

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**  
**ELC CIVIL SUIT NO 219 OF 2015**

**JAMBO HOLDINGS LIMITED.....**  
**PLAINTIFF**

**VERSUS**

**DOUBLE CLEAN LIMITED.....1<sup>st</sup>**  
**DEFENDANT**

**DAIMLER ENTERPRISES LIMITED.....2<sup>nd</sup>**  
**DEFENDANT**

**RUORA INVESTMENTS LIMITED.....3<sup>rd</sup>**  
**DEFENDANT**

**MARSTONS ENTERPRISES LIMITED.....4<sup>th</sup>**  
**DEFENDANT**

**NGINYO ROADWAYS LIMITED.....5<sup>th</sup>**  
**DEFENDANT**

**GUARANTEE TRUST BANK(KENYA)LIMITED...6<sup>th</sup>**  
**DEFENDANT**

**CHIEF LAND REGISTRAR.....7<sup>th</sup>**  
**DEFENDANT**

**JUDGMENT**

**Background**

1. Vide a Plaint dated the 12<sup>th</sup> March, 2015, the Plaintiff seeks as against the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 7<sup>th</sup> Defendants the following reliefs:

- i. A permanent mandatory injunction directed to the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants, their respective agents, servants and/or employees or any other persons acting on their behalf commanding them to vacate from the Plaintiff's property L.R No 7750 Nairobi.***
- ii. A permanent injunction order directed at the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants, their respective agents, servants and or employees or any other persons acting on their behalf restraining them from entering, staying, using, possessing, trespassing or in any way interfering with the Plaintiff's possession of all that property known as L.R No 7750, Nairobi.***
- iii. An order directed at the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants, their respective agents, servants and or employees or any other persons acting on their behalf, requiring them to vacate from the Plaintiff's property L.R No 7750 Nairobi, and in default thereof, the Plaintiff be given liberty to undertake forceful eviction of the 1<sup>st</sup> -5<sup>th</sup> Defendants, their agents, servants and or employees from the Plaintiff's property known as L.R No 7750 Nairobi.***
- iv. General and Exemplary damages for unlawful occupation and interference with the Plaintiff's***

**possession of L.R No 7750 Nairobi situated at Spring Valley.**

- v. Judgment be and is hereby entered against the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 7<sup>th</sup> Defendants, jointly and severally for a declaration to the effect that the Plaintiff is the registered and bonafide owner of all that property known as L.R No 7750 Nairobi.**
  - vi. Judgment be and is hereby entered against the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 7<sup>th</sup> Defendants, jointly and severally for a declaration that the Registry Index Map as amended over Nairobi/Block 92 for parcel numbers 225, 226, 227, 228, 229 and 230 and the certificate of leases and all documents appurtenant thereto issued on diverse dates with respect to Title Numbers Nairobi/Block 92/225, 226, 227, 228, 229 and 230 are null and void and of no effect.**
  - vii. Costs of the suit.**
  - viii. Interest.**
  - ix. Any other relief that this court may deem fit to grant.**
- 2.** The Plaintiff's case is that at all material times, it was and still is the registered owner of all that piece of land known as L.R 7750, Spring Valley Nairobi (*hereinafter the suit property*) and that it acquired the suit property from the 6<sup>th</sup>

Defendant, previously known as Finance Institution of Africa Limited, and Fina Bank Limited, as a chargee vide a sale simultaneously with a transfer by private treaty on the 20<sup>th</sup> December, 2004.

3. The aforesaid sale and transfer was financed by the 6<sup>th</sup> Defendant, and a charge over the property was created in its favour on 20<sup>th</sup> December 2004. It was averred that the Plaintiff has, since completion of the transaction, remained in continuous physical possession of the suit property.
4. According to the Plaintiff, on or about 6<sup>th</sup> May 2014, the 1<sup>st</sup> to 5<sup>th</sup> Defendants instituted ELC No. 536 of 2014 against it, the 6<sup>th</sup> Defendant, the Attorney General, and the Chief Land Registrar, alleging that it had unlawfully trespassed onto the suit property which they claimed ownership of. The court in that matter issued status quo orders, which effectively allowed it to remain in possession. The 1<sup>st</sup> to 5<sup>th</sup> Defendants subsequently withdrew the suit on 3<sup>rd</sup> February 2015.
5. According to the Plaintiff, despite the withdrawal of the earlier suit, on 15<sup>th</sup> February 2015, the 1<sup>st</sup> to 5<sup>th</sup> Defendants, acting through their agents, unlawfully invaded the suit property and dispossessed its agents, Messrs Eveready Security Guards Limited.
6. The Plaintiff contends that this invasion constituted a flagrant breach of the law, characterized by acts such as; unlawfully occupying the suit property without legal right or

justification; knowingly committing trespass upon land registered in the Plaintiff's name; causing agents to invade and purport to take possession and hiring persons to disrupt the Plaintiff's peaceful occupation.

7. Further particulars were set out as violating the prevailing status quo; violently attacking the Plaintiff's agents and security guards; denying them access to and from the property; using public officials from the Nairobi City County and known fraudsters to aid the invasion; abusing court process by withdrawing ELC No. 536 of 2014 with intent to unlawfully seize possession; and deploying hired criminals to masquerade as owners of the property.
8. The Plaintiff contends that since the unlawful entry of 15<sup>th</sup> February 2015, the 1<sup>st</sup> to 5<sup>th</sup> Defendants have exploited their temporary occupation of the property to purport to sell and transfer non-existent rights over it. It is alleged that they have fabricated and circulated false ownership documents, including the creation of six forged titles said to emanate from the suit property, namely Nairobi/Block 92/225, 226, 227, 228, 229, and 230.
9. The Plaintiff asserts that these documents are entirely fraudulent. It alleges fraud and misrepresentation by the 1<sup>st</sup> - 5<sup>th</sup> Defendants the particulars being, the creation of fake lease titles over non-existent parcels; falsely claiming that the suit property L.R. No. 7750 had been subdivided, when in fact no such subdivision occurred; and the fabrication of

fictitious Registry Index Maps (RIMs) to support the false narrative.

- 10.** It is further alleged that these actions were undertaken while the original title remains charged to the 6<sup>th</sup> Defendant bank, making any purported subdivision or transfer legally impossible.
- 11.** According to the Plaintiff, the Defendants have gone further to masquerade as the true owners of the suit property, utter false searches and documents in court proceedings, and mislead the court in ELC No. 536 of 2014 by presenting these forged materials. It was averred that the Defendants have also colluded with land officials to clone the title, illegally occupy the property, and interfere with the Plaintiff's peaceful possession since 2015.
- 12.** The Plaintiff therefore urges that, unless this court intervenes, its constitutionally guaranteed right to property stands to be gravely violated through continued acts of fraud, trespass, and unlawful interference with its proprietary interest.
- 13.** The 1<sup>st</sup> to 5<sup>th</sup> Defendants filed their Statement of Defence on 22<sup>nd</sup> April 2015, in which they denied the Plaintiff's allegations. It was asserted that they are the lawful and registered proprietors of the parcels known as Nairobi/Block 92/225, 226, 227, 228, 229, and 230, and therefore hold valid titles over the respective properties.

