



**Trust Land Developers Limited v Kenya Agricultural Research Institute & 3 others
(Civil Suit 455 of 2009) [2025] KEELC 7645 (KLR) (6 November 2025) (Judgment)**

Neutral citation: [2025] KEELC 7645 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
CIVIL SUIT 455 OF 2009
OA ANGOTE, J
NOVEMBER 6, 2025**

BETWEEN

TRUST LAND DEVELOPERS LIMITED PLAINTIFF

AND

KENYA AGRICULTURAL RESEARCH INSTITUTE 1ST DEFENDANT

**KENYA VETERINARY VACCINES PRODUCTION INSTITUTE 2ND
DEFENDANT**

THE LANDS REGISTRAR 3RD DEFENDANT

THE COMMISSIONER OF LANDS 4TH DEFENDANT

JUDGMENT

Background

1. Vide a Further Amended Plaint dated 19th January, 2023, the Plaintiff seeks the following reliefs:
 - i. A declaration that the Plaintiff is the sole registered owner of the suit property.
 - ii. A permanent injunction restraining the first and second Defendants, whether by themselves, their agents, servants employees, or whomsoever from moving onto, demolishing, continuing to demolish, alienating, selling, transferring, wasting, mortgaging, leasing or in any way dealing with the property in whatsoever the manner the suit property herein contrary to the interest of the Plaintiff on L.R No 209/13293 Nairobi.
 - iii. Special damages of:
 - a. Kshs 257,823, 351/= being the current value of the demolished houses costs.
 - b. The current value of the suit land being Kshs 300,000,000/=.



- c. Lost income, profits, lost investment opportunities being Kshs 467,500,000/=.
 - d. Costs for quantity surveyor and valuer being Kshs 39, 834, 530/=.
 - e. Consultancy fees for Architect, Engineer and initial purchase price being Kshs 40, 682, 997/=.
 - f. Costs of the suit and interests above at commercial rates.
 - g. Any other or further relief that this Honourable Court may deem fit.
2. The Plaintiff's case is that the 4th Defendant, in exercise of the powers conferred on it by the Registration of Titles Act, signed and sealed a grant being a Grant I.R 104222 being the land registered as L.R Number 209/13293 granted to Nicholas Muchene Njau and Philip Kibet Tanui t/a Citygate Enterprises.
 3. It was averred by the Plaintiff that in the alternative, and without prejudice to the foregoing, the 3rd and 4th Defendants in breach of their statutory duties, fraudulently and without lawful authority or order caused and/or misrepresented to have caused to be alienated, allocated and registered grant number I.R 1040222 -L. R Number 209/13293 to private parties who later sold the same to the Plaintiff.
 4. The foregoing, it was stated, was not only a fraudulent, and a breach of statutory duty, but was tantamount to misrepresentation on the part of the 3rd and 4th Defendants, the particulars of which include unlawfully causing the said land to be surveyed and sub-divided from L.R No 209/13409, unlawfully causing the sub-division to be duly registered as grant number I.R 104222 being L.R number 209/13293, causing the records regarding the new titles to be maintained and be presented for the use of the public as true records, and causing the Plaintiff to incur costs and expenses in the purchase and transfer of the said land.
 5. Further particulars were set out as misleading and misrepresenting to the Plaintiff through official records that the land in issue was available for purchase and development and misrepresenting to the grant holder that the same was executed under a valid and lawful order.
 6. According to the Plaintiff, it purchased L.R. No. 209/13293 in good faith, having relied on the apparent authenticity and regularity of the process that led to the issuance of the title. It averred that, upon conducting an official search at the land's registry, it confirmed that the title was duly registered by the 3rd Defendant, and being satisfied as to its validity, proceeded to enter into a sale agreement purely as an innocent purchaser for value without notice of any defect in title.
 7. It is the Plaintiff's case that by an instrument of transfer dated 22nd June 2007, duly consented to by the 4th Defendant and registered by the 3rd Defendant, its acquired ownership of the suit property for a consideration of Kshs. 18,500,000; that the transfer was registered on 4th July 2007, whereupon a title document was issued to it and that the property, now valued at approximately Kshs. 300,000,000 has been substantially invested on by the Plaintiff with the intention of developing high-end residential units.
 8. Prior to the purchase, the Plaintiff averred, it carried out due diligence which revealed that the sellers of the property, Nicholas Munene Njau and Philip Kibet Tanui, trading as Citygate Enterprises, were the registered owners thereof. The Plaintiff maintained in the Plaintiff that the title was unencumbered and has never been the subject of any inquiry, investigation, or recovery proceedings by any public agency.
 9. It was contended by the Plaintiff that nonetheless, by a public notice published in the local daily on 8th November 2008, the 1st Defendant, without any lawful basis, alleged that it owned several parcels of



land depicted on an attached plan, including the Plaintiff's property, claiming to have recovered them through a process involving the Government of Kenya and the Kenya Anti-Corruption Commission.

