



Kenya Ports Authority & another (Suing Through its Registered Trustees) v Akaba Investments Ltd. & 8 others (Environment & Land Case 282 of 2018) [2025] KEELC 4632 (KLR) (20 June 2025) (Judgment)

Neutral citation: [2025] KEELC 4632 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 282 OF 2018**

**LL NAIKUNI, J
JUNE 20, 2025**

BETWEEN

**KENYA PORTS AUTHORITY 1ST PLAINTIFF
KENYA PORTS AUTHORITY PENSION SCHEME 2ND PLAINTIFF
SUING THROUGH ITS REGISTERED TRUSTEES**

AND

**AKABA INVESTMENTS LTD. 1ST DEFENDANT
KEMO CONTRACTORS LTD. 2ND DEFENDANT
HASSAN ABUBAKAR 3RD DEFENDANT
SAMUEL KIPCHUMBA T/A PES INVESTMENT 4TH DEFENDANT
HILLARY OSODO T/A HIRIRA ENTERPRISES 5TH DEFENDANT
ABUBAKAR KISILO & SHABAN ISMAIL T/A. SHABAN BLUE
ENTERPRISES 6TH DEFENDANT
THE NATIONAL LAND COMMISSION 7TH DEFENDANT
THE LAND REGISTRAR 8TH DEFENDANT
THE HON. ATTORNEY GENERAL 9TH DEFENDANT**

JUDGMENT

I. Preliminaries

1. The Judgment of this Honourable Court pertains to the Further Amended Plaint dated 4th December, 2018 instituted by the Kenya Ports Authority and the Kenya Ports Authority Pension Scheme



(Suing through its registered trustees), the Plaintiffs herein against Akaba Investment Limited, Kemo Contractors Limited, Hassan Abubakar, Samuel Kipchumba T/A PES Investment, Hillary Osodo T/A Hirira Enterprises, Abubakar Kisilo and Shaban Ismail T/A Shaban Blue Enterprises, the National Land Commission, the Land Registrar and the Attorney General the Defendants herein.

2. Upon service of the pleading and summons to enter appearance, the 1st Defendant entered appearance and subsequently filed their Statement of Defence dated 5th February, 2019. Likewise, the 2nd Defendant filed a Statement of Defence dated 29th January, 2019.

II. Description

3. The 1st Plaintiff was described as a State Corporation duly established under the provisions of section 3 of the [Kenya Ports Authority Act](#) Chapter 391 of the Laws of Kenya. It is a body corporate with perpetual succession and a common seal and the Plaintiff has power to sue in its corporate name and to acquire hold and dispose of movable and immovable properties for its purposes while the 2nd Plaintiff is a pension scheme registered under the Retirement Benefit Act Chapter 197 of the Laws of Kenya.
4. The 1st and 2nd Defendants were described as a limited liability companies duly incorporated under the [Companies Act](#) and carrying out business within the Republic of Kenya. The 3rd, 4th, 5th and 6th Defendants were described as adults of sound mind and understanding working for gain and residing in the County of Mombasa.
5. The 7th Defendant was described as a Constitutional Commission duly established under the provision of Article 67 of [the Constitution](#) of Kenya 2010 read together with the [National Land Commission Act](#) and was a successor of the Commissioner for Lands. The 8th Defendant was the Land Registrar which office was created under the [Land Registration Act](#), No. 3 of 2012 and is sued through the Attorney General. The 9th Defendant was described as the Chief Legal advisor to the Government of Kenya under the provision Article 156 of [the Constitution](#) of Kenya, 2010.

III. Court Directions before hearing

6. Nonetheless, on sometimes in the year 2022, the Honourable Court fixed the hearing dated on 23rd April, 2024 with the parties having fully complied on the Provisions of Order 11 of the Civil Procedure Rules 2010 and the matter proceed for hearing by way of adducing “Viva Voce” evidence with the Plaintiffs’ witnesses PW – 1 and PW - 2 testifying in Court on 23rd April, 2024 and PW - 3 on 23rd July, 2024; after which they marked their case closed on 23rd July, 2024 and the Defendants called their witness DW - 1 on 23rd July, 2024 they marked their case closed on the same day.

IV. The Plaintiffs’ case

7. The Plaintiffs’ case was that at all material times, the 1st Plaintiff was the legal or beneficial owner of the fee simple interest in properties known as MSA/BLK/XXIII/179 (Hereinafter referred as “The Suit Property”) which property the 1st Plaintiff inherited and/or acquired from the East African Railway and Harbours Administration and subsequently the East African Harbours Corporation vide [Legal Notice No.19 of 1969](#) and [Legal Notice No. 160 of 2001](#) respectively and which the particulars are well within the Defendants’ knowledge. The Plaintiffs developed house staff for the 1st Plaintiff onto the suit property. Sometimes in the year 1999, the property was sub - divided to create a public access road. Further, the sub - division was to create individual titles for each of the houses on the property resulting in the creation of plots namely Land Reference numbers Mombasa/Block XXIII/214 - 226 and 231 - 244.



8. The Commissioner for Lands purported to illegally excise portions of the said MSA/BLK/XXIII/179 reserved for the public access road and purported to grant the same to third parties unknown to the Plaintiffs. For instance, a). Plot No. Mombasa/Block XXIII/227 was allocated to Hassan Abubakar (the 3rd Defendant); b). Plot No. Mombasa/Block XXIII/228 was allocated to Samuel Kipchumba t/a Pes Investment (4th Defendant); c). Plot No. Mombasa/Block XXIII/229 was allocated to Hillary Osodo t/a Hirira Enterprises (5th Defendant); d). while Plot No. Mombasa/Block XXIII/230 was allocated to Abubakar Kisilo and Shaban Ismail t/a Shaban Blue Enterprises (6th Defendant). Further and better particulars are well within the Defendants' knowledge.
9. The 1st Plaintiff averred that the Commissioner for Land acted illegally, unlawfully and without jurisdiction in purporting to allocate to the 3rd, 4th, 5th and 6th Defendants portions of Mombasa/Block/XXIII/179 considering that the suit properties were not unalienated government land as defined under the Government Lands Act, Cap. 380 (repealed) for the properties to be available for allocation by the Commissioner for Lands and the decision of the Commissioner for Lands was illegal, unlawful, null and void for want of jurisdiction and the same could not bestow any legally recognized right to the suit properties to the 3rd, 4th, 5th and 6th Defendants capable of protection by law.
10. The Plaintiffs held the 7th Defendant liable for the acts or omissions of the Commissioner for Land as the successors of the said office pursuant to the provision of Sections 31 and 32 of the *National Land Commission Act*. The 3rd, 4th, 5th and 6th Defendants purported to transfer the aforesaid properties namely Mombasa/Block XXIII/227 Mombasa/Block XXIII/228 Mombasa/Block XXIII/229 and Mombasa/Block XXIII/ 230 to the 1st Defendant. However, the Plaintiffs averred that the said Defendants were incapable of transferring a good title to the 1st Defendant since they had none in the first place. The 1st and 2nd Defendants had started developing the said properties which action amounted to trespass to the Plaintiff's properties. In so doing, the 1st and 2nd Defendant were blocking access to the Plaintiff's staff houses, posing threats and security risks to the lawful occupants of the suit property who were the Plaintiffs' staff.
11. Additionally, it was opined that the 1st and 2nd Defendants had invaded the suit properties without the Plaintiffs permission and authority. That the Defendants were illegally putting up constructions on the public access road impeding access to the Plaintiffs houses. They had ignored protestations from lawful occupants urging them to stop the constructions as it interferes with the Plaintiffs enjoyment of the property. As a result of the said illegal allocation of the Plaintiff's land as aforementioned, the Plaintiff commenced Judicial Review proceedings in "High Court Misc. Application No.124 of 2001 - Republic - Versus - Commissioner of Lands, Municipal Council of Mombasa & Akaba Investments Limited Ex - Parte Kenya Ports Authority" where the 1st Plaintiff sought Prerogative orders of Certiorari to quash the decision to allocate portions of Mombasa/Block/XXIII/179 namely Plots No. Mombasa/Block XXIII/227, 228, 229 and 230 which orders were granted. However, being aggrieved the Defendants preferred an appeal to the Court of Appeal in Civil Appeal No 255 of 2003 whereby the court held that the dispute should be filed as a normal suit at the appropriate court and not as a judicial review. In a nutshell, the appeal was allowed. Thus, that led to the institution of the instant case.
12. The Plaintiffs averred that the dispute over the illegal allocation of the said properties was yet to be heard on merit by any competent court. That unless this Honourable Court intervened, the Plaintiffs stood to suffer irreparable loss and damage to the Plaintiff's property. The 1st and 2nd Defendants threatened and intended, unless restrained by this Honourable Court, to continue to remain in wrongful occupation of the suit property. That the Defendants occupation, development and or construction was against public policy.



13. The 7th Defendant as the successor of the Commissioner for Land ought to cancel and or revoke the allocation of the suit property and revert the same to public use. The Plaintiffs averred that the 8th and 9th Defendants be ordered to cancel the 1st Defendant's titles and rectify the register accordingly to revert the property to the Plaintiffs. Despite demand and notice of intention to sue being issued, the Defendants had failed, refused and/or neglected to make good the Plaintiffs claim thus necessitating these proceedings. The Plaintiff averred that save for the judicial review proceedings mentioned in paragraph 16 above, there was no other suit pending before this court or any other court over the same subject matter involving the same parties herein.
14. Therefore, the Plaintiffs prayed for Judgment against the Defendants for:-
- a. A declaration that the Commissioner for Lands acted unlawfully and ultra vires in allocating Mombasa/Block XXIII/227 Mombasa/Block XXIII/228 Mombasa/Block XXIII/229 and Mombasa/Block XXIII/ 230 to the 3rd, 4th, 5th and 6th Defendants respectively and the allocation is null and void.
 - b. An order that the purported transfer of Mombasa/Block XXIII/227 Mombasa/Block XXIII/228 Mombasa/Block XXIII/229 and Mombasa/Block XXIII/230 by the 3rd, 4th, 5th and 6th Defendants respectively to the 1st Defendant is null and void.
 - c. An order that the 7th and 8th Defendants does revoke all the 1st Defendant's title to Mombasa/Block XXIII/ 227 Mombasa/ Block XXIII/ 228 Mombasa/ Block XXIII/ 229 and Mombasa/Block XXIII/ 230.
 - d. A permanent injunction restraining the 1st and 2nd Defendants, their agents and/or assigns from developing and or constructing on plots Mombasa/Block XXIII/227 Mombasa/Block XXIII/228 Mombasa/Block XXIII/229 and Mombasa/Block XXIII/230 illegally created on the public access road.
 - e. An order of rectification of the land registers in respect of all the Plaintiff's aforesaid parcels of land.
 - f. General damages for trespass.
 - g. Cost of this suit together with interest thereon at such rate and for such period of time as this Honourable Court may deem fit to grant.
 - h. Any such other or further relief as this Honourable Court may deem appropriate
15. Mr. Wafula Advocate for the Plaintiffs had the following remarks in his opening statement that the dispute was on 4 Plots – 227, 228, 229 and 230. They were hived off from 179, Plot No. 179 was owned by Kenya Ports Authority (KPA) it was sub - divided to Plots Nos. 214 to 226 and 231 to 244. The remainder was access road to the suit plot. The plots numbers 227, 228, 229 and 230 were created illegally from the access road. The RIM was still to be created for these plots. How could have been the plots created from the air without the RIM and hence from the prayers in the Plaint to have the plots be cancelled and costs to be awarded to them.
16. The Plaintiffs called their 1st Witness on 23rd April, 2024 who testified as follows:-

A. Examination in Chief of PW - 1 by Mr. Wafula Advocate.

17. The witness testified under oath and in English language. He identified himself as STEPHEN KHANDI. He worked for KPA as a Legal Officer in the litigation department. He had worked there



for 22 years. He recorded a statement dated 14th December, 2010 found at page 13. He told the court that there was Plot No. 179, KPA sub -divided it into Plot Numbers 214 to 244. There was a request from the Municipal Council to have access road created to those plots. The KPA obliged. It was from the access road that some illegal plots were created being Plots Numbers 227, 228, 229 and 230 which the Plaintiff had no knowledge of.

