

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELC CASE NO 30 OF 2017

CATHERINE NJERI NGANGA.....1st
PLAINTIFF

FRANCIS KIONGO MUTURI.....2nd
PLAINTIFF

VERSUS

CHIRAG SANGRAJKA.....1st
DEFENDANT

VINAY SANGRAJKA.....2nd
DEFENDANT

THE CHIEF LAND REGISTRAR.....3rd
DEFENDANT

THE REGISTRAR OF TITLES.....4th
DEFENDANT

THE HON ATTORNEY GENERAL.....5th
DEFENDANT

JAYSUKH B SANGHRAJKA.....6th
DEFENDANT

BIPIN CHANDRA B SANGHRAJKA.....7th
DEFENDANT

VINAY CHANDRA BIPIN SANGRAJKA.....8th
DEFENDANT

NISHIT BIPIN SANGHRAJKA.....9th
DEFENDANT

VINAY B SANGHRAJKA.....10th
DEFENDANT

NISHIT B SANGHRAJKA.....11th
DEFENDANT

JUDGMENT

Background

1. Vide a Further Amended Plaint dated 27th September, 2019, the Plaintiffs seek as against the Defendants, jointly and severally, the following reliefs:

- a) ***A declaration that the 1st and 2nd Plaintiffs are the absolute proprietors to L.R No 20518, Grant number 63978 measuring naught decimal four six five eight (0.4658) of a hectare and L.R No 20519, Grant number 63979 measuring naught decimal four six five eight (0.04658) of a hectare respectively, both properties within the Nairobi City County.***
- b) ***A declaration that the rectification of the register to the properties L.R No 20518, Grant number 63978 measuring naught decimal four six five eight (0.4658) of a hectare and L.R No 20519, Grant number 63979 measuring naught decimal four six five eight(0.04568) of a hectare by the 3rd and 4th Defendants in favour of the 1st and 2nd Defendants was without any legal basis, was ultra***

vires the power of rectification by the 3rd and 4th Defendants and were therefore null and void and the resultant titles had no validity.

- i. A declaration that the rectification deed dated the 6th December, 1994 on the I.R No 63978, L.R No 20518(Original No 7785/1015) by the 3rd and 4th Defendants from the 8th and 9th Defendants to the 6th and 7th Defendants was without any legal basis, was ultra vires the powers of rectification by the 3rd and 4th Defendants, was without jurisdiction in law and was therefore null and void and the resultant titles had no validity and was for cancellation, rectification, setting aside the sum of which orders do issue accordingly.***
- ii. A declaration that the rectification deed dated the 6th December, 1994 on the I.R No 63979, L.R No 20519(Original No 7785/1015) by the 3rd and 4th Defendants from the 8th and 9th Defendants to the 10th and 11th Defendants was without any legal basis, was ultra vires the powers of rectification by the 3rd and 4th Defendants, was without jurisdiction in law and was therefore null and void and the resultant titles had no validity and was for***

cancellation, rectification, setting aside the sum of which orders do issue accordingly.

- iii. A declaration that the 6th, 7th and 10th, 11th Defendants' L.R 209/20518 and L.R No 209/20519 Nairobi respectively are located near Wilson Airport off Langata Road and not at Runda where the suit properties herein are situated. Accordingly, the 6th, 7th and 10th and 11th Defendants claims (if any) lies elsewhere.*
- c) An order directing the 3rd and 4th Defendants to cancel the 1st and 2nd Defendants' titles to the suit properties L.R No 20518 and L.R No 20519 respectively and reconstruct the records relating to the suit properties to reflect the Plaintiffs.*
- d) An order directing the 3rd and 4th Defendants to reissue proper titles to the 1st Plaintiff reflecting the said Plaintiff as the original allottee and not as a transferee.*
- e) An order do issue directing the 3rd and 4th Defendants to forthwith cancel the 6th and 7th Defendants title to the I.R No 63978, on L.R No 20518(Original no 7785/1015) and to cancel the 10th and 11th Defendants title to the I.R 63979, L.R No 20519(Original no 7785/1015) and the accompanying respective rectification deed dated the 6th December, 1994 and all other subsequent*

processes cancelled, vacated and/or removed from the register and/or records.

f) An order of permanent injunction restraining the 1st, 2nd, 6th, 7th, 8th, 9th, 10th and 11th Defendants and/or their servants and/or agents from trespassing and/or continuing to trespass from entering, from constructing, from selling, from alienating, from transferring and/or leasing properties I.R No 63978, L.R No 20518 and I.R No 63979, I.R No 20519 and/or from interfering and/or from having any dealings with the Plaintiff's title and interest over the said property, properties and/or from dealing with the said property, properties in any manner whatsoever.

g) Costs of the suit and interest thereon.

h) Any other or further orders as the Honourable Court may deem fit and just to grant.

2. It is the Plaintiffs' case that they are the absolute proprietors of L.R No 20518, grant number 63978 containing by measurements naught decimal four six five eight (0.4658) of a hectare and L.R No 20519, grant number 63979 containing by measurements naught decimal four six eight (0.04658) situate within the Nairobi City County (*hereinafter the suit properties*).

3. According to the Plaintiffs, the 1st Plaintiff was allotted the properties vide the letter of allotment reference number 5674/V/187 dated the 27th October, 1994 in respect of Uns. Residential Plot B Runda Estate as well as vide the letter of allotment reference number 5674/V/188 dated the 27th October, 1994 in respect of Uns. Residential Plot A Runda Estate.
4. It was averred by the Plaintiffs that the 1st Plaintiff paid the requisite premiums in respect of both letters of allotment and thereafter engaged the services of a licensed surveyor who surveyed the suit properties and submitted the survey work to the Director of Surveys at Ruaraka.
5. Soon after the survey was approved, it was averred, the deed plans relating to the suit properties being deed plan number 191045 in respect of L.R No 20519 and deed plan number 191044 in respect of L.R No 20518 were released by the Director of Surveys to the 1st Plaintiff as the bona fide allottee for onward presentation to the Director of Land Administration for registration of titles in her favour.
6. It is the Plaintiffs' case that upon the submission of the two deed plans to the Ministry of Lands, the two files relating to the two suit properties got lost; that the 1st Plaintiff followed up with the Ministry officials until sometime in 2002 when the files suddenly re-appeared.

7. However, it was averred, all documents appertaining to her transaction were removed and replaced with fraudulent allotment letters in respect of Unsurveyed Residential Plot A Runda Estate in favour of Scanner Agencies Ltd and Unsurveyed Residential Plot B Runda Estate in favour of Sel & Barnet Ltd.
8. The Plaintiffs contended that the records in the two files further revealed that the said two entities had purportedly transferred their fraudulent interest in the two suit properties to some third parties vide informal transfers of the letters of allotment yet the said two entities, Scanner Agencies Ltd and Sel & Barnet Ltd had not even accepted the allotments nor paid the requisite premiums as required by law.
9. Armed with her documents, it was averred, the 1st Plaintiff lodged a complaint with the Chief Land Registrar about the fraudulent falsification of the records relating to the suit properties. The Chief Land Registrar after scrutinizing the two files summoned the purported new owners who claimed that they had bought the respective properties from the initial allottees.
10. It was pleaded by the Plaintiffs that upon being confronted with the evidence that the two companies which had purportedly sold the suit properties to them were not the

bona fide allotees, the buyers agreed to surrender the titles to the Chief Lands Registrar in lieu of being taken to court.

- 11.** Rather than cancelling the titles and issuing the 1st Plaintiff with new titles, it was averred that the Chief Land Registrar instructed one F.I Lubullelah, a land registrar, to effect transfers of the same title to the 1st Plaintiff in respect of L.R No 20518 and to the 2nd Plaintiff in respect of L.R No 20519 as an assignee of the 1st Plaintiff. It was urged by the Plaintiffs that pursuant to the aforesaid registrations, they are the *prima facie* absolute owners of the property and no other registration has overtaken their registration.
- 12.** Without reason to doubt the Chief Land Registrar's authority to sanction the aforesaid transfer, it is contended, the Plaintiffs have been duly paying rent and land rates evinced by rent clearance certificates and have had continuous possession of the suit properties, which they fenced and stationed guards thereon.
- 13.** According to the Plaintiffs, during one of their visits to the properties, they found a billboard mounted thereon advertising the properties for sale. In addition, their guards were threatened and asked to vacate the suit properties and that they reported the matter to Runda Police Station and the 1st and 2nd Defendants were summoned.
- 14.** It was stated in the Plaint by the Plaintiffs that they later discovered deeds of rectification had been done on the 6th

December, 1994 transferring the suit properties into the names of the 6th and 7th Defendants with respect to parcel 20518 and the 10th and 11th Defendant in respect to parcel 20519.