10. The Plaintiff contended that the said publication was malicious and misleading, asserting that the 1st Defendant neither verified the ownership records held by the 3rd Defendant nor conducted any official search before making the public announcement. A similar notice was issued by the 2nd Defendant on 10th July 2009, repeating the same ownership claims, which the Plaintiff equally characterized as malicious, deliberate, and calculated to disparage its title.
11. The Plaintiff averred that on 7th September 2009, the 1st and 2nd Defendants, acting jointly, unlawfully entered onto the suit property and commenced demolition of structures that had been erected thereon, thereby causing it extensive loss and damage. The Plaintiff holds the Defendants jointly and severally liable for the wrongful acts complained of and seeks special damages as follows:

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| Kshs 257, 823, 351/= | Costs of demolished houses at the current market value |
| Kshs 467,500,000/= | Loss of projected income from development. |
| Kshs 39, 834, 530/= | Procurement of Quantity Surveyor and Valuer |
| Kshs 40, 682, 997/= | Purchase price, stamp duty, legal fees, registration fees and consultancy fees paid to architect and engineer |

12. The Plaintiff further contends that it has suffered significant loss and damage, including the deprivation of use and enjoyment of its investment, the malicious and unlawful demolition of its property, and acts of trespass upon its land. It also claims to have incurred financial losses arising from the destruction of the housing units and the consequent loss of reinvestment opportunities. The Plaintiff maintains that the 1st and 2nd Defendants have no lawful claim to the suit property and are attempting to unlawfully alienate it.
13. The 1st Defendant filed a Further Amended Defence on 27th January 2023, denying the allegations contained in the Plaintiff's Further Amended Plaint. It maintained that the title known as L.R. No. 209/13293 could not lawfully issue to the Plaintiff, as the land in question formed part of the 2nd Defendant's property, L.R. No. 209/13409, for which the 2nd Defendant holds the original title.
14. The 1st Defendant averred that any subdivision, construction, or other developments undertaken by the Plaintiff on the disputed parcel amounts to trespass upon the 2nd Defendant's land. It further explained that the newspaper publication dated 8th November 2007 was not malicious, but was made bona fide on behalf of the 2nd Defendant, in the exercise of the 1st Defendant's administrative authority over the 2nd Defendant.
15. This authority, it was averred, was derived from a government directive contained in Presidential Circular No. 3 of 2003, which also revoked the appointment of the 2nd Defendant's Board of Management through Gazette Notice No. 6336.
16. The 1st Defendant added that its administrative oversight over the 2nd Defendant ceased following a government directive issued through a Presidential Circular dated May 2008, which reinstated and appointed a new Board of Management for the 2nd Defendant.



17. According to the 1st Defendant, the issue concerning the loss of several portions of the 2nd Defendant's land was investigated by the Commission of Inquiry into the Irregular Allocation of Public Land, whose report dated June 2004 referred the matter to the Kenya Anti-Corruption Commission for appropriate action.
18. It was the 1st Defendant's position that, despite having full notice of the 2nd Defendant's claim over the land, the Plaintiff proceeded with developments at its own risk, and therefore, the Defendants cannot be held liable for any losses arising therefrom.
19. The 2nd Defendant filed its Defence and Counterclaim on 1st October 2009, denying the allegations contained in the Plaint. It acknowledged, however, that vide a public notice in the local dailies of the 8th November, 2007 and 10th July 2009, it asserted ownership of the suit property as delineated on an attached plan and warning that any developments thereon would be demolished.
20. According to the 2nd Defendant, it is a state corporation established under the *State Corporations Act* and is the registered proprietor of L.R. No. 209/13409, measuring approximately 29.05 hectares. It stated that the land is reserved for industrial use, specifically for the production of veterinary vaccines and related research activities, in compliance with the Disease Security Regulations (O.I.E.) standards.
21. It is the 2nd Defendant's case that it holds the original title deed to the property, which has never been sold, subdivided, or otherwise alienated. It further indicated that its title was verified and confirmed to be intact on 22nd April 2009, and that on 26th August 2009, the Commissioner of Lands formally confirmed the authenticity of its title, declaring all other purported titles over the same land to be forgeries.
22. The 2nd Defendant maintained that it only became aware of the existence of title L.R. No. 209/13293 upon the filing of this suit. It contends that the Plaintiff's occupation and developments on the land amount to unlawful encroachment, and that having ignored prior public notices, the Plaintiff proceeded with such developments at its own risk.
23. The 2nd Defendant maintains that it has suffered loss and damage as a result of the Plaintiff's trespass. It seeks vide the counterclaim:
 - i. A declaration that it is the sole and lawful owner of L.R No 209/13409.
 - ii. A declaration that L.R No 209/13409 measures 29.05 hectares.
 - iii. Permanent injunction restraining the Plaintiff whether by itself, its servants, agents, employees or whomsoever from encroaching and/or trespassing, erecting any structures and in any way interfering with L.R No 209/13409.
 - iv. A mandatory order directing the Plaintiff to remove all development structures and buildings on L.R No 209/13409 and restore it to the condition it was before.
 - v. In the alternative to (iv) an order that all the developments be removed and land restored to the condition it was at the cost of the Plaintiff and the 3rd Defendant.
 - vi. General damages for trespass.
 - vii. Indemnify from the 3rd Defendant against the Plaintiffs claims and the cost of removing developments and restoring the land.
 - viii. Costs of the suit.
 - ix. Any other or further relief that this Honourable Court may deem fit to grant.



