



REPUBLIC OF KENYA



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Reliable Electrical Engineers (M) Limited v Funzi Resort Limited & 2 others (Environment and Land Case 66 of 2021) [2026] KEELC 581 (KLR) (6 February 2026) (Judgment)

Neutral citation: [2026] KEELC 581 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KWALE
ENVIRONMENT AND LAND CASE 66 OF 2021**

**AE DENA, J
FEBRUARY 6, 2026**

BETWEEN

RELIABLE ELECTRICAL ENGINEERS (M) LIMITED PLAINTIFF

AND

FUNZI RESORT LIMITED 1ST DEFENDANT

SIDIAN BANK KENYA LIMITED 2ND DEFENDANT

THE LAND REGISTRAR KWALE 3RD DEFENDANT

JUDGMENT

1. This matter was commenced at the Mombasa ELC before being transferred to this court, vide Plaintiff dated 18th November, 2020 in which the Plaintiff sought the following reliefs: -
 - a. A declaration that the Plaintiff is the lawfully registered absolute owner of Land Reference Number Kwale/Funzi Island/81
 - b. An order directing the 3rd defendant to cancel the green card entries reflecting the 1st Defendant as the registered owner of Land Reference No. Kwale/Funzi Island/81
 - c. A permanent injunction against the 2nd Defendant selling or purporting to sell Land Reference Number Kwale/Funzi Island/81 in exercise of the charges remedies.
 - d. General and punitive damages.
 - e. Costs of the suit
 - f. Any other reliefs that this court may deem just.
2. In support of the aforementioned prayers, the Plaintiff pleaded that it became the registered owner of all that property known as Land Reference Number Kwale/Funzi Island/81 (the suit property herein)



- on 2nd September, 2010. That it purchased the land from National Bank of Kenya Limited (NBK), who was a chargee and was exercising the chargee's remedies. That the Plaintiff conducted due diligence and confirmed that the land belonged to one Paul Kibugi Muite, and had no other adverse interests apart from the charge to NBK. It is pleaded that thereafter, the charge in favour of NBK was discharged and the property transferred to the Plaintiff who was issued with a title deed.
3. The Plaintiff avers that it conducted a search on 7th November, 2020 and discovered that the land had been transferred to Funzi Resort Limited on 24th November, 2015, and was charged to KRep Bank Limited, now Sidian Bank Kenya Limited, for KShs. 8,000,000/-. It is alleged that the transfer, issuance of title in favour of the 1st Defendant and charge in favour of the 2nd Defendant are illegal, irregular and fraudulent since the Plaintiff never sold, transferred or charged the land to third parties. The Plaintiff claims that its requests to the 2nd Defendant to avail the documents it received from the 1st Defendant, as well as its formal complaints to the 3rd Defendant and the National Land Commission (NLC) have elicited no positive response.
 4. The 2nd Defendant filed a Defence dated 10th February, 2021 where it denied the allegations set out in the Plaintiff. The 2nd Defendant claimed that its role was limited to advancing a credit facility of KShs. 8,000,000/- to the 1st Defendant for purchase of the suit property. That it conducted due diligence and discovered that the 1st Defendant had purchased it for KShs. 10,000,000/- from Shabir Mohamed Hasi on 27th April, 2015. The Defendant states that the suit land was vide instrument dated 30th October, 2015 transferred to the 1st Defendant who obtained title on 24th November, 2015. That the loan advanced to the 1st Defendant was secured by a legal charge in its favour, but it has since been paid off. The 2nd Defendant claims that in its due diligence, it conducted a search that revealed that the land was owned by Shabir Mohamed Hasi.
 5. The 2nd Defendant averred that it obtained the requisite completion documents including the transfer dated 30th October, 2015 from the Plaintiff to Shabir Mohamed Hasi, and a pre-registration search showing that the land was owned by Shabir Mohamed Hasi. The 2nd Defendant denied all the allegations of fraud, illegality and irregularity. The 2nd Defendant claims that to its knowledge, the 1st Defendant is an innocent purchaser for value. Further, that the documents from the 2nd Defendant were confidential and could not be supplied to the Plaintiff without the 1st Defendant's prior consent. That the Plaintiff is thus not entitled to the prayers sought and the suit against the 2nd Defendant should be dismissed with costs.
 6. The 3rd Defendant's Defence filed by the Attorney General is dated 11th May, 2022. The 3rd Defendant denied all the allegations set out in the Plaintiff. The 3rd Defendant averred that the suit property was first registered in favour of Paul Kibugi Muite on 9th December, 1988. That it was then transferred to the Plaintiff herein on 2nd September, 2010. That the Plaintiff transferred it to Shabir Mohamed Hasi on 27th November, 2013, who transferred it to the 1st Defendant herein on 24th November, 2015. That the suit land was thereafter charged to 2nd Defendant on 24th November, 2015. The 3rd Defendant denied receiving any complaints from the Plaintiff or service of demand or notice to sue as required by law.
 7. In response, the 1st Defendant with leave of the court vide a ruling dated 13/3/2023, filed an Amended Defence and Counterclaim dated 24th March, 2023 denying the allegations in the Plaintiff. The 1st Defendant denied the allegation that the Plaintiff was the registered owner of the land and averred that the Plaintiff transferred the land to Shabir Mohamed Hasi vide deed of transfer dated and registered on 27th November, 2013. The 1st Defendant claims that it lawfully purchased the land from Shabir Mohamed Hasi for valuable consideration on 27th April, 2015 and obtained title on 24th November,



2015. That the sale was financed and secured by a legal charge in favour of the 2nd Defendant, which loan has now been paid off.
8. The 1st Defendant avers that the 1st Defendant conducted due diligence and confirmed that the land was owned by Shabir Mohamed Hasi. That upon purchase, it took possession of the suit property, and denied the allegations of fraud set out in the Plaint. The 1st Defendant claims it is a bona fide purchaser without notice of defects in the title and denied knowledge of any omission, fraud, and/or mistake. The 1st Defendant accused the Plaintiff of fraud in trying to deprive it of property it had already sold in 2013, and set out the particulars of the alleged fraud.
 9. In its Defence, the 1st Defendant included a counterclaim against the Plaintiff as the 1st Defendant, the firm of Abdulrahman O. Aminga t/a A.O. Aminga & Company Advocates as the 2nd Defendant and the Land Registrar Kwale as the 3rd Defendant. The 1st Defendant asserted that he was the proprietor in possession of the suit property. The 1st Defendant reiterated that it purchased the land from Shabir Mohamed Hasi through an agreement dated 27th April, 2015 drafted by the 2nd Defendant in the Counter Claim. The Plaintiff also reiterated the averments of due diligence, and averred that the Plaintiff lost its proprietary rights on 27th November, 2013 when his title was cancelled.
 10. The 1st Defendant reiterated that it had bought the land for valuable consideration with the assurances of the 3rd Defendant, and without any knowledge of any omission, fraud or mistake in the title. The 1st Defendant claims that the damages and/or loss suffered by the Plaintiff were due to the fraudulent and/or illegal actions by the 2nd Defendant in the counterclaim, and it set out the particulars of the alleged fraud and illegality. The 1st Defendant averred that it followed due process in acquiring the land and is thus a bona fide purchaser, whose proprietorship is indefeasible, and opined that the Plaintiff should look to the Government of Kenya for a remedy and/or indemnity.
 11. Flowing from the above facts, the 1st Defendant sought the following reliefs in the counterclaim:
 - a. A declaration be and is hereby issued that the Plaintiff is the rightful, valid and lawfully registered absolute owner of Land Reference Number Kwale/Funzi Island/81 measuring approximately 8.0HA.
 - b. An order directing the 3rd Defendant to cancel the purported original title issued in the name of the 1st Defendant on 2nd September, 2010.
 - c. A permanent injunction restraining the 1st Defendant, its agents, servants, employees, assigns, successors or otherwise howsoever from trespassing on L.R. No. Kwale/ Funzi Island/81 and or interfering, in any way, with the Plaintiff's quiet enjoyment, possession and use of the property and from offering for sale, selling, transferring alienating or in any way disposing of the suit property being Land Reference Number Kwale/Funzi Island/81.
 - d. In the alternative, and without prejudice to prayers (a) to (c) above a declaration that the Plaintiff is entitled to be indemnified and compensated by the 2nd and 3rd Defendants, jointly and severally, for the value of the Plaintiff's interest in the suit property, that is, KShs. 10,000,000 [Kenya Shillings Ten million only] being the purchase price of Land Reference Number Kwale/Funzi Island/81 as at 24th November, 2015 when title to the suit property was issued in the name of the Plaintiff by the 3rd Defendant.
 - e. In the alternative, an order is hereby given directed at the 2nd and 3rd Defendants, jointly and severally, to indemnify and pay the Plaintiff the sum of KShs. 10,000,000 [Kenya Shillings Ten million only] being the value of the Plaintiff's interest in the suit property being Land Reference Number Kwale/Funzi Island/81.



