

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**  
**ELC CIVIL SUIT NO. 712 OF 2012**

**RAYMOND KIBET KIRUI (Suing as the  
Administrator of the estate of**

**WILSON KIPKEMOI BIRIR(DECEASED)) ..... 1<sup>ST</sup>**

**PLAINTIFF**

**ZACHARIAH ADEI ..... 2<sup>ND</sup>**

**PLAINTIFF**

**WILLIAM LANGAT ..... 3<sup>RD</sup>**

**PLAINTIFF**

**JOSEPH KOECH ..... 4<sup>TH</sup>**

**PLAINTIFF**

**RICHARD KIMANI ..... 5<sup>TH</sup>**

**PLAINTIFF**

**ANN KHASOA ISEDIA ..... 6<sup>TH</sup>**

**PLAINTIFF**

**T. NGUNYI ..... 7<sup>TH</sup>**

**PLAINTIFF**

**L. MORAGWA ..... 8<sup>TH</sup>**

**PLAINTIFF**

**VERSUS**

**THE HON. ATTORNEY GENERAL ..... 1<sup>ST</sup>**

**DEFENDANT**

**COMMISSIONER OF LANDS ..... 2<sup>ND</sup>**

**DEFENDANT**

**DIRECTOR OF SURVEY ..... 3<sup>RD</sup>**  
**DEFENDANT**  
**PERMANENT SECRETARY, MINISTRY OF**  
**LANDS & SETTLEMENT ..... 4<sup>TH</sup>**  
**DEFENDANT**  
**SATO NYUMBAZ LIMITED ..... 5<sup>TH</sup>**  
**DEFENDANT**

### **RULING**

1. This ruling relates to two applications.

#### **The Plaintiffs' application dated 29<sup>th</sup> January 2025**

2. The first application was filed by the Plaintiffs through a Notice of Motion dated 29<sup>th</sup> January 2025, seeking the following orders:

- a. That an order of injunction do issue against the 1<sup>st</sup>-4<sup>th</sup> Defendants barring them from disbursing any amount whatsoever towards compensation with respect to LR 24910 or 9180 or any other subdivision arising from LR 24910 pending the hearing and determination of the suit.*
- b. That the honorable court do set aside or stay any consent recorded in this matter or in any other matter in which any amount being payment towards acquisition of LR 24910 is discussed, agreed and or consented to pending the hearing of this suit.*

***c. That the honorable court do issue an order directing all parties associated with the release and receipt of Kshs. 49 million and Kshs. 40 million paid out in respect to acquisition and compensation towards LR 24910 to immediately pay back the money and restore the same with National Land Commission.***

***d. Costs of the suit.***

3. The grounds of the application are set out on its face and in the supporting affidavit sworn by Ann Khasoa, one of the Plaintiffs. She deponed that the suit property, being Parcel No. 24910, belongs to the Plaintiffs, and that the said parcel was subject to compulsory acquisition by Kenya Railways, for which compensation was payable to the Plaintiffs.
4. The deponent stated that she swore the affidavit on her own behalf and on behalf of Richard Kimani and Tabitha Ngunyi, the 5<sup>th</sup> and 7<sup>th</sup> Plaintiffs. She averred that the three Plaintiffs have discovered that several developments had taken place in respect of the suit property without their knowledge, and that they had been deliberately excluded from information relating to the matter, thereby enabling some of their co-plaintiffs to benefit without their participation or consent.
5. It was deponed that certain Plaintiffs had, by consent, agreed on the payment of compensation, pursuant to which a sum of Kshs. 40 million was to be paid to M/s Gitonga Muriuki

Advocates for distribution to all the Plaintiffs. The deponent contended that the said sum was instead shared among only some of the Plaintiffs, to the exclusion of herself, Richard Kimani, and Tabitha Ngunyi.

6. The deponent asserted that despite interacting with other Plaintiffs from time to time, she, together with the said co-plaintiffs, was not informed of any compensation payment or related developments. She stated that she only became aware of the payment during a visit to the National Land Commission on an unrelated matter, where she learnt that compensation had already been paid to some Plaintiffs in respect of Land Parcel No. 24910.
7. Upon making further inquiries, the deponent stated that she discovered that the suit had been purportedly compromised by a consent recorded on 17<sup>th</sup> July 2013, under which Sato Nyumbaz Limited was to be paid Kshs. 49,730,312.50 and the Plaintiffs a sum of Kshs. 40,688,473.
8. The deponent affirmed that she, Richard Kimani and Tabitha Ngunyi were neither aware of nor party to the negotiations that led to the recording of the said consent, and that the consent was fraudulently procured on the grounds that:
  - i. They are registered owners of the suit property and were never consulted.***
  - ii. No monies were paid to them following the alleged compensation.***