- 15.** It is the Plaintiff's case that the rectification deed was carried out on the basis of a narrative that the properties had been erroneously registered and to bring in the true proprietors of land, a non-existent jurisdiction. It was deposed that the mode of rectification anticipated under **Section 59** of the **Registration of Titles Act** is in circumstances where there have been errors, none of which was present herein, and that rectification was not intended to facilitate a transfer of property.
- 16.** According to the Plaintiffs, the stamping of the title deed conveying the rectification was not done on the blank margin of the document as required, a major deviation from the norm and points to illegality *ab initio*; that the rectification too was done in a record five days after the registration of title and that as ownership of land never changed from the Plaintiffs, the Registrar of Tiles had no powers to arbitrarily and whimsically rectify the register either under the provision of **Section 59(1) and (2)** of the **Registration of Titles Act** or under **Section 79** of the **Land Registration Act** and his actions are an illegality.

17. The Plaintiffs urge that the 1st, 2nd, 6th, 7th, 8th, 9th, 10th and 11th Defendants acquisition of any titles to the suit property was fraudulent, un-procedural, unfair and illegal and are *void ab initio*.

18. According to the Plaintiffs, L.R No 209/20518 and L.R No 209/20519, belonging to the Defendants are located near Wilson Airport off Langata Road and not at Runda.

19. The 1st, 2nd, 6th, 7th, 8th, 9th 10th and 11th Defendants filed a Defence and Counterclaim on 25th April, 2018. They denied the Plaintiffs' assertions stating that first, they have been misdescribed on the face of the pleadings and that their correct names are as follows:

1 st Defendant	Chirag Sanghrajka
2 nd Defendant	Vinay B Sanghrajka also Vinay Sanghrajka
6 th Defendant	Jaysukh B Sanghrajka
7 th Defendant	Bipin Chandra B Sanghrajka
9 th Defendant	Nishit Bhaichand Sanghrajka

20. According to the Defendants, the Plaintiffs' ownership of L.R No 20518 and L.R No 20519 vide the transfer of the 4th July, 2002 is defective and is impeachable pursuant to **Section 26(a) and (b) of the Land Registration Act.**

21. At all material times, they assert, L.R No 20518 was registered in the names of the 6th and 7th Defendants as

tenants in common with equal shares whereas L.R No 20519 was registered in the names of the 2nd and 11th Defendants as tenants in common with equal shares. They have throughout their ownership asserted title and paid the requisite land rates and rents.

- 22.** It is asserted that the Plaintiffs claims over the suit properties are fraudulent, the particulars of which include purporting to have received a transfer of land from them on the 4th July, 2002 despite the fact that they do not know the Plaintiffs and have never undertaken any business with them and that there has equally been no consideration between the Plaintiffs and the persons who allegedly sold them the property as required by the repealed **Transfer of Property Act**.
- 23.** They assert that the Plaintiffs only began asserting ownership over the suit parcels in 2016 whereas the 6th and 7th Defendants acquired L.R No 20518 on or about the 14th October, 1994 from Messrs Scanner Agencies Limited (Sel & Barnet Limited) while the 2nd and 11th Defendants acquired L.R No 20519 on or about the 14th October, 1994 from Messrs Scanner Agencies Limited and that in light of their earlier ownership, they contend, the Plaintiff's titles are fraudulent.
- 24.** According to the Defendants, the titles exhibited by the Plaintiffs bear the names of the 2nd and 11th Defendants and

the 6th and 7th Defendants and/or the names prior to the registration of deeds of rectification of the titles which was undertaken on or about the 6th December, 1994 and therefore the purported ownership documents are embarrassing and untenable.

- 25.** It is their case that when the Plaintiffs and their agents attempted to invade the suit properties, they reported the matter to the police who investigated and confirmed that the Plaintiffs had indeed committed fraud; that the titles exhibited by the Plaintiffs differ in user with those of the 6th and 7th Defendants as well as the 2nd and 11th Defendants under Special Condition number 5 thereof and that the titles in favour of the Defendants indicate user of "*one private dwelling excluding a guest house*" while the Plaintiffs' allotment letter indicates user as "*for residential purposes*".
- 26.** According to the Defendants, the deeds of rectification were indeed registered as pleaded by the Plaintiffs; that the same were however founded on provable and proven purchase and transfer; that the Chief Land Registrar is empowered to correct any proven and provable errors of the description of the title pursuant to the provisions of **Section 59(2)** of the repealed **Registration of Titles Act** and that in any event, the rectification did not create any new rights in favour of the 6th and 7th and 2nd and 11th Defendants.

27. It was stated that while the Plaintiffs make reference to L.R No 209/20518 and 209/20519, the 6th and 7th Defendants title is L.R No 20518 while the 2nd and 11th Defendants' title is L.R No 20519 and as such, the Plaintiffs pleadings are irrelevant. As the police have found that the Plaintiffs' titles are fraudulent, it was averred, their suit is liable to be dismissed.

28. The Defendants seek vide the Counterclaim the following prayers:

- i. ***A declaration that the title documents exhibited herein by the 1st Plaintiff, Catherine Njeri Nganga with respect to L.R No 20518 Nairobi purporting to or reflecting any entry vesting ownership in the 1st Plaintiff's favour, or on her behalf, is null and void and ineffective to confer any title to the 1st Plaintiff.***
- ii. ***A declaration that the title documents exhibited herein by the 2nd Plaintiff, Francis Kiongo Muturi with respect to L.R No 20519 Nairobi purporting to or reflecting any entry vesting ownership in the 2nd Plaintiff's favour, or on his behalf, is null and void and ineffective to confer any title to the 2nd Plaintiff.***
- iii. ***General and Exemplary Damages to be paid by the Plaintiffs to the 6th, 7th, 2nd and 11th***

Defendants for fraud, falsification of documents and for disturbance and inconveniences.

- iv. An order that a permanent injunction be issued against the 1st Plaintiff, her agents, servants and or employees restraining them from trespassing, entering, remaining in and/or interfering with, or purporting to sell or transfer, or selling and or transferring the 6th and 7th Defendants title, L.R No 20518, Nairobi.***
- v. An order that a permanent injunction be issued against the 2nd Plaintiff, his agents, servants and or employees restraining them from trespassing, entering, remaining in and or interfering with, or purporting to sell or transfer or selling and or transferring the 2nd and 11th Defendants property, L.R 20519 Nairobi.***
- vi. Costs of the counterclaim together with interests on (iii) above.***
- vii. Any other or further relief that the court may deem fit to grant.***

29. The 3rd, 4th and 5th Defendants filed a Defence on the 4th June, 2018. They denied the assertions by the Plaintiffs stating that according to the records in their possession, the presentation book for the year 1994, under entries number 281 and 282 shows that on the 6th December, 1994,

registration of the titles took place in the names of Jaysukh B Sanghrajka and Bipin Chandra B Sanghrajka for L.R No 20518, I.R 63978 and in the names of Vinay B Sanghrajka and Nishit B Sanghrajka for L.R 20519, I.R 63979. The same are duly captured in the A book entries.

- 30.** The 3rd, 4th and 5th Defendants averred that the titles in the names of the Plaintiffs for L.R No 20518, I.R 63978 and L.R 20519, I.R 63979 respectively allegedly transferred to them on 4th July, 2002 vide entry numbers 175 and 176 shows different transactions relating to land parcel I.R 50692; that it is evident that the title in the names of the 1st and 2nd Plaintiffs did not originate from the Ministry of Lands and Physical Planning, and that the said titles are suspicious and the work of fraudsters.
- 31.** They stated that the title deeds in the names of Jaysukh B Sangrajka and Bipin Chandra B Sanghrajka on one hand and those of Catherine Njeri Nganga and Francis Kioko Muturi were presented before Fredrick Indoko Lubulellah who is alleged to have registered all of them; that the aforesaid officer denied registering the transfers and signing the title in the names of the 1st and 2nd Plaintiffs on the 4th July, 2002 and that he maintained that the same are forgeries.
- 32.** It was stated that the criminal investigations department has conducted investigations which reveals that the Plaintiffs titles are fraudulent and that the records available at the

Ministry of Lands and Physical Planning, it is evident that the letters of allotment in the names of Scanner Agencies Limited and in the names of Sel & Barnet Limited, the vendors who sold the land to the Defendants are available in the lands office as shown in the file opening card whereas no records can be traced to show that the letter of allotment in the name of Catherine Njeri Nganga emanated from the government.

- 33.** According to the Defendants, the 6th and 7th and 2nd and 11th Defendants have been duly paying land rents to the Ministry of Lands and Physical Planning in respect of the properties. With regards to the contention on rectification, they stated that the Ministry of Lands and Physical Planning through the Chief Land Registrar has the legal mandate to rectify titles.

Hearing and Evidence

- 34.** The 1st Plaintiff testified as PW1. She adopted her witness statement dated the 27th September, 2019 as her evidence in chief and produced the bundle of documents of an even date as PEXHB1]. [Except pages 1-12 Inquiries File No 3 of 2017].
- 35.** It was her testimony vide the statement that in October, 1994, she made a request by way of a letter to the then Commissioner of Lands seeking to be allocated two vacant parcels of land within Runda Estate described as Uns.

