

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. 16 OF 2019

FLORENCE MAKANDI
.....PLAINTIFF
[Legal Representative of Anita Nkaimura M' Mutungi]

VERSUS

THE HON. ATTORNEY GENERAL1ST
DEFENDANT

DISTRICT SURVEYOR MERU2ND
DEFENDANT

DISTRICT LAND REGISTRAR3RD DEFENDANT

COUNTY GOVERNMENT OF MERU4TH
DEFENDANT

JULIUS KIAMBATI5TH DEFENDANT

AND

NELSON NKUNJA KAMANGA INTERESTED
PARTY

JUDGMENT

1. The Plaintiff approached the court *vide* Plaint dated **28th March 2019** and wherein same has sought various relief[s]. The reliefs sought by the Plaintiff are as hereunder:

- i. Cancellation of new numbers Meru Municipal BLOCK II 882 and 883 and revert to original No. NTIMA/IGOKI/820.*

- ii. Cancellation of letters of allotments of plots Nos MERU MUNICIPAL BLOCK II 882 and 883 and revert to the plaintiff.*
- iii. Costs of the case.*
- iv. Any other benefit this Hon Court may deem fit to grant.*

2. The 1st, 2nd, and 3rd Defendants duly entered appearance and filed Statement of Defense dated **5th November 2020** and wherein the named defendants denied the claims by the Plaintiff. Furthermore, the named defendants contended that the suit property was lawfully and duly acquired by the Government. In addition, it was contended that Anita Nkaimura M'Mutungu [Deceased] was duly compensated. Besides, it was contended that the suit beforehand is statute barred.
3. The 4th Defendant duly entered appearance and filed a Statement of Defense dated **26th April 2021**. The 4th Defendant denied the claims by the Plaintiff. Additionally, the 4th Defendant also posited that the suit by the Plaintiff was statute barred.
4. The 5th Defendant duly entered appearance, filed a Statement of Defense and counterclaim dated **15th August 2024**. The 5th Defendant has sought various reliefs at the foot of the Counterclaim. The reliefs sought at the foot of the counterclaim are as hereunder:
 - i. A declaration that Plaintiff is the legal and rightful proprietor of parcel number Meru/Municipality Block II/883.*
 - ii. An order of permanent injunction restraining the Defendants, their agents or anyone acting on their behest barring them from entering, interfering with quiet possession and usage of, trespassing on or as otherwise dealing with parcel number Meru/Municipality Block II/883.*
 - iii. Special damages for loss of business.*

- iv. *General damages.*
 - v. *Costs, interest of this suit and any other relief that the Honorable Court may deem fit to grant.*
 - vi. *In the alternative and without prejudice to the above, court be pleased to issue an order of compensation of parcel number Meru/Municipality Block II/883 together with the developments thereon in respect of the market value.*
5. The Plaintiff filed a Reply to the Statement of Defense and Counterclaim by the 5th Defendant. Same is dated **2nd October 2024**.
 6. The Plaintiff's case is premised on the evidence of two witnesses, *namely*; Florence Makandi and Kamuku M'Mukindia. Same testified as PW1 and PW2, respectively.
 7. It was the testimony of Florence Makandi [PW1] that same is the Plaintiff in respect of the instant matter. Moreover, the witness averred that by virtue of being the Plaintiff, same is conversant and familiar with the facts of the case. In addition, the witness averred that same has since recorded and filed a witness statement dated **13th November 2019**. The witness thereafter sought to adopt and rely on the contents of the witness statement as her evidence in chief.
 8. Suffice it to state that the witness statement dated **13th November 2019** was duly adopted and constituted as the evidence in chief of the witness. Furthermore, the witness referenced the list and bundle of documents dated **27th May 2021** containing eight documents and which documents the witness sought to tender and produce as exhibits before the court. There being no objection, the documents under reference were produced and marked as Exhibits P1 to P7 respectively.
 9. The witness further alluded to the Plaint dated **28th March 2019** and the attendant Verifying Affidavit. To this end, the witness sought to adopt and rely on the contents of the Plaint and the Verifying Affidavit.

Besides, the witness implored the court to grant the reliefs sought at the foot of the Plaint.

10. On cross-examination by learned counsel for the 1st, 2nd, and 3rd Defendants [The Hon. Attorney General]; the witness testified that the suit property was compulsorily acquired. In addition, the witness stated that same is aware of the compulsory acquisition of the land in question. Nevertheless, the witness stated that same has not tendered a copy of the gazette notice relative to the compulsory acquisition.
11. While still under cross examination, the witness testified that she now wishes to state that the land was not compulsorily acquired. To this end, the witness averred that same has a letter dated **18th January 1990** by the Town Clerk- Municipal Council of Meru [now defunct]. However, the witness admitted that same does not have a copy of the gazette notice to demonstrate that the land was not compulsory acquired.
12. It was the testimony of the witness that same has complained of fraud that was committed by the land registrar and the surveyor. Moreover, the witness testified that it would be a lie for someone to state that the land had been compulsory acquired. Further and in addition, the witness averred that her mother [Now deceased] was not compensated.
13. On cross examination by learned counsel for the 5th Defendant, the witness averred that same is aware that the land in question was compulsorily acquired. In addition, the witness averred that the purpose of the acquisition was to expand the town. Regarding Gazette Notice Number **1253 of 13th May 1977**; the witness averred that same relates to compulsory acquisition. However, the witness testified that there was no compensation for the land in question.
14. It was the further testimony of the witness that same is not aware whether the people whose lands were compulsorily acquired were given alternative land. In particular, the witness testified that same is not aware

whether her mother [Now deceased] was granted a plot. Besides the witness posited that same is not aware of any letter of allotment that was issued to her mother [Now deceased].

15. While still under cross examination, the witness averred that same has tendered and produced various letters before the court. In particular, the witness averred that same has produced the letter dated **18th January 1990**. The witness further stated that the letter under reference alluded to the fact that the land in question was no longer required for the initial purposes that underpinned the compulsory acquisition. However, the witness conceded that same has neither availed nor tendered any gazette notice to underpin the de-gazettement of the compulsory acquisition of the land in question, *namely*; LR No. Ntima/ Igoki/820.
16. Regarding the letter dated **18th July 2000**, the witness averred that the letter in question was addressed and sent to the commissioner of lands [Now defunct]. However, the witness averred that same is not aware whether the letter under reference attracted any response from the commissioner of lands [Now defunct].
17. It was the testimony of the witness that the dispute surrounding the legal status of the land in question arose in the year 1990. However, the witness averred that same was aware of the fraud being litigated before the court from the years 1990 up to 2000. Nevertheless, the witness testified that even though same was aware of the fraud, she [witness] did not file any case. Moreover, the witness averred that same had children in school and that is the reason why same did not file the suit in time.
18. Additionally, it was the testimony of the witness that same wrote a letter dated 26th March 2008. Furthermore, the witness averred that the letter in question was addressed to the town clerk [Municipal Council of Meru]. In

particular, the witness averred that the letter in reference was complaining of the fraud attendant to the suit land. Furthermore, the witness averred that same is not aware of any response from the town clerk, *namely*; Arthur Wambugu.