- iii. They only learnt of the payment fortuitously.**
- iv. A portion of the land remained after the initial acquisition and has since been subdivided and assigned a new number, LR No. 9810, with Sato Nyumbaz Limited allegedly seeking further compensation exceeding Kshs. 314,000,000; and**
- v. The advocate then acting for some of the Plaintiffs failed to keep them informed and acted in a manner prejudicial to their interests.**

- 9.** The deponent averred that some Plaintiffs had consolidated their efforts and were working towards receiving further compensation to the exclusion of the three Plaintiffs, and that Kenya Railways had forwarded additional compensation funds to the National Land Commission for payment. She expressed apprehension that unless restrained, the payments would proceed and the three Plaintiffs would suffer loss.
- 10.** She further stated that the conduct of some Plaintiffs and the 5<sup>th</sup> Defendant is tainted with illegality, and that the court ought not to permit any party to benefit from an allegedly fraudulent transaction.
- 11.** It was also deponed that some Plaintiffs filed ELC No. 369 of 2024 without the involvement or knowledge of the three Plaintiffs, with the intention of excluding them from any benefits arising from the compulsory acquisition.

- 12.** In support of the application, the 2<sup>nd</sup> Plaintiff, Zacharia Adei, swore an affidavit stating that he is one of the proprietors of parcel L.R No. 24910, which the Plaintiffs were allocated through a letter of allotment dated 10<sup>th</sup> December 2007. He deponed that upon allotment, the Plaintiffs commenced the process of title issuance and were issued with a lease pending registration.
- 13.** He averred that the Government issued a notice of compulsory acquisition in respect of land affected by the Standard Gauge Railway project, including Parcel No. 24910; that when compensation became due, the 5<sup>th</sup> Defendant allegedly claimed an interest in the land, prompting the Plaintiffs to institute this suit and that the court subsequently declared the 5<sup>th</sup> Defendant's claim illegal.
- 14.** He contended that following the court's decision, a consent was entered into by the advocates on record without the Plaintiffs' knowledge, leading to the sharing of compensation amounting to Kshs. 90 million and that their advocate did not disclose to them the existence of the consent or the receipt of compensation.
- 15.** The deponent averred that on various occasions, the advocate advanced small sums to them, representing the same as part-payments pending final compensation and that he does not agree with the consent entered into on his behalf and seeks its setting aside, urging the court to uphold the

judgment delivered by Hon. Lady Justice Nyamweya on ownership of the suit property.

- 16.** The 3<sup>rd</sup> Plaintiff, William Lagat, also supported the application. He deponed that he is a proprietor of the suit property pursuant to the letter of allotment dated 10<sup>th</sup> December 2007, and that the land was similarly affected by compulsory acquisition for the railway project. He averred that after the court declared the 5<sup>th</sup> Defendant's claim illegal, a consent was entered into without his knowledge, resulting in the sharing of compensation.
- 17.** He further deponed that he received small payments from the advocate, which were represented as advances pending final compensation. He denied transferring his interest in the suit property to the 5<sup>th</sup> Defendant and alleged that any purported deed of transfer was fraudulent. He deponed that he provided copies of his identification documents upon assurance that they were required to facilitate payment of his compensation, not to transfer his proprietary interest.
- 18.** The 4<sup>th</sup> Plaintiff, Joseph Koech, opposed the application through Grounds of Opposition dated 14<sup>th</sup> November 2025. He contended that the application is an abuse of the court process and that a consent adopted by the court can only be challenged on appeal.
- 19.** He asserted that the Plaintiffs/Applicants had failed to establish fraud, undue influence, coercion or

misrepresentation in the procurement of the consent, and that the application is defeated by inordinate delay and the doctrine of laches.

- 20.** In a Further Affidavit, Ann Khasoa deponed that the Respondents had not filed any substantive response and alleged intimidation through the involvement of investigative agencies following requests for personal information.
- 21.** She stated that while she was willing to cooperate with investigations, the dispute concerns ownership of land, which has already been determined by this court, and ought to be resolved judicially and that despite the 5<sup>th</sup> Defendant's claim of sole ownership, he later sought to purchase interests from co-owners, a position inconsistent with his earlier assertions.
- 22.** The deponent reiterated that the three Plaintiffs did not consent to the release or sharing of compensation monies and that the advocate who purportedly acted for the Plaintiffs did not distribute any funds to them.
- 23.** She referred to correspondence from the Chief Land Registrar dated 6<sup>th</sup> March 2015 confirming that pursuant to a decree of this court, the Plaintiffs were the bona fide allottees of the suit property and that certain deed plans had not resulted in registration.
- 24.** It was contended that the 5<sup>th</sup> Defendant attempted to circumvent the processing of the Plaintiffs' deed plan by securing alternative survey numbers, and that the consent

entered into failed to account for all Plaintiffs and was therefore tainted with fraud.

