



L.O.Okello & 4 others v Ayabei & 3 others (Environment & Land Case 10 of 2018) [2024] KEELC 6674 (KLR) (9 October 2024) (Judgment)

Neutral citation: [2024] KEELC 6674 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 10 OF 2018**

**JO MBOYA, J
OCTOBER 9, 2024**

BETWEEN

**ELEANDRO L.O.OKELLO 1ST PLAINTIFF
SHADRACK M.ADEDE 2ND PLAINTIFF
REHEMA ATIENO IBRAHIM 3RD PLAINTIFF
GAKII MUTHURI 4TH PLAINTIFF
ZEDEKIAH N. WANDIEMA 5TH PLAINTIFF**

AND

**JOHN KIPKORIR AYABEI 1ST DEFENDANT
THE HONOURABLE ATTORNEY GENERAL 2ND DEFENDANT
NATIONAL LAND COMMISSION 3RD DEFENDANT
DAWIS VENTURES LTD 4TH DEFENDANT**

JUDGMENT

Introduction And Background:

1. The Plaintiff herein [who are civil servants, some of whom have since retired] brought the instant suit vide the Plaint dated the 12th January 2018 and wherein same sought for various reliefs. Nevertheless, the Plaint under reference was subsequently amended resting with the amended Plaint dated the 30th September 2022; and wherein same [the Plaintiffs] have sought for the following reliefs [verbatim]:
 - i. An order for a permanent injunction restraining the 1st Defendant from taking any actions that may lead to the Plaintiffs losing their houses situated along Kabras Road South B.



- ii. A mandatory order to compel the Director of Surveys to give the correct parcel numbers for the parcel of land inhabited by the Plaintiffs and variously referred to as Block No. 26/1330, LR No. 209/5323 and LR No.209/12559 (LR No.209/3585), Kabras Road, South B.
 - iii. An order for the cancellation of the title over LR No. 209/12559 and IR No.181048 that has been issued to the first 1st Defendant.
 - iv. A mandatory order to compel the Chief Registrar of Lands to register them as proprietors of the parcel of land on which they reside, upon the correct parcel number being allocated as prayed for herein.
 - v. Costs and interest at court rates.
2. Upon being served with the original Plaint and summons to enter appearance [STEA] the 1st Defendant duly entered appearance on the 10th April 2018 and thereafter filed a statement of defence dated the 21st September 2018. Instructively, the 1st Defendant contended that same applied to the commissioner of lands [now defunct] to be allocated a plot within the city of Nairobi and thereafter the commissioner of land proceeded to and issued the 1st Defendant with a letter of allotment dated the 26th October 1994.
 3. The 2nd Defendant similarly entered appearance and filed a statement of defence dated the 22nd February 2018. For good measure, the 2nd Defendant denied the allegations contained in the body of the plaint and thereafter intimated that the Plaintiffs shall be invited to strict proof.
 4. Likewise, the 3rd Defendant entered appearance and filed a statement of defence, which is undated but filed in court on the 2nd December 2019. For coherence, the 3rd Defendant contended that the claims adverted to at the foot of the plaint have not attributed any failure and/or neglect to the 3rd Defendant. In any event, it was contended that no relief has been sought for against the 3rd Defendant.
 5. Though the 4th Defendant was not impleaded at the onset, the 4th Defendant was brought on board pursuant to the amended plaint. Nevertheless, upon being impleaded in the matter, the 4th Defendant duly entered appearance and filed a statement of defence dated 28th October 2022 and wherein the 4th Defendant contended that it had entered into a lawful sale agreement with the 1st Defendant culminating into the sale and transfer of L.R No. 209/12559 [suit property] unto itself.
 6. Following the close of pleadings, the subject matter was set down for pretrial directions whereupon the advocates for the respective parties intimated to the court that the parties have filed the requisite list and bundle of documents and the witness statements. In this regard, it was stated that the matter was thus ready for hearing.
 7. Arising from the foregoing position, the court proceeded to and confirmed the suit as being ready for hearing. Furthermore, the court ventured forward and fixed the matter for hearing.

Evidence By The Parties:

A. Plaintiffs'case:

8. The Plaintiff's case is anchored on the evidence of three [3] witnesses, namely, Leandro L O Okello, Shadrack M. Adede and Rehema Atieno Ibrahim. Same testified as PW1, PW2 and PW3, respectively.
9. It was the testimony of PW1 [Leandro L. O Okello] that same is the 1st Plaintiff in respect of the instant matter. Furthermore, the witness averred that same resides within the suit property. In any event, the witness averred that same has been residing on the suit property from the year 1997.



10. On the other hand, it was the testimony of the witness that same [Witness] has since recorded a witness statement pertaining to the facts of this case. In this regard, the witness adverted to the witness statement dated the 12th January 2018 and which witness statement, the witness sought to adopt and rely on. Instructively, the witness statement dated the 12th January 2018 was thereafter adopted and constituted as the evidence in chief of the witness.
11. It was the further testimony of the witness that same has also filed a list and bundle of documents dated the 12th January 2018 containing a total of 20 document and which documents the witness sought to adopt and produce before the court as exhibits. There being no objection to the production of the documents, same [documents] were produced and admitted in evidence as exhibits P1 to P20, respectively.
12. Other than the foregoing, the witness averred that same has also filed an amended plaint dated the 30th September 2022; and which amended plaint is accompanied by a verifying affidavit. In this regard, the witness implored the court to adopt the amended plaint and thereafter to grant the reliefs sought at the foot thereunder;
13. On cross examination by learned counsel for the 1st Defendant, the witness averred that same entered into and executed a tenant purchase agreement with the government of Kenya acting through the Ministry of Finance. In this regard, the witness alluded to the tenant purchase agreement entered into in the year 2005.
14. It was the further testimony of the witness that same bought unit number 173. However, the witness averred that neither the rest of the Plaintiffs nor himself has since obtained the certificate of title.
15. Whilst still under further cross examination, the witness averred that even though the government has not issued the rest of the Plaintiffs and himself with a certificate of title, the rest of the Plaintiffs and himself, have lawful rights to and in respect of the various units standing on the suit property.
16. Furthermore, it was the testimony of the witness that the tenant purchase agreement[s] which were entered into and executed with the government of Kenya through the Ministry of Finance, relates to units standing on L.R No. 209/5323.
17. It was the further testimony of the witness that even though same purchased his unit, the unit has not been transferred and registered in his name. Nevertheless, the witness added that same has since paid the entire purchase price that was agreed upon between the government of Kenya [through the Ministry of Finance] and himself.
18. In addition, it was the testimony of the witness that same was not aware that the suit property had been allocated to a third party. Nevertheless, it was the testimony of the witness that insofar as the houses standing on the suit property had been lawfully sold to the rest of the Plaintiffs and himself, the suit property could not be allocated to any third party.
19. On further cross examination, it was the testimony of the witness that same has tendered and produced evidence showing that he [witness] paid the entire consideration to the government. In any event, the witness added that what is outstanding is the issuance of the certificate of title in his favour.
20. On cross examination by learned counsel for the 2nd Defendant, the witness averred that same commenced to occupy the unit on the suit property on the 1st July 1997. Furthermore, the witness added that when same commenced to occupy the suit property the property [unit under reference] was a government house.



21. Additionally, it was the testimony of the witness that upon entry into and execution of the tenant purchase agreement, the agreed purchase price was paid vide deductions from his salary. Similarly, the witness averred that the rest of the Plaintiffs also paid part of the purchase price through deductions from their respective salaries.
22. Whilst still under cross examination, the witness averred that the houses/units standing on the suit property are still being occupied by civil servants and former civil servants. At any rate, the witness averred that the unit on the suit property actually constituted government quarters which were initially leased out to civil servants.
23. It was the further testimony of the witness that upon payments of the purchase price, same [witness] was issued with a letter dated the 6th April 2008 which confirmed that same [witness] had fully paid the purchase price.
24. The witness further averred that even though same [witness] finished paying the agreed purchase price, same has not been issued with a certificate of title. However, the witness stated that even though he has not been issued with a certificate of title, the government of Kenya has never demanded any rents from him.
25. On cross examination, by learned counsel for the 3rd Defendant, the witness averred that the Plaintiffs have sued the 3rd Defendant [National land Commission] because the commission may be the one who issued the impugned certificate of title in favour of the third party.
26. On cross examination by learned counsel for the 4th Defendant, the witness averred that the rest of the Plaintiffs and himself entered into and executed a tenant purchase agreements with the government of Kenya. Furthermore, the witness added that the land in question belongs to the government.
27. Upon being informed that the title number alluded to at the foot of the tenant purchase agreements is different from the suit property, the witness averred that the title numbers may be different, but the geo-space [location] of the suit property is one and the same with where the government quarters stand.
28. It was the further testimony of the witness that it is the rest of the Plaintiffs and himself who are in occupation of the suit property.
29. The second witness who testified on behalf of the Plaintiffs was Shadrack Mbai Adede. Same testified as PW2.
30. It was the testimony of the witness that same is the 2nd Plaintiff herein. Besides, the witness averred that same was a civil servant working with judiciary.
31. On the other hand, it was the testimony of the witness that by virtue of being a civil servant same [witness] was allocated a government house for residential purposes. In this regard, the witness averred that the house in question is situate at South B within the city of Nairobi. In addition, the witness averred that same commenced to reside in the house in question in the year 1982.
32. Other than the foregoing, the witness averred that same has since recorded a witness statement dated the 14th November 2022 and wherein same has highlighted the facts pertaining to the subject matter. At any rate, the witness thereafter sought to adopt and rely on the witness statement dated the 14th November 2022. For good measure, the witness statement was thereafter adopted and constituted as the evidence in chief of the witness.



33. In addition, the witness adverted to the supplementary list and bundle of documents dated the 16th June 2021 and thereafter sought to tender and produce the single document thereunder as an exhibit. In the absence of any objection, the document was tendered and produced as exhibit P21.
34. On the other hand, the witness also adverted the further/second supplementary list and bundle of documents dated the 2nd November 2022 and thereafter sought to produce the documents contained thereto. Suffice it to state that the documents at the foot of the further/second supplementary list of documents were tendered and admitted as exhibits P22 to P28, respectively.
35. Additionally, the witness averred that same is conversant with PW1. In any event, the witness added that same is also familiar with the documents that were tendered and produced by PW1.
36. On cross examination, by learned counsel for the 1st Defendant, the witness averred that same entered into and executed a tenant purchase agreement with the government of Kenya through the ministry of finance. Besides, the witness posited that same purchased unit number 209.
37. It was the further testimony of the witness that the unit which he [witness] purchased is located on L.R No. 209/12599.
38. It was the further testimony of the witness that even though same entered into a tenant purchase agreement, same however did not undertake any due diligence to ascertain ownership of the suit land. In any event, the witness added that same believed that the government of Kenya who were his [witness employer].
39. Whilst under further cross examination, the witness averred that at the time of purchasing his unit, unit 209, the units were not registered at the land registry.
40. On the other hand, the witness averred that same finished/completed the payments of the purchase price in the year 2018. In addition, it was the testimony of the witness that upon completion of the payment of the purchase price, the government issued him [witness] with a letter confirming that same had finished/completed payment of the purchase price.
41. It was the further testimony of the witness that the Plaintiffs herein wrote a complaint letter to the ministry responsible for housing on the 20th September 2017 and wherein the Plaintiffs were complaining about the interference with their occupation of the units standing on the suit property. Furthermore, the witness averred that subsequently, the permanent secretary ministry of housing generated a letter dated the 21st September 2017 and which was addressed to the director of survey. To this end, the witness referenced the letter at page 89 of the list and bundle of documents.
42. On cross examination by learned counsel for the 2nd Defendant the witness averred that, same [witness] has been residing in the house standing on the suit property since 1982. Furthermore, the witness averred that same was allocated the house by the government of Kenya.
43. Whilst under further cross examination, the witness stated that the rents payable in respect of the house in question was being recovered vide check-off system whereby the rents was being deducted from his salary.
44. It was the further testimony of the witness that upon completion of the purchase price, the government generated a letter confirming that same [witness] had indeed completed payments as pertains to the tenant purchase agreement.



45. On cross examination by learned counsel for the 3rd Defendant, the witness averred that the 3rd Defendant [National Land Commission] has been sued because of his failure to process and issue certificate of title to the Plaintiffs.
46. On cross examination, by learned counsel for the 4th Defendant, the witness averred that the land on which the units are located is L.R No. 209/12599. Furthermore, the witness averred that same is not aware whether the land in question had been sold to anybody.
47. The third who testified on behalf of the Plaintiffs is one Rehema Atieno Ibrahim. Same testified as PW3.
48. It was the testimony of the witness [Rehema Atieno Ibrahim] that same is the 3rd Plaintiff in respect of the instant matter. In addition, the witness averred that same is conversant and familiar with the facts of this case.
49. Other than the foregoing, the witness averred that same has since recorded a witness statement in respect of the instant matter. In this regard, the witness adverted to the witness statement and which statement the witness sought to adopt and rely on. Suffice it to point out that the witness statement was thereafter constituted as the evidence in chief of the witness.
50. On the other hand, the witness averred that same is familiar with the rest of the Plaintiffs. In this regard, the witness sought to adopt the various documents which have been tendered and produced by PW1 and PW2, respectively.
51. On cross examination, by learned counsel for the 2nd Defendant, the witness averred that same entered upon and commenced to occupy the house standing on the suit property in the year 1982. Additionally, the witness averred that same commenced to occupy the house on a tenancy basis.
52. It was the further testimony of the witness that the house in question was allocated unto her by the government. In this regard, the witness averred that the government of Kenya was her landlord.
53. Other than the foregoing, the witness averred that subsequently same entered into and executed a tenant purchase agreement with the government of Kenya acting through the ministry of finance. Besides, the witness testified that thereafter same paid the agreed purchase price relating to the unit/ house which was being sold unto her.
54. On cross examination, by learned counsel for the 3rd Defendant, the witness averred that the Plaintiffs have sued the 3rd Defendant [National Land Commission] because the 3rd Defendant failed to determine the dispute pertaining to ownership of the suit property. In addition, the witness averred that the 3rd Defendant has also been sued because same [3rd Defendant] is the one mandated to deal with issues pertaining to alienation of public land.
55. On cross examination by learned counsel for the 4th Defendant, the witness averred that same have sued the 4th Defendant because it is the 4th Defendant who contends that the Plaintiffs have trespassed onto the suit property. Furthermore, the witness added that it is the 4th Defendant who is laying a claim to the suit property, albeit through a different parcel/title.
56. On further cross examination, the witness averred that neither the rest of the Plaintiffs nor herself is laying a claim to the land belonging to the 4th Defendant.
57. Nevertheless, it was the testimony of the witness that the land being claimed by the 4th Defendant relates to and concerns the same ground [location] on which the houses which were sold to them [Plaintiffs] are located.