- 14.** They explained that their ownership traces back to an agreement for sale dated 28<sup>th</sup> June 1996, entered into between Videryasagar Vohora, Arvind Vohora, and Bipin Vohora (as vendors) on the one hand, and John Mugo Njeru and Mary Wanjiru Bernard (as purchasers) on the other. According to them, this agreement related to the sale of L.R. No. 7750 at a consideration of Kshs. 90,000,000/=.
- 15.** The Defendants further contended that at the time of the said transaction, the vendors had already undertaken a proposed subdivision of the land into six portions, although the subdivisions had not yet been formally registered. The purchasers adopted these subdivisions and proceeded to register and transfer the resultant parcels, now known as L.R. Nairobi/Block 92/225-230. L.R 7750 thereafter ceased to exist.
- 16.** The Defendants maintain that the purported sale of the suit property by the 6<sup>th</sup> Defendant to the Plaintiff never occurred and any title held by the Plaintiff is a forgery which ought to be cancelled. Accordingly, the 1<sup>st</sup> - 5<sup>th</sup> Defendants seek through their Counterclaim:
- i. An injunction to restrain the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants (as per the Counterclaim) from trespassing onto, claiming, selling, charging, developing or in any manner dealing with the Plaintiff's land parcel nos Nairobi/Block 92/225, Nairobi/Block 92/226, Nairobi/Block***

**92/227, Nairobi/Block 92/228, Nairobi/Block 92/229 and Nairobi/Block 92/230.**

**ii. A declaration that the Plaintiffs (as per original claim) is not genuine and the same is of no effect.**

**iii. General damages.**

**iv. Costs of the suit.**

17. No other party filed a response.

### **Hearing and Evidence**

18. The matter first proceeded for hearing on 7<sup>th</sup> November, 2023. PW1 was Rimal Rameshchandra Sira, a director of the Plaintiff company. He adopted his witness statement dated 28<sup>th</sup> April 2023 as his evidence-in-chief and produced the bundle of documents of an even date from pages 44-382 dated as PEXHB1.

19. It was his evidence that Mr. Trilok Nath Vohora and his sons Vidhya Sagar Vohora, Arvind Vohora, and Bipin Vohora were the registered proprietors in common of the suit property from the 28<sup>th</sup> December 1979. Following the death of Mr Trilok Nath Vohora on 20<sup>th</sup> June 1991, letters of administration for his estate were registered against the title on 20<sup>th</sup> January 1992.

20. The property was thereafter transferred to Rajnikant Jashbhai Desai and Nila Rajnikant Desai, the registration

being effected on 20<sup>th</sup> January 1992. The Desai's later charged the property to Finance Institution of Africa Limited (the predecessor to Fina Bank Limited) by a charge registered on 13<sup>th</sup> December 1994.

- 21.** PW1 stated that the Desai's executed a further charge in favour of Fina Bank Limited, which was registered on 8<sup>th</sup> March 2000. In exercise of its statutory power of sale under the said charges, Fina Bank Limited transferred the property to the Plaintiff, with registration taking place on 20<sup>th</sup> December 2004.
- 22.** It was PW1's testimony that the Plaintiff's acquisition of the property was above board; that the purchase was by private treaty at a consideration of Kshs. 55,000,000, fully paid to the bank in two instalments: a deposit of Kshs. 5,500,000 to Messrs Walker Kontos Advocates, and the balance of Kshs. 49,500,000 via cheque numbers 044482 (Kshs. 38,000,000) and 470864 (Kshs. 11,500,000) and Kshs. 2,200,000/= as stamp duty and Kshs. 307,320 in legal fees.
- 23.** PW1 informed the court that pursuant to the terms of the letter of offer dated 1<sup>st</sup> November, 2004, the Plaintiff charged the property to Fina Bank Limited by a charge dated 8<sup>th</sup> December 2004, which was registered simultaneously with the transfer on 20<sup>th</sup> December 2004 and that the charge was also duly registered at the Companies Registry. PW1 confirmed that the loan remains outstanding, and the

original grant is still held by Fina Bank Limited, now Guaranty Trust Bank (GT Bank).

- 24.** According to PW1, upon its registration as proprietor, the Plaintiff took possession of the property. It subsequently applied, through Real Plan Consultants, for a change of user from single to multiple dwelling, which was approved; that it also obtained approval from the City Council of Nairobi on 1<sup>st</sup> March 2013 to construct a perimeter wall and that to secure the premises, Eveready Guards Security Company Limited were engaged. PW1 asserted that the Plaintiff has continuously paid all land rent and rates due on the property to date.
- 25.** PW1 stated that the Plaintiff enjoyed quiet, open, and exclusive possession of the property from 20<sup>th</sup> December 2004 until 2013, when interference began from the 1<sup>st</sup> to 5<sup>th</sup> Defendants, led by John Mugo Njeru and that they noticed an advertisement for the sale of the suit property, which they immediately took down before erecting a perimeter wall around the parcel.
- 26.** It was his evidence that investigations revealed that the advert had been placed by Dajum Contractors Limited, a company with shared directorship with the 1<sup>st</sup> -5<sup>th</sup> Defendants, specifically, Mary Wanjiru Bernard and John Mugo Njeru.

- 27.** According to PW1, they later discovered that the Defendants had filed ELC No. 536 of 2014 seeking to restrain the Plaintiff from interfering with L.R Nairobi/Blocks 92/225-230; that this caught them by surprise noting that the Plaintiff is the legitimate proprietor of the suit property and from the pleadings in ELC No. 536 of 2014, the Plaintiff noted that while John Mugo Njeru and Mary Wanjiru Bernard initially claimed to have acquired the property from John Woodroffe Seago and David Anthony Parkinson, they later changed their position in a Further Affidavit, now asserting that they purchased it from the Vohoras.
- 28.** It was his evidence that Mr. Mugo further alleged that he and Mary Wanjiru subdivided the property in 2013, creating parcels 92/225 (1<sup>st</sup> Defendant), 92/226 (2<sup>nd</sup> Defendant), 92/227 (3<sup>rd</sup> Defendant), 92/228 and 230 (4<sup>th</sup> Defendant), and 92/229 (5<sup>th</sup> Defendant).
- 29.** PW1 informed the court that they undertook investigations to enable them respond and they established that Vohoras had never transferred the property to John Mugo Njeru and Mary Wanjiru Bernard as alleged or at all. He stated further, one of the alleged vendors, had died on 20<sup>th</sup> June 1991, before he allegedly signed the agreement and transfer.
- 30.** It was his testimony that they also established that the Advocate who allegedly drew and witnessed the 1996 documents did not hold a valid practising certificate at the time; that the transfer also omitted the land reference

number, and that the alleged payment of Kshs. 90,000,000 in cash raised serious doubts as the same was allegedly paid to an alleged common lawyer who issued unserialized receipts. There was also no formal transfer to the 1<sup>st</sup> -5<sup>th</sup> Defendants.

- 31.** According to PW1, after the proceedings in ELC 536 of 2014 did not proceed as intended by the Defendants, as the court's orders of 19<sup>th</sup> May 2014 allowed it to remain in possession, the Defendants irregularly withdrew the suit, and on 15<sup>th</sup> February 2015, unlawfully invaded the property and ejected the Plaintiff's guards.
- 32.** PW1 further testified that by a letter dated 5<sup>th</sup> March 2015, the National Land Commission (NLC) confirmed that the Plaintiff is the legitimate owner of the suit property. Meanwhile, it was stated, John Mugo and Mary Wanjiru were charged with conspiracy to defraud in **CMCC No. 1203 of 2015 - Republic vs John Mugo Njeru & Margaret Wanjiru.**
- 33.** It was asserted that at the time the Vohoras are alleged to have transferred the property, they were no longer the registered owners, and that the 1<sup>st</sup>-5<sup>th</sup> Defendants fabricated a grant, which they surrendered to the Commissioner of Lands to facilitate illegal subdivisions and preparation of a forged RIM, through which leases were unlawfully issued in their favour.

