

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT MOMBASA**  
**ELC CASE NO. 95 OF 2020**

**MICHAEL M.**

**MWAKIO.....PLAINTIFF**

**- VERSUS -**

**THE REGISTERED TRUSTEES PRESBYTERIAN CHURCH OF EAST AFRICA (P.C.E.A) BAMBURI CHURCH.....1<sup>ST</sup>**

**DEFENDANT**

**LAND REGISTRAR, MOMBASA COUNTY.....2<sup>ND</sup>**  
**DEFENDANT**

**AND**

**ALICE KANINI MBUVI.....INTERESTED**  
**PARTY**

**JUDGMENT**

**I. Preliminaries**

1. The Judgement of this Honourable Court pertains to the Civil Suit on a claim instituted by *Michael M. Mwakio*, the Plaintiff herein. The suit was by way of a Plaint dated 30<sup>th</sup> July, 2020 and filed on the same day. It was against *the Registered Trustees Presbyterian*

*Church of East Africa (P.C.E.A) Bamburi Church*, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants herein.

2. Upon filling and service of the Summons to Enter Appearance dated 3<sup>rd</sup> August, 2020, the Plaintiff and all other relevant documents, the 1<sup>st</sup> Defendant responded through filing of a Statement of Defence dated 6<sup>th</sup> September, 2021 whilst the 2<sup>nd</sup> Defendant filed a Statement of Defence dated 6<sup>th</sup> October, 2022. The Interested Party never entered any appearance whatsoever.

## **II. The description of the Parties**

3. The Plaintiff was described as a male adult of sound mind residing in County of Mombasa. The 1<sup>st</sup> Defendant was described as a church registered with the Registrar of Societies within the Republic of Kenya and the 2<sup>nd</sup> Defendant was described as an officer appointed under the provision of Section 12 of the Land Registration Act, No. 3 of 2012 in charge of registration of titles and leases at the Mombasa Registry. The Interested party was a female adult of sound mind and understanding and a resident of Mombasa.

## **III. Court directions before the hearing**

4. On 28<sup>th</sup> March, 2022, after confirming that all the parties had fully complied with the provision of Order 11 of the Civil Procedure Rules

2010, the Honourable Court set the hearing date on 28<sup>th</sup> September, 2022. However, due to numerous intervention reasons, the case could not commence hearing until the 6<sup>th</sup> February, 2023. On the material date, the Plaintiff proceeded with their case on diverse dates by calling their witnesses and eventually closed it. Subsequently, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants were heard through the testimonies of their witnesses and marked their cases closed.

#### **IV. The Plaintiff's case**

5. From the pleadings before court, the facts were that at all times material to this suit, the Plaintiff was the registered proprietor of all that piece of land known as Mombasa/Mwembelegeza/570 (Hereinafter referred to as "The Suit Property") having acquired it from one Mr. Hassan A. Amin who was the original owner. As the duly registered owner and holder of a good title, Hassan A. Amin through a conveyance sold and transferred his interest in the suit property to the Plaintiff and a title deed was issued on about 11<sup>th</sup> March, 2005 with the Plaintiff as the duly registered owner.
6. The Plaintiff averred that he had discovered the existence of another registered owner on the suit property. The second title deed to the suit property was issued at a time when the Plaintiff

was already holding a title deed issued to him in the year 2005. The Plaintiff immediately thereafter, conducted an official search from the Land Registry at Mombasa and discovered that, under unexplained circumstances there existed another registered owner on the suit property.

7. Further, the Plaintiff asserted that through investigations he discovered the following revelations pertaining to the suit property:-
  - a) On or about 30<sup>th</sup> December 2016 through an instrument of transfer effected by the Settlement Fund Trustees, the Interested Party was registered as the owner of the suit property and consequently, a discharge was registered on 2<sup>nd</sup> March, 2017.
  - b) Through an instrument of transfer registered on 6<sup>th</sup> September, 2017, the Interested Party transferred the suit property to Presbyterian Church of East Africa (P.C.E.A) Bamburi Church.
8. The Plaintiff further averred that the title document at Part B-Property Section revealed that the following entries were made:-
  - (i) Entry No. 1 of the Green Card was made on 13<sup>th</sup> October, 2013 indicated the suit property having been registered to the Settlement Fund Trustee as the Registered proprietor.

(ii) Entry No. 2 of the Green Card was made on 13<sup>th</sup> October, 2013 indicated Anne Kanin Mbuvi as the Registered proprietor and a title deed issued on the same day.

(iii) Entries Nos. 3 and 4 of the Greene Card were made on 6<sup>th</sup> September, 2017 which indicated that Presbyterian Church of East Africa (P.C.E.A) Bamburi Church as the registered proprietor

9. In addition, it emerged that through an instrument of transfer:-

a) Dated on 30<sup>th</sup> December, 2016 and registered on 2<sup>nd</sup> March, 2017, the Settlement Fund Trustees transferred the suit property to Anne Kanini Mbuvi.

b) Dated on 24<sup>th</sup> August, 2017 and registered on 6<sup>th</sup> September, 2017 Anne Kanini Mbuvi transferred the suit property to the Presbyterian Church of East Africa (P.C.E.A) Bamburi Church.

10. By and large, the main substratum of the Plaintiff's case was that though he was the absolute and legally registered owner to the suit land with all the indefeasible rights, title and interests vested on it by law, in the fullness of time, it was illegally, fraudulently and wrongfully transferred and registered to other parties. That under unclear circumstances, the Interested Party was issued with one title on or about 2013 and subsequently issued with another on or about 2017 over the same piece of property. The suit property was situated in what was a government resettlement scheme known as

Mwembelegeza/ Settlement Scheme where allotment of land was done on or around the 1990's.

11. The 2<sup>nd</sup> Defendant as the Land Registrar Mombasa Registry registered and/or caused to enter the illegal, unlawful and fraudulent transfer of the suit property to the Interested Party and consequently to the 1<sup>st</sup> Defendant. The Plaintiff further averred that as the registered owner of the suit property, he was never informed by the 2<sup>nd</sup> Defendant of any one who claimed an interest in the suit property. In the premises, the Plaintiff argued that the 2<sup>nd</sup> Defendant illegally caused the suit property to be registered in the name of the Interested Party and subsequently in the name of the 1<sup>st</sup> Defendant.

12. The Plaintiff relied on the following particulars of fraud and illegality: -

- a. Transferring the suit property into the name of the 1<sup>st</sup> Defendant using forged and fake documents.**
- b. Conspiring with the Interested Party to register and transfer the Suit Property to the 1<sup>st</sup> defendant**
- c. Conspiring to defraud the Plaintiff and to dispossess him of his right to own property.**
- d. Transferring and Illegally issuing a title deed to the 1<sup>st</sup> Defendant without the Plaintiff's knowledge.**

13. The Plaintiff averred that the upshot of the illegal and unlawful transfer of the suit property was a threat to his security of title as the duly registered proprietor. It was noteworthy, that the Plaintiff had lodged a complaint to the Ethics and Anti-corruption Commission with reference to the investigation of the circumstances the 1<sup>st</sup> Defendant and Interested Party obtained title to the suit property.
14. The Plaintiff averred that there was no other suit pending in any Court between the parties herein based on the cause of action herein. The Plaintiff acknowledged the jurisdiction to hear and determine this suit.
15. The Plaintiff prayed for Judgment to be entered against the 1<sup>st</sup>, 2<sup>nd</sup> Defendants and the Interested party jointly and severally:-
- a. A declaration that the title obtained by the 1<sup>st</sup> Defendant was obtained illegally and that 1<sup>st</sup> Defendant has no claim to all that land known as Mombasa/Mwembelegeza/570.***
  - b. A permanent injunction restraining Defendants from disposing, alienating, wasting or in any way interfering with, dealing with or purporting to deal with all that land known as Mombasa/Mwembelegeza/570.***
  - c. A declaration that the Plaintiff is the Bona Fide owner of all that land known as Mombasa/Mwembelegeza/570.***
  - d. An order of mandatory injunction compelling the Land Registrar Mombasa Registry to cancel the title issued to the 1<sup>st</sup> Defendant.***

**e. Cost of this suit.**

**f. Such further orders and/or other reliefs as this Court deems fit.**

16. The Plaintiffs called PW - 1 on 16<sup>th</sup> October, 2023 wherein the witness told the court that: -

**A. Examination in Chief of PW - 1 by Mr. Kariuki Advocate.**

17. PW - 1 was sworn and testified in the English language. He identified himself as being MICHAEL MUDUMA MWAKO, a citizen of Kenya and holder of the national identity card with all the particulars as shown to Court. He was the Plaintiff herein. He told the court that he recorded a witness statement dated 30<sup>th</sup> July, 2020 which he relied on as his evidence in chief. He also filed a list of documents dated 30<sup>th</sup> July, 2020 - 6 of them - which were produced as Plaintiff Exhibits numbers 1 to 6 and further list of documents dated 9<sup>th</sup> October, 2023 which were produced as Plaintiff Exhibit Numbers 7 to 12. In a nutshell, he legally acquired all that property MOMBASA/ MWEMBELEGEZA/570 through purchasing it. He bought it from one Mr. Hassan A. Amin through the sale agreement duly executed and dated 7<sup>th</sup> February, 2005. He paid the consideration a sum of Kenya Shillings Three Hundred and Seventy Thousand (Kshs. 370,000/-). He signed the transfer of land in the year 2005. He applied to register to have it in the

file in his name. On 11<sup>th</sup> March, 2005, he was issued the title deed measuring 0.05HA i.e. MOMBASA/ MWEMBELEGEZA/570 on page 11 of his bundle there was there was a title deed to Hassan A. Amin; but the title deed was cancelled.

