



Okutoyi & 11 others v Attorney General & 4 others (Environment and Land Case 18 (B) of 2023) [2025] KEELC 6738 (KLR) (1 October 2025) (Judgment)

Neutral citation: [2025] KEELC 6738 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND CASE 18 (B) OF 2023**

CK NZILI, J

OCTOBER 1, 2025

BETWEEN

- WYCLIFFE OKUTOYI 1ST PLAINTIFF**
- JOSEPH MUTIMOSI 2ND PLAINTIFF**
- NAOMI WAMAITHA MACHARIA & FLORENCE NJERI CHEGE (BEING THE LEGAL REPRESENTATIVE OF THE ESTATE OF CHEGE NJIRAINI - DECEASED) 3RD PLAINTIFF**
- BENEDICT WANJALA 4TH PLAINTIFF**
- ELIAKIM MALECHE 5TH PLAINTIFF**
- DORCAS EMALI SHIKAMI (BEING THE LEGAL REPRESENTATIVE OF THE ESTATE OF PETER SHIKAMI - DECEASED) 6TH PLAINTIFF**
- NEREAH MURUNGA (BEING THE LEGAL REPRESENTATIVE OF THE ESTATE OF HUMPHREY MURUNGA - DECEASED) 7TH PLAINTIFF**
- FRANCIS MAKUTWA 8TH PLAINTIFF**
- MARTIN JUMA NAMOYO 9TH PLAINTIFF**
- GEOFFREY KUNG’U 10TH PLAINTIFF**
- E. DAVID SIMIYU 11TH PLAINTIFF**
- JOHN EGESA 12TH PLAINTIFF**

AND

- HON. ATTORNEY GENERAL 1ST DEFENDANT**
- CHIEF LAND REGISTRAR 2ND DEFENDANT**
- DIRECTOR OF SURVEY 3RD DEFENDANT**



JUDGMENT

1. The plaintiffs approached the court through a further amended plaint dated 18/7/2024. They seek:
 - i. Declaration that the obtaining of registration of the 5th defendant as the owner of L.R. Nos. 5707/1-5 was illegal and fraudulent, given the Ruling in Kitale HCCC No.17 of 2018.
 - ii. Cancellation of titles to L.R. Nos. 11280 - 12804 for parcels Nos. 5707/1-5.
 - iii. Issuance by the 2nd defendant of titles for parcel Nos. 5707/1-5 in favour of 1st, 2nd, 3rd, 4th - 9th, and 7th, 10-12th plaintiffs.
2. The plaintiffs aver that in 1983 they entered into an oral agreement with the officials or directors of Tawai Limited, the 5th defendant, incorporated in 1974, as the registered owner of parcel L.R. No. 5707 -I.R No. 18551 for 125 acres, which was subdivided into parcels Nos. 5707/24 in favour of 1st plaintiff; LR No. 5707/2-25 acres in favour of 1st plaintiff, LR No. 5707/3-25 acres in favour of 3rd plaintiff; L.R. No. 5707/4-25 acres in favour of 4th, 5th, 6th, 7th, 8th and 9th plaintiffs and L.R. No. 5707/5-25 acres in favour of 7th, 10th, 11th and 12th plaintiffs.
3. The plaintiffs aver that they took possession and developed the said portions of land after paying the 5th defendant the full purchase price.
4. Unfortunately, the plaintiffs aver that the two directors of the 5th defendant fell into debt, the company was placed under receivership for non-payment of loans acquired from two lenders, but it was never wound up or dissolved.
5. The plaintiffs aver that the 3rd defendant prepared original deed plans for the respective portions and handed them over to the directors of the 5th defendant, who forwarded the same to them through a law firm. The plaintiffs aver that in 1986, the Kenya National Capital Corporation Limited, as one of the lenders to the 5th defendant, in exercise of its statutory power of sale, obtained consents to transfer the portions that they had purchased in 1983. However, the lender only sold and transferred 640 acres out of L.R. No. 5707/6 to Kaitet Tea Estate on 17/7/1987.
6. The plaintiffs aver that on 1/2/2005, some persons purporting to be the new directors of the 5th defendant lodged with the 4th defendant, a notification of change of directors, which was not accompanied by any minutes, resignation letters, transfers of shares, affidavits confirming the resignation of the outgoing directors, or the acceptance letter of the incoming directors.
7. Despite the irregularities alluded to above, the plaintiffs aver that the 4th defendant proceeded to register the seven persons as the new directors of the 5th defendant. As a result, this suit was filed out of an order was made on 2/10/2018, transferring the suit to the high court to determine issues relating to the incorporation, directorship, and ownership of the 4th defendant.
8. By a decision in Kitale HCCC No. 17 of 2018, the plaintiffs aver that the court held that the change of the directorship, any dealings, transactions, decisions, resolutions and actions allegedly made or undertaken by the said directors with the endorsement of the names in the companies register as



