



**Wafula (Derivatively on behalf of)Transnzoia Investment Company v Walubengo & 6 others
(Environment and Land Case 74 of 2019) [2025] KEELC 4668 (KLR) (18 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4668 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND CASE 74 OF 2019**

**CK NZILI, J
JUNE 18, 2025**

BETWEEN

**PASCAL WAFULA (DERIVATIVELY ON BEHALF OF)TRANSNZOIA
INVESTMENT COMPANY PLAINTIFF**

AND

**RONALD SAWENJA WALUBENGO 1ST DEFENDANT
PAUL SIMIYU WEKESA 2ND DEFENDANT
GEORGE IMBERA LUDISI 3RD DEFENDANT
KALORI ISOSO 4TH DEFENDANT
MUNDEBE INVESTMENT COMPANY LIMITED 5TH DEFENDANT
VIPUL RATILAL DODHIA 6TH DEFENDANT
CHERANGANI INVESTMENTS COMPANY LIMITED 7TH DEFENDANT**

JUDGMENT

1. The plaintiff, pursuant to leave granted on 1/10/2020 under Sections 238 and 239 of the [Companies Act](#) derivatively on behalf of the Trans Nzoia Investment Company Limited, hereinafter the company, through an amended plaint dated 21/9/2023. He seeks:
 - (a) Declaration that the Company is the rightful owner of Land Parcel No. Kitale Municipality Block 4/494, hereinafter the suit land, popularly known as Kitale Hotel measuring 0.6256 Ha.
 - (b) Declaration that the transfer on 17/4/21996 of the suit land to the 5th defendant was fraudulent, null, and void.



- (c) Declaration that the sale and transfer on 4/9/2002 of the suit land to the 7th defendant was unlawful, null and void.
 - (d) Declaration that the 7th defendant holds the suit land in trust for the affected party.
 - (e) Order that the 6th and 7th defendants do transfer the suit land to the affected party.
 - (f) An order that the 6th and 7th defendants do hand over vacant possession of all the premises comprised in the suit land popularly known as Kitale Hotel to the affected party in default, the 6th and 7th defendant, their agents, associates and workers be evicted from the premises.
 - (g) An inquiry into mesne profits with effect from 7/7/1995, when the property was leased to the 6th defendant until judgment.
2. The plaintiff avers that the affected party was incorporated on 18/12/1969 under the *Companies Act* Cap 486, Laws of Kenya and has been a minority shareholder, hence brings the suit as a derivative, on behalf of the said company whose directors are the 1st, 2nd, 3rd and 4th defendants who also double as up as directors of the 5th defendant. The plaintiff avers that the affected party was the registered owner of the suit land. Formerly I.R. 1144/1 LR No. 2116/1/15, now Kitale Municipality Block 4/498, popularly known as Kitale Hotel, situated in Kitale Town, measuring about 2.17 acres as registered at the Inland Registry of Titles Nairobi on 9/7/1925.
 3. The plaintiff avers that the suit property was acquired by Grant on 24/11/1970 and was to continue as a leasehold for a term of 99 years with effect from 1/7/1924 to 1/7/2023, which grant was under strict and special conditions including No. 7 outlawing any subdivision, subletting, assigning or otherwise disposing of any portion therefore, except for purposes of providing hotel accommodation in the usual course of business. As a consequence, the plaintiff avers that the affected party was entitled to its possession and use as a business premises earning income. The plaintiff avers that the original parcel was charged to the Industrial and Commercial Development Corporation (ICDC) on 24/1/1970 and has never been transferred to anybody. It is averred by the plaintiff that with effect from 1992, the affected party experienced massive mismanagement of its landed property and revenue from rent and without the knowledge of other directors as well as the shareholders, the 1st - 4th defendant collected the security title deed from the ICDC, with an intention of defrauding the company of its assets including the suit land, caused it to be subdivided and therefore personally reaped millions of shillings at the expenses and detriment of its shareholders.
 4. Similarly, the plaintiff avers that on 17/5/1994, the 1st - 4th defendants incorporated a private liability company by shares, with the sole purpose of unlawfully taking over the remaining LR No. 2116/29/V currently known as Kitale Municipality Block 4/494 - Kitale Hotel, belonging to the affected party. The plaintiff avers that on 10/3/1993, the 1st - 4th defendants and other directors of the affected party wrongfully and illegally subdivided the initial LR No. 2116/1/5 into LR. No. 2116/V/29, LR No. 2116/V/1/3, LR No. 2116/V/1/4, LR No. 2116/V/1/5, LR No. 2116/V/1/6, LR No 2116/V/1/1 measuring 0.6256Ha, 0.0533Ha, 0.0500Ha, 0.0500Ha, 0.0505 Ha and 0.049Ha hereinafter (a), (b), (c), (d), (e) and (f) respectively. Subsequently, the plaintiff avers that the 1st - 4th defendants transferred parcels Nos. (b), (c), (d), (e) and (f) to third parties leaving No. (a) the suit property herein registered in the name of the affected party, which they leased out to the 6th defendants for a term as an investor, paying rent and who was supposed to hand over vacant possession at the end of his demised term to the affected party.
 5. The plaintiff avers that the leasing of the hotel to the 6th defendant was equally done without the knowledge, consent or approval of the shareholders, without a board resolution and lastly that there



was also no consideration paid by the 6th defendant as agreed in the lease and the same was never accounted for by the lessor. The plaintiff avers that on or 17/4/1996 before the lease expired the 1st - 4th defendant and other directors of the affected party fraudulently and illegally sold and transferred the suit property to the 5th defendant without any valid sale agreement or any or adequate consideration. Further, the plaintiff avers that the transaction was tainted with irregularities in that the 1st - 4th defendant undervalued the Hotel at Kshs. 300,000/=, only for purposes of transfer so as to evade paying stamp duty, no stamp duty was paid by the 5th defendant, there was no board resolution of the affected party or its shareholders, it was a conduct of fraud, there was a conflict of interest, the 1st - 4th and 5th defendants denied the shareholders benefits. If any of the proceeds of the sale and transfer, there was no new lease between the 5th defendant and the 6th defendant who was a tenant.

6. Additionally, the plaintiff avers that on 2/9/2002, the 5th defendant purported to transfer the suit property to the 7th defendant, a company in which the 6th defendant is a director for a fictitious price of Kshs. 19,500,000/=, yet it had no better title to pass, the 1st - 4th directors were compromised through handouts by the 7th defendant to effect the sale and transfer, the property was undervalued, no adequate stamp duty was paid for the property, adequate consideration for the suit land was not paid and that there was a conspiracy to transfer to benefit the defendants to share the profits made from rental income to the detriment of the affected party. The plaintiff avers that the defendants were in the sale and transfer while the lease between the 6th defendant and the affected party was still subsisting, hence did not follow the due process of the law. As a consequence, the plaintiff avers that the acts of commission and omission by the defendants caused the affected party loss and damage, in terms of income on top of the rental loss of the entire suit property, through illegal and unlawful disposal by the 1st - 4th defendants, while there was a conflict of interest since they are and remain directors of the 5th defendant, who are yet to render a true account for the affected party's rental income and the sale proceeds out of the suit property.
7. The plaintiff avers that the 1st - 4th defendants as directors of the affected party breached their fiduciary trust to the affected parties, and its shareholders, unjustly enriched themselves, and wasted the assets thereof to the detriment of the affected party and its shareholders.
8. The 1st defendant opposed the suit through a statement of defence dated 14/1/2024. He averred that any decision to take the title deed from the ICDC was made as per the resolution passed by the company, during its meeting in which the plaintiff was present. The 1st defendant avers that the said decision was made after extreme wrangles had sprouted among the shareholders and thus the management of the affected party became totally unattainable, and hence a resolution was made to lease out the property to a 3rd party, namely the 6th defendant, who wanted to offer and was allowed by the shareholders to manage the property as a company. The 1st defendant avers that all the company accounts were availed as required by law, otherwise, the allegation and the contents of the claim are denied completely.
9. The suit against the 2nd defendant was withdrawn by an order made on 3/2/2020.
10. The 3rd and 4th defendants opposed the suit through a statement of defence dated 2/11/2020. They averred that their participation in the decisions of the affected board of directors to subdivide and later lease out the suit property to the 6th defendant in 1995 was initially well intentional to generate more revenue after the premises were improved. However, the 3rd and 4th defendants averred that it was immediately abused by some directors, otherwise, they were not personally involved in the alleged grant or actions complained about, which were done behind their backs, especially by the 1st defendant who unilaterally dwelt with the 5th, 6th and 7th defendants without their involvement. The 3rd and



