Ngata Kanyotu. Moreover, the witness averred that the details of the other people who were paid are contained at the foot of document Number Six [6] filed by the 1st defendant to the counterclaim.
238. Regarding the document at page 81 -82 of the 3rd Defendant's list and bundle of documents, the witness averred that the document in question is CR12 for the Plaintiff. Furthermore, the witness averred that the Postal address for the Plaintiff and that of Trendsetters Investment Limited are the same.
239. On cross-examination by learned counsel for the 4th Defendant, the witness averred that same has not produced before the court any resolutions of Trendsetters Investment Limited authorizing him[witness] to attend court. Nevertheless, the witness reiterated that same has the authority to act on behalf of the said Trendsetters Investment Limited.
240. It was the further testimony of the witness that Trendsetters Investment Limited undertook due diligence before same purchased the property. Moreover, the witness averred that same has availed a copy of the certificate of official search before the court. However, when pressed further, the witness admitted that the certificate, of search produced before the court relates to the search undertaken after the transfer of the suit property in favor of Trendsetters Investments Limited.
241. Regarding the sale agreement that was entered into between Trendsetters investment limited and the 4th Defendant, the witness averred that the stakeholder sum [deposit of the purchase price], was paid upon execution of the sale agreement. Furthermore, the witness averred that the balance of the purchase price was to be paid within one hundred and twenty days from the date of the execution of the sale



- agreement. However, the witness conceded that the said payments were not made within the stipulated one twenty [120] days.
242. While still under cross examination by learned counsel of the 4th Defendant, the witness averred that the sale agreement allude to parts of the suit property. However, the witness averred that what was transferred to Trendsetters investment limited was the whole of the suit property. For good measure, the witness stated that Trendsetters investment limited did not procure any sub-division scheme over and in respect of the suit property. Furthermore, the witness conceded that the suit property was never sub-divided.
243. Regarding the document at page 57 of the 4th Defendant's list and bundle of documents, the witness averred that the document under reference is a letter from the Deputy County Commissioner, Ruiru. Furthermore, the witness averred that the content of the said letter dispute[s] that any land control board consent was ever issued. In respect of the document at page 60 of the 4th defendant's list and bundle of document, the witness averred that same are minutes. However, the witness testified that the minutes are not confirmed.
244. Upon being referred to the document at page 15 of the 4th Defendant's list and bundle of documents, the witness testified that same is a copy of the order issued by Justice Luka Kimaru. Moreover, the witness testified that the said order barred any dealings with the properties of the deceased as well as the properties registered in the names of companies where the deceased was a majority shareholder. In any event, the witness admitted that the order under reference was duly entered and endorsed on the register of the suit property.
245. While still under cross-examination, the witness testified that even though the suit property was transferred to Trendsetters Investment Limited, same [witness] has not availed a copy of the transfer instrument before the court.
246. Regarding the letter from the Deputy County Commissioner-Ruiru, the witness averred that same has seen the content[s] thereof. In particular, the witness averred that the Deputy County Commissioner disputes the authenticity of the consent being relied upon by Trendsetters investment limited. Nevertheless, the witness added that the letter under reference was not addressed to Trendsetters Investment Limited.
247. It was the further testimony of the witness that same is conversant with one Abdul Dawood. In particular, the witness averred that the said Abdul Dawood is one of the directors of Marriott International Limited [the Plaintiff]. Furthermore, the witness testified that it is Trendsetters Investment Limited which sold the suit property to the Plaintiff.
248. On cross-examination by learned counsel for the 4th and 5th defendants to the counterclaim, the witness averred that same has worked for the company [Trendsetters Investment Limited] for more than twelve years. To this end, the witness averred that same is therefore conversant with the affairs of the said company. It was the further testimony of the witness that in respect of the sale/purchase of the suit property same [witness] acted as an intermediary.
249. While still under cross-examination, the witness averred that same was involved in the discussion[s] and negotiations relating to the suit property. Moreover, the witness testified that Trendsetters Investment Limited got wind of the intended sale of the suit property. The witness averred that thereafter, Trendsetters Investment Limited wrote a letter of interest expressing its desire to purchase the property. Furthermore, the witness testified that same has availed a copy of the letter of interest that was sent to the 4th defendant. However, the witness conceded that the letter of interest produced before the court does not bear an acknowledgement stamp of the 4th Defendant.



250. While still under cross-examination, the witness testified that Trendsetters Investment Limited undertook due diligence before purchasing the suit property. Furthermore, the witness averred that same procured and obtained a copy of the certificate of title/ lease of the suit property. Moreover, the witness averred that same sought to authenticate whether the title was clean. However, the witness acknowledged that in the course of undertaking due diligence, same established that there were entries that had been registered/ endorsed on the register and which were restricting any dealings on the suit property. In addition, the witness testified that Trendsetters Investment Limited was aware of the legal issues reflected vide the entries.
251. Additionally, the witness testified that the entries which were endorsed on the register of the suit property were shown to have arisen from court orders issued vide a succession cause. However, it was the testimony of the witness that the said orders were stated to have lapsed. On the other hand, the witness averred that same is aware that trendsetters investment limited filed Nairobi HCC No. 461 of 2012 seeking to vacate the various orders reflected at the foot of entries 2 & 3 in the register of the suit property. Furthermore, the witness testified that the suit was filed to discharge the restrictions in question.
252. While still under cross-examination, the witness averred that Trendsetters Investment Limited played a role in the sale of the suit property to Ukombozi Holdings Limited. However, it was the testimony of the witness that Trendsetters Investment Limited did not retain any portion of the suit property after the sale thereof to the plaintiff.
253. Moreover, the witness averred that the plaintiff herein has since sold the suit property to Ukombozi Holdings Limited.
254. Upon being referred to the document at page 74 of the Plaintiff's list and bundle of documents, the witness testified that the said document is a settlement agreement. The witness added that the settlement agreement is dated 2018. Furthermore, the witness averred that the settlement agreement was between Trendsetters Investment Limited and Mary Wanjiku Kanyotu. In addition, the witness averred that the settlement agreement related to payments of the sum of Kenya shilling[s]. Sixty -five million [Kshs. 65,000,000] only. Besides, it was averred that the payment in question is stated to be in full and final settlement of the purchase price. Furthermore, it was the testimony of the witness that the payment in question was in respect of the suit property. Nevertheless, the witness testified that same is aware that the purchase price of the suit property was duly paid. In any event, the witness testified that by the time of entering into the settlement agreement the land in question had already been sold to the Plaintiff.
255. Regarding the document at page 74 of the Plaintiff's list and bundle of document, the witness averred that same is evidence of further payment of Kshs. Thirty million [Kshs. 30,000,000] Only. In any event, it was the further testimony of the witness that same is not aware of any other payments.
256. On cross-examination by learned counsel for the Interested Party/ 3rd defendant in the counterclaim, the witness averred that same last visited the suit property in august 2024. Furthermore, the witness averred that when same visited the suit property, the suit property was the subject of massive construction[s]. In particular, the witness averred that there were more than one hundred [100] houses that had been constructed thereof.
257. While still under cross-examination, the witness averred that Trendsetters Investment Limited paid to the 3rd defendant the sum of Ksh. Thirty-nine million [Kshs.39,000,000] only. The witness averred that the said payments were made to the 3rd defendant because the 3rd defendant was disturbing Trendsetters



- Investment Limited. In particular, the witness averred that the payments were meant to avert further disturbance and complaints by the 3rd defendant.
258. On cross-examination by learned counsel for the Plaintiff, the witness averred that same was knowledgeable of the transaction between Trendsetters Investment Limited and the Plaintiff. The witness averred that same became aware of the transaction under reference by virtue of his portfolio of being the general manager of Trendsetters Investment Limited. Furthermore, the witness averred that same was involved in the purchase/ acquisition of the suit property. Nevertheless, the witness added that same was not the only one who was involved in the process of purchase of the suit property.
259. While still under cross-examination, the witness testified that Trendsetters Investment Limited generated and issued a letter of interest expressing its desire to purchase the suit property. Moreover, the witness averred that the letter of interest has been tendered and produced before the court.
260. It was the further testimony of the witness that by the time Trendsetters Investment Limited wrote the letter of interest, Trendsetters Limited had already undertaken due diligence over the suit property. Furthermore, the witness averred that same had also conducted a search at the registrar of companies. To this end, the witness testified that same has availed a copy of the CR 12 in respect of the 4th Defendant company.
261. Additionally, the witness averred that Trendsetters Investment Limited engaged the directors of the 4th Defendants. In particular, the witness testified that the directors who were engaged were the ones whose names were captured/ reflected in the CR 12 obtained from the Registrar of Companies.
262. While still under cross-examination, the witness testified that same has tendered and produced a copy of the certificate of title in respect of the suit property. Moreover, the witness averred that same has also availed a copy of the certificate of official search before the court. In particular, the witness added that the search was undertaken before the transfer of the suit property.
263. Regarding entries 2 and 3 at the foot of the register of title of the suit property, the witness averred that the said entries were underpinned by court orders. Nevertheless, the witness testified that same were duly informed that the orders under reference had lapsed. Moreover, the witness testified that it is the directors of the 4th defendant who informed same that the said orders had lapsed. To this end, the witness averred that same believed the representations by the directors of the 4th defendant. As pertains to whether trendsetters bought a portion of the suit property or otherwise, the witness testified that trendsetters limited bought the entire property. In any event, the witness added that the sale agreement was in respect of the entire of the suit property.
264. It was the further testimony of the witness that trendsetters limited thereafter entered into and executed the sale agreement dated 19th April 2012. Furthermore, the witness averred that the sale agreement was also executed by Mary Wanjiku Kanyotu and Christopher Ngata Kanyotu who were directors of the 4th Defendant.
265. Regarding the issuance of the consent from the land control board, the witness averred that the land control board consent was mandatory in so far as the suit property was agricultural land. Furthermore, the witness testified that the vendor of the suit property procured and obtained a land control board consent.
266. Upon being referred to the document at page 75 of the 3rd Defendant's list and bundle of documents, the witness averred that same is the letter of consent that was procured and obtained by the vendor [4th Defendant]. Furthermore, the witness testified that the suit property was thereafter duly transferred to and registered in the name of Trendsetters Investment Limited.



267. Regarding the document at page 71 of the 3rd Defendant's list and bundle of documents, the witness averred that same is a report by the directorate of criminal investigations. Nevertheless, the witness testified that same has never been summoned by the Deputy County Commissioner, Ruiru sub-county or Director of Criminal Investigations over the validity of the land control board consent. Moreover, the witness averred that same has neither been arrested nor charged with any criminal offence.
268. It was the further testimony of the witness that Mary Wanjiku Kanyotu was privy to and knowledgeable of the sale suit property. In particular, the witness averred that the said Mary Wanjiku Kanyotu has confirmed the payments of the full purchase price. To this end, the witness referenced an affidavit that was sworn and filed by the said Mary Wanjiku Kanyotu in respect of Milimani HCC No. 461 of 2012.
269. Referred to the document and page 26 of the 4th Defendant's list and bundle of documents, the witness averred that Trendsetters Investments Limited were not parties to the suit that gave rise to the court orders at pages 26 & 27 of the bundle of Documents. Furthermore, the witness added that Trendsetters Limited was also not a party to the suit that gave rise to the orders at page 23 of the 4th defendant's list and bundle of documents. In any event, the witness testified that same has just seen the said orders today. For good measure, the witness testified that there was no restriction that barred the registration of the suit property in the name of Trendsetters Investment Limited after the removal of entries number 2 and 3 courtesy of the orders issued by Justice Mutava vide Nairobi HCC No. 461 of 2012.
270. While still under cross-examination, the witness testified that the suit property was subsequently sold to and in favor of the plaintiff. In addition, the witness averred that the suit property was sold at a consideration of seven hundred million. Moreover, the witness testified that the entire purchase price was duly paid and acknowledged.
271. Regarding the document at page 74 of the Plaintiff's list and bundle of documents, the witness testified that the document under reference is a copy of the settlement agreement between Trendsetters Investment Limited and Mary Wanjiku Kanyotu. Furthermore, the witness averred that the settlement agreement was entered into long after the sale of the suit property. In addition, it was averred that the settlement agreement was in respect of additional payments.
272. It was the further testimony of the witness that the payments at the foot of the settlement agreements were made in addition to the purchase price of the suit property. Furthermore, it was averred that the said additional payments were made on an ex-gratia basis.
273. Furthermore, the witness testified that Trendsetters Investment Limited also made payments to the 3rd defendants. The witness averred that the payments to the 3rd defendant were forwarded vide cheques. Moreover, the witness averred that the said payments were made over and in respect of some perceived claims that the 3rd defendant raised in respect of the suit property. Nevertheless, the witness testified that the payments to and in favor of the 3rd defendant were made on ex-gratia basis and in any event, to avert further disturbance by the 3rd defendant.
274. Upon being referred to an affidavit filed in Nairobi HCC No. 461 of 2012, the witness stated that the said affidavit has been sworn by John Kanyotu. In addition, the witness testified that John Kanyotu has confirmed that the purchase price was duly paid. Furthermore, the witness reiterated that the purchase price was distributed in the manner that was agreed upon.



