



Kiragu v Commissioner of Lands & 6 others (Environment and Land Case 102 of 2019) [2025] KEELC 7734 (KLR) (11 November 2025) (Judgment)

Neutral citation: [2025] KEELC 7734 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND CASE 102 OF 2019
MAO ODENY, J
NOVEMBER 11, 2025**

BETWEEN

TITUS KIRAGU PLAINTIFF

AND

THE COMMISSIONER OF LANDS 1ST DEFENDANT

LAWRENCE MAINA MWANGI 2ND DEFENDANT

KINARU KIMAIGA NDUBI 3RD DEFENDANT

SALIM GULAM HUSSEIN GILANI 4TH DEFENDANT

JOHNSON GACAU KIBERA 5TH DEFENDANT

ATTORNEY GENERAL 6TH DEFENDANT

JOHN WAWERU KINYANJUI 7TH DEFENDANT

JUDGMENT

1. By a Plaint dated 19th July, 2010, amended on 27th July, 2011, and further amended on 24th October, 2014, the Plaintiff herein sued the Defendants seeking the following orders:
 - a. A cancellation of the lease in relation to Land Registration Number Nakuru Municipality Block 18/59 issued to the said Lawrence Mwangi and an order compelling the District Land Registrar Nakuru to register the lease to the said parcel of land in the names of the plaintiff.
 - b. A permanent injunction to be issued against the Defendants restraining the defendants either by themselves, their agents, employees and/or servants from entering, alienating disposing off and/or in any matter dealing with the plaintiff's parcel of land known as Nakuru Municipality Block 18/59. (sic)



- c. A cancellation of the new titles issued in the names of the 3rd, 4th & 5th defendants.
 - d. Costs of the suit, interest and damages.
2. The 2nd Defendant filed a Counterclaim dated 20th April, 2021, against the Plaintiff and sought the following orders:
- a. A Declaration that the Plaintiff now Defendant has no interest in the land known as Nakuru Municipality Block 18/59 and the subsequent subdivisions LR Nakuru Municipality Block 18/157, LR Nakuru Municipality Block 18/158 and L.R Nakuru Municipality Block 18/159 excised from it.
 - b. That an order be issued directing the 1st Defendant and/or his/her officers to cancel the Lease and Certificate of Lease and any other title document borne by the Plaintiff.
 - c. A permanent injunction be issued against the Plaintiff now Defendant, his agents, servants, employees, family and/or any other persons from laying claim, entering into, interfering with and/or trespassing upon the property Nakuru Municipality Block 18/59 and the subsequent subdivisions L.R Nakuru Municipality Block 18/157, L.R Nakuru Municipality Block 18/158 and L.R Nakuru Municipality Block 18/159 excised from it.
 - d. That the costs of the suit and the counterclaim be awarded to the 2nd Defendant now Plaintiff.
 - e. Any other order of Court that would be deemed fit in the circumstances.

Plaintiff's Case

3. PW1, Titus Kiragu, adopted his witness and supplementary statements dated 25th May 2017, and 28th April, 2022, respectively, as part of his evidence in chief and stated that he is ninety-two years old and a retired Civil Servant who worked at the Ministry of Agriculture.
4. PW1 produced a bundle of documents dated 12th May 2022, as PExb. No.1 to 63 except No. 9, 10,11, 12,17, 29, 30, 40, 41, 42, 43, and testified that he interacted with this property through the Kenya Gazette Notice of 22nd February, 1985, when the Commissioner of Lands advertised the availability of plots for allocation. He stated he was allocated plot No. 23 but the schedule indicated plot No. 5 with a stand premium of Kshs. 8,200/= and anybody interested was to enclose a Bankers Cheque of Kshs. 1,000/= with the letter.
5. PW1 further testified that by a letter dated 13th May 1985, he was informed that he had been allocated plot No. 23, and a letter of allotment issued to him for dated 14th October 1985 with a stand premium of Kshs. 9,415/=. Further, by a letter dated 12th May, 1985, the Commissioner of Lands wrote to him to send a letter of acceptance together with the fees within 21 days. It was PW1's testimony that he responded to the letter vide a letter dated 28th June, 1988, and K. M. Patel Advocate forwarded a cheque of Kshs. 10,000/= on his behalf. PW1 testified that he got a receipt for payment of Kshs.10,000/= and also paid a stand premium of Kshs.8,200/= as per the letter of allotment.
6. Mr. Kiragu told the court that Mr. Henry Obwocha informed him that he had mistakenly built a house on his plot and requested an exchange plot No. 25 with his plot No. 23. PW1 testified that after consideration, he told him that he would accept the offer as plot No 25 was bigger than his and he would not suffer any disadvantage.
7. PW1 referred the court to page 27 and a letter dated 11th May, 1988, addressed to the District Land Officer and the Town Clerk, which discussed the issue of exchange of plot No. 25 and 23, whereby the



- Commissioner of Lands agreed and gave them an officer to process the documentation. PW1 referred to a letter dated 11th July, 1990 addressed to him and Mr. Obwocha from the Commissioner of Lands for cross transfer and swapping plots Nos. 23 and 25, which granted the consent and Mr. Obwocha was to pay stamp duty for both transfers as the mistake was his.
8. PW1 further referred the court to a signed form of transfer from himself to Mr. Henry Obwocha, and testified that he is not sure whether Mr. Obwocha paid the stamp duty. It was PW1's evidence that he received a letter on the outstanding dues and a demand for land rent for Kshs. 2,920/= for plot No. 18/59, and that he made a payment of Kshs. 200,000/=. PW1 testified that the names of Philip Keter appears on the demand for rates as the Commissioner of Lands had directed that no transfer would be done if there were outstanding rates.
 9. It was PW1's testimony that the original allottee of the plot was Philip Keter who sold it to Henry Obwocha and had an outstanding amount to be paid. PW1 further testified that he used to pay the rates, in the name of Philip Keter as it had not been transferred to him due to the outstanding amount. He referred the court to page 24, where there is a letter dated 14th October 1985, addressed to Philip Kipkemoi Keter with a stand premium of Kshs.10,000/=.
 10. Mr. Kiragu told the court that he wrote a letter dated 9th July, 2002, to Lawrence Mwangi informing him of the outstanding amount to enable him to get his title as he wanted to raise money to pay his debts. PW1 testified that he engaged Lawrence Maina to help him sell his property to clear his bills, but Lawrence Mwangi later declared himself bankrupt.
 11. PW1 stated that the Commissioner of Lands wrote a letter dated 16th October, 2007, through the Chief Land Registrar, to the District Land Registrar and copied to him, informing him to go and sign the lease, where the stand premium was Kshs.10,000/= and the acreage was 0.6813 hectares.
 12. It was his testimony that the lease was for 99 years starting from 1985, and that while signing the lease, the District Land Registrar told him to stop as another person, and Lawrence Maina Mwangi had signed similar documents. When he asked the Land Registrar why Mr. Mwangi had signed his documents, Mr. Gathi stated that he suspected fraud.
 13. According to PW1, the Land Registrar wrote a letter (see page 48 of the bundle) to Lawrence Mwangi to appear on 18th December, 2007 to resolve the dispute, of which he attended but Mr. Mwangi did not attend. Further that the Land Registrar wrote another (see page 49 of the bundle) to Lawrence Mwangi informing him that he had not attended the meeting and was given 30 days to comply and bring his documents.
 14. PW1 further testified that he was not able to sign the lease as there was a restriction lodged on the grounds of fraud as per the certificate of official search. Further, he wrote a letter dated 14th January, 2008, to the District Land Registrar but has never received any response. PW1 referred to page 54 of the bundle and testified that there is a letter by his lawyer seeking to remove the restriction. He also stated that Kinaro Kimaga Ndubi filed a Misc. Application No. 432 of 2009, which was never served on the plaintiff, where the Applicant wanted to buy the suit property. He testified that he reported the matter to the Rates Officer at the Municipality and filed an application for joinder as an interested party, which was allowed, hence the restriction was not lifted.
 15. PW1 testified that there was a second suit, Civil Application No. 30 of 2013, (JR) (Lawrence Maina Mwangi Vs. Director of Surveys), which was withdrawn. He stated that he went to the office of the Director of Surveys and was given a letter dated 28th May 2013, addressed to the Commissioner of Lands. It was his evidence that the subdivision surveys which were done by Lawrence Maina Mwangi



were cancelled and the parcels were erased from the registry. Further that the council denounced the subdivisions and applications as forgeries/illegal.