- 34.** It was PW1's statement that they instructed Messrs. Kolmans Geomatic Consultants Kenya Limited to undertake a professional survey verification of the suit property; that the consultants confirmed that the re-establishment survey had been approved by the Director of Surveys as F/R No. 596/146 and Comps No. 69767; that they confirmed that the survey records of L.R. No. 7750 are intact and that parcel numbers Nairobi/Block 92/225, 226, 227, 228, 229, and 230, which were allegedly created as a result of a subdivision of L.R. No. 7750, do not exist.
- 35.** It is the Plaintiff's case that the purported subdivision could only have been possible with the surrender of the original title for L.R. No. 7750 and formal notification to the registered owners thereof; that no such surrender or notification has ever been made and that no lawful subdivision or conversion of L.R. No. 7750 ever took place.
- 36.** PW1 also reiterated that Guaranty Trust Bank (Kenya) Limited, through its letter dated 28<sup>th</sup> September 2017, addressed to its Advocates and copied to the Registrar of Titles, confirmed that it holds the original grant over the suit property, together with the registered charge in favour of the bank. This confirmation, PW1 stated, is conclusive proof that the original title has never been surrendered, cancelled, or replaced, and that any purported subdivision or transfer by third parties is a *nullity ab initio*.

- 37.** PW2, Pascaline Mburu, a Legal Officer at Guaranty Trust Bank (Kenya) Limited, testified on behalf of the bank. She explained that the institution has undergone several changes in name and status over the years and that pursuant to a Certificate of Change of Name issued on 17<sup>th</sup> January 1986, Finance International Limited changed its name to The Merchant Banking & Finance Limited, both of which operated as non-bank financial institutions. Subsequently, by a further Certificate of Change of Name issued on 17<sup>th</sup> February 1987, the entity became Finance Institution of Africa Limited, still a non-bank financial institution.
- 38.** PW2 testified that on 16<sup>th</sup> February 1996, Finance Institution of Africa Limited was converted into a commercial bank with the approval of the Central Bank of Kenya and was thereafter registered as Fina Bank Limited. Later, on 27<sup>th</sup> December 2013, Fina Bank Limited was acquired with regulatory approval resulting in the formation of Guaranty Trust Bank (Kenya) Limited, the current institution.
- 39.** Ms. Mburu testified that the Plaintiff has been a longstanding customer of the Bank, maintaining an account for nearly two decades. From her review of the bank's records, she confirmed that the bank has had a continuous relationship with the suit property for over 28 years, and that it is evident that the Plaintiff is the legitimate proprietor.

- 40.** Regarding the bank's dealings with the suit property, she stated that it was first charged to it, then trading as Finance Institution of Africa Limited, through a Charge dated 30<sup>th</sup> November 1994. The Charge was executed between Rajnikant Jashbhai Desai and Nila Rajnikant Desai, the registered proprietors at the time, and the bank and that a Further Charge was registered on 9<sup>th</sup> February 2000, in favour of the bank, then operating as Fina Bank Limited, executed by the same proprietors.
- 41.** PW2 stated that the facilities secured under the aforesaid charge and further charge became non-performing. Consequently, the bank, then Fina Bank Limited, exercised its statutory power of sale and sold the suit property to the Plaintiff by way of private treaty. Following the transfer, the Plaintiff charged the property to the bank, still trading as Fina Bank Limited under a Charge dated 8<sup>th</sup> December 2004, which remains valid and in force.
- 42.** PW2 stated that as a result of these transactions, the original Grant for the suit property has remained in the continuous custody of the bank since December 1994 to date, only temporarily being released for purposes of registering the respective charges and the transfer to the Plaintiff.
- 43.** She noted that the bank's records do not reflect any other dealings, transfers, or registrations concerning the property. Given that the original title has at all times remained in the

bank's possession, she stated that it would have been impossible for the property to have been lawfully transferred to any third party, including John Mugo or Mary Bernard, in 1996 or at any other time.

- 44.** DW1 was John Mugo Njeru, a businessman based in Nairobi, who testified on behalf of the 1<sup>st</sup> to 5<sup>th</sup> Defendants. He adopted his witness statement dated 27<sup>th</sup> April 2015 as his evidence-in-chief and produced the bundle of documents dated 22<sup>nd</sup> April 2015, which were marked as DEXHB 1-28.
- 45.** He testified that he serves as a Director in the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendant' companies and was testifying in that capacity; that the 4<sup>th</sup> and 5<sup>th</sup> Defendants have authorized him to testify on their behalf, him having been with one of their directors during the purchase of L.R No 7750, Nairobi and that they purchased the suit property in 1996 from the Vohora family, who were four in number, for a consideration of Kshs. 90 million, paid in cash in exchange for the title.
- 46.** The payment, he explained, was made to Mr. Ndung'u Ngunjiri, the Advocate who drew the sale agreement and acted for both parties; that the agreement was executed before an Advocate, and upon payment, receipts were issued by Mr. Ngunjiri and that the receipts reflected payments of Kshs. 45,000,000 each from himself and his business associate, Mary Wanjiru, as well as Kshs. 100,000 in legal fees paid in cash. He testified that the payments were completed in 1996, after which they were issued with

receipts. The funds, he said, came from their cereal import business.

- 47.** DW1 denied knowledge of the allegation that Trilok Nath Vohora had died in 1992, insisting that their dealings were conducted with the Vohora family, represented by Arvind Vohora, whom they met through their lawyer, who was also a family friend. He stated that he was not present when the vendors signed the sale agreement, as each party was going to their lawyer to sign but he confirmed that the Advocate held the original grant.
- 48.** According to DW1, there had been a prior subdivision of the property in 1992, and they were shown six RIM sheets as part of the completion documents; that the document dated 6<sup>th</sup> October 1992 relates to six parcels, nos. 225 to 230 and their respective acreages and that they were also furnished with subdivision approvals from both the Nairobi City Council and the Ministry of Lands, together with a duly signed transfer document.
- 49.** DW1 stated that the transfer was lodged, registered, and the land transferred to them; that they surrendered the mother title, obtained new titles for their respective companies, and continued paying land rent and that the titles were signed by Mr. Letich, whereafter they took possession of the land in 1996.
- 50.** However, it was his evidence that in 2014, they were confronted by persons claiming ownership of the property.

He concluded by noting that the Plaintiff is currently in possession of the land, pursuant to court orders.

- 51.** In cross-examination, he conceded that he did not have a CR12 to confirm that he was a director of the 1<sup>st</sup> to 3<sup>rd</sup> Defendants and that he was not a director of the 4<sup>th</sup> and 5<sup>th</sup> Defendants. He testified that the grant produced by the Plaintiff appeared similar to theirs, sharing the same deed plan number, although the entries were different. He pointed out that the special conditions in the Plaintiff's grant differed from those in their grant, and that theirs did not contain entry number 9.
- 52.** He further observed that the two grants differed in entries numbered 5, 6, and 7. He also noted a variation in acreage between the deed plan attached to their grant and that of the Plaintiff.
- 53.** DW1 acknowledged that entry number 9 in the Plaintiff's grant reflected a transfer to Trilok Nath and others, yet the death certificate showed that Trilok died in 1991, while the agreement dated 28<sup>th</sup> June 1996 was purportedly signed by him. He admitted that he was not present when the sellers executed the agreement and could not confirm who signed it on their behalf.
- 54.** It was his evidence that the correspondence from the Law Society of Kenya indicated that Mr. Ngunjiri (deceased), who

witnessed the transaction, did not hold a valid practising certificate at the material time.

- 55.** He conceded that whereas the mother title was originally registered under the **repealed Registration of Titles Act (RTA)**, they were issued with titles under the Registered Land Act (RLA); that the entry with respect to the surrender is not indicated therein; that he did not have a copy of the transfer executed from their side to the five Defendant's companies and that he had seen correspondence from the National Land Commission (NLC) indicating that the lawful owner of the property was the Plaintiff.
- 56.** DW2 was Bernard Letich, a civil servant working at the Ministry of Lands, serving as the Deputy Chief Land Registrar. He produced the certified copies of the registers and leases as 1DEXHB29. He stated that he had been served with a summons to appear before the court and that he was familiar with the documents he had signed in relation to the 1<sup>st</sup> to 5<sup>th</sup> Defendants' bundle.
- 57.** DW2 confirmed that he signed the certificate of lease for Nairobi/Block 92/225, issued on 23<sup>rd</sup> January 2014. He also signed the certificates of lease for parcels 226, 227, 228, 229, and 230, all dated 19<sup>th</sup> September, 2013.
- 58.** It was his evidence that lease documents are presented at the counter and allocated to an investigations clerk, who verifies that they meet the registration requirements. Once

confirmed, the registrar gives instructions for the preparation of the green card, white card, and certificate of lease, after which the registrar signs, makes the relevant entries, and dispatches the documents.