18. The 3rd, 4th, 5th and 6th Defendants claimed they bought the said plots from the 1st Defendant. These plots did not exist nor available for allocation as they belong to the Government. He was aware of the previous Judicial Review case under the contents of Paragraph Q on Page 30 being JR. No. Misc. No. 124 of 2001. It was a Judgment – KPA acquired Judgment to its favour but the Respondents preferred an appeal and the Court of Appeal decided that the KPA could not acquire legal Rights over the land through a Judicial Review but instead it should have filed a conventional and/or ordinary proper suit. As a result, KPA instituted the instant suit before this court.
19. PW - 1 relied on his witness statement as part of his evidence in chief. He produced the list of documents referred in his statement as evidence. The Plaintiff exhibits were produced as numbers 1, 2, 3 and 4 (Paragraph G).

B. Cross examination of PW - 1 by M/s. Abdalla Advocate.

20. PW - 1 told the court that all parcels belonged to KPA. It had the title deed. The Plaintiff had not produced title No. 179 produced as it had been surrendered upon the sub - division. He agreed the legal notices was not proof of ownership. He had proof that Plots 227, 228, 229 and 230 should never have existed through the recorded statement. These plots were not available for allocation to anyone including the Defendants. Apart from his statement he had not produced any evidence of these irregularity.
21. The 1st Defendant purchased the property knowing that they were irregular. The Surveyor's Reports showed there was no RIM. That area was reserved for access road for the KPA staff. It was from the survey the area was in use. When the sub - division of Plot No. 179 was done, 25 Plots were created. These were Plots No. 214 to 244. The plots No. 225, 226, 227, 228, 229 and 230 were not part of this sub – division. He disputed that the purchasers were innocent for value.

C. Cross Examination of PW - 1 by Mr. Onyango Advocate.

22. PW - 1 confirmed that they had sued the 2nd Defendant. He had not produced any documents showing of the apportionment of the suit land or role of the 2nd Defendant as a contractor. The 2nd Defendant had not been on site to prove that there was a contractor on site. He did not have proof that the 2nd Defendant had any numbers and he did not have any documents indicating that he was the Licensed Contractor engaged on site. The witness did not have any Investigation Report. The 2nd Defendant was just a Contractor and hence had no interest on land or agent of somebody. They were engaged by the 1st Defendant and who was known to him.
23. There were titles for Plot Numbers 225, 226, 227, 228, 229 and 230 but he did not question their legal validity. For an ordinary contractor who had not carried any official search would believe they were genuine title deeds. The 1st Defendant alleged he was never engaged by someone. It may have been necessary to be joined it in the suit.

D. Cross Examination of PW - 1 by Mr. Makuto Advocate.

24. PW - 1 reiterated that KPA was the owner of Plot No. 23/179. KPA caused the sub - division of Plot No. 179. He confirmed that it was during that sub-division of the Plot No. 179 there were access roads



servicing the said plot. That is the access roads were to serve plots No. 214 to 244. It was not the intention by the Plaintiff to have the said sub-divided plots be for allocation. He had conducted investigation. Unfortunately, he had not come with the Kenya Gazette for the allocation of Plot No. 227 to 230. There were public auction to this effect. These plots did not exist in the RIM. It was the responsibility of the purchaser to have conducted due diligence and if they conducted an official search they would have seen that those plots did not exist.

E. Re - Examination of PW - 1 by Mr. Wafula Advocate.

25. According to the witness, the Kenya Gazette Notice did not confirm ownership. Initially, Plot No. 179 belonged to East Harbour Railways and then East African Community Harbours. But upon the collapse of E.A.C.H, KPA acquired the property as seen on Page No. 18 of the Plaintiff's bundle found being Legal Notice No. 160. KPA was in occupation of the 179. It was with the desire of the development of the staff quarters on it. The access road was within Plot No. 179. After the sub-division of Plot 179 – it created Plots numbers 214 to 244. The Defendants claimed to own Plot No. 225 to 230. The witness claimed they were allocated for staff scheme. It was never sold to any person.

26. The Plaintiffs called PW - 2 who testified as follows:-

A. Examination in Chief of PW - 2 by Mr. Wafula Advocate.

27. The witness testified in English language and under oath. He identified himself as PADWICK MARATANI. He was an employee of the KPA Pension Scheme in charge of Investments. He swore the witness statement he confirms Plot No. 179 was sub - divided and Plot No. 214 to 234 was transferred to the Pension Scheme. They were disputing Plot No. 225 to 230 were allocating the access road. Plot No. 225 to 230 were for access road. The said plots were on Mbaraki to access to Nyerere Road and it was allocated to the Pension Scheme for its staff. He had sued the 2nd Defendant, they were undertaking a construction on the suit land.

B. Cross Examination of PW - 2 by M/s. Abdalla Advocate.

28. The witness reiterated that he could only confirm that Plots No. 214 to 224 have title documents he would be speculating of over other title issues. He was not aware of the suit in Court in 2009. He may not be aware of the allocation of Plot No. 225 to 230 to others. The witness said he left it to KPA. The statement held that the allocation of the plot No. 227 to 230 was unlawful and fraudulently done. He did not have any documents to demonstrate that these properties were reserve for road reserve, he was not aware that Plot No. 227 to 230 did exist and from the RIM. Plot No. 214 to 224 were allocated to Pension Scheme. He was informed that the Plot No. 227 to 230 were reserved for access road. It reduced the access to the staff quarters. The said plots were hindering the access to their plot. These were from year 2009, they had never reported the complaint to any authority – NLC, Government e.t.c. as the matter was being handled by KPW. They had access to their plots.

C. Cross Examination of PW - 2 by Mr. Onyango Advocate.

29. PW - 2 reiterated that he was the Investment Officer from year January, 2021. He was never there in 2018 but he relied on existing available documents. The witness was never there when the development was being done. He had not seen the Board. He was only relying on information given to him or on record. He had not seen the Development Plan to know the contractor. He agreed that depending on the size of the development. It would require approval from various authorities e.g. NEMA, NCA e.t.c. From the record, there was nowhere KEMU Contractors Ltd. appeared anywhere. They had no



legal interest on land and if at all he was on the ground, they were there out of request by someone – the 1st Defendant.

D. Cross Examination of PW - 2 by Mr. Makuto Advocate.

30. With reference to Page 33 (ParagraphIt was the Judgment on the JR Misc. No. 124 of 2001) starting from the words “The Municipal Council, the” at line 2 that the witness confirmed that there was an affidavit by Mr. Wycliffe Mukhongo who held that they were road reserve and on the issue of the approvals.

E. Re - Examination of PW - 2 by Mr. Wafula Advocate.

31. PW - 2 reiterated that although they had access to their plots it was too narrow as had been envisaged. The wider part had been taken up by Plot No. 225 to 230.
32. The Plaintiffs called PW - 3 on 23rd July, 2024 who testified that:-

A. Examination in Chief of PW – 3 by Mr. Wachira Advocate.

33. The witness testified under oath and in the English language. He identified himself as Dennis Malembeka. He was a registered Land Surveyor. He graduated from University of Nairobi in BA. Land Survey and Photograph. He had been attached to the Edward Kiguru & Surveyors. He prepared the Land Report dated 2nd June, 2023, on the suit land. From the site visit, they found the plots were along Nyerere road and Mbaraki area. They used a methodology that would get them the historical background of the area. They got plans– Director of Survey plans and the RIM. Plans No. “A”, “B “and “C“ of different dates and hence able to obtain the location where they fell on the RIM and provide a very specific location – on paragraph 3 of the Report. The site visit was necessary but they never got the beacons. They were able to locate the boundaries.
34. The witness further told the court that as per the Letter of Allocation it showed the un-surveyed plots. However, upon conducting of the survey – it indicated that Mr. Hassan Abubaka was allocated Plot no. A and eventually – parcel No. 227; Plot No. B was allocated to PES Investment for Mr. Samuel Kipchumba Plot No. B and Plot No. 228 and Plot No. C was allocated to IRIBA Investment – Plot 229. Plot No. D – Plot 230 to Blue Line under Mr. Hassan Abubakar. The said plots were located on RIM No. 174 which essentially was an access road. According to PW - 3, the access road were meant to serve Plot 178 which was subdivided to serve Plot 179 and 180 and eventually one plot was further sub-divided to give to 218, 2019, 220, 221 to the Northern side of the plot, and 201, 231 and 205.
35. Paragraph 4 summarized the situation of the access road i.e. reduced it to 12M road. Hence Plot 218, 219, 220 and 221 were restricted to the gate area. There was FR/390/52 i.e. the Survey Plan. The importance of Registry Index Map (RIM) indices all the registration maps of that area. RIM also showed the relatives the neighboring plots and its access i.e. location and availability of the plots and on Plots o. 227, 228, 229 and 230 he got the F/R from the Director of Survey and these plots were not on it – no amendment was done.
36. PW - 3 wondered how the Land Registrar was able to prepare the Grants without the RIM; the F/ R Plan which was approved and the shape of the area and hence without any encroachment. It was based on this information from the Director of Survey that is send to the Commissioner of Lands who prepared the Grant which was send to the Registrar of Titles, Mombasa to register and issue the titles. In short all these properties were irregular. These plots were already surrendered as access road and hence they were not available for allocation. It was a public road and closed and not available for allocation. He produced the Report dated 2nd June, 2023 as “Plaintiff exhibit No.”



B. Cross Examination of PW - 3 by M/s. Abdalla Advocate.

37. PW - 3 confirmed that he had been a Surveyor since year 1994. He was not a Licensed Surveyor but an Assistant surveyor. He was not aware of any boundary land dispute. The government may confirm allocation through the Letters of Allotment. In this case, the allocation was through the Letters of Allotment. It was not possible that the allocation with the amendment of RIM is the sole authority by the Director of Survey. From the methodology used there were no error. It was not within his knowledge that a Surveyor's report was overturned by any court of law.

C. Cross Examination of PW - 3 by Mr. Onyango Advocate.

38. PW - 3 reiterated that from his report, he had neither mentioned the site visit nor a ground report. The report did not mention any development on the site. He did not supply the information on the board by the developers. He did not deal on the construction on site as it was not part of his task. KEMU Contractor Ltd never appeared in any of the Letter of Allotments.

39. Mr. Wafula Advocate on 23rd July, 2024 marked the Plaintiffs case closed.

V. The Defendants' case

40. The 1st Defendant filed their Statement of Defence in opposition to the Plaintiffs' suit dated 5th February, 2019 where it was deposed as follows:-

- a. The 1st Defendant denied Paragraph 8 of the Plaintiff and stated that the proof of land ownership in Kenya was a Certificate of Title and not a legal notice.
- b. The 1st Defendant denied Paragraph 9 of the Plaintiff and stated that the 1st Plaintiff was not charged with the mandate of creating public access roads.
- c. Paragraphs 10, 11 and 12 of the Plaintiff was denied and the Plaintiffs were put to strict proof thereof.
- d. Paragraph 13 of the Plaintiff was denied and without prejudice the 1st Defendant averred that it was an innocent purchaser of value without notice.
- e. The 1st Defendant denied the contents of Paragraph 14 of the Plaintiff and stated that it was impossible to trespass on land that it legally owned.
- f. Paragraph 16 of the Plaintiff was admitted. However, the court in its Judgment also affirmed that the 1st Plaintiff did not at any point in time own the land in contention and the certificate of title proved that the 1st Defendant was the duly registered proprietor of the same.
- g. Paragraph 17 was denied and the 1st Defendant averred that the matter had been heard and determined thus there should be a finality to litigation.
- h. Paragraphs 18, 19 and 20 of the Plaintiff were denied and the Plaintiffs were put to strict proof thereof.
- i. The 1st Defendant denied Paragraph 21 and stated that the Plaintiffs did not issue a notice to sue nor a demand.
- j. Paragraph 22 was denied and the 1st Defendant stated that this matter had been heard, determined and concluded therefore it offends the mandatory provision of law of res judicata.



- k. The 1st Defendant would be raising a preliminary objection on the ground of res judicata, and locus standi.
- l. The 1st Defendant prayed that this Honourable Court dismisses this suit with costs to the 1st Defendant.