275. Regarding whether a rates clearance certificate was obtained, the witness testified that a rates clearance certificate was indeed procured and obtained. For good measure, the witness averred that the clearance certificate was issued upon payment of the outstanding rents.
276. Turning to the issue of the letter of consent, the witness testified that a letter of consent was indeed obtained before the transfer of the suit property was undertaken in favor of Trendsetters Investment Limited. Furthermore, the witness averred that a consent was also obtained in respect of the transfer of the suit property in favor of the Plaintiff.
277. Upon being referred to the document at page 78 of the 3rd Defendant's bundle of documents, the witness averred that the document is a report from the Directorate of Criminal Investigations. Nevertheless, the witness testified that same has neither been arrested nor charged with any offence touching on the land control board consent. Moreover, the witness added that neither has any employee of Trendsetters Investment Limited been arrested or charged over the said land control board consent.
278. On re-examination, the witness averred that Trendsetters Investments Limited paid the full purchase price to and in favor of the 4th defendant. Furthermore, the witness added that trendsetters limited also paid stamp duty; statutory levy and registration fees in respect of the suit property.
279. While still under re-examination, the witness testified that Trendsetters Investment Limited entered into a sale agreement with the 4th Defendant. Moreover, the witness averred that the land in question was lawfully transferred to Trendsetters Investment Limited.
280. It was the further testimony of the witness that Trendsetters Investment Limited have since sold and transferred the suit property to the Plaintiff. Furthermore, it was posited that the transfer in favor of the Plaintiff was lawful.
281. With the foregoing testimony, the case for the 1st Defendant to the counterclaim was closed.
282. Turning to the case for the 4th and 5th defendants to the counterclaim, it is imperative to state that the 4th & 5th defendants to the counterclaim filed their list of witnesses and bundle of documents on the 25th October 2024. However, by the time the 4th & 5th defendants to the counterclaim filed their witness statement and bundle of documents, the Plaintiff's case had already been closed. For coherence, the Plaintiff's case was closed on 22nd February 2024.
283. Furthermore, it is imperative to underscore that the documents and witness statement on behalf of the 4th & 5th defendants to the counterclaim were also filed without leave of the court. To this end, when learned counsel for the 4th & 5th defendants to the counterclaim sought to bring a witness to testify; an objection was taken by learned counsel for the Plaintiff, 1st Defendant to the counterclaim, and Interested Party/ 3rd Defendant to the counterclaim.
284. Arising from the objection, the court was called upon to render a ruling and in this regard the court delivered a ruling on 23rd March 2025 and whereupon the court found and held inter alia that the witness statement and bundle of documents were filed out of time without leave of the court; the documents were similarly filed long after the close of the Plaintiff's case; and that the documents were bound to occasion undue prejudice to the Plaintiff.
285. Flowing from the foregoing, the court proceeded to and expunged the witness statement and the list and bundle of documents that were filed by the Honorable Attorney General. Thereafter the case for the 4th & 5th Defendants to the counterclaim was ordered closed.



286. Upon the close of the hearing, the advocates for the parties sought for timelines to file and exchange written submissions. To this end, the court proceeded to and circumscribed the timelines for the filing and exchange of the written submissions.
287. The Plaintiff/2nd defendant to the counterclaim filed Three [3] sets of submissions, namely: the maiden submission dated 9th April 2025; the rejoinder submissions dated 20th May 2025; and the rejoinder submissions dated 11th June 2025.
288. Vide the maiden submissions the Plaintiff/2nd defendant to the counterclaim has highlighted various issues for determination. The issues highlighted by the plaintiff/2nd defendant to the counterclaim are namely; whether the sale to Trendsetters investments Ltd & the subsequent sale was valid; Whether the requisite board control consent was procured and obtained and if not what is the legal implication of failure; whether the presence of a foreign director/shareholding in the Plaintiff company has any legal effect on the ownership on the suit property; whether the 2nd & 3rd defendants are estopped from challenging the validity or otherwise of the sale transaction in favour of Trendsetters Investment Ltd and the Plaintiff; whether the orders that were issued vide succession cause No. 1239 of 2008 affected the transfer and registration of the suit property in favour of Trendsetters Investment Ltd and by extension the Plaintiff.
289. The 1st Defendant filed written submissions dated 7th May 2025; and wherein the 1st Defendant has highlighted and canvassed one [1] singular issue, namely; whether the Plaintiff herein has established the propriety/ validity of its title to the suit property or at all.
290. The 3rd defendant also filed written submissions dated 30th April 2025; and wherein same has also highlighted two [2] key issues, namely, whether the Plaintiff can maintain a claim of trespass against the defendants, and whether the counterclaim herein is merited or otherwise.
291. The 4th defendant filed written submissions dated 9th May 2025 and wherein same has highlighted Five [5] issues for consideration. The issues raised by the 4th defendant/counter-claimer are namely; whether Trendsetters Investment Ltd & Marriott Africa International Ltd were Bonafide purchasers for value without notice in respect of L.R No. 11261/76; what is the legality of the orders issued on 18th July 2012 and 25th July 2012 by Hon. Justice Mutava in Nairobi HCC Commercial Misc. Application No. 461 of 2012; whether the failure to obtain the relevant consents renders the sale of L.R No's 11261/76 null and void and the lack of good faith by the purchasers in forging the letters of consent; whether the plaintiff has proven its claim of trespass against the 4th defendant and therefore entitled to the reliefs sought and whether the subsequent dealings on the suit property including sub-plots held by the plaintiff and Ukombozi Holdings Ltd are tainted with illegalities and are therefore void.
292. The 1st Defendant to the counterclaim filed written submissions dated 5th May 2025 and wherein same has raised and highlighted twelve issues, namely; whether Trendsetters Investments limited was lawfully registered as the owner of the suit property at the time of its sale to the Plaintiff having fully purchased the suit property from the 4th defendant; whether Trendsetters Investments Limited lawfully transferred the suit property to the Plaintiff; whether at the time of transfer of the suit property to the Plaintiff the title thereof was clear of any encumbrance or otherwise; whether Trendsetters Investments Limited obtained land control board consent as required by the law and thereafter paid the requisite stamp duty prior to the transfer of the suit property; whether Trendsetters Investments Limited paid the full purchase price to the 4th defendant and its directors; whether the objections by the 1st and 3rd defendants are lawful and actionable under the law; whether the 4th defendant/counter claimer was also involved in other cases in respect of the same land; whether the full purchase price of the suit property was paid in settlement of the 4th defendant's debts and liabilities; whether



Trendsetters limited paid the requisite stamp duty on the registration the suit property; whether there exist any factors that vitiates or compromise the Plaintiff's title to the suit property; whether there are in existence over one thousand titles arising from the suit property; and whether this court is seized of jurisdiction to make any lawful orders affecting third party title holders in their absence; and whether the counterclaim by the 4th defendant ought to be dismissed or otherwise.

293. The 4th and 5th Defendants to the counter claim filed written submissions dated 29th May 2025, through the Hon. Attorney General and wherein same has raised and canvassed three [3] salient issues namely; whether the sale of the suit property by Kangaita Coffee estates Ltd to Trendsetters Ltd was valid and effective to confer a title; whether the Plaintiff is a bona-fide purchaser for value without notice of any defect in title; and whether there was breach of the doctrine of lis pendens; and the reliefs [if any] that the court can grant in the circumstances.
294. Having reviewed the pleadings filed by and on behalf of the parties; having taken into account 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 1st defendant to the counterclaim [Trendsetters Investments limited] acquired lawful and valid title to the suit property or otherwise; whether the Plaintiff [Marriot Africa International] is a Bonafide purchaser for valid without notice of any defect in its predecessor's title or otherwise; whether the 4th Defendant/ counter claimer has established and proved its claim to the suit property or otherwise; and what reliefs[if at all] ought to issue.
295. Regarding the first issue, namely; whether the 1st defendant to the counterclaim [trendsetters limited] acquired lawful and valid title to the suit property or otherwise, it is imperative to recall and reiterate that the determination as to whether or not the plaintiff herein acquired lawful title to the suit property cannot be addressed without first interrogating the process leading to the transfer and registration of the suit property in the name of the 1st defendant to the counterclaim. Instructively, the 1st defendant to the counterclaim was the vendor who sold and thereafter caused the suit property to be transferred to and in favor of the plaintiff.
296. Put differently, the validity or propriety on the Plaintiff's title to the suit property is dependent on whether or not the vendor acquired valid title to the suit property and was thus seized of the capacity to convey any proprietary rights over the property or otherwise.
297. Arising from the foregoing, it is therefore critical to engage with and interrogate the process leading to the transfer and registration of the suit property in favour of the 1st defendant to the counterclaim.
298. The need to interrogate the process leading to the transfer of the suit property in favor of the 1st defendant to the counterclaim or better still, the root of the title in favour of Trendsetters Limited has been underscored in a plethora of decisions.
299. In the case of Mas Construction Limited v Sheikh & 6 others (Civil Appeal E789 of 2023) [2025] KECA 349 (KLR) (28 February 2025) (Judgment) the court of Appeal stated thus;

This Court in Presbyterian Foundation v Kibera Siranga Self Help Group Nursery School (Civil Appeal 64 of 2014) [2023] KECA 371 (KLR) (31 March 2023) (Judgment) stated as follows regarding a claim over the existence of two titles in respect of the same parcel land: "The best evidence of ownership of immovable property is the title deed to it and that is why the question of the root of title is important. Root of title is the deed to which title to a property is ultimately traced to prove that the owner has good title. Accordingly, when there are competing interests as in this case, the parties are required to give evidence of title, starting with a "good root of title." A good root of title and an unbroken chain



of ownership is required. To be a good root of title, a document must satisfy each of the following requirements:

- (a) it must deal with or show the origin of the ownership of the whole legal and equitable interest in the land in question;
- (b) it must contain a recognizable description of the property;
- (c) it must not contain anything that casts any doubt on the title.”

300. Bearing in mind the ratio decidendi espoused in the decision [supra], it is now apposite to commence the journey in an endeavor to investigate the propriety of the certificate of title which was registered in the name of Trendsetters Investment Limited. Suffice it to underscore that the propriety of the title holds the key to the consequential transactions impacting upon and affecting the ownership rights of the suit property.
301. I shall address various perspectives touching on and concerning the registration of the suit property in favor of the 1st defendant to the counterclaim. To start with, it is common ground that the suit property was previously registered in the name of Kangaita Coffee Estate Limited [4th defendant/counterclaimant]. To this end, there is no gainsaying that any transaction affecting the suit property could only be sanctioned and or authorized by the 4th defendant and not otherwise.
302. Moreover, it is common knowledge that by virtue of being a body corporate [company], the 4th defendant/counter-claimant can only authorize transactions vide the resolutions of the board of directors. In any event, it suffices it to posit that the meeting convened for purposes of generating the resolutions must be convened by the duly authorized directors and not any other stranger or otherwise.
303. As pertains to the 4th defendant, there is no gainsaying that one James Kanyotu [now deceased] was the majority shareholder in the said company. Instructively, the said James Kanyotu died on or about the year 2008 and therefore his shareholding in the 4th defendant formed part of the estate of the said deceased. [See section 2 of the *Law of Succession Act* Chapter 160 Laws of Kenya].
304. Having stated that the resolution of the 4th defendant sanctioning and or authorizing sale, alienation and or disposition of the suit property could only be undertaken by the authorized directors, a question does arise as to whether the resolutions that were allegedly made on the 21st March 2012 and the 18th June 2012, respectively were made by the authorized directors of the 4th defendant or otherwise.
305. The 1st defendant to the counterclaim contended that same lawfully entered into a valid sale agreement with the 4th defendant and to this end the 1st defendant to the counterclaim has variously referenced the resolutions that were allegedly availed by the 4th defendant. However, it is worth recalling that the issue of the directorship of the 4th defendant was one of the matters that was addressed vide the erudite ruling rendered by Hon. Justice Luka Kimaru [as he then was] in *Jane Gathoni Muraya -Kanyotu vs Mary Wanjiku Kanyotu & 9 others* 2013 eKLR where the learned Judge stated as hereunder:-

“All changes that were made in respect of the shareholding of the companies were the deceased was a majority shareholder are hereby cancelled. The shareholding of the companies listed in the application shall revert to the position as at 13th February 2008 when the deceased died.”

306. My understanding of the holding of the learned judge is to the effect that the only valid directors of the 4th defendant who could transact in respect of the suit property were those who were reflected in the company register as at 13th February 2008. Furthermore, the holding of the learned judge [supra]



is succinct that the alienation and dealing with the shares of the deceased could only be dealt with after the succession and not otherwise.