**The 5<sup>th</sup> Defendant's Application dated 14<sup>th</sup> August 2025**

25. The second application was filed by the 5<sup>th</sup> Defendant through a Notice of Motion dated 14<sup>th</sup> August 2025, seeking the following orders:

- i. This court be pleased to order that the consent dated 16<sup>th</sup> July 2013 that was adopted as an order of court on 17<sup>th</sup> July 2013 herein, be set aside by consent of the parties as sought in the 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Plaintiff's application dated 29<sup>th</sup> January 2025 on condition that the Plaintiffs are jointly and severally ordered to refund to the 5<sup>th</sup> Defendant the sum of Kshs. 40,688,312.50 paid to them as a result of this consent within 14 days of the court order.*
- ii. The court be pleased to issue any further order in this suit or the related suit to wit, Milimani ELC No. 369 of 2024 and or Milimani ELC No. 446 of 2024 as consolidated.*
- iii. Costs of this suit be provided for.*

26. The grounds of the second application are set out in the Supporting Affidavit sworn by Anil Bharmal Shah, a Director of the 5<sup>th</sup> Defendant. He deponed that pursuant to the 5<sup>th</sup>

Defendant's application dated 30<sup>th</sup> April 2025, the court directed the parties to appear physically before it on 14<sup>th</sup> July 2025 in order to ascertain the existence of the Plaintiffs.

- 27.** According to the 5<sup>th</sup> Defendant, while the 1<sup>st</sup> to 6<sup>th</sup> Plaintiffs appeared, the 7<sup>th</sup> and 8<sup>th</sup> Plaintiffs failed to attend court, and no satisfactory explanation was offered for their absence. It was contended that this lent credence to the 5<sup>th</sup> Defendant's position that the 7<sup>th</sup> and 8<sup>th</sup> Plaintiffs are fictitious or that their names were being used as proxies, thereby undermining the integrity of the proceedings.
- 28.** The deponent further stated that the Plaintiffs have taken conflicting positions with respect to the consent dated 16<sup>th</sup> July 2013, which was adopted as an order of the court on 17<sup>th</sup> July 2013. He averred that the 5<sup>th</sup> Defendant entered into the said consent on the understanding that the Plaintiffs held a legitimate and registrable interest in the suit property by virtue of a letter of allotment.
- 29.** It was averred that in the course of these proceedings and related suits, the Plaintiffs have produced three different letters of allotment bearing identical reference numbers and signatories, as well as a purported lease reflecting names different from those appearing in the letters of allotment. According to the deponent, this raises serious doubts as to the authenticity of the Plaintiffs' documents. He contended that the Lands Office could not have lawfully issued multiple letters of allotment for the same parcel of land, particularly

where a registered title already exists in favour of the 5<sup>th</sup> Defendant.

- 30.** The deponent stated that these suits, ELC No. 712 of 2012 and ELC No. 345 of 2012, were filed after the Commissioner of Lands had gazetted LR No. 24910 for compulsory acquisition with the 5<sup>th</sup> Defendant identified in the Gazette Notice as the registered proprietor. He averred that the 5<sup>th</sup> Defendant holds a Certificate of Title to the suit property, which constitutes prima facie and indefeasible evidence of ownership, superior in law to the Plaintiffs' letters of allotment.
- 31.** It was further deponed that the 5<sup>th</sup> Defendant does not oppose the setting aside of the consent dated 16<sup>th</sup> July 2013, as sought in the Plaintiffs' application dated 29<sup>th</sup> January 2025, on condition that the Plaintiffs refund the sum of Kshs. 40,688,312.50 received pursuant to the consent within fourteen (14) days of the court's order. It was contended that the Plaintiffs have filed multiple suits and taken inconsistent positions, amounting to an abuse of the court process.
- 32.** It was averred that it is in the interest of justice that the orders sought are granted, as the 5<sup>th</sup> Defendant was entitled to the full amount offered by the government prior to the consent.
- 33.** The 1<sup>st</sup> Plaintiff supported the 5<sup>th</sup> Defendant's prayer for the setting aside of the consent dated 16<sup>th</sup> July 2013 but opposed

the prayer requiring the Plaintiffs to jointly and severally refund the sum of Kshs. 40,688,312.50. He contended that the prayer for refund is premature and lacks a legal basis, as the court is yet to determine the lawful proprietor of LR No. 24910. He further argued that the refund prayer is an abuse of the court process.

