



**Waweru v Extropica Food Limited & 5 others (Environment and Land Case
184 of 2015) [2026] KEELC 318 (KLR) (22 January 2026) (Judgment)**

Neutral citation: [2026] KEELC 318 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE 184 OF 2015
AA OMOLLO, J
JANUARY 22, 2026**

BETWEEN

PETER MAINA WAWERU PLAINTIFF

AND

EXTROPICA FOOD LIMITED 1ST DEFENDANT

WILLIAM ATATI ANGASA 2ND DEFENDANT

LINDA KAARI MUCHUNKU 3RD DEFENDANT

THE NATIONAL LAND COMMISSION 4TH DEFENDANT

THE CHIEF LAND REGISTRAR 5TH DEFENDANT

THE HON. ATTORNEY GENERAL 6TH DEFENDANT

JUDGMENT

The Pleadings:

1. Vide a plaint dated 4th March, 2015, the Plaintiff sued the listed six (6) defendants claiming interference with his parcel of land No. 14719(I.R No. 69908) hereafter referred to as the suit premises. The plaintiff pleaded that he visited the land in 2012 and discovered that his beacons had been removed.
2. He also stated that on 26th February 2013, he placed a caveat emptor notice in the daily nation warning that he had an interest of right in the suit premises. However, in June, 2013, he learnt that the 1st Defendant had illegally and unlawfully entered into and occupied the suit premises and proceeded to dig trenches and erected a perimeter wall around it.
3. The Plaintiff avers that 1st Defendant is claiming to own the suit property using a fake title deed. That the 4th Defendant on the order of the President of Kenya fraudulently and or negligently issued to the



- 1st Defendant an illegal title for land L.R 14719 Nairobi which was already registered in the plaintiff's name.
4. He accuses the 5th Defendant of unlawfully registering grant No. I.R 131436 made by the 4th Defendant when the land already had a grant No. 69908. He pleaded the particulars of fraud of the 4th & 5th Defendants to include failure to obtain and or verify information regarding the suit premises and abuse of office.
 5. By reason of the matters aforesaid, the Plaintiff avers he has suffered loss and damages as follows:
 - a. He has been deprived of the use and quiet enjoyment of the suit premises.
 - b. The 1st Defendant's digging of trenches and erecting a perimeter wall on and around the suit premises and further proceeding to erect a building or buildings or structures thereon is a violation of the Plaintiff's right over the suit premises.
 - c. The Plaintiff has been denied the right and opportunity to plan for and develop the suit premises that he is legally entitled to and would have liked to do.
 6. The Plaintiff claims damages against the Defendants for the loss of user cost of delay in utilizing his plot and the escalated costs he will incur when developing the suit plot due to the Defendants' omissions or commissions.
 7. Reasons wherefore the Plaintiff prays for judgment against the Defendants jointly and severally for;
 - a. A declaration that the Plaintiff is entitled to exclusive and unimpeded interest and the right of possession and occupation of all that piece of land known as LR No. 14718 Nairobi (Grant Number I.R No. 69908) "the suit premises"
 - b. A declaration that the 1st Defendant whether by itself, its servants of agents and/or otherwise howsoever is wrongfully in occupation of the suit premises and is accordingly a trespasser thereon.
 - c. A declaration that the 1st Defendant whether by itself or its servants or agents and/or otherwise howsoever is not entitled to build or erect anything on the suit premises.
 - d. An order directing the 1st Defendant to demolish all the structures erected and built on the suit premises and to remove all materials, stores and rubbish thereon.
 - e. An injunction restraining the 1st Defendant whether by itself or its officers, employees, servants or agents and/or others howsoever from further entering into and/or erecting any more walls or structures on the suit premises.
 - f. A declaration that Grant Number I.R No. 131436 issued by the 3rd Defendant to the 1st Defendant is nullity and should be revoked and annulled.
 - g. A declaration that the 6th Defendant is vicariously liable for the actions of the 4th and 5th Defendants.
 - h. Vacant possession of the suit premises.
 - i. General damages for trespass and encroachment.
 - j. Costs of this suit together with interest thereon at such rate or rates and for such period of time as this Honourable Court may deem fit to grant.