- 4th defendants were not involved. The 3rd and 4th defendants deny being personally involved with the dealings complained about in paragraphs 20 and 21 while they adversely affected the affected party and its shareholders.
11. Accordingly, the 3rd and 4th defendants deny membership as directors for both the affected party and the 5th defendant or being guilty of conflict of interest, otherwise, they have never personally been involved in any wrongdoing over the rental income of, and the sale proceeds out of the sale and transfer of the suit land to third parties. Specifically, the 3rd and 4th defendants blame the 1st defendant and other former directors for the affected party, and the 5th - 7th defendants for the matters affecting the affected party and its shareholders.
 12. The 6th and 7th defendants opposed the suit by an amended statement of defence dated 28/9/2023, terming it as incompetent in law and an abuse of the court process. The 7th defendant averred that it is a registered owner of all the original parcels of land title No. IR 1144/1 also known as LR No. 2116/1/6 now known as Kitale Municipality Block 4/494, measuring 0.6256 Ha, initially owned by the affected party, and immediately owned by the 5th defendant. The 6th and 7th defendants averred that the transfer of the land to the 5th defendant had been ratified by the by members of the affected party by a meeting held on 15/9/1979, whereby parties voted and was passed that the directors could form a new company and purchase the suit land, hence denied the alleged fraud, collusion or illegality.
 13. The 6th defendant averred that he entered into a lease agreement dated 7/7/1995 with the affected party to renovate and take possession of the commercial premises standing on the suit land known as Kitale Hotel on agreed terms and conditions as well as for consideration, and an option to purchase it, before the lease condition expires after 16 years. The 6th defendant averred that the 5th defendant held a meeting on 7/4/1999 and unanimously agreed to sell the suit land and each member to get his or her shares and the directors were tasked to source for a potential buyer.
 14. Again, the 6th and 7th defendants averred that it entered into a sale agreement with the 5th defendant to purchase the suit property and it paid the full consideration after which the suit property was lawfully and procedurally transferred and registered under its name, with the consent and knowledge of all the shareholders of the affected party and the full authorization by the 5th defendant. The 6th and 7th defendants averred that the 7th defendant is the lawful owner of the suit property, since 2/9/2002, whose proprietary rights cannot be derogated, compromised, or defeated except in accordance with the law.
 15. Accordingly, the 6th and 7th defendants averred that the 7th defendant is an innocent purchaser for value without notice of the alleged defect in title and that the reliefs sought by the plaintiff cannot obtain in law and are not for the benefit of the shareholders, but rather for the personal benefit of the plaintiff. The 6th and 7th defendant also averred that the suit is time-barred.
 16. In a reply to defence dated 1/12/2020, the plaintiff insists that between 24/11/1970 and 1992, the suit land was in the name of ICDC, hence the alleged resolution or ratification out of a meeting held on 15/9/1979 was never effected, since a legal charge subsisted on the title until 1992, rendering the resolution of no legal effect or state or obsolete in law, making the transfer to the 5th defendant inconsequential or unintended or anticipated in the said resolution. The plaintiff averred that though the intention was to lease the property, no renovation or improvements were made or consideration paid for the rent during the 16 years, otherwise, the 1st defendant and other directors were the sole beneficiaries to the detriment of the affected party and its shareholders.
 17. The plaintiff averred that the 5th defendant had no better title, the resolution in a meeting held on 7/4/1999 to dispose of the suit property was by a person lacking locus standi to sell the land and the



said resolution did not oust the right of the affected party to recover the suit property. The plaintiff denies the alleged auction or involvement in the affected party and its shareholders in the sale and transfer to the 5th defendant and subsequently to the 7th defendant. The plaintiff averred that the suit is well-intentioned to benefit the affected party and the shareholders. Again, the plaintiff averred that the demand letters were sent to the defendants including those of other affected party shareholders among them the widow of the former patron. The plaintiff averred that the 6th defendant and by extension the 7th defendant, were accessory to the fraud complained about as committed by the directors of the affected party to its detriment, hence the suit against them.

18. At the trial, Peter Wekesa Fwamba testified as PW1. He relied on a witness statement filed on 18/12/2019 as his evidence in chief. He told the court that he was a shareholder of the affected party as per certificate No. 9213, issued on 30/6/1992, produced as P. Exhibit No. (1). PW1 told the court that the affected party was the owner of Title No. IR 1144/1 also known as LR No. 2116/1/5 measuring 2.17 acres as registered in Nairobi on 9/7/1925, but acquired as a leasehold grant dated 24/11/1970 for 99 years. PW1 said that as per condition No. (7) of the grant the grantee could not subdivide, sublet, assign, or otherwise dispose of any portion thereof except for purposes of providing hotel accommodation in the usual course of business.
19. PW1 said that the property had been charged to the ICDC with effect from 24/11/1970. He told the court that on 10/3/1993, the 1st - 4th defendants and other directors of the affected party wrongfully and illegally subdivided the original property into six parcels namely LR No. 2116/V/29, LR No. 2116/V/1/3, LR No. 2116/V/1/4, LR No. 2116/V/1/5, LR No, 2116/V/1/6 and LR No. 2116/V/1/1. He said that since 1994 the affected party has had massive mismanagement of resources; no annual general meeting was held and attempts to hold one were unsuccessful due to corruption. PW1 said that complaints were lodged with the Registrar of Companies and in March 2007, the Registrar directed one to be held to elect new Board of Directors. After the same, PW1 said that the former Board of Directors thoroughly blocked the new board from taking over the management until 18/3/2015, when another election was ordered by the Registrar of Companies, to which shareholders resolved that the new board should take over.
20. PW1 said that without the knowledge of other directors and shareholders, the 1st defendant collected the security title deed from the ICDC with an intention of defrauding the affected party of its asset LR. No. 2116/V/29, which he perfected by subdividing as aforesaid and reaping millions at their expense. Aggrieved by the fraudulent activities, PW1 said that the then new elected board of directors filed Criminal Case No. 734 of 1999 and Civil Suit No. 59 of 2005 on behalf of the affected party against the defendants and some of the shareholders, and obtained court orders that were ignored by the defendants including to hold an annual general meeting, despite the proceeds of the company income into the designated account and desist from selling off the assets without the consent of the shareholders.
21. PW1 said that the former directors refused to hand over to the current directors, the company documentation particularly the company seal and other documents which would have enabled the new directors to effectively manage the affairs of the company. In addition, PW1 said that the defendants have been circumventing the shareholders' attempts to stop or prevent the disposal and misappropriation of the company's assets, through abuse of office and also used court orders to continue to remain by force, handling the affairs of the company so as to complete their looting spree, without accounting for its income and expenditure, since 1993 to date. PW1 said that the 1st - 4th defendants and their fellow directors of the 5th defendant had no capacity to enter into any transaction that resulted in the subdivision and the illegal alienation of parts of or the whole of the suit land, and



- have also continued to divert and dispose of other assets through the 5th defendant solely to perpetrate fraud.
22. PW1 said that the events began as early as 1992 and have caused substantial financial losses to the company and the shareholders. PW1 urged the court to find the records affecting the suit property subsequent to Entry No. 45 and the transfer to the 5th defendant and later to the 7th defendant illegal and should be revoked for LR No. 2116/29/V to revert back to the affected party.
 23. PW1 relied on a certificate of title and a deed plan as P. Exhibit No. 2(a) and (b), a copy of the list of directors produced as P. Exhibit No. 3, a list of directors for the 5th defendant as P. Exhibit No 4, copy of Grant.
 24. PW1 appears to have been stood down and that juncture for further hearing on 19/7/2021. Following directions made on 10/11/2021, the suit proceeded from where it had stopped before Hon. Dr. Justice iur Nyagaka.
 25. The copy of the title was produced as P. Exhibit No. 5 and charge as P. Exhibit No. 6, copy of discharge of charge dated 2/10/1992 as P. Exhibit No. 7, letter dated 17/2/2009 from ICDC P. Exhibit No. 8, letter to Standard Chartered Bank dated 23/5/1990, P. Exhibit No. 9, report from the Ministry of Public Works on renovation P. Exhibit No. 10, letter from KTDC to Masinde Muliro, P. Exhibit No. 11. PW1 said that on 4/5/1992 there was a directors' meeting as per minutes produced as P. Exhibit No. 12, letter from Municipal Council of Kitale dated 5/2/1992 giving consent to sell a portion measuring 50ft by 100 ft to repay the loan as P. Exhibit No.13, letter by wife of late Masinde Muliro dated 13/10/1999 objecting to the proposed sale as P. Exhibit No. 14, letter dated 28/9/1993 by the Commissioner of Lands as P. Exhibit No. 15, certificate of registration of the 5th defendant as P. Exhibit No. 16, letter by Municipal Council of Kitale dated 29/6/1994 as P. Exhibit No 17, letter dated 30/1/1995 to the 6th defendant as P. Exhibit No. 18, letter by the 1st defendant to the late Masinde Muliro as P. Exhibit No. 19, lease agreement dated 7/7/1995 as P. Exhibit No. 20, letter dated 30/9/2011 by the shareholders to the 6th defendant as P. Exhibit No. 21, lease between the 5th defendant and the 6th defendant dated 30/10/1995 as P. Exhibit No. 22, directors minutes dated 19/4/1996 as P. Exhibit No. 23, transfer dated 17/4/1996 as P. Exhibit No. 24, approval of sale agreement for LR No. 2116/V/29 between 5th defendant directors and the 6th defendant which is not dated or signed by all the people as P. Exhibit No. 25, minutes for meeting held on 5/1/2001 as P. Exhibit No. 26, an acknowledgment of payment to purchase LR No. 2116/V/29 dated 24/3/2001 as P. Exhibit No. 27, consent from the Commissioner of Lands to transfer and charge dated 27/8/2002 as P. Exhibit No. 28. Transfer of land from the 5th defendant to the 7th defendant dated 2/9/2002 as P. Exhibit No. 29, bundle of payment vouchers from the 7th defendant as P. Exhibit No. 30, letter from the affected party to the lands office dated 16/9/2009 as P. Exhibit No. 31, raising complaints letter from the affected party to the 6th defendant, P. Exhibit No. 32, letter from the Ministry of Land Housing and Development dated 4/12/2015 as P. Exhibit No. 33, letter dated 9/9/2019 from the County Commissioner as P. Exhibit No. 34, letter dated 19/11/2019 to 6th defendant as P. Exhibit No. 35, agreement between 5th defendant and 7th defendant dated 17/7/2001 for Kshs. 35,000,000/= as P. Exhibit No. 36.
 26. In cross-examination PW1 told the court that he became aware of the P. Exhibit No. 24, the transfer, in 2013 after he found the records. PW1 said that it took long from 1996 to 2013 for there was a lease of 16 years in existence running from 1995 to 2012, between the affected party and the 6th defendant. PW1 said that after the 6th defendant refused to vacate the hotel following the expiry of the lease, he made a follow-up. Equally, PW1 said that there were no annual general meetings called between 1994 and 2013 by the directions. He added that he was not aware of the consent by the shareholders authorizing