a nullity, unlawful, ineffective and void ab initio; otherwise the register be rectified to revert the directorship to its original subscribers before 21/2/2005.

9. The plaintiffs aver that, in the meantime, the new directors had obtained from the 3rd defendant the deed plans for parcel Nos. 5707/1-5, and proceeded to obtain individual titles for parcel Nos. 5707/1-5 as titles I.R. Nos. 112800-112804, respectively, for land parcels already purchased and occupied by them in 1983, and purported to issue a demand letter to evict them from the said parcels of land.
10. Equally, the plaintiffs aver that in view of the decision of the High Court in Kitale HCCC No. 17 of 2018, the change of directorship entries having been invalidated, this court should proceed to cancel the titles and order new titles to be issued to them.
11. The 1st, 2nd, 3rd, and 4th defendants opposed the suit through a statement of defence dated 30/4/2009. They termed the suit as contravening Section 13A of the *Government Proceedings Act*, Cap 40 Laws of Kenya, being statute-barred under Section 3 of the Public Authorities and Limitation Act, Cap 39 Laws of Kenya. The 1st, 2nd, 3rd, and 4th defendants averred that the survey of land parcel No. 5707 measuring about 764 acres was compiled as a new grant in or about March 1961, when a deed plan was prepared and issued to the 2nd defendant.
12. Further, it was averred that an excision of 44.98 Ha or approximately 125.5 acres was made on LR No. 5767, which resulted in land parcel No. 5707/1-5, and deed plans accordingly issued to the 2nd defendant on or about 28/12/1983. The 1st, 2nd, 3rd, and 4th defendants averred that one Martin Nyongesa, at the material time as the director and secretary of the 5th defendant, pursuant to his request, certified copies of the deed plans Nos. 117232-6 were prepared and availed to the 2nd defendant. It was therefore denied that the acts amounted to bad faith, fraud, or were irregular conduct on their part; otherwise, their actions in respect to the suit property were premised solely on the documentation presented before their respective offices. The 1st, 2nd, 3rd, and 4th defendants insisted that their acts were executed pursuant to the dictates of the attendant law without coercion, undue influence, or unprofessionalism as alleged.
13. The 5th defendant opposed the suit through an amended defence and counterclaim dated 19/7/2018. The same was verified by an affidavit sworn by Matthew Juma Khisa, a director, but was not accompanied by a list of witnesses, witness statements, documents, or any board resolution with a seal of the company, authorizing the deponent to swear the affidavit, defend, plead, or file a counterclaim.
14. Further, the 5th defendant denied the existence of any alleged oral contract, terming the suit as statute-barred, incompetent, a non-starter, null and void ab initio. The 5th defendant averred that it could not have sold the suit land without first discharging the same, as it was charged to both the Brooke Bond (K) Limited and the Kenya National Capital Corporation, until 2008.
15. The 5th defendant termed the plaintiffs as trespassers who had purportedly converted the suit land, hence their occupation was illegal, and injurious to it and its shareholders. The 5th defendant denied the alleged receivership status; otherwise, all its obligations to the two former lenders were fully and finally discharged in 2008, using its members' internal funds, following which, the suit property was legally and procedurally discharged and or redeemed.
16. The 5th defendant denied that any transfer consents were ever granted; otherwise, if any such were ever issued, the same must have been fraudulent, null, and void and of no legal effect, for there was never a consent or approval sought and obtained from the Commissioner of Lands, as the property was a leasehold under the repealed Registration of Tittles Act Cap 281 Laws of Kenya.