307. Flowing from the foregoing, I must ask myself as to whether the persons who purported to execute the resolutions on the 21st March 2012 and 18th June 2012 had the capacity to execute the impugned resolution. It is important to underscore that the 1st defendant to the counterclaim who contended that the said persons had the requisite authority did not place before the court the CR12 relating to the directorship of the 4th defendant as at February 2008.
308. To my mind, the persons who executed the impugned resolutions that underpinned the sale and subsequent transfer of the suit property to the 1st defendant in the counterclaim were not seized of the requisite authority and or capacity to act on behalf of the 4th Defendant. To this end, it is my finding and holding that the impugned resolution were void and thus invalid.
309. The second perspective touches on and concerns the legality of the resolutions made on 21st March 2012 and 18th June 2012 on the face of the orders of the court that were issued on the 28th September 2009; and 25th October 2011; vide Nairobi HCC Succession Cause No. 1239 of 2008. Given the significance of the said orders, it is appropriate to reproduce same verbatim.
310. In respect of the orders made on the 28th September 2009 the High court [Hon Justice G Dulu, Judge] stated thus;-
1.Not applicable.
 2. Pending the hearing and determination of this application interparties, an injunction be and is hereby issued restraining Mary Wanjiku Kanyotu, Christopher Ngata Kanyotu, Andrew Peter Ngirici, Ken Njau, John Kariuki Kanyotu and Sandra Gathoni Njau, in person or through any of their agents, servants or in any other manner howsoever and whatsoever from further interfering with any of the properties registered in the name of the companies listed below and further from transferring to third parties or in any other manner whatsoever or howsoever interfering with the shareholding of the deceased and shareholding allegedly acquired by the said Mary Wanjiku Kanyotu, Christopher Ngata Kanyotu and Gathoni Njau in the following companies subsequent to the demise of the deceased.
 - a. Not applicable
 - b. Not applicable
 - c. Kangaita Coffee Estate Limited
311. As pertains to the orders which were issued on the 25th October 2011, by Hon Justice D.K Maraga, Judge [as he then was], order one stated thus:
- i. Any sale, lease, charge, transfer or any other disposal of all the assets of the deceased including assets or properties registered in the names of the companies in which the deceased was as at the time of his death the majority shareholder be and are hereby prohibited and until further orders of the court.
 - ii. The family members of the deceased have been explained the importance of the order and warned the consequences of violation of the same.
312. The two [2] sets of orders [whose details have been reproduced in the preceding paragraphs] are explicit and devoid of ambivalence. Notably, Mary Wanjiku Kanyotu [the 2nd defendant herein] and



- Christopher Ngata Kanyotu had been restrained from undertaking any dealings and or transactions affecting the shareholding, directorship and properties of the 4th defendant.
313. The said orders remained in force and were subsequently reaffirmed vide the orders of Luka Kimaru, judge [as he then was] issued on the 8th November 2013. I shall revert to the legal implications of the orders of Hon. Justice Luka Kimaru, Judge, presently.
314. The critical issue that comes to the fore is whether Mary Wanjiku Kanyotu and Christopher Ngata Kanyotu, who had been prohibited by a court order, could purport to convene a meeting of [sic] the directors of the 4th defendant and to pass a resolution approving the sale of the suit property.
315. In my humble albeit view, the resolutions that were made by the said Mary Wanjiku Kanyotu and Christopher Ngata Kanyotu during the existence of the lawful court orders [allegedly on behalf of the 4TH Defendant] were illegal and void for all intents and purposes.
316. The third perspective that merits consideration relates to the entry into and execution of the sale agreement[sic] between the 4th defendant and Trendsetters Limited on the 19th April 2012 and which sale agreement was executed by Mary Wanjiku Kanyotu and Christopher Ngata Kanyotu on behalf of [sic] the 4th defendant.
317. It is not lost on this court that the orders that were issued vide Nairobi HCC Succession No 1239 of 2008 prohibited the sale and or alienation of any property registered in the names of the designated companies where the deceased was a majority shareholder. The said orders, which barred the sale and or alienation of the properties in the names of the companies where the deceased was a major shareholder, remained in existence even at the time of the purported entry and execution of the sale agreement dated 19th April 2012.
318. I am alive to the fact that the parties herein, could not agree as to whether or not James Kanyotu [now deceased] was a majority shareholder in the 4th defendant's company as at the time of his death. To this end, the Plaintiff herein and the 1st defendant to the counterclaim have referenced various CR 12 showing the status/portfolio of the 4th defendant. However, it is not lost on the court that the CR 12's which have been referenced relate to the events and the changes that were [sic] effected in 2009 and thereafter.
319. Be that as it may, the fact that James Kanyotu (deceased) was the majority shareholder in the 4th defendant was put to rest [bed] by PW 2 while under cross-examination by learned counsel for the 4th & 5th defendants to the counterclaim.
320. For coherence, PW 2 stated as hereunder:
- “Referring to the document at page 394 of the plaintiff's list and bundle of documents and the witness states that the document is a shareholders' portfolio. The shares of James Kanyotu [now deceased] were 4995. The total shareholding of the company was 5000. The shareholding of the 4th defendant was varied and enhanced. The variation and enhancement were done in 2009/2010. [emphasis supplied].
321. It is also instructive to recall that PW 2 reiterated the fact that James Kanyotu held the majority shares in the 4th defendant as at the time of his death.



322. While under re-examination by Learned Counsel for the Plaintiff PW 2 stated as hereunder;
- “ Referred to page 394 of the plaintiffs consolidated bundle and the witness states that the document is a CR 12. The CR 12 is in respect of the directorship of the 4th defendant. I am familiar with he document on page 394 of the plaintiffs' bundle. According to the document, the late Kanyotu now deceased, held 4995 shares. The document at page 394 does not reflect and or capture my name as a director of the 4th defendant.
323. From the testimony of PW 2 while under cross-examination and re-examination, there is no gainsaying that by the time James Kanyotu [deceased] died in February 2008, same was no doubt the majority shareholder in the 4th defendant company. Granted the shareholding in the 4th defendant company were interfered with ex-post his death, but the interference [read variation and enhancement] does not take the matter outside the purview of the orders that were issued and whose tenor was to prohibit any dealings in the companies. For good measure, I posit and reiterate that the 4th defendant was one of those companies in which the deceased held majority shares.
324. In the premises, it is crystal clear that by the time the sale agreement dated 19th February 2012[sic] was being executed, the sale of the suit property was prohibited by lawful and valid orders of the court, which prohibited any dealings with the affairs of companies where the deceased was the majority shareholder. [See the orders of 28th September 2009 and 25th October 2011].
325. The fourth perspective, which is equally critical, touches on and concerns the fact that the sale agreement was being entered into when the title of the suit property was subject to various inhibitions, restrictions and or encumbrances duly noted and entered against the register of the suit property. For coherence, it is imperative to reference entries No. 2 and 3 on the register of the suit property. Instructively, entry No. 2 was entered and endorsed in the register on 7th October 2010, whereas entry No. 3 was endorsed and entered in the register on 23rd November 2010. Could trendsetters purport to proceed with a sale agreement in respect to a property that was the subject of court proceedings and worse still, the subject of inhibitions?
326. I beg to highlight that where a particular property is the subject of litigation, no party and or person can purport to alienate and or dispose of such property. Any endeavor aimed at alienating and or interfering with such a property violates the rule/ doctrine of Lis Pendens [See the holding of the Court of Appeal in *Naftali Ruthi Kinyua v Patrick Thuita Gachure & another* [2015] KECA 911 (KLR); *Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 others* [2017] KECA 79 (KLR) and *Marete v Ndegwa & 2 others* (Civil Appeal E042 of 2021) [2024] KECA 545 (KLR) (24 May 2024) (Judgment-at par 63].
327. Most recently, the Court of Appeal revisited the doctrine of Lis pendens in the case of *Cove Investments Limited v Rono & 2 others* (Civil Appeal (Application) E051 of 2025) [2025] KECA 1089 (KLR) (20 June 2025) (Ruling) and held thus:
32. The above doctrine denotes those principles and rules of law which define and limit the operation of the common law maxim *pendente lite nihil innovetur*, that is, pending the suit nothing should be changed. As was held in *Ex parte Thornton* [1867] 2 Ch.p.178, as soon as proceedings are commenced to recover or charge specific property, there is *lis pendens*, that is, a pending suit, the consequence of which is that until the litigation is at an end neither litigant can deal with the property to the prejudice of the other. This doctrine requires that nothing new can be introduced during the pendency of a suit and if at



all anything new is introduced, the same would also be subject to the final outcome of the suit, which would decide the rights and obligations of the parties.

33. The Supreme Court of India in *Jayaram Mudaliar vs. Ayyaswami* AIR 1973 SC 569 explained that where any proceeding in respect of a property is pending, the doctrine of *lis pendens* vests the courts with the control or dominion over such subject-matter so that no party or person may remove the subject-matter outside of the power of the court to deal with it in accordance with law and thereby render the proceedings infructuous. The relevant observations read as under:

“14. ... the doctrine of *Lis pendens* has been defined as the jurisdiction, power, or control which a court acquires over property involved in a suit pending the continuance of the action, and until final judgment therein.” It was observed there: “Expositions of the doctrine indicate that the need for it arises from the very nature of the jurisdiction of Courts and their control over the subject-matter of litigation so that parties litigating before it may not remove any part of the subject-matter outside the power of the Court to deal with it and thus make the proceedings infructuous.”

328. In my humble albeit considered view, the persons who purported to act on behalf of the 4th defendant in the sale of the suit property were privy to and knowledgeable of, not only the pending proceedings vide Nairobi HCC Succession Cause no. 1239 of 2008, but were also aware of the live orders issued therein.
329. The fifth aspect that is also important relates to the sale which was being undertaken before the prohibitory orders issued by the high court were vacated and or discharged. I beg to underscore that Trendsetters Investment Limited was called upon to undertake due diligence before entering into and executing a sale agreement in respect of the suit property. To my mind, a semblance of due diligence would no doubt have brought to the attention and knowledge of the 1st defendant to the counterclaim the existence of court orders. This, in my humble view, constituted sufficient warning to the 1st defendant to the counterclaim that any sale would be vitiated by illegality.
330. I now wish to turn to the question of the suit which was filed by Trendsetters Investment Limited namely; Nairobi HCC No. 461 of 2012 [now Milimani ELC No. 4 of 2023]. Suffice it to highlight that Trendsetters Investments Limited, who were the purchasers of the suit property, filed the said suit and wherein same sought the following reliefs [verbatim]:
1. A declaration that entry No. 2 registered as IR No. 88741/2 on 7th July 2010 by B.F Atieno and 3 registered as IR No. 88741/3 on 23rd November 2010 by C.S Maina on the certificate of title for all that parcel of land known as LR No. 11261/76 west of Ruiru Township-Thika District are null and void.
 2. An order that the registrar of titles do cancel the entry No. 2 registered as registered as IR No. 88741/2 on 7th July 2010 by B.F Atieno and 3 registered



as IR No. 88741/3 on 23rd November 2010 by C.S Maina on the certificate of title for all that parcel of land known as LR No. 11261/76.

3. An order that the 1st defendant do register the transfer for Lr. No 11261/76 in favor of the plaintiff.
 4. General damages.
 5. Cost of the suit.
 6. Any other relief this honorable Court may deem fit to grant.
331. It is instructive to note that in ordinary circumstances, it is the vendor who would be obligated to ensure that the property being sold [if at all] is clear of encumbrances. That is the established position and practice in conveyance. For good measure, where a vendor cannot bring to the table a property clear of encumbrance, then a critical condition attendant to the sale is lacking/ absent.
332. On the other hand, a purchaser [in this case, Trendsetters Investment Limited] would not be called to engage itself in an endeavor to rid the property for sale of any encumbrance. In fact, the existence of an encumbrance is a pointer to the fact that the property underpinning the sale has issues impacting on its merchantability.
333. Back to the instant matter. Trendsetters Investments Limited, who were the purchasers took it upon itself to file a suit seeking to have the inhibitions registered against the title to be discharged. To my mind, the involvement of the purchaser in the filing of the suit constitutes a pointer that the purchaser was privy to the illegality attendant to the impugned sale. Notably, the actions of the purchaser, including the filing of the suit, which is out of the ordinary, cannot be wished away. Neither can it be taken lightly on the face of the serious issue[s] of illegality.
334. The seventh aspect touches on the failure of Trendsetters Investment Limited [purchaser], who filed Nairobi HCC No. 461 of 2012 to implead the various persons who had procured the prohibitory orders in the said suit. Instructively, the only persons who were sued at the onset were the registrar of titles and the Hon. Attorney General and not the estate of the deceased or the designated beneficiaries in whose favour the prohibitory orders had been issued.
335. The question that does arise is why trendsetters limited who was aware of the beneficiaries of the prohibitory orders failed to join the said parties. In any event, it is common ground that the orders [if any] which were to be issued in Nairobi HCC No. 461 of 2012 [now Milimani ELC 4 of 2023] would have an effect on the said parties.
336. Could it be that Trendsetters Investment Limited was keen to steal a match on the beneficiaries of the prohibitory orders? The answer is certainly in the affirmative.
337. The other aspect that is also critical relates to the manner in which the entries underpinned by the prohibitory orders were discharged. It is worth highlighting that the prohibitory orders and or injunctive orders that underpinned the entries that were sought to be rescinded were issued by Nairobi HCC succession cause No. 1239 of 2008.
338. In this regard, if anyone, Trendsetters Investment Limited not excepted, were keen to discharge such orders, the requisite application would by law be mounted in the said suit.
339. However, in respect of this matter, the purchaser [Trendsetters Investment Limited] choose to file a separate suit, namely; Nairobi HCC No. 461 of 2012. Thereafter, same proceeded to mount an application whose net effect was to impugn the orders made in a separate file and by Judges



of concurrent jurisdiction. Something was seriously amiss; furthermore, an illegality was being committed.