- for the formation of the 5th defendant. PW1 denied there was such a meeting as per DMFI No. (2) allegedly held on 15/9/1979, as members had refused to attend such a meeting at the station.
27. PW1 confirmed that all that had been agreed was for a sale of 50ft by 100ft to offset the loan and to lease out the hotel to the 6th defendant. PW1 said that he does not know when the 5th defendant was incorporated and who its shareholders are. PW1 confirmed that the 3rd and 4th defendants did not sign P. Exhibit Nos. 28(a) and (b) and 29, or receive any monies from the 6th and 7th defendants. PW1 said that the shareholders of the affected party are 2652 in number. Again, PW1 said that the 6th and 7th defendants were not shareholders of the affected party. PW1 blamed the 3rd and 4th defendants for not performing their duties as directors as required by the law, especially in taking care of the suit property.
 28. Following directions issued on 24/2/2025, parties agreed to proceed with the matter from where it had reached with the previous court.
 29. DW1 told the court that he was elected to the position of chairperson and secretary to the 5th defendant competitively due to his competence and the trust that the directors and shareholders had in him. DW1 said that he carried out his duties with utmost good faith and no decisions were made without a resolution being passed, either at the general or special meeting. DW1 said that the decision to lease off the suit property to the 6th defendant was reached after many wrangles, which as a result, members were fighting each other which made them impossible for them to make sober decision in relation to the same. DW1 said that the resolutions were properly made as per the Articles and Memorandum of Association for the affected party, which were binding of him, otherwise, he had no power on his own volition to make any decision.
 30. In cross-examination, DW1 told the court that though the suit property was leased to the 6th defendant, he could not remember if any consideration was paid to the affected party's bank account by way of rent. Similarly, DW1 was unable to tell when the vote was taken and a decision was made to transfer the suit land from the affected party's name to that of the 5th defendant. Equally, DW1 produced no minutes or documents showing when such decisions or resolutions were made by both the directors and the shareholders of the affected party. As regards payments after the suit land was transferred from the 5th to the 7th defendant, DW1 said that he could not remember the consideration as agreed or paid by the purchaser to the seller. Asked why the transfer form showed a figure of Kshs. 300,000/=. Similarly, DW1 denied that there was a conspiracy or collusion to swindle the affected party of the suit land and other assets. DW1 confirmed that the value of the hotel as of 1999 was approximately Kshs.100,000/= or thereabout.
 31. DW1 said that though the 6th defendant continued occupying the suit land for 16 years, he did nothing to ensure that he not only paid rent but also renovated the same as agreed initially. DW1 confirmed that he was still a director of both the 5th defendant and the affected party. DW1 insisted that the 7th defendant became the owner of the suit land after paying adequate consideration for it, going by the bundle of acknowledgment vouchers. DW1 said that the initial agreement did not envisage payment of the consideration through personal vouchers. DW1 could not remember how much he received as compensation for the sale from the 7th defendant. DW1 confirmed signing the lease agreement as chairman of the affected party for Kshs.9,000,000/=. DW1 admitted that the deposit of Kshs.4,000,000/=: was not channeled through the affected party's bank account. DW1 admitted signing the agreement dated 30/10/1995 which occurred exactly within three months after signing the lease agreement.
 32. DW1 said that in the minutes dated 17/4/1996, there was no mention of an intended sale of the suit property. Equally, DW1 confirmed signing the transfer dated 2/9/2022 for Kshs.19,000,000/= as



- consideration. DW1 said that he has no acknowledgment form for the receipt of the said consideration from the purchaser through the company's bank account. DW1 said that during the sale and transfer, the 3rd and 4th defendants were not involved, being the executive committee, though the exercise was done on behalf of all the directors. DW1 admitted that out of the foregoing transactions, it is evident that the affected party lost both the consideration and control of the suit property.
33. DW1 confirmed signing the agreement dated 17/1/2001 which was not prepared by the company's advocates. DW1 said that he was the one who signed the minutes produced as P. Exhibit No. 26. DW1 said that as a secretary and director of both the 5th defendant and the affected party, he acted in the best interest of the two, following the resolution by the shareholders. DW1 denied personally receiving monies belonging to the affected party out of both the lease and the sale of the suit property to the 7th defendant. DW1 admitted that the sale agreement dated 17/5/2001 and the minutes dated 5/1/2001, were incomplete and lacked vital details.
 34. George Imbera Ludisi, testified as DW2. He relied on a witness statement dated 30/10/2020 as his evidence in chief. DW2 told the court that he and the 4th defendant are co-directors of the affected party, conversant with its affairs and activities but have been sued erroneously, since they were never engaged in the sale and transfer of the suit property to the 5th defendant and later to the 7th defendant, hence the 1st defendant and other directors of the affected party should be the sole defendants. DW2 told the court that he only participated in the leasing of the suit land to the 6th defendant via a lease agreement dated 7/7/1995, for the renovation of Kitale Hotel, which he failed to undertake.
 35. DW2 denied participating in any board or shareholders meeting in which resolutions were made to transfer the suit property to the 5th defendant, or any other person. DW2 said that the transfer of the suit property from the 5th defendant to the 7th defendant was secretly and fraudulently done, by the 1st defendant together with other directors and non-directors in collusion with the 6th defendant, who was a leasee of the suit land.
 36. Subsequently, DW2 said that the passing over of the suit property from the affected party to the 5th defendant was suspect for no consideration of Kshs. 19,500,000/=, was ever paid to the affected party as alleged or at all. DW2 told the court that the 1st defendant and other directors colluded to hide away the suit property in conjunction with the 6th and 7th defendants, who unjustly benefited out of the millions of shillings as rent and sale proceeds. DW2 told the court that all these were underhand dealings orchestrated by the 1st defendant, a few other directors and the 6th defendant which seriously affected the finances and assets of the affected party to the detriment of its shareholders.
 37. DW2 said that he only saw the sale, transfer documents and acknowledgment vouchers for the first time when this suit was filed, otherwise he and the 4th defendant were never involved in the transactions or payments of the proceeds, or the approval of the same at any AGM or board resolutions, which are conditions precedent before such a mandate could be exercised by the directors. DW2 told the court that there was failure and betrayal of duty owed to the affected party by its directors, when the 1st defendant and a few of his confidants unilaterally decided to secretly enter into transactions and purported to alienate the valuable assets of the company. DW2 denied receiving any payments from the 5th - 7th defendants from the purported sale of the suit property, or witnessing any such payments to the affected party, pursuant to the purported sale and transfer of the suit property. DW2 was emphatic that the 6th defendant never paid any consideration pursuant to the lease agreement to the affected party as agreed or at all.
 38. Equally, DW2 termed the sale and transfer of the suit land to the 7th defendant as dishonest, null and void. DW2 relied on a letter dated 16/3/2015, a lease agreement dated 7/7/1995, a letter dated



23/8/1995, a lease agreement dated 30/10/1995, board meeting minutes dated 19/4/1995, transfer dated 17/4/1996, approval of the sale of 2001, minutes dated 5/1/2001 and transfer dated 2/9/2002 as D. Exhibit 1-9 respectively.

39. In cross-examination, DW2 insisted that he stood by his statement of defence that the foregoing transactions were irregular since no consideration was paid by both the 5th and 7th defendants to acquire the suit property or top of other irregularities such as non-involvement of the shareholders and directors of the affected party in sanctioning the same and transfer. DW2 also insisted that the 6th defendant failed to not only pay the rent but also renovate the Kitale Hotel as agreed in 1995. DW2 insisted that despite default, the secretary of the board who was the 1st defendant was reluctant to enforce the rights of the affected party against the 6th defendant. DW2 insisted that he was neither a director of the 5th defendant nor was he involved in any alleged approval of the sale and transfer of the suit land from the 5th defendant to the 7th defendant.
40. According to DW2, he became both a member and a director of the affected party in 1994, yet the title deed dated 16/3/2015 omitted his name. DW2 said that he was not privy to any meeting that took place on 20/8/1994 in which the executive committee was mandated to source for potential buyers of the suit premises, and from which the 6th defendant came out as the highest bidder. DW2 denied that there were management wrangles involving the company which resulted in the alleged need to dispose of its properties and the alleged dissolution of the affected party. DW2 said that apart from the suit land, the affected party had other assets including Namajalala, Sinoko, and Bulingo Farm, which it still owns to date, though the over one thousand shareholders are yet to acquire individual title deeds in line with their shares. DW2 said that there was never a board of directors or shareholders annual general meeting in which the 1st defendant tendered audited books of accounts for the affected party reflecting any income arising out of the lease, sale and transfer of the suit properties, received in the company's bank accounts, from the 5th - 7th defendants. DW2 said that if any such meetings do resolutions were ever undertaken, then he was not aware of, involved or informed of the same as a director and member of the affected party.
41. Vipul Ratilal Dodhia testified as DW3. He relied on a witness statement dated 18/11/2022 as his evidence in chief. He told the court that the 7th defendant is the registered owner of LR No. 2116/29/V, initially owned by the affected party, which later transferred it to the 5th defendant after the transactions was ratified by the members of the affected party through a resolution to form a new company to buy the hotel. DW3 said that he leased out the suit premises from the affected party to renovate and take possession of the commercial premises standing on it, referred to as Kitale Hotel on agreed terms and conditions, for a term of 17 years with an option to purchase the property. DW3 said that by a board of directors meeting minutes on 7/4/1999, the 5th defendant agreed that LR No. 2116/29/V, be sold and each member get his or her shares, and the directors were tasked to look for buyers in which after expressing interest, emerged as the highest bidder, paid the agreed consideration and the property was lawfully and procedurally transferred to the 7th defendant. DW3 said that the transaction was procedurally and lawfully undertaken with the consent and knowledge of all the shareholders.
42. DW3 relied on a copy of transfer dated 7/5/1995, minutes dated 15/9/1979, lease agreement undated, minutes for the meeting held on 7/4/1999, transfer dated 2/9/2002, minutes for a meeting held on 20/8/1994, minutes of meeting held on 7/4/1994, minutes for a meeting held on 5/6/2001, sale agreement dated 17/7/2001, bundle of payment vouchers and transfer of shares or stock dated 30/11/2021 as D. Exhibit Nos. 10 – 20, respectively
43. Following, DW3 said that there is no claim filed, regarding breach of the terms and conditions in the lease dated 1995. DW3 said that the suit property was never registered under his personal name, but



