



**Gicharu v Burugu & 4 others (Environment & Land Case
348 of 2019) [2024] KEELC 5219 (KLR) (11 July 2024) (Judgment)**

Neutral citation: [2024] KEELC 5219 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 348 OF 2019**

EK WABWOTO, J

JULY 11, 2024

BETWEEN

DAVID KIMANI GICHARU PLAINTIFF

AND

PETER MBURU BURUGU 1ST DEFENDANT

**JUMCHEM HEALTHCARE LIMITED ALIAS RUNDA PALMS
LIMITED 2ND DEFENDANT**

CHIEF LAND REGISTRAR 3RD DEFENDANT

WILLIAMS & KENNEDY LIMITED 4TH DEFENDANT

**MARY WANJIKU JUMA (SUED AS THE ESTATE OF THE LATE JUMA
MUCHEMI) 5TH DEFENDANT**

JUDGMENT

1. The suit herein relates to the property known as 5989/5 which the Plaintiff claims to be its lawful registered owner. It was also averred that the said property was subsequently subdivided into 44 sub-plots that are registered in his favour by the 3rd Defendant.
2. Vide an amended amended amended Plaintiff which for the purposes of these proceedings shall just be referred to the “amended plaintiff”. The Plaintiff seeks inter alia a declaration that he is entitled to ownership and occupation of the sub-divisions of the parcel of land known as L.R No. 5989/5 listed in prayer (d) of the plaintiff herein to the exclusion of the Defendants.
3. A total of 15 witness testified in the matter with 6 witness testifying on behalf of the Plaintiff and 9 witness testifying on behalf of the Defendants. The suit was contested by all the Defendants who filed their respective statement of defences and sought for dismissal of the Plaintiff’s suit with costs. The 1st and 2nd Defendants was opposed to the reliefs sought in the amended Plaintiff. They have filed



an amended statement of defence dated 7th October, 2020 contending that the Plaintiff's titles were acquired through fraud, mistake and a procedure that is irregular.

4. The 3rd Defendant equally filed its statement of defence dated 15th February 2020 which was later amended on 14th September 2020 in which it denied the averment made by the Plaintiff's and prayed that the suit be dismissed with costs.
5. The 4th Defendant filed its statement of defence dated 13th August, 2020. Vide its statement of defence, the 4th Defendant averred that it obtained Grant Number 35802 over L.R No. 5989/5 on 19th October, 1983 and further contended that the interest held by the Plaintiff is invalid.
6. The 5th Defendant filed a statement of defence dated 4th August, 2020 contesting the propriety of the interest held by the Plaintiff. By her statement of defence, the 5th Defendant alleged that her husband purchased the properties known as L.R 5989/5, 5989/68, 5989/66, 5989/67 and 5989/91 all measuring 11.96 Ha from the 4th Defendant vide an agreement for sale dated 23rd April, 1993.
7. The Plaintiff also filed a Reply to the 1st and 2nd Defendants statement of defence dated 12th March 2020, reply to the 3rd Defendant's Amended Defence dated 6th October 2020, reply to the 4th Defendant's Defence dated 6th October 2020 and reply to the 5th Defendant's Defence dated 6th October 2020.

The Plaintiff's case

8. The Plaintiff, David Kimani Gicharu, testified as PW1. He adopted the contents of his witness statement dated 29th July, 2020 in his evidence in chief. He testified that he purchased L.R No. 5989/5 ("the suit property") from Zena Grace Linsley. He Plaintiff produced in evidence an indenture dated 5th September, 2000 between Zena Grace Linsley and himself which shows that the purchase price was Kshs. 20 Million. He further stated that the transaction was handled on his behalf by the firm of Joseph M. Rioba Advocates who not only prepared the conveyance and witnessed its execution but also received the purchase price for onward transmission to the Vendor, Grace Zena Linsley. The evidence of the Plaintiff was that he paid the whole purchase price of Kshs. 20 Million to the Vendor through his Advocate, Joseph M. Rioba. He also produced in evidence payment acknowledgement receipts dated 2nd February, 2000, 11th May, 2000 and 14th June, 2000 which were produced as Plaintiff Exhibit 71.
9. He testified that before purchasing the suit property, he conducted due diligence and ascertained that; L.R No. 5989/5 previously belonged to Saint Benoist Plantation Limited, which by an indenture dated 25th July, 1950 transferred interest to Basil George Mitton and via an indenture dated and registered on 5th June, 1991 Basil George Mitton sold and transferred his interest to Zena Grace Linsley.
10. He testified that before his registration as the owner of L.R No. 5989/5 he applied for and obtained the consent of the Nairobi Land Control Board. He produced as Plaintiff Exhibit 46 the application for consent to transfer dated 8th March, 2000, Nairobi Land Control Board's letter dated 18th August, 2000 forwarding the consent of the transaction as Plaintiff Exhibit 46 and a letter of consent dated 18th August, 2000 as Plaintiff Exhibit 48. It was his testimony that the Vendor obtained a Rates Clearance Certificate from the defunct City Council of Nairobi and he produced in evidence the form of statement of payment of rates dated 17th July, 2000 and a clearance certificate dated 30th August, 2000 as Plaintiff's Exhibits 49 and 50 respectively, the collector of stamp duty vide a letter dated 30th August, 2000 valued the suit property at Kshs. 20 million and assessed stamp duty at Kshs. 400,000.00 as Plaintiff Exhibit 51.



11. It was also his testimony that the conveyance between Zena Grace Linsley and himself was assessed on 1st September, 2000 when stamp duty was paid and the instrument franked. Thereafter the conveyance was booked for registration and duly registered on 5th September, 2000.
12. He further stated that upon registration of the conveyance on 5th September, 2000 he took vacant possession of the suit property and initiated its sub-division.
13. It was also his testimony that on an application by his surveyor, the Nairobi City Planning and Architecture Department vide a letter dated 12th February, 2001 notified the Commissioner of Lands that the intended sub-division of the suit land had been approved. His further testimony was that by a letter dated 15th August, 2001 the consent of the Commissioner of Lands to sub-divide the suit land was issued and communicated to his advocates. There was delay in issuance of deed plans for the sub-divisions resulting from the suit property.
14. He told the court that while purchasing the suit property, Zena Grace Linsley disclosed that she had instructed the firm of G.K. Mugenyu to commence sub-division of L.R No. 5989/5 and supplied him with a number of documents that included a sub-division scheme approval of Nairobi City Commission dated 16th March, 1990 and survey fees payment receipt dated 14th August, 1990 issued to her by Ms. G. K Mugenyu. He further stated that by a letter dated 4th January, 2001 he requested the firm of G. Mugenyu to conclude the sub-division that had commenced on instructions of Zena Grace Linsley on his behalf. He also tendered as evidence the sub-division scheme approval that he obtained from the Zena Grace Linsley.
15. It was his further testimony that that upon contacting the firm of Ms. G.K. Mugenyu he was asked to contact their former staff, Francis Maina Ndegwa who was involved in the sub-division of the suit land. He stated that he contacted Mr. Francis Maina Ndegwa who, after payment of survey fees, processed deed plans for the sub-division of the suit land and that the Director of Surveys issued deed plans for the sub-division on 5th December, 2018.
16. It was his testimony that on 10th December, 2018, he booked the deed plans for the sub-divisions for registration by the 3rd Defendant. He produced booking forms dated 10th December, 2018 as Plaintiff Exhibit 53.
17. He also stated that the 3rd Defendant duly registered the deed plans for resultant sub-divisions of the suit land and issued certificates of titles that were produced in evidence as Plaintiff's Exhibit 1 – 31.
18. It was his testimony that the deed plans for parcel no. L.R No. 5989/66, 5989/67, 5989/68 and 5989/91 were subjected to amalgamation and further sub-division to give rise to the deed plans for parcels L.R No. 5989/231, 5989/232, 5989/233, 5989/234, 5989/235, 5989/236, 5989/237, 5989/238, 5989/239, 5989/240, 5989/241, 5989/242 and 5989/243 whose certificates of titles were produced as Plaintiff Exhibit 32 – 44.
19. He told the court that the suit property was validly registered in his name and that he has validly sub-divided it to give rise to the 44 certificates of title that he has urged the Court to protect the same.
20. It was his further testimony that as the owner of the sub-plots originating from the suit land, he has and continues to pay rates to the County Government of Nairobi according to rates demand notes which he produced as Plaintiff Exhibit 54.
21. In respect to possession, he told the Court that he occupied the suit land since 2000 until 2nd November, 2019 when the 1st and 2nd Defendants in cahoots with the 4th Defendant forcibly evicted



- him. His further testimony was that prior to his unlawful eviction, the 1st Defendant had put up a writing on the stone fence around the property purporting to forbid dealings on the land.
22. He further told the Court that upon noticing the illegal acts of the 1st, 2nd and 4th Defendants, he caused to be published caveat emptor in respect to the suit land in the Daily Nation Newspaper edition of 1st November, 2019 which was produced in evidence as Plaintiff Exhibit 65.
 23. It was his testimony that neither him nor his predecessor in title were aware of the illegal claim by the Defendants over the suit land until November, 2019 when the 1st and 2nd Defendants commenced acts of violent trespass. He also stated that upon filing the instant suit against the 1st and 2nd Defendants, he established from the court papers that they purport to claim ownership on account of fraudulent ownership documents held by the 4th Defendant. This prompted him to file an application for the joinder of the 4th Defendant. The Plaintiff also stated that until the filings by the 1st and 2nd Defendants in this matter, he was not aware of the multiple suits between the Defendants which he stated are all anchored on fraudulent land ownership documents.
 24. He stated that Deed Plan No. 106270 that purports to anchor the interest held by the 4th Defendant does not exist, is invalid and was procured through fraud to deprive him and his predecessors in title ownership of the suit land. He further contended that the genuine deed plan for the suit land was deed plan no. 45300 that has since been sub-divided into 44 parcels and titles issued. It was his testimony that Deed Plan No. 106270 allegedly held by the Defendants could not be validly issued on 22nd March, 1979 as there existed Deed Plan No. 45300 for the suit land at that time until 2018 when the same was surrendered for sub-division.
 25. He stated that the 1st and 2nd Defendants have presented two grant no. 35802 with conflicting entries that suggest their ownership of the suit land as follows; in grant no. 35802 that the 1st and 2nd Defendants have presented at are cancelled entries that immediately precede entries 2 and 7 while no such entries exist on grant no. 35802 that appears at pages 67 to 73 of their trial bundle. While entry no. 16 on grant no. 35802 that the 1st and 2nd Defendants have presented at pages 74 to 80 of their trial bundle does not indicate the value of the charge, entry no. 16 on grant no. 35802 that they have presented at pages 67 to 73 show the value of the charge as Kshs. 7 Million. While entry no. 17 on grant no. 35802 that the 1st and 2nd Defendants have presented at pages 74 to 80 of their bundle does not show the value of the further charge, entry no. 17 on grant no. 35802 that they have presented at pages 67 to 73 indicates the value of the further charge as Kshs. 2 Million. Whereas entry no. 19 in grant no. 35802 that the 1st and 2nd Defendants have presented at pages 74 to 80 of their bundle indicates value of the transfer to the 2nd Defendant as Kshs. 18 Million, entry no. 19 on grant no. 35802 at pages 67 to 73 of their bundle does not indicate the value of the transfer to the 2nd Defendant.
 26. He further told the Court that the purported transfer of the suit to the 2nd Defendant vide entry no. 19 on grant no. 35802 was irregular as there was no entry removing a caveat which had allegedly been registered on the purported title vide entry no. 18. According to PW1, if the title held by the 4th and 2nd Defendants over the suit land was genuine, registration of the transfer vide entry no. 19 would not have happened without removal of the caveat registered as entry no. 18.
 27. He also stated that the alleged sub-division of the suit land on 27th May, 1991 in favour of the 4th Defendant was illegal, null and void because; deed Plan No. 45300 dated 22nd March, 1950 and the title thereto were not surrendered to give rise to Deed Plan No. 106270 dated 22nd March, 1979 that is claimed to have been sub-divided on 27th May, 1991. There is no evidence of a surrender of the title for L.R No. 5989/5 on 27th May, 1991 to give rise to the grant for the four (4) sub-divisions allegedly held by the 4th Defendant. The mandatory consent of the Commissioner of Lands or President was



- not obtained before the purported sub-division on 27th May, 1991 in breach of special condition no. 7 on grant no. 35802 that was allegedly issued to the 4th Defendant.
28. He further told the court that the purported sub-division of 27th May, 1991 could not have taken place because the 2nd Defendant continues to hold on to Grant No. 35802 and Deed Plan No. 106270 to date which shows the total size of the land as 24.7 acres.
 29. According to him, the 4th Defendant could not also have validly sub-divided L.R No. 5989/5 on 27th May, 1991 as his predecessor in title had the custody of the unsub-divided original title and deed plan thereof until 5th September, 2000 when the land was transferred to him intact.
 30. He also told the Court that the registration of Grant No. 35802 for L.R No. 5989/5 in favour of the 4th Defendant in 1983 was fraudulent because on 23rd November, 1973, a resolution was passed to wind up the 4th Defendant and he produced as Plaintiff Exhibit 55 Gazette Notice No. 35986 dated 23rd November, 1973 containing the resolution to wind up the 4th Defendant as passed on 23rd November 1973. He further produced in evidence Gazette Notice No. 3596 dated 23rd November, 1973 through which the appointment of G.J. Silcock and J.G Bell as liquidators of the 4th Defendant for purposes of winding up was communicated. He also produced in evidence a special ordinary resolution dated 23rd November, 1973 by which directors and shareholders of the 4th Defendant resolved that this company be wound up through a member's voluntary winding up and appointed joint liquidators. He also produced in evidence the Registrar of Companies' letter addressed to the 4th Defendant and communicating that the Registrar was proceeding to remove the company from the register of companies under section 79 of the repealed Companies Act, Cap 488.
 31. He also told the Court that the claim by the 4th Defendant over the suit land and its existence is questionable given the contents of the annual returns that were purportedly filed on its behalf in the years 1984, 1985 and 1986 by Emu Registrars Limited, which is a company that was incorporated on 3rd January, 1991 according to the CR12 at page 354 of his trial bundle. He further told the court that he had obtained a notification of change of secretaries showing that Emu Registrars Limited were appointed as secretaries of the 4th Defendant with effect from 13th August, 1987, which was long before their incorporation on 3rd October, 1991.
 32. It was also his testimony that vide Gazette Notice No. 3439 dated 12th November 1970 the Commissioner of Lands communicated an intention to compulsorily acquire a portion of the suit land measuring 9.575 acres. At the time of publication of Gazette Notice No. 3439 dated 12th November, 1970 the registered owner of L.R No. 5989/5 was Basil George Mitton. It was his testimony that this notwithstanding Gazette Notice No. 3439 of 12th November, 1970 purported to indicate the owner of L.R No. 5989/5 as the 4th Defendant. It was his further testimony that vide a letter dated 21st December, 1970, which has been produced as Plaintiff Exhibit 56, Basil George Milton informed the Commissioner of Lands that the suit property belongs to him and not Williams & Kennedy Limited as suggested in Gazette Notice No. 3439 of 12th November, 1970.
 33. It was his further testimony that vide the letter dated 28th December, 1970 the Commissioner of Lands responded to Basil George's letter dated 21st December, 1970 stating that the indication in Gazette Notice No. 3439 dated 12th November, 1970 that L.R No. 5989/5 belonged to the 4th Defendant was done in error as the land in fact belonged to him. The evidence of the Plaintiff therefore was that no compulsory acquisition of the suit property has taken place as alleged by the Defendants.
 34. He testified that despite holding genuine certificates of titles over sub-division of L.R No. 5989/5, The 3rd Defendant in cahoots with the 1st, 2nd Defendant and 4th Defendants have attempted to illegally



- deprive him ownership by among others attempting to occasion an illegitimate re-construction of non-existent land records. He produced his letter dated 6th July, 2020 by which he objected to the 3rd Defendants' intention to reconstruct records for a parcel known as L.R No. 5989/5/R at the behest of the 2nd Defendant as communicated vide Gazette Notice No.3735 dated 29th May,2020.
35. He further tendered in evidence his letter dated 16th July, 2020 by which he lodged a complaint against the 3rd Defendant for instigating acts that were calculated to deprive him ownership of the suit land by among other receiving illegitimate land records from the 2nd Defendant and forwarding them to the Hon. Attorney General for filing in Court.
36. He told the Court that investigation into the competing claims by the parties by the Directorate of Criminal Investigations concluded that the 4th Defendant fraudulently acquired Grant No. 35802.
37. When being cross- examined by the 1st and 2nd Defendants, he told the court that the indenture between Zena Grace Linsley and Basil George Mitton was genuine. He further stated that he purchased the suit land from Zena Grace Linsley and not Beakabane as suggested by the 1st and 2nd Defendants. He also stated that he took vacant possession of the suit land in 2000 and that he has had possession thereof until November 2019 when the 1st and 2nd Defendants evicted him, which incident he reported to the police. It was his further testimony that the sub-division of the suit land was commenced by a Surveyor working in the firm of G.K. Mugenyu. His further evidence was that after the first sub-division, he obtained 31 titles. Thereafter, he told the Court four (4) parcels were amalgamated and further sub-divided to give rise to 13 more titles. He also stated that at the time of his eviction in 2019, there was a four (4) bedroom stone house on the land that housed his workers. He further stated that the compulsory acquisition contemplated in Gazette Notices No.s 3439 and 3440 in 1973 did not take place following an objection by the then registered owner George Mitton as there is in fact no evidence of payment of any compensation or excision of any land on grant no. 35802. He further told the Court during cross examination by that there is a letter dated 28th December, 1970 by which the Commissioner of Lands clarified that the 4th Defendant was not the owner of L.R No. 5989/5 as suggested in Gazette Notices Nos. 3439 and 3440.
38. On cross examination by the 4th Defendant, He told the court that the transaction between Zena Grace Linsley and him was handled by Joseph M. Rioba whose offices were situated at Queensway House in Nairobi. It was his evidence that it is until recently while following up his documents that he learnt that the said advocate passed on around 2018. It was also his evidence that the vendor sold the land to him as she was relocating from Kenya to her native county. When asked about the sale agreement he told the court that although a sale agreement between the vendor and him was prepared, he had not filed it in Court as he had misplaced it. He further stated that he filed in court the search appearing at page 55 of his trial bundle as per what was given to him by Joseph M. Rioba Advocate that acted for him in the sale transaction.
39. When cross examined by 5th Defendant he told the court that he was 27 years in 2000 and that he paid the purchase price for the suit property out of revenue that he generated from family business and savings. It was his further evidence that he met the vendor through a mutual friend that ran a children's home namely Bob Harris Children's Home. He stated that the purchase transaction was handled by Joseph M. Rioba & Co. Advocates on behalf of both parties. He stated that he paid the purchase price of Kshs. 20 Million in cash and three installments through the advocate and was issued with acknowledgment receipts dated 2nd February, 2000, 11th May, 2000 and 14th June, 2000. He further stated that he engaged two surveyors to sub-divide the property namely Francis Maina Ndegwa of Ms. G. K Mugenyu and Steve Rodgers Kobado.



40. When re-examined he told the Court that although he had not supplied a sale agreement between Zena Grace Linsley and himself, he had provided evidence of an indenture and receipts confirming payment of the purchase price. He further told the Court that he was not aware of any pending court cases over the suit property until after this matter was instituted following concerted acts of violent trespass.
41. He also stated that he does not have original title for L.R No. 5989/5 as he surrendered it to give rise to the 44 titles that were produced as Plaintiff Exhibit 1 – 44. He further stated that the search appearing at page 55 of his trial bundle is what he has and has never presented any other search. It was his evidence that the said search was obtained by Joseph Rioba Advocate who obtained it from the Ministry of Lands. He further stated in re-examination that Zena Grace Linsley attained registration of the suit land on 5th June, 1991 according to the indenture at pages 61 to 64 of his trial bundle. He reiterated that the person that he transacted with was Zena Grace Linsley and not Zena Grace Linsley Beakabane. On whether the 4th Defendant owned the land pursuant to the grant that was allegedly registered on 19th October, 1983, He stated that the 4th Defendant Company was wound up on 23rd November, 1973 and could not procure a deed plan in 1979 and attain registration in 1983.
42. He also reiterated in his reexamination that he was in occupation of the suit land since 2000 until November, 2019 when the 1st and 2nd Defendants trespassed thereon and evicted his workers.
43. Patrick Khaemba Maloba No. 235014, a Chief Inspector of Police working with at the DCI Headquarters as a detective testified as PW2. He produced as Plaintiff Exhibit 71 the DCI report dated 29th July, 2020 running from pages 533 to 555. It was his testimony that he not only authored the DCI report but also undertook investigations into the competing claims of ownership of the suit property. He told the court that on 25th November, 2013 the alleged directors of the 4th Defendant lodged a complaint that L.R No. 5989/5/R had been sold and transferred to the 2nd Defendant fraudulently and that the DCI recorded statements from various parties including Francis Ng'ang'a Gicharu who is an alleged director of the 4th Defendant.
44. He stated that Francis Ng'ang'a submitted a letter dated 13th October, 1983 by which he was allegedly offered shares in the 4th Defendant. He told the Court that this letter referred to conflicting purchase prices for the shares, being Kshs. 2.2 Million and Kshs. 2.5 Million at the same time creating doubts on its authenticity.
45. He stated that the purported director of the 4th Defendant submitted Grant No. 35802 for L.R No. 5989/5 registered on 19th October, 1983 and Deed Plan No. 106270 dated 22nd March, 1979 measuring 9.999 Ha which had been produced as Plaintiff Exhibit 72 allegedly registered in the name of the 4th Defendant. He also stated that whereas Grant No. 35802 allegedly held by the 4th Defendant was claimed to have been signed by the Commissioner for Lands, Raymond Njenga on 28th July, 1981, it turned out after the same was subjected to forensic examination that the signature of the said Commissioner of Lands was a forgery.
46. He told the Court that his investigations established that the purported directors of the 4th Defendant namely Francis Ng'ang'a Gicharu and Eunice Ng'ang'a Gicharu allegedly became directors vide notifications of change of directors dated 24th February, 1904 and that this is a clear demonstration of fraud because the 4th Defendant which was incorporated on 18th March, 1953 did not exist in 1904 when the share transfer forms were allegedly prepared and executed.
47. It was his testimony that investigations established that vide a notification of change of director dated 13th August, 1987 the purported directors of the 4th Defendant, Francis Ng'ang'a Gicharu and Eunice Ng'ang'a Gicharu allegedly appointed Emu Registrars Limited as company secretaries and that his



investigations established that on 14th January, 1984, 14th January, 1985 and 14th January, 1987 Emu Registrars Limited purported to file annual returns for the 4th Defendant which were produced as Plaintiff's Exhibit No.s 79, 80 and 81 respectively.