17. The 5th defendant averred that the plaintiffs and their representatives illegally and fraudulently uttered false documents, including a land control board consent, allegedly from the Kwanza Land Control Board, which the Commissioner of Land could not have sanctioned.
18. Again, the 5th defendant denied the alleged exercise of a statutory power of sale by one of its lenders; otherwise, without a discharge of the suit land in the first instance, the alleged sale was null, void, and of no legal effect. The 5th defendant denied the alleged or purported sale of the suit land to Kaitet Tea Estate; otherwise, through a judgment dated 16/8/2017 in Eldoret ELC No. 87 of 2015, the same was invalidated. The 5th defendant denied registering any company, or carrying out any of its activities under other derivatives, save for Tawai Limited as registered on 15/6/1974 and as the bona fide holder of the titles to the suit land, which, after it got lost, became a matter of public knowledge through an advertisement and was procedurally and legally replaced with another copy.
19. The 5th defendant averred that it has always been the registered owner of land parcel No. 5707, all under one title, and therefore, at no time did the plaintiffs become the registered owners of the suit parcels that they have illegally converted through occupation.
20. The 5th defendant averred that it was procedurally and legally issued and registered with the subdivisions of the titles L.R. No. 5707/1-5 and L.R. No. 5707(R) out of L.R. No. 5707, the parent title, hence the purported prayers in the plaint is a toll order which cannot obtain, otherwise, the plaintiffs' suit discloses no known cause of action against it for want of compliance of the statutes.
21. By way of a counterclaim, which had no titular heading describing the parties to it, the 5th defendant terms it as non-suited, the alleged oral agreements as contrary to the law of land contract. The 5th defendant denied ever seeking to convert itself to Tawai 2005 Limited, or any other derivative, or having been placed under statutory management, since all its development loans' obligations were fully and legally satisfied by 2008.
22. The 5th defendant averred that the defendants to the counterclaim were trespassers and or illegal occupants to its parcels of land; otherwise, it has not legally conveyed according to the law any legal rights over its property to the plaintiffs in the main suit. Further, the 5th defendant termed the allegation of sale of land to the plaintiffs as based on false statements, perjury, misrepresentation, and or fraudulent and doctored evidence.
23. Further, the 5th defendant averred that the plaintiffs in the main suit were out to unjustly enrich themselves, claiming a sale of the suit land, which was never sanctioned through a board resolution by the directors. The 5th defendant termed the same as illegal, based on unprocedural subdivisions, acts of trespass, allegedly occurring at a time when the suit land was still encumbered through a charge with no discharge of the charge by the creditors, and lastly, without any formal consent from the commissioner of lands.
24. The 5th defendant averred that the plaintiffs have squatted upon and converted portions of the suit land, built illegal structures therein, and denied the genuine members of the 5th defendant having economic engagement of their land. The 5th defendant denied that its genuine members had sanctioned the irregular transactions on its parcels of land involving the plaintiffs or benefited from the proceeds of the purported sale of their parcel of land to the plaintiffs; otherwise, the remedy to the plaintiffs, if any, lies with the persons whom they paid for the same, if at all there was any such transactions.
25. The 5th defendant averred that its genuine members were entitled to vacant possession, the plaintiffs had not regularized their stay on the land, and were therefore entitled to general damages for conversion, loss of user or mesne profits at Kshs. 10,000/= per annum, per acre, since 1982.