41. The 1st Defendant called its witness DW - 1 on 23rd July, 2024 who testified as follows:-

A. Examination in Chief of DW - 1 by M/s. Abdalla Advocate.

- 42. The witness testified under oath and in English language. He identified himself as Abdul Bisit Swaleh. He was a Director of 1st Defendant which dealt with import and export of goods to do with Real Estate. He recorded witness statement dated 28th April, 2022 which he adopted as his evidence in chief. Also, he filed documents dated 28th April, 2022. They were 3 documents which he produced as – 1st Defendant Exhibit numbers 1 to 3. He told the court that he bought plots No. 227, 228, 229 and 230 from the 3rd Defendant. Plots numbers 227 from Hassan Abubakar; Plot number 228 from Samuel Kichumba; Plot Number 229 from Hilary Osodo and Plot Number 230 from Abubakar and Ishmael respectively.
- 43. They purchased these plots in the year 2001 at a sum of Kenya Shillings Seven Hundred and Fifty Thousand (Kshs. 750,000/-) each. Before the purchase they conducted due diligence over the said properties. The process confirmed that they were registered in the names of the 2nd, 3rd and 4th Defendants and had no dispute. The Plaintiff had sued them in the year 2003 but it was dismissed – Civil Appeal No. 256/2003. There was no dispute over these properties with the neighbors.

B. Cross Examination of DW - 1 by Mr. Onyango Advocate.

- 44. DW - 1 told the court that he was the Director of Akaba Investment. He had never hired the 2nd Defendant. He had met Mr. Francis Ogeto Okemo but had never done any business with him. He had never hired him on any construction work. The witness had never met Mr. Benjamin Arisa. In the course of time, they applied for plans for development for Plot numbers 227 and 230 for approvals for renovation and they were granted. He had not dealt directly with the contractor. He confirmed that Mr. Francis Ogeto Kemu was not involved in this matter/project.

C. Cross Examination of DW - 1 by Mr. Wafula Advocate.

- 45. The witness was aware there were renovations not constructions on Plots No. 227, 228, 229 and 230. They were in form of a car wash and car service station. They had contracted somebody to undertake the renovations and hence he was not aware nor involved in those tasks. He was personally involved so if it was the 2nd Defendant he would not know. Regarding the purchase of the property, he understood the Plaintiffs were claiming they had been acquired illegally. On the due diligence, they conducted an official search but he had not produced it in court.
- 46. There was no due diligence by the Surveyor before they purchased it. With reference to the MAP on the Nyerere Road and Mbaraki road that was where the suit plots were. They saw the survey map and they were alright. He had seen the RIM. The RIM for the year 2023 never showed the existence of their plot. He was aware of any RIM without plots. On the rim was Plot No. 179 which was not marked as an access road.
- 47. The witness further told the court that when they were purchasing these plots there were no dispute. However, later on there were disputes with KPA – in the HCCC No. 124/2001. On being referred to the 4 plots. By the time they purchased them, they were already registered at the back of the lease.



Hence they were transferred to them. They purchased them from the Defendants. They registered them as the 1st registered owners i.e. AKABA Investment. Thus, he was not aware that the Defendant could not transfer the plots to them (1st Defendant). The plots numbers 227, 228, 229 and 230 were separate and not joined and hence there created another plot. They were not interfering with plots numbers 219 and others. To him there was a 20-meter wide road accessing all these plots. He did not know that there was 12 roads that remained.

D. Re - Examination of DW - 1 by M/s. Abdalla Advocate.

48. DW - 1 confirmed that he severally visited the site before purchasing the plots. The sellers provided them with Letters of Allotment to prove ownership. There were no properties on the access road hence all plots were accessible. He did not know anything about the RIM.
49. M/s Abadalla on 17th January, 2025 called DW - 2 who testified as follows: -

A. Examination in Chief of DW - 2 by M/s. Abdalla Advocate.

50. DW – 2 testified under oath and in English. He identified himself as being Mr. Bathlomew C. Mwanyungu. He was graduate from University of Nairobi from the year 2005. He was a member of ISPAK. He was a Registered Land Surveyor and an Expert in Cadastral Surveying exercise/tasks. He recalled receiving formal instruction from the Law of firm of Messrs. Hassan Alwai & Company Advocates vide a letter dated 10th May, 2022 to carry out a survey and produce a report for the suit lands. Specifically he was assigned four tasks i.e. to :-
- a. Establish the extent and developments around and within the boundaries of the parcel of land numbers Mombasa/Block XXII/227, 228, 229 and 230 found within the County of Mombasa.
 - b. Identify the boundary for the subject parcels
 - c. Establish any encroachments into the said parcels.
 - d. Establish how Akaba Investment Ltd. came into possession of the parcels. Eventually, he undertook the exercise situated at Mbaraki area and he prepared a report dated 23rd June, 2022 and which he produced as his evidence marked as 1st Defendant Exhibit No.....
51. According to the witness, the following were his observations: -
- a. Parcels Nos. 227, 228, 229 and 230 were created by a new Grant Survey registered as Survey plan FR No. 390/52 dated 6.1.2001. The computation file is No. 46194. The Director of Survey reference No. as on plan is CT/18/1/80
 - b. The ownership names on the Letters of Allotments that were used in the process conform to the names on the copy of the leases of the original allottees before they were transferred to AKABA Investment Limited.
 - c. Before the transfers were done to AKABA Investment Limited there were the initial owners of the parcels:-
 - i. Parcel No. 227 – Hassan Abubakar.
 - ii. Parcel No. 228 – Samwel Kipchumba.
 - iii. Parcel No. 229 – Hiripa Enterprise.



iv. Parcel No. 230 – Abubakar Kililo & Shabaan Ismail.

52. Accordingly, the witness told the court that all these parcels were transferred to Akaba Investments Limited by the above names persons who were the allottees. These were no encroachments to the parcels. His conclusions were as follows: -
- a. All the four parcels were acquired by AIC through purchase.
 - b. The Allottee were issued the parcels by the Commissioner of Lands.
 - c. There were no encroachment into the parcels or by the parcels of land.
53. According to the witness during the survey exercise, he never saw any irregularities that may have occurred in the process as alleged. To him the boundaries were in tact as per the Survey Report. He fully relied on the said report.

B. Cross examination of 1st Defendant’s (DW 2) by Mr. Onyango Advocate.

54. The witness told the court that he visited the site. From there he never saw any development carried out on the property. He only saw dug trenches in readiness for the development to commence or ensure whatsoever. The witness never saw any contractor on the ground. That is he never saw KEMO Contractors Limited on the ground nor their machineries. There was no Bill Board erected on the ground by any contractor including KEMO Contractor. He could not see nor detect any interest on the ground by KEMO Contractors.

C. Cross Examination of DW - 2 by Mr. Wafula Advocate.

55. The witness was aware of the parcels Numbers 227, 228, 229 and 230. Based on the contents of his reports these parcels came into existence having been created by the Letter of Allotment and Grant issued by the Commissioner of Lands. A RIM was used by the Land Registrar to cause their registration and entering into the Land Register, at Mombasa for a title to exist there must be a RIM (Registered Index Map). However, when he was surveying these plots he never followed the line of RIM as these plots were based on a Grant. He never established an RIM. He never used RIM. This was because he used the Survey Plan F/R 390/52 111/21 which was duly approved and authenticated by the Director of Survey and used it to identify the location of the land on the ground. He also used the information as contained and processed from the Letters of Allotment and the Part Development Plan (PDP).
56. According to the witness, as far as he was concerned he admitted that his report did not address the issue of legality of these title deeds as that was never his mandate. He left that aspect to the Lawyers under the observation his report clearly explaining that a survey was done, using the survey plan and information on Letter of Allotment and Grant of Lease were issued. Eventually the allottee transferred their Grant to the AKABA Investment Limited. According to the witness, that was his understanding of a Legal process and which was followed to the letter. The witness explained that the procedure which was used as being the root of the title deeds. He explained how they emanated from Plot LR. No. 236 on January, 2011. On page 1 of his report, it explained the purpose and the Terms of Reference (T.O.R) of his Land Survey exercise.

D. Re-Examination of DW - 2 by M/s. Abdalla Advocate.

57. According to DW – 2, the RIM Maps were not an authority on matters of boundaries on land. His understanding on the Legalties of title was that the Government allocated Letters of Allotment and then Grant was issued by the Commissioner of Lands which was then registered by the Land Registrar.



That happened and the Allottee sold the land to AKABA Investment Limited. While conducting the Survey works, he never noticed any illegalities nor irregularities at all. That is to say, in the process of acquiring the title deeds.

58. He stated that the Director of Survey had the responsibility of approving the Deed Plan and issuing RIM. He repeated all these happened and hence there was no irregularities on the property held by AKABA Investment Limited.
59. The 1st Defendant marked their case closed through its Legal Counsel M/s. Abdalla Advocate of 17th January, 2025.
60. The 2nd Defendant filed a Defence dated 29th January, 2019. The 2nd Defendant called DW - 3 who testified as follows: -

A. Examination in Chief of DW - 3 by Mr. Onyango Advocate.

61. DW – 3 testified under oath in English language. He was called FRANCIS OGESO KEMU. A contractor at KEMU Contractors. He recorded a witness statement dated 21st June, 2023 and had filed a list of documents dated 21st June, 2023 – 9 documents which he produced as the 2nd Defendant Exhibit numbers 1 to 9. The witness also stated that he filed a Defence on 29th January, 2019. He did not have any relationship with AKABA INVESTMENT LTD.

B. Cross Examination of DW - 2 by Mr. Wafula Advocate.

62. On being referred to the contents of Paragraph 10. This was on the statement that there had been people who were illegally using KEMO Contractor Ltd. from the year 2022 and 2024. That he had reported the matter to the police. He got a report. There was a person called Benjamin Okari Arisa who was using his name particulars on the KRA. He was using KEMO Construction Ltd. He was not using the PIN. He only used the name alone. They started using his name from the year 2001.

C. Re-Examination by Mr. Onyango Advocate.

63. According to the witness there was no documents to show that his name was being used and was found on the ground. His complaint at KRA was in the year 2022. From the year earlier they had been no complaint.

VI. Submissions

64. On 17th January, 2025 upon the closure of the Plaintiffs and Defendants cases, the Honourable court directed that the parties file their submissions within stringent timeframe thereof on. Parties obliged. Pursuant to that the Honourable court reserved a date to deliver its Judgement on 4th April, 2025. Unfortunately, due to unavoidable reasons, the Judgement was eventually delivered on 20th June, 2025 accordingly.

A. The Written Submissions by the 1st & 2nd Plaintiffs

65. The 1st and 2nd Plaintiffs through the Law firm of Messrs. Cootow & Associates filed their written submissions dated 14th February, 2025. Mr. Wafula Advocate commenced his submissions by providing the Court with the background of the case. He stated that the Plaintiffs herein commenced these proceedings vide a Plaint dated 4th December 2018. The Plaintiffs in their Plaint pleaded that Kenya Ports Authority was the owner of a property known as Mombasa/Block XXIII/179 which it inherited from the defunct East African Railways and Harbours Administration and subsequently the



East African Harbour Corporation vide [Legal Notice No. 19 of 1969](#) and [Legal Notice No.160 of 2001](#) respectively.

