



Choi & 3 others v Goldstein Group Services Limited & 2 others (Environment and Land Case 1073 of 2014) [2025] KEELC 7234 (KLR) (23 October 2025) (Judgment)

Neutral citation: [2025] KEELC 7234 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE 1073 OF 2014
OA ANGOTE, J
OCTOBER 23, 2025**

BETWEEN

**YOUNG MOON CHOI 1ST PLAINTIFF
BHARAT RAMNJI 2ND PLAINTIFF
ALLOTROPE TRUST COMPANY LIMITED 3RD PLAINTIFF
MASAI ROSES LIMITED 4TH PLAINTIFF**

AND

**GOLDSTEIN GROUP SERVICES LIMITED 1ST DEFENDANT
JAMII BORA BANK LIMITED 2ND DEFENDANT
CHIEF LAND REGISTRAR 3RD DEFENDANT**

JUDGMENT

Introduction

1. This Judgment concerns ambitious three parcels of land. Ambitious because they seem to have acquired several owners, each bearing a certificate of title from the same Ministry of Lands. Like a well-meaning but forgetful scribe, the Ministry of Lands appears to have rewritten its own story several times, bestowing ownership of land upon more than one deserving soul.
2. The court must now untangle the bureaucratic epic, and determine which title, if any, wears the crown of legitimacy, and restore order to the cadastral confusion pertaining to three parcels of land. At its core, the matter raises the critical question of the sanctity of land registration, the limits of ministerial authority, and the protection of property rights guaranteed under Article 40 of *the Constitution*.



The Plaintiffs' case

3. Vide an Amended Plaint dated 30th January 2015, the Plaintiffs seek judgment against the Defendants jointly and severally as follows:
 - a. A declaration that the creation of duplicate titles in respect of LR No. 21075 (I.R. No. 142801), 21103 (I.R. No. 147263) and 21104 (I.R. No. 147264) by Deed Plans obtained from genuine titles filed in favour of the 1st Defendant is fraudulent, illegal, null and void.
 - b. A declaration that the amalgamation of LR Nos 21075, 21103 and 21104 to LR No. 29945 (IR 152312) by the 1st Defendant herein and the resultant registration of the 1st Defendant as the registered owner thereof is fraudulent, illegal and has infringed, infringed and/or violated the Plaintiffs' property rights protected under Article 40 of *the Constitution* of Kenya 2010.
 - c. A declaration that to the extent that the charge registered in favour of the 2nd Defendant herein on 23rd December originates from the fraudulent amalgamated title to LR No. 29945 (IR 152312), the said charge is fraudulent and illegal, thus null, void and of no effect.
 - d. An order directing the 3rd Defendant to cancel the certificate of title number 152312 issued to the 1st Defendant and all subsisting entries.
 - e. An order directing the Director of Survey to cancel the Deed Plan No. 357897 forthwith.
 - f. A permanent injunction to restrain the 1st and 2nd Defendants and each of them whether by themselves, agents, servants or employees from advertising, undertaking any construction, trespassing, making any subdivisions, sale, transfer, lease, charge or in any manner creating any legal or beneficial interest in parcels of land known as LR No. 21075, LR No. 21103 and 21104 as well as the purported amalgamation of the said parcels into the parcel known as LR No. 29945 (I.R. 152312) situated in Loresho within Nairobi County.
 - g. Damages for fraud.
 - h. Costs.
4. The 1st and 2nd Plaintiffs contend that they are the registered proprietors of Land Reference No. 21075 measuring 3.822 ha delineated on Deed Plan No. 94. The 3rd Plaintiff claims to be the registered proprietor of Land Reference No. 21103 (I.R. 68300) measuring 1.00 ha delineated on Deed Plan No. 198102. The 4th Plaintiff claims proprietorship of Land Reference No. 21104 (I.R. 75381) also measuring 1.00 ha, delineated on Deed Plan No. 198103.
5. The Plaintiffs aver that, on or about September 2013, the 1st Defendant, purporting to be the registered owner of the aforesaid parcels, namely LR No. 21075, LR No. 21103 (IR No. 68300) and LR No. 21104 (I.R. No. 75381), caused the same to be unlawfully amalgamated, thereby producing a new combined parcel of land known as LR No. 29945 measuring 5.829 ha which piece of land is delineated on Deed Plan No. 357897 deposited in the Survey records at Nairobi.
6. It is further averred that pursuant to the said Deed Plan No. 357897, the 3rd Defendant procured the issuance of a grant, which was registered in favour of the 1st Defendant on 22nd December 2013 and that on the same date, the said title was charged in favour of the 2nd Defendant for an undisclosed sum.
7. The Plaintiffs' case is that Deed Plan No. 357897 and the consequent grant were obtained through fraud, illegality, misrepresentation, unprocedural actions, and a corrupt scheme perpetrated by the



- Defendants. On this account, the Plaintiffs urge that the said title is impeachable and liable to cancellation by this Court.
8. The particulars of the alleged fraud, illegality, misrepresentation, unprocedural conduct and corrupt scheme include:
- i. Fraudulent creation of duplicate titles in respect of LR No. 21075 (I.R. No. 142801), LR No. 21103 (I.R. No. 147263) and LR No. 21104 (I.R. No. 147264), utilizing Deed Plans generated from genuine titles in favour of the 1st Defendant;
 - ii. Fraudulent misrepresentation by the 1st Defendant that it is the registered owner of LR Nos. 21075, 21103 and 21104;
 - iii. Fraudulent application for and obtaining of consents to surrender and amalgamate the three fraudulent titles aforesaid on 23rd December 2013;
 - iv. Fraudulent and unprocedural surrender and amalgamation of LR Nos 21075, 21103 and 21104 to LR No. No. 29945 (IR 152312) allegedly on 23rd December 2013 contrary to the mandatory prescriptions of Section 22 of the Land Registration Act 2012;
 - v. Fraudulent registration of the resultant title, LR No. 29945, on 23rd December 2013 in favour of the 1st Defendant by the 3rd Defendant;
 - vi. Fraudulent registration of a charge over the said parcel in favour of the 2nd Defendant; and
 - vii. Failure by the Defendants to conduct due diligence, since a search at the Land Registry would have revealed that LR Nos. 21075, 21103 and 21104 were not owned by the 1st Defendant.
9. The Plaintiffs maintain that they never surrendered their titles to LR Nos. 21075, 21103 and 21104 to the Government of Kenya, remain in possession of the original certificates of title, and have not sold or otherwise disposed of the said parcels to the 1st Defendant.
10. The Plaintiffs further contend that, in purporting to surrender, amalgamate, and transfer the said parcels, the Defendants have unlawfully infringed, and continue to threaten, their constitutionally guaranteed property rights under Article 40 of the Constitution of Kenya, 2010.
11. It was averred that the 1st Defendant has instructed the real estate firm of Kiragu & Mwangi Limited to dispose of the amalgamated parcel, LR No. 29945 (I.R. 152312), at an offer price of Kshs. 45 million per acre. The Plaintiffs assert that, unless restrained, there is imminent danger that unsuspecting purchasers for value may be duped by the fraudulent titles in possession of the 1st, 2nd and 3rd Defendants.
12. Based on the offer price, it was averred that the 1st and 2nd Plaintiffs stand to suffer a loss of Kshs. 429,975,000, while the 3rd and 4th Plaintiffs risk losing more than Kshs. 222,394,500.

The 1st Defendant's case

13. In its Amended Statement of Defence, the 1st Defendant averred that the 3rd and 4th Plaintiffs are not legal persons, are non-existent both in fact and in the records of the Registry of Companies, and are therefore incompetent parties lacking the requisite locus standi to sue or be sued.
14. The 1st Defendant further contended that it is the bona fide registered owner of LR No. 21075 (Grant IR No. 142801), situated in Loresho within Nairobi County. It averred that the said parcel was subsequently amalgamated with the adjacent parcels of land being L.R. No. 21103 (Grant I.R.



- No. 147263) and L.R. No. 21104 (Grant I.R. No. 147264), following due process, to form L.R. No. 29945 (Grant I.R. No. 152312), and that any titles held or alleged by the Plaintiffs are forgeries and/or fraudulently obtained.
15. The 1st Defendant asserted that LR Nos 21075, 21103 and 21104 were lawfully allotted to it by the Government of Kenya in 1995 and that grants were duly issued in its favour. It was pleaded that prior to the amalgamation, LR No. 21075 had been charged to Jamii Bora Bank Limited, the 2nd Defendant, to secure a loan facility, with the consent of the Commissioner of Lands.
 16. It was further averred that the said parcels, being adjacent to each other, were amalgamated in 2013 with the requisite consents of the Commissioner of Lands and the 2nd Defendant thereby creating LR No. 29945 (Grant No. 152312) and that the resultant title was thereafter charged in favour of the 2nd Defendant, replacing the initial charge over LR No. 21075.
 17. The 1st Defendant maintained that the amalgamated parcels of land were its properties and therefore Section 22 of the *Land Registration Act*, as relied upon by the Plaintiff was irrelevant to the present dispute. It was averred that all necessary consents and approvals were obtained, the original titles surrendered, and all statutory fees duly paid prior to the issuance of a fresh certificate of title for LR No. 29945.
 18. The 1st Defendant denied the allegations of fraud, illegality, misrepresentation, unprocedural conduct, and corrupt schemes as particularized in the Plaintiff.
 19. In the alternative, and without prejudice, the 1st Defendant averred that it is the Plaintiffs who are engaged in a fraudulent scheme to dispossess it of its property by seeking to sanctify forged title documents through judicial process.
 20. It was the 1st Defendant's contention that the allegations levelled against the 3rd Defendant, being the custodian of title documents and administrator of land transactions in Kenya, amount to an admission of fraud by the Plaintiffs. The 1st Defendant maintained that Article 40 of *the Constitution* affords protection only to those who have acquired property genuinely and lawfully.
 21. It was further averred that the losses alleged by the Plaintiffs are speculative and unverifiable, and that the Plaintiffs cannot suffer loss over property to which they hold no valid claim. According to the 1st Defendant, the Plaintiffs have never lawfully acquired any interest in LR Nos. 21075, 21103, 21104 or the amalgam thereof, LR No. 29945. It was argued that the Plaintiffs' titles are of dubious origin and could only be authenticated by the 3rd Defendant or the Land Fraud Investigation Unit.
 22. The 1st Defendant reiterated that the alleged losses are moot and in any event, should the Plaintiffs have suffered any loss, their recourse would lie against their alleged predecessor in title, Kenplus Limited, which, it was alleged, fraudulently purported to sell to them the 1st Defendant's land using forged title documents. Similarly, the 3rd and 4th Plaintiffs remedy, if any, would lie against the individuals or entities who purported to, irregularly and illegally confer upon them interests over land belonging to the 1st Defendant.
 23. The 1st Defendant averred that it is the one likely to suffer irreparable loss as it has been deprived of the ability to freely deal with its property owing to the Plaintiffs' claims.
 24. By way of Counterclaim, the 1st Defendant maintained that it is the sole registered proprietor of LR No. 21103, 21104 and 21075, which with the necessary government approvals, were amalgamated to form LR No. 29945 Title No. (I.R. 152312), upon which a fresh certificate of title was duly issued.



25. It was its case that the Plaintiffs are themselves engaged in fraudulent dealings and improperly allege fraud against everyone including the Registrar of Titles, in an attempt to frustrate or scuttle the process of verification and authentication.
26. The 1st Defendant further averred that the registration of a transfer of lease from Kenplus Limited, described as a fictitious entity, to the 1st and 2nd Plaintiffs was irregular and fraudulent, being part of a wider scheme by the Plaintiffs to legitimize forged titles.
27. It was additionally averred by the 1st Defendant that the allotment letters and titles relied upon by the 3rd and 4th Plaintiffs are fraudulent, intended to mislead the court and aimed at dispossessing it of its legitimate property.
28. The 1st Defendant further faulted the 1st and 2nd Plaintiffs for failing to exercise due diligence to verify the ownership of LR 21075 or the existence of their purported predecessor in title, Kenplus Limited. In the alternative, it was contended that the Plaintiffs, together with their alleged predecessors in title, are parties to a fraudulent scheme designed to legitimise forged titles and to dispossess it of its property.
29. The particulars of fraud, illegality, and misrepresentation against the Plaintiffs were set out to include:
 - i. purporting to irregularly acquire the Defendant's parcels of land knowingly and without just cause;
 - ii. entering into a fraudulent scheme with Kenplus Limited, a fictitious entity, to forge title documents in respect of LR No. 21075;
 - iii. purporting to acquire title to land without any valid contract contrary to law;
 - iv. purporting to acquire land from a non-existent entity rather than the true owner;
 - v. failing to exercise due diligence in verifying the validity of the title and the identity of the purported vendor;
 - vi. misrepresenting themselves as owners of the land by issuing caveat emptor notices;
 - vii. failing to procure necessary consents and approvals for transfer;
 - viii. misrepresenting to the Commissioner of Lands that they had lost their title in order to procure a Deed of Indemnity;
 - ix. presenting forged documents to the Commissioner of Lands with forged entries and signatures;
 - x. fraudulently omitting the Deed of Indemnity from gazette to suppress objections; and
 - xi. fraudulently procuring valuation for stamp duty and/or registration of transfers to disguise the validity of the alleged transactions.
30. The 1st Defendant denied exerting any influence over the processes of registration, amalgamation or charging of the suit properties. It was contended that no two valid title deeds can exist in respect of one parcel of land in Kenya, and that the Plaintiffs' title deeds are fraudulent.
31. The 1st Defendant further asserted that it was under no statutory obligation to conduct an official search before commencing amalgamation, and that in any event, searches carried out by itself and by the 2nd Defendant revealed it to be the valid registered proprietor of the three parcels.



32. In their Counterclaim, the 1st Defendant prayed for judgment against the Plaintiffs jointly and severally as follows:
- i. The suit against the 1st Defendant herein be dismissed with costs.
 - ii. This Honourable court be pleased to issue an order declaring the title documents held by the Plaintiffs as null and void and of no legal consequence.
 - iii. The costs of the suit and of the counterclaim by the 1st Defendant herein be borne by the Plaintiffs, jointly and severally.
 - iv. Interest in 3 above.
33. In their Reply to the 1st Defendant's Amended Defence and Defence to Counterclaim, the Plaintiffs reiterated that the 1st and 2nd Plaintiffs are the registered proprietors of LR No. 21075, the 3rd Plaintiff of LR No. 21103, and the 4th Plaintiff of LR No. 21104. They contended that the Defendants' actions are part of a growing trend where fraudsters collude to sanitise fraudulent dealings in land through judicial proceedings.
34. The 3rd Plaintiff, in its Reply, asserted that it is a duly registered limited liability company under the Companies Act. It argued that the 1st Defendant's Defence and Counterclaim is grounded on illegality and fraud, and that it is not obliged to entertain damages arising from such illegality.
35. The Plaintiffs relied on its averments in the Amended Plaintiff, and prayed that the Counterclaim be dismissed with judgment entered as sought in the Amended Plaintiff.

The 2nd Defendant's case

36. In its Amended Statement of Defence, the 2nd Defendant, opposed the Amended Plaintiff and denied the allegations of fraud, misrepresentation, unprocedural conduct and corrupt schemes as pleaded by the Plaintiffs.
37. The 2nd Defendant contended that on 11th June 2013 it advanced to the 1st Defendant an SME loan facility of Kshs. 62,000,000 under a Letter of Offer of even date and that pursuant thereto, the 1st Defendant executed a charge over LR No. 21075, situate in Loresho, together with a Deed of Guarantee of Indemnity for the same amount (the Original charge).
38. It was averred that, before registration of the said charge, the 2nd Defendant carried out an official search on 3rd July 2013 at the 3rd Defendant's registry, which confirmed the 1st Defendant as the registered proprietor of LR No. 21075.
39. It is the 2nd Defendant's case that with the consent of the 2nd Defendant, the 1st Defendant thereafter consolidated LR No. 21075 with LR Nos. 21103 and 21104, forming LR No. 29945, which was then charged to the 2nd Defendant in replacement of the original charge; that a Deed of Guarantee and Indemnity for the loan facility was executed on 5th August 2013, and that on 23rd December 2013, a replacement charge for Kshs. 62,000,000 was registered against LR No. 29945.
40. The 2nd Defendant averred that the 1st Defendant defaulted in repayment of the facility, prompting the issuance of a Statutory Notice of Sale dated 8th April 2014, demanding for Kshs. 69,301,015.01 and as at 30th June 2014, the 1st Defendant had failed to rectify the default, whereupon the 2nd Defendant issued forty days' notice demanding the outstanding sum of Kshs. 73,974,652.48.