- 34.** The 1<sup>st</sup> Plaintiff further averred that it would be in the interest of justice for the Plaintiffs' former advocates, Messrs Gitonga Muriuki & Co. Advocates, to account for the consent dated 16<sup>th</sup> July 2013 and to clarify the receipt and disbursement of the sum of Kshs. 40,688,312.50 paid by the Government of Kenya.
- 35.** The 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs opposed the 5<sup>th</sup> Defendant's application through Grounds of Opposition dated 18<sup>th</sup> September 2025. They contended that the application is duplicative, as it seeks orders similar to those sought in the Plaintiffs' application dated 29<sup>th</sup> January 2025, and that the 5<sup>th</sup> Defendant ought to have filed a response instead of instituting a separate application. They argued that the application is bad in law and ought to be dismissed with costs.
- 36.** The 4<sup>th</sup> Plaintiffs similarly opposed the application through Grounds of Opposition dated 17<sup>th</sup> November 2025, contending that the application is frivolous, vexatious, and an abuse of the court process. It was asserted that the 5<sup>th</sup>

Defendant had failed to demonstrate that the consent dated 16<sup>th</sup> July 2013 was procured through fraud, coercion, undue influence, or misrepresentation.

- 37.** It was further contended that a considerable period has elapsed since the consent was adopted by the court in 2013, and that the reasons advanced for setting it aside are flimsy and defeated by the doctrine of laches.
- 38.** In response, the 6<sup>th</sup> Plaintiff, Ann Khasoa, deponed that the 5<sup>th</sup> Defendant had declined or neglected to file a response to the Plaintiffs' application dated 29<sup>th</sup> January 2025 and had instead filed a cross-application dated 14<sup>th</sup> August 2025. She contended that, if treated as a response, the application demonstrated concurrence that the consent be set aside, leaving the issue of refund of monies as the only outstanding question.
- 39.** She averred that the 5<sup>th</sup> to 8<sup>th</sup> Plaintiffs had consistently stated that they neither received any compensation nor were aware of the consent, and on that basis urged the court to order that the sum of approximately Kshs. 49 million paid to Sato Nyumbaz Limited be deposited in court pending determination of the rightful owner of the suit property.
- 40.** It was contended that there exists sufficient material demonstrating that the 5<sup>th</sup> Defendant was never the lawful owner of the suit property. It was further averred that records at the Lands and Survey offices indicate that the 5<sup>th</sup>

Defendant falsely represented that he had been granted authority by the 1<sup>st</sup> Plaintiff to subdivide the land, and that certain survey records suggest that documents were executed without the knowledge or consent of the 1<sup>st</sup> Plaintiff.

- 41.** The deponent asserted that the Lands Office had confirmed that the suit property belonged to the Plaintiffs and that any attempts to process ownership documents in favour of the 5<sup>th</sup> Defendant were found to be irregular and cancelled. It was contended that notwithstanding this position, the 5<sup>th</sup> Defendant has continued to pursue registration of the property in his favour. The Plaintiffs maintain that they are the bona fide owners of the suit property.

**Submissions**

- 42.** Counsel for the 5<sup>th</sup>-8<sup>th</sup> Plaintiffs, the Applicants, submitted that the consent was entered into by an advocate who purported to act for all the eight Plaintiffs, yet only consulted three of them, and disbursed the proceeds to those three to the exclusion of the remaining Plaintiffs. Counsel contended that the consent was irregularly procured, fundamentally defective, and contrary to the principles governing valid consents, and that its enforcement would occasion injustice. It was submitted that the Applicants did not receive any monies pursuant to the consent.

- 43.** It was argued that by entering into a consent, the proprietary or beneficial entitlement of the Plaintiffs without consulting and obtaining instructions from all affected parties, the advocate acted without authority, thereby rendering the consent voidable. Counsel stated that the suit property had been allotted to the eight Plaintiffs and that a deed plan had been issued, with the Plaintiffs awaiting processing of title.
- 44.** Counsel submitted that a party is not bound by a consent unless the party clearly instructed the advocate to enter into it. It was contended that the Applicants only became aware of the consent after compensation monies had already been paid. Counsel asserted that the Applicants gave no such instructions and were not consulted. It was argued that the circumstances disclose collusion and constructive fraud, warranting the setting aside of the consent.
- 45.** It was further submitted that a consent order ought not to operate to deprive parties of property without their knowledge, and that allowing the consent to stand would amount to an unjust deprivation of rights and would unjustly enrich the 5<sup>th</sup> Defendant.
- 46.** Counsel submitted that save for one party, the parties generally agree that the consent order dated 16<sup>th</sup> July 2013, adopted on 17<sup>th</sup> July 2013, ought to be set aside. It was contended that various grounds have been advanced for such setting aside, including fraud, mistake, misrepresentation

and illegality. Counsel asserted that the only outstanding question is whether the parties who received monies under the consent should refund the same.