48. He also stated that searches from the Registrar of Companies as obtained by the DCI established that Emu Registrar Limited was incorporated on 3rd October, 1991 and that it was fraudulent that Emu Registrars Limited that was incorporated on 3rd January 1991 would purport to file returns on behalf of the 4th Defendant in 1984, 1985 and 1987. He also stated that it was fraudulent that the purported directors of the 4th Defendant would appoint Emu Registrars Limited as its secretaries effective 13th August, 1987 when it was not until 3rd January, 1991 that it was incorporated.
49. He also stated that the director of Emu Registrars Limited is Owen Njenga Koimburi who was not licensed to practice as a secretary until 23rd November, 1990. He produced a letter dated 1st July, 2020 by which the Institute of Certified Secretaries informed the DCI that CS Owen Njenga Koimburi, member number 0019 and practicing certificate number 0497 joined the institute on 23rd November, 1990.
50. According to the witness, it amounted to an illegality that the purported directors of the 4th Defendant appointed as its secretary on 13th August, 1987 a person that was not qualified to practice as such until 23rd November, 1990. He also told the Court that it was fraudulent that Owen Njenga Koimburi purported to file annual returns for the years 1984, 1985 and 1987 on behalf of the 4th Defendant when he had not even been registered to practice as a Company Secretary.
51. He told the Court that he obtained from the Registrar of Companies a declaration of solvency dated 15th November, 1973 by which directors of the 4th Defendant declared in 1973 that it shall be able to pay its debts in full within twelve months of commencement of its winding up.
52. It was his testimony that that his investigations established that on 23rd November, 1973 directors of the 4th Defendant also passed a special/ordinary resolution for its liquidation.
53. It was his testimony that the resolution to wind up the 4th Defendant and appoint joint liquidators, J.G Silcock and J.G Bell for purposes of its winding up was published vide Gazette Notice No.s 3596 and 3597 dated 23rd November, 1973 and contained in Kenya Gazette edition of 30th November, 1973.
54. It was his testimony that it was an outright fraud and an illegality that a liquidated 4th Defendant would acquire Deed Plan No. 106270 on 22nd March, 1979, and obtain registration of grant no. 35802 on 19th October, 1983 and purport to transact on this title without rescission of the decision to wind it up, reinstatement in the company register and involvement of the liquidators.
55. He further stated that his investigations established that on 27th May, 1991 the 4th Defendant conducted an imaginary sub-division of the suit land in that whereas clause 2 of Grant No. 35802 that it purports hold required the consent of the Commissioner of Lands before any sub-division, it allegedly undertook a sub-division thereof to give rise to parcels L.R Nos 5989/66, 5989/67, 5989/68 and 5989/91 without the consent of the Commissioner of Lands. The 4th Defendant continued to hold onto Deed Plan No. 106220 dated 22nd March, 1979 for L.R No. 5989/5 reflecting 24.7 acres an indication that no sub-division took place.
56. The witness told the court that it was suspicious that the 4th Defendant would exist as a company when the Kenya Revenue Authority by letter dated 30th June, 2020 which had been produced in evidence as Plaintiff Exhibit 78 confirmed that they had no information about it. This considering the stringent



legal requirements as to payment of taxes and filing of tax returns according to him pointed to the non-existence of the 4th Defendant following its liquidation in 1973.

57. He also told the court that his investigation established that on 8th November, 1991 and 3rd July, 1992, the 4th Defendant purportedly charged L.R No. 5989/5/R vide entries nos. 16 and 17 on grant no. 35802 respectively. According to him this pointed to fraud and illegality because the charge and further charge as submitted by alleged directors of the 4th Defendant to the DCI show that they were created in respect to L.R No. 5989/5 which had ceased to exist on 27th May, 1991 when the sub-division took place. He told the court that his investigations also established that no valuation was undertaken before the charge and further charge were allegedly registered in 1991 and 1992.
58. He also told the Court that the 5th Defendant herein presented searches for parcels namely L.R No. 5989/66 dated 4th April, 2008, L.R No. 5989/67 dated 3rd April, 2008, 5989/68 dated 3rd April, 2008 and L.R No. 5989/91 dated 4th April, 1998 allegedly issued by Joseph Kamuyu, a land registrar, to suggest that these parcels are registered in the 4th Defendant's name. However according to him these searches were fraudulent because the land register that allegedly issued them denied executing them. He further told the court that a forensic examination of the registrar's signature on these searches disclosed that the signatures therein had been forged. He relied on the DCI forensic document examiner's report dated 16th June, 2020 at pages 590 to 607 of the Plaintiff's trial bundle. He also relied on the statement of Joseph Kamuyu dated 5th June, 2020 at pages 635 to 636 of the Plaintiff's bundle.
59. He further stated that the 5th Defendant also presented purported searches for L.R No. 5989/66, 5989/68 and 5989/91 allegedly issued by a land registrar namely Edwin Munoko on 21st July, 2016 in the name of the 4th Defendant which were forgeries because; Edwin Munoko, a land registrar, recorded a statement stating that the signatures and stamp impression on the purported searches did not belong to him. A forensic document examination report dated 26th July, 2020 pages 608 to 632 of the Plaintiff's bundle showed that the signature of Edwin Munoko, a land registrar on the searches for L.R No. 5989/66, 5989/68 and 5989/91 dated 21st July, 2016 does not belong to him and are forgeries.
60. He asserted that the on 26th June, 2020 the 1st Defendant presented Grant No. 35802 for L.R No. 5989/5 allegedly registered in the name of the 2nd Defendant that contained entries that contradicted entries contained in Grant No. 35802 L.R No. 5989/5 that had been presented by the 4th Defendant. He stated that the court that the contradictions on the titles for the same land as presented by the 2nd and 4th Defendant are detailed at pages 8 – 10 of DCI report at pages 540 to 542 of the Plaintiff's trial bundle. In this regard, he produced the grants for L.R No. 5989/5 as presented by the 1st Defendant and as presented by the 4th Defendant as Plaintiff Exhibit 72. He further stated that notable differences on these alleged titles according to PW 2 were as follows; in the grant presented by 1st and 2nd Defendants there are cancelled entries succeeding entry no. 2 while no such cancellations exist in the grant that was presented by the 4th Defendant. In the grant presented by the 1st and 2nd Defendants entry no. 16 which relates to the charge to Post Bank Credit Limited does not indicate the charge amount unlike entry no. 16 on the grant held by the 4th Defendant that indicates Kshs. 7 million as the value of the charge. In the grant held by the 1st and 2nd Defendants entry no. 17 does not indicate the value of the further charge. This is unlike entry no. 17 on the 4th Defendant's grant that indicates the value of the further charge as Kshs. 2 Million. Entry no. 17 on the grant purportedly held by the 1st and 2nd Defendants is succeeded by cancellations which is not the case for the alleged grant that the 4th Defendant holds. In the grant held by the 1st and 2nd Defendants entry no.19 indicates the value of the transfer to the 2nd Defendant as Kshs. 18 Million. This is unlike entry no. 19 on the alleged grant held by the 4th Defendant which does not indicate the value of the transfer.



61. It was his testimony that his investigations established that the Plaintiff purchased the suit property from Zena Grace Linsley. It was his evidence that his investigations further showed that the suit property had an old farm house and that Zena Grace Linsley had commenced the process of sub-division early in 1990 through Francis Maina Ndegwa of M/S G.K. Mugenyu who concluded the sub-division in 2018. He further relied on the statements of both the Plaintiff and Francis Maina Ndegwa that he said formed part of his report.
62. The witness told the court that the Plaintiff's advocates in the transaction supplied him with a search dated 14th June, 2000 issued by a Land Registrar, Fredrick Lubullelah that showed Zena Grace Linsley owned the suit property. He further told the Court that the said Land Registrar recorded a statement with the DCI confirming issuance of the search, which position is documented in the second paragraph of the DCI report at page 543 of the Plaintiff's trial bundle.
63. According to the witness, his investigations established that the Plaintiff paid a purchase price of Kshs. 20 Million as per the payment receipts dated 2nd February, 2000, 11th May, 2000 and 14th June, 2000. It was also his evidence that further investigations disclosed that before the Plaintiff was registered as the owner of the land on 5th September, 2000 a consent to transfer dated 8th March, 2000 was procured. It was his further evidence that the DCI investigations established that the Plaintiff had sub-divided the suit land to give rise to 44 parcels.
64. He also stated that during investigations Francis Maina Ndegwa, a surveyor in private practice was interrogated. He told the court that Francis Maina Ndegwa recorded a statement which appeared at pages 637 to 638 of the Plaintiff's bundle confirming that; he worked with the firm of G. K. Mugenyu as an assistant surveyor in the 1990s, the firm of G. K. Mugenyu was instructed to undertake survey of L.R No. 5989/5 by Zena Grace Linsley based on a scheme plan dated 6th March, 1990 and approval dated 8th August, 1990, Zena Grace Linsley paid G. K. Mugenyu's firm Kshs 600,000 as fees for the survey work which was duly acknowledged. She however did not follow up on the sub-division until the Plaintiff as a purchaser instructed him to conclude the work, which he did in 2018 following the intervention by his former employer, G. K Mugenyu.
65. He further told the court that during the investigations, the 1st Defendant presented to the DCI an affidavit sworn by George Kimathi Mugenyu on 20th July, 2020 stating that his firm never undertook any sub-division at the behest of Zena Grace Linsley. He also stated that the 1st Defendant presented an acknowledgement of payment by one Mwai Kariuki who had allegedly received survey fees of Kshs. 70,000 on behalf of G. K. Mugenyu from the 4th Defendant's alleged directors, Francis Ng'ang'a Gicharu. It was his evidence that the 1st, 2nd and 4th Defendants alleged that this acknowledgment of payment constituted evidence that G. K. Mugenyu sub-divided the suit land on behalf of the 4th Defendant and not the Plaintiff nor his predecessor in title. The alleged acknowledgement of payment between G.K. Mugenyu and the 4th Defendant according to him suggested that it was witnessed by Fred Ngatia Advocate. He told the court that they summoned Mr. Fred Ngatia SC to shed light on the matter when he recorded a statement dated 23rd July, 2020 stating that neither the signature nor stamp impression appearing on the acknowledgement of payment between G. K Mugenyu and the 4th Defendant belonged to him. The Court was told that vide his statement, Fred Ngatia Advocate stated that the purported acknowledgment of payment was not his document. It was his further evidence that the purported signature of Fred Ngatia Advocate was subjected to forensic examination against his known signatures which established that it was a forgery. He further relied on the statement of Fred Ngatia dated 23rd July, 2020 and the DCI forensic document examination report dated 24th July, 2020 that is at page 707 to 719 of the Plaintiff's trial bundle. He told the court that on the basis of the foregoing, the DCI recommended that Francis Ng'ang'a alongside George Kimathi Mugenyu



be charged with the offence of forgery of a survey fee note payment at page 105 of the 1st and 2nd Defendants' trial bundle.

66. The witness stated that during investigations, he also recorded the statement of Priscilla Njeri Wango, a Government Surveyor working within the office of the Director of Survey who made it clear that the Deed Plan No. 45300 dated 22nd March, 1950 was issued for L.R No. 5989/5 and was the only genuine deed plan for the suit property. Deed Plan No. 45300 has since been sub-divided to give rise to among others Deed Plan Nos. 439644, 429656 as well 429674 that were issued on 5th December, 2018 to the Plaintiff.
67. The witness further testified that the DCI recorded the statement of Edwin Munoko Wafula, a Land Registrar dated 23rd January, 2020 by which he stated that according to records at the 3rd Defendant there is an indenture dated 20th July, 1950 for L.R No. 5989/5 by which Saint Benoist Plantation Limited transferred the land to Basil George Mitton vide memorandum Vol. N. 34 folio 366/1 dated 28th July, 1950. There is an indenture dated 5th June, 1991 for L.R No. 5989/5 by which Basil George Mitton transferred the land to Zena Grace Linsley under presentation 126 volume N34 Folio 336/2 file 10874 and that there is an indenture dated 5th September, 2000 by which Zena Grace Linsley as the vendor conveyed L.R No. 5989/5 to the Plaintiff under presentation no. 240. N34 folio 366/j file No. 10874.
68. It was his testimony that he recorded the statement of Owino Jacob Cattwright, Land Registration Officer who confirmed vide a statement dated 10th June, 2020 that he is the Land Registrar that signed the 44 certificates of title for the sub-divisions in favour of the Plaintiff based on a surrender of the indenture for L.R No. 5989/5 that was registered on 5th September, 2000. He stated that Owino Jacob Cattwright, vide his statement confirmed the existence of approvals by both the Commissioner of Lands and Nairobi City County before the certificates of title were registered.
69. It was his testimony that the totality of the investigations led to the conclusion that Francis Ng'ang'a Gicharu was the main architect of fraud and illegally originated Grant No. 35802, for L.R No. 5989/5 and the claim by the 4th Defendant that was wound up pursuant to resolutions of 23rd November, 1973 and Gazette Notices No. 3596 and 3597 dated 23rd November 1975 is punctuated by fraud.
70. According to him, Francis Ng'ang'a Gicharu was assisted by Owen Njenga Koimburi trading as Emu Registrars Limited to use a liquidated company, 4th Defendant as a special purpose vehicle to fraudulently and illegally acquire L.R No. 5989/5. He therefore told the court that the DCI has among others recommended that, Francis Ng'ang'a Gicharu be charged with the offence of conspiracy to commit a felony, to wit, forgery of Grant No. 35802 under the 4th Defendant's name contrary to section 293 of the Penal Code, Cap 63. Francis Ng'ang'a Gicharu be charged with the offence of a conspiracy to commit a felony namely forgery of Deed Plan No. 106270 dated 22nd March, 1970 contrary to section 293 of the Penal Code, Cap 64. Francis Ng'ang'a Gicharu a purported director of the 4th Defendant and Owen Njenga Koimburi, the director and owner of Emu Registrars Limited be charged with four counts of making false annual returns for the period 1984, 1985, 1986 and 1987 for insertion at the Registrar of Companies contrary to section 363 of the Penal Code. Owen Njenga Koimburi, the owner and director of Emu Registrars Limited be charged with the offence of false assumption of authority contrary to section 104 of the Penal Code. Francis Ng'ang'a Gicharu and George Kimathi Mugenyu be charged with the offence of forgery of survey fee payment note purporting it to be genuine and witnessed by Fred Ngatia SC, which was false contrary to section 350 of the Penal Code, Cap 63.
71. Upon cross examination by the 1st and 2nd Defendants, he stated that the entries on the grant held by the 2nd and 4th Defendants in respect to the land ought to be similar. He denied any biasness in



- his investigations and further stated that David Nyambaso Nyandoro was summoned to record a statement over the matter under inquiry, the said David Nyambaso Nyandoro did not appear for interrogation.
72. On cross examination by the 3rd Defendant, he stated that the DCI has not faulted the Plaintiff for any irregularity in relation to the acquisition of the suit property.
 73. When cross examined by the 5th Defendant, he stated that he was in court to give evidence on the matter on the basis of witness summons that had been served on the DCI. He further told the Court that the Hon. Attorney General requested for the report in respect to which he was giving evidence on. He further stated that he interrogated the land registrar that issued the search at page 55 of the Plaintiff's trial bundle, who confirmed its issuance.
 74. When re-examination, he stated that there is no law that prohibits issuance of a consent on the date of application. He further told the Court that the basis of his finding that the 4th Defendant has been wound up are the special/ordinary resolutions dated 23rd November, 1973, Gazette Notices Nos. 3596 and 3597 dated 23rd November, 1973.
 75. He further stated in re-examination that the DCI report and findings were informed by numerous statements of Land Registrars that they recorded including Jacob Owino Cattwright, Edwin Wafula Munoko, Betty Atieno and Wang'ombe Kamuyu together with Priscilla Njeri Wango from the office of the Director of Survey. He concluded his testimony by stating that the contents of the DCI report have neither been impeached nor challenged by any party or authority.
 76. The third witness to testify on behalf of the Plaintiff was ASP Alex Mwongera No. 231761 who testified as PW3. He began his testimony by stating that he not only authored but also signed the forensic report dated 2nd July, 2020 at pages 570 to 589 of the Plaintiff's bundle which he produced as Plaintiff Exhibit 73. He stated that upon examination of the alleged signature of the Commissioner of Lands, Raymond Njenga on grant no. 35802 for L.R No. 5989/5 purportedly issued to the 4th Defendant, with his known signatures, it was established that it did not belong to him and was therefore a forgery. He explained that the alleged signature of James Raymond Njenga on grant No. 35802 was dissimilar and distinguishable from his known signatures.
 77. He further told the court that at pages 590 to 607 was a DCI report dated 16th June, 2020 which he authored. He stated that this report which he produced as Plaintiff Exhibit 74 showed that the alleged signature of Joseph Wang'ombe Kamuyu on postal searches for L.R No. 5989/67, 5989/68 and 5989/95 at pages 595 to 601 of the Plaintiff's bundle suggesting ownership thereof by the 4th Defendant was a forgery and did not belong to him. He told the court that he arrived at this conclusion after the signatures on the impugned searches were compared with Joseph Wang'ombe Kamuyu's known signatures.
 78. He also told the Court that at pages 608 to 632 of the Plaintiff's bundle is a report dated 26th June, 2020 which he not only prepared but also signed. According to him, the report dated 26th June, 2020 showed that the alleged signatures of Edwin Munoko Wafula, a Land Registrar, on searches for L.R No. 5989/68, 5989/66 and 5989/91 suggesting ownership thereof by the 4th Defendant did not belong to the named Land Registrar and were forgeries. This finding according to him was corroborated by sample and known signatures of Mr. Edwin Munoko Wafula alongside his statement dated 23rd June, 2020. He also produced the forensic examination report dated 26th June, 2020 which shows that the 4th Defendant's purported searches are forgeries as Plaintiff Exhibit 75.



79. It was his testimony that he prepared and executed the forensic examination report dated 24th July, 2020. He told the Court that this report whose findings were corroborated by the statement of Mr. Fred Ngatia SC dated 23rd July, 2020 his sample and known signatures and examination show the alleged signatures and stamp impression of Fred Ngatia Advocate on a purported acknowledgement of payment between G.K. Mugenyu's employee, Mwai Kariuki and an alleged director of the 4th Defendant, Francis Ng'ang'a Gicharu did not belong to him and was a forgery. The 2nd and 4th Defendants had presented this purported acknowledgement of payment of survey fees to insinuate that G.K. Mugenyu was instructed by the 4th Defendant and not the Plaintiff or his predecessors in title. He also produced the examination report dated 24th July, 2020 as Plaintiff's Exhibit No. 90.
80. When cross –examined by the 1st and 2nd Defendants' advocate, he told the court that the alleged Commissioner of Lands, James Raymond Njenga's signature on grant no. 35802 was not consistent with his known signatures at pages 577 and 581 of the bundle on the basis of pen lift, pen movement and terminal stroke. He further told the court that his examination took into consideration the fact that one's signature cannot be exactly the same.
81. In cross examination by the 4th Defendant, he reiterated that the signatures were submitted to him for interrogation and that the signature of the Commissioner of Lands on grant no. 35802 was dissimilar and distinguishable from his known signatures.
82. In re-examination, he told the Court that the lack of James Raymond signature did not affect his conclusion that his signatures on grant no. 35802 was a forgery. It was also his evidence that his examination and reports considered natural variations such as state of mind and that no other report had been prepared to impeach his findings.
83. The 4th Plaintiff's witness to testify during trial was Edwin Munoko Wafula a Senior Lands Registration Officer who testified as PW4 adopted the contents of his witness statement dated 8th March, 2023 and also the contents of his statement dated 18th February, 2020 that the Hon. Attorney General filed in court on 20th February, 2020. He stated that the contents of these two statements were the same. He further adopted the contents of this statements dated 23rd January, 2020 and 23rd June, 2020 exhibited to the DCI report as his evidence.
84. It was his testimony that according to records available in file no. 10874 held by the 3rd Defendant and Ministry of Lands; L.R. No. 5989/5 was by an indenture dated 19th July, 1950 and registered under presentation book no. 3365 Vol. N 34, folio 366/1 conveyed from Saint Benoist Plantation Limited to Basil George Mitton. Vide an indenture dated 5th June, 1991 and registered under presentation no. 126 N 34 Folio 336/2 file 10874, L.R. No. 5989/5 was conveyed from Basil George Mitton to Zena Grace Linsley. Vide an indenture dated 5th September, 2000 and registered under presentation no. 240 N34 Folio 366/3 file 10874, L.R. No. 5989/5 was conveyed from Zena Grace Linsley to David Kimani Gicharu. Vide an instrument of surrender dated 15th August, 2018 and registered on 28th September, 2018 title for L.R. No. 5989/5 was surrendered to the Government in consideration of a sub-division. In this regard he referred his testimony the instrument of surrender at page 168 of the Plaintiff's trial bundle – Vol 2.
85. He further told the court that title for L.R. No. 5989/5 according to records at the 3rd Defendants has been sub-divided to give rise to the certificates of titles that were produced as Plaintiff Exhibits 1 – 44.
86. He produced in evidence an extract of a certified copy of the presentation book which he stated shows deed plans for the 44 parcels were booked at the Lands Office, validly registered and certificates of titles issued.