26. The 5th defendant counterclaimed for:
 - a. Declaration that it is the registered owner of L.R. Nos. 5707/1-5.
 - b. Permanent injunction.
 - c. Mandatory injunction against the plaintiffs to yield vacant possession within 60 days of the judgment, to yield vacant possession and in default, an eviction order to issue under the persons of the OCPD Kitale.
 - d. General damages for trespass, conversion, and or mesne profits.
27. In a reply to defence and defence to the counterclaim dated 14/9/2018, the plaintiffs reiterated that the law as of 1983 recognized oral contracts for sale of land and in this case, the chargor at the time had permitted the sale of the land to them, whereof they paid full consideration for the suit parcels of land and have therefore been legally in possession of the same to date.
28. The plaintiffs aver that the liability of the two chargors were fully repaid from the proceeds of the sale of 259 acres to Koitet Tea Estate Limited and a transfer registered on 17/7/1987, effectively freeing and discharging the 5th defendant from any liability, whereof the chargors were equally allowed to apply for legal and valid consents for the sales and transfers of 259 acres out of L.R. No. 5707.
29. The plaintiffs insisted that as bona fide purchasers for value, they were legally in possession of the suit parcels of land out of valid oral contracts of sale of land; hence, the counterclaim for general damages for trespass and conversion and for mesne profits was not only misplaced but statute-barred.
30. At the trial, Wycliffe Okutoyi Saatia testified as PW1 on behalf of the rest of the plaintiffs, following an authority to plead on their behalf dated 3/3/2025, produced as P. Exhibit No. (1). PW1 adopted a witness statement dated 15/8/2018 as his evidence-in-chief. PW1 told the court that in 1983, the plaintiffs entered into an oral sale agreement with the 5th defendant that was incorporated in 1974, with its directors, the Z.R.C. Chesoni and Mary Aherwa Chesoni, for the sale of L.R. Nos. 5707/1, 5707/2, 5707/3, 5707/4, and 5707/5, measuring 125 acres in favour of him, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, and 9th plaintiffs and 7th, 10th, 11th and 12th plaintiffs each measuring 25 acres totaling to Kshs. 200,000/=.
31. PW1 said that they all took possession of their respective portions in 1983, established permanent and semi-permanent structures, and have lived on the land to date. PW1 said that the 3 defendants eventually prepared and delivered to them the original deed plans for the five parcels of land. In exercise of its statutory powers of sale, the 5th defendant, who had obtained a loan from it, PW1 said that Kenya National Corporation Limited sold and transferred 640 acres out of L.R. No. 5707/6 to Kaitet Tea Estate Limited, vide entry No. 20 in the title register, and that they were also equally issued with appropriate land control board consents for the transfer of their respective parcels, which were however, not perfected.
32. According to PW1, on 21/2/2005, some seven persons purporting to be the new directors of the 5th defendant lodged with the 4th defendant a notification of change of directors without any accompanying minutes, resignation letters, share transfers, an affidavit confirming the resignation of the outgoing, or acceptance by the incoming directors and the 4th defendant proceeded to register them as the new directors.
33. PW1 said that the court on 2/10/2018, forwarded this file to the High Court to determine the incorporation status, directorship, and membership of the 5th defendant and issued its judgment on



Kitale HCC No. 17 of 2018, nullifying and reversing the entries to the company registry to its status, directorship, and membership as before 21/2/2005.

34. PW1 said that before the reversal, the new directors had sought and obtained from the 3rd defendant deed plans, which they used to obtain new titles for L.R. Nos. 5707/1-5, from the 2nd defendant, and have now threatened them with eviction from the suit parcels of land. In view of the findings in the High Court, PW1 urged the court to order the cancellation or nullification of the said titles and for re-issuance of the same to the plaintiffs' names.
35. PW1 relied on a copy of the certificate of confirmation of grant issued to Nereah Nafula Murunga dated 21/10/2004, limited grant ad litem in respect of estate of Dorcas Imali Shikami dated 8/11/2012, grant of letter of administration in respect of the estate of Chege Njiraini Karu dated 15/5/2023, certificate of incorporation of the 5th defendant dated 15/6/1974, Memorandum and Articles of Association for the 5th defendant, company details dated 2/3/2006, deed plan No. 78018, copies of title deeds, letters dated 21/5/1986, 9/10/1982, 22/2/1987, Land Control Board minutes dated 27/11/1987, map, deed plans, notification of change of directorship, affidavit by Martin Nyongesa dated 10/6/2008, letter to vacate the land dated 8/10/2008, photographs, demand notice dated 27/10/2008 to the Attorney General, response to the demand letter dated 17/11/2008, judgment in HCCC No. 17 of 2018, ruling dated 29/1/2025, as P. Exhibit Nos. 2, 3, 4, 5, 6(a) and (b), 7, 8, 9, 10, 11, 12(a), (b) and (c), 12(a) and (b), 14(a), (b),(c) and (d), 15, 16, 17(a), (b), (c), (d) and (e), 18, 19, 20, 21, 22, 23, and 24.
36. PW1 told the court that Martin Nyongesa, whose affidavit was used to obtain the title deeds, was not one of the plaintiffs. PW1 refuted the contents in the statement of defence by the 1st, 2nd, 3rd, and 4th defendants as well as the counterclaim by the 5th defendant, relying mainly on the grounds and the contents of the reply to defence and defence to the counterclaim dated 14/9/2018.
37. Despite orders to comply with Order 11 of the Civil Procedure Rules and having taken the date for hearing by consent on 4/3/2025, neither did the defendants comply with the direction, nor attend court to offer evidence in support of their statements of defence and counterclaim. Learned counsel for the 1st, 2nd, 3rd and 4th defendant, Miss Chelagat, though she was present at the call, did not appear when the matter commenced hearing at 10:30 am. The court was also satisfied that the 5th defendant had been ably served with a hearing notice through email on 9/7/2025. The defences by the defendants were consequently marked as closed.
38. Whereas parties were directed to file written submissions, none complied.
39. The issues for my determination are:
 - i. Whether the plaintiffs entered into any binding agreements with the officials of the 5th defendant over L.R. No. 5707- I.R. No. 18551 for 125 acres.
 - ii. Whether the plaintiffs have discharged the burden of proof under Sections 107-112 of the *Evidence Act*, that the obtaining and registration of the titles and registers in L.R. Nos. 5707/1-5, in favour of the 5th defendant was fraudulent and illegal.
 - iii. If the plaintiffs are entitled to be registered as owners of parcel Nos. 5707/1-5.
 - iv. If the 5th defendant has a valid counterclaim.
40. Land sale agreements in 1983 were governed by Section 3 of the *Law of Contract Act*. The burden is on the plaintiffs to prove that they purchased portions of the suit land from the 5th defendant as pleaded,



