



REPUBLIC OF KENYA



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Ethics & Anti-Corruption Commission v Mitema Holdings & 13 others (Environment & Land Case E203 of 2021) [2025] KEELC 4066 (KLR) (19 May 2025) (Judgment)

Neutral citation: [2025] KEELC 4066 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E203 OF 2021**

JO MBOYA, J

MAY 19, 2025

BETWEEN

ETHICS & ANTI-CORRUPTION COMMISSION PLAINTIFF

AND

MITEMA HOLDINGS 1ST DEFENDANT
MAYWOOD LIMITED 2ND DEFENDANT
NOVA CONSTRUCTION COMPANY LIMITED 3RD DEFENDANT
SHITAL BHANDARI 4TH DEFENDANT
ROSEMARY WANJIKU IRUNGU 5TH DEFENDANT
FATMA ABDALLA AHMED 6TH DEFENDANT
HANNAH WANJIKU IHIGO 7TH DEFENDANT
ALI MALEKYA MWANZI 8TH DEFENDANT
JULIA OJIAMBO 9TH DEFENDANT
SAMUEL GATHOGO MWANGI 10TH DEFENDANT
FREDRICK KIMANI KIMEMIA 11TH DEFENDANT
WILSON GACHANJA 12TH DEFENDANT
CONSOLIDATED BANK OF KENYA LTD 13TH DEFENDANT
REGISTRAR OF TITLES 14TH DEFENDANT



JUDGMENT

1. The Plaintiff herein, namely, the Ethics and Anti-corruption Commission [EACC] filed the instant suit vide Plaint dated 3rd June 2021 and wherein the Plaintiff has sought a plethora of reliefs. The reliefs sought at the foot of the Plaint are as hereunder:
 - a. A declaration that the parcels of land now known as Nairobi/Block 90/584, Nairobi/Block 90/585, Nairobi/Block 90/586, Nairobi/Block 90/591, Nairobi/Block 90/592, Nairobi/Block 90/593, Nairobi/Block 90/594, Nairobi/Block 90/595 and Nairobi/Block 90/596 constitute the parcel of land initially known as Nairobi/Block 90/229, measuring 1.93 Ha or thereabouts, which is public land set aside for a water reservoir and related water distribution installations, which are public utilities.
 - b. A declaration that the allocation of land hived off from Nairobi/Block 90/229 vide a letter of allotment dated 19th September 1995 in favour of Mitema Holdings Ltd [1st Defendant] in respect of Plot A (Nairobi/Block 90/584), Maywood Ltd [2nd Defendant] in respect of Plot B (Nairobi/Block 90/585) and Nova Construction Company Ltd (3rd Defendant) in respect of Plot C (Nairobi/Block 90/584) was issued ultra vires the 12th Defendant's statutory powers and is null and void ab initio.
 - c. A declaration that the 1st, 2nd and 3rd Defendant had no good title/interest over the parcels of land known as Nairobi/Block 90/586 [amalgamated to Nairobi/Block 90/599] and the purported transfer or other disposition to the 4th Defendant, is null and void ab initio and incapable of conferring ownership rights and/or any other proprietary rights in the said public land.
 - d. A declaration that the 5th, 6th, 7th, 8th and 9th Defendants had no good title/interest over the parcels of land known as Nairobi/Block 90/591, Nairobi/Block 90/592, Nairobi/Block 90/593, Nairobi/Block 90/594 and Nairobi/Block 90/595 and the subsequent dispositions culminating to the purported transfer to the 10th Defendant are a nullity and incapable of conferring ownership or any other proprietary rights in the said public land.
 - e. An order directed to the Registrar of Lands (4th Defendant), Nairobi to rectify the register by cancellation of the entries relating to issuance of certificate of lease in favor of the 4th Defendant over the parcel of land described as Nairobi/Block 90/599 and to the 10th Defendant over Nairobi/Block 90/591, Nairobi/Block 90/592, Nairobi/Block 90/593, Nairobi/Block 90/594 and Nairobi/Block 90/595.
 - f. In the alternative an order directed to the Registrar of Lands (14th Defendant), Nairobi to rectify the register by cancellation of the entries relating to the transfer of Nairobi/Block 90/229 in favour of the 1st-10th Defendants.
 - g. An order directed to the Registrar of Lands, Nairobi to register the parcel of land initially known as Nairobi/Block 90/229 measuring 1.93 Ha or thereabouts, in the name of Nairobi City Water and Sewerage Company Limited.
 - h. As against the 11th Defendant, an order for vacant possession by demolishing the in-complete structure erected on that section of land constituting the public land being parcel Nairobi/



Block 90/591, Nairobi/Block 90/592, Nairobi/Block 90/593, Nairobi/Block 90/594 and Nairobi/Block 90/595 respectively.

- i. As against the 4th Defendant, an order for a permanent injunction to restrain him, his agents, servants, employees and/or assigns from trespassing upon, transferring, leasing, wasting and/or dealing in any manner whatsoever with land described as Nairobi/Block 90/591, Nairobi/Block 90/599 comprising of a water reservoir, other than by way of a surrender to the Government of Kenya.
 - j. As against the 10th and 11th Defendants, an order for permanent injunction to restrain them, their agents, servants, employees and/or assign[s] from trespassing upon, transferring, leasing, wasting and/or dealing in any manner whatsoever with the parcels of land described as Nairobi/Block 90/591, Nairobi/Block 90/592, Nairobi/Block 90/593, Nairobi/Block 90/594 and Nairobi/Block 90/595 comprising of a water reservoir, other than by way of a surrender to the Government of Kenya.
 - k. Costs of the suit and interest.
2. The 1st, 2nd and 3rd Defendants duly entered appearance and filed a Statement of Defence dated 17th January 2022 and wherein the named Defendants denied the allegations contained at the foot of the Plaint. Furthermore, the named Defendants averred that the Suit properties which were subsequently sold to and in favour of the 4th Defendant were lawfully allocated to and in their favour by the Commissioner of Lands in terms of the letter of allotment dated 19th September 1995.
 3. The 4th Defendant entered appearance and thereafter filed a Statement of Defence and Counterclaim dated 6th April 2022 and wherein the 4th Defendant denied the claims by the Plaintiff. In addition, the 4th Defendant sought a raft of reliefs, namely;
 - a. A declaration that the 4th Defendant's acquisition of LR. NO. Nairobi/Block 90/599 was lawful and procedural and therefore the 4th Defendant holds a good title over LR. NO. Nairobi/Block 90/599.
 - b. Mandatory injunction directing the Plaintiff, the Inspector General of Police, the National Land Commission, Nairobi City water and Sewerage Company Limited and all their agents to allow the 4th Defendant access the suit property LR. NO. Nairobi/Block 90/599.
 - c. A permanent injunction stopping the Plaintiff, the Inspector General of Police, the National Land Commission, Nairobi City water and Sewerage Company Limited and all their agents and representatives from trespassing into, entering, encroaching and interfering with the 4th Defendant's quiet possession and user of LR. NO. Nairobi/Block 90/599.
 - d. Damages for trespass.
 - e. Punitive and exemplary damages.
 - f. Special damages of Kshs.14,548,962 Only.
 - g. In the alternative to prayers (b) and (c) above, an order directing the government of Kenya and the 14th Defendant to compensate the 4th Defendant for the loss of LR. NO. Nairobi/Block 90/599 valued at Kshs.150,000,000/= as at 7th of January 2022, at prevailing market rates based on a valuation report to be submitted to this honourable court within 30 days from the issuance of a judgment in favour of the 4th Defendant for assessment or as this honourable court may deem fit to order.



- h. In the alternative to prayers (b) and (c) above, an order directing the government of Kenya to compensate the 4th Defendant Kshs.7,087,806.85/= Only being special damages arising out of the loss of LR. NO. Nairobi/Block 90/599.
 - i. Costs of the suit to be borne by the defendants to the counterclaim.
 - j. Such further and/or other reliefs as the Honourable Court may deem fit and expedient to grant.
4. The 8th Defendant herein entered appearance and filed a Statement of Defence and wherein similarly denied the claims by the Plaintiff. In addition, the 8th Defendant contended that the Plaintiff shall be invited to strict proof.
5. The 9th Defendant entered appearance and filed a Statement of Defence. Similarly, the 9th Defendant also denied the claims by the Plaintiff. In any event, the 9th Defendant contended that the claims by the Plaintiff are not only premature but legally untenable.
6. The 10th and 11th Defendants also entered appearance and filed a Statement of Defence. Suffice it to state that the said Defendants also denied the claims by the Plaintiff.
7. The 12th Defendant entered appearance and filed a Statement of Defence. Same contended that the suit properties were duly and lawfully allocated to the various allottees, including the 1st, 2nd and 3rd Defendants in exercise of his [12th Defendant's] powers under the Government Land Act, Chapter 280, Laws of Kenya [now repealed].
8. The 13th Defendant duly entered appearance and filed a Statement of Defence and wherein same contended that its joinder was misconceived and contrary to law. Furthermore, the 13th Defendant intimated that same shall seek to strike out the suit as against itself. For good measure, it is imperative to highlight that the 13th Defendant indeed filed an application to have its name expunged from the record. Additionally, the application under reference was duly allowed culminating into the name of the 13th Defendant being expunged from the record.
9. The 14th Defendant [Registrar of Titles] duly entered appearance and filed a Statement of Defence. Suffice it to state that the 14th Defendant conceded the claims by the Plaintiff herein.
10. The subject matter came up for directions on various dates including the 25th September 2023 whereupon the advocates for the parties confirmed that same had filed all the requisite pleadings, list and bundle of documents and witness statements. To this end, the advocates for the parties confirmed that the matter was ready for hearing.
11. The Plaintiff's case is premised on the evidence of 10 witnesses namely Innocent Mugane Nzioki, James Muriuki, Kenneth Mungai, Stephen Gathuita Mwangi, Patrick Tom Odongo, Engineer Nahashon Mwangi Mutuma, Gastavas Albert Kahinga, Wilson Kibichy and Francis Wafula. Same testified as PW1, PW2, PW3, PW4, PW5, PW6, PW7, PW8. PW9 and PW10, respectively.
12. It was the testimony of PW1 [Innocent Mugane Nzioki] that same is a resident of the city of Nairobi. Furthermore, the witness averred that same is a Land surveyor by profession. In addition, the witness testified that same is currently employed by Nairobi Water and Sewerage Company Limited.
13. The witness further testified that by virtue of his portfolio, his duties include taking and keeping data for the design of water and sewerage infrastructure. Furthermore, the witness averred that same also determines boundaries of water catchment areas. Moreover, the witness averred that Nairobi Water and Sewerage Company Limited is a subsidiary of the City County Government of Nairobi. To this



end the witness averred that Nairobi Water and Sewerage Company Limited works under the City County Government of Nairobi.

14. It was the testimony of the witness that by virtue of his office, same is conversant with the facts of this matter. In addition, the witness averred that same has since recorded and filed a witness statement dated 3rd of November 2019 and which witness statement the witness sought to adopt and rely on as his evidence in chief. To this end, the witness statement was duly adopted and constituted as the evidence in chief of the witness.
15. Additionally, the witness referenced the document at pages 8-16 of the Plaintiff's list and bundle of documents and same stated that the document in question is a report by Nairobi City Commission on behalf of the Water and Sewerage department. The witness further averred that the report in question is a valuation report relating to the land, buildings, office furniture and equipment of the department.
16. It was the further testimony of the witness that same has also seen another report at pages 114-117 of the Plaintiff's List and Bundle of Documents. In particular, the witness averred that the report under reference is in respect of Kyuna water reservoir on LR No. Nairobi Block 90/229.
17. It was the further testimony of the witness that the property in question namely LR No. BLOCK 90/229 relates to a lease for a duration of 99 years w.e.f. 1st January 1978. Furthermore, the witness averred that the leasehold interest is in favour of the Government.
18. The witness thereafter sought to produce the report under reference as an exhibit before the court. There being no objection to the production of the report dated November 1989, same was produced and marked as exhibit P-1.
19. On cross-examination by learned counsel for the 2nd and 3rd Defendants, the witness averred that the report before the court namely exhibit P-1 relates to the assets of Nairobi City Water and Sewerage Department. Furthermore, the witness averred that the report in question was for internal consumption. Nevertheless, the witness testified that same did not participate in the preparation of the report.
20. While still under cross-examination, the witness averred that even though same did not participate in the preparation of the report, same is nevertheless conversant with the contents of the report. In addition, the witness averred that the 2nd and 3rd Defendants were never involved in the preparation of the report. Besides the witness added that the 2nd and 3rd Defendants were not availed a copy of the report.
21. On cross-examination by learned counsel for the 4th Defendant, the witness averred that same was hitherto an employee of the City Council of Nairobi [now defunct]. Furthermore, the witness averred that same was employed in the year 1997.
22. It was the further testimony of the witness that by virtue of his employment with both the City Council of Nairobi and Nairobi Water and Sewerage Company Limited, same [witness] is therefore conversant with the facts of the case.
23. Regarding the document at page 47 of the 4th Defendant's List and Bundle of Documents, the witness stated that same is a copy of a beacon certificate. Besides, the witness testified that the beacon certificate is in respect of LR No. Nairobi/Block 90/599. Nevertheless, the witness averred that the beacon certificate does not relate to the current plot which is the subject of the suit.
24. It was the further testimony of the witness that the Nairobi Water and Sewerage Company wherein same works has no mandate to issue a beacon certificate. In any event the witness testified that same



- was not involved in the preparation of the Water Report which same has tendered and produced before the court.
25. Regarding paragraph 6 of the witness statement, the witness averred that the contents of the said paragraph are correct. In any event, it was the testimony of the witness that the land in question is public land. Furthermore, the witness averred that same has contended that the land in question is public land because it had a public utility including water storage facilities meant to serve the public.
 26. It was the further testimony of the witness that the land under reference measures 5.000 acres. Furthermore, the witness testified that the land in question has a survey plan which shows its boundaries. In addition, the witness averred that the survey plan is the only document that shows the extent of the suit property.
 27. While still under cross-examination, the witness testified that same is not conversant with the procedure's attendant to allotment and/or allocation of land. In this regard, the witness clarified that same does not know the procedure that was deployed in allocating LR Nairobi Block 90/599 to the 4th Defendant.
 28. On cross-examination by learned counsel for the 8th Defendant, the witness averred that same joined the City Council of Nairobi in the year 1997. Nevertheless, the witness conceded that the report which same has tendered and produced before the court was prepared in 1989. Moreover, the witness averred that the purpose of the said report is contained in the body thereof. In any event, it was the testimony of the witness that the report touches on and concerns LR No. Nairobi Block 90/229.
 29. It was the further testimony of the witness that the said property namely LR No. Nairobi Block 90/229 contains various water infrastructure which were installed on the said property. In particular, the witness averred that the report indicates that there is 9000 cubic metres water storage tank. Besides, the witness also stated that the suit property also has staff houses, a pumping station and underground water pipes.
 30. The witness further testified that same still works with Nairobi Water and Sewerage Company to date. Nevertheless, it was the testimony of the witness that same does not have any current valuation report. Furthermore, the witness testified that the report in question does not have the acreage of the land.
 31. On cross-examination by learned counsel for the 10th and 11th Defendants, the witness stated that same is privy to the contents of the report that was prepared on behalf of Nairobi Water and Sewerage Company. Furthermore, the witness averred that the report in question was in respect of LR No. Nairobi Block 90/229. Nevertheless, the witness testified that same is not aware whether the report under reference was shared with the 10th and 11th Defendants.
 32. It was the further testimony of the witness that same has never seen any certificate of title in respect of LR No. Nairobi Block 90/229.
 33. On cross-examination by learned counsel for the 12th Defendant, the witness averred that Nairobi Water and Sewerage Company Limited is a subsidiary of the City County Government of Nairobi. Furthermore, the company was created by the County Government of Nairobi.
 34. While still under cross-examination, the witness testified that by the time of the preparation of the report, same [witness] had not joined the City Council of Nairobi.
 35. Regarding the letter[s] of allotment dated 19th September 1995, the witness averred that same is shown to have been issued in favour of the 1st, 2nd and 3rd Defendants. Upon being shown the letter of allotment at page 75, the witness averred that there is indication that the letter under reference was copied to