- 59.** He referred to page 65 of the 1<sup>st</sup> - 5<sup>th</sup> Defendants' bundle, which contains a surrender document bearing a registration stamp and the registrar's signature. It was his evidence that the surrender relates to I.R. 7854, made in consideration of a subdivision scheme. He confirmed that these were the same titles he had signed.
- 60.** DW2 explained that he did not personally verify the surrender at the time of signing, as it is the responsibility of the Commissioner of Lands to confirm that the surrender has been properly executed. He further noted that there ought to have been a discharge of charge before the transfer to Jambo Holdings, which was not reflected in the documents.
- 61.** It was his evidence on cross-examination that the process of converting a title from the Registration of Titles Act (RTA) to the Registered Land Act (RLA) begins with an application by the owner; that the application is submitted to the Chief Land Registrar, who then writes to the Director of Surveys to prepare the Registry Index Map (RIM) and the corresponding acreage list and that thereafter, the matter is forwarded to the Land Administrator for the preparation of leases.

- 62.** With regard to subdivision, he explained that the owner must first apply for the preparation of a planning brief by a physical planner, obtain the County's consent, complete the PPA2 process, and finally receive a certificate of subdivision from the County Government.
- 63.** He conceded that there was a discrepancy in the lease periods between the Plaintiff's and Defendants' documents; that the Plaintiff's lease indicates a term of 99 years from 1<sup>st</sup> January 1950, while the Defendants' lease commences on 1<sup>st</sup> February 1980 and that this inconsistency reflected a defect.
- 64.** He stated that he was not aware of any complaint made by the Desais regarding the transfer, and that according to the records, the Vohoras became the owners of the land in 1979. He further observed that there was no evidence of consideration or of transfers from John Mugo and Jane Wairimu to the Defendant companies, although such transfers and proof of payment ought to have been on record.
- 65.** He noted that the leases he registered did not contain any photographs, and that according to the Defendants' bundle, the surrender was lodged on 11<sup>th</sup> September 2002, which should have been the date of registration yet the document also indicates it was surrendered on 13<sup>th</sup> September 2009, revealing a clear discrepancy.

- 66.** DW2 stated that he was unaware of how the parcels were transferred from individual ownership to company names, and that he did not check the deed file when signing the leases and certificates of lease. He added that the surrender should have been reflected as entry number 17 and clarified that he was not complicit in any issue relating to stamp duty.
- 67.** He stated on re-examination that he is unsure when photos were made mandatory for leases. He stated that without independent verification, he cannot vouch for the correctness of the entries in the RTA title. According to him, in the event of sale by charge, a discharge of charge must be registered.
- 68.** DW3 was Sergeant Gilbert Okello, Service No. 81416, a police officer attached to the Directorate of Criminal Investigations, Land Fraud Investigations Unit and one of the officers assigned to investigate the matter. He adopted his witness statement dated 5<sup>th</sup> April 2024 as his evidence-in-chief and produced the accompanying bundle of documents dated 3<sup>rd</sup> November 2023.
- 69.** It was his testimony that the matter under investigation concerned offences of forgery contrary to **Section 350(1)** of the **Penal Code**, and conspiracy to defraud contrary to **Section 317** of the **Penal Code and that on 2<sup>nd</sup> May 2014**, one Sira Ramal Ramesh, a director of the Plaintiff company, lodged a complaint at the CID Headquarters alleging that the Plaintiff was the registered owner of L.R. No. 7750 I.R. 7854, measuring 13.8 acres and situated along Lower Kabete Road,

Nairobi. It was reported that unknown persons had forged ownership documents and unlawfully taken possession of the said land.

- 70.** Upon receiving the complaint, comprehensive investigations were undertaken; that certified copies of the relevant records were obtained from the Chief Land Registrar, Ardhi House, GT Bank (formerly Fina Bank), and the Nairobi City County Government and that the documents revealed a complete chain of ownership beginning with a Grant dated 4<sup>th</sup> November 1950, whereby the Governor and Commander-in-Chief of the Colony of Kenya, on behalf of His Majesty King George VI, granted the land to Maude Beatrice Senior, the instrument being signed by Acting Commissioner of Lands, Richard John Ratcliffe.
- 71.** DW3 took the court through the other entries, and stated that following the death of Trilok Nath Vohora on 21<sup>st</sup> June 1991, Letters of Administration were issued to Vidya Sagar Vohora as executor, by a grant of probate dated 26<sup>th</sup> November 1991 (Entry No. 16) and that a transfer dated 29<sup>th</sup> January 1992, the executor and the surviving Vohoras transferred the property to Rajnikant Jasbhai Desai and Nila Jasbhai Desai (Entry No. 17).
- 72.** It was his evidence that the Desais charged the title to Finance Institution of Africa Ltd (Entry No. 18), and later to Fina Bank for USD 300,000 via an instrument dated 29<sup>th</sup> February 2000 (Entry No. 19). Upon default in repayment,

Fina Bank sold the property to Jambo Holdings by an agreement dated 26<sup>th</sup> October 2004, and a transfer executed on 8<sup>th</sup> December 2004 by Walker Kontos Advocates (Entry No. 20).

- 73.** Subsequently, it was stated by DW3, by a charge dated 8<sup>th</sup> December 2004, the Plaintiff charged the property to Fina Bank for Kshs. 55,000,000 (Entry No. 21); and that the copies of the title held by Fina Bank, the Chief Land Registrar, and the Nairobi County Government were found to be identical, all ending at Entry No. 21.
- 74.** During investigations, they also examined documents provided by John Mugo Njeru on 2<sup>nd</sup> June 2014, including a copy of a title deed for L.R. 7750, a surrender form, a transfer document, and four leases. He stated that Mr. Mugo alleged that the original title had been surrendered to the Commissioner of Lands in 2002 to facilitate conversion from the Registration of Titles Act (RTA) to the Land Registration Act (LRA).
- 75.** DW3 testified that the purported surrender, allegedly acknowledged by one Geoffrey Birudi, was subjected to forensic analysis; that the Forensic Report dated 20<sup>th</sup> March 2015 confirmed that the signature on the document was not that of Mr. Birudi, rendering it a forgery and that Mr. Birudi also denied ever receiving such a surrender.

- 76.** It was his evidence that the alleged transfer dated 16<sup>th</sup> July 1996, purporting to convey the land from Trilok Nath Vohora and others to Mary Wanjiru Benard and John Mugo Njeru, was also found to be fraudulent; that the records confirmed that Trilok Nath Vohora had died on 21<sup>st</sup> June 1991, and thus could not have executed the transfer in 1996 and that at that time, the property was already charged to Fina Bank, further invalidating the alleged transaction.
- 77.** By a letter dated 3<sup>rd</sup> March 2015, the Chief Land Registrar confirmed that L.R. No. 7750 belonged to the Plaintiff and that the surrender and transfer documents presented by the suspects did not originate from their records.
- 78.** DW3 stated that further investigations into the leases that led to the issuance of six new titles revealed that the land had purportedly been subdivided and converted from RTA to LRA, resulting in Nairobi Block 92/225-230; that these leases bore signatures purporting to be those of Zablon Mabea, Commissioner of Lands and Fedson Orare, Registrar of Titles and that both officials denied signing the documents, and a Forensic Report dated 8<sup>th</sup> April 2015 confirmed the signatures were forged.
- 79.** It was his evidence that a letter from the National Land Commission, signed by Dr. Swazuri, and addressed to the Director of Criminal Investigations, affirmed that the land rightfully belonged to the Plaintiff; that company searches

revealed that Ruora Investments Ltd and Daimler Enterprises Ltd, two of the entities issued with leases, were associated with John Mugo Njeru, while the other companies were unregistered or untraceable and that Mr. Njeru admitted in his statement that all six companies were under his control.