58. Whilst under further cross examination, the witness averred that it was not possible for the land wherein the housing units which were sold to the Plaintiffs stand, to be allocated to any third party. In any event, the witness averred that if there was any such allocation then the allocation could be irregular and illegal.
59. Furthermore, and whilst still under cross examination, the witness averred that same is not aware of how the land in question was allocated to the 1st Defendant who claims to have been allocated the said land before it was sold to the 4th Defendant.
60. With the foregoing testimony, the Plaintiffs case was duly closed.

B. 1st Defendant's Case:

61. The 1st Defendant's case is premised [anchored] on the evidence of one witness, namely, John Kipkorir Ayabei. Same testified as DW1.
62. It was the testimony of DW1 [John Kipkorir Ayabei] that same is the 1st Defendant in respect of the instant matter. In addition, the witness averred that by virtue of being the 1st Defendant, same [Witness] is conversant with the facts of the instant matter. In any event, the witness averred that same has since recorded a witness statement dated the 15th September 2020 and which witness statement the witness sought to adopt and rely on.
63. Suffice it to point out that the witness statement dated the 15th September 2020; was thereafter adopted and constituted as the evidence in chief of the witness.
64. On the other hand, the witness adverted to the list and bundle of documents dated the 15th March 2023, containing 9 documents and thereafter sought to tender and produce the documents as exhibits before the court. There being no objection to the production of the documents as exhibits, same were duly produced and admitted as defence exhibits 1 to 9 on behalf of the 1st Defendant.
65. It was the further testimony of the witness that the 1st Defendant filed a statement of defence dated the 21st September 2018 and which statement of defence was subsequently amended, resting with the one dated the 12th October 2022. In this regard, the witness sought to adopt and rely on the contents of the amended statement of defence.
66. On cross examination by learned counsel for the Plaintiff, the witness [DW1] averred that same was hitherto employed by Telkom Kenya Ltd. However, the witness added that same retired in the year 2007 and thereafter commenced to carryout businesses.
67. It was the further testimony of the witness that same applied to be allocated land. However, the witness averred that it is him who made the application to the commissioner of lands. Nevertheless, the witness averred that even though same made the application for allotment of land he [witness] has not tendered a copy of the application letter before the court.
68. Whilst under further cross examination, the witness averred that the application for allotment of land, was made by himself. In any event, the witness added that by the time he made the application for allotment of land, the business name had not been registered.
69. It was the further testimony of the witness that the business name, namely, Naigreen Enterprises was registered in the year 1998. In this regard, the witness averred that same has a certificate of registration of the business name.
70. Whilst under further cross examination, the witness averred that the land in question was allocated unto him in 1994. Nevertheless, the witness added that even though same was allocated the land in



- 1994, he was not shown the location of the land. Furthermore, the witness added that same did not take possession of the land.
71. On the other hand, it was the testimony of the witness that same processed and was thereafter issued with a certificate of title in respect of the suit property. Additionally, the witness testified that subsequently he sold the land to the 4th Defendant.
 72. It was the further testimony of the witness that later on same [witness] was taken to the land by some officer[s] from the ministry of land. However, the witness averred that when he was taken to the land, he found that the land had flats/storey buildings. Besides, the witness stated that the flats had some people who were residing therein.
 73. Nevertheless, the witness averred that even though there were some people residing on the flats[apartments] standing on the suit property, he [witness] did not authenticate the details of the said persons.
 74. On further cross examination, the witness averred that even though same was issued with a letter of allotment in 1994 he [witness] did not pay the standard premium within the stipulated 30 days period. However, the witness averred that he paid the standard premium on the 22nd February 2012.
 75. It was the further testimony of the witness that even though he did not pay the stand premium and other statutory levies within the stipulated timeline, same [witness] did not receive any demand letter from the government.
 76. Other than the foregoing, it was the testimony of the witness that same sold the suit property to the 4th defendant. In this regard, the witness stated that same entered into and executed a sale agreement with the 4th Defendant. It was the further testimony of the witness that the purchase price was agreed at in the sum of Kes.8, 500, 000/=.
 77. On the other hand, the witness averred that following the entry into and execution of the sale agreement, the 4th Defendant paid unto him the sum of Kes.7, 500, 000/= only, but the balance of the purchase price has not been paid to date.
 78. It was the further testimony of the witness that the land which allocated unto him, namely, L.R No. 209/12599 is the same ground, on which the flats/storey buildings are standing.
 79. On cross examination by learned counsel for the 2nd Defendant, the witness testified that same applied for the land in February 1993. In addition, the witness averred that same applied for a residential plot.
 80. It was the further testimony of the witness that the application which same made for allocation of land was general in nature. In this regard, the witness added that he did not specify the kind of plot that he was applying for.
 81. The witness further testified that subsequently same was issued with a letter of allotment in 1994. However, the witness averred that he did not visit the land which had been allocated unto him until around the year 2015.
 82. Whilst under further cross examination, the witness averred that the letter of allotment was issued in favour of Naigreen Enterprises. Furthermore, the witness averred that Nairgreen Enterprises was registered and issued with a certificate of registration on the 7th April 1998.
 83. On further cross examination by learned counsel for the 2nd Defendant, the witness admitted that it is evident that the letter of allotment was issued in the name of Naigreen Enterprises [which is a business



- name] long before the business name was registered. In any event, the witness acknowledged that the letter of allotment does not refer to him [witness].
84. It was the further testimony of the witness that the letter of allotment related to residential plot number D located at South C area within the city of Nairobi. Besides, the witness averred that the letter of allotment was accompanied with a PDP.
 85. Whilst under further cross examination, the witness averred that letter of allotment in his favour appears to have been issued on the same date with the letter of allotment contained at page 67 of the 2nd Defendant's bundle of documents. Furthermore, the witness clarified that the letter of allotment in the name of Naigreen Enterprises was issued on the 26th October 1994.
 86. The witness further testified that by the time the suit property was being allocated unto him, the land in question had been surveyed. In this respect, the witness averred that there was in existence a survey plan [FR] which was prepared by a licenced surveyor. Besides, the witness also pointed out that there was also in existence a Deed plan which was prepared in the year 2008.
 87. Whilst under further cross examination, the witness averred that same [Witness] did not know the exact location of the plot which he applied to be allocated. Nevertheless, the witness confirmed that the plot in question has several flats [high rise buildings].
 88. Other than the foregoing, it was the testimony of the witness that same was issued with a lease instrument. However, the witness conceded that he has not produced a copy of the lease instrument before the court. Furthermore, the witness acknowledged that same has not produced a copy of a letter of acceptance in respect of the letter of allotment.
 89. In addition, and whilst under further cross examination, the witness averred that by the year 2012, same only had a letter of allotment. For good measure, the witness acknowledged that by the year 2012 same had not paid the standard premium and the statutory payment[s] highlighted in the body of the letter of allotment.
 90. On the other hand, the witness averred that same is aware of the existence of another suit, namely, ELC No. 192 of 2019. The witness stated that the said suit relates to a claim by the 4th Defendant herein pertaining to the sale agreement which had been entered into between himself [witness] and the 4th Defendant].
 91. It was the further testimony of the witness that even though there were persons who occupy the flats on the suit property, same [witness] did not seek to ascertain the identities of the said occupants. At any rate, the witness added that he also did not know or bother to know who are the owners of the flats.
 92. On cross examination by learned counsel for the 4th Defendant, the witness averred that same entered into and executed a sale agreement with the 4th Defendant. However, the witness testified that same has not been paid the entire purchase price. It was the further testimony of the witness that the title number of the land being claimed by the Plaintiff is different from the one that was sold to and in favour of the 4th Defendant.
 93. Whilst under further cross examination, the witness averred that the letter of allotment was issued in favour of Naigreen Enterprises. In any event, it was the statement of the witness that the letter of allotment was accompanied with a Part Development Plan [PDP].
 94. It was the further testimony of the witness that subsequently same was issued with a deed plan dated the 27th June 2008. Besides, the witness added that the deed plan related to L.R No. 209/12599.



95. On further cross examination by Learned counsel for the 4th Defendant, the witness averred that ultimately same was issued with a certificate of title by the registrar of titles.
96. With the foregoing testimony, the 1st Defendant's case was closed.

C. The 2nd Defendant's Case:

97. The 2nd Defendant's case is anchored on the evidence of four [4] witnesses, namely, Gordon Odeka Ochien'g, Timothy Waiywa Mwangi, Wilfred Muchai Kabue and Bonface Mungai Ngochi. Same testified as DW2, DW3, DW4 and DW5, respectively.
98. It was the testimony of DW2 [Gordon Odeka Ochien'g] that same is currently the director of land administration at the ministry of lands, public works, housing and urban developments. Furthermore, the witness has averred that same has worked with the ministry for more than 34 years.
99. It was the further testimony of the witness that by virtue of his office same is familiar and conversant with the facts of this matter. In any event, the witness averred that same has since recorded a witness statement dated the 17th March 2023 and which witness statement the witness sought to adopt and rely on.
100. Suffice it to point out that the witness statement dated the 17th March 2023, was thereafter constituted as the evidence in chief of the witness. On the other hand, the witness also adverted to the list and bundle of documents dated the 17th March 2023 and containing 45 documents. In this regard, the witness thereafter sought to produce documents number 6 to 43 as exhibits before the court. There being no objection to the production of the named documents, same [documents] were produced and marked as exhibits D6 to D43 on behalf of the 2nd Defendant.
101. On cross examination by learned counsel for the Plaintiff, the witness averred that by virtue of being a director of land administration same is conversant and familiar with the process pertaining to allotment of land. In particular, the witness averred that where one was desirous to be allocated land same [person] would be called upon to generate an application letter to the commissioner of lands.
102. In respect of this matter, the witness averred that same did not come across any application letter written by the 1st Defendant seeking to be allocated land. In fact, the witness added that there was no application letter at all.
103. Whilst under further cross examination, the witness averred that same also did not come across any Part Development Plan [PDP] which was issued for purposes of alienation of the land in favour of the 1st Defendant.
104. On the other hand, it was the testimony of the witness that whenever an application for allotment of land was made on behalf of a business name, the Applicant would be called upon to attach a copy of the certificate of registration of the business.
105. It was the further testimony of the witness that same has since come across the letter of allotment dated the 26th October 1994. Furthermore, the witness averred that the letter of allotment is said to have been issued in favour of Naigreen Enterprises. Nevertheless, the witness added that the copy of business certificate which has been shown to him indicates that the business name was registered on the 7th April 1998.
106. Whilst under further cross examination, the witness averred that it is evident that the certificate of registration of the business name came long after the letter of allotment had been issued. In this regard,



- the witness testified that it was not possible for a letter of allotment to be issued in the name of an organization or business enterprise, which had not been registered.
107. On the other hand, it was the testimony of the witness that a letter of allotment ordinarily contains special conditions. In this regard, the witness averred that the special conditions would include an acceptance by the allottee and payment of the standard premium within 30 days from the post-mark. However, the witness averred that there was no payment which was made by the allottee within the 30-day period.
 108. It was the further testimony of the witness that the only payment which was made by Naigreen Enterprises was made in the year 2012. However, the witness clarified that by the time the payment was being made the 30-day period had long lapsed. In any event, the witness averred that the purported payment was being made after a duration of 18 years.
 109. Whilst still under cross examination, the witness averred that the payment in question was unlawful. Besides, it was the testimony of the witness that the purported allotment to and in favour of the 1st Defendant was equally illegal.
 110. The witness further testified that there was also no PDP that had been prepared and issued to underpin the allotment of the land to the 1st Defendant. Furthermore, the witness stated that the PDP which had been tendered by the 1st Defendant was fraudulent.
 111. It was the further testimony of the witness that the PDP which the 1st Defendant relies on is a copy of the PDP that had been used to allocate another piece of land. In any event, the witness added that the PDP relied upon by the 1st Defendant has been altered to create the suit property.
 112. On further cross examination, the witness averred that the creation of the purported plot in favour of the 1st Defendant has overlapped into an existing and developed government quarters which is occupied by serving civil servants. Besides, the witness averred that the registration of the suit property in favour of the 1st Defendant was fraudulent.
 113. On cross examination by learned counsel for the 1st Defendant, the witness averred that the 1st Defendant was allocated the suit plot. However, the witness clarified that he has said that the 1st Defendant was allocated the suit plot merely because the 1st Defendant has a letter of allotment.
 114. Whilst under further cross examination, the witness averred that the letter of allotment which was issued in favour of the 1st Defendant was irregular and illegal. In this regard, the witness pointed out that the land in question was not available for allocation.
 115. It was the further testimony of the witness that the PDP which is being relied upon and waved by the 1st Defendant was altered and is thus fraudulent.
 116. The witness further averred that the land in question was already reserved for government purposes in any event. The witness added that the land was developed with government quarters occupied by civil servants. In this respect, the witness clarified that the Land was not unalienated government land.
 117. It was the further testimony of the witness that insofar as the land in question stood alienated, same [Land] was not therefore available to be allocated to the 1st Defendant. Additionally, the witness averred that the original PDP which was altered in favour of the 1st Defendant reflected three plots. However, the witness clarified that upon the alteration, the PDP now [sic] shows four plots.
 118. The witness further clarified that the allotment of the land in favour of the 1st Defendant was fraudulent because the land in question was not available. Furthermore, the witness added that the