19. The witness further testified that the land in question has since been developed. The witness averred that there is a commercial building that is standing on the plot. Moreover, the witness testified that same is not aware whether the 5th Defendant obtained his title through succession.
20. On further cross examination, the witness testified that same knew and became aware of the fraud in the year 2007. Nevertheless, the witness posited that same did not act. Moreover, the witness averred that same procured and obtained the limited grant of letter of administration in the year 2015.
21. On cross examination by learned counsel for the interested party, the witness averred that same was removed from the land in question in the year 2005. Besides, the witness testified that she was removed from the land in question by the interested party. Furthermore, the witness averred that same proceeded to and reported the incident to the police. To this end, the witness testified that same was given an OB Number.
22. It was the further testimony of the witness that same undertook a search over and in respect of LR. NTIMA/IGOKI/ 820; and that upon undertaking the search, same discovered that the Plot had been subdivided into two portions. The witness further averred that the subdivision under reference was because of fraud committed by the ministry of lands.
23. While still under cross examination, the witness testified that the interested party entered onto the land in the year 2005. Nevertheless, the witness added that same did not lay any complaint to the National Land Commission.

24. It was the further testimony of the witness that same has tendered and produced before the court a letter dated **18th January 1990**. In addition, the witness averred that the letter was given to her [witness] by her mother [Now deceased]. Furthermore, it was the testimony of the witness that her mother was not compensated.
25. The second witness who testified on behalf of the Plaintiff was Kamuku M'Mukindia. Same testified as PW2.
26. It was the testimony of the witness that same is conversant and familiar with the Plaintiff. Moreover, the witness averred that same was also familiar with one Anita Nkaimuri M'Mutungi [Deceased]. In particular, the witness averred that she knew the deceased since 1970. Besides, the witness testified that same worked with the deceased at the county council of Meru [Now defunct].
27. On the other hand, the witness averred that same has since recorded a witness statement dated **13th November 2019** and which witness statement the witness sought to adopt and rely on as his evidence in chief. To this end, the witness statement was adopted and constituted as the evidence in chief of the witness.
28. On cross examination by learned counsel for the 1st, 2nd, and 3rd Defendants [The Hon. Attorney General], the witness testified that same has indicated that there was fraud that was done on the land belonging to Anita [Deceased]. Furthermore, the witness averred that the land in question was not bought by the county council of Meru. In addition, the witness testified that same is privy to the contents of a letter written by the Town Clerk -Municipal Council of Meru.
29. While still under cross examination, the witness testified that same does not know whether the land was compulsorily acquired. Nevertheless, the witness posited that the land was irregularly and illegally sold.

30. On cross examination by learned counsel for the 5th Defendant, the witness testified that same is conversant with LR Numbers Meru Municipality/Block II/883 belonging to Julius Kiambati. In particular, the witness averred that the said plot falls within LR Number Ntima/Igoki/820. Nevertheless, the witness admitted that same does not have any surveyors report before the court to show that Plot Number Meru Municipality/Block II/883 falls within Ntima Igoki/820.
31. Additionally, it was the testimony of the witness that the houses belonging to Anita Nkaimuri [Deceased] were burnt. Furthermore, the witness testified that the houses were burnt by people who wanted to build on the land. Further, the witness admitted that same did not report the incidence of the burning of the houses.
32. On cross examination by learned counsel for the interested party, the witness testified that Anita Nkaimuri [Deceased] worked for the County Council of Meru. Moreover, the witness averred that Anita and himself were colleagues at the County Council of Meru.
33. It was the further testimony of the witness that same was aware that Anita Nkaimuri was the owner of Plot 820. Furthermore, the witness testified that same is aware of the location of the plot in question. In addition, the witness averred that the county Council of Meru bought the neighboring plots, but not plot 820 belonging to Anita Nkaimuri.
34. It was the further testimony of the witness that same has alluded to fraud being committed in respect to the land of Anita Nkaimuri [Deceased]. Nevertheless, the witness acknowledged that same does not have any training to determine fraud. Moreover, it was the testimony of the witness that same was informed of the fraud by the owner of the land. Nevertheless, the witness clarified that same cannot recall the year/time when the owner of the land informed same of the fraud.

35. The witness further testified that same is aware of Plot Number Meru Municipality/ Block II/ 822. However, the witness clarified that same is not aware of the owner of the said plot.
36. With the foregoing testimony, the Plaintiff's case was closed.
37. The case for the 1st, 2nd, and 3rd Defendants [Represented by the Hon. Attorney General] is premised on the testimony of one witness, namely; Peter Kimani. Same testified as DW1.
38. It was the testimony of the witness [DW1] that same is the county surveyor, Embu County. Moreover, the witness averred that previously, same served in Meru. In addition, the witness testified that same is familiar with the parcel of land known as Ntima/Igoki 820.
39. The witness further testified that in respect of the subject matter, same has since recorded and filed a statement dated **13th January 2023** and which witness statement the witness sought to adopt and rely on. To this end, the witness statement was adopted and constituted the evidence in chief of the witness.
40. Additionally, the witness referenced a list and bundle of documents dated **13th January 2023** containing five documents and thereafter, same sought to tender and produce the documents as exhibits before the court. There being no objection to the production of the documents, same were produced and admitted as exhibits D1-D5 respectively. Regarding exhibit D5, the witness averred that Plot Number Ntima/Igoki 820 was never degazetted.
41. On cross examination by learned counsel for the 5th Defendant, the witness testified that LR. Number Ntima/Igoki/820 falls under the general boundaries type of survey whereas LR. Number Meru Municipality/ Block II 302 falls under the fixed boundary regime. Furthermore, the witness testified that the general boundary related to land situated outside

the municipality. In addition, it was averred that general survey has an aspect where the registry index map is not an authority on the boundary.

42. While still under cross examination, the witness testified that as pertains to fixed survey, the survey map is an authority in determination of a boundary. Moreover, the witness averred that the proprietor of land under fixed boundary is obligated to maintain the boundary beacons.
43. Regarding whether LR. Number Meru Municipality/ Block II/883 sits on the same ground as Ntima/Igoki/820, the witness testified that it would require a survey exercise before a conclusion can be arrived at. In addition, the witness testified that same would require physical reference point to be able to determine the boundaries of Plot Number Ntima/Igoki/820.
44. It was the further testimony of the witness that same is aware that Plot Number Ntima/Igoki/820 was compulsorily acquired. To this end, the witness referenced the gazette notice that was issued and published by the commissioner of lands. Furthermore, the witness testified that the compulsory acquisition in respect of the said plot was never degazetted.
45. While still under cross examination, the witness testified that after the compulsory acquisition of various plots including Ntima/Igoki/820, a re-planning was undertaken by the Municipal Council of Meru [Now defunct]. Moreover, the witness testified that after the re-planning was done, the directorate of survey conducted the re-survey; and thereafter same generated survey plans [F/R] for the entire area. Furthermore, the witness testified that the resurvey was done in broad daylight.
46. On cross examination by learned counsel for the Interested Party, the witness testified that same worked as the County Surveyor in Meru for

five years. In particular, the witness testified that same was the one in charge of survey- Meru County in the year 2021.

47. It was the further testimony of the witness that LR. Number Ntima/Igoki/820 was compulsorily acquired by the municipal council of Meru. In particular, the witness averred that the plot was acquired in 1977. Moreover, the witness added that upon compulsory acquisition, the land became public land.
48. It was the further testimony of the witness that land that has been compulsorily acquired was subjected to restrictions. Furthermore, the witness testified that upon compulsory acquisition, an entry is ordinarily endorsed on the green card/ register of the land. In addition, it was the testimony of the witness that where there is a de-gazettement, the register of the land will contain such an entry.
49. While still under cross examination, the witness testified that same has tendered and produced before the court evidence of gazettement of the plot in question. Moreover, the witness averred that the gazettement related to various properties including LR. Number Ntima/Igoki/820.
50. On cross examination by the Plaintiff, the witness testified that same has never received any letter from Meru Municipality. Nevertheless, upon being shown a letter by the Plaintiff, the witness averred that same cannot authenticate the source of the letter under reference. In addition, the witness averred that where there is de gazettement of land that has been acquired, the commissioner of lands would publish a de-gazettement. However, in respect of Ntima/Igoki/820, the witness averred that no de-gazettement was ever published.
51. On further cross-examination, the witness testified that previous Registry Index Map (RIM) for Ntima/Igoki/820 was superseded upon compulsory acquisition. To this end, the witness averred that the previous RIM ceased to exist.