- the town clerk, City Council of Nairobi. However, it was the testimony of the witness that the City Council of Nairobi was never consulted in the alienation of the suit property by the 12th Defendant.
36. On cross-examination by learned counsel for the 14th Defendant, the witness averred that in his witness statement, same has indicated that the suit property was reserved for public use. In particular, the witness averred that the land in question contains various water infrastructural facilities. Furthermore, the witness testified that the land is currently fenced.
 37. The second witness who testified on behalf of the Plaintiff was James Muriuki. Same testified as PW2.
 38. It was the testimony of the witness that same is a land surveyor by profession. In addition, the witness averred that same is a registered and licensed surveyor. Besides, the witness testified that currently same is practising under the name and style of M/s Kamwera & Associates.
 39. It was the further testimony of the witness that same was licensed as a surveyor way back in 1972. Furthermore, the witness averred that same is conversant with the facts of this matter. In addition, the witness averred that same has since recorded a witness statement with the ethics and anti-corruption commission. To this end, the witness referenced the witness statement dated the 2nd of February 2021 and which witness statement the witness sought to adopt and rely on as his evidence in chief. Suffice it to state that the witness statement was thereafter adopted and constituted as the evidence in chief of the witness.
 40. It was the further testimony of the Witness that at the foot of his witness statements, same has detailed the activities that were undertaken by himself as pertains the dispute property. In particular the witness averred that same was tasked by the government of Kenya to carry out a survey of the trading centres adjoining the city council water works. The witness averred that same proceed to and undertook the survey exercise in 1978.
 41. It was the further testimony of the witness that in the course of undertaking the survey exercise on behalf of the government, same [Witness] became aware of the City Council Water works on the suit property. For good measure, the witness reiterated that same became aware of the water works/water reservoir during the time when he undertook the survey.
 42. Regarding the document at page 199 of the plaintiff's bundle of documents, the witness averred that the document in question is the survey plan F/R No. 138/10. In particular the witness averred that the said survey plan bears a registration number. To this end, the witness adverted to folio 98 contained in register number 107.
 43. Besides, the witness testified that the survey plan was duly approved by the Director of Survey in the year 1976.
 44. It was the further testimony of the witness that the survey at the foot of the survey plan was carried out by Wahle who was the Chief Surveyor of the City Council of Nairobi. Instructively, the witness averred that the survey was done in respect of the Nairobi city council water works which was allocated the plot in question.
 45. It was the further testimony of the witness that the plot in question measures 5.00 acres. In addition, the witness averred that same is also privy to a cadastral plan which relates to the same water works. To this end, the witness referenced the document at page 200 of the Plaintiff's list and bundle of documents.
 46. Regarding the document at page 68 of the Plaintiff's list and bundle of documents, the witness averred that the document under reference is the scheme of subdivision relating to the suit property. The



- witness stated that the scheme of sub- division [Sub-division Scheme] was approved on the 28th of September 1977. Furthermore, the witness added that the document bears approval plan number 907.
47. On cross-examination by learned counsel for the 2nd and 3rd Defendants, the witness averred that same was not involved in the survey of LR No. Nairobi Block 90/229. Besides, the witness testified that when a survey is being undertaken, the original plot could give rise to various sub-divisions. Thereafter, the witness averred that the resultant sub-division[s] would be registered in the name of the original owner.
 48. It was the further testimony of the witness that same is conversant with the details pertaining to the suit property. Nevertheless, the witness averred that the suit property namely LR No. Nairobi Block 90/229, was never registered in the name of the City Council of Nairobi. For good measure, the witness testified that same has never seen the certificate of title over and in respect of the suit property.
 49. Moreover, it was the testimony of the witness that the owner of the land which is subject of sub-division is obligated to surrender a portion or portions thereof to the government. In addition, the witness averred that it is the practice for the owner of the land subject to sub-division to surrender portions for public use.
 50. While still under cross-examination, the witness averred that the city council of Nairobi thereafter proceeded to and developed water works/water infrastructure over the suit property. Nevertheless, the witness testified that same has never seen a certificate of title in the name of the City Council of Nairobi [now defunct] or the County Government of Nairobi.
 51. The witness further testified that the water reservoir on the suit land is still in existence. In addition, the witness averred that other than the water reservoir, there are also staff residential houses, security house and offices. In particular, the witness reiterated that the water reservoir is still operational and functional.
 52. On cross-examination by learned counsel for the 4th Defendant, the witness reiterated that same is a licensed and registered surveyor. Moreover, the witness added that same has a fairly reasonable experience in survey and related matters.
 53. It was the further testimony of the witness that the process of sub-division of Land would start by obtaining/preparing a sub-division scheme. Thereafter the witness averred that the sub-division scheme would be subjected to approval by various authorities including the physical planner and the director of survey. In any event, the witness stated that upon obtaining the approvals the surveyor would also visit the designated land and place beacons.
 54. While still under cross-examination, the witness averred that upon preparation of the survey plans, same would be surrendered/submitted to the Directorate of Survey for purposes of approval and thereafter preparation of the deed plan or the registry index map. Furthermore, the witness testified that the deed plan would be prepared if/where the sub-division was undertaken pursuant to the Registration of Titles Act.
 55. It was the further testimony of the witness that where a person seeks to undertake amalgamation of his/her plot, the owner of the plot will be obliged to apply for approvals from the requisite offices. In addition, it was averred that upon procuring the approvals, the surveyor would then undertake the survey works over the properties sought to be amalgamated. While still under cross-examination, the witness testified that a Land Registrar cannot undertake registration if there is a defect or deficiencies in the survey records.
 56. On further cross-examination, the witness testified that it is the duty of the Director of Survey to confirm that the Survey Records and Survey Plans are properly prepared. Furthermore, the witness



- averred that upon cross-checking the survey plans, the Director of Survey has the final say as pertains to approvals. Furthermore, the witness testified that if the Director of Survey approves the process of survey then the Surveyor would proceed and undertake the preparation of a Deed Plan.
57. Regarding the document at page 58 of the 4th Defendant's bundle of documents, the witness averred that the document in question is a copy of the beacon certificate. Besides, the witness testified that the beacon certificate belongs to the City Council of Nairobi.
 58. It was the testimony of the witness that wherever a person seeks to buy land in Nairobi, such a person would be enjoined to undertake due diligence, including procuring an Official Search over the property. Furthermore, the witness also testified that the intended purchaser would also be called upon to undertake a physical search.
 59. On cross-examination by learned counsel for the 8th Defendant, the witness averred that same did not undertake the survey exercise in respect of LR No. Nairobi Block 90/229. Nevertheless, the witness testified and confirmed that the City Council Water works are located on the suit property. For good measure, the witness averred that same is conversant with the ground in question.
 60. It was the further testimony of the witness that the land in question contains the water reservoir which serves Loresho area and the neighbourhood. In any event, the witness testified that the resident[s] of Loresho Estate protested the excavations that were being undertaken on the suit plot.
 61. It was the further testimony of the witness that same got to know that the suit property namely; LR No. Nairobi Block 90/229 was being sub-divided when same went to the offices of the Director of Survey.
 62. Furthermore, the witness averred that same went to the offices of Director of Survey when the residents of Loresho area lodged an objection/protest pertaining the impugned sub-division. Nevertheless, the witness testified that same did not prepare a report as pertains to the objections.
 63. While still under cross-examination, the witness testified that LR No. Nairobi Block 90/229 was sub-divided into various portions. However, the witness stated that same is not aware whether the process of survey was duly followed.
 64. On cross-examination by learned counsel for the 10th and 11th Defendants, the witness averred that same is privy to a cadastral survey plan which has been filed by the Plaintiff. Furthermore, the witness testified that the cadastral survey plan relates to the development on the suit property.
 65. While still under cross-examination, the witness testified that same is not aware whether the City Council of Nairobi approved the sub-divisions of the suit property.
 66. On cross-examination by learned counsel for the 12th Defendant, the witness averred that same is aware that the suit property was indeed sub-divided. Furthermore, the witness added that the sub-division was approved. Nevertheless, the witness clarified that same is not aware whether the approvals were genuine or otherwise.
 67. On cross-examination by learned counsel for the 14th Defendant, the witness averred that upon sub-division of the original parcel of land, each resultant plot has a designated user. In addition, the witness testified that the subject property was designated and reserved as a water reservoir.
 68. It was the further testimony of the witness that in so far as the suit property was already reserved for water works, same [suit property] stood alienated and was therefore not available for subsequent allocations.



69. The third witness who testified on behalf of the Plaintiff is Kenneth Mungai Wangachi. Same testified as PW3.
70. It was the testimony of the witness that same is currently a senior physical planning Assistant at the Ministry of Lands, Public Works, Housing and Urban Development. Furthermore, the witness testified that his duty includes drafting of physical plans, custody of physical/development plans and verification of such plans.
71. It was the further testimony of the witness that same is conversant with the facts of the matter. In addition, the witness averred that same recorded a witness statement dated the 14th of March 2018 and which witness statement the witness sought to adopt and rely on as his evidence in chief. Suffice it to state that the witness statement was thereafter adopted and constituted as the evidence in chief of the witness.
72. Regarding the document at page 68 of the Plaintiff's list and bundle of documents, the witness averred that the document in question is a part development plan for Loresho estate. It was the further testimony of the witness that the part development plan was prepared over and in respect of LR No. Nairobi Block 90/229.
73. It was the further testimony of the witness that the parcel of Land, namely; LR No. Nairobi Block 90/229 was reserved as a water reservoir.
74. Regarding the document at page 196 of the Plaintiff's list and bundle of documents, the witness averred that the document in question is a letter forwarding the part development plan to the commissioner of lands for approval. Furthermore, the witness averred that there was a response from the Commissioner of Lands.
75. On cross-examination by learned counsel for the 2nd and 3rd Defendants, the witness averred that same was not involved in the survey of the suit property. For good measure, the witness averred that same was only involved in the planning. Furthermore, the witness testified that same is aware that Loresho area was initially referenced as BLOCK 90.
76. It was the further testimony of the witness that same is conversant with the process pertaining to the preparation of a part development plan. In particular, it was the witness' testimony that a part development plan would ordinarily be prepared by Director of Physical Planning or his appointed designate. Thereafter, the witness averred that the part development plan would be subjected to approval. Regarding the part development plan for the suit property, the witness averred that same shows that the suit property was reserved for water reservoir.
77. On cross-examination by learned counsel for the 4th Defendant, the witness averred that the document at page 196 of the Plaintiff's list and bundle of documents is a letter from the Ministry of Lands. In particular, the witness averred that the letter in question was directed to the Commissioner of Lands.
78. While still under cross-examination, the witness averred that the document at the foot of page 197 of the Plaintiff's list and bundle of documents is a letter from the Commissioner of Lands. Moreover, the witness testified that the letter under reference was requesting for preparation of a part development plan.
79. It was the further testimony of the witness that a part development plan was thereafter prepared. To this end, the witness referenced the document at page 198 of the Plaintiff's bundle of documents. Furthermore, the witness testified that the said part development plan was prepared by the Director



- of Physical Planning and thereafter same was escalated to the Commissioner of Lands who also signed the same.
80. The witness further testified that same is aware of the creation of LR numbers LR No. Nairobi Block 90/584, LR No. Nairobi Block 90/585 and LR No. Nairobi Block 90/586, respectively. The witness further testified that the documents pertaining to the said parcels of land have been tendered and produced before the court.
 81. On cross-examination by the learned counsel for the 8th Defendant, the witness averred that the part development plan at page 198 of the Plaintiff's list and bundle of documents was not approved. In particular, the witness testified that an approval would culminate into the issuance of an approval number. However, it was the witness' position that the part development plan at the foot of page 198 does not have an approval number.
 82. While still under cross-examination, the witness testified that the part development plan was duly signed by both the director of physical planning and the Commissioner of Lands. Nevertheless, the witness clarified that the final evidence of approval relates to the issuance of the approval number.
 83. On further cross-examination, the witness testified that the resultant sub-divisions, which arose from LR No. Nairobi Block 90/229 were created on the basis of a part development plan which was not approved.
 84. It was the further testimony of the witness that same recorded a witness statement with the Plaintiff in the year 2018. The witness further averred that at the time of recording his witness statement, same had under his custody the register wherein the approvals are posted. In particular, the witness averred that the register would have the number of the approval. For good measure, the witness reiterated that the approval number is the final process in the approval of the part development plan.
 85. On cross-examination, the learned counsel for the 14th Defendant, the witness averred that a part development plan is a public document. To this end, the witness testified that a part development plan is therefore capable of being accessed albeit on application to the Director Physical Planning.
 86. While still under cross-examination, the witness added that a part development plan is a very important document in the process of allocation or alienation of land.
 87. The next witness who testified on behalf of the Plaintiff was Stephen Gathuita Mwangi. Same testified as PW5. It was the testimony of the witness that same was a Chief Officer-Lands at the County Government of Nairobi. Nevertheless, the witness added that same is now the CEC-Lands, Public Works, Physical Planning and Urban Development at the City County Government of Nairobi.
 88. The witness further testified that by virtue of his office as at the time of recording the witness statement, same was conversant with the facts of this case. In particular, the witness averred that same has detailed all the facts at the foot of his witness statement dated 4th July 2018. Suffice it to state that the witness thereafter sought to adopt and rely on the contents of the witness statement. To this end, the witness statement was thereafter adopted and constituted as the evidence in chief of the witness.
 89. It was the further testimony of the witness that same is privy to and conversant with the suit property. In particular, the witness averred that the certificate of title in respect of the suit property was surrendered to the City Council of Nairobi [now defunct] by a Loresho Developer in the year 1972.
 90. Regarding the document at page 68 of the Plaintiff's list and bundle of documents, the witness averred that same is a part development plan. In particular, the witness stated that the part development



- plan relates to the sub-division of the suit property. Furthermore, the witness clarified that the part development plan relates to the land where the water reservoir is located.
91. On cross-examination by learned counsel for the 2nd and 3rd Defendant, the witness averred that the land in question was surrendered to the City Council of Nairobi. Nevertheless, the witness clarified that even though the land was surrendered to the City Council of Nairobi, the City Council of Nairobi was never issued with a Certificate of Title. In any event, the witness averred that same has never seen the certificate of title in the name of the City Council Government of Nairobi.
 92. On cross-examination by learned counsel for the 4th Defendant, the witness testified that same does not know the process relating to the sub-division of land. For good measure, the witness clarified that same is only aware that there was a part development plan, which same has referenced before the court.
 93. While still under cross-examination, the witness testified that same has seen the part development plan which is at page 68 of the Plaintiff's list and bundle of documents. In addition, the witness clarified that the part development plan under referenced relates to the property, which was reserved for the water works.
 94. On cross-examination by learned counsel for the 8th Defendant, the witness averred that the property wherein the water works is located is LR No. Nairobi Block 90/229. Furthermore, it was the testimony of the witness that same is aware that the said property has since been sub-divided into various properties. Nevertheless, the witness averred that the impugned sub-divisions are not lawful.
 95. On cross-examination by learned counsel for the 10th and 11th Defendants, the witness averred that same is privy to and conversant with the facts of this matter. In particular, the witness averred that same is privy to the information in respect of the suit property. In any event, the witness clarified that the suit property was reserved for water works.
 96. On cross-examination by learned counsel for the 14th Defendant, the witness testified that the water reservoir has been in place since 1971. Furthermore, the witness averred that the City County Council [now defunct] and the City County of Nairobi is the one in possession of the suit property. The witness testified that there are various water infrastructural facilities which are existing on the suit property.
 97. It was the further testimony of the witness that the water works, the infrastructural facilities and the auxilliary properties on the suit land belong to Nairobi City Water and Sewerage Company.
 98. The next witness to testify on behalf of the Plaintiff is Patrick Tom Odongo. Same testified as PW 6.
 99. The witness testified that same is a registered physical planner. Furthermore, it was the testimony of the witness that same was previously an employee of the City County of Nairobi [now defunct]. Additionally, the witness averred that in the year 2013, same joined the City County of Nairobi and worked as County Executive Committee Member for Lands, Planning and Housing. It was the testimony of the witness that by virtue of his portfolio at the city council of Nairobi and thereafter at the County Government of Nairobi, same is conversant with this matter. In addition, the witness averred that same has recorded a witness statement dated 20th June 2020 and which same sought to rely on and adopt as his evidence in chief. To this end, the witness statement was adopted and constituted as the evidence in chief of the witness.
 100. Moreover, it was the testimony of the witness that same is privy to the suit property. In particular, the witness averred that the suit property arose from the subdivision of LR numbers 59 52 and 11653. Furthermore, the witness averred that the subdivision of the two[2] plots was approved on the 30th of



January 1976. It was the further testimony of the witness that upon surrender, the suit property was reserved as a water reservoir.