Residential Plot “B” Runda Estate and Uns. Residential Plot “A” Runda Estate.

- 36.** Vide two letters of allotment dated the 27th October, 1994, the Commissioner of Lands notified her of the allocations which she duly acknowledged by way of an acceptance letter. It was her evidence that she subsequently made all the requisite payments to the Ministry of Lands whereupon she sought the services of a surveyor to survey the two plots.
- 37.** PW1 stated that the survey work was conducted and submitted to the Director of Surveys who approved the same and she was issued with the attendant deed plan number 191045 in respect of L.R number 20519 and deed plan number 191044 in respect of L.R No 20518 upon which she signed the deed plans release letter.
- 38.** After the deed plans were handed over to her, she stated, she presented the same to the office of the Director of Land Administration at Ardhi House to facilitate the process of registration of titles in her favour; that she kept on following the process of registration of titles which took sometime whereupon she was notified that the two files relating to the two suit properties were lost and could not be traced and that she complained about the loss to the Chief Land Registrar who promised to look into the same. It was only in 2002, according to PW2, that the files were found.

- 39.** PW1 stated that the files as re-appeared, had all the documents appertaining to her transactions removed and replaced with other fraudulently backdated allotment letters in favour of Scanner Agencies Limited and Sel & Barnet Ltd; and that upon scrutinizing the documents, the Chief Lands Registrar informed her that the two aforesaid entities had purportedly transferred their fraudulent interest in the two suit properties to some third parties vide informal transfers of the letters of allotment.
- 40.** This, she stated, was despite the fact that the said two entities, Scanners Agencies Ltd and Sel & Barnet Ltd, had not even written acceptance letters nor paid the requisite premiums as required by law and that upon considering her set of documents, including her letters of allotment, her receipts as well as the deed plan release letters from Survey of Kenya, the Chief Land Registrar was satisfied that the records relating to the suit properties had been falsified.
- 41.** PW1 informed the court that the Chief Land Registrar summoned the purported new owners who claimed that they had bought the respective properties from the initial allottees, Scanner Agencies Ltd and Sel & Barnet Ltd and that upon being confronted with the evidence that the two companies which had sold them the suit property were not the bona fide allottees, they agreed to surrender the titles to the Chief Land Registrar in lieu of being dragged to court.

- 42.** It was the evidence of PW1 that they however asked to be refunded some of the monies used towards the processing of the titles in their names and being satisfied that they had been conned by the companies, associated with senior politicians, she acceded to their request.
- 43.** According to PW1, she sought the help of the 2nd Plaintiff who raised the money the two Pakistani nationals were seeking and that in return, when the titles were released to Advocate George Morara who facilitated the out of court settlement, she assigned one of the parcels to the 2nd Plaintiff.
- 44.** Rather than cancel the titles and issuing them with new titles, she stated, the Chief Lands Registrar instructed one F. I. Lubulellah, a land registrar to effect transfers of the same titles handed over to them by the Pakistani Nationals; that not doubting the Registrar's authority to sanction the aforesaid transfers, she and the 2nd Plaintiff collected the titles and that they have been making land rent and land rate payments over the said parcels on account of the titles.
- 45.** PW1 stated that it was not until the year 2014 when they intended to sell the suit properties to one Vijay Montaria that problems began and that as soon as they handed over copies of their titles to the said Vijay for his due diligence, they were informed that official searches could not be

generated because the files relating to the suit properties were missing.

- 46.** She stated that upon noticing the similarity between the Pakistani Nationals and the Defendants, a fraudulent plan was hatched to remove the entries in their favour and in their place, a backdated deed of rectification was registered to correct the Defendants' names in a situation which clearly amounted to deceitful transfer of land.
- 47.** It was her evidence on cross-examination that she and the 2nd Plaintiff did not purchase the property from the Defendants, do not know them and have never had any dealings with them; that whereas the transfer documents show a consideration of Kshs 4,000,000/= she has no evidence of paying the same and that the names in the informal transfer, Vinaychandra B Sanghrajka and Nishit B Sanghrajka are the same names in her transfer document.
- 48.** It was her further evidence that she does not have the receipt for allotment as the same was destroyed after her house was invaded in 2018. She noted that the allotment letter she holds is for a period of 99 years from the 1st July, 1994 while the one adduced by the Defendants is for a term of 99 years from 1st October, 1994.
- 49.** It was her evidence during re-examination that by the time she was allotted the property, they were un surveyed parcels of land; that the process of acquisition requires that a survey

is conducted, which was duly done leading to the issuance of the deed plans and that her dealings were with the persons named on the face of the title and not those reflected after the rectification. She emphasised that her role was not that of a purchaser of the land, but rather, of refunding the persons who had initially illegally acquired it.

- 50.** PW2 was Francis Kiongo Muturi, a retired accountant. He adopted his witness statement dated 6th July, 2021 together with the 1st Plaintiff's witness statement of 29th September, 2019 as his evidence in chief. He equally adopted the 1st Plaintiff's bundle of documents.
- 51.** It was his testimony that he is the registered owner of the parcel of land known as L.R. No. 20519, grant number 63979, deed plan number 191045. He further stated that he previously suffered a stroke which left him paralyzed and with difficulties in both speech and movement.
- 52.** It was his evidence vide the statement that he became the owner of the suit property after settling payments to two Pakistani Nationals in consideration of the parcel of land, which he asserted had been procedurally, lawfully, and legally allocated to the 1st Plaintiff. Following these payments, the 1st Plaintiff assigned to him one of the parcels, namely L.R. No. 20519, and was subsequently issued with a certificate of title in respect thereof. He stated that he later misplaced the title and reported the loss to the police under

OB No. 105/15/03/2021, and that he is currently in the process of being issued with a replacement title.

- 53.** It was his evidence during cross-examination that his role was confined to financing the acquisition of the property by the 1st Plaintiff in the sum of Kshs. 2,000,000. He stated that the 1st Plaintiff retained custody of all the documents and handled all the transactions. He further indicated that he could not recall when he provided the financing, and that he never personally met the Pakistani Nationals, only learning of them through the 1st Plaintiff.
- 54.** On further cross-examination, he testified that he did not know how the transfers were effected and was unaware of the person or persons who executed them. He clarified that he never issued a Power of Attorney to the 1st Plaintiff, and had no knowledge of when or where the transfer instruments were prepared, nor when the plot was acquired. He added that if any fraud was committed by the 1st Plaintiff, he was not aware of it.
- 55.** Similarly, he testified that he was not aware that the Defendants had placed security guards on the suit properties. He emphasized that he had no recollection of any transaction beyond what was relayed to him by the 1st Plaintiff, who solely managed all the dealings relating to the properties.

- 56.** PW3 was Wilson Kibichii, an employee of the Ministry of Lands, Director of Surveys, serving as the head of survey records. He stated that he was served with summons to appear before court and produce the survey records for L.R 20518 and 20519.
- 57.** It was Mr Kibichii's evidence that he received an inquiry from Arusei & Advocates regarding the location of two properties being L.R No 209/20518 and 209/20519; that he responded vide the letter dated 10th April, 2017 signed on behalf of the Director of Surveys and that in the letter, he stated that the properties were near Wilson Airport Off Langata Road.
- 58.** According to Mr Kibichii, parcels 209/20518 and 209/20518 are distinct from parcels 20518 and 20519, the suit properties; that the same were surveyed by D. Nyika, licensed surveyor and given grants based on allocation documents; that he is not sure on whose behalf the survey was done and that there is a deed release slip showing that the deed plans for L.R 20518 and 20519 were collected by the 1st Plaintiff.
- 59.** In cross-examination, PW3 stated that he did not respond to any other inquiry apart from that with respect to L.R 209/20518 and 209/20519; that he did not sign the release slip for the deed plans and that he knows the 1st Plaintiff and

is unaware of whether anyone else was issued with a deed plan.

- 60.** It was his further evidence on cross-examination that he is unaware of the letter of 5th May, 2017 referenced in the letter of 10th April, 2017; that he does not have certified copies of the deed plans or any document connecting the 1st Plaintiff to the survey plan and that the computations are missing and the date the 1st Plaintiff collected the deed plans is not indicated in the release form.
- 61.** PW3 stated that deed plans are usually released by a licensed surveyor or a person appointed by the licensed surveyor; that in this case, the release is addressed to Eric Kiptanui c/o D. Nyika and that page 54 of the bundle contains the details of the individual who collected the deed plans, including their identification number and signature.
- 62.** DW1 was Vinay Bhaichand Sangrajka. He adopted his witness statement dated 26th April, 2018 as his evidence in chief and produced the bundle of documents dated the 25th April, 2018 as 1DEXHB1
- 63.** It was his oral evidence that he is a Kenyan Citizen by birth and that the Plaintiffs have mixed up his name and his brother's name. He stated that he never transferred the land and did not sign the transfer documents. The said transfer, he averred, was a forgery. He asserted that he does not

know the Plaintiffs and saw them for the first time at the trial.