- allotment of the land was also based on a fraudulent PDP which had been altered to create the 4th plot contrary to the original PDP which showed three plots.
119. On further cross examination, the witness averred that the government through the ministry of finance entered into tenant- purchase agreement[s] with the Plaintiffs herein. In this regard, it was stated that the government was selling to the various civil servants including the Plaintiffs herein the housing units sitting on various flats.
 120. Additionally, and whilst under cross examination, the witness averred that even though the parcel number contained in the tenant purchase agreement differs with the one being claimed by the 1st Defendant herein, the ground location [geo-space] of the two properties is one and the same.
 121. The second witness who testified on behalf of the 2nd Defendant is Timothy Waiywa Mwangi. Same testified as DW3.
 122. It was the testimony of the witness [Timothy Waiywa Mwangi] that same is currently the deputy director of physical planning at the ministry of lands, housing, public works and urban development. Furthermore, the witness added that same has worked with the ministry for more than 30 years.
 123. It was the further testimony of the witness that by virtue of his office, same is conversant with matters pertaining to physical planning as well as the process attendant to allotment of land.
 124. In addition, the witness averred that in respect of the instant matter, same has recorded a witness statement dated the 8th March 2023 and which witness statement the witness sought to adopt and rely on as his evidence in chief. In this regard, the witness statement dated the 8th march 2023 was adopted and constituted as the evidence in chief of the witness.
 125. On the other hand, the witness adverted to the list and bundle of documents dated the 6th March 2023 containing two [2] documents and which documents the witness sought to tender and produce in court. There being no objection to the production of the documents, same [documents] were produced and admitted as exhibits D46 and D47, respectively, on behalf of the 2nd Defendant.
 126. Other than the foregoing, the witness also referenced the list and bundle of documents dated the 9th March 2023 and thereafter sought to tender and produce the documents listed thereunder. In the absence of any objection, the document thereunder was produced and admitted as exhibit D48 on behalf of the 2nd Defendant.
 127. On cross examination, by learned counsel for the Plaintiff, the witness stated that same has recorded a witness statement in respect of the instant matter. Furthermore, the witness also averred that he has clarified that he has no approved PDP underpinning the allotment of the property to the 1st Defendant.
 128. It was the further testimony of the witness that the land being claimed by the 1st Defendant was designated as government quarters. In fact, the witness added that the land is developed with flats which are occupied by civil servants.
 129. Whilst under further cross examination, the witness averred that the process attendant to allotment of land will include the preparation of a PDP, the approval thereof and the escalation of the approved development plan to the commissioner of lands for purposes of issuance of the letter of allotment. However, in respect of the instant matter, the witness averred that the PDP being relied upon by the 1st Defendant was never approved.
 130. It was the further testimony of the witness that the land in question was duly developed with government quarters and hence same was reserved. Furthermore, the witness added that the portion



- of land which is being claimed by the 1st Defendant was never replanned. In this regard, the witness testified that the land in question remained duly alienated and hence cannot be claimed by the 1st Defendant.
131. On re-examination by learned counsel for the 2nd Defendant, the witness averred that the PDP which related to the area contained three [3] plots. Furthermore, the witness added that the three [3] plots were named as a, b and c.
 132. Whilst under further re-examination, the witness averred that it is the said PDP which was highjacked and thereafter altered to create a fourth plot, namely, plot D. However, the witness clarified that the creation of plot D was a fraud.
 133. The third witness who testified on behalf of the 2nd Defendant was Wilfred Muchai Kabue. Same testified as DW4.
 134. It was the testimony of the witness, [Wilfred Muchai Kabue] that same is currently the assistant director of survey. Besides, the witness averred that same is also a licensed surveyor. In addition, it was the testimony of the witness that same is also a member of the institution of surveyor of Kenya.
 135. Arising from the foregoing, the witness averred that by virtue of his office and coupled with being a licensed surveyor, same [Witness] is knowledgeable about the facts of this matter. In any event, the witness added that same has since recorded a witness statement dated the 17th March 2023, which statement the witness sought to adopt as his evidence in chief.
 136. Suffice it to point out that the witness statement dated the 17th March 2023 was thereafter adopted and constituted as the evidence in chief of the witness.
 137. Other than the foregoing, the witness adverted to the list and bundle of documents dated the 17th March 2023 and containing 45 documents. Thereafter, the witness sought to tender and produce before the court documents number[s] 1 to 5 at the foot of the said list of documents. There being no objection to the production of documents numbers 1 to 5 at the foot of the list dated the 17th march 2023, same [documents] were produced and admitted in evidence as exhibit[s] D1 to D5, respectively on behalf of the 2nd Defendant.
 138. Furthermore, the witness also adverted to documents number[s] 44 and 45 at the foot of the list and bundle of documents dated the 17th March 2023 and thereafter sought to produce same as exhibits. In the absence of any objection to the production, the said documents were duly tendered and duly admitted as exhibits D44 and D45 on behalf of the 2nd Defendant.
 139. Other than the foregoing, DW4 also adverted to the list and bundle of documents dated the 9th march 2023 and thereafter sought to tender and produce before the court documents numbers 15 to 2022. For good measure, the said documents were tendered and produced as exhibit[s] D62 to 69, respectively on behalf of the 2nd Defendant.
 140. On cross examination, by learned counsel for the Plaintiff the witness averred that exhibit D45 is an overlay plan which was prepared by the director of survey. In any event, the witness added that the overlay plan was prepared by himself.
 141. It was the further evidence of the witness that the overlay plan [exhibit D45] shows the relationship between L.R No. 209/3585; 209/12558 and L.R No. 209/1559, respectively. Furthermore, the witness averred that the three [3] plots occupy the same geo-space [location].
 142. It was the further testimony of the witness that L.R No's 209/12558 and 209/12559 occupy the same ground which constitutes L.R No. 209/3585.



143. Whilst under further cross examination, the witness averred that L.R No, 209/12559 which is claimed by the 1st Defendant herein is fully developed and comprises of government quarters. In addition, the witness averred that the block containing the houses is fully captured and reflected in the overlay plan.
144. On further cross examination, the witness stated that there was no survey authority which was given to undertake any other survey works on the land comprising the housing blocks. At any rate, it was the testimony of the witness that the plot being claimed by the 1st Defendant is non-existent on the ground.
145. Other than the foregoing, the witness averred that the government houses stand on L.R No. 209/12558.
146. On cross examination by learned counsel for the 1st Defendant, the Witness averred that same is a qualified and licenced surveyor. In this regard, the witness testified that same is conversant with the process concerning the preparation of a survey plan [FR] and deed plan, respectively.
147. In any event, the witness averred that a deed plan can only be prepared after the approval of a survey plan. On the other hand, the witness averred that a deed plan was indeed prepared in respect of L.R No. 209/12558. However, the witness clarified that no deed plan was prepared in respect of the land being claimed by the 1st Defendant.
148. Whilst under further cross examination, the witness averred that the flats [Blocks of Flats] owned by the government are standing on L.R No. 209/12558.
149. Upon being referred to the letter of allotment dated the 26th October 1994, the witness averred that the letter of allotment in question was fraudulent, illegal and unlawful. In any event, the witness added that the letter of allotment was issued on the basis of a fraudulent PDP.
150. It was the further testimony of the witness that same [Witness] is aware that there was a conversion process which affected the suit property where the housing units are standing. Nevertheless, the witness clarified that there was no replanning of the area.
151. On cross examination by learned counsel for the 4th Defendant, the witness averred that the land in question, namely, the disputed property has three [3] parcel numbers. However, the witness clarified that the land reference numbers relate to the same ground.
152. It was the further testimony of the witness that the tenant purchase agreement[s] which were produced before the court relates to L.R No. 209/5323. Nevertheless, the witness clarified that he [witness] did not visit the locus in quo.
153. On re-examination, by learned counsel for the 2nd Defendant, the witness averred that it was no necessary for him to visit the ground, [locus in quo] before preparing the witness statement. In any event, the witness averred that same has availed to court the overlay plan which captures the exact ground situation pertaining to the suit property.
154. Whilst still under re-examination, the witness averred that the plot in question, which is the subject of the dispute before the court has government quarters [Blocks of Flats] which are currently occupied by civil servants.
155. The fourth witness who testified on behalf of the 2nd Defendant is Bonface Mungai Ngochi. Same testified as DW5.
156. It was the testimony of the witness [Bonface Mungai Ngochi] that same is currently the deputy director of housing at the ministry of lands, housing, public works and urban development. Furthermore, the



- witness averred that by virtue of his office, same is conversant and familiar with the facts of this matter. In addition, the witness averred that same has also recorded a witness statement dated the 23rd March 2023 and which witness statement the witness sought to adopt and rely on. To this end, the witness statement dated 23rd March 2023 was adopted and constituted as the evidence in chief of the witness.
157. On the other hand, the witness adverted to and referenced the supplementary list and bundle of documents dated the 9th March 2023 and thereafter sought to produce documents numbers 2 to 14 thereunder.
 158. There being no objection to the production of documents number[s] 2 to 14 contained at the foot of the supplementary list and bundle of documents dated the 9th March 2023, same [documents] were tendered and admitted as exhibits D49 to D61, respectively on behalf of the 2nd Defendant.
 159. Additionally, DW5 also referenced the supplementary list and bundle of documents dated the 6th March 2023 containing a total of 53 documents and which documents the witness sought to tender and produce before the court. In the absence of any objection to the production of the Documents, same were tendered in evidence as exhibit[s] D70 to D122, respectively on behalf of the 2nd Defendant.
 160. On cross examination by learned counsel for the Plaintiff, the witness averred that document number 3 at the foot of the supplementary list of documents dated the 6th March 2023 relates to the template of the tenant purchase agreements which were prepared by the ministry of finance. Furthermore, the witness averred that the template in question was the same for all the housing units, save for the unit numbers and the names of the tenant purchasers.
 161. On the other hand, it was the testimony of the witness that the tenant purchase agreement[s] relate to units standing on L.R No. 209/5323.
 162. Whilst under further cross examination and upon being referred to the letter dated the 6th April 2006, the witness averred that the land reference alluded to at the foot of the letter is L.R No 26/1330. In any event, the witness admitted that the Land referenced at the foot of the letter dated the 6th April 2006, is different from the one highlighted at the foot of the template.
 163. Whilst under further cross examination, the witness averred that even though the land reference contained at the foot of the letter dated the 6th April 2006 is different from the one contained at the foot of the tenant purchase agreement, however, the two land reference numbers refer to one and the same landed property. Furthermore, the witness added that same [witness] is conversant with the suit property.
 164. It was the further testimony of the witness [DW5] that same has visited the suit property and that the suit property is developed with 7 blocks comprising of flats. Furthermore, the witness added that the flats in question were constructed by the government.
 165. Additionally, it was the testimony of the witness that the housing blocks [flats] are under the occupation of various civil servant. Besides, the witness averred that the government sought to sell the said housing units to the various civil servants who are residing therein and, in this regard, the government generated tenant purchase agreement[s].
 166. Whilst under further cross examination, the witness averred that the various civil servants including the Plaintiffs herein have since complied with the terms of the tenant purchase agreement[s]. In particular, the witness averred that the Plaintiffs herein have fully paid the purchase price and the ministry of housing are in the process of issuing certificate of titles to the concerned occupants.



167. It was the further testimony of the witness that the process attendant to the issuance of certificate of title is currently on going and the matter/issue is with the directorate of survey who is called upon to clarify the appropriate land reference number.
168. Whilst under further cross examination, DW5 averred that the land in question was not unalienated government land. In this regard, the witness posited that the land in question was therefore not available for alienation.
169. On cross examination by learned counsel for the 1st Defendant, the witness averred that the contents of the witness statement which same adopted before the court are correct. Furthermore, the witness averred that same is conversant with the suit property. Besides, the witness testified that the property in dispute had long been alienated and same contains the government quarters occupied by various civil servant.
170. Whilst still under cross examination, the witness averred that the housing units were previously rented out to the various civil servant and thereafter the government entered into tenant purchase agreement with the occupants culminating into the sale of the various unit to the occupants.
171. It was the further testimony of the witness that the tenant occupants were issued with letters of allotment and thereafter same executed sale agreement with the government through the ministry of finance. The witness further testified that the property in question stood alienated and developed with housing units occupied by civil servants. In this regard, the witness clarified that the land in question was therefore not available for allocation to the 1st Defendant.
172. On cross examination, by learned counsel for the 4th Defendant, the witness averred that the Government indeed entered into and executed tenant purchase agreement with the tenant/occupants of the various housing unit situate on the suit property. Furthermore, the witness added that the tenant purchase agreement has referenced the land parcel of land.
173. Whilst still under cross examination, the witness averred that even though the land reference number contained at the foot of the tenant purchase agreement and the land reference number alluded to by the 1st Defendant are different, the same however refer to one and the same ground.
174. On re-examination, by learned counsel for the 2nd Defendant, the witness reiterated that the land in question which comprises of the government quarters was not available for allocation to the 1st Defendant. In any event, the witness added that the land in question was already alienated.
175. With the foregoing testimony, the 2nd Defendant's case was closed.

D. The 3rd Defendant's Case:

176. The 3rd Defendant herein duly entered appearance and filed a statement of defence. However, the 3rd Defendant neither filed a list and bundle of document nor a witness statement. At any rate, the 3rd Defendant herein intimated to the court that same would not be calling any witness. Consequently, and in this regard, the 3rd Defendant's case was duly closed without calling of any witness and production of any document.

E. The 4th Defendant's Case:

177. The 4th Defendant's case revolves and gravitates around the evidence of one witness, namely, David Kipkemoi Mundui. Same testified as DW6.