16. PW1 also stated that there are rulings at pages 80 to 90 of the bundle and an order for inhibition restricting any dealings of the suit property together with subdivisions. PW1 testified that Lawrence Mwangi has a certificate of lease for plot No. 18/157 for 99 years from 1st July 1984, and Plot No. 18/158, Plot No. 18/159 also for 99 years from 1st July 1984, belonging to John. He also stated that a gazette Notice dated 22nd February 1985 created the scheme and it is not possible for leases to be granted before 22nd February, 1985.
17. PW1 stated that he saw a letter dated 8th February 1994 written by Lawrence Maina Mwangi to the Commissioner of Lands applying for allocation of a residential plot Nakuru Municipality and an acceptance letter for Un-surveyed plot No. 25. He also acknowledged a letter dated 19th December, 2005 to the District Land Registrar, from the Commissioner of Lands copied to Lawrence Mwangi, and a lease for plot No. 18/59 for 99 years from 1st July 1984 with a stand premium is Kshs. 76,000. PW1 testified that the lease starting on 1st July, 1984 does not correspond with the gazette notice dated 22nd February, 1985, as the scheme had not been created. Further that the stand premium that was allocated to plot No. 18/59 was Kshs. 10,000/=.
18. According to PW1, Lawrence Maina Mwangi had petitioned for bankruptcy vide a petition dated 7th December 2006, and a receiving order was issued which adjudged Lawrence Maina Mwangi bankrupt, hence he could not enter into valid agreements or pass a good title. PW1 prayed that judgment be entered as prayed in the plaint with costs.
19. Upon cross-examination by Mr. Maina, PW1 stated that he saw a gazette notice with applications for allotment dated 22nd February, 1985, and applied for one residential plot among the ones listed. PW1 informed the court that he was allocated plot No. 23 but he did not have the application with him in court, and was issued with an allotment letter dated 14th October, 1985 for plot No. 23. PW1 stated that he was given one allotment letter with a stand premium of Kshs. 6,200/ and was not aware of any other allotment letters.
20. PW1 further stated that the area of the land is not clear and the allotment letters are not similar. It was his evidence that the conditions were that he was to pay the stand premium within thirty days, but he paid after the expiry of the thirty days. He confirmed that his payment was accepted for plot No. 23, took possession after being shown the plot by a surveyor, but did not fence it.
21. Mr. Kiragu stated that when he took possession, Mr. Obwocha had not started construction, and that Mr. Obwocha built on part of his plot on his land. PW1 further stated that the allotment letter was issued to Philip Kipkemoi Keter for plot No. 25 measuring 0.73 hectares from 1st September, 1985 and the stand premium was Kshs.10,300/= with an annual rent of Kshs.2,060/, therefore he was to pay Kshs.12,725/= and that the letter did not have a PDP a map showing where the plot is located. It was his evidence that the land was transferred to Mr. Obwocha but he was not given any proof that he had bought the land from Mr. Keter.
22. PW1 referred to a letter dated 28th May, 1986 from Phillip Keter asking the Commissioner of Lands to allocate the plot to Henry Obwocha. This was a consent to transfer, after he surrendered his allotment to Obwocha. It was his evidence that he never saw any agreement between Mr. Obwocha and Mr. Phillip Keter and has never interacted with Mr. Keter. PW1 stated that plot No. 25 was paid for on 29th May, 1986, and stated that the stand premium was Ksh.9,300/= and the total amount was Ksh 11,750/=.



23. It was PW1's testimony that payment was made after Philip Keter had surrendered the allotment to Obwocha, and they cross-transferred plot No. 23 and 25 on 4th September, 1990, which was with the Commissioner of Land's approval. PW1 stated that Senior Principal Records Officer noted the transfer, but he was not sure whether Mr. Obwocha had an allotment letter.
24. According to PW1, he sent a letter to Lawrence Maina in 2002, informing him of the rates payable to the council and that Mr. Obwocha had indicated that the titles were ready for collection, and that he had paid Kshs. 25,000/=. It was his evidence that he did not go to collect the title, as he had to pay money before collecting it. He also stated that he got a letter from the Commissioner of Lands asking him to go and execute the lease documents. Later Lawrence Maina sent him the rates demand notice of which he paid Kshs.193,159/=. Mr. Kiragu stated that he received a letter dated 16th October, 2007, through mail to go and collect his title, and when he went to the Land Registrar to sign the documents the Registrar had the lease for Nakuru/Municipality Block 18/59, whereby the stand premium was Kshs.10,000/= with an area of 0.6813 hectares and an annual rent of Kshs.2000/=. Further that parcel No. 25's stand premium in the Kenya Gazette was Kshs.10,300/= annual rent of 2,000/= an area 0.073 which was different as this was un-surveyed. He confirmed that the area and the stand premium were different and explained that the difference was because the Commissioner of Lands has authority to alter.
25. PW1 informed the court that he questioned the Land Registrar for irregularly issuing a lease to Lawrence and was told that he would place a restriction, and was never shown the documents that were issued to Lawrence. PW1 stated that he is not aware whether any action was taken by DCI but the search indicated that there was suspected fraud in the way Lawrence Maina obtained the lease.
26. Mr. Kiragu informed the court about a letter dated 20th May, 2013 to the National Land Commission on double allocation of Nakuru Municipality Block 18/59, whereby the National Land Commission replied and stated that they had instructed investigations to commence but he does not know the outcome. It was his evidence that the 2nd Defendant obtained the lease through fraud knowing that the land belonged to him.
27. Upon cross-examination by Mr. Makora for 4th defendant, PW1 stated that the restriction was removed on 6th July, 2010, but was reinstated in 2014. PW1 stated that he is aware that Gilani was buying part of his land, vide a sale agreement dated 19th December 2013, and he informed him of the situation but he said that he was following his lawyer's instructions. It was PW1's testimony that Mr. Gilani colluded with the 2nd defendant as he bought land which did not belong to the 2nd defendant.
28. Upon cross-examination by Ms. Mwangi for 5th defendant, PW1 stated that he asked the Registrar to lodge a restriction to the property, but there is a search dated 17th May, 2012, that indicates that there was no restriction. PW1 confirmed that the 5th Defendant is not a party to Misc. Application No. 432 of 2009 and did not know the 5th Defendant.
29. Upon re-examination by Ms. Mbanja, PW1 testified that the letter of allotment was certified as a true copy of the original which he relied on. PW1 testified that he made payments after the letter of allotment and took possession and has been occupying the land. PW1 further testified that there was no dispute about Mr. Keter and Obwocha's transaction, hence there is no reason to disbelieve Mr. Obwocha's payments.
30. PW1 testified that he would not have Mr. Obwocha's receipts, and has worked with the 2nd Defendant, Lawrence, from the year 2000 as a land broker who was selling land on his behalf. It was his evidence that he was issued with a letter of allotment, for an un-surveyed plot and was not allowed to complete the transaction of the lease at the Registrar's office. He further stated that he is not the one who filed



- case No. 432 of 2009 but was brought in as an interested party, where the court ruled that the restriction had to be reinstated, and that Mr. Gilani could not acquire a good title from Mr. Lawrence Mwangi.
31. PW2, Mr. Ojwang Omollo Patroba, an Assistant Director of Land Administration, Ministry of Lands at Ardhi House and testified that he has been working in the Ministry since 2006, and after being referred to the affidavit by Edmond Mombiba (6th defendant), he stated that in May 2021, the Land Administration Officer in Nakuru County was Peter Ouma Adipo, and he had not heard of Edmond Mombiba who filed a witness statement.
 32. It was PW2's testimony that previously, there was correspondence from R. W. Mbanya & Co. Advocates requesting for confirmation in respect of the dispute on LR No. Nakuru/ Municipality Block 18/59, and there were responses from their office which commented on the two sets of documents. PW2 was shown the Gazette Notice dated 22nd February, 1985 and testified that based on his investigation on the gazette notice, he managed to get the same at the government printer website which listed an invitation for allocation of residential plots Nos. 6 to 66. PW2 testified that he discovered a general alienation file for Nakuru 3088 Vol. 27 CCVIII and traced the plots allocation committee minutes.
 33. Mr. Patroba Ojwang testified that the minutes, indicated that plot No. 23 was allocated to Titus Kiragu of P.O Box 263 Nakuru, Plot No. 25 was allocated to Philip Kipkemei Keter of P.O Box 2681 Nakuru, and the same were signed by acting Town Clerk Nakuru and certified as true copies of the original on 17th October, 1986, with a cover letter dated 17th October 1986 forwarding the minutes.
 34. PW2 further testified that there was no allocation made to Lawrence Maina Mwangi, and there was a letter of allotment to Titus Kiragu which exists in their documents. It was PW2's testimony that, in the course of his investigations, he discovered that after the allocation, two files were opened being correspondence file No. 116075, which was opened for plot No. 23 in the name of Titus Kiragu and file No. 116077, opened for plot No. 25 in the name of P. K. Keter.
 35. PW2 further testified that there was movement from P. K. Keter to Henry Obwocha by way of transfer, whereby plot No. 25 would belong to Mr. Henry Obwocha. PW2 also told the court that, based on their records, that can be traced from 116075, relating to the swap between plot Nos. 23 and 25 vide a letter dated 11th July, 1990, the Commissioner of Lands noted that there was a joint application by Henry Obwocha and Titus Kiragu dated 20th April 1988 to be allowed to swap. He testified that the reason given in the correspondence is that Mr. Obwocha had erroneously developed the plot that belonged to Titus Kiragu. It was his evidence that the correspondence noted that the said swap would be in the form of an informal transfer and they were requested to avail transfer forms which were done as per page 30 in the plaintiff's bundle.
 36. Mr. Patroba Ojwang stated that a lease was eventually prepared in the name of Titus Kiragu and forwarded to the Land Registrar by the Commissioner of Land vide a letter dated 16th October, 2007. He testified that the lease was forwarded with an acreage of 0.6813 hectares, and the explanation for the difference in the acreage in the lease and the gazette notice was that the gazette notice has an approximate and the allotment letters were issued on un-surveyed residential plots.
 37. PW2 testified that upon survey, it is expected that the acreage may drop or increase so it is normal that the acreage reduced to 0.6813 hectares. PW2 further informed the court that the lease term was ninety-nine years from 1st September 1985 and an annual rent for Kshs.2000/=. He confirmed that Mr. Kiragu's file was 116077, which was the authentic file that was lost or stolen and cannot be traced, but they have however, managed to extract the information from the sister file and the general file.



