



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC SUIT NO. 279 OF 2017

**KINGSWAY INDUSTRIAL PARK LIMITED (FORMERLY
REAL INDUSTRIAL PARK LIMITED)PLAINTIFF**

=VERSUS=

CABINET SECRETARY,

MINISTRY OF LANDS AND PHYSICAL PLANNING.....1ST DEFENDANT

CHIEF LAND REGISTRAR.....2ND DEFENDANT

COUNTY SECRETARY NAIROBI CITY COUNTY.....3RD DEFENDANT

COUNTY EXECUTIVE COMMITTEE

MEMBER FOR LAND NAIROBI CITY COUNTY.....4TH DEFENDANT

DIRECTOR OF COUNTY PLANNING NAIROBI CITY COUNTY.....5TH DEFENDANT

DIRECTOR OF PHYSICAL PLANNING.....6TH DEFENDANT

DIRECTOR OF SURVEY.....7TH DEFENDANT

NATIONAL POLICE SERVICE.....8TH DEFENDANT

OFFICER COMMANDING POLICE DIVISION EMBAKASI.....9TH DEFENDANT

THE DIVISIONAL CRIMINAL INVESTIGATION OFFICER EMBAKASI...10TH DEFENDANT

THE HON. ATTORNEY GENERAL.....11TH DEFENDANT

BUSINESS REGISTRATION SERVICE.....12TH DEFENDANT

REGISTRAR GENERAL, BUSINESS REGISTRATION SERVICE.....13TH DEFENDANT

REGISTRAR OF COMPANIES.....14TH DEFENDANT

AND

KINGSWAY INDUSTRIAL PARK LIMITED(NO.CPR/2011/44366)....1ST INTERESTED PARTY

REAL INDUSTRIAL PARK LIMITED (NO.54643).....2ND INTERESTED PARTY

RULING

The plaintiff brought this suit on 26th April 2017. In its plaint dated 25th April, 2017, the plaintiff averred that it was incorporated on 14th July, 1993 as Real Industrial Park Limited under certificate of incorporation number C.54643 (hereinafter referred to as “Real Industrial Park Ltd. company No. 54643” where the context so permits). The plaintiff averred that through a special resolution dated 15th February, 2010 that was filed on 22nd June, 2010, Real Industrial Park Ltd. company No. 54643 changed its name to Kingsway Industrial Park Ltd. under the same company No. 54643 (hereinafter referred to as “Kingsway Industrial Park Ltd. company No. 54643” where the context so permits).

The plaintiff averred that at all material times it was registered as the proprietor of all those parcels of land known as L.R No. 209/11287, L.R No. 209/11288 and L.R No. 209/11289 situated at Embakasi, off Mombasa Road in Nairobi City County (hereinafter together referred to as “the suit properties”). The plaintiff averred that the suit properties were registered in the name of Real Industrial Park Ltd. company No. 54643 before it changed its name to Kingsway Industrial Park Ltd. company No. 54643. The plaintiff averred that after Real Industrial Park Ltd. company No. 54643 changed its name to Kingsway Industrial Park Ltd. company No. 54643, the 1st and 2nd defendants maliciously and in bad faith with the intention to defraud the plaintiff hid correspondence file and registers for the suit properties and denied the plaintiff the right to access the same so as to effect the change of its name in the said registers from Real Industrial Park Ltd. company No. 54643 to Kingsway Industrial Park Ltd. company No. 54643. The plaintiff averred that the said changes had not been made at as the time of filing this suit.

The plaintiff averred that while the 1st and 2nd defendants continued to hide the said correspondence files and registers relating to the suit properties as aforesaid, the plaintiff received information that the defendants had conspired to defraud and dispossess the plaintiff of the suit properties with impunity and with total disrespect for the rule of law. The plaintiff averred that it discovered an illegal subdivision scheme relating to the suit properties which was being pushed by the 1st to 7th defendants without the plaintiff’s knowledge or authority. The plaintiff averred that the 1st to 7th defendants while carrying out the said criminal activities purported to be acting at the behest of a company referred to as Real Industrial Park Ltd. The plaintiff averred that up to 2010 when the plaintiff changed its name from Real Industrial Park Ltd company No. 54643 to Kingsway Industrial Park Ltd. company No. 54643, no other company existed in the register of companies under the name Real Industrial Park Ltd. apart from Real Industrial Park Ltd. company No. 54643 that was registered on 14th July, 1993.

The plaintiff averred that the other company known as Real Industrial Park Ltd. on whose behalf the 1st to 7th defendants purported to act did not exist. The plaintiff averred that the said company came about as a result of identity theft by undisclosed shadowy individuals as its directors with the aim of engaging in fraudulent criminal activities in collusion with other conspirators mostly government officials. The plaintiff averred that part of the said criminal activities involved manipulation of records held in government offices. The plaintiff averred that it sought clarification from 11th to 14th defendants whether they had registered other companies under the names Real Industrial Park Ltd. and Kingsway Industrial Park Ltd. but the 11th to 14th defendants were non-committal indicating that they could be part of a conspiracy to defraud the plaintiff of the suit properties.