101. Regarding the document at page 68 of the Plaintiff's list and bundle of documents, the witness testified that the document under reference is the part development plan prepared by the ministry of lands. Besides, the witness clarified that the part development plan indicate that the suit property was reserved as a water reservoir.
102. As pertains to the subdivision of the suit property and the consequential creation of LR No. Nairobi Block 90/584, LR No. Nairobi Block 90/585, LR No. Nairobi Block 90/586 and LR No. Nairobi Block 90/587 was illegal.
103. It was the further testimony of the witness that LR No. Nairobi Block 90/587 was subsequently subdivided into various portions culminating into LR Nos. Nairobi Block 90/591, LR No. Nairobi Block 90/592, LR No. Nairobi Block 90/593, LR No. Nairobi Block 90/594, LR No. Nairobi Block 90/595 and LR No. Nairobi Block 90/596. In addition, the witness averred that the water reservoir now sits on LR No. Nairobi Block 90/596.
104. Regarding the document at page 72 of the Plaintiff's list and bundle of documents, the witness testified that the document in question is the part development plan in respect of the water reservoir land. Nevertheless, the witness clarified that the water reservoir land is shown/marked with several parcels running from (a) to (j).
105. Upon being referred to the document at page 73 of the Plaintiff's list and bundle of documents, the witness averred that the document in question is a plan. Nevertheless, the witness testified that the document under reference does not have the signature of the commissioner of lands. On the other hand, the witness stated that the signatures of the commissioners of land appears on the title Block and not on the plan. To this end, the witness averred that that kind of scenario is unusual.
106. It was the further testimony of the witness that it is the part development plan which is ordinarily to be approved. In this regard, the witness posited that the signature of the commissioner of lands therefore ought to be on the part development plan. Moreover, it was the testimony of the witness that the subdivision of any land and property within the city of Nairobi would require the approval of the town planning committee of the City Council of Nairobi. Besides, the witness added that such approvals would be supported by decisions and minutes of the Town Planning Committee.
107. Furthermore, the witness averred that the approval of the sub-division of the land would be required to follow a process. The witness clarified that the process will entail the involvement of the general purposes committee of the Council before the scheme could be forwarded to the Commissioner of Lands.
108. On cross-examination by learned counsel for the 14th Defendant, the witness averred that same is a registered physical planner. Moreover, the witness testified that same acquired his registration around the year 1990-1992. In addition, the witness averred that same is one of the first physical planners to be registered in the country.
109. It was the further testimony of the witness that same joined the City Council of Nairobi in 1980. In particular, the witness testified that same joined the City Council of Nairobi as a trainee planner. It was the further testimony of the witness that same left the City County Government of Nairobi in the year 2017. For good measure, the witness posited that same left as the County Executive Committee [CEC] Member for Urban Renewal.



110. It was the testimony of the witness that during his tenure at the City County Government of Nairobi, same interacted with the suit property. The witness averred that when he interacted with the suit property, the suit property was being used as a water reservoir. In any event, the witness testified that the suit property has an underground and elevated water tanks. Moreover, the witness testified that the suit property has always been under the occupation of the City Council of Nairobi and now the City County Government of Nairobi. Furthermore, the witness testified that the suit property, namely LR No. Nairobi Block 90/229 was surrendered through the sub-division of LR No. 5952 and 11653 respectively. Moreover, the witness averred that the subdivision scheme culminating into the surrender of the suit property was approved on the 30th of January 1976.
111. Regarding the document at page 68 of the Plaintiff's list and bundle of documents, the witness averred that same is the part development plan pertaining to the suit property. Furthermore, the witness averred that the suit property was reserved and marked as a water reservoir.
112. Upon being referred to the sub-division scheme, the witness averred that it is the one which was approved on the 30th of January 1976. In any event, the witness testified that the suit property having been reserved and marked as a water reservoir, same was not available for allocation.
113. While still under cross examination, the witness testified that if the user was to change then there would be need for approval. Moreover, the witness testified that there is a procedure to be followed before an application for change of user can be allowed. In particular, the witness testified that the procedure would involve an application being made to the commissioner of Lands after having been approved by the planning committee of the City Council of Nairobi. For good measure, the witness stated that the Commissioner of Lands would only grant the approval after the town planning committee of the city council of Nairobi has approved the application for change of user.
114. Additionally, the witness testified that once the approval for change of user is granted, then the land in question would have to be subjected to re-surveying. Furthermore, the witness testified that there would also be a change of the plot number.
115. Be that as it may, it was the testimony of the witness that same did not come across any application or approval for change of user for LR No. Nairobi Block 90/229. In addition, the witness averred that same also did not come across any minutes of the Town Planning Committee approving the change of user. Moreover, the witness referenced the document at page 72 of the Plaintiff's list and bundle of documents and thereafter averred that the document in question was prepared in May 1992.
116. While still under cross-examination, the witness testified that a part development plan must be approved. Furthermore, the witness testified that in the absence of an approval, the part development plan is incomplete and cannot therefore be deployed for purposes of alienation.
117. On cross-examination by learned counsel for the 2nd and 3rd Defendants, the witness averred that same was not involved in the process relating to the surrender of the suit property to the City Council of Nairobi. In any event, the witness testified that the land under reference was duly surveyed. Nevertheless, the witness clarified that same has never seen the certificate of title in the name of Nairobi City County.
118. While still under cross-examination, the witness testified that same is privy to and knowledgeable of the acreage of the suit property. Nevertheless, and upon being pressed further, the witness stated that same could not recall the acreage of the land.



119. Upon being referred to paragraph 4 of his witness statement, the witness reiterated that the contents thereof are correct. In particular, the witness testified that the acreage of the suit property is recorded and shown as 1.399 Ha.
120. It was the further testimony of the witness that same has previously visited the land in question. In particular, the witness testified that the land in question was marked and reserved as a water reservoir. Moreover, the witness clarified that the water reservoir is functional and operational.
121. On cross-examination by learned counsel for the 4th Defendant, the witness testified that same is conversant with and knowledgeable of the process of amalgamation. In particular, the witness averred that the process of amalgamation involves an application for amalgamation and thereafter approval before the land under reference can be subjected to resurvey.
122. While still under cross-examination, the witness averred that same has seen various demands for rates as well as rate payment receipts. In particular, the witness averred that the demand for rates was issued by the city council of Nairobi. Furthermore, the witness also averred that the rate payment receipts were also issued by the City Council of Nairobi and by the City County Government of Nairobi.
123. Additionally, the witness alluded to a rates clearance certificate and confirmed that same had been issued by the City Council of Nairobi. In addition, the witness clarified that the rates clearance certificate was issued in favour of the 4th Defendant.
124. Regarding the valuation of properties for purposes of listing in the valuation roll, the witness testified that the valuation exercise would be taken by the valuation department of the city council of Nairobi [now defunct] or the city county government of Nairobi. Thereafter, the witness averred that the valuation report would be forwarded to the revenue department for purposes of assessment and billing. While still on the issue, the witness averred that the valuation department would verify the existence of the property which is the subject of valuation before undertaking the valuation.
125. Regarding the document at page 105 of the 4th Defendant's list and bundle of Documents, the witness averred that same is a letter dated the 8th of August 2002. Furthermore, the witness testified that the Letter under reference, came from the 4th Defendant. Besides, the witness added that the letter was in respect of amalgamation at the instance of the 4th Defendant. While still under cross-examination, the witness averred that vide the letter under reference, the 4th Defendant was seeking amalgamation of various plots.
126. It was the further testimony of the witness that the request for amalgamation was approved. To this end, the witness referenced the letter from the Commissioner of Lands and which was addressed to M/S Ndichu & Associates. Furthermore, the witness averred that the letter from the commissioner of Land was also copied to various persons including the Director of Physical Planning [city planning], Director of Survey and the Town Clerk, Nairobi City Council.
127. Upon being referred to Form PPA2, the witness averred that the said form is the notification of approval of change of user. In particular, the witness clarified that the change of user was from residential to a commercial. In any event, the witness averred that the plot which was the subject of change of user is shown/indicated as LR No. Nairobi Block 90/599.
128. Regarding the document at page 58 of the 4th Defendant's list and bundle of documents, the witness averred that the document under reference is a beacon certificate. Moreover, the witness testified that the beacon certificate is dated 25th October 2002. For good measure, the witness confirmed that the beacon certificate relates to plot LR No. Nairobi Block 90/599.



129. While still under cross-examination, the witness testified that the beacon certificate is shown to have been signed by the Chief Surveyor, City Council of Nairobi. Nevertheless, the witness averred that same is not aware whether the Surveyor under reference went to the ground before preparing the beacon certificate. However, it was the testimony of the witness that the property in question had long been surveyed and hence the witness does not understand why there was need to prepare a beacon certificate yet again.
130. Upon being referred to the document at page 108 of the 4th Defendant's bundle of documents, the witness averred that the said document is a copy of a cheque. The witness further stated that the cheque under reference was issued by the 4th Defendant. Furthermore, it was clarified that the cheque was addressed to the City Council of Nairobi [now defunct].
131. As pertains to the purpose of the Cheque, the witness averred that the cheque was payment at the foot of an approval for hoarding.
132. On cross-examination by learned counsel for the 10th and 11th Defendants, the witness averred that the suit plot, LR No. Nairobi Block 90/229 was set aside and reserved as a water reservoir. Furthermore, the witness added that the land in question was set aside in the year 1976.
133. While still under cross-examination, the witness testified that the land in question was surrendered. It was averred that the surrender came when the developer sought to have the sub-division scheme approved. In particular, the witness reiterated that the surrender was for public use.
134. Regarding the document at page 59 of the Plaintiff's list and bundle of documents, the witness testified that same is a part development plan. Nevertheless, the witness clarified that the part development plan does not indicate the acreage of the suit property. Nevertheless, the witness averred that the part development plan in question demonstrates that the suit property was reserved and marked for water reservoir [Loresho].
135. Moreover, the witness testified that the land in question was surrendered in 1976. Nevertheless, the witness clarified that same cannot be able to state with certainty the acreage of the land that was reserved as a water reservoir.
136. The next witness who testified on behalf of the Plaintiff was Engineer Nahashon Mwangi. Same testified as PW7.
137. It was the testimony of the witness that same is currently the Managing Director of Nairobi Water and Sewerage Company. To this end, that same is therefore conversant with the facts of the dispute before the court. In addition, the witness testified that the same has since recorded a witness statement dated 17th December 2019 and which witness statement the witness sought to adopt and rely on as his evidence in chief. Suffice it to state that the witness statement was thereafter adopted and constituted as the evidence in chief of the witness.
138. It was the further testimony of the witness that same is conversant with the suit property. For good measure, the witness testified that the suit property comprises of the water reservoir which serves Loresho area, Gigiri, Runda, Upper Kabete and Upper Kabete Campus of the University of Nairobi. Furthermore, the witness testified that the land where the reservoir [water-works] is located measures approximately 4 acres.
139. Moreover, the witness testified that the water works on the suit land are on a portion thereof. The other portions of the suit land are said to be vacant and reserved for expansion.



140. Regarding the document at page 178 of the plaintiff's list and bundle of documents, the witness averred that same is a valuation report. Furthermore, the witness testified that the valuation report relates to the water reservoir and contains the values of the various developments standing on the suit property.
141. On cross-examination by the learned counsel for the 14th Defendant, the witness averred that same is indeed conversant with the suit property. Furthermore, the witness clarified that same lastly visited the suit property in February 2024.
142. While still under cross-examination, the witness testified that the land in question is under the occupation of the City County Government of Nairobi.
143. It was the further testimony of the witness that same was referred to a letter alluding to LR No. Nairobi Block 90/593. Nevertheless, the witness testified that the said parcel of land does not lawfully exist.
144. On cross-examination by learned counsel for the 2nd and 3rd Defendant[s], the witness testified that previously same was the Technical Director of Nairobi Water and Sewerage Company. Nevertheless, the witness averred that same but subsequently became the Managing Director of the company.
145. It was the testimony of the witness that the land belonged to the Nairobi city Government. Nevertheless, the witness averred that Nairobi Water and Sewerage Company is a subsidiary of the City County Government of Nairobi.
146. On cross examination by counsel for the 4th Defendant, the witness testified that the land in question belongs to the City County Government of Nairobi. In any event, the witness testified that same [witness] is not aware whether the 4th Defendant has been paying rents and rates.
147. While still under cross-examination, the witness also averred that same is not aware whether the 4th Defendant has any certificate of title over the suit property.
148. On cross-examination by learned counsel for the 10th and 11th Defendants, the witness averred that same is aware that a surveyor went to the suit property. In particular, the witness testified that the surveyor who went to the suit property is called Innocent Muthama.
149. The witness further testified that the plot in question is currently fenced. In addition, the witness clarified that the fence is a masonry perimeter wall. Furthermore, the witness testified that the wall in question was constructed in the year 2012.
150. On cross-examination by learned counsel for the 12th Defendant, the witness testified that same is not privy to and /or conversant with the process pertaining to allotment of land. Moreover, the witness averred that same does not understand how a letter of allotment is processed and issued.
151. The next witness who testified on behalf of the Plaintiff was Gustavas Albert Kahinga. Same testified as PW8.
152. It was the testimony of the witness that same was previously a water operator working at Loresho Water Reservoir. In this regard, the witness clarified that same [Witness] is knowledgeable of and privy to the facts of this matter.
153. In addition, the witness testified that same has since recorded a witness statement dated 28th November 2019 and wherein same has detailed the issues surrounding the suit property. Thereafter, the witness sought to adopt and rely on the witness statement. To this end, the witness statement was adopted and constituted as the evidence in chief of the witness.



154. It was the testimony of the witness that the land in question is fully fenced and same houses the water works. In addition, the witness testified that the water infrastructure on the suit land receives water from Sisismua Dam and thereafter, the water is treated and pumped to various areas including Loresho, Gigiri and Westlands.
155. Moreover, the witness averred that the land in question also has the water works, staff houses, offices, underground and elevated tanks. In particular, the witness clarified that this development are evidenced on the face of the property.
156. On cross-examination by learned counsel for the 2nd and 3rd Defendant[s], the witness averred that same was employed in the year 1999. Furthermore, the witness averred that same was based at Loresho Water Works.
157. By virtue of his station at Loresho Water Works, the witness averred that same [Witness] is therefore conversant with the facts of the case [matter].
158. On cross-examination by learned counsel for the 4th Defendant, the witness averred that same was employed in the year 1999 and thereafter same was posted to Loresho Water Works in the year 2007. It was the testimony of the witness that same is not aware of the sub-division of the suit land.
159. While still under cross-examination, the witness testified that same has never seen the certificate of title in respect of the suit property. Nevertheless, the witness added that by virtue of his portfolio, he would not have come across the certificate of title.
160. On further cross-examination, the witness averred that the masonry perimeter wall fence was constructed by an Asian. When pressed further, the witness testified that the person who constructed the wall was the 4th Defendant.
161. On cross-examination by learned counsel for the 10th and 11th Defendants, the witness averred that the land in question is approximately 5 acres. Furthermore, the witness reiterated that the land in question is developed with water works and infrastructural facilities. Moreover, the witness added that the land has staff houses, offices, underground and elevated tanks. Additionally, the witness testified that a portion of the land is also vacant. In any event, it was the testimony of the witness that the vacant possession was actually being cultivated by the employees of Nairobi City Water and Sewerage Company Limited.
162. While still under cross-examination, the witness testified that some developers came onto the land in the year 2014 or thereabout. Furthermore, the Witness averred that the perimeter wall was constructed in the year 2012.
163. The next witness to testify on behalf of the Plaintiff was Wilson Kibichy. Same testified as PW9.
164. It was the testimony of the witness that same works for and with the Ministry of Lands, Public Works, Housing and Urban Development and in particular the department of survey. Furthermore, the witness averred that same is the head of records at the survey office.
165. It was the testimony of the witness that same has since recorded a witness statement dated 26th of March 2024 and which Witness Statement same [Witness] sought to adopt and rely on as his evidence in chief. To this end, the witness statement was adopted and constituted as the evidence in chief of the witness.
166. It was the further testimony of the witness that in the course of his engagement, same has seen/come across the witness statement of Raphael Kioko Ngogu. Furthermore, the witness testified that Raphael Kioko Ngogu was his colleague at work. In addition, the witness averred that same is aware that Raphael



Ngogu had presented and availed various records to the court. To this end, the witness identified the records and sought to produce same before the court.

167. Regarding the document at page 74 of the plaintiff's list and bundle of documents, the witness averred that same is a letter of allotment.
168. Regarding the document at page 188 of the Plaintiff's list and bundle of documents, the witness averred that the document in question is a survey map. Furthermore, the witness added that the survey map under reference shows amendments.
169. It was the further testimony of the witness that a survey map can be amended. Nevertheless, the witness testified that the amendment of a survey map would follow a laid down process. Besides, it was the testimony of the witness that an amendment would require to be approved by the Director of Survey.
170. Moreover, it was the testimony of the witness that the document at page 188 of the Plaintiff's list and bundle of documents has a reference number. In particular, the witness averred that the reference number is duly shown and captured thereon.
171. On cross-examination by learned counsel for the 14th Defendant, the witness averred that the document at page 168 of the Plaintiff's bundle of documents is a copy of a letter of allotment. Furthermore, the witness averred that the letter of allotment is in respect of plot LR No. Nairobi Block 90/229. Furthermore, the witness averred that the letter of allotment in question has notations on the face thereof and the witness clarified that the notations demonstrate that the property was reserved as NCC Water Reservoir.
172. Regarding the document at page 72, the witness averred that same is a part development plan for Nairobi City. Furthermore, the witness clarified that the said part development plan indicate[s] the acreage of plot LR No. Nairobi Block 90/229.
173. While under cross-examination, the witness averred that there is a proposal dated May 1992. Furthermore, the witness testified that the proposal was a proposed sub-division for plot LR No. Nairobi Block 90/229. In addition, the witness averred that the proposed sub-division indicated that plot A was indicated as water Reservoir.
174. While still under cross-examination, the witness averred that the proposed part development plan indicated the purpose of the sub-division. However, the witness testified that the document under reference was not submitted to the Director of Survey. Besides, the witness testified that without approval by the Director of Survey, the document in question could not be authentic.
175. Regarding the document at page 199, the witness averred that same is a survey plan. Nevertheless, the witness testified that same cannot confirm whether the survey plan in question is relevant to the suit property.
176. On further cross-examination, the witness testified that the document under reference does not have the authority for survey. Nevertheless, the witness averred that the document showed that same was intended to sub-divide the original parcel of land.
177. Upon being referred to document at page 182 of the Plaintiff's list and bundle of documents, the witness averred that the said document is the report on the irregular and illegal allocation of public land. Furthermore, the witness testified that the suit property is contained at the foot of the report. Besides, the witness added that the remarks at the foot of the report show that the title of the suit property was marked for revocation.