- 80.** It was the evidence of DW3 that in response to inquiries, Walker Kontos Advocates, by their letter dated 20<sup>th</sup> July 2015, confirmed that they indeed prepared the sale agreement of 26<sup>th</sup> October 2004 and transfer of 8<sup>th</sup> December 2004 between Fina Bank and Jambo Holdings.
- 81.** Sgt. Okello maintained that the Defendants never possessed an original title to the property; that the alleged surrender to the Commissioner of Lands was fictitious; that the signatures on the surrender and transfer were forged, and that the purported transferor, Trilok Nath Vohora, had been deceased long before the alleged transaction.
- 82.** He concluded that the fraud appeared to have commenced around late 2012, with documents backdated to 1996 in a calculated attempt to dispossess the Plaintiff. Based on the evidence gathered, he affirmed that there was sufficient material to support the charges filed before the Chief Magistrate's Court, Milimani, against the suspects.
- 83.** It was his evidence on cross-examination that he forwarded his investigation findings to the Director of Public

Prosecutions (DPP), recommending that John Mugo be charged; that the charge was registered before the Chief Magistrate's Court, and the charge sheet appears at page 90 of the bundle; that the matter was later referred to the High Court, after which it was remitted back to the Chief Magistrate's Court, and that it was eventually withdrawn under **Section 87(a)** of the **Criminal Procedure Code**.

- 84.** He testified that efforts to trace Mary Wanjiru had been unsuccessful. He confirmed that Mr. Birudi's statement is not included in the bundle, and although he engaged Registrar Orare, his statement is also missing. He stated that they interviewed former Commissioner Mabeya and obtained his specimen signature. He clarified that he is not a forensic examiner.

### **Submissions**

- 85.** The Plaintiff's counsel filed submissions on 28<sup>th</sup> August, 2025. Counsel submitted that the Plaintiff has established that it lawfully acquired the property through a private sale conducted by Guaranty Trust Bank (Kenya) Limited (formerly FINA Bank), which exercised its statutory power of sale following default by the previous proprietors thus establishing its root of title.
- 86.** Conversely, Counsel submitted, the 1<sup>st</sup> to 5<sup>th</sup> Defendants' claim is riddled with glaring defects and inconsistencies. The alleged sale agreement was executed by, among others,

Trilok Nath Vohora, who, according to official records, was deceased at the time he signed the sale agreement and transfer. Further, the Defendants' chain of ownership does not show any formal transfer to the alleged vendors.

- 87.** It was further contended that the surrender of the mother title relied upon by the Defendants was confirmed by DW3, Senior Sergeant Gilbert Okello, to be a forgery and that the Defendants' own records contained incomplete entries and unexplained omissions, casting further doubt on their authenticity.
- 88.** Counsel submitted that DW2, an Assistant Land Registrar, admitted to issuing the Defendants' certificates of lease without reference to the underlying leases or ownership records, contrary to **Sections 14(2)(c), 30, and 36(5)** of the **Land Registration Act**. Counsel argued that these procedural irregularities and statutory breaches rendered the Defendants' titles invalid and incapable of conferring lawful ownership.
- 89.** It was submitted that as expressed by the Apex Court in **Dina Management Limited v County Government of Mombasa & 5 Others [2023] KESC 30 (KLR)**, title to land is only indefeasible where it is the product of a lawful process, and that where the root of title is tainted by illegality or fraud, the resultant registration is a nullity.

90. As such, the plea of bona fide purchaser was not available to the 1<sup>st</sup> -5<sup>th</sup> Defendants. Reliance in this regard was placed on the cases of **Sehmi & another v Tarabana Company Limited & 5 others (Petition E033 of 2023) [2025] KESC 21 (KLR) (11 April 2025) (Judgment)** and **Samuel Kamere vs Lands Registrar, Kajiado Civil Appeal No. 28 of 2005 [2015] eKLR**
91. According to Counsel, the Registrar's actions in issuing the fraudulent certificates of lease, coupled with the 1<sup>st</sup> - 5<sup>th</sup> Defendants' complicity, invalidated the titles in their entirety. Counsel relied on **Arthi Highway Developers Ltd v West End Butchery Ltd & 6 Others [2015] eKLR**, where the Court of Appeal held that fraudulent titles arising from official complicity are liable to cancellation.
92. Speaking to the damages sought, Counsel submitted that the Plaintiff is entitled to general and exemplary damages to the tune of Kshs 500,000,000/= having been denied the use of 13.8 Acres of land in the City of Nairobi, for a period of ten (10) years now. Reliance in this regard was placed on the case of **Caroget Investment Limited v Aster Holdings Limited & 4 others [2019] eKLR** where the Court of Appeal upheld the Judgment where the court had awarded general damages of Kshs. 100,000,000 against the trespasser.
93. No other submissions were filed as at 26<sup>th</sup> October, 2025.

## **Analysis and Determination**

**94.** Having considered the pleadings, evidence, testimonies and the submissions, the issues that arise for determination are:

- i. Who between the Plaintiff and the 1<sup>st</sup> to 5<sup>th</sup> Defendants is the legitimate proprietor of the suit property?*
- ii. What are the appropriate reliefs to issue?*

**95.** The Plaintiff instituted this suit against the Defendants seeking *inter-alia*, a declaration that it is the legitimate proprietor of L.R No 7750 Nairobi and that the alleged title documents and all other documents with respect to the parcels of land L.R Nairobi/Blocks 92/225, 226, 227, 228, 229 and 30 by the 1<sup>st</sup> -5<sup>th</sup> Defendants are fraudulent, null and void.

**96.** The Plaintiff also seeks permanent mandatory injunctive orders directed to the 1<sup>st</sup> -5<sup>th</sup> Defendants to vacate the property and restraining them from any further interference thereof as well as general and exemplary damages for the unlawful occupation.

**97.** The Plaintiff's case is that it is the lawful proprietor of L.R. No. 7750, Nairobi, having purchased the property from Fina Bank Limited on 26<sup>th</sup> October 2004. Upon completion of the purchase, it took possession and enjoyed quiet and uninterrupted occupation until around 2014, when the 1<sup>st</sup> to 5<sup>th</sup> Defendants began laying claim to the property and

ultimately evicted the Plaintiff. The Plaintiff later regained possession pursuant to orders issued by this court.