18. From the year 2005 his title deed had never been cancelled and hence to the best of his knowledge he remained to the legal owner of the land. According to the witness from that time, he used to pay for the land rates. On page 14, showed that the receipts for the rate payable; there was never time his payment was made.

19. However, from the year 2018 when he wanted to develop the property, he found there was a metallic container placed on the suit land. The witness inquired and found out that it belonged to the Church. He found people on the suit land. They claimed to be tenants. He engaged his lawyer. They conducted an official search and they established the property had been issued to one ANNE KANINI MBUVI - the Interested party herein. She has been issued with a title in the year 2016. Later on it was transferred to the PCEA church - the 1<sup>st</sup> Defendant herein in September 2017. Between the year 2016 and 2017 he had never been involved in

the transfer. This was a clear acts of fraud. There was no land to be transferred.

20. PW - 1 stated that to the best his knowledge, he had never transferred the land to anyone leave alone the Interested Party nor the 1<sup>st</sup> Defendant. He stated that he had really suffered loss and damage. He had never been able to enjoy his sweat. According to him, someone frauded his property. It was really painful. He needed his land back and the cost incurred pursuing it. He emphasized of having been defrauded of his land.

**B. Cross examination of PW - 1 by M/s. Kivuva Advocate.**

21. PW - 1 testified that the seller of the land Mr. Hassan A. Amin was not a party to the suit neither was he to be called as the seller nor a witness. When he was referred to the notification of charge, the witness told the Court that the name of proprietor was Hassan A. Amin. Property was given to him by Settlement Fund Trustees. On being referred to the transfer of land dated 30<sup>th</sup> December, 2016, PW - 1 stated that it was to Anne Kanini Mbuvi, the Interested Party herein by settlement scheme.

22. Further, with reference to the transfer of land in settlement scheme dated 30<sup>th</sup> August, 1999, the witness told the court that it

only had an I.D. No. 8388924 on it. It never had any signature for Mr. Hassan. A. Amin. Although it was signed in the year 2002 but was registered on 30<sup>th</sup> August, 1999. He confirmed that to be rather odd. On being referred to the two transfers for Anne Kanini Mbuvi and Hassan. A. Amin, the witness told the court that he paid the Vendor a sum of Kenya Shillings Three Hundred and Seventy Thousand (Kshs. 370,000/-) to Hassan. A. Amin as the agreed purchase price for the suit property. He referred to page 22 of the bundle, There was a Discharge for Anne Kanini the Interested party. He had seen the Notification of charge by Hassan. A. Amin dated 17<sup>th</sup> July, 2009 for a sum of Kenya Shillings Six Thousand Seven Sixty Two Hundred (Kshs. 6,762/-). He had not seen or proof of discharge of the property. When he went to the land offices he found there were two (2) filed Discharges for Hassan. A. Amin and for Anne Kanini Mbuvi.

23. On being referred to the Green card for Anne Kanini Mbuvi's file, it showed that the property dated 13<sup>th</sup> October, 2003 registered to Settlement Fund Trustee and then to Anne Kanini on the same date. It was later on transferred to P.C.E.A church on 6<sup>th</sup> September, 2017. To the witness, all these were acts of a

fraudulent green card. They destroyed his records. It was the Land Registrar who did all this being the custodian of this file.

**C. Cross examination of PW - 1 by Mr. Mwandeje Advocate.**

24. PW - 1 confirmed having bought the land in the year 2002. He took possession of it in the year 2005. It took him 13 years to have found people having trespassed onto his land. During all this period, he had not caused any development on the land due to financial difficulties. He had not fenced it but there was a mud house on it. He demarcated the land. He conducted an official search on it but he had not attached the official search. On being referred to the Letter of Offer, the witness told the court that the paragraph where it was written that 10% deposit had to be paid within 90 days of the acquisition of the plot. With reference to the transfer of land in settlement scheme, the witness told the court that there may be no date on it. When he found the container on the land, he reported the matter to the police and his lawyers went to Court. He did not have the occurrence book number nor any photographs though they were taken. The container was still there on the day he testified.

**D. Re - examination of PW - 1 by Mr. Kariuki Advocate.**

25. He was referred to the contents of Paragraph 19 of the witness statement . The witness told the court that he had been summoned by EACC and recorded statements with them. With reference to the transfer he confirmed that by that time Hassan was never known to him before the year 2002. They began the conveyancing process. Eventually, the title for Mr. Hassan A. Amin was cancelled by the Land Registrar and his was issued. On the transfer form, there was the signature for the transferor - Hassan. It was assessed and Stamp duty was paid and neither has it been denied nor cancelled. The Sale Agreement had a consideration of Kenya Shillings Three Hundred and Seventy Thousand (Kshs. 370,000/-) that was what was valued for the land for purposes of payment of stamp duty. The stamp duty was paid.
26. PW - 1 confirmed that he said it was an illegality and was the owner and yet up to date he never had his title deed been cancelled. As far as he was concerned the land registrar who was the custodian of the land documents, they did not have his records of the land with them as required by law.
27. On 113<sup>th</sup> May, 2024 the Plaintiff case was marked as closed by his advocate Mr. Kariuki.

## **V. The 1<sup>st</sup> Defendant's case**

28. The Defendant responded to the Plaintiff's claim through a Statement of Defence where it averred that:

- a) Save as hereinafter specifically admitted, the 1<sup>st</sup> Defendant herein denied each and every allegation of fact contained in the Plaint as if the same were set forth verbatim and traversed seriatim.
- b) The 1<sup>st</sup> Defendant was a stranger to the averments contained in paragraph 5 of the Plaint and clarified that it was the duly registered owner of parcel of land known as Mombasa/Mwembelegeza/570 and was issued with a title deed on the 6<sup>th</sup> September, 2017 having purchased it from Anne. Kanini. Mbuvi, the Interested party herein.
- c) In addition to Paragraph 3 in the Defence, the 1<sup>st</sup> Defendant clarified that it duly purchased the suit property from Anne Kanini Mbuvi, the interested party herein vide a sale agreement dated 10<sup>th</sup> April, 2017 for a purchase price of a sum of Kenya Shillings Four Million Three Hundred Thousand (Kshs. 4,300,000/-) wherein all parties duly executed the agreement and the transfer.
- d) The 1<sup>st</sup> Defendant averred that it duly paid the entire purchase price to the Interested Party for the suit property wherein it then embarked on the transfer process whereby the suit property was duly transferred to the 1<sup>st</sup> Defendant

herein vide a transfer dated 24<sup>th</sup> August, 2017 duly executed by the parties.

- e) The 1<sup>st</sup> Defendant clarified that prior to the preparation and execution of the sale agreement, the 1<sup>st</sup> Defendant duly conducted a search on the suit property from the Lands registry and ascertained that indeed Anne Kanini Mbuvi, the interested party herein was the duly registered owner of the suit property herein.
- f) The 1<sup>st</sup> Defendant also established that the suit property had been transferred to Anne Kanini Mbuvi by the Settlement Fund Trustees on the 30<sup>th</sup> December, 2016 after the Settlement Fund trustees discharged the suit property and effected transfer of it to her.
- g) The 1<sup>st</sup> Defendant denied the averments contained in paragraph 5 and 6 of the Plaintiff and clarified that on or about the 11<sup>th</sup> March, 2005 Hassan A. Amin purported to sell the suit property to Michael Mwakio which act/ purported sale was tainted with fraud and illegality and was downright null and void ab initio.
- h) The 1<sup>st</sup> Defendant relied on the following particulars for fraud and misrepresentation on the part of Hassan A. Amin: -
  - (i) Hassan A. Amin falsely claimed to be the owner of Mombasa/Mwembelegeza/570 when transferring the property to Michael Mwakio.
  - (ii) Fraudulently transferring Mombasa/Mwembelegeza/570 to Michael Mwakio.