The plaintiff averred that in view of the existence of another company under the name Real Industrial Park Limited also purporting to have certificate of incorporation No. C. 54643 which belongs to the plaintiff, the plaintiff was likely to suffer huge loss and damage which could not be adequately compensated by an award of damages unless the court took immediate and expeditious action to stop the defendants’ illegal activities. The plaintiff averred that the 8th, 9th and 10th defendants despite repeatedly being requested by the plaintiff to investigate the said criminal activities relating to the suit properties had conspired with the said criminals by deliberately and intentionally refusing to carry out their mandate to protect the suit properties and even to investigate the matter. The plaintiffs sought judgment against the defendants jointly and severally for;

1. A declaration that Real Industrial Park Ltd. company No. 54643 was incorporated on 14th July, 1993 and that it changed its name by a resolution dated 15th February, 2010 to Kingsway Industrial Park Ltd. company No. 54643 and was issued with a certificate of change of name by the registrar of companies on 22nd June, 2010.
2. A declaration that prior to change of name, Real Industrial Park Ltd. company No. 54643 was on 18th August, 1993 registered as the proprietor of the suit properties.
3. A declaration that Kingsway Industrial Park Ltd. company No. 54643 and Real Industrial Park Ltd. company No. 54643 are one and the same entity and the date of registration and the number of certificate of incorporation does not change upon the change of name and such change of name does not affect its right and activities including property owned before the change of name.
4. A declaration that assumption of the new name does not affect the status of a company and that Kingsway Industrial Park Ltd. company No. 54643 continued to operate as formerly known as Real Industrial Park Ltd. company No. 54643 and that the name Real Industrial Park Ltd. company No. 54643 was innate to the company and could not assumed by any other person or entity as it would not be registrable.
5. A declaration that after the change of name by the plaintiff, on the effective date; that is 22nd June, 2010, the registrar of companies was bound not to register or to allow any person to operate as either Kingsway Industrial Park Ltd. company No. 54643 or Real Industrial Park Ltd. company No. 54643 as both names referred to one entity incorporated under certificate of incorporation No. C. 54643, the plaintiff herein.
6. A declaration that any act by the Registrar General of registering and/ or allowing the use of either the name Kingsway Industrial Park Ltd. or Real Industrial Park Ltd. is unprocedural, unlawful, illegal and is a breach of the Companies Act.
7. A declaration that the Chief Land Registrar has a statutory duty to open, maintain and keep land records professionally, accurately, in good order and safely and to make them available and accessible to the general public upon request.

8. A declaration that the Registrar General of the Business Registration Service and the Registrar of Companies have statutory duty to open, maintain and keep companies' records safely, professionally, accurately, in good order and to make them available and accessible to the general public upon request.
9. A declaration that the chief land registrar's failure to make the records and files available to the plaintiff so as to affect the change of name in respect of the suit properties was un-procedural, unlawful, illegal, administratively unfair and has deprived the plaintiff of its constitutionally guaranteed right to own, use and enjoy its properties.
10. A declaration that the chief land registrar's act of hiding the files only to make them available three years after effecting the change of name on the property registered as LR. No.209/11288, is unprocedural, unlawful, administratively unfair, abuse of office and has deprived plaintiff of the use and enjoyment of its property contrary to Article 40 of the Constitution of Kenya, 2010.
11. A declaration that failure by the Registrar General of Business Registration Service and the Registrar of Companies to keep proper and accurate records, failure to respond to searches undertaken by the plaintiff and deliberate acts and actions of allowing the use of either Kingsway Industrial Park Limited and Real Industrial Park Limited by other persons other than the plaintiff herein, as well as the acts of issuing CR 12s acknowledging that the company belonged to any other person other than the plaintiff herein, were unprocedural, unlawful, illegal and administratively unfair towards the plaintiff.
12. A declaration that Kingsway Industrial Park Ltd. company number 54643, being one and the same entity as Real Industrial Park Ltd. company number 54643 after change of name was and is entitled to effect the change against the land records and its titles in respect of its properties registered as L.R No. 209/11287 and L.R No. 209/11289 to portray the new name.
13. A declaration that the plaintiff is the lawful owner and registered proprietor of the suit properties.
14. A permanent mandatory injunction compelling the 1st and 2nd defendants to make available the property files and any other record necessary to enable the plaintiff to effect the change of name from Real Industrial Park Ltd. company No. 54643 to Kingsway Industrial Park Ltd. company No. 54643 in respect of L.R. No. 209/11287 and L.R No. 209/11298.
15. A permanent injunction restraining the defendants jointly and severally from in any manner depriving, dispossessing and defrauding the plaintiff of the suit properties.
16. A mandatory injunction compelling the 8th, 9th and 10th defendants to protect the properties of the plaintiff and ensure that the orders, judgments, decrees and decisions of the court are obeyed and that the defendants collectively and severally do not in any manner deprive, dispossess and defraud the plaintiff of the suit properties which falls in the area of their jurisdiction.
17. A mandatory injunction compelling the defendants to revoke, amend, suspend, cancel any approval or entry granted or made touching or in any way affecting the suit properties granted and/or applied for by the companies masquerading as Real Industrial Park Limited without the authority of the plaintiff.
18. A permanent injunction restraining the 1st, 2nd, 11th, 12, 13th and 14th defendants from in any way interfering with the plaintiff's files and records both at the Lands office and the Companies Registry or in any manner dealing with the same without the authority, approval and permission of the plaintiff.
19. Any other remedy, prayer and relief the court may deem fit and just to grant to protect the plaintiff's right to property.
20. A mandatory injunction compelling the 11th, 12th, 13th and 14th defendants to remove, strike off and expunge from the register of companies any company interfering with the plaintiff's properties by purporting to be either Real Industrial Park Limited company No. 54643 or Kingsway Industrial Park Limited company No. 54643 without the authority of the plaintiff.
21. The costs of the suit and interest.

Together with the plaint, the plaintiff filed a Notice of Motion application dated 25th April, 2017 seeking interim orders pending the hearing and determination of the suit. The plaintiff's application was placed before the duty judge on 27th April, 2017 who granted a temporary order of injunction restraining the defendants jointly and severally from any way interfering with, transacting on or dealing in any way with the suit properties. The court also ordered the 9th and 10th defendants to ensure that the orders issued by the court were obeyed.