- 64.** DW1 stated that the 1st Defendant is his nephew whereas the 6th, 7th and 11th Defendants are his brothers and that they had authorized him to represent them in this suit, and has executed all the documents on their behalf.
- 65.** It was his testimony during cross-examination that he is named both as the 2nd and 10th Defendant. He further stated that he could not recall filing his brother's identity cards. He confirmed that the two titles were registered and prepared on the same day, and explained that the appearance of the name Vinachay Bipin Sanghrajka on both titles was the result of a mix-up.
- 66.** DW1 stated that they purchased the suit properties on the strength of letters of allotment as no titles had as yet been issued to the vendors. At the point of the transaction with respect to the purchase of the suit property, they were to pay the stand premium on behalf of the allottees, the same having not been paid, neither had the titles been issued to the vendors.
- 67.** DW1 conceded to not having a sale agreement in writing. He stated that he dealt with Eric Kiptanui on behalf of the vendor companies; that he did not see the certificate of incorporation of the companies neither did he undertake a search at the companies' registry and that he does not know

the person who paid Mr. Nyike, the surveyor. It was his evidence on re-examination that the errors in their names were rectified as per the deed of rectification.

- 68.** He further stated during re-examination that the amount set out in the receipt is Kshs 96,000 the same amount as in the letter of allotment and that the letter at pages 8 and 9 acknowledges the same and identifies the property.
- 69.** DW2 was Edwin Wafula, a principal land registrar based at Chuka. He adopted his witness statement dated the 4th June, 2018 as his evidence in chief and produced documents number 1 and 4 as 3DEXHB1 and 2.
- 70.** It was his oral testimony that there exists a title within the Defendants' bundle and the deed of rectification is duly reflected in the presentation book. He further stated that the reference in the Plaintiffs' titles to "joint tenants in common with equal shares" is legally untenable, as ownership can only be as joint tenants, or as tenants in common with equal, undivided, or sub-divided shares and that the presentation book in his possession does not support the entries appearing in the Plaintiffs' titles, since presentation numbers 175 and 176 relate to entirely different transactions.
- 71.** It was the evidence of DW2 that the title in the 1st Defendant's bundle shows that the deed of rectification was registered on the 6th December, 1994. This being so, he argued, the transfer in the Plaintiff's bundle could not have

used the names that appeared before the rectification as per the deed of rectification.

- 72.** In cross-examination, his evidence was that he has no authority to summon parties where there is a dispute. While he holds a certified copy of the titles signed by C.K. Ngetich, he does not know Mr Ngetich's signature. He further admitted that he is unable to confirm whether the land in question was originally public land or whether the vendors duly accepted the allotment.
- 73.** DW2 conceded that he has no evidence of acceptance letters, payment of stand premiums, or a sale agreement. He noted that the rectification document does not contain identity card numbers. He emphasized that he is not a document examiner and is therefore unable to identify the alleged fraudsters, nor can he tell which documents were registered by Mr. Lubullelah.
- 74.** It was his further evidence that he has never seen the letters of allotment issued to the vendors and did not inquire about the same from the Director of Land Administration. As such, he cannot authenticate the letters of allotment. Before issuance of a title, he noted, the correspondence file should be available and it should contain the letter of allotment, application, acceptance, evidence of payments, deed plan and the grant itself. It was his evidence that the file was

missing when he recorded his statement. He only relied on the day book and the file opening cards.

75. He noted that the date of 6th December, 1994 represents the date of presentation at the registry, while 7th December 1994 reflects the date an officer was allocated to process the matter. He stated that he obtained the names from the Advocate who provided him with the title, and that the day book number corresponds to the deed of rectification dated 6th December 1994. He admitted that the date indicated in his statement as the date of registration of title was erroneous.
76. DW2 conceded that he did not obtain the presentation book relating to the titles themselves, and that the copies of the Plaintiffs' titles in his possession were sourced from the pleadings. He also acknowledged that he did not obtain identity cards or passports to verify the Defendants, and that he never came across any correspondences by the Plaintiffs in the file.
77. In re-examination, he testified that the deed of rectification expressly sets out the reasons necessitating the rectification. He stated that he relied on the Plaintiffs' documents in preparing his statement and clarified that he did not participate in the four processes, only becoming involved at the final stage. He explained that the date of 6th December 1994 relates to the registration of the deed of rectification.

He confirmed that he obtained Mr. Lubullelah's statement from the DCI.

- 78.** DW3 was Inspector Martin Kitayi, Force No. 24052, a qualified forensic document examiner with over ten years' experience. His evidence was that he serves on a full-time basis with the DCI, where he received his initial training, and has undertaken further specialized training at the Foster Institute in the United Kingdom, Gujerat Forensic University in India, and the Regional Forensic Laboratories at Rabat University in Sudan.
- 79.** DW3 testified that he prepared and adopted his report referenced as CID/8/3/1/076/2017 (and not 2016). He explained that it was a group report signed by four experts, namely, John Muinde, Vincent Chelongo, Bernard Cheruiyot, and himself. He produced the report as 3DEXB3.
- 80.** It was his evidence on cross-examination that they examined the disputed signatures being those marked in red in A1 and A2 with the specimen signatures, C1 and C4 and the known signatures of Mr Lubullelah. Their opinion was that the questioned signatures were made by different authors and not Lubullelah. They also examined the questioned signatures of B1 and B2, the specimen signatures of Lubullelah C1 and the known signatures. They concluded that the signatures were made by the same authors.

- 81.** DW3 stated that they received the exhibits on the 19th January, 2017 and certified copies of the titles for the suit properties transferred to the Plaintiffs. These were the controversial documents. They also received the deed of rectification and the titles in the Defendants' names, together with the specimen signatures of F. Lubullelah.
- 82.** He noted that he does not know the exact time the specimen signatures were taken and stated that some documents were certified while others were original. As regards C-1, he stated that he was unaware of who extracted the specimen signature.
- 83.** During re-examination, his evidence was that there was nothing unique about the report, as the standard procedure required it to be signed by two or more experts. He noted that similar reports were prepared around the same period, and that he was provided with certified copies of the title deeds, which were examined on 23rd January 2017, having been delivered to them on 19th January 2017.
- 84.** DW3 stated that while there may be variations between signatures made in 1994 and those made in 2005, the individual characteristics inherent in a person's handwriting do not change over time.
- 85.** DW4 was Benet Kwarat, Assistant Superintendent of Police attached to DCI Land Fraud Investigations Unit. It was his evidence that he has been at the unit from 2014-2021 and

was thereafter transferred to Mombasa; that he recently went back to the same unit and has been there for two months and that he carried out investigations with respect to the suit land and prepared a report dated the 14th November, 2024 which he produced as 3DEXHB4. He relied on the documents referenced in the report.

- 86.** It was his evidence on cross-examination that vide his report, he recommended that the 1st and 2nd Plaintiffs be charged with various offences relating to conspiracy to defraud. He stated, however, that he did not know what transpired after his investigations were concluded.
- 87.** According to DW4, it was the Plaintiffs who lodged the complaint with the DCI and furnished him with certified copies of the two titles, a certified copy of an instrument of transfer, and letters of allotment. He further stated that the respective files at Ardhi House were missing, and that he did not retain the letter through which he requested the opening card from Ardhi House.
- 88.** He conceded that he did not ascertain how the same deed plan came to be used for both titles, and reiterated that these were new grants which ought to have been supported by letters of allotment.
- 89.** According to his evidence, the names of the persons he interrogated, namely Vinay and Bipin, do not appear on the face of the titles. He conceded that he never wrote to the

Registrar of Persons to verify their registration documents and did not meet the other brothers who purported to have purchased the land.

- 90.** DW4 conceded that the letters of allotment produced were incomplete, and he was unsure whether he had ever been given complete allotment letters. He confirmed that he did not verify the existence of the initial allottees and could not tell whether stand premium had been paid. DW4 acknowledged that, although he recorded the statement of F. Lubullelah, he did not retain a signed copy, and that it was during the proceedings that he first saw the letter in which F. Lubullelah purportedly confirmed signing and registering the titles.
- 91.** During re-examination, he stated that he could not confirm the authenticity of the letters in which F. Lubullelah is said to have confirmed signing the transfers in favour of the Plaintiffs. He reiterated that he personally recorded Lubullelah's statement and explained that his investigations focused on the circumstances under which the grant was registered, with the opening cards forming the basis of his findings.

Submissions

- 92.** The 1st Plaintiff's counsel filed submissions on 7th March, 2025. Counsel submitted that at the onset, the Counterclaim is fatally defective it having been admitted by Mr. Vinay Sanghrajka, who solely executed the pleadings by the 1st, 6th

-11th Defendants that he had no demonstrable authority to do so as required under **Order 4 Rule 1(5)** of the **Civil Procedure Rules**.