41. The 2nd Defendant denied that LR No. 21075, prior to consolidation, had been acquired fraudulently, asserting that the official search confirmed the 1st Defendant as the registered proprietor for value.
42. The 2nd Defendant invoked the presumption of law that a purchaser, mortgagee or chargee for value, acting in good faith and entering their interest on the register, acquires an indefeasible right, notwithstanding infirmities in the root of title. It was its case that it acquired its interest in LR Nos. 21075 and 29945 from the 1st Defendant in good faith, without notice of any fraud, and that its interest was duly guaranteed and secured by the 3rd Defendant.
43. It was further averred that the 2nd Defendant's duty did not extend beyond conducting an official search to ascertain ownership, and it was under no obligation to investigate the validity of the 1st Defendant's root of title. The 2nd Defendant maintained that the Plaintiffs' claim cannot succeed, as it would interfere with its indefeasible interest and statutory power of sale over LR No. 29945.
44. In any event, it was averred by the 2nd Defendant that should the Plaintiffs' suit succeed, their remedy lies in damages against the 3rd Defendant, which could adequately compensate them.
45. In response, the Plaintiffs maintained that LR Nos. 21075, 21103 and 21104 are lawfully theirs, and that the 1st, 2nd and 3rd Defendants acted in concert in the impugned transactions. They denied the assertions by the 2nd Defendant and contended that the undertakings by the 1st and 2nd Defendants were not bona fide.

The 3rd Defendant's case

46. In its Defence, the 3rd Defendant denied, in toto, the allegations set out in the Amended Plaint. The Chief Land Registrar averred that the Directorate of Criminal Investigations Land Fraud Unit had, pursuant to a complaint lodged on 3rd May 2013 by Messrs Goldstein Group Services Limited, undertaken investigations which revealed that the said Goldstein Group Services Limited were the lawful allottees of Land Reference No. 21075, I.R. No. 142801.
47. It was further averred that the titles exhibited by the Plaintiffs, to wit: L.R. No. 21075 I.R. No. 68667/1, L.R. No. 21103 I.R. No. 68300, and L.R. No. 21104 I.R. No. 75381, did not emanate from the 3rd Defendant's office. According to the 3rd Defendant, the said titles were forgeries, and the Plaintiffs were put to strict proof thereof. The 3rd Defendant also maintained that it does not have any record on the letters of allotment shown by the Plaintiffs and the accompanying deed files.
48. In the alternative, and without prejudice to the foregoing, the 3rd Defendant contended that the processes of transfer, amalgamation, and registration relating to the disputed parcels were undertaken lawfully and in full compliance with the provisions of the then operative Registration of Titles Act (now repealed) The allegations of fraud attributed to the 3rd Defendant were denied, it being asserted that no liability could arise against the Government under the *Government Proceedings Act*.
49. The 3rd Defendant further averred that all transactions relating to the parcels in dispute, including the procurement of consents, surrender of titles, amalgamation, issuance of a new title for the amalgamated parcel, and subsequent charging of the same in favour of the 2nd Defendant, were conducted in accordance with the laws of Kenya.
50. It was its position that the particulars of fraud pleaded in the Amended Plaint disclosed no reasonable cause of action against it and were, in any event, denied. The 3rd Defendant added that it had no knowledge of any occupation of the suit properties and contended that mere possession or occupation does not, of itself, found a cause of action against the Government.



51. In its Reply to the 3rd Defendant's Defence, the 3rd Plaintiff asserted that the 3rd Defendant, being a public office charged with land administration under the [Land Registration Act](#), Cap 300, cannot lawfully engage in fraud against litigants or the Court.
52. It was contended that the 1st and 3rd Defendants acted in concert, and that the Defence filed by the 3rd Defendant was riddled with factual inaccuracies, denials, and allegations that were contradictory, irrelevant, and mischievous.
53. The 3rd Plaintiff reiterated its proprietorship of the suit property, and averred that the 3rd Defendant cannot abdicate its statutory mandate by relying on what it termed a collusive and fraudulent investigation report by the Criminal Investigation Department.
54. It was alleged by the 3rd Plaintiff that it has become commonplace for fraudsters to collude with officers of the Criminal Investigation Department and some State Counsel to launder fraudulent dealings in land under the guise of investigations, and thereafter seek judicial endorsement.
55. On the issue of forgery, the 3rd Plaintiff contended that the allegations by the 3rd Defendant were misconceived, noting that the 3rd Defendant is not a forensic expert and had not demonstrated which documents or signatures were allegedly forged. It was further argued that requiring the Plaintiffs to prove forgery of genuine government records was unconstitutional, illegal, and contrary to public policy.
56. The 4th Plaintiff, in its Reply, adopted the position of the 3rd Plaintiff. It reiterated its proprietorship of the suit properties, denied the allegations of forgery, and contended that no specific documents had been identified as forged. It similarly argued that the 3rd Defendant's demand for proof of forgery of government-issued records was unconstitutional and contrary to public policy.
57. Collectively, the Plaintiffs maintained that Deed Plan No. 357897 and the consequent title were procured through fraud, illegality, misrepresentation, unprocedural conduct, and a corrupt scheme by the Defendants, and are therefore liable to cancellation by this Court.

Hearing and Evidence

The 1st and 2nd Plaintiffs' evidence

58. The 2nd Plaintiff, Bharat Ramji (PW1) relied on his statement dated 19th February 2018 as his evidence in chief and a bundle of documents filed on 21st April 2015. In his statement, PW1 averred that the 1st Plaintiff is his business partner.
59. He testified that Kenplus Limited was issued with a Letter of Allotment for L.R. No. 21075 and duly paid the allotment fees on 22nd February 1996, upon which Grant Number I.R. No. 68667 was issued in its name.
60. He added that the firm of Issa & Company Advocates filed an application for a certified copy to L.R. No. 21075 dated 26th March 2010. He relied on a letter of allotment, the receipt of payments and the said application for a certified copy of title contained in the bundle of documents.
61. PW1 recalled that in 2010, they purchased L.R. No. 21075 from Kenplus Limited for a consideration of Kshs. 20,000,000. He referred to a Sale Agreement dated 7th May 2010, letters confirming deposit of the purchase price and release of completion documents, land rates and stamp duty payment receipts, as well as the banking form for registration of transfer received on 27th September 2010.



62. PW1 stated that a transfer of lease was executed on 20th September 2010 and registered on 27th September 2010. The property, he said, was then a vacant plot in Loresho. PW1 averred that he paid the balance of the purchase price and ensured that the land rates and rent were duly settled. He referred to the registered transfer, the certificate of title, letters and payment receipts for land rates and rent of LR 21075.
63. PW1 further testified that in September 2013, they discovered that third parties were attempting to hoodwink innocent purchasers by purporting that the land was available for sale. Consequently, they instructed their advocates to issue a public caveat and that an advertisement was placed in the Daily Nation of 17th September 2013 warning members of the public that the land was not available for sale.
64. PW1 stated that in March 2014, he and the 1st Plaintiff noticed irregularities in the land rent and rates record of LR No. 21075 in that there was a charge recorded on the rent and rates account. When they attempted to obtain a search from the Lands Department, they were informed that the file was missing and that by a letter dated 13th March 2014, they requested the National Land Commission to open a temporary file.
65. PW1 further testified that in July 2014, real estate agents approached them with an offer to sell a vacant parcel of land in Loresho measuring fourteen acres; that he was shown a copy of the title and, upon perusing the deed plan, realised that L.R. No. 29945 was an amalgamation of three parcels, namely L.R. Nos. 21103, 21104, and 21075.
66. It was the evidence of PW1 that they then obtained a copy of Survey Plan File Reference No. CR 201/93/43 (Folio No. 548, Register No. 150), which indicated that the survey work had been undertaken in September 2013 by one Stephen O. Ambani.
67. It was his evidence that the amalgamation was unlawful, as neither he nor the other Plaintiffs had requested amalgamation; that none of the Plaintiffs had sold the land to the 1st Defendant and that the amalgamation could only be explained as part of a corrupt scheme facilitated by the 3rd Defendant, being the statutory custodian of land administration.
68. PW1 testified that although they attempted to engage the 1st Defendant informally, no resolution was reached. He added that the 1st Defendant instructed a real estate firm, Kiragu & Mwangi Limited, to market the amalgamated property for sale at Kshs. 45 million per acre and that he was apprehensive that innocent purchasers would be exposed to loss through what he termed as the Defendants' corrupt scheme.
69. On cross-examination, PW1 reiterated that he purchased L.R. No. 21075 from Kenplus Limited through an agent, Mr. Kennedy Mochere, who introduced him to the vendor. He stated that due diligence was undertaken by his advocate, Issa, prior to execution of the Sale Agreement.
70. He testified that the consideration was paid by way of cheques, RTGS and cash as indicated at pages 45–48 of the bundle; that the land, measuring ten acres, was purchased at Kshs. 20,000,000, each acre costing Kshs. 2,000,000 and that he did not conduct a valuation prior to purchase.
71. PW1 further stated that a caveat which had been registered over the property was withdrawn before purchase. When referred to the first entry in the title contained in his bundle, which indicated a Deed of Indemnity, PW1 stated that he did not know whether the deed was gazatted, nor did it indicate when it was received. He added that he was unfamiliar with the firm of Archer & Wilcock Advocates.
72. PW1 conceded that he did not know how the Letter of Allotment had been issued, whether the sums indicated therein were paid within the 30 days stipulated, or when the property was surveyed. He



further stated that he was unaware if his advocates obtained particulars of the directors of Kenplus Limited. He testified that he did not know the directors, neither did he know if they had previously been implicated in land fraud cases.

73. When referred to page 49 of his bundle, which showed a demand for rates addressed to Ivory Insurance Service Limited, PW1 stated that he had cancelled the name for his personal records. He further stated that the directors of Kenplus had appended their photographs to the transfer, and that one A.K. Mululu, Advocate, witnessed its execution.
74. PW1 stated that the 2nd Defendant was sued because it advanced a loan on the basis of what he termed a “fake title”. He admitted that he was unaware that the charge had been discharged, but maintained that the Plaintiffs nonetheless sought a permanent injunction against the 2nd Defendant.
75. He was referred to page 9 of the Bundle, which indicated that the Deed Plan was prepared by J. Kamwere, a licensed surveyor, and to condition 2 at page 8. He admitted they never submitted building plans save for plans for the construction of a boundary wall. He further stated that he was not aware if Kenplus Limited had obtained the requisite consents before the sale of the property to them.
76. PW1 testified that although he had seen copies of the title held by the 1st Defendant, he did not know how the 1st Defendant had obtained them. He stated that the suit property is near land occupied by the Kabete Veterinary Laboratory.
77. PW1 maintained that the agent in the transaction was Kennedy Mochere, who introduced him to the vendor, one Erick Naibei. When referred to the original title as against the document at page 43 of the bundle, he noted that the original bore an additional entry not reflected in the produced documents, namely the registration of a Deed of Indemnity in 2016.
78. In re-examination, PW1 referred to page 32 of the 3rd Defendant’s documents, which showed that the property had been transferred by Erick Naibei. He also stated that Kennedy Mochere had recorded a statement with the DCI confirming that he acted as the agent.
79. PW1 further testified that the document at page 15 is an extract from the parcel file corresponding to page 43 of the Bundle. He stated that the title documents, including the original Letter of Allotment, were released to him upon payment of the purchase price. He added that the Government valuers accepted the purchase price of Kshs. 20,000,000/= for purposes of stamp duty, and that approval was obtained from the County Government for the construction of a boundary wall.

The 3rd and 4th Plaintiffs’ evidence

80. PW2, Enos Adundo Okatch, a Director of the 3rd Plaintiff, relied on his witness statement dated 17th May 2017 as his evidence in chief, and produced his bundle of documents dated 5th December 2014. He stated that the 3rd Plaintiff was incorporated on 18th March 1993, and noted a typographical error at paragraph 2 of his statement. He asserted that LR No. 21103 is registered in the 3rd Plaintiff’s name and has not been sold to any person.
81. In his statement, PW2 averred that on 24th August 1995, the Government allocated L.R. No. 21103 Nairobi to Allotrope Trust Company Limited, the 3rd Plaintiff by a Letter of Allotment Ref. No. 26199/IV of the same date; that the 3rd Plaintiff accepted the terms and conditions and remitted Kshs. 283,617/= to the Commissioner of the Lands by Banker’s Cheque No. NQ/BP 406330, under cover of a letter dated 28th September 1995 and that receipt number. D.385220 was issued on 4th October 1995 acknowledging payment.



82. PW2 further stated that the 3rd Plaintiff paid stamp duty of Kshs. 11,000 for issuance of the grant, acknowledged by receipt number 38178 dated 30th January 1996. Consequently, Grant No. IR 68300 over LR 21103 measuring approximately 1.00 hectares and delineated on Deed Plan No. 198102, was issued in favour of the 3rd Plaintiff.
83. He averred that the 3rd Plaintiff has never sold, transferred, let, or surrendered its proprietary rights to the suit property nor has its title been revoked, and that it has been paying all the rates and rent in respect thereof.
84. It was further averred that unknown to the 3rd Plaintiff, the 1st Defendant, being neither the registered owner nor a holder of any interest in the suit property, fraudulently and illegally procured a duplicate title using a deed plan allegedly obtained from the 3rd Defendant's file at the Land's registry. PW2 stated that the 1st Defendant falsely represented to the 3rd Defendant that it was the registered owner and thereby caused LR No. 21103 to be amalgamated with LR No. 21075 and 21104 to produce LR No. 29945 (IR 15312), delineated on the Deed Plan No. 357897.
85. Subsequent to the amalgamation, PW2 stated that the 3rd Defendant issued and registered a grant in favour of the 1st Defendant on 22nd December 2013 as IR 15312/1 and on the same date, registered a charge in favour of the 2nd Defendant the chargee, for an undisclosed amount.
86. PW2 maintained that the amalgamation of the three properties occurred without the 3rd Plaintiff's knowledge, consent and acquiescence; that the 1st Defendant's fraudulent and corrupt actions violated the Plaintiff's property rights protected under Article 40 of *the Constitution*; and that the 3rd Plaintiff stands to lose more than Kshs. 222,394,500 being the value of the land.
87. On cross-examination, PW2 testified that LR No. 21103 is situated in Loresho; that the 1st and 2nd Plaintiffs are his neighbours; and that he is in possession of the property. He stated that he is a businessman based in Migori, engaged in the sale of vegetables and fruits; that he formerly practiced as estate agent from 1993 and worked as a court clerk at Oraro & Co. Advocates between 1988 and 2000 and that prior to 1983, he traded in cereals.
88. PW2 stated that the 3rd Plaintiff has two directors and that he is the Managing Director; that the company's offices are at ACK Gardens House, which he noted was also the address of his former employer; that the property had been surveyed at the time of acquisition and that it was the first property acquired by the 3rd Plaintiff. He stated that he does not reside on the suit land; that any houses thereon do not belong to him, and that he was unaware of the farming activities being undertaken on the land.
89. PW2 stated that, in his estimation, the prevailing price per acre in the area is Kshs. 85,000,000. He informed the court that the property was allotted by the Government; that the 3rd Plaintiff operates a single bank account at Kenya Commercial Bank and that payment for the allotment was made by a banker's cheque.
90. PW2 observed that certain handwritten insertions on the allotment were not countersigned. Referring to page 10 of his bundle, he noted that the cheque number was not indicated and that the forwarding letter dated 28th September 1995 bears Cheque No. 174874, which appears cancelled without a countersignature.
91. PW2 stated that he uses only one signature and confirmed that the signature on the letter dated 28th September 1995 is his. He reiterated that the suit property was allotted to the 3rd Plaintiff and that the premium was paid using a bank loan from Kenya Commercial Bank.