- PW2 testified that they came across a file with a similar file number being 116077 allegedly belonging to Lawrence Mwangi.
38. According to PW2, the entire file in the name of Lawrence is a forgery and was introduced in their registry through corrupt schemes, as the wordings on the file cover as written implies forgery and at the back of the file cover, it is signed by the Director of Land Administration Mr. Gordon Ochieng. PW2 was referred to 2nd defendant's bundle of documents and testified that there was no allocation done to Lawrence Maina Mwangi.
 39. PW2 was referred to page 3 of a letter of allotment dated 4th July, 1994 and testified that he investigated the letter of allotment and noted several inconsistencies. He testified that first, the reference 10884/XXVII belongs to a property in Mombasa therefore it could not have been issued for a property in Nakuru. Further that the error is repeated on the Plan No. on the letter of allotment and testified that it is quoted as 10884/XXVII which also belongs to a property in Mombasa and there is no way that a plan could be of a higher volume when the allotment letter was issued in volume XXVII.
 40. PW2 went on to inform the court that the values and figures in the stand premium, the annual rent and the letter of allotment are captured in the gazette notice. That in the gazette notice, the stand premium for plot No. 25 was Ksh10,3001/= and the annual rent was Ksh.2,060/= and there is no way that six years later the stand premium would come down Kshs.6,200/= and annual rent to 1,640/= . PW2 testified that the term of the lease on the letter of allotment dated 4th July, 1994 reads ninety-nine years from 1st July, 1994 and he confirmed that the gazette notices were running from 1985. It was his evidence that another inconsistency is on the requisite fees where the conveyance fee is indicated as Kshs.350/ and registration fee at Ksh.50/= and that in 1994, the conveyancing fee was Kshs.1250/= and the registration fee was Kshs.250/= and all these errors were in a single allotment letter.
 41. It was PW2's testimony that on page 2 of the letter of allotment, the authority is indicated as an alternative of Block 17/232 being portion of Block 17/23 and he was not able to trace such authority, hence the file was manufactured outside and sneaked into the registry. PW2 referred the 2nd Defendant's lease document and testified that in file No. 116077, he found an original lease document for Nakuru Municipality /18/59 in the name of Lawrence Maina Mwangi, which was purportedly executed on 19th December, 2005 and the signature of the lease was witnessed by Elijah Maragia Advocate on 8th February, 2006 and purportedly registered on 7th April, 2006 by the Land Registrar J. M. Manguti.
 42. It was PW2's testimony that he investigated this document and confirmed that the lease is not for a new grant as the case would be. PW2 testified that the lease has conditions cancelled, condition number 1 crossed out & No. 2, 3, & 4, 5 are crossed out. PW2 testified that leases of such cancellations are typical of subdivisions and not a new grant. Further that the term on this lease is ninety-nine years from 1st July, 1984 and the letter of allotment was for 1st July, 1994, which is inconsistent.
 43. Mr. Patroba Ojwang testified that in the file, there is a forwarding form for execution of documents by the Commissioner of Lands which would cascade the lease from the lowest level to the Commissioner of Lands who would execute the lease and date it. PW2 testified that the date the Commissioner purportedly executed the lease in favour of Lawrence Mwangi is indicated as 8th February, 2006 and this date is inconsistent with the lease in their records and the lease in the bundle, as the lease in their file is not similar to the one the 2nd defendant has filed in his bundle of documents. PW2 testified that whereas the date which the Commissioner is indicated to have executed the lease on is indicated as 19th December, 2005, the forwarding form shows that the Commissioner executed the lease on 8th February, 2006 and this is a glaring inconsistency.



44. PW2 further testified that the letter of allotment shows the stand premium as Ksh 6200/= while on the purported lease the same is Kshs. 76,000/= and the annual rent on the lease is indicated as Kshs.15200/= while on the letter of allotment it is Kshs.1640/=. PW2 testified that these are not valid leases and therefore not capable of transferring interest in land to anybody else, hence any titles emanating from that lease are a forgery as the records were manufactured to facilitate a subdivision.
45. According to PW2, after the registration, the subdivision applied for by Mr. Lawrence Mwangi for parcel No. Block 18/59 was divided into three and relying on official search the same was approved by their Nakuru office and later surveyed as Block 18/157 to 159. PW2 testified that all these are in the suspect file that was manufactured. PW2 produced file Nos. 116075 and 116077 as Pex. No. 64 (a) & (b) and minutes as Pex. No. 65. He testified that from their records Philip K. Keter, was the original allottee and maybe the same records were never changed.
46. Upon cross-examination by Mr. Maina, PW2 stated that the meeting for the plot allocation was held on 26th April, 1985, and that the minutes at page 10 are neither dated nor signed. PW2 stated that these are the minutes that proposed allocation to Mr. Titus Kiragu and Kipkemoi who were to be allocated plot No. 23 and 25 respectively.
47. PW2 informed the court that there was a gazette Notice dated 22nd February 1995, that these plots were available for allocation and the approximate area of plot No 23 was 0.52Ha with a stand premium of Kshs. 8,200/= and annual rent of Kshs.1,640/=. He stated that plot No. 25 had an approximate area of 0.73Ha with a stand premium of Ksh.10,300/ and an annual rent of Ksh.2,060/=. PW2 stated that an applicant was to make an application to the plot allocation committee and the Commissioner of Lands, and that he is aware that Titus Kiragu applied for the plot and indicated that he had produced certified true copies of the original file.
48. It was his evidence that they do not keep the applications in the correspondence file and he is not aware whether Titus Kiragu has produced a copy of the application. PW2 stated that after the application, the Commissioner of Lands issues a letter of allotment, and that the letter of allotment in respect of plot No. 23 was issued on 14th October, 1985 to Titus Kiragu being an un-surveyed plot. He stated that only one letter was prepared for a plot with copies in triplicate and the Commissioner of Lands for opening the correspondence.
49. He stated that the other one sent to the DC who was the chair of the plot allocation committee and the original given to the allottee. PW2 stated that the allotment letter is for un-surveyed plot No. 23 Ref No. 30884/XXVII for ninety-nine years from 1st September, 1985 with an area of 0.52Ha, stand premium Ksh 8200/- annual rent Ksh 1,040/= vide correspondence file No is 116075.
50. PW2 further stated that Titus was to pay Kshs.9,415/= and the allottee was to accept the offer and pay the stand premium within thirty days from the date of allotment. PW2 stated that the allotment letter refers to Titus Kiragu dated 14th October, 1985 for plot No. 23, Ref No. 30884/XXVII and Ref. No. 1088/XXVII/143A plan number which are in the body of the allotment letter.
51. According to PW2, there is the plan No. 30884/XXVII/143A which is the plan number in the body of the allotment letter and the Ref No. is 30884/XXVII. He stated that the numbers are similar in the two allotment letters and the area in the second allotment is scribbled and is not clear. He stated that the stand premium is Kshs.6,200/= & annual rent is Ksh 1640/=. PW2 informed the court that the allotment letter seems different as their official copy is typed and the second one is scribbled and the terms and conditions in the second allotment means a temporary cover, which is normally opened when the original correspondence file is misplaced and it is for purposes of transactions. PW2 stated



- that there was no temporary cover for plot No. 23 and does not know where the second allotment came from.
52. PW2 stated that Titus Kiragu accepted the offer after thirty-days with the approval of the Commissioner of Lands on 28th June, 1988 and payment was made and a receipt issued on 29th August, 1988. He further stated that it was a practice that acceptance would be done after thirty days and he does not have an application by Phillip Kipkemoi Keter for Plot No. 25. PW2 stated that he did not see the duplicate allotment letter for plot No. 25, and that the documents in respect of Plot No. 25 – were opened vide a correspondence file 116077 for parcel No. 25 in the name of Phillip Kipkemoi Keter. Further that the file opening card does not have a date and they are normally not dated and confirmed that there is a correspondence file No. 116075 in the name of Titus Kiragu.
53. PW2 informed the court that the two files were opened at the same time and when a file is opened, the records office normally puts a stamp on the face of the letter of allotment, the officer opening the file signs and dates it. Further that the date is in the correspondence file and when payment is made, they issue a receipt and a payment register is opened. He stated that there is a letter dated 28th May, 1986 by Phillip Kipkemoi Keter and which is not in the correspondence file, but it is not true that Phillip Kipkemoi surrendered his allotment letter to Commissioner of Lands for reallocation.
54. PW2 stated that based on the handwritten notes on the letter, ACC is the initial for Assistant Commissioner of Lands by Commissioner of Lands, and that James Raymond Njenga, the then Commissioner of Lands, would approve informal transfer as the allottee is exchanging his plot with a developed one that belongs to Hon. Obwocha. He stated that the cashier is instructed to accept Kshs.25 and Ksh.11,725/= as per letter of allotment and that was as at the date of assessment.
55. PW2 stated that the first letter was an informal transfer which was approved by the Commissioner of Lands, from Phillip Kipkemoi Keter to Henry Obwocha. It was his evidence that his report gives a chronology leading to the exchange of plot Nos 23 and 25 which request was made on 20th April, 1988, but did not see any agreement between Philip and Obwocha. Further there was a joint application dated 20th April 1988 for swapping between plot No. 23 and 25 and at paragraph 2; Mr. Obwocha was to bear the burden of paying stamp duty as he had developed the whole plot.
56. PW2 also stated that there is a letter dated 11th May, 1988 from the Commissioner of Lands addressed to the District Lands Officer & Makuru Town Clerk, in respect of proposed exchange of plot No. 25 with plot No. 23. He stated that a leasehold interest is for ninety-nine years and there is an informal transfer of leasehold before registration, which was a practice but they stopped it in 2005 with the advice of Attorney General. PW2 stated that a lease was prepared in favour of Titus Kiragu but he cannot confirm whether it was registered. He stated that at one point, the registered owner of the suit land was Lawrence Maina Mwangi before the subdivision which is disputed. PW2 stated that there are records to show that Lawrence Maina Mwangi has an application, an allotment letter but they are not authentic.
57. PW2 stated that 116077 is the reference file in respect of plot No. 25 and this correspondence file No. 116077 is not the authentic one and that authentic one was opened in the name of Philip Kipkemoi Keter for plot No. 25 which are in the alienation file. He stated that on the face of file No. 116077, Nakuru Municipality Block 18/59 was indicated as a suspected forgery at page 82 of the supplementary bundle. PW2 stated that he is not the officer who wrote this but the Director Land Administration. PW2 stated that he is not aware that the documents relating to Lawrence Mwangi were subjected to any forensic examination.