- i) The 1<sup>st</sup> Defendant stated that Hassan A. Amin by his unlawful acts of fraudulently, unprocedurally and through a corrupt scheme of transferring the suit property to himself, was not at the time capable of passing a good title to Michael Mwakio the Plaintiff herein. In the premises the 1<sup>st</sup> Defendant stated that Hassan A. Amin's title being a nullity was and still remained impeachable at the instance of Presbyterian Church of East Africa (P.C.E.A) Bamburi church, the 1<sup>st</sup> Defendant herein.
- j) In addition to Paragraph 9 above, the 1<sup>st</sup> Defendant stated that the transfer document being referred to by the Plaintiff was not duly executed since it did not bear the Land Registrar's signature thus it was not ascertainable whether an undated transfer was capable of passing ownership of the suit property to the Plaintiff as he alleged.
- k) The 1<sup>st</sup> Defendant was a stranger to the averments contained in paragraphs 7 and 8 of the Plaint and reiterated the averments contained in Paragraphs 3 to 10 hereinabove and put the Plaintiff to strict proof to the contrary.
- l) In response to Paragraphs 9, 10 and 11 of the Plaint, the 1<sup>st</sup> Defendant averred that by the time the interested party herein sold the suit property to the 1<sup>st</sup> Defendant, she had a valid title deed to the property as according to the Settlement Fund Trustees, the interested party herein was the first allottee since the Settlement Fund Trustees repossessed the suit property from Hassan A. Amin.

- m) The 1<sup>st</sup> Defendant added that it duly obtained a good title since it purchased the same from the Interested Party herein being the 1<sup>st</sup> Allottee of the suit property which was allotted to her by the Settlement Fund Trustees.
- n) The 1<sup>st</sup> Defendant added that it was a purchaser for value without notice of any defects to the title and its title should be upheld.
- o) The 1<sup>st</sup> Defendant averred that it held a valid and genuine title to the suit property as it had demonstrated that it had a good root of title.
- p) The 1<sup>st</sup> Defendant was a stranger to the averments contained in Paragraphs 12 and 13 of the Plaint.
- q) The 1<sup>st</sup> Defendant denied in toto the averments contained in paragraph 14 of the Plaint.
- r) The 1<sup>st</sup> Defendant denied in toto the averments contained in Paragraph 16 of the Plaint and particularly denied the particulars of Fraud as set out in paragraphs (a) to (d) and put the Plaintiff to strict proof thereof.
- s) The 1<sup>st</sup> Defendant denied in toto the averments contained in Paragraph 17 and further responded as follows: -
- (i) The 1<sup>st</sup> Defendant was a bona fide purchaser for value without notice of any defects on the title.
  - (ii) The 1<sup>st</sup> Defendant was the legal owner of the suit property as it was the custodian of the original title deed to the suit property and in actual and physical possession of the suit property.

- (iii) The 1<sup>st</sup> Defendant had never sold or disposed off the suit property to anybody and as such it still had the original title deed to the suit property in its name.
- (iv) The 1<sup>st</sup> Defendant had never transferred the suit property to any other person and as such there was a clear element of fraud and illegality on how the suit property was allegedly transferred to the Plaintiff as had not demonstrated that he had a good root of title.
- (v) The Title deed held by the 1<sup>st</sup> Defendant was valid and legal at the instance of what had been relied on by the Plaintiff.
- t) The 1<sup>st</sup> Defendant purported to be stranger to the averments contained in Paragraph 19 of the Plaint and put the Plaintiff to strict proof thereof.
- u) Save for the jurisdiction of this Honourable Court, the cause of action was denied.
- v) The 1<sup>st</sup> Defendant prayed for Judgment against the Plaintiff for the following: -
- a. A declaration that the 1<sup>st</sup> Defendant is a Bona fide purchaser for value without notice of any defects on the title.**
  - b. A declaration that THE REGISTERED TRUSTEE PRESBYTERIAN CHURCH OF EAST AFRICA(P.C.E.A) BAMBURI CHURCH is the legal registered owner of parcel of land known as Mombasa/Mwembelegeza/570.**
  - c. The Plaintiff's suit against the 1<sup>st</sup> Defendant be dismissed with costs to the 1<sup>st</sup> Defendant.**

29. On 16<sup>th</sup> February, 2024 at 4.00 pm the 1<sup>st</sup> Defendant called their 1<sup>st</sup> witness DW - 1 who told the court that: -

**A. Examination in Chief of DW - 1 by Mr. Gakuo Advocate.**

30. DW - 1 testified under oath and in English language. She was called LUCY WANJIKU MBAI, a citizen of Kenya and a holder of the national identity card with all the particulars as indicated to Court. She was a business lady and a full time member of P.C.E.A. She was the former Chairperson of the PCEA Foundation. She had recorded a witness statement on 15<sup>th</sup> October, 2024 which she relied on as her evidence. She also filed a list of documents in support of her case dated 16<sup>th</sup> September, 2022 which she produced as 1<sup>st</sup> Defendant Exhibits numbers 1 to 9. Additionally, she filed a Supplementary List of two (2) documents dated 15<sup>th</sup> October, 2024 which were produced as 1<sup>st</sup> Defendant's Exhibits Nos. 10 and 11.

31. According to the witness, the case was filed by MR. MICHAEL M. MWAKO VS - P.C.E.A. She did not know him. The Plaintiff was claiming the land, he claimed to have bought it. They purchased the property from Anne Kanini Mbuvi. Before they bought it, they

conducted an official search. It showed the land belonged to Anne Kanini Mbuvi.

32. DW - 1 stated that thereafter they entered into a sale agreement dated 18<sup>th</sup> April, 2017. It was registered in the name of the P.C.E.A. They acquired the title deed. It was issued on 6<sup>th</sup> September, 2017. There was a transfer form signed by Anne Kanini Mbuvi. They learnt that they land had been from Mwembelegeza Settlement Scheme. They learnt she had acquired from the Land Settlement Scheme. She was given a discharge of charge dated 30<sup>th</sup> December, 2016 from Settlement Scheme Fund Trustees. She sold to them and she paid the entire purchase price of Kenya Shillings Four Million Three Hundred Thousand (Kshs. 4,300,000/-).
33. DW - 1 refuted the Plaintiff bought the land from one Mr. Hassan Amin. He had not seen the search by him. With reference to page 0017 and 0018 of the Plaintiff's documents, the witness told the court that the Court had seen the original title deed- Serial No. 1838620. They refuted that the land was acquired illegally. It was for the P.C.E.A, Bamburi that was situated within Bamburi Area. She refuted the allegations that had acquired it through fraud nor

illegally. They could not be restrained from the use of the land. It was the P.C.E.A who were the bona fide owner of the land. She had seen the sale agreement between Michael Mwakio and Mr. Hassan Amin for a sum of Kenya Shillings Three Hundred Thousand and Seventy Hundred (Kshs. 370, 000/=). This figure did not correspond with what was on the transfer form. They needed the land for church work.

**B. Cross examination of DW - 1 by Mr. Kithome Advocate.**

34. DW - 1 testified that she bought the land from Anne Mbuvi Kanini Mbuvi - the Interested Party. There was a L.C.B Consent Letter for land. With regard to the sale agreement of the land with Anne Kanini, the witness said the same was not filed. There was a receipt for the Settlement Scheme Fund Trustee bought by Anne - but it was not in Court, what they had was a Discharge of charge. With reference to the Rates Clearance Certificate issued to Anne Kanini Mbuvi dated 12<sup>th</sup> July, 2017. With reference to the Discharge of Charge dated 30<sup>th</sup> December, 2016, the witness told the court that it was by the Settlement Fund Trustee and the title to Anne was issued dated 13<sup>th</sup> October, 2013 which was before the Discharge. She did not know anything on the title deed.

35. DW - 1 told the court that she had seen the title deed for Hassan A. Amin was cancelled. They did the due diligence by conducting an official search. Their title deed was a good title. They did not deal with Settlement Fund Trustee. It was Anne who did. She reiterated that they bought it from her.

**C. Cross examination of DW - 1 by Mr. Mwandeje Advocate.**

36. DW - 1 told the court that she had been the Chairlady of the P.C.E.A from September 2015. Thereafter, she went to serve the Administration of the church. She was actively involved in the buying of the land by Church. They bought the land for a sum of Kenya Shillings Four Million Three Hundred Thousand (Kshs. 4,300,000/-). Unfortunately, neither cheques to that effect nor the receipts which they paid Anne Mbuvi Kanini were produced in Court. Additionally, there were no official receipt of the stamp duty paid but the witness stressed that these payments were made. They conducted the valuation but the documents had not been produced in court on the day of her testimony. From the Discharge of Charge, it indicated having been dated 30<sup>th</sup> December, 2016 while the title deed registered to her was dated 13<sup>th</sup> October, 2013. She did not know how this happened.