- k. Any such other or further relief as this Honourable court may deem appropriate in the circumstances.
8. The 1st – 3rd Defendants entered appearance on 13th July 2015 and filed a statement of defence dated 13th October, 2015. The same was amended on 18th November, 2022 to include a counter-claim. The 1st, 2nd & 3rd Defendants plead that the 1st Defendant is the registered owner of the land reference 14719 IR No. 131436.
 9. They denied the allegation that the Plaintiff is the owner of the suit premises stating that the title issued to him is the fake one. They deny causing the Plaintiff any loss and damage as their occupation and proprietorship of the land is bonafide and legitimate. They urged the court to dismiss the Plaintiff's suit.
 10. In their counter-claim, the 1st – 3rd Defendants aver that the 2nd Defendant was issued with a letter of allotment on 3rd June, 1999 by the defunct Nairobi City Council. That the 2nd Defendant paid for the stand premiums on 24th August, 1999.
 11. Thereafter, the plot was fenced and a make shift warehouse built on the suit property. The 1st – 3rd Defendants plead they have been paying levies, rents and rates over the property. They continued that on 4th December, 2012, the 1st Defendant was granted a lease over suit property registered as L.R 14719 I.R. 131436.
 12. Subsequently, on 12th September, 2013, the 1st Defendant acquired all the relevant permits and proceeded to construct permanent structures on the suit land 14719 IR 131436. The 1st – 3rd Defendants assert the Plaintiff is guilty of laches – having come to court after 16 years. That the dispute/ trespass have occasioned them loss of peaceful use of their land.
 13. They seek to be granted judgment against the plaintiff and co-defendants the following orders;
 - a. A declaration that the 1st, 2nd and 3rd Defendants are entitled to exclusive and unimpeded interest and the right of possession and occupation of all that piece of land known as L.R No. 14719 Nairobi (Grant Number I.R 131436).
 - b. The Plaintiff and Co-Defendants herein their agents/servants/principals or otherwise howsoever, be restrained from entering, trespassing, demolishing structures on, alienating, dissembling or in any way interfering with the 1st, 2nd and 3rd Defendants' right of occupation, possession and or use of L.R No. 14719 Nairobi (Grant Number I.R 131436).
 - c. A declaration that the land known as L.R No. 14719 Nairobi (Grant Number I.R No. 69908) issued to the Plaintiff is a nullity and should be revoked and annulled.
 - d. In the alternative, the 1st, 2nd and 3rd Defendants be indemnified/compensated for the cost incurred in acquiring and developing the suit property at current market value.
 - e. Any such other or further relief as this Honourable Court may deem appropriate in the circumstances.
 - f. General and exemplary damages.
 - g. Costs and interest on the above.
 14. The 4th Defendant through undated statement of defence also denied the claim by the Plaintiff. It Pleaded that it was a stranger to averments contained in paragraphs 8 – 13 of the plaint. The 4th Defendant denied that it issued a title to the 1st Defendant on orders of the President of Kenya.