52. With the foregoing testimony, the case for the 1st, 2nd, and 3rd Defendants was closed.
53. The 5th Defendant's case is premised on the evidence of two witnesses, *namely*; Julius Kiambati and Muthamia Haron Mbae. Same testified as DW2 and DW3, respectively.
54. It was the testimony of Julius Kiambati [DW2] that same is the 5th Defendant. In addition, the witness testified that by virtue of the being the 5th Defendant, same is conversant with the facts of the case. Moreover, the witness further testified that in respect of the instant matter, same has recorded and filed a witness statement dated **15th August 2024** and which witness statement the witness sought to adopt and rely on as his evidence in chief. To this end, the witness statement was thereafter adopted and constituted the evidence in chief of the witness.
55. Additionally, the witness referenced the list and bundle of documents dated **15th August 2024** containing thirty-nine documents and thereafter same sought to tender and produce the documents as exhibits before the court. There being no objection to the production, same were tendered and produced as exhibits D1- D39, on behalf of the 5th Defendant.
56. The witness further referenced a list and bundle of documents dated **4th October 2024** containing three [3] documents and thereafter same sought to tender the documents as exhibits. However, it transpired that though the list highlighted three documents, only one document was annexed thereto and served. To this end, the singular document at the foot of the list under reference, was produced as Exhibit D40 on behalf of the 5th Defendant.
57. On the other hand, the witness adverted to the statement of defense and counterclaim. Moreover, the witness pointed out that the statement of defense and counterclaim was amended resting with the amended one dated **15th August 2024**. Suffice it to state that the witness sought to

adopt and rely on the contents of the said amended Statement of Defense and Counterclaim.

58. On cross examination by the learned counsel for the interested party, the witness averred that same is the lawful proprietor/owner of LR. Number Meru Municipality/Block 11/883. Furthermore, the witness testified that the said plot borders plot number 882.
59. It was the further testimony of the witness that same acquired his plot through purchase from Alex Murithi. In particular, the witness referenced the sale agreement dated **17th May 2012**. Moreover, the witness testified that same was thereafter issued with a certificate of lease.
60. Additionally, the witness testified that same entered upon, took possession of and has since developed his plot. On the contrary, the witness averred that the plaintiff has never been in occupation of Plot Number Meru Municipality/ Block II/883 or at all.
61. On cross examination by the plaintiff, the witness testified that same bought/ purchased the suit property in 2012. Moreover, the witness reiterated that same is the lawful owner of Plot 883.
62. It was the further testimony of the witness that his plot, *namely*; Meru Municipality/ Block II/883 arose from LR. Number Meru Municipality/ Block II/302. Nevertheless, the witness clarified that same does not recall the map sheet number that birthed his property.
63. While still under cross examination, the witness testified that same is aware that plot being claimed by the plaintiff was compulsorily acquired. Furthermore, the witness testified that same has not trespassed onto the plaintiff's land.
64. It was the further testimony of the witness that the plot claimed by the plaintiff was compulsorily acquired. In addition, the witness posited that

his plot, *namely*; Meru Municipality/ Block II/883 did not arise from LR. Number Ntima/Igoki/820.

65. The second witness who testified on behalf of the 5th Defendant was Muthamia Haron. Same testified as DW3.
66. It was the testimony of the witness that same is the director in charge of land administration- Meru County Government. To this end, the witness averred that same is conversant and familiar with the facts of this case. In particular, the witness testified that same is familiar with LR. Number Ntima/Igoki/820.
67. Furthermore, the witness testified that Plot Number Ntima/Igoki/820 is one of the plots that was compulsorily acquired. In this regard, the witness testified that the plot in question was acquired in 1977. Besides, the witness added that the acquisition was duly gazette.
68. Additionally, the witness testified that Plot Ntima/Igoki/820; belonged to Anita Nkaimuri. Moreover, the witness averred that the owner of the said plot was duly compensated. Furthermore, the witness testified that same is aware that some plots were degazetted from the list of those who had been compulsorily acquired. To this end, the witness referenced gazette notice number 5075 of 1990. Nevertheless, the witness clarified that parcel number Ntima/Igoki/820 was not part of what was degazetted.
69. It was the further testimony of the witness that LR. Number Ntima/Igoki/820 remained compulsorily acquired and that the owner thereof *namely*; Anita Nkaimuri was duly compensated. To this end, the witness referenced the gazette notice and the list/ schedule containing the details of people who were paid.
70. Regarding Anita Nkaimuri, the witness pointed out that same was compensated *vide* cheque number **OP-002756**. In particular, the witness averred that the deceased was paid and same acknowledged payment by signing the schedule.

71. Regarding the letter dated **18th July 2000**, the witness averred that the letter in question was authored by the town clerk- Meru Municipality and same was addressed to the District Lands Officer- Meru Central. Moreover, the witness testified that the letter in question referenced LR. Number Ntima/Igoki/820. In addition, the witness averred that the letter in question was escalated to the director of land valuation which is the office dealing with compensation.
72. It was the further testimony of the witness that same has availed and tendered before the court evidence showing that Plot Number Ntima/Igoki/820 was duly acquired.
73. On cross examination by counsel for the 1st, 2nd, and 3rd Defendant, the witness reiterated that LR. Number Ntima/Igoki/ 820 was compulsorily acquired. Furthermore, the witness further reiterated that the acquisition was never degazetted.
74. It was the further testimony of the witness that subsequently the land in question was subjected to re-planning and re-surveying. To this end, the witness averred that LR. Number Ntima/Igoki/820 ceased to exist.
75. Regarding compensation to Anita Nkaimuri, the witness averred that same was duly compensated. Furthermore, the witness added that Anita Nkaimuri was also allocated an alternative plot.
76. On cross examination by learned counsel for the interested party, the witness testified that same has no evidence to show that compulsory acquisition of Ntima/Igoki/820 was ever degazetted. On the contrary, the witness testified that the compulsory acquisition was undertaken in accordance with the law.
77. It was the further testimony of the witness that the certificate of title in respect of LR. Number Meru Municipality/ Block II/ 882 and 883 were lawfully issued.

78. On cross examination by the Plaintiff, the witness reiterated that the compulsory acquisition of Ntima/Igoki/820 was never degazetted. Furthermore, the witness added that Anita Nkaimuri [Now deceased] was duly compensated.
79. Besides, the witness further testified that the payments as compensation were made by the office of the commissioner of lands.
80. It was the further testimony of the witness that Municipal Council of Meru did not acquire the land. On the contrary, it was clarified that the compulsory acquisition was undertaken by the commissioner of lands [Now defunct].
81. Regarding whether the compulsory acquisition of plot Ntima/Igoki/820 was degazetted, the witness testified that same was never degazetted.
82. With the foregoing testimony, the 5th Defendant's case was closed.
83. The Interested Party's case is premised on the evidence of two witnesses, *namely*; Mwiti Kariyiu Njue and Nelson Nkunja Kamanga. Same testified as IPW1 and IPW2, respectively.
84. It was the testimony of IPW1 that same is the Land Registrar Meru Central. In addition, the witness averred that by virtue of his portfolio, same is the custodian of records pertaining to parcels of land located within Meru Central Sub-county. Moreover, the witness testified that same has records relative to LR. Number Ntima/Igoki/820.
85. It was the further testimony of the witness that Ntima/Igoki/820 was previously registered in the name of Anita Nkaimuri daughter of

Mutungi. Nevertheless, the witness testified that the said land was thereafter compulsorily acquired. In this regard, the witness averred that the land ceased to belong to Anita Nkaimuri.