178. It was the testimony of the witness [DW6] that same is a director of the 4th Defendant. Furthermore, the witness averred that the 4th Defendant entered into and executed a sale agreement in respect of L.R No 209/12559 [suit property].
179. It was the further testimony of the witness that same is therefore conversant with the facts of this matter and in any event, same has since recorded a witness statement dated the 20th May 2019. In this regard, the witness sought to adopt and rely on the contents of the said witness statement.
180. Suffice it to state that the witness statement dated the 20th May 2019 was thereafter adopted and constituted as the evidence in chief of the witness. Furthermore, the witness adverted to and referenced the list and bundle of documents dated the 20th May 2018, containing 11 documents. In this regard, the witness thereafter sought to tender and produce the documents as exhibits before the court.
181. There being no objection to the production of the documents highlighted at the foot of the list of documents dated the 20th May 2019, the same were tendered and produced as exhibits D1 to D11 on behalf of the 4th Defendant.
182. Additionally, the witness referenced the statement of defence dated the 28th October 2022 and thereafter sought to adopt and rely on same. In this regard, the witness implored the court to dismiss the Plaintiff's suit.
183. On cross examination by learned counsel for the Plaintiff, the witness averred that the 4th Defendant undertook and/or carried out an official search over the suit property. In this regard, the witness averred that the 4th Defendant was issued with an official search.
184. On the other hand, the witness also testified that the 4th Defendant's representative also visited the locus in quo [the ground location] and discerned that the suit property was developed. In particular, the witness averred that the suit property was developed with various blocks of apartments/flats. However, the witness stated that same did not enter onto the suit property.
185. Whilst under cross examination, the witness averred that despite the sale agreement containing a clause that vacant possession would be handed over to the 4th Defendant, the 4th Defendant has to date not been given vacant possession.
186. On the other hand, it was the testimony of the witness that upon entering into the sale agreement, the 4th Defendant paid to and in favour of the 1st Defendant the sum of kes.7, 500, 000/= only. Nevertheless, the witness averred that the 4th Defendant has not paid the balance of the purchase price.
187. It was the further testimony of the witness that the suit property was subsequently transferred and registered in the name of the 4th Defendant. In this regard, the witness averred that the 4th Defendant duly paid the stamp duty of kes.1, 028, 040/= only, which was assessed by the commissioner of stamp duty.
188. The witness further testified that the 1st Defendant executed the sale agreement and the transfer instrument on the same day. However, the witness averred that same does not recall the date when the 4th Defendant made payments on account of the purchase price.
189. Nevertheless, it was the further testimony of the witness that the payments towards and on account of the purchase price was made after the signing of the agreement and the transfer instrument.
190. On further cross examination, the witness averred that the purchase price was paid to the transactional advocate. However, the witness admitted that same has not tendered and/or produced any documents to demonstrate payment of the purchase price.



191. On cross examination by learned counsel for the 1st Defendant, the witness averred that the 4th Defendant carried out and undertook a search in respect of the suit property. Besides, the witness added that the official search which was issued has been tendered and produced as an exhibit before the court.
192. It was the further testimony of the witness that the sale agreement was entered into and executed on the 18th November 2016. Besides, the witness added that the 4th Defendant paid the purchase price save for a balance of Kes.1, 700, 000/= which amount remains due.
193. Whilst still under cross examination, the witness averred that the balance of the purchase price, namely, kes.1, 700, 000/= was to be paid at the time of handing over of vacant possession of the suit property. The witness further averred that despite the transfer and registration of the suit property in the name of the 4th Defendant, the 4th Defendant has not been granted vacant possession of the suit property.
194. Additionally, the witness averred that as a result of the failure to hand over vacant possession of the suit property, the 4th Defendant has since sued the 1st Defendant in court. In fact, the witness averred that there is a pending suit wherein the 4th Defendant has sought to compel the 1st Defendant to hand over vacant possession or to refund the purchase price.
195. On cross examination by learned counsel for the 2nd Defendant, the witness averred that the 4th Defendant was incorporated around the year 2014/2015. Besides, the witness averred that the directors of the 4th Defendant include Weston Kibet and himself [DW6].
196. It was the further testimony of the witness that prior to entering into the sale agreement, the 4th Defendant carried out an official search in respect of the suit property. Furthermore, the witness admitted that the official search has been tendered and produced as evidence before the court.
197. It was the further testimony of the witness that the certificate of official search which was issued to the 4th Defendant is dated the 17th October 2016. However, the witness shortly made an about turn and contended that the official search was issued on the 24th September 2016.
198. Whilst under further cross examination, the witness averred that the search which was carried out on the 24th September 2016 revealed that the suit property was already registered in favour of the 4th Defendant. Nevertheless, the witness testified that the registration of title was undertaken on the 17th October 2016.
199. Upon being cross examined as to how the search would reveal that the suit property was already registered in the name of the 4th Defendant long before the transfer of same, the witness indicated that he [witness] does not know how the search came out before the registration.
200. On further cross examination, the witness averred that the suit property which was being sold to the 4th Defendant was fully developed with apartment/flats. However, the witness added that the housing blocks/apartments are old.
201. Other than the foregoing, the witness averred that the blocks of apartment/flats, which are standing on the suit property are currently occupied by some persons. However, the witness added that he did not authenticate the identities of the persons who occupy the suit property.
202. On further cross examination by learned counsel for the 1st Defendant, the witness averred that the 4th Defendant has since paid to and in favour of the 1st Defendant the sum of Kes.7, 000, 000/= only. However, the witness testified that same has not brought to court any evidence of payments made by the 4th Defendant.



203. It was the further testimony of the witness that even though the suit property was transferred and registered in the name of the 4th Defendant, same has neither paid rent or rates on annual basis.
204. Furthermore, it was the testimony of the witness that same is aware that the blocks of apartment/flats sitting on the suit property are currently occupied by civil servants. In this regard, the witness averred that same got to know of the said position in the year 2020.
205. On the other hand, it was the testimony of the witness that same is not aware of whether the occupants of block of apartments standing on the suit property have ever paid rents to the 1st Defendant.
206. On cross examination by learned counsel for the 3rd Defendant, the witness averred that the suit property is developed. In any event, the witness added that the suit property contains a block of old buildings. Furthermore, the witness added that same does not know the owner of the block of flats sitting on the suit property.
207. On further cross examination, the witness averred that even though same purchased the suit property from the 1st Defendant, the 4th Defendant has never gained access to and/or occupation of the suit property.
208. On re-examination by learned counsel for the 4th Defendant, the witness averred that the 4th Defendant was given an assurance by the 1st Defendant that same will facilitate vacant possession of the suit property. On the other hand, the witness averred that despite the assurance by the 1st Defendant, the 4th Defendant has never been granted vacant possession.
209. Whilst under further re-examination, the witness averred that as a result of the failure by the 1st Defendant to grant vacant possession, the 4th Defendant has withheld the payments of the balance of the purchase price amounting Kes.1, 700, 000/= only.
210. With the foregoing testimony, the 4th Defendant's case was duly closed.

Parties Submissions:

211. At the close of the defence hearing, the advocates for the respective parties covenanted to file and exchange written submissions. In this regard, the court thereafter proceeded to and circumscribed the timelines for the filling and exchange of written submissions.
212. In line with the directions of the court, the Plaintiffs proceeded to and filed written submissions dated the 30th July 2024 and wherein the Plaintiffs have highlighted and canvassed four [4] salient issues for consideration by the court. For good measure, the Plaintiffs have highlighted the following issues, namely; whether the Plaintiffs are bona fide proprietors of the suit property; whether the allocation of the suit premises to the 1st Defendant conferred upon him a good title; whether the 4th Defendant is a bona fide purchaser for value without notice and whether the Plaintiff had a legitimate expectation to be issued with titles to the suit premises.
213. The 1st Defendant, filed written submissions dated the 12th July 2024 and wherein same similarly, highlighted and canvassed four [4] issues, namely; whether the Plaintiffs have a legitimate claim based on the sale agreement; whether the suit property was available for allocation to the 1st Defendant; whether the Plaintiff and the 2nd Defendant have proved any fraud on the part of the 1st Defendant and finally, whose interests as between the Plaintiffs and the 1st Defendant takes precedence in terms of priority.
214. The 2nd Defendant [the honourable attorney general] filed written submissions dated 22nd July 2024 and in respect of which the honourable attorney general has highlighted and canvassed four [4]



- pertinent issues, namely; whether the Plaintiffs are bona fide proprietors of the suit premises; whether the allocation of the suit premises to the 1st Defendant confer upon him good title; whether the 4th Defendant is a purchaser for value without notice and whether the Plaintiffs had a legitimate expectation to be issued with certificate of titles.
215. Suffice it to point out, that in the conclusion of the submissions by the 2nd Defendant, the honourable attorney general has contended that the Plaintiffs herein having duly entered into and executed tenant purchase agreements with the government through the ministry of finance, same [Plaintiffs] have a legitimate expectation to be issued with certificate of titles to the various housing units occupied by the them.
 216. On the contrary, the honourable attorney general has contended that the allocation of the suit property to and in favour of the 1st Defendant wrought and fraught with fraud and illegalities and hence the 1st Defendant did not accrue any lawful title to the suit property.
 217. By extension, the honourable attorney general has also posited that insofar as the 1st Defendant did not acquire nor accrue any lawful title to the suit property, same [1st Defendant] therefore did not convey to the 4th Defendant any lawful interests over the suit property. Notably, the written submissions on behalf of the 2nd Defendant are accompanied with various case law which are bound together in a booklet numbering 576 pages.
 218. The 3rd Defendant filed written submissions dated the 26th July 2024 and wherein same has isolated and thereafter canvassed two [2] salient issues, namely; whether the suit property was available for allocation to the 1st Defendant and whether the Plaintiffs have a viable cause of action as against the 3rd Defendant.
 219. Finally, the 4th Defendant filed written submissions and in respect of which the 4th Defendant has primarily contended that same is a bona fide purchaser for value without any notice of defect in the title of her predecessor, namely, the 1st Defendant herein. In this regard, the 4th Defendant has thus implored the court to find and hold that same is entitled to the suit property on the basis of being an innocent purchaser for value.
 220. Additionally, the 4th Defendant has also contended that by virtue of being the registered and lawful proprietor of the suit property, same is therefore entitled to vacant possession of the suit property.
 221. Arising from the foregoing, the 4th Defendant has therefore sought for an order for the Plaintiffs to vacate and grant vacant possession of the suit property. However, it suffices to point out that the 4th Defendant did not file any counterclaim.
 222. The written submissions [details in terms of the preceding paragraphs] form part of the record of the court. In this regard, the court has had occasion to consider same and the arguments thereunder shall be deployed in determining the issues in dispute.
 223. Be that as it may, it suffices to underscore, that even though the court has not rehashed and reproduced the contents of written submissions in the body of the judgment, the court is nevertheless, extremely grateful to the advocates for the respective parties for comprehensive and incisive submissions tendered.
 224. Furthermore, it is imperative to underscore that the failure to reproduce and/or rehash the submissions by respective parties is not borne out of any contempt. Far from it, the court is indeed indebted to the advocates for the erudite research that underpins the submissions beforehand.



Issues For Determination:

225. Having reviewed the pleadings filed, namely, the amended Plaintiff and the Statements of Defence; as well as the evidence tendered [both oral and documentary] and upon consideration of the written submissions filed by and on behalf of the respective parties, the following issues crystallize and are thus worthy of determination;
- i. Whether or not L.R No's Nairobi Block 26/1330; L.R No. 209/5323; L.R No. 209/3585 and L.R No. 209/12559 relate to one and the same geo-space or otherwise.
 - ii. Whether the property namely, L.R No. 209/12559 [which is claimed by the 1st Defendant] was lawfully allocated to the 1st Defendant or otherwise.
 - iii. Whether the 1st Defendant acquired and/or accrued any lawful rights or interests over and in respect of the suit property or at all.
 - iv. Whether the 4th Defendant is bona fide purchaser for value and thus entitled to the suit property or otherwise.
 - v. What orders, if any ought to issue.

Analysis And Determination:

Issue Number 1 Whether or not L.R No's Nairobi Block 26/1330; L.R No. 209/5323; L.R No. 209/3585 and L.R No. 209/12559 relate to one and the same geo-space or otherwise.

226. The Plaintiffs herein filed the instant suit contending that same [Plaintiffs] entered into and executed tenant purchase agreements with the government of Kenya through the ministry of finance and wherein the government agreed to sell to and in favour of the Plaintiffs the various housing units standing on block of flats standing on L.R No. 209/5323.
227. To this end, it suffices to reproduce the contents of paragraph 7 of the amended Plaintiff. Same states as hereunder;
7. upon making a proposal to purchase the houses and accepting the government's terms that were offered to them, the Plaintiffs signed tenant purchase agreement over the housing units on the block or flats on L.R No. 209/5323 with the government of Kenya acting through the ministry of finance.
228. From the contents of paragraph 7, which has been reproduced in the proceeding paragraph, it is evident and apparent that the land wherein the block of flats is standing is deemed to be L.R No. 209/5323.
229. Furthermore, it is also important to underscore that when the government through the ministry of finance offered to sell to the Plaintiffs the various units wherein the Plaintiffs were occupying, the government through the ministry of lands and housing clearly referenced the property where the housing units were standing as L.R No. 209/5323 – Kabras Road Estate. [See Exhibit P1 [a] to [e] respectively].
230. Similarly, upon generating the tenant purchase agreement, the government through the ministry of finance signalled that the parcel of land on which the blocks of flats were standing was L.R No. 209/5323. Suffice it to posit that the letter of offer by the ministry of lands and housing as well as the tenant purchase agreement which were executed referenced the land in question as L.R No. 209/5323.