- was certain that the 7th defendant fulfilled all its terms and conditions regarding the sale and transfer from the 5th defendant.
44. DW3 said that though the initial lease period was for 17 years, at a rate of Kshs.9,000,000/= which he all cleared, though there are no documents on acceptance or payments by the lessors, DW3 insisted that he cleared the consideration by cash payments made on behalf of the company to the individual directors of the affected party, going by the vouchers produced before the court. DW3 said that after the lease expired, he paid Kshs. 35,000,000/= in cash for the suit property, over a period of time but made completion on 30/6/2002. DW3 said that he had no evidence from the bank that he made withdrawals in cash for Kshs. 35,000,000/=, to make payments for the suit land to the 5th defendant through its directors.
 45. DW3 admitted that though the transfer is dated 7/3/1995, he denied that there was a scheme to swindle the affected party or the 5th defendant of the suit property, otherwise D. Exhibit 11 was a clear resolution from the shareholders/directors authority the sale. DW3 denied that the minutes of 1979 had become slate by 1995. DW3 admitted that it was strange that the 1st defendant did not rely on the said documents in support of his statement of defence. DW3 told the court that he genuinely obtained both the lease, sale and transfer of the suit land from the 5th defendant and the affected party, after initially undertaken due diligence over the title to the land. DW3 said that he had no evidence to confirm that the commercial premises were renovated as per the lease agreement dated 30/10/1995. DW3 said that though he did the renovations, the hotel was condemned hence the demolition after he took over from the directors.
 46. DW3 said that the lessor was collecting approximately Kshs. 5,000,000/= per month. DW3 confirmed that resolutions in the minutes for 1979 and 1994 were not contradictory hence the board had authorised the sale and transfer. DW3 said that he never deposited the purchase price in any account belonging to the seller otherwise, he was acting as per the instructions of the directors in making the payments. DW3 insisted that he cleared all the considerations for the sale and transfer through the directors going by the acknowledgement vouchers. DW3 said that he had no audited company or personal accounts to show capacity to pay the consideration of Kshs. 35,000,00/=. DW3 confirmed that D. Exhibit No. 18 was not witnessed by his lawyers. Equally, DW3 admitted that there was no authority from the co-directors regarding the sale agreement, lease and transfer forms. DW3 confirmed that D. Exhibit No. 17 had missing signatures of the co-directors as well as those of the chairman and the treasurer.
 47. Nonetheless, DW3 admitted that he was the sole author of the payments acknowledgment vouchers to the directors of the seller. Asked about his pre-emptive rights, DW3 said that he exercised them accordingly. Equally, DW3 said that he was not privy to the running of the affairs of the lessor and the seller for the property otherwise, he dealt with the directors of the company.
 48. Manasse Nyagah Njega, testified as DW4. He relied on a witness statement dated 25/3/2024 as his evidence in chief. DW4 told the court that he is one of the directors of the 7th defendant, the owner of LR No. 2116/1/V formerly known as Kitale Hotel. DW4 said that the 7th defendant bought and was transferred the land on 7/12/2002, at the time the shareholders being Ratital Gosar Dodhia and DW3. DW4 said that on 7/7/2011, he bought shares in the 7th defendant belonging to a co-director of DW3 and later on from the latter on 2/9/2017. DW4 said that after buying the share, he started running the company together with the 6th defendant upto 30/11/2021, when he acquired all the shares of the company and has since been in possession of the land without any interruption.
 49. In cross-examination, DW4 told the court that he is currently the sole director of the 7th defendant after his co-director passed on. DW4 said that he was not aware that the suit land changed status and



its ownership during the subsistence of the suit as a cover-up. DW4 said that he collected close to Kshs.2,000,000/= as rent per month from the suit land. DW4 said that he was not privy to how the affected party had acquired or lost ownership of the land. Similarly, DW4 said that he had no board resolution before the court authorizing him to testify. DW4 admitted that the transfer of stock is dated 30/11/2021 but was not certain if an order was in existence before the court stopping any such transaction. DW4 said that he paid Kshs. 80 million to acquire the suit property on 30/11/2021 while he was not aware of the pending suit. DW4 said that the seller did not disclose to him that there was a pending suit before the court over the land.

50. The plaintiff relied on written submissions dated 17/2/2025. He isolated 13 issues for courts determination. On whether the suit is time barred, he relied on Section 26 of the [Limitation of Actions Act](#) and *Kampala Bottlers Ltd -vs- Damanico (U) Ltd (2010) 2 E A 514* and submitted that he only became aware of the fraud by the defendants upon retrieval of the records. On whether the resolution of 15/9/1979 to form a new company was valid, the plaintiff submitted that the said company was on condition of winding up of the affected party and the said proposal was not turned to a binding resolution. Reliance was placed on Section 380(1) of the UK [Companies Act](#) and Section 421 of the [Companies Act](#), *Multichoice Kenya Ltd -vs-Wananchi Group (Kenya) Ltd & 2 others (2020) eKLR*.
51. Regarding the transfer of the suit property to the 5th defendant was fraudulent, illegal null and void. Relying on Section 3(3) of the [Law of Contract Act](#), *Arthi Highway Developers Ltd -vs- West End Buthcherry Ltd (2015) eKLR* and *R.G. Patel -vs- Lalji Makanji (1957) E.A 314*, it was submitted that the same was marred with fraud and thus null and void ab initio since no consideration was paid, stamp duty, no consent from the Commissioner of Lands, there was conflict of interest, the suit land had been charged to ICDC, was I violation of the special conditions of the grant by the government.
52. On the legality of the sale of the suit land from the 5th defendant to the 7th defendant, the plaintiff submitted that it was unlawful irregular, null and void since the 5th defendant had no valid title to pass. The consideration of Kshs.19,500,000/= was not substantiated. Again, that there was no evidence of the termination of the lease or that the affected party consented to the sale of the suit land to a company of its tenant. He relied on Section 26 of the [Land Registration Act](#) and *Daudi Kiptugen -vs- Commissioner of Lands & others [2015] eKLR* and *Arthi Highway Developers Ltd (supra)*.
53. Further the plaintiff submitted that the 6th and 7th defendants do not qualify as bona fide purchaser for value without notice. They were aware of the fraudulent origin of the 5th defendants title and failed to conduct due diligence and therefore do not qualify to be bona fide purchasers since the were aware of the fraud and willful blindness. Reliance was placed on *Arthi (supra)* and *Dina Management Ltd -vs- County Government of Mombasa & 5 others [2023] KESC 30 (KLR)*. On impeachment of the title by the 7th defendant, the plaintiff submitted that it was acquired through fraud, procedural irregularity and corrupt scheme and cannot be protected by Section 26(1) of the [Land Registration Act](#).
54. The plaintiff also submitted that the 1st - 4th defendants as directors breached their fiduciary duties and their transactions should be cancelled and be ordered to account for the lost assets and income of the company. Regarding the restoration of ownership and possession of the suit land to the affected party, the plaintiff submitted that it had demonstrated that it is the undisputed the affected party is the original registered owner of the suit land which land it acquired through a government grant, held under a 99 years lease from 1/7/2024. He relied on Section 80(1) of the [Land Registration Act](#), *Daudi Kiptugen (supra)*, *Arthi Highway Developers Ltd (supra)* and *Republic -vs- Land Registrar (2018) eKLR*.
55. On the reliefs sought, the plaintiff submitted that he is entitled on behalf of the affected party, to an order for eviction of the 6th and 7th defendants from the suit land and mesne profits from 1995.