340. Fast forward, the application that had been filed by Trendsetters vide Nairobi HCC No. 461 of 2012 [now Milimani ELC No. 4 of 2023], was heard ex-parte and culminated into precipitate, nay final orders. It is not lost on me that the nature of orders which were granted at the foot of the application could not, in ordinary circumstances, have been issued. However, despite the established and hackneyed position of the law, precipitate [substantive] orders were issued on the basis of an application.

341. I am aware that the impugned orders vide Nairobi HCC No. 461 of 2012 were issued by a court of coordinate jurisdiction. However, as a court of justice, I cannot close my eyes to what is evidently illegal and void. No wonder the judge who issued the impugned orders faced the tribunal and was thereafter discharged from Judgeship.

342. At this juncture, I beg to remind myself of the dictum in the case of *Macfoy vs United Africa Company* [1961] 3 All ER 1169:

“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 setting aside. It is automatically null and void without more ado, though it is sometimes convenient to have the court declare it to be so.”

[Emphasis Supplied].

343. What I hear the esteemed Judge [lord Denning MR] to be saying is that where an order is a nullity, such order is void for all intents and purposes. To this end, there is no gainsaying that the learned judge in Nairobi HCC No. 461 of 2012 [now Milimani ELC No. 4 of 2023] could not purport to vacate orders of his contemporaries in Nairobi HCC Succession Cause No. 1239 of 2008.

344. While still on this issue, I deem it apposite to take cognizance of the ratio in the case of *Kenya Hotel Properties Limited v Attorney General & 5 others (Petition 16 of 2020)* [2022] KESC 62 (KLR) (7 October 2022) (Judgment) at par 55 where the Supreme Court [the apex Court] stated thus;

“As was thus rightly noted by the High Court and the Court of Appeal, the rule of thumb is that superior courts cannot grant orders to reopen or review decisions of their peers of equal and competent jurisdiction much less those court higher than themselves. Again, we take cognizance of our finding in the Samuel Kamau Macharia case where we held that: “A court jurisdiction flows from either *the Constitution* or legislation or both.

Thus, a court of law can only exercise jurisdiction as conferred by *the Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents in his submission that the issue as to whether a court of law has jurisdiction to entertain a matter before it, is not one mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the court cannot entertain any proceedings. This court dealt with the question of jurisdiction extensively in, In the Matter of the Interim Independent Electoral Commission (applicant), Constitutional Application Number 2 of 2011. Where *the Constitution* exhaustively provides for the jurisdiction of a court of law, the court must operate within the



constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation.” (emphasis supplied).

345. What the learned judge did by granting the impugned orders was effectively to invalidate the orders that were in existence vide Nairobi HCC No. 1239 of 2008. The issuance of the said orders[sic] constituted the judge in the subsequent case as an appellate Judge over decisions of his peers.
346. In my humble view, the filing of Nairobi HCC No. 461 of 2012[now ELC No. 4 of 2023] and the orders arising therefrom was contrived into stealing a match against the estate of James Kanyotu [now deceased]. Instructively, a certificate of title procured on the basis of a contrived court order and or decree cannot suffice [See Section 26(1) (b) of the *Land Registration Act* 2012.
347. Moreover, it is also important to reference the decision 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 thus;

“64. 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.”

348. The 1st defendant to the counterclaim has contended that same lawfully entered into a sale agreement, procured a transfer, paid the requisite stamp duty and other statutory levies and thereafter obtained a certificate of title. To this end, what I hear the 1st defendant to the counterclaim to be saying is that same acquired an indefeasible title to the suit property. Simply put, the 1st defendant to the counterclaim is invoking the doctrine of indefeasibility of title.
349. Whereas a certificate of title which is procured and obtained procedurally, legally and in accordance with the law is entitled to the requisite protection by a court of law, however, where the title is afflicted with illegalities, such a title cannot be protected under the guise of indefeasibility.
350. Moreover, it has been held that indefeasibility of title or, better still the doctrine of indefeasibility, cannot be invoked to protect an illegality.
351. 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), the Supreme Court of Kenya [the apex court] expounded on the legal principle and stated thus;

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 gives its seal of approval to an illegal or irregularly obtained title.”

352. Additionally, the court of appeal has also expounded on the principle and clarified that a certificate of title procured in contravention of the law does not infuse in the bearer any proprietary rights and or interests. Instructively, the Court of Appeal elaborated on the principle in the case of Chemey Investment Limited v Attorney General & 2 others [2018] KECA 863 (KLR) where the court stated thus;

The above provisions have consistently been held to guarantee sanctity of title, which cannot be defeated except on the specific and serious grounds set out therein. However, we must hasten to add that title to property that is obtained fraudulently or illegally in violation of the provisions of the statute is and was not sacrosanct and did not enjoy protection of the law under the repealed Act. Recently in, Denis Noel Mukhulo & Another v Elizabeth Murungari Njoroge & Another, [*CA No. 298 of 2013*](#), this Court explained the situation as follows:

“While we agree with the appellants that title registered under the Registered [*Land Act*](#) was sacrosanct, we are not able to agree that the Act protected title registered under it in all and sundry cases, irrespective of how the title was acquired. By section 27 of the Act, the registration of a person as a proprietor of land vested in him the absolute ownership of the land together with all rights and privileges belonging or appurtenant thereto, while section 28 of the Act insulated the rights of a proprietor from challenge except in the manner set out in the Act, which really does not afford the blanket protection that the appellants claim it did. Section 143 of the Act, which granted the court power to order rectification of the register provided as follows...The effect of the above provision is that the court had power to order rectification, save in the case of a first registration, where the registration was obtained by fraud or mistake to which the registered person was party.”

Decisions abound where courts in this land have consistently declined to recognise and protect title to land, which has been obtained illegally or fraudulently, merely because a person is entered in the register as proprietor. See for example Niaz Mohamed Jan Mohamed v. Commissioner for Lands & 4 Others [1996] eKLR; Funzi Island Development Ltd & 2 Others v. County Council of Kwale (supra); Republic v. Minister for Transport & Communications & 5 Others ex parte Waa Ship Garbage Collectors & 15 Others KLR (E&L) 1, 563; John Peter Mureithi & 2 Others v. Attorney General & 4 Others [2006] eKLR; Kenya National Highway Authority v. Shalien Masood Mughal & 5 Others (2017) eKLR; Arthi Highway Developers Limited v. West End Butchery Limited & 6 Others [2015] eKLR; Munyu Maina v Hiram Gathiha Maina [2013] eKLR and Milan Kumarn Shah & Others v. City Council of Nairobi & Others, HCCC No. 1024 of 2005. The effect of all those decisions is that sanctity of title was never intended or understood to be a vehicle for fraud and illegalities or an avenue for unjust enrichment at public expense.

353. The next aspect that also impacts on the validity of the title relates to and concerns the land control board consent. The 1st defendant to the counterclaim and the vendors who [sic] sold the suit property unto her appreciated that there was need to procure and obtain the land control board consent. To



this end, an application for land control board consent was filled and thereafter [sic] forwarded to the land control board sitting at Ruiru.

354. To this end, the Plaintiff tendered and produced before the court copies of the application for the land control board consent and the consent that was said to have been issued by the land control board. Instructively, the consent in favour of Ms. Kangaita Coffee Estate Ltd is said to have been issued on 26th July 2012.
355. Nevertheless, during the hearing, evidence was tendered to the effect that the impugned consent did not lawfully originate from the land control board at Ruiru. To this end, it is apposite to reference the letter dated 27th April 2022, signed by one Margaret Mbugua, the Deputy County Commissioner-Ruiru.
356. For ease of appreciation, it is appropriate to reproduce the contents of the letter under reference.
357. The letter states thus;

Reference is made to your letter Ref: AMW/FD/019/08, dated 26th April 2022.

This is to inform you that this office has no records pertaining to the above-mentioned land and the attached letter of consent did not originate from this office.

However, attached please find certified copies of the register extracts of those in attendance of the land control board on 3rd July 2012 and on 23rd July 2012 and 6th May 2014 respectively.

As you may be aware all other land registration documents are in the custody of the land offices.

Signed.

Margaret Mbugua

Deputy County Commissioner – Ruiru

358. It is evident from the contents of the letter under reference and the attached extract of the register containing the details of the applications for land control board consents, that the purported consent that was relied upon by the purchasers [Trendsetters Investment Ltd] did not emanate from the land control board. Furthermore, what is also apparent is that the impugned land control board consent is fraudulent and an illegality.
359. Other than the foregoing, it is also worth recalling that DW 2 [Chief inspector Bernard Cheruiyot] testified that same was privy to a forensic document examination report which was prepared by chief inspector Guto. The report under reference was dated 18th November 2021. The said report touched on and concerned the validity of the letters of consents dated 26th July, 2012 and the 6th May 2014 respectively. It was the testimony of the witness that after examining the questioned signatures, same came to the conclusion that the letters of consents were forgeries.
360. While under cross-examination by learned counsel for the Plaintiff the witness testified as hereunder;

“I wish to add that I relied on the documents that were brought to me by the investigator. I do wish to state that I relied on the specimen signatures of the designated persons. I do confirm that the specimen signatures belonged to the persons who are said to have executed the questioned documents. I have indicated what I took into account before arriving at the conclusions. I have returned a finding that Juliana and Mercy did not sign the disputed



letters of consents. I came to the conclusion that the letters of consents were forgeries. I returned a finding that the letters of consent were forgeries. I formed the opinion that the letters of consents were forgeries.”

361. What I hear DW 2 to be confirming is that the impugned letters of consent were forged. Suffice it to state that the expert evidence of DW 2 and that of DW 3, were not controverted. To this end, there is yet another aspect that brings to question the legality of the impugned letters of consent.
362. It is instructive to observe and highlight that the evidence of an expert, including the evidence of DW2 and DW3 herein, could only be impeached by the evidence of another expert. However, there is no gainsaying that neither the Plaintiff nor the 1st defendant to the counterclaim procured the services of a forensic document examiner to rebut the testimony of the named experts. To this end, what becomes apparent is that the testimonies of the said experts [forensic document examiners] were not controverted.
363. Put differently, the testimonies of the two forensic document examiners remain steadfast. Essentially, the testimony under reference vindicates the position by the 1st, 3rd and 4th defendants to the effect that the letters of consent dated the 26th July 2012 and 6th May 2014 were forgeries.
364. The manner in which the evidence of an expert is to be controverted was expounded upon by the Supreme Court [the ApexCourt] in the case of *Attorney General v Zinj Limited (Petition 1 of 2020)* [2021] KESC 23 (KLR) (3 December 2021) (Judgment) where the court stated as hereunder;

30.In granting special damages, the trial judge was guided by the Valuation Report tabled by the respondent. In the absence of a contrary report on record, we have no basis upon which to interfere with the award. Even if there had been one such other report, our jurisdiction to interfere would still have been largely circumscribed, unless the award had clearly ignored the fundamental principles of valuation as demonstrated by the counter-report.

365. The Court of Appeal has also expounded on the same principle in the case of *Criticos v National Bank of Kenya Limited* (as the successor in business to Kenya National Capital Corporation Limited “Kenyac”) & another (Appeal 80 of 2017) [2022] KECA 870 (KLR) (28 April 2022) (Judgment), where the court sated thus;

39.There is also no substantive rebuttal of Mr. Musau’s valuation report based on a similar valuation undertaken in the year 2010. As properly held in *STEPHEN KININI WANG’ONDU* (supra), expert evidence can only be challenged by another expert. We also associate ourselves with the criteria for assessing an expert’s evidence as outlined in the same decision, rehashed herein below for emphasis. A further criteria for assessing an expert’s evidence focuses on the quality of the expert’s reasoning. A court should examine each expert’s testimony in terms of its rationality and internal consistency in relation to all the evidence presented. In *Routestone Ltd. v. Minorities Finance Ltd. and Another*.