58. Mr. Patroba informed the court that if an allottee does not comply with the conditions of the offer, they do a reminder but if after the reminder he/she does not comply, they withdraw the offer in writing. PW2 stated that a reallocation is then done through an application to the Commissioner of Lands. PW2 stated that the letter of allotment to Lawrence Maina Mwangi dated 4th July, 1994 is not authentic and that the reasons are captured in page 4 of the supplementary bundle where P. Amiani who was working in the Commissioner of Lands' office signed the document.
59. PW2 stated that there is no affidavit from P. Amiani indicating that she did not sign the letter. PW2 informed the court that it is not true that the plot was allocated to Lawrence Maina Mwangi after Philip Keter failed to comply with the conditions of allotment. PW2 referred the court to the letter dated 28th May, 1986 and stated that the Commissioner of Lands received the requisite fees and upon payment of the fees, the land became private land and was not available for allocation. He stated that a memorandum of registration of transfer of lands was not applicable, as the titles would be issued under blocks.
60. PW2 stated that before registration, transfers were done through informal transfer and that the lease document for Lawrence Maina Mwangi is not in their records but it is in the suspicious file and they cannot confirm that the lease was registered at Nakuru District Land Office and that a copy should be sent to Ardhi House as a matter of practice.
61. PW2 further testified that the stand premium and the annual rent were also inconsistent and that there are special conditions that prescribe review of the rent but it is not strictly followed, and can only be reviewed after a lease has been issued. Further that a letter of allotment is issued together with an official Receipt, RIM and a forwarding letter for the lease document, and that Edmond Mokamba is not an employee at the Ministry of Lands and he knows the Land Administration Officer known as Peter Adipo.
62. Upon cross-examination by Mr. Makora, PW2 stated that Mr. Kiragu was issued a letter of allotment and he accepted by paying in 1988. He stated that on 28th April, 1988, there was a joint application to swap plots with Mr. Obwocha. PW2 further stated that the plaint was filed on 19th July, 2010 seeking cancellation of Lawrence Maina Mwangi's certificate of lease and that the National Land Commission letter dated 30th December, 2013 states that the original allottee is Lawrence Maina Mwangi. Further that correspondence dating back to December 2021 and file No. 106077 is in Lawrence Maina Mwangi's name but the same is suspected to be a forgery. PW2 stated that there is a letter dated 26th January, 2022 by R. J. Simiyu Director of Land Administration indicating that Lawrence Maina documents were a forgery. He stated that the Director of Land Administration indicated on 18th February, 2022 that the file was suspected to be a forgery.
63. Upon cross-examination by Ms. Mwangi, PW2 stated that they are the custodians of documents in the Lands Office Nairobi and they do not do searches, in Nairobi office. He stated that the forgery was discovered on 18th February, 2022 and that a search dated 17th May, 2012 indicates that Nakuru Municipality Block 18/59 belongs to Lawrence Maina Mwangi.
64. Upon re-examination by Ms. Mbanya, PW2 testified that the minutes were forwarded to the Commissioner of Lands by John Cheren of Municipal Council vide a letter dated 17th October, 1986. PW2 testified that the minutes were in respect of the successful applications of the allottees and that Titus Kiragu was at No. 17 for plot No. 23 and at Philip Keter at No. 19 for plot No. 25.



65. PW2 testified that there is a typed letter of allotment dated 14th October, 1985 in the plaintiff's bundle of documents dated 12th May, 2022 which is certified as a true copy from the file record, further that they do not issue letters of allotments that are inserted in writing as their letters of allotment are typed.
66. PW2 testified that there was an offer and acceptance letter by Mr. Titus Kiragu and his payment was accepted by the Commissioner of Lands and a receipt issued and that Mr. Kiragu's plot was never relocated to anyone else. PW2 testified that 116075 was opened for P.K. Keter and Lawrence Maina Mwangi's file was never opened. It was PW2's testimony that prior to 14th December, 2021, he was not aware whether there was any investigation in this matter, but the Director of Lands flagged the file for Lawrence Maina Mwangi as a suspected forgery. He testified that from his investigations, he found that it was a forgery and that a search was conducted at the Nakuru land office and no inquiry was made in their office. PW2 testified that a letter was written to the National Land Commission.

2Nd Defendant's Case

67. DW1, Lawrence Maina Mwangi adopted his witness statement dated 20th April 2021, as part of his evidence, and testified that he has been working as an agent since 1988, dealing in buying and selling properties. He produced his list of documents dated 20th January, 2023, as exhibits and testified that in early 1994, he came to learn that there were plots that had been allocated in 1985, and some of the allottees did not accept the offers, so the allotments lapsed. DW1 testified that he managed to get a few numbers of those properties and when he came back to Nakuru, he went to see them physically and identified plot No. 25 as the one which he wanted to apply for.
68. DW1 further testified that on 8th February, 1994, he wrote an application letter and attached a ground plan that showed the plot that he was interested in, and was later issued with a lease after allocation dated 19th December, 2005 which was registered in Nakuru on 7th April, 2006. DW1 stated that he was issued with a certificate of lease and a memorandum of registration of land, and that he later subdivided the property into three portions to sell. It was DW1's testimony that the subdivision was successful in 2013 and got title Nos. Nakuru Municipality Block 18/157, 158 and 159.
69. DW1 informed the court that there was no claim from anybody else at that time and after the subdivision by Mr. Olweny (Surveyor), he was given FR No. 540/23 and the Nakuru Municipality Block 18 RIM was amended on 25th February, 2013. DW1 testified that he collected the sealed RIM from the Surveyor and took them to the Commissioner of Lands office, for preparation of the lease. He stated that the leases were prepared for the subdivisions and forwarded to the District Land Registrar Nakuru by the Chief Land Registrar vide a letter dated 20th March, 2013, and subsequently the leases were registered on 25th March, 2013, with certificates prepared for the three parcels.
70. It was DW1's testimony that around 9th July, 2013, he received a call from the District Land Registrar who requested him to go to his office immediately, and when he went he found Mr. Areli, and Mr. Daniel Nyantika, the District Land Registrar, who informed him to go to Nairobi as there were activities in the file for Block 18/59. It was DW1's testimony that he met the SPRO (Senior Planning Records Officer) Mr. Akech whom he asked to give him the file No. of Block 18/59, but he told him that they had completely destroyed the file. That further that the subdivisions had been cancelled in Ruaraka which was as a result of a company known as Launex's forged letter purporting to have come from Mr. Olweny dated 5th April, 2013.
71. DW1 further stated that the Nakuru Municipal Council had no knowledge of the application for subdivisions and vide a letter dated 12th March, 2013 the District Physical Planner by the strength of the other two letters was cancelling PPA 5. DW1 testified that the amendment of the RIM was



also cancelled, therefore he instructed his lawyers to sue the Commissioner of Lands and Director of Surveys for cancelling his subdivision vide Civil App. No. 30 of 2013.

72. DW1 further testified that he pursued the Director of Surveys while the case was pending before the court until 18th November, 2013, when Mr. Jumba, the Director of Surveys, agreed to give him copies of the letters that were used to cancel his subdivisions. DW1 testified that he took the documents to Mr. Olweny who stated that the documents did not emanate from his office. DW1 testified that Mr. Olweny wrote a letter dated 18th November, 2013 to the Director of Surveys and later went to the County government offices and they wrote another letter to the Director of Surveys informing him that they did not cancel the subdivisions.
73. DW1 testified that the Director of Physical Planning made another PPA 5 and they expected the amendment to take place but he was told, that they could not do so as there was a pending case in court. DW1 testified that he was advised to either continue with the case or withdraw the case to enable them amend, of which he withdrew the case on 7th January, 2014. It was his testimony that RIM was amended upon receipt of the order withdrawing the case vide amendment No. 24 of 12th February, 2014, and it is not true that the plaintiff was involved in the cancellation of RIM.
74. DW1 informed the court that Launex had prepared a lease of the suit parcel and the lease was not registered in Nakuru and have not made any other claim to the suit parcel of land.
75. He stated that he met the Plaintiff in 2013 and did not know that he had a claim to the suit land. DW1 stated that he sold the three parcels including parcel Nos. 157 & 158 to Gilani on 19th December, 2013 and at that time there was no dispute as to the ownership of the suit parcel as he was the one in possession.
76. DW1 further testified that he sold parcel No. 159 to Johnson Gacau Kibera and transferred the properties to them, and that Mr. Kibera later filed a case for refund of his money which DW1 refunded but he thinks the property is still in his name. DW1 testified that plot No. 157 & 158 are still registered in Gilani's name and that the plaintiff is claiming the whole parcel. DW1 testified that Mr. Obwocha has never owned plot No. 25 and has never claimed the property, and that Phillip Keter had been allocated the suit property in 1985 and he neither accepted nor paid the stand premium for the allocation.
77. DW1 informed the court that when he took possession, the property was vacant and neither received any letter nor payment from Mr. Kiragu, DW1 denied receiving the letter from the Land Registrar vide P. O. Box 1832 Nakuru which is not his address as his address is P. O. Box 13832 Nakuru. DW1 testified that there was a restriction that was placed on the property and he met the Land Registrar at Ardhi House Nakuru and was later summoned verbally but Mr. Kiragu did not come. DW1 testified that the restriction was lifted as Mr. Kiragu never appeared on the three occasions and that he was not a party to Misc. App. No. 432 of 2009.
78. DW1 further testified that there is no document relating to Mr. Henry Obwocha and he has never claimed plot No. 25, and that in 2006, at the time he was selling the property he had not been adjudged bankrupt and that the receiving order was lifted in 2007 or thereafter. DW1 testified that PW2 stated that his name was not in the minutes of 1986 as he was not the first allottee and had not made an application for allocation in 1986.
79. Upon cross-examination by Ms. Mwangi, DW1 stated that the petition was filed in 2006 for bankruptcy and he did not inform the 5th defendant of the case. DW1 stated that he informed the 5th defendant of the case No. 30 of 2013 (JR) and further testified that there was a suit against him filed by the 5th defendant which arose from compensation for non-disclosure which they settled.