On 18th March, 2017, a company known as Kingsway Industrial Park Limited, company number CPR/2011/44366 (the 1st interested party) with Henry Okech Opondo, Ernest Kiprotich Kimitei and Charles Mutuku Matolo as directors applied to be joined in this suit as an interested party. This company claimed to have interest in the suit properties and that it was affected by the orders that the court had issued on 27th April, 2017. On 23rd May, 2017, a company known as Real Industrial Park Limited also said to have company number 54643 (the 2nd interested party) with Jeneby Taita Arap Too and Paul Maiyo as directors also applied to be joined in this suit as an interested party. This company claimed to own L.R No. 209/11289 and that it was affected by the orders that the court had issued on 27th April, 2017.

On 14th July, 2017 a company known as Real Industrial Park Limited, also said to have company No. 54643 with Jeneby Taita Too and Paul Chepngok Maiyo as directors filed another case before this court namely, ELC No. 472 of 2017, Real Industrial Park Limited vs. Evans Ochieng Otieno and 3 others. In the said suit, the said Real Industrial Park Ltd. laid a claim to L.R No. 209/11289 and sought a permanent injunction restraining the defendants in the suit from invading, chasing away workers, blocking, occupying, trespassing or in any other

manner interfering with or wasting the said property. On 13th October, 2017, Henry Kipkirong Lelei and David Kimunai Milgo as directors of a company known as Real Industrial Park Limited said to have been registered on 5th January, 1989 also as company number C. 54643 sought leave to be joined in ELC No. 472 of 2017, Real Industrial Park Limited vs. Evans Ochieng Otieno and 3 others as interested parties. The two claimed that their Real Industrial Park Limited was the owner of L.R No. 209/11289.

In ELC No. 472 of 2017, Real Industrial Park Limited vs. Evans Ochieng Otieno and 3 others, the court issued a temporary injunction on 24th July, 2017 restraining the defendants in the suit from in any manner interfering with or wasting L.R No. 209/11289. The court also ordered the OCS Embakasi Police Station to ensure compliance with the said orders. When the court issued the said orders in ELC No. 472 of 2017, Real Industrial Park Limited vs. Evans Ochieng Otieno and 3 others aforesaid, the attention of the court was not drawn to the existence of the present suit, ELC No. 279 of 2017, Kingsway Industrial Park Ltd. vs. Cabinet Secretary Ministry of Lands and Physical Planning and 13 others that had been filed earlier and the orders that had been issued by the court on 27th April, 2017. The existence of these two suits and the conflicting orders that had been issued in them was brought to the attention of the court by the plaintiff in the present suit through an application that was brought by way of Notice of Motion dated 19th December, 2017.

In view of the existence of numerous companies purporting to be registered as Real Industrial Park Limited and Kingsway Industrial Park Limited with different directors that were claiming the suit properties, the parties agreed on 15th February, 2018 that the court should determine as a preliminary issue which of the various companies before the court bearing the names, Kingsway Industrial Park Limited and Real Industrial Park Limited were valid and lawful and the valid and lawful directors of the said legitimate companies before considering the various applications which were pending in this suit and in ELC No. 472 of 2017. It was also agreed that Kingsway Industrial Park Limited company registration No. CPR/2011/44366 and Real Industrial Park Limited company No. C.54643 whose directors were Paul Maiyo and Jeneby Taita Arap Too (Kenton Construction Company Limited) be joined in this suit as the 1st and 2nd interested parties. The parties in ELC No. 472 of 2017 were also allowed to participate in the proceedings which were conducted in the present suit.

During the hearing of the said preliminary issues that were framed by the parties, the parties adduced oral and affidavit evidence. The first to give evidence was Margret Wangu (PW1). She told the court that she was assistant registrar of companies and that she had in her possession a file for a company known as Kingsway Industrial Park Limited company No. 54643. She stated that the said company was incorporated on 14th July, 1993 under the name, Real Industrial Park Limited and that at the time of incorporation the directors and shareholders of the company were four namely, Pradip Kharamshi Shah, 1 share, Ramesh Pandya, 1 share, Surrinder Paul Datta, 1 share and Umit Gunvant Shah, 1 share. The nominal share capital was Kshs. 100,000/= divided into 100 shares of Kshs. 1,000/= each. She stated that from the records held at the companies registry, the company's name was changed from Real Industrial Park Limited to Kingsway Industrial Park Limited through a special resolution dated 15th February, 2010 that was filed on 22nd June, 2010. She stated that the registrar of companies issued a certificate of change of name on 22nd June, 2010 and that according to the records held at their office, the shareholders of the company were Growth Management Limited, 1 share, Kingsway Holdings Limited 99 shares and Manish Shah who had no share.

PW 1 told the court that she did not have any other file relating to Kingsway Industrial Park Ltd. company No. 54643. She stated that there was a company known as Kingsway Industrial Park Limited that was registered inadvertently on 4th April, 2011 as company No. CPR/2011/44366. She stated that the directors and shareholders of that company were Henry Okech Opondo, 10 shares, Ernest Kiprotich Kimitei, 80 shares and Charles Mutuku Matolo, 10 shares. She stated that the company was incorporated by mistake because there was another company with the same name existing in the register when the company was incorporated. PW1 told the court that they took action to rectify the error by writing to the said company that the name under which it was registered was existing and that it should change its name.

PW1 stated that through Gazette Notice No. 962 of 3rd February, 2017, the company was listed in the Kenya Gazette for intended dissolution. She stated that the said Gazette Notice was never challenged and that they had no record of any other company by the name Kingsway Industrial Park Limited apart from Kingsway Industrial Park Limited company No. 54643 which came about following the change of name by Real Industrial Park Limited company No. 54643. She told the court that the information that she had given and the documents that she had referred to were attached to the affidavit of Joyce Koech that was filed in court on 1st August, 2017.