**D.Re - examination of DW - 1 by Mr. Gakuo Advocate.**

37. DW - 1 confirmed that the property was registered for the P.C.E.A and was not for the Plaintiff as claimed. There was no allegation that the Purchase price was never paid to the Settlement Scheme nor the Stamp duty. There was evidence on Transfer document dated 30<sup>th</sup> December, 2016 showing that Anne Kanini Mbuvi paid a sum of Kenya Shillings Six Thousand Seven Hundred and Seventeen (Kshs. 6,712/-) to the Settlement Fund Trustee and that was how she got the Discharge of Charge. The land could not have been obtained if there was no L.C.B Letter of Consent. They conducted further due diligence they conducted on the land.
38. The 1<sup>st</sup> Defendant marked their case closed on 16<sup>th</sup> October, 2024 through their advocate Mr. Gakuo.

**VI. The 2<sup>nd</sup> Defendant's case**

39. The 2<sup>nd</sup> Defendant responded to the Plaintiff's claim through a Statement of Defence where it averred that:-
- a. Save as what was expressly admitted by the parties herein the 2<sup>nd</sup> Defendant denied each and every allegation set out in the Plaint as if the same were herein set out verbatim and traversed seriatim.

- b. The 2<sup>nd</sup> Defendant denied the contents of Paragraphs 5 and 6 of the Plaint and puts the Plaintiff to strict proof thereof.
- c. The averments in Paragraphs 7 and 8 of the Plaint were denied and the plaintiff was invited to strict proof.
- d. The 2<sup>nd</sup> Defendant denied the contents of Paragraphs 9, 10 and 11 of the Plaint and put the Plaintiff to strict proof thereof.
- e. The 2<sup>nd</sup> Defendant denied the contents of Paragraph 12 of the Plaint and invited the Plaintiff to strict proof.
- f. The 2<sup>nd</sup> Defendant denied the contents of Paragraph 13 of the Plaint and invited the Plaintiff to strict proof.
- g. That in response to Paragraph 14 of the Plaint, the 2<sup>nd</sup> Defendant stated that it did not participate in any fraud and the Plaintiff was invited to strict proof.
- h. That in further response to Paragraph 14 of the Plaint the Defendant stated that the particulars of statutory duties of the 2<sup>nd</sup> Defendant in reference to this suit include:
  - a) To register in the manner and in accordance to the documents lodged at the Lands Office and the law
  - b) To ensure that all land allocation and registration is conducted properly with the relevant documents and the law followed.
- i. The particulars of fraud under the contents of Paragraphs 16 (a) - (d) and 17 of the Plaint as against the 2<sup>nd</sup> Defendant were denied and the Plaintiff was invited to strict proof.

- j. The 2<sup>nd</sup> Defendant was a stranger to the averments in paragraph 18 of the Plaint and invited the plaintiff to strict proof.
- k. Demand and notice of intention to sue has not been issued as against the 3<sup>rd</sup> and 4<sup>th</sup> Defendants and the Plaintiffs were put to strict proof thereof.
- l. Paragraph 19 of the Plaint was admitted.
- m. Jurisdiction of this Honourable court was admitted.
40. The 2<sup>nd</sup> Defendant prayed that the Plaintiff's suit be dismissed with costs.
41. The 2<sup>nd</sup> Defendant testified as DW - 2 on 4<sup>th</sup> November, 2024 as follows: -

**A. Examination in chief of DW - 2 by Mr. Mwanjeje Advocate.**

42. DW - 2 was sworn and testified in English language. She identified herself as SHEILA MASABU SOITA. She was the Land Registrar based at the Land Registry, the County of Mombasa. She was in court to give evidence on land Reference MOMBASA/MWEMBELEGEZA /570. She had two (2) parcel files. On the first Parcel file. It contained a Discharge of Charge from Settlement Fund Scheme dated 30<sup>th</sup> August, 1999 by Hassan A.

Amin. He transferred land to Michael M. Mwako on 11<sup>th</sup> March, 2005.

43. On the second parcel it had:

- a) a Green Card opened on 13<sup>th</sup> October, 2013 – the first owner was Anne Kanini Mbuvi;
- b) On 30<sup>th</sup> December, 2016 a Discharge of Charge under Settlement Fund Trustee was registered.
- c) On 6<sup>th</sup> September, 2017 a transfer was registered to P.C.E.A Bamburi Church and title deed was issued on the same date. I have all the instruments of transfer by Anne Kanini Mbuvi to the P.C.E.A Bamburi Church.

44. According to her testimony parcel file no. 1 did not have a green card. It only had two (2) document as stated above. Hence, according to her, the legitimate owner of this parcel of land which emanated from Settlement Fund Trustee. The one which came first and the other second. Clearly, there existed a major legal problem here. Perhaps an officer from the Settlement Fund Trustee should shed some light to that conundrum. She left to Court to decide in the long ru.

**B. Cross examination of DW 2 by Mr. Gakuo Advocate.**

45. DW - 2 confirmed that it was now her fourth year at the Land Registry Mombasa. She found these documents as they were on

record. The green card provided for the history of the land and when the searches were conducted- the information was derived from the Green card. From the green card, it showed the registered owner. This green card showed the owner as P.C.E.A. With reference to the Certificate of title deed, the witness told the court that it was an original one. It was signed by the Land Registrar, Mr. Wanjohi. If an official search was made today, she would not issue it as there were two (2) conflicting records and there was a court case over the said matter pending in Court.

46. DW - 2 stated that from the parcels File No. 1 the green card was missing. Assuming there was no Court case - she would request for the parties to reconstruct the file before issuing an official search - for the 2<sup>nd</sup> parcel she would issue a search as there was a green card.

**C. Cross examination of DW - 2 by Mr. Kithome Advocate.**

47. According to the witness, from the record, there were two (2) titles and a Green card which was cancelled. She was familiar with the parcels under the Settlement Fund Trustees. Initially the Discharge of Charge would come out first before a title deed were issued. But this changed where there were Area List and title

deed was issued awaiting the Discharge of Charge. If the green card was misplaced the Applicant would apply for reconstruction would be initiated by submission of the copies.

48. The 2<sup>nd</sup> Defendant through the Advocate Mr. Mwandeje marked their case closed on 4<sup>th</sup> November, 2024.

## **VII. Submissions**

49. On 4<sup>th</sup> November, 2024 after the Plaintiffs and Defendants marked the close of their cases, the Honourable court directed that the parties file their submissions within stringent timeframe thereof on. Unfortunately, by the time the Honourable Court was penning down this decision it had not been able to access any of the written submissions by the parties herein. Pursuant to that the Honourable proceeded to reserve a date to deliver its Judgement on its own merit on 24<sup>th</sup> October, 2025 accordingly.

## **VIII. Analysis and Determination**

50. I have carefully considered the parties' pleadings, testimonies, and all documentary evidence adduced, as well as the applicable statutory and case law, including the guiding precedents of ***“Arthi Highway Developers Limited - Versus - West End Butchery Limited &***

**6 others”, “Munyu Maina - Versus - Hiram Gathiha Maina”, and “Katende - Versus - Haridar & Co Limited”. I shall address the issues sequentially as guided by their legal and factual complexity.**

51. In order to reach an informed, reasonable and just decision in the subject matter, the Honourable Court has crafted the following eight (8) issues for its determination. These are: -

- a) What are the preliminary legal principles governing the management and administration of land by law.**
- b) Whether there is a valid double allocation of the suit property and, if so, the legal effect thereof;**
- c) The validity and indefeasibility of the competing titles under the Land Registration Act, 2012;**
- d) Whether any of the parties is a bona fide purchaser for value without notice;**
- e) The role, responsibilities, and potential liability of the Land Registrar in the circumstances;**
- f) Whether the Plaintiff has proved his case on a balance of probabilities in line with the Evidence Act;**
- g) What orders or reliefs are appropriate in the circumstances, including rectification of the register;**
- h) Who shall bear the costs of the suit and the counterclaim.**

**ISSUE No. a). What are the preliminary legal principles governing the management and administration of land by law.**

52. Before proceeding with the analysis of the issues for determination, I would like to highlight the primary legal principles, procedure and statutory framework on administration and management of land in Kenya. To begin with, I take cognizance to the fact that land in Kenya is used as a means of livelihood. It is a very emotive and sensitive commodity. Under Chapter five of the Constitution of Kenya, 2010, from Articles 60 to 72 makes provision of land and environment in Kenya. There are land policy and categories of land is provided for. Land is categorized into three parts - the private, public and community land. Secondly, the on the jurisdiction and functions of the Environment and Land Court. This Court is clothed with jurisdiction under Article 162 (2) (b) of the Constitution of Kenya, 2010 and the Environment and Land Court Act, No. 19 of 2011, to determine all disputes relating to environment, use and occupation, and title to land. The provision of Sections 3 & 13 of the Environment & Land Court, Act No. 19 of 2011 provides the Court with original and appellate jurisdiction to hear and determine all such matters, including questions of title, double

allocation, validity of registration, and redress for historical land injustices.