80. Upon cross-examination by Mr. Makora, DW1 stated that he sold the suit parcel to the 4th defendant and at that time, they had a case No. 30 of 2013 but the case was withdrawn in 2014. DW1 stated that he told the 4th defendant about the case and at the time of the sale, there was no restriction lodged on the suit parcel of land.
81. Upon cross-examination by Ms. Mbanya, DW1 stated that he took possession of the suit property in 1994, and immediately he was issued with an allotment letter in July. DW1 testified that those who had been allocated the plots did not accept the offer therefore the offers lapsed. He stated that he applied for allocation of un-surveyed plot No. 25. DW1 was shown the letter of allotment dated 4th July, 1994 Ref No. 10884/XXVII un-surveyed Plot No. 25 Nakuru Municipality. No 10884/XXVIII 143A and stated that the stand premium as Kshs.6,200/=, the annual rent Kshs. 1,640 for ninety-nine years. DW1 also referred to gazette notice for 22nd February, 1985 and stated that the acreage is 0.73 Hectares and the stand premium is Kshs.2,060/= and confirmed that the figures in the gazette notice are completely different from the letter of allotment.
82. DW1 further stated that the letter of allotment reads alternative for Block 17/232 being portion of Block 17/213 and there is nowhere that is written Block 18/59 on the letter of allotment and that the figures on the letter of allotment and the gazette notice of 1985, do not tally. DW1 referred to the lease on page 7 and stated that the stand premium is Kshs.76,000/=, the area is 0.6813 Hectares for ninety-nine years from 1st July, 1984, which was different from the letter of allotment which had Kshs.6,200 and the gazette notice was Kshs.10,300/=. He stated that the figure could have gone up and he got the ownership document on 19th December, 2005, and that he took possession before he got the ownership documents. DW1 stated that on the certificate of lease, there was an annual rent of Kshs. 15,200/= which is different from the letter of allotment, the Kenya gazette and the lease for ninety-nine years from 1st July, 1984
83. DW1 informed the court that he discovered the error on the term of the lease while in court. DW1 stated that the certificate of lease was issued on 7th April, 2006, and did not know when the restriction was lifted but later did searches and found that it had been lifted.
84. According to DW1, allotment letters do not have transferable interest so Mr. Obwocha and Mr. Kiragu could not transfer or swap the suit plot. DW1 referred to the Kenya gazette at note No. 8 and stated that the grantee shall not subdivide the land without the consent of the Commissioner of Lands and the County Council. DW1 stated that he does not have consent from the Commissioner of Lands as it was not required, but has a consent from the County Council signed for the Town Clerk. Further that a letter dated 26th March, 2013, the council stated that it had no knowledge of application and approvals before the Director of Surveys were forged and illegal.
85. DW1 referred to a letter dated 5th April, 2013, from Olweny & Associates denouncing the documents and stated that he went to Olweny's office and paid Kshs.5,000/= to write a letter correcting the earlier letter that he had written. It was his evidence that he entered into a sale agreement with the 5th defendant on 31st December 2012 (Johnson Gacau Kibera) and ELC No. 182 of 2010 was still pending and sold land to the 4th Defendant on 19th December, 2013 and that by that time the case had been determined and the re-amendment of RIMS was ongoing. DW1 confirmed that he refunded Mr. Gacau the 5th defendant Kshs.10.5million and he was supposed to give the titles to his lawyers.
86. Upon re-examination by Mr. Maina, DW1 testified that he took possession of the suit land in 1994, and that the area of the suit land is 0.6813 Hectares different from the one in the Kenya gazette, which is 0.73 Hectares which changes upon subdivision. Further that the lease for Block 18/50 acreage 0.6813 Hectares corresponds with his allotment letter but there was a typographical error on the date



- of the commencement of the lease. He urged the court to dismiss the Plaintiff's suit and allow his counterclaim with costs.
87. DW2, Salim Gulam Gilani adopted his witness statement dated 14th October 2019, as part of his evidence and stated that he is the 4th defendant and a businessman in Nakuru. He produced a list of documents dated 14th October, 2019 as DExhb No. 1 to 6 and testified that he is the registered owner of the suit plots.
88. DW2 further testified that he came to know that the plots were available in 2013 through Mr. Ahmed and went to see them whereby he established that the same were neither fenced nor developed and that they were next to the Golf Club. He also stated that there was no signage warning that the plot was not for sale, therefore he went to his lawyer Mr. Boniface Ndumia whom he instructed to carry out due diligence. DW2 testified that he did a search and was issued with an official search which indicated that the plot belonged to Lawrence Maina Mwangi. DW2 testified that Mr. Ndumia wrote a letter to the National Land Commission Dex No. 4 dated 21st December, 2013 to check the ownership status of the suit properties.
89. It was DW2's testimony that Mr. Ndumia received a response from the National Land Commission via letter dated 30th December, 2013, which confirmed that the plot belonged to Lawrence Maina Mwangi. DW2 testified that they proceeded with the transaction, whereby they entered into an agreement for sale of the two plots at a consideration of Kshs. 8million per plot. DW2 testified that he subsequently received a certificate of lease for the two plots dated 30th December, 2013.
90. It was his evidence that he did not know the plaintiff, Titus Kiragu and it is not true that he warned him verbally not to buy the plots. DW2 prayed that the plaintiff's suit be dismissed with costs.
91. Upon cross-examination by Mr. Maina, DW2 stated that his advocate conducted due diligence and was issued with a search Dex No. 1 and 3 which did not show any restriction, encumbrance or caution. He stated that there is no restriction or encumbrance section. DW2 stated that at the time of the purchase, he did not have any information that Mr. Lawrence did not have the capacity to deal with the property. DW2 referred the court to Dex No. 5 and stated that the response from the National Land Commission does not show any restriction on the properties.
92. DW2 stated that there were no bankruptcy proceedings or receivership at the time he was purchasing the suit properties. DW2 stated that he took possession of the two parcels upon payment of the purchase price but he is not sure of the dates when Mr. Kiragu (the plaintiff) claimed to the suit properties.
93. Upon cross-examination by Ms. Rose Mbanya, DW2 stated that he bought the suit plots from Lawrence Maina Mwangi and he thinks the original plots were subdivided being Block 18/59. DW2 stated that he has no information about the witness who gave evidence from the Land Administration Office. DW2 referred to the certificate of lease and stated that the term of the lease was ninety-nine years from 1st July, 1984 and that the plot was hived off from Nakuru Municipality Block 18/59 and he is not aware of the history of the land. He stated that he is not aware of the fraudulent dealings of Mr. Mwangi in the property and the report by the Ministry of Lands.
94. DW2 stated that if Lawrence Mwangi did not have a good title then he could not pass a good title to him, further that he was not aware that Lawrence Mwangi had been adjudged bankrupt. DW2 referred to the receiving order dated 15th December, 2006 where Lawrence Maina Mwangi had been adjudged bankrupt and stated that he was not aware that a bankrupt cannot enter into agreements. DW2 stated that he has not sued Mr. Lawrence Maina Mwangi or the National Land Commission for the information they gave him respect of the ownership of the suit properties.