87. He also produced in evidence copies of parcel files for some of the properties that are registered in the Plaintiff's name as contained in the records of 3rd Defendant, to wit, parcel files I.R No. 203470 L.R No. 5989/59, I.R No. 20347 L.R No. 5989.60, IR No. 203459 LR No. 5989/83, IR No. 203459 L.R No. 5989/85, IR No. 203472 LR No. 5989/61, IR No 203474 L.R No. 5989/63, I.R No 203461 LR No. 5989/85, I.R No. 203462 L.R No. 5989/86, I.R No. 203468 L.R No. 5989/57, I.R No. 203451 L.R No. 5989/75, I.R No. 203475 L.R No. 5989/64, I.R No. 203455 L.R No. 5989/ 79, I.R No. 203456 L.R No. 5989/80, I.R No. 203454 L.R No. 5989/78, I.R No. 203453 L.R No. 5989/77, I.R No. 203452 L.R No. 5989/70, I.R No. 203448 L.R No. 5989/5/4, I.R No. 203450 L.R No. 5989/74, I.R No. 203445 L.R No. 5989/5/2, I.R No. 203457 L.R No. 5989/81, I.R No. 203449 L.R No. 5989/73, I.R No. 207251 L.R No. 5898/65, and I.R No. 203476 L.R No. 5989/72. PW⁴ produced copies of these parcel files as Plaintiff Exhibit 95.
88. Upon cross examination by the 1st and 2nd Defendants, he told the Court that the Ministry of Lands has in place a system known as Land Information Management System where documents are stored in an image form. He stated that in absence of a physical file, the 3rd Defendant referred to documents stored in the Land Information Management System. He further told the Court that he presented the documents in custody of the 3rd Defendant to the Hon. Attorney for filing in Court which happened on 20th February, 2020. It was his evidence that as a Land Registrar, his duty was to present documents in custody of the 3rd Defendant to Court through the Hon. Attorney General and the DCI on receipt of such request.
89. When cross examined by the 3rd Defendant, he told the Court that upon receipt of a letter from the Hon. Attorney General, he provided that office with the documents that have been exhibited to his statement that were duly filed on 20th February, 2020. On further cross examination by the 3rd Defendant, he stated that at the time of forwarding instructions to the Attorney General, he checked the Land Information Management System and did not find any documents relating to the ownership of the suit property.
90. On cross examination by the 5th Defendant, he stated that his statement dated 8th March, 2023 is a replicate of his witness statement that the Hon. Attorney General prepared and filed on 20th February, 2020.
91. In re-examination, he told the Court that he obtained the documents exhibited to his statement from the 3rd Defendant's file in the strong room.
92. Priscilla Njeri Wango, a Government Surveyor working in the office of the Director of Survey testified as PW5. She adopted the contents of her statement dated 8th March, 2023 as her evidence. She further adopted the contents of her statement dated 18th February, 2020 and filed in court by the Attorney General on 20th February, 2020 as her evidence. She also adopted the contents of her statement that she recorded with the DCI on 19th February, 2020 as her evidence.
93. She told the Court that according to Survey of Kenya records; L.R No. 5989/5 is depicted on survey plan F/R 59/123. She stated that L.R No. 5989/5 was surveyed on 10th October 1949 and Deed Plan No. 45300 dated 22nd March, 1950 issued measuring 24.7 Acres. She also stated that the Director of Survey did not issue Deed Plan No. 106270 dated 22nd March 1979 because Deed Plan for L.R No. 5989/5 issued on 22nd March, 1950 had not been cancelled.
94. It was her evidence that Deed Plan No. 106270 dated 22nd March, 1979 allegedly for L.R No. 5989/5 was not supported by records held by the Director of Survey. It was her further evidence that issuance of Deed Plan No. 106270 was not tenable as no re-survey had been carried out according to records held by the Director of Survey. She further stated that on 9th November, 1990 survey plan F/R 215/49 was



- authenticated to give rise to sub-division of 5989/5. She produced survey plan FR 215/49 as Plaintiff Exhibit
95. She also stated that L.R No. 5989/5 was sub-divided into 36 portions on 5th November, 1990 according to F/R No 215/49 which she produced as Plaintiff Exhibit 98. Deed Plans No. 154620 – 154623 were issued by the Director of Survey on 23rd April, 1991. On 15th December, 2018 Deed Plans No.s 429644 -429656, 429659 -429674, 429676 and 429678 were issued by the Director of Survey and collected by an assistant from the firm of G.K. Mugenyu, a private licensed Surveyor. She produced deed plans that were issued on 5th December, 2018 as Plaintiff Exhibit 98.
 96. She also stated that the certificates of titles held by the Plaintiff are supported by records held by the Director of Survey.
 97. On cross examination by the 1st and 2nd Defendants she stated that her statement and documents that she had provided were as per the records that she obtained at the Survey of Kenya.
 98. She also stated that a new deed plan must be issued with a new land reference number. It was her evidence that deed plan no. 106270 dated 22nd March, 1979 is irregular because it was not issued with a new land reference number.
 99. When cross examined by the 3rd Defendant, she stated that that she did not come across the letters exhibited to the statement of Polly Gitimu as they were not in the file during the recording of her previous statements in 2020 and the one dated 8th March,2023.
 100. On cross examination by the 5th Defendant, she stated that the information she supplied and her testimony are anchored on official records at the Director of Surveys office.
 101. When re-examined she told the Court that a deed plan cannot be collected at the Director of Surveys by someone that is not authorised by the licensed surveyor. She also stated that almost all the letters attached to Polly Gitimu’s statement originate from the Ministry of Lands and not from the Director of Survey.
 102. The last witness to testify on behalf of the Plaintiff was Steve Rodgers Kobado, a licensed private surveyor, testified as PW6. He adopted the contents of his witness statement dated 8th March, 2023 as his evidence. He told the Court that he is a licensed Private Surveyor No. 242 practicing in the name and style of Rokos Mapping Consultants. It was his evidence that he undertook the amalgamation of deed plans no. 154620, 154621, 154622 and 154623 for L.R Nos. 5989/66, 5989/67, 5889/68 and 5989/91 respectively.
 103. It was his evidence that vide a letter dated 18th April, 2019 the Director of Land Administration granted an approval of the proposed amalgamation and sub-division of L.R No. 5989/66, 5989/67, 5989/68 and 5989/91.
 104. It was his testimony that the amalgamation and sub-division that he conducted for L.R No.s 5989/66, 5989/67, 5989/68 and 5989/91 was based on a notification of approval dated 22nd August, 2018 issued by Nairobi City County that he produced as Plaintiff Exhibit 99.
 105. It was his further testimony that by a letter dated 20th January, 2020, he submitted documents for amalgamation that included a field note cover, field note sheets, and survey computations and approved sub-division scheme plan to the Director of Surveys for approval and checking. He produced the letter dated 20th January, 2020 which is at page 404 as Plaintiff Exhibit 101.



106. He also stated that by letter ref no. L.R 199/Vol.8/186 dated 20th January, 2020 which he produced as P.E.X 102, the Director of Survey informed him that the intended amalgamation and sub-division had been approved and deed plans could be submitted for signatures and sealing.
107. He further stated that on 3rd February, 2020 he submitted to the Director of Surveys deed plans for L.R No. 5989/230 and 5989/231 -243 for approval, signing and sealing. He produced the letter dated 31st January, 2020 as Plaintiff Exhibit 103. This letter shows that survey fees for both the amalgamation and sub-division of L.R NO. 5989/66, 5989/67, 5989/68 and 5989/91 amounting to Kshs. 14,000 was not only paid for but also receipted by the Director of Survey.
108. He further stated that by a letter dated 4th February, 2020 the Director of Survey released deed plans for L.R No.s 5989/230 -242 and 5989/230/1 to him and in support of this position, he produced the Director of Survey's letter dated 4th February, 2020 as Plaintiff Exhibit 104. He also told the court that he successfully amalgamated deed plans for L.R No. 5989/66, 5989/67, 5989/68 and 5989/91 and thereafter sub-divided them, which process resulted to issuance of deed plans for parcels L.R No. 5989/231 - 243 whose titles together with deed plans appear at pages 209 to 260 of the Plaintiff's trial bundle.
109. When cross-examination by the 1st and 2nd Defendants he stated that he is a licensed Surveyor No. 242. He also told the Court that he is licensed by the Survey of Kenya Board and that he is also a member of the Institute of Surveyors of Kenya. He stated that the Plaintiff gave him Deed Plans for L.R Nos 154620, 154621, 154622 and 154623 which he amalgamated and sub-divided and that the deed plans he amalgamated are different from what the 4th Defendant allegedly holds.
110. On further cross examination he stated that the Director of Surveys upon amalgamation and sub-division by letter dated 4th February, 2020 issued him with fifteen (15) deed plans. Out of the 15 deed plans, 13 were to be registered as resultant sub-divisions, one (1) deed plan showed the entire parcel while one (1) deed plan related to the road that was to be surrendered.
111. He further stated during cross-examination that a survey can be amended or even cancelled before registration. It was his testimony that an amalgamation and further sub-division can be conducted without the necessity of obtaining title but subject to procurement of necessary approvals. He also stated that he freely accessed the property during amalgamation and sub-division and that he was not denied any access. It was also his evidence that he visited the suit property during the exercise.
112. Upon cross examination by the 3rd Defendant, he told the court that he placed beacons on the ground using iron pins in concrete form around August, 2019. He further stated that before proceeding with the instructions he personally visited the survey department and verified with the Director of Surveys that the original deed plans handed over to him by the Plaintiff were genuine.
113. While being cross examined by the 4th Defendant, he told the Court that deed plans can be amalgamated and sub-divided before titles are issued. He stated that he conducted necessary due diligence at Lands office by way of searches on the parcel numbers in question and confirmed that the deed plans had not been used for registration
114. When re-examined he clarified that his work as a licensed surveyor ended after the Director of Survey released signed and sealed deed plans. He reiterated he conducted due diligence and ascertained that the deed plans that he amalgamated were authentic. He further told the Court that during amalgamation, the first deed plan shows the entire parcel, the second shows the road to be surrendered and the remaining 13 relate to the resultant sub-divisions.



1st and 2nd Defendants case

115. The 1st and 2nd Defendant filed a statement of defence dated 18th February 2020 which was later amended on 7th October 2020.
116. It was averred that the Plaintiff's claim to the suit property is predicated on blatant falsehoods and fraudulently processed documents with the sole aim and objective of depriving the rightful owners of their property rights. The 1st and 2nd Defendant pleaded particulars of fraud as against the Plaintiff and they urged the court to dismiss the Plaintiff's suit.
117. During trial, three witness testified on behalf of the 1st and 2nd Defendants, John Frankland Beakabane testified as DW1, Goerge Mugenyu as DW2 while Peter Mburu Burugu testified as the DW3.
118. DW1 adopted his witness statement dated 5th February 2021 stated that his mother's name Zena Grace Linsley had been used in land transactions documents that had been procured fraudulently. He stated that his mother died in the United Kingdom on 22nd October 1999 and he produced a copy of her death certificate in respect to the same.
119. When crossed examined by the Plaintiff's Counsel and pressed to reveal his identity he stated that he did not have any of his personal identification documents in court. He also stated that he had no filed in Court any documents bearing the alleged mother's genuine signature. While admitting that he is not a forensic document examiner, he stated that he did not have the ability to confirm or deny whether the signature on the conveyance between the Plaintiff and Zena Grace Linsley was not genuine.
120. When asked whether he had the original death certificate in Court, he stated that he did not have the alleged original death certificate of Zena Grace Linsley Beakabane which he stated that it was lost in the U.K in 2019. He also stated that he did not travel to the United Kingdom to collect it as the same was sent to him by his sister.
121. He also stated in cross examination that the names Zena Grace Linsley and Zena Grace Linsley Beakabane are different. He further stated that whereas the purported death certificate refers to the deceased as Zena Grace Linsley Beakabane, the conveyance instruments held by the Plaintiff refers to Zena Grace Linsley, which is a different name.
122. When asked on whether he had reported the alleged fraud he stated that he had neither reported the alleged fraud to the police nor recorded any statement with the police over his claim.
123. He further stated during cross examination that he was neither the executor nor administrator of the estate of Zena Grace Linsley Beakabane and he did not therefore have authority to represent or speak on behalf of her estate. He also stated that he did not know who the personal representative of Zena Grace Linsley Beakabane was.
124. He also stated that he did not know details of the properties that they allegedly sold and that he had not sighted or filed any agreement for sale in Court. He also stated that he was not sure of the details of the exact properties owned by his parents in Nairobi.
125. In re-examination he stated that Zena Grace Linsley acquired the name Beakabane after her marriage to Alan Frankland Beakabane. He also stated that he was not the one who applied for the death certificate but the same was done by his sister.
126. The second witness to testify on behalf of the 1st and 2nd Defendants was George Kimathi Mugenyu a Licensed Surveyor who testified as DW2. He adopted the contents of his statement dated 22nd February, 2021 in his evidence in chief. He stated that he carried out sub-division of L.R No. 5989/5 in the year



- 1990 on instructions of the 4th Defendant who were the registered owners at that time. He also stated that under the professional practice of Licensed Land Surveyor, no surveyor can hijack the partially completed work of another Surveyor and proceed with the processing of the title documents. He also stated that it was irregular and improper for Steve Rogers Kobado a Land Surveyor to have taken over and subdivided four plots into thirteen plots without his consent.
127. When cross examined by the Plaintiff's Counsel he stated that neither the Plaintiff nor his predecessor in title approached him to undertake sub-division of L.R No. 5989/5. He further stated that the documents exhibited by the Plaintiff to show that he either undertook sub-division of the suit property on his behalf or that of his predecessor in title are false and forged. He denied issuing the receipt at page 400 of the Plaintiff's bundle. He also stated that he never received the Plaintiff's letter addressed to him that appears at page 399 of the Plaintiff's trial bundle.
 128. He denied preparing deed plans dated 10th December, 2018 that anchor thirty-one (31) certificates of title held by the Plaintiff.
 129. When cross examination by the 4th Defendant he stated that he was instructed by Francis Ng'ang'a Gicharu on behalf of the 4th Defendant to sub-divide L.R No. 5989/5.
 130. On cross examination by the 5th Defendant he stated that although the 4th Defendant instructed him to produce 38 deed plans he had only produced 5. He stated that the 4th Defendant has not contacted him over the conclusion of the sub-division.
 131. He also stated during cross examination that he had seen a statement recorded by Fred Ngatia SC with the police on 23rd July, 2020 confirming that he did not witness the survey fee acknowledgment between his firm and the 4th Defendant. He further stated that he had seen a statement recorded by Fred Ngatia Advocate SC confirming that his signature and stamp impression on the fee acknowledgment between the firm of Ms. G. K Mugenyu and the 4th Defendant were forgeries.
 132. He also stated in cross examination that he had seen a forensic examination report dated 24th July, 2020 which had concluded that the signature of Fred Ngatia Advocate on the survey fee acknowledgment note was a forgery and that a recommendation had been made that he should be charged with the offence of forgery.
 133. He further told the Court during cross examination that he had not done anything to challenge the contents of the statement of Fred Ngatia Advocate dated 23rd July, 2020, the contents of the DCI forensic examination report dated 24th July, 2020 and the recommendation contained in the DCI report that he should be charged with the offence of forgery of survey fee acknowledgment note which he tendered as evidence in this matter to suggest that he was instructed by the 4th Defendant and not the Plaintiff.
 134. He stated during cross examination that he had not made any report of forgery against the Plaintiff to the police and further that he had not subjected the contents of this receipt dated 14th August, 1990 including the signature thereof to any forensic examination to support the contention that it is a forgery.
 135. When asked about the deed plans for parcels L.R Nos. 5989/66, 67, 68 and 91 allegedly produced for the 4th Defendant, he confirmed that they do not bear a signature of the Director of Surveys but the name D. R. Gitau contrary to requirement that deed plans should be signed by the Director of Survey and that he had no evidence in the form of a release letter or authentication slip to support their issuance by the Director of Survey.



136. In re-examination, he told the Court that Mwai Kariuki was running errands and conducting survey in his firm in the 1990s when he was the Chief Lands Surveyor at Nairobi City Commission and that he knew Francis Maina Ndegwa who was working with Mwai Kariuki.
137. Peter Mburu Burugu, the 1st Defendant and a Director of the 2nd Defendant testified as DW3 and the final witness for the 1st and 2nd Defendants.
138. He adopted his witness statement dated 12th November 2020 in his evidence in chief. He stated that the 2nd Defendant purchased L.R No. 5989/5/R from the Deposit Protection Fund Board (the Liquidator of Postbank Credit Limited). It was his evidence that the latter sold and transferred L.R No. 5989/5/R to it in exercise of the statutory power of sale as a charge to recover funds that had been advanced against the security of this property. He told that the Court that the 4th Defendant has challenged the exercise of the statutory power of sale at Nairobi HCCC No. 710 of 2009 which is still that is pending. It was his testimony that the title held by the 2nd Defendant is valid because it contains numerous entries including a caveat that was registered as entry number 18 on grant number 35802 before its purported registration vide entry number 19 without removal of the stated caveat.
139. He also stated that he took possession of L.R No. 5989/5/R in May 2007 following the purchase by the 2nd Defendant and he further denied that the Plaintiff has ever occupied the suit land and alleged that it was not until 2nd November, 2019 that he attempted to take possession of the suit property forcibly.
140. When cross examination by Counsel for the 3rd Defendant, he stated the 2nd Defendant owns L.R No. 5989/5/R and had fenced the same. He further stated during cross examination by the 3rd Defendant that the intended acquisition of 9.575 acres comprised in L.R No. 5989/5989 as envisaged in Gazette Notice Number 3439 dated 12th November, 1970 never went through.
141. In cross examination by the 4th Defendant, he stated that the 2nd Defendant purchased L.R No. 5989/5/R from Post Bank Credit Limited (In Liquidation) according to the agreement for sale dated 1st March, 2005 at pages 11 to 17 of the 5th Defendant's bundle. He also stated that the parties to agreement were Postbank Credit Limited (In Liquidation) and Juma Muchemi. He also stated that the 2nd Defendant was not a party to the sale agreement dated 1st March, 2005 whose subject matter was L.R No. 5989/R and neither L.R No. 5989/5 nor 5989/5/R.
142. He further stated in cross examination that there was no evidence of a transfer between Post Bank Credit Limited (In Liquidation) and the 2nd Defendant before its registration as the owner vide entry no. 19 on grant number 35802. He was not present during the registration of the 2nd Defendant as the owner of L.R No. 5989/5/R. He did not have a discharge of charge and further charge before registration of the 2nd Defendant as the owner vide entry no. 19 on grant no. 35802. Neither did he know whether a discharge of charge and further charge took place as there was no entry depicting registration of a discharge and that no evidence had been tendered to show payment of the purchase price of Kshs. 18 million.
143. In further cross examination by the Plaintiff he stated that the 2nd Defendant's parcel of land is known as L.R No. 5989/5/R which he stated neither has a certificate of title nor a deed plan. He also stated that Juma Muchemi and the 2nd Defendant are different persons and there was no correspondence or agreement to show that the latter had nominated the former to acquire interest over any property from Post Bank Credit Limited (In Liquidation). He also stated that he was not involved in the negotiations, sale and transfer of L.R No. 5989/5/R to the 2nd Defendant. It was his testimony that he only became a director of the 2nd Defendant sometime in 2009 after L.R No. 5989/5/R had already been transferred to the 2nd Defendant. He further stated that as at 17th April, 2009 he was not a director of the 2nd



Defendant. It was his further evidence that neither him nor the 2nd Defendant conducted due diligence before the purchase of L.R No. 5989/5/R.

144. He further stated that he had neither presented the consent of the Commissioner of Lands nor transfer that was obtained before the alleged registration of the 2nd Defendant as the owner of L.R No. 5989/5/R. He also stated that the 2nd Defendant neither applied for nor obtained a rates clearance certificate before its alleged registration as the owner of L.R No. 5989/5/R.
145. When asked about how he had obtained the purported certificate of death of Zena Grace Linsley Beakabane at page 145 of the 1st and 2nd Defendant's bundle, he stated that he had not presented any correspondence to show how he obtained it.
146. When re-examination, he told the Court that the intended acquisition of 9.5 acres comprised in L.R No. 5989/5 as contemplated by entry number 2 on grant no. 35802 did not materialize. The 2nd Defendant company is still in existence. He constructed the perimeter wall in 2015. He is waiting for the completion of the case to develop the land.