- f. Costs of this suit.
 - g. Interest on (f) and (g) above.
 - h. Any other or further relief that this Honourable Court may deem fit and just to grant.
12. The Plaintiff filed a response to the 1st Defendant's Counter claim dated 2nd June, 2023 denying the averments therein. The Plaintiff averred that the 1st Defendant was not an innocent purchaser for value and good faith as alleged as there is no record to show consideration was paid. The Plaintiff denied the validity of the Agreement dated 27th April, 2015, stating that the said agreement and transfer thereto had glaring inconsistencies. The Plaintiff further denied that the 1st Defendant borrowed money from the 2nd Defendant, and averred that the borrower in the Charge documents is Ahead Architects Limited. Further, the loan money was not deposited in the 1st Defendant's account, and added that there is an outstanding amount of KShs. 8900.89/-.
13. The Plaintiff denied that the 1st Defendants conducted sufficient due diligence. The Plaintiff claimed that the green card and Certificate of Official Search were not valid and pointed out that the search did not have a search number. Further that the green card and title deed reveal glaring inconsistencies in the Vendor's name, thus they were procured irregularly, illegally and fraudulently. The Plaintiff averred that the 1st Defendant did not obtain the requisite completion documents. The Plaintiff alleged that the entry into the land by the 1st Defendants workers without authority amounts to invasion of private property, which is liable to prosecution.
14. The Plaintiff claims that it still holds a valid and lawful subsisting title and that the cancelled title deed is alien to it as it differs from the one in its possession. The Plaintiff refuted the allegation that the 1st Defendant is the one in possession of the suit land. The Plaintiff explained that Shabir Mohamed Hasi is a stranger to it, and the claims that the land was sold to him are unfounded, fabricated and based on forged documents. The Plaintiff denied the particulars of fraud as well as the allegations that due process was followed in acquiring the suit property, and accused the Plaintiffs of being victims of their own mischief.
15. The Plaintiff further averred that a title procured fraudulently and illegally cannot be subject of indefeasibility, and reiterated that it is still in possession of the original title which was never cancelled upon the alleged transfer to the 1st Defendant as by law required. The Plaintiff alleged that there is no reciprocal thread of transfer of the loan amount from Sidian Bank and nothing to show that the money was paid to the Vendor, Shabir Mohamed Hasi. The Plaintiff attacked the charge documents and the transfer claiming gross inconsistencies pointing towards a well-orchestrated scheme to illegally and fraudulently acquire the suit land. The Plaintiff alleged that the counter-claim lacks merit and urged it be dismissed with costs.
16. In response, the 1st Defendant filed a reply to Defence dated 12th October, 2023. The 1st Defendant reiterated the allegations set out in the counterclaim and asserted that it purchased the suit property for valuable consideration financed by the 2nd Defendant in the Plaint, which was paid through the 2nd Defendant in the counterclaim who represented the Vendor. That the 2nd Defendant in the Counterclaim has confirmed he acted strictly per the Vendor's instructions and obtained the completion documents. The 1st Defendant denied that the allegation that the Agreement was invalid. The 1st Defendant averred that the loan advanced by the 2nd Defendant has been repaid and that stamp duty for the transfer and charge were duly paid.
17. The 1st Defendant averred that it did not obtain its title irregularly or illegally, and asserted that it conducted its due diligence, and that upon purchase it took possession of the land. The 1st Defendant



insists that it obtained the Plaintiff's cancelled title from the 3rd Defendant, and that the documents relating to the Vendor's title are the same documents in the land registry file. Further, that the transfer in its favour was lawfully done by the 3rd Defendant without any fraud. That the Plaintiff lawfully lost its title on 27th November, 2013 when the land was registered to Shabir Mohamed Hasi, who then transferred it to the 1st Defendant. On this basis, the 1st Defendant asked that the counter claim be allowed with costs.

18. Abdulrahman O. Aminga, the 2nd Defendant in the Counterclaim filed a Statement of Defence to the Counterclaim dated 11th May, 2023 and denied all the averments contained therein. He alleged that he acted strictly per the Vendor's instructions, obtained all completion documents and forwarded them to M/S Munyao, Muthama & Kashindi Advocates who were acting for the Financier. That receipt of the full purchase price was acknowledged and disbursed per the Vendor's instructions. He denied that he practiced under two different names, and explained that he simply changed the name of the firm which has nothing to do with the subject matter herein nor prejudiced the 1st Defendant in any way.
19. The 2nd Defendant in the counterclaim asserted that he acted in good faith and utmost professionalism and was not privy to any information casting doubt on the Vendor's capacity. He denied the allegations of fraud, claiming they were in bad faith, defamatory and unfounded. He refuted any purported attestation of the transfer by the firms of Omondi Waweru Advocates and J.O. Mandi Advocates. He averred those investigations were conducted by the Directorate of Criminal Investigations and no criminal culpability was cast on him, while the Vendor was arrested and charged in Kwale Law Courts. He prayed that the claim against him be dismissed with costs.
20. The 1st Defendant filed a Reply to the Defence to Counterclaim filed by the 2nd Defendant dated 12th October, 2023 and put the 2nd Defendant to strict proof of the averments therein. The 1st Defendant reiterated the particulars of fraud and illegality and asserted that the 2nd Defendant facilitated and ensured the due attestation of the signatures of its directors. The 1st Defendant asked that the counter claim be allowed.
21. Through the Attorney General, the 3rd Defendant also filed a Defence to the Counter Claim dated 23rd May, 2023 denying the averments set out therein. The 3rd denied that the 1st Defendant purchased the suit land for KShs. 10,000,000/- vide an agreement of 27th April, 2015 as alleged. The 3rd Defendant denied that the 1st Defendant obtained KShs. 8,000,000/- from the 2nd Defendant or that the 1st Defendant obtained a Certificate of Official Search. The 3rd Defendant denied the particulars of fraud or that due process was followed, and averred that the 1st Defendant could only acquire a title as good as its predecessor in title.
22. The 3rd Defendant denied the allegation that the 1st Defendant appeared before Andrew J.O. Mandi on 14th October, 2015 as alleged on the transfer documents or at all and that the same are forged. The 3rd Defendant claimed that no indemnity is payable to the 1st Defendant since it caused and/or contributed to the forgeries that resulted in the transfer in its favour.
23. The 3rd Defendant issued notice of its intention to claim against the 1st Defendant herein and asked that the suit against it be dismissed with costs.
24. In response the 1st Defendant filed a Reply to the 3rd Defendant's Defence to Counterclaim dated 12th October, 2023. The 1st Defendant reiterated the averments in the counterclaim. The 1st Defendant asserted that the signatures of its Directors on the Transfer dated 30th October, 2015 were attested with the facilitation of the 2nd Defendant in the Counter claim and the signatures thereon are not forgeries. The 1st Defendant denied causing or contributing to any alleged forgeries on the transfer document,



and asserted that it was entitled to indemnity as claimed. The 1st Defendant once more asked that the counterclaim be allowed with costs.

Hearing And Evidence

The Plaintiff's Case

25. Hearing of the suit commenced on 7th November, 2022; Manoj Shah testified as PW1. He adopted his witness statement dated 18th November, 2020 as his evidence-in-chief. PW1 was recalled to testify on account of the Amended Defence and Counterclaim on 5th July, 2024. He additionally adopted his Further Witness statement and a Replying Affidavit filed on 22nd May, 2023 as his evidence in the case. PW1 also produced the documents in his list of documents dated 18th November, 2020 filed in court on 19th November, 2020 as PEXb 1-11.
26. PW1 presented the original title deed and transfer before the court for confirmation. PW1 testified that they paid the bidding value to the bank within the required timelines. That they then did a valuation and paid the balance. PW1 testified that they later came to learn that the land had been given to someone else. He testified that he did not know Shabir Mohamed Hasi and that they had never had business with him. He sought the court's assistance to certify that they are the original owners of the property and to have their title confirmed and the rest of the prayers sought in their plaint.
27. PW1 was cross-examined by Mr. Obok for the 1st and 2nd Defendant. PW1 was referred to the letter dated 14/12/2020 in the 1st and 2nd Defendant's bundle and he testified that as a company, they had never dealt with anyone in respect to the land. On being referred to the transfer at page 15 of the bundle he testified that the photo therein was his and the signature resembled his. He stated he had no report from the document examiner showing that the signature was not his. PW1 admitted that the other photo was of Salim Mohamed, one of their directors but he could not remember his signature, neither was he aware if he had disputed it. He testified that the documents are fake and they had reported the matter to the local Criminal branch, but had no proof of it in court.
28. PW1 was referred to the letter dated 17th January, 2022 and testified that it was asking for the cancelled title, which is present in the 1st and 2nd Defendant's bundle but that it was unknown to them. He insisted that they were not aware of the transfer. PW1 testified that there is a period of 5 years between his title and the 1st and 2nd Defendants', and while he admitted that they did not do anything on the land for those 5 years, he insisted that they had the title to the land. He clarified that they did the search in 2020, but before then, they knew they were the owners of the land.
29. PW1 could not confirm if the 1st and 2nd Defendants obtained money from the bank. He also could not tell if the Plaintiff had been paying rates on the land, and that they did not know that someone else was paying rates as there was no demand. He acknowledged that the green card is kept by the Registrar, and that if a party is told during due diligence that the register is fine, there is no reason to doubt.
30. PW1 conceded that at the time of filing the suit, he had not been in possession of the suit land for about 10 years and had done nothing on it, but he would know if anyone did anything on it. He denied the 1st Defendant claims that they took vacant possession of the suit property, and testified that he visited the land in 2008 and there was nothing on it. He however conceded that the reason he sought an injunction in this case is because the 1st Defendant was on the suit property. PW1 testified that Shabir colluded with Funzi to take away his property but had no evidence to prove it. He also acknowledged the possibility that like him, the 1st Defendant may have been defrauded by Shabir.