[Same v. Bird and others [1997] B.C.C. 180] Jacob J. observed that what really mattered in most cases was the reasons given for an expert’s opinion, noting that a well-constructed expert report containing opinion evidence sets out both the opinion and the reasons for it. The judge pithily commented, “[i]f the reasons stand up the opinion does, if not, not.”(Emphasis ours).



366. Bearing in mind the principles espoused in the decisions [supra], what comes to the fore is that the impugned letters of consent were indeed forgeries.
367. Furthermore, the question that does arise is whether the impugned transfer to and in favour of Trendsetters Ltd could have been effected and or perfected in the absence of a lawful consent. The answer to the question herein lies in the provisions of section 6 of the [Land Control Act](#), Cap 302, Laws of Kenya.
368. The provisions of Section 6 of the [Land Control Act](#) [supra] stipulate thus;
- Transactions affecting agricultural land
- (1) Each of the following transactions that is to say—
- (a) the sale, transfer, lease, mortgage, exchange, partition or other disposal of or dealing with any agricultural land which is situated within a land control area;
- (b) The division of any such agricultural land into two or more parcels to be held under separate titles, other than the division of an area of less than twenty acres into plots in an area to which the Development and Use of Land (Planning) Regulations, 1961 (L.N. 516/1961) for the time being apply;
- (c) the issue, sale, transfer, mortgage or any other disposal of or dealing with any share in a private company or co-operative society which for the time being owns agricultural land situated within a land control area, is void for all purposes unless the land control board for the land control area or division in which the land is situated has given its consent in respect of that transaction in accordance with this Act.
- (2) For the avoidance of doubt it is declared that the declaration of a trust of agricultural land situated within a land control area is a dealing in that land for the purposes of subsection (1).
- (3) This section does not apply to—
- (a) The transmission of land by virtue of the will or intestacy of a deceased person, unless that transmission would result in the division of the land into two or more parcels to be held under separate titles; or
- (b) a transaction to which the Government or the Settlement Fund Trustees or (in respect of Trust land) a county council is a party.
369. It is also worth recalling that the 1st defendant to the counterclaim, who had relied on the said consent, did not controvert the evidence as pertains to the illegality of the impugned consent. Moreover, it is not lost on this court that the 1st defendant to the counterclaim did not call any witness from the land control board – Ruiru to attend court to contradict the contents of the letter dated 27th April 2022 and the duly certified minutes which were tendered and produced before the court.
370. The failure by the 1st defendant to summon and or call any witness from the land control board leaves the testimony that was placed before the court by the 4th defendant uncontroverted.
371. The Court of Appeal in the case of *Philemon L. Wambia v Gaitano Lusitsa Mukofu & 2 others* [2019] KECA 157 (KLR), considered the importance of calling a witness from the land registry or such other land department in an endeavor to confirm the authenticity of certain documents.



372. For coherence, the court observed thus;

40. The appellant further testified that he was given the letter of allotment from the Nairobi office of the SFT. The SFT witness testified that letters of allotment are issued at the Land Adjudication and Settlement Office located in the District where the settlement scheme is found. It is not in dispute that the appellant did not obtain his letter of allotment from the Lands Office in Trans Nzoia. The authenticity of the appellant's letter of allotment is therefore in issue. The legal adage is that he who alleges must prove. In this matter, the appellant has not tendered any evidence to support the counterclaim that his letter of allotment is genuine. When the authenticity and genuineness of the appellant's letter of allotment were raised, it was incumbent upon the appellant to prove the genuineness of his letter of allotment. As the trial court correctly stated, the appellant ought to have called a witness from the Nairobi Lands Office where he claimed he obtained the letter of allotment. Failure on the part of the appellant to call a witness from the Lands Office means that he did not prove the counterclaim on a balance of probabilities.

373. Again, it is worthy to recall and reiterate that the purported application for consent was being made during the lifespan of the various orders that were issued by Hon. Justice Dulu, Judge; Hon. Justice D.K Maraga, Judge; as he then was; and Hon. Justice Luka Kimaru, Judge [as he then was] which orders prohibited inter alia interference with the suit property either vide sale alienation or in any other manner. In this regard, I hold the humble view that even if the impugned consent was lawful [which is not the case], same would still run afoul of the orders of the court that had not been vacated and or otherwise invalidated.

374. Next is the ruling of Hon Justice Luka Kimaru rendered on 8th November 2013; which ruling has serious implication on the transactions that underpin the transfer and eventual registration of the suit property in the name of Trendsetters Investments Ltd. Suffice it to posit that the learned judge held that the suit property could not have been sold until and unless the succession proceedings in respect of the estate of James Kanyotu [deceased] were concluded.

375. The Learned Judge stated as hereunder;

The companies qualified to be referred to in the Kenyan speak as “Kampuni yangu” i.e the companies could not be separated or be considered as distinct entities from the incorporators. In this regard, Kawakanja Ltd and Kangaita Coffee Estate Ltd were “Kampuni yangu” of the deceased. This does not mean that this court is unaware of the separate legal personalities of the companies and their incorporators. Far from it. The issue here is in respect of the shares that were held by the deceased in the said companies. Those shares cannot be dealt with before the succession process is completed. In the same vein, no lawful meeting could have been convened by the said companies before the administrators of the estate of the deceased were appointed.

In the premises, therefore, it is clear from the foregoing that Mary Kanyotu and her children acted unlawfully when they purported to convene the meetings of the two companies. They had no legal authority to convene such meetings without the consent of the administrators of the estate of the deceased. The decisions made in the said meetings were therefore ultra vires and had no sanction of the law. The application dated 25th September 2009 is therefore allowed, as a result of which Mary Kanyotu and her children are hereby restrained from



dealing with the shares owned by the deceased in all the companies that the deceased was a majority shareholder pending the hearing and determination of this succession cause. Mary Kanyotu is further restrained from dealing with any property belonging to the estate of the deceased without the sanction of the administrators of the estate of the deceased. So that the deceased's shareholding in the respective companies are preserved, this court hereby issues an order that the shareholding of all the companies where the deceased was the majority shareholder shall remain as at 13th February 2008, when the deceased died. [emphasis added].

376. My reading of the ruling of the learned judge [details in terms of the preceding paragraph] drives me to three conclusions. Firstly, the learned judge held that the shares of James Kanyotu [deceased] in the various companies in which the said deceased was a majority shareholder, including the fourth defendant, could not be dealt with prior to and before the issuance of grant of letters of administration. Instructively, the judge underscored that no sale could be undertaken before the succession process was completed.
377. Secondly, the Learned Judge found and held that no meeting could have been convened by the various companies, including the 4th defendant herein, before the administrators of the estate of the deceased were appointed and or constituted.
378. Suffice it to underscore that interim administrators/administratix of the estate of the deceased were appointed and constituted on the 23rd June 2010. Pursuant to the orders of Hon. Justice R.N Nambuye, Judge [as she then was]. Nevertheless, it is not lost on me that the appointment of Jane Gathoni Kanyotu, Margaret Nyakinyua Murigu & Mary Wanjiku Kanyotu as interim administratix was a stop-gap measure pending the issuance of the final grant of letters and the confirmation of [sic] the grant.
379. It is imperative to underscore that even though there was an interim appointment of joint administrators, the said interim administrators could not deal with alienation and or sale of an immovable property until the issuance of a certificate of confirmation of grant. [See Section 82 of the [Law of Succession Act](#) Cap 160 Laws of Kenya].
380. The third conclusion that flows from the ruling of Hon. Justice Luka Kimaru, Judge; as he then was [now Judge of the Court of Appeal] is to the effect that all changes that had been made in respect of the shareholding of the various companies where the deceased was a major shareholder were cancelled.
381. Instructively, the fourth defendant is one such company where the deceased had majority shares taking into account the orders that were made on the 28th September 2008, 25th October 2011 and 8th November 2013 respectively. For good measure the said orders spoke to the fourth defendant as one such company.
382. Pertinently, the cancellation of the changes in the directorship and shareholding in the various companies and in particular the 4th defendant, have substantially negated the dealings, transactions and or activities touching on the suit property. Simply put, the actions that were undertaken by Mary Wanjiku Kanyotu and Christopher Ngata Kanyotu, were rendered invalid.
383. Flowing from the ruling of Hon. Justice Luka Kimaru, Judge [as he then was] which was rendered on the 8th of November 2013 vide Nairobi HCC Succession No. 1239 of 2008, it becomes evident that the sale of the suit property was invalid.



384. To this end, I beg to state that the transfer and registration of the suit property in favour of the 1st defendant to the counterclaim was/is vitiating with illegalities. Instructively, the transfer and registration cannot be countenanced.
385. The final aspect that merits consideration relates to the subsequent activities wherein the 1st defendants to the counterclaim were involved. Suffice it to state that even though the 1st defendant to the counterclaim had posited that same was a lawful purchaser of the suit property; and that same paid the agreed purchase price, it is not lost on me that the 1st defendant to the counterclaim was involved in questionable dealings ex-post-facto with some of the heirs of the deceased.
386. Notably, the 1st defendant to the counterclaim procured and entered into [sic] a settlement agreement with Mary Wanjiku Kanyotu dated 30th May 2018. Pursuant to the said settlement agreement, the said Mary Wanjiku Kanyotu [2nd defendant] was paid the sum of Kshs.30,000,000/= only for purposes of [sic] forfeiting any claims [if any] in respect of the suit property.
387. What is curious about this document is that the payment in question was being made long after the 1st defendant had allegedly bought the suit property and [sic] paid the consideration. Furthermore, the payment under reference was also being made long after the 1st defendant to the counterclaim had transferred the suit property to the Plaintiff herein.
388. A reading of the entire settlement agreement dated 30th May 2018, brings to the fore issues of someone [the 1st defendant to the counterclaim] undertaking firefighting measures to gag the beneficiaries and to stop same from propagating the illegalities underpinning the transfer of the suit property.
389. In my humble view, the subsequent engagements and the ex-post-facto payments exhibits corrupt scheme, calculated to sweep beneath the carpet burning issues of illegalities and fraud.
390. Other than the settlement agreement entered into on the 30th May 2018, there is yet other engagements underpinned by the letter dated 11th January 2017, wherein the 1st defendant to the counterclaim appear to have been buying the silence of the 3rd defendant. For good measure, the 3rd defendant was being paid a whopping Kshs.39,000,000/= only on account of sic full and final settlement in respect of the perceived or alleged claims with regard to the sale of the suit property to Trendsetters Investment Ltd by Kangaita Coffee Estates Ltd.
391. Surely, if the 1st defendant to the counterclaim had lawfully dealt with the true directors of Ms. Kangaita Coffee Estates Ltd, then the 1st defendant to the counterclaim would not have been involved in the subsequent firefighting endeavours.
392. To my mind, the 1st defendant to the counterclaim was pretty aware of some questionable dealings and illegalities, and this explains the subsequent payments [termed ex gratia] whose net effect was to buy silence.
393. A court of law and which is also a court of equity, cannot in good conscience countenance the kind of illegalities that surround and underpin the sale, transfer and ultimate registration of the suit property in favour of the 1st defendant to the counterclaim.
394. Before concluding on this rather elaborate issue, there is one more aspect that cannot be left without due consideration. The aspect touches on the fraud pertaining to the correct consideration that was [sic] paid at the foot of the suit property.
395. The sale agreement allegedly entered into between the 1st defendant to the counterclaim and the 4th defendant on 19th April 2012 shows that the consideration was Kshs.700,000,000/=. Furthermore, the



- manner in which the said consideration was to be paid was clearly captured at the foot of clause [4] of the sale agreement. As to whether the said purchase price was paid is another issue. Nevertheless, what concerns me is the fluid position taken by the 1st defendant to the counterclaim.
396. It is the said 1st defendant to the counterclaim who subsequently procured [sic] a letter of consent dated 26th July 2012 and wherein same indicated the consideration of Kshs.350,000,000/= only. In this respect, it is worthy to observe that the consideration spoken to at the foot of the sale agreement is at variance with the one indicated at the foot of [sic] the consent.
397. Moreover, when the 1st defendant to the counterclaim sought to transfer the suit property unto itself, same executed a transfer instrument and which was ultimately registered. At the foot of the transfer instrument, the 1st defendant to the counterclaim indicated the consideration to be Kshs.350,000,000 only and not 700,000,000/= only, being the consideration at the foot of the sale agreement.
398. I am unable to reconcile my conscience with the various figures that are being bandied around. Why would an honest purchaser [Trendsetters Investments Ltd] be engaged in a game of suffocating the truth? If the said trendsetters honestly bought and or purchased the suit property, it behooved same to come clean and place on the table the true sets of documents deployed in the purchase of the property.
399. The puzzle and or mystery surrounding the actual consideration [if at all] which was paid by the 1st defendant to the counterclaim could not even be addressed by Ken Njau [PW 2].
400. Notably, when under cross-examination by learned counsel for the 1st defendant, PW 2 stated thus;
- “I have been a director of the 4th defendant since 2009. The sale of the property to and in favour of the 1st defendant to the counterclaim was authorized by the board of the 4th defendant. The purchase price was agreed at Kshs.700,000,000/=. I do confirm that once the certificate of title of the 4th defendant are issued, the same are kept by the office of the 4th defendant. I can see the consideration shown in terms of entry No. 5 in the register of the suit property. The entry shows the consideration of Kshs.350,000,000/= only. I do not have any reason for the variation between the purchase price shown on the sale agreement and the entry captured at the foot of No. 5 in the register. However, I can see that the amount alluded to at the foot of the consent is also said to be Kshs.350,000,000/=.
401. To my mind, the fact that both the 1st defendant and PW 2 are propagating contradicting considerations brings to question the honesty surrounding the impugned transaction. Quite clearly, a genuine sale [if at all] would be underpinned on the basis of consistent documents speaking to the same factual matrix.
402. Suffice it to state that the shifting of goalposts at every opportunity does not in my humble view, help the case for Trendsetters Investment Ltd. On the contrary, there is some semblance of perjury that surrounds the transaction that was sic entered into between the 1st defendant to the counterclaim and sic the 4th defendants.
403. The various perspectives [aspects] which I have considered vide the preceding paragraphs drive me to the conclusion that the title that was procured and obtained by the 1st defendant to the counterclaim was obtained unprocedurally, illegally and informed by corrupt practices. Such kind of title is frowned upon by the provisions of Section 26 (1) (b) of the *Land Registration Act*.
404. In a nutshell, my answer to issue number one is the effect that the 1st defendant to the counterclaim [Trendsetters Investments Ltd] did not acquire and or obtain a good title to and in respect of the suit property.



