Nesco Services Limited v Kenelec Supplies Limited & 6 others (Environment and Land Case 157 of 2017) [2025] KEELC 7262 (KLR) (23 October 2025) (Judgment)

Neutral citation: [2025] KEELC 7262 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ENVIRONMENT AND LAND CASE 157 OF 2017

OA ANGOTE, J

OCTOBER 23, 2025

BETWEEN

NESCO SERVICES LIMITED ..... PLAINTIFF

AND

KENELEC SUPPLIES LIMITED ..... 1ST DEFENDANT

COUNTY GOVERNMENT OF NAIROBI ..... 2ND DEFENDANT

NATIONAL LAND COMMISSION ..... 3RD DEFENDANT

THE LAND REGISTRAR, NAIROBI ..... 4TH DEFENDANT

DIRECTOR OF SURVEYS ..... 5TH DEFENDANT

PERMANENT SECRETARY, MINISTRY OF LANDS, HOUSING AND URBAN DEVELOPMENT ..... 6TH DEFENDANT

THE HON ATTORNEY GENERAL ..... 7TH DEFENDANT

JUDGMENT

1. Vide a Further Amended Plaint dated 19th December, 2023, the Plaintiff seeks the following reliefs:

   i. A permanent injunction do issue against the 1st Defendant, its servants, employees and/or agents from encroaching into, blocking access entry, erecting any building and/or structure, preventing usage, storing any materials, developing and/or dealing in any manner whatsoever with access service lane connected to the Plaintiff's premises known as L.R No 209/13557 situate along Langata Road-Nairobi West within Nairobi Area.

   ii. An order of cancellation do issue directing the 3rd, 4th and 5th Defendants jointly and severally to cancel the 1st Defendant's title known as L.R No 209/18289 and all entries in the register and all documents of ownership.

iii. An order do issue directing the 2nd, 3rd and 5th Defendants jointly and severally to restore the original service lane of 6 metres serving the Plaintiff's premises known as L.R No 209/13557.

iv. Special damages of Kshs 7,575,971.

v. General Damages.

vi. Costs and Interests.

2. The Plaintiff contends that it is the lawful and registered proprietor of all that parcel of land known as Land Reference No. 209/13557, situated along Langata Road, Nairobi West, within Nairobi City County and that the property was transferred to it by its previous owner, Mr. Harun Osoro Nyamboki, one of its directors, on 21st September 2021.

3. The Plaintiff avers that on or about 3rd August 1998, Mr. Nyamboki, then the registered owner, obtained approval from the Nairobi City Council's Water and Sewerage Department to extend a connection serving the suit property from the adjacent service lane.

4. Subsequently, it was averred, on 25th April 1999, he received approval from the Council's Planning and Architecture Department for the development of a domestic building comprising two shops and twelve flats and that acting on these approvals, he invested substantial resources, partly financed through loans towards developing the property, which is now fully occupied and serves as a vital source of livelihood for the Plaintiff's retired directors.

5. The Plaintiff maintains that, from the time of development, its tenants and members of the public have freely accessed and utilized the adjacent service public lane without interruption, obstruction, or interference from any person or adjoining proprietor.

6. According to the Plaintiff, in January 2017, the 1st Defendant, its neighbour and the registered proprietor of L.R. No. 209/10191, unlawfully encroached upon the said public service lane, and placed heavy containers thereon, effectively blocking access, and falsely claimed ownership of the lane with the intent to appropriate it.

7. In an effort to amicably resolve the matter, Mr Nyamboki engaged a representative of the 1st Defendant in mid-January 2017; that by a letter dated 23rd January 2017, he sought clarification and confirmation of the steps being taken to avert the encroachment and that in response, by a letter dated 3rd March 2017, the 1st Defendant, through its advocates, furnished the Plaintiff with documents purporting to demonstrate ownership of the disputed service lane.

8. It was averred that upon review of those documents, the Plaintiff discovered that the 1st Defendant had in 2002 applied to the Commissioner of Lands for an extension of its property boundaries to include a 6-metre service lane; that the application was approved in 2007 by the Nairobi City Council; that in 2008, the 1st Defendant was granted an exemption by the Permanent Secretary, Ministry of Lands, from the statutory requirement to publish a notice of intention to alienate for public objection and that thereafter, the 1st Defendant was issued with a new title, L.R. No. 209/18289, whose area increased from 0.2936 hectares to 0.3193 hectares.

9. The Plaintiff contends that the said title was fraudulently obtained through collusion between the 1st, 4th, 5th, and 6th Defendants. The particulars of fraud are set out as forging and falsifying approvals purportedly issued by the Commissioner of Lands and the Nairobi City Council.

10. It was further averred that the 1st Defendant unlawfully amalgamated and extended L.R. No. 209/10191 to create L.R. No. 209/18289; registered a defective and unprocedural amalgamation

contrary to established legal processes; procured approvals and title irregularly through corrupt practices; and undertook the alleged extension and conversion without public participation or notice to affected proprietors.

11. As a consequence of these actions, the Plaintiff claims that it has been denied access to its property and to the essential water and sewerage lines serving the premises and that the inability to access these utilities for maintenance or repair has exposed its property to significant risk and jeopardized the continued occupation by tenants, thereby threatening the Plaintiff's investments and income.

12. It is the Plaintiff's position that the conduct of the Defendants, jointly and severally, offends the rules of natural justice, and renders the entire process leading to the issuance of L.R. No. 209/18289 null and void, and that the purported conversion of a public service lane for private use constitutes illegal and unlawful land grabbing, and the 1st Defendant cannot be said to have acquired a valid or indefeasible title to what is, in law, public land.

13. The Plaintiff further narrates that on 16th July 2018, the court dismissed its application for interim injunctive orders. Misconstruing the effect of that ruling, the 1st Defendant, on 17th July 2018, forcefully disconnected the water and sewerage lines serving its property and blocked the stormwater drainage system.

14. It was contended by the Plaintiff that the services were only restored on 13th March 2019, leaving the property without water and sewerage for over seven months and that during this period, it incurred substantial costs seeking alternative water and waste management solutions, and several tenants vacated the premises due to the unsanitary conditions.