After the evidence of PW1, the advocates for Real Industrial Park Limited company No. 54643 whose directors were Paul Chemngok and Kenton Construction Company Ltd., and Kingsway Industrial Park Ltd. company No. CPR/2011/44366 applied to be discharged from the proceedings and were granted their prayers.

In cross-examination by the plaintiff's advocate, PW1 told the court that every company which is registered is given a unique number and that no two companies could have the same number. She stated that when a company changes its name, it is issued with a certificate of change of name but the company number remains the same. She confirmed that when Real Industrial Park Ltd. company No. 54643 changed its names to Kingsway Industrial Park Ltd. company No. 54643, it retained the same company number. PW1 stated further that from the time Real Industrial Park Ltd. company No. 54643 changed its name to Kingsway Industrial Park Ltd. company No. 54643, they had not registered any other company at the companies registry under the name Real Industrial Park Ltd. She confirmed that Real Industrial Park Ltd. with certificate of incorporation number C.54643 changed its name to Kingsway Industrial Park Ltd. and that it retained the company number C.54643 meaning that the two companies were one and the same. PW1 stated that Kingsway Industrial Park Ltd. registered under CPR/2011/44366 was incorporated after Real Industrial Park Ltd. company No. 54643 had changed its name to Kingsway Industrial Park Ltd. company No. 54643. She stated further that the said company was dissolved through Gazette Notice No. 962 aforesaid as it had been registered by mistake.

In cross-examination by the advocate for the 3rd to 5th defendants, PW1 stated that the certificate of incorporation of Real Industrial Park Ltd. company No. 54643 that was annexed to the affidavit of Joyce Koech filed in court on 1st August, 2017 and the certificate of incorporation that was annexed to the affidavit of Jeneby Taita Arap Too sworn on 22nd May, 2017 in support of the application dated 22nd May, 2017 had similar numbers and names and that third parties would not know which of the two was genuine. In cross-examination by the advocate for the plaintiff in ELC 472 of 2017, PW1 told the court that they only had one file for Kingsway Industrial Park Ltd. company No. 54643 formerly known as Real Industrial Park Ltd. company No. 54643. PW1 stated further that the file that they had was reconstructed

from the documents that they obtained from the file of the company secretary of Kingsway Industrial Park Ltd. company No. 54643 who was the custodian of the said company's records. PW1 told the court that a company wishing to change its name was not required to give any reason for such change and that the change would be allowed so long as the name was available.

PW1 stated further that once a company changes its name, the company registry issues a certificate of change of name but everything else remain the same including the company file and number. PW1 confirmed that she issued a notice to deregister Kingsway Industrial Park Ltd. company No. CPR/2011/44366 and also reconstructed the file for Kingsway Industrial Park Ltd. company No. 54643. She stated that the file that she reconstructed already existed and that they reconstructed the file because the company registry file was missing. She stated that Kingsway Industrial Park Ltd. company No. 54643 company's secretary supplied them with copies of the documents that she had produced in court. PW1 reiterated that Real Industrial Park Ltd. company No. 54643 changed its name to Kingsway Industrial Park Ltd. company No. 54643 and that the name Real Industrial Park Ltd. ceased to exist in their register. In re-examination, PW 1 stated that certificate of incorporation for Real Industrial Park Ltd. company No. 54643 was the one that was attached to the affidavit of Joyce Koech filed in court on 1st August, 2017. PW1 also stated that the company registry dissolved Kingsway Industrial Park Ltd. company No. CPR/2011/44366 when it was brought to its attention that a company with that name already existed.

The next to give evidence was Sanjay Ramniklal Shah (PW2). Before his evidence the following documents were produced in evidence by consent;

1. Memorandum and Articles of Association dated 14th July, 1993 for Real Industrial Park Ltd. company No. 54643.
2. Certificate of Incorporation for Real Industrial Park Ltd. company No. 54643 dated 14th July, 1993.
3. Transfer of share between Ramesh Pandya to Pradeep Karamshi Shah dated 18th January, 1994.
4. Transfer of share between Pradeep Karamshi Shah and Manish Ramniklal Shah dated 20th April, 1994.
5. Transfer of Share between Surrinder Paul Datta and Bharat Tank dated 17th April, 2000.
6. Deed of transfer between Manish Ramniklal Shah and Kingsway Holdings Ltd. dated 17th December, 2004.
7. Transfer Deed between Bharat Tank and Hashit Gulabchand Shah dated 17th December, 2004.
8. Transfer Deed between Umit Gunvant Shah and Kishore Kaushik Meghji Shah dated 14th December, 2004
9. Letter dated 17th September, 2007 from Taibjee & Bhalla Advocates to Kingsway Tyres Ltd. Attn. Mr. Manish Shah
10. Transfer Deed between Kishore Kaushik Meghji Shah and Kingsway Holdings Ltd. dated 31st August, 2007.
11. Transfer Deed between Hashit Gulabchand Shah and Kingsway Holdings Ltd. dated 31st August, 2007.
12. Transfer Deed between Hashit Gulabchand Shah and Growth Management Ltd.
13. Certificate of change of name of Real Industrial Park Ltd. company No. 54643 to Kingsway Industrial Park Ltd. company No. 54643 dated 22nd June, 2010.
14. Growth Management Ltd. Directors Resolution dated 26th January, 2018.
15. Memorandum & Articles of Association of Kingsway Holdings Ltd. dated 5th February, 1987.
16. Certificate of Incorporation of Kingsway Holdings Ltd. company No.33749 dated 5th January, 1987.
17. Memorandum and Articles of Association for Growth Management Ltd. dated 6th November, 1992.
18. Certificate of Incorporation for Growth Management Ltd. company No. 51330 dated 6th November, 1992
19. Annual Return dated 14th January, 2016 for Growth Management Ltd.
20. Annual Return dated 14th January, 2016 for Kingsway Holdings Ltd.