- 93.** Counsel submitted that as Mr. Vinay's proprietorship rights extends only to L.R 209519, in the absence of authority, he lacks the locus to canvass any claim in respect of any other property.
- 94.** According to Counsel, despite asserting that they purchased the property from Messrs Scanner Agencies Limited and Sel & Barnet Limited, the Defendants failed to avail essential ingredients of a valid sale of land, there being no offer or acceptance, written agreement, sellers proof of ownership and title search, payment of purchase price, consent to transfer, and stamping and payment of stamp duty.
- 95.** In any event, it was submitted, the Defendants allege to have purchased the property on the strength of letters of allotment which as explained in **Torino Enterprises Limited vs Attornet General [2023]KESC 79(KLR)** do not constitute titles but mere offers.
- 96.** Counsel urged that allotment letters relied on by the Defendants are deficient in material particulars only having the front page, no name or signature of the officer who signed on behalf of the Commissioner of lands, no special conditions and no PDP.

97. According to Counsel, the forensic examination did not examine the authenticity of the letters of allotment held by the parties, only limiting itself to the titles and that an adverse inference must be drawn against the Defendants. It was submitted that as between the Plaintiffs and the Defendants, the Plaintiffs have demonstrated the legitimacy of their titles.
98. The 2nd Plaintiff's counsel filed submissions on 14th March, 2025. Counsel submitted that it is trite law that land allotment, acceptance of the same and issuance of title can only be done pursuant to the relevant legal regime. It was submitted that a party cannot purchase a letter of allotment as the same is, as discussed by the Supreme Court in **Torino Enterprises Limited Vs Hon. Attorney General, Petition Number 5 (E006) of 2022**, a mere letter of offer.
99. It was submitted that since the 6th and 7th and 2nd and 11th Defendants base their claim on purchasing letters of allotment, their claim is untenable, legally invalid, a nullity, null and *void ab initio* and did not confer any interest in land or at all. In support, reference was made to the decision in **Macfoy -versus- United Africa Co. Limited (1961) 3ALL 1169 at 1172**.
100. It was submitted that in any event, there has been no demonstration that the terms in the letter of allotment were adhered to, no acceptance thereto, no evidence to confirm

that the offer in the letter of allotment was accepted within the stipulated timeline or at all, no records showing that a licensed surveyor surveyed the land or that an authentic Registry Index Map (RIM) and survey details were ever obtained.

- 101.** According to Counsel, in this case, there is no written sale agreement and/or contract of sale on the part of the 6th and 7th, and 2nd and 11th Defendants in compliance with **Section 3(3)** of the **Law of Contract Act**, and that without conducting due diligence and following the law, they rushed to purchase letters of allotments in what was clearly an illegal act. As such the alleged sale was invalid. Reliance was placed on the cases of **Thrift Homes Limited v Kays Investment Limited [2015]eKLR**, **Universal Education Trust Fund vs Monica Chopeta [2012]eKLR**.
- 102.** It was urged that investigations by the DCI and document examiner are not sufficient to nullify the Plaintiffs' claims. Expert evidence, it was urged, as held in **Samson Tela Akute vs Republic [2006] eKLR**, is a mere opinion which is not binding on the trial Court.
- 103.** The 1st, 2nd, 6-11th Defendants' counsel filed submissions on 5th September, 2025. Counsel submitted that the 2nd, 8th and 10th Defendants make reference to the same individuals while the 9th and 11th Defendants refer to the same person. It was submitted that the Supreme Court in **Dina**

Management Limited vs County Government of Mombasa & 5 Others[2023]KESC 30(KLR) emphasized the importance of due diligence before purchasing property. In this case, it was urged, it is clear that the persons who sold the property to the Plaintiffs had no title to pass to them. Reliance was placed on the case of **St Thomas Academy Limited vs Githumu Kangema Limited and Others[2024]KEELC 7025(KLR)**.

104. It was urged that as discussed in **Dina Management(supra)**, for a party to be considered a bona fide purchaser for value, they must demonstrate that they acquired a valid and legal title. And where a proprietor's title is under challenge, they must demonstrate its root, as held in **Munyu Maina vs Hiram Gathitha Maina[2013]eKLR**. It was submitted that in this case, evidence from the ministry officials and the forensic examiner shows that the titles did not originate from the lands office.

105. According to Counsel, the Plaintiffs claims founded on both the title and the letter of allotment is inconsistent and that in any event, even as regards the allotment, the suit properties having been allotted to Sel and Barnet Limited and Scanner Agencies Limited first in time, and the allotment conditions having been duly complied with, the letters of allotment issued to the 1st Plaintiff cannot be valid. In support, the cases of **Patel vs Commissioner of Lands through the**

Office of the Hon Attorney General & 4 Others [2023]KEELC 17907(KLR) and *Murakaru vs Kirera & 2 Others[2025]KEELC 302(KLR)* were referenced.

- 106.** It was noted that the Plaintiffs further did not demonstrate any payment of stand premium or meeting any of the conditions of the allotment; that the Plaintiffs conceded to not having paid stamp duty which invalidated any alleged transfer as expressed in **Section 19** of the **Stamp Duty Act** and that the evidence by DW4 shows that the Plaintiffs' allotment letters did not originate from the lands office.
- 107.** Considering the entirety of the evidence by the different parties, it was urged, the protections of **Article 40** of the Constitution cannot accrue to the Plaintiffs as their titles are tainted by fraud. Reliance was placed on the cases of *Alice Chemutai Too vs Nickson Kipkurui Korir & 2 Others[2015]eKLR*, *Elijah Makeri Nyangwara vs Stephen Mungai Njuguna & Another [2013] KEHC 5046 (KLR)* and *Sehmi & Another vs Tarabana Company Limited & 5 Others[2025]KESC 21(KLR)*.
- 108.** As regards the Defendants' title, it was submitted that the same is valid; that pursuant to **Section 142** of the **Registered Land Act**, the Registrar had the authority to rectify the register in any of the circumstances set out therein, which included to rectify errors and that despite

alleging fraud, the Plaintiffs did not demonstrate the same to the requisite standard being higher than in ordinarily civil cases as explained in **Muriithi vs Makena & Another[2024]KEELC 6936(KLR).**

Analysis and Findings

- 109.** The Plaintiffs instituted this suit seeking, *inter-alia*, declarations that they are the legitimate proprietors of L.R 20518 and L.R No 20519 and that the rectification of the register of 6th December, 1994 was void and the resultant titles invalid. They also seek the cancellation of the titles to the suit property issued in the names of the Defendants and issuance of fresh titles in their names, and permanent injunctive orders restraining any interference with the suit properties.
- 110.** It is the Plaintiffs' case that they are the legitimate owners of the suit property having acquired the same by way of allotment; that they duly accepted the allotment and made the requisite payments; that they carried out a survey upon which they took the deed plans to the Director of Land Administration for registration and issuance of the title.
- 111.** However, according to the Plaintiffs, the file was lost and when it re-appeared, their documents were missing and the file showed that the properties had been transferred to new owners. According to the Plaintiffs, the new owners however surrendered the titles upon being informed that the

purported vendors had no interest. This surrender was by way of a transfer to them pursuant to the advice of the Chief Land Registrar.

- 112.** According to the Plaintiffs, despite never having transferred the title, they discovered that the same was in the names of the 6th, 7th, 10th and 11th Defendants as owners of the property upon the undertaking of a rectification on the false narrative that the suit land belonged to their brothers.
- 113.** The Plaintiffs adduced into evidence the letters of allotment in respect of the two parcels, rent payment requests and rent clearance certificates for the years 2016 and 2017, land rates receipts for 2017, transfers dated the 28th June, 2002, correspondence from National Police Service, Ministry of Lands and Physical Planning, Arusei & Co Advocates, memorandum of registration of transfer and title deeds for the suit properties.
- 114.** On their part, the 6th and 7th and 2nd and 11th Defendants contend that they are the legitimate owners of the suit parcels. It is their case that they acquired the same from Scanner Agencies Ltd and Sel & Barnet Limited, the properties' initial allottees in 1994.
- 115.** They assert that they have at all times remained in possession of the parcels and did not make any transfers thereof to the Plaintiffs as alleged. They seek vide the Counterclaim to *inter-alia*, have the title documents

exhibited by the Plaintiffs cancelled, general damages for fraud and falsification of documents and permanent injunctive orders restraining them from interfering with the suit properties.

- 116.** The Defendants adduced into evidence the letters of allotment dated 14th October, 1994, receipts of allotment, correspondence from KPLC, Sel & Barnet, Scanner Agencies Limited, Commissioner of Lands, Chief Lands Registrar, Nairobi City Council, transfer forms dated 14th October, 1994, public notice in the Daily Nation dated 21st August, 2008, title deeds, a search, and receipt of payment from the Director of Surveys.
- 117.** The Defendants also adduced the approved development permissions, letters to the Deputy Registrar and Vinay B Sanghrajka, the part development plan dated 21st November, 1994, NEMA licenses, deed of rectifications number 63978 and 63979, beacon certificate, fee note from Harunani & Associates, land rent receipts and rates demand notes, and judgment in criminal appeal no 67 of 2013
- 118.** The 3rd, 4th and 5th Defendants on their part contend that as per the records held by them, the 6th and 7th Defendants and the 2nd and 11th Defendants respectively are the legitimate owners of the suit properties and that the Plaintiffs' claims are un-supported and their titles fraudulent.