Hearing and Evidence

24. The hearing commenced on 21st May, 2024. PW1 was Mohammed Bare, a business man and Director of the Plaintiff. He adopted his witness statement dated 19th September, 2016 as his evidence in chief and the documents filed on 23rd September, 2016 as PEXHB1, except documents 17, 20 and 21. The documents filed alongside the Further Amended Plaintiff were marked as MFI 2 and the valuation report MFI 3.
25. PW1 testified that, by an instrument of transfer dated 22nd June 2007 between Nicholas Munene Njau and Philip Kibet Tanui of one part and the Plaintiff of the other, the interest in L.R. No. 209/13293 was legally transferred to the Plaintiff for the sum of Kenya Shillings Eighteen Million Five Hundred Thousand (Kshs. 18,500,000).
26. It was his evidence that prior to executing the agreement, the Plaintiff conducted an official search at the Lands Registry and obtained confirmation from the Registrar of Titles, which indicated that the land was owned by the vendors free from any encumbrances and that the then Nairobi City Council issued a rates demand note for the property, which was duly settled, and the 3rd Defendant provided a rents clearance certificate granting consent for the transfer.
27. PW1 stated that the Plaintiff also paid the requisite stamp duty to the 4th Defendant, as assessed by authorized officers. Having fulfilled all obligations under the sale agreement and to the 3rd and 4th Defendants, the Plaintiff proceeded to develop the property. He stated that he submitted plans for a proposed perimeter wall to the Nairobi City Council, made the required payments, and obtained approval to commence construction.
28. According to PW1, on the 8th November 2007, the 1st Defendant published a notice in the local newspapers claiming that the properties shown therein belonged to one of its departments, the 2nd Defendant, and referenced among others the Plaintiff's property. Subsequently, on 10th July 2009, the 2nd Defendant, issued a similar notice in the newspapers indicating that the Plaintiff's property would be demolished.
29. It was PW1's testimony that despite being aware that the Plaintiff was the registered owner of the suit property, the 1st and 2nd Defendants unlawfully, illegally, and with malice entered the Plaintiff's land and began demolishing the housing units already erected. The Plaintiff moved the court and obtained injunctive orders, which remain in force.
30. PW1 emphasized that the certificate of title issued by the Registrar is conclusive proof of absolute and indefeasible ownership. PW1 also stated that the suit property was not referenced in any commission of inquiry or recovery process, and that the Defendants' actions caused it significant losses and suffering, as some of the developed housing units had already been sold to third parties.
31. On cross-examination, PW1 conceded that the parcel in question was government land, as evidenced by the fact that it was originally granted by the government. He admitted that he did not have copies of the letters of allotment issued to the vendors, Nicholas Njau and Philip Kibet Tanui, and that the Plaintiff had not taken any legal action against them. He explained that the lawyers handled the transaction on behalf of company, and he was unable to trace proof of the payments made.
32. PW1 stated that the Plaintiff company is no longer operational and has ceased trading, and that beyond the certificate of title, he possesses no other supporting documents. Although the land was subdivided and maisonettes constructed, he said he did not have the subdivision documents, and the valuation of the property differs from the actual purchase price.



33. He further conceded that the Plaintiff does not have evidence of actual payments for construction and lacks the bills of quantities prepared before building commenced. He admitted that no police report was filed when encroachment occurred on the land. He acknowledged that the Ndung'u Commission report stated that the land was set aside as a public utility. Additionally, he could not produce the official search undertaken prior to the purchase, and despite the notices published in the newspapers, the maissonettes were erected on the suit property.
34. In re-examination, PW1 clarified that all payments were made through their lawyer and that neither he nor the Plaintiff has ever been charged with any offence of forgery. He confirmed that the Plaintiff paid the required stamp duty and took lawful possession of the land. He further observed that the 2nd Defendant's deed plan appears to have been issued after the Plaintiff's title, noting that while the title was issued in 1992, the deed plan was only issued in 1997, an inconsistency he contended should not have been possible.
35. DW1 was Henry Mbaluku, the Assistant Director, Property Management at KALRO, the successor of the 1st Defendant, and part of the team tasked with the administration of the 2nd Defendant's operations at the time. He adopted his witness statement dated 26th March, 2024 as his evidence in chief and produced the bundle of documents dated 30th January, 2023. He produced the bundle dated 22nd July, 2015 as 1DEXHB1.
36. It was DW1's testimony that at all material times relevant to this suit, the 1st Defendant was a wholly government-owned State Corporation, established in 1979 under the Science and Technology Act, with the core mandate of conducting agricultural research of strategic national importance, integrating programmes in food crops, horticultural and industrial crops, livestock and range management, land and water management, and socio-economic studies.
37. It was his evidence that the 2nd Defendant, also a wholly government-owned State Corporation, was established under the *State Corporations Act* on 5th May 1990 through Legal Notice No. 223 of 4th June 1990, and that its mandate includes production of all veterinary vaccines in the country, research into innovations in vaccine production, development and production of chemicals, media, and laboratory products for vaccine production, and distribution of veterinary vaccines locally and internationally.
38. Pursuant to Presidential Circular No. 3 of July 2003, he stated, the operations, functions, services, and assets of the 2nd Defendant were transferred to the 1st Defendant, granting it administrative authority over the 2nd Defendant. Consequently, the 1st Defendant designated the 2nd Defendant as its Veterinary Vaccines Production Center- Embakasi for management and operational purposes. These administrative powers were later withdrawn by Presidential Circular No. 1 of May 2008, and in 2009, the Board of Management of the 2nd Defendant was appointed through Gazette Notice No. 4791, ending the 1st Defendant's operational control.
39. DW1 stated that, upon taking over management in 2003, the 1st Defendant found that the 2nd Defendant held a valid certificate of title over L.R. No. 209/13409 in the Industrial Area of Nairobi City County. He stated that this parcel of land was the remainder of a larger piece of land allocated to the 2nd Defendant in the 1990s for industrial purposes, including veterinary vaccine production, in compliance with O.I.E. standards (Disease Security Regulations).
40. It was his testimony that the 2nd Defendant has remained the sole proprietor of L.R. No. 209/13409, a remainder of parcel L.R. 209/8260, the mother title which was never alienated, nor was its original title surrendered, raising questions about the validity of the Plaintiff's claimed title, L.R. No. 209/13293.