The 3rd Defendant's case

147. The 3rd Defendant filed a Statement of Defence dated 15th February, 2020 which was later amended on 14th September, 2020 in which it denied the Plaintiff's case and prayed that the suit be dismissed with costs.
148. During trial four witnesses testified on behalf of the 3rd Defendant; Chief Land Registrar David Nyandoro Nyambaso, Government Surveyors Wilfred Muchae Kabue and Paul Owino Odak and Government Valuer, Rose Nabiswa. The 3rd Defendant relied on the bundle of documents dated 3rd March, 2021 containing 40 documents.
149. Mr. David Nyandoro Nyambaso the Senior Assistant Chief Land Registrar testified as DW4. He adopted his witness statement dated 14th September, 2020 as his evidence in chief and relied on the documents he had filed. DW4 testified that the original files relating to parcels L.R No. 5989/5, 5989/66, 5989/67, 5989/68 and 5989/91 were missing but scanned copies were available.
150. DW4 testified that the copy of Grant L.R 35802 for L.R No. 5989/5 shows that it was registered in the name of the 4th Defendant on 19th October, 1983. DW4 stated that there is an indication on Grant 35802 that it was issued pursuant to a surrender of the previous title to the Government though he stated that he had never seen the surrender instrument as it was not in the records at the Ministry.
151. He also stated that the copies he retrieved showed that the suit property was subdivided in 1991 by the 4th Defendant giving rise to 5989/5/R, 5989/66, 5989/67, 5989/68 and 5989/91 going by the entries. He also stated that the records relating to the interest claimed by the Plaintiff over the suit property and the resultant 44 subdivisions were in the custody of the 3rd Defendant but there are errors and omissions on the face of some of the records which informed his opinion that some may have been irregularly procured.
152. It further stated that a deed plan precedes issuance of title and no valid interest can be registered over a parcel in the absence of a deed plan with an assigned land reference number by the Director of Surveys or a Registry Index Map (RIM) as the case may be. He also stated in evidence that where sale of property is by way of private treaty, then both an instrument of transfer and discharge need to be prepared and registered as distinct entries.
153. He also stated that there is no dispute that the suit property was once owned by Saint Benoists Plantation Limited and Basil George Mitton as shown by the Indentures in the 3rd Defendant's



- custody. He also stated that the assessment and franking of the Plaintiff's Conveyance dated 5th September, 2000 was irregular since the franking was done on 1st September, 2000 before the document was dated.
154. He further stated that where the consent of the Commissioner of Lands is a prerequisite prior to subdivision of land, then the same has to be obtained for the subdivision to be valid. He stated that he had not seen any consent of the Commissioner of Lands that was granted prior to the subdivision that is said to have been done by the 4th Defendant.
 155. It was his testimony that the deed files for parcels 5989/66, 5989/67, 5989/68 and 5989/91 that are said to have been registered in the name of the 4th Defendant following the subdivision were missing but only the scanned copies he has filed in Court were obtained from the Land Information Management System.
 156. He further stated that that he did not have any information to contradict the evidence of Priscila Njeri Wango who testified pursuant to Court summons as PW5 to the effect that deed plans for 5989/66, 5989/67, 5989/68 and 5989/91 that were released on 23rd April, 1991 have never been used for registration and the originals are in the custody of the Director of Survey.
 157. On cross examination by the 1st and 2nd Defendants, he stated that it is not a requirement that entries for removal of a caveat and a discharge be made before registration of a transfer. He told the Court that L.R No. 5989/5 could not have been available for sale and transfer to the Plaintiff in entirety given the sub-divisions that allegedly took place on 27th May, 1991. He also stated that the sub-divisions held by the Plaintiff originated from the Ministry of Lands although the procedure was irregular.
 158. In cross examination by the 4th Defendant, he stated that the statement and documents filed in Court by Mr. Edwin Wafula Munoko, a Land Registrar that testified in this matter as PW4 were based on other documents and information contained in a separate file held by the Ministry of Lands and 3rd Defendant.
 159. In cross examination by the 5th Defendant, he told the Court that there are instances of duplication of land records at the office of the 3rd Defendant.
 160. When asked by the Plaintiff about the registration of the memorandum of a transfer between the 4th Defendant and Basil George Mitton on the 17th September 1955 which was on a Saturday, he stated that throughout its existence before and after independence, the office of the Chief Land Registrar has never registered any document on Saturday or Sunday.
 161. During cross examination by the Plaintiff, he stated that he did not know how the 4th Defendant acquired the suit property. He further stated that he had neither interacted with the deed plan no. 106270 nor the deed plan for the parcel of land claimed by the 4th Defendant being L.R No. 5989/5/R. He was equally uncertain of the user of the property L.R No. 5989/5 prior to 1983. He also told the Court that it is the office of the Director of Surveys that assigns Land Reference Number and not the Chief Land Registrar.
 162. He further stated that he was not in a position to confirm how the 4th Defendant allegedly acquired L.R No. 5989/5 vide grant number 35802 which the DCI have concluded is a forgery.
 163. When asked on whether a land reference number can exist without a deed plan he stated that a deed plan must be prepared before a land reference number is issued. A deed plan precedes the issuance of a title. There is no deed plan for L.R No. 5989/5/R.
 164. When asked about the contents of an official search, he stated that it is the Land Registrar who provides a search whose content is dependent of the application.



165. He also stated during cross examination that according to the repealed Government *Land Act*, Cap 280, the file for L.R No. 5989/5 could not be closed to give rise to titles under the repealed Registration of Titles Act, Cap 281 without the registration of a surrender. He further stated that he had not seen the surrender that should have preceded the issuance of grant number I.R 35802 under the repealed Government Lands Act, Cap 281.
166. In re-examination he stated that although he is in a position to establish whether a document is genuine or not, there are instances where the 3rd Defendant would prefer that forensic examination be undertaken by the DCI.
167. Wilfred Kabue Muchae an Assistant Director of Survey testified on behalf of the 3rd Defendant as DW5. He relied on his witness statement dated 22nd June, 2023 as his evidence in chief. He further relied on his bundle of documents dated 27th June, 2023. It was his testimony that the suit property L.R No.5989/5 was initially issued with deed plan no. 45300 dated 22nd March, 1950 but was later also issued with Deed Plan No. 106270 following an application for change of user by way of surrender. It was also his testimony that the suit property was subdivided by Surveyor George Mugenyu in 1990 leading to the issuance of four parcel deed plans on 23rd April, 1991. The rest of the deed plans subject of the subdivision were released on 5th December, 2018 and they are the ones that were used in registering the Plaintiff's titles as per the copies filed in Court.
168. On cross examination he stated in evidence that the original deed plans need to be surrendered to the Director of Survey before any amalgamation can take place and if the same had been used for registration then they are to be surrendered together with the title to the Chief Land Registrar. He also stated that a title must be supported by a deed plan bearing a distinct land reference number assigned by the Director of Surveys or an RIM. He further stated that land reference No. 5989/5/R was not assigned by the Director of Surveys as it does not feature in their records.
169. Paul Owino Odak testified an Assistant Director of Survey with Kenya Urban Roads Authority ("KURA") testified as PW6. He relied on his witness statement dated 27th November, 2020. It was his testimony that the copies of the records he obtained from their department showed that 9.575 acres of the suit property was earmarked for compulsory acquisition following publication of a gazette notice dated 12th November, though there existed an objection letter by Basil George Mitton dated 27th December, 1970.
170. On cross examination he stated that the purpose of the intended acquisition was for road construction but the road was re-aligned and another gazette notice for a different location published. On further cross examination by the Counsel for the 4th Defendant he stated that according to the ownership records filed by the Plaintiff the land in 1970 should have belonged to Basil George Mitton though he had not come across any evidence of an award to Basil George Mitton.
171. He also conceded that there is no entry in the Grant IR No. 35802 showing excision of the 9 acres. According to him compulsory acquisition is deemed concluded upon vesting which is not reflected in any of the Grants or titles filed in Court by the parties.
172. The last witness to testify on behalf of the 3rd Defendant was Rose Nabiswa a Government Valuer who testified as DW7. She adopted her witness statement dated 9th November, 2023 as her evidence in chief. She stated that there was an intention to acquire a portion of the suit property and a gazette notice communicating that intention was published on 20th November, 1970. She stated that ordinarily an award is prepared and communicated to the owners of the suit property to either accept or reject the same. She further stated that she was not in possession of evidence to show that the owner of L.R No. 5989/5 accepted an award on account of compulsory acquisition. She further stated that gazette notices



for acquisition were not conclusive proof of ownership of land to be acquired thus the need to have inquiry sittings to address any objections touching on interest over the property and the same would be settled or confirmed through official searches and that it was on that basis that the commissioner of lands issued that gazette notices.

The 4th Defendant's case

173. The 4th Defendant filed a written statement of defence dated 13th August 2020. It was averred that the Plaintiff's suit is statute barred having been brought to court thirty-six years after the Defendant obtained title to the suit property. The same had also been filed without the leave of the court.
174. It was the 4th Defendant's case that it is the bonafide registered owner of the parcel known as L.R No. 5989/5 having been issued with a title on 19th October 1983 under the provisions of Section 23 of the Registration of Title's Act after purchasing the same from Mr. Basil George Mitton and following all the laid down procedures.
175. During trial, Francis Nganga Gicharu testified as the sole witness on behalf of the 4th Defendant being DW8. He relied on his bundle of documents dated 22nd February, 2021 and supplementary bundle of documents dated 10th December, 2021. He adopted his witness statements dated 4th September, 2020 and 10th December, 2021 as his testimony in chief.
176. It was his testimony that the suit property L.R. No. 5989/5 was acquired by the 4th Defendant in December, 1954 from George B. Mitton and interest thereon registered on 17th September, 1955. It was his further evidence that he acquired the suit property in 1983 after he purchased the 4th Defendant's shares from the previous directors. He stated that he subsequently subdivided the suit property in 1991 through private licensed Surveyor George Mugenyu's firm and was issued with 4 separate titles for parcels LR No. 5989/66, 5989/67, 5989/68 and 5989/91 following a partial release of deed plans.
177. He further stated that he used the remainder of the subdivided property to acquire a facility from Post Bank in 1991 and 1992 through a charge and further charge respectively. He also informed the Court the charged portion of the suit property was later disposed of by Post Bank (under liquidation) to the 2nd Defendant in 2007 after they defaulted in repaying the loan advanced.
178. He further stated that he challenged the legality of the transaction between the Bank and the 2nd Defendant in Nairobi High Court Civil Suit No. 710 of 2009 as the same was done fraudulently and the matter is still pending for determination before the Commercial Court. He stated in evidence that in 2000 when the Plaintiff alleged to have acquired the suit property L.R No. 5989/5, the 4th Defendant was the lawful registered owner and thus his claim over the suit property as well as the alleged subdivisions were fraudulent.
179. On cross examination, he stated that he had scanty information concerning how the 4th Defendant acquired the suit property in 1954/1955 and that he had no records touching on the transaction including ownership documents reflecting the interest acquired, transfer or evidence of payment of consideration for the property. He also stated that after he acquired the shares of the 4th Defendant in 1983, returns were filed in 1984 by Emu Registrars owned by Mr. Owen Nyagah Koimburi thereby perfecting his interest as the new director.
180. When asked about the registration of Emu Registrars Limited, he stated that the same was registered as a legal entity on 3rd October, 1991 and its proprietor Mr. Owen Nyagah became licensed as a company secretary in 1990.



181. He further stated that according to filed certified company records, the previous directors of the 4th Defendant whose signatures he was familiar with executed and filed a declaration of solvency in 1973. He conceded that the certified company records as well as gazette notice no. 3596 of 30th November, 1973 showed that the 4th Defendant's shareholders had passed a resolution for the voluntary winding up of the 4th Defendant and liquidators Mr. G. Silcock and Mr. G. Bell were subsequently appointed and gazetted as such vide gazette notice no.3597 of 30th November, 1973. He stated that though the winding up process was initiated, the same was not concluded and the company is still in existence, contrary to the allegations that it ceased operations.
182. On further cross examination he stated that the 4th Defendant vide its amended defence and counterclaim dated 5th December,2013 and filed in Nairobi High Court Suit No. 2459 of 1997 had stated that it was not the owner of the suit property as at 1970. He also stated that he only acquired interest over the suit property in 1983 upon the acquisition of the 4th Defendant's shares and was thus not privy on how the change of user was effected and how new deed plan 106270 for the suit property came about. He admitted that he had neither seen the previous title anchored on deed plan 45300 nor the surrender instrument for the same that was registered before Grant 35802 was issued.
183. When asked about the recommendations made in the DCI report about his prosecution as well as DW2 on allegation of fraud touching on his interest over the suit property as contained in the DCI report dated 29th July, 2020, he stated that he has never been charged over the said accusations.

The 5th Defendant's case

184. The 5th Defendant filed a written statement dated 4th August 2020. It was the 5th Defendant's case that Juma Muchemi the late husband to Mary Wanjiku Juma purchased the land parcels L.R 5989/91, L.R 5989/68, L.R 5989/66, L.R 5989/5 and L.R 5989/95 vide an agreement dated 23rd April 1993 for a total price of Kshs. 30 Million. It was further averred that vide an agreement dated 1st March, 2006, the 5th Defendant's deceased husband purchased land parcel No. LR 5989/5/R from Post Bank Credit Limited through the latter's exercise of its chargee's power of sale at a cost of 18 Million. It was also averred that the 5th Defendant's family has had physical possession of the suit land and custody of the title documents all along save that when the 5th Defendant's husband passed on in December 2018 the directors of Williams and Kennedy the 4th Defendant herein forcibly trespassed on the suit premises and occupied an old dilapidated building in one of the parcels of land. It was also averred that the Plaintiff herein has no legitimate claim to the parcels of the land. The 5th defendant also pleaded particulars of fraud on the part of the Plaintiff.
185. During trial, Mary Wanjiku Juma who was the last witness to testify in the suit, testified on the behalf of the 5th Defendant as DW9. She adopted the contents of her witness statement dated 11th January, 2021 and told the Court that she was the administratrix of her late husband's estate. It was her testimony that by an agreement dated 23rd April, 1993 her late husband who passed away in 2018 purchased the properties.
186. It was her testimony that whereas the agreement for sale dated 23rd April, 1993 envisaged that the whole land was 11.96 Ha, which translates to 29.55 acres, it was established that the Government had allegedly acquired 9.575 acres implying that a substantial portion of the purchased land was not available.
187. She stated that there is a pending dispute between the 5th Defendant and the 4th Defendant in Nairobi HCCC No. 2459 of 1997 where the question of specific performance is directly in issue.



188. She also stated that by an agreement for sale dated 1st March, 2006 the 5th Defendant through the 2nd Defendant purchased L.R No. 5989/5/R from Post Bank Credit Limited (In Liquidation) at a consideration of Kshs. 18 million.
189. She further told the Court that she first heard of the Plaintiff's claim in 2019.
190. When cross examined by the 3rd Defendant, she stated that the 5th Defendant was staying on the suit property until 2018 when the 4th Defendant displaced them. She also stated that the 4th Defendant constructed structures on the suit property after 2018.
191. In cross examination by the Plaintiff, she stated that there is no search from the lands office that was conducted before the 5th Defendant allegedly purchased the suit properties vide the sale agreement dated 23rd April, 1993. She also stated that there is no search and CR12 from the Registrar of Companies on the details of Williams & Kennedy Limited that was obtained before the 5th Defendant allegedly entered into the agreement for sale dated 23rd April, 1993.
192. She further stated that the size of the land that was purchased under the agreement for sale dated 23rd April, 1993 was 11.96 Ha, which translates to 29.55 acres. She further stated that none of the suit properties is registered in the name of the 5th Defendant.
193. When asked about the occupation of the suit property, she stated that on 23rd April, 1993 and 1st March, 2006 when the 5th Defendant allegedly purchased the suit properties, there was no person in occupation thereof.
194. When re-examination, she reiterated that in 1993 and 2007 when the 5th Defendant purchased the suit properties, the parcels in question were vacant.

The Plaintiff's submissions

195. The Plaintiff filed written submissions dated 28th March 2024. The Plaintiff submitted on the following eight issues;
 - i. Who has proved a valid root of title between the Plaintiff and the 4th Defendant,
 - ii. Who has demonstrated fraud as between the Plaintiff and the Defendants,
 - iii. Whether the 4th Defendant has capacity to originate Deed Plan No. 106270 dated 22nd March 1979, acquire Grant No. 35802 for L.R No. 5989/5 and transact thereon,
 - iv. Whether the 4th Defendant obtained registration of Grant Number 35802 for L.R No. 5989/5 on 18th October 1983 if so, does Grant No. 35802 comment itself to the protection under Section 26 of the [Land Registration Act](#), 2012,
 - v. Who has validly subdivided L.R No. 5989/5 between the Plaintiff and the 4th Defendant, Does L.R No. 5989/5/R exist, if so was its acquisition by the 2nd Defendant lawful and legal?
 - vi. Whether the Plaintiff is entitled to damages and unlawful eviction and who should bear costs.
196. Relying on the cases of Dina Management Limited vs County Government of Mombasa & 5 Others [2023] eKLR and Samuel Kamwere vs Lands Registrar, Kajjido [2015] eKLR it was submitted that the Supreme Court had already pronounced itself on the circumstances under which a party's claim as a bonafide purchaser for value can succeed.



197. It was also submitted that the Plaintiff has submitted evidence of an indenture that was registered on 5th September, 2000 to show that he not only purchased the suit property from Zena Grace Linsley but the vendor conveyed a good title to him. The Plaintiff's case is that before the purchase of the suit property and his registration as the owner, he conducted due diligence and established that the vendor, Zena Grace Linsley held a valid title which she had acquired on 5th June, 1991 from Basil George Mitton. In this respect, the Plaintiff tendered in evidence an indenture between Basil George Mitton and Zena Grace Linsley that was registered on 5th June, 1991, which he stated he obtained before the purchase.
198. The Plaintiff has led further evidence in this matter to show that before the purchase of the suit property, he also obtained an indenture dated 19th July, 1950 between Saint Benoist Plantation Limited and Basil George Mitton. This indenture alongside Deed Plan No. 45300 which are at pages 56 to 60 of the Plaintiff's trial bundle show that it was registered by the 3rd Defendant on 25th July, 1950.
199. The legitimacy of the interest held by Zena Grace Linsley and Basil George Mitton over the suit property between 19th July, 1950 and 5th September, 2000 is a fact that has been confirmed by the records held by the 3rd Defendant that were tendered in evidence by Edwin Wafula Munoko, a land registrar, who testified as PW4 in this matter.
200. It was further submitted that David Nyambaso Nyandoro, who testified as DW4 in this matter also confirmed the existence of the indentures dated 19th July, 1950, 5th June, 1991 and 5th September, 2000 in the records of the Ministry of Lands.
201. The indenture between the Plaintiff and Zena Grace Linsley show that the former acquired interest over the suit property at a consideration of Kshs. 20 million. The Plaintiff's testimony was that he liquidated the purchase price to the vendor through the advocate handling the transaction, Joseph M. Rioba & Company Advocates in three (3) instalments. At pages 65 to 67 of the Plaintiff's trial bundle are receipts dated 2nd February, 2000, 11th May, 2000 and 14th June, 2000 that were issued to the Plaintiff by the vendor's advocates. They show payment of the purchase price.
202. The Plaintiff urged the court to find that he is a bona fide purchaser for value that has proved the existence of a valid root title that is traceable from Saint Benoist Plantation Limited, Basil George Mitton, Zena Grace Linsley and finally himself.
203. It was submitted that in respect to the 4th Defendant's claims to have purchased the suit property from Basil George Mitton the memorandum of transfer of registration that was produced in evidence showed that it was registered on 17th September, 1955, which position is also confirmed at paragraph 4 of the statement of DW8 that testified on behalf of the 4th Defendant and his evidence during cross examination. 17th September, 1955, fell on a Saturday. In his evidence, the DW4 told the court that there is no document at the Ministry of Lands that is registered on Saturday or Sunday since pre-colonial era.
204. It was further submitted that 4th Defendant did not produce in evidence any title document either in the name of Basil George Mitton or its name that preceded its alleged grant no. 35802 that is claimed to have been registered on 19th October, 1983.
205. Whereas DW8 claimed that the transfer from B. G Mitton to the 4th Defendant was registered on 17th September, 1955, it is not in dispute that the 4th Defendant did not adduce in evidence the title that it claimed to have acquired on the said 17th September, 1955.
206. The Plaintiff submitted that the 4th Defendant did not produce any transfer document between itself and Basil George Mitton as during trial. At the hearing, DW8 told the Court that there was no evidence



- of payment of purchase price to B. G Mitton. The 4th Defendant also conceded that it neither had a sale agreement or resolutions that sanctioned the alleged purchase of the suit property from Basil George Mitton.
207. It was also submitted that DW4 told the court that there was no evidence to show how the 4th Defendant acquired grant no. 35802. The Chief Land Registrar further confirmed that there was no evidence of surrender that gave rise to grant no. 35802. It was also his evidence that the issuance of grant no. 35802 under the Registration of Titles Act, Cap 281 repealed ought to have been preceded by closure of the file pursuant to the Government Lands Act, Cap 280.
208. According to the Plaintiff, it was argued that in absence of the surrender and title document that allegedly gave rise to grant no. 35802 that was issued on 19th October, 1983 there has been total failure by the 4th Defendant to prove that its root title is valid. Reliance was placed in the Court of Appeal case of Samuel Kamwere v Lands Registrar, Kajiado [2015] eKLR where it was held that a party must demonstrate that they carried out necessary due diligence to determine the lawful owner of a piece of land and further tender evidence to show payment of valuable consideration as the purchase price.
209. On who has demonstrated fraud between the Plaintiff and the Defendants, it was submitted that what the 1st and 2nd Defendants relied on to suggest that the Zena Grace Linsley that sold and transferred the suit land to the Plaintiff on 5th September, 2000 died on 22nd October, 1999 is a purported certified copy of a death certificate that appears at page 145 of their bundle that was never admitted as an exhibit. The 1st and 2nd Defendants did not produce the original version of the alleged certificate of death dated 22nd October, 1999. DW1 claimed during cross examination that the original got lost in 2019 in the United Kingdom. The alleged certified copy of the certificate of death is for all purposes and intends a foreign document that purports to have been issued in the City of Southampton in England and Wales.
210. The Plaintiff argued that the purported certified copy of the certificate of death dated 22nd October, 1999 is not admissible on account of violation of Section 82(g) of the *Evidence Act*, Cap 80. The purported certified copy of the certificate of death dated 22nd October, 1999 does not bear a certificate under seal by a notary public or Kenya consular or diplomatic agent confirming that it has been certified by the officer in England and Wales having its lawful custody.
211. It was contended that 1st and 2nd Defendants not only failed to present evidence to support the contention that Zena Grace Linsley died on 22nd October, 1999 and never owned the suit property as alleged but also presented evidence that was punctuated with serious shortcoming that included the fact that John Frankland Beakabane did not produce an identity card or passport for purposes of identification neither did he produce a birth certificate nor any other document that would identify him as such. He also did not provide evidence on how he accessed or obtained the alleged certificate of death dated 22nd October, 1999 and purportedly certified on 17th November, 2020 despite stating that he last visited the United Kingdom in 2019.
212. It was also contended that John Frankland Beakabane's evidence that his alleged mother neither owned the suit property nor any other property in the Nairobi area including L.R No. 5989/2 contradicted the contents of Gazette Notice No. 3439 dated 12th November, 1970 which show that a person identified as Zena Grace Linsley Beakabane owned L.R No. 5989/2 in Nairobi Area and in view of the foregoing, the Plaintiff urged the Court to find that the Defendants have not, on a balance of probabilities established that Zena Grace Linsley died on 22nd October, 1999 or that she never owned the suit property.
213. The Plaintiff submitted that while the Defendants had in their pleadings alleged fraud on the part of the Plaintiff on the basis that about 9.9 acres of the suit property L.R No.5989/5 which he claims to



own as a whole was actually compulsorily acquired by the Government, the 1st, 2nd and 4th Defendants abandoned their position on the issue of compulsory acquisition and asserted that the intention to acquire the said portion of L.R No. 5989/5 was never actualized. According to the Plaintiff this change in position was informed by the uncontroverted evidence tendered by the Plaintiff demonstrating that the then lawful registered owner, George Basil Mitton vide a letter dated 21st December, 1970 (page 358 of the Plaintiff's bundle) protested the gazette publication of 12th November, 1970 which purported that the 4th Defendant was the owner of the suit property. The Commissioner of Lands vide a letter dated 28th December, 1970 clarified that the erroneous publication had been noted and rectified.

