



Kenya Anti-Corruption Commission v Asis Stores Ltd & 3 others (Environment & Land Case 306 of 2012) [2025] KEELC 3707 (KLR) (8 May 2025) (Judgment)

Neutral citation: [2025] KEELC 3707 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 306 OF 2012**

A OMBWAYO, J

MAY 8, 2025

BETWEEN

KENYA ANTI-CORRUPTION COMMISSION PLAINTIFF

AND

ASIS STORES LTD 1ST DEFENDANT

**BARCLAYS BANK OF KENYA & 2 OTHERS & 2 OTHERS & 2
OTHERS 2ND DEFENDANT**

JUDGMENT

1. The Plaintiff commenced this suit vide a Plaint dated 12th February, 2008 against the Defendants seeking the following orders:
 - a. A declaration that the purported subdivision of land parcel number Nakuru Municipality Block6/X2 is null and void.
 - b. A declaration that the allocation and grant of lease of land parcel number Nakuru Municipality Block 6/XX8 by the 4th Defendant to the 1st Defendant is null and void and incapable of conferring any estate, interest or right.
 - c. A declaration that the transfer of land parcel number Nakuru Municipality Block 6/XX8 from the1st Defendant to the 2nd Defendant is null and void and incapable of conferring any interest or right in favour of the 2nd Defendant.
 - d. A declaration that the creation and registration of the charge over land parcel number NakuruMunicipality Block 6/XX8 is null and void and incapable of conferring any interest or right in favour of the 3rd Defendant.
 - e. An order that the registration of the 2nd Defendant as the lessee of land parcel number Nakuru Municipality Block 6/XX8 be cancelled.



- f. An order that the registration of the 3rd Defendant as the chargee of land parcel number Nakuru Municipality Block 6/XX8 be cancelled.
 - g. A mandatory injunction directing the 2nd Defendant, his servants or agents, to vacate land parcel number Nakuru Municipality Block 6/XX8 forthwith.
 - h. An order of permanent injunction to restrain the 2nd and 3rd Defendants by themselves, their servants, agents or any other person whatsoever, from selling, leasing, charging, sub-dividing, developing, wasting, transferring, or in any other manner dealing with land parcel number Nakuru Municipality Block 6/XX8.
 - i. Costs of and incidental to the suit.
2. The 2nd Defendant entered appearance and filed his Statement of Defence dated 25th February, 2008 where he denied the allegations in the Plaintiff.
 3. The 3rd Defendant entered appearance and filed its statement of Defence dated 20th February, 2008 where it also denied the allegations in the plaintiff. The 4th Defendant entered appearance and filed his statement of Defence dated 29th February, 2008 where he denied the allegations in the Plaintiff.

Plaintiffs' Case

4. Dedan Ochieng Okwama testified as PW1 where his statement dated 7th December, 2022 was adopted as his evidence in chief. It was his testimony that he was appointed as an investigator of the Plaintiff in 2006. He testified that his role was to collect and analyze documents in respect of complainant and take the necessary action. He further testified that he collected and analyzed the documents. He produced a copy of the grant as PEX1. He testified that the grant had a plan. He also produced the certificate of lease as PEX 2. PW1 testified that the lease was a conversion from RTA to RLA. He added that the land was 0.2788 Ha. He testified that he had a certificate extract of the title which he produced as PEX 3. He also produced a plot allocation certificate meeting minutes dated 2nd October, 1996 as PEX 4. He testified that it showed the plot applied for with no number. He further produced the allotment letter as PEX 5 (a) with PDP PEX 5 (b). He also produced the acceptance letter as PEX 6 and lease as PEX 7. It was his testimony that the lease was never registered. He testified that the Land Registrar did not sign the lease but a white card was opened. He went on to testify that an entry was made for the 1st Defendant and on the same date an entry was also made to the 2nd Defendant- PEX 9. He testified that there was a complaint by the Managing Director Kenya National Traders Corporation (KNTC) PEX 10. He produced letters dated 24th November, 2006, 26th November, 2007, 12th February, 2007 and 14th March, 2006 as PEX 11,12, 13 and 14 respectively. He also produced a receipt of land Rent PEX 15. He produced a correspondence file on Block 6/158 PEX 16. He produced a transfer letter dated 16th November, 2007 as PEX 17. PW1 produced a report PEX 18 and PEX 19. He also produced a copy of the ruling as PEX 20. It was his testimony that he had a further list of documents dated 6th December, 2022. He added that he had a survey plan S R 326/19 which showed that parcel No.158-159 were part of Nakuru Block 65/42. He testified that they were created from land owned by K.N.T.C PEX 21. He produced a copy of RIM as PEX 22.
5. He testified that Block 6/158 was created from Block 6/42 which belonged to KNTC. He further testified that the property was in use and registered in the name of KNTC. He testified that it was not available for allocation. He also testified that there was no comment by KNTC to give up the property. He added that KNTC had the power to sell the land. He testified that the property was in the name of the Corporation hence not available for allocation.