- 47.** It was submitted that the 5<sup>th</sup> Defendant is not the lawful owner of the suit property. Counsel urged the court to grant injunctive relief restraining the 1<sup>st</sup> to 4<sup>th</sup> Defendants from disbursing compensation funds held by the 2<sup>nd</sup> to 4<sup>th</sup> Defendants pending determination of ownership.
- 48.** Counsel for the 5<sup>th</sup> Defendant submitted that neither the 1<sup>st</sup> nor the 6<sup>th</sup> Plaintiffs opposed the setting aside of the consent. Counsel further submitted that although the 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs filed Grounds of Opposition, they raised no substantive legal objections capable of defeating the application, their principal objection being procedural in that the 5<sup>th</sup> Defendant ought to have filed a response rather than a separate application.
- 49.** It was submitted that the 5<sup>th</sup> Defendant is the registered proprietor of LR No. 24910 and holds a certificate of title issued under the **Registration of Titles Act (now repealed)**. Counsel argued that the title is protected under **Article 40** of the **Constitution** and **Section 26(1)** of the **Land Registration Act**.
- 50.** Counsel reiterated that the Plaintiffs filed suit claiming ownership of the property; that a consent dated 16<sup>th</sup> July 2013 was recorded and adopted by the court; and that

pursuant to the consent, the 5<sup>th</sup> Defendant paid the Plaintiffs Kshs. 40,688,312.50, on the understanding that the Plaintiffs held a recognizable interest in the suit land.

51. Counsel submitted that a consent judgement or order has the same binding effect as a contract and may be set aside on grounds that would vitiate a contract, including fraud, collusion, mistake or misrepresentation. Reliance was placed on **Flora N. Wasike vs Destimo Wamboko [1988] eKLR** and **Hirani vs Kassam (1952) 19 EACA 131.**
52. Counsel submitted that the court should not sanction retention of a consent obtained through deception or concealment of material facts. It was contended that it has emerged in the proceedings that the Plaintiffs presented different letters of allotment bearing identical reference numbers and signatories, and a purported lease reflecting different names from those appearing in the letters of allotment.
53. Counsel submitted that the Plaintiffs are already enjoying conservatory or injunctive orders issued on 18<sup>th</sup> September 2024 in ELC No. 369 of 2024 and orders issued on 30<sup>th</sup> October 2024 in ELC No. 446 of 2024 restraining the National Land Commission from paying compensation monies to the 5<sup>th</sup> Defendant pursuant to Land Acquisition Tribunal Case No. E012 of 2024.

- 54.** Counsel argued that further injunctive relief is unnecessary. Counsel further contended that the Plaintiffs' claim to compensation flows principally from the impugned consent, and absent the consent, they have no basis to assert proprietary rights to the land.
- 55.** It was submitted that the Plaintiffs have not met the threshold for injunctive relief, having failed to establish a prima facie case with a probability of success.
- 56.** Counsel urged the court to dismiss the Plaintiffs' application dated 29<sup>th</sup> January 2025, set aside the interim orders issued on 18<sup>th</sup> September 2024 in ELC No. 369 of 2024 and the orders issued on 30<sup>th</sup> October 2024 in ELC No. 446 of 2024, and direct the National Land Commission to release compensation funds to the 5<sup>th</sup> Defendant pursuant to Land Acquisition Tribunal Case No. E012 of 2024.
- 57.** Counsel for the 1<sup>st</sup> Plaintiff submitted that while the 1<sup>st</sup> Plaintiff did not object to the setting aside of the consent, it objected to the 5<sup>th</sup> Defendant's prayers for the court to order the Plaintiff to refund it the sum of Kshs. 40,688,312. Counsel argued that the court did not determine the substantive prayers because the matter was compromised by consent. It was submitted that once the consent is set aside, the suit reverts to its original posture and ought to be heard on the merits.