92. PW2 stated that the 2nd Defendant was sued because it advanced money to the 1st Defendant, and that other than that, he had no other substantive claim against the 2nd Defendant. Referring to the letter of allotment at page 5 of the 3rd Defendant's bundle, PW2 stated that the property was advertised prior to allocation and that payment for the land was made on 28th September 1995.
93. PW2 was referred to page 4, a deed plan. He stated that investigations revealed that their plot had been amalgamated with others to form a different title. He reiterated that the property was allocated to him 1995 and indicated that he had never submitted building approvals to the County Government of Nairobi.
94. On re-examination, PW2 clarified that in the letter forwarding the cheque to the Commissioner of Lands at Page 10 of his bundle, the number 174894 is the file number while the cheque number he sent to the Lands office is 406330, for the amount Kshs. 283,617, which is the same amount reflected in the receipt at page 10.
95. He added that the title was registered on 30th January 1996, for a term of 99 years from 1st September 1995, which term has not expired. PW2 stated that he was not given notice to produce land rent receipts and emphasized that he had never received any notice cancelling the 3rd Plaintiff's title from the Commissioner of Lands or the Chief Land Registrar.
96. PW3, Eliud Muchiri Mutura, a Director of the 4th Plaintiff, relied on his Witness Statement dated 18th May 2012 and produced a bundle of documents marked as 4PEXB1.
97. In his statement, he averred that LR No. 21104 was initially offered to Ashantee Investments Limited by the Government of Kenya vide a Letter of Allotment dated 24th August 1995; that Ashantee Investments Limited accepted the offer on 8th July 1997 and, that by a letter of the same date, forwarded a banker's cheque No. PB/N 31385 dated 11th July 1997 in compliance with the conditions of allotment.
98. It was the evidence of PW3 that in that letter, Ashantee Investments further requested that the title to L.R. No. 21104 be issued in favour of Masai Roses Limited, the 4th Plaintiff and that the Ministry of Lands issued a receipt acknowledging payment of Kshs. 316,937 as stipulated in the Letter of Allotment.
99. PW3 stated that the Ministry of Lands subsequently wrote to the Director of Surveys on 22nd September 1997, confirming that the offer for L.R. No. 21104 had been accepted; that the Ministry of Lands gave instructions that a new lease be prepared in favour of the 4th Plaintiff and that on 26th September 1997, Ashantee Investments wrote to the Commissioner of Lands seeking consent to transfer the property to the 4th Plaintiff.
100. PW3 further averred that Ashantee Investments lodged a transfer and paid stamp duty of Kshs. 30,000, and that the Registrar of Titles issued instructions authorizing the transfer of the property from Ashantee Investments to the 4th Plaintiff.
101. PW3 testified that the 4th Plaintiff was thereafter issued with a grant of lease over LR No. 21104 dated 24th December 1997; that stamp duty was duly paid and a certificate of stamp duty issued on 31st December 1997 and that the transfer in favour of the 4th Plaintiff was registered on 24th December 1997, and a certificate of title, being I.R. 75381, was issued.
102. PW3 averred that as the registered owner, the 4th Plaintiff diligently performed its obligations by paying land rent over the years. He stated that in or about September 2013, the 1st Defendant purporting to be the registered owner of LR No. 21104 caused it to be amalgamated with L.R. Nos. 21075 and



- 21103 to create L.R. No. 29945 measuring approximately 5.829 hectares, as delineated in Deed Plan No. 357897.
103. Pursuant thereto, it was averred, the 3rd Defendant issued a grant in favour of the 1st Defendant on 22nd December 2013, and simultaneously registered a charge in favour of the 2nd Defendant for an undisclosed amount. PW3 contended that Deed Plan No. 357897 and the resultant title were procured fraudulently, illegally, and through misrepresentation, unprocedural conduct, and a corrupt scheme by the Defendants, and are therefore liable to cancellation.
 104. He confirmed that the 4th Plaintiff has never surrendered its original title to L.R. No. 21104, which it still holds. He asserted that the amalgamation was unlawful and contrary to Section 22 of the [Land Registration Act](#), 2012, and that the subsequent creation of a charge in favour of the 2nd Defendant was equally fraudulent.
 105. PW3 further testified that he became aware that the firm of Kiragu & Mwangi Limited had been instructed to market the amalgamated parcel at Kshs. 45 million per acre, thereby placing innocent purchasers at risk. He stated that despite demand, the 1st, 2nd, and 3rd Defendants had refused to surrender the Deed Plan and resultant title for cancellation.
 106. In cross-examination, PW3 testified that the 4th Defendant has no claim against the 2nd Defendant bank. He referred to a resolution appointing him as a Director in 2014 and stated that he was directly involved in the acquisition of the land.
 107. He confirmed knowing Ashantee Investments Limited, from whom the 4th Plaintiff acquired L.R. No. 21104, but could not confirm whether the directors of the two companies were the same. He conceded that he was not familiar with the plan at page 2 of the bundle and did not know how Ashantee obtained its letter of allotment, as he was not involved in the allocation process.
 108. PW3 stated that he relied on the Letter of Allotment dated 24th August 1995. He acknowledged that the land reference number therein had been amended, without a countersignature; that the stand premium was to be paid within thirty days, but the acceptance letter was dated 8th July 1997 and that while the banker's cheque in the letter was indicated as No. 31385, the receipt reflected Cheque No. 31386. He stated that the Commissioner's letter dated 22nd September 1997 referenced L.R. No. 21104.
 109. PW3 further observed that while the letter of allotment was dated 24th August 1995, the Commissioner of Land's letter of 22nd September 1997 referred to it as dated 8th July 1996. He was referred to the letter for consent to transfer at page 11 of the Bundle, which did not specify the transferee. It was his evidence that he did not know the author of the handwritten notes on the letter dated 26th September 1997 and confirmed that he did not obtain a formal consent from the Commissioner of Lands.
 110. He was also referred to a receipt of Kshs. 30,000/- whose date was unclear, in respect of Cheque Number 074837, which differed from that in the forwarding letter dated 26th September 1992. He denied authorship of handwritten notes appearing at page 17.
 111. In re-examination, PW3 denied ever working at the Ministry of Lands. He referred to page 7 of the Bundle, being the letter of acceptance, which references LR. No. 21104. He also referred to the receipt of Kshs. 316,937 dated 31st December 1997 at page 8 and explained that the contribution of Kshs. 125,000 referenced at page 18 was in lieu of rates.



The 1st Defendant's evidence

112. DW1, Robert Manono Ayongo, a Director of the 1st Defendant, adopted his witness statement dated 8th October 2017 as his evidence-in-chief and produced in support the bundles of documents dated 18th September 2014 and 1st August 2018.
113. It was his evidence that the 1st Defendant is the lawful registered proprietor of LR No. 21075 IR No. 68667, LR No. 21103 and LR No. 21104, which three parcels are adjacent to each other. He testified that in 2013, the 1st Defendant amalgamated the three parcels into one bigger portion and was issued with a fresh title, exhibited in his bundle of documents. He further stated that prior to the issuance of the new title, all pre-amalgamation conditions were duly complied with by the 1st Defendant.
114. DW1 averred that there had been numerous attempts by individuals and cartels to fraudulently dispose of the 1st Defendant's property. He stated that some of those individuals had been prosecuted, with criminal proceedings pending before the relevant courts. He referred to the charge sheets annexed to the 1st Defendant's bundle of documents and maintained that the titles produced in the names of the Plaintiffs or their alleged predecessors were forgeries which ought to be declared null and void.
115. In cross-examination, DW1 testified that LR No. 21075 was allocated to him in January 1995, upon which he paid the requisite fees and was issued with a title. He stated that he lodged a complaint with the Directorate of Criminal Investigations in 2012 after strangers attempted to take over his land.
116. When referred to his statement recorded with the police at page 10 of the 3rd Defendant's bundle, he explained that the indication therein that the land was allocated to him in 2011 was erroneous, attributing it to confusion.
117. He testified that the three titles were initially in his name but were surrendered in exchange for one title, which was subsequently charged to a financial institution. He conceded that no charge or surrender was endorsed on LR No. 21075 and that he did not possess a copy of its title.
118. When referred to the consent to charge, DW1 noted that it had a correspondence file number 266342/XL 111, which differed from that indicated on the letter of allotment at page 42 of the documents. He maintained that he had been paying land rent since 1995 and had a land rent clearance certificate, although he did not produce receipts, save for a payment slip dated 5th February 2014.
119. DW1 testified that in 2013, LR No. 21075 was charged when one Samuel Gichuru, as a shareholder of Goldstein Ltd, secured a loan of Kshs. 62 million for developments in Loresho and elsewhere. He clarified that Mr. Gichuru was not a director of the company, whose finances he himself did not directly manage, although he remained a director and signatory to the company's accounts.
120. DW1 testified that the 1st Defendant paid an appraisal fee equivalent to 2.5% of the loan sum, after which the Bank undertook a valuation of the charged property. He stated that he could not recall whether the charge instrument was executed in 2013. It was his further testimony that the company had several directors and that its directorship had changed over time.
121. According to DW1, in 2013, he served as a Director together with one Finlay. According to him, the loan transaction was effected from account to account, and it was the 1st Defendant, and not Samuel Gichuru personally, that borrowed and serviced the facility. He maintained that the company duly honoured its repayment obligations and never defaulted.
122. DW1 further testified that Wesonga & Co. Advocates acted for the 1st Defendant in effecting the amalgamation and in collecting the deed plan. He referred to a letter dated 28th March 2013 from



the Director of Surveys concerning LR No. 29945, a PPA2 dated 30th April 2013 at page 32 of the documents, a letter dated 30th April 2013 at page 37 signed by B. L. Limo, and a Deed Plan at page 33 collected by the said Mr. Limo. He asserted that the amalgamation had the requisite approvals, including from the relevant county authorities.

123. DW1 testified that LR No. 21103 was allocated to him on 14th January 1995, pursuant to his application to the Ministry of Lands. He produced a letter of acceptance and stated that payment of the stand premium was made by a cheque drawn on his personal account, which was credited into the account of Goldstein Ltd before being remitted to government.
124. It was his evidence that although the payment was delayed, the letters of allotment were issued in his name and that of Finlay Akunge, with the three plots being allotted to them on the same day.
125. He stated that the annual rent for LR Nos. 21103 and 21104 was Kshs. 9,600 each, as reflected on the receipts issued in his name. While the cheques used for payment were drawn in the name of Goldstein Ltd, he explained that he had registered the company, invited shareholders, and subsequently transferred the land to it.
126. DW1 affirmed that the letters of allotment were genuine, issued to him by the government, and supported by receipts bearing reference numbers 199907 for LR No. 21104 and 199851 for LR No. 21103. He testified that he managed the properties both in his individual capacity and as a director of the 1st Defendant. He stated that LR No. 21103 was registered on 5th August 2013 by one Ngetich, whom he did not know.
127. It was his evidence that he was not aware that as at 8th January 1996, a title had already been issued under IR 68300 in respect of the same parcel, nor that LR No. 21104 had in 1996 been registered in the name of Maasai Roses Ltd. He further noted that the amalgamated title, as well as the charge and the title for LR No. 21075, were also registered by the said Ngetich, whom he described as a government officer with whom he had no personal relationship.
128. He confirmed that the deed plans for LR Nos. 21104 and 21103 were 198103 and 198102 respectively. He maintained that he purchased the properties in 1995, although the titles were only issued in 2013, eighteen years later. He reiterated that the amalgamation and charge were registered on 23rd December 2013, and that prior thereto, there was no charge registered against LR Nos. 21103 and 21104.
129. While acknowledging that the 1st Defendant was not incorporated in 1995, DW1 maintained that the allotments were genuine and were subsequently transferred to the company through his advocates, Wesonga. He confirmed that the stand premium and rent were paid, supported by receipts.
130. In particular, he stated that the letter of allotment for LR No. 21103 reflected a stand premium of Kshs. 48,000 and annual rent of Kshs. 9,600, of which he produced evidence of payment of Kshs. 86,550. He contended that he was not obliged to produce further documentation in support of the allotment.
131. DW1 further testified that there were notable disparities between the letter of allotment issued to the 1st Defendant and that exhibited by the 3rd Plaintiff, the latter indicating a stand premium of Kshs. 280,000 and annual rent of Kshs. 56,000. He further noted that whereas the Plaintiffs had produced titles for IR N 68300 and 68301, his title bore IR 147263.
132. DW1 testified that processing of the titles at the Ministry of Lands was delayed owing to a go-slow. He conceded that he did not have documentary evidence of the follow-ups he made, save that they would at times leave notes with the officers handling the matter. He stated that he subsequently surrendered the titles for purposes of amalgamation in the name of the 1st Defendant.



133. On re-examination, DW1 urged the Court to rely on his filed witness statement and not on the one recorded with the police. He reiterated that the land was allotted to the directors of the 1st Defendant, including himself. He denied knowledge of “informal transfers” but affirmed that he effected a transfer of the properties into the company. He maintained that the stand premiums, land rates, and rent were duly paid.

The 2nd Defendant’s evidence

134. DW2, Jackson Kimathi, the Head of Legal of the 2nd Defendant, adopted his witness statement dated 19th October 2020 and produced documents marked as 2DEXB1. He testified that the loan advanced to the 1st Defendant had since been fully repaid and redeemed, and that the Bank no longer had any interest in the suit property. He urged that the 2nd Defendant ought not to be penalized by way of damages or costs.
135. It was his evidence that by a Letter of Offer dated 11th June 2013, the 1st Defendant obtained from the Bank an SME loan facility of Kshs. 62,000,000. As security, the 1st Defendant executed a charge over LR No. 21075 together with a Deed of Guarantee and Indemnity for the same amount in favour of the Bank.
136. He testified that prior to the registration of the charge, the Bank conducted an official search at the Lands Registry on 3rd July 2013, which confirmed that LR No. 21075 was registered in the name of the 1st Defendant. It was his evidence that with the bank’s consent, the 1st Defendant consolidated LR Nos. 21075, 21103 and 21104 into LR No. 29945, which was thereafter charged to the bank as a replacement of the original charge.
137. Without prejudice, he averred that the Bank was an innocent chargee for value, having acquired an interest in LR No. 29945 from the 1st Defendant in good faith and without notice of any defect in title. He asserted that the Bank’s interest was indefeasible under the law, and that it was not required to go beyond the register to investigate the validity of the 1st Defendant’s title.
138. In cross-examination, DW2 stated that the facility was extended to the 1st Defendant, whose director, Samuel Gichuru, represented the company. He testified that the Bank conducted due diligence, including an official search, which confirmed that the property was registered in the 1st Defendant’s name. He noted that the replacement charge dated 23rd December 2013 was registered on the same day after release of the earlier charge to facilitate amalgamation.
139. He testified that although the title for LR No. 21075 in the Bank’s records did not bear an endorsement of the earlier charge, the Bank had nonetheless processed the facility based on the official search and appraisal of the customer.
140. DW2 confirmed that the title had not been discharged because of subsisting status quo orders issued by the court, which were registered against the amalgamated title. He clarified that while the Bank registers the charge, the obligation to register a discharge lies with the chargor.