6. Upon cross examination by Kisila for the 1st Defendant, PW1 confirmed that KNTC was a limited liability company which could sue or be sued. He confirmed that they had filed on their behalf as it never filed a suit. He stated that the Plaintiff had the mandate to file a suit on behalf of any public body. He also stated that KNTC requested the matter to be investigated. He admitted that he did not have the correspondence. He stated that he investigated and established cases of corruption, bribery and economic crimes against the 2nd Defendant. He added that he discovered fraud on the part of the 2nd and 4th Defendants. PW1 confirmed that the illegality was against 1st and 4th Defendants and not the 2nd Defendant. He stated that the 2nd Defendant had improper benefit of the property. He further stated that no good title existed for 1st Defendant. PW1 admitted that they had not produced the shareholders of KNTC. He also admitted that he did not know the shareholding structure. He admitted that he had not provided a basis stating that KNTC was a state Corporation.
7. He confirmed that the 2nd Defendant was registered in 1999 while the 1st Defendant registered in 1997. He further confirmed that the 2nd Defendant bought the land from the 1st Defendant. He stated that parcel number 158 and 159 were from a survey document. He also stated that the property belonged to KNTC. He stated there was a building on the plot. He further stated that there was an error in the Ministry of lands. PW1 urged that court to direct that the land reverts to the state. He admitted that there were no civil proceedings. He also admitted that there was no evidence or corruption. He added that they investigated the civil matter and went for recovery. He stated that KNTC would know what to do with the property.
8. Upon cross examination by Tank for the 3rd Defendant, PW1 confirmed that the land was in the 2nd Defendant's name. He stated that a search was not enough as it could be manipulated. He further stated that the chargor was in occupation of the land. He confirmed that the survey plan showed that the land was subdivided.
9. Upon cross examination by Muchemi for the 4th Defendant, PW1 confirmed that he was familiar with the land allocation process. He stated that it included identification of the property by the party. He further stated that the Commissioner of the Lands then allocates the property. He confirmed that he knew the verification process. He further confirmed that the Commissioner of Land did not do the verification but that it was done by the officials. He stated that there were several departments under Commissioner of Lands. He also stated that the parcel was issued to the scheduled offices. He added that deed plans were prepared by a different department. He admitted that there was no gazettee notice. He also admitted that the 4th Defendant existed in 1999 and added that the suit had been filed 19 years after the 4th Defendant left office. He admitted that the demand letter had not been addressed to the 4th Defendant.
10. Upon re-examination, he stated that the commission dealt with public entities and not private entities. He further stated that KNTC was a public body. He added that the property had already been surveyed and registered to KNTC. PW1 stated that they were in court to correct the error. He stated that they had not included other public servants since the buck stopped with the Commissioner of lands.
11. Pancras Kariuki Muriuki testified as PW2 where his statement dated 17th November, 2022 was adopted as his evidence in chief. It was his testimony that he was the Legal Officer KNTC in 2018 and has since changed ranks to the Senior Legal Officer. He testified that he also did litigation and asset management in the institution. He added that they also drafted and negotiated agreements. He testified that the suit property Block 6/X2 was in the name of KNTC having been created in 1967. It was his testimony that they had the original title. He testified that the title had a charge with a bank by KDC formerly ICDC. It was his testimony that the property was charged for Kshs100,000,000/= with a further charge of Kshs. 9,500,000/=.