405. Turning to the next issue, namely; whether the Plaintiff herein acquired lawful rights to and in respect to the suit property, and whether the plaintiff is a bona-fide purchaser for value without notice of any defect in the title of its predecessor.
406. To start with, there is no gainsaying that the Plaintiff herein could only acquire and obtain a lawful and valid title to the suit property, if its predecessor [Trendsetters Investment Ltd] had a valid title capable of being conveyed and or passed over unto it. However, while addressing issue number 1 [which has been comprehensively covered in the preceding paragraphs], the court has found and held that the 1st defendants to the counterclaim did not acquire any lawful title to the suit property. For good measure, the court has adverted to a plethora of aspects, which negate the title of Trendsetters Investment Ltd.
407. Arising from the foregoing, my first observation is to the effect that the doctrine of nemo dat quod non habet [where someone does not have title, then same cannot pass a better title] does apply in respect of this matter. Simply put Trendsetters investment ltd had no title capable of being conveyed to the Plaintiff herein. [See the holding of 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 expounded on the import, tenor and legal implication of the doctrine in question].
408. Moreover, it is also apposite to reference the decision in the case of Arthi Highway Developers Ltd vs West End Butchery Ltd & 6 others (2015) eKLR, where the doctrine of nemo dat quod non habet was also expounded.
409. For coherence, 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.
410. The finding and holding of the Court of Appeal in the decision [supra], apply with equal force to the circumstances underpinning [sic] the transaction between Trendsetters Investment Ltd and the plaintiff herein.
411. I now beg to address the aspect of the letter of consent which was deployed to facilitate the transfer and registration of the suit property to and in favour of the Plaintiff. Suffice it to state that the plaintiff herein relied on the letter of consent dated 6th May 2024 and which is stated to have been signed by the District Officer, Ruiru Division, on the 6th May 2014.
412. The said consent was the subject of a serious challenge. Furthermore, the Deputy county commissioner, Ruiru sub-county, wrote a letter dated 27th April 2022 and wherein same contended that the land control board at Ruiru has no records pertaining to the application for consent and the impugned consent letter issued on [sic] the 6th May 2014.
413. Additionally, it is important to highlight that the deputy county commissioner also ventured forward and availed certified copies of the register containing the various applications that were dealt with on the 6th May 2014. Notably, the register under reference does not capture any application that was made either by Trendsetters Investment Ltd [vendor] or Marriot Africa International Ltd [the purchaser].
414. Other than the fact that the origin of the letter of consent was doubted by the deputy county commissioner – Ruiru subcounty, who authored the letter under reference there is yet another interesting perspective touching on [sic] the letter of consent dated 6th May 2014.



415. Whereas the letter of consent is said to have been issued on the said 6th May 2014, the meeting culminating into the issuance of the impugned consent is said to have occurred on the 6th June, 2014, namely; 1 month after the issuance of the consent. To be able to appreciate this perspective, it suffices to reference the evidence of PW 1 while under cross-examination by learned counsel for the 4th & 5th defendants to the counterclaim.
416. The witness [PW 1] stated as hereunder;
- “I am aware that there was need to procure and obtain a land control board consent. Referred to page 85 of the plaintiffs bundle of documents and the witness states that the document is the letter of consent. I wish to state that the consent is dated 6th May 2014. The letter makes reference to a meeting held on the 6th June 2014. The meeting appears to have been held after more than one month from the date of the letter of consent. I did not attend the meeting. I reiterate that I did not attend the meeting.
417. To my mind, the letter of consent under reference could not have been issued prophetically on the 6th May 2014, yet the meeting that birthed the consent was to be held on 6th June 2014. In this regard, a question does arise as pertains to the validity of the impugned consent. Suffice it to state that the mystery underpinning this particular consent is equally not addressed and or resolved by the Plaintiff.
418. In the absence of records showing that an application for land control board consent was ever made and or processed in accordance with the law, it then means that the impugned transaction [namely the transfer of the suit property in favour of the plaintiff] was undertaken contrary to the provisions of section 6 of the Land Control Act Cap 302, laws of Kenya. To this end, the impugned transaction is illegal and unlawful.
419. The Plaintiff's witness [Abdul Dawood Hassan] acknowledged the fact that the validity of the consent that was relied upon had been challenged. For ease of appreciation, the said witness [who testified as PW 1] is on record stating thus;
- “The purchaser of the property will normally attend the land control board meeting. In respect of the suit property, I did not attend the meeting. I am aware that the validity of the consent has been challenged. I am aware that the challenge to the land control board consent has been made by the 4th defendant. The application was submitted by out advocate. I cannot remember attending the land control board.
420. Despite acknowledging and conceding that the land control board consent relied upon was under challenge, the plaintiff herein did not endeavor to procure any evidence to underpin the validity of the letter of consent. Suffice it to reiterate that the deputy county commissioner had indeed posited that the impugned letter of allotment did not arise from the land control board at Ruiru.
421. In my humble view, it was incumbent upon the Plaintiff to take steps and ensure that credible evidence was placed before the court to enable the court validate the letter of consent dated 6th May 2014. Absent any such evidence, the court is left with no option but to believe the contents of the letter by the Deputy County Commissioner Ruiru and the duly certified copy of the register.
422. Next is the question pertaining to the legality of the transfer and registration of the suit property to the plaintiff herein [which is a company substantially/majorly owned by a foreigner]. PW 1 during his cross-examination by learned counsel for the 1st defendant, acknowledged and admitted that the Plaintiff's majority shareholder is Ukrainian.



423. To put the evidence of PW 1 into perspective, it is important to reproduce the pertinent excerpt[s] thereof.

424. Same are reproduced as hereunder;

“The majority shareholder of Marriot Africa International Ltd is Ukrainian. He holds 601 shares”.

425. From the testimony of PW 1, what becomes apparent is that the Plaintiff company is majorly owned by a foreigner and not by a citizen of the Republic of Kenya. To this end, the question that does arise is whether the Plaintiff company could accrue title for a duration in excess of 99 years or otherwise.

426. For good measure, it is imperative to underscore that the suit property, which was [sic] bought by the plaintiff company, had been leased out to Kangaita Coffee Estates Ltd for a period of 940 years with effect from 1st February 1963. To this end, it then means that by the time the property was being transferred to the plaintiff the remainder duration of the leasehold was in excess of 99 years.

427. Furthermore, the fact that the tenure of the title passed to and in favour of the Plaintiff herein exceeded the constitutional prescription was adverted to by PW 1 while under re-examination by learned counsel for the Plaintiff.

428. For ease of appreciation, I beg to reproduce the salient aspect[s] of the testimony of the witness.

429. The witness stated thus;

“I do confirm that the plaintiff herein obtained and procured a certificate of title. The sale agreement relates to the entire suit property. I wish to clarify that the plaintiff did not purchase a piece of the suit property. The sale agreement refers to the entire piece of land. Referring to the certificate of title, the witness states that the term of the lease is 940 years and 6 months.

430. From the foregoing testimony, there is no gainsaying that the Plaintiff herein, whose majority shareholder is a foreigner [Ukrainian] procured a certificate of title for a duration while outside the prescription and stipulation of *the constitution*.

431. Pertinently, *the constitution* of the Republic of Kenya does not sanction and or authorize land ownership by a foreigner for a duration in excess of 99 years. In this regard, the provisions of Article 65 of *the Constitution* 2010 are succinct and apt.

432. For ease of appreciation, the provisions of Article 65 of *the Constitution* 2010 are reproduced as hereunder;

Landholding by non-citizens

- (1) A person who is not a citizen may hold land on the basis of leasehold tenure only, and any such lease, however granted, shall not exceed ninety-nine years.
- (2) If a provision of any agreement, deed, conveyance or document of whatever nature purports to confer on a person who is not a citizen an interest in land greater than a ninety-nine-year lease, the provision shall be regarded as conferring on the person a ninety-nine-year leasehold interest, and no more.
- (3) For purposes of this Article—



(a) A body corporate shall be regarded as a citizen only if the body corporate is wholly owned by one or more citizens; and property held in trust shall be regarded as being held by a citizen only if all of the beneficial interest of the trust is held by persons who are citizens.

(4) Parliament may enact legislation to make further provision for the operation of this Article. [emphasis supplied].

433. Bearing in mind the import, tenor and implication of article 65 of *the constitution*, I am propelled to find and hold that the certificate of title that was issued to and in favour of the Plaintiff herein was void and invalid for being in contravention of the supreme law of the Republic of Kenya. [See Article 2 (1) of *the Constitution* 2010].

434. I now beg to turn to the aspect dealing with whether the Plaintiff herein can invoke and rely on the doctrine of bona-fide purchaser for value without notice of any defect in the title of its predecessor [Trendsetters Investments Ltd].

435. The doctrine of bona-fide purchaser for value has received considerable judicial pronouncements. To this end, the extent and scope of the said doctrine have been elucidated with sufficient clarity and precision.

436. In the case of *Dina Management Ltd vs the county government of Mombasa & 7 others (2023) KESC*, the Supreme Court expounded on the doctrine as hereunder;

The Black’s Law Dictionary 9th Edition, defines a bona fide purchaser as:

“One who buys something for value without notice of another’s claim to the property and without actual or constructive notice of any defects in or infirmities, claims, or equities against the seller’s title; one who has in good faith paid valuable consideration for property without notice of prior adverse claims.”

91. The Court of Appeal in Uganda in *Katende v Haridar & Company Ltd* [2008] 2 EA 173, defined a bona fide purchaser for value as follows:

“For the purposes of this appeal, it suffices to describe a bona fide purchaser as a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly. For a purchaser to successfully rely on the bona fide doctrine he must prove that:

1. he holds a certificate of title;
 2. he purchased the property in good faith;
 3. he had no knowledge of the fraud;
 4. he purchased for valuable consideration;
 5. the vendors had apparent valid title;
 6. he purchased without notice of any fraud;
- and



7. he was not party to the fraud.”

92. On the same issue, the Court of Appeal in *Samuel Kamere v Lands Registrar, Kajiado Civil Appeal No 28 of 2005 [2015] eKLR* stated as follows:

“...in order to be considered a bona fide purchaser for value, they must prove; that they acquired a valid and legal title, secondly, they carried out the necessary due diligence to determine the lawful owner from whom they acquired a legitimate title and thirdly that they paid valuable consideration for the purchase of the suit property...”

437. Most recently, the Supreme Court of Kenya reverted to the doctrine and rendered a more comprehensive decision underpinning the concept/doctrine under reference. The recent re-visitation was in the case of *Sehmi & another v Tarabana Company Limited & 5 others (Petition E033 of 2023) [2025] KESC 21 (KLR) (11 April 2025) (Judgment)* where the court stated as hereunder;

We consider it necessary to clarify and restate the doctrine of “innocent purchaser for value” in view of the Court of Appeal’s pronouncement in certifying this appeal as one involving matters of general public importance, when it stated thus: “Having considered the issues raised, we find that indeed, there is uncertainty in the law with regard to the concept of innocent purchaser for value and the indefeasibility of titles as is apparent in the various decisions cited by the parties.” [Emphasis ours].