The 3rd Defendant’s case

141. DW3, Gordon Ochieng, Director of Land Administration at the Ministry of Lands, adopted his statement dated 22nd July 2022 and produced the bundle of documents marked 3DEXB1.
142. He outlined that the issuance of new grants ordinarily follows a sequential process: application for allocation; confirmation of availability; issuance and acceptance of the letter of allotment; payment of



- requisite fees; survey; issuance of a deed plan by the Director of Surveys; preparation and execution of the grant by the Commissioner of Lands; and registration by the Registrar of Titles.
143. Having perused the Ministry records pursuant to the Court's directive, DW3 stated he was unable to trace the subject files. It was his evidence that the file-opening cards showed LR 21103 was allocated File No. 174894, LR 21075 File No. 178037, and LR 21104 File No. 192806; that the files themselves could not be located and that he found no records at either the Plan Records Office or the File Records Registry relating to LR 29945.
 144. In cross-examination, he stated that the PPA2 at page 32 of the bundle of documents relates to amalgamation and sets conditions, inter alia, non-encroachment on a road reserve and avoidance of disputed public utilities, although such conditions vary.
 145. Referring to the NLC amalgamation scheme letter, he testified that such a letter would typically be signed by an officer from the Directorate of Land Administration and that the impugned letter was authored "for the Chair" by one B. L. Limo, who, he said, was then a Land Registrar in the Ministry.
 146. DW3 stated that an amalgamation scheme plan generally accompanies the PPA. Here, the scheme bears the date 30th April 2013; the PPA2 is dated 18th April 2013 with a stamp of 30th April 2013; the application to the County was submitted on 27th March 2013; and the PPA2 purports to record approval on 28th April 2013.
 147. It was his evidence that the accompanying scheme spoke to subdivision, not amalgamation and that his office opposed the process, having noted inconsistencies in the amalgamation chronology.
 148. It was his evidence that the record shows a surrender instrument. He stated that in an amalgamation, one surrenders existing parcels to be merged. Here, the surrender cites only LR 21075 as the property amalgamated property, rather than all the three titles, and quotes the same land instead of the additional parcels. It was his evidence that he never saw a valuation for rent or review in relation to the amalgamation.
 149. Turning to the 3rd Plaintiff's documents, he identified a letter of allotment dated 24th August 1995 in favour of Allotrope Trust Co. Ltd for one acre, with payable sums of Kshs. 283,617. It was his evidence that notations showed circulation for authorization to different offices and that an acceptance letter and proof of payment were on record, including an official receipt of 4th October 1995 bearing the same amount and File No. 174894.
 150. He further noted instructions of 16th January 1996 to prepare a new lease setting out fees, followed by forms initiating typing of the title on 18th January 1996 and a certificate of stamp duty franking dated 30th January 1996 (File No. 174894; receipt D385220). It was his evidence that the title at page 15 reflects File No. 174894, IR 68300, rent, and acreage (approximately one hectare) in favour of Allotrope Trust Ltd for LR 21103, registered on 31st January 1996 and that the memorandum confirmed the premium and annual rent.
 151. Comparing with the 1st Defendant's bundle, he stated that Allotrope's IR appears first in time; that IRs are sequential and cannot be duplicated for different parcels and that the rent is shown as Kshs. 9,600 for one hectare. He added that such an annual rent would not have applied in 1913 as shown on the 1st Defendant's title. In his view, Goldstein did not own LR 21103 and could not have amalgamated it.
 152. DW3 then referred to a letter of allotment at page 3 of the Plaintiffs' documents dated 5th December 2014 for LR 21104, issued on 24th August 1995 to Ashantee Investment for one acre, with a of stand



- premium Kshs. 280,000 and a total sum of Kshs. 316,937. I was his testimony that acceptance and payment were confirmed by a receipt referencing File No. 192806, consistent with LR 21104.
153. He stated that on 26th September 1997, Ashantee sought and obtained consent; that an informal transfer then followed and was endorsed on 22nd December 1997, transferring the land to Masai Roses Ltd, with the consent fee of Kshs. 30,000 receipted under File No. 192806.
 154. He contrasted same with the 1st Defendant's title IR 147264 with Masai Roses' title, noting the former's rent at Kshs. 9,600 against the latter's Kshs. 56,000. The 1st Defendant's title shows registration on 10th June 2013, long after Masai Roses' registration. The memorandum for Masai Roses bears Serial No. 4838. He opined that the 1st Defendant could not have surrendered a title belonging to Masai Roses Ltd.
 155. He stated that the documents for the 3rd and 4th Plaintiffs all emanate from the Ministry, although they are now missing. While he had not seen the original applications, proof of payment of stand premium suffices. He noted a correction on a document at page 3 of the Plaintiffs' bundle from "LR 21004" to "LR 21104" without a countersignature, and stated that although the premium was to be paid within 30 days, the receipt is dated 29th July 1997, approximately two years later.
 156. He observed that the letter by Ashantee dated 8th July 1997 carried a stamp reading "reconds," a term unfamiliar to him. The letter cited banker's cheque No. 31385 for Kshs. 316,937/= with a future date, while the receipt referred to cheque No. 31386. A letter at page 9 referenced LR 21704 (not LR 21104) and a letter of allotment dated 8th July 1996, differing from the one produced, and was copied to the Municipal Treasurer, Nakuru.
 157. DW3 reiterated that informal transfers were administrative decisions no longer in use. As to the 3rd Plaintiff's letter of allotment, he confirmed that premiums were paid (receipt of 4th October 1995), albeit outside the stipulated 30 days and that kshs. 11,000 was also paid.
 158. Regarding LR 21075, he stated that File No. 178037 indicated a file was opened, although no name appeared on the opening card; that he was unfamiliar with Kenplus Limited which is not reflected in the card. It was his evidence that the title at page 5 of the 1st Defendant's bundle (LR 21104) indicates surrender for amalgamation with LR 21103 and 21075 and that while entry No. 2 on that title is facially regular, the title at page 1 shows LR 21103 as amalgamated with itself, which is irregular.
 159. In re-examination, he restated that common ownership is a prerequisite for amalgamation and that the kind of year-dating error seen in the Defendant's title is exceedingly rare. He confirmed the historical existence of administrative informal transfers but said he could not locate the correspondence files for the three parcels.
 160. DW4, Wilfred Muchae Kabue, testified that he is the Deputy Director of Surveys at the Directorate of Surveys and Mapping within the Ministry of Lands. He adopted his statement dated 23rd June 2022 as his evidence in chief and produced a bundle of documents of the same date as 3DEXB2.
 161. In his statement, Mr. Muchae averred that according to the records held and maintained at the Survey Records Office, Nairobi, in respect of the parcels LR Nos. 21075, 21103, and 21104, the said parcels were resultant new grant surveys undertaken pursuant to alienations by the Commissioner of Lands.
 162. He stated that these were represented on Cadastral Plan No. F/R 257/92, Survey Computations No. 34158, duly approved and authenticated by the Director of Surveys on 23rd August 1995 and that the parcels measured as follows:
 - i. LR No. 21075 measured 3.822 hectares (Deed Plan No. 198094);



- ii. LRNo.21103 measured 1.00 hectare (Deed Plan No. 198102),
 - iii. LR No. 21104 measured 1.008 hectares (Deed Plan No. 198103).
163. He stated that the new deed plans in respect of the said parcels were issued by the Director of Surveys on 1st September 1995. He further testified that on 9th September 2013, the Director of Surveys received an Amalgamation Survey submitted by M/s Stephen O. Ambani, a licensed surveyor, in respect of the amalgamation of LR Nos 21075, 21103 and 21104 as indicated on Cadastral Plan No. F/R No. 548/150, Survey Comps No. 64325.
164. The Director examined, approved, and authenticated the amalgamation on 13th September 2013, thereby giving rise to LR No. 29945. A corresponding Deed Plan No. 357897 was thereafter issued on 17th September 2013 vide letter Ref. No. CR 201/Vol.93/49 of the same date.
165. DW4 testified that the documents presented in support of the amalgamation survey included:
- a. A Notification of Approval of Development Permission- Form P.P.A 2 Ref. No. CPD/PIS/000608/21075, 21103 & 21104/DM/sng dated 18th April 2013, approved on 20th April 2013 by the Director of City Planning issued to Two EMS Associates;
 - b. An unreferenced Amalgamation Scheme Plan prepared by M/s Chris N. Omare, a registered physical planner approved by the Director of City Planning on 30th April 2013 and by the Commissioner of Lands on 20th August 2013.
 - c. A National Land Commission Letter of provisional approval Ref. No. 178241/23 dated 20th August 2013.
166. He averred that the rationale informing the Director of Surveys' decision to approve and authenticate the amalgamation was that the supporting documents presented were found to be authentic and the requisite statutory approvals had been duly obtained.
167. He further stated that should any of the authority documents underlying an approved survey be found to be invalid, the Director of Surveys is empowered under Section 33 of the *Survey Act* (Cap 299) to recall and cancel any authenticated survey record, upon giving prior notice to all affected parties.
168. DW4 explained that a deed plan is a document prepared to facilitate land registration and may be drawn either by the Director of Surveys or a licensed surveyor. Where the survey is undertaken by the Government, the Director prepares and authenticates the deed plan; where done by a private licensed surveyor, the plan must be submitted to the Director for signing, sealing, and approval.
169. He outlined the process of deed plan preparation as comprising: issuance of deed plan numbers; quality assurance and central checking; authentication and sealing; and final release to either the National Land Commission or the licensed surveyor. He added that a copy of each deed plan is retained by the Director of Surveys as an "office copy."
170. Under cross-examination, he stated that the initial survey plan of 1995 was undertaken by Mr. Kamwere, a licensed surveyor, and that it constituted a new grant survey. He testified that while supporting documents such as allotment letters are ordinarily required, it is not a legal necessity to indicate ownership on the survey plan.
171. He observed that although the name Goldstein Group Services Ltd appears on the plan, the entry was unsigned and irregular. He further noted that the amalgamation proceeded without verification of the original titles, relying instead on planning documents, including PPA2.



172. He stated that forwarding letters were not part of his bundle as the Directorate acts on copies forwarded by the County Government. Normally, PPA2 is transmitted by the Director of Land Administration to the Director of Surveys and Director of Physical Planning for comments, after which approvals are issued. The correspondences not included in his bundle are ordinarily found in the general file, which he described as an administrative issue.
173. He referred to a letter from the National Land Commission at page 3 of his bundle referencing the proposed amalgamation, observing that although it ought to have been addressed to the agent or owner, its address to the Director of Surveys, while irregular, was not fatal. He noted that the letter dated 3rd September 2013 imposed six conditions, including payment of new rent and valuation by the Government Valuer, and that the term “sub-plot” therein was an error.
174. He further observed inconsistencies between the approval letter dated 28th August 2013, the reference numbers, and the survey computation file, which did not contain the referenced letter. He contended that the said letter may not have emanated from the Directorate.
175. DW4 testified that authentication of survey work is evidenced through a letter or by signing the cadastral plan. He confirmed that Cadastral Plan F/R 548/150 was duly authenticated on 13th September 2013. Ownership, he clarified, is not reflected on cadastral plans. He also identified that the deed plans were collected by Mr. Benjamin Limo, whose name also appeared in the NLC letter.
176. He explained that the letter of 20th August 2013, addressed to the Director of Surveys, contained provisions outside the Director’s mandate, such as surrender of titles and payment of rent. He noted further inconsistencies in dates and approval stamps, and confirmed that while Deed Plans Nos. 198102 and 198103 were authentic, their corresponding receipts were filed separately.
177. He referred to a 1995 survey plan showing Deed Plans Nos. 198102 and 198103, and confirmed that amalgamation presupposes common ownership and surrender of the underlying titles. He verified that the titles for LR Nos. 21103, 21104, and 21075 were all in the name of Goldstein Group Services Ltd, corresponding to the authenticated deed plans.
178. He reiterated that the issuing authority for amalgamation approvals was the National Land Commission, and confirmed that the approval of the amalgamation was predicated on the authenticity of the authority documents submitted.
179. He acknowledged that while some documents exhibited inconsistencies, these were not material enough to invalidate the authentication process, since authentication would not proceed before requisite payments and conditions were met.
180. Upon re-examination, DW4 clarified that duplication of deed plan numbers is impossible. His evidence, he stated, was drawn from official records of the Director of Surveys. He reiterated that the Directorate acts upon copies of PPA2 received from the Director of Land Administration, which, together with survey works and scheme plans, form the basis for authentication of surveys and issuance of deed plans.
181. DW5, Dominic Mutegi, testified that he worked at the Nairobi City County Government, Department of Development Management, where he was in charge of approvals relating to development, subdivision, and amalgamation of land. He stated that in the year 2013, he was serving under the then Nairobi City Council.
182. He referred to page 29 of the 3rd Defendant’s bundle which contained a Form PPA2. He averred that the signature appearing on the said document was not his. He further stated that there was no meeting



of the Development Committee on 28th March 2013 as suggested therein. The document purported that Item No. 23 was discussed at that meeting. Upon reviewing the actual agenda, he confirmed that Item No. 23 related to parcels L.R. Nos. 1870/1/202 and 1870/1/138, both situated along General Mathenge Road. He observed that while the PPA2 dated 18th April 2013 was indeed on the agenda, the Land Reference numbers appearing on it differed from those discussed under Item 23.

183. DW5 testified that the accompanying scheme plan was shown as one for amalgamation, and at page 30 of the same bundle appeared a plan bearing the stamp “Approval of Subdivision of Land”, rather than the correct stamp which ought to have read “Amalgamation”. He categorically denied that the signature appearing on the said document was his and asserted that the PPA2 was a forgery which did not emanate from the Nairobi City County Government.
184. During cross-examination, he stated that the proposed amalgamation plan listed three separate titles, each registered in different names, and therefore could not lawfully be amalgamated. He explained that, for an amalgamation to be approved, the titles must be held by the same proprietor and bear the same user classification.
185. He noted that the plan listed the owners as Goldstein Group Services Limited, but he had never encountered the document appearing at page 30 of the bundle prior to this case. He further observed that the plan bore two stamps, one of Chris N. Omare dated 20th August 2013 and another showing approval on 30th April 2013, a sequence he described as impossible.
186. He stated that he had been called solely to confirm whether the impugned PPA2 originated from the Nairobi City County Government. He clarified that he did not file a witness statement or produce any document. He reiterated that he did not sign the PPA2 dated 30th April 2013, notwithstanding that it bore the endorsement “D. Mutegi.” He testified that he was the only officer bearing that name within the department and did not know who appended the signature. He added that the same authority within the department handles both subdivision and amalgamation matters, and that the PPA2 is ordinarily copied and forwarded to the Director of Surveys for reference in the survey approval process.
187. DW5 concluded that the PPA2 in issue was inconsistent and irregular. He pointed out that the PPA2 named 2 EMS Associates as the applicant, while the accompanying map bore the name Chris Omare, which, in his view, was not procedurally possible.
188. DW6, David Nyambura Nyandoro, the Chief Land Registrar, testified that he was served with summons of the Court requiring him to produce certain land records relating to the suit properties. He stated that he did not have certified copies of the titles except for a reconstructed file relating to LR No. 21075 (IR 68667).
189. He explained that his office was able to retrieve the Presentation Book entries for LR Nos. 21103 and 21104, both dated 5th August 2013, and the corresponding IR registers, which are used for issuance of title numbers. Apart from these, the remaining files and documents were missing. He added that the parcels LR Nos. 21103, 21104 and 21075 had been cited as having parallel titles under different entities.
190. With respect to LR No. 21103 (IR 68300), DW6 stated that the title was missing but, based on sequential numbering, it should have been prepared on 31st January 1996, as IR Nos. 68299 and 68302 which were both issued on that date. Regarding LR No. 21104 (IR 75381), he stated that its file was unavailable and that the corresponding IR register was missing, having been among the documents taken by the Ethics and Anti-Corruption Commission (EACC) in 2015. The missing title, he opined, could have been prepared in December 1997, as the surrounding titles, IR 75379 and IR 75384, were issued in that month.



191. For LR No. 21075 (IR 68667), he confirmed that a reconstructed title existed, issued on 14th March 1996 in favour of Kenplus Limited, later transferred to Bharat Ramji Manji and Young Moon Choi. According to his register, the parcels LR Nos. 21103 and 21104 were also issued IR Nos. 147263 and 147264, respectively, in the name of Goldstein Group Services Limited, while LR No. 21075 was issued IR No. 142801 in the same name. He stated that there are two competing titles.
192. He stated that the issue before the Court was that of competing titles, and the central question was whether the land was available for reallocation and how a second allocation could have been made. He emphasized that once land has been duly allocated and a title issued, it ceases to be available for any subsequent allocation.
193. During cross-examination, DW6 testified that land fraud had become increasingly sophisticated, often involving officers within the registry. He expressed concern about the sanctity of title, stating that it must be safeguarded. Referring to the statement of Gordon Ochieng on the sequence of land allocations, he clarified that IR numbers are assigned at the time of registration. In respect of LR No. 21103, there was no record in his custody. He had, however, obtained IR Register Volume 5, which contained IR 147263, although it did not show the same correspondence file number indicated elsewhere.
194. From his review, DW6 established that IR No. 68300, as cited in the summons, would have been issued on 31st January 1996. For LR No. 21104, the corresponding file number was 192806, and although his records were missing, he could ascertain that the title would not have been issued beyond December 1997. He confirmed that Mr. Ochieng had attributed File Ref. 17489 to LR No. 21103 and 192806 to LR No. 21104. He stated that to confirm whether the titles were issued to the same person, one must examine the actual titles.
195. Upon reviewing the title in the 3rd Defendant's bundle, DW6 noted that LR No. 21103 (IR 68300) was issued to Allotrope Trust Company Limited. He stated that this aligned with his records since IR 68300 precedes IR 147263 numerically. As at 31st January 1996, a memorandum of registration existed for the said title, indicating that at that time there was no double allocation, and the land was therefore not available for reallocation.
196. With respect to LR 21104 Reference Number 192806, he noted that the letter of allotment in the 4th Plaintiff's bundle was dated 24th August 1995. He stated that it corresponded with the file reference number. The stamp duty receipt showed the file reference number as 192806. He further noted that there were instructions for the said land dated 23rd September 1997 to prepare a lease.
197. It was the evidence of DW6 that there was also a signed consent to transfer dated 26th September 1997 by the former Commissioner of Lands, Wilson Gachanja as well as an informal transfer at page 12. He stated that an informal transfer was used by the Directorate of Land Administration when a title had not been issued. It was a transfer to Masai Roses Ltd. He referred to a receipt dated 23rd December 1997.
198. He referred further to a memorandum appearing at page 18 of the same bundle indicating IR 75381 (File Ref. 192806) in favour of Masai Roses Ltd, accompanied by a certificate of stamp duty bearing the same file number. He also identified a memorandum of transfer and a title registered on 31st December 1997 for the said IR number. He confirmed that these documents fell within the expected numerical sequence.
199. DW6 acknowledged that missing files are abnormal but stated that the Ministry may reconstruct such records where necessary. He confirmed that IR 75381 precedes IR 147264, issued in 2013, and that the two titles were held by different proprietors.