- 98.** The Plaintiff maintains that the 1<sup>st</sup> -5<sup>th</sup> Defendants claim to the property is illegitimate and founded on fraud which the court ought not countenance.
- 99.** On their part, the 1<sup>st</sup>-5<sup>th</sup> Defendants maintain that they are the registered proprietors of L.R Nairobi/Block 92/225, 226, 227, 228, 229 and 230. It is contended that parcel L.R No 7750, was purchased from Videryasagar Vohora, Arvind Vohora and Bipin Vohora as vendors by John Mugo and Mary Wanjiru Bernard as purchasers.
- 100.** The property was subsequently transferred to John Mugo and Mary Wanjiru Bernard. As at the time of the purchase, it was alleged, the vendors had already sub-divided the parcel into six portions. The purchasers adopted the aforesaid portions which was then transferred to them. They contend that it is the Plaintiff's title which is a forgery.
- 101.** It is evident from the foregoing that the dispute herein concerns competing claims of ownership over the suit properties, and each party bears the burden of proving the legitimacy of its respective claim. This requirement is anchored in the fundamental principle of law that he who alleges must prove. This legal maxim is enshrined in **Section 107(1) and (2) of the Evidence Act, Cap 80**, 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.”***

**102.** And **Sections 109** and **112** of the same Act which state:

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

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

**103.** In discussing the standard of proof in civil liability claims in this jurisdiction, the Court of Appeal in **Mumbi M'Nabea vs David M.Wachira [2016] KECA 773 (KLR)** stated as follows:

***“In our jurisdiction, the standard of proof in civil liability claims is that of the balance of probabilities. This means that the Court will assess the oral, documentary and real evidence***

*advanced by each party and decide which case is more probable. To put it another way, on the evidence, which occurrence of the event was more likely to happen than not...The position was re-affirmed by the Court of Appeal in Maria Ciabaitaru M'mairanyi & Others v. Blue Shield Insurance Company Limited -Civil Appeal No. 101 of 2000 [2005] 1 EA 280 where it was held that:*

*“Whereas under section 107 of the Evidence Act, (which deals with the evidentiary burden of proof), the burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue, section 109 of the same Act recognises that the burden of proof as to any particular fact may be cast on the person who wishes the Court to believe in its existence.”*

**104.** It is also noted that the Plaintiff has set out allegations of fraud. The **Black's Law Dictionary** defines fraud thus:

*“Fraud consists of some deceitful practice or willful device, resorted to with intent to deprive another of his right, or in some manner to do him an injury. As distinguished from negligence, it is always positive, intentional. Fraud, as applied to contracts, is the cause of an error bearing on a*

***material part of the contract, created or continued by artifice, with design to obtain some unjust advantage to the one party, or to cause an inconvenience or loss to the other. Fraud, In the sense of a court of equity, properly includes all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust, or confidence justly reposed, and are injurious to another, or by which an undue and unconscientiously advantage is taken of another.”***

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

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

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

*“...It is trite law that any allegations of fraud must be pleaded and strictly proved. See Ndolo vs Ndolo (2008) 1 KLR (G & F) 742 wherein the Court stated that: “...We start by saying that it was the respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof on the respondent was certainly not one beyond a reasonable doubt as in criminal cases...”...In cases where fraud is alleged, it is not enough to simply infer fraud from the facts.”*

**107.**The court will be so guided.

**Who between the Plaintiff and the 1<sup>st</sup> to 5<sup>th</sup> Defendants is the legitimate proprietor of the suit property?**

**108.**As earlier noted, the Plaintiff claims ownership of L.R. No. 7750, while the 1<sup>st</sup> to 5<sup>th</sup> Defendants assert ownership of

parcels L.R. Nos. 92/225, 92/226, 92/227, 92/228, 92/229, and 92/230. The Defendants, however, acknowledge that their parcels are subdivisions derived from L.R. No. 7750. It is therefore clear that the dispute centers on competing titles over the same property.

**109.** In view of the finding above, the issue that now arises for determination is which of the parties holds lawful claim to the property. It is important to begin by recalling the guiding principle laid down by the Court of Appeal in **Chief Land Registrar & 4 others vs Nathan Tirop Koech & 4 others [2018] KECA 27 (KLR)** where it was observed that:

***“Land ownership and land rights is both a historical and emotive subject in Kenya. A right to hold property is a constitutional right as well as a human right and no person can be deprived of his property except in accordance with the provisions of the Constitution or Statute. The condition precedent to taking away anyone's property is that the authority must ensure compliance with the Constitution and Statutory provisions.”***

**110.** This principle underscores the constitutional sanctity of title to immovable property, guaranteed under **Article 40 of the Constitution**, subject to constitutional and statutory limitations.

**111.**It cannot be gainsaid that the question of competing land titles continues to be one of the most persistent and intricate problems in Kenya’s land governance framework. The title deed, intended as an instrument of certainty and security of tenure has become a focal point of disputes. As Kiage, J.A. aptly observed in **Gathonu (As Administrator of the Estate of the Late Thumbi Kariuki) vs Registrar & Others [2024] KECA 668 (KLR):**

*“Once upon a time, the holding of a title deed, that treasured document that declared the person named therein as the indisputable owner of the landed property, was a ticket to peace and proprietary security. That it was before a vile mix of greed, rapacity and fraud on one hand and corruption mischief, and tampering of records on the other, increasingly rendered many a title deed worthless papers the holding of which, without more, provided neither certitude nor assurance of safety as courts have had to step in to decipher and determine which among two contending instruments of title is genuine and efficacious. The puzzle of competing title deeds over the same property on the ground in contemporaneous existence is now becoming a contest not of dualities of claims, but, as this case shows, one of*

***multiple contestations, each backed by a title deed.”***

**112.**The Court of Appeal in **Munyu Maina vs Hiram Gathiha Maina [2013] KECA 94 (KLR)** emphasized that when the validity of a registered proprietor’s ownership is questioned, it is insufficient for that person to simply produce the title deed as proof of ownership. The proprietor bears the duty to go further and show that process through which the title was obtained, was lawful, procedurally sound, and free from fraud or irregularity.

**113.**Reiterating this, the Appellate Court in **Gathondu (As Administrator of the Estate of the Late Thumbi Kariuki) vs Registrar & Others (supra)** noted:

***“It is, to my mind, a question of the greatest importance because, like ‘Eneke’, the bird in Chinua Achebe’s Things Fall Apart, who learnt to fly without perching because men had learnt to shoot without missing, Kenyan courts can no longer content to perch on the branch of simply accepting titles as conclusive, incontestable and indefeasible; or the concomittant argument that in the face of two or more competing titles, the first in time automatically prevails. It is not enough to wave an instrument of title or rest easy on the former rock of chronological primacy.***

***What must now be established by he who would prevail is the solidity of the root of title. No flowery foliage, absent a sturdy and settled root speaking to a regular and legal process preceding the product that is the title, will avail the holder. That much is now the law pronounced in a lengthening line of authorities from our superior court such as Munyu Maina vs. Hiram Gathiha Maina (supra) and Funzi Development Ltd & others vs. Country Council of Kwale [2014] eKLR, by this Court; Esther Ndegi Njiru & another vs. Leonard Gatei (supra) by the Environment Court (Mutungi, J)."***

**114.** Where the acquisition process leading to the issuance of a title is tainted with illegality or non-compliance with the law, such a title cannot be sustained. This position was affirmed by the Supreme Court in *Dina Management Limited vs County Government of Mombasa & 5 others [2023] KESC 30 (KLR)* where the Apex court was categorical that:

***"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.....Article 40 of the Constitution entitles every person to the right to property, subject to the limitations set out***

***therein. Article 40(6) limits the rights as not extending them to any property that has been found to have been unlawfully acquired. Having found that the 1<sup>st</sup> registered owner did not acquire title regularly, the ownership of the suit property by the appellant thereafter cannot therefore be protected under article 40 of the Constitution. The root of the title having been challenged, as we already noted above the appellant could not benefit from the doctrine of bona fide purchaser.”***

**115.** Ordinarily, where there exists two competing titles over the same parcel of land, the one that was first in time takes precedence and must prevail. This position was emphasized in the case of **Wreck Motors Enterprises vs The Commissioner of Lands & 4 Others** [1997] KECA 284 (KLR) where the court held that:

***“Where there are two competing titles the one registered earlier is the one that takes priority.”***

**116.** Crucially however, this maxim is only applicable where there are equal equities. In the circumstances, each of the titles has been impugned and the court is mandated to investigate their roots.

**117.** In the present case, the Plaintiff relies on Grant I.R. No. 7854, with entry number 20 showing a transfer in its favour

on 20<sup>th</sup> December 2004. The Plaintiff's case was supported vide the testimony of three witnesses. PW1, Mr. Rimal Rameshchandra Sira, a director of the Plaintiff company, traced the history of the parcel from the Vohoras in 1979, to the transfer to them on the 20<sup>th</sup> December 2004.