214. It was also submitted that while the 4th Defendant vide its own evidence confirmed that it was not the owner of L.R No. 5989/5 in 1970 as evidenced by paragraph 7(b) of its amended defence and counterclaim date 5th December, 2013 filed in Nairobi HCCC No. 2459 of 1997 (pages 258 to 263) of the 1st and 2nd Defendants' bundle the 3rd Defendant, had also alleged that there was compulsory acquisition of about 9.9 acres of L.R No. 5989/5, all its witnesses being DW4, DW5, DW6 and DW7 conceded that there was neither evidence that 9 acres of the property was acquired and surrendered to the Government nor proof that payment was made and acknowledged for the alleged acquisition. Despite purporting that the 4th Defendant was paid for the acquisition as the owner, no evidence was tendered in the form of a search, title or transfer to demonstrate that the 4th Defendant was the lawful owner of L.R No. 5989/5 and that it in fact received the alleged payments. The alleged payee, the 4th Defendant, has also categorically during trial denied the alleged acquisition and payments.
215. The Court was urged to find that lawful compulsory acquisition of L.R No. 5989/5 was not demonstrated by the 3rd Defendant. There was no evidence that the lawful owner George Mitton was granted alternative agricultural land as requested or paid any compensation considering the 4th Defendant in evidence denounced interest over the property in 1970 and has refuted the allegations that it was paid any compensation by the Government. Reliance was placed in the case of *Dismas Egesa Osinya v County Government of Busia* [2018] eKLR held;

“But the law applicable prescribes various steps to actualise compulsory acquisition. Necessarily, each of these steps has, or should have, the required back-up records. And this is so even regarding any compensation paid. That the Plaintiff did not avail the necessary back-up records is an indication that the law was not followed to the letter. This in effect gives plausibility to the Plaintiff's claim.”

216. It was further submitted that the assertion by George Kimathi Mugenyu that the Plaintiff and Zena Grace Linsley did not instruct him to sub-divide the suit property was untrue because while giving evidence George Kimathi Mugenyu confirmed that before he was licensed in 1988 he used to prepare survey documents which he would submit to a licensed surveyor for execution. George Kimathi Mugenyu asserted that in 1990 he was working as a Chief Land's Surveyor at Nairobi City Commission and also working as a private licensed surveyor at the same time. He told the Court that he had employed one Mwai Kariuki among other employees who was working in his office and running errands on his behalf. He had confirmed at trial that Francis Maina Ndegwa, whose statement as recorded with the DCI appear at pages 637 to 638 of the Plaintiff's trial bundle was working with Mwai Kariuki.
217. It was the Plaintiff's submission that the evidence of the DCI as submitted in Court by PW2 shows that Francis Maina Ndegwa was employed by George Kimathi Mugenyu as a survey assistant, which position was later confirmed when he stated that Francis Maina Ndegwa worked with Mwai Kariuki who was his employee.



218. It was further submitted that George Kimathi Mugenyu testified that it is tenable for a surveyor who has not been licensed to prepare survey documents and present them to a licensed surveyor for execution and he had further told the court that one of the employees working in his firm in 1990s was one Mwai Kariuki who used to run his errands in his private licensed surveyor's firm. In re-examination he had told the court that Francis Maina Ndegwa worked with Mwai Kariuki.
219. It was further submitted that on that basis Francis Maina Ndegwa who was working with George Kimathi Mugenyu undertook and completed sub-division of L.R No. 5989/5 on his instructions and that of Zena Grace Linsley.
220. The court was also urged to refer to the DCI report that contains the statement of Francis Maina Ndegwa dated 25th March, 2020. The DCI report not only shows that Francis Maina Ndegwa was an employee of Ms. George Kimathi Mugenyu but also demonstrated that during his employment they were instructed by Zena Grace Linsley and subsequently the Plaintiff to sub-divide L.R No. 5989/5.
221. It was the Plaintiff's submissions that while DW2 had led evidence that he was instructed by the 4th Defendant in October, 1990 to carry out the survey work and indeed participated in obtaining the necessary approvals, he was unable to explain how the purported approvals were obtained prior to the instructions only stating that he was unsure when he actually started the work.
222. The Plaintiff also submitted that at the hearing, Alex Mwongera, an Assistant Superintendent of Police - PW3, confirmed that he is the forensic document examiner that prepared the forensic document examination report at pages 708 to 718 which showed that George Kimathi Mugenyu forged the signature of Fred Ngatia Advocate and that there was also a forensic document examination report dated 24th July, 2020, which was produced as Plaintiff Exhibit 90 that shows George Kimathi Mugenyu has presented a forged survey fee payment acknowledgement note to both the Court and the DCI. The contents of this forensic document examination report had not been rebutted by the Defendants. As a result, the Plaintiff urged the Court to follow the reasoning and find that he has proved beyond the balance of probabilities that George Kimathi Mugenyu forged a survey fee acknowledgement note in an attempt to mislead the court and is therefore not a credible witness.
223. Submitting further on the aspect of fraud, it was argued that the Plaintiff has at paragraph 14C of his plaint pleaded that the 4th Defendant claim over the land is fraudulent. At paragraph 14C(h) the Plaintiff has pleaded the particulars of fraud against the 4th Defendant as presenting grant number 35802, Land Reference Number 5989/5 as genuine and uttering false entries thereon.
224. Patrick Khaemba Maloba, a Chief Inspector of Police, who testified as PW2 produced the DCI inquiry report dated 29th July, 2020 which shows that the 2nd and 4th Defendants presented him with grant no. 35802 that although allegedly signed by the Commissioner of Lands, James Raymond Njenga on 28th July, 1981 they contained contradictory entries. PW2 was emphatic that this was an unusual phenomenon that prompted him to obtain certified copies of ownership documents containing known signatures of the Commissioner of Lands, James Raymond Njenga which he forwarded for examination by a forensic document examiner against the signature appearing on grant no. 35802.
225. Certified copies of the known sample signatures that PW2 collected from the 3rd Defendant appear at pages 574 to 582 of the Plaintiff trial bundle. PW2 told the Court that upon examination, it was established that the signature of the Commissioner of Lands on grant no. 35802 held by the 2nd and 4th Defendants had been forged, which fact made the DCI recommend that Francis Ng'ang'a Gicharu be charged with the offence of conspiracy to commit a felony namely forgery of grant no. 35802, L.R No. 5989/5.



226. It was further submitted that Alex Mwongera, an Assistant Superintendent of Police who testified as PW3 and the forensic document examiner that examined the alleged signature of the Commissioner of Lands on grant no. 35802 alongside his known signatures and authored the forensic document examination report dated 16th June, 2020 testified and produced it as Plaintiff Exhibit 73. PW3's evidence was that the alleged signature of the Commissioner of Lands, Raymond Njenga on grant no. 35802 was dissimilar and distinguishable from his known signatures and therefore a forgery. PW3 told the Court that in arriving at this conclusion, he considered a number of factors that included pen movement, pen speed, pen lift, initial and terminal strokes, general resemblance and natural variations.
227. Citing the case of John G. Kamuyu & another v Safari 'M' Motors [2013] eKLR held it was submitted that no expert report was produced by the Defendants to counter the contents of the forensic examination report dated 16th June, 2020 which showed that the 4th Defendant forged the signature of the Commissioner of Lands, James Raymond Njenga on grant number 35802 for L.R No. 5989/5.
228. The court was urged to find that the Plaintiff has established beyond a balance of probabilities that the 4th Defendant fraudulently procured grant no. 35802 for L.R No. 5989/5 measuring 9.999 Ha.
229. It was further submitted that It is undeniable that that vide Gazette Notice No. 3596 contained in Kenya Gazette edition of 30th November, 1973 the 4th Defendant gave of the resolution for voluntary winding up that has been passed on 23rd November, 1973 as contemplated by section 272(1) of the Companies Act, Cap 486 repealed. It is also not contested that vide Gazette Notice No. 3597 dated 23rd November, 1973 contained in Kenya Gazette edition of 30th November, 1973 the 4th Defendant gave notice of appointment of G. J. G Silcock and J. G Bell as its joint liquidators. The Plaintiff produced Gazette Notices No. 3596 and 3598 contained in Kenya Gazette edition of 30th November, 1973 as Plaintiff Exhibit 55. Francis Ng'ang'a Gicharu who testified on behalf of the 4th Defendant not only alleged that he was its director but also confirmed that the directors of the company validly passed the resolution to wind it up on 23rd November, 1973, which resolution were duly published in the Kenya Gazette on 30th November, 1973. He claimed to have known the signatures of G. M. Kennedy and J. M. Williams, the directors of the 4th Defendant and indeed confirmed that they executed the declaration of solvency on 15th November, 1973.
230. Francis Ng'ang'a Gicharu, despite conceding that he was aware that a company as a distinct and separate entity from its shareholders, directors and employee can only act through its organs and make decisions by resolutions, told the Court that the 4th Defendant had never passed resolutions to rescind the resolution to wind it up as contained in the special/ordinary resolution dated 23rd November, 1973. He had confirmed to the Court that the 4th Defendant has to date never passed any resolution to rescind the appointment of G. J. G Silcock and J. G Bell as joints liquidators for purposes of winding it up. Neither had they passed any resolution rescinding the resolution no. 2 of 23rd November, 1973 that the joint liquidators of the 4th Defendant distributes its assets among the shareholders.
231. It was contended that the resolution for the voluntary winding up of the 4th Defendant Company was passed on 23rd November, 1973 and according to section 273 of the repealed Companies Act, Cap 486, the winding up of this company commenced on 23rd November, 1973 by operation of the law.
232. It was further contended that the 4th Defendant has not exhibited any deed plan and or title to show that it owned the parcel of land known as L.R No. 5989/5 before 23rd November, 1973 when the voluntary winding up of the 4th Defendant commenced. On the contrary, the 4th Defendant has in evidence confirmed that it was not the registered owner of the property in the 1970s.
233. The Plaintiff submitted that PW2 had told the Court that his investigations established that Francis Ng'ang'a Gicharu, a purported director of the 4th Defendant was the main architect of the fraudulent



acquisition of L.R No. 5989/5 and that he achieved this fraudulent acquisition by using a company that had been liquidated voluntarily by its members as a special purpose vehicle to deprive the lawful owner(s) of L.R No. 5989/5.

234. On whether the 4th Defendant was fraudulently employed by its purported directors as a special purpose vehicle to deprive the Plaintiff and his predecessors in title the suit property, the Plaintiff relied on section 275 of the repealed *Companies Act*, Cap 486 and the allegation by Francis Ng'ang'a Gicharu that he was offered to purchase shares in the 4th Defendant on 13th October, 1983, became a director on 31st January, 1984 and shares transferred to him on 24th February, 1984.
235. It was contended that the purported appointment of Francis Ng'ang'a Gicharu and Eunice Wanjiku Gicharu as directors of the 4th Defendant happened on 31st January, 1984 long after the commencement of the member's voluntary winding up on 23rd November, 1973. The purported transfer of shares in the 4th Defendant from George Michael Kennedy, John Michael Williams and Pamela Savage to Francis Ng'ang'a Gicharu and Amy Kagendo Gicharu happened on 24th February, 1984 after commencement of the member's voluntary winding up on 23rd November, 1973.
236. It was further contended that the evidence on record shows that the 4th Defendant forged the signature of the Commissioner of Lands on grant. 35802 which it purported to acquire after commencement of the winding up.
237. Relying on the testimony of Patrick Maloba Khayemba, PW2, it was submitted that the filing of the purported annual returns on behalf of the 4th Defendant in the years 1984, 1985 and 1986 by Owen Njenga Koimburi and Emu Registrars Limited was fraudulent. His evidence was that Owen Njenga Koimburi became licensed to practice as a certified public secretary on 23rd November, 1990 while Emu Registrars Limited was incorporated on 3rd October, 1991 and could not have validly filed returns for the 4th Defendant in 1984, 1985 and 1986.
238. The contents of the letter dated 1st July, 2020 authored by the Institute of Certified Secretaries at pages 687 of the Plaintiff's trial bundle that was produced as his exhibit 84 have not been impeached. This letter is conclusive evidence that Owen Njenga Koimburi that Francis Ng'ang'a Gicharu told the Court filed returns on behalf of the 4th Defendant was licensed to practice as a company secretary on 23rd November, 1990.
239. The contents of the search at page 354 of the Plaintiff's trial bundle that shows that Emu Registrars Limited was incorporated as a company on 3rd January, 1991 have also not been impeached.
240. In *Hasham Lalji Properties Limited v Philip Kimaiyo Komen & 2 others* [2017] eKLR the Court stated that it is a legal fantasy that a non-existent entity can claim right that allegedly accrued when it did not exist.
241. By parity of reasoning, the Plaintiff submits that it is a legal fantasy and outright fraud that Owen Njenga Koimburi who was not a member of the Institute of Certified Secretaries until 23rd November, 1990 filed annual returns for the 4th Defendant in the years 1984, 1985 and 1987 using an entity that it has been established was incorporated in 1991.
242. In the premises, the Plaintiff submits that a case has been made out that the annual returns for the period 14th January, 1984, 14th January, 1985 and 14th January, 1987 which the 4th Defendant exhibited at pages 81 to 104 of its trial bundle that are indicated as having been filed by Emu Registrars Limited to suggest that it is validly in existence were filed by non-existence entity and therefore fraudulent.



243. The Court to find the voluntary liquidation of the 4th Defendant having commenced on 23rd November, 1973 and in absence of resolutions rescinding the voluntary winding up and appointment of joint liquidators, the 4th Defendant lacked the legal capacity to continue transacting business and to acquire both the deed plan and grant for the suit property in 1979 and 1983 respectively.
244. The Plaintiff also urged the Court to find that the purported directors have not only falsified annual returns for the said company for the period 1984, 1984 and 1986 but further acquired shares in breach of section 275 of the repealed *Companies Act*, Cap 486 with the intend to fraudulently acquiring the suit property and deprive him and or his predecessor in title of the same.
245. It was also argued that the allegation that the 4th Defendant purchased the suit property from Basil George Mitton is not supported by any agreement for sale or proof of payment of the purchase price. The allegation that the 4th Defendant attained ownership of the suit property on 17th September, 1955 is also noted supported by any indenture or copy of title that resulted from the registration of the transfer.
246. In respect to the prayers for damages for trespass and unlawful eviction sought by the Plaintiff it was submitted that the Plaintiff is entitled to the same having been unlawfully evicted from the land and he prayed for a sum of Ksh 10,000,000 as damages. Reliance was placed in the cases of *Wilesden Investments Limited vs Kenya Hotel Properties Limited NBI H.C.C.C No. 367 of 2000* and Rhoda S. Kiilu vs Jiangxi Water and Hydropower Construction Kenya Limited [2019] eKLR.
247. The Plaintiff concluded his submissions by urging the Court to find out that he has proved his case and is entitled to the prayers sought together with the costs of the suit.

The 1st and 2nd Defendants submissions

248. The 1st and 2nd Defendants filed written submissions dated 6th May 2024. Counsel submitted on the following issues:-
- a. Whether or not the Plaintiff has legitimate title to the suit property.
 - b. Whether or not the Plaintiff has fully discharged his burden of proof as required under the law.
 - c. Whether or not the Plaintiff was in occupation, possession and/or control of the suit property as alleged by him.
 - d. Whether or not the Plaintiff is entitled to be granted the orders sought.
 - e. What orders should be made with regard to costs of the suit.
249. It was submitted that the Plaintiff has not proved his legitimate interest to the suit property. The Plaintiff never called the Land Registrar by the name O. J. Cattwright to testify on his behalf during trial. It was submitted that the records in respect to L.R Numbers 5989/5, 5989/66, 5989/67, 5989/68 and 5989/91 are missing as was stated by the Chief Land Registrar and that the records available in respect to Land Parcel File No. 10874 had been tampered with and that all the documents produced by the Plaintiff could not be relied upon. It was also submitted that the Plaintiff had been unable to demonstrate his occupation of the suit property during the site visit that was undertaken by the court and that there were glaring inconsistencies from the Plaintiff's testimony that was tendered in court.
250. The 1st and 2nd Defendant's also submitted that no sale agreement had been produced in evidence to show that the Plaintiff purchased the suit property from one Zena Grace Linsley in September 2000.



251. In respect to the “DCI” report that was titled “DCI Headquarters Inquiry File No. 19/2015” which was produced by the Plaintiff in evidence, it was submitted that the same lacks probity and has no probative value to the Plaintiff’s case. The author of the document Chief Inspector Patrick Maloba had conceded in cross-examination that he had no knowledge at all how the report he had authored and allegedly addressed to the Hon. Attorney General instead of the Director of Public Prosecutions had found its way to the Plaintiff.

It was also submitted that the 2nd Defendant had always been in actual physical possession of the plot of land described as LR. No. 5989/R since May 2007 when it purchased it and was duly registered as its owner. The court was urged to dismiss the Plaintiff’s suit with costs

The 3rd Defendant’s submissions

252. The 3rd Defendant filed written submissions dated 10th May 2024. Counsel for the 3rd Defendant submitted on the following three issues;

- i. Have the parties demonstrated the validity of the root of their interests?
- ii. What is the legal implication of the finding that an interest over land was fraudulently acquired and or mistakenly acquired and registered on the subsequent transactions anchored on such interest?
- iii. Is the suit against the 3rd Defendant merited?

253. It was submitted that from the evidence presented by the Plaintiff and the 4th Defendant as well as the records filed by the 3rd Defendant in this matter, there is no disputation that property L.R No. 5989/5 was at one point in time legally owned by Basil George Mitton. The point of departure however is whether the said Basil George Mitton transferred his interest over the suit property to Zena Grace Linsley, the Plaintiff’s predecessor in title or the 4th Defendant Williams and Kennedy Limited and if so, when.

254. It was submitted that the Plaintiff in the instant case alleges that the interest held by the 4th Defendant over the suit property as registered in Grant IR No. 35802 issued on 19th October, 1983 and anchored on deed plan 106270 is fraudulent and illegal. Among the key reasons the Plaintiff advances in challenging the legality of the 4th Defendant’s interest is the fact that the 4th Defendant has not demonstrated how it acquired the suit property from Basil George Mitton, its alleged vendor and the existence of uncontroverted evidence that the 4th Defendant’s shareholders and directors had made a voluntary resolution to have it wound up way back in 1973, which resolution was never rescinded.

255. The Plaintiff pointed out that the 4th Defendant’s previous directors additionally occasioned the gazette of the resolution to wind up the company and the appointment of its liquidators vide gazette notices 3596 and 3597 respectively on 30th November, 1973. According to the Plaintiff, following the commencement of the winding up process and the appointment of the two liquidators, the 4th Defendant’s directors could not lawfully directly deal with its affairs as alleged without the sanction of the liquidators and compliance with the provisions of the law.

256. It was further submitted that the 1st, 2nd and 4th Defendants on their part have equally challenged the Plaintiff’s interest said to have been acquired in September, 2000 from Zena Grace Linsley as the said Zena Grace Linsley did not have any valid interest over the suit property and was allegedly dead at the time of the purported transaction with the Plaintiff and hence the cardinal consideration by the Court in this matter is thus whether the parties have proved the legality of their respective root titles and rebutted any allegations of fraud.



257. The Supreme Court in the Dina Management Case (supra) emphasized that a title document alone is not sufficient proof of ownership of land and where the title is under contestation, then the holder of such interest must transcend the title instrument and demonstrate that due process was followed in the acquisition of the disputed interest from inception and the same was valid.
258. It is further worth pointing out that in proving the validity of the root interest, it behooves litigants to demonstrate to the Court that they carried out proper due diligence prior to the said acquisition.
259. On whether the Plaintiff has tendered any evidence to prove legality of his title, it was argued that the Plaintiff in an endeavor to demonstrate the legality of the root of his interest has filed an Indenture between Basil George Mitton and Zena Grace Linsley dated 5th June, 1991 and registered the same day which appears at pages 61 to 64 of the Plaintiff's bundle. The existence of this Indenture in the records maintained by the 3rd Defendant was confirmed by both PW4 and DW4 while giving evidence. PW4 stated that the Indenture was part of the records he retrieved from the registry's strong room in a deed file and forwarded to the Attorney General for filing in this matter. It was his further evidence that the original deed file containing the Indenture was released to the DCI and copies thereof retained.
260. The Plaintiff also adduced in evidence a Conveyance dated 5th September, 2000 and registered the same day which was found at pages 68 to 71 of the Plaintiff's bundle. The existence of this Conveyance in the records maintained by the 3rd Defendant was equally confirmed by both PW4 and DW4 though DW4 termed it as irregular considering that it was franked on 1st September, 2000 yet it is dated 5th September, 2000.
261. It was further submitted that in demonstrating that he paid the agreed purchase price, the Plaintiff filed an acknowledgment receipts totaling Kshs. 20 million issued by the firm of Rioba Advocates. The Plaintiff also avers that the requisite stamp duty of Kshs. 400,000 was paid to the Government prior to the registration of his interest as shown by the franked Conveyance filed in Court by PW4.
262. It was the 3rd Defendant's submissions that It is also worth noting that the evidence on record points to conflicting expert opinions by surveyors on whether deed plans can be subject of amalgamation prior to registration. While DW2 has taken the position that this is an irregularity, PW5 (Ms. Priscilla Wango), PW6 (Mr. Kobado), DW5 (Mr. Muchai) and DW6 (Mr. Odak) were of the contrary view that the same is regular and is a normal practice. Further, while DW4 testified that land reference number of a parcel does not necessarily need to change if change of user is by way of surrender and resurvey, PW5, PW6, DW5 and DW6 who are surveyors on the other hand had stated in uncertain terms that both the land reference and the deed plan number must change after a resurvey for purposes of change of user.
263. Relying on the case of Bungoma Line Sacco Society vs Super Bargains Hardware (K) Limited [2021] eKLR, it was submitted that courts are at liberty to independently apply the law and evidence and assess in their own judgment the probative value and credibility of expert opinions or evidence so as to arrive at a just determination of a dispute.
264. On whether the Defendants have tendered any evidence to prove the legality of the root of their interests, it was submitted that the validity of the root of the interest claimed by the 1st, 2nd and 5th Defendants if any is reliant on the legality of the 4th Defendant's interest over the suit property.
265. It was submitted that DW8 being the sole witness for the 4th Defendant in this matter had stated in evidence that he was only privy to the transactions the 4th Defendant entered into post 1983 when he had acquired shares of the 4th Defendant from the previous directors and formally became a director in 1984.