31. PW1 was then cross-examined by Mr. Makuto and he testified that he had no statement from Mr. Salim saying that the signature did not belong to him. He testified that they did not sue Shabir because they did not know him, but the search showed the 1st Defendant. He reiterated that they did not sell to Shabir. PW1 testified that he had not presented the transfer to a document examiner thus there is no report on the veracity of his signature. He testified that he wrote to the Land Registrar and Sidian Bank after he found out about the transfer in 2020, although he had no proof the letter was received.
32. PW1 further testified that Shabir Alias Shabir Mohamed Haji was charged in Criminal File No. E323/21, where he was bonded to appear and testify and he had recorded a statement with the police. He testified that he never released his title to the Land Registrar for cancellation for purposes of a transfer. He asserted that he never appeared before Omondi Waweru Advocates and neither did he sign the transfer. He added that he never appeared before the LCB for purposes of consent to transfer to Shabir Mohamed Hasi and never took him to the suit land.
33. On re-examination, PW1 reiterated that he does not know Omondi Waweru and never appeared before them. PW1 testified that he was never informed of the cancellation of the title deed. He testified that the Plaintiff had never sold the suit property. He testified that when he conducted the search, the names on the title were the 1st Defendant and K-Rep Bank not Shabir's name, and that is what they relied on to sue.
34. With the above the Plaintiffs case was marked as closed.

The 1st Defendant's Case

35. Vincent Ochieng Ochieng, testified on oath as DW1 and told this court that he was a Co-Director of the 1st Defendant alongside his wife. He adopted his witness statement dated 14th February, 2022 as his evidence-in-chief. He testified that the 1st Defendant acquired the suit property through the sale agreement dated 27th April, 2015 between him and his wife as purchasers from Shabir Mohamed Hasi. That the consideration was KShs. 10,000,000/-, part of which was financed by the 2nd Defendant. He testified that the agreement was drawn by M/S Aminga & Co. Advocates for the Vendor while they were represented by Munyao Muthama & Kashindi, who conducted due diligence. He acknowledged that while the Chargor is Funzi Resort Limited, the borrower on the charge was Ahead Arc Limited because they submitted financial statements of that company, where he is also a director.
36. DW1 testified that they obtained a search dated 9th February, 2015 which showed that the land was transferred to Shabir Mohamed Hasi on 27th November, 2013. DW1 detailed the completion documents obtained, and testified that he did not obtain the green card as part of his due diligence. He testified that the 1st Defendant was issued with a title on 24th November, 2015. DW1 testified that they took possession immediately upon issuance of title and employed workers to maintain the land. He added that they used to visit periodically and that they remain in possession to date. DW1 testified that he had never dealt with the Plaintiff and wouldn't know whether the Plaintiff and Shabir knew each other. He asserted that at the time of purchase, he had no knowledge of any defect in Shabir's title. DW1 produced the documents in the 1st and 2nd Defendants' list of documents as DW1 PEXb 1-18.
37. On cross-examination by Mr. Makuto, DW1 testified that they had paid off the loan but were yet to register the discharge. DW1 testified that he did not attend the Land Control Board meeting in person but sent one of his agents. DW1 was shown the original title issued to the Plaintiff and confirmed that it is dated 2nd September, 2010 and its serial number is 226228, same as the serial number of the title in the 3rd Defendant's bundle of documents, and the title was not cancelled. DW1 also conceded that



- the one produced at page 10 of his bundle of documents is dated 2nd November, 2010 and has no serial number.
38. DW1 was referred to page 23 of the 3rd Defendant's bundle and testified that it was a title in favour of Shabir Mohamed Hasi. He noted that the said title was similar to the one at page 17 of his bundle, however the names differed. DW1 was referred to the spousal consent and testified that the deponent, Salma Yussuf never stated who she was to Shabir Mohamed Hasi and neither was a marriage certificate attached. DW1 conceded that while he bought the land from a Haji, the name was differed in the various documents between Hasi, Hadi and Haji. DW1 testified that the funds for the transfer from Shabir were sent to Aminga Advocate from the loan account of Ahead Architect Limited.
 39. On 22nd February, 2024 DW1 was recalled for further cross-examination and he testified that he was not present when the transfer at page 25 and the agreement at page 20 were signed. DW1 conceded that he had no proof of any payment to the Vendor. He testified that he and his wife Christine never appeared in person before A. Mandi Advocate and that the transfer was not signed in his presence. DW1 told this court that he has never met the said Andrew Mandi Advocate and that he does not know him. He told this court that he was unaware that 14th October, 2015 was a Sunday.
 40. DW1 was cross-examined by Mr. Njoroge and he testified that he had no affidavit clarifying that Haji, Hasi and Hadi is the same person. He conceded that he had no record to show the court that the money was transferred to the Vendor. DW1 also had no record to show that Shabir paid stamp duty when he purchased the land or that he paid rates for the 3 years he had the land. DW1 also had no record showing that the 1st Defendant paid rates since he purchased the property. DW1 contended that the amount due and owing to Sidian Bank is negligible compared to the full loan amount. He insisted that he is a bona fide purchaser.
 41. DW1 admitted that he never met Shabir since he found out about the land from his agents and he only dealt with his lawyers. He was not aware that Shabir was facing criminal charges in court. DW1 relied on the stamp on the transfer document as proof that stamp duty was paid. DW1 further testified that Shabir did not live on the land and did not accompany him when he went to visit the land. DW1 testified that he is the proprietor of Ahead Architects who was the borrower in the charge. DW1 could not confirm if Shabir Mohamed Hasi paid capital gains tax.
 42. On cross-examination by Mr. Otieno DW1 testified that they were represented by a lawyer in the transaction, and that he also had an agent, one Abdalla Shehi, who introduced them to Mr. Aminga. He stated that he was satisfied with the due diligence carried out by his advocate. He confirmed that the transfer was attested by A.O. Aminga on the part of the Vendor, and for the purchasers, it was attested to by Andrew J. Mandi.
 43. On re-examination, DW1 testified that he and the 1st Defendant were neither witnesses nor the complainant in the criminal case. As to the varying names of the vendor, DW1 testified that he had produced before court an ID card for Shabir Mohamed Hasi. On rates, he testified that there is nothing to show that the Plaintiff herein has also been paying rates. DW1 testified that Shabir was not called to court to testify that he never received the money. On the issue of appearing before Mandi Advocate, DW1 testified that he signed the transfers and sent the documents to Aminga Advocate. On payment of the purchase price to the Vendor, he testified that Advocate Aminga in his response confirmed that he received the purchase price and disbursed it.

The 2nd Defendant's Case

44. The 2nd Defendant called Delida Nduku Kisinga to testify on its behalf as DW2. The witness adopted her witness statement dated 10th February, 2022 as her evidence-in-chief.



45. DW2 was cross-examined by Mr. Njoroge and she testified that she worked as a manager for Sidian Bank. With regards to the charge, she testified that the customer applied for KShs. 8 Million, but upon valuation they only disbursed KShs. 6 Million. She testified that the bank conducted a search as shown at page 68 of the bundle of documents, but she admitted that the said document had no search number. She testified that their advocate asked for a spousal consent and it was provided. She affirmed that the transfer at page 25 of the 1st and 2nd Defendant's bundle was the one presented to the bank.
46. DW2 acknowledged that there were variations in the names of the Vendor appearing in the transfer as Haji and Hasi on the title deed. DW2 testified that the borrower and the transferee were the same as was confirmed by a CR12. She confirmed that the letter dated 30th October, 2020 originated from the 2nd Defendant and states that as at that date, the unpaid loan balance was KShs. 8,900.98/-. She however confirmed that the loan had been paid although she had no bank statement to prove this. DW2 conceded that there was no application for LCB Consent to charge or a corresponding letter of consent to charge, and neither was there a consent to transfer.
47. DW2 was also cross-examined by Mr. Otieno and she testified that they were represented by an advocate and due diligence was properly done, as well as background checks on the 1st Defendant. DW2 confirmed that all the documents pertaining to the transaction were handed over to their advocate.
48. Cross-examined by Mr. Makuto she testified that before the bank advances a facility, the borrower must provide an application or resolution to borrow, bank statements, ID for the borrower, certificate of incorporation, Memorandum and Articles of Association, KRA PIN, CR12. DW2 conceded that she had not produced any of these documents before court. She explained that they relied on the searches conducted by their lawyer to confirm ownership of the property. She also had no sale agreement showing that the 1st Defendant bought the property or a statement showing that it received money from the bank. She confirmed however, that the purchasers were their customers. DW2 stated that the Banks Advocates registered the transfer and charge simultaneously. She further testified that by the time the transfer was presented to the Bank's Advocates it was already attested.
49. On re-examination, DW2 testified that the bank's advocates informed her when they received the transfer, but she could not establish when this was done. DW2 could not tell if they received the transfer attested. She also testified that she had not been provided with anything to show that the bank did not provide the money for the purchase price.