41. According to DW3, at the time L.R. No. 209/13293 was purportedly allocated to the Plaintiff, the 1st Defendant occupied and used the land on behalf of the 2nd Defendant, and no portion was available for transfer, allocation, or alienation. DW1 noted that the issue of loss of portions of the 2nd Defendant's land was investigated by the Commission of Inquiry into the Illegal/Irregular Allocation of Public Land, whose report of June 2004 led the 1st Defendant to refer the matter to the Kenya Anti-Corruption Commission for further action.
42. With the commencement of the Plaintiff's developments, the 1st Defendant, exercising administrative powers at the time, issued a public notice on 8th November 2007 in local newspapers asserting that the property belonged to the 2nd Defendant. This was followed by another notice on 10th July 2009 issued by the now autonomous 2nd Defendant, warning the public against dealings with any purported owners and including a sketch map delineating the property boundaries. DW1 stated that despite these clear notices, the Plaintiff proceeded with developments without first verifying the 2nd Defendant's title.
43. DW1 emphasized that both the 1st and 2nd Defendants are State Corporations, holding assets in trust for public use and interest. He stated that the 1st Defendant's actions in defending the 2nd Defendant's title were bona fide and in line with its public mandate; that the certificate of title for L.R. No. 209/13409 is valid and legally binding, and the Plaintiff's claimed title cannot coexist with it and that the Plaintiff's failure to seek nullification of the 2nd Defendant's title is fatal to its case.
44. Consequently, DW1 contended the 1st Defendant is not a necessary party to this suit, and that the Plaintiff's claim against it should be dismissed with costs.
45. On cross-examination, DW1 testified that he did not know the officer who authored the letter dated 31st March 1995 referencing the sub-division of L.R. No. 209/11969, noting that the same was done before KARI became involved. He stated that the Plaintiff's title is not referenced on pages 38–39 of the Ndung'u Commission report, and that by the time the 1st Defendant issued the public notice on 8th November 2007, the Plaintiff already held a title to the land.
46. DW1 further acknowledged that there was no communication from the 3rd or 4th Defendants cancelling the Plaintiff's title, and conceded that demolition of structures on a validly titled property would call for compensation.
47. In re-examination, DW1 clarified that page 29 of the Commission report contains a report prepared by N. Marutegek and submitted to the Ndung'u Commission which references the Plaintiff's title. He noted that the newspaper advertisement is reflected on pages 52–53, which includes a map showing the Plaintiff's land. He further observed that the 2nd Defendant's title was issued earlier in time in the year 1995 whereas the Plaintiff holds a title issued on 29th December 2006.
48. DW2 was Geoffrey Simwa, a Senior Human Resource & Administration Officer of the 2nd Defendant. He adopted his witness statement dated 12th October 2017 as his evidence in chief and produced documents dated 18th June 2013, as 2DEXHB2.
49. It was his testimony that the 2nd Defendant is a State Corporation established in 1990 under the *State Corporations Act* and he has served therein since 2nd May 2005; that the 2nd Defendant has filed a Counterclaim seeking cancellation of any claims the Plaintiff may assert over KEVEVAPI's land and that the 2nd Defendant is the registered proprietor of L.R. No. 209/13409, measuring approximately 29.05 hectares, and holds the original title issued on 5th June 1997.



50. DW2 emphasized that the 2nd Defendant's title has never been subdivided, released, or allocated for subdivision. He added that the demolitions carried out in 2009 were supervised by the Ministry of Agriculture.
51. DW2 explained that the encroachment was reported, and the Commissioner of Lands confirmed the illegality of the Plaintiff's claim by a letter dated 26th August 2009, stating that L.R. No. 209/13293 is a forgery and did not originate from the 2nd Defendant. Following this, the Ministry of Lands established beacons, and a survey determined that the Plaintiff had encroached on the 2nd Defendant's land by approximately 0.19 hectares.
52. In cross-examination, DW2 testified that the 1st Defendant ceased administering the affairs of the 2nd Defendant in 2008, after which the latter became an independent institution. He stated that the Plaintiff commenced construction in 2009. According to him, the original parcel measured approximately 93.03 hectares, while the current title reflects an area of 29.05 hectares, the reduction having resulted from the subdivision and issuance of titles out of the original land.
53. DW2 acknowledged that there were existing structures on the property. He further stated that he was not aware of any order nullifying the title for L.R. No. 13293, nor of any legal document authorizing demolitions on the suit property.

Submissions

54. The Plaintiff did not file submissions. [As at 1st November, 2025). The 1st Defendant's Counsel filed submissions on 30th September, 2025. Counsel submitted that the 2nd Defendant holds a valid title to L.R 208/13409, it being part of a larger parcel of land allocated to it in the 1990's for public purposes, which title has not been impugned under Section 24 of the [Land Registration Act](#).
55. L.R No 209/13409, it was submitted, is undisputably public land under Article 62(1)(b) of [the Constitution](#). It was submitted that the 2nd Defendant, a public entity, has continuously used the land for its statutory purpose, research and production of veterinary vaccines since the 1960s and that as the 2nd Defendant's title is intact, the Plaintiff's title stands impeached as per Section 26 of the [Land Registration Act](#). Reliance was also placed on the case of *Funzi Island Development Limited & 2 others vs County Council of Kwale & 2 others* [2014] KECA 882 (KLR).
56. Counsel reiterated that as expressed in *Niaz Mohamed Jan Mohamed vs Commissioner for Lands & 4 Others* [1996] eKLR, land acquired for a public purpose cannot be transferred for private use. Counsel also cited *Tuguta Enterprises Limited vs Kenya Agricultural Research Institute & 3 Others* [2024] KEELC 437 (KLR), where the court confirmed the 2nd Defendant's sole ownership of L.R 209/13409.
57. As regards the Plaintiff's claims for special damages, it was asserted that the same were not strictly proved, a mandatory requirement as affirmed by the court in *Hahn vs Singh* (1985) KLR 716). It was submitted that the public notice issued by the 1st Defendant on 8th November 2007 was bona fide, issued in the public interest, and that the Plaintiff's failure to verify the 2nd Defendant's title before commencing developments constitutes negligence.
58. The 2nd Defendant filed submissions on the 14th July, 2025. Counsel submitted that it is trite that it is not enough that one waves a certificate of lease or a certificate of title and asserts that he has good title by the mere possession thereof. In that regard, the court in *Kenya Anti-Corruption Commission vs Online Enterprises Limited & 4 others* [2019] KEELC 4680 (KLR), held that where there is contention that a lease or certificate of lease held by an individual was improperly acquired, then the holder must demonstrate, through evidence, that the same was properly acquired.