15. As a result of the foregoing acts and omissions, the Plaintiff claims to have suffered mental anguish, distress, and financial loss. The particulars of loss were set out as:

Purchase of sewer pump, jubilee clip and PVC Flat 2 Blue Hose	Kshs 55,953/=
Plumbing material and Plumbing charges	Kshs 16, 150/=
Power Cont Dayliffe Av13 and Sewerage pump	Kshs 50, 490/=
Supply and Installation of Sewage plump	Kshs 150,000/=
Purchase of Bass white	Kshs 650/=
Casual cleaners	Kshs 540,000/=
Plumbing Charges	Kshs 403, 500/=
Cleaning materials costs	Kshs 127, 770/=
Exhauster services	Kshs 1, 330,000/=
Electricity costs	Kshs 355, 484/=
Legal fees	Kshs 350,000/=
Loss of rental income	Kshs 3, 085, 281/=
Medical expenses	Kshs 1, 110, 683/=
Total	Kshs 7, 757, 971/=

16. The 1st Defendant filed its Statement of Defence on 10th May 2017, denying in totality the allegations set out in the Plaint. It contends that the alleged 6-metre service lane does not exist, and that the cadastral map clearly delineates how both the Plaintiff and the 1st Defendant are to access their respective properties. The 1st Defendant asserts that the Plaintiff's claim of accessing its property exclusively through its land is false, misleading, and intended to distort the true position on the ground.

17. It is the 1st Defendants' position that on or about 18th January 2008, it wrote to the Director of the City Engineer's Department seeking clarification on the approved access point to its premises and that in response, the Department pointed out the access points of the said property.

18. According to the 1st Defendant, it complied with all legal and procedural requirements in seeking and obtaining approval for the extension of its parcel, and was thereafter issued with a valid and authentic certificate of title in respect of L.R. No. 209/18289. It asserts that it is unaware of any lawful water or sewerage lines traversing its property and that any such installations, if present, are unlawful and amount to trespass.

19. Speaking to the procedure leading to its acquisition of the suit property, the 1st Defendant stated that on the 7th June 2002, it applied to the Commissioner of Lands for an extension of L.R. No. 209/10191 by 6 metres, which application was duly approved on 11th December 2007.

20. The 1st Defendant maintains that the Plaintiff has no proprietary or legal interest in the said 6 metre strip, which lawfully forms part of its title. It argues that it would be unreasonable and unconscionable for the court to grant an injunction restraining a registered proprietor from exercising rights protected under Article 40(1) of *the Constitution*.

21. Accordingly, the 1st Defendant asserts that its title to L.R. No. 209/18289 was lawfully and procedurally acquired, and is therefore indefeasible and not liable to revocation.

22. The 2nd Defendant filed its Statement of Defence on 3rd May 2019, denying the allegations contained in the Plaint. It averred that it has no knowledge of the facts pleaded by the Plaintiff and is therefore unable to respond to the same substantively.

23. According to the 2nd Defendant, if, as alleged by the Plaintiff, there was any unlawful or irregular acquisition of public land by the 1st Defendant, such actions were undertaken unilaterally and without its participation, involvement, or facilitation in any manner whatsoever.

24. The 3rd Defendant filed its Statement of Defence on 7th May 2017, denying all the allegations set out in the Plaint. It stated that no formal notification or complaint had been brought to its attention regarding the alleged conversion of a public utility, and therefore it had not been placed in a position to exercise its constitutional mandate. Consequently, it averred that the Plaintiff's accusation of inaction on its part is premature and unfounded.

25. The 3rd Defendant further asserted that it is a stranger to the allegations of aiding, approving, or otherwise participating in the alleged grabbing of public utility land. It emphasized that its constitutional role is to protect, manage, and oversee public land, including land reserved for public purposes. Accordingly, it urged the court to find that it played no role in the alleged illegal activities and should not be held liable for the matters complained of.

Hearing and Evidence

26. The matter proceeded for hearing on 6th March, 2023. Mr Harun Nyamboki, the Plaintiff's Director testified as PW1. He adopted his amended witness statement dated 27th January, 2025 as his evidence in chief and produced the documents number 2-24 in the bundle of 9th March, 2017 as PEXHB1, further list of documents, 2-34 in the bundle dated 3rd March, 2022 as PEXHB2 and the documents in the bundle of 3rd March, 2025 as PEXHB3.

27. It was PW1's testimony that prior to the sale of the property to the Plaintiff, he was the registered owner thereof having purchased it in 1997. Immediately upon purchase, he initiated the process of developing the property by constructing a domestic building comprising two shops and twelve flats, for which he obtained all the necessary approvals from the relevant County authorities. He thereafter completed the development and put up residential apartments which have since been occupied by tenants.

28. According to PW1, in 1998, before commencing the residential development, he had obtained approval from the Nairobi City Council Water and Sewerage Department to construct a sewer line through an existing public service lane and to connect the extension to serve the suit property. T

29. He testified that the same approval allowed him to install a fresh water supply pipeline through the 6 metre public service lane and that from 1998 to 2016, both the owner of the property and the tenants enjoyed the continuous use of the said public service lane without interference.

30. It was his statement that in January 2017, the 1st Defendant, being the owner of L.R. No. 209/10191, unlawfully entered and encroached upon the said service lane by erecting structures, including metallic

containers, which completely blocked access thereto and interfered with the sewer and water lines. He averred that it was at this point that he discovered the encroachment.

31. PW1 stated that following the incident, he approached one of the Directors of the 1st Defendant, Mr. Claudio, to inquire about the matter; that during their discussion, Mr. Claudio maintained that the disputed portion was part of his land, and that vide a letter dated 14th February 2017, the 1st Defendant, through its Advocates, responded to his letter and forwarded to him a bundle of documents purporting to show that the amalgamation of the public service lane with L.R. No. 209/10191 had been lawfully undertaken, resulting in the creation of L.R. No. 209/18289.