119. They adduced into evidence a copy of the presentation book, police statement recorded by Fredrick Lubulellah dated 12th January, 2017, CID forensic examination report dated 23rd January, 2017, file opening cards, correspondence, letter of allotment ref 5674/v/188 dated 14th October, 1994 in favour of Scanner Agencies Ltd and ref no 5674/V/187 in favour of Sel & Barner Limited, deed plans number 191044 and 191045, forensic examination report and a duplicate file inquiry 3/2017.

120. The dispute herein revolves around the parties' competing claims to the suit properties, and as such, each party is obligated to prove their claim as set out under **Section 107(1)(2)** of the **Evidence Act**, which provides as follows:

“(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

“(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”

121. Sections 109 and **112** of the same Act which states as follows:

“109. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by

any law that the proof of that fact shall lie on any particular person.

“112. In civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving that fact is upon him.”

122. In discussing the standard of proof in civil liability claims in this jurisdiction, the Court of Appeal in **Mumbi M'Nabea vs David M. Wachira [2016] eKLR** stated as follows:

“In our jurisdiction, the standard of proof in civil liability claims is that of the balance of probabilities. This means that the Court will assess the oral, documentary and real evidence advanced by each party and decide which case is more probable. To put it another way, on the evidence, which occurrence of the event was more likely to happen than not.

...The position was re-affirmed by the Court of Appeal in Maria Ciabaitaru M'mairanyi & Others v. Blue Shield Insurance Company Limited - Civil Appeal No. 101 of 2000 [2005] 1 EA 280 where it was held that:

“Whereas under section 107 of the Evidence Act, (which deals with the evidentiary burden of proof), the burden of proof lies upon the party who invokes the aid of the law and substantially

asserts the affirmative of the issue, section 109 of the same Act recognises that the burden of proof as to any particular fact may be cast on the person who wishes the Court to believe in its existence.”

123. It is also noted that allegations of fraud have been raised by the parties as against each other. The **Black’s Law Dictionary** defines fraud thus:

“Fraud consists of some deceitful practice or willful device, resorted to with intent to deprive another of his right, or in some manner to do him an injury. As distinguished from negligence, it is always positive, intentional. Fraud, as applied to contracts, is the cause of an error bearing on a material part of the contract, created or continued by artifice, with design to obtain some unjust advantage to the one party, or to cause an inconvenience or loss to the other. Fraud, In the sense of a court of equity, properly includes all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust, or confidence justly reposed, and are injurious to another, or by which an undue and unconscientiously advantage is taken of another.”

124. It is trite law that fraud must not only be pleaded and particularized, but strictly proven. This position was affirmed by the Court of Appeal in **Demutilla Nanyama Pururmu vs Salim Mohamed Salim [2021] eKLR** relying on an earlier exposition in **Vijay Morjaria vs Nansingh Madhusingh Darbar & Another[2000]eKLR** thus:

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

125. As regards the standard of proof, the Court of Appeal in **Demutilla Nanyama Pururmu v Salim Mohamed Salim (supra)** looked to its earlier decision in **Kinyanjui Kamau vs George Kamau [2015] eKLR** wherein it had held:

“...It is trite law that any allegations of fraud must be pleaded and strictly proved. See Ndolo vs Ndolo (2008) 1 KLR (G & F) 742 wherein the Court stated that: “...We start by saying that it was the respondent who was alleging that the will

was a forgery and the burden to prove that allegation lay squarely on him. Since the respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof on the respondent was certainly not one beyond a reasonable doubt as in criminal cases...”...In cases where fraud is alleged, it is not enough to simply infer fraud from the facts.”

126. The court is so guided.

127. Having considered the pleadings, testimonies and submissions, the issues that arise for determination are as follows:

- i. Whether the 1st, 2nd, 6th, 7th, 8th, 9th, 10th and 11th Defendant’s Counterclaim is fatally defective?*
- ii. Who are the legitimate proprietors of the suit properties?*
- iii. What orders should the court issue?*

128. At the onset, the Plaintiffs contend that the 1st, 2nd, 6th-11th Defendants’ Counterclaim is fatally defective. It is their claim in this regard that the 2nd Defendant has no authority to act, appear and/or plead on behalf of the other Defendants whom he alleges to represent. By virtue of the

foregoing, it is asserted that the only claim the 2nd Defendant can advance is with respect to his alleged parcel.

129. In the present case, the 2nd Defendant has testified on his own behalf and on behalf of the 1st, 6th -11th Defendants. It is indeed trite that where there are multiple Plaintiffs and/or Defendants, the rules of civil procedure dictate how one party can act on behalf of the others. **Order 1 Rule 13 (1) & (2)** of the **Civil Procedure Rules 2010** is instructive in this regard, and provides thus:

“13. Appearance of one of several plaintiffs or defendants for others (Order 1, rule 13.)

(1) Where there are more plaintiffs than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding, and in like manner, where there are more defendants than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding.

(2) The authority shall be in writing signed by the party giving it and shall be filed in the case.”

130. On the other hand, **Order 4 Rule 1(3)** provides that:

“Where there are several plaintiffs, one of them, with written authority filed with the verifying

affidavit, may swear the verifying affidavit on behalf of the others.”

- 131.** It is clear from the foregoing that the law expressly requires where one party is to act, appear, or take part in proceedings on behalf of another, they require the authority of the person whom they appear for and such authority must not only be given in writing, but also filed in court.
- 132.** Speaking to this, the court in **Kiringo (168) vs Kenya Electricity Transmission Company Limited (KETRACO) & 3 others (Environment and Land Case Civil Suit 28 of 2021)** **[2022] KEELC 13765 (KLR)** **(28 October 2022) (Ruling)** persuasively noted:

“The order provides that where there are more Plaintiffs one or more of them may be authorized by any of them to appear plead or act for such other in the proceedings and such authority must be in writing. This order is in mandatory terms to require such authority to be sought and obtained. The mischief that the order sought to address is where any party can wake up one morning and file a suit on behalf of a party who has not given such authority or even not aware of a case being filed on his or her behalf. That is why there are such rules to be adhered to. If this rule was not in

place, then there would be abuse with pecuniary consequences for the affected parties.”

- 133.** The court has considered the pleadings and notes that the Defence and Counterclaim is supported by the verifying affidavits sworn by Vinay Sanghrajka, the 2nd Defendant, Chirag Sanghrajka, the 1st Defendant, Jaysukh B Sanghrajka the 6th Defendant, Bipin Chandra B, the 7th Defendant and Nishit Bhaichand Sanghrajka, named as the 9th and 11th Defendants.
- 134.** There is also on record, “*authorities to act*” filed on the 26th April, 2018 and 8th May, 2018 granting to the 1st and/or the 2nd Defendant authority to act on behalf of the 1st, 6th, 9th and 11th Defendants. In the circumstances, the court considers that the aspect of authority has been sufficiently met and finds this objection moot.
- 135.** The present case revolves around a dispute over the proprietorship of L.R 20518 and L.R 20519 between the Plaintiffs and the 6th and 7th and 2nd and 11th Defendants. From the record, there are two sets of titles in existence in respect of the same parcels of land.
- 136.** It is noted that both sets of titles are governed by the Registration of Titles Act, CAP 281(*now repealed*). By dint of the provisions of **Section 107** of the **Land Registration Act, 2012**, the law applicable to the titles aforesaid is the

retired **Registration of Titles Act** which provides as follows with respect to proprietorship:

“23. (1) The certificate of title issued by the registrar to a purchaser of land upon a transfer or transmission by the proprietor thereof shall be taken by all courts as conclusive evidence that the person named therein as proprietor of the land is the absolute and indefeasible owner thereof, subject to the encumbrances, easements, restrictions and conditions contained therein or endorsed thereon, and the title of that proprietor shall not be subject to challenge, except on the ground of fraud or misrepresentation to which he is proved to be a party.”

137. Under **Section 23** aforesaid, the rights acquired by a proprietor were only subject to any leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register. The proviso to section 23 of the RTA (repealed) allowed one to challenge a title on the ground of fraud or misrepresentation to which the registered owner is proved to be a party.

138. In the present case, the Plaintiffs rely on transfers executed on 4th July 2002 in their favor allegedly by Vinaychandra Bipin Sanghrajka and Nishit Bipin Sanghrajka. Their

certificates of title reflect registration in their names pursuant to these transactions.