86. It was the further testimony of the witness that same has brought before the court a certified copy of the green card relating to Ntima/Igoki/820. To this end, the witness tendered and produced before the court a copy of the green card and same was marked as exhibit IP-1.

87. Furthermore, the witness adverted to LR. Number Meru Municipality/ Block II/ 882 and 883. The witness testified that same has also brought to court copies of the green cards relative to the two plots and thereafter sought to produce same as exhibits. Suffice it to state that the green cards of the named plots were tendered and produced as exhibits IP2 on behalf of the interested party.

88. Additionally, the witness also testified that same has brought a copy of White Card relative to Meru Municipality/Block II/302. To this end, the witness tendered and produced before the court the white card as exhibit IP3.

89. On cross examination by learned counsel for the 1st, 2nd, and 3rd Defendants [The Hon. Attorney General] the witness testified that the land Ntima/Igoki/820 was compulsorily acquired.

90. On cross examination by learned counsel for the 5th Defendant, the witness testified that the white card which same has tendered before court shows that LR. Number Meru Municipality/ Block II/302; indicated that the lessor of the property is the County Council of Meru.

91. Additionally, the witness testified that the said plot was sub-divided into two culminating to Meru Municipality/ Block II/882 and 883, respectively. Moreover, the witness averred that 882 and 883 were thereafter transferred to and registered in the names of the current owners.

92. On cross examination by the plaintiff the witness averred that same has tendered and produced before the court the records relative to LR Numbers Meru Municipality/Block II/882 and 883. In addition, the witness averred that same has also produced before the court a copy of the white card relative to LR. Number Meru Municipality/Block II/302.
93. It was the further testimony of the witness that LR. Number Ntima/Igoki/820 was compulsorily acquired by the government. Moreover, the witness added that upon the acquisition, the land in question [Ntima/Igoki/820] lawfully belonged to the government.
94. The second witness who testified on behalf of the interest party was Nelson Nkunga Kamanga. Same testified as IPW2.
95. It was the testimony of the witness that same is the interested party. Furthermore, the witness averred that same is the lawful owner of LR. Number Meru Municipality/Block II/882. In addition, the witness testified that same has since recorded and filed a witness statement to that effect. To this end, the witness statement dated **4th July 2024** was produced before court and thereafter the witness sought to rely on the said statement as his evidence in chief.
96. Suffice it to state that the witness statement under reference was thereafter adopted and constituted as the evidence in chief of the witness. Furthermore, the witness adverted to the list and bundle of documents and same sought to tender and produce same as exhibits before the court.
- There being no objection to the production of the documents, same were tendered and produced as exhibits IP4 to IP8 on behalf of the Interested Party.

97. Additionally, witness also referenced a Statement of Defense and thereafter sought to adopt and rely on same. In addition, the witness invited the court to grant the reliefs highlighted in the body thereof.
98. On cross examination by learned counsel for 1st, 2nd, and 3rd Defendants [The Hon. Attorney General] the witness testified that his Plot is LR. Number Meru Municipality/Block II/882. Moreover, the witness averred that same acquired his plot in 2005.
99. It was the further testimony of the witness that same bough his plot from Marion Muthama; Edith Musichi; and Patrick Ikiara, respectively.
100. Regarding document number 2 at the foot of the list and bundle of documents by the Interested Party, the witness averred that the documents are the minutes of the Municipal Council of Meru allocating plot number 302 to Marion Muthamia. Furthermore, the witness averred that the minutes in question relates to various plots.
101. On cross examination by learned counsel for the 5th Defendant, the witness testified that same is the owner of LR. Number Meru Municipality/Block II/882. Furthermore, the witness averred that the said plot emanated from Plot Number 820. However, on further cross examination, the witness averred that his plot arose from and is a sub-division of LR. Number Meru Municipality/ Block 11/302.
102. Additionally, the witness testified that same has since developed his property. Besides the witness averred that his neighbor, *namely*; Julius Kiambati has also developed a portion of his land. In particular, the witness testified that the 5th Defendant has erected a four-storey building on a portion of his land.
103. While still under cross examination, the witness testified that same has been on land since 2005. Moreover, the witness averred that before he purchased Plot 882, same undertook due diligence and obtained a certificate of official search.

104. On further cross examination, the witness averred that same got to know of the dispute raised by Plaintiff in 2024. In this regard, the witness averred that same thereafter followed up to ascertain the validity of the plaintiff's claim. In this regard, the witness testified that same discovered that the plot claimed by the Plaintiff was compulsorily acquired by the Government. Same also averred that he established that the owner of Plot Number Ntima/Igoki/820, *namely*; Anita Nkaimuri was duly compensated.
105. It was the further testimony of the witness that same entered upon and took possession of LR. Number Meru Municipality/Block II/882 in 2005. Furthermore, the witness testified that same did not evict anyone when he entered upon his parcel of land. Besides, the witness averred that same did not demolish any structures at the time he took possession of his land.
106. On further cross examination, the witness testified that same was not the first allottee of LR. Number Meru Municipality/ Block II/882. On the contrary, the witness testified that same purchased the property from the previous owners.
107. On cross examination by the Plaintiff, the witness averred that same bought his property from Marion; Edith and Patrick Ikiara respectively. Moreover, the witness averred that same has tendered and produced a copy of the sale agreement.
108. It was the further testimony of the witness that his Plot *namely*; LR. Number Meru Municipality/Block II/882 is a sub-division of plot number Meru Municipality/Block II/302. Nevertheless, the witness stated that same does not know the sheet number from which his plot emanated.
109. Upon being shown a Registry Index Map [RIM] by the Plaintiff, the witness averred that same is not aware of the origin and authenticity

of the map in question. Nevertheless, the witness averred that the issues of Registry Index Map can only be addressed by the Director of Survey.

110. Regarding the acreage of LR. Number Meru Municipality/Block II/882, the witness averred that the same is shown on the certificate of title. Moreover, the witness testified that same has built on his plot.

111. Regarding the status of LR. Number Ntima/Igoki/820, the witness averred that same was compulsorily acquired by the government. In addition, the witness further stated that the owner thereof was duly compensated.

112. With the foregoing testimony, the Interested Party's case was duly closed.

113. Upon the close of the hearing, the parties, *namely*; the plaintiff and the advocates for the respective parties sought time to file and exchange written submissions. To this end, the court proceeded to and issued directions regarding the filing and exchange of written submissions. Furthermore, the court also circumscribed the timelines for the filing of written submissions.

114. The Plaintiff filed written submissions dated **6th August 2025** and wherein the Plaintiff has highlighted and canvassed three key issues. The issues highlighted by the Plaintiff are *namely*; whether the Defendants had the legal right to substitute the ground position and allotment of land parcel Number Ntima/Igoki/820 and register the same to the 5th and 6th Defendants; whether the Plaintiff is the rightful registered proprietor; and whether the Plaintiff is entitled to the reliefs sought in the *Plaint*.