In his evidence, PW2 told the court that the directors of Real Industrial Park Ltd. company No. 54643 were Kingsway Holdings Ltd., Growth Management Ltd. and Manish Shah. He stated that he was a director of Growth Management Ltd. and in that capacity he was aware of all the dealings in respect to Real Industrial Park Ltd. company No. 54643 which had changed its name to Kingsway Industrial Park Ltd. company No. 54643. He stated that Real Industrial Park Ltd. company No. 54643 was incorporated on 14th July, 1993 under registration No.

C 54643. He stated that the original subscribers to the company were Pradeep Karamshi Shah, Ramesh Pandya, Surrinder Paul Datta and Umit Gunvat Shah. He stated that the first transfer of shares in the company took place on 18th January, 1994 between Ramesh Pandya and Pradeep Karamshi Shah and that Real Industrial Park Ltd. company No. 54643 had four shares and the original subscribers had one (1) share each. PW2 stated after the first transfer of shares, Pradeep Karamshi Shah had two (2) shares while Surrinder Paul Datta and Umit Gunvat Shah had one (1) share each. He stated that, on 20th April 1994, Pradeep Karamshi Shah transferred his two (2) shares to Manish Ramniklal Shah and on 17th April, 2000, Surrinder Paul Datta transferred his one (1) share to Bharat Tank. He stated that on 17th December, 2004, Manish Ramniklal Shah transferred two (2) shares to Kingsway Holdings Ltd.

PW2 stated further that on the same date namely, 17th December, 2004, Bharat Tank transferred his share to Hashit Gulabchand Shah, and Umit Gunvat Shah transferred his share to Kishore Kaushik Meghji Shah. He stated that after these transfers of shares, Kingsway Holdings Ltd. had two (2) shares, Hashit Gulabchand Shah had one (1) share and Kishore Kaushik Meghji Shah had one (1) share. He stated that on 31st December, 2004, 96 additional shares were issued and allocated as follows; Kingsway Holdings Ltd. fifty (50) shares, Hashit Gulabchand Shah twenty-three (23) shares and Kishore Kaushik Meghji Shah twenty-three (23) shares. He stated that these additional shares together with the initial 4 shares brought the number of shares in Real Industrial Park Ltd. company No. 54643 to 100. He stated that on 31st August, 2007 Kishore Kaushik Meghji Shah transferred 24 shares he held to Kingsway Holdings Ltd. On the same date, Hashit Gulabchand Shah transferred 23 shares to Kingsway Holdings Ltd. and his last one (1) share to Growth Management Ltd. He stated that as at the end of 31st August, 2007, Kingsway Holdings Ltd. held 99 shares in Real Industrial Park Ltd. company No. 54643 and Growth Management Ltd. had one (1) share and that, that shareholding structure had not changed.

PW2 stated that in 2010, Kingsway family was celebrating 50 years of operation in Kenya and a decision was made to change the name of Real Industrial Park Limited company No. 54643 to Kingsway Industrial Park Ltd. company No. 54643. He stated that on 22nd June, 2010, the registrar of companies issued a certificate of change of name from Real Industrial Park Ltd. company No. 54643 to Kingsway Industrial Park Ltd. company No. 54643. He stated that despite that change of name, the company registration number remained C. 54643. He stated that after the certificate of change of name was issued, they asked their advocates to have the change of name effected in the title deeds of the properties that were held in the name of Real Industrial Park Ltd. company No. 54643. He stated that at the lands office, they were told that the files for their various properties could not be located. He stated that in the year 2014, the file for L.R No. 209/11288 was found and their advocate managed to effect the change of name from Real Industrial Park Ltd. company No. 54643 to Kingsway Industrial Park Ltd. company No. 54643. PW2 stated that the files for L.R. No. 209/11287 and L.R No. 209/11289 were still missing and had not been traced at the lands office. He stated that the title for L.R No. 209/11289 was used as a security by Kingsway Industrial Park Limited's sister company known as Kingsway Motors Ltd. to secure a loan from Industrial Development Bank (I.D.B). He stated that I.D.B charged the said property and also registered a caveat on L.R No. 209/11287. PW2 stated that the loan advanced by I.D.B had been paid and the property discharged but due to lack of the file at the land registry, it had not been possible to effect the discharge of charge over the property and the removal of the caveat on the other property.

In cross-examination by the State Counsel who appeared for the 1st, 2nd and 6th to 14th defendants, PW2 stated that what he told the court about the shareholding in Kingsway Industrial Park Ltd. company No. 54643 was the same information that was given to the court by the registrar of companies through PW1. He stated that following a letter by their company registrar, Synergy Registrars, their file at the companies registry was reconstructed. PW2 stated further that as at 31st August, 2007, Kingsway Industrial Park Ltd. company No. 54643 had only two (2) shareholders namely, Kingsway Holdings Ltd. with 99 shares and Growth Management Ltd. with one (1) share. He reiterated that he was a shareholder and a director in Growth Management Ltd. and that they had no dealings with persons named, Henry Kipkirong Lelei and David Kimunai Milgo. He stated that those persons were strangers to him and that the shareholding in Kingsway Industrial Park Ltd. company No. 54643 had not changed since 31st August, 2007.