32. Upon perusing the said documents, PW1 stated that he noted several attachments including copies of an alleged approval dated 7th June 2002, from the Commissioner of Lands, authorizing the extension of L.R. No. 209/10191 to include the 6 metre public service lane,th October 2007 addressed to the Commissioner of Lands, purporting to surrender the title to L.R. No. 209/10191, andth December 2007, communicating approval by the Town Planning Committee for the amalgamation of the 1st Defendant's parcel with the six-metre service lane.

33. PW1 noted that that the public service lane in question was a designated utility corridor serving several properties within the area, including his own, and could not lawfully be alienated or amalgamated into a private title. He further stated that the alleged letters relied upon by the 1st Defendant did not bear the requisite approvals or official seals and appeared inconsistent with the applicable planning and land administration procedures at the time.

34. Concerned with the developments, PW1 stated that he wrote to various public offices, including the Nairobi City County Government, the National Land Commission, and the Director of Surveys, seeking clarification on the legality of the amalgamation and requesting intervention to protect the public service lane. He stated that despite his efforts, the County Government did not take prompt action, and the encroachment persisted.

35. He stated that in 2016, the situation deteriorated when the 1st Defendant commenced further developments on the encroached portion, which completely sealed off the lane and disrupted both sewer and water connections to his property. He stated that this caused great inconvenience to his tenants, leading to frequent complaints and threats of vacating the premises.

36. It was his evidence that he engaged a private surveyor who confirmed through cadastral records and site inspection that the 6 metre lane had indeed been a designated public service lane in the original subdivision scheme. The surveyor's report, he stated, demonstrated that the lane was not available for amalgamation or private allocation.

37. Upon establishing that the amalgamation was illegal, PW1 once again wrote to the County Physical Planning Department demanding restoration of the lane to its original status, and that when his pleas went unheeded, he was left with no option but to instruct his Advocates to institute the present suit to challenge the unlawful amalgamation and to seek protection of the public service lane for continued access and utility services.

38. He explained that as a result of the encroachment, his property's sewer and water systems were severely affected, tenants experienced unsanitary conditions, and access for maintenance purposes was rendered impossible. He stated that he suffered financial losses as he had to undertake emergency works to redirect drainage and water systems at considerable cost.

39. PW1 reiterated that the amalgamation of the six-metre public service lane into L.R. No. 209/18289 was fraudulent and unlawful. He maintained that the same was achieved through collusion between

the 1st Defendant and officials in the Lands Office, City Planning Department, and the Survey Department, resulting in the unlawful alienation of public land for private benefit.

40. It was his evidence upon cross-examination that he purchased the land from a group of individuals, most of whom are now deceased. He stated that there was one allotment letter for the parcel, although it was not included in his bundle of documents. He further testified that the vendors had paid the stand premium, but he had no documentary proof of such payment.

41. PW1 conceded that there is an ongoing claim being ELC Case No. 0211 of 2023, wherein it is alleged that his parcel constitutes public land. He confirmed that the case is still pending. He further stated that he does not have a written sale agreement in respect of the transaction, nor does he possess evidence of payment of stamp duty or the purchase price.

42. PW1 explained that although he has constructed apartments on the property, he has not obtained a certificate of occupation. He also confirmed that Mr. Claudio was acquitted in the criminal complaint relating to interference with the sewer line.

43. PW1 admitted that he had not produced evidence to explain the expenditure claims listed in his documents. Specifically, he noted that there were no written acknowledgements for the alleged casual payments, the receipts for plumbing services did not bear the name of the plumber or the nature of the work done, and there were no vouchers showing the names of the recipients.

44. He further stated that the receipts for exhauster services did not indicate the name of the provider, the medical claim forms did not show where the payments were made, and there were no receipts from law firms confirming payment of legal fees.

45. He further stated that the land was transferred to the Plaintiff company during the pendency of this suit. He confirmed that he is a shareholder in the Plaintiff company but acknowledged that he had not produced a CR-12 or a company resolution authorizing the institution of these proceedings.

46. It was his evidence during re-examination that there is no challenge on his property; that he could not repair the sewer line because the 1st Defendant was challenging it and that the amalgamation was fraudulent because the letter from the Commissioner of Lands dated the 26th March, 2008 purporting to exempt advertisement for allocation of the land where the sewer line is located was a forgery.

47. PW1 stated that he was both a complainant and a witness in the criminal case. He explained that whenever the sewer line required repairs, his workers and those from the Nairobi City County were unable to access his premises. He observed that the 1st Defendant's property has only one frontage, which abuts the service lane in question. He further narrated that he had purchased a pump specifically to drain out the sewage after the 1st Defendant had blocked the sewer line, and that this arrangement continued for about six months.

48. PW1 added that even after the court issued an order, the Nairobi City County later re-blocked the sewer line, and since then, they have not had proper access to it. He clarified that the casual labourers he engaged for the maintenance works were not necessarily the same individuals throughout, as they often changed from time to time.

49. PW2 was Zablon Mabea, a former employee of the Ministry of Lands. It was his evidence that between October, 1981 to January, 2014, he worked in various capacities in the Ministry of Lands and rose to the position of Commissioner of Lands.

50. PW2 stated that he recorded a statement after he was shown a copy of a letter of reference number CE5946/SMM/PWK/LR 209/18289 dated the 26th March, 2008 printed on the Ministry of Lands

letterhead and purported to have been signed by him. He denied ever writing and signing the same at any time as a Commissioner of Lands.

51. He stated that as a Commissioner of Lands, and to the best of his knowledge, a Permanent Secretary of the Ministry of Lands had no power to exempt any person from the advertisement exemption. He stated that he did not in any event know the nature of exemption alluded to in that letter.

52. Further, he stated that as a Commissioner of Lands, at no time did he issue titles as they were and have always been issued by the Registrar of Titles and it is the same officer who releases them. He urged that no claim should be based on the aforementioned title as the same is an illegality, null and void ab initio.

53. It was his evidence on cross-examination that he does not have the statement he recorded at the DCI and that he did not report his forged signature, neither did he pursue a forensic examination. PW2 conceded to not having checked the correspondence file for L.R No 209/18289. He stated that his statement to the DCI was confined to the letter of 26th March, 2008.