15. The 4th Defendant denied the allegations of fraud set out in paragraph 14 and 15 of the plaint and put the plaintiff to strict proof. It also denied all the allegations made against it severally and jointly with other defendants. It urged the court to dismiss the suit with costs as there is no reasonable cause of action pleaded against it.
16. The 5th and 6th Defendants filed a joint statement of defence dated 9th November, 2017. They plead that the suit property was allocated to Mr. Michael Maina vide a letter of allotment reference 51776/IV/63 dated 10th June, 1994. At the time, the land was not surveyed and was referred to as unsurveyed Industrial Plot 82 on the PDP.
17. Upon payment of the requisite fees, a grant of title was processed by the Commissioner of Lands and registered as I.R No. 69908 17th July, 1996. They aver that in 1997, the plot was inadvertently allocated to Palo Investments vide letter ref. 159055/5 dated 9th April, 1997.
18. Palo proceeded to make payments vide official receipt No. E493032 dated 18th August, 1999. Concurrent with the payment, Palo sought consent of the Commissioner to transfer. The request was approved leading to the transfer to one Andrew Wanyoike. The 5th to 6th Defendants assert that no title was issued to Andrew Wanyoike after it emerged that the land was already allocated to Michael Maina who already held a title.
19. That on 8th October, 1996, the property was charged to Euro Bank. Further, on 21st May, 1998 the property was transferred to Chirag Builders Ltd after the Bank exercised its statutory power of sale. The suit property was transferred on 20th June 2007 to the Plaintiff through a deed of exchange with Chirag Builders Ltd.
20. It is the 5th & 6th Defendants contention that the plaintiff's title is supported by their records unlike the title of the 1st Defendant which they say is a forgery. The 5th & 6th Defendants deny particulars of fraud levelled against them. They further deny registering grant I.R No. 131436. They deny the Plaintiff is entitled to the prayers sought as against them.
21. The 3rd party filed a statement of defence dated 24th November, 2023 against the Counter-claim by the 1st – 3rd Defendants. They deny the claim taken against them and denied issuing the 1st – 3rd Defendants with any letter of allotment. The third party avers that parcels of land bearing the number “L.R” are registered by the National Land Commission and not the City County. They put the 1st – 3rd defendant to strictly prove their claim.
22. They denied that there are records they hold regarding allotment of Plot 14719 to the 1st, 2nd and 3rd defendants. That the claim against them are fatally defective and ought to be dismissed with costs.

The Evidence Adduced:

23. At the close of the pleadings, it is only the plaintiff, 1st – 3rd and 5th – 6th Defendants who called witnesses. The Plaintiff relied on its sole witness and the documents filed. The same to the 1st – 3rd Defendants who called only one witness. The 5th and 6th Defendants called two witnesses.
24. The Plaintiff adopted his witness statement dated 4th March, 2015. Before the court, he narrated that he acquired the property on 20th May, 2001 through deed of exchange with the previous owner. He produced a copy of the title deed which at entry 5 showed his registration through a transfer by exchange.



25. He stated that in 2012, he visited the suit land and found the beacons had been removed. Therefore, he commissioned a survey to restore the beacons which was done. He mentioned the placing of a caveat on the daily nation newspaper of 26th February, 2013 following the incident of removal of beacons.
26. In June 2013 when he again visited the suit property, he found building materials deposited on the land. He reported the matter to the police and was given two police officers to go with to the land. It is in the company of these officers he learnt that it was the 2nd defendant working on the land. He was also informed that the 2nd Defendant held a title registered in the name of the 1st Defendant.
27. The Plaintiff continued in his evidence that he wrote a demand letter to the 1st and 2nd Defendants to cease their illegal occupation. However, these Defendants did not move out, necessitating the filing of this suit. He urged the court to grant him the orders sought.
28. In cross-examination, the Plaintiff affirms that he did not know who removed the beacons. He states that he sued the 4th Defendant for issuing a grant No. 131436 held by the 1st Defendant. He said he got this land through an exchange, although he does not remember his title No. which was exchanged with the suit property.
29. The Plaintiff asserted that the Ministry of Lands have records of his land. He admitted that he had not raised any complaints with the Registrar of Lands before filing this suit. The Plaintiff affirms that following the witness statement of Mr Kipkurui filed in court, he no longer had any complaints against the Attorney General (the 5th and 6th Defendants).
30. The 1st – 3rd Defendants were not present at the hearing on 29th April, 2024 but they had cross-examined the Plaintiff when he testified on 16th July, 2019 by Ms Fatma, learned counsel on record then. During this time, the Plaintiffs affirmed he had not developed the suit property and it was not fenced. The suit was filed in 2015, explaining the delay was to allow for police investigations to be completed.
31. The 2nd Defendant Mr. William Atati Angasa testified on his behalf and on behalf of the 1st and 3rd Defendants. He adopted his witness statement dated 13th October, 2015. He also produced a bundle of documents filed on the same date.
32. DW 1 said he acquired the suit property in 1999. He stated that he started the acquisition process in 1996 after realising he required land to build a warehouse for his export business. Therefore, he approached the then Nairobi City Council to be allocated a plot. He was shown vacant land and began documenting for its title.
33. He asserted that because he used to travel out of the Country frequently, he was only able to obtain the letter of allotment in 1999. Thereafter, title was processed in the 1st Defendant's name in December 2012. That they took occupation by fencing the land. It is until 2013 when he paid for approved plans and started building. That they have been paying all rents and rates due on the suit property.
34. The witness stated that they were surprised to be sued. He asserts the 1st Defenant has invested a lot of money on the land and urged the court to issue orders of permanent injunction to stop any interference with their occupation or use.
35. Under cross-examination, DW1 admitted that in the 1st Defendant's title the lease runs from 1st June, 1999, whereas in the Plaintiff's title it runs from 1st June, 1994. The witness was not aware that the 3rd Party denied issuing their allotment letter. He was also unaware that the Attorney General considered their title to be forged. He did not have records of survey he did in 1996. He also denied receiving the demand letter dated 23rd October, 2013 from the Plaintiff.