- 58.** Counsel submitted that pending the hearing of the main suit and determination of ownership, it would be in the interest of justice that no compensation monies be released to any party. Counsel urged that the Plaintiffs had satisfied the principles for injunctive relief.
- 59.** Counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs submitted that the consent order did not originate from the Plaintiffs, and that they were not party to any instructions allegedly given to counsel to compromise the suit. It was contended that the advocates colluded and secured part payment of compensation in respect of property whose legal ownership had not been determined by the court.
- 60.** Counsel further submitted that the court record on adoption of the consent could not be traced, which, in their view, raised doubts as to the regularity of the process.
- 61.** Counsel submitted that the 5<sup>th</sup> Defendant had previously claimed compensation in respect of LR No. 9810 while the Plaintiffs claimed compensation for LR No. 24910. Counsel argued that ownership remains the central question and that the suit ought to proceed to hearing on the merits. It was submitted that the consent should be set aside to allow the court to determine ownership.
- 62.** Counsel for the 4<sup>th</sup> Plaintiff submitted that despite the court's order requiring the Plaintiffs' former advocate, Mr. Gitonga Muriuki, and the Office of the Attorney General to attend

court and shed light on the authenticity and circumstances of the consent, the said parties did not attend, and neither has disputed the circumstances under which the consent was recorded. It was submitted that the consent therefore remains uncontroverted.

- 63.** Counsel submitted that the Applicants failed to plead, particularize and prove fraud, deceit, collusion, or undue influence. Counsel urged the court to dismiss the applications dated 19<sup>th</sup> January 2025 and 14<sup>th</sup> August 2025 with costs.

**Analysis and Determination**

- 64.** Having considered the two applications, the affidavits on record and the rival submissions of counsel, the following issues arise for determination by the Court:

- a. Whether the consent order ought to be set aside*
- b. Whether the Plaintiffs have met the threshold for the grant of injunctive orders restraining the disbursement of compensation monies pending determination of the suit.*
- c. Whether any party is entitled to a refund of monies paid pursuant to the consent order, and if so, at what stage and upon what conditions.*

- 65.** This suit herein was instituted by way of a Complaint dated 15<sup>th</sup> October 2012. The Plaintiffs pleaded, inter alia, that they were the bona fide allottees of LR No. 24910; that the 5<sup>th</sup> Defendant's title was a forgery; and that compensation for

compulsory acquisition ought to be paid to them. The pleadings also sought orders directed at the land administration offices for processing of titles in the Plaintiffs' names and payment of the compensation sum pleaded.

**66.** It is common ground that the matter did not proceed to full hearing on the merits. The parties concede that a consent was recorded and adopted by the court in July 2013. While the original consent is not traceable in the court file, a copy of the consent has been placed before court by some of the parties, and its existence is not disputed.

**67.** The terms of the consent, as produced, provided as follows:

***a. That the Permanent Secretary (now the Permanent Secretary) Ministry of Lands and Commissioner of Lands do pay Sato Nyumbaz Limited the sum of Kshs. 49,730,312.50 and a sum of Kshs. 40,688,473.50 to the 8 plaintiffs in HCCC No. 712 of 2013, the sum payable to Sato Nyumbaz Limited be paid to Sato Nyumbaz Limited and the sum payable to the 8 Plaintiffs be paid to Gitonga Muriuki & Co. Advocates.***

***b. That the remainder of Land Parcel No. LR 24910 be registered in the names of the 8 Plaintiffs in HCCC No. 712 of 2012 and Sato Nyumbaz Limited in equal shares.***

***c. That these suits be and are hereby marked settled in terms of the orders 1 and 2 above named.***

***d. That each party do bear its/his/her own costs in both the suits.***

***e. That payment to be made to both the said parties simultaneously.***

**68.** The first application, dated 29<sup>th</sup> January 2025 is by the 5<sup>th</sup> -8<sup>th</sup> Plaintiffs. They principally seek for an order setting aside or stay of the consent; restraining disbursement of further compensation; and refund to the National Land Commission of monies allegedly paid out pursuant to the consent.

**69.** The second application, dated 14<sup>th</sup> August 2025 is by the 5<sup>th</sup> Defendant. The 5<sup>th</sup> Defendant supports the setting aside of the consent, but on condition that the Plaintiffs refund the sum of Kshs. 40,688,312.50 allegedly received by them pursuant to the consent, within fourteen days.

**70.** The record further shows that there are other suits relating to the same subject matter, including ELC No. 369 of 2024 and ELC No. 446 of 2024, where interim orders have issued restraining release of compensation monies.