115. The 1st, 2nd, and 3rd Defendants [through the Hon. Attorney General] has filed written submissions dated **19th August 2025** and same has highlighted one salutary issue, *namely*; whether parcel number Ntima/Igoki/820 was procedurally compulsorily acquired.

116. The 5th Defendant filed written submissions dated **4th September 2025** and wherein same has highlighted and canvassed five [5] key issues. The issues highlighted on behalf of the 5th defendant are namely, whether the suit property was lawfully acquired by the Government pursuant to land acquisition act; whether compensation was duly paid to the original proprietor; whether the plaintiff suit is time barred or otherwise; whether the 5th Defendant is an innocent purchaser for value without notice of any fraud; and whether the 5th Defendant is entitled to the prayers sought in the counterclaim.
117. The interested party filed written submissions dated **13th September 2025**; and wherein the interested party has highlighted four issues, *namely*; whether the Plaintiff's mother land was compulsorily acquired by the government of Kenya; whether the plaintiff's mother was duly compensated; whether the interested party is an innocent purchaser for value without notice of fraud; and whether the Plaintiff is entitled to the reliefs sought or otherwise.
118. Having reviewed the pleadings filed on behalf of the parties, having considered the evidence tendered [*both oral and documentary*] and upon consideration of the written submissions filed, I conclude that the determination of the instant matter turns on four [4] key issues, *namely*; whether LR. Number Ntima/Igoki/820 [the suit property] was compulsorily acquired and whether the compulsory acquisition was complete; whether the interested party can partake of and accrue a precipitate order from the subject proceedings or otherwise; whether the Plaintiff's suit premised on the plea of fraud is statute barred or otherwise and, what reliefs [if at all] ought to issue.
119. Regarding the first issue, it is imperative to recall and reiterate that the Plaintiff's claim before the court was to the effect that LR. Number Ntima/Igoki/820 [the suit property] lawfully belonged to Anita Nkaimuri

[Now deceased]. Furthermore, it was the evidence of the Plaintiff that though the suit property was the subject of compulsory acquisition, the acquisition was however degazetted.

120. Additionally, the Plaintiff contended that other than the fact that the Compulsory Acquisition of the suit property was degazetted, the original owner of the suit property was also not compensated. To this end, the plaintiff maintained that the suit property was not compulsorily acquired hence same belonged to the estate of Anita Nkaimuri [Now deceased].

121. Other than the foregoing, the Plaintiff also contended that even though the suit property was not acquired, the defendants herein acted fraudulently and altered the registration details of the suit property and thereafter created two new parcels, namely; Meru Municipality/Block II/882 and 883 respectively.

122. To buttress her claim that her suit property was not compulsorily acquired, the Plaintiff who testified as PW1 tendered and produced before the court a letter dated 18th January 1990 [Exhibit P1]; letter dated 18th July 2000 [Exhibit P3]; and a letter dated 11th February 2014 [Exhibit P4], respectively.

123. It is instructive to note that the letter dated 18th January 1990 originated from the District Lands Officer- Meru and same was addressed to Anita Nkaimuri. The letter under reference indicated that no compensation for the above plot [Ntima/Igoki/820] has been made and arrangements are being made to degazette the same.

124. Regarding the letter dated **18th July 2000**, it is instructive to note that same was authored by the Town Clerk- Meru Municipal Council and same was addressed to the District Lands Officer-Meru Central. The crux of the letter under reference was to the effect that the Municipal council

of Meru is no longer interested in utilizing the Land Ntima/Igoki/820 and hence the Council is requesting to have the same degazetted.

125. Turning to the letter dated **11th February 2014**, it is important to highlight that same was authored by the CEC Member Lands, Economic, and Physical Planning- Meru County and it indicated that the compulsory acquisition of the above title deed [LR. Number Ntima/Igoki/820] *vide* gazette notice Number 1264 of 1977 was degazetted.

126. The contents of the three letters [details in terms of the preceding paragraphs] underpins the Plaintiff contention that the compulsory acquisition of the suit property was degazetted. Furthermore, the plaintiff also hinges her claim on non-compensation based on the said letter.

127. Be that as it may, it is imperative to recall and reiterate that the plaintiff herein tendered and produced a copy of the green card in respect of LR. Number Ntima/Igoki/820 [the suit property] which clearly showed that the compulsory acquisition was duly concluded and an entry endorsed at the foot of the green card. It is evident that the compulsory acquisition was endorsed on **18th May 1977**.

128. Even though the Plaintiff contends that the compulsory acquisition was degazetted, it is apparent that the plaintiff herein has not found it appropriate to challenge the endorsement of the entry relating to compulsory acquisition in the green card. To this extent, there is no gainsaying that the endorsement of the compulsory acquisition on the suit property stands unchallenged.

129. Additionally, it is not lost on me that even though the Plaintiff posited that the compulsory acquisition of the suit property was degazetted, same [Plaintiff] failed to tender and produce before the court any evidence of the gazette notice speaking to de-gazettement. It is instructive that the gazettement of compulsory acquisition could only be

superseded by another gazette notice duly published on behalf of the commissioner of lands.

130. The other aspect that was referenced by the plaintiff to suggest that the compulsory acquisition did not accrue turns on the issue of [sic] non-payment of the compensation. According to the plaintiff, Anita Nkaimuri [Now deceased] was never compensated. In this regard, the plaintiff posited that in the absence of compensation, the process of compulsory acquisition did not materialize.

131. I beg to address this aspect of the Plaintiff's claim in a three-pronged manner. Firstly, it is worth to highlight that despite the denial by the plaintiff that Anita Nkaimuri was not compensated, evidence abound that Anita was duly paid. To this end, it suffices to reference the letter dated **8th August 2000** by the Commissioner of Lands which indicated that the owner of LR. Number Ntima/Igoki/820 was paid the sum of **Kshs. 41,876** only *via* cheque number OP-002756.

132. Furthermore, there is the list/schedule of payment[s] which was tendered and produced by the 5th Defendant and which captures the payments in favor of Anita Nkaimuri as entry number 94. Suffice it to underscore that the schedule confirms that Anita Nkaimuri signed for the payments on **2nd September 1977**.

133. The totality of documents tendered by and on behalf of the 5th Defendant and whose contents were reiterated by DW3 and IPW1, respectively; authenticate that Anita Nkaimuri was duly paid.

134. In my humble view, the contention by the Plaintiff that Anita Nkaimuri [Now deceased] was not compensated is not backed by any plausible; credible; compelling; and or tangible evidence. On the contrary, evidence abound denoting payment of the due compensation.

135. The second aspect relates to the effect [if at all] of the non-payment of the compensation money. I have already found and held that evidence abound confirming that Anita Nkaimuri [now deceased] was duly compensated. Nevertheless, it is still important to address the legal implications of [sic] non-payment of compensation.
136. It is important to posit that the process of compulsory acquisition was underpinned by the provisions of the Land Acquisition Act Chapter 295 [Now repealed]. For good measure, this is the act that was applicable at the point in time when the suit property was being compulsorily acquired. The said act contains elaborate provisions underpinning compulsory acquisition. In particular, the said act stipulated that the process of compulsory acquisition would terminate upon the issuance of the notice of taking the possession [**See Section 19 of the Land Acquisition Act**].
137. To my mind, the process of compulsory acquisition would terminate provided that an award has been made by the commissioner of lands [now defunct] to the owner of land in question and such other persons who have an interest in the designated land.
138. It is immaterial whether the compensation shall have been paid or otherwise. Moreover, there is a distinction between making of an award and payment of the compensation.
139. I beg to underscore that the non-payment of the compensation money does not negate compulsory acquisition. In such a situation, the land owner and persons affected by the acquisition are entitled to pursue compensation in accordance with the due process of the law. However, the non-payment of compensation cannot be leveraged upon to negate a process that has concluded.
140. The Court of Appeal has had occasion to expound on the legal implication of [sic] non payment of the compensation money. In

particular, the court of appeal underscored that the process of compulsory acquisition stands concluded provided that an award has been made and accepted by the land owner. It is immaterial whether the actual payment has been meted out or otherwise.