66. According to the Counsel, the Plaintiffs then pleaded at paragraph 9 of the Plaint that the Kenya Ports Authority then developed an expansive housing estate on the suit property. However, sometimes in the year 1999 the said property was sub - divided to create individual title for each of the houses on Mombasa/Block XXIII/179 and a public access road to access the sub - divisions. The sub - division resulted in Plots namely Mombasa/Block XXIII/214 - 226 and 231 - 244. At paragraph 10 of the Plaint, the Plaintiffs averred that the Commissioner of Land purported to illegally excise portions of Mombasa/Block XXIII/179 reserved for the public access road and purported to allocated the same to the 3rd, 4th, 5th and 6th Defendants. The illegal Plot created on the public access road are Mombasa/Block XXIII/227 allocated to the 3rd Defendant, Plot No. Mombasa/Block XXIII/228 allocated to the 4th Defendant, Plot No. Mombasa/Block XXIII/229 allocated to the 5th Defendant and Mombasa/Block XXIII/230 allocated to the 6th Defendant. The 3rd, 4th, 5th and 6th Defendants then purported to transfer the suit properties to the 1st Defendant. The Plaintiffs averred that the 1st Defendant contracted the 2nd Defendant to construct illegal structures on the suit properties effectively interfering with the access road. The Plaintiffs maintained that the Commissioner of Land had no power to create Plots No. Mombasa/Block XXIII/227, 228, 229 and 230 on the land reserved for a public access road specifically designed to serve individual titles created as a result of the sub - division of Plot Mombasa/Block XXIII/179.
67. The Plaintiffs contend that the titles created on the public access road are illegal and void. The Plaintiffs further averred that the 3rd, 4th, 5th and 6th Defendants did not acquire any good title to the said properties and thus could not transfer any good title to the 1st Defendant. The titles created are illegal and a nullity and therefore incapable of transferring any good title to the 1st Defendant or and therefore incapable of transferring any good title to the 1st Defendant or any other party. The Plaintiffs prayed for the cancellation of Plots Nos. Mombasa/Block XXIII/227, 228, 229 and 230 among other prayers sought in the Plaint. All the Defendants were served with the Summons and the pleadings. By an Order of this Honourable Court of 18th December 2018, this Court granted leave to the Plaintiffs to serve the 3rd, 4th, 5th and 6th Defendants by substituted service by advertising in the Newspapers. This was done on 14th January 2019 and an Affidavit of Service sworn by Nelson Mwachambi Nyiro was filed in this Honourable Court on 23rd January 2019. The 3rd, 4th, 5th, 6th and 7th Defendants failed to enter appearance or file any defence to the claim. Consequently, there were deemed not to be opposing the Plaintiffs' claim. The National Land Commission (7th Defendant) was also served as per the Affidavit of Service sworn by Alfred Soita Paul on 19th December 2018 and filed in this Honourable Court on 15th January 2019.
68. The said National Land Commission failed to enter appearance or file any defence in response to the Plaintiffs' claim. They were deemed to admit the Plaintiffs' claim as filed. The Land Registrar (8th Defendant) and the Attorney General (9th Defendant) were also served. It is on Court record that the Attorney General entered appearance for the 8th and 9th Defendants vide the Memorandum of Appearance dated 23rd January 2019 and filed in Court on 25th January 2019. Despite entering appearance, The Attorney General did not file any defence to the claim at all. The Attorney General did not attend the hearing of this case despite numerous services. The 8th and 9th Defendants are deemed to have admitted the Plaintiffs' claim as filed. In a nutshell, only the 1st and 2nd Defendants filed their defences to the claim. During the hearing of this case, the Plaintiffs called a total of three witnesses namely, Stephen Kyandih (PW - 1), Patrick Maratani (PW - 2) and Dennis Malembeka (PW - 3). The 1st Defendant called two witnesses namely, Abdulbasit Muhsin (DW - 1) and Mr. B.C. Mwanyungu



(DW - 3). The 2nd Defendant only called one witness (DW - 2). The witnesses testified in chief, adopted their statements in reports and were then extensively cross-examined and re-examined.

69. The Learned Counsel stated that the issues that arose were as follows:-
- a. Whether Plots Mombasa/Block XXIII/227, 228, 229 and 230 were illegally created on a public access road created from the sub - division of Mombasa/Block XXIII/179 as claimed by the Plaintiffs.
 - b. Whether the 1st Defendant acquired good titles to the suit properties.
 - c. Whether the prayers in the Complaint should be granted as prayed.
70. The Plaintiffs in their pleadings and evidence were categorical that Plot No. Mombasa/Block XXIII/179 then owned by the 1st Plaintiff was sub - divided to create individual titles for each house on the said Plot. The sub - division resulted in Plots No. Mombasa/Block XXIII/214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 231, 232, 233, 234, 235, 236, 237, 238, 238, 240, 241, 242, 243 and 244. The Court would note that in the above series there is a break from Plots No. 227 to 230 which was cleverly used to hide the illegal titles. PW - 1 testified that the 1st Plaintiff transferred some of the Plots in the series to the 2nd Plaintiff. This evidence was corroborated by PW - 2 who was the Chairman for the 2nd Plaintiff. PW - 1 and PW - 2 testified that Plots No. Mombasa/Block XXIII/227-230 were created on the public access road created on the former Mombasa/Block XXIII/179 to serve the sub - divisions and neighbouring plots.
71. The Learned Counsel submitted that that parties were directed to seek professional services from the Surveyors for purposes of addressing the question of how Plots No. Mombasa/Block XXIII/227-230 were created. The Plaintiffs instructed Mr. Dennis Malembeka of Mashariki Geo Surveys Ltd (PW - 3) who went to the root of the issue and prepared a report dated 2nd June 2023. In his report, PW - 3 relied on the Director of Survey duly authenticated Survey Plans marked Folio Number 290 Register Number 52 (FIR 390/52, the Original abutting plans of the locality Folio Number 111: Register Number 21 ("F/R 111/21), the Folio Number 107: Register Number 89 ("F/R 107/89) and the current certified True Copy of the Registry Index Map (RIM) of Mombasa Block XXIII from which the PW3 observed as follows in his report regarding the suit properties namely Mombasa/Block XXIII/227, 228, 229 and 230:-

“...That were essentially hived out of part of the Parcel Number Mombasa/Block XXIII/179, which was a resultant access road to Parcel Mombasa ISLAND/Block 178 and 180 as well as abutting lands PROVIDED for in 1968...

"3. That we confirm that these parcels of the properties were hived from the then existing Access Road as a resultant of subdivisions and surrender to the Government as Road and was granted Parcel Number MI/XXIII/179, upon subdivision exercise of former parcels to allow connecting Nyerere Avenue and Mbaraki Road which access was for the fulfillment of providing an access for use of parcels MI/XXIII/218-221 and 231."

72. PW - 3 stated further as follows: -

“4 That this Road reserve has hence been reduced to 12 metres only with restricted access to 218, 219, 220 and 221 leaving a narrow gate access width to the road frontages of the properties.

Then PW - 3 concluded as follows in his report:-



"5 That the RIM has not been amended to show that the road reserve excision despite the issuance and registration of the properties as per the Postal Search Records attached."

PW - 3 testified in Court that the Registry Index Map (RIM) was one of the crucial documents that was used by the Land Registrar to register land and that land could not be registered unless the RIM was amended to reflect the property. PW - 3 was categorical that registration of properties without amendment of the Registry Index Map was illegal. He further stated that land reserved for a road reserve could not be allocated. Thus, the Learned Counsel opined that it was important to note that the Plaintiffs' evidence that Plots No. Mombasa/Block XXIII/227, 228, 229 and 230 were illegally created on the public access was not seriously challenged. The evidence of PW - 3 was not shaken at all. DW - 1's only evidence was that the 1st Defendant purchased the suit properties from the 3rd, 4th, 5th and 6th Defendants. This evidence never in any way address the question of the legality of the properties purchased. The 1st Defendant's Surveyor (DW - 3) produced his report dated 23rd June 2022. It would be noted that on the face of the report itself, the purpose of this report was to establish extent of development on the subject properties, to identify the boundary beacons of the subject properties, establish any encroachment and lastly, to establish how 1st Defendant came into possession of the parcels. Therefore, it was clear the DW - 3's report never in any way investigate the legality of creation of the subject properties and to that extent the report and his evidence was irrelevant. It was clear from the evidence of PW - 3 that the Commissioner for Land allotted to the 3rd, 4th, 5th and 6th Defendants land that had been reserved for a public access road. Therefore, the said Plots Mombasa/Block XXIII/227, 228, 229 and 230 were not available for allocation and the Commissioner for Lands had no jurisdiction to allocate the same to the said Defendants. To buttress on this point, the Learned Counsel referred Court to the Court of Appeal case of:- "Nelson Kazungu Chai & 9 others – Versus - Pwani University College [2017]KECA 135 (KLR)" stated as follows at Paragraph 18 of the Judgement:-

"From the foregoing, it is not in doubt that according to the Commissioner for lands and the director of physical planning, the land in question was at all material times government land reserved for the Institute. It is little wonder therefore, that no PDP was in the offing. Additionally, from the above correspondence, it is clear that once allotted to the institute, the suit land ceased being unalienated land as defined under section 2 of the repealed Government Lands Act. Consequently, the Commissioner of Lands could not cause allocation to issue in respect of the same because under section 3 of the Act, the only land that could be so allocated was unalienated land. Therefore under statutory law, the Commissioner of lands ceased to have the mandate to allocate the land the moment the same was allocated to the institute. Even if the Commissioner were to purport to allocate the land, the same would be null and void. As stated by the predecessor of this court in the case of Said Bin Seif – Versus - Shariff Mohammed Shatry, (1940)19 (1) KLR 9; an action taken by the Commissioner of Lands without legal authority is a nullity and such an action, however technically correct, is null and void and is of no effect whether under legitimate expectation, estoppel or otherwise."

73. The Counsel submitted that the creation and allocation of the suit properties to the 3rd, 4th, 5th and 6th Defendants was without jurisdiction and therefore illegal and a nullity. Lord Denning put it simply in



the case:- “MacFoy – Versus - United Africa Limited (1961) 3 ALL ER 1169” at 1172 as follows with regard to something that was a nullity:-

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

74. The Counsel held that the National Land Commission as the successor in title of the defunct office of the Commissioner for Lands failed to enter appearance and file any defence to the claim. Therefore, the averment that the subject Plots were illegally created by the defunct office of the Commissioner for Lands was not challenged at all. The question that arose was whether the 3rd, 4th, 5th and 6th Defendants transferred a good title to the 1st Defendant. The Nemo Dat rule was a legal principle that a person who never had adequate ownership of goods or property could not transfer the ownership of those goods or that property to someone else. Justice Matheka in the case of: “Katana Kalume & Another – Versus - Municipal Council of Mombasa & Another (2019) KEELC 4044 (KLR)” stated as follows:-

“The rule of Nemo Dat quod Non Habil (No one can give that which one does not have) equally applied to the purported allocation of the suit property herein to the 2nd Defendant. A person cannot give a better title than what he has except in rare cases such as sale under an order of court, transfer of a negotiable instrument to a holder in due course. None of these exceptions apply in this case... No one can ever pass a better title than that he has.”

75. Therefore, it was the submission by the Plaintiff that the 1st Defendant could not obtain a better title than that which the 3rd, 4th, 5th and 6th Defendants had. The 1st Defendant's contention that it was an innocent purchaser for value never held any water. First, the 1st Defendant had obligation to carry out due diligence by looking at the history of the suit properties before purchasing the same. To back up its position, the Learned Counsel cited the Court of Appeal case of:- “Samuel Kamere – Versus - Lands Registrar, Kajiado Civil Appeal No. 28 of 2005 (2015) eKLR” stated as follows:-

“In order to be considered a bona fide purchaser for value, they must prove that they acquired a valid and legal title, 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.”

The Supreme Court in the case of:- “Dina Management Limited – Versus - County Government of Mombasa & 5 Others (Petition No. 8 (E010) of 2021) [2023] KESC 30 (KLR)” stated as follows:

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

76. According to the Learned Counsel, in this case, the 1st Defendant never made any attempt to establish the root of its title. For instance, had the 1st Defendant conducted due diligence as required by law, it would have established that the subject property arose from sub - division of Mombasa/Block XXIII/179 and that the area on which the Plots were created had been reserved for road access and therefore was not available for location. The 1st Defendant would have established that the Registry



Index Map (RIM) was yet to be amended to reflect the creation of the subject properties and therefore the registration of the subject property was irregular. The Supreme Court in “Dina Management (Supra)” stated as follows at Paragraph 101:

“The suit property was at the time designated as an open space. Having been designated as such, it was rendered a public utility and could not be described as unalienated public land.”

77. Additionally, the Counsel submitted that the subject properties were designated as public access road and therefore not available for allocation. Due diligence on the part of the 1st Defendant would have established these facts. Therefore, he submitted that the 1st Defendant was not an innocent purchaser as claimed. In any case the titles were a nullity from the beginning.
78. In conclusion, the Learned Counsel averred that the Plaintiffs should be granted the orders prayed. The area had been reserved for a road. In the circumstances the orders sought should be granted as prayed. It was trite law that costs follow events and thus the Plaintiffs prayed to be awarded costs.