54. During re-examination he asserted that he never signed the 1st Defendants title.

55. PW3, Stanley Kimani Karayo, a Surveyor with the Nairobi City Water and Sewerage Company Limited, testified on behalf of the Managing Director, who had been summoned but was unable to attend. He confirmed having seen letters dated 3rd August 2016, 7th August 2018, and 2nd February 2019.

56. According to him, the letter of 3rd August 2016 was a response to an earlier letter dated 27th May 2016 from the 1st Defendant, who had requested the removal of a sewer line allegedly running through his land.

57. In reply, he stated, they informed him that the sewer line lay on a public wayleave and could therefore not be relocated. He noted that the 1st Defendant did not challenge this position. He further testified that the letter dated 7th August 2018 reported interference with the sewer line, and specifically the intentional clogging of a manhole, a matter that was later reaffirmed in another letter dated 18th September 2018.

58. During cross-examination, PW3 stated that he could not recall when the title to the suit property was issued, as it had not been presented to their office. He explained that the sewer line serves the public and runs across land that includes an access gate, and that he was unaware of any related criminal proceedings.

59. He clarified that Nairobi City Water & Sewerage Company is an agency of the Nairobi City County Government and that the company is aware the land in question has a registered title. He further stated that the 6 metre strip was originally reserved as a road reserve, over which the company routinely passes its sewer lines as a public wayleave. Wayleaves, he added, are authenticated from survey maps, though none had been filed in this matter.

60. He explained that while the sewer line was initially privately developed, it was constructed under their supervision, and after one year, they adopt such infrastructure and it becomes part of its network.

61. Upon re-examination, PW3 clarified that his main role in court was to produce the three letters following summons by the court. He added that the sewer line was constructed in 1998 and was formally adopted by Nairobi Water a year later, in accordance with their standard conditions of approval.

62. PW4, Dominic Mutegi, testified that he serves as a planner at the Nairobi City County, specifically in charge of development management. He explained that the letters appearing on pages 78 and 79

of the Plaintiff's bundle originated from the Urban Planning Department and were addressed to the Plaintiff. However, he disowned the letter dated 11th December, 2007, stating that it did not emanate from his department. The aforesaid letter purported to grant approval for the extension of L.R. No. 209/10191 to create L.R. No. 209/18289.

63. During cross-examination, PW4 acknowledged that the signatory of the letter dated 11th December, 2007 was a former employee of the County, who is now deceased. He confirmed that their office maintains records for verification of such correspondences but observed that the letters at pages 78 and 44 were unsigned. He stated that he was not the signatory of the letter at page 79 and conceded to not having brought the office file to court.

64. Upon re-examination, PW4 clarified that there had been no specific request for him to produce the original office file during his testimony.

65. DW1 was Joseph K Claudio, a Director of the 1st Defendant. He adopted his amended witness statement dated 2nd November, 2023 as his evidence in chief and produced the list of documents at page 19 of his bundle dated the 6th November, 2023 as 1DEXHB1.

66. It was his evidence vide the statement that at all material times, the 1st Defendant was the lawfully registered proprietor of the parcel of land known as L.R No 209/18289; that on or about the 16th August, 2001, the 1st Defendant applied to the Commissioner of Lands for an extension of L.R 209/10191 by a 6 metres wide lane located between L.R 209/10191 and L.R 209/12493 on the side of Langata Road and that this application was approved vide a letter dated the 7th June, 2002, and was asked to carry out the survey of the parcel of land.

67. It was his evidence that on 1st August 2002, the 1st Defendant was granted a letter of allotment for the unsurveyed extension onto its property at a total fee of Kshs 23, 190; that upon issuance of the letter of allotment as well as satisfying all the requisite conditions for the grant of the allotment, the 1st Defendant paid to the Commissioner of Lands the sum of Kshs 23,190 vide a bankers cheque number 018110, as well as an additional sum of 44,275 and that he also surrendered the original title for L.R 209/10191 in exchange for the new title L.R No 209/18289.

68. Desirous of developing its property, it was averred, on or about the 18th January, 2008, the 1st Defendant wrote to the Director of City Engineers Department to inquire about the access points to the said property; that vide a letter dated 24th January, 2008, the 2nd Defendant replied to it stating that the official access to the property is on the access road between plots L.R 208/10195, L.R 209/9959 and L.R 209/10192 and that the letter further stated that there is a common parking between the Telkom Exchange building and the family planning building.

69. It was stated by DW1 that the Plaintiff's alleged property being L.R 209/13557 occupies the common public parking and he has refused to co-operate with investigative agencies who have sought to inquire into the ownership of the said property, and that the Plaintiff is currently entangled in a court dispute with EACC over ownership of the property as the same is public land.

70. According to DW1, the 6 metres land alluded to by the Plaintiff is fictitious since the cadastral map is explicit on the road and access; that the 1st Defendant has held its title since 29th October, 2009 yet the Plaintiff has not complained.

71. He stated that in 2018, while in the ordinary cause of carrying out works on the property, the Plaintiff maliciously accused him of destroying the sewer line leading to his being charged in Criminal Case No 298A of 2018; that he was however acquitted on 1st December, 2020; that the Plaintiff further complained to the NLC that the 1st Defendant had been allotted the extension of the 6 metres lane

un procedurally and that the NLC instructed the DCI who returned a verdict that the 1st Defendant's ownership was legitimate.

72. DW1 stated during cross-examination that he had never seen the letter dated 30th June 2023 which he had attached to his documents. He further admitted that he sold the suit property about four years ago, while this matter was still pending before the court. He explained that the property was sold to persons associated with T-Mall Supermarket.

73. It was his testimony that he had applied for the adjacent parcel to be amalgamated with his property since, in his view, it had no specific use or public purpose. According to him, the land had always been his, and that he had never instituted any legal proceedings against Nairobi Water regarding the sewer line.

74. He stated that he did not involve any of the neighbouring property owners during the amalgamation process. He further testified that he was permitted to conduct a survey of the property, which was undertaken by a licensed surveyor, resulting in the preparation of a survey plan although he did not produce a copy of it in evidence. He added that a Part Development Plan (PDP) was issued to him, but he was uncertain whether the Commissioner of Lands had formally requested its preparation.