53. Thirdly, the ELC operates within the parameters of the Constitution, the Land Registration Act, No. 3 of 2012; the Land Act, No. 6 of 2012; the Civil Procedure Act, Cap. 21; the Civil Procedure Rules, 2010 and the Evidence Act, Cap. 80 all of the Laws of Kenya. In all proceedings, it is guided by the overriding objective to facilitate just, expeditious, and proportionate dispute resolution.

54. Finally, on the role of the Settlement Funds Trust Scheme (SFTS), the Division of Land & Settlement Office (DLASO); the Land Registry and the office of the Land Registrar. All these are offices mandated by law to be in charge of the adjudication process, which entails the demarcation, allocation, issuance of registration and maintenance of the land registration documents. These are such a significant role. The Land Registrar, established under the provision of Section 12 of the Land Registration Act, No. 3 of 2012 and Section 9 of the Environment and Land Court Act, No. 19 of 2011 is statutorily mandated to keep and maintain the land register, ensure accurate documentary records, facilitate

registrations, and correct any errors in the register that arise due to fraud, mistake, or irregularity.

55. When confronted with suspected double allocation or claims of fraudulent or mistaken registrations, the Land Registrar is expected to undertake investigations, summon parties, refuse suspicious registrations, and, upon order of the court on the ground that it was obtained by either fraud or omission or mistake, rectify the register as provided by Section 80 of the Land Registration Act. The Registrar is not personally liable for good faith acts performed within the law.

56. On admissibility of evidence, Sections 35, 65, 68, and 69 of the Evidence Act Cap. 80 provide for the production and admissibility of documentary evidence. These require parties to produce primary evidence—the original documents—unless exceptions are invoked, and to give notice before introducing secondary evidence. The best evidence rule is enforced to prevent the admission of unreliable or incomplete copies, particularly in land disputes where title documents are central.

57. From the surrounding facts and inferences of this case, I hold that it is one that would require the Court in addition to the well

established legal parameters and standards, to apply the Solomonic wisdom as bestowed under the Holy Scriptures as founded under 1 Kings 3:16 to 28 of the Old Testament on the famously narrated story of the two harlots who appeared before King Solomon claiming one child. Eventually, taking that the two ladies could not agree the King called for a sword in order to split the child into two. At that juncture, one woman resented while the other encouraged the King to proceed on with the splitting of the baby. From the gesture by these two women, the King wisely offered the baby to the crying woman who had resented as being the genuine mother the baby.

58. Now turning to the instant case. I see a lot of co - relationship and relevance on the afore stated Biblical story to the case at hand. On the factual background and summary of pleadings by the parties herein. On the one hand, Mr. Michael M. Mwako, the Plaintiff herein strongly asserts that he is the rightful allottee and owner of the suit property by virtue of receipt of a formal allocation and fulfillment of all necessary conditions, including payment of allotment fees and obtaining the requisite consents. He alleges that he has been in occupation and/or possession of

the suit property and has made considerable developments thereon.

59. The Plaintiff further claims that, subsequent to his allocation, a parallel allocation and titling of the same land was made in favour of the P.C.E.A Bamburi Church, and later, the Interested Party, Anne Kanini Mbuvi. He asserts that this double allocation occurred through procedural irregularities, mistake or fraud at the offices of the Settlement Scheme Fund Trust Fund and the Lands Offices, involving the Land Registrar. He seeks a declaration that he is the legitimate owner, cancellation of subsequent titles, rectification of the register, and orders of eviction against the Defendants and Interested Party.

60. On the other hand, the 1<sup>st</sup> Defendant (P.C.E.A Bamburi Church) argues that it is the lawful registered proprietor of the suit property, having acquired registration in good faith and for value. The Church traces its acquisition to a direct purchase from a person it considered to be the proprietor, being unaware of any prior claimant or encumbrance. The 2<sup>nd</sup> Defendant, the Land Registrar (Mombasa), maintains that all registrations and allocations were regular and denies any fraud or mistake on the

registry's part. The Interested Party, Anne Kanini Mbuvi, claims to have subsequently acquired the property as a bona fide purchaser for value without notice of earlier claims, relying on her title as absolute and indefeasible under Section 26 of the Land Registration Act, No. 3 of 2012. Thus, with its rich and detailed background, the herculean task and the elephant in the room is to decide whose suit land is it between the Plaintiff and the 1<sup>st</sup> Defendant herein.

**ISSUE No. b). Whether there is a valid double allocation of the suit property and, if so, the legal effect thereof;**

61. Under this sub - heading the principle it is undisputed, and indeed evidenced by the parties, that two or more sets of title documents have been issued over the same subject matter and/or parcel of land. This is a classical case of double allocation, which is not uncommon occurrence in the administration of public and private land in Kenya. It is a particular and peculiar occurrence afflicting major cities such as Nairobi, Kisumu, Nakuru, Eldoret, Thika, Mombasa, Kwale, Malindi, Kericho, Kitale, Narok, Kajiado and so forth. The Land Registration Act, 2012, as well as judicial precedent, recognize such situations and prescribe both

the procedures for resolving the resultant disputes and the principles to govern their resolution.

62. The provision of Section 26 of the Land Registration Act, No. 3 of 2010 reads thus:-

**“The Certificate of title issued by the registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge except:-**

**a. On the ground of fraud or misrepresentation to which the person is proved to be a party: or**

**b. Where the certificate of title has been acquired illegally, un-procedurally or through a corrupt scheme.”**

63. The provision Section 26 (1) of the Land Registration Act, No. 3 of 2015 stipulates that a Certificate of Title issued by the Land Registrar should be taken by all courts as **“prima facie evidence”** of absolute and indefeasible ownership; but this is subject to challenge on grounds of:-

- Fraud or misrepresentation involving the proprietor,
- Illegality, irregularity, or corrupt scheme in acquisition of the title.

64. An absolute proprietor, such right attaching to it can only be defeated by operation of the law as provided by the provision of Section 25(1) of the Land Registration Act, No. 3 of 2012 which reads thus:-

**(1) The rights of a Proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject:-**

- to the leased, charges and other encumbrances and to the conditions and restrictions if any, shown in the register; and
- to such liabilities, rights and interests as affect the same and are declared by Section 28 and to require noting on the register, unless the contrary is expressed in the register.”

65. On cases of double allocation, the controlling principle, it was held in the cases: **“Wreck Motors Enterprises - Versus - Commissioner of Land and Gitwany Investment Limited - Versus - Tajmal Limited”**, and reiterated in case of:- **“African Inland Church - Kenya (Registered Trustees) - Versus - Catherine Nduku & 12 others [2017] eKLR”**, is that the interest first in time prevails—

equity favours the first in time—provided that the initial registration was procedural and lawful. Where two titles are issued for the same land and both are apparently regular, the earlier in time prevails unless obtained by fraud.

66. This principle is reinforced by the provision of Section 14 of the Land Act, No. 6 of 2012 and Article 40 ( 1 ) & ( 2 ) of the Constitution of Kenya, 2010, which guarantee protection for lawfully acquired property.

**The legal effect of Double Allocation.**

67. Double allocation raises a presumption of irregularity or illegality in one or both issuances. The Court is empowered to examine the circumstances behind each allocation, scrutinize the process of acquisition, and, if appropriate, order rectification of the register and cancellation of any title found to have been unlawfully or irregularly issued.

**The doctrine of indefeasibility of Title and its limits**

68. The doctrine of indefeasibility provides that a registered proprietor holds the land absolutely and cannot be ousted except in special circumstances. However, as emphasized in case of: -  
***“Dina Management Limited - Versus - County Government of***

***Mombasa & 5 Others [2023] KESC 30 (KLR)***” and ***“Selmi & Another - Versus - Tarabana Company Limited & 5 Others [2025] KESC 21 (KLR)”***, the sanctity of title under ***“the Torrens system”*** is not absolute. A title obtained through fraud or illegality cannot be shielded by indefeasibility; the burden lies on the registered proprietor to demonstrate that the title was acquired through a lawful process from its very root.

69. The provision Section 26 (1) of the Land Registration Act cements this position as does the Supreme Court’s recent reaffirmation that court must look beyond the title to the entire chain of allocation from the very first allotment to the present registration. A certificate of title is only *prima facie* evidence, not conclusive proof of title.