B. The Written Submissions by the 1st Defendant.

79. The 1st Defendant through the Law firm of Messrs. Hassan Alawi & Company filed their written submissions dated 24th March, 2025. M/s. Ali Advocate commenced her submissions by providing a detailed background of the case. The Learned Counsel stated that the Plaintiffs approached this Honourable Court by way of Plaint seeking orders as against the Defendants over properties Mombasa/ Block XXIII/227, Mombasa/Block XXIII/228, Mombasa/Block XXIII/229 and Mombasa/Block XXIII/230. The Plaintiff averred that the Suit Properties were unlawfully and allocated to the 3rd, 4th and 5th Defendants and seek to had the allocation null and void and subsequently cancel the Titles issued to the 3rd, 4th and 5th Defendants. The 1st Defendant entered appearance and filed its defence stating that the properties were lawfully allocated and that the 1st Defendant was an innocent purchaser for value. The 2nd Defendant also entered appearance and filed its defence denying any involvement with the Plaintiffs and denies any cause of action as against it. The Plaintiff pleaded that it was the legal and beneficial owner of the Suit Properties having inherited it from the defunct East African Railways and Harbours Administration. It relied on the [Legal Notice 19 of 1969](#) and [Legal Notice 160 of 2001](#) to indicated it. It alleged that the Plaintiffs developed the properties, and subdivided properties known as Mombasa/Block XXIII/179 to create individual titles for houses. It stated that the Commissioner of Lands illegally excised portions of land, which land was allegedly reserved for public access and allocated the same to the 3rd, 4th, 5th and 6th Defendants.

The 3rd, 4th, 5th and 6th Defendants thereafter sold the properties to the 1st Defendant. The Plaintiffs called three (3) witness Stephen Kyandih, Patrick Maratani and Dennis Malembeka.

80. On the other hand, the 1st Defendant’s case was that it purchased the suit properties around 27th March 2022 from the 3rd, 4th, 5th and 6th Defendants. At the time of filing of this suit by the Plaintiff the 1st Defendant was the legal and beneficial owner of the Suit properties being an innocent purchaser for value. The 1st Defendant conducted its searches prior to purchase of the suit properties and denies that the properties are public access roads as alleged. The 1st Defendant called two witnesses, Abdulbasit Swaleh and B.C Mwanyungu.
81. The Learned Counsel relied on the following legal issues to be considered by Court for the determination of the case. These were:-
 - a. Whether the Suit properties were lawfully allocated.



- b. Whether the 1st Defendant was an innocent purchaser for value.
- c. Whether the Plaintiff's were entitled to the reliefs sought.

To begin with, the Learned Counsel submitted that the Plaintiffs alleged that the Suit properties were hived from the access road created by the subdivision of Mombasa/Block XXIII/179 for access for properties known as Mombasa/Block XXIII 218 to 226 and 231 to 224. However, the Plaintiffs have not demonstrated to this Honourable Court, whether property Mombasa/Block XXIII/179 ever existed which parented the titles Mombasa/Block XXIII 218 to 226 and 231 to 224. The Plaintiffs listed a copy of the title for Mombasa/Block XXII/179 in its list of documents, however the same was never filed nor produced as evidence before this Honourable Court.

82. Further, the Plaintiffs prior to these proceedings had filed a suit in "Civil Appeal No. 255 of 2003", where they sought for prerogative writs of Certiorari orders to quash the Certificate of Leases in respect of the Suit Properties. The subject of the appeal was the fact that the Trial Court had quashed the Titles of the 1st Defendant. The 1st Defendant was aggrieved against. The Court of Appeal in allowing the Appeal held at pages 5 to 6 that:

"..... it is accepted that the Respondent was not the registered owner of the property, (emphasis mine) strictly speaking the Respondent was not entitled to be heard before the decision was made ownership of land is manifested not by legal notices but by ownership of title documents."

82. According to the Learned Counsel, the Plaintiff herein did not challenge this finding of the Court of Appeal, which remained valid to date. Indeed, it was found that the Plaintiff's were not owners of the properties they purported to assert ownership over, relying on the Legal Notices Numbers 19 of 1969 and 160 of 2001. What was an undisputed is that the Suit Properties were allotted and allocated to the 3rd, 4th, 5th and 6th Defendants. PW - 3 in his Land Survey report confirmed that indeed the properties were all new Grants parcels that were allocated by the Commissioner of Lands vide a Letter of Allotment. This was also the position of DW - 2, that the Suit properties were granted by the new survey by a new Grant Survey registered as Plan FR No. 390/52.

83. The Learned Counsel averred that there was no evidence provided of whether the allotment and consequent allocation to the 3rd, 4th, 5th and 6th Defendants were unlawful and fraudulent. Further, there was no illegality had been specifically pointed out by the Plaintiffs on account of any action by the Defendants in the allocation of the property, nor was there any evidence that the Suit Properties could had been hived from an alleged sub-divided property. In fact it was a consensus that the properties were allotted by a new Grant. Under the provision of Section 109 of the *Evidence Act*, Cap. 80 placed the burden of proof on the one who alleges a fact, it provides that:-

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

84. Contrary to the submissions by the Plaintiffs, the burden to prove that the title was unlawfully issued lies squarely with the Plaintiffs. The Plaintiffs could not purport to shift the burden to prove the root of the title onto the Defendants when they had failed to establish that the title was unlawfully allocated in the first instance. In accordance with established legal principles, the Plaintiffs bear the responsibility of proving that the title they claim was issued in an unlawful manner. Without meeting this threshold.



The Defendants, therefore, could not be expected to disprove something that the Plaintiffs had not sufficiently proven in the first place.

85. Additionally, as confirmed by PW - 3, the adjacent properties to the Suit Properties do indeed had access, which further undermines the Plaintiffs' arguments. The Learned Counsel posited that it was important to note that access to the properties in question did not necessarily have to meet the Plaintiffs' preferred specifications. Whether the access was wide or narrow, as the Plaintiffs would contend, was irrelevant to the matter at hand. The Plaintiffs did not have the right to dictate the width or specific nature of the access as such, the existence of access, as affirmed by the evidence presented, suffices to resolves any concerns the Plaintiffs might raise in that regard.
86. The Counsel submitted that there was no access route was taken or hived from and thus in failing to provide any substantive evidence that the Suit Properties were unlawfully allocated and a mere assertion that the Suit Properties were hived from an alleged subdivision for public access road does not hold water. Thus, the property was unalienated public property and not one designated as a public entity contrary to the submissions of the Plaintiffs. The 1st Defendant submitted that indeed the property was lawfully allocated to him. Indeed, he was the current legal, registered and beneficial owner of the Suit properties and the Plaintiffs suit ought to be dismissed with costs.
87. Secondly, without prejudice to the above, the Learned Counsel contended that it was a second Purchaser and acquired the Suit Properties for valuable consideration from the 3rd, 4th, 5th and 6th Defendant, having carried out all the necessary due diligence for the Suit property. It was clear from the evidence of the Plaintiffs, that the Plaintiff's did not fault the procedure in which the property was allocated and titles issued. Thus the 1st Defendants Titles were indefeasible. However, if at all there existed an irregularity on the root of the title, it could not have been determined at the time the search was conducted. The 1st Defendant duly conducted a search which indicated the person who it was purchasing the suit properties were the legal and beneficial owners of the property. As had been submitted above, no documentation indicates that these properties were hived from a bigger property, the same were allocated to the 3rd, 4th, 5th and 6th Defendants as first owners of the property. The provision of Section 26(1) of the *Land Registration Act*, No. 3 of 2012 provides that a certificate held by a registered proprietor is conclusive evidence of proprietorship.
88. On this point, the Learned Counsel relied on the Court of Appeal Case, "Samuel Kamere – Versus - Land Registrar Civil Appeal No. 28 of 2005 (2015) eKLR where the court held that:-

“In order to be considered a bona fide purchaser for value, they must prove that they acquired a valid and legal title, 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 property.”

The 1st Defendant duly carried out due diligence in confirming that the lawful owner from whom it acquired the property was the owner at that time and it remains unchallenged that the purchaser paid valuable consideration for the purchase of the property. In this premises, the 1st Defendant urged this Honourable Court to hold that it was an innocent purchaser for value for the suit properties.

89. The Plaintiffs sought for declaratory orders as against the 1st, 2nd, 3rd & 4th Defendants that the Commissioner for Lands acted unlawfully and ultra-vires in allocating the suit properties and that the allocation was null and void, and the purported transfer of the Suit Properties by the 3rd, 4th, 5th and 6th Defendants to the 1st Defendant was null and void. They further sought the title to the 1st Defendant to be revoked. Having established that the Plaintiffs had not provided evidence of any unlawful action



carried out by the Commissioner of Lands on the allocation of the suit properties, the Defendant humbly submitted that the title being held by it was lawful and a good title. It ought to fail.

90. Further, the Plaintiffs sought a permanent injunction restraining the 1st and 2nd Defendants from developing and/or construction on the Suit properties. The 1st Defendant submitted that the property was legally acquired, it was an innocent purchaser for value and the prayers as sought would infringe in his right to quiet enjoyment of his property violating his constitutional right to property. Again and as emphasized the 1st Defendant acquired good title from the 3rd, 4th, 5th and 6th Defendants and the properties were lawfully allotted and allocated at first instance.
91. The Learned Counsel averred the prayer on general damages was baseless, unfounded and misguided. The Plaintiffs did not own the properties. Thus, it could not benefit on account of general damages for trespass. Trespass was defined as an invasion of another's property. The suit properties never belonged to the Plaintiffs in the first place nor had they laid a claim on ownership of the property. Thus the claim never arose.
92. The Counsel asserted that the Plaintiffs had failed to prove their case on the balance of probability. Hence, the 1st Defendant urged this Honourable Court to dismiss the claim by the Plaintiffs with costs to the 1st Defendant.

C. The Written Submission by the 2nd Defendant

94. The 2nd Defendant through the Law firm of Messrs. Isaac Onyango & Company Advocates filed their written submissions dated 28th February, 2025. Mr. Onyango Advocate stated that having been served with the Plaintiff's Written submissions dated 14th February, 2025 by email on 17th February, 2025 at 3.59 PM, he endeavoured to respond to the Plaintiffs' submissions.
95. The Learned Counsel submitted that for determination was the claim made by the Plaintiffs' against the Defendants over ownership of the suit properties all that parcel of land known as MSA/BLK/XXIII/179, Mombasa/Block XXIII/214, Mombasa/Block/XXIII/215, MSA/BLK/XXIII/216, MSA/BLK/XXIII/217, MSA/BLK XXIII/218, MSA/BLK XXIII/219, MSA/BLK XXIII/220, MSA/BLK/XXIII/221, MSA/BLK XXIII/222, MSA/BLK XXIII/223, MSA/BLK XXIII/224 which are claimed by the Plaintiffs and were allegedly registered in the name of 1st, 3rd, 4th, 5th and 6th Defendants. All that was claimed against the 2nd Defendant was that the 1st, 3rd, 4th, 5th and or 6th Defendants individually and or jointly engaged the 2nd Defendant to undertake some developments, constructions and or improvements on either and or some of the suit properties.
96. According to the Learned Counsel, in its defence, witness statement and evidence in court, the 2nd Defendant denied any connection, relationships, interests and or claims in any of the suit properties and that it was instructed, engaged and or involved in any constructions, developments and or improvements of any of the suit properties. Despite of the above pleadings by the Plaintiff, the 2nd Defendant shall pray that the Plaintiff's suit against it be dismissed with costs for among others, the following two (2) main reasons:-
 - a. The 2nd Defendant's connection with the suit properties not proved.
 - b. The suit against the 2nd Defendant contravene the law of principal and agents.
97. The Learned Counsel submitted that, the 2nd Defendant denied of any connection, relationship, activities and or developments on the suit properties or any of the suit properties. The burden of proof under the provision of Sections 107 and 109 of the *Evidence Act*, Cap. 80 rested upon the Plaintiffs'. To buttress on this point, the Counsel cited the case of "Japheth Mjomba – Versus - Salim Rashic _019]



eKLR”, held that a Defendant only tenders evidence in rebuttal where the Plaintiff who alleges has adduced sufficient evidence to meet the threshold of proof and require a rebuttal.