75. Upon cross-examination by the court, he stated that by 2002, he was unsure of whether there was a sewer line. He maintained that the sewer line was serving only the Plaintiff's property and could easily be relocated. He concluded by clarifying that although the property had been sold, the completion of the sale transaction was contingent upon the final determination of this suit.

76. During re-examination, he stated that as at the year 2002, he was not aware of any existing sewer line on the property. He explained that he only became aware of it later when certain individuals approached him seeking to know why the line had been blocked. He reiterated that he did not know when or why the sewer line had been constructed, as the area was undeveloped at the time.

Submissions

77. The Plaintiff's counsel filed submissions on 30th June, 2025. Counsel submitted that the Plaintiff is challenging the validity of the 1st Defendant's title as per Section 26 (1) of the *Land Registration Act* which provides the instances when a title can be challenged. In this instance, it was urged, it has been demonstrated that the 1st Defendant's title is fraudulent and it should as such should be cancelled.

78. Reference in this regard was made to the Court of Appeal decision of Thoya v Mwaro (Civil Appeal E041 of 2022) [2025] KECA 931 (KLR), as well as the cases of Chemey Investment Limited v Attorney General & 2Others [2018] eKLR, Funzi Development Ltd & Others v County Council of Kwale, [2014]eKLR and Dina Management Limited v County Government of Mombasa & 5 others (Petition 8 (E010) of 2021) [2023] KESC30 (KLR).

79. Counsel submitted that the interference and destruction of the sewer line was orchestrated by the 1st Defendant. It was argued that the acts began shortly after the court's Ruling of 16th July 2018 and were repeatedly carried out despite repairs by the Nairobi City Water and Sewerage Company, only ceasing after the arrest of the 1st Defendant's director and issuance of injunctive orders.

80. It was urged that the Plaintiff had proved its case on a balance of probabilities and is entitled to the reliefs sought. Relying on Nguruman Ltd v Jan Bonde Nielsen & Others [2014] eKLR, counsel argued that the Plaintiff has met the legal threshold for a permanent injunction, having established the existence and continued use of the sewer line constructed in 1998 and which Nairobi City Water and Sewerage Company confirmed as a public wayleave protected under Section 28 of the *Land Registration Act*.

81. Further, it was submitted, the Plaintiff has made a case for the cancellation of the 1st Defendant's title to L.R No. 209/18289 under Section 80(1) of the *Land Registration Act*. Upon cancellation, it was submitted that restoration of the six-metre service lane serving the Plaintiff's property will naturally follow. On special damages, it was emphasized that they had been specifically pleaded and supported by receipts and invoices.

82. The 1st Defendant filed submissions on 15th September, 2025. Counsel submitted that the 1st Defendant has established that all statutory procedures and payments were complied with in respect to the amalgamation. In any event, it was submitted, the six-meter strip was not a public access road.

83. It was submitted that the Plaintiff did not prove ownership of L.R. No. 209/13557, which forms the foundation of his claim. The aforesaid parcel is public land originally reserved as a car park, and that the Ethics and Anti-Corruption Commission (EACC) has already instituted recovery proceedings in ELC No. E211 of 2023 – EACC v Nesco Services Ltd & Others.

84. It was further submitted that the Plaintiff's earlier attempts to shield the property through Nesco Services Ltd v EACC & 3 Others [2023] and Nesco Services Ltd v EACC [2024] were both dismissed by the High Court and the Environment and Land Court. The courts found that the EACC was lawfully executing its constitutional mandate and that the Plaintiff's title was not indefensible. These findings, Counsel argued, conclusively show that L.R. No. 209/13557 is public land, hence the Plaintiff has no proprietary rights capable of protection by this court.

85. Counsel emphasized that equity does not aid a party tainted by illegality, citing Patrick Waweru Mwangi v Housing Finance Co. of Kenya (2013)eKLR and Protus Hamisi Wambada v Eldoret Hospital [2020]eKLR where courts held that "he who comes to equity must come with clean hands."

86. It was submitted that the Plaintiff, having been implicated in the illegal acquisition of public land, cannot now rely on that title to seek injunctive or declaratory reliefs. Furthermore, the Plaintiff's own Part Development Plan from 2002 shows the area as a vacant public plot, further undermining his claim of ownership.

87. It was contended that since the Plaintiff has not established any proprietary interest in L.R 209/13557, he lacks locus standi to institute the present proceedings and his suit should be dismissed.

88. As regards fraud, it was urged that the Plaintiff wholly failed to prove the same to the requisite standard being higher than on a balance of probabilities. Reliance in this regard was placed on the case of Kinyanjui Kamau v George Kamau [2015] eKLR and Re Estate of Johana Keya Kikuyu (Deceased) [2020] eKHC 4503 (KLR).

89. With respect to special damages, Counsel argued that none were proved. Relying on Hahn v Singh [1985] KLR 716 and Kenya Shell Ltd v Benjamin Karuga Kibiru [1986] KLR, it was submitted that special damages must be specifically pleaded and strictly proved through receipts or clear evidence of payment. The Plaintiff's reliance on invoices, quotations, and lists of expenses without corresponding proof of actual loss was inadequate. In the absence of such proof or a causal link between the 1st Defendant's actions and the alleged loss, it was submitted that the claim for special damages cannot stand.

90. The 3rd Defendant filed submissions on the 2nd October, 2025. Counsel submitted that the Supreme Court in Kiluwa Limited & Another v. Business Liason Company Limited & 3 Others (Petition 14 of 2017) (2021) KESC 37 (KLR) expressed that un-alienated government land is public land within the context of Article 62 of *the Constitution* and the Government *Land Act* (repealed).

91. It was explained that that the law governing the allocation of unalienated government land, then under Section 3 of the repealed Government Lands Act (Cap 280), required that any such grant or disposition by the President be made "subject to any other law," including the Land Planning Act (Cap 303) and its 1961 Development and Use of Land (Planning) Regulations.