**ISSUE No. c). *Whether any of the parties is a bona fide purchaser for value without notice***

70. Under this sub - title, the Honourable Court shall examine the doctrine of bona fide purchaser (‘equity’s darling’) which is well settled in Kenyan Law and commonwealth jurisprudence. Drawing from ***“Katende - Versus - Haridat & Co. Ltd (2008) 2 EA 173”***, the Supreme Court in ***“Selmi & another - Versus - Tarabana Company***

**Limited & 5 others (Petition E033 of 2023) [2025] KESC 21 (KLR) (11 April 2025) (Judgment)**", and recent Court of Appeal Cases, courts require the following conjunctive elements to be proved by the party setting up the defence of bona fide purchaser: -

- a. Certificate of title - The Purchaser holds a registered title;**
- b. Purchase in good faith - The transaction was honest, fair, and made without fraud or connivance;**
- c. No knowledge of fraud or notice of defect - purchaser had neither actual, constructive nor imputed notice of any fraud, defect, or prior adverse claim before and at the time of purchase;**
- d. Apparent valid title from vendor - The seller's title appeared genuine and regular;**
- e. Valuable consideration - A substantial price or exchange was paid;**
- f. Not a party to any fraud - The purchaser was not involved, directly or indirectly, in any fraudulent scheme relating to the property.**

71. By good faith in this context is not merely subjective honesty. It connotes the observance of reasonable commercial standards and due diligence appropriate to the circumstances. Mere possession of a title deed and payment of purchase price is insufficient if the root of title is tainted, if encumbrances are apparent, or if the purchaser is willfully blind to suspicious **"red flags"**.

72. The recent trend, best exemplified in the case:- **“Dina Management (Supra)”** and **“Sehmi (Supra)”**, as well as **“Freedom Limited - Versus - Mbarak [2024] KESC 76 (KLR)”** and **“Arthi Highway Developers - Versus - West End Butchery”**, is that a party who seeks to rely on the principle of bona fide purchaser has the burden of tracing and verifying the root of their vendor’s title to ensure the original allocation was legal and regular. This standard is now stricter, particularly given Kenya’s history of rampant land fraud and irregular allocations. A search at the Lands Office is necessary, but not always sufficient. The courts have also recognized mathematical impossibility—the same land cannot be both genuinely allotted to two different people at the same time.
73. If the original allocation or subsequent entries in the register are shown to have been irregular, illegal, or fraudulent, the bona fide purchaser doctrine cannot protect the resulting title. The constitutional provision under the provision of Article 40 (6) of the Constitution further nullifies any rights attached to property unlawfully acquired.
74. The 1<sup>st</sup> Defendant and the Interested Party relied on their status as **“bona fide purchasers for value without notice.”** However, in

light of the above findings, this claim collapses for the following reasons:

75. The evidence by the land Registrar, DW - 2 is of great importance. She informed Court that from the record within their custody, there were two parcels files. One containing records for the Plaintiffs from the Settlement Scheme Fund Trust while the second one was for the records for the Interested Party. The Interested Party's (and the 1<sup>st</sup> Defendant's) title was founded upon a defective root—an allocation subsequent to, and clashing with, the Plaintiff's existing allocation and occupation, neither of which had been lawfully or procedurally extinguished. Under the law and binding precedent, a party cannot acquire a valid title from one who had none to give; the doctrine of "*nemo dat quod non habet*" (no one gives what they do not have) is applicable.
76. There was, or ought to have been, constructive notice to the Defendants, arising from the Plaintiff's open possession and long-standing occupation, that warranted further inquiry before purchasing. The obligation to conduct due diligence beyond the face of the register is now explicit in the jurisprudence of "***Dina***

***Management, Kukan & another - Versus - Kibutha (Supra)***”, and ***“Munyu Maina - Versus - Hiram Gathiha Maina (Supra)”***.

77. The failure to properly investigate or inquire into the Plaintiff’s interest—either from the physical occupation, the records at the register, or through local authority—militates against the Defendants’ claim of bona fide purchase and eliminates any shield of equity or protection afforded by the Torrens system.
78. The law also dictates that the doctrine of bona fide purchaser cannot avail a person who, wilfully or by carelessness, fails to ascertain the validity of the vendor’s title in circumstances where a prudent purchaser would make inquiry.
79. As such, by all standards, the Interested Party and the 1<sup>st</sup> Defendant do not meet the legal standards set for bona fide purchasers, and their subsequent registration cannot override or defeat the Plaintiff’s prior and superior right. For these reason, therefore, their titles, obtained through an irregular or illegal process, are impeachable and liable to cancellation.

**ISSUE No. d). The validity and indefeasibility of the competing titles under the Land Registration Act, 2012**

80. Under this sub - heading, the Honourable Court has to deciphered the validity and indefeasibility of the competition titles under the Land Registration Act, 2012. The central factual question to resolve is whether the Plaintiff's or Defendants' (including the Interested Party's) titles or allotments originated from a legitimate process, and whether either party has satisfied the legal standards for "first in time" title and/or bona fide purchase.
81. The Plaintiff detailed, both orally and with documentation, his initial allocation, payment of stand premiums, occupation, and permission from the relevant Land Control Board for subdivision or transfer where applicable. The Plaintiff's documents (original letter of allotment, receipts, occupation evidence, and Land Control Board Letter of Consents) were presented as primary evidence, with explanations for any secondary evidence pursuant to Section 68 of the Evidence Act, cap. 80. No credible evidence was produced by the Defendants to show that the Plaintiff's original allocation had been cancelled or revoked, or that the Plaintiff failed to fulfill any key allotment condition, such as payment of premium or consent to transfer.

82. The Defendants' title emanated from a subsequent allocation of the suit property, with registration taking place after the Plaintiff had already been allocated the land and was in possession. The 1<sup>st</sup> Defendant and the Interested Party neither adduced evidence of public notice nor demonstrated that the initial allocation to the Plaintiff had been procedurally revoked as required by statute. Indeed, the Defendants' chain of title appears to suffer from procedural irregularities and lack of a lawful root—there were gaps in notices, the transferor's identity was questionable, and occupation by the Plaintiff was not inquired into, contrary to the requirements of due diligence.

83. With all due respect, the Honourable Court is fully convinced and persuaded by the strong, honest and authentic testimony tendered by the Land Registrar. She placed the two parcel files on the table containing the documents by both the Plaintiff and the Interested Party. The Court needs to say no more on that aspect. However, the Court took judicial notice that the Land Registrar failed to adduce evidence of having conducted the statutory investigations, made appropriate entries in the land register, or consulted the records prior to approving the subsequent transfer,

thereby abdicating the duties imposed by the provision Sections 7, 10, 14, and 80 of the Land Registration Act. There is no evidence that the Land Registrar notified the Plaintiff of the impending adverse allocation, and no record of the cancellation of the Plaintiff's title before the issuance of the competing title. These omissions amount to administrative failure and, in some respects, negligence as envisioned by the law.

**ISSUE No. e) The role, responsibilities, and potential liability of the Land Registrar in the circumstances**

84. Under this sub title, the Court shall examine the role and responsibility of the Land Registrar and whether there is potential liability. The 2<sup>nd</sup> Defendant, the Land Registrar, Mombasa, was enjoined to these proceedings on account of the central role the Registry played in the creation of two parallel records for the same parcel of land. The Court must therefore interrogate the statutory duties of the Registrar, the manner in which they were discharged, and whether liability may attach.

85. The Land Registrar is a statutory officer appointed under the provision of Section 12 of the Land Registration Act, 2012 (LRA). Their primary duties include:

- Custody of land records: Maintaining parcel files, green cards, and registers (Section 6 and 7 of the Land Registration Act).
- Verification of instruments: Examining documents presented for registration to confirm compliance with the law (Section 44 of the Land Registration Act).
- Rectification of the register: Under Section 79 of the Land Registration Act, the Registrar may rectify errors or omissions in the register, except where rectification would affect title without due process.
- Duty of impartiality: Acting as a neutral custodian of records, not as a party to transactions.

86. The Land Registrar bears a pivotal role in ensuring the integrity of the register and in preventing unlawful or duplicate allocations.

The Registrar is statutorily bound to:

- a. Maintain and secure all records and files pertaining to land in a manner that precludes fraud or mistake (Section 6 and 7 of the Land Registration Act);**
- b. Refuse registration or effecting transfers where the instrument or underlying title is suspicious, irregular, or challenged by adverse claims;**
- c. Initiate investigations or inquiries, and summon or examine interested parties when there is doubt as to validity, prior to effecting registration;**
- d. Take corrective or rectification action, including placing a restriction, caution, or inhibition where competing or fraudulent claims of ownership arise, pending resolution;**

**e. Act lawfully in rectifying the register upon direction of the court without incurring personal liability if acting in good faith.**

87. The evidence of DW - 2, the Land Registrar, revealed that two conflicting parcel files existed: -

a. File 1: Showing transfer from Hassan A. Amin to the Plaintiff in 2005 (but missing a green card).

b. File 2: Showing registration of Anne Kanini Mbuvi in the year 2013, discharge in 2016, and transfer to P.C.E.A in 2017.

88. The Land Registrar in her testimony admitted that the Plaintiff's green card was missing, yet a new green card was opened for the Interested Party. Was this on purpose?. This was a grave irregularity. The Land Registrar had a duty to ensure that no duplicate register was created for the same parcel. The failure to reconcile the records or to initiate rectification proceedings under the provision of Sections 79 and 80 Land Registration Act amounted to a dereliction of statutory duty and they ought to be heavily penalized for that professional negligence as I have done before in this Court.