12. Upon cross examination by Kisila he admitted that he did not have a letter of appointment. He stated that he was employed in 2018. He further stated that the managing director had briefed him on all the cases. He further stated that Paul Mathew retired when the case was still pending. PW2 confirmed that KNTC was a limited liability company. He admitted that he visited the suit property which was located in industrial area. He added that it had their ware house which had two similar structures. He stated that the bigger structure had encroached. He admitted that he could not recall when the structure was put up. He stated that the structure was not as elaborate as when he joined in 2018. He also stated that the current shareholders were Kenya Development Corporation formerly ICDC and Samuel Wandari. PW2 stated that when the suit was filed in 2008, he did not know the shareholders. He admitted that they did not have a search for 2008. He admitted that he had no reason for issuance of certificate of lease in 1997 and 2001. He also admitted that he did not have a letter of protest between 1997 and 2006. He admitted that he had never met the 2nd Defendant. He stated that he was aware that KNTC referred the matter to the Commissioner of Lands. He added that he was also aware that the National Land Commission found that the 2nd Defendant was an innocent purchaser. He stated that the National Land Commission advised that they should regularize the ownership by the 2nd Defendant. He stated that the land was currently operating as a go-down.
13. Upon cross examination by Tank, PW2 was referred to PEX 21 where he confirmed that there was property 158 and 159 on the map. He admitted that they needed to do a historic search so as to read further. He confirmed that the land was public land under Kenya National Traders Corporation (KNTC).
14. Upon cross examination by Muchemi, he stated that the corporation, KNTC was the complainant. He added that most of the documents came from the Corporation. He also stated that there was no document signed by the 4th Defendant in his capacity as Commissioner for lands. He also admitted that there were documents signed by the 4th Defendant. He confirmed that he signed the lease in 1998 as Commissioner of Lands in the presence of Land Registrar.
15. On re-examination, he stated that he was not aware of the certificate of lease. He stated that they followed up the issues of the corporation. He further stated that the issue before National Land Commission was that the Corporation was not adequately represented. He added that this issue was challenged in a Judicial Review case. That marked the close of the Plaintiff's case.

2nd Defence case

16. William Njoroge Karanja the 2nd Defendant testified as DW1 where his witness statement filed on 1st March, 2023 was adopted as his evidence in chief. He testified that he had filed a list of documents on 15th July, 2013 which documents were produced and marked as DEX 1-DEX 7. It was his testimony that the suit parcel was Nakuru/Municipality/Block 6/XX8 along Prantay House Road in Industrial area, Nakuru town. He testified that he had procured the land in September 1999. He testified that he has been doing milling and business on the land. He further testified that he knew Mr Yego of the 1st Defendant company as the owner of Block 6/XX8. He testified that Mr. Yego had rented the property to 3 tenants, Mary Mugure Mbao who operated a feeds business. He further testified that Mr Yego sold him the property with some structures inside. He added that the agreement was done at Seth Wathigo advocates. He testified that he saw the lease document. He was referred to DEX 5 being the lease where he confirmed that it had been issued by the president to run from 1st June, 1997. He testified that it was given to the 1st Defendant. He further testified that there was a letter of allotment for the unsurveyed plot which was for 99 years. He testified that they procured the title from his lawyer which was then transferred to him. He went on to testify that he had acquired a certificate of lease. He testified that the