95. Upon re-examination by Mr. Makora, DW2 testified that the date of the report from the Lands office is 16th October, 2023 and he has not relinquished his right to indemnity against Lawrence Maina Mwangi.
96. DW3, Johnson Gacau Kibera, a retired Civil servant, and the 5th Defendant adopted his witness statement dated 1st December 2014 as part of his evidence. He also produced a list of documents dated 25th November, 2019, as the 5th defendant's Dex No. 1 to 7. He testified that he was not aware that the 2nd defendant had petitioned for bankruptcy and had been adjudged bankrupt at the time of selling him the property.
97. DW3 referred to Dex No. 2 and stated that the status of the 2nd defendant's bankruptcy was not indicated in the register and he was not informed that the subdivision had been cancelled. DW3 testified that he was not a party to High Court Misc. No. 432 of 2009 for removal of the restriction on the suit land and after he was registered as the owner, no restriction was placed on the suit land. Further that he never knew the plaintiff before he was enjoined as a party to this case.
98. DW3 informed the court that he filed a suit against the 2nd defendant in respect of this property being ELC No. 309 of 2018 where he was seeking a refund of kshs.24.5million being the current market value of the suit plot and costs of the suit. He stated that the reason for filing the suit against the 2nd defendant was for misrepresentation and damages of which they later settled the matter out of court and he was refunded Kshs.10million. DW3 testified that he does not have any claim on the suit property and he seek for costs.
99. Upon cross-examination by Mr. Maina, DW3 stated that he bought land Nakuru Municipality Block 18/159 but the agreement stated that he was purchasing plot No. Nakuru Municipality Block 18/59 and it was in the process of subdivision. DW3 testified that after getting his refund of Kshs. 10Million, he surrendered the parcel to the 2nd defendant in 2018. Upon re-examination by Ms. Mwangi, DW3 testified that the issue of general damages has not been settled.

Plaintiff's Submissions

100. Ms. Rose Mbanya, counsel for the Plaintiff filed submissions dated 21st August, 2025 and identified the following issues for determination:
 - a. Whether the Plaintiff has established a legitimate claim to title over the suit property?
 - b. Whether the 2nd Defendant holds legitimate title to the suit property?
 - c. Whether the 2nd Defendant holds title that is transferable to third parties?
 - d. Is the Plaintiff entitled to the reliefs sought in the plaint?
101. On the first issue, counsel submitted that the Plaintiff is the rightful owner of the suit property as his ownership is anchored on a lawful, complete and traceable allocation process affirming his proprietary interest and right to the lease. Counsel relied on the case of Hubert L. Martin & 2 others vs Margaret J. Kamar & 5 others [2016] eKLR.
102. On the second issue, counsel submitted that the mere holding of a lease document is not in itself conclusive prima facie proof that the 2nd Defendant is the lawful and indefeasible owner of the suit land. Counsel relied on the cases of Dina Management Limited vs County Government of Mombasa & 5 others [2023] KESC 30 (KLR), Funzi Development Limited and Others vs County Council of Kwale [2014] eKLR and Munyu Maina vs Hiram Gathiha Maina [2013] eKLR.



103. On the third issue, counsel submitted that the 2nd Defendant did not have a good title on the suit property to pass on to or transfer to third parties. Counsel submitted that the only recourse that the 4th and 5th Defendants have is against the 2nd Defendant for damages. Counsel relied on the cases of General & another vs Hussein & 3 others KECA 1022 (KLR) and Alberta Mae Gacii vs Attorney General & 4 others [2006] eKLR.
104. On the fourth issue, counsel relied on Section 80 of the Land Registration Act 2012, and submitted that the Plaintiff is entitled to the orders sought in the further amended plaint and should be awarded costs of this suit against all the Defendants jointly and severally.

2nd Defendant's Submissions

105. Mr. Maina, counsel for the 2nd Defendant filed submissions dated 29th September, 2025, and identified the following issues for determination:
- a. Whether the 2nd Defendant is the registered and legal owner of the suit property and has he demonstrated the process leading to him being the registered owner of the suit property?
 - b. Whether the Plaintiff has demonstrated the process leading to him being issued with a certificate of lease for the suit property?
 - c. Whether the Plaintiff has proved the allegation of fraud and/or collusion as against the 2nd Defendant to the required standard?
 - d. Whether the 2nd Defendant's Certificate of Lease was issued earlier than the Certificate of Lease purportedly issued to the Plaintiff?
 - e. Whether the 2nd Defendant had capacity to dispose of the subject property to the 4th and 5th Defendants?
 - f. Whether the Plaintiff is entitled to the reliefs sought?
 - g. Who should bear the costs of this suit?
106. On the first issue, as to whether the 2nd Defendant is the registered and legal owner of the suit property and has demonstrated the process leading to him being registered as the owner of the suit property, counsel submitted that the 2nd Defendant has held a certificate of lease for the suit property, is in possession since 1994 before selling to the 4th and 5th Defendants.
107. Counsel further submitted that the 2nd Defendant has demonstrated the process and procedure he followed leading to him being registered and issued with a certificate of lease to the suit property. Counsel relied on the cases of Munyu Maina vs Hiram Gathiha Maina [2013] eKLR.
108. On the second issue, as to whether the Plaintiff has demonstrated the process leading to him being issued with a certificate of lease for the suit property, counsel submitted that there was no transferrable interest capable of being transferred to the Plaintiff by Henry Obwocha or Philip K. Keter in relation to the suit property. Further that the Plaintiff was under an obligation to prove how he acquired the suit land following due process.
109. Counsel also stated that the Plaintiff neither produced a sale agreement nor payment of the purchase price between Phillip Keter and Henry Obwocha, further that Phillip Keter was never called to give evidence of the same. Counsel also faulted the Plaintiff for not producing an allotment letter or lease for plot No. 23. It was counsel's submission that the Plaintiff cannot seek to sanitize a flawed process



- and relied on the cases of Richard Kipkemei Limo vs Hassan Kipkemboi Ngeny & 4 others [2019] eKLR and Torino Enterprises Limited vs Attorney General [2023] KESC 79 (KLR).
110. On the third issue, counsel submitted that the Plaintiff did not prove that there was fraud and/or collusion as against the 1st Defendant and relied on the cases of Gichinga Kibutha vs Caroline Nduku [2018] eKLR, Kinyanjui Kamau vs George Kamau Njoroge [2015] eKLR and Kuria Kiarie & 2 others vs Sammy Magera [2018] eKLR.
 111. On the fourth issue, counsel submitted that the Plaintiff's lease ought to be cancelled as the root of title has not been proved and the suit property was allotted to the 2nd Defendant and relied on the case of Richard Kipkemei Limo vs Hassan Kipkemboi Ngeny & 4 others [2019] eKLR.
 112. On the fifth issue, counsel submitted that an adjudged bankrupt is automatically discharged after three years beginning when the bankruptcy order was made and relied on Section 261 (1) of the *Insolvency Act* and submitted that the 2nd Defendant had capacity to sell the subject property to the 4th and 5th Defendants and therefore acquired good title. On the sixth issue, counsel submitted that the Plaintiff's suit lacks merit, should be dismissed with costs and the court should allow his counter claim.

4th Defendant's Submissions

113. Mr. Makora, counsel for the 4th Defendant filed submissions dated 19th September, 2025, and submitted that the 4th Defendant is a bona fide purchaser for value for the suit parcels and relied on the case of Katende vs Haridar & Co Ltd [2008] 2EA 173. Counsel submitted that the 4th Defendant paid valuable consideration of Kshs 8,000,000/= million per acre totaling to 16,000,000/= million and complied with all obligations in the sale agreement dated 19th December, 2013 with the 2nd Defendant.
114. Counsel relied on Section 26 (1) (b) of the *Land Registration Act* and submitted that the 4th Defendant did his due diligence and his title should be protected. Counsel further submitted that the 4th Defendant went a step further and obtained confirmation from the National Land Commission (NLC) that the original allottee of the suit property was Lawrence Maina Mwangi and relied on the case of Wambugu vs Ng'ethe [2022] KEELC 2542 (KLR). Counsel further relied on Section 254 of the *Insolvency Act* and submitted that when the 2nd Defendant entered into the sale agreement on 19th December, 2013, he had long been discharged from bankruptcy.
115. Mr. Makora also submitted that the 4th Defendant did not participate or have any knowledge of fraud in the titles and relied on the cases of Kinyanjui Kamau vs George Kamau [2015] eKLR, Elijah Makeri Nyang'wara vs Stephen Mungai Njuguna & Another [2013] eKLR and Catherine Gacheri vs Jamleck Njagi Njiru [2013] eKLR.
116. Counsel submitted that equity aids the vigilant and not the indolent, and that if the Plaintiff had been proactive in protecting his claim over the land, then third party rights could not have been created over the suit property thus dispute. Counsel relied on the cases of Mungai vs Kimanu [2025] KEHC 568 (KLR), Amina Karama vs Njagi Gachangua & 3 others [2020] KEELC 186 (KLR) and Kinyanjui vs Joreth Limited & 2 others [2023] KEELC 21634 (KLR).
117. Counsel also relied on the case of Dina Management Limited vs County Government of Mombasa & 5 others [2023] KESC 30 (KLR) where the court clarified that protection cannot apply where a title is void ab initio, and that it did not abolish the protection of purchasers who go beyond the face of the register. Counsel urged the court to dismiss the Plaintiff's suit against the 4th Defendant and in the alternative if the Court finds fraud in the root of title, no adverse finding or costs be made against the 4th Defendant. Counsel also prayed that the 4th Defendant be treated as an innocent purchaser for value



without notice and relied on the case of *Law Society of Kenya vs Commissioner of Lands & Others* [2001] eKLR.

5th Defendant's Submissions

118. Ms. Mwangi, counsel for the 5th Defendant filed submissions dated 17th September, 2025 and identified the following issues for determination:
- a. Whether the 5th Defendant acquired title to the suit properties by fraudulent means?
 - b. Who should bear the costs of the suit?
119. On the first issue, counsel submitted that the 5th Defendant conducted due diligence before entering into an agreement with the 2nd Defendant who was the registered owner of the suit property. Counsel submitted that the title issued to the 5th Defendant was procedurally legal and the Plaintiff has failed to prove his case on a balance of probabilities. Counsel relied on Section 26 of the *Land Registration Act*, Sections 107 & 108 of the *Evidence Act* and the cases of *Kimani vs Njeri & 3 others* [2023] KEELC 17771, *Omondi vs Manyala* [2024] KEELC 13874 (KLR) and *Gitwany Investment Limited vs Tajmal Limited & 3 others* [2006] KEHC 2519 (KLR).
120. On the second issue, counsel urged the court to dismiss the case with costs to the 5th Defendant and cited the case of *Rai & 3 others vs Rai & 4 others* KESC 31 (KLR).