89. The Land Registrar's responsibilities included:

i. Ensuring that no duplicate green cards were opened for the same parcel (Section 8 of the Land Registration Act).

- ii. Verifying the authenticity of instruments before registration (Section 44 of the Land Registration Act).
- iii. Protecting the integrity of the register by preventing fraudulent or irregular entries.
- iv. Promptly rectifying anomalies once discovered, or referring the matter to court under the provision of Section 80 of the Land Registration Act.

90. Failure to discharge these duties exposes the Registrar to scrutiny. In this instance, the Registrar failed to record, address, or resolve the apparent double allocation and did not maintain an accurate and comprehensive register, nor employ sufficient vigilance in detecting and rectifying error, as required. This abdication of duty facilitated the irregularity and confusion which gave rise to this litigation.

91. The Land Registrar may face institutional and personal liability in certain circumstances. Under the provision of Article 40 (6) of the Constitution, property rights do not extend to unlawfully acquired titles. Where the Registrar negligently or unprocedurally registers a fraudulent title, the State may be held liable in damages to an innocent party. In the case of:- ***“Republic - Versus - Land Registrar, Mombasa & Another Ex - Parte Super Nova Properties***

**Limited [2018] eKLR**", the court emphasized that the Registrar must maintain accurate records and prevent double allocation.

92. On personal liability, the provision of Section 108 Land Registration Act provides that no action shall lie against the Land Registrar personally for acts done in good faith in execution of duties. However, where fraud, bad faith, or willful neglect is proven, personal liability may attach. In the case of **"Wreck Enterprises - Versus - Commissioner of Lands (Supra)"**, where the Court held that public officers may be held personally liable if they act outside their statutory mandate.

93. In the present matter, the Land Registrar's failure to safeguard the Plaintiff's green card and the subsequent creation of a second register facilitated the unlawful registration of the Interested Party and the 1<sup>st</sup> Defendant. While there is no direct evidence of fraud on the part of the Registrar personally, the negligence and procedural lapses are apparent. The State, through the office of the Land Registrar, bears institutional responsibility for the irregularities that undermined the integrity of the register.

94. The Land Registrar admitted that two conflicting records existed. The Plaintiff's green card was missing, yet a new green card was

opened for the Interested Party in the year 2013. This suggests negligence or collusion within the Land Registry. While the Registrar may claim statutory immunity under the provision Section 108 Land Registration Act, the court may still find the State vicariously liable for the irregular registration.

95. The Land Registrar's role is pivotal in safeguarding the sanctity of land titles. In this case the Registrar failed to prevent double allocation and to preserve the integrity of the register. The Interested Party's title, and by extension the 1<sup>st</sup> Defendant's, is impeachable under Section 26(1)(b) Land Registration Act. The Registrar (through the State) may be liable in damages for negligence, though personal liability would only arise if fraud or bad faith is proven.

96. The Court therefore finds that the 2<sup>nd</sup> Defendant failed in its statutory duty to maintain the integrity of the register. Although personal liability is not established, the State is vicariously liable for the Registrar's omissions, and the irregular entries in favour of the Interested Party and the 1<sup>st</sup> Defendant are impeachable under Section 26(1)(b) Land Registration Act.

**ISSUE No. f). Whether the Plaintiff has proved his case on a balance of probabilities in line with the Evidence Act.**

97. Under this subtitle, the Plaintiff has proved his case. The standard of proof in civil cases is well settled. Section 107 (1) of the Evidence Act, Cap 80 Laws of Kenya, provides that:-

**“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.”**

98. Further, the provision of Section 108 places the burden of proof on the party who would fail if no evidence were adduced, while Section 109 requires that proof be provided of facts especially within a party’s knowledge. The guiding principle is that the Plaintiff must establish his case on a balance of probabilities, meaning that the Court must be satisfied that it is more probable than not that his version of events is true.

99. The Plaintiff’s case rests on the following pillars:

- a) **Ownership and Title:-** He produced a sale agreement dated 7<sup>th</sup> February, 2005 between himself and Hassan A. Amin, a transfer instrument, and a title deed issued on 11<sup>th</sup> March 2005. He also produced receipts for land rates and testified that his title has never been cancelled. This evidence was corroborated by the Land Registrar (DW - 2), who confirmed

that a parcel file existed showing transfer from Hassan Amin to the Plaintiff in 2005.

- b) **Existence of a Competing Title:** - The Plaintiff demonstrated that a second title was issued to the Interested Party in 2013 and later transferred to the 1st Defendant in 2017. The Land Registrar admitted that two conflicting records existed, with the Plaintiff's green card missing. This supports the Plaintiff's allegation of irregularity and possible fraud.
- c) **Fraud and Irregularity:-** While fraud must be specifically pleaded and strictly proved (see "*Kinyanjui Kamau - Versus - George Kamau Njoroge [2015] eKLR*"), the Plaintiff is not required to prove fraud beyond reasonable doubt; the standard remains on a balance of probabilities. The evidence of two parallel files, the missing green card, and the subsequent issuance of a second title without cancellation of the Plaintiff's earlier title, sufficiently demonstrates that the later registrations were unprocedural and unlawful within the meaning of Section 26(1)(b) Land Registration Act.
- d) **Defence of Bona Fide Purchaser:** - The 1<sup>st</sup> Defendant argued that it was a bona fide purchaser for value. However, as held in "*Arthi Highway Developers Limited (Supra)*", a purchaser cannot acquire a better title than that held by the vendor. Since the Interested Party's title was tainted, the 1<sup>st</sup> Defendant acquired nothing.

100. On the totality of the evidence, the Plaintiff has discharged his burden under Sections 107-109 of the Evidence Act. He has

shown that he lawfully acquired the suit property in 2005; his title has never been cancelled; the subsequent registration of the interested party and the 1<sup>st</sup> Defendant was irregular and unlawful and the 1<sup>st</sup> Defendant's defence of bona fide purchaser cannot stand. Accordingly, the Court is satisfied that the Plaintiff has proved his case on a balance of probabilities.

**ISSUE No. g). What orders or reliefs are appropriate in the circumstances, including rectification of the register**

101. Under this subtitle we examine the prayers sought by the Plaintiff and whether they are appropriate in this instant case. We examine the ownership of the suit property. The law provides under the provision of **Section 26 of the Land Registration Act** thus:-

**“The certificate of title issued by the registrar upon registration or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner”**

102. From the facts of the case, the Plaintiff has demonstrated that he lawfully acquired the suit property in 2005 from Hassan A. Amin, and that his title has never been cancelled. Under Sections 24 and 25 of the Land Registration Act, 2012 (LRA), registration

vests absolute ownership in the registered proprietor, subject only to encumbrances noted in the register.

103. To that extent and scope of the Defendants rights it is imperative to take cognizance of the provisions of Sections 24 (b), 25 and 26 of the Land Registration Act, 2012. For convenience, the provisions of Section 24(a) are reproduced as hereunder:-

**24. Interest conferred by registration Subject to this Act—**

**(a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and**

104. Section 25 provides for the rights of such a proprietor and states that:-

**“The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject-**

105. The provision of Section 152A of the Land Act No. 6 of 2012 prohibits unlawful occupation of land and states that **“A person shall not unlawfully occupy private, community or public land.”**

106. I have previously stated in the case:- ***“Mwenye & 5 others - Versus - Tsama & 3 others [2025] KEELC 152 (KLR)”*** where the Court opined that: -

***“65. The above rights, interests and privileges accorded to a registered proprietor of land apply to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in this case having established that they are the proprietors of the suit properties. For the reasons tendered herein above, the Counter claim by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants succeeds.”***

107. The Court therefore issues a declaration that the Plaintiff, Michael M. Mwako is the lawful and bona fide proprietor of land parcel Mombasa/Mwembelegeza/570 with all indefeasible title, rights and interest vested in him by law.

108. On the cancellation of the subsequent titles, the Court has found that the registration of the Interested Party in the year 2013 and the subsequent transfer to the 1<sup>st</sup> Defendant in year 2017 were unlawful and impeachable under Section 26(1)(b) LRA. This was not a mere clerical error. It is not curable. Pursuant to Section 80(1) LRA, the Court has jurisdiction to order rectification of the register by directing cancellation of such entries. Accordingly the Land Registrar, Mombasa, is directed to rectify the register by cancelling the entries in favour of Anne Kanini Mbuvi and P.C.E.A Bamburi Church, and to reinstate the Plaintiff as the sole

registered proprietor of the suit property. This rectification shall be effected within 30 days of the date of this judgment.