- original title was charged to Barclays Bank. It was his testimony that he had done due diligence. DW1 testified that the regular white card showed that the land had been transferred to him.
17. He went on to testify that he had been given permission on 30th September, 1999. He testified that parties were notified and they vacated the property. He added that he renovated the property and put up a go down storage with 100 employees. He testified that KNTC was not referred anywhere. He added that there was no encumbrance. He testified that NLC on 17th December, 2015 recorded that he retains the property. He testified that he had attended the sessions and produced the decision as DEX 8. He further testified that KNTC Corporation went to court and a decision was made-DEX9.
 18. He testified that survey was done before creation of the parcel of land. He added that there was no gazette notice for public land. He testified that KNTC did not file any suit. He also testified that KNTC was currently in operation. It was his testimony that he used to buy cement from them which he used to build his project. He testified that no one ever told him that the property belonged to KNTC. He added that there was no sign that the land belonged to KNTC. He also testified that his lawyer confirmed that he bought the property. DW1 testified that KNTC responded on 12th February, 2007 and stated that the property had been illegally acquired by him. He testified that he has been paying rent and rates.
 19. Upon cross examination by Tank, he stated that he took a loan from Absa and a charge was registered. He admitted that he was not aware of any incumbrance. He confirmed that valuation was done.
 20. Upon cross examination by Maina for the Plaintiff, DW1 stated that he had an adjacent plot Block 6/XX3 which he acquired in 1997. He stated that Mr. Yego was his neighbor who was also next to KNTC. He further stated that the original parcel of land was owned by one Mutari. He added that it was government land. He stated that XX3 was adjacent to 158. He admitted that he was not aware whether it had been reserved for public use. He stated that XX3 was currently on XX9 and XX8, part of Block6/X2. DW1 admitted that he had not done a historical search prior to purchase of the suit land. He also admitted that he had not seen the plan. He stated that he left everything to his lawyer who did the due diligence. He confirmed that the other tenant was Mary Mugure Mbau who operated beside them. He admitted that he had no evidence of trades.
 21. He confirmed that there was a stack of quarry stones and iron sheets when he purchased the land. He admitted that he did not know the owner. He also stated that they were owned by Mr Yego with whom he did an agreement with. He stated that the agreement was seconded by a company seal. DW1 added that the allotment letter showed the file number with a PDP. He admitted that there was a proposed identical plot. He stated that the land bordered parcel number X2. He stated that he could confirm that the plan number was not there. He confirmed that the lease was registered but that the 1st Defendant did not have a certificate of lease. He added that the lease was transferred to him. He admitted that Yego never signed the lease. He admitted that he did not have receipts. He also stated that he was supposed to retain the land. DW1 stated that the court quashed the decision by National Land Commission.
 22. Upon re-examination, he stated that he was near the land and that there was no suspicion. He also stated that the survey was done by survey of Kenya. He further stated that he owned 6/XX3. He stated that he had been given the lease and transfer of lease. He also stated that the transfer was registered on 27th September, 1999. He stated that he followed the procedure. That marked the close of the 2nd Defendant's case.

3rd Defendant's case

23. Samuel Njuguna testified as DW2 where his statement dated 4th February, 2002 was adopted as his evidence in chief. It was his testimony that he works as a collateral manager with Absa bank. He produced his documents as 3rd DEX 1 – 3rd DEX 5. He testified that the 2nd Defendant took a facility



with them. He further testified that he has a letter of lease for Nakuru/Municipality/Block 6/XX8 in the name of William Karanja. He added that the bank had the original title. It was his testimony that due diligence was conducted by the bank before the charge was registered. Upon cross examination by Maina, he stated that he had no proof of identification as any employee of Absa. He stated that he was employed in 2014. He added that the 2nd Defendant presented a title. He also stated that there was a typing error. Upon reexamination, he stated that the parcel of land was Nakuru/ Municipality /Block 6/XX8. That marked the close of 3rd Defendant's case.