231. However, the Plaintiffs contended that on or about the year 2017, the 1st and 4th Defendants herein sought to interfere with their [Plaintiffs] occupation of the housing units which were the subject of the tenant purchase agreements contending that same [1st and 4th Defendants] were the lawful owners of the land in question.
232. Furthermore, the Plaintiffs also averred that the 1st Defendant also retained a lead expert with instructions to prepare an environmental impact assessment report on L.R No. 209/12559 – South B. However, even though, the parcel of land referenced and claimed by the 1st and 4th Defendant is different from the one referenced at the foot of the tenant purchase agreement, it was contended by the Plaintiffs that the 1st and 4th Defendants were actually staking a claim to the land wherein the Plaintiffs were residing.
233. As a result of the threats posed by the 1st and 4th Defendants, the Plaintiffs herein wrote a complaint letter to the principal secretary, transport, infrastructure, housing and urban development seeking to ascertain the true status of the claim by the 1st and 4th Defendants and whether L.R 209/12559, L.R 209/5323 and L.R 209/3585 had any correlation.
234. Upon receipt of the complaint by the Plaintiffs, the principal secretary, transport, infrastructure, housing and urban development generated a letter dated the 21st September 2017 and which was directed to the director of survey seeking clarification on the correct parcel number on which the seven [7] blocks of apartments formerly belonging to the national government and which were sold to civil servant in 2004, were standing. For coherence, the permanent secretary referenced both L.R No. 209/12559 and L.R 209/3585.
235. From the foregoing, what comes out is that there are four conflicting parcel numbers which are being adverted to and referenced by the parties. In this respect, there is need to discern and/or ascertain whether the parcel numbers being referenced refer to separate and distinct parcel of lands or otherwise.
236. Additionally, it is important to posit that the determination of whether or not the various parcel numbers refer to separate and distinct parcel of lands or otherwise, would be critical in assisting the court to resolve the dispute between the Plaintiffs on one hand and the 1st and 4th Defendant on the other hand.
237. Quite clearly, if the various parcels of lands refer to different plots, then it means each and every party has a distinct plot and this would require the intervention of the director of survey to point out the geo-space [ground location] attendant to each parcel of land.
238. On the other hand, if the various land references relate to one and the same geo-space [ground location] then it becomes imperative to ascertain who between the disputants has a right to the geo-space that corresponds with the land being disputed.
239. In an endeavour to discern whether the various land references L.R No. 26/1330, L.R 209/12559, L.R 209/5323 and L.R 209/3585 refer to separate and distinct geo-space or otherwise, it suffices to take cognizance of the totality of the evidence tendered by the parties.
240. To start with, PW1 whilst under cross examination by learned counsel for the 4th Defendant stated as hereunder;

“The tenant purchase agreements contain the details of the land that were sold to us. Furthermore, the details of the land have also been referenced in my witness statement. I stand by the contents of the witness statement. The land in question belongs to the



government of Kenya. The numbers of the land may be different but the plot is the same. We are the ones on the plot/land”.

241. On the other hand, PW2 whilst under re-examination stated as hereunder;

“The government is the one who sold the units to us. The government would not have sold the land to us. The dispute before the court touches on the true identity of the suit property. The dispute has been the basis of various correspondences”.

242. PW3 whilst under cross examination by learned counsel for the 4th Defendant stated as hereunder;

“We have sued the 4th Defendant because it is the 4th Defendant who contends that we have trespassed onto her land. Additionally, I wish to add that it is the 4th Defendant who lays a claim to the suit property albeit through a different title number”.

243. Furthermore, PW3 ventured forward and stated as hereunder;

“I don’t claim ownership of the land registered in the name of the 4th Defendant but I wish to add that the said land is the same ground as the property which was sold to us by the government and which the other Plaintiffs and I occupy. It was not possible for the 3rd Defendant to allocate the same property even under a different title number to another person because the property in question was already reserved and therefore not available for allocation”.

244. From the testimonies by the Plaintiffs, what comes out clearly is that even though the 1st and 4th Defendants are adverting to and staking a claim to L.R No. 209/12559 [suit property], the geo-space which is claimed by the 1st and 4th relates to the same ground wherein the blocks of flats occupied by the Plaintiffs is situated. Simply put, from the Plaintiffs perspective, the land reference numbers may be different but the ground location is the same.

245. First forward, DW1 testified that even though same applied to be allocated land, same however did not know the ground location of the land that was [sic] allocated unto him. In any event, the witness added that same did not visit the ground of the property allocated to him until the year 2015.

246. Be that as it may, whilst under cross examination by learned counsel for the Plaintiffs, DW1 stated as hereunder;

“I was taken to the land by some officer from the ministry of lands. The land in question had a block of flats/storey buildings. The block of flats had some people in occupation thereof. I did not know the details of the persons who were in occupation of the block of flats”.

247. Whilst under cross examination by learned counsel for the 2nd Defendant, DW1 stated as hereunder;

“The land in question was situated in South C. I did not know the plot beforehand. The plot in question had flats thereon. I have not taken possession of the property. I did not care to ascertain and confirm who are the people residing on the property”.

248. On further cross examination by learned counsel for the 2nd Defendant DW1 stated as hereunder;

“I did not know who was the owner of the blocks of flats. I did not bother to find out who are the people staying on the blocks”.



249. Instructively, DW1, who contends that same was allocated L.R No. 209/12559, is on record as confirming that what was allocated unto him contain a block of flats. Furthermore, DW1 also confirms that the block of flats standing on the land that was allocated unto him had various occupants residing thereon.
250. To my mind, the evidence/testimony by DW1 corroborates the evidence of PW1, PW2 and PW3 to the effect that the land which was purportedly allocated to and in favour of the 1st Defendant and which bears L.R No. 209/12559 relates to the same ground containing the block of flats occupied by the Plaintiffs.
251. Other than the testimony that was tendered by DW1, it is imperative to take cognizance of the evidence of DW2 [Gordon Odeka Ochieng]. Whilst under cross examination by learned counsel for the Plaintiffs, same stated as hereunder;

“The certation of the purported plot in favour of the 1st Defendant herein overlapped into an existing and developed government quarters occupied by serving civil servant. The registration of the land in favour of the 1st Defendant was fraudulent because the land did not exist for allocation”.

252. On his part DW4 [Wilfred Muchai Kabue] stated as hereunder whilst under cross examination by learned counsel for the Plaintiff;

“Exhibit number D45 is an overlay plan which is prepared by the director of survey. I am the one who prepared the overlay plan herein. The document shows the relationship between L.R No. 209/3585; 209/12558 and 209/12559. Same are at the same place. I wish to clarify that L.R No. 209/12558 and L.R No. 209/12559 occupy the same ground location or geo-space as L.R No. 209/3585”.

253. Whilst under further cross examination by learned counsel for the Plaintiff, DW4 testified and stated as hereunder;

“The plot claimed by the 1st Defendant is non-existent on the ground. However, I wish to state that there are government houses on L.R No. 209/12558”.

254. From the totality of the evidence on record, what emerges and which is crystal clear is that the various and diverse land reference numbers which are being adverted to by the parties relates to and concern the same geo-space.

255. For good measure, the land which was [sic] allocated to the 1st Defendant, namely L.R No. 209/12559 actually relates to the same ground wherein the government quarters occupied by the Plaintiffs stand. In this regard, the Plaintiffs position that what was allocated to the 1st Defendant under a different land parcel number actually relates to the land same [Plaintiffs] occupy is correct and well grounded.

Issue Number 2 Whether the property namely, L.R No. 209/12559 [which is claimed by the 1st Defendant] was lawfully allocated to the 1st Defendant or otherwise.

256. Having found and held that L.R No’s Nairobi Block 26/1330. 209/5523, 209/3585 and 209/12559, the latter which is the suit property, fall on the same geo-space, it is now appropriate to venture forward and discern whether the suit property which is claimed by the 1st and 4th Defendants was lawfully allocated to the 1st Defendant.



257. Suffice it to point out that it is the 1st Defendant who contends that the suit property was lawfully allocated unto him on the basis of [sic] the letter of allotment dated the 26th October 1994. Thereafter the 1st Defendant posited that same proceeded to and undertook the necessary processes culminating into the issuance of a certificate of lease on the 17th October 2016.
258. In my endeavour to discern whether or not the suit property was lawfully and duly allocated to the 1st Defendant, I propose to consider various perspective [read nuances] underpinning the circumstances leading to the issuance of the letter of allotment dated the 26th October to 1994.
259. To start with, it is worthy to point out that the letter of allotment dated the 26th October 1994 was issued to and in favour of an organization namely, Naigreen Enterprises of P.O Box 20183 Nairobi. For good measure, the letter of allotment was not issued to and in favour of the 1st Defendant. In this regard, the contention by the 1st Defendant that the letter of allotment was issued unto him [1st Defendant] is misleading and erroneous.
260. Furthermore, the question that does arise is whether a letter of allotment could issue to and in favour of a business name, namely, Naigreen Enterprises. Suffice it to underscore that DW1 testified before the court and intimated to the court that Naigreen Enterprises was/is a business name which was registered by himself [1st Defendant].
261. To the extent that Naigreen Enterprises is a business name and not a company, it suffices to underscore that same [Naigreen Enterprises] is not a legal entity in the eyes of the law. In this regard, and to the extent that Naigreen is not a legal entity in the eyes of the law [Naigreen Enterprises] was therefore incapable of being granted and/or issued with a letter of allotment.
262. In addition, I hold the position that a letter of allotment is an offer by the commissioner of lands [now defunct] to the allottee and which offer is subject to acceptance. In this regard, the legal presupposition is that the allottee, in this case Naigreen Enterprises is a legal entity capable of entering into a contract. Sadly, in this case, the letter of allotment was being issued to and in favour of a non-entity.
263. To underscore the legal position that a letter of allotment cannot issue to and in favour of a business name, which is not a legal entity, it suffices to cite and reference the holding in the case of John Mukora Wachihi versus Minister for Lands & 6 others [2013] eKLR where the court dealt with a similar scenario. For coherence, the court stated and held thus;-

“Consequently, as the petitioners in Petition Nos. 83, 85, 86, 88 and 89 of 2010 have no title to the respective properties they claim ownership of, they cannot allege violation of their rights under section 75 of the former constitution or Article 40 of *the Constitution* of Kenya 2010. Indeed, given the fact that the letters of allotment are, in some cases, issued to business names, which are not legal entities and which, as averred by the 6th respondent, have no capacity to hold property, questions do arise with regard to the propriety of the alleged allocations in the first instance. These, however, are not issues that fall for determination in this matter. Suffice to say that as they do not hold titles to the respective properties that they claim ownership of, the petitioners in Petition Nos. 83, 85, 86, 88 and 89 of 2010 cannot maintain a claim for violation of constitutional rights against the respondents.”

264. Similarly, this court has previously dealt with and discussed the question as to whether a letter of allotment can issue to and in favour of a business name. In the case of Ahamed v Kenya National Highways Authority & 2 others; Lead Property Developers & 2 others (Third party) (Environment & Land Case 333 of 2013) [2024] KEELC 5130 (KLR) (10 July 2024) (Judgment), this court stated and held thus;



287. The question that does arise and which the court must grapple with in the first instance relates to whether an allotment of land [which constitutes an offer to an allottee] can issue and/or be issued to a non-entity; or a body not known to Law.
288. To my mind, it is settled law that an allotment of land can only be issued to a legal person whether natural or juristic. In this regard, other than a natural person [human being], the only other body that can accrue a letter of allotment in its/her own name would be a duly incorporated company [which is a person known to law] or such other body duly registered and imbued with legal capacity.
289. To the contrary, a business name like M/s Baimet Contractors in whose favour the letter of allotment is said to have been issued, cannot accrue such allotment. Simply put, a business name is not a legal/juristic entity, in the eyes of the law.
290. Having come to the foregoing position, the incidental question that arises is whether any allotment of land to a non-entity, can suffice for purposes of attracting lawful rights and/or interests and/or otherwise.
291. However and without belabouring the point, it is my considered view that the letter of allotment which was [sic] issued in a business name is itself a nullity and thus cannot be fulcrum [foundation] upon which any legal process is premised.
265. Flowing from the foregoing, I hold the conviction that a letter of allotment cannot issue to and in favour of a business name. In this respect, there is no gainsaying that the letter of allotment dated the 26th October 1994 upon which the 1st Defendant stakes a claim to the suit property was a nullity ab initio.
266. Notwithstanding the foregoing, there is yet another puzzle pertaining to and concerning the issuance of the letter of allotment in favour of Naigreen Enterprises. The puzzle touches on and concerns whether it was possible to issue a letter of allotment in favour of [sic] a business name which had not been registered as at the material time of the letter of allotment.
267. It is worthy to recall that DW1 [the 1st Defendant] testified before the court and averred that M/s Naigreen Enterprise is his business name. Furthermore, the witness averred that the business name was registered in 1998. In addition, DW1 posited that the certificate of registration was issued on the 7th April 1998.
268. To put the testimony of DW1 into perspective, it suffices to reference the evidence tendered whilst being cross examined by learned counsel Mr. Allan Kamau [Principal litigation counsel]. DW1 stated as hereunder;
- “The letter of allotment is dated the 26th October 1994. The letter of allotment is in favour of Naigreen Enterprises. I am familiar with the certificate of registration of the business name. The certificate was issued on the 7th April 1998. The letter of allotment was issued long before the business name was registered. The business name was registered on the 7th April 1998. The letter of allotment was issued in the name of Naigreen Enterprises long before the business was registered”.
269. It is evident and apparent that the business name which was allegedly issued with the letter of allotment in question was not in existence as at the time of the purported issuance of the letter of allotment. Consequently and in this regard, it is perplexing as to how a letter of allotment could prophetically issue in favour of an organization that has not been birthed.