- Similarly, he submitted that the 1st to 7th defendants are jointly and severally liable to account for all the proceeds, income and benefits received wrongly from the use, occupation and exploitation of the suit land. Reliance was placed on Boardman -vs- Phipps (1916) 2AC 46 and Cooks -vs- Deeks (1916) 1 AC 554. Equally, the plaintiff submitted that that under Section 27(1) of the [Civil Procedure Act](#) provides that costs follow the events and should be awarded to the plaintiff.
56. The 1st and 5th defendants through written submissions dated 28/5/2025, have identified five issues for this courts determination. As to whether the plaintiff has proved fraud against the 1st defendant, it is submitted that the plaintiff did not call any independent witness and failed to produce any document to prove the 1st defendant acted fraudulently. The plaintiff submitted that fraud must be strictly proved and he who alleges must prove as set out under Sections 107-109 of the [Evidence Act](#) and as held in Koinange -vs- Koinange (1986) KLR, Makanji (supra) and Vijay Morjalia -vs- Nansingh Darbar (2000) eKLR. The 1st and 5th defendants also submit that the 1st defendant has not faced any fraud charges to unravel the alleged fraudulent acts.
57. Further, the 1st and 5th defendants submitted that it is not disputed that the plaintiff produced a sale agreement showing that the company and the 5th defendant entered into a sale agreement, which had been signed by the 1st defendant as one of the directors, in compliance with Section 3(3) of the [Law of Contract Act](#) and therefore the allegations of fraud are or illegality are baseless.
58. Again, regarding whether the plaintiff has proved that the 5th defendant was a conduit of fraud for 1st - 4th defendants, the 1st and 5th defendants submitted that the plaintiff did not adduce any evidence to prove the same that the 5th defendant was incorporated to defraud the company and that there was no lease agreement between the 5th and 6th defendants. It is further submitted that the burden of proof on fraud is higher than that required in civil cases. Reliance is place on Ndolo -vs- Ndolo (2008) 1KLR and Moses Parantai & Peris Wanjiku Mukuru suing as the legal representatives of the estate of Sospeter Mukuru Mbeere (deceased) -vs- Stephen Njoroge Macharia [2020] KECA 232 (KLR).
59. The 1st and 5th defendants also submitted that the plaintiff has failed to establish any claims against them. The suit is contrary to Order 4 Rules 1 and 4 of the Civil Procedure Rules and is therefore incompetent, since the suit is not supported by a verifying affidavit of an authorized company agent. Further, the 1st and 5th defendants submitted that all the activities of the 1st and 5th defendants were undertaken together with all the other directors of the company, where meetings were held, minutes taken and resolutions passed and no action was undertaken without the knowledge and consent of the directors. They relied on Njuri Ncheke Supreme Council of Ameru Elders (suing through its officials) & 3 others -vs- Linus Kathera & 4 others [2018] KEHC 9073 (KLR).
60. Accordingly, the 1st and 5th defendants submitted that the 5th defendant lawfully acquired the suit land and fulfilled the all the requisite elements of a valid contract and thus obtained good title to pass to the 6th defendant. It is submitted that parties are bound by the terms of their contracts and courts do not rewrite contracts as held in Husamuddin Gulamhussein Pothiwalla -vs- Kidogo Basi Housing Co-operative Society Ltd & 31 others [2003] KECA 172 (KLR). Additionally, it is submitted that the suit against the 1st and 5th defendants should be dismissed with costs as the allegations of fraud have not been proved by the plaintiff.
61. The 6th and 7th defendants relied on written submissions dated 17/3/2025. On whether the suit is statute beered,they submitted that it was filed outside the statutory period and thus the court lacks jurisdiction. That the plaintiff did not file a reply to the 6th and 7th defendant defence and thus admitted the issued raised therein. Reliance is placed on Order 2 rule 12(1) and 4 of the Civil Procedure and Section 7 and 26 of the [Limitation of Actions Act](#), Harrison Ndung'u Mwai & 500 others -vs- Attorney



General [2018] eKLR, Joash M. Nyabicha -vs- Kenya Tea Development Authority & 2 others [2013] eKLR, Edward Moonge Lengasurang -vrs- Jame Lanaiyara & Another (2019) eKLR.

62. On whether the suit land was acquired legally by the 6th and 7th defendants, it is submitted that the 6th and 7th defendants bought the suit land from the 5th defendant, the then registered owner, through a sale agreement in compliance with Section 3(3) of the *Law of Contract Act*. As the registered owner, the 7th defendant relied on Sections 25 and 26 of the *Land Registration Act* to submit that it has land rights over the suit land protected under the law. Reliance is also placed on Harrison Kiambuthi Wanjiru & another -vs- District Land Registrar Nairobi & 3 others [2022] eKLR and National Bank of Kenya Limited -vs- Pipe Plastic Samkolit (K) Ltd [2002] 2 EA 503 [2011] eKLR at 507.
63. Further, the 6th and 7th defendants submitted that the 5th defendant had all the intention to sell the suit land, where the 6th defendant emerged the highest bidder. On fraud, it is submitted that the onus is on the party that is alleging as outlined under Section 109 of the *Evidence Act*, Emfil Limited -vs- Registrar of Titles Mombasa & 2 others [2014] eKLR and Kuria Kiarie & 2 Others -vs-Sammy Magera [2018] eKLR, on the proposition that the allegation against the 6th and 7th defendants were not substantiated, specifically pleaded or evidence adduced to prove.
64. Regarding whether the 6th and 7th defendants are bona fide purchasers for value without notice, it is submitted that a bona fide purchaser is one who honestly intends to buy the property offered for sale reliance is placed Blacks Law Dictionary 8th edition and Katende -vs- Harindar (supra). It is also submitted that the 7th defendant paid Kshs.35,000,000/=, as consideration for purchased of the suit land from the 5th defendant.
65. On whether stamp duty was paid, the 6th and 7th defendants submitted that the same was paid and there was an endorsement at the bottom of the transfer document by the collector of stamp duty. On the prayers sought the 6th and 7th defendants submitted that the plaintiff's suit is time barred, the court lacks jurisdiction and fraud has not been proved. They relied on Ireri -vs Kubu Benson Nderi & 3 Others [2019] eKLR and Were & another -vs- Ongaro (Deceased) & 7 others (Land Case 13 of 2013) [2022] KEELC 3829 (KLR) (11 August 2022) (Judgment).
66. The court has carefully gone through the pleadings, evidence tendered and written submissions. The issues calling for my determination are:
 1. If the suit by the plaintiff is incompetent and properly before a court with jurisdiction.
 2. If the plaintiff's suit is time-barred.
 3. If the 3rd and 4th defendants are improperly joined in this suit.
 4. If the plaintiff has proved that the subdivision and registration of the resultant parcels of LR No. 2116/1/5 was illegal and wrongful.
 5. If the plaintiff has proved that the incorporation and registration of the 5th defendant on 17/5/1994 was for purposes of solely unlawfully taking over the remaining LR No. 2116/V/29 from the affected party.
 6. If the plaintiff has proved that the lease of LR No. 2116/29/V by the 1st - 4th defendants to the 6th defendant in 1995 was wrongful, illegal and unprocedural.
 7. If the plaintiff has proved that the sale and transfer of LR. No. 2116/29/V to the 5th defendant before the subsisting lease expired was wrongful, illegal, unprocedural and fraudulent.



8. If the plaintiff has proved that the sale and transfer of LR No. 2116/29/V on 2/9/2002 by the 5th defendant to the 7th defendant was illegal, unprocedural and fraudulent.
 9. If the plaintiff has proved that the 1st – 4th defendants were complicit, unaccountable, breached their fiduciary trust as directors, colluded and conspired to lease, transfer, sell and deal with the suit land otherwise, than in the best interest of the plaintiff, shareholders and the affected party as a result of which the plaintiff and the affected party incurred loss and damage.
 10. If the 6th and 7th defendants were party to the alleged fraud, illegality, collusion and conspiracy to defraud the plaintiff and the affected party the suit land, its rental income and sale proceeds.
 11. If the 6th and 7th defendants were bona fide lessees or innocent purchasers for value without notice.
 12. If the plaintiff is entitled to the reliefs sought.
 13. What is the order as to cost?
67. It is trite law that parties are bound by their pleadings. Through pleadings, parties disclose the facts and issues which they seek the court to determine. In this suit the plaintiff sought leave to bring the suit as a derivative action. After the initial plaintiff passed on 20/9/2023, leave was granted to bring on board the current plaintiff. There was no objection from the defendants after the amended plaint was filed dated 21/9/2023. The initial plaintiff had also testified before his death. Through an amended statement of defence dated 28/9/2023, the issue of lack of capacity to sue was never pleaded.
68. A preliminary objection to the jurisdiction of this court had also been raised and was determined by a ruling dated 27/7/2022, in which the court affirmed the holding in the ruling delivered on 1/10/2020. All these rulings and another one dated 27/9/2024 have not been reviewed, or overturned by way of an appeal by a superior court. In the premises, I find and affirm that this court is properly seized of the matter and that the issues raised and ventilated by all the parties herein fall under the jurisdiction of this court as defined under Article 162 2(b) of *the Constitution, Environment and Land Court Act*, the *Land Act* and the *Land Registration Act*.
69. Coming to time limitation, the 6th and 7th defendants have attacked the suit on account of limitation. Section 7 of the *Limitation of Actions Act* provides that an action to recover land may not be brought after the end of 12 years from the date the right of action accrued to the applicant. The plaintiff as alluded above brings the suit as a derivative action. There is no dispute that the first cause of action as pleaded occurred in 1993 when the initial land was subdivided, followed by the lease and transfer to the 5th and 6th defendants respectively, in 1995. The next cause of action as pleaded occurred in September 2012 when the suit land was transferred to the 7th defendant by the 5th defendant.
70. In *Edward Moonge Lengusuranga -vs- James Lanaiyara and another* (2019) eKLR, the court observed that the period of imitation starts running afresh whenever there are changes in the title, as was held in *Kimani Muchina & Another -vs- Swift Rutherford & Co. & Another* [1980] eKLR.
71. Limitation of time in fraud under Section 26 of the *Limitation of Actions Act* does not start running until the plaintiff has discovered the fraud, or mistake with reasonable diligence. In *Justus Tureti Obara -vs- Peter Koipeitai* (2014) eKLR, the court said that when the plaintiff discovered the fraud was a matter of fact to be ascertained at the trial. The plaintiff has testified that he came to learn about the fraud, illegality on the charge of title in 2013. The plaintiff further testified that since 1994 upto the filing of the suit, the 1st - 4th defendants and the other directors of the affected party had failed to call for an annual general meeting and or appraise the shareholders through audited accounts or reports the