Submissions

24. Counsel for the 2nd Defendant filed his submissions dated 13th March, 2025 where he gave a summary of the case and identified six issues for determination. The first issue is whether the Plaintiff is vested with the requisite locus standi to present and prosecute the instant suit. He submits in the negative and relied on the case of Kahuya V Kisilu & Another (Civil Appeal E056 of 2023) [2023] KEHC 18236 (KLR). He submits that no evidence had been led to prove corruption. He further submits that the report by NLC was that an error had been committed by the then officials at the lands office that led to the subject parcel being declared available for alienation. He further submits that the Plaintiff is not mandated to engage in the prosecution of such a matter as the same falls under the ODPP hence the action by the Plaintiff is ultra vires. He cited Section 13 of the EACC Act and the case in Michael Sistu Mwaura Kamau V Ethics & Anti-Corruption Commission & 4 Others [2017] eKLR. He also submits that KNTC has the power to prosecute the present case. It was his submission that the Plaintiff's action of filing the suit is against the law.
25. The second issue was whether Nakuru Municipality Block 6/XX8 was duly allocated to the 1st Defendant from the proprietorship of the Kenya National Trading Corporation (KNTC). He submits that the transactions that involved Nakuru/Municipality/Block 6/XX8 were undisputed. He relied on the case of Dina Management Limited V County Government of Mombasa & 5 Others (2023) eKLR and African line Transport Co. Ltd. V The Hon. Attorney General Mombasa, HCCC No. 276 of 2003 [2007] eKLR. It was his submission that the 1st Defendant fully complied with the process before acquisition of the suit property. He further submits that the Corporations land parcel Nakuru/Municipality Block 6/X2 was lawfully divided into Block 6/XX8 and 6/XX9. He added that on 8th December, 1998 the 4th Defendant granted the lease to the 1st Defendant. Counsel relied on Section 107 of the Evidence Act and submits that Nakuru/Municipality Block 6/159 was available for allocation at the time of the subject transaction. It was his submission that the 4th Defendant undertook his functions as provided for under Sections 3 and 7 of the repealed Government Land Act in executing transfer to the 1st Defendant. He further submits that the Plaintiff failed to meet the threshold in substantiating the allegations of fraud against the 1st and 4th Defendant. He cited the case of Vijay Morjaria V Nansigh Madhusigh Darbar & Another [2002] eKLR.
26. The third issue was whether the 2nd Defendant herein is a bona fide purchaser for value with respect to his acquisition of the subject property. Counsel submits in the affirmative and relied on a number of cases including Lwanga V Mubiru & Others (Civil Appeal 18 of 2022) [2024] UGSC 7 and Joseph N.K Arap Ng'ok V Moijo Ole Keiwua & 4 Others [2014] eKLR. He submits that the 1st Defendant undertook all the necessary pre-requisites prior to obtaining the suit property from KNTC. He also submits that in the event this court finds that the initial process of acquisition by the 1st Defendant was tainted with illegality, then the 2nd Defendant qualifies as an innocent purchaser for value without notice of any illegality.
27. The fourth issue for determination was whether the Plaintiff's claim is guilty of laches and that the Kenya National Trading Corporation acquiesced to the 2nd Defendant's acquisition, use and



ownership of the suit property. He submits that the 2nd Defendant position was that the Plaintiff's claim was guilty of laches and that KNTC had acquiesced to the 2nd Defendant's acquisition, use and ownership of the suit property. He relied on the case of Joshua Ngatu V Jane Mpinda & 3 Others [2019] eKLR. He submits that KNTC had knowledge of the acquisition and ownership by the 2nd Defendant. He argues that the Plaintiff cannot thus present a claim on behalf of the Corporation on account of a stale and aged protestation. He submits that the Commissioner of Lands waited for more than 9 years to lodge a complaint with the knowledge that the 2nd Defendant already took possession and developed the suit property since 1998. He relied on the case of Benjoh Amalgamated Limited & Another V Kenya Commercial Bank Limited [2014] KECA 872 (KLR)