36. DW1 affirmed he had not paid rates in recent years after he found names had been changed at the County offices. He asserts to have been in possession of the suit property since 1999 by fencing it. He affirmed that the allotment letter was issued to his name but the title issued in the name of 1st Defendant.
37. Under further cross-examination by Mr Allan Kamau, principal State Counsel, the witness admitted he did not produce a copy of his application to the City Council or Commissioner of Lands for the land allocation. That he identified the area, confirmed the plot was vacant then obtained a map. The plot number was 14719.
38. He did not have original receipts used for paying the land because they were lost when he was relocating officers. He also did not have the transfer document from him to the 1st Defendant arguing the land was not purchased. Their title was issued on 4th December, 2012. That as a director of the 1st Defendant, he has never interacted with the lands office when processing the title to the suit land.
39. In re-examination, DW 1 stated that he has produced a copy of survey done in 1996. That he paid for the stand premium of Kshs.477508 and a receipt was issued by the department of lands. He reiterated that they have been in possession of the suit property.
40. The 5th and 6th Defendants opened their case by calling Charles Ngetich, hereinafter referred to as DW 2. He introduced himself as the Deputy Chief Land Registrar, currently stationed at Kehancha. He adopted his written statement dated 14th June, 2022 as his evidence in chief.
41. DW 2 stated that registering new grants takes along process including making application for allocation, payment of requisite fees and survey of the specific or particular plot. He also highlighted the process of transfer of private land in paragraph 4 of the statement.
42. This witness stated that according to their records, the suit land L.R. No 14719 and I.R. No. 69908 as registered in the Plaintiff's name. He went further to say that the grant number 131436 allegedly registered on 4th December, 2012 in favour of the 1st Defendant is a forgery and never emanated from the Ministry of Lands and Physical planning.
43. The witness was put to cross-examination first by Mr. Odera learned Counsel for the 1st – 3rd Defendants. He stated that he is the one who signed the last entry on the issuance of provisional title to the Plaintiff. That there were security charges registered as entry 3 and 4 on the title when it was still in the name of Michael Maina.
44. In cross-examination by the Plaintiff, DW 2 stated that as per their records, the plaintiff is the owner of the suit property, IR No. 69908 L.R 14719. He asserts that I.R No. 131436 is a forgery because by 4th December, 2012 their series of numbering had not reached the said number.
45. DW 2 in re-examination stated they did find the records for I.R 131436 and expunged it.
46. Gordon Odeka Ochieng testified as DW 3 on behalf of the 5th and 6th Defendants. He introduced himself as the Director of Land Administration for the last 4 years. That he has worked for the department of lands since 1989. He also adopted his written witness statement as his evidence in chief.
47. DW 3 states in brief that the suit property was allocated to Michael Maina on 10th June, 1994 vide allotment letter referenced 51776/IV/63. Upon payment of the requisite fees, Michael Maina was issued with a grant I.R 69908 on 17th July, 1996.
48. On 8th October, 1996, the property was charged to Euro Bank and a further charge registered on 3rd April, 1997. With respect to grant I.R No. 131436, DW 3 stated that the date in which the



Commissioner of Lands is said to have executed is missing. He also points out that the 1st defendant's title lacks the citation "a limited liability duly registered under the *Companies Act*."