98. From the evidence tendered by the three (3) witnesses the Plaintiff had called to testify on its behalf, no evidence showed any developments, constructions and or improvements the 2nd Defendant was alleged to have been undertaking on any of the suit properties. Similarly, all the documents adduced in evidence by the Plaintiff do not show any such constructions nor the 2nd Defendant’s involvement, connection and or relationship with any alleged constructions, developments and or improvements in the suit properties. As the one who alleged, the Plaintiffs had a duty to show the licenses, approvals, permits, signages, and or photos of any such constructions and relate them to the 2nd Defendant. They failed on this front. In addition to the Plaintiff’s witnesses, the 1st Defendant’s witnesses also dispute the existence of any such developments, constructions and or improvements. They confirmed that the 2nd Defendant not only had no relationship with the 1st Defendant but also that the 1st Defendant had not engaged the 2nd Defendant to undertake any constructions, developments and or improvements on any of the suit properties. DW - 1 – Mr. Abdulbasit Swaleh was emphatic that the 1st Defendant did not even know the 2nd Defendant. Further, both PW – 3, Mr. Dennis Malembeka and DW – 3, Mr. Edward Mwanyungu who visited the suit properties confirmed that there were no constructions and or signages of the 2nd Defendant nor activities by the 2nd Defendant at the scene.
99. Therefore, according to the Learned Counsel, the above evidence corroborated the 2nd Defendant’s defence and testimony that he had no claim, relationships and or connection with any of the suit properties and or any alleged constructions, development and or improvements therein, if at all. Rather than tender evidence to support the case against the 2nd Defendant, all the Plaintiffs did through PW - 1 Stephen Kyandih was rely on possible speculation, innuendos and possible gossip which Judge Diane J. Humetewa, United States District Judge castigated in the case of “Bowyer v Ducey 506 F. Supp. 3d 699 (D. Ariz. 2020” reminded the legal world that “...allegations that find favour in public sphere of gossip and innuendo cannot be a substitute for earnest pleadings and procedure before a court.”. Not only had the Plaintiffs failed to provide legal or factual support for the allegations it made against the 2nd Defendant but also engaged the 2nd Defendants in what the Supreme Court in “Odinga & 16 others – Versus - Ruto & 10 others; Law Society of Kenya & 4 others (Amicus Curiae) (Presidential Election Petition E005, E001, E002, E003, E004, E007 & E008 of 2022 (Consolidated)) [2022] KESC 54 (KLR) (Election Petitions) (5 September 2022) (Judgment)” castigated as a wild goose chase.
- For this reason alone, the 2nd Defendant to dismiss the Plaintiffs’ suit as against the 2nd Defendant with costs.
100. Secondly, even if the Plaintiffs’ claimed against the 2nd Defendant were to be given any benefit of doubt, it emerged in evidence that the 2nd Defendant could only had been given instructions to undertake development, constructions and or improvements on any of the suit properties by either the 1st, 3rd, 4th, 5th and or 6th Defendants in whose names the suit properties were registered. The 2nd Defendant was not claiming and was not alleged to have any claims of ownership of any of the suit properties. As such, the 2nd Defendant would only have been acting as an agents of known principals who have been sued in this suit. In the case “Victor Mabachi & ai er – Versus - Nurtun Bates Limited [2013] KECA 204 (KLR)[2013]eKLR”, the Court of Appeal emphasized that an agent of a known and o disclosed principal could not be sued when it stated thus:-

“(21) It remains now to consider the second issue whether the enjoinder of the appellants in the suit in the High Court breached the principle of law that an agent cannot be sued where there is a disclosed principal. In Anthony Francis Wareheim t/a Wareheim & 2 Others – Versus - Kenya Post Office Savings



Bank, Civil Application Nos. Nai 5 & 48 of 2002”, at page 10, this Court unanimously held as follows:-

“It was also prima facie imperative that the court should have dismissed the respondent’s claim against the second and third appellants for they were impleaded as agents of a disclosed principal contrary to the clear principal of common law that where the principal is disclosed, the agent is not to be sued. Furthermore, the court having found on the evidence that the second and third appellants were principals in their own right and not agents of the first appellant in the transaction giving rise to the suit, it should have dismissed the suit against the first appellant who had been sued as the principal.”

(22) The principle established in the above case still holds good. In the absence of factors vitiating the liability of the principal, we consider that the enjoinder of the appellants in the case is unwarranted.”-emphasis ours.

101. With the Plaintiffs being aware and even disclosing that the suit properties were purportedly registered in the names of the 1st, 3rd, 4th, 5th and 6th Defendants, either or all of the above co-Defendants were the only parties who could have authorized and or instructed the 2nd Defendant to undertake any developments, constructions and or developments on the suit properties and therefore became the known and or disclosed principals of the 2nd Defendant. The Plaintiffs having sued the disclosed principals of the 2nd Defendant, if at all, had no cause of action against the 2nd Defendant. The Plaintiffs dragged the 2nd Defendants into an unnecessary litigation. Rather than withdraw the suit against the 2nd Defendant at the earliest, the Plaintiffs vehemently continued and perpetuated that litigation even after the 2nd Defendant filed a Written Statement of Defence, witness statements and documents. The Plaintiffs suit against the 2nd Defendant should also be dismissed with costs for the above reasons.

VII. Analysis and Determination

102. I have keenly assessed the filed pleadings by the Plaintiffs, 1st, 2nd and 3rd Defendants herein, the written submissions and the cited authorities, the relevant provisions of *the Constitution* of Kenya, 2010 and the statutes.

103. In order to reach an informed, reasonable and just decision in the subject matter, the Honourable Court has crafted the following five (5) issues for its determination. These are: -

- a. Whether the Plots No. Mombasa/BlockXXIII/227, 228, 229 and 230 were duly allocated to the 3rd, 4th and 5th Defendants by the Commissioner of Lands?
- b. Whether the 1st Defendant is a bona fide purchaser for value of the suit property from the 3rd, 4th and 5th Defendants and if so whether the 1st Defendant acquired lawful rights and interests thereto.
- c. Whether the Plaintiffs have established and/or proved the allegations of [sic] fraud as against the Defendants in terms of the allocation of the suit property?
- d. Whether the Plaintiff is entitled to the orders sought in the Plaintiff
- e. Who bears the costs of the suit?



ISSUE No. A). Whether the Plots No. Mombasa/BlockXXIII/227, 228, 229 and 230 were duly allocated to the 3rd, 4th and 5th Defendants by the Commission of Lands.

104. Under this sub – title, the Court notes that the main substratum touches on and concerns the ownership over and in respect of the suit properties which are currently referenced a Plots No. Mombasa/BlockXXIII/227, 228, 229 and 230. Consequently and insofar as the dispute touches on ownership of the suit property, it is therefore imperative to trace the origin and the initial allocation pertaining to and concerning what now constitutes the suit property.
105. To begin with, it is imperative that the Honourable Court critically examines the acquisition, the registration of land and its effect in Kenya. The Provisions of Section 7 of the Land Act No. 6 of 2012 provides the said methods on how titles may be acquired in Kenya.

S. 7 Title to land may be acquired through:-

- i. Allocations;
- ii. Land Adjudication process;
- iii. Compulsory acquisition;
- iv. Prescription;
- v. Settlement programs;
- vi. Transmissions;
- vii. Transfers;
- viii. Long term leases exceeding Twenty one years created out private land; or
- ix. Any other manner prescribed in the Act of Parliament.

The efficacy on the registration of land are governed under the provision of Sections 24, 25 and 26 (1) of the Land Registration Act, No. 3 of 2012. The registration of person as a proprietor vests in them the absolute rights and privileges.

24. Subject to this Act:-

- (a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and
- (b) the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.

25. Rights of a proprietor.

- (1) “The rights of proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject-
 - (a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and



- (b) to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register”.

According to the provision of Section 26 (1) of the [Land Registration Act](#) (2012), it provides as follows:

“A Certificate of Title issued by the Registrar upon registration shall be taken by all courts as a prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, except on grounds of fraud, misrepresentation, illegality and corrupt scheme.

Section 26(2) provides that

“certified copy of only registered instrument signed by the registrar, shall be received in evidence in the same manner as the original”.

In this regard, clearly, the ownership of the Certificate of title to the suit property are challenged. This was the reason the Plaintiffs instituted this suit against the 1st, 2nd and the 3rd Defendants. The Plaintiffs averred that the registration of the suit property in favour of the 1st Defendant was fraudulently done and the same ought to be impeached. When a person’s ownership to a property is called into question, it is trite that the said proprietor has to show the root of his ownership. See the case of “Hubert L. Martin & 2 Others – Versus - Margaret J. Kamar & 5 Others [2016] eKLR”, where the Court held that;

“A court when faced with a case of two or more titles over the same land has to make an investigation so that it can be discovered which of the two titles should be upheld. This investigation must start at the root of the title and follow all processes and procedures that brought forth the two titles at hand. It follows that the title that is to be upheld is that which conformed to procedure and can properly trace its root without a break in the chain. The parties to such litigation must always bear in mind that their title is under scrutiny and they need to demonstrate how they got their title starting with its root. No party should take it for granted that simply because they have a title deed or Certificate of Lease, then they have a right over the property. The other party also has a similar document and there is therefore no advantage in hinging one’s case solely on the title document that they hold. Every party must show that their title has a good foundation and passed properly to the current title holder.”

However, this registration is not absolute as a person must prove that the said registration was one that was in accordance with the law and the laid down procedures as stated out under the provision of Section 26(1) of the [Land Registration Act](#), No, 3 of 2012.

As may be observed, the law is extremely protective of title and provides only two instances for the challenge of title. The first is where the title is obtained by fraud or misrepresentation to which the person must be proved to be a party. The second is where the certificate of title has been acquired illegally, un-procedurally or through a corrupt scheme.

The import of the provision of Section 26 (1) (b) is to remove protection from an innocent purchaser or innocent title holder. It means that the title of an innocent person is impeachable so long as that title was obtained illegally, un-procedurally or through a corrupt scheme. The title holder need not have contributed to these vitiating factors. The purpose of Section 26 (1) (b) is to protect the real title holders from being deprived of their titles by subsequent transactions.

106. To this end, it is worthy to recall that PW - 1 told the court that all parcels belonged to the Kenya Ports Authority (KPA) have title deed. They had not produced title No. 179 had not been produced as it had



been surrendered upon the sub - division. He agreed the legal notices was not proof of ownership. He had proof that Plots Numbers 227, 228, 229 and 230 should never have existed through the recorded statement. These plots were not available for allocation. Apart from his statement he had not produced any evidence of these irregularity.