200. He referred to LR No. 29945 (IR 152312), issued in favour of Goldstein Group Services Limited, and stated that two parcels registered in different names cannot be amalgamated, and that only parcels under common ownership may be amalgamated. Referring to IR Nos. 142801, 147263, and 147264, he testified that these titles could not have been validly issued, as the land was no longer available for allocation. Consequently, the amalgamation purportedly done in December 2013 was irregular, as the parcels had already been alienated.
201. He explained that while IR numbers are sequential, letters of allotment are not. He observed that IR 147263 and 147264 must have been issued on the same day, as they follow each other numerically. He stated that Registrar Mr. Ngetich was responsible for registering IR Nos. 142801, 147263, 147264, and the amalgamated title IR 152312, which was later charged to Jamii Bora Bank.
202. When comparing the letters of allotment for LR No. 21104 issued to the 4th Plaintiff and the 1st Defendant, DW6 observed discrepancies in the stand premium, the 1st Defendant's letter reflected Kshs. 48,000 and Kshs. 250,000, whereas the 4th Plaintiff's reflected Kshs. 86,550 and Kshs. 283,617, noting that the same property cannot attract different premiums.
203. On the issue of amalgamation, DW6 testified that no surrender of title can occur without the Registrar's consent, and once surrendered, the original title remains with the Registry. He emphasized that one cannot surrender property that one does not own.
204. Referring to a letter dated 24th April 2002 to the Commissioner of Lands seeking a change of name for LR No. 21104, he stated that this was not the proper procedure, as such a transaction requires a duly signed informal transfer and approval by the Commissioner. The referenced letter, he said, lacked proof of payment of requisite fees.
205. He affirmed the principle that the first in time prevails, unless the earlier title is recalled or surrendered. He further explained that indemnity is an endorsement confirming reconstruction of a missing register. Before issuing one, the Registrar must be satisfied that the file is indeed missing, the original title presented, and a public gazette notice issued.
206. He noted that the indemnity had been endorsed on the reconstructed title for LR No. 21075 (IR 68667). He added that the Registrar retains powers to exclude any second or subsequent registration found to be irregular.
207. DW6 confirmed that while it is possible to register an amalgamation, discharge, and charge simultaneously, the conditions in the title, such as rent payable, must be adjusted after amalgamation. He stated that a new lease must first be issued by the Land Administration Department to accompany the amalgamated titles. He observed that in the case of LR No. 21075, there was no discharge of charge or registered closure of the title, which was an irregularity.
208. It was his evidence that although the Defendants' documents showed surrenders for LR Nos. 21103 and 21075, LR No. 21104 was irregularly omitted.
209. He stated that surrender documents originate from the Land Administration Department. He referred to a letter from the National Land Commission (NLC) in the 3rd Defendant's bundle granting provisional approval for amalgamation, which he noted was addressed to the Director of Surveys instead of the applicant, an irregularity, since such communication should be directed to the client.
210. He added that the 1st Defendant's title was purportedly issued on 5th August 2013, signed by the Commissioner of Lands, but bore the date 10th June 1913, observing that the said Commissioner was not in office at that time. He concluded that the title was not authentic.



211. He noted that though the letter of allotment for LR No. 21104 in the 4th Plaintiff's bundle bore an uncountersigned alteration, the original copy showed no such change, and that the letter of allotment properly referenced LR No. 21104 Nairobi. Referring to a letter from Ashantee Co. Ltd dated 8th July 1997 to the Commissioner of Lands, he noted that while it was stamped as received by the Records Section, the apparent typographical error "reconds" would not ordinarily occur in official land records.
212. He testified that the sum of Kshs. 316,937 was paid via banker's cheque No. PB/N 31385, but the receipt reflected cheque number 31386, indicating an inconsistency. Referring to a letter by the Commissioner of Lands appearing at page 5 of the bundle, DW6 noted that it referenced LR No. 21704, which is different from LR No. 21103, and cited a letter of allotment Ref. 26199/IV of 8th July 1996. He also questioned why the letter was copied to the Municipal Treasurer, Nakuru.
213. He referred to another letter at page 6, which lacked the official stamp of the Lands Office, although it bore handwritten notes and the signature of Gachanja. It also cited a cheque No. 0163599125210 dated 23rd December 1997 and a receipt of 23/22/1997 referencing cheque number 192806. He averred that there were inconsistencies in the 4th Defendant's documents.
214. He stated that once a title is surrendered, it is left with the Registrar of Lands and it cannot be taken back. He reiterated that the records are missing other than the reconstructed LR 21075. He averred that he is usually not involved in the amalgamation process, but they get the documents from other offices.

Submissions

215. Counsel for the 1st and 2nd Plaintiffs' counsel submitted that they are bona fide purchasers for value without notice and hold a valid, indefeasible title. Reliance was placed on Lawrence P. Mukiri Mungai, Attorney of Francis Muroki Mwaura vs Attorney General & 4 others [2017] eKLR, citing Katende vs Haridar & Co. Ltd [2008] 2 EA 173.
216. It was urged that the initial allocation to Kenplus Limited was lawful, the transfer to the Plaintiffs regular, and their possession continuous, and that no evidence of fraud or bad faith attaches to them. Section 26(1) of the *Land Registration Act* was invoked.
217. Counsel submitted that the dispute arises from a fraudulent scheme, implicating multiple actors including the 3rd Defendant, through which the 1st Defendant was irregularly allocated LR No. 21075 despite prior registration in the Plaintiffs' names.
218. The Plaintiffs, it was submitted, produced and relied upon the original Certificate of Title for LR No. 21075 as conclusive evidence of ownership. In contrast, the 1st Defendant, Counsel observed, produced only a copy of a title, whose authenticity was questionable. Counsel urged that no valid title can emanate from an illegality and that no rights can be founded upon a nullity. Reliance was placed on Mas Construction Limited vs Sheikh & 6 others [2025] eKLR.
219. It was submitted that the law is settled that allegations of fraud must be proved to a standard that approaches, though not necessarily equals, proof beyond reasonable doubt. Counsel contended that the 1st Defendant's purported title fails this test. He identified several instances of forgery: first, that the alleged title for LR No. 21075 bears the signature of one Zablon Agwata Mabea and is curiously dated 1913; and second, that the letter of allotment was issued directly to two individuals, Robert Manono Ayonga and Finaley Akunga Angwenyi, rather than to Goldstein Group Services Limited, the 1st Defendant company. Reliance was placed on Phillip Brainfield Otieno vs Jacob Ochieng Otieno & another [2020] eKLR and Dina Management Limited vs 6 others [2021] KECA 503 (KLR).



220. It was further submitted that if allotment was issued to individuals, a transfer to the company required a conveyance, and none was produced. Counsel stated that the letter to the Commissioner of Lands dated 24th April 2007 could not substitute for an instrument of transfer. Also, it was submitted, no proof of stand premium, rent, rates, or other sums necessary to ripen an allotment into registrable title was shown, contrary to *Torino Enterprises Limited vs Attorney General* [2023] KESC 79 (KLR).
221. On the totality of the evidence, Counsel urged that the 1st Defendant failed to establish a lawful root of title, and that its purported ownership is tainted by fraud. It was submitted that the title should be nullified. Reference was made to *Nanteya vs Sayagie & another* [2022] KEELC 14991 (KLR).
222. Counsel also invoked the principle of *nemo dat quod non habet*, submitting that the 1st Defendant, having acquired no valid title, could not convey any lawful interest capable of forming a basis for a charge over the property.
223. It was further argued that although the charge over the property was indicated as registered on 23rd December 2013, the corresponding stamp duty was only paid on 13th January 2014, contrary to Section 17 of the *Stamp Duty Act*, which prohibits registration of any instrument prior to payment of the requisite duty.
224. Regarding amalgamation and issuance of LR No. 29945, Counsel submitted that the 3rd Defendant's actions fell short of the requirements of Section 22 of the *Land Registration Act*, which prescribes the conditions for lawful combination of adjacent parcels. It was argued that several irregularities and inconsistencies emerged in the process, thereby rendering the amalgamation void.
225. It was submitted that prior to initiating the amalgamation, the 3rd Defendant failed to conduct due diligence by way of an official search or site verification to confirm that the 1st Defendant was indeed the lawful proprietor of the parcels proposed for amalgamation. Counsel further argued that the 3rd Defendant failed to ensure compliance with the Physical Planning Act, including the mandatory requirements for advertisement of the intended change of user and erection of a site notice to inform the public.
226. Counsel added that during the hearing, Mr. Dominic Mutegi denied signing the Form PPA2. Further, the letter dated 17th September 2013 from the Survey of Kenya addressed to Mr. Stephen O. Ambani, a licensed surveyor, was curiously signed and collected not by an official of the Survey of Kenya, but by the said B.L. Limo, a land officer in the Ministry of Lands. Counsel submitted that this further underscores the irregularity and fraudulent nature of the amalgamation process.
227. Counsel for the 3rd and 4th Plaintiffs submitted that both their clients and the 1st Defendant lay claim to the suit properties, each asserting that their interests originate from allotments made by the Government of Kenya. Reliance was placed on the Court of Appeal decision in *Presbyterian Foundation vs Kibera Siranga Self Help Group Nursery School* [2023] KECA 371 (KLR), which addressed the legal implications of the existence of parallel titles over the same parcel of land.
228. It was submitted, citing *Dina Management Limited vs County Government of Mombasa & 5 others* [2021] KECA 503 (KLR), that where the root of title is challenged, the proprietor must go beyond the mere production of a title deed to demonstrate a lawful acquisition process.
229. Counsel argued that the 3rd and 4th Plaintiffs had tendered evidence establishing a complete and traceable chain of ownership, including original letters of allotment, receipts of payment, correspondence with the Department of Lands, instructions for lease preparation, evidence of stamp duty payment, and ultimately, the issued grants. Reference was made to Section 2 and Section 23(1) of



- the Government Lands Act, which empower the Commissioner of Lands, on behalf of the President, to grant leases over unalienated government land upon satisfaction of statutory conditions.
230. It was counsel's submissions that the 3rd Plaintiff's allotment for LR No. 21103 dated 24th August 1995 was accepted and perfected to issue of a grant and the 4th Plaintiff similarly proved the root for LR No. 21104. It was contended that the Chief Land Registrar corroborated these titles and Mr. Mutegei, in his testimony, termed the 1st Defendant's PPA2 a forgery.
231. It was further submitted that no original title documents or official files were produced by the 1st Defendant to establish a lawful root of title. In contrast, the 3rd and 4th Plaintiffs produced the yellow copies of their respective letters of allotment, confirming that LR Nos. 21103 and 21104 were lawfully allocated to them. Reliance was placed on *Mbithi vs Mureithi & 2 others; Nairobi City County (Interested Party) [2023] KEELC 20489 (KLR)*.
232. Counsel emphasized that the 1st Defendant conspicuously failed to produce any correspondence files, deed files, or letters of allotment relating to the parcels it purports to own, suggesting that such documents do not exist because its title is fictitious.
233. It was submitted that although the 1st Defendant claimed that letters of allotment for LR Nos. 21075, 21103, and 21104 were initially issued to individuals in 1995 and later transferred to it, no evidence of any formal or informal transfer, payment of stamp duty, or registered conveyance was tendered. Counsel questioned why, if the 1st Defendant was a genuine allottee, it waited eighteen years, from 1995 to 2013, to process the titles.
234. It was submitted that by the time the 1st Defendant procured titles in 2013, the properties had long been registered in the names of the 3rd and 4th Plaintiffs. These titles, Counsel argued, were lawfully issued and therefore first in time.
235. Counsel submitted that where two titles exist over the same parcel of land, the title that is first in time and has not been lawfully cancelled takes precedence. Reliance was placed on *Gitwany Investment Limited vs Tajmal Limited & 3 others [2006] KEHC 2519 (KLR)*, *Wreck Motor Enterprises vs Commissioner of Lands & 3 others [1997] KECA 391 (KLR)*, *Mas Construction Limited vs Sheikh & 6 others [2025] KECA 349 (KLR)* and *Hubert L. Martin & 2 others vs Margaret J. Kamar & 5 others [2016] KEELC 1092 (KLR)*.
236. It was submitted that the 3rd and 4th Plaintiffs' titles were the first in time, having been registered on 30th January 1996 and 24th December 1997 respectively, while the 1st Defendant's titles were only issued in 2013. There was, moreover, no evidence of cancellation or surrender of the Plaintiffs' titles prior to the issuance of those to the 1st Defendant.
237. It was further submitted that the purported amalgamation was illegal and procedurally defective. Under Section 23 of the *Land Registration Act*, amalgamation may only occur where contiguous parcels are owned by the same proprietor and with the consent of all parties concerned.
238. It was contended that there was no evidence of surrender of the original titles or consent of the rightful owners, and that Deed Plan No. 357897 was fabricated without the approval of the Director of Survey. Counsel submitted that even the Chief Land Registrar confirmed that amalgamation of land under separate ownership is unlawful. Reliance was placed on *Sammy Magera vs Kuria Kiarie & 2 others [2017] KEELC 2189 (KLR)* and *Kamunge & another vs Registered Trustees Africa Gospel Church & another; National Land Commission (Interested Party) (2022) KEELC 4753 (KLR)* on amalgamation.



239. Despite these irregularities, it was submitted, the 3rd Defendant proceeded to issue a certificate of title for the amalgamated parcel LR No. 29945 in favour of the 1st Defendant, relying on forged planning documents.
240. It was contended that the 2nd Defendant's failure to conduct due diligence disentitles it from the protection accorded to an innocent chargee for value without notice. The charge over LR No. 29945, Counsel submitted, is void as it is anchored upon a non-existent title. Reliance was placed on *Siringi vs Makori & 5 others* [2023] KEELC 595 (KLR) and *Teleposta Pension Scheme Registered Trustees vs Intercountries Exporters Limited & 5 others* [2024] KECA 870 (KLR).
241. Counsel submitted that the 3rd and 4th Plaintiffs are entitled to damages for fraud, asserting that the 3rd Defendant, as the custodian of land records, bears a statutory duty under Section 12 of the [Land Registration Act](#) and Sections 8 and 9 of the [Public Officer Ethics Act](#) to maintain accurate records and uphold integrity. It was submitted that the 3rd Defendant breached these duties by allowing his office to be used as a conduit for fraud.
242. Counsel submitted that the damages for fraud be assessed at Kshs. 30 million each being the amount of money for the harm suffered and expended by the 3rd and 4th Plaintiffs in countering the fraud.
243. Counsel for the 1st Defendant submitted that the burden of proof lies on the Plaintiffs to prove the averments in their pleadings and that parties are bound by their pleadings. Reliance was placed on *Bullen and Leake and Jacob's Precedents of Pleadings*, 12th ed., Sweet & Maxwell (Common Law Library No. 5).
244. It was argued that evidence which does not support the pleaded case must be rejected. Counsel cited the Court of Appeal decision in *Independent Electoral and Boundaries Commission & another vs Stephen Mutinda Mule & 3 others* [2014] eKLR, which in turn cited the Supreme Court of Nigeria in *Adetoun Oladeji (Nig) vs Nigeria Breweries Plc* SC 91/2002.
245. Counsel contended that any evidence tendered by the Chief Land Registrar inconsistent with his pleadings should be disregarded. Section 107 of the [Evidence Act](#) was invoked.
246. It was submitted that the Plaintiffs failed to discharge both the legal and evidentiary burdens of proof and that the documentary exhibits and oral testimony did not sustain their claims. Particular emphasis was placed on PW1's admission that stand premium was not paid within thirty days, notwithstanding the explicit condition in the allotment letter of 25th July 1995 that the offer would lapse absent acceptance and payment within that period.
247. Counsel further submitted that no evidence of acceptance of the offer to Kenplus Limited was produced, and that if a title was processed in Kenplus Limited's name, it was irregular and illegal. Reliance was placed on *Mbau Saw Mills Ltd vs Attorney General (for and on behalf of the Commissioner of Lands) & 2 others* [2014] eKLR.
248. It was submitted by the 1st Plaintiff that additional evidence of fraud appear on the Certificate of Title in Kenplus Limited's name found in the Plaintiffs' bundle: two entries described as deeds of indemnity were unsigned and bore no entry numbers. Counsel submitted that every register entry must carry an entry number and the Registrar's signature.
249. The alleged transfer of lease from Kenplus Limited to the 1st and 2nd Plaintiffs was also impugned as irregular: the transfer is dated 20th September 2010, yet the declared value of Kshs. 20 million is stated to have been accepted three days earlier, on 17th September 2010; there was no evidence of consideration paid to Kenplus Limited; and the transfer form appears to have been approved for value before it