28. The fourth issue was what reliefs ought to be granted if any. He relied on Section 107 of the *Evidence Act* and submits that the Plaintiff is not entitled to the prayers set out in the Plaint as it failed to prove its case on a balance of probabilities.
30. The final issue on costs, counsel urged the court to declare that the Plaintiff pays for the costs of the suit having failed to prove its case to the required standard.
31. Counsel for the 3rd Defendant filed his submissions dated 19th March, 2025 where he identified two issues for determination. The first issue was whether there was fraud in the charging of the property title Nakuru Municipality Block 6/XX8. He submits that the Plaintiff has not demonstrated any involvement of the 3rd Defendant in any fraud nor has it provided any evidence of improper conduct on its part. He further submits that it is trite law that fraud must be proved beyond a balance of probabilities but below reasonable doubt. He relied on the case of Arthi Highway Developers Limited V West End Butchery Limited & 6 Others [2015] eKLR. He submits that the purported allegations of fraud has not been substantiated.
32. The second issue was whether the 3rd Defendant was an innocent by-stander while charging the land parcel Nakuru Municipality Block 6/158. He relied on the case of Lawrence Mukiri V Attorney General & 4 Others (2013) and Hannington Njuki V William Nyanzi High Court Civil Suit Number 434 of 1996. It was his submission that the 3rd Defendant exercised all the necessary due diligence before charging the suit property. He further relied on the case of Dina Management Limited V County Government of Mombasa & 5 Others (2023) eKLR. He submits that the records submitted by the Plaintiff showed that there was proper sub-division of the land and thus the Defendant would not have known that the title was irregular.

Analysis and Determination.

33. This court has considered the pleadings, the evidence on record and the submissions and is of the view that the following issues arise for determination:
 - a. Whether the Plaintiff has the locus standi to institute the suit.
 - b. Whether the 1st Defendant was lawfully allocated Nakuru Municipality Block 6/XX8 by the 4th Defendant.
 - c. Whether the 2nd Defendant is a bona fide purchaser for value without notice.
 - d. Whether the Plaintiff is entitled to the orders sought.
 - e. Who should bear the costs of the suit.

Whether the Plaintiff has the locus standi to institute the suit.

34. The 2nd Defendant contends that the Plaintiff lacks the locus standi to file the present suit since



35. Kenya National Trading Corporation (KNTC) could file the suit on its own. In the case of Ethics & Anti-Corruption Commission & another V Mwaita & 2 others [2023] KEELC 16790 (KLR) the court held that that Kenya Anti-Corruption Commission had locus standi to bring recovery proceedings on behalf of the public. Further, in the case of Ethics & Anti-Corruption Commission V Njuguna Macharia [2015] KEELC 660 (KLR) the court held as follows:

“The Defendant also contested the Plaintiff’s locus standi to investigate the legality or otherwise of the allocation of the suit property arguing that the National Land Commission was the one seized with power to investigate the legality of a title and recommend revocation. This Court notes that the Plaintiff’s mandate as provided by section 11(1)(j) of the *Ethics and Anti-Corruption Commission Act* empowers it to institute and conduct proceedings in court for purposes of the recovery or protection of public property. In addition, Article 79 of *the Constitution* grants the Ethics and Anti-Corruption Commission similar status and powers as other Constitutional Commissions under Chapter Fifteen, when performing its mandate. The objection on the Plaintiff’s locus standi thus has no merit and fails.”

36. This court being guided by the above authorities thus finds that the Plaintiff possesses the requisite locus standi to institute the current suit.

Whether the 1st Defendant was lawfully allocated Nakuru Municipality Block 6/158 by the 4th Defendant.