59. Reliance was also placed on the case of *Munyu Maina vs Hiram Gathiha Maina* Civil Appeal No. 239 of 2009 [2013]eKLR and *Dina Management Limited vs County Government of Mombasa & 5 others* (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR) (21 April 2023).
60. It was submitted that in any event, the Plaintiff's title is defective in several respects to wit, it was not preceded by a sale agreement as mandatorily required contrary to Section 3(3) of the *Law of Contract Act* as read with Section 38 of the *Land Act*, a position affirmed by the courts in *Lucy Wangui Mwaura vs Linet Achieng Amala* [2019] eKLR and *Moses Njaramba Kamau vs Mary Muthoni Njaramba & 3 others* [2017] eKLR.
61. Similarly, it was urged, there is no evidence of payment of the purchase price of Kshs 18,500,000, and this, guided by the decision in *Esther Kabugi Njuguna v Martha Chebet & 3 others* [2020] eKLR, rendered the sale void/invalid for want of consideration. Reliance in this regard was also placed on the case of *Ronald Kenyansa Nyamosi vs National Social Security Fund & Another* [2019] eKLR.
62. Counsel asserted that in the circumstances, the Plaintiff's alleged title could only be lawfully obtained upon the surrender and cancellation of the 2nd Defendant's title to L.R. 209/13409, followed by subdivision and issuance of new titles over the new parcels. This position, it was stated, was reiterated in *Peter Rugu Gikanga & Another vs Hellen Muringe Kabutha* [2018] eKLR as well as *Francis Ngaru Njuguna & Another vs Onesmus Njuguna Ngaru & Another* [2019]eKLR. No evidence having been adduced in this regard, the title cannot stand.
63. It was further submitted that as held by the Apex court in *Sehmi & another vs Tarabana Company Limited & 5 others* (Petition E033 of 2023) [2025] KESC 21 (KLR) (11 April 2025) (Judgment), the doctrine of innocent purchaser for value can only be used against equitable interests and not legal interests. In any event, it was submitted, the Plaintiff did not demonstrate due diligence before purchasing the parcel of land, a requirement as explained in *Moses Lutomia Washiali vs Zephaniah Ngaira Angweye & another* [2018] eKLR.
64. Having found that the Plaintiff's title was obtained illegally, it was urged, the court should, taking note of Kenya's history of unprecedented land grabbing, cancel the same pursuant to Section 80 of the *Land Registration Act*. Reliance in this regard was made to the cases of *Funzi Island Development Limited & 2 Others vs County Council of Kwale & 2 Others* [2014] eKLR and *Chemey Investment Limited vs Attorney General & 2 others* [2018] KECA 863 (KLR).
65. As regards the Plaintiff's other claims, it was urged that the court should be guided by the exposition in *Kenya Pipeline Co. Ltd vs Glencore Energy (U.K) Ltd* [2015] eKLR and *Holman vs Johnson* (1775–1802) All ER 98, which established the principle that no court will lend its aid to a party whose cause of action arises from an illegal or immoral act. Reliance was also placed on the cases of *Nyakundi & 2 others vs NSSF & another* [2024] KEELC 1012 (KLR) and *Kenya Airways Ltd vs Satwant Singh Flora* [2013] eKLR, where it was reiterated that judicial policy abhors illegal claims.
66. It was submitted that the Plaintiff, having constructed structures on land belonging to the 2nd Defendant despite public notices and warnings, was guilty of trespass. Citing the case of *Park Towers Ltd vs John Mithamo Njika & 7 others* [2014] eKLR, counsel urged the court to award the 2nd Defendant general damages of Kshs. 20,000,000/= for trespass, following the precedent set in *Ajit Bhogal vs KPLC* [2020] eKLR.

Analysys and Determination

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



- i. Whether parcel L.R. No. 209/13293 emanated from L.R. No. 209/13409, and if so, whether it is legitimate?
 - ii. What are the appropriate reliefs to issue?
68. The Plaintiff instituted this suit against the Defendants seeking inter-alia, a declaration that it is the legitimate owner of L.R No 209/13293 (the suit property), permanent injunctive orders restraining interference with the parcel and special damages.
 69. It is the Plaintiff's case that it purchased the suit property from Nicholas Muchene Njau and Philip Kibet Tanui t/a Citygate enterprises sometime in 2007. Upon purchasing the property, it took possession thereof and begun constructions. According to the Plaintiff, on 8th November, 2008 and 10th July, 2009, the 1st and 2nd Defendants published public notices in the newspaper claiming ownership of his parcel, and that the 1st and 2nd Defendants subsequently moved onto the parcel demolishing its structures thereon.
 70. The Plaintiff adduced into evidence the instrument of transfer dated 22nd June, 2007, title deed for L.R No 209/13293, deed plan number 27029, official search over L.R 209/13293, rates demand note dated 15th March, 2007, land rent pay in slip and receipt dated 20th March, 2007, rate clearance certificates dated 29th March, 2009, and consent to transfer dated 30th March, 2007.
 71. Also adduced were copies of the stamp duty declaration, assessment and pay in slip dated 25th June, 2007, receipts for plan inspection fees for boundary wall and sub-division, cheques to Nairobi City County, City Council approvals of civil engineering drawings and project evaluation report, photos of the demolitions and sites and adverts in the daily newspaper.
 72. On their part, the 1st and 2nd Defendants maintain that the 2nd Defendant is the legitimate proprietor of the L.R 209/13409, from which the Plaintiff's parcel was curved and that any alleged title held by the Plaintiff is fraudulent.
 73. It is their case that the 2nd Defendant was originally allocated a parcel of land known as L.R. No. 209/8260, measuring approximately 96 acres and that the land was strategically located and reserved for the operations of the Veterinary Vaccines Production Institute, designed to meet the standards of the International Office of Epizootic Diseases (OIE).
 74. Being a state corporation, it was averred, the 2nd Defendant holds the land as public land for a specific statutory purpose namely, research, development, and production of veterinary vaccines.
 75. The Defendants contend that the said land was subsequently illegally and irregularly subdivided and portions thereof allocated to private individuals and that the illegal allocation of its land was highlighted in the Ndung'u Land Commission Report, which identified the illegal alienation of several of its parcels to private persons. Among the parcels listed was L.R. No. 209/13409, which was ultimately restored to the 2nd Defendant. The Defendants maintained that the Plaintiff's parcel, a sub-division of L.R 209/13409 is illegal.
 76. They adduced into evidence extract of Government of Kenya Presidential Circular number 3 of 2003, summons for production of records by the Ndung'u Commission dated 29th August, 2003, 2nd Defendants submissions and extract of a report to the Commission dated 12th September, 2003, and June, 2004, public notice by the Kenya Anti-Corruption Commission dated 14th March, 2006, public notice published in the Daily Nation of 8th November, 2007, and various correspondence.