**71.** The principles governing interference with a consent judgment are settled. A consent judgment has contractual effect and may only be set aside on grounds that would justify setting aside a contract, including fraud, collusion,

mistake, misrepresentation, or where counsel acted without authority or contrary to express negative instructions. In **S M N vs. Z M S & 3 others [2017] eKLR** the Court of Appeal held as follows:

***“Generally, a court of law will not interfere with a consent judgment except in circumstances such as would provide a good ground for varying or rescinding a contract between parties. The factors touted for impeaching the consent in this matter were fraud and collusion. It is also alleged that counsel had no authority to enter into the consent. The onus of proving those assertions to the required standard was on the appellant. They are serious imputations bordering on crime and therefore the burden of proof is of necessity slightly higher than on a balance of probability but perhaps not beyond reasonable doubt.”***

72. Similarly, in **Flora N. Wasike vs. Destimo Wamboko [1988] eKLR**, the Court of Appeal stated:

***“It is now settled law that a consent judgment or order has contractual effect and can only be set aside on grounds which would justify setting a contract aside, or if certain conditions remain to be fulfilled, which are not carried out: see the decision of this Court in J M Mwakio vs Kenya***

**Commercial Bank Ltd Civil Appeals 28 of 1982 and 69 of 1983.**

73. In **Kenya Commercial Bank Ltd vs. Specialized Engineering Co. Ltd [1982] KLR 485**, Harris, J correctly held, *inter alia*, that:

***“1. A consent order entered into by counsel is binding on all parties to the proceedings and cannot be set aside or varied unless it is proved that it was obtained by fraud or collusion or by an agreement contrary to the policy of the court or where the consent was given without sufficient material facts or in misapprehension or ignorance of such facts in general for a reason which would enable the court to set aside an agreement.”***

74. The applicants (5<sup>th</sup> -8<sup>th</sup> Plaintiffs) contend that the consent was entered into without their knowledge and instructions; that monies were disbursed to only some Plaintiffs; and that their then advocate acted prejudicially. The 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs similarly contend that the advocate did not disclose the consent and that he gave them “advances” while concealing the true position.

75. On the other hand, the 5<sup>th</sup> Defendant alleges that it entered the consent on the understanding that the Plaintiffs held a legitimate and registrable interest but has since emerged

that there are inconsistencies in the Plaintiffs' allotment documents and even doubts as to the existence/identity of some Plaintiffs.

76. The court notes that two distinct questions arise which must not be conflated: first, whether the consent was vitiated at inception; and second, whether there was impropriety in the accounting and distribution of monies after the consent. The latter may find professional or civil consequences against counsel, but does not, without more, invalidate the consent order itself.
77. I say so because it is trite that an advocate on record generally has implied authority to compromise a suit. This was held in **Kenya Commercial Bank Ltd vs Specialised Engineering Co. Ltd [1982] KLR 485**, in which Harris J correctly held inter alia, that:-

***“A duly instructed advocate has an implied general authority to compromise and settle the action and the client cannot avail himself of any limitation by him of the implied authority to his advocate unless such limitation was brought to the notice of the other side***

***An advocate has general authority to compromise on behalf of his client, as long as he is acting bona fide and not contrary to express negative***

***direction. In the absence of proof of any express negative direction, the order shall be binding.”***

- 78.** Equally, a party seeking the setting aside of a consent order or judgment is duty bound to produce evidence to prove that the circumstances of the case justified the setting aside of the order or judgment. Bare assertions are not enough.
- 79.** In this matter, the primary factual basis advanced for setting aside is that some Plaintiffs were not consulted and did not receive monies, and that the consent was fraudulently procured. Though the affidavits before court are emphatic on non-consultation and non-payment, they are less specific on the particulars of fraud in the procurement of the consent itself. The allegations of collusion are asserted generally, without identifying the specific acts, or circumstances showing that the other parties to the consent were aware that counsel lacked authority or was acting contrary to instructions.
- 80.** As to the 5<sup>th</sup>-8<sup>th</sup> Plaintiffs claim that they are not aware of the payments to the other Plaintiffs, the record and correspondence referred to by parties suggests awareness of the consent at least by 2015, when they issued demand for payment of Kshs. 15,258,279.00 pursuant to the terms of the consent dated 18<sup>th</sup> July 2013.
- 81.** The 5<sup>th</sup> Defendant’s claim is that the Plaintiffs represented that they are the registered owners of the suit property

which, it is alleged, they are not, as they have presented three different letters of allotment with respect to the suit property.

**82. Mary Charman** in her book *Contract Law* defines misrepresentation as follows:

***“A misrepresentation is an untrue statement of fact, made by one party to a contract to another, which is not a term of the contract, but has an inducing effect on it.”***

**83.** Misrepresentation of facts can be made by carelessly issuing facts without checking the actual details. Also, misrepresentation can be a deliberate lie, intended to deceive and stated in the full knowledge that it is untrue. An innocent party in both types of misrepresentation is entitled to rescind the contract if he chooses to (Mary Charman, 2007, pg. 179).

**84.** The classic definition of fraudulent misrepresentation comes from the House of Lord's case, **Derry v Peek (1889) UKHL 1**, in which it was stated that a fraudulent misrepresentation was a false statement made “knowing, without belief in its truth, or recklessly as to whether it be true or false.”