- took vacant possession, the sellers caused and prepared deed plans in their favour, and whether they are entitled to be registered as such, by offering tangible and cogent evidence.
41. The plaintiffs plead that the sale of the portions of the land from the officials of the 5th defendant arose in 1983, paid the full purchase prices, took vacant possession, and have since lived or developed the five portions of land that were subdivided and deed plans processed in their favor by the directors of the sellers, only for the purported new directors of the 5th defendant to take advantage and cause the 2nd defendant to process and issue the title deeds in 2008, despite their overriding interests.
 42. From the Law of the Contract Act, as it was before June 2003, the plaintiffs are expected to prove that there was an acknowledgement or memorandum by the seller, payment of, or acknowledgement of the consideration, and taking of vacant possession in furtherance of the oral land sale agreements. See *Mbiri Michuki -vs- Mugo Michuki* [2014] eKLR.
 43. In paragraph 6 in the witness statement dated 15/8/2016, pw1 admits that the 5th defendant was placed under receivership on 14/5/1985 vide Nairobi HC Winding Up Case No. 1 of 1985, and that though the joint liquidator called creditors to the 5th defendant, and 639 acres of L.R. No. 5707/6 were disposed of, the transfers of L.R. No. 5707/1-5 were not perfected, though, they remained in possession of the pleaded portions of land. The court has also looked at another witness statement dated 1/3/2025 and drawn some inferences.
 44. The plaintiffs admit that they received a demand letter dated 8/10/2008 from the 5th defendant's advocates to vacate the suit parcels of land, as they were trespassers.
 45. The plaintiff's case is based on oral sale agreements, which are based on P. Exhibit No. (10) was acknowledged by the late Justice R. Chesoni. In the said letter, he refers to the liquidators and Kenyac Limited, P. Exhibit No. (11) confirms that deed plans were forwarded for L.R. No. 5707/1, 2, 3, 4, and 5, by the late Justice Z.R. Chesoni, to the plaintiffs' lawyers. P. Exhibit Nos. 12(a), (b), (c), (d), 13 (a) and (b), 14 (a)-(e) are not certified. Evidence of an acknowledgement note by way of a board resolution to sell, receive, and or subdivide the portions of land to the plaintiffs by Mr. Zakayo and Mary Chesoni as the Director and Secretary of the 5th defendant, as of 1983, is lacking.
 46. Exhibit No. (10) is not written by Justice Z.R. Chesoni in his capacity as the director of the 5th defendant. The document cannot amount to a note, memorandum of sale, or acknowledgment of a land sale agreement in favour of the plaintiffs. A board resolution authorizing the transactions was not produced. The plaintiffs' Exhibits No. (10) and (11) do not contain the particulars of the size, locality, and the date of handing over vacant possession of the respective parcels of land to the plaintiffs. Judicial notice is taken from the plaintiffs' own admissions that at the time, the 5th defendant was under receivership.
 47. Therefore, the only person with legal capacity to deal with the suit parcels of land at the time was the joint liquidators, as pleaded in this matter. See in the case of *Queensway Trustees Ltd -vs- Official Receiver & Liquidator Tanneries of Kenya Ltd* [1983] KECA 50 (KLR), 21 April 1983 and *Kenya Revenue Authority, Ex parte KSC International Ltd* (in receivership [2016] eKLR.
 48. The burden was on the plaintiffs to prove there was actually a valid oral sale agreement. It is the plaintiffs who want the court to believe that their occupation of the suit properties was on account of a valid sale agreement, in which the 5th defendant, authorized agents, had the capacity to bind or dispose of the five parcels of land, to them, but which to date has not been perfected.
 49. Evidence that the plaintiffs were included in the inventory prepared by the joint liquidators as genuine creditors of the company assets was not tendered. Evidence that the plaintiffs made a presentation