**118.** PW1 detailed the Plaintiff's acquisition process, explaining that the sale of the land was conducted by private treaty for a total consideration of Kshs. 55 million, which was fully paid to the bank. He produced receipts and cheques evidencing payment. Also adduced were the payments for stamp duty and legal fees.

**119.** He stated that simultaneous with registration of the transfer, it executed a charge in favour of Fina Bank Limited on 8<sup>th</sup> December 2004, which was duly registered at the Land Registry and the Companies Registry. PW1 stated that the charge remains valid and subsisting, and that the original grant is still held by Guaranty Trust Bank (Kenya) Limited (GT Bank), the successor to Fina Bank.

**120.** In this regard, the letter dated 28<sup>th</sup> September 2017, confirming that the bank still holds the original grant for L.R. No. 7750 and the registered charge in favour of the bank was produced.

**121.** PW1's testimony was corroborated by PW2, Ms. Pascaline Mburu, a Legal Officer at Guaranty Trust Bank (Kenya) Limited. She provided a detailed account of the bank's

corporate evolution, from Finance Institution of Africa Limited to Fina Bank Limited, and later Guaranty Trust Bank (Kenya) Limited and confirmed the bank's uninterrupted custody of the original title from 1994 to date.

**122.** Ms. Mburu stated that the bank advanced financial facilities to the Desais, and upon default, exercised its statutory power of sale, and sold the property to the Plaintiff. She confirmed that the property was subsequently charged back to the bank in 2004 by the Plaintiff, and that no other transfer or transaction involving the title has ever been registered or recognized by the bank. She emphasized that it would have been impossible for any lawful transfer to occur during this period since the bank has always retained physical possession of the original title.

**123.** PW3, Sgt. Gilbert Okello of the DCI's Land Fraud Investigations Unit, testified that he had conducted thorough investigations into the dispute at hand which revealed that the Plaintiff's title was authentic.

**124.** Turning to the Defence evidence, the 1<sup>st</sup>-5<sup>th</sup> Defendants, hold certificates of lease issued between 19<sup>th</sup> September 2013, and 23<sup>rd</sup> January 2014 for the respective subdivided parcels. They assert that these are sub-divided parcels of L.R 7750 purchased by John Mugo and Mary Wanjiru for a consideration of Kshs. 90 million, allegedly paid to the vendors in cash.

**125.**The 1<sup>st</sup> -5<sup>th</sup> Defendants evidence was given by DW1, John Mugo Njeru. He testified that the Defendants purchased the property from the Vohoras in 1996 for Kshs. 90 million in cash, paid to one Advocate Ndungu Ngunjiri (deceased) who acted for both parties. He stated that they received receipts, were handed the original title, and subsequently obtained individual certificates of lease after sub-division and conversion from RTA to RLA.

**126.**DW2, Assistant Land Registrar also testified for the Defendants. It was his evidence that he duly signed the certificates of lease with respect to the Defendants' parcels of land.

**127.**Beginning with the Plaintiff's claim as aforesaid, it has set out a concise history tracing the root of the title and its acquisition in that respect supported by PW2, an officer from Guaranty Bank. The court notes that PW1's evidence remained firm and consistent under cross-examination, maintaining that the suit property belongs to the Plaintiff. As for PW2, her testimony was not subjected to any cross-examination. Consequently, her evidence remains unchallenged and, in law, must be accorded full probative value.

**128.**As for the 1<sup>st</sup>-5<sup>th</sup> Defendants, critical issues arise. First, the alleged agreement of 28<sup>th</sup> June, 1996, and the transfer of 6<sup>th</sup> July 1996 is executed by, among others, Trilok Nath Vohora who, according to official records and the death certificate

produced by the Plaintiff, had died on 20<sup>th</sup> June 1991, five years before the purported transaction.

- 129.** The other signatories, Arvind Vohora, Vidyar Sagar Vohora and Bipin Vohora swore Affidavits in ELC No. 536 of 2014, the pleadings of which were adduced before this court, denying ever having executing the sale agreement or transfer, and categorically disowning the signatures attributed to them. They denied the entire transaction and stated that the suit property was sold to the Desai's.
- 130.** It is further noted that the alleged purchase price of Kshs. 90 million was said to have been paid entirely in cash, without any supporting banking records or transfer trail. The only evidence produced consists of receipts purportedly issued by an Advocate whose practice status at the material time was in question. Such a transaction, involving such a substantial sum without a single bank record, strains the bounds of credibility.
- 131.** Even if the court were to accept, for argument's sake, that the sum of Kshs. 90 million was indeed paid in cash as claimed by the 1<sup>st</sup>-5<sup>th</sup> Defendants, the evidence shows that the money was allegedly paid to the advocate, not to the vendors themselves. This position supports the vendors' claims of not being parties to the transaction. DW1 further stated that the said Advocate acted as a joint advocate for both parties.

- 132.** However, when pressed on whether he personally witnessed the Vohoras signing the agreement, he conceded that “*the parties went to sign before their advocates,*” thereby casting further doubt on the authenticity and execution of the alleged sale transaction.
- 133.** There also arises the issue that no formal transfer was ever affected between John Mugo Njeru and Mary Wanjiru on the one hand, and the 1<sup>st</sup> to 5<sup>th</sup> Defendants on the other. It is a well-settled legal principle that a company is a distinct legal entity, separate from its directors and shareholders, as pronounced in **Salomon vs Salomon & Co. Ltd Ltd [1896] UKHL 1, [1897] AC 22.**
- 134.** Therefore, even if DW1 was a director in all the five companies, which he himself conceded he was not, his personal ownership or interest in the property could not, by that fact alone, be transmitted to the companies. A valid transfer of ownership would still have required formal conveyance and registration in the companies’ names in accordance with the law.
- 135.** Beyond the validity of the transactions relied upon by the Defendants, the documents produced by DW1 were themselves riddled with irregularities, as established through investigations by the Directorate of Criminal Investigations. DW3 testified that the investigators obtained certified copies of records from the Chief Land Registrar, Fina Bank, now GT Bank, and the Nairobi City County Government. All three

sets of records were identical and terminated at Entry No. 21, confirming the Plaintiff's ownership through a charge to Fina Bank executed on 8<sup>th</sup> December 2004.

**136.** Upon examining the documents presented by John Mugo Njeru, including a purported surrender of the title to the Commissioner of Lands dated 2002, the investigators found glaring evidence of forgery. The alleged signature of Mr. Geoffrey Birudi, then a senior land officer, was subjected to forensic examination and found not to be his. The investigation report had a copy of the forensic examination report alluding to this.

**137.** Mr. Birudi himself confirmed that he never signed nor received the purported surrender. Similarly, the alleged transfer dated 16<sup>th</sup> July 1996 purporting to convey the land from Trilok Nath Vohora to Mary Wanjiru Benard and John Mugo Njeru was fraudulent, since Mr. Vohora had died on 21<sup>st</sup> June 1991 and the property was at that time charged to Fina Bank.

**138.** Further investigations revealed that the subsequent leases purportedly resulting in the subdivision and conversion of L.R. No. 7750 into parcels Nairobi Block 92/225-230 were based on forged documents. The signatures appearing on the leases, purportedly those of Zablon Mabea, the then Commissioner of Lands and Fedson Orare Registrar of Titles, were confirmed through forensic analysis to be forgeries. Both officials denied executing the documents, and the

relevant conveyancing registers contained no record of the alleged conversion from the **Registration of Titles Act** (RTA) regime to the **Land Registration Act** (LRA) regime.

**139.** The Chief Land Registrar, by a letter dated 3<sup>rd</sup> March 2015, and the National Land Commission, by correspondence dated 15<sup>th</sup> March 2015, both confirmed that the Plaintiff was the lawful proprietor of L.R. No. 7750 and that the surrender and subdivision documents relied upon by the Defendants did not originate from official records.