141. In the case of ***Kenya Urban Roads Authority & another v Belgo Holdings Limited (Civil Appeal E011 of 2021) [2025] KECA 764 (KLR) (9 May 2025) (Judgment)***, the court stated as hereunder;

“56. In order to determine this issue, we need to interrogate, in brief, the process of acquisition of land under the repealed Land Acquisition Act. Section 6(2) of the Act provides for notification in the Gazette by the Commissioner that the Government intends to acquire the land and that Notice was to be served on every person who appeared to the Commissioner to be interested in the land. It is not alleged that the notice was not served, since neither Jays nor the Bank were made parties to the suit and they never testified before the trial court. Section 7 of the Act provides that the Commissioner may cause the land which is to be acquired to be marked out and measured (if this has not already been done), and shall cause a plan of the land to be prepared. In this case the portions to be acquired were already known. Section 8 of the Act provides that where land is acquired compulsorily under that part, full compensation shall be paid promptly to all persons interested in the land. In our view, by the use of the underlined phrase, it is clear that payment is not a pre-condition to acquisition since the compensation is only payable where land is acquired. Accordingly, this section does not peg acquisition to compensation such that land may be acquired even before compensation and once it is acquired compensation is to be paid promptly. It follows that the mere fact that compensation has not been

made, does not necessarily mean that the acquisition did not take place. Section 9 of the Act deals with inquiry as to compensation and subsection (1) provides that the Commissioner shall appoint a date, not earlier than thirty days and not later than twelve months after the publication of the notice of intention to acquire, for the holding of an inquiry for the hearing of claims to compensation by persons interested in the land. Such a notice is required to be published in the Gazette and also to be served on persons who appear to be interested in the land. That was what Notice No. 943 was all about. In the absence of the joinder of Jays or the Bank or evidence from them, we are unable to determine whether or not they were served.

57. Thereafter follows an inquiry upon conclusion of which, the Commissioner prepares a written award. Section 2 of the Act states that: “award” means an award of compensation made under section 10;

58. Award is therefore not compensation but determination of what is payable in respect of the acquisition and is the basis of the compensation. It is stated to be final. Section 11 of the Act provides that on making an award, the Commissioner shall serve on each person whom he has determined to be interested in the land a notice of the award and offer of compensation. The appellants’ position is that payment was made as per the letter dated 6th August 1976 signed on behalf of the Commissioner of Lands to the Chief Engineer Roads. That letter was in respect of several parcels of land, including the portions of the suit properties whose compensation was in the sum of Kshs 214,000. The letter instructed the Chief Engineer, Roads, to pay Jay Syndicate and Standard Bank Limited the said sum. On the face of the letter were notations for urgent payment. One of the notations

on the letter was “P. V. effect” dated 6th September 1976 which DW1 explained to mean “payment voucher effected”. In re-examination, DW1 explained, with reference to the letter dated 6th August 1976, that: “this letter is the evidence of payment of the sum of Kshs 214,000. In government, payment is effected when payment voucher is given. This payment was made to commissioner of lands who is supposed to disburse the payment to the beneficiary it states: “I shall be grateful to receive cheques for the following amounts to complete this acquisition”. The evidence is here.

Payment was made to Jays Syndicate and Standard Bank Ltd. A request for cheques and payment voucher was effected. Once the ministry of roads remits the funds to the ministry of lands, to us the payment has been affected.”

142. The third aspect that merits consideration turns on the fact that the commissioner of lands indeed proceeded to and issued the notice of taking possession and that the compulsory acquisition was duly endorsed on the register of the suit property. For good measure, the endorsement of compulsory acquisition in the register remains in situ.

143. I am afraid that the contention by the plaintiff that Anita Nkaimuri [now deceased] was not paid does not hold water. In any event, the non-payment of the compensation money [if at all] would not defeat the process of compulsory acquisition.

144. It is also important to recall the evidence of DW3, *namely*; Haron Muthamia. Same testified that the compulsory acquisition was duly gazetted and thereafter the owner of the suit property was duly compensated. In addition, the witness posited that some of the properties which had hitherto been gazetted for compulsory acquisition were

degazetted *vide* gazette notice 5075 of 1990. However, the witness clarified that the suit property was never degazetted.

145. Additionally, it is imperative to reference the evidence of DW1, namely; Peter Kimani. Same posited that upon the conclusion of the compulsory acquisition, the land was subjected to replanning and thereafter re-surveying. Moreover, the witness testified that following the resurveying, the initial survey map underpinning the suit property was superseded and a new survey plan was birthed. It was the new survey plan which brought to the fore the new registration block, *namely*; Meru Municipality/Block II/302 in lieu of the original plot number Ntima/Igoki/820.

146. The crux of the evidence tendered by DW1 is captured at the foot of Exhibit D1 on behalf of the 1st, 2nd, and 3rd Defendants. **[See Survey Report dated 21st September 2022 together with the attendant map].**

147. Other than the evidence of DW1 and DW3, it is also instructive to reference the evidence of IPW1 [Mwiti Kariyu Njue]. The witness herein, tendered and produced before the court the white card relative to Plot Number LR. Meru Municipality/ Block II/ 302. The white card was produced as exhibit IP3 on behalf of the Interested Party.

148. What is pertinent on the testimony of IPW1- Land Registrar Meru Central; is to the effect that the suit property, namely; Ntima/Igoki/820 was compulsorily acquired, subjected to replanning; and thereafter resurveyed. Effectively, IPW1 confirmed that the process of compulsory acquisition was not only finalized but the Municipal Council of Meru [Now defunct] indeed took possession in accordance with the process of compulsory acquisition.

149. My answer to issue number one is four-fold. Firstly, the suit property, *namely*; Ntima/Igoki/820 was duly and lawfully acquired. The process of compulsory acquisition was concluded.

150. Secondly, evidence abound that Anita Nkaimuri [Deceased] was duly compensated *vide* cheque number OP-002756. Furthermore, the payment was duly acknowledged and signed for by the deceased on **2nd September 1977**.
151. Thirdly, the suit property was thereafter taken possession of by the Municipal Council of Meru [Now defunct] on whose behalf the land was acquired for. The taking of possession by the acquiring body effectively extinguished the rights and interests of the previous land owner. [**See Section 19 of the Land Acquisition Act, Chapter 295 Laws of Kenya**].
152. Fourthly, evidence abound that the land in question was thereafter subjected to replanning in accordance with the Physical Planning Act Chapter 286 [Now Repealed] and thereafter resurveyed. The net effect of replanning and resurveying was to extinguish the previous registry index map and the survey plan relative to the suit property. The said survey plan for the suit property, namely; Ntima/Igoki/820 therefore ceased to exist and cannot now be referenced in the eyes of law.
153. Turning to the second issue, *namely*; whether the interested party can partake of and accrue a precipitate order from the subject proceedings or otherwise, it is instructive to recall and reiterate that the interested party herein, sought for and obtained leave to be joined as such. Thereafter, the Interested Party filed a Statement of Defense and wherein same has sought a declaration to declare him [Interested Party] as a Bonafide purchaser for value without notice.
154. Additionally, the Interested Party filed written submissions dated **13th September 2025** and wherein same has highlighted four issues. One of the issues adverted to and highlighted by the interested party states as hereunder:

“Whether the interested party is an innocent purchaser for value without notice of fraud.”