58. It is a fundamental principle of the law of property in land that a purchase of a legal estate for value without notice is an absolute, unqualified and unanswerable defence against the claims of any prior equitable owner or encumbrancer. The onus of proof however, lies upon the person claiming to be a bona fide purchaser. Three main ingredients must be present for a claimant to mount a successful defence based on the doctrine. These are, innocence, purchase for value, and a legal estate.

59. The element of innocence means that the purchaser must act in good faith. His conduct must not raise any doubt as to whether indeed, he did not have any notice or knowledge as to the existence of a rival interest in the suit land. If for example, it comes to light that during the process of purchase, the claimant engaged in conduct that was unconscionable in the eyes of equity, such conduct would weaken his claim of innocence as to the existence of a rival interest. The element of innocence also connotes the exercise of diligence expected of any reasonable purchaser. The claimant must demonstrate that he acted diligently and conducted a reasonable inquiry into the status of the estate or land that he sought to purchase.

60. In *Torino Enterprises Limited v Attorney General (Petition 5 (E006) of 2022) [2023] KESC 79 (KLR)*, this Court held that an innocent purchaser for value



denotes a purchaser who exercised due diligence, which would include, but is not limited to, inspecting the suit property. It explained further as follows:

“64. What about the argument to the effect that the appellant was an innocent purchaser for value without notice? It is obvious by now that such argument cannot hold in view of our pronouncements regarding the transactions between Renton and the appellant. ... there is evidence on record in the form of correspondence and minutes, confirming that DoD had been granted access by the defunct municipal council and had taken possession of, and erected public infrastructure upon the suit property before the purported purchase.... Further, it is on record that the Ministry of Lands and Settlement was monitoring excision activities by NCC to ensure that the portion occupied by DoD was not affected.... Therefore, if the appellant was a diligent purchaser, it ought to have at least known of this fact. An innocent purchaser for value would also denote one was aware of what they were purchasing by inspecting the suit premises. This takes us to the question of whether the appellant had visited the suit premises and if so, what was its impression of the military installations on the suit premises? The fact that the suit land was occupied must have sounded a warning of “buyer beware” to the appellant. We therefore find that it was not an innocent purchaser for value entitled to orders for restoration or compensation” [Emphasis added].

61. Purchase for value means that consideration in money or money’s worth was paid by the claimant in return for the land. The purchaser must actually pay all the money before receiving notice of the existence of the equitable interest over the suit land. Mere execution of the instrument of conveyance of the legal estate before notice is received without payment of money, will not avail to the claimant the defence of innocent purchaser. A person who takes land without giving value in exchange must take it with all its burdens, equitable as well as legal. Even a person who has given value will be bound if before he obtained the land, he knew of the existence of equitable interest.

438. Other than our own supreme court, the doctrine of bona-fide purchaser for value without notice was also expounded upon by the Supreme Court of Uganda in the case of *Lwanga v Mubiru and Others* (Civil Appeal 18 of 2022) [2024] UGSC 7, where the court held:

The principle of bona fide purchaser for value without notice is a general defence in any transaction of sale or purchase of any property, particularly land. The definition of bona



fide purchaser for value without notice is “that buyer who has paid a stated price for the property without knowledge of existing or prior claims or prior equitable interest”. Bona fide is a Latin word meaning good faith, without fraud, sincere, genuine. See (Black’s Law Dictionary 9th Edn Page 199

)A bona fide purchaser is a buyer who buys without constructive or actual notice of any defects or infirmities against the seller’s title. See (page 1355 Black’s Law Dictionary 9th Edn. It is trite law that a person who relies on the defence of bona fide purchaser for value without notice has the burden to prove that he or she acted in good faith. The purchaser must have given due consideration and purchased the land without notice of the fraud. Such notice covers both actual and constructive notice of fraud. In the case of Jones v. Smith [1841] 1 Hare 43, the Chancery Court held:

“a purchaser has constructive notice of fraud if he had actual notice, that there was some encumbrance and a proper inquiry would have revealed what it was (but if) it abstained either deliberately, carelessly from making those inquiries which a prudent purchaser would have made...then the defence cannot be available to him or her” See Yakobo M. N Senkungu & Others v. Cresencio Mukasa Civil Appeal No 17 of 2014. [Underlining supplied].

439. The doctrine of bona-fide purchaser for value espouses several perspectives. Nevertheless, there are some key ingredients, which a claimant must prove, namely; that the predecessor had a valid title; that the claimant accrued a valid title; that the claimant bought the property in question without knowledge of any fraud or defect; the claimant paid the agreed consideration and the claimant undertook due diligence prior to and before entering into [sic] the sale contract.
440. Bearing the foregoing ingredients in mind, I now beg to interrogate whether the Plaintiff herein can stake a claim as a bona fide purchaser for value without notice of any defect in the title of its predecessor. To start with, it behooved the Plaintiff herein to establish that indeed its predecessor had a valid title capable of being conveyed unto her. Unfortunately, the title that was held by the 1st defendant to the counterclaim [Trendsetters Investment Ltd] was vitiated to the root. Same was thus devoid of any validity.
441. Secondly, the Plaintiff herein through its witness [PW1] acknowledged and conceded that the suit property which same was purchased, formed part of the estate of James Kanyotu [now deceased]. Furthermore, PW 1 also acknowledged that the said property was previously subject to inhibition and various orders of the court. For good measure, it was posited that the inhibitions/restrictions were underpinned by orders issued vide Nairobi HCC No. 1239 of 2008.
442. For ease of appreciation, the witness stated as hereunder while under cross-examination by learned counsel for the 1st Defendant.

“The plaintiff was aware of the fact that the land in question was also part of the estate of James Kanyotu. I do confirm that entry No. 2 in the title relates to the estate of James Kanyotu. Entry No. 3 in the title relates to case No. 1239 of 2008. Prior to and before purchasing the property the plaintiff did an official search on the property. I didn’t peruse the succession file.

443. Having known that the suit property formed part of the estate of the deceased and having also appreciated that there were orders that had previously been issued vide Nairobi HCC Succession Cause 1239 of 2008, there is no gainsaying that a prudent and reasonable person would have been obliged to



peruse the succession file. [See *Torino Enterprises Limited v Attorney General* (Petition 5 (E006) of 2022) [2023] KESC 79 (KLR) (22 September 2023) (Judgment) at paragraph 64 thereof, where the court underscored the importance of credible due diligence].

444. I now beg to address the aspect/ingredients touching on whether the plaintiff herein was privy to and knowledgeable of the fraud underpinning the purchase, transfer and registration of the suit property in the name of its predecessor. Instructively, the plaintiff herein was confronted with various claims by and on behalf of the heirs of James Kanyotu [now deceased]. The said heirs were staking a claim to the suit property and in particular, that the suit property had not been lawfully sold to Trendsetters Investment Ltd.
445. Arising from various issues that affected the suit property, Trendsetters Investment Ltd entered into a settlement agreement dated 30th May 2018 and wherein the said Trendsetters Ltd was buying the silence of the 2nd defendant. The said settlement agreement has been tendered and produced by the Plaintiff. To this end, the connotation is to the effect that the Plaintiff was privy to and or knowledgeable to the ex-post-facto dealings by Trendsetters Ltd.
446. To my mind, the plaintiff herein appears to have been acting in concert with Trendsetters Ltd in an endeavor to fraudulently acquire the suit property. In any event, there is a curious interlink and or interconnection between the 1st defendant to the counterclaim and the plaintiff. Notably, the two companies have their offices within the same building; same postal and physical address. [See the evidence of PW 1 while under cross-examination]. Simply put, evidence abounds pertaining to and or concerning the complicity of the plaintiff herein in the acquisition of the suit property.
447. Besides, it is also worthy to recall that in so far as the vendors title was invalid, it then means that the certificate of title that was issued to and in favour of the Plaintiff becomes invalid without much ado. Pertinently, no valid title can arise out of an illegality. To this end, it suffices to invoke and deploy the doctrine of *ex nihilo nihil fit* [out of nothing comes nothing].
448. It is also opportune to reference the epigram of Lord Denning MR in the case of *In Macfoy vs. United Africa Co. Ltd* [1961] 3 All E.R.,1169 where the Learned Judge, 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.”
449. My answer to issue number two [2] is to the effect that the plaintiff herein neither acquired nor obtained any lawful title to the suit property. Instructively, the title which was being transferred to and in favour of Plaintiff, was coloured with irredeemable illegalities.
450. Moreover, the plea of bona-fide purchaser for value cannot arise and or avail to the Plaintiff. The said plea cannot avail because of various reasons which have been highlighted elsewhere herein before.
451. Turning to the third issue, namely; whether the fourth defendant has established and proved its counterclaim to the requisite standard, it is important to observe that the suit property was admittedly registered in the name of Kangaita Coffee Estates Ltd at the onset. For good measure, the fact of such registration is acknowledged by all the parties.



452. Additionally, it is worth recalling and reiterating that the said 4th defendant is one of the many companies wherein James Kanyotu [deceased] was a majority shareholder. To this end, it was stated and held by the court in Nairobi HCC Succession No. 1239 of 2008 that no dealings with the shares of the deceased in the said companies could be undertaken without the completion of succession.
453. Furthermore, it is also common ground that Hon. Justice Luka Kimaru [Judge] rendered an elaborate ruling dated 8th December 2013 and wherein the learned judge found and held that no lawful meeting could have been convened by and on behalf of the said companies including the 4th defendant herein before the administration of the estate of the deceased.
454. From the decision of the learned judge [whose import and tenor were alluded to herein before], it means that any transaction that affected and or impacted upon the suit property was a nullity and invalid. What is a nullity and invalid is incapable of birthing any legal claim or otherwise.
455. My understanding of the totality of the orders which were issued vide the succession cause is to the effect that the transactions that the transaction imparted the ownership of the suit property were all void. This then means that the only legal position is the one that obtains ante [namely, before the offensive activities].
456. To my mind, the 4th defendant/counterclaimant has placed before the court plausible, cogent and credible evidence to show that the certificate of title to and in favour of the 1st defendant to the counterclaim, and thereafter to the Plaintiff herein, was vitiated. In this regard, there is no gainsaying that the counterclaim by and or on behalf of the 4th defendant has been duly established, proved and thus same is meritorious. [See sections 108 & 109 of the *Evidence Act*].
457. Finally, I beg to venture forward and to address the question of reliefs [if any] that ought to issue and or be granted in respect of the subject matter. The Plaintiff has sought a plethora of reliefs, including assorted orders of permanent injunction to restrain the defendants from interfering with the suit property or any sub-plot arising therefrom as a result of the subdivisions.
458. It is important to state that an order of permanent injunction would no doubt issue to protect the property rights of the registered owner. However, before a particular person, the plaintiff herein not excepted, can partake of and benefit from an order of permanent injunction, such a party must demonstrate to the court that same has lawful rights and or interests in the suit property. For good measure, the interests must be lawful, legal and legitimate.
459. It is my humble position that an order of permanent injunction can only issue to the registered owner of the property. To this end, I am reminded of the ratio decidendi espoused in the case of Moya Drift Farm Ltd. v. Theuri (1973) EA 114, where the court of appeal for Eastern Africa expounded on the rights of the legitimate owner of the land as hereunder;

A registered proprietor of land is the absolute and indefeasible owner of land and is entitled to take proceedings for trespass and eviction of a trespasser even if he did not have possession of the property.

Spry, V-P at 116, considered the effect of section 23 of the Registration of Titles Act and held –

“I cannot see how a person could possibly be described as “the absolute and indefeasible owner” of land if he could not cause a trespasser to be evicted. The Act gives a registered proprietor his title on registration and, unless there is any other person lawfully in possession, such as a tenant, I think that title carries with



it legal possession: there is nothing in the Act to say or even suggest that his title is imperfect until he has physical possession.”

Sir William Duffus, P. *ibid* at p.117 agreed with Spry, JA as follows:

“In any even I agree with the Vice-President that the fact that the appellant was the registered proprietor as owner in fee simple under the Registration of Titles Act, and as such vested with the absolute and indefeasible ownership of the land, was sufficient to vest legal possession of the land in the appellant and that this possession would be sufficient to support the action of trespass against a trespasser wrongly on the land.”

460. The scope of the rights of a title holder were also elucidated in the case of Embakasi Properties Ltd vs the Commissioner of Lands (2019) eKLR [Five Judge bench, wherein the court held that the registered owner of a landed property is entitled to exclusive occupation, possession and use. However, the rights to exclusivity only inhere in the lawful owner and not the merely the bearer of a certificate of title devoid of legality. [See also Elizabeth Wambui Githinji & 29 others (2019) eKLR.

461. Can the Plaintiff herein lay a claim to an order of permanent injunction as pertains to suit property or otherwise? To my mind, the Plaintiff herein has no valid title to the suit property and thus same is divested of the right to seek any relief over and in respect of the suit property.

462. Furthermore, it is not lost on me that while discussing issue number Three [3], I have found and held that the 4th defendant is the lawful proprietor of the suit property. By virtue of being the lawful proprietor of the suit property, it then means that the 4th defendant cannot be enjoined from the use of the suit property either in the manner sought or at all.