178. Regarding the document at page 164 of the Plaintiff's list and bundle of documents, the witness averred that the document in question is an internal memorandum addressed to the Chairman of National Land Commission. Nevertheless, the witness clarified that same has not seen/come across any record or document that relate to the re-planning of the property.
179. In addition, the witness also averred that same has also not come across an approved development. In particular and upon being referred to the document at page 69 of the Plaintiff's bundle of documents, the witness testified that same is a part development plan. However, the witness reiterated that the said part development plan does not have an approved development plan number.
180. On cross-examination by learned counsel for the 2nd and 3rd Defendants, the witness testified that same has seen the Letter dated the 26th of January 1996. The witness further averred that same is conversant with the contents of the letter. In addition, the witness averred that the letter under reference was forwarding a copy of the Registry Index Map [RIM] to the office of the commissioner of lands.
181. While still under cross-examination, the witness averred that what was essentially being forwarded was an amendment. In particular, the witness stated that the amendment related to the registry index map. Furthermore, the witness averred that the letter in question was written by Mr. Kioko and that the letter references a letter of allotment.
182. While still under cross-examination, the witness averred that the contents of his witness statement are correct. In any event, it was the testimony of the witness that in his witness statement same has synchronised the items that must be availed before a registry index map can be amended. Furthermore, the witness also averred that same also alluded to the various steps that must be undertaken before a letter of allotment is issued.
183. Regarding the document at page 196 of the Plaintiff's list and bundle of documents, the witness averred that the document in question is a letter from the Commissioner of Lands requesting for the preparation of a part development plan. In particular, the witness added that the request under reference was honoured/adhered to vide letter dated 5th of September 1995.
184. It was the further testimony of the witness that the letter date 5th September 1995, was authored by the Director of Physical Planning and that same forwarded a copy of the part development plan for approval to the Commissioner of Lands.
185. In any event, the witness testified that a part development plan must be prepared before the letter of allotment can issue.
186. It was the further testimony of the witness that the letter of allotment in question was procedurally issued. In particular, the witness reiterated that the letter of allotment was regularly issued.
187. On cross-examination by learned counsel for the 4th Defendant, the witness averred that the registry index map was amended after all the necessary document[s] were availed. Nevertheless, the witness testified that same is not aware of any land rates that were paid in respect of LR No. Nairobi Block 90/586.
188. On further cross-examination, the witness testified that the preparation of the registry index map is the function of the office of survey. Nevertheless, the witness clarified that the function is not the function of one person but the entire office of the Directorate of Survey.
189. While still under cross-examination, the witness testified that the part development plan is a critical document in the process of amendment of a registry index map. Moreover, the witness confirmed that same has seen a copy of the part development plan before the court.



190. In addition, the witness testified that the part development plan is duly signed by the director of Physical Planning and the Commissioner of Lands.
191. On cross-examination by the learned counsel for the 5th Defendant, the witness averred that same was given the procedures attendant to the allotment of land. In particular, the witness averred that same has alluded to the process to be taken by the commissioner of lands in an endeavour to allocate land. Nevertheless, the witness averred that same has indicated that he was not aware of the issuance of the letter of allotment in respect of LR No. Nairobi Block 90/584.
192. Moreover, the witness averred that same is not privy to whether the City Council of Nairobi sanctioned and/or authorized the issuance of the letter of allotment.
193. On cross-examination by learned counsel for the 10th and 11th Defendants, the witness averred that same has availed to the court a copy of the survey plan. For good measure, the witness averred that the survey plan is at page 186 of the Plaintiff's bundle of documents.
194. It was the further testimony of the witness that parcel numbers are ordinarily issued/allocated by the Director of Survey. In particular, the witness added that the parcel number under reference were indeed allocated by the Director of Survey.
195. Regarding the document at page 196 of the Plaintiff's bundle of documents, the witness averred that same is a letter from the Commissioner of lands. Furthermore, the witness averred that the Commissioner of Lands was requesting for issuance of a part development plan. In any event, the witness testified that a part development plan was to be issued by the Director of Physical Planning.
196. While still under cross-examination, it was the testimony of the witness that a part development plan would be used towards the preparation of a survey plan. Furthermore, the witness averred that a part development plan will also form part of the records of the Director of Survey. In particular, the witness testified that the documents availed before the court were procured from the office of the Director of Survey.
197. Regarding the document at page 200 of the Plaintiff's list and bundle of Documents, the witness averred that same is a survey plan. Furthermore, the witness testified that the survey plan is part of the documents that are prepared by the director of survey.
198. On cross-examination by learned counsel for the 12th Defendant, the witness averred that same has recorded and filed a Witness Statement. Furthermore, the witness averred that the Witness Statement filed before the court is elaborate and alludes to the process attendant to the preparation of a part development plan as well as the issuance of a letter of allotment. Nevertheless, the witness reiterated that it is the Director of Physical Planning who is obligated to prepare the part Development Plan and thereafter, escalate same to the Commissioner of Lands. In any event, the witness added that it is the director of physical planning that is also tasked with the obligation to advise the Commissioner of Lands as to whether the land sought to be allocated is available or otherwise.
199. The last witness to testified on behalf of the Plaintiff was Francis Wafula. Same testified as PW10.
200. It was the testimony of the witness that same is a forensic investigator. Furthermore, the witness averred that same is currently working with the Ethics and Anti-Corruption Commission, namely, the Plaintiff herein, In addition, the witness testified that previously, same was attached to the headquarters at Integrity centre, Nairobi. Nevertheless, the witness averred that same is currently attached to the Regional office at Kisumu.



201. It was the further testimony of the witness that same has worked with the Ethics and Anti-Corruption Commission for more than 14 years. In this regard, the witness testified that same is therefore conversant with matters pertaining to investigations. Moreover, it was the testimony of the witness that same has since recorded a witness statement dated 1st March 2023 and which witness statement the witness sought to adopt and rely on as his evidence in chief.
202. To this end, the witness statement under reference was duly adopted and constituted as the evidence in chief of the witness.
203. It was the further testimony of the witness that in March 2015, same [witness] was tasked with the investigations pertaining to the suit property. To this end, the witness averred that same visited various government agencies and collected various documents. In particular, the witness referenced the document at page 73 of the Plaintiff's list and bundle of documents and same indicated that the document in question is an application dated 22nd July 1995 wherein the 1st 2nd and 3rd Defendants were requesting to be allocated alternative plots within the city of Nairobi.
204. Furthermore, the witness averred that the Application letter under reference alluded to a request for alternative plot[s] because it was said that the previous plots which were allocated in Kilifi had become unavailable.
205. It was the testimony of the witness that in the course of his investigations, same visited the locus in quo [suit property] and while on the ground he found that the property in question contained an underground water reservoir. In addition, the witness averred that same also found staff quarters, pump house and other water works. Besides, the witness also averred that same also came across uncompleted buildings which were standing on both sides of the plots.
206. It was the further testimony of the witness [PW10] that the water reservoir was sitting in between the uncompleted buildings. Nevertheless, the witness averred that the water reservoir was functional.
207. Moreover, the witness testified that same also procured and obtained copies of the letters of allotment which were issued to Mitema Holdings Limited as well as Mayhood Limited respectively. The witness averred that the letters of allotment were in respect of un-surveyed residential plots in Loresho, Nairobi.
208. It was the further testimony of the witness that the letters of allotment were dated 19th September 1995. In any event, the witness averred that the letters of allotment form part of the documents which have been tendered and produced before the court.
209. Additionally, the witness testified that same also procured and obtained a copy of a sale agreement dated 22nd January 1996; between 1st, 2nd and 3rd Defendants on one hand and the 4th Defendant on the other hand. Suffice it to state that the witness averred that the Sale Agreement is dated 22nd of January 1996.
210. Other than the foregoing, the witness averred that same also procured and obtained a copy of the transfer in favour of the 4th Defendant. To this end, the witness referenced the document on page 100 of the Plaintiff's list and bundle of documents.
211. It was the further testimony of the witness that after procuring and obtaining assorted documents in the course of his investigations, same called/summoned the various people he was investigating to enable same give their part of the story. To this end, the witness averred that he thereafter recorded witness statements from the various parties including one Leonard Onyancha.
212. Furthermore, the witness testified that after concluding the investigations, gathering the documentary exhibits and summoning the various parties with a view to taking their witness statements, same



- [witness] proceeded to and recommended the recovery of the various plots that had been carved out of LR No. Nairobi Block 90/229.
213. On cross-examination by learned counsel for the 14th Defendant, the witness averred that same indeed summoned the 1st to the 12th Defendants. Furthermore, the witness testified that same also called the 4th Defendant.
 214. Regarding the document at page 68 of the Plaintiff's list and bundle of documents, the witness averred that same is a part development plan. Furthermore, the witness testified that the part development plan shows that same was produced on the 31st of January 1976. In addition, the witness also averred that the part development plan in question was also approved on the 28th of November 1997.
 215. While still under cross-examination, the witness testified that the part development plan in question shows a Water reservoir.
 216. Regarding the document at page 72 of the Plaintiff's list and bundle of Documents, the witness testified that same is a part development plan in respect of the proposed sub-division of LR No. Nairobi Block 90/229. Furthermore, the witness averred that the sub-division in question related to a plot that already had a title number.
 217. It was the further testimony of the witness that the document at page 69 of the Plaintiff's list and bundle of documents is also a part development plan. Moreover, the witness averred that the part development plan in question relates to the proposed sub-division of the plot containing the water reservoir. Nevertheless, the witness testified that the proposed part development plan does not have an approved development plan number.
 218. On cross-examination by learned counsel for the 2nd and 3rd Defendants, the witness averred that same recorded the witness statement of one Mr. P.G Njoroge. Furthermore, the witness averred that the P.G Njoroge is the one who prepared the report at page 60 of the Plaintiff's list and bundle of documents. Besides, the witness testified that same also proceeded to and opened criminal proceedings against various officers working at the Ministry of Lands.
 219. While under further cross-examination, the witness averred that same visited the suit property in the year 2015. Nevertheless, it was the testimony of the witness that he did not visit the suit property in the year 1999.
 220. While under cross-examination, the witness testified that the water reservoir was built in the year 1978. In any event, the witness averred that the plot where the water reservoir is located was surveyed. In addition, the witness testified that the plot had even been assigned a registration number namely LR No. Nairobi Block 90/229.
 221. It was the further testimony of the witness that the water reservoir is standing on a plot measuring 2.3 Hectares. However, the witness added that the water reservoir was only constructed on a portion of the Plot; and leaving the other portions vacant.
 222. Additionally, the witness testified that while on the ground, same also established that the land containing the water reservoir also has underground pipes, underground tanks and elevated water tanks.
 223. It was the further testimony of the witness that it is the 1st, 2nd and 3rd Defendants who applied to be allocated the designated plots. To this end, the witness referenced the documents at page 73 of the Plaintiff's list and bundle of documents.



224. Moreover, the witness testified that the land where the water reservoir sits was surrendered to the City Council of Nairobi [now defunct]. However, the witness clarified that same does not have any certificate of title in the name of City Council of Nairobi.
225. On cross examination by learned counsel for the 4th Defendant, the witness averred that same has recorded a witness statement as pertains to the subject matter. Furthermore, the witness averred that the witness statement details the scope of the investigation that were undertaken by same and the details of the documents that were obtained. In addition, the witness also averred that the witness statement has also spoken to the findings arising out of the investigations.
226. It was the further testimony of the witness that same also established that the suit property was also captured at the foot of the Ndung'u Land Commission Report. However, the witness averred that same is not conversant of the legal standing of the Ndung'u Report. In particular, the witness testified that same does not know whether the Ndung'u Report is binding on the court.
227. While still under cross-examination, the witness averred that in the course of his investigations, same [PW10] discovered that it is the 1st 2nd and 3rd Defendants who applied for allotment of plots. However, the witness clarified that the 4th Defendant did not apply for allotment of any land.
228. Regarding the contents of paragraphs 12 and 13 of the Witness Statements, the witness averred that the contents thereof are correct. In particular, the witness testified that same established that the letters of allotment were irregular and fraudulent. In any event, the witness averred that the land in question was not vacant and same was therefore not available for allotment.
229. Additionally, the witness testified that the issuance of the letters of allotment arose as a result of collusion between the various private actors and officials of the ministry of lands. Furthermore, the witness reiterated that the report which was prepared by one E. Njoroge on behalf of the Ministry of Lands was not correct.
230. On further cross-examination, the witness averred that same is the one who recommended that the 4th Defendant be sued. The witness added that the 4th Defendant was privy to and knowledgeable of the fact that the suit properties were reserved for water works.
231. Referred to the document at page 80 of the Plaintiff's list and bundle of documents, the witness averred that same is a copy of the part development plan. Furthermore, the witness averred that the said part development plan is duly signed by the Director of Physical Planning and Commissioner of Lands. However, the witness clarified that the person who signed on behalf of the Director of Physical Planning has not indicated his/her name.
232. The witness further testified that the part development plan before the court does not have an approved part development number.
233. While still under cross-examination, the witness testified that the 4th Defendant was not issued with any letter of allotment. Nevertheless, the witness averred that the 4th Defendant purchased the suit property from the 1st, 2nd and 3rd Defendants. To this end, the witness averred that same proceeded to obtain copies of the Sale Agreement from the offices of Mohammed and Muigai Advocates. For good measure, the witness clarified that the law firm of Mohamed and Muigai Advocates were the advocates for the 4th Defendant.
234. On the other hand, the witness averred that same also obtained and procured copies of the transfer instruments from the Ministry of Lands. In addition, the witness averred that, same procured copies



- of lease in favour of the 4th Defendant. Moreover, the witness testified that the Certificate of Title in favour of the 4th Defendant was issued by the Chief Lands Registrar.
235. It was the further testimony of the witness that same has also seen the application for change of user that was issued in respect of LR No. Nairobi Block 90/557, LR No. Nairobi Block 90/558 and LR No. Nairobi Block 90/559. In addition, the witness testified that the Application for change of user was allowed.
236. Furthermore, it was the testimony of the witness that same also came across the application for amalgamation. In this regard, the witness averred that the application for amalgamation was approved. Nevertheless, the witness referenced the fact that the approval was conditional.
237. While still under cross-examination, the witness averred that the allocation of the suit plot[s] was irregular and fraudulent. Furthermore, the witness averred that same does not have any written evidence to show that the allocation of the plots was irregular.
238. Additionally, it was the testimony of the witness that during his visitation to the suit property, same found and established that there were various water pipes running through the land. In particular, the witness averred that the water pipes were even running through LR No. Nairobi Block 90/599 which is registered in the name of the 4th Defendant. However, the witness clarified that same did not personally see the pipes but he [witness] relied on the information supplied by the technical officers from Nairobi Water and Sewerage Company Limited.
239. It was the further testimony of the witness that what constitutes the suit properties was land which had been reserved and hence same was not available for further allocation. To this end, the witness reiterated that the allocation of the suit properties was fraudulent. In particular, the witness clarified that the Commissioner of Lands could not allocate land which was already reserved as a water reservoir.
240. On cross-examination by learned counsel for the 8th Defendant, the witness averred that in the course of his investigations, same summoned all the persons of interest including the 8th Defendant. Furthermore, the witness averred that same established that the 8th Defendant had been issued with a letter of allotment. It was the further testimony of the witness that same has referenced the details of the various letters of allotment that were issued over and in respect of portions of the land which was reserved for the water reservoir.
241. Nevertheless, the witness admitted that the letter of allotment in favour of the 8th Defendant does not form part of the documents before the court. While still under cross-examination, the witness averred that same does not exactly recall how the 8th Defendant acquired his parcel of land. However, the witness reiterated that the 8th Defendant is registered as the owner of LR No. Nairobi Block 90/584.
242. Regarding the document at page 129 of the Plaintiff's list and bundle of documents, the witness averred that the document in question is a copy of the certificate of title in respect of LR No. Nairobi Block 90/584.
243. Regarding the document at page 131, the witness averred that same relates to and concerns the entry showing the name of the 8th Defendant. Nevertheless, the witness conceded that the entry under reference has been cancelled. Moreover, the witness averred that when he interrogated the 8th Defendant, same informed him that he had not transferred the land to anyone.
244. Additionally, the witness testified that same did not obtain any transfer documents from the 8th Defendant. Furthermore, the witness testified that he did not ascertain how the transfer was done. In any event, the witness testified that the parcel of land in favour of the 8th Defendant does not exist.