Analysis And Determination

121. This is a case that was filed in 2010 in the High Court as HCC No. 182 of 2010, but was later transferred to the Environment and Land Court for hearing and determination. This case has seen better days in court and several cases filed in respect of the same parcel of land by the 2nd Defendant, the 5th Defendant and the Plaintiff respectively.
122. The background to this suit has been elaborately enumerated in the evidence of the parties and that of PW2 who was a witness from the Director Land Administration office who were the custodians of the files in respect of the suit parcels of land. The issues for determination are:
- a. Whether the Plaintiff has established a legitimate claim to title over the suit property.
 - b. Whether the Plaintiff has proved the allegation of fraud and/or collusion against the 2nd Defendant to the required standard.
 - c. Whether the 2nd Defendant acquired a good title that could transferred to the 4th and 5th Defendants.
 - d. Whether the 2nd Defendant had capacity to dispose of the subject property to the 4th and 5th Defendants.
 - e. Whether the 2nd Defendant is the registered and legal owner of the suit property
123. The case against the 3rd Defendant was withdrawn with no orders as to costs on 12th October, 2023. It is the Plaintiff's case that vide a gazette Notice dated 22nd February 1985, the Commissioner of Lands advertised the availability of plots for allocation whereby he made an application and was allocated plot No. 23, with a stand premium of Kshs.8,200/= and anybody interested was to enclose a Bankers Cheque of Kshs.1,000/= with the letter. He also testified that upon allocation, he was issued with a letter of allotment dated 14th October 1985, with a stand premium of Kshs.9,415/=. Further, by a letter dated 12th May, 1985, the Commissioner of Lands wrote to him to send a letter of acceptance together



with the fees within 21 days of which he responded vide a letter dated 28th June, 1988, through K. M. Patel Advocate who forwarded a cheque of Kshs.10,000/= on his behalf and was issued with a receipt for payment of Kshs.10,000/= and stand premium of Kshs.8,200/= as per the letter of allotment.

124. The salient issues of the Plaintiff's case is that, the Commissioner of Lands advertised plots that were available for allocation through a gazette Notice dated 22nd February 1985, the Plaintiff made an application and was notified that he was successful and had been allocated Plot No. 23 and issued with an allotment letter dated 14th October 1985, which had conditions for acceptance and payment of stand premium.
125. It is on record that the plaintiff complied with the conditions, accepted the offer, and was issued with an allotment letter upon payment of the stand premium. Subsequently he was issued with a lease but this dispute arose when he was to get his certificate of lease from the District Land Registrar, a lease having been forwarded for his execution.
126. It is also important to note that the Plaintiff was approached by Mr. Henry Obwocha who had mistakenly/by error built a house on the Plaintiff's plot and requested that they exchange their plot Nos, 23 and 25. It is also on record that the process of exchange and transfer was captured by the Commissioner of Lands and the Council who gave consents and approvals for the transaction. This evidence was captured by the evidence of PW2 Mr. Patroba Ojwang the Assistant Land Administration Officer who gave documentary evidence and produced files in respect of the suit parcels of land.
127. The issue of the exchange of plot Nos 23 and 25, had elaborate documentation which was both at the Commissioner of Lands office in Nairobi and at the District land office. The issue of cross transfer or swapping of the said plots was never questioned by anyone, either at Ardhi House Nairobi or at the District land registry as the same was regular. PW2 also confirmed that the original allottee was Philip K. Keter who had sold the land to Mr. Henry Obwocha.
128. The Plaintiff having fulfilled the conditions of the letter of allotment, received a letter dated 16th October 2007 addressed to the District Land Registrar through the Chief Land Registrar and copied to the Plaintiff to go and execute the lease. This was the genesis of this case, as the Land Registrar informed him that there was another person who had signed a similar document, called Lawrence Maina Mwangi. He also stated that when he inquired from the land Registrar why Mr. Mwangi had signed the lease document, he stated that they had suspected fraud.
129. On the issue of whether the land was available for allocation to the 2nd Defendant, where land has been allocated, the same land cannot be reallocated unless the first allocation is validly and lawfully cancelled.
130. In the case of Rukaya Ali Mohamed ...Vs... David Gikonyo Nambacha & Another (Kisumu HCCA No. 9 of 2009:-

“Once (an) allotment letter is issued and the allottee meets the conditions therein, the land in question is no longer available for allotment, since a letter of allotment confers (an) absolute right of ownership or proprietorship unless it is challenged by the allotting authority or is acquired through fraud, mistake or misrepresentation, or that the allotment was out rightly illegal or it was against the public interest.”

131. The Plaintiff's allotment letter was first in time and there was no evidence that it was lawfully revoked/ cancelled or reallocated to anybody else. It was the 2nd defendant's evidence that in early 1994 he was at Ardhi House Nairobi and came to learn that there were plots that had been allocated in 1985 and some allottees did not accept the offers so the allotments lapsed. He later applied and was allocated plot No. 25. There was no evidence that the allotments had been lawfully cancelled or revoked through a notice.



132. It is his case that around 2007, the Plaintiff discovered that the 1st Defendant had fraudulently issued a lease document of the suit parcel of land to the 2nd Defendant who had declared himself bankrupt.
133. The Plaintiff listed the particulars of fraud on the 1st Defendant as follows:
- a. Issuing a title deed to a person who did not have letters of allotment for the said parcel of land.
 - b. Issuing a title deed to a person who had not been paying the land rents and rates for the parcel of land in question.
 - c. Lifting a restriction without issuance of any notice to the plaintiff.
 - d. Issuing a lease to the 2nd Defendant while knowing that another one existed in the name of the plaintiff.
134. The Plaintiff further listed the particulars of fraud on the part of the 2nd Defendant as follows:
- a. Obtaining a title deed/lease in relation to land parcel number Nakuru Municipality Block 18/59 when he knew very well that the said land belonged to the plaintiff herein.
 - b. Causing a restriction to be lifted from the said parcel of land which caution the plaintiff had placed to protect his own interest on the aforesaid parcel of land.
 - c. Selling land registration number Nakuru Municipality Block 18/59 to the third, fourth and fifth defendants when he had already declared himself bankrupt.
 - d. Transferring the said land to the 4th and 5th defendants while this suit was pending hearing and determination in court to preempt the outcome.
135. The Plaintiff lists the particulars of fraud on the part of the 3rd, 4th & 5th Defendants as follows:
- a. Buying a parcel of land which they knew or ought to have known had a restriction placed on it.
 - b. Buying land from a person who was bankrupt.
 - c. Colluding with the 1st and 2nd defendant to remove the restriction placed on the aforesaid parcel of land.
 - d. Purporting to buy a parcel of land despite warnings that the said land did not belong to the 2nd defendant and had a case pending in court.
136. The Plaintiff called the Director Land Administration as a witness who was represented by an Assistant Director Land Administration, one Patroba Ojwang who gave extensive evidence in respect of the suit parcels of land. His testimony was very crucial in this case as he produced a report/ history and files in respect of the suit parcels of land.
137. He confirmed that Plot No. 23 was allocated to the Plaintiff Titus Kiragu of P.O Box 263 Nakuru, Plot No. 25 was allocated to Philip Kipkemei Keter of P.O Box 2681 Nakuru, and that there was no allocation made to Lawrence Maina Mwangi, further that they have a letter of allotment to Titus Kiragu in their file. This evidence show that the Plaintiff was allocated the suit land, accepted the offer and paid for the stand premium, and a lease was subsequently prepared in the name of Titus Kiragu and forwarded to the Land registrar by the Commissioner of Lands vide a letter dated 16th October 2007.
138. PW2 confirmed to the court that there were two files in respect of the same parcel of land and stated that Lawrence Maina Mwangi's file was suspect and must have been opened fraudulently and irregularly. PW2 pointed out many anomalies and inconsistencies with Lawrence Mwangi's documents, the term



of the lease, the letter of allotment, the stand premium, the acreage, the annual rent, and when the file was opened. He concluded that the entire file in the name of Lawrence Maina Mwangi is a forgery, which was introduced in their registry through corrupt schemes, as the wording on the file cover as written infer forgery and at the back of the file cover.

139. It is trite law that allegations of fraud must be proved. In the case of *Benson Wandera Okuku vs Israel Were Wakho* (2020) eKLR the court stated as follows:

“ 15. And what about the standard of proof? The plaintiff said he has proved the case on a balance of probability. Is that the standard required in law. Certainly NOT. The law has been clear along. In *RG Patel vs Lalji Makanji* (1957) EA 314 the court expressed itself as follows:-

“Allegations of fraud must be strictly proved; although the standard of proof may not be so heavy as to require prove beyond reasonable doubt, something more than a mere balance of probabilities is required”.

16. In *Jennifer Nyambura Kamau vs Hampherey Nandi* (2013) eKLR, the court of appeal sitting at Nyeri emphasised that fraud must be proved as a fact by evidence, and, more importantly that standard of proof is beyond a balance of probabilities. This is the same position found in *Koinange & 13 Others vs Nyati* (1984) EA 425, *Gudka vs Dodhia* CA No 21 of 1980 and *Richard Ekwesera Onditi vs Kenya Commercial Finance Co. Ltd*: CA No 329 of 2009, Nairobi”.