49. DW 3 further points that the amount given as land rent of Kshs.360,000 does not tally with a percentage on stand premium of Kshs.432,000. He concluded that their office recognizes the title of the plaintiff only.
50. In cross-examination, DW 3 said annual rent is charged on a property at 20% of the stand premium. Therefore Kshs.360,000 cannot be 20% of Kshs.432,000. He admitted that the anomaly of re-allocating the land to Palo Investments originated from the Ministry of Lands. That the anomaly was discovered in the year 2000 and correspondence sent to the affected parties.
51. DW 3 admits that he had not produced any document to support the assertion of an auction by Euro Bank. Shown the 1st Defendant letter dated 1st January, 2008, the witness stated that an authentic letter comes from the Ministry of Lands but this one did not originate from there. That the letter of 1st January, 2008 had no relationship with the Plaintiff's title.
52. In re-examination, DW 3 stated that D ex 2 dated 1st April, 1998 and presented to the lands office on 21st May, 1998 is evidence of transfer from Euro Bank to Chirag builders Ltd. He maintained that the Ministry did not issue two titles over the suit property. That the documents held by the 1st – 3rd Defendants did not originate in their offices. This marked the close of oral hearings.

Analysis & Determination:

53. Counsels for the parties each filed their written submissions which I have taken time to. The dispute revolves around who between the Plaintiff and the 1st – 3rd Defendants should be declared as the genuine and legal owner of the suit parcel of land L.R No. 14719.
54. The plaintiff's case is supported by the evidence of the 5th and 6th Defendants. The 4th Defendant chose to remain neutral alleging that it did not play any role in the issuance of the titles the subject of this dispute.
55. It is the path taken by the 5th and 6th Defendants that made the 1st – 3rd Defendants in the opening statement of their submissions write thus, "it is ludicrous that the registered proprietor's certificate of title is now termed as a forgery yet no forgery has been blamed against it."
56. It is now settled by precedence in several cases inter alia the supreme court of Kenya in the case of *Dina Management vs Mombasa County Government and 5 Others (2023)* which held that;

"Where a registered proprietor root title was under challenge, it was not enough to dangle the instrument of title as proof of ownership. It is was the instrument that was under challenge, and therefore the proprietor must go beyond the instrument and prove the legality of the title and show that the acquisition was legal formal and free from any encumbrances including interests which would not be noted in the register."
57. In this instance, the plaintiff holds a title and bears the burden of showing that the process of acquiring it was formal, legal and free from any encumbrances. If he does so and the 1st – 3rd Defendants fail to do the same for their title, then he shall be granted the orders he is seeking.
58. In his endeavour to prove his case, the plaintiff produced a copy of the title first registered on 17th July, 1996, in favour of Michael Maina. The transfer by deed of exchange to the plaintiff was made on 20th June, 2001. The other documents produced by the plaintiff relate to his application for the issuance of a provisional title, which, in my view, serves no relevance in explaining the root of his title.