266. It was further submitted that though DW8 testified that he was aware the suit property was acquired by the 4th Defendant in 1954/1955 from Basil George Mitton, he admitted in his testimony that he had not adduced any evidence to show that the transaction took place as alleged, whether due diligence was undertaken, agreed consideration was paid, completion documents were procured and that a title document with an entry transferring interest from the said vendor to the 4th Defendant was in existence.
267. It was the 3rd Defendant's submission that DW4 while giving evidence had stated that copies of the 4th Defendant's title documents over parcels L.R No. 5989/5, 5989/66, 5989/ 67, 5989/68 and 5989/91 were in the scanned records of the 3rd Defendant were in the Land Information Management System as the deed files were missing. DW4 further testified that the previous title over the suit property was surrendered before Grant IR No. 35802 L.R No. 5989/5 was issued on 19th October, 1983 to the 4th Defendant. On cross examination, he further stated that surrender is a process and the process would entail preparation of a surrender instrument. He stated that where there is no surrender document we will look at the resultant output. However, he admitted that he had not seen the surrender instrument in this case and thus unable to explain what led to the issuance of Grant IR No. 35802 in 1983 based on deed plan 106270 and not 45300 and that issues concerning deed plans would be better explained by the surveyors.
268. Counsel submitted that while the 4th Defendant's witness had conceded in evidence that its previous directors had passed a resolution for its voluntary winding up and Gazette notices were published to that effect and liquidators appointed in 1978 even though it had not been concluded, the company was still in existence and could lawfully transact with third parties through its directors contrary to the Plaintiff's allegations. The 4th Defendant therefore argues that the change of user by way of surrender and resurvey as well as the transfer of shares to DW8 was procedurally undertaken by its previous directors even after the commencement of the voluntary winding up.
269. The 3rd Defendant argued that considering that the transactions in question took place prior to the enactment of the *Companies Act*, 2015, the applicable law would be the *Companies Act* Cap 486 Laws of Kenya (Repealed). Section 273 of the Repealed Act provided that a voluntary winding up was to be deemed to have commenced at the time of the passing of the resolution for voluntary winding up. With regard to the 4th Defendant, the winding up commenced on 23rd November, 1973 when the resolution was passed as shown on the Gazette Notice No. 3596 published on 30th November, 1973. Consequently, it was unto the 4th defendant to satisfactorily explain when the winding up process was terminated.
270. It was further argued that according to Section 274 of the repealed *Companies Act*, Chapter 486 the consequence of commencement of a voluntary winding up was that a company from the commencement of the winding up ceased to carry on its business, except so far as was required for the beneficial winding up.
271. Reliance was also made to Section 275 of the repealed Act which provided that any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members of the company, made after the commencement of a voluntary winding was prima facie void.
272. In respect to the testimony tendered by the 5th Defendant, it was submitted that the 5th Defendant's witness had testified that the transaction with the 4th Defendant over the suit properties as well as with Post Bank was done by her late husband Juma Muchemi. She conceded that she did not have evidence to demonstrate that necessary due diligence was undertaken to verify the legality of the interest that was being acquired or the legal status of the 4th Defendant.



273. Counsel submitted that the Plaintiff had contested that parcel known as L.R No. 5989/5/R legally exists as the reference number was never issued by the Director of Surveys neither was it anchored on any deed plan and hence no registrable interest could be supported by the parcel.
274. On whether there was any collision between the Plaintiff and the 3rd Defendant it was submitted that no evidence has been tendered by the 4th Defendant or any other party in these proceedings to prove the allegations against the 3rd Defendant's officers. The DCI inquiry report filed in Court has equally not indicted any of the officers of the 3rd Defendant for fraud or illegality. The 3rd Defendant has discharged the duty of presenting all the records in its custody and it is cardinal upon the parties claiming interest over the suit property to demonstrate the legality of their respective interests as provided for in the law and settled jurisprudence.
275. The 3rd Defendant also submitted that should the Court on a balance of probabilities arrive at a finding that sufficient proof has been tendered by the 1st and 2nd Defendants as well as the 4th Defendant to demonstrate that Zena Grace Linsley that purportedly transacted with the Plaintiff did not possess any valid interest over the suit property and in fact died in 1999 prior to the alleged transaction of September, 2000, then the legality of the Plaintiff's interest shall be under serious challenge and thus impeachable. Equally should the Court conclude that the 4th Defendant has failed to demonstrate on a balance of probability that it lawfully acquired interest over the suit property prior to the issuance of Grant IR No. 35802 and that as at the time of the alleged change of user, resurvey and issuance of the Grant IR No. 35802 the directors had no capacity to directly deal with the affairs of the 4th Defendant and shares over the company were not transferable then by extension the interest acquired by DW8 by way of share transfers would equally be questionable and impeachable.
276. The 3rd Defendant concluded its submissions by urging the court to dismiss the suit as against it for the reasons that neither the Plaintiff nor the 4th Defendant has demonstrated any wrong doing on the part of the 3rd Defendant.

The 4th Defendant's submissions

277. The 4th Defendant filed written submissions dated 2nd May 2024. Counsel submitted on the following issues;
- i. Whether or not the Plaintiff's suit against the 4th Defendant is statute barred.
 - ii. Whether or not the Plaintiff has a legitimate title to the suit property.
 - iii. Whether or not the Plaintiff has discharged his burden of proof.
 - iv. Whether or not the Plaintiff has ever been in possession and/or control of the suit property.
278. Citing the provisions of Section 7, 9(1) and 26 of the *Limitation of Actions act* Cap.22, it was submitted that the Plaintiff's suit as against the 4th Defendant was statute barred and the court lacked jurisdiction to entertain the same. It was submitted that the Plaintiff had alleged that he bought the suit property in the year 2000 and that is when his cause of action as against the 4th Defendant arose. The 4th Defendant obtained title to the suit property in 1983 and the present suit was filed in court in the year 2019 which was over twenty years after the cause of action accrued. It was also submitted that the suit was filed 36 years after the 4th Defendant had gotten his title in the year 1983. It was further submitted that the Plaintiff's suit was filed 8 years out of the legally prescribed time and 36 years after the 4th Defendant acquired his title to the suit property.



279. The 4th Defendant also submitted that the exceptions of Section 7 under Section 9 and 26 of the *Limitation of Actions Act* Cap 22 are not applicable to the Plaintiff as the Plaintiff led no evidence of fraud as against the 4th Defendant. The following cases were cited in support: *Bosire Ongero vs Royal Media Services* (2015) eKLR, *Sohanlaldurgadass Rajput & Another vs Divisional Integrated Development Programmes Co. Ltd* (2021) eKLR and *Gathoni vs Kenya Cooperative Creameries Ltd* (1982) KLR 104.
280. On whether or not the Plaintiff has a legitimate title to the suit property, it was argued that the 4th Defendant's title was the first time having been obtained in 1983 and hence indefeasible pursuant to Section 23 of the Registration of Title's Act Cap.281 (Repealed). It was also submitted that there was no evidence of any sale agreement produced by the Plaintiff. Reliance was placed on the cases of *Silverbird Kenya Limited vs Junction Ltd & 3 Others* (2013) eKLR, *Arthi Highway Developers Limited vs West End Butchery Limited & 6 Others* (2015) eKLR, *Mawji vs US International University & Another* (1976-80) 1 KLR 229 among others.
281. It was further submitted that the Plaintiff has not discharged his burden of proof and that he has not been in possession and or control of the suit property. The 4th Defendant also challenged the Plaintiff's contention that there was an intention to wind up the 4th Defendant. It was submitted that there is no proof that the company was actually wound up. The intention to wound up the company was tantamount to an expression of desire but was not in itself a winding up process.
282. The 4th Defendant concluded its submissions by urging the court to dismiss the Plaintiff's suit since his case has not been proved to the required standard.

The 5th Defendant's submissions

283. The 5th Defendant filed written submissions dated 3rd May 2024. It was submitted that the Plaintiff had not proved his case to the required standard. There was no evidence tendered by Land Registrar Owino Jacob Catwright and failure to call the said witness was deliberate since he was the Land Registrar who had undertaken the registration of the sub title plots.
284. It was also submitted that the Plaintiff had also failed to lay any evidential basis of the claim for damages suffered. It was further submitted that parties herein had equally been litigating in another suit over the same property to the exclusion of the Plaintiff these being cases number HCCC No. 2459 of 1997 and HCCC No. 710 of 2009. The 5th Defendant urged the Court to dismiss the Plaintiff's suit with costs.

Analysis and Determination

285. The parties herein did not agree on the issues for determination by this court. In their respective submissions which the court has duly considered, each party framed his or her own issues. From the pleadings filed, evidence adduced and written submissions presented to this court by the parties, the following issues stand out for determination by this court:-
- i. Whether the Plaintiff's suit is time barred.
 - ii. Who is the bona fide and legitimate owner of the suit parcel herein.
 - iii. Whether the Plaintiff has proved the particulars of fraud as against the Defendants.
 - iv. Whether the Defendants have proved the particulars of fraud as against the Plaintiff.
 - v. Whether or not the Plaintiff is entitled to the reliefs sought in the amended plaint.



vi. What orders should be issued as to the costs of the suit.

The court shall now proceed to examine the said issues sequentially.

Issue No. 1 Whether the Plaintiff's suit is time barred

286. The 4th Defendant in its defence dated 13th August 2020 objected to the Plaintiff's suit to the effect that the suit was instituted 36 years after the 4th Defendant had obtained title to the suit property, the same was filed without leave of the court and hence was statute barred.
287. The 4th Defendant also submitted on the said issue in its written submissions dated 2nd May 2024. It was submitted that the Plaintiff alleged to have obtained title to the suit property in the year 2000 and he filed the suit against the 4th defendant in 2020 and hence therefore his suit was filed after the 12 years stipulated period.
288. Reliance was placed on the provisions of Section 7, 9(1) and 26 of the *Limitation of Actions Act* Cap 22 and the following cases: Bosire Ongero vs Royal Media services (2015) eKLR, Edward Moonge Lengusuranga vs James Lanaiyara & Another (2019) eKLR, Sohanlaldurgadass Rajput & Another vs Divisional Integrated Development Programmes Co. Ltd (2021) eKLR and Gathoni vs Kenya Cooperative Creameries Ltd (1982) 104.
289. It was also submitted by the 4th Defendant that the exceptions under Section 26 of the Law of Limitation Actions Act could not be applied to the Plaintiff's case for the reasons that during trial, the Plaintiff did not lead any evidence to show that the 4th Defendant fraudulently obtained the title to the suit property.
290. The Plaintiff in his evidence and pleadings stated that he purchased the suit property in August 2000 and subsequently thereafter applied for subdivisions into 44 parcels with certificate of titles being issued on 10th December 2018 and 21st February 2020. It was pleaded that later on 4th April 2019 the 1st Defendant subsequently disclosed to the Plaintiff that he owed the suit property and on 2nd November 2019 the 1st and 2nd Defendants and their agents wrongfully entered the suit property harassed and intimidated the Plaintiff's employees working on the suit property. The Plaintiff also pleaded that he later learnt that the 4th Defendant was equally laying claim to the suit property and subsequently pleaded particulars of fraud as against the Defendants.
291. Section 7 of the *Limitation of Actions Act* provides:

“An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person”.

Section 7 of the *Limitation of Actions Act* Cap 22 of the Laws of Kenya provides that an action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him if it first accrued to some person through whom he claims against that person. However, where fraud is pleaded, time does not start to run until when such fraud was discovered as is stated under Section 26 of the Limitation of Actions. Section 26 of the *Limitation of Actions Act* provides as follows: “Where, in the case of an action for which a period of limitation is prescribed, either—

the action is based upon the fraud of the defendant or his agent, or of any person through whom he claims or his agent; or



the right of action is concealed by the fraud of any such person as aforesaid; or

the action is for relief from the consequences of a mistake, the period of limitation does not begin to run until the plaintiff has discovered the fraud or the mistake or could with reasonable diligence have discovered it.”

292. Going by the above provision, it is trite law that in circumstances where fraud is pleaded, time does not start to run until when such fraud was discovered. In the case of Justus Tureti Obara Vs Peter Kopeitai (2014) eKLR the Court held:-

“I am in agreement with the Plaintiff’s submission that the Plaintiff’s claim is for the recovery of the suit property from the defendant and as such the limitation period for such a claim is 12 years as provided for in Section 7 of the *Limitation of Actions Act*, Cap. 22, Laws of Kenya. I would wish to point out further that the Plaintiff’s case although for recovery of land is based on fraud. The proviso to section 26 (a) of the *Limitation of Actions Act*, Cap. 22, Laws of Kenya provides that where an action is based on the fraud of the defendant or his agent, the period of limitation does not begin to run until the Plaintiff has discovered the fraud or could with reasonable diligence have discovered it”.

293. In the instant case, the Plaintiff pleaded particulars of fraud as against the Defendants. The Plaintiff also pleaded that he became aware of the Defendants interest in the suit property on various dates of between 4th April 2019 and 2nd November 2019. The Plaintiff’s suit herein was filed on 6th November 2019 and later amended on 30th July 2020. Having considered the said position, it is evident that time had not run out when the Plaintiff filed this suit in 2019 and in view of the foregoing, the contention by the 4th Defendant that the suit is time barred is unfounded.

Issue No. (ii) Who is the bonafide and legitimate owner of the suit property herein.

294. The dispute before this court is that both the Plaintiff and Defendants with the exception of the 3rd Defendant have laid claim to the suit property herein. There are two conflicting and or parallel root titles relating to parcel L.R No. 5989/5. One of the root titles is claimed by the Plaintiff who asserts that he is the bonafide owner of the suit property and its resultant 44 registered subdivisions and on the other hand, there is the root title claimed by the 4th Defendant who similarly affirms that it lawfully acquired the suit property and occasioned its subdivision into four registered parcels being L.R No. 5989/66, 5989/67, 5989/68, 5989/91 and the remainder portion described as L.R 5989/5/R. The 1st 2nd and 5th Defendants all draw their interest from the 4th Defendant’s root of title.

295. It is trite law that whoever alleges must prove. Section 107 (1) of the *Evidence Act*, Cap 80 Laws of Kenya provides that:

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

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

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



112. in civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving the fact is upon him.”
297. The two provisions were dealt with in the case of *Anne Wambui Ndiritu –vs- Joseph Kiprono Ropkoi & Another* [2005] 1 EA 334, in which the Court of Appeal held that:
- “As a general proposition under Section 107 (1) of the *Evidence Act*, Cap 80, the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. There is however the evidential burden, that is, placed upon a party..... the burden of proving any particular fact which he desires the court to believe in its existence which is captured in Sections 109 and 112 of the Act.”
298. The issuance of two titles is not contemplated in the law and strictly speaking should not happen. If the Land Registry followed all processes and procedures as they are required to do, this is not a phenomenon that should occur. Unfortunately, it is a sad reality in our country, that there may be more than one title to the same land issued to different people. Where a court is faced with two or more titles over the same suit property, it must look into the root of ownership of the suit said. This approach was well appreciated in the case of *Hubert L. Martin & 2 Others vs Margaret J. Kamar & 5 Others* [2016] eKLR. Equally in the case of *Nairobi High Court Civil Suit No. 1024 of 2005(O.S), Milankumar Shah & 2 others v The City Council of Nairobi & another*, the court stated as follows:
- “We hold that the registration of title to land is absolute and indefeasible to the extent firstly that the creation of such title was in accord with the applicable law and secondly where it is demonstrated to a degree higher than the balance of probability that such registration was not procured through fraud and misrepresentation to which the person or body which claims and relies on that principle has not himself or itself been part of a cartel which schemed to disregard the applicable law, and the public interest”.
299. Equally it is not automatic that simply accepting titles as conclusive, incontestable and indefeasible or the concomitant argument that in the face of two or more competing titles, the first in time automatically prevails. It is not enough to wave an instrument of title or rest easy on the former rock of chronological primacy. What must now be established by he who would prevail is the solidity of the root of title. No flowery foliage, absent a sturdy and settled root speaking to a regular and legal process preceding the product that is the title, will avail the holder. That much is now the law pronounced in a lengthening line of authorities such as *Munyu Maina vs Hiram Gathiha Maina* (Supra) And *Funzi Development Ltd & Others vs Country Council Of Kwale* [2014] eKLR, and by the Supreme Court in its authoritative and all-binding decision of *Dina Management Limited vs County Government of Mombasa & 5 Others* [2023] eKLR
300. As earlier stated and without appearing to be repetitive, a court when faced with a case of two or more titles and interests over the same land has to make an investigation so that it can be discovered who is the bonafide and lawful owner. This investigation must start at the root of the title and follow all processes and procedures that brought forth the interests of each party to the land. It follows that the title that is to be upheld is that which conformed to procedure and can properly trace its root without a break in the chain. The parties to such litigation must always bear in mind that their title is under scrutiny and they need to demonstrate how they got their title starting with its root. No party should take it for granted that simply because they have a title deed or Certificate of Lease, then they have a right over the property. The other party also has a similar document and there is therefore no advantage



in hinging one case solely on the title document that they hold. Every party must show that their title has a good foundation and passed properly to the current title holder. With the nature of case at hand, I will need to embark on investigating the chain of processes of the root of each title which a view of ascertaining who is the bonafide owner.

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

“The historical background to the acquisition of the title is as good as the title itself. How else, for example, can a person seeking to impugn or impeach the title on the grounds of fraud, misrepresentation or it having been obtained unprocedurally or through corrupt means do so without placing the title in its historical context? On the ground of indefeasibility of title, it was urged that the trial judge erred in failing to find that the appellant’s title to the suit land was indefeasible... In the persuasive case of Fahiye & 2 others – v- Omar & 4 others [201] 2KLR, 224, it was held that indefeasibility of title is not absolute particularly where the whole transaction was void. In Milankumar Shah and 2 Others vs. City Council of Nairobi & Attorney General (Nairobi HCC Suit No. 1024 of 2005 (05), it was correctly pointed out that: “The concept of absolute and indefeasible ownership of land cannot be clothed with legal and constitutional protection if the interest was acquired through fraud, misrepresentation, illegality, unprocedural ways or corrupt schemes. This concept cannot be used to sanitize the commissioner if it allocates or issues title in such manner. In the case of Champaklal Ramji Shah & 3 Anors –v- AG & Anor, HCCC No. 145 of 1997, it was held that the court has a duty to examine the process of acquisition of such title and if it determines that there is an illegality, should nullify the titles as required.”

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

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

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

“26.

- (1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in



the certificate, and the title of that proprietor shall not be subject to challenge, except—

- (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
- (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

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

304. From the evidence that was adduced herein during trial, it was evident that the suit property initially belonged to Saint Benoist Plantation Limited upon which it was transferred to Basil George Mitton vide an Indenture dated 25th July 1950. From that point there appears to have been different root of the property as presented by the Plaintiff and the Defendants.

305. In analysing this issue, the court then ought to clearly address itself on whether the interest over the property was legitimately transferred by Basil George Mitton to the 4th Defendant or to the Plaintiff's predecessor in title, Zena Grace Linsley. The Plaintiff testified that he acquired the suit property after purchase from Zena Grace Linsley in the year 2000 and that Zena Grace Linsley had acquired her interest in the property in 1991 from Basil George Mitton who was its previous owner having acquired it from Saint Benoist Plantation Limited. DW8 who testified on behalf of the 4th Defendant stated that the suit property was acquired by the 4th Defendant in December 1954 from George Basil Mitton and interest thereon registered on 17th September 1955, it was further stated by DW8 who testified on behalf of the 4th Defendant that he acquired the suit property in 1983 after he purchased the 4th Defendant's shares from its previous directors and that the same was subsequently subdivided in 1991 through licensed surveyor George Mugenyu's firm and was issued with 4 separate titles for parcels L.R No. 5589/66, 5989/67, 5989/68 and 5989/91 following a partial release of the deed plans and he later used the remainder of the subdivided property to acquire a facility from Post Bank in 1991 and 1992 through a charge and a further charge respectively which he defaulted and it was disposed of by Post Bank and later sold to the 2nd Defendant in 2007. During trial, the DW2 who testified on behalf of the 2nd Defendant stated that the 2nd Defendant purchased part of the suit land described as 5989/5/R on 23rd May 2007 from Deposit Protection Fund Board who were the liquidator of Post Bank Credit Limited in exercising of charge's power of sale against the 4th Defendant after loan repayment default wherein the 2nd Defendant Company had been used by the late Juma Muchemi as his nominee in terms of the sale agreement which the late Juma Muchemi had entered into with the said Chargee. The 5th Defendant who was sued in her capacity as the administrator of the estate of Juma Muchemi (Deceased) stated that her late husband entered into a sale transaction with the 4th Defendant for the purchase of parcels L.R No. 6989/5, L.R No. 6989/66, L.R No. 6989/67, L.R No. 6989/68 and L.R No. 6989/91 vide a sale agreement dated 23rd April 1993. It was also her testimony that the 4th Defendant breached the terms of the sale agreement prompting her late husband to institute proceedings at the Nairobi High Court Civil Suit No.2459 of 1997. She also testified that her late husband by an agreement dated 1st March, 2006 acquired parcel L.R No.5989/5/R from Post Bank Credit Limited through the 2nd Defendant which by then was his company. She stated that the said transaction is equally subject of litigation at Nairobi High Court Civil Suit No. 710 of 2009 and is pending determination after it was challenged by the 4th Defendant.