**85.** While the 5<sup>th</sup> Defendant adduced three letters of allotment, only two were with respect to LR No. 24910. Both were referenced 36121/V and dated 10<sup>th</sup> December 2007. While one letter was issued to Zacharia Marita Adei & Others, the

other letter was issued to W. Birir, Langat, J.K. Koech, Z. Marita, L. Moragwa, P.M. Kimani, A.K, Isadia and T. Ngunyi. On a prima facie basis, these letters do not disclose fraud or misrepresentation, as they do not appear to refer to different persons.

- 86.** On the evidence presented, this court is not satisfied that the 5<sup>th</sup> Defendant has demonstrated to the standard required for allegations of fraud, that the Plaintiffs made a false statement of fact, known to be false, or recklessly made, which induced the consent.
- 87.** The existence of more than one allotment letter, without further authentication from the allocating authority and the survey/lands registries, is insufficient, by itself, to lead a finding of fraudulent misrepresentation.
- 88.** However, it is imperative that the Plaintiffs, some of whose identity is shrouded in mystery, should proof to the required standard that they own the suit property. I say so because although the court directed that all the Plaintiffs appear before the court with their national identity cards for identification, some failed to do so. The identity of the Plaintiffs, and their claim to the suit land can only be conclusively determined by the court after trial, and not at this stage.
- 89.** Further, the absence of the original consent in the court file and the contested circumstances of adoption raise legitimate

concerns on the regularity of the record and the integrity of the process. Those concerns, cannot be resolved conclusively at this point, particularly where the former advocate and the officers who participated in the recording and adoption of the purported consent were ordered to attend court but did not appear before the court to meaningfully clarify the circumstances of the consent, and how the money that was paid out was distributed to the Plaintiffs, if at all.

- 90.** On the totality of the material before the court, I am persuaded that in the interest of justice, the impugned consent be set aside to enable the court determine, after trial, if indeed the Plaintiffs are the legitimate owners of the suit property and how the money that was paid out by the 5<sup>th</sup> Defendant was distributed.
- 91.** However, at this juncture, and the 5<sup>th</sup> Defendant and the Plaintiffs having not joined in this suit the advocate who is said to have received the money that was paid out to explain how he distributed it, I decline to order for the refund of the said money, or the deposit of the money in court.
- 92.** On the issue of whether injunctive reliefs should issue, it is not in dispute that the effect of the consent entered into between the parties was to compromise this suit in its entirety. This court having set aside the consent, and the issue of whether indeed the Plaintiffs are the legitimate owners of the suit property, and whether all the Plaintiffs actually exist, an order of the prevailing status quo, including

any further disbursement by the acquiring authority, should issue to preserve the suit property pending the hearing and determination of the suit.

- 93.** This court also takes cognizance that the Plaintiffs have instituted other proceedings, namely **ELC E365 of 2024** and **ELC E446 of 2024**, in which they seek permanent injunctive relief against the 5<sup>th</sup> Defendant in respect of LR No. 24910 and LR No. 9810, together with compensation arising from the alleged compulsory acquisition of LR No. 24910.
- 94.** This court further notes that in **ELC E369 of 2024**, orders were issued on 18<sup>th</sup> September 2024 barring the release of compensation funds, and that in **ELC E446 of 2024**, temporary injunctive orders were issued on 30<sup>th</sup> October 2024. Any other order to the contrary will lead to an absurdity.
- 95.** For those reasons, the 5<sup>th</sup> Defendant's application dated 14<sup>th</sup> August 2025 is dismissed while the 5<sup>th</sup> - 8<sup>th</sup> Plaintiffs' application dated 29<sup>th</sup> January 2025 is allowed partially as follows:
- a. An order of injunction do hereby issue against the 1<sup>st</sup>-4<sup>th</sup> Defendants barring them from disbursing any amount whatsoever towards compensation with respect to LR 24910 or 9180 or any other subdivision arising from LR 24910 pending the hearing and determination of the suit.**

**b. An order is hereby issued setting aside and staying any consent recorded in this matter or in any other matter in which any amount being payment towards acquisition of LR 24910 is discussed, agreed and or consented to pending the hearing of this suit.**

**c. Each party to bear its own costs.**

**Dated, signed and delivered virtually in Nairobi this 5<sup>th</sup> day of February, 2026.**

**O. A. Angote  
Judge**

**In the presence of:**

Mr. Simiyu for the 5<sup>th</sup> Defendant

Mr. Gachie for the 8<sup>th</sup> Plaintiff

Mr. Omino for 5<sup>th</sup> - 8<sup>th</sup> Plaintiffs

Mr. Kibet for 1<sup>st</sup> Plaintiff

Court Assistant: Tracy