In cross-examination by the advocate for the 3rd, 4th and 5th defendants, PW 2 reiterated that the files for the suit properties went missing at the land registry from time to time and that they had unsuccessfully tried to do a search on the properties. PW2 stated that there were fraudsters who were attempting to take over the suit properties and that the Nairobi City County nullified the subdivision approval that it had given in respect of L.R No. 209/11289 due to conflicts over the issue of ownership of the property.

In cross-examination by the advocate for the plaintiff in ELC No. 472 of 2017, PW2 stated that Real Industrial Park Ltd. company No. 54643 and Kingsway Industrial Park Ltd. company No. 54643 were one and the same company which had one company number. He reiterated that there was a certificate of change of name and that due to interference with the files at the companies registry and the land registry, the change of name from Real Industrial Park Ltd. company No. 54643 to Kingsway Industrial Park Ltd. company No. 54643 had not been effected with respect to some of the titles for the properties that were owned by Real Industrial Park Ltd. company No. 54643. He reiterated that Real Industrial Park Ltd. company No. 54643 was incorporated on 14th July, 1993 and that it changed its name to Kingsway Industrial Park Ltd. company No. 54643 on 22nd June, 2010 and retained the same registration number C.54643. PW2 stated further that he had in his possession the original titles for the suit properties and that the properties were adjacent to each other and were not developed.

He stated that fraudsters invaded the suit properties and constructed a boundary wall and were busy putting up structures on the suit properties contrary to the orders that had been issued by the court. He stated that he did not know the fraudsters and that he believed that they were represented in court. He stated that none of the defendants was occupying the suit properties. He stated that the invasion of the the suit properties had been reported to the police and there were two criminal cases going on against the invaders. PW2 stated that ELC No. 472 of 2017 was not filed by them and that the suit was fraudulent.

The third witness was Bharat Tank Shah (PW3). He told the court that he was a former director and shareholder of Real Industrial Park Ltd. company No. 54643 and that on 17th April, 2000, he bought one (1) share from Surrinder Paul Datta and that on 17th December, 2000 he transferred the share to Hashit Gulabchand Shah. He confirmed that he transferred his share in the company to Hashit Gulabchand Shah and to nobody else. In cross-examination by the State Counsel, PW3 stated that he never dealt with Jeneby Taita Too and that his share was transferred to Hashit Gulabchand Shah. In re-examination, he stated that he transferred his share on 17th December, 2004.

The 4th witness was Hashit Gulabchand Shah (PW4). He told the court that he was a former director and shareholder of Real Industrial Park

Ltd. company No. 54643 and that he bought one (1) share from PW3 and twenty-three (23) shares from Real Industrial Park Ltd. in 2004. He stated that he exited the company in 2007 when he sold one (1) of his shares to Growth Management Ltd. and 23 shares to Kingsway Holdings Ltd. In cross-examination by the State Counsel, PW4 stated that he was a director of Real Industrial Park Ltd. company No. 54643 between 2004 and 2007 and that he was not aware during that period of any other company with a similar name. He stated that he also never dealt with anyone by the name Janeby Taita Too and did not transfer any share to Henry Kipkirong Lelei.

The next witness was Umit Guntant Shah (PW5). He told the court that he was one of the original subscribers, shareholders and directors of Real Industrial Park Ltd. company No. 54643. He stated that they incorporated Real Industrial Park Ltd. company No. 54643 in 1993 and that he had one (1) share in the company when it was formed which he sold in 2004 to Kishore Kaushik Meghji Shah. He stated that he had no dealings with any other person in relation to that share apart from Kishore Meghji Shah. In cross-examination by the State Counsel, he stated that he had never heard of one, Janeby Too.

The next witness was Kishore Kaushik Meghji Shah (PW6). He told the court that he was a former director of Real Industrial Park Ltd. company No. 54643 having bought one (1) share from PW5 and was allocated 23 shares by the company in 2004. He stated that he resigned from the company in December, 2007 after transferring his shares to Kingsway Holdings Ltd. on 31st August, 2007. In cross-examination by the State Counsel, he stated that he never had any dealing with Janeby Arap Too.

The next witness was Manish Ramniklal Shah (PW7). He told the court that he was a director of Kingsway Industrial Park Ltd. company No. 54643 formerly known as Real Industrial Park Ltd. company No. 54643. He stated that he purchased two (2) shares from P. K. Shah and that one of the shares belonged to Ramesh Pandya. He stated that he charged one of the parcels of land that was in the name of Real Industrial Park Ltd. company No. 54643 to Industrial Development Bank Ltd. (I.D.B) to secure a loan that was advanced to Kingsway Motors Ltd. which was one of the companies which they owned. He stated that the parcel of land that was charged was L.R No. 209/11289 and that the same was still charged since the discharge of charge could not be registered at the land registry due to the missing file. He stated that he transferred two (2) shares to Kingsway Holdings Ltd. and that he had not transferred shares to any other person. In cross-examination by the State Counsel, he stated that he was still a director of Kingsway Industrial Park Ltd. company No. 54643 and also a director of Real Industrial Park Ltd. company No. 54643 that changed its name to Kingsway Industrial Park Ltd. company No. 54643. PW7 stated that he had never dealt with Janeby Too and that he was a stranger to him. In cross-examination by the advocate for the 3rd, 4th and 5th defendants, he reiterated that the property that was charged to I.D.B was L.R No. 209/11289. He stated that the name of the registered owner of the property had not been changed to Kingsway Industrial Park Ltd. company No. 54643.

After the close of evidence, the parties made submissions in writing. The 3rd, 4th and 5th defendants filed their submissions on 26th April, 2019. The plaintiff and the Attorney General filed their submissions on 21st February, 2019. The other parties did not file submissions.