The 2nd Defendant Case in the Counterclaim

50. The 2nd Defendant in the Counterclaim, Mr. Abdulrahman O. Aminga testified as DW3. He adopted his witness statement dated 18th April, 2023 as his evidence-in-chief and relied on it entirely. DW3 produced the documents in his list of documents dated 18th April, 2023 as DW3 EXb 1-4.
51. DW3 was cross-examined by Mr. Obok and he admitted that he prepared the agreement between Shabir, Vincent and Christine. He testified that he met the 1st Defendant's directors the same month and year of the agreement after they were introduced to him by Abdalla Shehi. DW3 testified that Shabir Mohamed Hasi delivered to his office the original title that was in his name, and he did a search to ascertain that the title was genuine. DW3 testified that the spousal consent was also prepared at his office. DW3 further testified that throughout the transaction he had the original title from the Vendor and that he is the one who sent it to the bank's advocates alongside all the completion documents. He told this court that he could not tell what the purchasers' advocates did with the completion documents, but he thought that they must have registered the transfer.



52. DW3 testified that he is the one who drew the transfer after ascertaining that Shabir owned the land. That he forwarded it to the bank, but he could not tell how the stamp of Mandi Advocate got on the transfer. DW3 testified that it is not possible for the directors to have signed before he did since when he forwarded the documents to the bank, they were blank. He however did not have a copy of the blank documents he claimed to have forwarded. DW3 testified that the firm of Mandi J.O. Advocate had a branch office in Kwale which was operated by a clerk in 2013. He could not confirm whether the said office was still operational in 2015.
53. DW3 testified that he first saw the Plaintiff's title when he was served. DW3 confirmed that he received the purchase price, which was paid partly in cash and partly through the bank. He testified that he noted the variations in the vendor's names but stated that he was guided by his identification documents. DW3 testified that at the time he forwarded the completion documents on 30th October, 2015 stamp duty had not been paid. He clarified that he never dealt with Shabir before, and that he had never acted for the Plaintiff.
54. DW3 was then cross-examined by Mr. Makuto and he testified that he is not the one who registered the transfer. That he was aware the police investigated the matter and he recorded a statement thereon. He confirmed having attested Shabir's signature on the transfer, but said that he was not present when Vincent and Christine signed the agreement. He asserted that the purchase price was paid in full, but he could not be certain how much he disbursed to the vendor as he also had to pay agents and his fees. He stated that he neither procured the Purchaser's signatures nor their attestation by counsel.
55. DW3 was further cross-examined by Mr. Ruwa and he testified that he drew both the agreement for sale and the transfer, as well as attested the Vendor's signature. He insisted that he did not attest the Purchasers' signature. He noted that in the charge, the bank signed for the borrower which is irregular. Further, that the particulars of the attesting advocate was not indicated. DW3 admitted that the absence of a serial number on a title is questionable.
56. On re-examination, DW3 testified that he had no experience as a document examiner and he did not see anything to question the title. He added that he did due diligence and did not notice any irregularity. He further testified that the Purchasers were also represented and their advocates were expected to conduct their own due diligence. DW3 testified that the attestation of the purchasers' signature was the duty of the purchasers through their advocates. This marked the close of the case of the 2nd Defendants case in the counter claim.

The 3rd Defendant's Case

57. Susan Mueni, a Land Registrar in Kwale testified on oath on behalf of the 3rd Defendant as DW3. She adopted her witness statement dated 3rd June, 2024. She produced the Parcel File for the suit property containing a cancelled title in the name of Paul Kibugi Muite dated 20/11/1989. She testified that the file also contained an irrevocable P/A from Muite Paul to NBK Ltd, Discharge of Charge, Charge to NBK, transfer dated 27/11/2013 from the Plaintiff to Shabir Mohamed Haji, surrender of the title and transfer from Shabir to the 1st Defendant.
58. The Land Registrar testified that she also had the original title surrendered for cancellation, which did not have a serial number, whereas the green card shows the title issued on 2/09/2010 bore serial no. 226228. DW3 confirmed that there was no LCB Consent for transfer to Shabir in the parcel file. DW3 produced a letter dated 15/2/2021 from the DCI and the summons to attend court on 7/01/2023. DW3 told this court that the title deed is one of the completion documents, and that in the absence of its surrender for cancellation, the transfer cannot be registered. She was of the opinion that the transfer ought to have been rejected and the reasons for the rejection explained on the booking form.



59. The witness told the court that the title which was surrendered for cancellation is not the title that was issued by their office. She concluded therefore that Shabir did not get good title. DW3 produced the documents in her Bundle of Documents dated 11/5/2022 as DW3 EXb 1-3. DW3 produced the Bond to attend Court on 7/01/2023 as DW3 EXb 4. She also produced the letter dated 15/2/2021 as DW3 EXb 5.
60. On cross-examination by Mr. Obok, DW3 testified that the documents in the parcel file are put by officers at the lands office and not outsiders, although she clarified that any of the officers can do so. DW3 testified that cancellation of a title is only done by a Land Registrar and it means that ownership is moving to another person. DW3 said that the cancelled title was certified by a Land Registrar and is available in the parcel file, but it does not have a serial number. DW3 explained that the serial no. is necessary to authenticate the title upon surrender as it is compared with the serial number in the register/green card and they must match.
61. DW3 told the court that the year appearing on the GPK number at the last page of the title is the year the title was printed. DW3 explained that initially, some titles were issued without serial numbers, and for these the green card would equally not bear a serial number, however, this is not the case for the current title period. She testified that they gave a certified copy of the title in the name of Shabir because it is what is in their records and was used by the Registrar to transfer the title. DW3 testified that on the face of Shabir's cancelled title, an innocent purchaser would not see its legality. DW3 contended that the lack of a search number was an omission as some times, it is not indicated.
62. DW3 was recalled for further cross-examination by Mr. Ruwa on 10th December, 2024 and she testified that at the top of transfer, the Land Registry ought to have filled in the booking information, but the same was blank. She explained that for a transfer that was registered, it should not have had any blanks. She confirmed that the original title given to this court by the Plaintiff bears the Serial No. 226228, which is the same as the serial number on the green card. She confirmed that this was the title that was used on transfer to the Plaintiff. She also testified that there was no attendant LCB Consent attached to the Application for LCB Consent. She concluded by telling this court that according to him, the Plaintiff did not transfer his land to Shabir.
63. DW3 was cross-examined and she testified that she had the original of the transfer from Shabir to the 1st Defendant, and the same did not have a company seal. She testified that the transfer was registered on 24th November, 2015.
64. The AG also called Andrew J.O. Mandi an advocate of the High Court of Kenya, who testified under oath as DW4. He adopted his witness statement dated 4th June, 2024 as his testimony and relied on his statement recorded with the police as his evidence in this matter. He denied the signature appearing on the transfer at page 50/51, and explained that he had never met the people appearing on the photographs thereon. He also denied participating in the transaction, and testified that on 16th October, 2015 he was attending a CPD programme in Nairobi, thus he could not have met the people to witness as alleged. He opined that the transfer document is forged. DW4 produced the witness statement dated 4/06/2024 and the statement dated 23/2/2021 and specimen signatures and stamps as DW4 EXb 1-3.
65. During cross-examination by Mr. Obok, DW4 testified that the stamp in the transfer was not his as he had never owned an oval stamp. In essence, DW4 testified that he has known Mr. Aminga for almost 20 years having met him once around the year 2012. That however, he has never handled a land matter, or any other matter at that, with Mr. Aminga. He testified that he only saw the transfer between Shabir and the Directors of 1st Defendant when the CID took it to his office on 23/02/2021.