- was prepared, whereas the usual practice is preparation first, followed by presentation for stamp duty valuation.
250. It was also submitted that the Land Registrar, Frank Lubullelah, alleged to have signed IR No. 68667 for LR No. 21075, disowned the signature as a forgery in a statement recorded at the Directorate of Criminal investigations.
 251. Counsel added that the 3rd Plaintiff neither accepted the offer nor paid the stand premium within thirty days; that the alleged payment was forwarded on 28th July 1995, outside the stipulated period and that consequently, there was no subsisting offer capable of valid acceptance or payment.
 252. Counsel highlighted irregularities in the letter of allotment to Ashantee Co. Ltd with respect to LR No. 21104 dated 24th August 1995: that the LR Number differs from the 1st Defendant's property and was altered without countersignature and that the forwarding letter dated 8th July 1997 indicates it was for LR 21081 but was altered and replaced with LR 21104 without countersignature.
 253. Further, it was submitted, the alleged forwarding letter dated 8th July 1997 was purporting to forward a post-dated cheque No. 31385 dated 11th July 1997 yet a banker's cheque cannot be post-dated; the stamp on the letter dated 8th July 1997 is fake with the words 'reconds' as testified by Gordon Ochieng; and the alleged receipt dated 29th July 1997 refers to Cheque No. 31386 whereas the alleged forwarding letter refers to Cheque No. 31385.
 254. Reliance was placed on Joseph Kamau Muhoro vs Attorney General & Another (2021) eKLR and Bubaki Investment Company Ltd vs National Land Commission & 2 others (2015) eKLR, Gathundu (As Administrator of the Estate of the Late Thumbi Kariuk) & 3 others vs Registrar & 7 others (Consolidated) [2024] KECA 668 (KLR).
 255. It was Counsel's submission that none of the Plaintiffs satisfied the prerequisites for issuance of a grant, and they therefore acquired no title. Reliance was placed on Dina Management Ltd vs County Government of Mombasa & 5 others [2023] KESC 30 (KLR) and Ahmed Mohammed Noor v Abdi Aziz Osman [2019] eKLR.
 256. Counsel argued that the equitable doctrine that the "first in time prevails" is inapplicable, as it protects only a genuine title, which the Plaintiffs lacked ab initio. Reliance was placed on Gitwany Investment Limited vs Tajmal Limited & 3 others [2006] eKLR.
 257. It was submitted that the 1st Defendant is the proprietor of LR No. 29945, the amalgam of LR Nos. 21075, 21103 and 21104, the three parcels having been allotted to Robert Manano Anyona and Finlay Agunga Angwenyi, with stand premiums paid within time and that the allotments were registered and grants issued in accordance with Nelson Kazungu Chai & 9 others vs Pwani University [2014] eKLR.
 258. Counsel added that records at the Directorate of Survey corroborate the 1st Defendant's ownership: the inset to Cadastral Plan No. 540/150 indicates Goldstein Group Services Ltd as proprietor; that further corroboration arise from the 2nd Defendant's official search, which showed the 1st Defendant as owner, and that the 1st Defendant is in occupation, whereas none of the Plaintiffs or their directors testified to being in possession.
 259. Counsel maintained that the amalgamation of LR Nos. 21075, 21103 and 21104 into LR No. 29945 and the registration of the 1st Defendant as owner were procedural and lawful, citing Section 22(1) of the [Land Registration Act](#), 2012.



260. It was argued that prior to amalgamation, the 1st Defendant owned the three adjacent properties as evidence by the Certificates of Title in the 1st Defendant's bundle of documents and the Deed Plan no. 198094 dated 1st September 1995.
261. On reliefs, Counsel submitted that the Court is confined to the prayers sought and urged that the suit be dismissed, citing *David Sironga Ole Tukai vs Francis arap Muge & 2 others* [2014] eKLR.
262. Counsel for the 2nd Defendant submitted that, on the evidence, the 2nd Defendant held a valid title as security. Section 26 of the *Land Registration Act* was cited for the proposition that a certificate of title is prima facie conclusive evidence of proprietorship. Reliance was also placed on *Elizabeth Wambui Githinji & 29 others vs Kenya Urban Roads Authority & 4 others* [2019] KECA 706 (KLR); *Munyu Maina vs Hiram Gathira Maina* [2013] eKLR; and *Peter Kagunyu Kiragu vs Anne H.G. Muchunke* [2021] eKLR.
263. It was argued that the Plaintiffs presented no recognized official records of the history of their supposed titles; that the 3rd Defendant had no record of their allotments while recognizing the 1st Defendant's and that the title held as security therefore remains valid unless and until the contrary is proved.
264. Counsel relied on the case of *Josephat Muthui Mwangi vs Chief Land Registrar & 2 others* [2015] eKLR for the principle that two original titles cannot subsist concurrently over the same land. The Plaintiffs' titles were said not to be original. The Court was urged to protect the 2nd Defendant's interest pursuant to Article 40(1) of *the Constitution*.
265. It was further submitted that the 2nd Defendant complied with its due-diligence obligations prior to registering the charge: an official search at the Lands Registry disclosed no adverse entries or encumbrances beyond the 1st Defendant's proprietorship.
266. Counsel added that the *Land Registration Act* obliges a chargee to undertake reasonable due diligence, which the 2nd Defendant satisfied by formal searches and reliance on official records and that a post-registration search similarly revealed no contrary entries. At all times, it was submitted, the 2nd Defendant acted in good faith on the basis of the law and official documentation.
267. As to stamp duty assessed after registration, Counsel submitted that such assessment does not invalidate the charge. The Chief Land Registrar testified that post-registration assessment does not affect validity and that the assessment in question concerned an exemption.
268. It was further submitted that replacement charges are exempt from stamp duty under Clause 1(b) of Legal Notice No. 461 of 1958 (Stamp Duty Ordinance), which exempts a replacement charge over the same land between the same parties for the same amount.
269. The 3rd Defendant did not file submissions.

Analysis and Determination

270. Upon consideration of the pleadings, evidence and submissions on record, the following issues arise for determination:
- a. Whether 1st and 2nd Plaintiffs or the 1st Defendant have established a lawful root of title to LR No. 21075;
 - b. Whether the 3rd Plaintiff or the 1st Defendant have established a lawful root of title to LR No 21103;



- c. Whether the 4th Plaintiff or the 1st Defendant have established a lawful root of title to LR No. 21104;
 - d. Whether the 1st Defendant lawfully amalgamated the three properties;
 - e. Whether the charge registered in favour of the 2nd Defendant over LR No. 29945 was valid and enforceable;
 - f. What remedies ought to issue
271. This suit concerns competing claims in respect of LR No. 21075, LR No. 21103 and LR No. 21104. The 1st and 2nd Plaintiffs assert ownership of LR No. 21075 (I.R. No. 68667), which they claim to have purchased from Kenplus Ltd for Kshs. 20 million. The 3rd Plaintiff claims LR No. 21103 (IR No. 68300), pursuant to a letter of allotment dated 24th August 1995, which it avers it perfected and was issued a grant and certificate of title.
272. The 4th Plaintiff claims LR No. 21104 (IR No. 75381), contending that, following an informal transfer from the original allottee, Ashantee Investments, the property was registered in its name.
273. The 1st Defendant's case is that it was directly allotted all three parcels by the Government of Kenya in 1995 and grants were issued in its favour, i.e. L.R No. 21075 (Grant I.R. No. 142801) L.R. No. 21103 (Grant I.R. No. 147263) and L.R. No. 21104 (Grant I.R. No. 147264). It contends that it lawfully charged LR No. 21075 to the 2nd Defendant, and that the three parcels being adjacent to each other, it obtained the requisite consents and amalgamated them into LR No. 29945 (Grant No. 152312), which was in turn charged as a replacement of the initial charge over LR No. 21075.
274. The 2nd Defendant contends that, acting in good faith and for value, it acquired its interest as chargee over LR No. 21075 and, upon amalgamation, over LR No. 29945, without actual or constructive notice of any fraud; that it relied on the register maintained by the 3rd Defendant in perfecting its security; and that, in any event, the charge has since been fully redeemed.
275. Although the 3rd Defendant initially contested the validity of the Plaintiffs' claim and aligned his position with that of the 1st Defendant, the evidence tendered through his witnesses revealed a different picture. The testimony and documentary evidence presented by the 3rd Defendant was to the effect that the titles held by the Plaintiffs bore the hallmarks of authenticity, whereas those relied upon by the 1st Defendant were devoid of the requisite administrative trail ordinarily attendant to genuine titles issued by the Land Registry.
276. The law is settled that once the legality of a title is challenged, the proprietor must go beyond the certificate of title and demonstrate the root of title. The Supreme Court in its seminal decision in *Dina Management Limited vs County Government of Mombasa & 5 others* [2021] KECA 503 (KLR) stated as follows:

“As held by the Court of Appeal in *Munyu Maina v Hiram Gathiha Maina* Civil Appeal No 239 of 2009 [2013] eKLR, where the registered proprietor's root title is under challenge, it is not enough to dangle the instrument of title as proof of ownership. It is the instrument that is in challenge and therefore the registered proprietor must go beyond the instrument and prove the legality of the title and show that the acquisition was legal, formal and free from any encumbrance including interests which would not be noted in the register.



It is not enough for a party to state that they have a lease or title to the property.... Indeed, the title or lease is an end product of a process. If the process that was followed prior to issuance of the title did not comply with the law, then such a title cannot be held as indefeasible.”

277. The Court of Appeal in *Presbyterian Foundation vs Kibera Siranga Self Help Group Nursery School* [2023] KECA 371 (KLR) restated that a party must show good root of title and went further to detail what this would entail:

“The best evidence of ownership of immovable property is the title deed to it and that is why the question of the root of title is important. Root of title is the deed to which title to a property is ultimately traced to prove that the owner has good title. Accordingly, when there are competing interests as in this case, the parties are required to give evidence of title starting with a “good root of title.” A good root of title and an unbroken chain of ownership is required. To be a good root of title, a document must satisfy each of the following requirements:

- (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.”

278. Based on these authorities, a duty lay upon each party to present evidence to satisfy this court as to the root of their title. Equally, each party bore the statutory burden of proof 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.”

279. The process of alienation of public land under the repealed Government Lands Act was restated by this court in *Nelson Kazungu Chai & 9 others vs Pwani University* [2014] KEELC 109 (KLR) as follows:

“130. It is trite law that under the repealed Government Lands Act, a Part Development Plan must be drawn and approved by the Commissioner of Lands or the Minister for lands before any unalienated Government land could be allocated. After a Part Development Plan (PDP) has been drawn, a letter of allotment based on the approved PDP is then issued to the allottees.

131. It is only after the issuance of the letter of allotment, and the compliance of the terms therein, that a cadastral survey can be conducted for the purpose of issuance of a certificate of lease.”

280. Similarly, in *African Line Transport Co Ltd vs The Hon AG Mombasa HCCC No 276 of 2013* it was stated:

“Secondly, all the defence witnesses were unanimous that in the normal course of events, planning comes first, then surveying follows. A letter of allotment is invariably accompanied by a PDP with a definite number. These are then taken to the department of survey, who



undertake the surveying. Once the surveying is complete, it is then referred to the Director of Surveys for authentication and approval. Thereafter, a land reference number is issued in respect of the plot.”

281. In the present case, the suit property was already surveyed, and as such, the requirement for a Part Development Plan (PDP), which ordinarily applies to un surveyed land, did not arise. Each party was nonetheless required to demonstrate its interest in the property through the proper chain of title, beginning with a valid letter of allotment, and culminating in the issuance of a certificate of lease.
282. As to fraud, it must be specifically pleaded and strictly proved to a standard higher than on a balance of probabilities, although not beyond reasonable doubt. The Court of Appeal in *Arthi Highway Developers Limited vs West End Butchery Limited & 6 Others* [2015] eKLR ably stated that:

“It is common ground that fraud is a serious accusation which procedurally has to be pleaded and proved to a standard above a balance of probabilities but not beyond reasonable doubt. One of the authorities produced before us has this passage from *Bullen & Leake & Jacobs, Precedent of Pleadings* 13th Edition at page 427:

“Where fraud is intended to be charged, there must be a clear and distinct allegation of fraud upon the pleadings, and though it is not necessary that the word fraud should be used, the facts must be so stated as to show distinctly that fraud is charged (*Wallingford v Mutual Society* (1880) 5 App Cas 685 at 697, 701, 709, *Garden Neptune V Occident* [1989] 1 Lloyd’s Rep. 305, 308).”

The statement of claim must contain precise and full allegations of facts and circumstances leading to the reasonable inference that the fraud was the cause of the loss complained of (see *Lawrence V Lord Norreys* (1880) 15 App Cas 210 at 221). It is not allowable to leave fraud to be inferred from the facts pleaded and accordingly, fraudulent conduct must be distinctly alleged and as distinctly proved (*Davy V Garrett* (1878) 7 chD 473 at 489). “General allegations, however strong may be the words in which they are stated, are insufficient to amount to an averment of fraud of which any court ought to take notice”. See *Insurance Company of East Africa v The Attorney General & 3 others* HCCC 135/1998.

Whether there was fraud is, however, a matter of evidence.”

283. This court is guided accordingly.

Whether 1st and 2nd Plaintiffs or the 1st Defendant have established a lawful root of title to LR No. 21075

284. This Court has carefully considered the rival claims in respect of LR No. 21075. The central issue for determination is which of the parties has, on a balance of probabilities, established a lawful root of title to the suit property.
285. The 1st Defendant produced a copy of an allotment letter dated 14th January 1995 issued to Robert Manano Ayonga and Finlay Akunga Angweny, together with receipt No. D560898 dated 17th January 1995 for Kshs. 628,950 being payment of the stand premium and other charges indicated in the said allotment letter.
286. The 1st and 2nd Plaintiffs, on their part, contend that they purchased the suit property from Kenplus Limited, which had earlier been issued with a letter of allotment dated 25th July 1995, and subsequently



paid the requisite allotment fees on 22nd February 1996, as evidenced by Receipt No. D287908 for Kshs. 1,293,740/= against the stipulated allotment charges of Kshs. 1,101,740/=.

287. On the face of the record, therefore, the 1st Defendant's letter of allotment appears to have been issued earlier in time than that of the Plaintiff's predecessor, Kenplus Limited. However, the mere chronological priority of allotment does not, in itself, confer a superior title unless it is demonstrated that the earlier allotment was validly accepted, complied with in accordance with its terms, and had not lapsed at the time the subsequent allotment was made.
288. The Court of Appeal in *Waterfront Holdings Limited vs Kandie & 2 Others* [2023] KECA 1223 (KLR) restated the principle that where allotments are made to two competing parties, the party that fulfils the conditions of the offer first in time prevails:

“Where an allotment is made to two competing parties one of whom pays for the allotment before the other one, this Court in *Kenya Ihenya Company Limited & another v Njeri Kiribi* (supra) held that;

“... 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.”

The position reflects the equitable maxim that where there are equal equities, the first in time prevails.”

289. The letter of allotment first issued to Mr. Ayonga and Mr. Angweny is said to have culminated in the issuance of title L.R. No. 21075 in the name of Goldstein Group Services Limited on 27th June 2012. It was asserted that this company was incorporated on 17th April 2007, with the said allottees as its directors. Following incorporation, they wrote to the Commissioner of Lands requesting that the suit property be registered in the company's name, thereby transferring the interest initially allotted to them to the corporate entity.
290. However, DW3, the Director of Land Administration, testified that for such a transfer to be recognized as valid, a document of informal transfer or instrument of assignment evidencing the transfer of the allotment from the individual allottee to the company was required. No such document was presented to the Court.
291. In its absence, the process by which the property came to be registered in the name of Goldstein Group Services Limited remains procedurally deficient and legally incomplete, casting doubt on the validity of the resultant title.
292. Indeed, the Supreme Court in *Torino Enterprises Limited vs Attorney General* [2023] KESC 79 (KLR) was emphatic that a letter of allotment that has not been perfected is incapable of conferring proprietary rights or passing title to a third party. The Court held:

“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... 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.

...

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.”