59. The plaintiff stated in his evidence that he could not remember the title to the land used for exchange with the suit property. However at page 75 – 78 is the deed of exchange. It provides his title used in the exchange as number as LR. 14729, IR 80575/1.
60. The 5th and 6th Defendants position is that the land belongs to the Plaintiff. In support of this assertion, they produced inter alia a copy of title showing the land was in 1996 charged to Euro Bank who later sold it to Chirag builders Ltd. There was produced a memorandum of sale presented for registration on 21st May, 1998 transferring the land to Chirag Builders Ltd for a consideration of Kshs.900,000/=.
61. Besides the memo, there is also produced a letter stating to be drawn by Chirag Builders Ltd dated 8th September, 2000 seeking consent to transfer the land to Brigadier Peter Waweru. The consent was granted vide a letter dated 18th October, 2000 signed by J. M. Gitau, land officer Nairobi.
62. The 1st – 3rd Defendants argued that there were no documents produced to support the charge to Euro Bank. At page 10 is a letter from Martha Koome & Co. Advocates (now the Chief Justice of the Republic of Kenya) seeking for consent to charge L.R No. 14719.
63. The consent to charge was issued on 2nd October 1996 to the said law firm. Entry No. 2 on the copy of the title in possession of the plaintiff is registration of a charge to Euro Bank on 8th October, 1996 to secure a sum of Kshs.400,000. The date of consent to charge and the entry on registration of the charge is 6 days apart. The charge instrument is found at pages 104 – 132 of the AG’s trial bundle. It is dated 5th September 1996 while the further charge is dated 27th March, 1997 (pages 135 to 160)and signed by Michael Maina in the presence of M. Koome advocate.
64. The Attorney General’s documents also include those used to process the allocation of the suit property to Michael Maina. These include his application to be allotted the land, dated 9th May 1996 and addressed to the Commissioner of Land (page 27), and the letter of allotment dated 10th June 1994, referenced 51776/IV/63.
65. The 5th and 6th Defendants also produced documents supporting the issuance of the grant to Michael Maina inter alia a receipt dated 25th June, 1996 No. 59401 for Kshs.2240 for stamping of grant L.R No. 14719, and an instruction to prepare a new lease with the date on the document reading 7th June, 1996. The survey of Kenya also sent to the Commissioner of Lands a signed document dated 7th June, 1996 stating the survey fee of 2450 had been paid.
66. From the analysis of these documents (some of which I have not mentioned) there is a flow that the land was allocated to Michael Maina, he made the requisite payment and was subsequently issued with a title I.R No. 69908 L.R No. 14719 on 17th July, 1996.
67. Upon receipt of the title, he charged the property to Euro Bank. There is produced a copy of the charge and copy of the letter of consent to charge. The flow of documents suggest he did not repay the loan. The bank proceed to sell and Chirag Builders became the purchaser.
68. Later, in the year 2004, Chirag Builders Ltd decided to exchange this property with the plaintiff as per the transfer document found at pages 75 – 78 of the Attorney General’s bundle. As shown in this transfer instrument, the plaintiff’s land was L.R 14729, IR No. 80575/1.
69. The contents of these documents thus speak to the root of the title which was later transferred to the Plaintiff. It shows the allocation to Micahel Maina was legal, formal and free from all encumbrances.



70. However before concluding in favour of the plaintiff, I must also look at the process of acquisition of title held by the 1st Defendant. In support of their counter-claim, the 1st – 3rd Defendants filed a list of documents dated 13th October, 2015 containing three documents;
- i. Copies of titles (grant No. 131436
 - ii. Copies of letter of allotment and receipt
 - iii. Copies of approved building plans.
71. The letter of allotment is dated 3rd June, 1999, and is in the name of the 2nd Defendant, William Atati Angasa. The title deed is in the name of Extropica Food Ltd. Mr. William Angasa, in his evidence, affirmed that he signed no document of transfer in favour of the 1st Defendant, which is a limited liability company.
72. Although he is listed as one of the directors of the 1st defendant in the document produced at page 18 of the plaintiff's bundle, it would have been procedural for him to write a letter to the Commissioner of Lands transferring his interest in the suit land to the 1st defendant. In the absence of any such form of transfer, the manner of issuance of title into the name of the 1st Defendant becomes questionable.
73. In the allotment letter bearing the 2nd Defendant's name, only the land reference number was given. The 1st – 3rd Defendants do not explain whether a survey was conducted that generated I.R No. 131436. In his oral evidence, the 2nd Defendant stated that he did not play any role in the processing of their title I.R 131436 L.R 14719. However, he does not go further to disclose who undertook this process on their behalf. He also did not call any evidence from the land's office to ascertain that in acquisition of the suit land all due process was followed.
74. The 1st – 3rd Defendant's witness stated that he started the process of acquiring the suit property in 1996. However, no document was produced to support this assertion. This evidence was necessary taking into consideration in the Plaintiff's title the lease runs from 1994. They also stated the land was allocated to them by the third party (Nairobi City Council). No proof was given to support this statement and again this was important piece of evidence in anchoring the root of their title
75. The 2nd Defendant went further to state that they have been paying rents and rates over the years. No receipts were availed nor rates statement produced to confirm if they ever made any such payment.
76. While challenging the plaintiff's case, the 1st – 3rd defendants in their submissions quoted the case of Hurbert L. Martin & 2 Others vs Margaret J. Kamar & 5 others (2016) eKLR in which Munyao Sila J stated thus;

“A court when faced with a case of two or 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.”