status of the assets of the affected party. The plaintiff testified that it took the intervention of the court and the Registrar of Companies to call for the annual general meeting. Further, the plaintiff testified that they were denied opportunities to be appraised of the going-on in the affairs of the company including denial of new directors to take over the running of the affected party's affairs from the 1st defendant. These facts were confirmed at the hearing by the 1, 2, 3 and 4th defendants, especially the 1st defendant who was unable to tender any document in support of his statement of defence that all was well, since 1994 up to the filing of this suit. The court therefore finds no rival evidence to show that the plaintiff was privy to and had he exercised due diligence, he would have become aware of the changes to the title register earlier than in 2013. Additionally, the defendants have not pleaded that there was inordinate delay in bringing the suit, that the plaintiff was reckless, that they have suffered any prejudice. See *Iga -vs- Makerere University* [1992] EA, *Gathoni -vs- KCC Ltd* [1982] KLR 104 and *R.G. Patel -vs- Lalji Makanji* [1957] EA 315.

72. As to fraud and illegality, the law is that it must be specifically pleaded under Order 2 Rule 1(1) of the Civil Procedure Rules. It must also be proved on a balance higher than in ordinary suits. See *Vijay Morjaria -vs- Nansingh Darbar* (2000) eKLR and *Arthi Developers -vs- West End Butchery & others* (2015) eKLR. Mere suspicion is not enough. There must be circumstances incompatible with honest dealing. Fraudulent conduct must be distinctly alleged and proved. See *Mususa -vs- Dhanani* [2001] 2 EA 471.
73. The 1st - 4th defendants have not denied that they are and were members and duly elected directors of the affected party, which initially owned the suit land, that had been leased out with the consent of the shareholders in 1995 to the 6th defendant for consideration, for a period of 16 years. The plaintiff has testified that there was non-disclosure of the operations of the affected party, by the 1st - 4th defendants, regarding the rental income arising out of the lease for 16 years and for the 6th defendant in providing value for the lease. In *Ultimate Laboratories vs. Tasha Bioservice Limited Nairobi H.C.C.C No. 128 2000*, the court said that the corporate veil may be lifted by the courts if the corporate personality is being used as a mask for fraud or improper conduct. In this suit, the plaintiff pleaded and testified that the manner that the directors of the affected party especially the 1st defendant conducted themselves was fraudulent, illegal and resulted to irregular, fraudulent and unlawful disposal of the company's assets, and also that they failed to render or provide a statement of account for the financial years between 1994 to the filing of the suit, including calling for an annual general meeting. The plaintiff pleaded and testified that as a shareholder, he was entitled to be notified of the going-on and that the 1st - 4th defendants had breached the provisions of the *Companies Act*. A company is a juristic person separate from its members as held in *Solomon -vs- Solomon & Co.* [1897] AC 22.
74. The plaintiff has pleaded that the 1st - 4th defendants were involved in fraudulent, illegal and unprocedural disposal of the assets of the affected party. It is trite law that he who alleges must prove. Fraud is a conclusion of law. The facts alleged to be fraudulent must be set out and evidence led thereon to prove fraudulent intent as held in *Pamba Ong'weno Amila -vs- John Juma Kutolo* [2015] eKLR. A director of a company acts in a fiduciary capacity. The plaintiff has pleaded breach of trust on the part of the 1st - 4th defendant. Lord Herschel in *Bray -vs- Ford* [1896] AC, held that a person in a fiduciary capacity should not put himself in a position where his interest and duty conflict, so as to prejudice where he is bound to protect.
75. The plaintiff has pleaded and testified that the acts of 1st - 4th defendants were for their own benefit and not that of the affected party and its shareholders, hence the reason that the 1st - 4th defendants dwelt with the 6th and 7th defendants without disclosing or availing the income and the proceeds to the company bank account. In other words, the plaintiff's pleaded and testified that the 1st - 4th defendants



- turned company assets into their own personal use to the exclusion of the shareholders, hence the 1st - 4th defendants were liable for the loss of the income and the suit land.
76. Section 1004 (2) of the *Companies Act* grants courts powers to deal with those who attempt, aid, abet, procure or induce or conspire to contravene or not comply with the *Companies Act*. The plaintiff has produced proceedings and mentioned litigation that involved the directors in 1999. The plaintiff has testified that the fund collected by the 1st defendant from the 6th and 7th defendants out of the rental income and the sale was for the personal benefit of the 1st - 4th defendants. On the other hand, the 1st defendant pleaded and testified that what he did was in the interest of the affected party and its shareholders, the plaintiff included. On the other hand, the 3rd and 4th defendants distanced themselves from the actions of the 1st defendant and the 6th and 7th defendants.
77. In *Rusell Co. Ltd -vs- Commercial Bank of Africa Ltd & Another* [1985] eKLR, the court said that under Sections 2, 23, and 75 of the Registration of Titles Act (repealed), a certificate of title was conclusive proof of ownership unless there is fraud or misrepresentation to which the owner is proved to be a party. The sale and transfers signed by the 1st defendant, the 5th and 6th defendants, have to be looked into in that light. In *Limuru Tiibiya General Stores Ltd -vs- Peter Nyanga & Another* [2020] eKLR, the court observed that unless there was a specific clause in the articles and memorandum of association, the sale agreement signed by a sole director on behalf of the company had met the requirements of the then law Section 34 of the *Companies Act*. Other than the anomalies in the sale and transfer, the documents the plaintiff has also pleaded lacked the minutes of the annual general meetings, board resolutions and annual audited reports to confirm that the sale and transfer was legally approved by the shareholders of the affected party, Section 257A of the *Companies Act* mandates companies once every year. The duty to do so is placed under the directors. Article 9 of the model articles of association grants the directors powers to convene general meetings. Section 257(6) of the *Companies Act*, relates to general and special meetings. In a company limited by shares, the decision-making organ is the board of directors or its members in an annual general or special general meeting.
78. In *E.A. Portland Cement Ltd -vs- Capital Markets Authority & Others* [2014] eKLR, the court cited with approval *Affordable Houses Africa Ltd -vs- Ian Henderson & Others* HCC No. 524 of 2004, that a company can make decisions only through the agency of its organs, the board of directors and the shareholders. Order 9 Rule 2(c) of the Civil Procedure Rules provides that in respect of a company, an officer duly authorized under the corporate seal is the one required as the agent in a court of law. The defendants have relied on several minutes which authorized the sale, and transfer of the suit premises in 1995 and 2002. The plaintiff has produced documents to show that he was a shareholder of the affected party, hence capable of suing under Section 238(6) of the *Companies Act*. The CR 13 is an authoritative legal document that gives the shareholders and directors of the companies. The plaintiff blames the wrongdoing on the part of the 1st - 4th defendants, who undertook transactions allegedly binding on the affected party as well as the shareholders. There is no valid and authentic evidence that the minutes of 1979, 1994, and 1995 were undertaken in an annual general meeting or a special general meeting or resolutions were passed by the majority of the over 1000 members of the affected party, a notice in compliance with the law having been issued and effected by the 1st defendant.
79. In *Prudential Assurance Co. Ltd -vs- Newman Industries Ltd & Others* [1982] 1ALLER 364, the court said that there is an exception to the rule where what has been done amounts to fraud and the wrongdoers are themselves in control of the company, especially where the minority have been denied the right and their grievances could never reach court and would not allow the company to sue. In *Sultan Hasham Lalji & 2 others -vs- Ahmed Hasham Lalji & 4 others* [2014] eKLR, the court observed that it is the minority shareholders that are availed the protection by exception. See also *Grace Wanjiru Munyinyi & Another -vs- Gicheru Waweru Githunguri & Others* [2011] eKLR, and *Ghelani Metals*