66. DW4 testified that the transfer shown to him by the Police was dated 4th October, 2015 which was a Sunday and he does not work on Sundays. He said that he was never shown the one dated 14th October, 2015 but, in any event, that he was in Nairobi at the time for a CLE. That he never reported the unlawful use of his stamp to the police or the LSK. He had no idea who had forged his stamp. He testified that he submitted his specimen signature to the police for verification, and though he had not seen any report on the same, the signature on the transfer was not his.
67. On cross-examination by Mr. Ruwa, DW4 reiterated that he was in Nairobi on 14th October, 2015. He insisted that he does not know the Vendors in the transfer he is alleged to have witnessed. DW4 testified that he had never operated an office in Kwale. He reiterated that the signature on the transfer is not his signature.
68. DW4 was then cross-examined by Mr. Otieno and he testified that he was told by the Police that there was a complaint, and he told them that the signature did not belong to him. DW4 testified that there was no need for him to call Mr. Aminga as the matter was already in court. He testified that all his stamps are distinct because they have dates, while the one in the transfer does not have a date.
69. On re-examination, DW4 asserted that he had not signed or witnessed the transfer as alleged. He explained that Mr. Aminga had never written him a protest letter on account of his denial of the signature on the transfer. He testified that after the investigations, he was not charged in any court of law.
70. DW5 was one Inspector Titus Kemoi, a police officer no. 241358 attached to the DCI Office in Kwale undertaking general investigations. He had with him the investigation file in respect of the criminal aspect of this matter which he produced as DW5 EXb1. He testified that Shabir Mohamed Haji was charged under this investigation but the matter was withdrawn under Section 87(a) of the CPC on 27th June, 2023. He testified that they recorded witness statements from the parties involved, as well as collected specimen signatures and stamp impressions from Andrew Mandi Advocate.
71. DW5 testified that the accused was arrested and charged with the offence of forgery and making a document with intent to defraud in case file number E323 of 2021 and witnesses were bonded to attend court. That some of the exhibits collected was a sale agreement between Shabir and Vincent Ochieng dated 27/4/2015, a certified copy of the title deed in the name of Shabir Mohamed Haji, a document examiner's report, although the same was not included in the AG's List, and identification reports.
72. DW5 was cross-examined by Mr. Obok and he testified that he could not comment on the withdrawal of the criminal case as he came in after the fact, and the Investigating Officer involved has since retired. He confirmed that the complainant in the case was the Plaintiff herein. To DW5's knowledge, the statement of the accused was not taken during investigations. He could not confirm whether the accused had testified at the point of withdrawal of the case. He testified that in the absence of a determination that the accused committed fraud, then the issue of fraud is no longer there. DW5 testified that the Plaintiff never wrote to them to complain about the withdrawal of the case.
73. When he was cross-examined by Mr. Ruwa, DW5 testified that the complaint that led to the criminal suit was made by Mohamed Ali Salim, a director of the Plaintiff. He confirmed that in his witness statement, Moses Waweru of Omondi Waweru denied witnessing the document. He testified that the Land Registrar in his witness statement to the police also denied signing.
74. DW5 was then cross-examined by Mr. Otieno and he testified that the person of interest in the investigation was Shabir Mohamed alias Haji, which is a conclusion that was arrived from the evidence, witness statements and documents from the Land Registrar. He testified that his records did not



contain any summons to Mr. Aminga as a witness, and neither could he tell why he was not a person of interest. DW5 was unaware what document is being contested in this suit. He was also unaware of the reason for withdrawal of the case.

75. On re-examination, DW5 testified that the DPP is the one with power to prosecute. He affirmed that investigations were carried out based on a complaint and charges preferred against Mohamed Haji, and he had produced the investigation file as his evidence in court.

Submissions

76. After hearing the court directed the parties to file their final written submissions. The Plaintiff complied and filed its written submissions dated 14th January, 2025. The 1st and 2nd Defendant filed joint submissions dated 3rd April, 2025 on the main suit as well as the 1st Defendant's on the Counterclaim. The 2nd Defendant then filed separate submissions in support of the counterclaim dated 4th April, 2025.

Analysis and Determination

77. Having carefully considered the pleadings, testimonies and submissions herein, the issues that arise for determination are;
- i. Whether Shabir Mohamed Haji acquired a valid title to the suit property
 - ii. Whether the 1st Defendant acquired a valid title to the suit property
 - iii. Whether the 1st Defendant is an innocent purchaser for value without notice
 - iv. Whether the prayers sought in the Plaint should issue
 - v. Whether the 1st and 2nd Defendants' counterclaim has merit
 - vi. Who shall bear the costs of this suit and the counterclaim

Whether Shabir Mohamed Haji acquired a valid title to the suit property

78. The contest in this matter is with regards to the ownership of the suit property herein. The Plaintiff and 1st Defendant each lay a claim on the suit property Kwale/Funzi Island/81 and each presented to this court Title Deed registered pursuant to the provisions of the Registered Land Act (repealed). It is trite that one parcel of land cannot have two titles.

79. Therefore, it is necessary that the court first determine who is the real owner of the suit property herein. In determining this I must be alive to the evidentiary burden each party must discharge to substantiate their claim. This position is provided under the provisions of Sections 107, 109 and 112 of the Evidence Act.

80. Section 107 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."

81. Sections 109 and 112 of the same Act read as follows: "



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.”
82. The courts in Kenya have also elaborated on the standard of proof in civil liability claims. The Court of Appeal in *Mumbi M’Nabea vs David M. Wachira* [2016] eKLR posited thus:
- “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.”
83. Since claims of fraud have been raised by the parties against the other, it is important to note that the burden of proof is higher than that required in civil cases, that of proof on a balance of probabilities; and lower than that required in criminal cases being beyond reasonable doubt. This because fraud is a quasi-criminal charge proved on a standard though below beyond reasonable double doubt, but above balance of probabilities. This is supported by the decision in *Vijay Morjaria vs Nansingh Madhusingh Darbar & Another* [2000] eKLR and *Moses Parantai & Peris Wanjiku Mukuru suing as the legal representatives of the estate of Sospeter Mukuru Mbeere (deceased) vs Stephen Njoroge Macharia* [2020] eKLR, (Court of Appeal). Fraud cannot be inferred.
84. As regards the ownership of land Section 26 of the *Land Registration Act* provides as follows: -
26. Certificate of title to be held as conclusive evidence of proprietorship
- (1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—
- (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
- (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.
- (2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original.



85. There is no doubt that the suit property initially belonged to Mr. Paul Kibugi Muite. According to PW1 the same was sold and transferred to the Plaintiff herein by National Bank of Kenya (NBK) in exercise of its statutory power of sale. The Plaintiff was issued with a title dated 2nd September, 2010 which PW1 produced as part of his evidence. The Plaintiff's claim is thus premised on this title, pursuant to which, it claims to be the lawful owner of the suit property. This court has seen the original of this title and confirmed that it bears the name of the Plaintiff, and serial number 226228. The transfer to the Plaintiff is captured at entry no. 5 of the green card produced before this court, and the green card also indicates that the title issued thereunder was serial no. 226228. Entry No. 3 of the same further shows an Irrevocable Power of Attorney was registered in favor of NBK on 15/07/2004 and which was produced in evidence.
86. From the same green card, the land is alleged to have been transferred by the Plaintiff to one Shabir Mohamed Haji, who then sold it to Funzi Island Resort, the 1st Defendant herein. The latest entry on the green card is the transfer made on 24th November, 2015 in favour of the 1st Defendant, pursuant to which, the 1st Defendant was issued with a title deed on the same date.
87. However, the Plaintiff herein denies ever selling the land to any third party, the 1st Defendant included. The Plaintiff's case is that the 1st Defendant is unknown to it and claims that the registration of the 1st Defendant was procured through fraud. The 1st Defendant, however claims to have been an innocent purchaser for value and without notice of any defects in the title held by the said Shabir Mohamed Hasi.
88. The 1st Defendant's title is therefore under challenge in this suit but of importance is that the court is now faced with two title deeds. Where parties claim to have titles over one parcel of land, the court is mandated to conduct an investigation into the root of the titles to establish the real ownership and which one of them is genuine and ought to be upheld.
89. In *Munyu Maina vs Hiram Gathiha Maina* (2013) KECA 94 (KLR), the Court of Appeal explained as follows: -
- “We state that when a registered proprietor's root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which need not be noted on the register.”
90. *Hubert L. Martin & 2 Others vs Margaret J. Kamar & 5 Others* [2016] eKLR, the Court of Appeal noted thus:
- “A court when faced with a case of two or more titles over the same land has to make an investigation so that it can be discovered which of the two titles should be upheld. This investigation must start at the root of the title and follow all processes and procedures that brought forth the two titles at hand. It follows that the title that is to be upheld is that which conformed to procedure and can properly trace its root without a break in the chain. The parties to such litigation must always bear in mind that their title is under scrutiny and they need to demonstrate how they got their title starting with its root. No party should take it for granted that simply because they have a title deed or Certificate of Lease, then they have a right over the property. The other party also has a similar document and there is therefore no



advantage in hinging one's case solely on the title document that they hold. Every party must show that their title has a good foundation and passed properly to the current title holder.”