77. It is their contention that the plaintiff did not legally acquire the suit land from Chirag Builders Ltd because; no deed of exchange agreement was produced. Second that the plaintiff did not produce evidence that he owned L.R 14729 I.R 80575/1 used in the exchange.
78. The dispute before the court is not whether the transfer from Chirag to the Plaintiff was proper. Rather, whether there existed L.R 14719, I.R 69908 properly obtained before the subsequent transfers to Chirag Builders Ltd and the Plaintiff. The 1st – 3rd Defendants do not suggest they have any relationship with Chirag Builders Ltd nor does their title have any nexus with the Chirag’s title before the transfer by exchange to the plaintiff.
79. The acquisitions by Michael Maina and later by Chirag Builders Ltd both predate the allotment documents to the 2nd defendant (June 1999) and the later title to the 1st Defendant (December 2012). Thus, the doctrine of equity “the first in time prevails” works in favour of the Plaintiff not the the 1st to 3rd Defendants.
80. At paragraph 59 of the 1st – 3rd Defendants’ submissions, they submit on the allocation to Michael Maina who then charged to Euro Bank. They also refer to the transfer to Chirag Builders on 3rd April, 1997. They seem not to challenge the records of the suit property upto this point.
81. Interestingly, counsel submit that thereafter, on 3rd June, 1999, the suit land was allocated to the 2nd Defendant. Once the land had a title in favour of Michael Maina and subsequently Chirag Builders Ltd, it follows that no land was available to be allocated to the 2nd and or the 1st Defendants.
82. I find their defence that they are in occupation and that they have not been charged with any criminal offence or forgery untenable. If no land was available to be allocated, their title is void ab initio, and the case cannot be treated as a double allocation. For this reason, I find no merit in their counterclaim and proceed to dismiss it.
83. On the other hand, I find the plaintiff’s case is proved. It does not matter that some of the documents were supplied by the 5th and 6th Defendants. The documents were in the possession of the 1st–3rd Defendants through service. They formed part of the court record once they were produced as exhibits, and so I am allowed to use them in the determination of this dispute.
84. In conclusion, I enter judgment for the Plaintiff as against the 1st – 3rd Defendants jointly and severally thus;
 - a. (a) A declaration is issued that the Plaintiff is entitled to an exclusive and unimpeded interest and the right of possession and occupation of all that piece of land known as LR No. 14719, Nairobi (Grant Number I.R No. 69908), “the suit promises”
 - b. A declaration is made that the 1st to 3rd Defendants, whether by themselves, their servants or agents and/or otherwise, are wrongfully in occupation of the suit premises and are accordingly declared as trespassers.
 - c. A declaration is made that the 1st to 3rd Defendants, whether by themselves or their servants or agents and/or otherwise, are not entitled to build or erect anything on the suit premises.
 - d. An order is hereby issued directing the 1st to 3rd Defendants to within 120 days of the date of this judgment demolish all the structures erected and built on the suit premises and to remove all materials, stores and rubbish thereon.



- e. Thereafter on surrender of vacant possession, an order of permanent injunction issues restraining the 1st to 3rd Defendants whether by themselves or their officers, employees, servants or agents and/or others howsoever from further entering into and/or erecting any more walls or structures on the suit premises.
- f. A declaration is given that Grant Number I.R No. 131436 issued to the 1st Defendant is nullity and is revoked and annulled.
- g. In default of surrender of Vacant possession of the suit premises within the timelines set, the Plaintiff is at liberty to evict using lawful means.
- h. Costs of this suit to the Plaintiff.

DATED, SIGNED & DELIVERED AT NAIROBI VIRTUALLY ON THE 22ND DAY OF JANUARY 2026

A. OMOLLO

JUDGE