270. To my mind, the issuance of the letter of allotment in favour of a business name which had not been registered is tantamount to generating a letter of allotment in the name of a child long before the child has been born. As to how this is possible, only the 1st Defendant and [sic] the commissioner of land who executed the letter of allotment can tell.
271. Be that as it may, it is my finding and holding that the letter of allotment in question is similarly vitiated by the fact that same was purportedly being issued in favour of a non-existent organization. For coherence, there is no gainsaying that the circumstances leading to the issuance of the letter of allotment in question are mind boggling.
272. Thirdly, there is also the question that any allottee, Naigreen Enterprises not excepted, is obligated to comply with the special terms contained at the foot of the letter of allotment. In particular, the allottee is obligated to accept the offer and to make payments of the standard premium within 30 days from the date of the letter of allotment. Furthermore, it is also worthy to point out that a failure to comply with the special conditions will render the offer to lapse.
273. In respect of the instant matter and for the sake of arguments only, it is important to underscore that the letter of allotment under reference was issued on the 26th October 1994. Consequently, the allottee thereof was obligated to generate a letter of acceptance and to make the requisite payments within 30 days of the post-mark. In this regard, it suffices to point out that the 30 days would run up to and including the 25th November 1994.
274. Accordingly, if the 1st Defendant herein or by extension Naigreen Enterprises, were desirous to act upon the letter of allotment, same were obligated to generate the letter of acceptance and make the requisite payments within 30 days. However, it is not lost on this court that no letter of acceptance was ever generated by the 1st Defendant or otherwise.
275. Additionally, there is no gainsaying that neither the 1st Defendant nor M/s Naigreen Enterprises made payments of the standard premiums and the other statutory levies within the 30 days. For good measure, the 1st Defendant [DW1] did not tender or produce before the court any banker's cheque or revenue receipt issued by the commissioner of lands.
276. Notwithstanding the foregoing, the 1st Defendant herein conceded that payments pertaining to and in respect of the stand premium were made in the year 2012. For good measure, the payments were [sic] being made after a duration of more than 18 years.
277. Other than the foregoing, DW2 [Gordon Odeka Ochieng] testified and intimated to the court that whenever an allottee is issued with a letter of allotment same [allottee] is obligated to pay the standard premium within the stipulated 30 days period. In the event that no payments are made within the prescribed timelines, the letter of allotment would lapse.
278. For ease of reference and appreciation DW2 stated as hereunder whilst under cross examination by learned counsel for the Plaintiff.

“The Letter of allotment ordinarily contains special condition. The special conditions include payment of stand premium and acceptance within 30 days from the post-mark. The cheque by and on behalf of Naigreen Enterprises was submitted in the year 2012. I wish to clarify that the purported payments was made after a duration of 18 years. The payment in question was unlawful”.



279. Whilst still under cross examination, DW2 stated thus;

“I do confirm that the purported allotment to and in favour of the 1st Defendant was illegal”.

280. From the testimony on record, it is apparent that the 1st Defendant [who purports to be the allottee] did not comply with and/or abide by the terms of the letter of allotment. In this regard, even if the letter of allotment was valid, [which is not the case], the letter of allotment stood extinguished by effluxion of time.

281. To buttress the foregoing exposition of the law, namely, that a letter of allotment lapses if the special conditions are not complied with timeously, it suffices to reference, the holding of the Supreme Court [the Apex Court] in the case of *Torino Enterprises Limited v Attorney General* (Petition 5 (E006) of 2022) [2023] KESC 79 (KLR) (22 September 2023) (Judgment), where the court held as hereunder;

60. Suffice it to say that an Allottee, in whose name the allotment letter is issued, must perfect the same by fulfilling the conditions therein. These conditions include but are not limited to, the payment of a stand premium and ground rent within prescribed timelines. But even after the perfection of an allotment letter through the fulfillment of the conditions stipulated therein, an allottee cannot pass valid title to a third party unless and until he acquires title to the land through registration under the applicable law. It is the act of registration that confers a transferable title to the registered proprietor, and not the possession of an allotment letter.

In *Peter Wariire Kanyiri v Chrispus Washumbe & 2 others*, Environment and Land Court Case No 603 of 2017; [2022] eKLR, Kemei, J held as follows:

“[15].In the case at hand, in the absence of any title registered in the name of the plaintiff, the court is unable to hold that the plaintiff is the registered proprietor of the land. This is because the letter of allotment lapsed within 30 days and the same is of no legal consequences” [Emphasis added].

61. While we agree with the general tenor of the learned Judge’s foregoing pronouncement, we remain uncomfortable with his inference that the allotment letter was of no legal consequence solely because it had lapsed after 30 days. We must reiterate the fact that an allotment letter in and by itself, is incapable of conferring a transferable title to an allottee. Put differently, the holder of an allotment letter is incapable of transferring or passing valid title to a third party on the basis of the allotment letter unless and until he becomes the registered proprietor of the land consequent upon the perfection of the Allotment Letter. It matters not therefore that the allotment letter has not lapsed.

62. Back to the facts of this case, the allotment letter issued to Renton Company Limited was subject to payment of stand premium of Kshs 2,400,000.00, annual rent of Kshs 480,000.00 amongst others. Moreover, the letter was granted on condition that Renton Company Limited would accept it within thirty (30) days from the date of the offer, failure to which it would be considered to have lapsed.

282. Simply put, the letter of allotment dated the 26th October 1994 lapsed and became extinct in law upon the expiration of the timelines highlighted in the face thereof. Consequently, there was no letter of allotment which could be acted upon in the year 2012 or otherwise.

283. Furthermore, there was also no letter of allotment that could underpin the issuance of certificate of lease in favour of the 1st Defendant on the 17th October 2016. [See the holding of the court of appeal in



the case of *Waterfront Holdings Limited v Kandie & 2 others (Civil Appeal 88 of 2019)* [2023] KECA 1223 (KLR) (6 October 2023) (Judgment)]

284. The fourth perspective that merits consideration relates to whether or not the suit property or better still, the geo-space that constitutes the suit property was an unalienated government land capable of being allocated to and in favour of the 1st Defendant or otherwise.
285. First and foremost, evidence abound that the geo-space that comprises of the suit property was fully developed with blocks of apartments/flats which were occupied by civil servants. In this respect, there is no gainsaying that the suit property comprised of land that had been reserved for a specific purpose.
286. Suffice it to state that DW1 himself conceded that by the time same made the application to be allocated what comprises the suit property he [1st Defendant] was not aware of the ground location thereof. Besides, DW1 testified that even though the suit property was allocated unto him, same did not visit the property up to and including the year 2015.
287. Whilst under cross examination by learned counsel for the 2nd Defendant, DW1 testified as hereunder;
- “I did visit the property around 2015. I do confirm that I only visited the plot in question for the first time in 2015. The plot in question has block/flats standing thereon. I have not been in possession of the suit property. I did not care to ascertain who were the people on the property are”.
288. Whilst still under cross examination by learned counsel for the 2nd Defendant DW1 stated as hereunder;
- “I didn’t know who was the owners of the flats. I did not bother to found out who are the people staying on the suit property”.
289. On the other hand, DW2 [Gordon Odeka Ochieng] stated that the suit property comprises of the government quarters occupied by civil servants and thus the geo-space under reference stood alienated. In particular, DW2 stated as hereunder whilst under cross examination by learned counsel for Plaintiffs.
- “The creation of the purported plot in favour of the 1st Defendant herein overlapped into and existing and developed government quarters occupied by civil servant”.
290. On his part, DW4 [Wilfred Muchai Kabue] testified and stated that same prepared an overlay plan relating to the suit property. In this regard, DW4 tendered in evidence exhibit D45.
291. Whilst under cross examination by learned counsel for the Plaintiff, DW4 stated as hereunder;
- “Exhibit D45 is an overlay plan which is ordinarily prepared by the director of survey. I am the one who prepared the overlay plan. The document shows the relationship between L.R No. 209/3585; 209/12558 and L.R No. 209/12559. The plots are at the same place. I wish to clarify that L.R No. 209/12558 and L.R No. 209/12559 occupy the same geo-space as L.R No.209/3585. I am aware that the government houses are situated on L.R 209/12559”.
292. There is also the evidence of DW5, namely, Bonface Mungai Ngochi, who intimated to the court that same is currently the deputy director of housing in the ministry of lands, housing and urban developments.



293. The witness herein [DW5], stated as hereunder whilst under cross examination by learned counsel for the Plaintiffs’

“The property is known to me. I have been to the property once. The property is developed. The property has a block of flats thereon. the blocks are seven in number. The block of flats on the suit property were constructed by the government of Kenya. The blocks of houses have been sold to the employees and former employees of the government. The said employees/former employees have not been issued with certificate of titles. I am aware of the process towards issuing title in favour of various employees/former employees of the government. The process is ongoing and the matter is with the director of survey. The land in question was an unalienated government. The land was not available for alienation”.

294. From the foregoing testimony, what comes to the fore is to the effect that the suit property or the ground comprising of the suit property had indeed been reserved for a designated purpose. Besides, the government went ahead and constructed blocks of flats/apartments thereon. In addition, the blocks of flats or the housing unit situated thereof were leased out to the civil servants.

295. On the other hand, it is also evident that on or about the year 2004, the government entered into and executed Tenant purchase Agreements with the various civil servants, who were residing in the various units on the block of flats. Thereafter, the various civil servants paid the covenanted purchase price which was duly acknowledged by the government. [See the evidence of DW5].

296. Suffice it to point out that the suit property, which was purportedly being allocated to the 1st Defendant ceased to be unalienated government land. In this regard, the suit property could not be alienated by the commissioner of lands [now defunct] in terms of [sic] the letter of allotment dated the 26th October 1994 or otherwise.

297. At any rate, it is important to underscore that a letter of allotment must relate to an existing and available land. Pertinently, no letter of allotment can issue where the land which is purportedly being allocated is non-existent. Nevertheless, where a letter of allotment is issued in respect of a non-existent land, then such letter of allotment constitutes a mere paper transaction devoid of any legal anchorage.

298. In this respect, I beg to reference and adopt the succinct holding in the case *Benja Properties Limited v Syedna Mohammed Burhannudin Sahed & 4 others* [2015] eKLR, where the court stated and held thus;

25. In arriving at our decision, we note that an interest in land cannot be allotted, alienated or transferred when the specific parcel of land allotted is not in existence. Allotment of an interest in land is a transaction in rem attaching to and running with a specific parcel of land.

In the instant case, the allotment by the Commissioner of Land to the original allottees did not attach in rem to any land since there was no parcel upon which the allotment could attach. What the 5th respondent, the appellant and the original allottees did was to engage in paper transactions without a parcel of land upon which any interest in land would attach and vest – it was paper transactions without any parcel of land as its substratum.

299. Likewise, the position that a letter of allotment must relate to an existing plot or parcel of land was reaffirmed in the case *Philemon L. Wambia v Gaitano Lusitsa Mukofu & 2 others* [2019] eKLR, where the court held thus;

“ 36. On our part, we have considered the evidence on record on the two letters of allotment. The evidence on record shows that the first allotment to the suit



property was to Mr. Joseph Muturi Muthurania. In *Benja Properties Limited -v- Syedna Mohammed Burhannudin Sahed & 4 others* [2015] eKLR, this Court stated that an allotment of an interest in land is a transaction in rem attaching to and running with a specific parcel of land.

37. In the instant case, the second letter of allotment to the appellant did not attach in rem to any land since there was no parcel upon which the allotment could attach. The first allotment to Mr. Joseph Muturi Muturania effectively made the suit property unavailable for allotment to the appellant the more when the first allottee had fulfilled the terms and conditions of the allotment.”
300. Without belabouring the point, the suit property which was purportedly being allocated to and in favour of the 1st Defendant stood reserved and thus same could not form the basis of the impugned Letter of allotment. For good measure, once land is allocated or reserved for a designated purpose, the land in question ceases to be an unalienated government land.
301. What constitutes an unalienated government land has since been the subject of various court decisions. Instructively, the meaning and import of an unalienated government land was elaborately addressed in the case of *Frann Investment Limited v Kenya Anti-Corruption Commission & 6 others* (Civil Appeal E038 of 2021) [2024] KECA 714 (KLR) (21 June 2024) (Judgment), where the Court of Appeal reviewed a number of decisions and thereafter held as hereunder;
31. The Supreme Court of Kenya in *Kiluwa Limited & Another vs. Business Liaison Company Limited & 3 Others, (Petition 14 of 2017)* [2021] KESC 37 (KLR) explained as follows as regards unalienated government land:
- “(55) A number of conclusions can be derived from the foregoing provisions as quoted. Firstly, un-alienated government land is public land within the context of article 62 of *the Constitution* and the Government Lands Act (repealed). This notwithstanding the fact that, the expression “Public Land” only came to the fore with the promulgation of the 2010 Constitution.
- What Article 62 of *the Constitution* does is to clearly delimit the frontiers of public land by identifying and consolidating all areas of land that were regarded as falling under the province of “public tenure”. The retired constitution used the term “government” instead of “public” to define such lands”.
32. In this respect, section 2 of the repealed Government Lands Act defined “unalienated Government land” to mean Government land which was not for the time being leased to any other person, or in respect of which the Commissioner has not issued any letter of allotment. Government land in this context is land that was held by government ministries, departments, statutory bodies and agencies, and land which has not been registered. Section 3 of the then Physical Planning Act defines un-alienated Government land in similar terms. A similar definition is now given to public land under Article 62 of *the Constitution*, which includes
- a. land which at the effective date was unalienated government land as defined by an Act of Parliament in force at the effective date;