92. Counsel further relied on the Supreme Court's decision in Dina Management Ltd v County Government of Mombasa & 5 Others [2023] KESC 30 (KLR), which affirmed that land allocation without an approved development plan is unlawful and incapable of conferring valid proprietary rights. The court emphasized that a title is merely the end product of a legal process, and if that process is flawed, the resulting title is defeasible.

93. Counsel submitted that the allocation of unalienated government land must strictly comply with legal requirements, including the preparation and approval of a Part Development Plan (PDP) before any allotment is made. In this case, it was submitted, the 1st Defendant failed to produce any PDP or evidence showing that the suit land was available for allocation.

94. Counsel emphasized that under *the Constitution*, the *Land Act*, and the *National Land Commission Act*, only the 3rd Defendant, is empowered to allocate public land, subject to public notice and participation. It was further submitted that the 1st Defendant's purported letter of allotment was neither perfected nor followed by registration, and therefore could not confer any valid interest in the suit land.

95. Reliance in this regard was placed on the case of Wreck Motor Enterprises v Commissioner of Lands [1997] eKLR, Torino Enterprises Ltd v Attorney General (2023) KESC 79 (KLR), and Dr. Joseph N.K. Arap Ng'ok v Justice Moijo Ole Keiyu & 4 Others (CA No. 60 of 1997).

96. It was submitted that the 1st Defendant failed to meet the conditions attached to the alleged letter of allotment, including obtaining a grant and registration under the relevant statutes. Consequently, the letter could not form a lawful basis for ownership or amalgamation with L.R. No. 209/10191 to create L.R. No. 209/18289.

97. Counsel argued that the absence of compliance with the mandatory requirements under the *Land Act*, the *Physical and Land Use Planning Act*, and related regulations rendered the purported title fundamentally invalid.

98. The Plaintiff's counsel filed further submissions on 3rd October, 2025 which I have considered. He urged that the law is settled that a title founded on forgery cannot confer any interest. Reliance was placed on the case of Munyu Maina v Hiram Gathiha Maina [2013] eKLR and Dina Management Ltd v County Government of Mombasa & 5 Others [2023] KESC 30 (KLR-SC).

99. As regards ownership and locus, Counsel submitted that no Counter-claim has been filed to challenge its title as per Section 26(1) of the *Land Registration Act*. It was urged that as expressed in IEBC v Stephen Mutinda Mule & 3 Others [2014]eKLR, submissions cannot replace pleadings.

100. According to Counsel, beyond registration, the Plaintiff's locus is reinforced by practical utility rights as both the Nairobi City Council and the Nairobi City Water & Sewerage Company authorized the use of the 6m lane for sewerage services for the Plaintiff's property and tenants creating a legitimate and protectable interest.

101. As regards the special damages and emergency expenditure, it was submitted that the Plaintiff duly pleaded and proved special damages with receipts for some expenditures. Where receipts are unavailable, with respect to emergency costs, the same are corroborated by the Nairobi Water &

Sewerage Company letter confirming the hazard and necessity of immediate remedial action and these constitute legitimate claims that may be proved without receipts. Reference was made to the cases of Jacob Ayiga Maruja & Another v Simeon Obayo [2005] eKLR and Virginia Simpano Mukami v Attorney General &Another [2020] KEHC 4001.

Analysis and Determination

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

    i. Whether the suit is competent?

    ii. Whether the 1st Defendant lawfully acquired and holds a valid title over L.R No. 209/18289?

    iii. What are the appropriate reliefs to issue?

103. The Plaintiff instituted this suit against the Defendants seeking inter-alia, permanent injunctive orders against the 1st Defendant restraining it from any interference with the access lane purportedly connected to its property, L.R 209/13557, an order directing the 3rd, 4th and 5th Defendants to cancel the 1st Defendants' title, L.R 209/18289 and an order directing the 2nd, 3rd and 5th Defendants to restore the original service lane of 6 meters serving the Plaintiffs premises.

104. It is the Plaintiff's case that it is the legitimate proprietor of parcel L.R 209/13557 next to which was a 6-metre service lane which has always been in use by its tenants and the general public as a walk path, and that sometime in 1998, he received approval from the Nairobi Water and Sewerage Company to connect an extension to serve his parcel from the service lane.

105. It is the Plaintiff's case that the 1st Defendant, the owner of parcel L.R 209/10191 adjacent to its parcel, unlawfully amalgamated the service lane serving its parcel, essentially blocking the lane. This, it is asserted, is tantamount to illegal and unlawful grabbing of public land. Further still, it was urged, the 1st Defendant also interfered with the water and sewer lines in the premises causing it grave losses.

106. On its part, the 1st Defendant asserted that it is the lawful and bona fide proprietor of the suit property, L.R. No. 209/18289, having acquired it through a lawful and procedural process. It explained that it had formally applied to the Commissioner of Lands for an extension of its original parcel, L.R. No. 209/10191, by an additional six metres. The application, it maintained, was duly considered and approved, culminating in the issuance of a new title, L.R. No. 209/18289, in its favour.

107. On their part, the 2nd and 3rd Defendants contended that the 1st Defendant's acquisition of the public service lane was irregular and undertaken without their involvement.

108. The present dispute involves the legitimacy of the 1st Defendants title. The Plaintiff seeks to impugn the same and he is obligated to establish his claim in this regard. 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."

109. 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."

110. 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."

111. 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 Demutila Nanyama Pururmu v Salim Mohamed Salim [2021] eKLR relying on an earlier exposition by Vijay Morjaria v 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."

112. As regards the standard of proof, the Court of Appeal in Demutila Nanyama Pururmu v Salim Mohamed Salim (supra) looked to its earlier decision in Kinyanjui Kamau v 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 v 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."

113. The court will be so guided.

Whether the suit is competent?

114. The 1st Defendant seeks to impugn the legitimacy of the proceedings on the basis that the Plaintiff does not have the requisite locus. Locus standi is defined in Black's Law Dictionary, 9th Edition (page 1026) as:

> " The right to bring an action or to be heard in a given forum."