- before the joint liquidators to prove that they were bona fide purchasers for value is lacking. Equally, there is no evidence of payment to the 5th defendant's bank account of the full purchase price.
50. The plaintiffs are alleging accrued legal rights to the property belonging to the 5th defendant. They must prove through tangible evidence the basis of those rights as held in *Nairobi Mamba Village -vs- NBK* [2002] E.A. 197. See *Charles Mwirigi Miriti -vs- Thananga Tea Growers Sacco Ltd & Another* [2014] KECA 535 [KLR], *Smith -vs- Cook* [1891] AC 297, *East African Fine Spinners Ltd (under receivership) & Others -vs- Bedi Investments Ltd* [1994] KECA 96 [KLR].
 51. In *Kenya Railways Corporation & Others -vs- Okoiti & Others* [2023] KESC 38 [KLR], the court observed that a court considers the wording and the apparent intention of the parties. Whether a contract is binding depends on what parties agreed, their subjective state of mind, communication between them by words or conduct, taken into totality, so that a conclusion can be reached that they intended to create a legal relation, whose terms and conditions they had agreed upon. See *RTS Flexible Systems Ltd -vs- Molkerei Alois Muller GmbH* [2010] UKSC 1438.
 52. Guided by the cited caselaw, I am not persuaded that there could have been a valid oral agreement in the nature that the plaintiffs want the court to believe in 1983, and soon thereafter with the 5th defendant, without either the involvement of the two directors of the 5th defendant, and the joint liquidators, as the case may have been. It is a cardinal rule in Section 109 of the *Evidence Act* that he who alleges must prove. Evidence to prove the ingredients of a valid oral land sale agreement is missing.
 53. The plaintiffs have also pleaded that the basis upon which the title deeds issued on 10/6/2008 and registers were effected by the 2nd defendant in favour of the current registered owners, were fraudulent, illegal, and irregular; otherwise, the capacity in which the directors of the 5th defendant presented themselves to the 2nd and 4th defendants has since been invalidated by the court decree. The plaintiffs have laid before the court the ruling and order by the High Court made in Kitale HC Case No. 17 of 2018.
 54. The effect of the order made on 29/1/2025 is that the directorship of the 5th defendant is to remain as of 21/2/2005. That decree remains and is binding on the court, as far as who had the capacity to deal otherwise with the immovable property of the 5th defendant in law after the death of the initial directors, which facts on death are not in contest in this suit. A company is a legal person and acts through its registered shareholders and or directors.
 55. Fraud refers to any activity that relies on deception to achieve a gain. It is defined under Black's Law Dictionary as a knowing misrepresentation of the truth to another to act to his or her detriment. Any allegation of fraud must be specifically pleaded and proved. See *Ndolo -vs- Ndolo* [2008] 1 KLR (G & F) 742. A title is to be taken as prima facie evidence that the person named therein is the bona fide owner.
 56. A land title may be impeached on account of procurement through fraud, illegality, or through a corrupt scheme. See *Gathondu (Administrator of the Estate of the late Thumbi Kariuki) & Others -vs- Registrar & Others Civil Appeal E505 and E519 of 2020 (Consolidated)* 2024 KECA 668 [KLR].
 57. In *Dina Management Ltd -vs- County Government of Mombasa & Others*, Petition No. 8 [E010 of 2021], the court said that a good root is one whose process of granting adhered to the legal requirements and does not raise any uncertainties regarding the legitimacy of the title.
 58. In this suit, a persuasive judgment of the court has found that the persons who purported to be the directors of the 5th defendant and who caused the Registrar of Companies to register them as such were against the law. Titles to land before this court were issued on the strength of the representation