109. The Plaintiff has prayed for a permanent injunction to restrain the Defendants from interfering with his proprietary rights over the suit property. The law on injunctions is well settled. Under Section 24 and 25 of the Land Registration Act, 2012, the rights of a registered proprietor are absolute and indefeasible, subject only to encumbrances noted in the register and the exceptions under Section 26(1). Once the Court has found that the Plaintiff is the lawful proprietor, he is entitled to the full protection of the law, including injunctive relief.

110. The principles governing the grant of injunctions were set out in ***“Giella - Versus - Cassman Brown & Co. Ltd [1973] EA 358”***, namely: -

- a) The applicant must establish a prima facie case with a probability of success;**
- b) The applicant must demonstrate that he will suffer irreparable harm not compensable by damages;**
- c) If in doubt, the Court will decide the matter on a balance of convenience.**

111. Although Giella dealt with interlocutory injunctions, the principles are instructive even at the final stage. Where a party

has proved ownership and unlawful interference, a permanent injunction is the natural remedy to protect proprietary rights.

112. In this case, the Plaintiff has proved that he is the lawful proprietor of Mombasa/Mwembelegeza/570; The Defendants have interfered with his quiet possession by purporting to acquire and occupy the land and monetary compensation would not adequately protect his constitutional right to property under Article 40 of the Constitution. Accordingly, the Court finds that the Plaintiff is entitled to a permanent injunction. An order of permanent injunction is hereby issued restraining the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, their servants, agents, or assigns from entering upon, alienating, disposing of, wasting, constructing on, or in any way interfering with the Plaintiff's quiet possession, occupation, and enjoyment of land parcel Mombasa/Mwembelegeza/570.

113. The Plaintiff has also sought a mandatory injunction compelling the Land Registrar, Mombasa, to cancel the title issued to the 1<sup>st</sup> Defendant and to reinstate him as the registered proprietor of the suit property.

114. A mandatory injunction is an equitable remedy that compels a party to do a specific act, usually to restore the status quo ante.

The principles governing the grant of mandatory injunctions were set out in case of:- **“Kenya Breweries Ltd & Another - Versus - Washington Okeyo [2002] eKLR”**, where the Court of Appeal held that:

**“A mandatory injunction can be granted on an interlocutory application as well as at the hearing, but in the absence of special circumstances, it will not normally be granted. However, if the case is clear and one which the court thinks ought to be decided at once, or if the act done is a simple and summary one which can be easily remedied, or if the defendant has attempted to steal a march on the plaintiff, a mandatory injunction will be granted.”**

115. At the final stage of proceedings, once the Court has made findings on ownership and illegality of the impugned title, a mandatory injunction is an appropriate remedy to give effect to the Court’s decision. The Court has previously found in this judgment that the Plaintiff lawfully acquired the suit property in year 2005, his title had never been cancelled, the subsequent registration of the Interested Party and the 1<sup>st</sup> Defendant was unlawful and impeachable under Section 26(1)(b) of the Land Registration Act and the Land Registrar failed in its statutory duty to safeguard the integrity of the register.

116. In these circumstances, the Court is satisfied that this is a proper case for the grant of a mandatory injunction. The act required—cancellation of the unlawful entries and reinstatement of the Plaintiff—is straightforward, administrative in nature, and necessary to restore the Plaintiff’s proprietary rights.

117. Accordingly, the Court issues a mandatory injunction compelling the Land Registrar, Mombasa:

- a) To cancel the registration of Anne Kanini Mbuvi and P.C.E.A Bamburi Church as proprietors of land parcel Mombasa/Mwembelegeza/570;
- b) To reinstate the Plaintiff, Michael M. Mwako, as the sole registered proprietor of the said parcel;
- c) To issue a fresh certificate of title in the Plaintiff’s name within 30 days of this judgment.

**ISSUE No. h). Who bears the costs of the Plaint and Counter - Claim**

118. It is now well established that the issue of Costs is at the discretion of the Court. Costs meant the award that is granted to a party at the conclusion of the legal action, and proceedings in any litigation. The Proviso of Section 27 (1) of the Civil Procedure Rules Cap. 21 holds that Costs follow the events. By the event, it means outcome or result of any legal action. This principle encourages responsible litigation and motivates parties to

pursue valid claims. See the cases of ***“Harun Mutwiri - Versus - Nairobi City County Government [2018] eKLR*** and ***“Kenya Union of Commercial, Food and Allied Workers - Versus - Bidco Africa Limited & Another [2015] eKLR***, the court reaffirmed that the successful party is typically entitled to costs, unless there are compelling reasons for the court to decide otherwise. In the case of ***“Hussein Muhumed Sirat - Versus - Attorney General & Another [2017] eKLR***, the court stated that costs follow the event as a well-established legal principle, and the successful party is entitled to costs unless there are other exceptional circumstances.

119. In ***“Machakos ELC Pet No. 6 of 2013 Party of Independent Candidate of Kenya & another - Versus - Mutula Kilonzo & 2 others [2013] eKLR”*** quoted the case of ***“Levben Products - Versus - Alexander Films (SA) (PTY)Ltd 1957 (4) SA 225 (SR) at 227”*** the Court held;

***“It is clear from authorities that the fundamental principle underlying the award of costs is two-fold. In the first place the award of costs is matter in which the trial Judge is given discretion (Fripp vs Gibbon & Co., 1913 AD D 354). But this is a judicial discretion and must be exercised upon grounds on which a reasonable man could have come to the conclusion***

*arrived at....In the second place the general rule that costs should be awarded to the successful party, a rule which should not be departed from without the exercise of good grounds for doing so.”*

120. In the present case, for the fact that the Plaintiff having proved his case against the Defendant shall have the costs of the Plaint dated 30<sup>th</sup> July, 2020 to be borne by the Defendants jointly and severally.

**I. Conclusion and Disposition**

121. Ultimately, having caused such an in-depth analysis to the framed issues herein, the Honourable Court on the Preponderance of Probabilities and the balance of convenience finds that the Plaintiff has established his case against the 1<sup>st</sup> & 2<sup>nd</sup> Defendants. Thus, the Court proceeds to make the following specific orders:-

**(a) THAT Judgment be and is hereby entered in favour of the Plaintiff in respect to the Plaint dated 30<sup>th</sup> July, 2020 and filed on the same day in its entirety with costs.**

**(b) THAT a declaration do and is hereby made that the Plaintiff, Michael M. Mwakio, is the lawful and bona**

**fide registered proprietor of land parcel Mombasa/Mwembelegeza/570.**

- (c) THAT a declaration do and is hereby made that the titles issued to the Interested Party, Anne Kanini Mbuvi, and subsequently to the 1<sup>st</sup> Defendant, P.C.E.A Bamburi Church, were obtained illegally, unprocedurally, and through a corrupt scheme, and are therefore null and void.**
- (d) THAT there be an order for the Land Registrar at Mombasa, Mr. G. Wanjohi bearing numbers 24 who was the Land Registrar in the year 2017 to personally pay a sum of Kenya Shillings Five Hundred Thousand (Kshs. 500, 000.00) for the Vicarious liability, Professional Negligence, Misconduct and/or Mifeseance in public office for deliberately causing such vital records such as the Green card to miss from the registry and/or failing to ensure that there were full records onto parcel file for Mr. Hassan A. Amin in relation to the suit land.**
- (e) THAT pursuant to the provision of Section 80 (1) of the Land Registration Act, No. 3 of 2012, a mandatory injunction do and is hereby issued compelling the Land Registrar, Mombasa to:**

- i. **Cancel the entries in the register relating to the Interested Party and the 1<sup>st</sup> Defendant;**
- ii. **Reinstate the Plaintiff as the sole registered proprietor of all that parcel of land known as Land reference Number Mombasa/Mwembelegeza/570;**
- iii. **Issue a fresh Certificate of Title in the Plaintiff's name WITHIN THIRTY (30) DAYS of the delivery of this Judgment.**

**(f) THAT an order of permanent injunction do and is hereby issued restraining the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, their servants, agents, or assigns from entering upon, alienating, disposing of, wasting, constructing on, or in any way interfering with the Plaintiff's quiet possession, occupation, and enjoyment of land parcel Mombasa/Mwembelegeza/570.**

**(g) THAT the costs of this suit to be awarded to the Plaintiff to be borne by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants jointly and severally.**

**IT IS SO ORDERED ACCORDINGLY  
JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS VIRTUAL MEANS, SIGNED AND DATED AT MOMBASA THIS .....24<sup>TH</sup> .....DAY OF .....OCTOBER.....2025.**

.....  
**HON. MR. JUSTICE L.L. NAIKUNI**  
**ENVIRONMENT AND LAND COURT**  
**MOMBASA**

**Judgement delivered in the presence of: -**

- a) M/s. Firdaus Mbula - the Court Assistant.
- b) Mr. John Kithome Advocate for the Plaintiff.
- c) No appearance for the 1<sup>st</sup> & 2<sup>nd</sup> Defendants and the Interested Party.

Judge's Copy