Determination:

I have considered the pleadings and other material on record. I have also considered the evidence and submissions by the advocates appearing for the parties. As mentioned earlier in this ruling, the issues that I have been called upon to determine at this stage are;

1. Which of the various companies before the court bearing the names Kingsway Industrial Park Limited and Real Industrial Park Limited are valid and lawful?
2. Who are the lawful directors of the legitimate companies?

The determination of these issues has become necessary because there are before the court various outfits going by the names Real Industrial Park Ltd. and Kingsway Industrial Park Ltd. some of which share company numbers but have different directors. Others share names but have different company numbers and directors.

The central issue in the dispute before the court has nothing to do with these companies. The crux of the dispute revolves around the ownership of three parcels of land known as L.R No. 209/11287, L.R No. 209/11288 and L.R No. 209/11289 (the suit properties) all registered in the name of Real Industrial Park Ltd. The parties before the court more particularly the plaintiff and the interested parties have claimed to own the suit properties through their own Real Industrial Park Ltd. and Kingsway Industrial Park Ltd. To determine the lawful owner of the suit properties, it is important that a determination be made as to the legality of the various vehicles known as Real Industries Park Ltd. and Kingsway Industrial Park Ltd. through which the plaintiff and the interested parties have laid a claim to the suit properties.

The plaintiff herein, Kingsway Industrial Park Ltd. company No. 54643 has claimed that it is also known as Real Industrial Park Ltd. company No. 54643 which owns the suit properties and that Kingsway Industrial Park Ltd. company No. 54643 and Real Industrial Park Ltd. company No. 54643 is one and the same company. The plaintiff has contended that Real Industrial Park Ltd. company No. 54643 was incorporated on 14th July, 1993 under company No. C.54643 and that it changed its name on 22nd June, 2010 to Kingsway Industrial Park Ltd. company No. C.54643, the plaintiff herein. The plaintiff has contended that even though Real Industrial Park Ltd. company No. C.54643 changed its name to Kingsway Industrial Park Ltd., it retained its company number C.54643. The plaintiff has contended further that the directors and shareholders of the plaintiff which was formerly known as Real Industrial Park Ltd. company No. C.54643 as at the time of filing of the suit were Kingsway Holdings Ltd., Growth Management Ltd. and Manish Ramniklal Shah.

The other Kingsway Industrial Park Ltd. laying a claim to the suit properties is the one that was incorporated on 4th April, 2011 under company number CPR/2011/44366. The directors of this company as at the time of filing this suit were Henry Okech Opondo, Ernest Kiprotich Kimitei and Charles Mutuku Matolo. The other company laying a claim to the suit properties is also known as Real Industrial Park Ltd. The company was also incorporated on 14th July, 1993 under company number C.54643. The directors of this company as at the time of filing this suit were Paul Maiyo and Janeby Taita Arap Too.

The other company laying a claim to the suit properties is Real Industrial Park Ltd. which was incorporated on 5th January, 1989 under company number C.54643. The directors of this company as at the time of filing this suit were Henry Kipkirong Lelei and David Kimunai Milgo who sought leave to be joined in ELC No. 472 of 2017 and were allowed to participate in these proceedings.

The plaintiff in this suit was represented by the firm of B. M. Musyoki & Co. Advocates. Kingsway Industrial Park Ltd. incorporated as company Number CPR/2011/44366 was represented by T. K. Rutto & Company Advocates. Real Industrial Park Ltd. whose directors were Jeneby Taita Arap Too and Paul Maiyo was represented by Kimani, Kiplagat and Company Advocates. Real Industrial Park Ltd. which was the plaintiff in ELC No. 472 of 2017 was represented by Joseph Kiarie & Company Advocates and Real Industrial Park Ltd which was incorporated on 5th January, 1989 under company number C. 54643 was represented by Okoth & Co. Advocates. The Attorney General appeared for the 1st, 2nd and 6th to 14th defendants while the firm of Mereka & Company Advocates appeared for the 3rd, 4th and 5th defendants.

At the trial only the plaintiff and the Attorney General called witnesses. After analysing oral, affidavit and documentary evidence before the court, it is my finding that the lawful Real Industrial Park Ltd. is the one that was incorporated on 14th July, 1993 and registered under company No. C.54643 with Pradeep Karamshi Shah, Ramesh Pandya, Surrinder Paul Datta and Umit Gunvant Shah as shareholders and directors. It is also my finding that the lawful Kingsway Industrial Park Ltd. is the one with company No. C.54643 which came about as a result of a change of name of Real Industrial Park Ltd. company No. C.54643. It is my further finding that all other entities and outfits masquerading as Real Industrial Park Ltd. and Kingsway Industrial Park Ltd are fraudulent and illegal creatures formed for the sole purpose of fraudulently dispossessing and depriving the shareholders and directors of the genuine Real Industrial Park Ltd. company No. C.54643 and Kingsway Industrial Park Ltd. company No. C.54643 of the suit properties.

The evidence on record shows that the legitimate and genuine Real Industrial Park Ltd. was incorporated on 14th July, 1993 under company No. C. 54643 with Pradeep Karamshi Shah, Ramesh Pandya, Surrinder Paul Datta and Umit Gunvant Shah as shareholders and directors. The uncontroverted evidence also shows that this company changed its name on 22nd June, 2010 to Kingsway Industrial Park Ltd. and that it retained its company number as C. 54643. It is also my finding from the evidence on record that the current lawful directors of the genuine Real Industrial Park Ltd. which changed its name to Kingsway Industrial Park Ltd. are, Growth Management Ltd., Kingsway Holdings Ltd. and Manish Ramniklal Shah. The affidavit evidence of Joyce C. Koech sworn on 5th July, 2017, the oral evidence that was tendered by PW1 to PW7 and the documentary evidence that was adduced in court regarding the incorporation of Real Industrial Park Ltd. company No. 54643, the change of name of Real Industrial Park Ltd. company No. 54643 to Kingsway Industrial Park Ltd. company No. 54643, the increase of share capital, allocation of shares, transfer of shares and appointment of directors were not controverted.