140. Similarly, in the Court of Appeal case of *Vijay Morjaria Vs Nansingh, Madhusingh Darbar & another* [2000] eKLR it was held thus:

“It is well established that fraud must be specifically pleaded and the particulars of fraud alleged must be stated on the face of the pleading. The act 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.”

141. Section 107 (1) of the *Evidence Act* Cap 80 of the Law of Kenya provides:

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...”

142. The Plaintiff pleaded fraud and listed the particulars for each individual who participated in the fraudulent dealings with his suit land. He also tendered cogent evidence to establish the fraud that was committed to deny him the use and enjoyment of the suit land for over three decades.

143. It could not be a coincidence that the Commissioner of Lands, the Council, the Director Land and Administration, and the Director of Surveys, the District Land Registrar talk with one voice that the 2nd Defendant’s documents were suspected to be fraudulent and at some point same were cancelled. Why would there be two files for the same parcel of land whereby one is genuine and one is suspect with glaring anomalies as was pointed out by PW2.

144. It was his evidence that he investigated the letter of allotment and noted several inconsistencies, first, the reference 10884/XXVII belongs to a property in Mombasa therefore it could not have been issued for a property in Nakuru. Further that the error is repeated on the Plan No. on the letter of allotment and



testified that it is quoted as 10884/XXVII which also belongs to a property in Mombasa and there is no way that a plan could be of a higher volume when the allotment letter was issued in volume XXVII.

145. The 2nd Defendant's interaction with the parcels of land was dramatic, from his evidence, there were telltale signs that the process was not procedural and had many hiccups. He filed for bankruptcy and admitted that by the time he was selling the plots to the 4th and 5th defendants he had been adjudged bankrupt and did not inform them of his status as an adjudged bankrupt. The 4th and 5th defendants confirmed to the court that they were not aware that the 2nd defendant had filed a petition for bankruptcy.

146. It is also on record that the 5th defendant sued the 2nd Defendant for refund of the purchase price which they settled and the 2nd Defendant paid him Kshs. 10 million.

147. Section 24 (a) of the *Land Registration Act*, 2012 provides:

24. 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

148. Section 25 (1) provides:

- (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—

- (a) -----
- (b) -----

149. Section 26 (1) provides:

- (1) 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, unprocedurally or through a corrupt scheme.

150. In the case of *ELIJAH MAKERI NYANGWARA v STEPHEN MUNGAI NJUGUNA & another* [2013] eKLR the court held as follows:

“...it needs to be appreciated that for Section 26(1) (b) to be operative, it is not necessary that the title holder be a party to the vitiating factors noted therein which are that the title was obtained illegally, unprocedurally or through a corrupt scheme. The heavy import of Section 26 (1) (b) is to remove protection from an innocent purchaser or innocent title holder. It means that the title of an innocent person is impeachable so long as that title was obtained illegally, unprocedurally or through a corrupt scheme. The title holder need not



have contributed to these vitiating factors. The purpose of Section 26 (1) (b) in my view is to protect the real title holders from being deprived of their titles by subsequent transactions."

151. As much as the 2nd Defendant put up a spirited fight as the registered owner of the suit land, the root of his title was tainted and could not therefore pass a valid title to the third parties that he purportedly sold the land to. No wonder the 5th Defendant sued him and got his refund. Why did he file for bankruptcy if he knew that he still wanted to continue with his business as an agent? Why did he not inform his unsuspecting customers or prospective buyers that he was an adjudged bankrupt?
152. In the case of *Hubert L. Martin & 2 Others v Margaret J. Kamar & 5 Others* [2016] eKLR the court held that:

"...A court when faced with a case of two or more titles over the same land has to make an investigation so that it can be discovered which of the two titles should be upheld. This investigation must start at the root of the title and follow all processes and procedures that brought forth the two titles at hand. It follows that the title that is to be upheld is that which conformed to procedure and can properly trace its root without a break in the chain. The parties to such litigation must always bear in mind that their title is under scrutiny and they need to demonstrate how they got their title starting with its root. No party should take it for granted that simply because they have a title deed or Certificate of Lease, then they have a right over the property. The other party also has a similar document and there is therefore no advantage in hinging one's case solely on the title document that they hold. Every party must show that their title has a good foundation and passed properly to the current title holder. With the nature of case at hand, I will need to embark on investigating the chain of processes that gave rise to the two titles in issue as it is the only way I can determine which of the two titles should be upheld..."

153. The Plaintiff has demonstrated the processes he followed from application, allocation, payment of stand premium and issuance of a lease which was corroborated by the Assistant Director Land Administration Officer, PW2.
154. The 2nd Defendant's case in the counterclaim was also based on fraud and listed the particulars of fraud and illegality on the part of the Plaintiff as follows:
- a. Obtaining a Lease for the parcel of land Nakuru Municipality Block 18/59 when he had neither been allocated the said parcel of land nor purchased it from the first registered owner, the 2nd Defendant now Plaintiff herein.
 - b. Relying on another unfulfilled allotment letter for Unsurveyed Plot No 23 to acquire a Certificate of Lease for another Plot Unsurveyed Plot No 25 now Nakuru Municipality Block 18/59.
 - c. Obtaining Lease for the Parcel of land Nakuru Municipality Block 18/59 knowing very well that the Allotment letter purported issued to him was never fulfilled by acceptance and/or meeting the conditions thereon and therefore the same could not produce a Lease.
 - d. Using political influence of Hon H.O Obwocha then MP West Mugirango to illegally and fraudulently acquire documents relating to ownership of Nakuru Municipality Block 18/59. (sic)
 - e. Illegally claiming ownership without proof.



155. PW2 flagged the inconsistencies in the 2nd Defendant's allotment letter and lease and testified that in the gazette notice, the stand premium for plot No. 25 was Ksh10,300/= and the annual rent was Ksh..2060/= and there is no way that six years later the stand premium would come down to Kshs.6,200/= and annual rent to 1,640/=. PW2 further testified that the term of the lease on the letter of allotment dated 4th July, 1994 reads ninety-nine years from 1st July, 1994 and he confirmed that the gazette notices were running from 1985. PW2 testified that another inconsistency is on the requisite fees where the conveyance fee is indicated as Kshs.350, and registration fee at Ksh.50/=. PW2 testified that in 1994, the conveyancing fee was Kshs.1250/= and the registration fee was Kshs.250/=. That there were many errors in a single letter of allotment that raised a red flag.
156. It was also PW2's testimony that on page two of the letter of allotment, the authority is indicated as alternative of Block 17/232 being portion of Block 17/23 and he was not able to trace such authority. PW2 informed the court that this file was manufactured outside and sneaked into the registry hence there was no lease to Lawrence Maina Mwangi. The court notes that the burden of proof shifted to the 2nd Defendant to prove his claim. When a root of a claimant's title is in issue, it is incumbent upon such a party to prove the authenticity of his/her title.
157. In the case of *Munyu Maina vs Hiram Gathiha Maina*, Civil Appeal Number 239 of 2009, [2013] eKLR the Court stated that:
- “... when a registered proprietor's root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which would not be noted in the register.”
158. The 2nd Defendant cannot be allowed to dangle the certificate of lease as proof of ownership yet the root of the title is tainted. He was under a duty to go beyond the title to prove the legality and how he acquired it. He admitted that he also noticed the inconsistencies in his lease in court.
159. Having found that the 2nd Defendant's lease was questionable/ fraudulently acquired it follows that he could not validly pass any good title to third parties. Any titles or subdivisions emanating from such a case is null and void. The 4th and 5th Defendants did not file any counterclaim against the 2nd defendant as the 5th had already been refunded his money. For the 4th Defendant he just asked the court not to punish him for costs if it finds in favour of the plaintiff. This case was essentially between the Plaintiff and the 2nd Defendant. The 4th Defendant pleaded that he is a bona fide purchaser which cannot be applicable as the 2nd defendant did not have a good title to pass to him.
160. Section 80 of the *Land Registration Act* gives courts powers to rectify a title in case of a mistake. The said section provides:
- “(1) Subject to subsection (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.
- (2) The register shall not be rectified to affect the title of a proprietor who is in possession and had acquired the land, lease or charge for valuable consideration, unless the proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such



omission, fraud or mistake or substantially contributed to it by any act, neglect or default”.

161. I have considered all the pleadings, the evidence on record, the submissions by counsel and find that the plaintiff has proved his case against the 2nd Defendant and I therefore issue the following specific orders:
- a. The District Land Registrar Nakuru, is hereby directed to cancel the lease in relation to Land Registration Number Nakuru Municipality Block 18/59 issued to Lawrence Mwangi and shall register the lease to the said parcel of land in the names of the plaintiff.
 - b. A permanent injunction is hereby issued against the Defendants restraining the defendants either by themselves, their agents, employees and/or servants from entering, alienating disposing off and/or in any matter dealing with the plaintiff's parcel of land known as Nakuru Municipality Block 18/59.
 - c. The District Land Registrar Nakuru is hereby directed to cancel the new titles issued in the names of the 3rd, 4th & 5th defendants within 14 days.
 - d. Costs of the suit are awarded the Plaintiff against the 2nd Defendant.
 - e. The 2nd Defendant Counterclaim dated 20th April, 2021 is hereby dismissed with costs.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 11TH DAY OF NOVEMBER 2025.

M. A. ODENY

JUDGE