306. From the evidence that was adduced herein, the Plaintiff presented evidence that he not only conducted due diligence before purchasing the suit property from Zena Grace Linsley but also established that the vendor and her predecessors in title held a valid indenture over the suit property. The evidence tendered herein demonstrates that he conducted due diligence by among other obtaining a search and establishing a root title. There is also evidence that the Plaintiff paid valuable consideration of Kshs. 20 million to the vendor, Zena Grace Linsley as the purchase price for acquisition of the suit property.
307. The court is convinced that the evidence tendered by the Plaintiff shows that he purchased the suit property from Zena Grace Linsley who was the then lawful registered owner of the suit property. The Plaintiff has further tendered evidence in the form of an indenture between Zena Grace Linsley and himself that they duly executed on 24th August, 2000 before an advocate. This is a fact that has been confirmed by PW4 and DW4, officers within the 3rd Defendant, who stated that the indentures signed by Zena Grace Linsley on 5th June, 1991 and 24th August, 2000 exist in the records held at the Ministry of Lands.
308. From the evidence adduced by the 3rd Defendant's witness, the 3rd Defendant was unable to demonstrate how the 4th Defendant acquired the interest over L.R No. 5989/5 and how Grant 35802 and deed plan 106270 of 22nd March, 1979 came to existence considering that L.R No. 5989/5 was registered way back in 1950 anchored on deed plan 45300 of 22nd March, 1950.
309. In the circumstances the court is satisfied that the Plaintiff has proved the existence of a valid root title that is traceable from Saint Benoist Plantation Limited, Basil George Mitton, Zena Grace Linsley and finally to himself.
310. In respect to the 4th Defendant root of title, whereas the 4th Defendant claimed that it purchased the suit property from Basil George Mitton, DW8 who testified on its behalf confirmed that he did not have the title that was allegedly registered in the name of Basil George Mitton or a search to that effect.
311. The 4th Defendant whose grant no. 35802 issued on 19th October, 1983 has been called into question shows that it was purportedly issued pursuant to an alleged surrender that was registered in Vol N. 34 Folio 367/12. At the hearing, the 4th Defendant's witness told the Court that he neither has a copy of the surrender instrument nor title that was allegedly surrendered to give rise to grant no. 35802.
312. The 4th Defendant has not tendered any evidence to show what documents it obtained from Basil George Mitton to determine that it was the lawful owner of the suit land. The 4th Defendant has also not tendered any evidence to show that it paid valuable consideration as the purchase price of the suit property. The 4th Defendant has further not tendered any evidence in the form of a transfer between itself and the vendor that was allegedly registered and the resultant title that anchored its interest over the property. In the circumstances, it is the finding of this court that the 4th Defendant has failed to establish the existence of a valid root of its title as its own evidence on record impeaches the purported claim over L.R No. 5989/5. This subsequently implies that the interest acquired by the 1st, 2nd and 5th Defendant's title is invalid.
313. The 4th Defendant was not able to produce or show the surrender and title document that allegedly gave rise to grant No. 35802 that was issued on 19th October 1983. The 4th Defendant did not tender any evidence to show what document it obtained from Basil George Mitton to determine that it was the lawful owner of the suit property.
314. The 4th Defendant exhibited a memorandum of registration of transfer that was signed by the Registrar of Titles on Saturday 17th September 1955 which according to the testimony of DW4 who testified on



behalf of the Chief Land Registrar that no transactions since the creation of his office can be registered on weekends.

315. In view of the foregoing the 4th Defendant herein has failed to demonstrate on a balance of probability that it lawfully acquired interest over the suit property prior to the issuance of Grant IR No. 335802 and that as at the time of the alleged change of user, and issuance of the Grant LR No. 35802 its directors had no capacity to deal with the affairs of the 4th Defendant and shares on the company were not transferable since the 4th Defendant's shareholders and directors had made a voluntary resolution to have the 4th Defendant wound up way back in 1973. Equally, DW8 who testified on behalf of the 4th Defendant admitted in his testimony that he was only privy to the transactions the 4th Defendant entered into post 1983 when he had acquired shares of the 4th Defendant from the previous directors and formally became a director in 1984. The 4th Defendant was unable to adduce any evidence demonstrating whether the said resolution made by the 4th Defendant's previous directors was ever rescinded. Having found that the 4th Defendant did not prove its root of title to the suit property it therefore follows that it did not hold a good title over the property and therefore could not have been able to pass good title to either the 2nd Defendant and or the 5th Defendant herein.
316. In view of the foregoing, this court having carefully analysed the evidence adduced herein finds that the Plaintiff has been able to demonstrate on a balance of probability that he is the legitimate and bonafide owner of the suit property and its subsequent subdivisions having satisfactorily explained the root of his title.

Issue No. (iii) Whether the Plaintiff has proved the particulars of fraud as against the Defendants.

317. It is trite law that a party alleging fraud must specifically plead the particulars of fraud and specifically lead evidence to prove the allegations of fraud. There are steps that must be taken to prove fraud. In the case of *Vijay Morjaria Vs Nansign Madhusihn Darbar & Another* (2000) eKLR, the court of Appeal stated as follows"-

“It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must of course be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and as distinctly proved, and it is not allowable to leave fraud to be inferred from the facts”.

318. The same procedure goes for allegations of misrepresentation and illegally as outlined under Order 2 rule 4 of the Civil Procedure Rules. As regards the standard of proof, the court of Appeal in the case of *Kinyanjui Kamau Vs George Kamau* (2015) eKLR expressed itself as follows: -

“It is trite law that any allegations of fraud must be pleaded and strictly proved. (See *Ndolo Vs Ndolo* (2008) 2 KLR (G & F) 742 wherein the court stated that:-

“...We start by saying that it was the respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof on the respondent was certainly not one beyond a reasonable doubt as in criminal cases...”



“In cases where fraud is alleged, it is not enough to simply infer fraud from the facts”.

319. It is the burden of the person who makes such allegations to present cogent and believable evidence of the same. Indeed, given the seriousness of charges of such character that border on criminality, the standard of proof is necessarily higher than the usual civil standard of a preponderance of probabilities. The standard does not, however, reach the criminal law standard of proof beyond reasonable doubt. It is proof to a level just below beyond reasonable doubt but must, in my estimation, reach the level of assured and confident proof. See *Magutu Electrical Services Ltd vs Miriam Nyawira Ngure & Anor* [2019] eKLR.
320. The Plaintiff pleaded particulars of fraud as against the Defendants. The same were particularized as follows at paragraphs 14(c) and 14(d) of the Amended Plaint dated 30th July 2020. The following particulars were particularised as against the 4th Defendant; purporting to hold grant in respect to the suit property issued on 19th October 1983 when it was evident that the 4th Defendant had been dissolved and wound up pursuant to resolutions passed on 23rd November 1973 and Gazette Notice No. 3596 dated 23rd November 1973 and has neither been reinstated nor incorporated to date. Procuring Deed Plan No. 106270 dated 22nd March 1979 when it was evident that there was in force Deed Plan No. 45300 issued and dated 22nd March 1950 and the suit property had neither been resurveyed nor the title and the Deed Plan surrendered to give rise to a new Deed Plan. Purporting to cause the sub division of the suit property without the surrender of Deed Plan Number 106270 and or a resurvey of the same and purporting to appoint Emu Registrars Limited as its Company Secretary on 13th August 1987 to facilitate its operations when it was evident that Emu was registered on 3rd October 1991 and its proprietor became a member of the Institute of Certified Public Secretaries on 23rd November 1990.
321. The following particulars of fraud were pleaded as against the 1st and 2nd Defendants; purporting to own the property known as L.R No. 5989/R when they were fully aware that Deed Plan number 106270 dated 22nd March 1979 that allegedly gave rise to the sub division in L.R 5989/R has never been surrendered and purporting to lay claim on the entire suit property which measures 9.88 Ha while the alleged title document that he has presented in court suggests that was allegedly transferred to him measures 6.5796 Ha.
322. In demonstrating fraud on the part of the Defendants the Plaintiff's witness PW2 and PW3 produced the DCI report and the forensic report respectively which showed forgeries of various entries and signatures on the part of the Defendants. PW2 told the Court that investigations into the matter had culminated to the conclusion that George Kimathi Mugenyu forged the signature of Fred Ngatia Advocate on the alleged survey fee acknowledgement note. PW2 in this regard relied on the statement of Fred Ngatia dated 23rd July, 2020, the DCI forensic document examination report dated 24th July, 2020, together with his sample and known signatures that have been produced as evidence in this matter. The evidence of PW3, confirmed that the forensic document examination showed that George Kimathi Mugenyu forged the signature of Fred Ngatia Advocate in an attempt to disown the sub-division of L.R no. 5989/5 on instructions of the Plaintiff.
323. It was also evident from the DCI inquiry report dated 29th July, 2020 which was produced in evidence that grant no. 35802 presented by the Defendants contained contradictory entries and that the signature of the Commissioner of Lands on grant no. 35802 held by the 2nd and 4th Defendants had been forged, which fact made the DCI recommend that Francis Ng'ang'a Gicharu be charged with the offence of conspiracy to commit a felony namely forgery of grant no. 35802, L.R No. 5989/5.



324. Further the evidence of PW3 which was captured in the forensic document examination report dated 16th June, 2020 that was produced as Plaintiff Exhibit 73 demonstrated that the alleged signature of the Commissioner of Lands, Raymond Njenga on grant No. 35802 was dissimilar and distinguishable from his known signatures and therefore a forgery. PW3 told the Court that in arriving at this conclusion, he considered a number of factors that included pen movement, pen speed, pen lift, initial and terminal strokes, general resemblance and natural variations.
325. The evidence that was tendered herein confirmed that on 23rd November, 1973 directors of the 4th Defendant in an extra ordinary general meeting of its members that was held at Rattansi Trust Building along Koinange Street in the providence of Nairobi passed a special or ordinary resolution to wind it up. Pursuant to the said resolution which was produced in evidence, the shareholders of the 4th Defendant resolved on 23rd November, 1973 that the company be wound up as a member's voluntary winding up and that Mr. G. J. G Silcock and Mr. J. G Bell be appointed joint and several liquidators for the purposes of the winding up and Pursuant to Article 131 of the Company's memorandum of association, the joint liquidators be authorised to distribute the assets of the company in specie amongst the shareholders.
326. DW8 did not contest that before the passing of the resolutions to wind up the 4th Defendant on 23rd November, 1973, its directors and shareholders namely G. M. Kennedy and J. M. Williams made a declaration on 15th November, 1973 that having done a full inquiry into the affairs of the company, they had formed the opinion that it shall be able to pay its debts in full within a period of twelve (12) months from the commencement of the winding up. PW2 produced this declaration of solvency that was passed in compliance with Section 276 of the *Companies Act*, Cap 486 – repealed as Plaintiff Exhibit 76.
327. The evidence tendered before Court also showed that both deed plan no. 106270 dated 22nd march, 1979 and grant no. 35802 that was purportedly signed by the Commissioner of Lands and registered on 28th July, 1981 and 19th October, 1983 respectively were issued between seven (7) and ten (10) years after commencement of the voluntarily liquidation of the 4th Defendant on 23rd November, 1973.
328. DW8 did not produce any deed plan and or title to show that it owned the parcel of land known as L.R No. 5989/5 before 23rd November, 1973 when the voluntary winding up of the 4th Defendant commenced.
329. Both the Plaintiff and the 3rd Defendant also submitted that pursuant to the provisions of Section 274 and Section 275 of the repealed *Companies Act* the consequences of a voluntary winding up was that a company from the commencement of the winding up ceased to carry on its business except so far as was provided for the beneficial winding up and further that the transfer of shares not being a transfer made to or with the sanction of the liquidator and any alteration in the status of the members of the company made after the commencement of a voluntary winding up was void.
330. Section 274 of the repealed *Companies Act*, Cap 486 provided for consequences of voluntary winding up as follows: -

“In case of a voluntary winding up, the company shall, from the commencement of the winding up, cease to carry on its business, except so far as may be required for the beneficial winding up thereof:

Provided that the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.”



331. Section 275 of the repealed *Companies Act*, Cap 486 provides that: -

“Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members of the company, made after the commencement of a voluntary winding up, shall be void.”

332. Looking at the evidence that was tendered herein, it was observed that the appointment of Francis Ng’ang’a Gicharu and Eunice Wanjiku Gicharu as directors of the 4th Defendant happened on 31st January, 1984 long after the commencement of the member’s voluntary winding up on 23rd November, 1973. The purported transfer of shares in the 4th Defendant from George Michael Kennedy, John Michael Williams and Pamela Savage to Francis Ng’ang’a Gicharu and Amy Kagendo Gicharu happened on 24th February, 1984 after commencement of the member’s voluntary winding up on 23rd November, 1973. DW8 informed the Court that to date no resolutions have been passed to rescind the resolutions to wind up the 4th Defendant voluntarily and the appointment of joint liquidators for purposes of winding it up and distribution of its assets in specie. He further told the Court that the joint liquidators of the 4th Defendant, G. J. G Silcock and J. G Bell were neither parties to the transfer of shares nor consented to the transaction. He further told the Court that he transacted with Donald Vincent who was neither a director, shareholder nor liquidator of the 4th Defendant.

333. In view of the foregoing, this court is convinced that the Plaintiff has been able to prove that the appointment of Francis Ng’ang’a Gicharu and Eunice Wanjiku Gicharu as directors of the 4th Defendant on 31st January, 1984 after commencement of the voluntary winding up on 23rd November, 1973 without the sanction of the joint liquidators was not only null and void for violation of section 275 of the repealed *Companies Act*, Cap 486 but also led to the fraudulent acquisition of the ownership of L.R No. 5989/5.

334. The material evidence on record which the court has considered also shows that the annual returns filed on behalf of the 4th Defendant in the years 1984, 1985 and 1986 by Owen Njenga Koimburi and Emu Registrars Limited was fraudulent. PW2 testified that that Owen Njenga Koimburi became licensed to practice as a certified public secretary on 23rd November, 1990 while Emu Registrars Limited was incorporated on 3rd October, 1991 and could not have validly filed returns for the 4th Defendant in 1984, 1985 and 1986. The court was furnished with the contents of the letter dated 1st July, 2020 authored by the Institute of Certified Secretaries at pages 687 of the Plaintiff’s trial bundle that was produced as his Exhibit No. 84 which confirmed as much. Emu Registrars Limited was incorporated as a company on 3rd January, 1991.

335. The court further notes that the DCI and forensic reports which were produced herein were never challenged and or controverted by another report.

336. As it relates to the ownership of 5989/5/R which the 1st and 2nd Defendants claimed to have acquired, the evidence that was adduced by the Government Surveyors herein, PW5, DW5 and DW6 was to the effect that the same could not be in existence and or was issued irregular. Evidence that was produced herein showed that it did not have a deed plan nor registry index map. There was no evidence that the director of survey had issued any deed plan for L.R No. 5989/5/R. It is not possible to have a title without a legitimate deed plan. This evidence was equally not controverted by the Plaintiff.

337. The status of experts’ evidence was dealt with in *Shah and Another vs. Shah and Others* [2003] 1 EA 290 where the Court expressed itself as follows:

“One of the special circumstances when witnesses may be called to give evidence of opinion is where the situation involves evidence of expert witness and this is an exception to the



general rule that oral evidence must be direct...The expert opinion is however limited to foreign law science or art; including all subjects on which a course of study or experience is necessary to the formation of an opinion and handwriting is one such field...However as a rule of practice, a witness should always be qualified in Court before giving his evidence and this is done by asking questions to determine and failure to properly qualify an expert may result in exclusion of his testimony... The opinion of the expert witness is not binding on the Court, but is considered together with other relevant facts in reaching a final decision in the case and the Court is not bound to accept the evidence of an expert if it finds good reasons for not doing so...If there is a conflict of expert opinion, with experts appearing for both parties, resolution of conflicting evidence or the acceptance of the evidence of the expert in preference to the opinion of the other, is the responsibility of the Court. Properly grounded expert evidence of scientific conclusion will be extremely persuasive in assisting the Court to reach its own opinion.”

338. However, when all is said and done, as was held by the Court of Appeal in *Juliet Karisa vs. Joseph Barawa & Another* Civil Appeal No. 108 of 1988, expert evidence is entitled to the highest possible regard and though the Court is not bound to accept and follow it, as it must form its own independent opinion based on the entire evidence before it, such evidence must not be rejected except on firm grounds.

339. On the weight a Court of law should attach on expert opinion, the Court in the case of *Stephen Kinini & Another v The Ark Limited* [2016] eKLR held that,

“Expert testimony, like all other evidence, must be given only appropriate weight. It must be as influential in the overall decision-making process as it deserves; no more, no less. To my mind, the weight to be given to expert evidence will derive from how that evidence is assessed in the context of all other evidence. Expert evidence is most obviously needed when the evaluation of the issues requires technical or scientific knowledge only an expert in the field is likely to possess. However, there is nothing to prevent reports for Court use being commissioned on any factual matter, technical or otherwise, provided; it is deemed likely to be outside the knowledge and experience of those trying the case, and the Court agrees to the evidence being called.

While there are numerous authorities asserting that expert evidence can only be challenged by another expert, little has been said regarding the criteria a Court should use to weigh the probative value of expert evidence. This is because, while expert evidence is important evidence, it is nevertheless merely part of the evidence which a Court has to take into account.”

340. This Court concurs that expert evidence should not trump all other evidence and, that it should not be considered in a vacuum, but the same should be evaluated in the context of other evidence. This is to say that even though experts are called upon to assist the Court to evaluate complex matter, the said evidence is not compelling on its own. In the instant case, both PW2 and PW3 alleged that they were officers from the DCI and qualified document examiner respectively, who had acquired their skills at the CID Training Center and other institutions and had acquired many years of experience in investigations and document examination. This Court is convinced on their expertise and skill in conducting investigations and forensic document examination.

341. In the instant case herein, the 1st, 2nd and 4th Defendants attempted to discredit the testimony of PW2 and PW3 as expert witnesses in their submissions and not during cross-examination, and further they did not controvert the evidence of PW2 and PW3 to the effect that the signatures on the transfer



instruments were forgeries. In this regard the court is persuaded by the decision in the case of Ali Mohamed Sunkar -vs- Diamond Trust Bank Ltd (2011)eKLR where it was held that an expert report can only be challenged through a counter expert report which was not availed in the present case.

342. In summary upon analysis of the entire evidence presented herein as to whether the Plaintiff has proved fraud on the part of the defendants points to the following; the DCI forensic examination report dated 2nd July 2022 is conclusive that the signature of the Commissioner of Lands on grant held by the 4th Defendant is a forgery which renders the document fraudulent. The DCI forensic examination report dated 16th June 2020 is conclusive evidence that searches held by the 2nd, 4th and 5th Defendants are forgeries and were not signed by the Land's Registrar Kamuyu The DCI forensic examination report dated 24th July 2020 is conclusive evidence that the signature of Fred Ngatia S.C on acknowledgement of payment presented by DW2 was a forgery. The transfer of shares of Williams and Kennedy's previous shareholders through which DW8 claimed to have acquired interest and ownership of the land was dated 24th February 1904 when the 4th Defendant was not in fact in existence having been incorporated on 18th March 1953. The annual returns that formalised the purported transfer of shares and ownership of the company and therefore land for the years 1984, 1985 and 1987 filed by Company Secretaries Emu Registrars that did not exist having been incorporated on 3rd October 1991 and its owner Owen Njenga Koimburi having been registered as a Company Secretary on 23rd November 1990. Emu Registrars was purportedly appointed as the 4th Defendants Company Secretary on 13th August 1987 when it was not in existence.
343. Upon analysing the evidence that was tendered herein it is the finding of this court that the Plaintiff has been able to prove the particulars of fraud as pleaded as against the Defendants herein.

Issue No. (iv) Whether the Defendants have proved the particulars of fraud as against the Plaintiff.

344. The 1st, 2nd, 4th and 5th Defendants separately pleaded fraud on the part of the Plaintiff. The 1st and 2nd Defendants pleaded the several particulars of fraud, illegality and inconsistency towards the acquisition of the suit property as against the Plaintiff in their defence.
345. During trial the 1st and 2nd Defendant's witness John Frankland testified that he was the son to Zena Grace Linsley who died in the United Kingdom on 22nd October 1999 and hence could not be involved in the sale of the suit property in September 2000. On cross-examination by Counsel for the Plaintiff he stated that his parents sold all their properties in Kenya, he did not have any birth certificate to confirm that he was the son to Zena Grace Linsely neither did he have any letter to confirm that he was the same. He also stated in cross-examination that he was not involved in the daily affairs of his mother. That he would meet his parents once every two or five years and she did not know what her mother used to do on a daily basis. His parents relocated to Dubai after selling all their properties and the death certificate had different names from other documents. He also stated that he had not made any report to the police neither had he recorded any statement. In re-examination he stated that the suit property was not owned by his parent.
346. The 4th Defendant equally pleaded the particulars of fraud as against the Plaintiff in its Defence.
347. During trial, only one witness testified on behalf of the 4th Defendant. Francis Ng'ang'a Gicharu. It was his testimony that he acquired the suit property in 1983 after he purchased the 4th Defendant's shares from its previous directors and he subsequently subdivided it in 1991 through private licensed Surveyor George Mugenya's firm and was issued with 4 separate titles of parcels L.R N o. 5989/66, 5989/67, 5989/68 and 5989/91 following a partial release of deed plan.