463. In any event, there is no gainsaying that the registered owner of a landed property cannot be restrained vide an order of temporary or permanent injunction. For coherence, the issuance of an order of Permanent injunction by the court may no doubt culminate into invalidating the certificate of title.

464. In the case of Nguruman Limited v Jan Bonde Nielsen & 2 others [2014] KECA 606 (KLR), the Court of Appeal stated thus;

“It must also be remembered that it is a serious thing to restrain a registered proprietor of a property over what is undeniably his unless there are justifiable grounds to do so.”

465. Additionally, the prayer for permanent injunction sought by and on behalf of the Plaintiff herein would also not be available in so far as the Plaintiff contends that the suit property has since been sold to and in favour of the interested party/3rd defendant to the counterclaim [Ukombozi Holdings Ltd]. Suffice it to state that the sale of the suit property [if at all] would divest the Plaintiff of rights and or interests over the same property.

466. The sale of the suit property [sic] to the interested party/third defendant to the counterclaim was adverted to by PW 1 [Abdul Dawood Hassan] while under cross-examination by learned counsel for the interested party.

467. For ease of appreciation, PW 1 stated thus;

“The plaintiff has sold the land in question to Ukombozi Holdings Ltd. We sold the suit property at the sum of Kshs.3 million or 4 million thereabout. The plaintiff sold the land to Ukombozi Holdings Ltd. I have not seen any title in favour of Ukombozi Holdings Ltd. I



am aware that Ukombozi has transferred various plots to various purchasers. It is Ukombozi Ltd who is now the registered owner of the suit property. Ukombozi Holdings Ltd has not paid the entire purchase price”.

468. While still under cross-examination by learned counsel for the interested party PW 1 proceeded thus;

“The agreement was that Ukombozi Holdings Ltd was to sell the plots and thereafter it is Ukombozi Ltd who are now selling the plots. The plaintiff herein does not play any role in the sale of the property herein.

469. On the other hand, the same witness [PW 1] is also on record while under cross-examination by learned counsel for the 4th & 5th defendants to the counterclaim, confirming that the Plaintiff has sold the suit property to the interested party.

470. For good measure, PW 1 stated as hereunder;

“The plaintiff sold the plots to Ukombozi Holdings Ltd. The plots were sold to Ukombozi Holdings. I don’t know the purchase price that was paid to the plaintiff herein. We have sold half of the subdivided plots. The plots are being sold even as the suit herein is proceeding. The plaintiff has sold the land to Ukombozi. We have transferred the property to Ukombozi Holdings Ltd. I don’t know when the transfer was made/effectuated”.

471. My understanding of the evidence tendered by PW 1 is to the effect that the Plaintiff has since sold the suit property. Assuming that the suit property has since been sold in the manner posited by PW 1, then the question that does arise is whether the Plaintiff has any rights and or interests over the suit property known to law. Furthermore, an issue does arise whether an order of permanent injunction can issue in favour of a person bereft of proprietary rights.

472. The Court of Appeal in the case of Cove Investments Limited v Rono & 2 others (Civil Appeal (Application) E051 of 2025) [2025] KECA 1089 (KLR) (20 June 2025) (Ruling) considered a similar scenario where a party has [sic] divested itself of property rights and stated thus;

52. A litigant’s interest can cease in several circumstances, typically when the subject matter of the suit is no longer relevant or when the litigant is no longer affected by the outcome. Where a litigant has transferred his interest in the suit property, the question whether the cause of action still exists arises. The Black’s Law Dictionary, 10th Edition defines a cause of action as “a group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one to obtain a remedy in court from another person.”

473. The Court ventured forward and stated as hereunder:

55. We have said enough to demonstrate that:

- (a) the applicant has persuaded us that the 1st and 2nd respondents transferred the suit property pendente lite without the permission of the Court in total violation of the doctrine of lis pendens, and contrary to a court order,
- (b)



- (c) that by parting with the property, the subject of this appeal, the 1st and 2nd respondents constructively abandoned their appeal,
- (d) by transferring the suit property, the 1st and 2nd respondents basically abandoned the cause of action, a sine qua non for the ultimate success of the suit.
- (e) The 1st and 2nd respondents' interest in the subject matter, and therefore, this appeal, ceased the moment they transferred the property, which means they lost their standing in this appeal.

474. Yet again, I am afraid that the prayer for permanent injunction sought by the Plaintiff is not merited. On the contrary, it appears that the orders of permanent injunction are being sought in vacuum, taking into account the evidence by PW1 that the suit property has since been sold to and in favour of Ukombozi Holdings Limited [the Interested party/3rd defendant in the counterclaim].
475. The Plaintiff has also sought for an order for general damages for trespass. What constitutes trespass has been elaborated upon in a plethora of decisions. [See *M'Rinkanya vs Kabeere M'Mbijiwe* (1984) eKLR; *Municipal Council of Eldoret vs Titus Gatitu Njau* (2020) eKLR; *Christine Nyanchama Oanda v Catholic Diocese of Homa Bay Registered Trustees* [2020] eKLR; *Church Commissioners for Kenya of the Anglican Church of Kenya v Wayuga* (Civil Appeal 111 of 2018) [2024] KECA 1048 (KLR) (16 August 2024) (Judgment) and *Doshi v Chemutut & 7 others* (Civil Appeal E020 of 2023) [2025] KECA 776 (KLR) (9 May 2025) (Judgment).
476. The claimant seeking general damages for trespass is obligated to first and foremost prove title or ownership rights to the designated property. Furthermore, the claimant is also enjoined to establish that same is entitled to the immediate right of possession of the suit property. Absent title to or ownership rights over a particular landed property, the plea of trespass cannot arise and or accrue.
477. Other than the Plaintiff, the 4th defendant filed a counterclaim dated 12th October 2020 and wherein same also sought a cocktail of declaratory orders; an order of revocation of the certificate of title in the name of the plaintiff; an order of cancellation of the subdivisions undertaken on the suit property; an order of eviction and an order of permanent injunction to restrain the plaintiff/2nd defendant to the counterclaim either by itself or agents from interfering with the suit property or otherwise.
478. I beg to state that while dealing with issue number three [3] I found and held that the 4th defendant had indeed proved her case. Instructively, I found and held that the suit property admittedly belonged to and was registered in the name of the 4th defendant, prior to the various illegal transactions that were undertaken at the instance of Trendsetters Investment Ltd and by extension the Plaintiff herein.
479. In a nutshell, I hold the view that the 4th defendant/counter-claimant is entitled to various declaratory orders that have been enumerated at the foot of the amended counterclaim. Furthermore, the 4th defendant/counter-claimant is also entitled to an order of eviction as well as a permanent injunction.
480. To buttress the foregoing holding, I beg to reference the decision in the case of *Waas Enterprises Limited v City Council of Nairobi & another* [2014] KEELC 605 (KLR).

As a registered proprietor, the plaintiff is entitled to enjoy all proprietary rights to the exclusion of all others. This includes the right to exclusive possession of the suit land. The



rights of a proprietor of land are set out in Sections 24 and 25 of the [Land Registration Act](#) which provide as follows:-

“24. Subject to this Act—

- (a) The registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and
- (b) The registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.

25. The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject—

1. to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and
2. to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.

(2) Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee.”

It therefore follows from the above that only the plaintiff is entitled to enjoy proprietary rights over the suit land. The 2nd defendant had no right to the suit land. She must therefore vacate the suit land and hand over possession to the plaintiff.

Final Disposition:

481. Flowing from the discussion contained in the body of the Judgment, it must have become crystal clear that the Plaintiff's suit was vitiated by several illegalities, whose net effect was to negate the validity of the certificate of title. Instructively, the mere holding of the certificate of title without proof of its validity [root] does not avail to the Plaintiff herein any Legal right[s] to the Suit Property.
482. On the other hand, it must have become crystal clear that the 4th Defendant/ Counter-claimer has been able to tender and produce before the court credible evidence to underpin its claim to and in respect of the suit property.



483. Consequently, and in the premises, the final orders that do commend themselves to me are as hereunder;

- i. The Plaintiff's suit be and is hereby dismissed.
- ii. Costs of the suit be and are hereby awarded to the 1st, 3rd and 4th Defendants only.
- iii. The Counterclaim be and is hereby allowed in the following terms:
 - a. A declaration be and is hereby issued that the parcel of land known as L.R No. 11261/76 belongs to the 4th defendant/counter-claimant herein and the alleged sale to the 1st defendant to the counterclaim; was null and void and the subsequent sale of the said parcel land to the 2nd defendant to the counterclaim [Plaintiff in the main suit] and thereafter third parties was fraudulent, illegal, null and void for all intents and purposes.
 - b. A declaration be and is hereby issued that the purported sale agreement dated 19th April 2012 allegedly between the plaintiff in the main suit and the 1st defendant to the counterclaim herein is illegal, null and void as it was entered contrary and in violation of the orders issued by the High Court of Kenya in Nairobi H.C Succ Cause No. 1239 of 2008 in the matter of estate of James Kanyotu [Deceased] and registered against the title for the suit land on 7th July 2010 and 23rd November 2010 respectively and the said agreement and or contract is not enforceable before any court of law for illegality.
 - c. A declaration be and is hereby issued that the sale and transfer of L.R 11261/76 when the orders referred to in paragraphs 22 and 23 hereinabove issued in Nairobi H.C Succession Cause No. 1239 of 2008 were in force was null and void for all intent and purposes and the transfer in favour of the 1st defendant to the counterclaim registered on 11th February 2013 is null and void.
 - d. A declaration be and is hereby issued that the entry on the title L.R 11261/76 by the 4th defendant to the counterclaim [chief land registrar] herein on 14th February 2013 on the adoption of file copy for as the official record by the 4th defendant was used to perpetuate fraud and the same is illegal and null and void.
 - e. An order directing the 4th defendant to the counterclaim [the chief land registrar] to cancel all the entries relating to the above-mentioned transactions and to revoke all the subdivisions and amendments and restore the original records relating to L.R No. 11261/76 accordingly.
 - f. The Plaintiff in the main suit [2nd defendant to the counterclaim] be and is hereby ordered to surrender the certificate of title in respect of L.R No. 11261/76 or the resultant subdivisions to the chief land registrar for cancellation.
 - g. The Surrender of the title documents [in terms of (f) above shall be undertaken within 90 days from the date hereof.
 - h. In default to comply with clauses (f) & (g) hereof, the Chief Land Registrar shall nevertheless proceed and effect the revocation.
 - i. Furthermore, and to avert any mischief, the chief land registrar [4th defendant to the counterclaim] be and is hereby ordered to gazette the cancellation of the certificate of title in respect of L.R No. 11261/76 and any resultant sub-divisions arising therefrom.



- j. The gazettment in terms of clause (i) hereof shall be undertaken at the expense of the 4th defendants/counterclaimers.
- k. The Plaintiff [2nd Defendant to the counterclaim] either by herself, agents, servants, employees and or anyone claiming under the said plaintiff be and are hereby ordered to vacate the suit property and to hand over vacant possession thereof within 120 days from the date hereof.
- l. That in default by the plaintiff [2nd defendant to the counterclaim] to vacate and handover vacant possession in terms of clause (k) hereof of the 4th defendant/counter-claimers shall be at liberty to levy eviction and or demolition.
- m. That in the event of the 4th defendant/counter-claimers levying the eviction, the costs/ expenses incurred shall be certified by the Deputy Registrar and thereafter be borne by the Plaintiff [2nd defendant to the counterclaim].
- n. There be and is hereby issued an order of permanent injunction against the plaintiff to the main suit [2nd defendant to the counterclaim] either by itself, agents, servants, employees and or anyone claiming under the said plaintiff from interfering, selling, disposing, charging and or dealing with L.R 11261/76 of any of the resultant subdivision of the said property in any manner whatsoever.
- o. Costs of the counterclaim be and are hereby awarded to the 4th defendant/counter-claimers.
- p. The Costs in terms of clause (o) shall be borne by the 1st and 2nd defendants to the counter-claim jointly and or severally.
- q. Any other relief not expressly granted is hereby declined.

484. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 10TH DAY OF JULY 2025.

OGUTTU MBOYA, FCIArb;CPM [MTI-EA].

JUDGE

In the presence of:

Ms. Brandy/Mutuma

Mrs. Wangui Koech for the Plaintiff/2nd defendant to the counterclaim

Miss Ruth Kiunga holding brief for Mr. Theuri for the 1st defendant.

Mr. Ruiru Njoroge for the 2nd and 3rd defendants

Mrs. Wangechi Akedi for the 4th defendant/counter-claimers

Mr. O.M.T Adala for the 1st Defendant to the counterclaim.

Mr. Guandaru Thuita for the Interested party/3rd Defendant to the counterclaim.

Mr. Allan Kamau [Deputy Chief Litigation counsel] for the 4th & 5th Defendants to the counterclaim.