155. The question that does arise is whether an Interested Party, the one beforehand not excepted can seek for and partake of such a declaratory order. To start with, it is common ground that an interested party plays a peripheral role in a matter. Moreover, an interested party is only joined or joins the proceedings merely to protect an interest/right; and to ensure that no adverse order is issued without him/her being afforded an opportunity to be heard.

156. On the contrary, an interested party is not at liberty to generate and propagate a separate and distinct cause of action. In any event, where an interested party concludes that same is desirous to propagate a cause of action, then same is enjoined to seek leave to be admitted as a substantive party. For good measure, it is only a substantive party to the proceedings whether as a plaintiff or defendant who can accrue precipitate reliefs in the suit [**See the decision of the supreme court in the case of *Senate & 3 others v Speaker of the National Assembly & 10 others (Petition 19 (E027) of 2021) [2025] KESC 11 (KLR) (21 March 2025) (Judgment) Paragraph 72***].

157. The role and place of an Interested Party in a suit [whether commenced *vide* plaint or petition] was highlighted by the Supreme Court in the Case of ***Muruatetu & another v Republic; Kenya National Commission on Human Rights & 2 others (Interested Parties); Death Penalty Project (Intended Amicus Curiae) (Petition 15 & 16 of 2015 (Consolidated)) [2016] KESC 12 (KLR) (Civ) (28 January 2016) (Ruling)*** where the court stated thus:

“41. Having carefully considered all arguments, we are of the opinion that any party seeking to join proceedings in any capacity, must come to terms with the fact that the overriding interest or stake

in any matter is that of the primary/principal parties before the Court. The determination of any matter will always have a direct effect on the primary/principal parties. Third parties admitted as interested parties may only be remotely or indirectly affected, but the primary impact is on the parties that first moved the Court. This is true, more so, in proceedings that were not commenced as Public Interest Litigation (PIL), like the proceedings now before us.

42. Therefore, in every case, whether some parties are enjoined as interested parties or not, the issues to be determined by the Court will always remain the issues as presented by the principal parties, or as framed by the Court from the pleadings and submissions of the principal parties. An interested party may not frame its own fresh issues, or introduce new issues for determination by the Court. One of the principles for admission of an interested party is that such a party must demonstrate that he/she has a stake in the matter before the Court. That stake cannot take the form of an altogether a new issue to be introduced before the Court.”

158. My understanding of the succinct and apt position flowing from the decision [supra] is to the effect that an Interested Party like the one beforehand cannot seek to propagate an independent and distinct cause of action. Additionally, an Interested Party cannot procure and obtain a precipitate declaration in his or her favor. For good measure, it is only the principal parties who can procure and obtain precipitate/substantive reliefs in a suit. [See ***Philomena Mbete Mwilu v Director of Public Prosecutions & 3 others; Stanley Muluvi Kiima (Interested Party) [2019] KEHC 11025 (KLR)***].

159. *In a nutshell*, I am afraid that the interested party herein cannot procure and obtain from me an order declaring same as an innocent

purchaser for value without notice of any fraud. The issuance of such an order [if at all] would amount to judicial overreach. Such a scenario must be frowned upon.

160. Next is the issue as to whether the Plaintiff's suit premised on the plea of fraud is statute barred or otherwise. It is imperative to note that the crux/substratum of the Plaintiff's case is to the effect that the alteration of the registration details of the suit property and the conversion thereof to LR. Number Meru Municipality/Block II/302; and the consequential sub-division thereof was informed by fraud.

161. It was the Plaintiff's testimony that the fraud that underpins the conversion in question and the impugned sub-division came to her notice/knowledge between the year 1990 and the year 2000. To this end, there is no gainsaying that the Plaintiff herein was knowledgeable of and privy to the ingredients underpinning the fraud from as early as 1990.

162. During cross examination by learned counsel for the 5th Defendant, the Plaintiff who testified as PW1 stated thus:

“The dispute herein arose in 1990. I was aware of the fraud that is being litigated before the court from the years 1990 up to 2000. I did not file any case. I had children in school. That is the reason why I did not file the suit in time. I wrote a letter dated 26th March 2008. The letter was addressed to the town clerk. I was complaining about the fraud attendant to the suit land.”

163. From the excerpt in the preceding paragraph, what becomes apparent is that the plaintiff was knowledgeable of the actions or omissions complained of between 1990 to 2000; and 2008. Nevertheless, the plaintiff herein did not file the suit beforehand.

164. It is also common ground that a suit founded on fraud is one that must be filed and or lodged within three [3] years of the accrual of the cause of action.

165. Section 4(2) of the Limitation of Actions Act stipulates as hereunder:

“4. Actions of contract and tort and certain other actions

(1) The following actions may not be brought after the end of six years from the date on which the cause of action accrued;

(a)actions founded on contract;

(b)actions to enforce a recognizance;

(c)actions to enforce an award;

(d)actions to recover a sum recoverable by virtue of a written law, other than a penalty or forfeiture or sum by way of penalty or forfeiture;

(e)actions, including actions claiming equitable relief, for which no other period of limitation is provided by this Act or by any other written law.

(2) An action founded on tort may not be brought after the end of three years from the date on which the cause of action accrued: Provided that an action for libel or slander may not be brought after the end of twelve months from such date.”

166. Similarly, it is also important to take cognizance of section 3 of the Public Authorities Limitation of Action Act, Chapter 39 Laws of Kenya. The said section stipulates thus;

“3. Limitation of proceedings

(1)No proceedings founded on tort shall be brought against the Government or a local authority after the end of twelve months from the date on which the cause of action accrued.(2)No proceedings

founded on contract shall be brought against the Government or a local authority after the end of three years from the date on which the cause of action accrued.(3)Where the defence to any proceedings is that the defendant was at the material time acting in the course of his employment by the Government or a local authority and the proceedings were brought after the end of—

(2)(a)twelve months, in the case of proceedings founded on tort;

Or

(b)three years, in the case of proceedings founded on contract, from the date on which the cause of action accrued, the court, at any stage of the proceedings, if satisfied that such defendant was at the material time so acting, shall enter judgment for that defendant.

167. What becomes apparent is to the effect that by the time the Plaintiff was filing the instant suit, the requisite statutory period had long lapsed and, or extinguished. In this regard, there is no gainsaying that the Plaintiff's suit is statute barred. To this end, the plaintiff became *non-suited*.

168. In the case of ***Gathoni v Kenya Co-operative Creameries Ltd [1982] KECA 10 (KLR)*** the Court of Appeal considered the legal implications of the law of limitation. Regarding the import of limitation on a suit, the court stated as hereunder:

“The law of limitation of actions is intended to protect defendants against unreasonable delay in the bringing of suits against them. The statute expects the intending plaintiff to exercise reasonable diligence and to take reasonable steps in his own interest. Special provision is made for infants and for the mentally unsound. But, rightly or wrongly, the Act does not help persons like the applicant who,

whether through dilatoriness or ignorance, do not do what the informed citizen would reasonably have done.”

169. I am afraid that by the time the Plaintiff was approaching the court, namely, on **28th March 2019** the suit/cause of action stood extinguished.