- b. land lawfully held, used or occupied by any State organ, except any such land that is occupied by the State organ as lessee under a private lease...
33. The Supreme Court of Kenya noted these definitions in *Torino Enterprises Ltd vs. The Attorney General*, SC Petition No. 5 (E006) of 2022; [2023] KESC 79 (KLR), and also cited with approval the decision of this Court in *Benja Properties Limited vs. Syedna Mohammed Burbannudin Sabed & 4 Others, Civil Appeal No. 79 of 2007*; [2015] eKLR that the legal effect of registration of land is to convert property from un-alienated government land to alienated land, with the consequence that the property became private property and moved out of the ambit and confines of the Government *Land Act*.
34. In this regard, KACC brought evidence in the trial Court to demonstrate that the suit property was already surveyed, planned, and reserved for use as a customs house at the time of its allocation to Mr. Kenny Mohammed Sheikh Ali. One of the issues raised in *Dina Management Limited vs. County Government of Mombasa & 5 others* (supra) was whether land that had been reserved for a road could be allocated. The Supreme Court found the then applicable law and its effect to be as follows:
- “(51) From the record and submissions, we note that the land was first allocated to HE Daniel T Arap Moi in 1989. The applicable law at the time was the Land Planning Act, cap 303, which was repealed by the Physical Planning Act cap 286 which has since been repealed by the *Physical and Land Use Planning Act* No 13 of 2019. The Land Planning Act made provision for open spaces. regulation 11(3) of the Development and Use of Land (Planning) regulations, 1961 made under the Land Planning Act defined “public purpose” as any non-profit making purpose declared by the Minister to be a public purpose and includes educational, medical and religious purposes, public open spaces and car parks; and Government and local government purposes.
- Similarly, under the Physical Planning Act, section 29 gave the local authorities power to reserve and maintain land planned for open spaces.
- (52) The suit property was at the time designated as an open space. Having been designated as such, it was rendered a public utility and could not be described as unalienated public land as urged by the appellant. It was therefore not available for alienation to HE Daniel T Arap Moi or for further alienation...”
302. The last perspective that merits mention and a short discussion relates to whether the letter of allotment dated the 26th October 1994 was underpinned by a lawful and legitimate PDP. For good measure, there is no gainsaying that before a letter of allotment can issue, the commissioner of lands [now defunct] must call for the requisite PDP from the directorate of physical planning.
303. As pertains to the letter of allotment dated the 26th October 1994, DW1 tendered and produced before the court a copy of a PDP dated and approved by the directorate of physical planning. However, during the course of the hearing, evidence was tendered that the PDP which was being relied upon by the 1st Defendant to anchor his claim to the suit property was manipulated and fraudulently altered. Furthermore, evidence was tendered that the PDP in question was utilized to allocate a different land and wherein the PDP showed three [3] plots; and not four [4] as indicated at the foot of the impugned PDP, being relied on by the 1st Defendant herein.
304. However, the PDP that was tendered by and on behalf of the 1st Defendant was manipulated and altered culminating into the creation of four plots and not three. In this regard, it suffices to take



cognizance of the evidence of DW2 [Gordon Odeka Ochieng] whilst under cross examination by learned counsel for the 1st Defendant, the witness stated as hereunder;

I have also availed a copy of the PDP that was allegedly used to allocate the land to the 1st Defendant. The PDP that has been relied upon by the 1st Defendant shows that there are four plots. The plots are abbreviated as A, B, C and D. However, the proper PDP shows that there were three plots and not four. I also wish to state that the land being claimed by the 1st Defendant was not available for allocation”.

305. Other than DW2 who spoke to the manipulation and alteration of the PDP that was deployed in the allocation of the suit property, there is also the evidence of DW3.

DW3 [Timothy Waiywa Mwangi] stated as hereunder when under cross examination by learned counsel for the Plaintiff;

“I am not aware of any approved PDP towards the allocation of the suit property. there were anomalies in the allocation of land. The plot in question was not duly allocated to the 1st Defendant”.

306. On re-examination, DW3 stated as hereunder;

“The area in question has never been replanned. I also wish to state that the approved PDP only contains three plots. The Plots are A, B and C. However, i wish to clarify that the insertion of Plod D was a fraud”.

307. In my humble view, the 1st Defendant was called upon to tender and produced before the court a duly approved PDP to demonstrate that the allocation of the suit property was procedural, lawful and legal. However, the PDP which has been relied upon by the 1st Defendant has been demonstrated to have been procured by fraud.

308. Further and in any event, evidence abound that the PDP underpinning the letter of allotment dated the 26th October 1994 was actually altered to create a Plot “D”, which was thereafter [sic] allocated in favour of the 1st Defendant.

309. In a nutshell, there is no gainsaying that the PDP which was relied upon to allocate the suit property was invalid and thus illegal. In the absence of a lawful and valid PDP, no allotment can stand.

310. To this end, it suffices to cite and reference the decision of the supreme court of Kenya in the case of Dina Management Limited v County Government of Mombasa & 5 others (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR) (21 April 2023) (Judgment), where the court stated and observed as hereunder;

104. The procedure for the allocation of unalienated land is laid out by the Environment and Land Court in Nelson Kazungu Chai & 9 others v Pwani University [2014] eKLR as follows:“

...It is trite law that under the repealed Government Lands Act, a Part Development Plan must be drawn and approved by the Commissioner of Lands or the Minister for lands before any un-alienated Government land could be allocated. After a Part Development Plan (PDP) has been drawn, a letter of allotment based on the approved PDP is then issued to the allottees.

131. It is only after the issuance of the letter of allotment, and the compliance of the terms therein, that a cadastral survey can be conducted for the purpose of issuance of a certificate of lease. This procedural requirement was confirmed by the surveyor,



PW3. The process was also reinstated in the case of African Line Transport Co Ltd v Attorney General, Mombasa HCCC No 276 of 2013 where Njagi J held as follows:

“Secondly, all the defence witnesses were unanimous that in the normal course of events, planning comes first, then surveying follows. A letter of allotment is invariably accompanied by a PDP with a definite number. These are then taken to the department of survey, who undertake the surveying. Once the surveying is complete, it is then referred to the Director of Surveys for authentication and approval. Thereafter, a land reference number is issued in respect of the plot 132. A part development plan (PDP) can only be prepared in respect to Government land that has not been alienated or surveyed...”

105. This process is restated in African Line Transport Co Ltd v Attorney General, Mombasa, HCCC No 276 of 2003 [2007] eKLR where it was held that planning comes first, then surveying. A letter of allotment is invariably accompanied by a PDP with a definite number, which would then be taken to the Department of Survey for surveying. Thereafter, it is then referred to the Director of Surveys for authentication and approval. It is after that process that a land reference number is issued in respect of the plot.
106. We note that the suit property was allocated to HE Daniel T Arap Moi who was not a party to the suit. The 2nd to 6th respondents on the other hand at the trial court in the replying affidavit of Gordon Odeka Ochieng in response to ELC Petition 12 of 2017 stated that certain documents that were required to support the allocation of the suit property to HE Daniel T Arap Moi were missing. These were, “the letter of application addressed to the Commissioner of Lands seeking to be allocated the suit land; and a Part Development Plan (PDP) showing the suit property in relation to the neighbouring parcels of land.”
311. Arising from the foregoing analysis, my answer to issue number two [2] is twofold. Firstly, the letter of allotment dated the 26th October 1994 was issued in favour of a non-existent entity not known to law. In this regard, the letter of allotment was a nullity ab initio.
312. Secondly, the land in respect of which the letter of allotment was purportedly being issued had long been alienated by way of reservation. In any event, the land constituted government quarters which was occupied by civil servants. Furthermore, the housing unit standing on the blocks of apartments had been sold by the government to the civil servants vide tenant purchase agreement.

Issue Number 3 Whether the 1st Defendant acquired and/or accrued any lawful rights or interests over and in respect of the suit property or at all.

313. Whilst discussing issue number two, the court has discussed various perspectives touching on and concerning the validity of the letter of allotment that was being relied upon by the 1st Defendant to stake a claim to the suit property. Furthermore, the court has found and held that the letter of allotment was void ab initio.
314. Having found and held that the letter of allotment underpinning the 1st Defendant’s claim to the suit property was a nullity ab initio, the question that now arises is whether the 1st Defendant accrued any lawful or legal rights to and in respect to the suit property.
315. Suffice it to point out that the 1st Defendant herein procured and obtained a certificate of lease dated the 17th October 2016. In this regard, the 1st Defendant may very well be heard to say and has indeed



- said that same holds a valid certificate of title to the suit property. In this regard, the 1st Defendant now seeks to invoke and rely on the provisions of Sections 24 and 25 of the *Land Registration Act*, 2012.
316. However, it is incumbent upon this court to interrogate whether the mere issuance and holding of a certificate of title, irrespective of the process attendant to its issuance, would and does confer upon the holder thereof a seal of indefeasibility.
317. To my mind, the mere fact that one holds a certificate of title does not ipso facto, mean that the holder of certificate of title is fused with the seal of indefeasibility. Instructively, it is incumbent upon a court of law to interrogate and determine whether the certificate of title being waved by the holder thereof, in this case, the First Defendant, was acquired procedurally, legally and lawfully.
318. Pertinently, the manner in which a certificate of title is procured and obtained is useful in ascertaining the validity and legality thereof. Consequently, where a certificate of title is acquired in a fraudulent and in illegal manner, then the holder thereof, the 1st Defendant not excepted, cannot stake a claim to indefeasibility.
319. To this end, it suffices to take cognizance of the holding of the court of appeal in the case of *Funzi Development Ltd & others v County Council of Kwale, Mombasa Civil Appeal No 252 of 2005 [2014] eKLR the Court of Appeal*, which decision this court affirmed, stated that:
- “...a registered proprietor acquires an absolute and indefeasible title if and only if the allocation was legal, proper and regular. A court of law cannot on the basis of indefeasibility of title sanction an illegality or gives its seal of approval to an illegal or irregularly obtained title.”
320. The importance of the process attendant to the acquisition of the certificate of title and the legal implications thereto were also highlighted by the court of appeal in the case of *Wambui v Mwangi & 3 others (Civil Appeal 465 of 2019)* [2021] KECA 144 (KLR) (19 November 2021) (Judgment), where the court stated and held as hereunder;
64. The jurisprudence relied upon by the appellant and which we find prudent not to replicate are as already highlighted above. We have given due consideration to them in light of the record as assessed herein by us. Our take on the same is that the jurisprudential thread running through all of them is that no court of law should sanction and pass as valid any title to property founded on: fraud; deceitfulness; a contrived decree; illegality; nullity; irregularity, unprocedural or otherwise a product of a corrupt scheme.
321. Guided by the ratio decidendi espoused in the decisions [supra], there is no gainsaying that the 1st Defendant herein was obligated to demonstrate the legality attendant to the issuance of the impugned certificate of title. However, it is evident that the certificate of title which was held by the 1st Defendant was vitiated to the root.
322. Certainly, the certificate of title held by the 1st Defendant emanated from an illegality. In this regard, it suffices to state that whatever emanates from an illegality remains an illegality, no matter how attractive the thing is.
323. Put differently, where the process culminating into the certificate of title is vitiated like the one beforehand, no legal rights or interests can accrue thereto. Indeed, the circumstances underpinning the certificate of title held or which was hitherto held by the 1st Defendant, warrants the invocation and application of the doctrine of *Ex-Nihilo-Nihil-Fit* [out of nothing comes nothing].



324. Furthermore, I hold the humble view that the circumstances attendant to the issuance of the certificate of title in favour of the 1st Defendant befits the invocation and application of the dictum in the case of *Macfoy v United Africa Ltd (1961) 3 All F.R. 1169* where Lord Denning stated and held at p. 1172 thus:

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

325. From the foregoing analysis, my answer to issue number three [3] is to the effect that the 1st Defendant herein neither accrued nor acquired any lawful rights to and in respect of the suit property. Indeed, the 1st Defendant cannot stake a claim to the concept of indefeasibility of title, insofar as same [1st Defendant] never acquired any such certificate of title save for a worthless piece of paper in respect of a non-existent plot.

Issue Number 4 Whether the 4th Defendant is bona fide purchaser for value and thus entitled to the suit property or otherwise.

326. The 4th Defendant herein contended that same entered into and executed a sale agreement with the 1st Defendant whereby the 1st Defendant sought to sell to and in favour of the 4th Defendant the suit property. In this respect, the 4th Defendant referenced the sale agreement dated the 18th November 2016.

327. Furthermore, the witness who testified on behalf of the 4th Defendant, namely, DW6 stated that prior to entering into the sale agreement, the 4th Defendant through her representative undertook an official search in respect of the suit property.

328. Furthermore, DW6 also posited that same visited the locus in quo. Additionally, DW6 also averred that when he visited the locus in quo same found that the suit property was indeed developed. For good measure, DW6 testified that the suit property had blocks of apartments.

329. It was the evidence of DW6 that despite entering into and executing the sale agreement and coupled with the transfer of the suit property in the name of the 4th Defendant, the 4th Defendant has never been able to obtain vacant possession.

330. In addition, the witness [DW6] also averred that when same went to the suit property he found that there were various persons who were occupying the suit property. However, the witness stated that he did not enter into the blocks of apartments to ascertain the identities of occupants therein.

331. Notwithstanding the foregoing, DW6 gave contradictory testimony pertaining to and concerning the application for official search, the date of the official search and the fact that the certificate of official search indicated that the suit property had been transferred and registered in the name of the 4th Defendant long before the actual registration of the suit property.

332. To this end, it is imperative to reproduce the evidence of DW6 whilst under cross examination by learned counsel for the 2nd Defendant.



333. Same stated as hereunder;

“The search was issued on the 17th October 2016. I now say that the search was issued on the 24th September 2016. The search is before the court. A search cannot be issued before the certificate of title has been issued. The registration of title was on 17th October 2016. I do confirm that the search was issued on the 24th September 2016. I don’t know how the search came out before the registration”.

334. From the testimony of DW6, there is no gainsaying that there was something fishy and not adding up as pertains to the transaction touching on the suit property. To my mind, the contradictory evidence, which has been highlighted on the part of DW6 speaks to an illegality. Notwithstanding the foregoing, it is the 4th Defendant’s case that same [4th Defendant] is a bona fide purchaser for value in respect of the suit property and thus entitled to the protection of the court.

335. Nevertheless, as pertains to the claim by the 4th Defendant to be a bona fide purchaser for value, it suffices to underscore that one can only stake a claim on the basis of bona fide purchaser for value if the root of the property being claimed is demonstrated to be legal, lawful and legitimate.

336. However, in respect of the instant matter, there is no gainsaying that the court has since found and held that the certificate of title which was issued to and in favour of the 1st Defendant was illegal and void. In this regard, the 1st Defendant accrued no lawful rights to the suit property.

337. To the extent that the 1st Defendant accrued no lawful rights to and in respect of the suit property, the question that does arise is whether the 1st Defendant, was competent to convey any legal rights to and in favour of the 4th Defendant. Instructively, the doctrine of *Nemo Dat Quod Non Habet* suffices.