- Limited & 3 others -vs- Elesh Ghelani Natwarlal & another [2017], the court observed that a derivative action is designed as a tool of accountability to ensure redress is obtained against all wrongdoers in the form of a representative suit filed by a shareholder on behalf of the corporation. The 6th and 7th defendants plead that the plaintiff cannot vitiate the sale and transfer.
80. Section 34(1) of the *Companies Act* 2015 provides that the power of the directors binds the company. In *Board of Trustees National Social Security Fund -vs- Michael Mwaloi* [2015]eKLR the court cited *Mahony -vs- East Holyford Mining Co.* [1875] LR 7 HL 869, where it was held that people dealing with company externally are not to be affected by any irregularities that take place on the internal management of the company. The court further cited *Royal British Bank -vs- Turquand* (1856) 6 E&B 327, otherwise known as Turquand Rule, that a person dealing with a company in good faith is entitled to assume that the company has complied with all its internal procedures and formalities.
 81. In *Samuel Mureithi Muriuki & Another -vs- Kamahuha Ltd* [2018] eKLR, the court held that whether or not a company has complied with its internal procedures on execution of contracts was an internal management issue that cannot affect a defendant to a third party dealing with the company. In *Kuwinda Rurinja Co. Ltd -vs- Kuwinda Holdings Ltd & Others* [2019] eKLR, the court held that the issue of whether the letter in question was signed by one or more persons was an internal mechanism that could not be blamed on the advocate or parties who genuinely in good faith relied on and benefited from the consequences of the consent.
 82. The 6th and 7th defendants relied on D. Exhibit Nos. 15, 16, and 17 which are board meeting minutes for the affected party held on 20/8/1994, 7/4/1999 and 5/1/2002. First and foremost, the documents were not produced by their makers and especially the 1st defendant. They are not certified or authenticated by either the chairman, secretary, or treasurer of the affected party or the 5th defendant. Equally, D. Exhibit No. 15 is incomplete. It does not show when the special general meeting notice was issued and who had issued it. It does not state where the special general meeting was held. The list of shareholders present is not printed, authenticated and or countersigned by the 1st defendant. The maker of the list was not called to produce it. DW3 and 4 had no capacity to produce or keep custody of the said records for they were neither members, shareholders or directors of both the 5th defendant and the affected party. The same issues or anomalies raised above apply to D. Exhibit No. 16. Regarding D. Exhibit No. 17, the document is not authenticated, or certified and was not produced by the maker. DW1 never signed the same.
 83. Coming to D. Exhibit No. 18, the document is ineligible. It lacks a witness to the same in line with Section 3(3) of the *Law of Contract Act* and Section 38 of the *Land Act*. The details of the advocate's name, signature and stamp as a witness to the document are lacking. The company seal and the capacity in which the purchaser's representatives signed the documents are missing. The status in which the subject matter was at the time of the sale is lacking. Equally, the consideration payable in view of the existing lease agreement at the time is not authenticated. The completion date of the sale agreement is also not included. Regarding payment of the consideration, D. Exhibit No. 19 are from Cherangani Hills Ltd, whose relationship with the 6th and 7th defendant was not established. Equally, the mode of payments, time taken to pay and acknowledgement of the payments by the 1st - 4th defendants and the affected party was never pleaded in the amended statement of defence by the 1st, 6th and 7th defendants. More importantly, other than the payment vouchers, there are no accompanying receipts from either the 1st- 4th defendants or the affected party acknowledging receipt of payments for the total Kshs. 35,000,000=, on account of a sale of land dated 17/1/2001.
 84. Additionally, the payment vouchers do not refer to the purpose for which the payments were being effected as relating to a land sale agreement. To say the least the court finds Exhibit 19 bordering on



- forgeries and having no relationship with the purchase of the land dated 17/1/2001. Otherwise, there would have been invoices, receipts and correspondences between the affected party and the 6th and 7th defendants confirming payments and receipts of the payments on account of a sale of land.
85. In *Mwai Kibaki & Another -vs- Mathigira Wholesalers Co. Ltd & Others* [2018] eKLR, the court cited Section 75 of the *Companies Act* and *Arthi Highway Developers Ltd -vs- West End Butchery* [2015] eKLR, that failure to follow procedures set out in the Memorandum and Articles of Association on transfer of shares invalidated the transfer. The court said that equitable principles cannot apply where there are express statutory law provisions, governing how shares should be transferred from existing members either to other members or to outsiders. The court said that it is incumbent upon any new shareholder to carry out due diligence and know with exactitude the process necessary to be admitted as a new member.
86. In this suit, the 6th and 7th defendants rely on D. Exhibit No. 10 a transfer of the suit land between the affected party and the 5th defendant at a consideration indicated as Kshs.300,000/=. The transfer is dated 7/3/1995. The stamp by the advocate who signed or witnessed it is missing. The name of the advocate just like in the sale agreement is missing. The company seal is equally missing for the directors of the 5th defendant. The document is not signed by both the transferee and the transferors. The transfer is not accompanied by any consent from the head lessor. D. Exhibit Nos. 11 and 12 lack the signatures of the 1st defendant and the rest of the directors of the 5th defendant. The minutes are also not certified, authenticated and or approved by the Registrar of Companies. D. Exhibit No. 12 is not dated. Regarding D. Exhibit No. 14, the consideration appearing is suspect or incomplete.
87. As held in *Mwai Kibaki (Supra)*, there is a procedure in which shares and properties belonging to a company have to be acquired. Other than the transfer dated 7/3/1995, there are no other documents showing how the procedural requirements under the *Companies Act* were followed. Equally, there are no approvals and consents over the sale and transfer by the head lessor. The sale and transfer is equally silent on the developments, rental income and the existing lease between the affected party and the 6th defendant at the time. D. Exhibit No. 11 refers to the minutes, board and annual general meetings resolutions authorizing the sale and transfer. The minutes are dated 15/9/1979. The board of directors, chair and the managing directors are not the ones who signed the transfer dated 7/3/1995. The 1st, 6th and 7th defendants have urged the court to find that it is the D. Exhibit No. 10 that ratified the sale and transfer of the suit land in 1995, and in 2002. None of the maker of the said documents were called to testify, produce the same and attest to their authenticity. The exhibit was not signed and dated by the then chairman.
88. Coming to D. Exhibit No. 14, the consideration indicated is Kshs.19,500,000/=:, as opposed to Kshs.35,000,000/= appearing in the sale agreement dated January 1995. The exhibit is illegible. It was not produced by the maker. The exhibit is not signed and witnessed by both the transferee and the transferor. The transfer is not accompanied by any documents for stamp duty valuation, receipt for payment of the stamp duty and the registration fees. D. Exhibit No. 11 is not clear on who were the directors of the affected party as of March 2015. Any board meeting, minutes, decisions and resolutions, relied upon by the 1st, 5th, 6th, and 7th defendants must therefore show that all those directors were party to the transactions arising out of such board or shareholders' resolutions, given that the directors had bona fide equal share as per the subscription note dated 17/5/1994. Regarding D. Exhibit No. 12, there is no doubt that the 6th defendant held a lease for 10 years with effect from 1995. Clause No. 1V and VIII gave the 6th defendant an option to purchase the land at the end of the lease term. Equally, D. Exhibit No. 4 is the lease which the 6th defendant signed with the 5th defendant on 30/10/1995 for a period of 10 years, for the same premises. It is not clear if the 6th defendant terminated the earlier one with the affected party after the property changed hands.



89. D. Exhibit No. 5 are minutes authorizing the lease and not a sale according to the 3rd and 4th defendants. The defendants rely on D. Exhibit No. 7, an approval allegedly signed by 4 directors of the affected party. The date when the same was signed is blank. A board of directors' resolution is different in nature from D. Exhibit No. 7. The witness to the alleged approval is missing. D. Exhibit No. 8 is equally lacking the signature and date by chairman and the directors. The minutes are also not certified by their makers.
90. The 6th and 7th defendants have pleaded that they were innocent purchasers for value without notice of any interests by the plaintiff over the suit land. In *Torino Enterprises Ltd -vs- Attorney General* Petition No. 5/E006 of 2022 [2023] eKLR, the court held that an innocent purchaser for value would also denote one's awareness of what they were purchasing by inspecting the suit premises. In *Dina Management Ltd -vs- County Government of Mombasa & Others* [2023] KESC 30 [KLR], the court said that for one to qualify as an innocent purchaser for value, the court must first establish the root of the title from the first allotment, guided by *Samuel Kamere -vs- Land Registrar Kajiado* [2015] eKLR, that he carried out the necessary due diligence, he acquired a valid and legal title, and thirdly, that he paid valuable consideration for the land.
91. In *Said -vs- Shume & Others* [2024 KECA 866 [KLR] (26th July, 2024) (Judgment), the court observed that a title to land is not contrived out of oblivion nor is it created in vacuum and therefore a good title means title to land which is traceable back to its origin. The court affirmed the standard of due diligence as held in *Kukan & Another (Administrator of the estate of the late Jason Kukan Lila) -vs- Kibutha* Civil Appeal 339 of 2018 [2023] KECA 742 [KLR], that due diligence has to go beyond merely obtaining a certificate of title since Section 26(1)(a) and (b) of the [Land Registration Act](#) and Article 40(6) of [the Constitution](#), places a responsibility to purchasers to ascertain the status of a property beyond carrying out an official search. See also *Mohamed -vs- Duba & Another* civil Appeal 83 of 2019 [2022] KECA 442 [KLR] (18TH March 2022) (Judgment). In *Katende -vs- Haridar & Co. Ltd* [2008] 2 EA 173, an innocent purchaser was defined as one who purchased in good faith, with no knowledge of fraud, for a valuable consideration, was not aware of the fraud and was not party to any fraud.
92. From the documents provided by the 6th and 7th defendants showing the history of the title and the capacity of the 1st defendant to deal with the land, the court has noted that the same are not certified. Under Sections 79 and 80 of the [Evidence Act](#). There is no evidence that the 6th and 7th defendants conducted any search to ascertain the root of the title and the capacity of the 1st - 4th defendants to deal with the land on behalf of the affected party. None of the documents produced by the 6th and 7th defendants are public documents falling under Sections 78 and 80 of the [Evidence Act](#). In *Willy Kimutai Kitilit -vs- Michael Kibet* [2018] eKLR, the court said that any act in furtherance of an unlawful transaction is itself illegal. A bona fide purchaser has to produce a valid contract of sale. See *Lawrence P.K. Mukiri Mungai & Others vs Attorney General & Others* [2017] eKLR. Under Article 40(6) of [the Constitution](#), 2010, protection does not extend to unlawfully acquired title. In *Arthi Highway Developers Ltd* (supra), the court held that an irredeemably fake title could not be a basis of conferring proprietary right to subsequent purchaser of a property.
93. In *Alice Chemutai Too -vs- Nickson Kipkurui Kori & Others* [2015] eKLR, the court said a claimant seeking to impeach a title has to demonstrate that the title holder is guilty of immoral conduct on his part. The plaintiff has pleaded and testified that the 6th and 7th defendants were party to the illegalities, irregularities and colluded with the 1st- 4th defendants to illegally and unlawfully deprive the affected party and its shareholders their assets and income from the time the lease was signed to a sale and the transfer. The plaintiff testified and pleaded that no consideration at all in terms of rental income and the sale proceeds were paid to the accounts of the affected party by the 5th, 6th and 7th defendants, under