37. It was the Plaintiff’s case that the lease in the 1st Defendant’s name (PEX 7) was never registered. PW1 the Plaintiff’s investigator testified that the Land Registrar did not sign the lease but a white card was opened. It was his case that the property was in use and registered in the name of Kenya National Traders Corporation (KNTC) hence it was not available for allocation. It was PW1’s evidence that he discovered fraud on the part of the 2nd and 4th Defendants and that the 2nd Defendant had improperly benefited from the property. PW2 the legal officer of confirmed that the suit property was public land owned by KNTC. On cross examination, he confirmed that there was no document signed by the 4th Defendant in the capacity of Commissioner for lands.
38. The 2nd Defendant on the other hand contends that he purchased the suit property from one Mr. Yego of the 1st Defendant company. He testified that survey had been done on the suit property and admitted that there was no gazette notice for public land. He also contends that he procedurally followed the due process in allocation of the suit land. Upon cross examination, he confirmed that the lease was registered but that the 1st Defendant did not have a certificate of lease. He also admitted that that in as much as the lease was transferred to him, Mr. Yego never signed the lease. He also admitted that he did not have receipts but that he left his advocate do all the transaction and due diligence for him.
39. The 3rd Defendant gave evidence that the 2nd Defendant took a loan facility with them and where they charged the suit property as security. It was his case that their advocate had conducted due diligence prior to registering the charge.
40. It is not in dispute that the property was public land registered under the Kenya National Trading
41. Corporation Limited as evidenced from the Grant I.R 2XX77 issued on 12th September, 1987 (PEX 1). The Plaintiff alleged fraud on the part of the Defendants and it is this court’s view that the burden was on the Plaintiff to prove the same.



41. In the case of *Arthi Highway Developers Limited V West End Butchery Limited & 6 others* [2015] KECA 816 (KLR) the court held as follows:

“It is common ground that fraud is a serious accusation which procedurally has to be pleaded and proved to a standard above a balance of probabilities but not beyond reasonable doubt. One of the authorities produced before us has this passage from *Bullen & Leake & Jacobs*, Precedent of pleadings 13th Edition at page 427:

“Where fraud is intended to be charged, there must be a clear and distinct allegation of fraud upon the pleadings, and though it is not necessary that the word fraud should be used, the facts must be so stated as to show distinctly that fraud is charged (*Wallingford v Mutual Society* (1880) 5 App.Cas.685 at 697, 701, 709, *Garden Neptune V Occident* [1989] 1 Lloyd’s Rep. 305, 308).

42. The statement of claim must contain precise and full allegations of facts and circumstances leading to the reasonable inference that the fraud was the cause of the loss complained of (see *Lawrence V Lord Norreys* (1880) 15 App. Cas. 210 at 221). It is not allowable to leave fraud to be inferred from the facts pleaded and accordingly, fraudulent conduct must be distinctly alleged and as distinctly proved (*Davy V Garrett* (1878) 7 ch.D. 473 at 489). “General allegations, however strong may be the words in which they are stated, are insufficient to amount to an averment of fraud of which any court ought to take notice”.

43. The Plaintiff adduced evidence of a letter dated 26th January, 2007 from the Ministry of Lands directed to the Commissioner of Lands stating that it was not clear how Block 6/4X was subdivided to create Block 6/XX8 and allocated to the 1st Defendant. It is a fact that there was no mutation form produced as evidence confirming the said subdivision as alleged by the 1st Defendant. It is this court’s view that in as much as the 1st Defendant gave evidence that it followed the due process in acquiring the suit land, it is clear that the same was done without the knowledge of KNTC and thus it cannot be guilty of acquiescence or laches. In addition, KNTC is a state-owned corporation that operates under the Ministry of Investment, Trade and Industry thus serving under the government. In the case of *Pashito Holdings Limited & Another V Paul Nderitu Ndungu & 2 Others* [1997] KECA 423 (KLR) the court held that:

“Under the Government Lands Act (Cap 280, Laws of Kenya) the Commissioner of Lands can only make grants or dispositions of any estates, interests or rights in over unalienated government land. (Section 3). In the instant case, the two parcels of land among others had been alienated and designated for particular purposes. It was not open for the Commissioner of Lands to re-alienate the same. So the alienated was void ab initio.”