- 139.** On the other hand, the Defendants contend that as at 6th December 1994, the register had been rectified from the names of Vinaychandra Bipin Sanghrajka and Nishit Bipin Sanghrajka to Jaysukh B. Sanghrajka and Bipin Chandra B. Sanghrajka, the 6th and 7th Defendants respectively in respect to L.R 20518 while the title to L.R. No. 20519 was amended to reflect Vinay B. Sanghrajka and Nishit B. Sanghrajka, the 2nd and 11th Defendants.
- 140.** In view of the fact that the Plaintiffs predicate their ownership on transfers executed in 2002, whereas the Defendants maintain that as early as 1994, the register had already been altered through deeds of rectification to reflect their names, and it being undisputed that the original named proprietors in the titles held by both parties are the same, the legitimacy of the rectification presents itself as the first logical issue for determination.
- 141.** According to the Plaintiffs, the rectification was part of a calculated scheme to divest the “Pakistanis” of ownership and subsequently themselves. They contend that rectification cannot, as it purported to in the circumstances be used to transfer property from one proprietor to another. They also argued that the execution of the rectification was

irregular, citing improper stamping and presentation of the document.

142. The law governing rectification at the material time was **Section 59** of the **Registration of Titles Act (now repealed)**. It provided thus:

59. (1) In the case of a non-existent or fictitious person being named as proprietor, the name in the register or document of title or other instrument may on the order of the competent authority be cancelled.

(2) In other cases, the rectification of grants, certificates of title and other instruments shall be effected by the addition of further endorsements correcting former endorsements which are found to be insufficient or to have been otherwise made in error.

143. A reading of this law shows that errors anticipated by **Section 59** are more than fictitious persons. Subsection 2 anticipates, other cases which may well include where the wrong parties have been cited as proprietors.

144. The evidence before this court shows that the rectification deed was duly registered and appears in the presentation book as entries 281 and 282. This position was affirmed by DW2 on behalf of the 3rd 4th and 5th Defendants. The reasons for the rectification are set out therein. Whereas the

Plaintiffs are categorical that this was a scheme and was tantamount to a transfer, they have not adduced any evidence in this regard.

- 145.** It has not been demonstrated by the Plaintiffs that the named proprietors were the “Pakistani’s” from whom the Plaintiffs “bought” the land from, and not the 2nd and 9th Defendants or that they were imposters. The concession that ID’s are not attached to the rectification deed is not conclusive evidence of the Plaintiffs’ allegations in this regard. There is equally no evidence to show that there have been any complaints in this regard to support the scheme alluded to.
- 146.** As to the fact of the stamping on the title deed having not been done on the blank margin of the title document as required, the court finds that such an omission does not go to the root of the rectification. Procedural or clerical lapses of this nature cannot, without more, vitiate an otherwise lawfully registered instrument.
- 147.** Ultimately, this court is constrained to uphold its legal effect. The inevitable conclusion is that, by 6th December 1994, the title to L.R 20518 was in the names of the 6th and 7th Defendants whereas the title to L.R 20519 was in the names of the 2nd and 11th Defendants.
- 148.** Accordingly, by the time the transfers of 28th June, 2008 were executed in favor of the Plaintiffs, the suit properties

were in the names of the 6th and 7th Defendants, L.R 20518 and the 2nd and 11th Defendants, L.R 20519 and not the originally named vendors, the 2nd and 9th Defendants who have in any event distanced themselves from the transaction.

149. The 1st Plaintiff too concedes that she did not deal with the 2nd and 9th Defendants herein. This brings to the fore the principle of *nemo dat quod non habet*.
150. Mostly used in sale of goods transactions, it is also applicable to dispositions over land in Kenya as articulated by the Court of Appeal in the case of **Arthi Highway Developers Limited vs West End Butchery Limited & 6 others [2015] KECA 816 (KLR)**. It posits that one with no interest in property cannot purport to transfer the same.
151. In addition to the foregoing, the 2nd and 9th Defendants expressly denied having signed the transfers in favour of the Plaintiffs as alleged. On their part, the Plaintiffs conceded that they had no evidence of consideration having been paid, nor of stamp duty having been remitted with respect to the transfer.
152. There is also the testimony of DW2, who was categorical that the Plaintiffs titles' did not emanate from their records. The forensic report adduced by DW3 reinforced this position, revealing the signatures attributed to F. Lubullelah on the transfer documents were not genuine. DW4 also affirmed

this position. Taken cumulatively, this body of evidence points to the conclusion that the titles in the names of the Plaintiffs are fraudulent.

153. The next issue for consideration is whether the Defendants' titles, are legitimate. It is trite and indeed need not be reiterated that when a title holder's title is under challenge, he/she must demonstrate its root. This position was affirmed by the Court of Appeal in the case of **Munyu Maina vs Hiram Gathiha Maina [2013]KECA 94(KLR)** thus:

“When a registered proprietor's root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free of any encumbrances including any and all interests which need not be noted on the register.”

154. It is the Defendants' position in this regard that they purchased the properties from Sel and Barnet Limited and Scanner Agencies Limited who were allotted the properties on 14th October, 1994. It is conceded that at the time of the transfer, the aforesaid entities did not have titles in their names, only holding the letters of allotment

155. In impugning these titles, the Plaintiffs are categorical that holders of letters of allotment are incapable of transferring any interests in land. Further still, they argued, there was no evidence of particulars of a valid contract for the sale of property.
156. To begin with, it is common ground that the bearer of a letter of allotment accrues no lawful rights and/or title capable of being sold. A letter of allotment merely constitutes an offer by the government to the designated allottee inviting him/her to confirm acceptance and thereafter comply with the terms and conditions thereunder.
157. Furthermore, the bearer of a letter of allotment can only stake a claim to ownership rights, if at all, upon complying with the terms of the letter of allotment and upon the ultimate issuance of the certificate of title or lease, whichever is applicable. Speaking to this, the Court of Appeal in **Wreck Motor Enterprises vs Commissioner of Lands & 3 others [1997] eKLR** stated thus:

“Title to landed property normally comes into existence after issuance of a letter of allotment, meeting the conditions stated in such a letter and actual issuance thereafter of title document pursuant to provisions held.”

158. The Apex Court in **Torino Enterprises Limited vs Attorney General [2023] KESC 79 (KLR)** ventured into

an in-depth exposition on the legal character of allotment letters and their effect on claims of title to land noting:

“57The respondent also challenged the letter of allotment on grounds that at the time of its transfer, the conditional thirty (30) days acceptance period had lapsed. As it turned out, the letter was also silent on whose behalf the commissioner of lands had made the allotment. Noting that the Commissioner of Lands by an allotment letter dated December 19, 1999 purported to allocate the suit property to Renton Company Limited. Thereafter, by a letter dated April 25, 2001, Renton Company Limited sought approval from the Commissioner of Lands to transfer the same to the appellant. The appellant’s ownership is traced back to this allotment Letter even if subsequently registered under the Registration of Titles Act cap 281 (Repealed) on April 26, 2001.

58.So, can an allotment letter pass good title? It is settled law that an allotment letter is incapable of conferring interest in land, being nothing more than an offer, awaiting the fulfilment of conditions stipulated therein. In Dr Joseph NK Arap Ng’ok v Justice Moiyo Ole Keiyua & 4 others CA 60/1997 [unreported]; and in Gladys Wanjiru

Ngacha v Teresa Chepsaat & 4 others HC Civil Case No 182 of 1992; [2008] eKLR, the superior courts restated this principle as follows:

“It has been held severally that a letter of allotment per se is nothing but an invitation to treat. It does not constitute a contract between the offerer and the offeree and does not confer an interest in land at all” [Emphasis added].

59. The pronouncement in Gladys Wanjiru and Dr Joseph NK Arap Ng’ok (supra) has been echoed in various Environment and Land Court decisions post the 2010 Constitution, including; Lilian Wanjeri Njatha v Sabina Wanjiru Kuguru & another, Environment and Land Case No 471 of 2010; [2022] eKLR; John Elias Kirimi v Martin Maina Nderitu & 4 others, Environment and Land Suit No 320 of 2011; [2021] eKLR; and Kadzoyo Chombo Mwero v Ahmed Muhammed Osman & 11 others, Environment and Land Case No 42 of 2021; [2021] eKLR, to mention but a few.

60 Suffice it to say that an Allottee, in whose name the allotment letter is issued, must perfect the same by fulfilling the conditions therein. These conditions include but are not limited to, the payment of a stand premium and ground rent within prescribed timelines. But even after the

perfection of an allotment letter through the fulfillment of the conditions stipulated therein, an allottee cannot pass valid title to a third party unless and until he acquires title to the land through registration under the applicable law. It is the act of registration that confers a transferable title to the registered proprietor, and not the possession of an allotment letter. In Peter Wariire Kanyiri v Chrispus Washumbe & 2 others, Environment and Land Court Case No 603 of 2017; [2022] eKLR, Kemei, J held as follows:

“[15]. In the case at hand, in the absence of any title registered in the name of the plaintiff, the court is unable to hold that the plaintiff is the registered proprietor of the land. This is because the letter of allotment lapsed within 30 days and the same is of no legal consequences” [Emphasis added].