245. On cross-examination by learned counsel for the 10th and 11th Defendant, the witness testified that same has referenced various searches that he procured in respect of the impugned sub-division. To this end, the witness has referenced the documents at pages 118-139 of the Plaintiff's list and bundle of documents.
246. It was the testimony of the witness that the 10th and 11th Defendants were not the original allottees.
247. While still under cross-examination, the witness testified that same did not come across the surrender documents as pertains to the land for the water reservoir.
248. On further cross-examination, the witness averred that the document at page 80 of the Plaintiff's list and bundle of documents is a part development plan. Furthermore, the witness testified that the part development plan is dated 5th September 1995. In addition, the witness averred that the said part development plan is indicated to have been signed by the Director of Physical Planning.
249. It was the further testimony of the witness that the part development plan was also signed by the Commissioner of Lands. However, the witness clarified that the land in question was not available for allocation and/or alienation.
250. Regarding the document at page 102 of the Plaintiff's list and bundle of documents, the witness averred that the document is a copy of the certificate of title in respect of LR No. Nairobi Block 90/585. In addition, the witness testified that the said parcel of land is shown to be registered in the name of the 4th Defendant.
251. On further cross-examination, the witness averred that the 10th and 11th Defendants have been sued for fraud. Nevertheless, the witness testified that the 10th and 11th Defendants were not the original allottees of the plots in question. When pressed further, the witness testified that the 10th and 11th Defendants were involved in the fraud because the land was not lawfully allocated. In any event, the witness averred that the 10th and 11th Defendant[s] are part of a cartel in the fraud touching on land and concerning land.
252. Regarding the contents of paragraph 8 of the witness statement, the witness averred that the contents thereof are correct. In particular, the witness stated that the water reservoir was constructed in 1978. Furthermore, the witness averred that same procured and obtained the said information as concerns the acreage of the property from the surveyors of Nairobi Water and Sewerage Company Limited.
253. On cross-examination by learned counsel for the 12th Defendant, the witness averred that the allocation of land could either be directly by the Commissioner of Lands or by the President. Nevertheless, the witness testified that the Commissioner of Lands could only allocate an unalienated land and not land which had been reserved for public use.
254. Regarding the documents at pages of 59 and 68 of the Plaintiff's list and bundle of documents, the witness averred that the documents in question are the part development plans. Furthermore, the witness averred that the documents were procured from the Ministry of Lands. As concerns the documents at page 197 of the Plaintiff's list and bundle of documents, the witness averred that same is a letter forwarding the part development plan to the Commissioner of Lands.
255. With the foregoing testimonies, the Plaintiff's case was closed.
256. The 2nd and 3rd Defendants case is predicated on the evidence of one witness, namely; Leonard Onyancha Mokua, same testified as DW1.



257. It was the testimony of the witness that same is a director of the 2nd Defendant. Furthermore, the witness averred that by being a director of the 2nd Defendant, same is therefore conversant with the facts of this case.
258. The witness further testified that as pertains to the subject matter, same has since recorded a witness statement dated the 21st of July 2022 and which witness statement the witness sought to adopt and rely on as his evidence in chief. To this end, the witness statement was duly adopted and constituted as his evidence in chief.
259. On the other hand, the witness averred that same has not filed any list and bundle of documents.
260. Furthermore, the witness testified that same was summoned by the Ethics and Anti-Corruption Commission with a view to recording a statement. To this end, the witness testified that same indeed recorded a witness statement. However, the witness clarified that same did not avail to the Ethics and Antic Corruption Commission any documents.
261. It was the further testimony of the witness that his companies applied to the Commissioner of Lands to be allocated land within the city of Nairobi. In this regard, the witness stated that his companies were thereafter allocated designated plots [un-surveyed residential plots] in Loresho. Furthermore, the witness testified that the allotment of the designated plots were lawful.
262. On cross-examination by learned counsel for the 4th Defendant, the witness averred that the 1st, 2nd and 3rd Defendants indeed applied to be allocated land. In particular, the witness averred that the application was for allotment for an alternative land to the land which the 1st, 2nd and 3rd Defendants had been allocated in Kilifi and which turned out to be plots in the Indian Ocean.
263. In addition, the witness confirmed that the Application letters were addressed to the Commissioner of Lands.
264. While still under cross-examination, the witness averred that the application for allotment for alternative land was accepted by the Commissioner for Lands. In addition, the witness averred that the Commissioner for Lands proceeded to issue letters of allotment dated 19th September 1995.
265. It was the further testimony of the witness that the 1st, 2nd and 3rd Defendants thereafter sold the allocated plots to the 4th Defendant. To this end, the witness referenced the documents at pages 88, 94 and 87 of the Plaintiff's bundle of documents. Moreover, the witness averred that the said documents are copies of the Sale Agreement between the 1st, 2nd and 3rd Defendants on one hand and the 4th Defendant on the other hand.
266. Moreover, the witness averred that the Commissioner of Lands is the one who approved the part development plans for the various plots and thereafter issued the letters of allotment. To this end, the witness averred that the letters of allotment were lawfully issued.
267. The witness further testified that after same was issued with the letters of allotment, the properties in question were sold to the 4th Defendant. For good measure, the witness averred that the 4th Defendant did not play any role in the allotment of the land.
268. On cross-examination by learned counsel for the 12th Defendant, the witness averred that same is conversant with one Wilson Gachanja. Furthermore, the witness added that the said Wilson Gachanja was previously the Commissioner of Lands.
269. While still under cross-examination, the witness testified that same did not solicit for the allotment of the plots in question.



270. On cross-examination by learned counsel for the 14th Defendant, the witness averred that same is familiar with the 1st and 3rd Defendants. In any event, the witness added, that the 1st and 3rd Defendants were similarly allocated land. It was the further testimony of the witness that the 1st 2nd and 3rd Defendants wrote application letters to the Commissioner of Lands. In this regard, the witness referenced the letter at page 73 of the Plaintiff's list and bundle of documents.
271. It was the further testimony of the witness that even though the 1st 2nd and 3rd Defendants contended that same had previously been allocated plots at Mambui-Mombasa, same has neither tendered nor produced copies of the said letters of allotment. Moreover, the witness averred that the application letter addressed to the Commissioner of Lands stated that the land that had previously been allocated was or turned out to be in the ocean.
272. While still under cross-examination, the witness averred that even though same has also stated that the 1st 2nd and 3rd Defendants paid for the letter of allotment for the Mombasa plot, same has not produced before the court copies of the receipts to that effect.
273. It was the further testimony of the witness that the 1st 2nd and 3rd Defendants were allocated un-surveyed residential plots at Loresho in Nairobi. However, the witness clarified that same has neither tendered nor produced a copy of the letter of acceptance before the court. In addition, the witness averred that same has also not produced a copy of the revenue receipt to confirm that the standard premium was duly paid. For good measure, the witness averred that same has not availed any evidence to demonstrate that same complied with the terms of the letter of allotment.
274. It was the further testimony of the witness that the letters of allotment speak to the issuance of Grant under the Registration of Titles Act. However, the witness conceded that no Grant was ever issued to the 1st 2nd and 3rd Defendants. Moreover, the witness testified that the plots in question were sold to the 4th Defendant before the Grant could be issued in favour of the 1st 2nd and 3rd Defendants.
275. While still under cross-examination, the witness averred that it is him who identified the plots in question before the application for the allotment of land. Furthermore, the witness testified that it is him who drew the sketch plan in respect of the plots.
276. It was the further evidence of the witness that the letters of allotment were lawfully issued. Moreover, the witness averred that it was him who followed up as pertains to the issuance of the letters of allotment.
277. The witness further testified that a part development plan was indeed prepared over and in respect of the plots which were applied for. To this end, the witness averred that the part development plan was attached to the Letters of allotment. It was the further testimony of the witness that even though same was allocated the plot, at the foot of the letters of allotment same did not enter upon and/or take possession of the land.
278. Additionally, it was the testimony of the witness that the land in question had some temporary kiosks erected thereof. However, the witness testified that same did not ascertain the details or identities of the owners of the kiosks.
279. It was the further testimony of the witness that the 1st 2nd and 3rd Defendants are the ones who sold the plot to the 4th Defendant. Moreover, the witness testified that same sought for and obtained the consent of the Commissioner of Lands [now defunct] to transfer the plots to the 4th Defendant.



280. On further cross-examination, the witness averred that the 2nd and 3rd Defendants did not undertake any survey of the plots. On the contrary, the witness testified that the survey was undertaken by the 4th Defendant after the sale of the land in question.
281. Regarding the document at page 90 of the Plaintiff's list and bundle of documents, the witness averred that the said document is the Sale Agreement entered into between the 3rd Defendant and 4th Defendant. Similarly, the witness also referenced the document at page 91 and averred that same is a copy of the Sale Agreement between the 2nd Defendant and the 4th Defendant. In addition, the witness testified that the date shown on the Sale Agreement at page 91 of the Plaintiff's Bundle of Documents is indicated to be 1994. However, the witness conceded that by the year 1994, the plot in question had not been allocated to the 2nd Defendant.
282. While still under cross-examination, the witness averred that it is himself who signed the Sale Agreement.
283. It was the further testimony of the witness that the document at page 94 of the Plaintiff's list and bundle of documents is the third Sale Agreement. In particular, the witness averred that the said Sale Agreement has one single signature on behalf of the seller [Vendor].
284. The witness further testified that the 4th Defendant paid part of the purchase price in respect of the suit property. However, the witness added that the balance of the purchase price was to be paid after the 4th Defendant was given vacant possession. Moreover, the witness averred that the 4th Defendant was granted vacant possession.
285. On cross-examination by learned counsel for the Plaintiff, the witness averred that same indeed recorded a witness statement with the Ethics and Antic Corruption Commission. Moreover, the witness clarified that same indicated that the other directors of the companies in question were his wife and son.
286. It was the further testimony of the witness that the 1st, 2nd and 3rd Defendant had hitherto been allocated plots at Mombasa. However, the witness averred that the plots turned out to be in the middle of the Indian Ocean.
287. It was the further testimony of the witness that same indeed visited the plots at Mombasa before the letter of allotment was issued unto him. On the other hand, the witness averred that same is also aware that his companies were issued with letters of allotment in respect of un-surveyed residential plots at Loresho. In particular, the witness averred that the letters of allotment were issued to his companies.
288. Nevertheless, the Witness averred that same was not privy to the fact that the plots in question fell within the water reservoir.
289. It was the further testimony of the witness that it is him who sold the suit plot[s] to the 4th Defendant. In any event, the witness testified that same is aware that the terms of the letters of allotment were duly complied with. Nevertheless, the witness conceded that same has not tendered and/or produced any evidence to show that the terms of the letters of the allotment were complied with.
290. While under further cross-examination, the witness testified that same has neither tendered nor produced any evidence that the 1st, 2nd and 3rd Defendants accepted the letters of allotment. Furthermore, the witness averred that same has also not produced any receipt to demonstrate payment of the standard premium.
291. When pressed further, the witness averred that same has not tendered any document to show acceptance of the letter of allotment or payment of the standard premium because the documents were



- taken away by an auctioneer. In any event, the witness averred that the loss of the documents was not a coincidence.
292. With the foregoing testimony, the case for the 2nd and 3rd Defendants was closed.
293. The 4th Defendant's case is premised [anchored] on the evidence of one witness, namely; Shital Bhandari. Same testified as DW 2.
294. It was the testimony of the witness that same is the 4th Defendant. Moreover, the witness averred that by virtue of being the 4th Defendant, same is therefore conversant with the facts of the case. In addition, the witness averred that same has since recorded and filed a witness statement in respect of the subject matter.
295. In this regard, the witness referenced this witness statement dated 28th February 2023 and which witness statement the witness sought to adopt and rely on as his evidence in chief. To this end, the witness statement was duly adopted and constituted as the evidence in chief of the witness.
296. The witness also adverted to the list and bundle of documents dated the 22nd of September 2022 containing a total of 54 documents and which documents the witness sought to tender and produce before the court. There being no objection to the production of the documents, same were tendered and produced as exhibits D-1 to D-54 on behalf of the 4th Defendant.
297. It was the further testimony of the witness that same purchased the suit property from the 1st 2nd and 3rd Defendants. To this end, the witness referenced the Sale Agreements dated 22nd of January 1996. Furthermore, the witness averred that the purchase price was duly paid. To this end, the witness referenced the document at page 130 of his [4th Defendant] list and bundle of documents.
298. It was the further testimony of the witness that after purchasing the suit plot, same commissioned survey culminating into the issuance of a beacon certificate. To this end, the witness referenced the copy of the beacon certificate which forms part of the documents tendered before the court.
299. Additionally, the witness testified that subsequently, same applied to have the suit plot amalgamated and that the application for amalgamation was duly approved. Furthermore, the witness testified that the suit plots were subsequently amalgamated culminating into the creation of LR No. Nairobi Block 90/599.
300. Other than the foregoing, the witness averred that same has since filed a statement of Defence and Counterclaim dated 6th of April 2022. Furthermore, the witness testified that same has also filed a Verifying Affidavit. In this regard, the witness implored the court to grant the reliefs sought at the foot of the Counterclaim.
301. On cross-examination by learned counsel for the 2nd and 3rd Defendants, the witness averred that same purchased the three [3] properties. Furthermore, the witness testified that same has since availed and produced copies of the sale agreements. In addition, the witness testified that the Agreement for sales are dated 1996.
302. Regarding the documents at page 78 of the Plaintiff's list and bundle of documents, the witness averred that same is a copy of the letter of allotment. In particular, the witness averred that the letter of allotment in question was issued to Mayhood Limited. Besides, the witness averred that the Commissioner of Lands sanctioned and authorized the sale of the plots at the foot of the said Sale Agreement.
303. It was the further evidence of the witness that subsequently, same was issued with a Certificate of Lease. In any event, the witness added that the term of the lease was 99 years w.e.f 1st of December 1995.



304. On cross examination by learned counsel for the 14th Defendant, the witness averred that same came across the properties courtesy of an advertisement that was carried out in one of the local dailies. Thereafter, the witness averred that same visited the suit property in early 1996.
305. It was the further testimony of the witness that same was shown the suit properties by an Estate agent. For good measure, the witness testified that same did not meet Mr. Leonard Onyancha.
306. While still under cross-examination, the witness testified that he thereafter proceeded to and instructed his advocate to undertake/carry due diligence. For good measure, the witness averred that the due diligence was indeed undertaken by his advocate.
307. While still under cross-examination, the witness testified that same bought the plot on the basis of the Letters of allotment. In addition, the witness averred that the sale agreements were crafted and drawn by the law firm of M/s Mohammed Nyaoga & Company Advocates.
308. On further cross-examination, the witness reiterated that same bought the plots on the basis of the Letters of allotment. Thereafter, the witness averred that same entered upon and took possession of the suit plots.
309. Moreover, the witness further averred that subsequently same applied for change of user. To this end, the witness testified that the application for change of user was allowed.
310. It was the testimony of the witness that before applying for the change of user, same sought for and obtained confirmation from the Director of Physical Planning. On the other hand, the witness testified that same has also been to court over a number of times concerning the suit plot. In particular, the witness testified that there was a suit that was filed by Loresho Residents Association.
311. It was the further testimony of the witness that same entered upon and took possession of the suit plots. However, the witness averred that same was evicted from the land by the former Governor of Nairobi City County, namely, H.E Mike Sonko.
312. Additionally, it was the testimony of the witness that same is conversant with the land wherein the water reservoir is located. Moreover, the witness clarified that the water reservoir is adjacent to his land. The Witness testified that the fence of the water reservoir has encroached onto his land.
313. On cross-examination by learned counsel for the Plaintiff, the witness averred that same is a resident of Loresho. The witness testified that the land in question is about five minutes from his house. Nevertheless, the witness testified that he came across the suit plot vide a newspaper advertisement. It was the further testimony of the witness that after reading about the suit property from the newspaper advertisement, same contacted the estate agent who thereafter took him [witness] to the suit property. Thereafter, the witness averred that he instructed the firm of Mohammed & Muigai Advocates to undertake due diligence and to prepare the Sale Agreements.
314. Regarding the document at page 189 of the Plaintiff's list and bundle of documents, the witness averred that the document in question is the witness statement of Mr. Onyancha. Moreover, the witness averred that the Sale Agreements were entered into in 1996.
315. While still under cross-examination, the witness testified that the same is privy to the Judicial review proceedings which were filed against the Ethics and Anti-Corruption Commission. In particular, the witness confirmed that it is him who filed the same proceedings. Nevertheless, the witness averred that he is not aware of the state of the Judicial Review proceedings.