91. As already noted, the suit land was allegedly transferred by the Plaintiff to Shabir Mohamed Haji vide transfer dated 27th November, 2013. The 1st Defendant has contested the Plaintiff's ownership of the suit property, claiming that the same ended when its title was cancelled and the land transferred. But a number of concerns and inconsistencies where this purported transfer is concerned has captured the courts attention.
92. The court notes in the said transfer, the signatures of both the Directors of the Plaintiff as Transferor and the Transferee were witnessed by Omondi Waweru & Co. Advocates. However, Inspector Titus Kemoi who testified in these proceedings produced the investigation file relating to the suit property. In that file is a witness statement dated 6th November, 2021 by Moses Waweru who stated that the transfer document was totally forged. He stated that he did not witness the transfer between the parties and that the signature and stamp are not his. He also pointed out that attestation is normally done individually by an advocate, and not in the name of the company/firm as appears in the transfer to Shabir Mohamed Hasi. I would agree with the later argument even if such statement were not available on record.
93. Additionally, the original title issued to the Plaintiff dated 2nd September, 2010 was presented before this court, and it clearly bears serial number 226228, which number also appears on the corresponding entry of the green card. Ms. Susan Mueni the land registrar testified and told this court that one of the completion documents submitted with a transfer is a title deed, which is surrendered for cancellation to pave way for the registration of the transfer. This court also heard from the Land Registrar that if the original title is not surrendered for cancellation, then the transfer ought not be registered which position I respectfully agree with.
94. On the issue of serial number, Ms Mueni explained that it is used to verify whether the title deed surrendered back to the Land Registrar is genuine. To verify and authenticate the title surrendered, the serial number on the title has to match with the serial number indicated on the green card/register. However, the title that was surrendered during the transfer to Shabir Mohamed during the purported transfer bore no serial number. In his testimony, DW1 conceded that the one produced at page 10 of his bundle of documents is dated 2nd November, 2010 but has no serial number. To this, Ms Mueni explained that the title allegedly surrendered as an original title for purposes of cancellation was not the genuine title issued to the Plaintiff.
95. The facts speak for themselves on this issue, and I have no reason to disbelieve the land registrars testimony that the title surrendered for cancellation in favour of the transfer to the 1st Defendant was not the title issued by the Land Registry to the Plaintiff and which title I have already alluded I saw the original. The said surrendered title could not, for that reason, be a genuine title. DW1 in his testimony also conceded that the title issued to the Plaintiff bearing serial no. 226228 was not cancelled. Evidently therefore, Ms. Mueni is right in her conclusion that the Plaintiff never transferred its land to Shabir Mohamed Haji.
96. To further cast doubt on the alleged transfer to Shabir Mohamed Haji, the Land Registrar testified that the GPK number at the bottom of the last page of the title indicates the year in which the title document was printed at the Government Printers. With regards to the title in the name of the Plaintiff that was surrendered for cancellation in favour of the transfer to Shabir Mohamed, the year indicated thereon is 2007. Going by the Land Registrars testimony, this cancelled title issued in favour of the Plaintiff was printed in the year 2007. Notably, the original title held by the Plaintiff is dated 2nd September, 2010.



97. For me it is impossible to have had the title to the Plaintiff printed in the year 2007 because by then, the land still belonged to the previous owner, Paul Kibugi Muite, and had not yet been sold to the Plaintiff or discharged by the NBK for that matter. In addition, the transfer instrument that was made in favour of the Plaintiff is dated 20th August, 2010 and was registered on 2nd September, 2010. The title cannot have been printed before the land was purchased by the Plaintiff and/or the transfer was even drafted and signed by the Bank. This adds strength to my conviction that the title surrendered for cancellation and registration of the transfer in favour of Shabir Mohamed Hasi alias Haji was a forged title.
98. Moreover, the 1st and 2nd Defendants at page 17 of their bundle of documents produced a copy of the title deed dated 27th November, 2013 which bears the name of Shabir Mohamed Hasi. This is the same document purported to have been produced by the 3rd Defendant in its list of documents dated 11th May, 2022. Evidently, the two documents bear the same parcel number, that is Kwale/Funzi Island/81 measuring 8.0 Ha. both were issued on and/or are dated 27th November, 2013 and are purported to belong to one person. Essentially, the two documents are supposed to be copies of the same document, which is the title deed in favour of Shabir Mohamed, the Vendor in the transaction.
99. However, the name appearing in the copy produced by the 3rd Defendant is Shabir Mohamed Haji and not Hasi as the one produced by the 1st and 2nd Defendant. I do not see how it is possible, that the same document that was given to the 1st and 2nd Defendant during the sale and charge, and the original thereto surrendered for cancellation would bear different names.
100. In addition, the court was not led to any LCB Consent approving the sale/transfer from the Plaintiff to the said Shabir Mohamed Hasi, which is contrary to the laid down laws.
101. It is evident that the process that resulted in the acquisition of the land by Shabir Mohamed Hasi was shrouded in forgery, fraud and illegalities. The advocate attesting the alleged transfer has denied ever doing so. The title surrendered for cancellation to pave way to the acquisition of the land by Shabir Mohamed Hasi was clearly not a genuine title. I am convinced that the Plaintiff did not sell its land to Shabir Mohamed Hasi, and therefore Shabir could not acquire a good title from the transfer registered in his favour and the title issued pursuant thereto.
102. In trying to convince this court that Shabir's title was valid, the 1st & 2nd Defendants in their submissions cited the case of *Tolksdorf vs Mwangi & 3 others (Environment & Land Case 5 of 2022) (2025) KEELC 848 (KLR)*, where it was held that:

“ 106. But let me turn to the evidence of the custodian of all land documents in Kenya, the Land Registrar sued in these proceedings as the 3rd Defendant.

107. DW3 produced the documents in the 3rd Defendants list of documents dated 27/4/23 DW3 EX 1-12. DW3 Ex 1 was Entries in the Green card. This green card is for Kwale/Galu/Kinondo/1203. My review of the same shows six entries. There was no entry dated 8/12/11 herein for the Plaintiffs alleged proprietorship. The Land Registrar confirmed Carola has never held a title to the suit property. On being shown Corola's title dated 8/12/2011 by the 2nd Defendant the witness reiterated it was not part of the Land Registrars' records. On the official search dated 13/02/2013 produced by the Plaintiff the witness stated though they use the register to indicate the parcel status the information given in the search could not have originated from the parcel file. In any event PW1 did not produce a green card that contained her entries rebut this evidence and or in proof of her allegations that the same were fraudulently



removed from the parcel file. DW3 maintained that based on the documents in the parcel file Carola has no legal claim as far as registration was concerned which I respectfully agree with.

108. Moreover from the proviso of section 26 aforementioned, for Carolas title to be recognised it must feature in the register as registered on transfer since she is not the original registered owner for it to be considered as prima facie evidence of title. There is clear demonstration that there is no such registration in the Green Card for the suit parcel.”

103. I would however distinguish the above authority from the instant case, since clearly, the Plaintiff’s title in the said authority never featured in the green card. In the present case however, the Plaintiff’s name was on the green card but was removed pursuant to the invalid transfer registered in favour of Shabir Mohamed. Equally, the Plaintiff’s title issued to him by the Land Registrar was in the parcel file, save that it was cancelled owing to the impugned transfer to Shabir Mohamed.

Whether the transfer from Shabir to 1st Defendant was lawful and resulted in a valid title to the suit property.

104. The next step is to consider whether the transfer and eventual registration of the suit property in favour of the 1st Defendant was lawful and resulted in a valid title. The 1st Defendant claims to have purchased the suit land from Shabir Mohamed Haji. The said Shabir Mohamed Haji vide an instrument of transfer dated 30th October, 2015 transferred the suit property to the 1st Defendant herein. The main question for determination under this issue is whether the transfer from Shabir Mohamed could confer on the 1st Defendant a valid title to the suit property.

105. This court has already found that the title that was held by Shabir Mohamed Haji alias Hasi was not a genuine title. That being the case, it did not confer on the holder any genuine interests over the suit property. The law is clear that a party cannot sell what they do not have, and that no one can give a better title than he himself possesses.

106. The above embraces the nemo dat principle which was explained in *St Thomas Academy Limited vs Githumu Kangema Limited and Others* (2024) KEELC 7025 (KLR) as follows: -

“64. The nemo dat principle means one cannot give what he does not have. This principle is intended to protect the title of the true owner. The rationale behind this principle is that whoever owns the legal title to property holds the title thereto until he or she decides to transfer it to someone else. Accordingly, an unauthorized transfer of the title by any person other than the owner generally has no legal effect, which means the owner continues to hold the title to the property while the person who received the invalid title owns nothing.”

107. Similarly, in *Teresia Kamene King’oo vs Harun Edward Mwangi* (2019) KECA 734 (KLR), the Court of Appeal enunciated that: -

“36. ... We hasten to add that any proprietary interest that Mr. Sang acquired, shall acquire or shall not acquire over the suit property, depends on whether the appellant had any legal interest and entitlement to the suit property capable of being transferred to Mr. Sang. A purchaser can only acquire a good title as that which inheres or is vested upon the vendor. This is represented by the latin



maxim nemo dat quod non habet, literally meaning ‘no one gives what they don't have’.”