115. Speaking to the same, the court in the case of Alfred Njau and Others v City Council of Nairobi (1982) KAR 229, noted:

> " The term Locus Standi means a right to appear in Court and conversely to say that a person has no Locus Standi means that he has no right to appear or be heard in such and such proceedings."

116. It is trite that locus is essential in proceedings. The 1st Defendant contends that the Plaintiff has failed to demonstrate legal interest in the parcel of land known as L.R. No. 209/13557. It opines that the said property constitutes public land unlawfully acquired by the Plaintiff, as confirmed by the Ethics and Anti-Corruption Commission (EACC).

117. Similarly, it was argued, the Plaintiff has no interest in the 6-metre lane which forms part of the 1st Defendants property. On that basis, the 1st Defendant maintains that the Plaintiff lacks the requisite locus standi to invoke the jurisdiction of this court.

118. The Plaintiff has instituted this suit as the registered proprietor of L.R. No. 209/13557. Its grievance concerns the alleged encroachment and unlawful conversion by the 1st Defendant of a six-metre service lane next to its parcel aforesaid. It maintains that the same is a designated public walk path and serves as a public wayleave wherein it has connected water and sewer lines approved by the relevant authorities.

119. It is noted that whereas the Plaintiff's 'title has been strongly questioned, the 1st Defendant has not sought to impeach it through a Counterclaim. This brings to the fore the principle that parties are bound by their pleadings.

120. Speaking to the same, the Court of Appeal in Joshua Mungai Mulango & Another v Jeremiah Kiarie Mukoma [2015] KECA 374 (KLR), expressed thus:

> " In our view, parties are bound by their pleadings. The court is bound to determine a dispute on the basis of the pleadings filed by the parties and the evidence adduced on the basis of such pleadings. In an adversarial system such as ours, it is the parties who set the agenda for the trial by their pleadings. The need for this cannot be gainsaid. For the purpose of ensuring certainty and finality, a party cannot be allowed to resile from its pleadings without due amendment. Each party knows the case he has to meet and cannot be taken by surprise. The purpose and importance of the rules in this regard clearly is to ensure that litigation is conducted in a framework that will guarantee fair play without prolixity and needless escalation of litigation costs."

121. Indeed, the 1st Defendant cannot, in the absence of a pleaded and substantiated challenge to the Plaintiff's title, or evidence demonstrating that the Plaintiff's title has been impeached as per the law, state that the Plaintiff's title is a forgery. The Plaintiff's title remains valid and enjoys the protection accorded under Section 26(1) of the *Land Registration Act* and Article 40 of *the Constitution*, until and unless it is nullified through due process.

122. The court finds that the Plaintiff has demonstrated a clear and legitimate interest in the dispute. His standing is grounded in his ownership of L.R. No. 209/13557 which neighbours the impugned parcel and the alleged infringement on the access and utility rights attached to it. Accordingly, the plea of want of locus fails.

Whether the 1st Defendant lawfully acquired and holds a valid title over L.R No. 209/18289.

123. The evidence before this court shows that the 1st Defendant is the registered owner of parcel number L.R 209/18289 having been so registered on 10th August, 2008 pursuant to the provisions of the retired Registration of Titles Act (repealed). By dint of the provisions of Section 107 of the *Land Registration Act*, 2012, the law applicable to the title aforesaid is the repealed Registration of Titles Act.

124. The Registration of Titles Act(repealed) under Section 23 provided as follows with respect to proprietorship:

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

125. Pursuant to these provisions, the rights acquired by a proprietor were only subject to any leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register. However, the title of the proprietor can be challenged on the ground of fraud or misrepresentation to which he is proved to be a party.

126. In the present case, the Plaintiff disputes the validity of the 1st Defendant's title, contending that L.R. No. 209/18289 was unlawfully created through the amalgamation of L.R. No. 209/10191 with a six-metre public access lane. It is argued that this amalgamation was undertaken in contravention of the law thereby rendering the resultant title irregular and subject to cancellation.

127. Indeed, as has now been firmly settled by the Apex Court in Dina Management Limited v County Government of Mombasa & 5 others [2023] KESC 30 (KLR), where the process leading to the issuance of a title is marred by illegality, fraud, or procedural impropriety, such a title cannot stand.

128. It is at the outset noted that the existence and character of the 6-metre strip or access is not in dispute. The only issue in contention is its nature, whether it was, as contended by the Plaintiff, a parcel designated for public purposes and in this regard being a public walkway as well as serving as a public wayleave or, as the 1st Defendant maintains, it was simply an idle parcel that could be amalgamated with his land.

129. The evidence before this court shows that by way of a letter dated 6th August, 2001, the 1st Defendant applied to the Commissioner of Lands for the extension of his plot, then known as LR 209/10191, to include the 6M wide lane located between the said land and LR 209/12493.

130. In the said letter, the 1st Defendant stated that "since there is no access roadside to neighbouring plots, the lane would serve no purpose." The letter by the 1st Defendant has annotations by the officers in the

Commissioner of Lands office. In one of the last annotations on the letter dated 7th September, 2007, it was observed as follows by the Senior Principal Records Officer (SPRO):

> "I visited the site in question and established that the road has not been developed and it doesn't serve the neighbouring plots since they are served by another road. Consequently, it is not accessible from Langata road."

131. In the letter dated 7th June, 2002, the Commissioner of Lands approved the application requesting for extension of the plot adjacent to the 1st Defendant's LR No. 209/10191. In the said latter, the Commissioner of Lands authorized the 1st Defendant to carry out the survey of the land in question.

132. Pursuant to the approval, the 1st Defendant produced in evidence a letter dated 2nd July, 2002 in which it submitted to the Commissioner of Lands four prints of the proposed amalgamation for his approval and further processing. The 1st Defendant produced in evidence the letter of allotment dated 1st August, 2002 for the "UNS. EXTENSION TO L.R. NO. 209/10191 NAIROBI WEST" with an area of approximately 0.03HA.

133. The said letter of allotment provided for the payment of Kshs. 23,190 which was paid by the 1st Defendant vide a bankers cheque number 18110. Vide a letter dated 9th October, 2007, the Commissioner of Lands informed the 1st Defendant about the increased annual rent for the combined land, and informed the 1st Defendant to surrender the existing title in exchange for a new one, upon making payments of Kshs 1,000 being the conveyancing and registration.