**140.** The Director of Surveys, in a letter dated 1<sup>st</sup> April 2015, further clarified that while there had once been an attempt at subdivision, it had been abandoned, and the land had reverted to its original title, L.R. No. 7750. He emphasized that since there had been no lawful surrender for cancellation, any titles derived therefrom were null and void.

**141.** Similarly, the Chief Valuer, by his letter of 19<sup>th</sup> March 2015, confirmed that the Plaintiff remained the ratable owner of the property.

**142.** Further undermining the Defendants' case was that of its witness, DW2, Bernard Letich, the Deputy Chief Land Registrar. He admitted under cross-examination that he could not verify how the property moved from the Vohoras to the Defendants' companies; that there was no evidence of consideration, and that he did not personally check the deed file or verify the surrender prior to signing the leases. He

conceded discrepancies in dates and lease periods and described the leases as defective. He noted that he could not vouch for the authenticity of the 1<sup>st</sup> -5<sup>th</sup> Defendants' titles.

**143.** Having considered the totality of the evidence, this court finds that the Plaintiff's title rests on a coherent, verifiable, and legally cognizable chain of transactions, all supported by registered instruments, banking records, and possession of the original Grant. The Defendants' claim, on the other hand, is grounded on documents tainted by forgery, having been purportedly signed by a deceased person, witnessed by an Advocate of doubtful status, and unsupported by registry records.

#### **What are the appropriate orders to issue?**

**144.** As aforesaid, the Plaintiff seeks several reliefs, including a declaration that it is the legitimate proprietor of the suit property and a finding that the all the documents with respect to L.R No 99/225, 226, 227, 228, 229 and 230 are void and of no consequence. It also seeks permanent injunctive orders restraining the 1<sup>st</sup> -5<sup>th</sup> Defendants from any interference with the suit property, as well as general and exemplary damages for unlawful occupation and interference with the suit property.

**145.** The court has found that between the Plaintiff and the 1<sup>st</sup>-5<sup>th</sup> Defendants', the Plaintiff has established that it is the legitimate proprietor of the suit property. It is therefore

entitled to a declaration in that respect, as well as injunctive orders restraining interference with its property. The court has also found that the documents relied on by the 1<sup>st</sup> -5<sup>th</sup> Defendants are outright forgeries and consequently void.

**146.** The Plaintiff also seeks general and exemplary damages for interference with its property. Essentially, damages for trespass.

**147.** As a general rule, trespass is actionable per se. In the case of **Hebron Oroche Gisebe & 2 others vs Joseph Ombura Gisebe & Another (2022) eKLR** the court stated thus:

***“...41.Lastly with regards to general damages, it is trite law that trespass is actionable per se and unlike special damages which must be specifically pleaded and strictly proved, general damages for trespass are usually awarded once trespass is proved. I am guided by the case of Park Towers Limited -VS-John Mithamo Njika & 7 Others (2014) eKLR, Mutungi J stated as follows;-“I agree with the Learned Judges that where trespass is proved, a party need not prove that he suffered any specific damage or loss to be awarded general damages. The Court in such circumstances is under a duty to assess the damages awardable depending on the unique circumstances of each case.”***

148. In the case of **Philip Ayaya Aluchio vs Crispinus Ngayo [2014] eKLR**, the court stated:

*“The plaintiff is entitled to general damages for trespass. The issue which arises is as to what is the measure of such damage? It has been held that the measure of damages for trespass is the difference in the value of the plaintiff’s property immediately after the trespass or the costs of restoration, whichever is less See Hostler - VS - Green Park Development Co. 986 S. W 2d 500 (No. App. 1999).”*

149. As regards exemplary damages, its rationale was explained by the Court of Appeal in **Godfrey Julius Ndumba Mbogori & another vs Nairobi City County [2018] eKLR** thus:

*“Exemplary damages are essentially different from ordinary damages. The object of damages in the usual sense of the term is to compensate. The object of exemplary damages is to punish and deter. We are guided by the case of Rookes v Barnard [1964] AC 1129 where Lord Devlin set out the categories of cases in which exemplary damages may be awarded which are: i) in cases of oppressive, arbitrary or unconstitutional action by the servants of the government, ii) cases in which the defendant’s conduct has been*

*calculated to make profit for himself which may well exceed the compensation payable to the plaintiff and iii) where exemplary damages are expressly authorized by statute". 24. It seems then that aggravated damages go beyond compensation since they are meant to punish the wrongdoer and act as a deterrent from similar conduct in future."*

**150.** It is evident that general damages and exemplary damages are conceptually distinct. General damages are compensatory in nature, meant to redress the actual loss or inconvenience suffered by a party, whereas exemplary, or punitive damages are awarded to punish and deter particularly oppressive, arbitrary, or high-handed conduct. In the present case, although the Plaintiff sought an award of Kshs. 500,000,000 as exemplary damages, it did not provide any specific guidance or justification regarding the quantum of general damages for trespass.

**151.** The Plaintiff alleged loss of possession for a period of ten years. However, the evidence of PW1 was that the Plaintiff was unlawfully evicted in February 2015 and subsequently regained possession in 2016, a period of roughly one year.

**152.** Taking into account the short duration of loss of possession, the location, size, and value of the parcel, and the inconvenience suffered, a sum of Kshs. 5,000,000/= is considered reasonable as general damages for trespass.

**153.** As for exemplary damages, the court finds that this is an appropriate case for such an award, given the fraudulent conduct and deliberate attempts to deprive the Plaintiff of its lawfully registered property, which call for the court's censure to deter similar acts in future. Exemplary damages to the tune of Kshs. 10,000,000 will be sufficient in the circumstances of this case.

**154.** In the end, it is the finding of the court that the Plaintiff has established its case on a balance of probabilities. On the other hand, the 1<sup>st</sup> - 5<sup>th</sup> Defendants did not prove their counterclaim. For those reasons, the court makes the following orders;

- i. A declaration does hereby issue that the Plaintiff is the registered and bonafide owner of all that property known as L.R No 7750 Nairobi.**
- ii. A declaration does hereby issue that the Registry Index Map as amended over Nairobi/Block 92 for parcel numbers 225,226,227,228, 229 and 230, the certificate of leases and all documents appurtenant thereto issued on diverse dates with respect to Title Numbers Nairobi/Block 92/225, 226, 227, 228, 229 and 230 are null and void and of no effect.**

- iii. A permanent mandatory injunction does hereby issue directed to the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants, their respective agents, servants and/or employees or any other persons acting on their behalf commanding them to vacate from the Plaintiff's property L.R No 7750 Nairobi.**
- iv. The Plaintiff is hereby awarded General Damages for trespass in the sum of Kshs 5,000,000 to be borne by the 1<sup>st</sup> -5<sup>th</sup> Defendants jointly and severally.**
- v. The Plaintiff is awarded Exemplary Damages in the sum of Kshs 10,000,000 to be borne by the 1<sup>st</sup> -5<sup>th</sup> Defendants jointly and severally.**
- vi. The 1<sup>st</sup> - 5<sup>th</sup> Defendants to pay interest on the above amount at court rates from the date of Judgment until payment in full.**
- vii. The 1<sup>st</sup> -5<sup>th</sup> Defendants' Counter-Claim is dismissed with costs.**
- viii. The 1<sup>st</sup> -5<sup>th</sup> Defendants shall bear the costs of the suit.**

**Dated, signed and delivered in Nairobi virtually this 30<sup>th</sup> day of October, 2025.**

**O. A. Angote**  
**Judge**

**In the presence of;**

Mr. Mwangi and Wanyoike for Plaintiff

Mr. Allan Kamau for 7<sup>th</sup> Defendant

No appearance for 1<sup>st</sup> - 5<sup>th</sup> Defendants

Court Assistant: Tracy

ORIGINAL