338. Without belabouring the point, it is crystal clear that one who holds no title cannot bestow any title on his/her successor. To this end, the 4th Defendant cannot purport to hold a better title than the one, if any, that was held by its predecessor.

339. In the case of *Carogot Investment Limited v Aster Holdings Limited & 4 others* [2019] eKLR, the court of appeal whilst dealing with a near similar situation like the one beforehand stated and held as hereunder;

The totality of what we have said is that the 1st respondent’s title was unimpeachable while that of the appellant was tainted with fraud, illegalities and irregularities. The lightning speed with which the entire transaction was executed, from the moment the suit property was transferred to the appellant to the point it was set to sell it to White Horse Investment Limited, all within four months, smacked of fraud, bad faith and deceit.

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

340. On the other hand, it is not lost on the court that the 4th Defendant proceeded to and entered into the transaction touching on the suit property, even though the 4th Defendant was privy to the fact that the suit property had blocks/flats apartments standing thereon. Furthermore, DW6 stated that despite seeing several people occupying the flats, same did not endeavour to ascertain the identities of the occupants.

341. To my mind, the failure by DW6 to venture forward and to ascertain the identities of the occupants of block/flats, speaks to lack of seriousness in the course of undertaking due diligence. Evidently, DW6



was either being complicit in some fraudulent transaction or better still, same was just adopting a carefree approach.

342. Surely, if DW6 on behalf of the 4th Defendant had ventured to undertake appropriate due diligence and in particular interrogation of the identities of the occupants of the Flats, same [DW6] would have discovered that the 1st Defendant did not own the block of flats standing on the suit property that was purportedly being sold.
343. Another perspective that also merits interrogation and a shot discussion relates to the testimony of DW6, that whereas the agreed purchase price was kes.8, 500, 000/= only, the suit property was however valued at kes.25, 000, 000/= only, for purposes of Stamp Duty. Furthermore, the witness ventured forward and stated that the 4th Defendant proceeded and paid stamp duty in the sum of kes.1, 028, 040/= only.
344. Looking at the agreed purchase price, namely, kes.8, 500, 000/= only versus the assessed value of the suit property, there arises a serious mismatch. In my humble view, the discrepancy between the purchase price and the valuation of the suit property should have raised an alarm in the mind of the actors on behalf of the 4th Defendant.
345. Taking the entirety of the evidence into account, it is my finding and holding that the 4th Defendant has not met and/or satisfied the requisite ingredients underpinning a claim for bona fide purchase for value without notice.
346. Suffice it to point out that before a court of law can return a finding that one, the 4th Defendant not excepted, is a bona fide purchaser for value, such a party must establish the ingredients which were elaborated in the case of *Dina Management Limited v County Government of Mombasa & 5 others* (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR) (21 April 2023) (Judgment), where the Supreme Court of Kenya [the apex Court] court stated as hereunder;

90. The Black's Law Dictionary 9th Edition defines a bona fide purchaser as:

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

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

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

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



7. he was not party to the fraud.”

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

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

347. In a nutshell, my answer to issue number four [4] is twofold. Firstly, the 1st Defendant had no lawful title capable of being conveyed to and in favour of the 4th Defendant. In this respect, the transaction between the 1st Defendant and the 4th Defendant was a paper transaction albeit devoid of any lawful interests being passed.

348. Secondly, the 4th Defendant cannot contend that same [4th Defendant] is a bona fide purchaser for value, yet evidence abound that the 4th Defendant was complicit in the fraud and illegality attendant to the transfer of the suit property. Certainly, the 4th Defendant did not exercise reasonable diligence prior to and before entering into the impugned transaction.

Issue Number 5 What orders, if any ought to issue.

349. The Plaintiffs herein have sought for a plethora of reliefs inter-alia an order to direct the directorate of survey to ascertain and authenticate the correct parcel number for the property on which block of flats [comprising the government quarters] stand. In this regard, the Plaintiffs adverted to diverse numbers which have hitherto been alluded to whilst referencing the same property.

350. In particular, the Plaintiffs posited that in one instance the ministry of land and housing referenced the property in question as L.R No. 209/5323 – Kabras Road whilst on another occasion, the property was referenced as L.R No. 209/3585. Furthermore, it was also the Plaintiff’s testimony that the same property is being claimed by the 1st and 4th Defendant under the guise of L.R No. 209/12559.

351. Arising from the contradictory parcel numbers, the Plaintiffs herein therefore sought that the court be pleased to direct the directorate of survey to address the question of the conflicting parcel numbers and thereafter clarify the correct parcel number as a precursor to the issuance of certificate of title in favour of the Plaintiffs.

352. Suffice it to point out that the question of the correct parcel number on which the non-strategic government houses which were sold to inter-alia the Plaintiffs herein stand, was also the subject of the letter by the permanent secretary dated the 21st September 2017.

353. To my mind, the diverse parcel numbers being adverted to by the authorities has provided a fertile basis for the generation of the fraudulent certificate of title which was being waved and relied upon by the 1st and 4th Defendants. Consequently, it is imperative that the directorate of survey does undertake the requisite process including the preparation of the deed plan in respect of the property in question in accordance with the [Survey Act](#), Chapter 299 Laws of Kenya.

354. Secondly, the Plaintiffs herein also sought for an order for the cancelation of the certificate of title in respect of L.R No. 209/12559 [I.R No. 181048], bearing the name of the 4th Defendant. As pertains to the prayer for cancelation, there is no gainsaying that this court has since found and held that the impugned certificate of title was void ab initio.



355. To this end, I hold the humble view that the certificate of title known as L.R No. 209/12559 [I.R No. 181048], was procured fraudulently and illegally and thus same merits cancelation.
356. Thirdly, the Plaintiffs sought for an order to compel the chief land registrar to proceed and effect the registration of the various units unto their names. In this respect, it is worth recalling that DW5 [Bonface Mungai Ngochi], testified that the government was in process of perfecting the transfer and registration of the various units to and in favour of the Plaintiffs.
357. Barring repetition, it suffices to reproduce the salient aspects of the evidence of DW5 whilst under cross examination by learned counsel for the Plaintiffs.
358. Same testified as hereunder;

“The blocks are seven in number. The blocks of flats on the suit property were constructed by the government of kanya. The blocks of houses have been sold to the employees/former employees of the government. The said employees/former employees have not been issued with a certificate of title. I am aware of the process towards/giving certificate of title to the various employee/former employees of the government. The process is ongoing and the matter is currently with the directorate of survey”.

359. What I understand DW5 [Deputy Director of Housing] to be saying is that the Plaintiffs together with the rest of the Civil Servants who entered into and executed the tenant purchase agreements are entitled to the various units that were purchased. Furthermore, DW5 clarifies that indeed the ministry of lands and housing is in the process of perfecting titles in favour of the Plaintiffs.
360. Arising from the foregoing, there is no gainsaying that the Plaintiffs herein are certainly entitled to an appropriate order compelling the chief land registrar to register the various units wherein the Plaintiffs resides in the Plaintiffs name. However, it suffices to underscore that such registration must await the preparation of the requisite deed plan by the directorate of survey to authenticate the relevant [apposite] parcel number.
361. Other than the foregoing, the Plaintiffs herein also sought for an order of permanent injunction to restrain the 1st and 4th Defendants from interfering with their [Plaintiffs] possession, occupation and use of the housing units on the blocks of flats standing on the suit property.
362. Flowing from the evidence of DW5, there is no gainsaying that the Plaintiffs herein are indeed entitled to the various units standing on the suit property. In fact, DW5 posited that the ministry of lands and housing is in the process of perfecting the transfer and registration of the Units in favour of the Plaintiffs.
363. In the circumstances, it is evident that the Plaintiffs herein have demonstrated that same have lawful rights to and in respect of the premises situate on the suit property. In this regard, I hold the view, that the Plaintiffs have demonstrated a basis to warrant the grant of an order of permanent injunction. In any event, there is no gainsaying that the order of permanent injunction is ordinarily intended to protect and vindicate the rights of the Plaintiffs from third parties and in this case, the 1st and 4th Defendants, respectively.
364. Other than the claims mounted by the Plaintiffs,[which have been highlighted in the preceding paragraphs]; it is worth stating that the 1st Defendant herein filed an amended statement of defence dated the 12th October 2022; and wherein same sought for the following reliefs;
- a. The Plaintiff's suit be dismissed with costs.



- b. The Plaintiffs be ordered to vacate the suit property with immediate effect.
 - c. Any other reliefs that the honourable court may deem just to grant.
365. Though the 1st Defendant is seeking positive orders, namely, orders of eviction, it is worth recalling that the 1st Defendant did not file a counterclaim. In the absence of a counterclaim, it is common knowledge that the 1st Defendant cannot procure and/or obtain any order of eviction, whatsoever.
366. Notwithstanding the foregoing, it is not lost on this court that the 1st Defendant herein is the one who entered into and executed a sale agreement and thereafter [sic] transferred the suit property to the 4th Defendant. In this regard, the 1st Defendant ceased to hold any [sic] interests over the property and cannot now be heard to contend that same is entitled to an order of eviction.
367. Surely, upon the transfer of his [sic] rights to and in favour, the 4th Defendant [which rights the court found to be void] the 1st Defendant herein has no locus standi to propagate and/or seek a claim for eviction.
368. Simply put, the claim for eviction which is predicated on the basis of a statement of defence is not only premature and misconceived, but same is equally untenable in the eyes of the law, taking into account that the First Defendant is not seized of any rights to and in respect of the suit property.

Conclusion:

369. Flowing from the discussion [details highlighted in the body of the judgment], it must have become clear that the Plaintiffs herein have tendered and placed before the court credible evidence to demonstrate that same [Plaintiffs] truly entered into tenant purchase agreements with the government of Kenya through the ministry of finance.
370. Furthermore, the Plaintiffs have also tendered before the court evidence to demonstrate that L.R No. 26/1330; L.R No.209/3585; L.R No.209/5323 and L.R No.209/12559, respectively, refer to and the same geo-space. For good measure, it has been confirmed that the geo-space pertains to the blocks of flats containing the housing units which were being sold to and in favour of inter-alia the Plaintiffs.
371. In a nutshell, the Plaintiffs herein have established and demonstrated their claims at the foot of the amended plaint to the requisite standard. To this end, it suffices to posit that the Plaintiffs have met the threshold in terms of Section 107, 108 and 109 of the [Evidence Act](#), Chapter 80 Laws of Kenya.

Final Disposition:

372. Consequently and in the premises, the final orders of the court are as hereunder;
- i. A Declaration be and is hereby issued to the effect that L.R No. 26/1330; L.R No.209/3585; L.R No.209/5323 and L.R No.209/12559, respectively refer to one and the same ground [geo-space] which comprises of the various blocks of flats which were sold to the civil servants including the Plaintiffs herein.
 - ii. A declaration be and is hereby issued to the effect that what constitutes L.R No.209/12559 was not an unalienated government land capable of being alienated vide letter of allotment dated the 26th October 1994.
 - iii. A declaration be and is hereby issued that the letter of allotment issued in favour of M/s Naigreen Enterprises and dated 26th October 1994 was a nullity ab initio.



- iv. The certificate of title in respect of LR No.209/12559 [LR No.209/358]), Kabras Road, South B bearing the name of the 4th Defendant be and is hereby revoked, cancel and nullified.
- v. The 4th Defendant be and is hereby ordered to surrender the certificate of title in respect of LR No.209/12559, Kabras Road, South B to the chief land registrar for cancellation forthwith and in any event within 60 days from the date herewith.
- vi. Nevertheless, the Chief Land Registrar shall proceed to cancel, revoke and nullify the certificate of title in respect to LR No.209/12559, Kabras Road, South B, notwithstanding the failure by the 4th Defendant to surrender the certificate of title in terms of clause [v].
- vii. The Chief Land Registrar be and is hereby ordered and directed to gazette the cancellation of the certificate of title in respect of LR No.209/12559, Kabras Road, South B in the Kenyan gazette albeit at the expense of the Plaintiffs herein.
- viii. The Directorate of survey be and is hereby ordered and directed to ascertain and authenticate the correct parcel number pertaining to the geo-space comprising the blocks of flats which are occupied by the Plaintiffs and which were/are the subject of the tenant purchase agreements duly entered into and executed between the Plaintiffs and the Government of Kenya through the Ministry of Finance.
- ix. The Directorate of survey shall thereafter prepare, generate and authenticate the requisite deed plan in respect of the property in question in preparation for the issuance of certificate of title to the Plaintiffs.
- x. Subject to the preparation of the requisite deed plan by the Directorate of survey and the execution of the necessary transfer instrument, the chief land registrar shall process and issue the certificate of title to the Plaintiffs in respect of the designated units that were sold to the Plaintiffs.
- xi. National Land Commission by dint Article 67[2] of *the Constitution* be and is hereby directed to coordinate the implementation and preparation of the deed plan, execution of the transfer instrument and oversee the actualization of the processes towards the registration of the designated units in favour of the Plaintiffs and the other civil servants who executed the tenant purchase agreements.
- xii. There be and is hereby issued an order for a permanent injunction to bar and/or restrain the 1st and 4th Defendants either by their agents, servants and/or employees from entering upon, trespassing onto and/or otherwise interfering with the Plaintiffs peaceful occupation of their respective units situate in the block of flats standing on the suit property.
- xiii. Costs of the suit be and are hereby awarded to the Plaintiffs and same shall be borne by the 1st and 4th Defendants.
- xiv. Any other reliefs not expressly granted is declined.

373. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 9TH DAY OF OCTOBER 2024.

OGUTTU MBOYA

JUDGE.

In the presence of:



Benson: court Assistant.

Mr. Khayega for the Plaintiffs.

Mr. Peter Kibet for the 1st Defendant.

Mr. Allan Kamau [Principal litigation counsel] for the 2nd Defendant.

Ms. Masinde for the 3rd Defendant.

Mr. W. Kibet for the 4th Defendant.