61. While we agree with the general tenor of the learned Judge’s foregoing pronouncement, we remain uncomfortable with his inference that the allotment letter was of no legal consequence solely because it had lapsed after 30 days. We must reiterate the fact that an allotment letter in and by itself, is incapable of conferring a transferable title to an allottee. Put differently,

the holder of an allotment letter is incapable of transferring or passing valid title to a third party on the basis of the allotment letter unless and until he becomes the registered proprietor of the land consequent upon the perfection of the Allotment Letter. It matters not therefore that the allotment letter has not lapsed.”

- 159.** While the exposition by the Supreme Court in ***Torino(supra)*** remains valid, the courts have, in appropriate circumstances, upheld transactions grounded upon allotments, particularly where the Commissioner of Lands has sanctioned the transfer and the prescribed payments have been made.
- 160.** In ***Kenya Anti-Corruption Commission vs Willesden Investments Limited & 6 others; City Council of Nairobi (Interested Party) (Environment and Land Civil Suit 35 of 2010 & Environment and Land Petition 28 of 2020 (Consolidated)) [2025] KEELC 279 (KLR)***, this court held that where the allottee requests the Commissioner of Lands to transfer an allotment, and the requisite payments are duly remitted, where the Commissioner of lands accedes to this request, the resultant title is valid.
- 161.** The question then that follows is was the allotment legitimate and duly complied with? To begin with, the Plaintiffs cast doubt on the very existence of the initial

allottees, namely Scanner Agencies Limited and Sel & Barnet Limited, and pressed the Defence witnesses on whether certificates of incorporation or records of directorship were produced to establish their legal personality. They were not.

- 162.** However, the burden lay upon the Plaintiffs, having alleged non-existence of the companies to prove that these entities were indeed fictitious. The easiest way to do so was by calling a witness from the Business Registration Services, which operates as one stop shop for all business registration and support services, including company registration. The same reasoning applies to their further contention that there was no authority for disposing of the parcels.
- 163.** The Defendants have adduced into evidence letters of allotment in the names of Scanner Agencies Limited and Sel & Barnet Limited in respect to Unsurveyed parcels A & B Runda dated the 14th October, 1994. They have also adduced receipts evidencing payment of Kshs. 96,000/= in respect of Plots A and B Runda, being the fees indicated in the letters of allotment. These receipts referenced a banker's cheque dated 25th October, 1994.
- 164.** On the 26th October, 1994, Sel & Barnet wrote to the Commissioner of Lands seeking consent to transfer their Plot B to Vinay Chandra B. Sanghrajka and Nishit B. Sanghrajka, while Scanner Agencies Limited wrote on 27th

October, 1994 seeking consent to transfer their Plot A to Bipin Chandra Sanghrajka and Jaysukh B. Sanghrajka. There was no objection to these requests as indicated on the face thereof.

- 165.** Transfer forms, though undated, were also produced, indicating a consideration of Kshs. 575,000 was paid for the transfer of the plots to the Defendants.
- 166.** It is correct that the allotment letters produced did not have the page setting out the special conditions. There was also no acceptance letter. However, their absence does not, without more, render the allotments invalid. The critical requirements are that the stand premium and the amounts stipulated in the offer letter were paid, and within 30 days which the court opines evinces acceptance. As regards the Part Development Plan (PDP), the Defendants adduced the same. It is identical to the one adduced by the Plaintiffs.
- 167.** It is also not disputed that a survey was carried out and deed plans number 191044 and 191045 were prepared in respect to the suit parcels. On whose instructions it was carried out is not very clear. Neither the Plaintiffs nor the Defendants adduced evidence in this regard. The receipts for the survey were addressed to Mr Eric Kiptanui. This is despite the fact that the deed plans were collected by the 1st Plaintiff. DW1 stated that Mr Kiptanui was the person with whom they

transacted on behalf of the two companies initially allotted the parcels.

168. Taken together, the foregoing evidence demonstrates, on a balance of probabilities, compliance with the legal requirements attendant to the allotments and that the same crystallized into registrable interests. It is to be stated that the claim by the Plaintiffs is not one founded on a contract for the sale of land as anticipated under **Section 3(3)** of the Law of **Contract Act** and contentions in this regard are moot.

169. It is trite that once a property has been allotted and the allotment perfected, the property is not available to be re-allocated. As expressed by the court in **Republic vs City Council of Nairobi & 3 Others [2014] eKLR:**

“once an allotment letter is issued and the allottee meets the conditions therein, the land in question is no longer available for allotment since a letter of allotment confers absolute right of ownership unless it is challenged by the allotting authority or is acquired through fraud, mistake or misrepresentation or that the allotment was outrightly illegal or it was against public interest. In other words, where land has been allocated, the same land cannot be reallocated unless the first allocation is validly and lawfully cancelled.”

170. This was the position held by the Court of Appeal in **Kenya Ihenya Company Ltd & Another vs Njeri Kiriba [2019] KECA 749 (KLR)** where it was again stated:

“... it was clear that the 1st appellant had allotted the suit land to both the respondent and the 2nd appellant hence the learned Judge’s conclusion that there was a double allocation. That being the case, since the respondent was first in time, as the evidence is clear that she completed making payments in the year 1983 whilst the 2nd appellant claimed to have purchased the same on 24th June, 1997, she was the bonafide proprietor.”

171. Having already found that there was compliance with the terms of the allotments by Scanner Agencies Limited and Sel & Barnet Limited and who were first in time, it is clear that the Plaintiffs’ letters of allotments could not lawfully confer rights to land to them that had already been allocated. The Commissioner of Lands lacked authority to alienate the same parcels twice.

172. Even if the court were to consider the 1st Plaintiff’s allotments, they would still falter. This is primarily because the 1st Plaintiff has not demonstrated compliance with the terms of the allotments. In particular, the Plaintiffs failed to establish payment of the stand premium, which is a critical

precondition for crystallization of rights under an allotment. Mere possession of a letter of allotment, without evidence of acceptance and payment, does not confer any enforceable or registrable interest.

173. In the end, the court finds that the Defendants have ably demonstrated the root of their titles and affirms the legitimacy thereof.

174. The 1st, 2nd, 6th -11th Defendants seeks several reliefs including declarations that the titles held by the Plaintiffs are null and void, permanent injunctive orders, and general and exemplary damages as well as costs of the suit.

175. Having found in favour of the 6th and 7th and 2nd and 11th Defendants' titles *vis* the Plaintiffs, the Plaintiffs titles are amenable to revocation and/or cancellation pursuant to the provisions of **Section 80(1)** of the **Land Registration Act** which provides:

“(1) Subject to subsection (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.”

176. As the established proprietors of the suit property, the 6th and 7th and 2nd and 11th Defendants are entitled to all the rights appurtenant thereto, which include the rights to exclusive possession thereof. It follows therefore that they

have established a case for the permanent injunctive orders sought.

177. The Defendants also seek general and exemplary damages for fraud. General damages are those damages which cannot be mathematically assessed as at the time of the trial. On the other hand, exemplary damages are punitive in nature, for they are designed to punish the defendant. [See **D K Njagi Marete vs Teachers Service Commission [2020] KECA 840 (KLR)**].

178. On the facts before this court, the 6th and 7th and 2nd and 11th Defendants have successfully demonstrated the legitimacy of their titles. Conversely, the Plaintiffs' case has not been established.

179. However, the evidence before this court did not disclose that the Plaintiffs acted with deliberate dishonesty, or that they procured their allotments or titles through conscious fraudulent misrepresentation. Absent of such proof, the court cannot elevate their actions into the realm of fraud that would justify either general or exemplary damages. This plea fails.

180. In the end, the court proceeds to make the following final orders;

a) The Plaintiffs' suit be and is hereby dismissed with costs.

b) The Defendants' Counterclaim is allowed as follows:

- i. A declaration does hereby issue that the titles exhibited herein by the 1st Plaintiff, Catherine Njeri Nganga with respect to L.R No 20518, Nairobi and the title exhibited herein by the 2nd Plaintiff, Francis Kiongo Muturi with respect to L.R No 20519, Nairobi are null and void.**
- ii. An order of permanent injunction does hereby issue restraining the Plaintiffs from trespassing, entering, remaining in and/or interfering with, or purporting to sell or transfer, or selling and or transferring the parcels of land known as L.R 20518 and L.R 20519, Nairobi.**
- iii. The 1st, 2nd, 6th-11th Defendants shall have the costs of the suit and Counterclaim.**

Dated, signed and delivered in Nairobi virtually this 2nd day of October, 2025.

**O. A. Angote
Judge**

In the presence of;

Mr. Mwangi and Wanyoike for 1st, 2nd - 11th Defendants

Mr. Arusei for 2nd Plaintiff

Mr. Allan Kamau for 3rd, 4th and 5th Defendants

Court Assistant: Tracy

ORIGINAL