316. It was the further testimony of the witness that same also filed another suit before the Chief Magistrate courts. Furthermore, the witness averred that same does not recall the status of the said suit before the Chief Magistrate courts.
317. While still under cross-examination, the witness testified that same is a genuine and bona fide purchaser of the suit property. Furthermore, the witness testified that same entered upon and took possession of the suit property. In any event, the witness averred that there was a small structure on the land.
318. It was the further testimony of the witness that there is a water reservoir. Upon being referred to the document and pages 1-16 of the Plaintiff's list and bundle of documents, the witness testified that same is a report from Nairobi Water and Sewerage Company.
319. It was the further testimony of the witness that same has filed a Statement of Defence and Counterclaim. Moreover, the witness averred that same has sought various reliefs at the foot of the counter-claim. In any event, the witness testified that same has tendered and produced various receipts before the court to underpin his claim for compensation arising from the impugned activities.
320. While still under cross-examination, the witness testified that the dispute pertaining to the allocation of the suit property has hitherto been discussed in the National Assembly. In fact, the witness conceded the witness conceded that the dispute is captured in the Hansard of the National Assembly.
321. On re-examination, the witness averred that same indeed paid the purchase price at the foot of the suit plots. To this end, the witness referenced the payment receipts at page 130 of the 4th Defendant's list and bundle of documents. In any event, the witness added that the payments were made through the law firm of Mohammed & Muigai Advocates.
322. While still under re-examination, the witness testified that the plots in question were sold to him before same were surveyed.
323. It was the further testimony of the witness that subsequently same [Witness] procured and obtained the certificate of title over the suit plots.
324. Additionally, the witness testified that when same was buying the suit plots, there was no structure on the land. For good measure, the witness clarified that the structures were on the neighbouring land.
325. Moreover, the witness testified that it is him who built the masonry perimeter wall. However, the witness conceded that he did not obtain any building approval as pertains to the construction of the said wall.
326. It was the further testimony of the witness that same entered upon the suit plot in the year 1996. Thereafter, same sought for and obtained change of user.
327. In addition, the witness testified that the user was changed from residential to commercial. In any event, the witness testified that same intended to build a mall on the suit property. However, the witness stated that his efforts were thwarted by the Defendants' herein and in particular, the County Government of Nairobi.
328. Finally, the witness averred that as a result of the actions of the Defendants, same has suffered and incurred various losses. To this end, the witness has implored the court to decree compensation in the manner sought at the foot of the counterclaim.
329. With the foregoing testimony, the 4th Defendant's case was closed.



330. Other than the 2nd, 3rd and 4th Defendants who called witnesses, the rest of the Defendants did not call any witness and/or tender any evidence at all. Instructively, the case[s] for the rest of the Defendants were closed without any evidence being adduced.
331. Upon the close of the hearing, the Advocate for the various parties intimated to the court that same were desirous to file and exchange Written Submissions. To this end, the court was called upon to give directions including circumscribing the timelines for the filing and exchange of the Written Submissions.
332. The parties thereafter proceeded to and filed their respective submissions. The various submissions which were filed by and on behalf of the parties are on record. The court has had occasion to review the submissions filed and the pertinent issues raised therein shall be considered and taken into account while determining the key issues in dispute.
333. Even though the court has not reproduced and/or rehashed the submissions filed by the parties, it is imperative to underscore that the court is hugely indebted to the parties for the elaborate and comprehensive written submissions. Suffice it to state that the submissions filed on behalf of the parties demonstrate the depth of research taken by the concerned Advocates. The said efforts cannot go without due commendation and appreciation.
334. Having reviewed the pleadings filed; having taken into account the evidence tendered [both oral and documentary] and upon consideration of the written submissions filed on behalf of the parties, I come to the conclusion that the determination of the disputes beforehand turns on four [4] key issues, namely; Whether the suit property, to wit LR No. Nairobi Block 90/229 constituted an unalienated government land and was thus available for allocation or otherwise; whether the Letters of allotment which were issued by the Commissioner of Lands [now defunct] were lawful and whether same conferred any lawfully rights/interest to the designated allottees or otherwise; whether the 4th Defendant acquired lawful title to LR No. Nairobi Block 90/599 or otherwise; and what reliefs [if at all] ought to be issued.
335. Regarding the first issue, namely; whether the suit property, to wit, LR No. Nairobi Block 90/229 constituted an unalienated government land and was thus available for allocation or otherwise, it is imperative to state and outline that the determination of whether or not the suit property under reference was an unalienated government land and thus available for allotment requires interrogation of the background underpinning the origin, birth and creation of the suit property.
336. Put differently, the endeavour to ascertain and/or discern whether the suit property was an unalienated government land cannot be addressed without undertaking a journey through the historical background leading to the birth of the suit property. For good measure, the historical background will give this court a proper perspective into discerning whether the suit property was surrendered to the City Council of Nairobi [now defunct] for public use and if so, whether such surrender for public use takes away the suit property from the realm of unalienated government land.
337. To start with, it imperative to take cognisance of the evidence in chief of PW5, namely; S.G Mwangi.
338. While testifying in chief, the witness under reference averred that LR. No Nairobi Block 90/229 [the Suit Property] arose from the sub-division of two parcels of land, namely; LR number 5952 and LR number 11653, respectively
339. For ease of appreciation, it is imperative to reproduce the evidence of PW5 where pertinent.



340. Same stated as hereunder:-

“Referred to the document at page 68 of the plaintiff’s bundle of documents and the witness state that the document is the subdivision scheme plan in respect of LR number 5952 and LR number 11653, respectively. The scheme plan hearing was drawn on the 30/05/1976. The document was approved on the 28/11/1977 by the commissioner of lands as plan number 107. The subdivision scheme hearing does points out/refers to public utilities at the left-hand corner. The public utility is reserved as a water reservoir. The water reservoir is a plot of land reserved for water infrastructure.”

341. Moreover, while under cross examination by learned counsel for the second and third defendants, PW5 proceeded to and confirmed that the land in question had indeed been surrendered by the developer as a water reservoir. To this end PW5 reiterated that the land therefore stood alienated vide reservation.

342. For good measure, the testimony of PW5 while under cross examination is instructive.

343. Same is reproduced as hereunder:-

“I do confirm that the land was surrender by the developer as a water reservoir. The acreage of the land that was surrender was 1.939 HA. The water reservoir was put up around 1976/1977. The water reservoir exists to date.”

344. Other than the testimony of PW5 who traced /tracked the historical background and the origin of the suit property, it also imperative to take cognisance of the evidence of PW6, namely; Patrick tom Odongo. The said witness, similarly provided the background leading to the surrender of LR number Nairobi Block 90/229.

345. While testifying in chief the witness stated as hereunder:-

“I have spoken about surrender of the suit property. There was a surrender from a subdivision of plot number LR 5952 and LR 11653. The subdivision of the two plots was approved on the 30/01/1976. The surrendered parcel became a water reservoir. Referred to the document at page 68 of the bundle and the witness state that same is a part development plan prepared by the ministry of land and settlement. The part development plan shows/ indicates that the land in question was reserved as a water reservoir.”

346. It is worthy to recall that the testimony of the said two [2] witnesses, pertaining to and concerning the origin and historical background was not controverted. To this end, there is no gainsaying that the suit property which birthed the various/resultant sub-divisions which were later on registered in the names of the designated defendants was indeed surrendered to the City Council of Nairobi [now defunct]. Furthermore, it is also evident that the purpose of surrender was clearly captured and noted at the foot of the part development plan [PDP] that was approved on the 30/01/1976.

347. Bearing in mind the evidence which underpins the historical background [the root] culminating into the creation of LR number Nairobi Block 90/229, it is now appropriate to revert to the issue under reference and to discern/ascertain whether the suit property was an unalienated government land or otherwise.

348. Nevertheless, and before venturing forward to interrogate whether or not the suit property was an unalienated government land, it is imperative to appreciate the meaning and tenor of what constitutes unalienated government land.



349. What constitutes an unalienated government land was defined vide by section 2 of the Government Land Act, Chapter 280 laws of Kenya, Laws of Kenya, [now repealed], in the following manner:-

“Unalienated Government land” means Government land which is not for the time being leased to any other person, or in respect of which the Commissioner has not issued any letter of allotment.”

350. The provisions of Section 2 of the Government Land Act [supra] clearly underscore that unalienated government land is such land which has not been leased to any other person; or in respect of which the commissioner of lands has not issued any letter of allotment at the point in time. In this regard, the existence of a lease and/or certificate of title, whichever is relevant, takes the land in question outside the purview of unalienated government land.

351. Additionally, it is also important to underscore that where land is surrendered for a particular purpose, in this case for purposes of public use as a water reservoir, such land ceases to be unalienated Government land. Instructively, land can stand alienated on the basis of reservation. [See *Kenya Industrial Estates Limited v Anne Chepsiror & 4 others* [2018] KECA 322 (KLR)].

352. Moreover, what constitutes unalienated government land has been the subject of various decisions and judicial pronouncements. In this regard, it is imperative to reference just but a few holdings wherein the various courts, including the Supreme Court [the apex court] and the Court of Appeal, have elaborated upon the meaning and import of unalienated government land.

353. In the case of *Kiluwa Limited & another v Business Liaison Company Limited & 3 others* (Petition 14 of 2017) [2021] KESC 37 (KLR) (6 August 2021) (Judgment), the court, namely, the Supreme Court stated as hereunder;

55. A number of conclusions can be derived from the foregoing provisions as quoted. Firstly, unalienated 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. Therefore, it is incorrect for the respondents to assert that the lands in question were un-alienated government land but not public land. It is even more inaccurate to argue that the said parcels had never been public land. Un-alienated government land remains public until it is privatized through allocation to individuals or other private entities.

354. The import and tenor of what constitutes unalienated government land [now unalienated public land] was also re-affirmed by the Supreme 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 stated as hereunder:-

The Government Lands Act (repealed), which was the Act in force at the effective date defined ‘unalienated government land’ in section 2 as follows;

“Unalienated Government land” means Government land which is not for the time being leased to any other person, or in respect of which the Commissioner has not issued any letter of allotment. [Emphasis Added].section 3 of the Physical Planning Act, cap 286 defines unalienated land in similar terms.



53. This court in *Kiluwa Limited & another v Business Liaison Company Limited & 3 others*, (Petition 14 of 2017); [2021] KESC 37 (KLR) had this to say about un-alienated 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”.

355. The Court of Appeal on its part, addressed the import and tenor of what constitute[s] unalienated government land 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 stated as hereunder;

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 *BenjaProperties Limited vs. Syedna Mohammed Burhannudin Sahed & 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*).

356. From the foregoing decisions [whose details have been highlighted in preceding paragraphs], what becomes apparent is that government land which has been reserved for a particular purpose stands alienated on the basis such reservation. For good measure, the reservation of land for a designated public purpose constitutes alienation.

357. Furthermore, it also instructive to state and observe that where a particular piece of land is surrendered at the foot of an approved sub-division scheme, like the one before hand, such surrendered land does not become unalienated government land.



358. In the premises, I encounter no difficulty in finding and holding that the suit property, namely; LR number Nairobi Block 90/229, was not unalienated government land within the meaning/definition of section 2 of the Government *Land Act*, chapter 280 Laws of Kenya [now repealed].
359. Regarding the second issue, namely, whether the first, second and third defendants accrued any lawful rights and or interest capable of conveyance to and in favour of the fourth defendant or otherwise, it is imperative to observe and outline that the first, second and third defendants wrote an application letter to the Commissioner of lands [now defunct] and wherein same sought to be allocated various plots within Loresho area- Nairobi. For coherence, the application letter was dated then 22/07/1995.
360. At the foot of the application letter, the first second and third defendants contended that same had earlier been allocated beach plots measuring 3.6 HA, at Mambui Kilifi district. However, it was contended that the plot which had been allocated at Mambui area of Kilifi district turned out to be in the ocean and thus the first, second and third defendants sought to be allocated alternative site[s] which same contended to have identified.
361. Furthermore, the first second and third defendant[s] posited that the site in question was Government land and that same was vacant.
362. Additionally, the first second and third defendants proceeded to attach/ annex a sketch plan pertaining to and concerning the purported government land which was the basis of the intended allocation.
363. Suffice it to state that the Commissioner of lands [now defunct] proceeded to and processed three [3] sets of letters of allotments all dated the 19th of September 1995, and thereafter allocated unsurvey residential plots A, B and C to and in favour of the first second and third defendants. For ease of reference, the various letters of allotments were tendered and produced as Exhibits before the court.
364. It is important to outline and underscore that the letters of allotments under reference contained terms and conditions, which the allottees were obliged to adhere to and or comply with. In particular, the allottees of the plots in question were obliged to accept the terms of the letters of allotments and to pay the standard premium within 30 days from the date of the post mark.
365. Pertinently, they impugned letters of allotments were issued and dated on the 19th of September 1995. It then means that the first second and third defendant[s] were obliged to generate the formal letter of acceptance of the allotment if at all; and to pay the standard premium on or before the 19th of October 1995.
366. Notably, the 30-day duration highlighted in the body of allotment, was bound to lapse and indeed lapsed on the said date.
367. Suffice to state, it was the duty of the first second and third defendants to demonstrate to the court that same complied with and or adhered to the terms of the letters of allotments. Pertinently, the demonstration that the terms of the letters of allotments were complied with would have entailed production of a copy of the letter of acceptance [if any] and the revenue receipt [if any] issued by the commissioner of lands acknowledging receipts of the stand premium.
368. Nevertheless, it is not lost on this court that the first second and third defendants neither tendered or produced any such evidence before the court. In any event, it is worthy to underscore, that DW1 [Leonard Onyancha] who testified on behalf of the second and third defendants averred that the second and third defendants had lost the documentation pertaining to compliance with terms of the letter[s] of allotment.



369. At this juncture, it is instructive to reproduce the evidence of DW1 while under cross examination by learned counsel for the 14th defendant.

370. The witness stated as hereunder:-

“I do confirm that I was allocated the plot in question. I have indicated that the 2nd defendant had paid for the letter of allotment for the Mombasa plot. I have not availed any copy of the receipt to show that payments were made. I do confirm that I was allocated unsurvey residential plot at Loresho-Nairobi. I have no evidence of letter of acceptance before the court. I also don't have any evidence as pertains to the payments of standard payments. I have also not availed any evidence that I complied with the letter of allotment.”

371. On the other hand, and while under cross examination by learned counsel for the plaintiff, DW1 is on record stating as hereunder:

“I do wish to state that I duly complied with the terms of the letters of allotment. I have no evidence before the court to show that I complied with the terms of the letters of allotments. I also have no evidence that I accepted the terms of the letters of allotment. I do wish to state that I have not availed evidence before the court because I lost the documents, I wish to state that the documents were taken away by an auctioneer. The loss of the documents was not a coincidence.”

372. From the testimony of DW1, it becomes apparent that same did not tender and did not produce before the court any evidence of compliance with the terms of the letters of allotments that were issued to and in favour of the 1st, 2nd and 3rd defendants. Suffice to state, that non-compliance with the terms of the letters of allotments, led to the letter of allotments lapsing by effluxion of time.

373. To the extent, that the terms of the letters of allotments lapsed for non-compliance, [failure to comply with the set terms] it imperative to highlight that the 1st, 2nd and 3rd defendants therefore accrued no rights and or interest which was capable of being sold which was to the 4th defendant or at all.

374. In this regard, I beg to reference the decision in the case of, Joseph Kamau Muhoro v Attorney General & another [2021] KEELC 1457 (KLR), where this court stated and observed as hereunder:

33. In my humble view, by the time the Plaintiff/Applicant herein, was purporting to pay the stand premium and the annual rent, which were mandatory conditions to the letter of Allotment, the allotment in question was already extinguished and was thus incapable of attracting any payment and/or being activated whatsoever.

34. Besides, I also hold the humble opinion that having not formally accepted the Letter of Allotment, [in writing as required], the Letter of Allotment, on which the Plaintiff/Applicant has premised his claim, was rendered void and non-existent.

35. In support of the foregoing holdings, it is important to take cognizance of the Decision in the case of Dr. Syedna Mohammed Burhannuddin Saheb & 2 others vs Benja Properties & 2 others [2007] eKLR;

“In any event, the letter of allotment relied upon by the Defendant had itself expired, and was therefore invalid. I do not accept Mr. Kirundi, Counsel for Defendant's argument, that the expired letter, when acted upon, had been “revived” through conduct. The letter had expired. It was dead. There was nothing to “revive”.