348. In cross-examination, he stated that he had no records of how the 4th Defendant acquired the suit property in 1954/1955. He also conceded that the certified records as well as gazette notice No. 3596 of 30th November 1973 showed that the 4th Defendant shareholder had passed a resolution for the voluntary winding up of the 4th Defendant and liquidators Mr. G. Silcok and Mr. G. Bell were appointed and gazetted as such vide gazette notice No. 3597 of 30th November 1993. It was also stated that he was not privy on how the change of user was effected and how new deed plan 106270 for the suit property came about. He admitted that he had neither seen the previous title anchored on deed plan 45300 nor the surrender instrument for the same that was registered before Grant 35802 was issued.
349. The 5th Defendant pleaded particulars of fraud in her defence dated 4th August 2020. The same were particularized as follows; using fake documents to claim title, purporting to have purchased from a non-existent seller Zena Grace Linsley, purporting to have paid a sum of Ksh 20,000,000/- in cash, using the name of a deceased Advocate, purporting to have submitted the suit property without any evidence on the ground and creating a parallel file to authentic his fraudulent activity
350. During trial, Mary Wanjiku testified as the witness on behalf of the 5th defendant. She stated that her late husband Juma Muchemi entered into a sale transaction with the 4th defendant for the purchase of parcels L.R No. 6989/5, L.R No. 6989/66, L.R. No. 6989/67, L.R. No. 6989/68 and L.R No. 6989/91 vide a sale agreement dated 23rd April 1993. The 4th Defendant breached the terms of the sale agreement prompting her late husband to institute proceedings at the Nairobi High Court Civil Suit No. 2459 of 1997. It was also her testimony that her late husband by an agreement dated 1st March 2006 acquired parcel L.R No. 5989/5/R from Post Bank Credit Limited though the 2nd Defendant which by then was his company and that the said transaction was also subject to court proceedings in Nairobi High Court Civil Suit NO. 710 of 2009. When cross-examined, she stated that she had not adduced any evidence to show that due diligence was conducted by her late husband to establish statuses of the 4th Defendant and ownership of the parcels that were being acquired or if consideration was paid. She also stated that she had been in occupation of the land until 2018 when the 4th Defendants director. Francis Ng'ang'a Gicharu evicted her after the death of her late husband.
351. Starting with the 1st and 2nd Defendants particulars of fraud as against the Plaintiff, the 1st and 2nd Defendants argued that the Plaintiff did not produce any sale agreement, the certificates of subdivisions had been illegally, fraudulently and unprocedurally issued. The same had been signed by Land Registrar called O. J. Cattwright who was never called to testify.
352. The Plaintiff on the other hand argued that the 1st and 2nd Defendant did not produce the original version of the alleged certificate of death dated 22nd October 1991 and that DW1 had conceded during cross-examination that the same got lost in 2019 in the United Kingdom. The Plaintiff contended that the alleged certified copy of the certificate of death is for all purposes and intends a foreign document issued in the City of Southampton in England and Wales and hence not admissible on account of Section 82(g) of the *Evidence Act*, Cap.80 of the Laws of Kenya. It was contended that the said document does not bear any certificate under seal by a Notary Public or Kenya Consular or diplomatic agent confirming that it has been certified by the officer in England and Wales having to lawful custody and reliance was placed on the case of Richard Kipkemei Limo vs Hassan Kipkemboi Nganyi & 4 Others (2019) eKLR.
353. In respect to the particulars of fraud as pleaded by the 4th Defendant. It was contended that the Plaintiff nor the 3rd Defendant produced before court the mother title registered in the name of the Plaintiff and the purported subdivisions were irregular, illegal, null and void. Reliance was placed on several cases including the cases of Moses Lutomia Washiali vs Zephania Ngaira Angweye & Another (2018) KLR, Alberta Mae Gage vs Attorney General & 4 Others (2006) KLR, Caroget Investment Limited



vs Aster Holdings Limited & 4 Others (2019) eKLR and Kenneth Nyaga Mwise vs Austin Kiguta & Others (2015) eKLR.

354. In respect to the issues raised by the 4th defendant, the Plaintiff submitted and argued that the 4th Defendant never tendered any evidence in the form of a search, title or transfer to demonstrate that the 4th Defendant was the lawful owner of L.R No. 5989/5. Francis Maina Ndegwa who was employed by George Kimathi Mugenyu as a Survey Assistant undertook and completed subdivision of L.R No. 5989/5 on his instructions and that of Zena Grace Linsley.
355. It was also contended that the DCI report that was produced in evidence had a statement of Francis Maina Ndegwa dated 25th March 2020 which showed that Francis Maina Ndegwa was an employee of George Mugenyu and had been instructed by Zena Grace Linsley and the Plaintiff to sub divide L.R No. 5989/5.
356. It was also argued by the Plaintiff that vide Gazette Notice No. 3596 contained in Kenya Gazette edition of 30th November 1973, the 4th defendant gave of the resolution for voluntary winding up that has been passed on 23rd November 1973 as contemplated by Section 272(1) of the Companies Act, Cap 486 repealed. It was also contended that vide Gazette Notice No. 3597 dated 23rd November 1973 the 4th Defendant gave notice of appointment of G. J. G. Silcok and J. G. Bell as its joint liquidates. It was further contended that after the commencement of the voluntary winding up on 23rd November 1973 and appointment of joint liquidates, the 4th Defendant had no legal capacity to originate deed plan No. 106270 and obtain registration of grant No. 35802 of L.R No. 5989/5 pursuant to the provisions of Section 274 and 278(2) of the repealed Companies Act Cap. 486.
357. In respect to the 5th Defendant, it was argued that the Defendants were not aware of the Plaintiff's interest on the land until he filed his case in the year 2019 soon after the demise of Juma Muchemi the 5th defendant's late husband who had been in physical possession for many years. It was also contended that the Plaintiff had failed to establish his claim to the suit property.
358. From the evidence that was adduced during trial, the Plaintiff maintained that he purchased the suit property from Zena Grace Linsley and not Zena Grace Linsley Beakabane. It was the Plaintiff's testimony that all his documents and pleadings referred to Zena Grace Linsley and not any other person by the name "Beakabane". The testimony of DW1 was controverted by the Plaintiff, DW1 did not produce any identification confirming his relation with Zena Grace Linsley the vendor who sold the property to the Plaintiff. He did not furnish the court with any birth certificate to confirm that he is a son to Zena Grace Linsley. He further confirmed to Court that he did not have any correspondence from the authorities or religious leader to suggest that he was son to either Zena Grace Linsley or Zena Grace Linsley Beakabane. DW1 further stated during cross examination that whereas the purported certificate of death indicates Jill Elizabeth Elliot as a daughter to Zena Grace Linsley Beakabane, he had not tendered any evidence to show that she was his sister. His name does not appear in the purported death certificate that he had presented. He had no evidence to show that Allan Frankland Beakabane was his father or that he was married to Zena Grace Linsley as claimed in his statement. He had not filed in Court any document bearing the alleged mother's genuine signature. While admitting that he is not a forensic document examiner, DW1 stated that he did not have the ability to confirm or deny whether the signature on the conveyance between the Plaintiff and Zena Grace Linsley was not genuine. He did not have the alleged original death certificate of Zena Grace Linsley Beakabane which he alleged was lost in the U.K in 2019 without providing evidence of such a loss.
359. In respect to the death certificate that was produced in Court, while the Defendants urged the court to consider the same, the Plaintiff in his submissions urged the Court to disregard it for the reasons that



1st and 2nd Defendants did not produce the original version of the said death certificate and further that the same was not admissible on account of violation of Section 82(g) of the *Evidence Act*.

360. Section 82(g) of the *Evidence Act*, Cap 80 provides: -

“Without prejudice to any other mode of proof, prima facie evidence of the following public documents may be given in the manner hereinafter shown, that is to say –

.. public documents of any other class in a foreign country, by the original, or by a copy thereof bearing a certificate under seal of a notary public or of a Kenya consular officer or diplomatic agent that the copy is duly certified by the officer having the lawful custody of the original thereof, and upon proof of the character of the document according to the law of the foreign country.”

361. In view of the aforementioned provisions, it is evident that the said death certificate was a foreign public document which ought to have been certified by a notary public or Kenya consular officer or diplomatic agent with a view of confirming that that the copy is duly certified by the officer having its lawful custody to avert the difficulty of ascertaining its authenticity. In absence of a certificate by a notary public or Kenya consular officer or diplomatic agent in England and Wales confirming that the purported copy of the death certificate has been fully certified, it is the finding of this court that the same is inadmissible in evidence for want of compliance with section 88(g) of the *Evidence Act*, Cap 80.

362. The Plaintiff adduced a conveyance/transfer, application for Land Control Board and letter of consent which showed that he transacted with Zena Grace Linsely. The burden of proof was on the Defendants to show that she had died in 1999 as at the time of the transaction. The Defendants did not discharge this burden and It therefore follows that the allegation that Zena Grace Linsley died on 22nd October, 1999 remains doubtful and has not been proved to the required standard.

363. The 1st, 2nd, 4th and 5th Defendants have further castigated the Plaintiff of fraud allegedly because George Kimathi Mugenyu, a private licensed surveyor, has denied sub-dividing the suit property at the behest of the Plaintiff and his predecessor in title, Zena Grace Linsley. Hower evidence adduced in court shows that the firm of George Kimathi Mugenyu undertook and completed sub-division of L.R No. 5989/5. The Plaintiff produced payment receipt for Kshs. 600,000 dated 14th August, 1990 that the firm of George Kimathi Mugenyu issued to Zena Grace Linsley, being part payment of the survey fees that she remitted.

364. The DCI report that was produced in evidence which the court has duly considered showed that Francis Maina Ndegwa was an employee of Ms. George Kimathi Mugenyu and it also demonstrated that during his employment they were instructed by Zena Grace Linsley and subsequently the Plaintiff to sub-divide L.R No. 5989/5. The evidence on record shows that Francis Maina Ndegwa was an employee in the firm of George Kimathi Mugenyu, which was instructed and completed sub-division of L.R No. 5989/5 on behalf of Zena Grace Linsley and the Plaintiff respectively. The Plaintiff's evidence on record further controverted the allegations of George Kimathi Mugenyu that Francis Maina Ndegwa was not employed in his firm since he used to work with Mwai Kariuki who was his employee and ran his errands in 1990s when he was working as the Chief Land Surveyor, Nairobi City Commission.

365. The 1st and 2nd Defendants presented a survey fee acknowledgement note between the 4th Defendant and Ms. George Kimathi Mugenyu purporting to have been witnessed by Fred Ngatia S.C. during trail, However, PW2 told the Court that investigations into the matter had culminated to the conclusion that George Kimathi Mugenyu forged the signature of Fred Ngatia Advocate on the alleged survey



- fee acknowledgement note. The DCI report showed that Francis Maina Ndegwa worked with George Kimathi Mugenyu who confirmed that their firm did the work with him as the assistant. George Mugenyu also confirmed in re-examination that Francis Maina Ndegwa worked with Kariuki Mwai that used to work in his office he was employed and or engaged at the Nairobi City Commission. PW2 relied on the statement of Fred Ngatia S.C dated 23rd July, 2020, the DCI forensic document examination report dated 24th July, 2020, together with his sample and known signatures that have been produced as evidence in this matter and the said evidence was not controverted by the Defendants.
366. The law is, and has always been that he who alleges must prove, which finds statutory expression in sections 107(1), 108 and 109 of the *Evidence Act*. The court has gone through the dozen particulars of fraud and illegality pleaded by the Defendants. It is the burden of the person who makes such allegations to present cogent and believable evidence of the same. Indeed, given the seriousness of charges of such character that border on criminality, the standard of proof is necessarily higher than the usual civil standard of a preponderance of probabilities. The standard does not, however, reach the criminal law standard of proof beyond reasonable doubt. It is proof to a level just below beyond reasonable doubt but must, in my estimation, reach the level of assured and confident proof. See *Magutu Electrical Services Ltd vs Miriam Nyawira Ngure & Anor* [2019] eKRL.
367. In respect to the lack of the sale agreement by the Plaintiff, the court notes that the transaction between the Plaintiff and the vendor took place in 2000 and the parcel of land was transferred to the Plaintiff in September 2000. Section 3(3) of the *Law of Contract Act* which imposed the requirement for agreement for disposition of land to be in writing took effect on 1st June 2003 and as such the transaction between the Plaintiff and the vendor cannot be invalidated for lack of the same. See the Court of Appeal case of *Peter Mbiri vs Samuel Mugo Michuki* [2014] eKLR.
368. Having analysed the evidence and voluminous documents that were tendered herein, it emerged that the subdivisions by the 4th Defendant of L.R No. 5989/5 was invalid and void for lack of consent of the Commissioner of Lands pursuant to special condition no. 7 of the said grant. The charge created on 14th November 1991 and further charge created on 3rd July 1992 in favour of Pot Bank was invalid as the said charge and further charge documents related to L.R No. 5989/5 that had ceased to exist on 27th May 1991. The grant presented by the 4th Defendant and 2nd Defendant consisted of several conflicting entries, transfer to the 2nd Defendant vide entry no. 19 was illegal as caveat had been placed as entry no. 18 and the same had not been removed. No deed plan existed to support the existence of L.R No. 5989/R as was confirmed from the testimony of PW5, DW5 and DW6. The court also notes that there were various versions as to the possession of the suit property by the 1st and 2nd Defendants, 4th Defendant and 5th Defendant.
369. Considering the weight of evidence adduced by the parties herein, the Plaintiff has been able to demonstrate how he acquired the suit property by tracing its root as was captured at the earlier part of this judgment. The Defendants failed to call and bring any expert reports to controvert the evidence adduced by the Plaintiff.
370. As was stated in *Jennifer Nyambura Kamau vs Humphrey Mbaka Nandi* [2013] eKLR; “If an expert witness is necessary, the evidential burden was on the appellant to call the expert witness. The appellant did not discharge the burden and as section 108 of the *Evidence Act* provides, the burden lies on that person who would fail if no evidence at all were given on either side.”
371. Given the weight of evidence adduced by the Plaintiff, it is the finding of this court that the Defendants have not tendered sufficient evidence to prove the particulars of fraud as against the Plaintiff to the satisfaction of the court.



Issue No. (v) What reliefs should be granted if any in respect to the Plaintiff's suit

372. The Plaintiff herein has sought for several reliefs as pleaded in his amended plaint. The Plaintiff is seeking for injunctive orders, declaratory orders that he is the lawful owner of the suit property, a permanent injunction against the Defendant, a mandatory injunction directing the 3rd Defendant to cancel any instruments conferring any interest of the suit property to the 1st, 2nd, 4th and 5th Defendant and costs of the suit.
373. The Plaintiff had sought for a declaration that he is the lawful owner and proprietor of the suit property and hence obligated to partake of and benefit from the right attendant to and flowing from such ownership. This court has already held that the Plaintiff was able to prove the root of his title and to also demonstrated that indeed he is the bonafide owner of the suit property. The court has also found and held that the Plaintiff herein has placed before the court cogent and plausible evidence demonstrating his entitlement to the suit property.
374. In respect to the prayer of permanent Injunction that was sought, it is worth noting that a permanent injunction fully determines the right of the parties before the court and is normally meant to perpetually restrain the commission of an act by the Defendants in order for the rights of the Plaintiff to be protected. To the extent that the Plaintiff has ably demonstrated his entitlement to the suit property, it thus suffices to state and hold that the Plaintiff therefore has all the rights to enter upon and take possession of the suit property. In the instant case, the Plaintiff is deserving of the said relief and this court shall proceed to grant the same. Owing to the findings made by this court, the same shall also be issued in respect to L.R No. 5989/91 currently in occupation by the 4th Defendant.
375. The Plaintiff having tendered evidence and further the court having arrived at the conclusion that the Plaintiff is the lawful owner of the suit property having been able to prove his case as against the Defendants on a balance of probabilities, he is entitled to the orders sought and the court shall proceed to grant the appropriate reliefs that have been sought.

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

376. As a general rule, costs follow the event unless the court for good reasons orders otherwise. In the present case, the Plaintiff has succeeded in his claim as against the Defendants and consequently the Plaintiff shall have the costs of the suit.

Final orders

377. In conclusion, based on the totality of the evidence tendered herein, the Plaintiff has been able to prove his case on a balance of probabilities as against the Defendants. The court hereby enters judgment in favour of the Plaintiff as follows: -
- a. A declaration be and is hereby issued that the Plaintiff is entitled to ownership and occupation of the suit properties known as Land Reference Numbers 5989/56, 5989/57, 5989/58, 5989/59, 5989/60, 5989/61, 5989/63, 5989/64, 5989/65, 5989/72, 5989/73, 5989/74, 5989/75, 5989/76, 5989/77, 5989/78, 5989/79, 5989/80, 5989/81, 5989/82, 5989/83, 5989/84, 5989/85, 5989/86, 5989/87, 5989/88, 5989/89, 5989/90 as well as 5989/5/2, 5989/5/3 and 5989/5/4 as well as 5989/231, 5989/232, 5989/233, 5989/234, 5989/235, 5989/236, 5989/237, 5989/238, 5989/239, 5989/240, 5989/241, 5989/242 and 5989/243, all formerly known as LR No. 58989/5 situated in Nairobi City County to the exclusion of the Defendants herein.



- b. A declaration be and is hereby issued that all ownership or proprietary documents held by the Defendants in relation to L.R No. 5989/5 and all its sub-divisions thereon including but not limited to Land Reference Numbers 5989/56, 5989/57, 5989/58, 5989/59, 5989/60, 5989/61, 5989/63, 5989/64, 5989/65, 5989/72, 5989/73, 5989/74, 5989/75, 5989/76, 5989/77, 5989/78, 5989/79, 5989/80, 5989/81, 5989/82, 5989/83, 5989/84, 5989/85, 5989/86, 5989/87, 5989/88, 5989/89, 5989/90 as well as 5989/5/2, 5989/5/3 and 5989/5/4 as well as 5989/231, 5989/232, 5989/233, 5989/234, 5989/235, 5989/236, 5989/237, 5989/238, 5989/239, 5989/240, 5989/241, 5989/242 and 5989/243 is a nullity, void and unenforceable.
- c. A declaration be and is hereby issued declaring that any interest conferred by the 4th Defendant to either the 1st, 2nd, 5th Defendants or any other person in respect to the property known as L.R No. 5989/5 and all its sub-divisions thereon including but not limited to Land Reference Numbers 5989/56, 5989/57, 5989/58, 5989/59, 5989/60, 5989/61, 5989/63, 5989/64, 5989/65, 5989/72, 5989/73, 5989/74, 5989/75, 5989/76, 5989/77, 5989/78, 5989/79, 5989/80, 5989/81, 5989/82, 5989/83, 5989/84, 5989/85, 5989/86, 5989/87, 5989/88, 5989/89, 5989/90 as well as 5989/5/2, 5989/5/3 and 5989/5/4 as well as 5989/231, 5989/232, 5989/233, 5989/234, 5989/235, 5989/236, 5989/237, 5989/238, 5989/239, 5989/240, 5989/241, 5989/242 and 5989/243 is a nullity, void and unenforceable.
- d. A permanent injunction be and is hereby issued restraining the Defendants either by themselves, their agents or servants or otherwise howsoever from interfering with the Plaintiff's quiet and peaceful possession and occupation of the suit properties known as Land Reference Numbers 5989/56, 5989/57, 5989/58, 5989/59, 5989/60, 5989/61, 5989/63, 5989/64, 5989/65, 5989/72, 5989/73, 5989/74, 5989/75, 5989/76, 5989/77, 5989/78, 5989/79, 5989/80, 5989/81, 5989/82, 5989/83, 5989/84, 5989/85, 5989/86, 5989/87, 5989/88, 5989/89, 5989/90 as well as 5989/5/2, 5989/5/3 and 5989/5/4 as well as 5989/231, 5989/232, 5989/233, 5989/234, 5989/235, 5989/236, 5989/237, 5989/238, 5989/239, 5989/240, 5989/241, 5989/242 and 5989/243, and any other subdivisions emanating from property formerly known as LR No. 58989/5 situated in Nairobi City County.
- e. A mandatory injunction compelling the Defendants, their servants and/or their agents and any other person occupying the suit properties known as Land Reference Numbers 5989/56, 5989/57, 5989/58, 5989/59, 5989/60, 5989/61, 5989/63, 5989/64, 5989/65, 5989/72, 5989/73, 5989/74, 5989/75, 5989/76, 5989/77, 5989/78, 5989/79, 5989/80, 5989/81, 5989/82, 5989/83, 5989/84, 5989/85, 5989/86, 5989/87, 5989/88, 5989/89, 5989/90 as well as 5989/5/2, 5989/5/3 and 5989/5/4 as well as 5989/231, 5989/232, 5989/233, 5989/234, 5989/235, 5989/236, 5989/237, 5989/238, 5989/239, 5989/240, 5989/241, 5989/242 and 5989/243 and any other subdivisions emanating from property formerly known as LR No. 58989/5 situated in Nairobi City County to vacate unconditionally and remove any materials deposited or erected thereon at their own cost, in default of which an eviction order is hereby issued against the Defendants and the Officer Commanding Station, Runda Police Station in Nairobi or any other nearest police station to ensure compliance save for Land Reference Number 5989/91.
- f. Pursuant to prayer (e) above, the 4th Defendant, its agents and or servants are hereby granted sixty (60) days to vacate the suit property known as Land Reference Number 5989/91 failure of which eviction shall issue and the Officer Commanding Station Runda Police Station or any other nearest police station is here by directed to ensure compliance.



- g. A mandatory injunction be and is hereby issued compelling the 3rd Defendant to cancel any instrument purporting to confer interest in the properties known as Land Reference Numbers 5989/56, 5989/57, 5989/58, 5989/59, 5989/60, 5989/61, 5989/63, 5989/64, 5989/65, 5989/72, 5989/73, 5989/74, 5989/75, 5989/76, 5989/77, 5989/78, 5989/79, 5989/80, 5989/81, 5989/82, 5989/83, 5989/84, 5989/85, 5989/86, 5989/87, 5989/88, 5989/89, 5989/90 as well as 5989/5/2, 5989/5/3 and 5989/5/4 as well as 5989/231, 5989/232, 5989/233, 5989/234, 5989/235, 5989/236, 5989/237, 5989/238, 5989/239, 5989/240, 5989/241, 5989/242 and 5989/243 and any other subdivisions emanating from property formally known as LR No. 58989/5 situated in Nairobi City County to the 1st, 2nd, 4th and 5th Defendants herein.
- h. The Plaintiff shall have the costs of this suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI THIS 11TH DAY OF JULY 2024.

E. K. WABWOTO

JUDGE

In the presence of: -

Mr. Rapando for the Plaintiff.

Mr. Mwiti for the 1st and 2nd Defendants.

Mr. Motari for the 3rd Defendant.

Mr. Njuguna and Ms. Gitau for the 4th Defendant.

Mr. Mutiso or the 5th Defendant.

Court Assistants: Mary Ngoira and Norah Chao