77. Also adduced were copies of the letter of allotment with respect to surveyed parcel 209/8260/B, quarantine notice for 209/8260B, titles L.R 209/11969, 12345, 13409, report dated 25th March, 2003, summons dated 29th August, 2003, reports to public accounts committees dated May, 2007, search application dated 22nd April, 2009, various correspondence, and the Daily Nation advert dated 8th November, 2011.
78. Considering the foregoing, it is apparent that the present dispute involves competing claims of ownership by the Plaintiff and the 2nd Defendant. Each of them is obligated to prove their respective claims. This requirement is anchored in the fundamental principle of law that he who alleges must prove. This legal maxim is enshrined in Section 107(1) and (2) of the *Evidence Act* 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.”
79. 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.”
80. In discussing the standard of proof in civil liability claims in this jurisdiction, the Court of Appeal in *Mumbi M’Nabea vs David M.Wachira* [2016] KECA 773 (KLR) stated as follows:
- “In our jurisdiction, the standard of proof in civil liability claims is that of the balance of probabilities. This means that the Court will assess the oral, documentary and real evidence advanced by each party and decide which case is more probable. To put it another way, on the evidence, which occurrence of the event was more likely to happen than not.
- ...The position was re-affirmed by the Court of Appeal in *Maria Ciabaitaru M’airanyi & Others v. Blue Shield Insurance Company Limited -Civil Appeal No. 101 of 2000* [2005] 1 EA 280 where it was held that:
- “Whereas under section 107 of the *Evidence Act*, (which deals with the evidentiary burden of proof), the burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue, section 109 of the same Act recognises that the burden of proof as to any particular fact may be cast on the person who wishes the Court to believe in its existence.”



81. 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.”

82. 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 vs Salim Mohamed Salim* [2021] eKLR relying on an earlier exposition in *Vijay Morjaria vs Nansingh Madhusingh Darbar & Another*[2000]eKLR thus:

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

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

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

84. The court will be so guided.

85. Vide the present suit, the Plaintiff seeks, inter alia, a declaration that it is the legitimate owner of the parcel of land known as L.R. No. 209/13293. Conversely, the 2nd Defendant, through its Counterclaim, prays to be declared the lawful proprietor of L.R. No. 209/13409. Each party has adduced its title document in this regard.

86. According to the Defendants, the Plaintiff's parcel, L.R. No. 209/13293, emanates from, and forms part of L.R. No. 209/13409, being a subdivision thereof. This, despite the fact that the 2nd Defendant has never ceded possession of any part of parcel L.R 13409, neither has its title been revoked.



87. In support of their position, the Defendants produced the report on illegal allocation of public land of May, 2007 which notes at page 12:

“a new excision (L.R. 209/13293) appears to have been made out of L.R. 209/13409. This has never been revealed from various searches at the Commissioner of Lands office. We have requested the Director of Surveys to establish boundary beacons for L.R. 209/13409.”

88. There is also a letter dated 16th May 2007 addressed to the Director of Surveys complaining of encroachment, and another dated 17th May 2007 to the Director of City Planning objecting to construction works on L.R. No. 209/13293.

89. The Defendants also relied on a survey report dated 4th July 2007 confirming encroachment of approximately 1.91 hectares into their parcel, a letter dated 13th July, 2007 to PW1 complaining about trespass onto parcel L.R. No. 13409, a letter dated 6th July, 2009 to the Commissioner of Lands inquiring about parcel L,R No. 209/13293, alleged to be emanating from parcel 209/13409 as well as public notices dated 8th November 2007 and 10th July 2009. These notices have annexed to them a plan delineating several parcels of land including parcel 209/13293, all of which are noted to belong to the 2nd Defendant.

90. The Plaintiff, on its part, does not seriously dispute that its parcel originated from the 2nd Defendant’s land. In fact, in its pleadings, albeit vide an alternative plea, it avers that the 3rd and 4th Defendants, officials of the then Ministry of Lands, unlawfully caused L.R. No. 209/13409 to be surveyed and subdivided to create L.R. No. 209/13293, which it subsequently purchased and developed. It pleads fraud and misrepresentation on the part of these officials, contending that it was an innocent purchaser for value.