From the evidence on record, I am in agreement that there existed another company by the name Kingsway Industrial Park Ltd. This company was incorporated on 4th April, 2011 under company number CPR/2011/44366. From the evidence adduced by PW1, this company was incorporated by mistake because there was already in existence another company by the name Kingsway Industrial Park Ltd. under company number C.54643 (the plaintiff) which came about as I mentioned earlier as a result of change of name of Real Industrial Park Ltd. company No. 54643. From the evidence on record, when it was brought to the attention of the registrar of companies that a company had been registered with a name similar to that of an existing company, the registrar of companies dissolved Kingsway Industrial Park Ltd. that was incorporated under company number CPR/2011/44366. The same was struck off the register through Gazette Notice No. 962 published on 3rd February, 2017. It follows therefore that the said company does not exist as a legal entity.

As to the Real Industrial Park Ltd. which was allegedly incorporated also on 14th July, 1993 under company number C. 54643 whose directors are said to be Paul Maiyo and Jeneby Taita Too, what I can say is that from the evidence placed before the court, its existence is questionable. This company moved the court by an application brought by way of Notice of Motion dated 22nd May, 2017 seeking an order that it be joined in this suit as an interested party which application was allowed by the court. In support of that application, the company filed an affidavit sworn by Jeneby Taita Arap Too on 22nd May, 2017 to which several documents were annexed among them its certificate of incorporation No. C. 54643 dated 14th July, 1993. The company also filed in court an index of documents which contained among others its defence and list of documents. In the list of documents, the company annexed among others its certificate of incorporation, tax compliance certificate and a search it had carried out at the companies registry on its status. The first thing which is notable from these documents presented to court by this company is that its certificates of incorporation annexed to the affidavit of Jeneby Taita Arap Too and the one annexed to the list of documents are different. Secondly, I have noted from the search the company carried out at the companies registry on 9th February, 2018 at 09:06 a.m that the company was incorporated on 11th June, 2010 under Company Number C. 54643 and that its directors were Paul Chemngok Maiyo and Kenton Construction Company Ltd. It is not clear whether this Real Industrial Park Ltd. was incorporated on 14th July, 1993 or on 11th June, 2010. This Real Industrial Park Ltd. did not place any evidence before the court of its Memorandum and Articles of Association or any returns it had filed with the registrar of companies over the years. PW1 disowned this company's certificate of incorporation.

It is my finding from the evidence on record that there is no other company with the name Real Industrial Park Ltd. that was incorporated on 14th July, 1993 under Company Number C. 54643 apart from Real Industrial Park Ltd. that changed its name to Kingsway Industrial Park Ltd. and whose current directors I have mentioned above. If at all this other Real Industrial Park Ltd. existed, nothing would have been easier for it than to place its Memorandum and Articles of Association in evidence together with the annual returns.

The other Real Industrial Park Ltd. was that which was registered on 5th January, 1989 under Company Number C. 54643. Apart from a certificate of incorporation which was neither signed nor certified and correspondence said to have originated from the registrar of companies, this company placed no other evidence of probative value before the court showing that it was actually incorporated on 5th September, 1989. The company did not place before the court its Memorandum and Articles of Association or Annual Returns. The company did not also controvert PW1's evidence that that apart from Real Industrial Park Ltd. company No. 54643 that changed its name to Kingsway Industrial Park Ltd. company No. 54643, they did not register any other company by the name Real Industrial Park Ltd. I am not satisfied from the evidence before the court that this company was incorporated on 5th January, 1989 as alleged and that it is in existence as a legal entity.

Conclusion:

In the final analysis and for the foregoing reasons, the following are my findings on the issues that were framed by the parties for determination.

1. The only lawful Real Industrial Park Ltd. is the one that was incorporated on 14th July, 1993 under company No. C. 54643 with Pradeep Karamshi Shah, Ramesh Pandya, Surrinder Paul Datta and Umit Gunvant Shah as shareholders and directors.
2. The only lawful Kingsway Industrial Park Limited is that which came into existence on 22nd June, 2010 when Real Industrial Park Ltd. company No. C. 54643 changed its name to Kingsway Industrial Park Ltd. company No. C. 54643.
3. Real Industrial Park Ltd. company No. C. 54643 and Kingsway Industrial Park Ltd. company No. C. 54643 is one and the same company.
4. The lawful directors of Kingsway Industrial Park Ltd. company No. C. 54643 formerly known as Real Industrial Park Ltd. company No. C. 54643 which is the plaintiff herein are, Growth Management Ltd., Kingsway Holdings Ltd. and Manish Ramniklal Shah.
5. The other entities known as Real Industrial Park Ltd. and Kingsway Industrial Park Ltd. formed by Jeneby Taita Arap Too and Paul Maiyo; Henry Kipkirong Lelei and David Kimunai Milgo; Ken Wycliffe Lugwili; and Henry Okech Opondo, Ernest Kiprotich Kimutei and Charles Mutuku Matolo are illegal entities.
6. The costs shall be in the cause.

Delivered and Dated at Nairobi this 30th Day of January 2020.

S. OKONG'O

JUDGE

Ruling read in open court in the presence of

Mr. Ouma for Plaintiff

Mr. Kamau for the 1st, 2nd and 6th to 14th defendants

N/A for the 3rd to 5th defendants

N/A for the 1st interested party

N/A for the 2nd interested party

N/A for the plaintiff in ELC No. 472/2017

C. Nyokabi-Court Assistant