- by the purported directors of the 5th defendant at the time. A manifestly illegal transaction cannot be enforced by a court.
59. In *General & Others -vs- Hussein & Others*, Civil Appeal No. 100 ELD No. 32 of 2018 [2025] KECA 1022 KLR (5th June 2025) (Judgment), the court said parties in a litigation must always bear in mind that when their title is under scrutiny, they have to demonstrate how they got their title, starting with the root. A good title was described in the *Presbyterian Foundation -vs- Kibera Siranga SHG Nursery School* [2025] eKLR, as
- (a) It must deal with or show the origin of the ownership of the whole legal and equitable interest in the land in question.
 - (b) It must contain a recognizable description of the property.
 - (c) It must not contain anything that casts any doubt on the title.
60. In this suit, the plaintiffs have produced the paper trail to attack the title deeds and showed that they were irregularly issued to persons now declared non-directors of the 5th defendant, by a court of competent jurisdiction. The defences by the defendants, therefore, raise issues which have been determined to finality and are therefore *res judicata*. The defendants have not called evidence to support their statements of defence, including the 5th defendant to sustain its counterclaim on the legality of the titles. A nullity is a nullity. A court of law cannot be used to sanction an illegality.
61. The defendants were allowed to defend the suit. A party that fails to call evidence to elucidate facts leaves the court with the right to make reasonable inferences and renders its statement of defence a mere statement. The 5th defendant's defence and counterclaim is verified by one of the directors whose capacity was invalidated by the court order or ruling. A board resolution was not attached to the pleading. The counterclaim is therefore dismissed for incompetence. Equally, the defendants have failed to disprove that the holders of the titles misrepresented themselves to the registrar as genuine and *bona fide* directors. A title deed is an end product.
62. If the process of acquiring it is illegal, then it renders it an illegal document. The 5th defendant's defence is built on an illegality and cannot stand. As indicated above, where a party fails to attend court to ventilate his or her case, the pleading remains a mere statement. See *Autar Singh Bahra & Another -vs- Raju Govindji* HCC No. 54 of 1998. A registered owner of land enjoys an absolute and indefeasible title if the process of registration and acquisition was legal, proper, and regular. See *Funzi Island Development & Others -vs- County Government of Kwale & Others* [2014] eKLR.
63. Compliance with the law to obtain title on behalf of the 5th defendant is what the plaintiffs have questioned and laid evidence that the purported directors of the 5th defendant, who caused the issuance of the titles by the Chief Land Registrar, had processed their registration as directors with the Registrar of Companies irregularly. Sections 26 and 80 of the *Land Registration Act* vest this court with the power to cancel a title deed procured illegally through fraud or misrepresentation.
64. After the reversal of the entries in the company registry through a court order issued by the High Court, it remains unclear who are now the directors, presenting the 5th defendant and counterclaim by the 5th defendant, after the initial directors who have passed on.
65. The Registrar registered the titles based on documents presented, which have now been invalidated. Evidence that the Registrar of Companies and the Chief Land Registrar had a basis of knowing or suspecting that the documents presented to them by the 7 directors of the 5th defendant has not been availed by the plaintiffs. The court therefore finds the evidence by way of a binding determination at



the High Court that the directors who presented themselves as the bona fide ones for the 5th defendant and who used the same status to procure the title deeds from the Chief Land Registrar, credible to prove that there was misrepresentation in the issuance of titles and registration.

66. The conclusion is that the plaintiffs have failed to adduce enough evidence to prove the existence of any valid or binding land sale agreements with the 5th defendant capable of invoking the doctrine of constructive trust to be entitled to prayer No. (3).
67. The upshot is I grant prayers that;
- i. Declaration that the registration and issuance of titles by the 2nd and 4th defendants on account of presentations of documents on behalf of the 5th defendants amounts to misrepresentation of facts, hence invalidates the said titles and entries to the title registers,
 - ii. Cancellation of titles to L.R. Nos. 11280 - 12804 for parcels Nos. 5707/1-5.
 - iii. The 5th defendant's defence and counterclaim are dismissed with costs.
 - iv. Costs to the plaintiffs.
68. Orders accordingly.

**JUDGMENT DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT
AT KITALE ON THIS 1ST DAY OF OCTOBER 2025.**

HON. C.K. NZILI

JUDGE, ELC KITALE.

In the presence of:

Court Assistant - Dennis

Mr. Kiarie for the plaintiffs present

Mr. Nakitare for 5th defendant present

Miss Chilaka for 1st - 4th defendants absent