293. This court, in *Kenya Anti-Corruption Commission vs Willesden Investments Limited & 6 others; City Council of Nairobi (Interested Party)* [2025] KEELC 279 (KLR) discussed the historical context of informal transfers of letters of allotment, as examined in the Report of the Commission of Inquiry into Illegal/Irregular Allocation of Public Land (The Ndung’u Land Report). The report observed that:

“Until June 2003, notwithstanding the absolute prohibition of sales of undeveloped land, there was a vibrant land market in such lands. The selling and buying of undeveloped leaseholds took place pursuant to consents illegally given by the Commissioner of Lands. The sales were often actualized through the informal transfers of Letters of Allotment. (This practice could be in fact criminal).”

294. In that decision, this Court distinguished between the sale of unperfected allocations, which is unlawful, and instances where an allottee may request the Commissioner of Lands to register the land in another person’s name, which may be regularized if the Commissioner accedes to the request. The Court observed as follows:

“There is no evidence in this case to show that the allottee sold the land that it had been allocated. Indeed, the 1st Defendant has not claimed that it bought the land from the allottee. According to the letter dated 7th August, 1995, the allottee requested the Commissioner of Lands to transfer the allotment to the 1st Defendant, and issue it with a title.

In my view, on the basis of that request, and the letter of allotment having been perfected by the payment of Kshs. 4, 047,690, to the Commissioner of Lands, the Commissioner of Lands had the option of declining to accede to the request, whereby the land would be available for allocation to someone else, or acceding to it by accepting the payments and issuing a title as requested by the allottee.

The Commissioner of Lands having acceded to the request by the allottee, I do not find any illegality on the part of the Commissioner of Lands in the processing of the title in the name of the 1st Defendant, save for the fact that the title was erroneously issued in respect of a road, and not the land that was actually allocated to the initial allottee, Center Park Limited.”

295. Guided by the foregoing authorities, this Court notes that Mr. Ayonga and Mr. Akunga, were allotted LR No. 21075 in 1995 and promptly paid the requisite premiums. The 1st Defendant, Goldstein Group Ltd, was incorporated much later on 17th April 2007, and it is contended that the said allottees, being its directors, requested the Commissioner of Lands to have the property registered in the company’s name, with the title being issued on 27th June 2012.



296. While such a request, if properly made, would not of itself constitute an illegality, the evidence before this Court discloses no contemporaneous correspondence, or an informal transfer specifically relating to LR No. 21075.
297. The letters produced by the 1st Defendant requesting registration in its name refer only to L.R. Nos. 21103 and 21104. Moreover, the Chief Land Registrar testified that the correspondence file for L.R. No. 21075 could not be traced and that, by 2012, when the title was issued, the land was no longer available for allocation, having already been allocated to the Kenplus Ltd and later transferred to the 1st and 2nd Plaintiffs.
298. Furthermore, if indeed the 1st Defendant's allotment was first in time and the requisite payments were duly made in 1995, the question that naturally arises is why it took seventeen (17) years before the title was ultimately issued in 2012. I say so because unlike allotments in respect of un surveyed land, the disputed land herein had already been surveyed and Deed Plan No. 198094 prepared on 1st September 1995.
299. The 1st Defendant did not place before this Court evidence of any follow-up correspondence with the Ministry of Lands explaining or justifying the inordinate delay in processing the title.
300. Turning now to the claim by the 1st and 2nd Plaintiffs, the evidence adduced shows that their receipt for allotment fees bears Reference No. 178037. This number, as confirmed by DW3, the Director of Land Administration, corresponds with the entry in the File Opening Card at the File Records Registry, indicating that LR No. 21075 was allocated a correspondence File No. 178037.
301. Although this alignment lends credence to the Plaintiffs' assertion of allocation, DW3 clarified that the said correspondence file could not be traced at the Ministry of Lands, leaving the Court with no documentary record of the allotment process itself. However, DW 3 produced in evidence the file cards showing the reference numbers in respect to the three parcels of land.
302. The 1st and 2nd Plaintiffs' claim received further corroboration from DW6, the Chief Land Registrar, who testified that according to the registry records, a title was issued on 14th March 1996 in favour of Kenplus Limited. It was the Plaintiffs' case that Kenplus Limited subsequently transferred the property to them upon payment of the purchase price. This testimony, although supportive, must be weighed alongside the 1st and 2nd Plaintiffs' own obligation to demonstrate compliance with the terms of the original allotment.
303. It is not in dispute that the Plaintiffs, through their predecessor, Kenplus Limited, paid the stand premium on 22nd February 1996, approximately two hundred and twelve (212) days after the date of the letter of allotment issued on 25th July 1995.
304. The payment receipt on record reflects a sum of Kshs. 1,293,740/=, being in excess of the allotment fees of Kshs. 1,101,740/= prescribed in the letter of allotment. Although made outside the thirty-day period stipulated in the letter of allotment, the payment was received and acknowledged by the Commissioner of Lands, thereby suggesting acceptance of the offer.
305. In *Hassan Hashi Shirwa & another vs Swaleh Mohamed & 7 others* [2014] KEHC 4612 (KLR), this Court held that a letter of allotment does not become invalid merely because payment was made after the expiry of the stipulated thirty (30) days, where the Government has nonetheless accepted such payment.



306. However, where the Government has, upon lapse of the thirty (30) days, allocated the same parcel of land to another person, it would be justified in declining to receive the late payment. In that event, the initial allottee would have no legitimate basis upon which to lay claim to the same parcel.
307. Similarly, in *Kimitei vs Argut* [2025] KEELC 6143 (KLR), the Court observed that the practice by the Commissioner of Lands of accepting payment beyond the period stipulated in a letter of allotment may, in appropriate circumstances, be construed as an implied extension of the time within which acceptance and payment ought to be made.
308. The Court, however, cautioned that where there is inordinate delay in accepting the offer, as in that case where the delay extended over twenty-one (21) years, it would be unreasonable and absurd to hold that the offer remained valid and capable of acceptance by the allottee on the same terms and conditions.
309. In the present case, although the stand premium was paid outside the period stipulated in the letter of allotment, the Commissioner of Lands accepted the payment and thereafter issued Deed Plan No. 198094 and Grant I.R. No. 68667 to Kenplus Limited on 5th March 1996.
310. The acceptance of the late payment, coupled with the subsequent preparation and registration of the title, constitutes an implied extension of time and clear acquiescence on the part of the Commissioner of Lands. This sequence of administrative actions demonstrates that the allotment was treated as subsisting and perfected in accordance with established practice within the Lands Office.
311. In light of the foregoing, the Court finds that the 1st and 2nd Plaintiffs have established a lawful and traceable root of title to L.R. No. 21075. Their ownership is supported by credible documentary evidence emanating from the office of the Commissioner of Lands and corroborated by official records in the Land Registry. Conversely, the 1st Defendant has not demonstrated a credible root of title nor produced documentary evidence linking its claim to any valid process of allocation or registration.
312. In fact, by the time the 1st Defendant was issued with a title in 2012, a title had already been issued to the 1st and 2nd Plaintiffs. Therefore, the Plaintiffs' title, having been issued pursuant to due administrative process and without proof of fraud having been adduced, is presumed valid under Section 26(1) of the *Land Registration Act*, and this courts so holds.

Whether the 3rd Plaintiff or the 1st Defendant have established a lawful root of title to LR No 21103

313. With respect to LR No. 21103, the 1st Defendant produced a letter of allotment dated 14th January 1995 issued to Robert Manano Ayonga and Finlay Akunga Angweny, together with a receipt No. D259238 dated 13th December 1995 for the sum of Kshs. 86,550.
314. It is not in dispute that the payment of the stand premium was made some three hundred and thirty-three (333) days after the date of the offer. The letter of allotment required acceptance and payment within thirty (30) days, failing which the offer would lapse.
315. The evidence on record shows that owing to the 1st Defendant's failure to meet the conditions within the prescribed period, the Commissioner of Lands proceeded to issue a subsequent letter of allotment in respect of the same parcel to the 3rd Plaintiff on 24th August 1995, which the latter promptly accepted and paid for on 28th September 1995, albeit marginally out of time.
316. Consequently, as at 13th December 1995, when the 1st Defendant purported to make payment, L.R. No. 21103 had already been reallocated and was no longer available for alienation. The 1st Defendant's payment, therefore, could not confer any enforceable right or interest in the property.



317. There is then the question of Grant IR No. 147263 which is said to have been issued in the 1st Defendant's favour on 10th June 1913. The Plaintiffs contended that the reference to the year 1913 on Grant I.R. No. 147263 was indicative of forgery. Upon examining the document in its entirety, the Court is satisfied that the reference to 1913 is most likely a typographical error, as the instrument is indicated to have been registered on 5th August 2013.
318. Nevertheless, a further anomaly is evident under Entry No. 2 on the title, which curiously states that LR 21103 was surrendered in consideration of approval of amalgamation with itself, LR No. 21103 and LR 21075, and that the resultant title was registered as I.R. 1523/2, instead of I.R. 152312.
319. These irregularities, though ostensibly clerical, warrant closer scrutiny of the supporting documentation to ascertain the integrity of the process culminating in the issuance of the Grant. However, in the absence of corroborative records from either the Lands Office or the Director of Surveys, the authenticity of the grant remains unverified and doubtful.
320. The evidence adduced does not disclose any administrative or procedural nexus between the earlier allotment of 1995 to the eventual issuance of the said grant in 2013. The 1st Defendant did not demonstrate that the grant emanated from a valid or subsisting letter of allotment, or that the requisite procedural steps, including the opening of a correspondence file, were undertaken. In the absence of such records, the chain of title asserted by the 1st Defendant appears broken and unsupported by lawful documentation.
321. In contrast, the 3rd Plaintiff, Allotrope Trust Company Limited, adduced evidence of a letter of allotment dated 24th August 1995. The 3rd Plaintiff demonstrated acceptance of the offer through a letter dated 28th September 1995 addressed to the Commissioner of Lands, enclosing Banker's Cheque No. NQ/BP 406330 for Kshs. 283,617/= being payment of the stand premium.
322. The record further shows that Receipt No. D385220 was duly issued on 4th October 1995 acknowledging the said payment. The Court is satisfied that the 3rd Plaintiff accepted the offer and fulfilled all the requisite conditions within the stipulated period.
323. In support of its claim to L.R. No. 21103, the 3rd Plaintiff produced comprehensive documentation, including instructions dated 18th January 1996 to prepare a lease in its favour, a Certificate of Stamp Duty dated 30th January 1996 for Kshs. 11,000/=, a copy of Grant I.R. No. 68300, and a Deed Plan No. 198102.
324. Although the 1st Defendant initially challenged the legal existence of the 3rd Plaintiff, the production of a Certificate of Incorporation for Allotrope Trust Company Limited, No. C.52901, and a Certificate of Change of Name from Allotrope Co. Ltd to Allotrope Trust Co. Ltd dated 5th January 1994, conclusively established its legal personality. The authenticity of these documents was not disputed.
325. PW2 drew the Court's attention to certain handwritten insertions on the letter of allotment which were not countersigned. The Court, however, finds that these notations do not impugn the validity or authenticity of the allotment. The further allegation that the receipt lacked cheque particulars is not borne out by the evidence. Upon close examination, the Court noted that Cheque No. 406330 is clearly reflected on the official receipt, and there is no indication of any cancellation or alteration on the forwarding letter dated 28th September 1995. These objections are therefore unsubstantiated and immaterial to the integrity of the 3rd Plaintiff's allotment.



326. DW3, Mr. Gordon Ochieng, Director of Land Administration, confirmed that the notations on the allotment letter reflected its internal circulation for approval within the Lands Office and that both the acceptance letter and proof of payment were on record.
327. He testified that the receipt bore File No. 174894, corresponding with the entry in the File Opening Card at the File Records Registry. The same number appears in the Grant IR No. 68300 issued to the 3rd Plaintiff. Although the physical file could not be traced, the sequential and numerical consistency within the registry supports the 3rd Plaintiff's allocation.
328. DW6, the Chief Land Registrar, corroborated this evidence, noting that while the file for IR No. 68300 was missing, sequential registry numbering indicates that it was prepared on 31st January 1996, between IR Nos. 68299 and 68302. Upon reviewing his documents, he confirmed that LR No. 21103 (IR 68300) was issued to Allotrope Trust Company Limited and that, as at that date, no competing title or double allocation existed.
329. Applying the principle in *Torino Enterprises Limited vs Attorney General* [2023] KESC 79 (KLR), a valid title can only issue upon the perfection of an allotment and registration in accordance with law. The evidence before this Court demonstrates that the 3rd Plaintiff duly perfected its allotment and was subsequently issued with a title on 31st January 1996, while the 1st Defendant's payment, made nearly a year after the offer, was incapable of sustaining a valid claim.
330. In view of the foregoing, the Court finds that while the 1st Defendant has produced documents purporting to establish title to L.R. No. 21103, it failed to demonstrate a credible administrative trail linking those documents to a valid and subsisting allocation. The alleged title, lacking a lawful foundation, cannot therefore displace the 3rd Plaintiff's claim founded upon a subsequent and procedurally regular allotment.
331. Having already been issued to the 3rd Plaintiff on 31st January 1996, the title to LR No. 21103 was therefore not available for subsequent allocation to the 1st Defendant in 2013.
332. In the absence of proof of double allocation, fraud or procedural irregularity, the Court is satisfied that L.R. No. 21103 was lawfully allocated, processed, and registered in favour of the 3rd Plaintiff.

Whether the 4th Plaintiff or the 1st Defendant have established a lawful root of title to LR No. 21104;

333. As to LR No. 21104, the 1st Defendant relied on a letter of allotment dated 14th January 1995 issued to Robert Manano Ayonga and Finlay Akunga Angweny, together with receipt No. D259237 dated 13th December 1995 for Kshs. 86,550. Just like in the case of LR No. 21103, the payment was made approximately three hundred and thirty-three (333) days after the date of the offer.
334. The 1st Defendant also produced a letter dated 24th April 2007 addressed to the Commissioner of Lands, requesting that LR No. 21104 be registered in the name of Goldstein Group Services Ltd, a company allegedly owned by the said Robert Manano Ayonga and Finlay Akunga Angweny.
335. In further support of its claim, the 1st Defendant relied on Deed Plan No. 198103 and Grant IR No. 147264. Upon examination, this Court notes that Entry No. 2 in the said Grant is an exact replica of the anomaly appearing in Grant I.R. No. 147263 for L.R. No. 21103.
336. The Entry indicates that L.R. No. 21104 was surrendered in consideration of the approval of amalgamation with itself, L.R. No. 21103 and L.R. No. 21075, and that the resultant title was registered as I.R. 1523/2 instead of I.R. 152312. These identical anomalies across separate titles invite



closer scrutiny of the authenticity of the grants and the regularity of the process leading to their issuance.

337. Both the Chief Land Registrar and the Director of Land Administration testified that no correspondence files or supporting records were found in respect of Grant IR No. 147264, which was said to have been issued to Goldstein Group Services Ltd on 10th June 2013. The absence of such official documentation casts considerable doubt on the legitimacy of the title to LR No. 21104 held by the 1st Defendant.
338. Consistent with the pattern observed in respect of the other titles, the 1st Defendant's claim to L.R. No. 21104 is unsupported by any contemporaneous administrative record. No evidence was produced showing that a correspondence file was ever opened in relation to the 1st Defendant's purported allotment, nor was any approval traceable to the Commissioner of Lands.
339. Furthermore, the evidence demonstrates that by the time Grant I.R. No. 147264 was allegedly issued to the 1st Defendant on 27th June 2013, the title to L.R. No. 21104 had already been issued to the 4th Plaintiff on 24 December 1997, and there is no evidence to show that the title was ever surrendered, cancelled, or revoked in accordance with the law.
340. The effect of this is that the purported grant issued to the 1st Defendant in 2013 could not lawfully vest any interest in land that had already been alienated and registered in favour of another party.
341. Under the well-settled principle articulated in *Dr. Joseph Arap Ngok vs Justice Moiyo Ole Keiuwa & 5 Others* [1997] eKLR, once land has been duly allocated and a title issued, the same property ceases to be available for further allocation, and any subsequent title arising therefrom is null and void ab initio. Accordingly, the 1st Defendant's alleged title to L.R. No. 21104 cannot be sustained in law.
342. The 4th Plaintiff, on the other hand, produced a letter of allotment dated 24th August 1995 issued to Ashantee Investments Limited, together with a letter of acceptance dated 8th July 1997 forwarding Banker's Cheque No. PB/N 31385 for Kshs. 316,937 as payment of the stand premium and receipt No. D889358 dated 11th July 1997 acknowledging payment.
343. The record further contains Receipt No. D889358 dated 11th July 1997 acknowledging the said payment. The evidence thus shows that payment was made nearly two years after the date of the offer. Notwithstanding the delay, the Commissioner of Lands accepted the payment, as confirmed by a letter 1997 from the Department of Lands to the Director of Surveys, which expressly acknowledged acceptance of the offer by Ashantee Investments Limited.
344. Subsequently, Ashantee Investments Limited executed a form of informal transfer on 23rd December 1997 in favour of Masai Roses Limited, for a consideration of Kshs. 1,500,000, accompanied by Receipt No. E028055 acknowledging payment of consent fees of Kshs. 30,000 in respect of L.R. No. 21104.
345. The Survey Deed Plan No. 198103 and Grant I.R. No. 75381 were also produced in evidence. Unlike the earlier transaction attributed to the 1st Defendant, the form of transfer in this instance originated from the Ministry of Lands and bore the signature of the Commissioner of Lands, thereby affirming its authenticity.
346. Although the 1st Defendant challenged the authenticity of the 4th Plaintiff's documents, arguing that the letter of allotment contained handwritten alterations to the land reference number that were not countersigned, the Court finds that such alterations do not impugn the authenticity or probative value of the documents.