44. It is this court’s view that the land being government land, the Commissioner of Lands had no power to pass any title to the 1st Defendant.

45. I have also keenly perused the documents and it is clear from the Land Rent payment from KRA (PEX 15), dated 31st April, 2008 was paid by KNTC and not the 1st Defendant. In addition, the Plaintiff produced a letter dated 13th December, 2006 being a complaint to the District Land Registrar against the Defendants encroachment of the suit property.

46. In the case of *Munyu Maina V Hiram Gathiha Maina* [2013] KECA, the court held as follows: “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.”

47. Further, in the case of *Elijah Makeri Nyangwa v Stephen Mungai Njuguna & another* [2013] KEHC 5046 (KLR) the court held as follows:

“...the title in the hands of an innocent third party can be impugned if it is proved that the title was obtained illegally, unprocedurally or through a corrupt scheme..”

48. It is this court’s view, that the said letters are evidence of the position by the Plaintiff that parcel no. Nakuru/Municipality Block 6/42 was not vacant government land as submitted by the 2nd Defendant and was therefore not available for alienation as provided by Section 3(a) of the Government Lands Act (now repealed). I therefore find that the 1st Defendant did not lawfully acquire the suit property.

Whether the 2nd Defendant is a bona fide purchaser for value without notice.

49. In the case of *Samuel Kamere V Lands Registrar, Kajiado* [2015] KECA 644 (KLR) the court held as follows:

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

50. DW1 produced a sale agreement dated 13th September, 1999 having purchased the suit property from the 1st Defendant at a consideration of Kshs. 2,300,000/=. He admitted that he never conducted a historical search prior to purchase of the suit land. He also admitted that he had not seen the plan but that he had left everything to his lawyer to conduct the due diligence. It is noteworthy that he never called his lawyer to testify on the same. It is this court’s view that the 2nd Defendant failed to fulfil the requirements of a bona fide purchaser. This court therefore finds that the 2nd Defendant is not bona fide purchaser for value.

Whether the Plaintiff is entitled to the orders sought.

51. In the upshot, I find that the Plaintiff proved its case on a balance of probabilities and is therefore entitled to the orders sought in the plaint dated 12th February, 2008. Consequently, I shall proceed to enter judgement in favour of the Plaintiff as against the Defendants in the following terms:

- a. A declaration that the purported subdivision of land parcel number Nakuru Municipality Block 6/X2 was null and void.
- b. A declaration that the issuance of a lease by the 4th Defendant to the 1st Defendant over Nakuru Municipality Block 6/XX8 was null and void ab initio and ineffectual to confer any right, interest or title upon the 1st Defendant in the first instance.
- c. A declaration is hereby made that the transfers and issuance of certificates of lease over Nakuru Municipality Block 6/XX8 to the 2nd Defendant was null and void and ineffectual to confer a good title upon any of them.
- d. An order is hereby issued for rectification of the lands register by cancellation of the lease over Nakuru Municipality Block 6/XX8 and certificate of lease issued to the 2nd and 3rd Defendants so as to restore the suit property to the Corporation.



- e. An order of permanent injunction is hereby issued against the 2nd and 3rd Defendants bythemselves, their agents, servants or assigns restraining them from leasing, transferring, charging, taking possession, developing or in any other manner howsoever from dealing with Nakuru Municipality Block 6/XX8.
- e) Costs of the suit to be paid by the Defendants. It is so ordered.

HON. JUSTICE ANTONY O. OMBWAYO

DATE: 2025-05-08