Section 80(2) of the *Land Registration Act*, a title register can only be cancelled if the proprietor had knowledge of the omission, fraud or mistake or substantially contributed to it by any act, negligence or default. The 6th defendant was aware of the status of the land as of 1995 when he signed a lease with the affected party and later with the 5th defendant. There is no evidence that the 6th defendant paid the agreed rent for 16 years or renovated the suit premises in accordance with the lease agreement. Equally, there is no evidence that the 6th defendants undertook any renovations or improvements to the suit premises to the tune of Kshs.5,500,000/=, which appear to have been part of the consideration paid in acquiring the land from the 5th defendant.

94. There is evidence that the 6th defendant, as early as 30/1/1995, was notified in writing by Mukasa M. Muliro that the suit property belonged to a public company, the affected party and that members had not met and agreed to sell it. Another letter was also written dated 30/1/1995 to Ronald Walubengo, copied to the 6th defendant. The 6th defendant also entered into a new lease with the 5th defendant on 30/10/1995 before revoking the one dated 7/7/1995 with the affected party. The 6th defendant was also notified of the anomalies by the affected party through a letter dated 30/9/2011. In the new lease the 5th and 6th defendants did not disclose that they had already entered into a sale agreement and a transfer dated 7/3/1995.
95. In a replying affidavit sworn on 25/2/2020, the 6th defendant admitted that there was a Kakamega High Court Civil Suit No. 20 of 1995, Emmanuel Simiyu & Others suing as shareholders vs Evans Khaemba & Others, raising issues of fraud and breach of trust and where a temporary injunction had been issued on 7/2/1995, against the 6th defendant from taking possession of and demanding rent from the suit land. So, it cannot be true that the 6th and 7th defendants were not aware that the shareholders of the affected party were raising issues, objections or reservations to dealings with the suit property. Even after the red flags were raised, the 6th and 7th defendants went ahead to deal with the suit land without ascertaining from the head lessor, the Registrar of Companies and the shareholders whether the suit land was available for sale. Above all the 6th and 7th defendants while aware of the issues raised, opted to pay the consideration by way of cash to some of the directors of the affected party including the 1st defendant without any deposit to the bank account of either the 5th defendant or the affected party. Going by the bundles of vouchers produced as D. Exhibit No. 19 and the petty cash prepared by the Cherangani Hills Ltd, the amounts paid fall short of Kshs. 35,000,000/=.
96. There is no evidence that the 6th and 7th defendants paid full consideration to be allowed to benefit from the contract of sale. The 6th and 7th defendants relied on falsified documents to evade payment of stamp duty. It is not the duty of the court to rewrite the contract but to enforce the way it is written. See *Sun Sand Dunes Limited -vs- Raiya Construction Limited* [2018] KECA 548 (KLR). The 6th and 7th defendants are the ones who benefited from a transfer indicating Kshs.19,500,000/= instead of Kshs.35,000,000/=. In *Kibathi T/A Osoro Chege Kibathi & Co. Advocates -vs- Mutsi Investments Ltd* Civil Appeal E134 of 2022 [2024] KECA 270 [KLR] (8th March 2024) (Judgment), the court said it cannot allow a party to benefit from fraud or to keep an advantage which it obtained through fraud as held in *Lazarus Estates Ltd -vs- Beasley* [1956] 1 ALL ER 341.
97. The court said that falsification of transfer forms, non-disclosure of the consideration and failure to pay stamp duty for value different from what the agreed purchase price was the responsibilities of the appellant, who could not be allowed to rely on it to avoid honouring the professional undertaking. In this suit, it is the 6th and 7th defendants who want the court to aid them by enforcing the sale agreement and a transfer of the land from the 5th defendant to themselves. The 5th defendant has not testified to confirm that the suit land was lawfully and procedurally sold and transferred on account of valid shareholders and board of directors' resolutions and for a valuable consideration that was paid to the



- accounts of the 5th defendant and or the affected party. A party without a valid title has nothing to pass to a third party. There is no evidence that other than the sale agreement of the land, the 6th and 7th defendants executed valid transfer forms, obtained requisite consents and approvals from to the head lessor and subsequently paid the requisite stamp duty and registration fees to acquire valid title documents to the suit land. Rates and rent payments including rate and rent clearance certificates were not availed to show that the 6th and 7th defendants obtained title to the land in a regular, formal and procedural manner, as held in *Munyu Maina -vs- Hiram Gathiba Maina Civil Appeal No. 239 of 2009.*
98. Fraud as defined in Black Laws Dictionary 9th edition, consists of willful deceit with intent to deprive another of his right or cause him injury. In Black Laws Dictionary 9th Edition P 731, it consists of knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. In *Teresia Wangari Mbugua -vs- Jane Njeri Nduati & Another* [2020] eKLR, the court said a proprietor must show the root of his ownership as held in *Hubert L. Martin & Others -vs- Margaret J. Kamar & Others* [2016] eKLR, by showing that all the processes towards its acquisition were duly followed without a break in the chain.
99. I think the evidence tendered by the plaintiff is consistent and has not been refuted by the defendants some who have conceded to the claim that the 6th and 7th defendants' title was not procedurally and formally obtained. The 6th and 7th defendants were party to the irregular and unprocedural acquisition of the title. I do not believe that they paid valuable consideration for the same. The exhibits relied upon by the 6th and 7th defendants are all forgeries.
100. The upshot is, I find the plaintiff's suit proved to the required standard. The 1st - 4th defendants failed to exercise due care and hold their fiduciary duty to the plaintiff and the affected party. The 1st defendant failed to disclose to the affected party and its shareholders how much was paid as rental income for 16 years and the proceeds of the sale if any took place between the 5th, 6th and 7th defendants. If the intended purpose of the sale was for the benefit of the affected party and its shareholders, then the 1st - 4th defendants have failed in their duties as directors.
101. The 6th defendant and the DW3 have no board resolutions to represent the 7th defendant or speak on behalf of the 5th defendant. See *Leo Investments Ltd -vs- Trident Insurance Co. Ltd* [2014] eKLR.
102. The plaintiff has been able to prove acts of omission and commission by the 1st - 4th defendants, which amount to negligence, default, breach of duty or breach of trust by a director of a company under Section 241 of the *Companies Act*. As a result of those acts of omission and commission, the affected party was put at a loss or damage. See *Dr. Jane Wambui Weru -vs- Overseas Private Investment Corp & Others* HCCC No. 83 of 2012.
103. It is the right of shareholders to require that an AGM be held. The duty of disclosure and the keeping of books of account by a company is provided under Section 628 of the *Companies Act*, failure to do so on the part of a director attracts criminal sanctions. The shareholders had a legitimate expectation and right to protect the interest of the company and other shareholder's interested in the success of the company. The 1st - 4th defendants were obligated in law to give and provide documents showing everything that they did during their tenure as directors especially touching on the suit property. The 1st defendant was not truthful or diligent in his duties as directors. See *Fidelity Commercial Bank Ltd -vs- Italian Market Ltd* [2017] eKLR.
104. The upshot is, I allow the prayers in the amended plaint dated 21/9/2023 in terms of prayers (a), (b), (c), (d), (e) and (f), that is a:



- (a) Declaration that the Company is the rightful owner of Land Parcel No. Kitale Municipality Block 4/494, popularly known as Kitale Hotel measuring 0.6256 Ha.
- (b) Declaration that the transfer on 17/4/21996 of the Land Parcel No. Kitale Municipality Block 4/494, to the 5th defendant was fraudulent, null and void.
- (c) Declaration that the sale and transfer on 4/9/2002 of the Land Parcel No. Kitale Municipality Block 4/494 to the 7th defendant was unlawful, null and void
- (d) Declaration that the 7th defendant holds Land Parcel No. Kitale Municipality Block 4/494, in trust for the affected party.
- (e) An order that the 7th defendant do transfer Land Parcel No. Kitale Municipality Block 4/494, to the affected party.
- (f) An order that the 6th and 7th defendants do hand over vacant possession of all the premises comprised in Land Parcel No. Kitale Municipality Block 4/494, in default the 6th and 7th defendant, their agents, associates and workers be evicted from the premises, in line with the law.

105. Costs of the suit to the plaintiff to be borne by the 1st, 5th, 6th and 7th defendants.

106. Orders accordingly.

JUDGMENT DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 18TH DAY OF JUNE 2025.

In the presence of:

Court Assistant - Dennis

Kemboi for Orwa for 6th and 7th defendants present

Mr. Kraido for the plaintiff present

Muhanda for 1st and 5th defendants present

3rd defendant absent

4th defendant

Affected party absent.

HON. C.K. NZILI

JUDGE, ELC KITALE.