347. Indeed, DW6, the Chief Land Registrar, confirmed that the original letter of allotment properly referenced L.R. No. 21104 Nairobi, consistent with the other records held at the Ministry.
348. Similarly, the issues raised concerning alleged errors in the acceptance letter, the stamp impression bearing the word “reconds”, the irregular date on the receipt referencing Cheque No. 192806, and the reference to a correspondence with a later date in the Commissioner of Lands’ letter dated 22nd September 1997, are not of such substantive or material nature as to suggest irregularity, impropriety, or fraud in the transaction. On the contrary, the documentary trail reflects administrative continuity and ministerial approval consistent with established practice within the Department of Lands.
349. DW3 and DW6 both testified that the documents produced by the 4th Plaintiff emanated from the Ministry of Lands, although the corresponding physical files are no longer traceable. They confirmed that the reference number 192806 appearing on the documents corresponds with the Ministry’s internal file reference system.
350. It was their evidence that the stamp duty receipt similarly bears File Reference No. 192806, aligning with the registry records. DW6 further referred to a memorandum appearing at page 18 of the 4th Plaintiff’s bundle, indicating I.R. No. 75381 (File Ref. 192806) registered in favour of Masai Roses Limited, accompanied by a Certificate of Stamp Duty bearing the same file reference number.
351. He also identified a memorandum of transfer and a title registered on 31st December 1997 under the said I.R. number. Both witnesses confirmed that the documents fall within the expected chronological and numerical sequence of the registry, thereby corroborating the authenticity of the 4th Plaintiff’s title.
352. In light of the foregoing, this Court is satisfied that the 4th Plaintiff’s title to L.R. No. 21104 (I.R. No. 75381) was lawfully processed and procedurally issued.
353. The supporting documents bear consistent reference numbers, are traceable within the Ministry’s registry system, and correspond with the chronological sequence of registered instruments for the period in question.
354. The acceptance of payment, the preparation of the lease, the issuance of the grant, and the subsequent registration all point to a regular administrative process culminating in a valid title.
355. In the absence of any evidence of fraud, misrepresentation, or irregular acquisition, the Court finds that the 4th Plaintiff’s title is presumed valid under Section 26(1) of the [Land Registration Act](#), and that the later title purportedly issued to the 1st Defendant in 2013 is null and void ab initio, having been founded on a parcel that was no longer available for allocation.

Whether the 1st Defendant lawfully amalgamated the three properties

356. From the foregoing analysis, the Court has found that the 1st Defendant’s titles to LR Nos. 21075, 21103, and 21104 exhibit a consistent pattern of procedural irregularities and administrative impropriety in allocation and registration.
357. Conversely, the Court is satisfied that the Plaintiffs have, on a balance of probabilities, established lawful and traceable roots of title to the respective parcels. Against that backdrop, the Court now turns to consider whether the subsequent amalgamation of these three parcels could vest a valid proprietary interest despite the evident defects in their root titles.



358. The law governing the combination of contiguous parcels is found in Section 22(1) of the [Land Registration Act](#), 2012, which provides that:

“Subject to authentication of the cadastral map, if contiguous parcels are owned by the same proprietor and are subject in all respects to the same rights and obligations, the Registrar, on application by the proprietor, may combine these parcels by closing the registers relating to them and opening a new register or registers in respect of the parcel or parcels resulting from the combination.”

359. The plain reading of the provision is that amalgamation is a registrable disposition predicated upon ownership by the same proprietor of the parcels sought to be combined, and presupposes that each underlying title is valid and free from encumbrance or dispute.

360. The Court in *Sammy Magera vs Kuria Kiarie & 2 others* [2017] KEELC 2189 (KLR) aptly defined amalgamation as:

“...The combination of two or more adjoining pieces of land existing under separate titles but in the name of the same proprietor. The end result of amalgamation is that the separate titles are collapsed into a single title in the name of the same proprietor. Amalgamation process involves the drawing of an amalgamation scheme showing the pieces of land to be combined. The schemes are presented for approval. Once approved by relevant authorities, titles of the pieces of land proposed for amalgamation are surrendered to the lands registry for cancellation, noting in the register and registration of the amalgamated title.”

361. The 1st Defendant contended that prior to amalgamation, it was the lawful proprietor of LR Nos. 21075, 21103, and 21104. However, as earlier established, this Court found glaring inconsistencies and procedural defects in the documents relied upon as its root of title. The evidence adduced does not disclose valid, lawfully registered interests capable of satisfying the ownership requirement under Section 22(1) of the Act.

362. The legality of the amalgamation process must also be tested against the integrity of the planning and survey approvals underpinning it. DW4, Mr. Wilson Muchae, the Deputy Director of Surveys, testified that the Director of Surveys approved the amalgamation on the strength of supporting documents said to be authentic and accompanied by statutory approvals. The Court, however, finds that this assertion is not borne out by the documentary evidence.

363. The evidence of DW5, Mr. Dominic Mutegi, an officer in the Nairobi City County Government’s Department of Development Management, was particularly instructive. He categorically denied having signed the Form PPA2 relied upon by the 1st Defendant as part of its planning approvals.

364. Mr. Mutegi further testified that the plan accompanying the said form bore a stamp inscribed “Approval of Subdivision of Land” rather than “Amalgamation,” thereby contradicting the very purpose for which the approval was allegedly sought. He also noted that while the PPA2 form cited 2 EMS Associates as the applicant, the attached map was in the name of Chris Omare, a discrepancy which, in his professional view, could not have occurred in a procedurally valid application. These contradictions, taken together, cast serious doubts on the authenticity and legality of the planning approvals purportedly relied upon by the 1st Defendant.

365. Further, the letter dated 28th August 2013 from the Director of Surveys, which purported to approve the amalgamation of LR Nos. 21075, 21103, and 21104 into a new parcel, LR No. 29945, curiously referenced a subsequent letter dated 5th September 2013. DW4, the Deputy Director of Surveys,



- also identified inconsistencies between the approval letter, its reference numbers, and the survey computation file, which did not contain the purported correspondence.
366. He testified that, in his view, the letter may not have originated from the Directorate. This chronological inconsistency, together with the internal discrepancies, undermines the authenticity and procedural integrity of the documents. The Court cannot disregard such anomalies, which suggest possible manipulation of official records.
367. DW6, the Chief Land Registrar, further testified that in the process of amalgamation, a new lease must first be issued by the Land Administration Department to accompany the amalgamated titles. He clarified that surrender instruments ordinarily originate from the Land Administration Department and form part of the administrative trail preceding amalgamation.
368. In the present case, however, the surrender documents produced by the 1st Defendant were prepared by Wesonga & Company Advocates and were not accompanied by the requisite formal surrender forms issued or endorsed by the Ministry. This omission undermines the procedural integrity of the purported amalgamation process.
369. It is further noteworthy that DW3, Director of Land Administration, testified that a diligent search conducted at both the Plan Records Office and the File Records Registry yielded no records whatsoever relating to LR No. 29945. The absence of this documentation, including the actual surrender instrument duly registered, casts grave doubt on the legitimacy of the process through which the said parcel was purportedly created.
370. In the present case, the amalgamation process was neither supported by valid ownership nor undertaken in compliance with the procedural safeguards under the *Land Registration Act*. The absence of authentic approvals, the presence of forged or unauthorized signatures, and the manipulation of correspondence collectively render the purported amalgamation unlawful.
371. Accordingly, having found that the 1st Defendant did not hold lawful titles to L.R. Nos. 21075, 21103, and 21104, and upon further scrutiny of the purported amalgamation process, this Court finds that the amalgamation of the said parcels into L.R. No. 29945 was procedurally irregular, substantively unlawful, and tainted with elements of fraud.
372. It was therefore incapable of conferring any legal or equitable rights upon the 1st Defendant. A void title cannot be resuscitated through amalgamation, for, as the Court held in *Macfoy vs United Africa Co. Ltd* [1961] 3 All ER 1169, “if an act is void, it is in law a nullity; it is not only bad but incurably bad.” The purported amalgamated title LR No. 29945 and the resultant Deed Plan No. 357897, therefore, stand invalid and are liable for cancellation.

Whether the charge registered in favour of the 2nd Defendant over LR No. 29945 was valid and enforceable

373. The 2nd Defendant, Jamii Bora Bank, advanced to the 1st Defendant a loan facility in the sum of Kshs. 62,000,000, which was secured by a charge registered over LR No. 21075, situate in Loresho. It was its case that, prior to registration, it conducted an official search on 3rd July 2013 at the lands registry, which confirmed the 1st Defendant as the registered proprietor of the property.
374. Subsequently, with the consent of the 2nd Defendant, the 1st Defendant consolidated LR Nos. 21075, 21103 and 21104 into a single parcel, LR No. 29945, which was then charged to the 2nd Defendant in substitution of the earlier charge. A copy of the replacement charge was produced in evidence.



375. By the time of the hearing, it was confirmed that the said charge over LR No. 29945 had been fully redeemed, and the 2nd Defendant had no continuing financial interest in the property.
376. In their Complaint, the Plaintiffs sought a declaration that the charge registered in favour of the 2nd Defendant on 23rd December 2013 having emanated from a fraudulent and unlawful amalgamation of the titles to form LR No. 29945 (IR 152312), was fraudulent, illegal, null and void and of no legal effect.
377. In response, the 2nd Defendant invoked the statutory presumption of indefeasibility of title, arguing that it was a bona fide chargee for value who had acted in good faith, without notice of any defect in the 1st Defendant's title. It contended that it had relied upon the entries on the land register, and that its interest was duly registered and guaranteed under the Land Registration Act, thus conferring upon it an indefeasible right in law.
378. The Court of Appeal in *Wambui vs Mwangi & 3 Others* [2021] KECA 144 (KLR) pronounced itself on the legal consequence of transactions founded on nullities, holding that:
- “... the title was also tainted with nullity in that the court process on the basis of which the title to the suit property was anchored was subsequently declared null and void ab initio. The position in law as we have already highlighted above is that anything founded on nullity is also null and void and of no consequence. The title allegedly vested in the 3rd respondent and subsequently passed on to the appellant having stemmed from court proceedings that were subsequently declared null and void also stood vitiated by the same nullity and of no consequence. The Judge cannot therefore be faulted for stating the correct position in law in the manner done.”
379. In the present case, both the original charge over LR No. 21075 and the replacement charge over LR No. 29945 were predicated upon titles which this Court has already found to have been fraudulently and irregularly obtained. It is a settled principle of law that a charge cannot create rights or confer a valid interest over a defective or void title. As the Court observed in *Siringi vs Makori & 5 Others* [2023] KEELC 595 (KLR):
- “A charge over an invalid title cannot create a valid interest in land. The title held by the 2nd and 3rd defendants was invalid the same having been tainted with the 1st defendant's fraudulent activities. An invalid title is a nullity. A charge cannot be created over a null and void title.”
380. Guided by these principles, this Court finds that the charges registered in favour of the 2nd Defendant, having been founded on titles declared null and void, are themselves invalid and incapable of conferring any legal or equitable interest upon the Bank. The maxim *nemo dat quod non habet* applies: one cannot convey or encumber an interest that one does not lawfully possess.
381. Although DW2 maintained that the Bank was under no obligation to go beyond the register to investigate the historical validity of the 1st Defendant's title, the assertion is contrary to settled jurisprudence and evidences a failure to conduct reasonable due diligence, as established in *Dina Management Limited vs County Government of Mombasa* [2023] KESC 30 KLR. While the register is prima facie evidence of proprietorship, it is not conclusive where fraud or illegality is alleged.
382. Furthermore, the admission by the Bank's Legal Manager that certain documents may have been forged, coupled with the Bank's failure to produce essential documentation, including the borrower's



Board Resolution, and valuation report, gravely undermines its claim of having exercised due diligence and complied with statutory requirements.

Orders which this court should issue

383. The Court has found that the Plaintiffs demonstrated a traceable, regular, and perfected chain of ownership with respect to the suit properties.

384. The Plaintiffs sought general damages for fraud. This court is guided by the reasoning in *Mustek East Africa Limited vs Mtawa Technologies Limited & 3 Others* [2024] KEHC 11119 (KLR), that general damages are awarded for non-quantifiable harms which the claimant must prove the fraud resulted to:

“General damages, on the other hand, are awarded for non-quantifiable losses such as pain and suffering, emotional distress, or loss of reputation. In cases of fraud, general damages may be considered if the plaintiff can demonstrate that the fraud resulted in non-quantifiable harm beyond the specific financial losses covered by special damages. Halsbury’s Laws of England, Volume 12(1), paragraph 880, acknowledges that:

“General damages do not need to be specifically proved. However, the plaintiff must plead the material facts giving rise to the claim for general damages and provide the necessary evidence to support such a claim.”

385. The Plaintiffs contended that the fraudulent and corrupt actions of the 1st Defendant infringed upon their constitutional right to property guaranteed under Article 40 of *the Constitution*. Upon careful consideration of the evidence, and noting that the Plaintiffs remain in possession of the suit properties and have not been deprived of access or use thereof, this Court finds that there is no demonstrable loss occasioned, declines to award any damages.

386. In the result, and upon consideration of the totality of evidence, the Court makes the following declarations and orders:

- a. A declaration be and is hereby issued that the 1st and 2nd Plaintiffs are the lawful proprietors of LR No. 21075 (IR 68667).
- b. A declaration be and is hereby issued that the 3rd Plaintiff, Allotrope Trust Company Limited, is the lawful proprietor of LR No. 21103 (I.R. 68300).
- c. A declaration be and is hereby issued that the 4th Plaintiff is the lawful proprietor of LR No. 21104 (I.R. No. 75381).
- d. A declaration be and is hereby issued that the 1st Defendant’s titles LR No. 21075 (IR 142801), LR No.21103 (IR 147263) and LR No. 21104 (IR 147264) were issued unlawfully and are null and void.
- e. The amalgamation of LR Nos. 21075, 21103 and 21104 to LR No. 29945 (IR 152312) by the 1st Defendant and the resultant registration in its name are declared fraudulent and illegal.
- f. A declaration be and is hereby issued the charge registered in favour of the 2nd Defendant on 23rd December 2013 having emanated from the fraudulent amalgamated title LR No. 29945 (I.R. 152312), is illegal, null and void.
- g. The 3rd Defendant, Chief Land Registrar, shall forthwith cancel Certificate of Title for LR No. 29945, IR 152312 issued to the 1st Defendant and all subsequent entries thereon.



- h. The Director of Survey shall forthwith cancel Deed Plan No. 357897 which was used to register the title for LR No. 29945, IR 152312 in favour of the 1st Defendant.
- i. A permanent injunction is hereby issued restraining the 1st and 2nd Defendants, their agents or servants, from advertising, developing, subdividing, selling, leasing, transferring, charging, or otherwise dealing with LR Nos. 21075, 21103, 21104, or their purported amalgamation LR No. 29945 (I.R. 152312) situated in Loresho, Nairobi County.
- j. The 1st Defendant's Counter claim is dismissed with costs.
- k. Costs of the suit shall be borne by the 1st Defendant.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 23RD DAY OF OCTOBER, 2025.

O. A. ANGOTE

JUDGE

In the presence of;

Mr. Ongeru for 2nd Defendant

Mr. Adan for 1st and 2nd Plaintiff

Mr. Mwangi K. M. for 1st Defendant

Mr. Allan Kamau for 3rd Defendant

Mr. Adan for Ochieng Oduor for 3rd and 4th Plaintiffs

Mr. Oduor for James Ochieng for 3rd and 4th Plaintiff

Court Assistant: Tracy