375. Other than the fact the letters of allotments under reference lapsed and stood extinguished for non-compliance [breach] with the terms thereof, there is another perspective which merits due consideration. The perspective in question turns on whether a letter of allotment by and of itself, is capable of being sold to and in favour of a 3rd party, the 4th defendant not excepted.
376. It is imperative to recall, that DW1 testified and stated that upon the letters of allotment being issued to the 1st, 2nd and 3rd defendants the said defendants proceeded to and sold their interest at the foot of the letters of allotment to the 4th defendant.
377. Furthermore, DW1 averred that by the time of sale of their interest at the foot of the letter of allotments, the 1st, 2nd and 3rd defendants had not procured and/or obtained any Grant over and in respect of the plots that were allocated by the Commissioner of Lands.
378. Additionally, DW1 also testified that the suit plots were actually sold to and in favour of then 4th defendant prior to and before survey could be undertaken. In particular, it was posited that it the 4th defendant who undertook the survey of the suit plots, long after purchase and or acquisition of same.
379. To put the evidence of DW1 into context, it is imperative to reproduce the salient aspect[s] thereof and more particularly where DW1 acknowledged that the sale to the 4th defendant transpired before issuance of a Grant.
380. DW1 stated as hereunder;
- “The letter of allotment speaks to the issuance of Grant under the requisite of land laws. The Grant was issued to me. I do confirm that the land/ plots were sold to the 4th defendant before the Grant could be issued.”
381. While still under cross examination by learned counsel for the 14th defendant, DW1 stated as hereunder;
- “The 2nd and 3rd defendants, herein did not undertake any survey of the plot. The survey was undertaken by the 4th defendant after the sale of the land in question.”
382. What I hear the witness to be saying is that the suit plots were equally sold to and in favour of the 4th defendant long before same were surveyed and furthermore, before the requisite Grant could issue in favour of the 1st, 2nd and 3rd defendants.
383. Did the 1st, 2nd and 3rd defendants accrue any lawful rights and or interest capable of being sold or at all? The answer to this question is readily discern able from the holding of the Supreme court in the case of Torino Enterprises Limited v Attorney General (Petition 5 (E006) of 2022) [2023] KESC 79 (KLR) (22 September 2023) (Judgment).
384. For coherence, the Court stated thus:-
57. The respondent also challenged the letter of allotment on grounds that at the time of its transfer, the conditional thirty (30) days acceptance period had lapsed. As it turned out, the letter was also silent on whose behalf the commissioner of lands had made the allotment. Noting that the Commissioner of Lands by an allotment letter dated December 19, 1999 purported to allocate the suit property to Renton Company Limited. Thereafter, by a letter dated April 25, 2001, Renton Company Limited sought approval from the Commissioner of Lands to transfer the same to the appellant. The appellant’s ownership is traced back to this allotment Letter even if subsequently registered under the Registration of Titles Act cap 281 (Repealed) on April 26, 2001.



58. So, can an allotment letter pass good title? It is settled law that an allotment letter is incapable of conferring interest in land, being nothing more than an offer, awaiting the fulfilment of conditions stipulated therein. In *Dr Joseph NK Arap Ng'ok v Justice Moiyo Ole Keiyua & 4 others* CA 60/1997 [unreported]; and in *Gladys Wanjiru Ngacha v Teresa Chepsaat & 4 others* HC Civil Case No 182 of 1992; [2008] eKLR, the superior courts restated this principle as follows: “It has been held severally that a letter of allotment per se is nothing but an invitation to treat. It does not constitute a contract between the offerer and the offeree and does not confer an interest in land at all” [Emphasis added].
59. The pronouncement in *Gladys Wanjiru and Dr Joseph NK Arap Ng'ok* (supra) has been echoed in various Environment and Land Court decisions post the 2010 Constitution, including; *Lilian Wanjeri Njatha v Sabina Wanjiru Kuguru & another*, Environment and Land Case No 471 of 2010; [2022] eKLR; *John Elias Kirimi v Martin Maina Nderitu & 4 others*, Environment and Land Suit No 320 of 2011; [2021] eKLR; and *Kadzoyo Chombo Mwero v Ahmed Muhammed Osman & 11 others*, Environment and Land Case No 42 of 2021; [2021] eKLR, to mention but a few.
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 fulfilment 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.
385. Pertinently, the 1st, 2nd and 3rd defendants could only accrue rights to and interests over the suit plot upon compliance with the terms of the letters of allotments and ultimately upon issuance of the certificate of title/ the certificate of lease, whichever is relevant. Only then, would the 1st, 2nd and 3rd defendants be possessed of any rights capable of being sold. [See, *Wreck Motors Enterprises Limited versus the Commissioner of Lands and another* [1997] eKLR.]



386. Flowing from the above, my answer to issue number 2, is threefold. Firstly, the land underpinning the impugned letters of allotments was surrendered to the city council of Nairobi and same was reserved and marked for water reservoir. To this end, the impugned plots stood alienated and were thus not available for allotment.
387. Secondly, the 1st, 2nd and 3rd defendants did not comply with the terms of the letters of allotment in accordance with the special conditions highlighted in the body thereof.
388. The failure to comply with and or adhere to the terms of the letters of allotments culminated into the impugned Letters of allotment lapsing. Simply put, the letters of allotment in question stood extinguished long before the purported sale to the 4th defendant in the year 1996.
389. Thirdly, a letter of allotment by and of itself does not vest upon the allottee [the 1ST, 2ND and 3RD Defendants not excepted] any lawful rights and or interest capable of being sold. In this regard, the purported sale between the 1st, 2nd and 3rd defendants on one hand, and the 4th defendants on the other hand, was an act in vanity.
390. Regarding the third issue, namely; whether the certificate of title to and in favour of the 4th defendant was valid and lawful or otherwise, it is imperative to recall reiterate that the certificate of title in favour of the 4th defendant emanates from the impugned letters of allotment that were allegedly issued to and in favour of the 1st, 2nd and 3rd defendants. To this end, there is no gainsaying that the validity or otherwise of the certificate of title held by the 4th defendant must depend on the background Documents [what is popularly referenced as the root] underpinning its origin and ultimate issuance.
391. Suffice it to posit that a certificate of title or a certificate of lease is an end product. Nevertheless, the validity of the end product is dependent on the process, namely, the mean[s] that conceived and birthed same. In this regard, it behoved the 4th defendant to justify that the certificate of title and or lease in respect of the suit property was legally procured and obtained.
392. The necessity, for a title holder to prove the root of his/her title before same can partake of the statutory rights and privileges as pertains to the property in question has been elaborated in a number of judicial decisions. In the case of *Munyu Maina Vs Hiram Gathiha Maina* [2013] eKLR, the Court of Appeal stated thus:-

“We state that when a registered proprietor’s root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which need not be noted on the register. It is our considered view that the respondent did not go this extra mile that is required of him and no evidence was led to rebut the appellant’s testimony. We find that a trust exists in relation to the suit property.”

393. Moreover, the Court of Appeal re-visited the same subject in the case of *Presbyterian Foundation v Kibera Siranga Self Help Group Nursery School* (Civil Appeal 64 of 2014) [2023] KECA 371 (KLR) (31 March 2023) (Judgment), the court observed as hereunder:-

“We will next address the pertinent issue regarding the existence of two titles in respect of the same parcel land. The best evidence of ownership of immovable property is the title deed to it and that is why the question of the root of title is important. Root of title is the deed to which title to a property is ultimately traced to prove that the owner has good title.



Accordingly, when there are competing interests as in this case, the parties are required to give evidence of title starting with a "good root of title." A good root of title and an unbroken chain of ownership is required. To be a good root of title, a document must satisfy each of the following requirements:

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

394. The Supreme Court on its part has also highlighted the need and necessity to prove the process leading to the issuance of the certificate of title. For coherence, the Supreme court underscored that a certificate of title/certificate of lease is an end product and therefore where same is challenged, the bearer thereof is obliged to prove and demonstrate that same was acquired in a regular, lawful and procedural manner. Furthermore, it was posited that the process leading to the acquisition must be free of illegality and/or irregularity, which impacts on the validity thereof.

395. In the case of *Dina Management Limited v County Government of Mombasa & 5 others* (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR) (Constitutional and Human Rights) (21 April 2023) (Judgment), the court stated thus:-

108. As we have established above, before allocation of the unalienated Government Land, there ought to have been processes to be followed prior. Further, we cannot, on the basis of indefeasibility of title, sanction irregularities and illegalities in the allocation of public land. It is not enough for a party to state that they have a lease or title to the property. In the case of *Funzi Development Ltd & others v County Council of Kwale, Mombasa Civil Appeal No 252 of 2005* [2014] eKLR the Court of Appeal, which decision this court affirmed, stated that:

"...a registered proprietor acquires an absolute and indefeasible title if and only if the allocation was legal, proper and regular. A court of law cannot on the basis of indefeasibility of title sanction an illegality or gives its seal of approval to an illegal or irregularly obtained title."

109. We note that the suit property was subsequently converted and HE Daniel T Arap Moi registered as owner and obtained a freehold title. Further, the suit property herein is within the then Mombasa municipality. Contrary to the appellant's averment, section 10 of the GLA is applicable. Being a town plot, within the jurisdiction of the 1st respondent and its predecessor, it ought to have been an allocation for a lease for a term not exceeding 100 years.

110. Indeed, the title or lease is an end product of a process. If the process that was followed prior to issuance of the title did not comply with the law, then such a title cannot be held as indefeasible. The first allocation having been irregularly obtained, HE Daniel Arap Moi had no valid legal interest which he could pass to Bawazir & Co (1993) Ltd, who in turn could pass to the appellant.

396. Bearing in mind the dictum obtaining in the decision, [supra], I am now disposed to revert to the instant matter and to discern whether the certificate of title in respect of LR No. Nairobi Block 90/599 [being the title in the name of the 4th Defendant], was procured in a regular, procedural and lawful manner or otherwise.



397. To start with, it is worth recalling that the 4th Defendant entered into sale agreements with the 1st, 2nd and 3rd Defendants pertaining to the plots allocated at the foot of the three (3) sets of the letters of allotments dated the 19th of September, 1995.
398. Furthermore, it is important to reiterate that by the time the 4th Defendant entered into the said sale agreements, the 1st, 2nd and 3rd Defendants had not accrued and/or been issued with the Grant in respect of the designated plots.
399. Moreover, it is common ground that the said plots which were allocated to the 1st, 2nd and 3rd Defendants had also not been surveyed. Simply put, the 4th Defendant, who testified as DW2 indicated that same bought [sic] the interest[s] at the foot of the letters of allotment.
400. It is instructive to note that the 1st, 2nd and 3rd Defendants could only sell to and in favour of the 4th Defendant, lawful rights which had accrued in respect of the plots in question subject to issuance of the requisite certificate of title. Absent certificate of title the 1st, 2nd and 3rd Defendants had no title capable of being conveyed to and in favour of the 4th Defendant.
401. To this end, it is important to re-visit the holding of the Supreme 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 stated thus:-
58. So, can an allotment letter pass good title? It is settled law that an allotment letter is incapable of conferring interest in land, being nothing more than an offer, awaiting the fulfilment of conditions stipulated therein. In *Dr Joseph NK Arap Ng'ok v Justice Moiyo Ole Keiyua & 4 others* [CA 60/1997](#) [unreported]; and in *Gladys Wanjiru Ngacha v Teresa Chepsaat & 4 others* HC Civil Case No 182 of 1992; [2008] eKLR, the superior courts restated this principle as follows: “It has been held severally that a letter of allotment per se is nothing but an invitation to treat. It does not constitute a contract between the offerer and the offeree and does not confer an interest in land at all” [Emphasis added].
59. The pronouncement in *Gladys Wanjiru and Dr Joseph NK Arap Ng'ok* (supra) has been echoed in various Environment and Land Court decisions post the 2010 Constitution, including; *Lilian Wanjeri Njatha v Sabina Wanjiru Kuguru & another*, Environment and Land Case No 471 of 2010; [2022] eKLR; *John Elias Kirimi v Martin Maina Nderitu & 4 others*, Environment and Land Suit No 320 of 2011; [2021] eKLR; and *Kadzoyo Chombo Mwero v Ahmed Muhammed Osman & 11 others*, Environment and Land Case No 42 of 2021; [2021] eKLR, to mention but a few.
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 fulfilment 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.
402. Flowing from the succinct decision in the case of Dina Management, supra, there is no gainsaying that the letter[s] of allotment which underpinned the purported sale agreement between the 1st, 2nd and 3rd Defendants, could not convey any legal title to and in favour of the 4th Defendant.
403. Other than the fact that a letter of allotment could not underpin the purported sale to the 4th Defendant, it is also worthy to recall that the suit property which was allegedly being allocated to the 1st, 2nd and 3rd Defendants and thereafter being sold to the 4th Defendant, was alienated Government land.
404. For good measure, the land which was the subject of the alienation was surrendered to the City council of Nairobi [now defunct] and same was reserved as a water reservoir. Instructively, the land in question is where Loresho Water Reservoir is located. In any event, evidence abound that the water works, the water infrastructure, the staff houses and underground and elevated tanks are indeed located thereon. [See the evidence of PW10, who was the lead investigator designated by the Ethics and Anti-Corruption Commission].
405. To my mind, where a particular land has been alienated, either on the basis of a previous letter of allotment, certificate of lease or on account of reservation [like the one beforehand], such land ceases to be available for further allocation or alienation.
406. The Court of Appeal in the case of Benja Properties Limited v Syedna Mohammed Burhannudin Sahed & 4 others [2015] eKLR , stated as hereunder:-
1. 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.
407. Suffice to posit that a letter of allotment must of necessity attach to a particular land. Instructively, the land underpinning the letter of allotment must be available and be capable of alienation or allocation. Where the land underpinning the letter of allotment is not available for alienation or allocation, then the letter of allotment constitutes a mere paper transaction.
408. Such letter of allotment is and constitutes an exercise [an act] in futility.



409. In the premises, the letter of allotment which was issued to the 1st, 2nd and 3rd Defendants and which underpinned the sale to and in favour of the 4th Defendant, and which thereafter culminated into the issuance of the various certificates of title were in vain. In this regard, the certificate of title held by the 4th Defendant was procured in vacuum. Same is therefore illegal and invalid.
410. I am aware that the 4th Defendant may very well contend that same has a certificate of title that was issued by the Chief Land Registrar or the Registrar of Titles. Nevertheless, the mere fact that the certificate of title was issued by the said officers cannot be deployed to sanction an illegality which is evident and apparent on the face of the certificate of title.
411. In this regard, I beg to take cognisance of the dictum in the case of *Henry Muthee Kathurima v Commissioner of Lands & another* [2015] eKLR, where the Court of Appeal discussed the import of an act which is contrary to law and whether such an act can [sic] birth a lawful title or otherwise.
412. For coherence the court stated as hereunder:-
18. We have considered the submissions by the appellant in this appeal and have no hesitation to state that we concur with the findings and decision of the trial court. The Commissioner of Lands had no power to alienate public land and any action taken without due authorization is a nullity. We cite the case of *Said Bin Seif v. Shariff Mohammed Shatry*, (1940)19 (1) KLR 9, and reiterate that an action taken by the Commissioner of Lands without legal authority is a nullity; such an action, however, technically correct, is a mere nullity, and not only voidable but void with no effect, either as legitimate expectation, estoppel or otherwise.
413. Whereas the Court of Appeal was addressing the import of an illegal act undertaken by the Commissioner of Lands, albeit without authority, the ratio decidendi in the said decision applies with equal force to any act undertaken by the Chief Land Registrar/Registrar of titles contrary to law. To this end, I adopt and reiterate the reasoning supra.
414. Moreover, it is trite and established that the mere fact that a particular person, the 4th Defendant not excepted, has certificate of title, cannot be deployed to white wash an illegality. Simply put, the doctrine of indefeasibility of title is not a cure of an illegality that is evident on the face of a title.
415. To buttress the foregoing reasoning, I am minded to cite and reference the decision of the Court of Appeal in the case of *Wambui v Mwangi & 3 others* (Civil Appeal 465 of 2019) [2021] KECA 144 (KLR) (19 November 2021) (Judgment), where the Court summarised the jurisprudence as pertains to validity of certificates of titles in the following manner:-
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, unprocedurality or otherwise a product of a corrupt scheme.
416. My answer to issue number three [3] is threefold. Firstly, the letters of allotments which anchored the agreement for sale between the 1st, 2nd and 3rd Defendants on one hand, and the 4th Defendant on the other hand, were incapable of conveying any rights to and in favour of the 4th Defendant.
417. Secondly, the suit property, which was allegedly being allocated to the 1st, 2nd and 3rd Defendants and thereafter begin sold to the 4th Defendant stood alienated on the basis of reservation as a water reservoir.