134. The 1st Defendant did forward to the Commissioner of Lands the original title vide a letter dated 18th October, 2007. The 1st Defendant also produced in evidence a copy of the Part Development Plan (P.D.P) showing the strip of land that was acquired. The Part Development Plan shows that the same was approved by the Commissioner of Lands on 1st August, 2002.

135. The 1st Defendant did produce in evidence the rates clearance certificate and the stamp duty that was paid towards the issuance of the new title. The 1st Defendant also exhibited the Memorandum of Registration pursuant to a surrender of the old title dated 2nd October, 2008. This is what culminated into the issuance of a title for LR NO. 209/18289 encompassing the 6 meters strip of land.

136. According to the evidence of PW3, a surveyor from the Nairobi Water Sewerage Company, the 6-metre strip was a road reserve accommodating sewer lines, thereby serving as a public wayleave. However, other that the Deed Plan annexed on the Plaintiff's title which shows the strip of land terminating on 15 meter-wide road, and which seems to serve the 1st Defendant's original parcel of land 209/10191, there is no indication that the said access road was indeed a public road, or service lane, or a road reserve.

137. If, in fact, the said 6-meter strip of land was a public way leave, then why did the 2nd Defendant, vide the letter dated 3rd August, 1998, grant to the Plaintiff approval for the sewer line subject to condition number 2, that the Plaintiff acquire the way leave, failure to which the connection of the sewer to the NCC Sewerage network was going to be deemed illegal?

138. Indeed, there is a difference between an access road, which was the case here, and a public road. An access road, also known as a service road, is usually a smaller road built to provide entry to a specific property, subdivision or facility.

139. Its purpose is usually to connect a specific property to the public road. From the drawing herein, and the evidence, the strip was not being accessed by the members of the public, including the Plaintiff, and was therefore not a public road. Indeed, the Deed Plan annexed to the Plaintiff's title shows that his property is accessible vide a much wider road, which is a public road.

140. The next issue for consideration is whether the six-metre lane was lawfully alienated. The process of allocation under the repealed Government Lands Act is sequential and precise. In Dina Management Limited v County Government of Mombasa & 5 Others (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR) (21 April 2023) (Judgment), the Apex Court elaborated on this process noting thus:

> " The procedure for the allocation of unalienated land is laid out by the Environment and Land Court in Nelson Kazungu Chai & 9 others v Pwani University [2014] eKLR as follows:"...It is trite law that under the repealed Government Lands Act, a Part Development Plan must be drawn and approved by the Commissioner of Lands or the Minister for lands before any un-alienated Government land could be allocated. After a Part Development Plan (PDP) has been drawn, a letter of allotment based on the approved PDP is then issued to the allotees."
>
> It is only after the issuance of the letter of allotment, and the compliance of the terms therein, that a cadastral survey can be conducted for the purpose of issuance of a certificate of lease. This procedural requirement was confirmed by the surveyor, PW3. The process was also reinstated in the case of African Line Transport Co Ltd v Attorney General, Mombasa HCCC No 276 of 2013 where Njagi J held as follows:"Secondly, all the defence witnesses were unanimous that in the normal course of events, planning comes first, then surveying follows. A letter of allotment is invariably accompanied by a PDP with a definite number. These are then taken to the department of survey, who undertake the surveying. Once the surveying is complete, it is then referred to the Director of Surveys for authentication and approval. Thereafter, a land reference number is issued in respect of the plot."

141. As already pointed out hereinabove, the Commissioner of Lands found as a fact that the 6 meter-strip of land that was adjacent to the 1st Defendant's land was not required for any public purpose. Vide a letter of allotment dated 1st August, 2002 and a Part Development Plan issued on the same day, the Commissioner of Lands allocated the said strip to the 1st Defendant. The 1st Defendant complied with the conditions in the letter of allotment, and upon surrendering the original title of the abutting land, was issued with a new grant.

142. Although PW2, the then Commissioner of Lands, denied authoring the letter dated 26th March 2008 that allegedly exempted the 1st Defendant from the requirement of public advertisement. He informed the court that he was not in possession of the documents relating to the said transaction, having retired from the Ministry of Lands.

143. It is trite that he standard of proving fraud is higher than on a balance of probabilities (see Karanja v Kamau & Another(2024)KECA 1701(KLR).

144. When alleging fraud by way of forgery of documents or signatures, parties are often required to submit an expert opinion due to the technical nature of the objection. (see Re Estate of Johana Keya Kikuyu (Deceased) (2020)KEHC 4503 (KLR). The Plaintiff did not adduce any evidence of an expert to show that indeed PW2 did not sign the 1st Defendant's title.

145. Indeed, the burden of impugning the documents produced by the 1st Defendant, including the title document, the letter of allotment, the P.D.P and the approvals that were granted to the Plaintiff by the Commissioner of Lands to allocate and annex the 6 meter access road was on the Plaintiff. Having failed to summon the Chief Land Registrar or his nominee to testify, the court is convinced that the documents the 1st Defendant relied on from the Ministry of Lands are authentic.

146. In conclusion, it is the finding of this court that the Plaintiff did not discharge its burden of proof, having failed to show that the reason that the Commissioner of Lands gave, vide the annotations on the 1st Defendant's letter dated 16th August, 2001, that the 6 meter strip of land neighbouring the 1st Defendant's land, does not serve the neighbouring land, including the Planning's land, was false, and that the allocation of the said strip was fraudulent.

147. Having failed to prove fraud in the acquisition of the title in respect of L.R No. 209/18289, the question of whether the Plaintiff is entitled to damages becomes moot.

148. For those reasons, the Plaintiff's suit is dismissed with costs.

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

O. A. ANGOTE

JUDGE

In the presence of;

Mr. Osoro for NLC

Mr. Manyara for Plaintiff

Mr. Kairu for Waithaka for 1st Defendant

Mr. Allan Kamau for 3rd – 5th Defendants

Court Assistant: Tracy