91. Ultimately, the court finds that parcel L.R. No. 209/13293 indeed emanated from L.R. No. 209/13409.

92. Having so found, the next question for determination is whether the Plaintiff’s title for L.R. No. 209/13293, is valid. The Plaintiff anchors its claim on a certificate of title issued under the Registration of Titles Act (Cap 281) (repealed), and a transfer to it having been registered on the 4th July, 2007. 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.

93. The Registration of Titles Act 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.”

94. 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. The said



rights could only be challenged on the ground of fraud or misrepresentation to which he is proved to be a party.

95. It is trite that where the validity of a registered proprietor's title is in question, it is insufficient for that person to simply produce the title deed as proof of ownership. The proprietor bears the duty to go further and show that process through which the title was obtained was lawful, procedurally sound, and free from fraud or irregularity. [See *Munyu Maina vs Hiram Gathiha Maina* [2013] KECA 94 (KLR)]
96. Reiterating this, the Appellate Court in *Gathondu (As Administrator of the Estate of the Late Thumbi Kariuki) vs Registrar & Others* (supra) noted:
- “It is, to my mind, a question of the greatest importance because, like ‘Eneke’, the bird in Chinua Achebe’s *Things Fall Apart*, who learnt to fly without perching because men had learnt to shoot without missing, Kenyan courts can no longer content to perch on the branch of simply accepting titles as conclusive, incontestable and indefeasible; or the concomittant argument that in the face of two or more competing titles, the first in time automatically prevails. It is not enough to wave an instrument of title or rest easy on the former rock of chronological primacy. What must now be established by he who would prevail is the solidity of the root of title. No flowery foliage, absent a sturdy and settled root speaking to a regular and legal process preceding the product that is the title, will avail the holder. That much is now the law pronounced in a lengthening line of authorities from our superior court such as *Munyu Maina vs. Hiram Gathiha Maina* (supra) and *Funzi Development Ltd & others vs. Country Council of Kwale* [2014] eKLR, by this Court; *Esther Ndegi Njiru & another vs. Leonard Gatei* (supra) by the Environment Court (Mutungi, J.)”
97. Where the acquisition process leading to the issuance of a title is tainted by illegality or non-compliance with the law, such a title cannot be sustained. This position was affirmed by the Supreme Court in *Dina Management Limited vs County Government of Mombasa & 5 others* [2023] KESC 30 (KLR) where the Apex Court was categorical that:
- “Indeed, the title or lease is an end product of a process. If the process that was followed prior to issuance of the title did not comply with the law, then such a title cannot be held as indefeasible.....Article 40 of *the Constitution* entitles every person to the right to property, subject to the limitations set out therein. Article 40(6) limits the rights as not extending them to any property that has been found to have been unlawfully acquired. Having found that the 1st registered owner did not acquire title regularly, the ownership of the suit property by the appellant thereafter cannot therefore be protected under article 40 of *the Constitution*. The root of the title having been challenged, as we already noted above the appellant could not benefit from the doctrine of bona fide purchaser.”
98. From the evidence on record, it is undisputed that L.R. No. 209/13293 was excised and created from L.R. No. 209/13409. The evidence further establishes that L.R. No. 209/13409 was, at all material times, registered in the name of the 2nd Defendant, a State Corporation under the Ministry of Agriculture, Livestock and Fisheries, State Department of Livestock.
99. The Defendants have produced the 2nd Defendant's title to the property together with several supporting correspondences. Upon considering the pleadings, it is clear that the Plaintiff has not



impugned the 2nd Defendant's ownership of L.R. No. 209/13409, nor does it seek any orders challenging that title.

100. The 2nd Defendant's mandate, as statutorily defined, includes the production of veterinary vaccines and related services of a public nature. Its land holdings, including L.R. No. 209/13409, were acquired and held by it for that public function. Accordingly, such land constitutes public land within the meaning of Article 62(1)(b) of *the Constitution*, being land vested in a public body for the use and benefit of the people of Kenya.
101. It is trite that government land allocated for public purposes cannot be alienated to private individuals. Discussing this, the court in *Nelson Kazungu Chai & 9 others vs Pwani University* [2014] KEELC 109 (KLR) a decision upheld by the Court of Appeal in *Nelson Kazungu Chai & 9 others vs Pwani University College* [2017]KECA 135 stated as follows:

“Section 3 of the repealed Government Lands Act, which is the applicable law in this case, provides that the President may, subject to any other law, make grants and dispositions of any estates, interests or rights in or over unalienated Government land.

150. Section 9 of the same Act provides that the Commissioner of Lands may cause any portion of a township which is not required for public purpose to be divided into plots and may be disposed of in the prescribed manner.

The above two sections clearly shows that land reserved for public purpose cannot be allocated to individuals. This position has been reinstated at Article 62 (1) (b) of *the Constitution*. The Article has defined “public land” to include land lawfully held, used or occupied by any State organ. Such land cannot be disposed of or otherwise used except in terms of an Act of Parliament.

152. The issue of land which has been set aside for public purpose not been available for allocation by the President or the Commissioner of Lands has been up held in numerous decisions.

153. In the case of *Lalitchandra Dugarshankar Padya & Another Vs Saled Awale & Another*, Mombasa HCCC No. 87 of 2001, Justice Maraga , as he was then held as follows:“ I am also satisfied and I find that at all material times the suit piece of land was to the knowledge of the Plaintiffs as it is clear from the letters EX 25 and 26, public land vested in the second Defendant (Kenya Railways) for its use as a marshaling yard. At no time did the second defendant surrender it to the Government. It was therefore by virtue of section 9 of the Government LandAct, not available for allocation by the Commissioner of Lands. Its allocation to the people who later transferred it to the Plaintiffs was therefore null and void.”