108. Since Shabir Mohamed's title was defective and forged, it conferred no legal interests on the land even on the holder thereof. As a consequence, Shabir did not own any interest in the suit land capable of being transferred to the 1st Defendant vide sale or transfer. The transfer to the 1st Defendant herein therefore did not vest in it any interest on the suit property herein.
109. This court has further noted various defects in the transfer instrument between Shabir Mohamed and the 1st Defendant. A look at the said transfer shows that it was drawn by the firm of A.O. Aminga & Co. Advocates. The Advocate Abraham Aminga testified in this matter and confirmed having drawn the instrument. He however claimed that it was blank when he sent it to the purchaser's advocates. He therefore could not explain how Mr. Andrew Mandi's stamp and signature ended up on the transfer.
110. Mr. Andrew Mandi also testified in these proceedings and denied ever signing or witnessing the signatures as alleged. He denied the stamp stating that he has never owned an oval stamp, and that all his stamps bear a date at the middle, unlike the stamp used in the transfer. He was adamant that the signature on the transfer as well as the stamp do not belong to him.
111. It is also on record that during further cross-examination, DW1 who is a director of the 1st Defendant, testified that he was not present when the transfer from Shabir to the 1st Defendant and the agreement dated 27th April, 2015 were signed. DW1 admitted that they never appeared before Mandi Advocate to sign the transfers. During re-examination, DW1 told this court that he only signed the transfers and sent them to Aminga Advocate, indirectly admitting once more that they were never signed before Mandi Advocate or attested by him as alleged. The transfer from Shabir to the 1st Defendant was therefore defective and thus invalid.
112. Additionally, the Land Registrar testified that the parcel file presented did not contain an LCB Consent for the transfer to the 1st Defendant which was another illegality or irregularity.
113. Owing to the above reasons, the transfer from Shabir Mohamed to the Plaintiff was defective and unlawful. At the same time, the said transfer could not confer any interests on the land to the 1st Defendant since the transferor, Shabir Mohamed, had no title capable of being transferred to the 1st Defendant.

Whether the 1st Defendant is an innocent purchaser for value without notice

114. At this juncture, I must interrogate whether the plea of innocent purchaser for value without notice would be available to the 1st defendant. The doctrine of bona fide purchaser is applied under Kenyan law for the protection of property transactions, and is to the effect that a person who takes in good faith and for value without notice should get a good title.
115. The Black's law Dictionary 10th Edition defines a bona fide purchaser as follows: -

One who buys something for value without notice of another's claim to the property and without actual or constructive notice of any defects in or infirmities, claims or equities against the seller's title; one who has in good faith paid valuable consideration for property without notice of prior adverse claims.



116. The criteria for one to be considered a bona fide purchaser were initially set down in *Katende vs Haridar & Company Limited* (2008) 2 E.A.173 where the Ugandan Court of Appeal stated thus:

“For the purposes of this appeal, it suffices to describe a bona fide purchaser as a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly. For a purchaser to successfully rely on the bona fide doctrine, ... (he) must prove that:

- (a) he holds a certificate of title;
- (b) he purchased the property in good faith;
- (c) he had no knowledge of the fraud;
- (d) he purchased for valuable consideration;
- (e) the vendors had apparent valid title;
- (f) he purchased without notice of any fraud;(g) he was not party to any fraud.”

117. The above position was adopted by the Court of Appeal in the case of *Arthi Highway Developers Limited vs West End Butchery Limited & 6 others* (2015) eKLR and *Lawrence P. Mukiri Mungai, Attorney of Francis Muroki Mwaura v. Attorney General & 4 Others*, Nairobi Civil Appeal No. 146 of 2014

118. The Supreme Court of Kenya in *Dina Management Limited vs. County Government of Mombasa & 5 others* [2023] KESC 30 (KLR) had this to say:

“To establish whether the appellant is a bona fide purchaser for value therefore, we must first go to the root of the title, right from the first allotment...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.”

119. Applying the above case law the element of purchase is important. The 1st Defendant claims to have bought the land from the said Shabir Mohamed. The purchase price is said to have been paid partly in cash and partly financed by the 2nd Defendant. However, there was no documentary evidence tendered as proof that any amount of money was paid, or ever made its way to the Vendor, Shabir Mohamed. The lack of proof that consideration was paid takes away the element of purchase from the transaction.

120. On the threshold for due diligence this court was told and confirmed that the Plaintiff's original title bears serial no. 226228. This serial number was duly indicated on the relevant entry of the green card when it was issued to the Plaintiff. The 1st Defendant has admitted that it never obtained a copy of the green card while conducting their due diligence. Had it done so, it would have noted the lack of a serial number on the title presented, and the defect therein. It is not enough to state that if the Land Registrar tells you that the title is fine there would be no reason to doubt.

121. Additionally, DW1 testified in cross examination that he never met the vendor who allegedly sold him the land but relied on agents. DW1 further testified that Shabir did not accompany him when he went to visit the land. Clearly this casts a dent on the quality of the alleged due diligence conducted by DW1 on behalf of the 1st defendant.



122. Furthermore, for one to invoke the plea they must prove that they obtained a valid title. In the case of *Dina Management Limited vs County Government of Mombasa* (Supra) the Supreme Court stated that, for a court to establish whether a party is a bona fide purchaser for value, the court must first establish the root of the title right from the first allotment. The Court stated that: -

“ 92. On the same issue, the Court of Appeal in *Samuel Kamere vs Lands Registrar, Kajiado Civil Appeal No 28 of 2005* (2015) eKLR, stated as follows:

“ ... in order to be considered a bona fide purchaser for value, they must prove; that they acquired a valid and legal title, secondly, they carried out the necessary due diligence to determine the lawful owner from whom they acquired a legitimate title and thirdly that they paid valuable consideration for the purchase of the suit property...”

93. As held by the Court of Appeal in *Munyu Maina vs Hiram Gathiha Maina Civil Appeal No 239 of 2009* (2013) eKLR, where the registered proprietor’s root title is under challenge, it is not enough to dangle the instrument of title as proof of ownership. It is the instrument that is in challenge and therefore the registered 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 encumbrance including interests which would not be noted in the register.

94. To establish whether the appellant is a bona fide purchaser for value therefore, we must first go to the root of the title, right from the first allotment, as this is the bone of contention in this matter.”

123. The Supreme Court, while making a finding that the Appellant therein ought to have been more cautious in undertaking due diligence, further held that: -

“ 110. 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. The first allocation having been irregularly obtained, HE Daniel Arap Moi had no valid legal interest which he could pass to *Bawazir & Co (1993) Ltd*, who in turn could pass to the appellant.

111. 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.”

124. The apex court’s decision is clear that there can be no protection offered to a purchaser with respect to a title whose root is defective or marred by illegality. This court has already found that the 1st Defendant has failed to prove the root of its title, and/or that *Shabir Mohamed* held a good and valid title that he could transfer to the 1st Defendant. Bound by the finding of the apex court of this land, the 1st Defendant cannot therefore benefit from the doctrine of bona fide purchaser.



Whether the prayers sought in the Plaint should issue

125. I will now determine if the reliefs sought should issue. The Plaintiff seeks various reliefs in its Plaint dated 18th November, 2020. The first prayer in the said Plaint is for a declaration that the Plaintiff is the lawfully registered absolute owner of Land Reference Number Kwale/Funzi Island/81. On this, the court has found that the transfer that resulted in the purported loss of the Plaintiff's title to Shabir Mohamed was not valid, and that it did not confer on the said Shabir Mohamed any interests in the land.
126. Consequently, the said Shabir Mohamed had no title or interests in the suit property capable of being transferred to the 1st Defendant. This means therefore, that the only valid title over the suit property is that held by the Plaintiff herein, and therefore, it is entitled to the declaration of ownership sought.
127. The Plaintiff also urges this court to issue an order directing the 3rd Defendant to cancel the green card entries reflecting the 1st Defendant as the registered owner of Land Reference No. Kwale/Funzi island/81.
128. Having affirmed the Plaintiff's proprietorship, the 1st Defendant's title is liable to be impeached as per Section 143 of the Registered *Land Act* (repealed) which provides as follows:
- “Subject to subsection (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.”
129. Section 80(1) of the *Land Registration Act* now provides thus:
- “(1) Subject to subsection (2), the Court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.
- (2) The register shall not be rectified to affect the title of a proprietor, unless the proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by any act, neglect or default.”
130. I have made a finding that the 1st Defendant could not have obtained any good or valid title from the said Shabir Mohamed over the suit land. As already stated, no ownership can be conferred through the title held by the 1st Defendant. It is only logical therefore that the entries reflecting the 1st Defendants' ownership must be removed to rectify the register to reflect the proper position. However, for this to happen, it is crucial that the entries reflecting the ownership of the said Shabir Mohamed Hasi must as well be cancelled so as to reflect the true ownership of the land.
131. The Plaintiff also seeks an order of permanent injunction against the 2nd Defendant selling or purporting to sell Land Reference Number Kwale/Funzi Island/81 in exercise of the charges remedies.
132. A permanent injunction is granted at the end of a suit, after the matter has been heard. In *Kenya Power & Lighting Company Limited vs Habib* (Civil Appeal 24 of 2016) (2018) KEHC 5027 (KLR), the court stated that: -
- “8. It is apparent from the pleadings that the Respondent was seeking a permanent injunction against disconnection of his electricity by the Appellant. A



permanent injunction which is also known as perpetual injunction is granted upon the hearing of the suit. It fully determines the rights of the parties before the court and is thus a decree of the court. The injunction is granted upon the merits of the case after evidence in support of and against the claim has been tendered. A permanent injunction perpetually restrains the commission of an act by the defendant in order for the rights of the plaintiff to be protected.