170. Turning to the reliefs [if at all] which ought to be granted, it is instructive to recall that both the Plaintiff and 5th Defendant have made out various claims.

171. On behalf of the Plaintiff, same sought various reliefs including cancellation of the new numbers Meru Municipality/ Block II/ 882 and 883 and reinstatement of the original LR. Number Ntima/Igoki/820; cancellation of letters of allotment of Plot Numbers Meru Municipality/ Block II/882 and 883 and to revert the land to the plaintiff; and costs.

172. While discussing issue number one and three elsewhere in the body of the judgement, I have found and held that LR. Number Ntima/Igoki/820 was duly compulsorily acquired. Furthermore, I have also found that Anita Nkaimuri [Deceased] was duly compensated. In this regard, the prayer for re-instatement of the suit property is not legally tenable.

173. Additionally, it is not lost on me that following the compulsory acquisition, the suit property was subjected to replanning and thereafter resurveying. The net effect of replanning and thereafter resurveying was to extinguish the entirety of LR. Ntima/Igoki/820 and the survey plans underpinning the same. To this end, the suit property ceased to exist. It cannot be the subject of restoration.

174. Finally, it is also worthy to reiterate that I have also found and held that the Plaintiff's suit was statutory barred. The import of limitation is to extinguish the cause of action. In this regard, the Plaintiff's claim was

dead before arrival. [See the decision in the case of *Bosire Ogero v Royal Media Services [2015] KEHC 4728 (KLR)*].

175. Turning to the claims by the 5th Defendant, it is important to point out that the 5th Defendant tendered and produced before the court evidence to demonstrate that same bought/purchased LR. Number Meru Municipality/ Block II/883 from Marion Muthama; Edith Musichi; and Patrick Ikiara. To this end, the 5th Defendant tendered and produced a copy of sale agreement and consequential Certificate of Lease.

176. Additionally, the 5th Defendant also tendered evidence to demonstrate that by the time same entered and executed the sale agreement, LR Number Meru Municipality /Block II/883 was already in existence. For good measure, the said parcel of land had long been subdivided/ excised from LR. Number Meru Municipality/ Block II/302 [the original parcel of land].

177. To my mind, the 5th Defendant tendered and produced credible evidence to demonstrate that same was/is a Bonafide purchaser for value without notice of any defect in the title of his predecessor. Moreover, there is no gainsaying that I have since found and held that the predecessors of the 5th Defendant acquired lawful title to LR. Number Meru Municipality/ Block II/302 following the compulsory acquisition, replanning; resurveying; and subsequent allotment in terms of the minutes of the Municipal Council of Meru which were tendered before the court.

178. In the premises, I am minded to and do hereby find that the 5th Defendant was a Bonafide purchaser for value. [see *Arthi Highway Developers Limited v West End Butchery Limited & 6 others [2015] KECA 816 (KLR)*; *Mwangi James Njehia v Janetta Wanjiku Mwangi & Simon Kamanu (Civil Appeal 177 of 2019) [2021] KECA*

768 (KLR); Dina Management Ltd v County Government of Mombasa & 5 others (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR) (Constitutional and Human Rights) (21 April 2023) (Judgment); Sehmi & another v Tarabana Company Limited & 5 others (Petition E033 of 2023) [2025] KESC 21 (KLR) (11 April 2025) (Judgment)].

179. Other than the prayer for declaration [which I have addressed in the preceding paragraph] the 5th Defendant also sought an order of permanent injunction to bar and or prohibit the Defendants to the Counterclaim from interfering with his occupation, possession and use of LR. Number Meru Municipality/ Block II/883. I have pointed out that the 5th Defendant is the lawful and Bonafide proprietor of the named property. In this regard, there is no gainsaying that the 5th Defendant is entitled to partake of and to benefit from the statutory rights, interests, and privileges attendant to such ownership [see **Section 24 and 25 of the Land Registration Act 2012; see also the holding in the case of Waas Enterprises Limited vs Nairobi City Council (2014) eKLR; and Moya Drift Farm Limited vs Theuri (1973) EA**].

180. Furthermore, the 5th Defendant also sought special damages for loss of business. However, it is common ground that the 5th Defendant has neither pleaded nor particularized the purported special damages for loss of business. It is trite that special damages must not only be pleaded and particularized but must be specifically proved. [See the holding of the Court of Appeal in the case of **Superior Homes (Kenya) PLC v Water Resources Authority & 9 others (Civil Appeal E330 of 2020) [2024] KECA 1102 (KLR) (19 August 2024) (Judgment)**]

181. I am afraid that the 5th Defendant is not entitled for any special damages for loss of business. Suffice it to posit that such damages are not awardable from the blues; or plucked from the air.

182. Lastly, the 5th Defendant sought for general damages. I beg to state that the plea for general damages is so omnibus that one is left wondering what is the purpose of the said general damages. Could it be the general damages for breach of contract; general damages for trespass; general damages for conversion? Quite clearly, it behoved the 5th Defendant to adhere to the rule of reasonable precision.

183. Similarly, it is important to recall that the 5th Defendant is the one in occupation of LR. Number Meru Municipality/ Block II/883. Moreover, evidence abound that the 5th Defendant has constructed a four-storey building thereon. Instructively, the 5th Defendant continues to partake of and benefit from the proceeds arising therefrom.

184. *In a nutshell*, the 5th Defendant has neither laid a basis nor justified the prayer for general damages. Same is accordingly declined.

FINAL DISPOSITION.

185. Flowing from the discussion in the body of the Judgement, it is apparent that the Plaintiff herein has neither established nor proved her claim as against the defendants. Moreover, there is no gainsaying that the plaintiff's claim was statute barred and thus rendered extinguished.

186. On the other hand, the 5th Defendant has placed before the court plausible and credible material pertaining to his ownership of LR. Number Meru Municipality/Block II/883. In this regard, it suffices to posit that the 5th Defendant has established and substantially proved his claim.

187. Consequently, and in the premises, the final orders that commend themselves to me are as hereunder:

- a) **The Plaintiff's suit be and is hereby dismissed.**
- b) **Cost of the suit be and are hereby awarded to Defendants only.**
- c) **The Interested Party's claim be and is hereby struck out with no orders to costs.**
- d) **The 5th Defendant's counterclaim be and is hereby allowed as hereunder;**
 - i. **A declaration be and is hereby issued that the 5th Defendant is the legal and rightful proprietor of LR. Number Meru Municipality/Block II/883.**
 - ii. **An order of permanent injunction be and is hereby issued restraining the Defendants to the Counterclaim, their agents or anyone acting on their behest barring them from entering, interfering with quiet possession and usage of, trespassing on or as otherwise dealing with parcel number Meru/Municipality Block II/883.**
 - iii. **Costs of the counterclaim are awarded to the 5th Defendant and same shall be borne by the 1st Defendant to the Counterclaim [Plaintiff to the main suit].**
- e) **Any other relief not expressly granted is hereby declined.**

188. It is so ordered.

DATED, SIGNED AND DELIVERED AT MERU THIS 3RD DAY OF OCTOBER 2025

**OGUTTU MBOYA, FCI Arb; CPM [MTI-EA].
JUDGE**

In the presence of:

Hussein – Court Assistant

Florence Makandi – Plaintiff in person

Ms. Miranda [Senior Litigation Counsel] for the 1st, 2nd, and 3rd Defendants

Mr. Mwirigi Brian for the 5th Defendant

Mr. Kiogora Mugambi for the Interested Party

No Appearance for the 4th Defendant