154. In *African line transport Co. Ltd Vs the AG*, Mombasa HCCC No. 276 of 2003, Njagi J. held as follows:“Finally, there is nothing on record to suggest that the site was ever surrendered back to the Government. Having been allotted to the NYS as a public utility, there was nothing left to be re-allocated to Mr. Omari and the subsequent grant to him was therefore irregular.”

155. In the case of *H.H. DR. Syedna Mohammed Burhennuddin Saheb & Others Vs Benja Properties Ltd*, Nairobi HCCC NO. 73 of 2000, Visram J, as he was then, held as follows;“In any event the letter of allotment purchased by the



Defendant had expired, and was subject to a disclaimer. In any event, that letter was worthless because it purported to allot land under the Government Land Act that was not available for allotment.”

156. In James Joram Nyaga & another Vs The AG and Others, Nyamu J, as he was then, and Wendo J held as follow:“We therefore hold that the suit land having been acquired for public purpose, that is construction of road, is held in trust of the public and could not have been allocated to the Applicants who are private individuals for their private use.”

157. While discussing the concept of public trust and public interest, Nyamu J, as he was then, in the case of Kenya Guards Allied Workers Union Vs Security Guards Services & 38 Others Nairobi HC Misc 1159 of 2003, stated as follows;“How for instance are the courts going to deal with the land grabbers who stare at your face and wave to you a title of the grabbed land and loudly plead the principle of the indefeasibility of title. Are the courts going to stay away and refuse to rise to the greater call of unraveling the indefeasibility by holding that such a title perhaps issued in order to grab a public plot such as a hospital by an individual violates the public or national interest and therefore a violation of the constitution. I venture to suggest that such titles ought to be nullified on this ground and thrown into the dustbins”.

158. I am in agreement with the sentiments of the Judges in the above cases.”

102. In the present case, the Plaintiff did not produce any evidence to demonstrate that the 2nd Defendant had surrendered L.R. No. 209/13409, or that the land had been re-planned, or otherwise made available for private allocation. Indeed, the letter from the Ministry of Lands dated 26th August, 2009 stated that any purported allocations of land excised from parcel 209/13409, including the Plaintiff’s parcel, are illegal.

103. Further, the Plaintiff did not shed light on how the vendors who sold it the parcel came to acquire it. The Plaintiff did not call them to testify, or produce in evidence the Part Development Plan and allotment letter that was issued in favour of the alleged vendors. Even as regards its own acquisition from the vendors, critical evidence was missing such as the sale agreement, and evidence of payment of consideration.

104. Consequently, the court finds, as a matter of fact, that L.R. No. 209/13293 was created from L.R. 209/13409, which land was at all material registered in favour of the 2nd Defendant, and reserved for public purposes. The land was not available to the Plaintiff or at all, and the purported allocation to the Plaintiff was illegal, null and void ab initio.

What are the appropriate orders

105. As aforesaid, the Plaintiff has failed to establish the legitimacy of its proprietorship and as such has no claims in this regard. While the Plaintiff set out allegations of breach of statutory duty and fraud as against the 3rd and 4th Defendants, no reliefs were claimed as against the said Defendants.

106. The Plaintiff also sought special damages. Its title and possession of the suit property having been deemed illegitimate, the claim for special damages equally cannot lie. In any event, the same was not proven contrary to the law, which mandates that special damages must be specifically pleaded and proved. [See Capital Fish Kenya Limited vs The Kenya Power & Lighting Company Limited [2016] KECA 56 (KLR)]



107. The 2nd Defendant on its part has affirmed its proprietorship of L.R 209/13409 and is entitled to a declaration in that respect as well as permanent injunctive orders restraining further interference thereto as pleaded in the Counterclaim.
108. The 2nd Defendant also seeks damages for trespass and an order directing the Plaintiff to remove all the developments from the property and restore it to its original state. It is conceded that the Plaintiff is in occupation on a portion of L.R 209/13409 and undertook construction thereon. However, it is uncontested that the 1st and 2nd Defendants demolished the structures on the parcel sometime in 2009.
109. In the circumstances, considering the nature and extent of the trespass, the time within which the 2nd Defendant lost possession, and the location thereof, the court comes to the conclusion that an award of the sum of Kshs 5,000,000, would suffice, as appropriate recompense to and in favor of the 2nd Defendant as damages for trespass.
110. In the end, the court makes the following final determination:
- a. The Plaintiff's suit be and is hereby dismissed.
 - b. The 2nd Defendant's Counterclaim succeeds in the following manner:
 - i. A declaration be and is hereby issued that the 2nd Defendant is the sole and lawful owner of L.R No 209/13409 measuring 29.05 hectares.
 - ii. Permanent injunctive orders do hereby issue restraining the Plaintiff, whether by itself, its servants, agents, employees or whomsoever from encroaching and/or trespassing, erecting any structures and/or in any way interfering with L.R No 209/13409.
 - iii. The Plaintiff is directed to remove all developments/structures on LR No. 209/13409 within 60 days of issuance of this judgment.
 - iv. Failure to the above, the 2nd Defendant is at liberty to remove all developments/structures on LR No. 209/13409 at the Plaintiff's expense.
 - v. The 2nd Defendant is granted general damages for trespass as against the Plaintiff to the tune of Kshs 5,000,000.
 - vi. The Plaintiff shall pay interest on the above amount at court rates from the date of this Judgment until payment in full.
 - vii. The 1st and 2nd Defendants shall have the costs of the suit and Counter claim to be borne by the Plaintiff.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 6TH DAY OF NOVEMBER, 2025.

O. A. ANGOTE

JUDGE

In the presence of;

Ms Mbaabu for 2nd Defendant

Ms Oluoch for 1st Defendant

No appearance for Plaintiff

Mr. Allan Kamau for 3rd and 4th Defendant



Court Assistant: Tracy