9. A permanent injunction is different from a temporary/interim injunction since a temporary injunction is only meant to be in force for a specified time or until the issuance of further orders from the court. Interim injunctions are normally meant to protect the subject matter of the suit as the court hears the parties.”

133. Having heard the parties herein, the court has found that the Plaintiff is still the legal and registered owner of the suit property. Being the registered owner of the suit property, the Plaintiff is no doubt entitled to protection of its interests from any future interference by the Defendants herein, and in particular the 2nd Defendant, by way of the permanent injunction sought. The Plaintiff is thus entitled to protection of his right to occupy the land to the exclusion of the 2nd Defendant by way of the permanent injunction sought in the Plaintiff.
134. The Plaintiff further sought general and punitive damages. It is not clear who exactly these damages are sought from. However, as far as the 1st Defendant is concerned, despite the 1st Defendant’s assertions that it is the one on the land, the Plaintiff was adamant it was in fact in possession and occupation of the suit land. It is therefore unclear how the Plaintiff would seek damages from the 1st Defendant since it claims to be on the land.
135. With regards to the 2nd Defendant, it was only approached as a financier for the transaction between the 1st Defendant and the said Shabir Mohamed. There has been no evidence that the 2nd Defendant partook in any mischief that resulted in the loss of title by the Plaintiff. For this reason, I do not see how the 2nd Defendant should be condemned to pay damages when it only allegedly advanced a loan to its client in good faith, and has confirmed that the loan has been repaid and it has no other pending connections to the suit land.
136. As a result, the prayer for general and punitive damages, not having been sufficiently proved, hereby fails.

Whether the 1st and 2nd Defendants’ counterclaim has merit

137. I turn now to the reliefs sought in the 1st Defendant’s Amended Defence and Counterclaim. I note that, the 1st Defendant seeks to be declared the rightful and lawfully registered owner of the suit property. The 1st Defendant also seeks cancellation of the Plaintiff’s original title issued on 2nd September, 2010 as well as a permanent injunction barring the Plaintiff interfering with its enjoyment of the suit land or disposing of the same.
138. From the findings in the above issues, it is evident that the Plaintiff has succeeded in this suit and demonstrated that it is entitled to the prayers in its Plaintiff. As a result, the aforementioned prayers on the 1st Defendant’s Counterclaim as against the Plaintiff must of necessity, fail.
139. The 1st Defendant also included two alternative prayers seeking indemnification and/or compensation by the 2nd and 3rd Defendants, jointly and severally, for the value of its interest in the suit property. This is pegged at KShs. 10,000,000/- which it claims is the purchase price of the suit land as at 24th



November, 2015 when title to the suit property was issued in the name of the 1st Defendant by the 3rd Defendant.

140. The provisions of Section 81 of the [Land registration Act](#) are on indemnity and stipulate that:-

81. Right to indemnity

- (1) Subject to the provisions of this Act and of any written law relating to the limitation of actions, any person suffering damage by reason of—
 - (a) any rectification of the register under this Act; or
 - (b) any error in a copy of or extract from the register or in a copy of or extract from any document or plan certified under this Act, shall be entitled to indemnity.
- (2) No indemnity shall be payable under this Act to any person who has caused or substantially contributed to the damage by fraud or negligence, or who derives title, otherwise than under a registered disposition made bona fide for valuable consideration, from a person who caused or substantially contributed to the damage.

141. The 1st Defendant/Plaintiff in the Counterclaim claims that it purchased the suit land for KShs. 10,000,000/-. It is this sum that the 1st Defendant now seeks as indemnification and/or compensation for loss of its interest in the suit land against the defendants in the counterclaim.

142. I have already pointed that the 2nd Defendant Bank only allegedly advanced a loan to its client in good faith. To me I find no reason to hold the Bank accountable on indemnity. They merely facilitated and disbursed money under the loan arrangements.

143. I note also, that at Section 81(2) of the [Land Registration Act](#), the law is clear that no indemnity shall be payable under the Act to any person “... who derives title, otherwise than under a registered disposition made bona fide for valuable consideration”. It has been repeated in this decision that the 1st Defendant’s title was derived from that of Shabir Mohamed Haji.

144. The purported transfer from the Plaintiff to Shabir Mohamed Haji was not made bona fide for valuable consideration since documentary proof was not submitted of actual receipt of the purchase price to Shabir. As a result, the 1st Defendant herein is not entitled to any indemnity/or compensation from the 3rd Defendant.

145. With regards to the firm of Abdulrahman O. Aminga t/a A.O. Aminga & Company however, the circumstances are different. The advocate himself testified in this case and admitted that he was paid the purchase price in full in his capacity as the Advocate for the Vendor in the transaction. That indeed the bulk of the purchase was arising from the loan was paid to his firm. He affirmed that part of the purchase price was also paid to him in cash. Being the Vendors Advocate, he ought to have been able to inform this court just how much money he paid to Shabir Mohamed as purchase price in the transaction. He also should have been able to produce evidence of such transfer of money either by bank transfer or if it was paid in cash, then a receipt showing that it was received by the Vendor.

146. It is not clear why Mr. Aminga did not call Shabir Mohamed to testify in court and confirm that he was paid the purchase price by his advocate. Moreover Mr. Aminga could not tell this court how much of the money he received was transmitted to the vendor. He also failed to produce evidence that he transmitted the money to his client, Shabir Mohamed, and neither did he call his client to court to testify.



147. Considering all the facts and evidence in its totality, it is clear that the alleged transaction between the 1st Defendant in this suit and Shabir Mohamed ended up in a fraudulent and illegal transfer of the suit property to a third party to the disadvantage and loss to the Plaintiff. In such a case, the 1st Defendant's recourse would ideally have been to pursue the Vendor for a refund of the purchase price in the transaction. There is however no documentary evidence that the vendors advocate transmitted the purchase price to the Vendor.
148. In Nelson Harun (Practicing Law as Nelson Harun & Company Advocates Vs Land Registrar Kajiado North District & Another and Perirose Limited Environment and Land Case Number 340 of 2017 (2024) KEELC 5906 (KLR) at Kajiado Justice Gacheru allowed Counterclaim against the firm of Nelson Harun Advocates for part of the purchase price paid to the firm following a fraudulent transaction. The court noted that. The Plaintiff did not specifically deny receipt of Kshs.42 million from the second defendant. He did not show how he spent the money.
149. I find the above decision persuasive and agree with it.
150. Having admitted to receiving the money and provided no proof that it ever left his hands, the trail with regards to the purchase price stops squarely at Mr. Amingas doorstep. Consequently, the prayer for indemnity as against the firm of Abdulrahman O. Aminga t/a A.O. Aminga & Company Advocates hereby succeeds.

Who shall bear the costs of this suit?

151. On the issue of costs, the general rule is that costs shall follow the event in accordance with the provisions of Section 27 of the [Civil Procedure Act](#) (Cap. 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. Any departure from this general rule can only be for good reasons as was explained by the Supreme Court of Kenya in *Jasbir Singh Rai & Others vs Tarlochan Rai & Others* [2014] eKLR, and may include instances where the matter was a public interest litigation among other justified reasons.
152. The court has not seen or been shown any cause why it should deny the victor the costs of the suit. Therefore, it is only just that this court exercises its discretion and award the Plaintiff the costs of this suit.
153. For those reasons, the Court finds that the Plaintiff has established its case on a balance of probabilities and proceeds to make the following determination:
 - a. A declaration be and is hereby made that the Plaintiff is the lawfully registered absolute owner of Land Reference Number Kwale/Funzi Island/81;
 - b. An order be and is hereby issued directing the 3rd Defendant to cancel the green card entries reflecting the 1st Defendant as the registered owner of Land Reference No. Kwale/Funzi Island/81
 - c. An order be and is hereby issued directing the 3rd Defendant to further cancel the green card entries made to Shabir Mohamed Haji.
 - d. An order of permanent injunction be and is hereby issued against the 2nd Defendant restraining it from selling or purporting to sell Land Reference Number Kwale/Funzi Island/81 in exercise of the charges remedies.
 - e. The 1st Defendant to bear the Costs of the suit.



- f. The Counterclaim succeeds against the 2nd Defendant therein in the following terms;
- I. An order hereby issues directed at the 2nd Defendant, to indemnify and pay the Plaintiff the KShs. 10,000,000 [Kenya Shillings Ten million only] being the purchase price of Land Reference Number Kwale/Funzi Island/81 as at 24th November, 2015 when title to the suit property was issued in the name of the Plaintiff by the 3rd Defendant.
 - II. Costs on the counterclaim shall be borne by the 2nd defendant in the counterclaim.
 - III. Interest on (f) (1) above from the date of this judgement.

JUDGEMENT DATED SIGNED AND DELIVERED THIS 6TH DAY OF FEBRUARY 2026

HON. LADY JUSTICE A.E DENA

JUDGE

6/02/2026

Judgement delivered virtually through Microsoft teams Video Conferencing Platform in the presence of:

Mr. Ruwa for the Plaintiffs

Mr. Obok for 1st and 2nd defendant

No appearance for the 3rd Defendant

Mr. Disii Court Assistant.