- Same was therefore unavailable. In this regard, any certificate of title that stems therefrom is invalid. Suffice to invoke and deploy the doctrine of Ex nihilo nihil fit [out of nothing comes nothing].
418. Thirdly, the certificate of title in favour of the 4th Defendant is illegal and invalid. In this regard, the 4th Defendant cannot invoke and deploy the provisions of Article 40 (3) of *the Constitution* in an endeavour to vindicate, [sic], his property rights. Moreover, it is common ground that the protection given by the Article 40(3) of *the Constitution* does not extend to properties that have been found to have been illegally obtained. [See Chemey Investments Limited Vs the Commissioner of Lands [2018] KECA] [See also Kenya National Highway Authority v Shalien Masood Mughal & 5 others [2017] KECA 465 (KLR)].
419. Regarding the fourth issue, namely; what reliefs [if at all] ought to issue, it is instructive to note that the Plaintiff herein has sought for a plethora of reliefs pertaining and concerning the suit property, namely; Nairobi Block 90/229. In particular, the Plaintiff has sought declaratory orders to the effect that the suit property having been surrendered to the city Council of Nairobi [now defunct] for public purpose, namely water reservoir, same was not available for allocation or alienation.
420. Furthermore, the Plaintiff has also contended that the sub-division arising from the suit property including Nairobi Block 90/584, 585, 586, 591, 592, 593, 594, 595 and 596, respectively; are null and void and thus same ought to be invalidated.
421. Additionally, the Plaintiff has also sought for an order that the certificate of title in respect of Nairobi Block 90/599 [which arose from the amalgamation of L.R No's Block 584, 586, respectively] is void and invalid.
422. Whilst discussing issues number one, two and three elsewhere herein before, this court found and held that the original property, namely; Nairobi Block 90/229 was surrendered to the city council of Nairobi following the sub-division of two parcels of lands, whose details were highlighted at the foot of the evidence of PW5 and PW6, respectively.
423. Moreover, the court also found that the land having been surrendered and reserved as a water reservoir, same was not available for allocation or at all.
424. In the premises, there is no gainsaying that the purported allocation of [sic] un-surveyed residential plot – Loresho Nairobi to the 1st, 2nd and 3rd Defendants was a nullity and thus incapable of birthing any valid title.
425. In addition, it follows as a matter of course that any certificate of title that arose from the impugned letter of allotment was/is equally invalid. Simply put, the declaratory orders pertaining to the invalidity of the certificates of titles arising from the suit property are merited.
426. The Plaintiff herein has also sought for an order for eviction of the 11th Defendant from the portions of the original parcel of land namely, Nairobi Block 90/229, but otherwise disguised as L.R No's Nairobi Block 90/591, 592, 593, 594, and 595, respectively. Having found and held that no lawful title could be curved out of and/or created from the suit property, there is no gainsaying that the eviction order is meritorious.
427. At any rate, it is instructive to observe that a failure to issue and grant the eviction order as sought shall be tantamount to legitimizing an illegality. To my mind, such an endeavour would be contrary to the national values and principles of governance. Besides, such an endeavour, may foster and inspire further grabbing of public land.



- 428 Furthermore, the Plaintiff herein has also sought for an order of permanent injunction. In my humble view, the suit property was surrendered to the city council of Nairobi and reserved as a water reservoir. Moreover, it is not lost on the court that the land in question houses the water works, water infrastructural facilities and other auxiliary facilities, which facilitate the supply of water of various areas including Loresho, Westland, Gigiri and Upper Kabete Campus of University of Nairobi.
429. In this regard, failure to grant an order of permanent injunction would jeopardize the rights of the residents of the said areas and subject same to extreme prejudice. Suffice to state that the right to water is tantamount to right to Life. No wonder it has been said that water is Life.
430. In a nutshell, I am minded to and do hereby decree that an order of permanent injunction is meritorious in the circumstances of this case. To this end, the 1st to the 12th Defendants either by themselves and/or employees are hereby restrained from entering upon and/or interfering with or dealing with the suit property, namely Nairobi Block 90/229 [the Loresho Water Reservoir].
431. Other than the Plaintiff herein, it is instructive to note that the 4th Defendant also filed a counterclaim dated the 6th April 2022. The 4th Defendant has sought a raft of orders including a declaration that his acquisition of Nairobi Block 90/599 was lawful.
432. However, whilst discussing issue number three, this court evaluated various perspectives and thereafter came to the conclusion that the certificate of title in respect of Nairobi Block 90/599 is illegal, unlawful and invalid.
433. The 4th Defendant has also sought for a mandatory injunction directing the Plaintiff herein [EACC] the Inspector General of Police, National Land Commission and Nairobi Water Sewerage Commission to allow the 4th Defendant to enter upon and take possession of Nairobi Block 90/599. Suffice to underscore, that what the 4th Defendant is adverting to is public land reserved and marked as the water reservoir.
434. In this regard, the prayer for mandatory injunction is premature and otherwise built on quick sand.
435. Additionally, the 4th Defendant has also sought for an order of permanent injunction to restrain Plaintiff herein [EACC] the Inspector General of Police, National Land Commission and Nairobi Water Sewerage Commission from interfering with his quiet possession and user of Plaintiff herein [EACC] the Inspector General of Police, National Land Commission and Nairobi Water Sewerage Commission.
436. I beg to state that an order permanent injunction will ordinarily issue to protect and preserve the lawful rights of a proprietor of land. [See *Moya Drift Farm Ltd v Theuri* [1973] EA 173; *Mohanson Kenya Ltd v The Registrar of Titles* [2017]eKLR and *Waas Enterprises Ltd v Nairobi City Council* [2014]eKLR]. However, before a person can partake of an order of permanent injunction, it behoves such a person to demonstrate that same acquired and/or accrued lawful rights to the designated property.
437. As concerns the 4th Defendant, I have found and held that same did not acquire and/or accrue any lawful rights to and or interests over L.R No. Nairobi Block 90/599. In this regard, the prayer for an order of permanent injunction does not lie.
438. Other than the foregoing, the 4th Defendant has also sought for damages for trespass. What I hear the 4th Defendant to be contending is that the Plaintiff herein has trespassed onto [sic] L.R No. Nairobi Block 90/599. For good measure, the Plaintiff to the main suit is presumably the only Defendant to the counter-claim taking into account that the counter-claim on behalf of the 4th Defendant does not contain any sub-title to implead any other party.



439. It is important to highlight that before a party, the 4th Defendant not excepted, can partake of and benefit from damages for trespass, such a party must demonstrate that same holds title to the property which is alleged to have been trespassed upon. Notably, ownership to the property in question is a precursor to proof of trespass. Absent title to or legal rights over the property in question, one cannot lay a claim for trespass and damages for trespass.
440. What constitutes trespass was elaborated upon in the case of *Doshi v Chemutut & 7 others* (Civil Appeal E020 of 2023) [2025] KECA 776 (KLR) (9 May 2025) (Judgment), where the court stated thus;
39. Trespass, as stated by this Court in the case of *Charles Ogejo Ochieng v Geoffrey Okumu* [1995] KECA 169 (KLR), is an injury to a possessory right, and therefore the proper plaintiff in an action of trespass to land is the person who has title to it, or a person who is deemed to have been in possession at the time of the trespass. As for the ingredients of trespass, the Court in *William Kamunge Gakui v Eustace Gitonga Gakui* (Civil Appeal 16 of 2013) [2014] KECA 39 (KLR) stated that trespass is a violation of the right to possession, and that a plaintiff must prove that he has the right to immediate and exclusive possession of the land. Justice Chemutut did not name Mr. Doshi as a defendant in the suit.
441. Similarly, the ingredients that underpin a claim for trespass were also highlighted in the case of *Municipal Council of Eldoret v Titus Gatitu Njau* [2020] KECA 782 (KLR), where the Court of Appeal stated as hereunder;
35. In *M’Mukanya v M’Mbijiwe* (1984) KLR 761, the ingredients of the tort of trespass were revisited by this Court and restated as follows:
- “trespass is a violation of the right to possession and a plaintiff must prove that he has the right to immediate and exclusive possession of the land which is different from ownership (See *Thomson v Ward*, (1953) 2QB 153.”
36. Further, in *Winfield & Jolowicz on Tort*, Sweet & Maxwell, 19th Edition at page 428 states as follows:
- “Trespass to land, like the tort of trespass to goods, consists of interference with possession. Mere physical presence on the land does not necessarily amount to possession sufficient to bring an action for trespass. It is not necessary that the claimant should have some lawful interest in the land. This is not to say that legal title is irrelevant, for where the facts leave it uncertain which of several competing claimants has possession, it is in him who can prove title that can prove he has the right to possession. More generally, in the absence of evidence to the contrary, the owner of land with the paper title is deemed to be in possession of the land.” [Emphasis supplied].
442. Bearing in mind the holding of the Court of Appeal in the decisions cited in the preceding paragraphs, I am afraid that the 4th Defendant herein is not entitled to any recompense on the basis of damages for trespass.
443. The 4th Defendant has also sought for punitive and exemplary damages. Suffice it to state that the law as pertains to award of punitive and exemplary damages is now settled. Instructively, any claimant seeking an award of punitive and exemplary damages must demonstrate and prove that the actions complained of were inter-alia oppressive, whimsical, arbitrary and capricious. [See *Municipal Council of Eldoret v*



Titus Gatitu Njau [2020] KECA 782 (KLR)]. [See also Godfrey Julius Ndumba Mbogori & another v Nairobi City County [2018] KECA 702 (KLR)].

444. Furthermore, the 4th Defendant has also sought for special damages in the sum of Kes.14, 548, 962/= only comprising of various payments whose details have been captured at the foot of paragraph 30 of the statement of defence and counterclaim.
445. Even though the 4th Defendant availed various receipts, it is not lost on this court that some of the receipts which have been deployed to underpin the claim for special damages are more than three years old. In this regard, there is no gainsaying that the claim at the foot of special damages appear to be statute barred. [See Section 3 of the Public Authority Limitations Act, Chapter 39 Laws of Kenya].
446. Notwithstanding the foregoing, it is worthy to recall that the claim that underpins the claim for special damages relates to moneys which were expended towards the acquisition of L.R No Nairobi Block 90/599, which the court has found to have been illegal. In this regard, I opine that the doctrine of *ex-nihilo-nihil-fit* suffices.
447. I now wish to turn to the alternative prayer for compensation in the sum of Kes.150, 000, 000/= only, on the basis of the valuation report dated 7th January 2022 and prepared by M/s Mwaka Musau Consultants. Two issues do arise and merit consideration.
448. Firstly, it is not lost on this court that the 4th Defendant's case was premised on the evidence of one witness, namely; Shital Bandari. To this end, there is no gainsaying that the valuation report which is an expert document was not proved before the court.
449. In this regard, the valuation report is devoid of probative value. Instructively, production of a document is separate and distinct from proof thereof. Moreover, production of a document is also distinct from probative value, [if any] that such a document has. [See the decision of the supreme court in Kenya Railways Corporation & 2 others v Okoiti & 3 others (Petition 13 & 18 (E019) of 2020 (Consolidated)) [2023] KESC 38 (KLR) (16 June 2023) (Judgment) at paragraph 80].
450. Secondly, there is no gainsaying that the compensation sought relates to L.R No. Nairobi Block 90/599, which the court has since found to have been illegally acquired. The question that does arise is whether the Government of Kenya can be compelled to compensate the 4th Defendant on the basis of an illegality. The answer is certainly in the negative.
451. Flowing from the foregoing analysis, what becomes apparent is that the various reliefs sought by the 4th Defendant are not only premature and misconceived, but same are also legally untenable.

FINAL DISPOSITION:

452. Having appraised and considered the thematic issues that were highlighted in the body of the judgment, I come to the conclusion that the Plaintiff herein [EACC] has indeed proved its claim on a balance of probabilities or better still balance of preponderance. In this regard, the claim beforehand is meritorious.
453. On the contrary, the 4th Defendant has not proved and/or established his claim to the suit property. Moreover, the court has found and held that the transaction[s] that were entered into between the 1st, 2nd and 3rd Defendants on one hand and the 4th Defendants on the other hand amounted to mere paper transaction[s].
454. The impugned transactions did not vest upon the 4th Defendant any legal rights capable of protection before a court of law. [See the provisions of Article 40[6] of *the Constitution*, 2010].



455. In the premises, the final orders that commend themselves to the court are as hereunder;
- i. A declaration be and is hereby issued that the parcels of land now known as Nairobi/Block 90/584, Nairobi/Block 90/585, Nairobi/Block 90/586, Nairobi/Block 90/591, Nairobi/Block 90/592, Nairobi/Block 90/593, Nairobi/Block 90/594, Nairobi/Block 90/595 and Nairobi/Block 90/596 constitute the parcel of land initially known as Nairobi/Block 90/229, measuring 1.93 Ha or thereabouts, which is public land set aside for a water reservoir and related water distribution installations, which are public utilities.
 - ii. A declaration be and is hereby issued that the allocation of land hived off from Nairobi/Block 90/229 vide a letter of allotment dated 19th September 1995 in favour of Mitema Holdings Ltd [1st Defendant] in respect of Plot A (Nairobi/Block 90/584), Maywood Ltd [2nd Defendant] in respect of Plot B (Nairobi/Block 90/585) and Nova Construction Company Ltd (3rd Defendant) in respect of Plot C (Nairobi/Block 90/584) was issued ultra vires the 12th Defendant's statutory powers and is null and void ab initio.
 - iii. A declaration be and is hereby issued that the 1st, 2nd and 3rd Defendant had no good title/interest over the parcels of land known as Nairobi/Block 90/586 [amalgamated to Nairobi/Block 90/599] and the purported transfer or other disposition to the 4th Defendant, is null and void ab initio and incapable of conferring ownership rights and/or any other proprietary rights in the said public land.
 - iv. A declaration be and is hereby issued that the 5th, 6th, 7th, 8th and 9th Defendants acquired and had no good title/interest over the parcels of land known as Nairobi/Block 90/591, Nairobi/Block 90/592, Nairobi/Block 90/593, Nairobi/Block 90/594 and Nairobi/Block 90/595 and the subsequent dispositions culminating to the purported transfer to the 10th Defendant are a nullity and incapable of conferring ownership or any other proprietary rights in the said public land.
 - v. The Chief Land Registrar be and is hereby directed to rectify the register by cancellation of the entries relating to issuance of certificate of lease in favor of the 4th Defendant over the parcel of land described as Nairobi/Block 90/599 and to the 10th Defendant over Nairobi/Block 90/591, Nairobi/Block 90/592, Nairobi/Block 90/593, Nairobi/Block 90/594 and Nairobi/Block 90/595.
 - vi. Furthermore, the Chief Land Registrar be and is hereby directed to rectify the Register by cancellation of the entries relating to the transfer of Nairobi/Block 90/229 in favour of [sic] the 1st -10th Defendants.
 - vii. An order be and is hereby issued directing the Chief Land Registrar to register the parcel of land initially known as Nairobi/Block 90/229 measuring 1.93 Ha or thereabouts, in the name of Nairobi City Water and Sewerage Company Limited.
 - viii. The 11th Defendant be and is hereby ordered to vacate and hand over vacant possession in respect of L.R No's Nairobi/Block 90/591, Nairobi/Block 90/592, Nairobi/Block 90/593, Nairobi/Block 90/594 and Nairobi/Block 90/595 to the City County Government of Nairobi and in particular, to Nairobi Water & Sewerage Co Ltd within 60 days from the date hereof.
 - ix. In default by the 11th Defendant to vacate and hand over vacant possession of L.R No's Nairobi/Block 90/591, Nairobi/Block 90/592, Nairobi/Block 90/593, Nairobi/Block 90/594 and Nairobi/Block 90/595 in terms of clause [viii] hereof, the City County Government shall be at liberty to enter upon and demolish whatever structure[s] standing



on the designated property, namely Nairobi/Block 90/591, Nairobi/Block 90/592, Nairobi/Block 90/593, Nairobi/Block 90/594 and Nairobi/Block 90/595.

- x. To facilitate the eviction and demolition in terms of clause [ix] an eviction order shall issue.
- xi. In the event of the eviction and demolition being undertaken by the City County Government of Nairobi, the costs/expense incurred shall be certified by the Deputy Registrar and same shall be recovered from the 11th Defendant.
- xii. There be and is hereby issued an order for a permanent injunction against the 4th Defendant prohibiting and/or barring same, his agents, servants, employees and/or assigns from trespassing upon, transferring, leasing, wasting and/or dealing in any manner whatsoever with land described as Nairobi/Block 90/591, Nairobi/Block 90/599 comprising of a water reservoir, other than by way of a surrender to the Government of Kenya.
- xiii. There be and is hereby issued an order for a permanent injunction against barring the 10th and 11th Defendants, their agents, servants, employees and/or assign[s] from trespassing upon, transferring, leasing, wasting and/or dealing in any manner whatsoever with the parcels of land described as Nairobi/Block 90/591, Nairobi/Block 90/592, Nairobi/Block 90/593, Nairobi/Block 90/594 and Nairobi/Block 90/595 comprising of a water reservoir, other than by way of a surrender to the Government of Kenya.
- xiv. Costs of the suit be and are hereby awarded to the Plaintiff and same shall be borne by the 1st to the 12th Defendants jointly and/or severally.
- xv. The Counterclaim by the 4th Defendant be and is hereby dismissed.
- xvi. Costs of the Counterclaim be and are hereby awarded to the Plaintiff/Defendant to the Counterclaim only.

456. It is so ordered.

DATED SIGNED AND DELIVERED AT NAIROBI ON THE 19TH DAY OF MAY, 2025.

OGUTTU MBOYA, FCI Arb, CPM [MTI].

JUDGE.

In the presence of:

Benson – court assistant

Ms. Judith Shamala for the Plaintiff.

Mr. A K Mwangi h/b for Mr. Arthur Ingutia for the 2nd and 3rd Defendants

Mr. Ogara h/b for Dr. Hakula for the 4th Defendant/Counter-claimer

Mr. Justus Obuya for the 9th Defendant

Mr. Ongegu for the 10th and 11th Defendants

Mr. Allan Kamau [Principal litigation counsel] for the 14th Defendants

N/A for the 1st, 5th, 6th, 7th, 8th and 13th Defendants