107. PW - 2 reiterated that he was the investment officer from year January, 2021. He was never there in the year 2018 but he relied on existing available documents. The witness was never there when the development was being done. He had not seen the Board. He was only relying on information given to him or on record. He had not seen the Development Plan to know the contractor. He agreed that depending on the size of the development it would require approval from various authorities e.g. NEMA, NCA e.t.c. From the record, there was nowhere KEMO Contractors Ltd. did not appear anywhere. They were no legal interest on land and if at all he was on the ground, they were there out of request by someone – the 1st Defendant.
108. As pertains to the allocation of the suit properties to the 3rd, 4th and 5th Defendants, DW - 1 told the court that they purchased them in the year 2001 at a sum of Kenya Shillings Seven Hundred and Fifty Thousand (Kshs. 750,000/-) each. Before the purchase they conducted due diligence. They confirmed they were registered in the names of the 3rd, 4th and 5th Defendants and had no dispute. The Plaintiff had sued them in the year 2003 but it was dismissed – Civil Appeal No. 256/2003. There was no dispute over these properties with the neighbors. They applied for plans for development for Plots Numbers 227 and 230 for approvals for renovation and they were granted.
109. DW - 1 confirmed that he severally visited the site before purchasing the plots. The sellers provided them with Letters of Allotment to prove ownership. There were properties on the access road hence all plots were accessible. He did not know anything about the RIM. According to the 1st Defendant's DW - 2 before the transfers were done to AKABA Investment Limited there were the initial owners of the parcels:-
 - i. Parcel No. 227 – Hassan Abubakar.
 - ii. Parcel No. 228 – Samwel Kipchumba.
 - iii. Parcel No. 229 – Hiripa Enterprise.
 - iv. Parcel No. 230 – Abubakar Kililo & Shabaan Ismail.
110. Accordingly, the witness told the court that all these parcels were transferred by the above names persons who were the allottees to Akaba Investments Limited. These were no encroachments to the parcels. His conclusions were as follows: -
 - a. All the four parcels were acquired by AIC through purchase.
 - b. The Allottee were issued the parcels by the Commissioner of Lands
 - c. There were no encroachment into the parcels or by the parcels of land
111. From the totality of the evidence tendered, it is evident and apparent that plot number Plots 227, 228, 229 and 230, [which admittedly now constitutes the suit property] were allocated to and in favor of the 3rd, 4th and 5th Defendants. On the other hand, it is also worthy to point out that upon the allocation of the designated Plot to and in favor of the 3rd, 4th and 5th Defendants herein duly complied with the terms of the allotment and consequently, same accrued lawful rights and interests thereto. Allotment of an interest in land is a transaction in rem attaching to and running with a specific parcel of land.



112. To my mind, upon the allocation and/or allotment of the designated plot to and in favor of the 3rd, 4th and 5th Defendants, same [3rd, 4th and 5th Defendant] thereafter became the lawful and legitimate owners of the designated properties. The moment the mother land was sub - divided and the Commissioner of Lands allotted the same to the 3rd, 4th and 5th Defendants, the Plaintiffs ceased to have any rights on the suit properties.

ISSUE B. Whether the 1st Defendant is a bona fide purchaser for value of the suit property from the 3rd, 4th and 5th Defendants and if so whether the 1st Defendant acquired lawful rights and interests thereto.

113. Having been duly allocated the suit properties, the 3rd, 4th and 5th Defendants therefore acquired lawful rights to and in respect of the designated plots. Furthermore, having acquired lawful rights to and in respect of the suit plot, there is no gainsaying that the 3rd, 4th and 5th Defendants were therefore seized of the requisite capacity to sell and/or dispose of the designated plot.

114. In any event, there is no gainsaying that the registered proprietor and/or an allottee [who has complied with the terms of allotment] is vested with lawful rights to the property, which rights include inter-alia, the right to occupy [usus], the right to possess [fructus] and the right to alienate [abusus], respectively. Premised on the extent and scope of rights that inhere upon the registered proprietor and/or an allottee [who has complied with the terms of the allotment], it is common ground that such a proprietor and/or an allottee is therefore vested with the mandate to enter into and/or execute a sale agreement pertaining to and concerning the designated property.

115. Arising from the foregoing, there is therefore no debate as to whether or not the 3rd, 4th and 5th Defendants had the capacity to enter into the sale agreement with the 1st Defendant. Furthermore, upon entry into and execution of the named sale agreement, the 1st Defendant herein duly paid to and in favor of the 3rd, 4th and 5th Defendants the agreed purchase price. On the other hand, evidence abound that upon the execution of the sale agreement, coupled with receipt of the purchase price, the 3rd, 4th and 5th Defendants [vendors] proceeded to and facilitated the transfer of the titles to and in favor of the 1st Defendant.

116. Additionally, evidence was tendered before the court that the transfer of the suit property to and in favor of the 1st Defendant was duly sanctioned and approved by the 8th Defendant, who thereafter proceeded to and issued a certificate of lease in favor of the 1st Defendant without raising any question or at all. Notably, the approval of the transfer signified that the 3rd, 4th and 5th Defendant's title was free from any defect or at all.

117. Simply put, the 1st Defendant herein fits within the parameters of a bona fide purchaser for value and thus same is entitled to the requisite protection under the law. As pertains to the ingredients to be established prior to and before a declaration of bona fide purchaser for value can be rendered, it suffices to adopt and reiterate the holding in the case of "Arthi Highway Developers Limited – Versus - West End Butchery Limited & 6 others [2015] eKLR", where the court held and stated as hereunder;

“A Bona fide purchaser for value is a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly. For a purchaser to successfully rely on the bona fide doctrine, he must prove the following:

- a. He holds a certificate of Title.
- b. He purchased the Property in good faith;



- c. He had no knowledge of the fraud;
- d. The vendors had apparent valid title;
- e. He purchased without notice of any fraud;
- f. He was not party to any fraud.

A bona fide purchaser of a legal estate without notice has absolute unqualified and answerable defence against claim of any prior equitable owner.”

118. Black’s law Dictionary (8th Edition) defines a “bona fide purchaser” as:

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

119. Similarly, it is also important to take cognizance of the holding in the case of “Mwangi James Njehia – Versus - Janetta Wanjiku Mwangi & another [2021] eKLR”, where the Court [Court of Appeal] stated and observed as hereunder;

37. In *Lawrence P. Mukiri Mungai, Attorney of Francis Muroki Mwaura v. Attorney General & 4 Others*, Nairobi Civil Appeal No. 146 of 2014 this Court cited with approval the case of *Katende v. Haridar & Company Ltd* (2008) 2 EA 173, where the Court of Appeal in Uganda held that:-

“For the purposes of this appeal, it suffices to describe a bona fide purchaser as a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly.

For a purchaser to successfully rely on the bona fide doctrine as was held in the case of *Hannington Njuki v William Nyanzi* High Court civil suit number 434 of 1996, must prove that:

1. he holds a certificate of title;
2. he purchased the property in good faith;
3. he had no knowledge of the fraud;
4. he purchased for valuable consideration;
5. the vendors had apparent valid title;
6. he purchased without notice of any fraud; and
7. he was not party to the fraud.”

We nonetheless wish to state that the law, including case law is not static and the above requirements which were crafted over twenty years ago cannot be said to have been cast in stone. We hold the view that (5) above will need to be revisited and the word “apparent” be done away with altogether.



120. The ingredients that underpin bona fide purchase for value were also highlighted and elaborated upon by the Supreme Court of Kenya [the apex court], In the case of “Dina Management Limited – Versus - County Government of Mombasa & 5 others (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR)”, the Supreme Court stated that, for a court to establish whether a party is a bona fide purchaser for value, the court must first establish the root of the title right from the first allotment. The court stated thus:-
90. The Black’s Law Dictionary 9th Edition defines a bona fide purchaser as: “One who buys something for value without notice of another’s claim to the property and without actual or constructive notice of any defects in or infirmities, claims, or equities against the seller’s title; one who has in good faith paid valuable consideration for property without notice of prior adverse claims.”
91. The Court of Appeal in Uganda in *Katende v Haridar & Company Ltd* [2008] 2 EA 173, defined a bona fide purchaser for value as follows: “For the purposes of this appeal, it suffices to describe a bona fide purchaser as a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly. For a purchaser to successfully rely on the bona fide doctrine he must prove that:1.he holds a certificate of title;2.he purchased the property in good faith;3.he had no knowledge of the fraud; 4.he purchased for valuable consideration;5.the vendors had apparent valid title;6.he purchased without notice of any fraud; and7.he was not party to the fraud.”
121. The Supreme Court further upheld the dicta in “Samuel Kamere – Versus - Lands Registrar, Kajiado, Civil Appeal No 28 of 2005 [2015] eKLR” and stated that:-
- “.....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”
122. This position has recently been reaffirmed by the Supreme Court of Uganda in “Lwanga - Versus - Mubiru and Others (Civil Appeal 18 of 2022) [2024] UGSC 7”, where the court held:
- “The principle of bona fide purchaser for value without notice is a general defence in any transaction of sale or purchase of any property particularly land.
- The definition of bona fide purchaser for value without notice is “that buyer who has paid a stated price for the property without knowledge of existing or prior claims or prior equitable interest”.
- Bona fide is a Latin word meaning good faith, without fraud, sincere, genuine. See (Black’s Law Dictionary 9th Edn Page 199)
- A bona fide purchaser is a buyer who buys without constructive or actual notice of any defects or infirmities against the seller’s title. See (page 1355 Black’s Law Dictionary 9th Edn.
- It is trite law that a person who relies on the defence of bona fide purchaser for value without notice has the burden to prove that he or she acted in good faith.
- The purchaser must have given due consideration and purchased the land without notice of the fraud. Such notice cover both actual and constructive notice of fraud.
- In the case of *Jones v. Smith* [1841] 1 Hare 43, the Chancery Court held: “a purchaser has constructive notice of fraud if he had actual notice, that there was some encumbrance and



a proper inquiry would have revealed what it was (but if) it abstained either deliberately, carelessly from making those inquiries which a prudent purchaser would have made... then the defence cannot be available to him or her” See Yakobo M. N Senkungu & Others v. Cresencio Mukasa Civil Appeal No 17 of 2014.

123. The court reaffirmed the law regarding the importance of due diligence in land transactions holding that, “...Lands are not vegetables which are bought from unknown sellers. Lands are very valuable properties and buyers are expected to make thorough investigations not only on land but also of the owner before the purchase.” And as in the Supreme Court decision in “Dina Management Limited – Versus - County Government of Mombasa (supra)”, the Court went on to hold that, once the root of the title has been challenged, a party cannot derive benefit from the doctrine of bona fide purchaser.
124. From the foregoing analysis, my answer to issue number two [2] is twofold. Firstly, the 1st Defendant herein bought and acquired the designated plots [now the suit properties] from the vendors who held valid titles thereto. Secondly, that the 1st Defendant herein is thus a bona fide purchaser for value without notice of any defect or at all in the title of his predecessors [the vendors]. Consequently and in the premises, the 1st Defendant is entitled to the requisite protection of the court as pertains to the rights acquired and arising from the lawful purchase of the suit properties as per the provisions of sections 24 and 25 of the Land Registration Act, 2012.

ISSUE No. C. Whether the Plaintiffs have established and/or proved the allegations of [sic] fraud as against the Defendants in terms of the allocation of the suit property

125. The Plaintiffs have contended that the allocation of the suit plot to and in favor of the 3rd, 4th and 5th Defendant was fraudulent and thus illegal. Furthermore the Plaintiffs also alleged. Furthermore, the Plaintiffs also contended that the 3rd, 4th and 5th Defendant had no business being allotted a land that belonged to them that they had a RIM (Registered Index Map) which was used by the Land Registrar to cause their registration and entering into the Land Register, at Mombasa for a title to exist there must be a RIM (Registered Index Map) and they had however when he was surveying these plots he never followed the line of RIM as these plots were based on a Grant. He never established a RIM. Which he never used as he only used the Survey Plan F/R 390/52 111/21 which was duly approved and authenticated by the Director of Survey and used it to identify the location of the land on the ground. He also used the information on the process of the Letters of Allotment and the Part Development Plan (PDP).
126. Furthermore, it is trite and established law that no evidence pertaining to and/or concerning a plea founded on fraud can be tendered before a court of law and/or utilized, where the claimant [person making such allegation] has not impleaded fraud. Simply put, where evidence seeking to establish fraud is tendered/adduced before the court, albeit in the absence of the requisite pleadings, in the manner prescribed, such evidence are inconsequential and devoid of any legal basis[foundation].
127. Without belaboring the foregoing position, it suffices to adopt and reiterate the hackneyed position obtaining in the holding in the case of “Kuria Kiarie & 2 others – Versus - Sammy Magera [2018] eKLR”, where the court of appeal stated and held thus;
25. The next and only other issue is fraud. The law is clear and we take it from the case of Vijay Morjaria vs Nansingh Madhusingh Darbar & Another [2000] eKLR, where Tunoi, JA. (as he then was) stated as follows:

“It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to



be fraudulent must, of course, be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.” [Emphasis added].

The same procedure goes for allegations of misrepresentation and illegality. See Order 2 Rule 4 of the Civil Procedure Rules.

26. As regards the standard of proof, this Court in the case of *Kinyanjui Kamau vs George Kamau* [2015] eKLR expressed itself as follows;-

“...It is trite law that any allegations of fraud must be pleaded and strictly proved. See *Ndolo vs Ndolo* (2008) 1 KLR (G & F) 742 wherein the Court stated that: “...We start by saying that it was the respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof on the respondent was certainly not one beyond a reasonable doubt as in criminal cases...”...In cases where fraud is alleged, it is not enough to simply infer fraud from the facts.”

27. We have examined the appellants' amended defence for any pleading on particulars of fraud or illegality but there is none. The claims were therefore stillborn and no evidence could be tendered. Even if it was open to tender evidence on fraud and illegality, the mere allegation that a sale agreement and a Consent for transfer cannot be obtained on the same day is well below the standard of proof set under the authorities cited. We need not belabour this issue as we are satisfied that it was neither properly pleaded nor strictly proved. That ground of appeal fails too.

128. Fraud has been defined in Black's Law Dictionary 11th Edition as

“A knowing misrepresentation or knowing concealment of material facts made to induce another to act to his or her detriment.”

It is an established principle of law that a claim based on fraud must be specifically pleaded and strictly proved. Fraud was specifically pleaded in paragraph 8 of the Joint Statement of Claim and the particulars thereof itemized. The Court of Appeal in *Vijay Morjaria vs Nansingh, Madhusingh Darbar & another* [2000]eKLR held that:

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

129. On the standard of proof required for claims based on fraud, courts have held that the standard of proof is higher than in the ordinary civil cases. In the case of:- “*Koinange & 13 others – Versus - Charles Karuga Koinange* 1986 KLR at page 23” the court held that: -

“When fraud is alleged by the Plaintiffs the onus is on the Plaintiffs to discharge the burden of proof. Allegations of fraud must be strictly proved, although the standard of proof may not



be so heavy as to require proof beyond a reasonable doubt, something more than a balance of probabilities is required.”

Also in the case of *Kinyanjui Kamau v George Kamau* [2015] eKLR the court dismissed the appeal as it was not demonstrated that the appellants had proved fraud to the required degree and stated that:

“It is trite law that any allegations of fraud must be pleaded and strictly proved. see *Ndolo vs Ndolo* [2008]1KLR (G & F) 742 wherein the court stated that “.. we start by saying that it was the Respondent who was alleging that the will was a forgery and the burden to prove the allegation lay squarely on him. Since the Respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely; proof upon a balance of probabilities; but the burden of proof on the Respondent was certainly not one beyond a reasonable doubt as in criminal cases...”

In case where fraud is alleged it is not enough to simply infer fraud from the facts.

130. Under the provisions of sections 107 to 109 of the *evidence Act*, the burden of proof is on the Plaintiffs to prove that the transactions were fraudulent. I have considered the evidence on record and particularly the evidence of PW - 1, PW - 2 and PW - 3. The procedure governing the alienation of public land was aptly captured by Cheron J in the case of “*Ali Mohamed Dagane (Granted Power of Attorney by Abdullahi Muhumed Dagane, suing on behalf of the Estate of Mohamed Haji Dagane) – Versus - Hakar Abshir & 3 others* [2021] eKLR” where he stated as follows:-

“The process of the disposition of government land followed the following procedure: First, the respective municipal council in which the land to be disposed was situate had the mandate of advising the Commissioner of Lands on which portions of land could be disposed. This step would have required the responsible council to visit the area or to carry out a fact-finding mission to satisfy itself that the land was first of all government land and second that it was indeed available for disposition. See *Harison Mwangi Nyota v Naivasha Municipal Council & 20 others* [2019] eKLR

.....

The second step would be for the part development plan to be drawn up and approved by the Commissioner of Lands. See *Nelson Kazungu Chai & 9 Others vs. Pwani University College* (2014) eKLR

.....

The third step involved the determination of certain matters by the Commissioner of lands which matters are listed under Section 11 of the *Government Lands Act (Repealed)*. The matters to be determined include setting price at which the lease of the plot would be sold, the conditions to be inserted into the lease; the determination of any attaching special covenants and the period into which the term is to be divided and the annual rent payable in respect of each period.

The fourth step would be for the gazettment of the plots to be sold, at least four weeks prior to the sale of the plots by auction under Section 13 of the *Government Lands Act (Repealed)*. The notice was required to indicate the number of plots situate in an area; the upset price in respect of every plot; the term of the lease and rent payable, building conditions and any attaching special covenants.



The fifth step would be for the sale of the plots by public auction to the highest bidder. Section 15 of the Government Lands Act (Repealed).

The sixth step would be for the issuance of an allotment letter to the allottee. An allotment letter has been held not to be capable of conferring an interest in land, being nothing more than an offer, awaiting the fulfilment of the conditions stipulated therein by the offeree. See the decisions in: Gladys Wanjiru Ngacha v Teresa Chepsaat & 4 others 182/1992 (Nyeri); and in Dr. Joseph N.K. Arap Ng'ok v Justice Moiwo Ole Keiyua & 4 others C.A.60/1997

.....

In order for an allotment letter to become operative, the allottee was required to comply with the conditions set out therein including the payment of stand premium and ground rent within the prescribed period. See the decision in: Mbau Saw Mills Ltd v Attorney General for and on behalf of the Commissioner of Lands) & 2 others [2014] eKLR

The allotment letter also must have attached to it a part development plan (PDP). See the decision in African Line Transport Co. Ltd Vs the Hon .AG, Mombasa HCCC No.276 of 2013 where Njagi J held as follows:

.....

The seventh step, which comes after the allottee has complied with the conditions set out in the allotment letter is the cadastral survey, its authentication and approval by the Director of Surveys and the issuance of a beacon certificate. The survey process precipitates the issuance of land reference numbers and finally the issuance of a certificate of lease.

131. In the instant case, it is clear that the above mentioned procedure was followed evidenced by the testimony DW 2 for the 1st Defendant who did a survey on the said suit properties and investigated their history. The Plaintiffs never produced any evidence to show that there was no Part Development Plan drawn and approved nor there the said land was not gazetted making the suit properties available for the disposal to private citizens like the 3rd, 4th and 5th Defendants. There were Letters of Allotment issued to the 3rd, 4th and 5th Defendants which the 1st Defendant was given when it bought the land from the vendors. The Plaintiffs have not shown that there were no cadastral Survey Maps that were authenticated and approved by the Director of Surveys nor is there evidence that there was a beacon certificate issued to the 3rd, 4th and 5th Defendants. The Plaintiffs purported to have a title which was surrendered when the land was subdivided but they did not produce it before court. Having carefully analysed the evidence placed before the court I find that the Plaintiffs have not discharged the burden of proof and demonstrated to the required standard of proof that the sub-division of the suit land and subsequent transfer of the resultant portions in favour of the Defendants was fraudulent. Consequently, the titles held by the Defendants are found to have been obtained legally according to procedure.

ISSUE No. D). Whether the Plaintiff is entitled to the orders sought in the Plaintiff.

132. Under this sub title, the Plaintiffs sought the following reliefs:-
- a. A declaration that the Commissioner for Lands acted unlawfully and ultra vires in allocating Mombasa/Block XXIII/227 Mombasa/Block XXIII/228Mombasa/Block XXIII/229 and Mombasa/Block XXIII/ 230 to the 3rd, 4th, 5th and 6th Defendants respectively and the allocation is null and void.



- b. An order that the purported transfer of Mombasa/Block XXIII/227Mombasa/Block XXIII/228Mombasa/Block XXIII/229 and Mombasa/Block XXIII/230 by the 3rd, 4th, 5th and 6th Defendants respectively to the 1st Defendant is null and void.
 - c. An order that the 7th and 8th Defendant does revoke all the 1st Defendant's title to Mombasa/Block XXIII/ 227 Mombasa/ Block XXIII/ 228 Mombasa/ Block XXIII/ 229 and Mombasa/Block XXIII/ 230.
 - d. A permanent injunction restraining the 1st and 2nd Defendants, their agents and/or assigns from developing and or constructing on plots Mombasa/Block XXIII/227 Mombasa/Block XXIII/228 Mombasa/Block XXIII/229 and Mombasa/Block XXIII/230 illegally created on the public access road.
 - e. An order of rectification of the land registers in respect of all the Plaintiff's aforesaid parcels of land.
 - f. General damages for trespass.
 - g. Cost of this suit together with interest thereon at such rate and for such period of time as this Honourable Court may deem fit to grant.
 - h. Any such other or further relief as this Honourable Court may deem appropriate
133. This Court has determined firstly that the suit lands belonged to the 3rd, 4th and 5th Defendants through allocation after the same was subdivided and transferred to the Defendant by the Commissioner of Lands procedurally. Secondly that the sub-division of the suit land and subsequent transfer of the resultant portions thereof in favour of the Defendants was not fraudulent. Thirdly that the purported fraud by the Plaintiffs had not been proved. On the basis of these findings, this court find that Plaintiffs have largely failed to prove their claim on a balance of probabilities. Therefore the Plaintiffs are not entitled to the prayers sought.

ISSUE No. E). Who bears the costs of the suit?

134. It is now well established that the issue of Costs is at the discretion of the Court. Costs meant the award that is granted to a party at the conclusion of the legal action, and proceedings in any litigation. The Proviso of Section 27 (1) of the Civil Procedure Rules Cap. 21 holds that Costs follow the events. By the event, it means outcome or result of any legal action. This principle encourages responsible litigation and motivates parties to pursue valid claims. See the cases of “Harun Mutwiri – Versus - Nairobi City County Government [2018] eKLR and “Kenya Union of Commercial, Food and Allied Workers – Versus - Bidco Africa Limited & Another [2015] eKLR, the court reaffirmed that the successful party is typically entitled to costs, unless there are compelling reasons for the court to decide otherwise. In the case of “Hussein Muhumed Sirat – Versus - Attorney General & Another [2017] eKLR, the court stated that costs follow the event as a well-established legal principle, and the successful party is entitled to costs unless there are other exceptional circumstances.
135. In “Machakos ELC Pet No. 6 of 2013 Party of Independent Candidate of Kenya & another – Versus - Mutula Kilonzo & 2 others [2013] eKLR” quoted the case of “Levben Products – Versus -Alexander Films (SA) (PTY)Ltd 1957 (4) SA 225 (SR) at 227” the Court held;

“It is clear from authorities that the fundamental principle underlying the award of costs is two-fold. In the first place the award of costs is matter in which the trial Judge is given discretion (Fripp – Versus - Gibbon & Co., 1913 AD D 354). But this is a judicial discretion



and must be exercised upon grounds on which a reasonable man could have come to the conclusion arrived at....In the second place the general rule that costs should be awarded to the successful party, a rule which should not be departed from without the exercise of good grounds for doing so.”

136. In the present case, for the fact that the Plaintiffs did not prove their claim they shall bear the costs of the suit to be paid to the 1st and 2nd Defendants who participated in the suit.

VIII. Conclusion and Disposition

137. Ultimately, having caused such an in-depth analysis to the framed issues herein, the Honourable Court on the Preponderance of Probabilities and the balance of convenience finds that the Plaintiffs have not established their case against the Defendants. Thus, for avoidance of any doubts, the Court proceeds to make the following specific orders:

- a. That Judgment be and is hereby entered against the Plaintiffs and in favour of the 1st and 2nd Defendants pursuant to the Statement of Defence by the 1st Defendant dated 5th February, 2019 and the 2nd Defendant’s Statement of Defence dated 29th January, 2019 which sought for the dismissal of the 1st & 2nd Plaintiffs’ case with costs.
- b. That the 1st and 2nd Defendants shall have the costs of the suit to be paid by the 1st & 2nd Plaintiffs jointly and severally.

It is so ordered accordingly

JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS VIRTUAL MEANS, SIGNED AND DATED AT MOMBASA THIS20TH DAY OF JUNE 2025.

**HON. MR. JUSTICE L.L. NAIKUNI
ENVIRONMENT AND LAND COURT
AT MOMBASA**

Judgement delivered in the presence of: -

- a. M/s. Firdaus Mbula – the Court Assistant.
- b. No appearance for the 1st & 2nd Plaintiffs.
- c. M/s. Ali Advocate for the 1st and 2nd Defendant.
- d. Mr. Lenjo Advocate holding brief for Mr. Onyango Advocate for the 2nd Defendant.

