

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELCL CASE NO. E139 OF 2023

LANGTON INVESTMENTS LIMITED.....

.....PLAINTIFF

-VERSUS-

MERON LIMITED1ST

DEFENDANT

THE CHIEF LAND REGISTRAR.....2ND

DEFENDANT

THE DIRECTOR OF LAND ADMINISTRATION.....3RD

DEFENDANT

JUDGMENT

Background.

1. This case was commenced by way of a plaint dated 31st October 2023, by the Plaintiff, Langton Investments Limited. The Plaintiff asserts that it was at all material times the registered owner of the property known as L.R. No. 24801 (hereinafter referred to as ‘the suit property’), measuring approximately 21.85 hectares and situated in Nairobi area.

2. The Plaintiff case is that sometimes in the year 2020, it discovered that its account in the Business Registration Service (BRS) Portal had been fraudulently interfered with by unknown people changing the Directors of the Company without its knowledge or consent. Vide a letter dated 3rd March 2020, the Plaintiff's company secretary wrote to BRS requesting for investigation and rectification of the details of the directors and shareholders which request was acted upon as confirmed by the search dated 16th April 2020.
3. In the year 2021, the Plaintiff's company secretary noted yet again another attempt to alter its company directors and shareholders and to charge the suit property. The Plaintiff then informed its advocates and instructed them to report the incident to the Director of Criminal Investigations (DCI). The advocates too prepared a caveat emptor notice to the public against dealing with fraudsters or 3rd parties purporting to sell the suit property, which was published in the Daily Nation Newspaper of 21st April 2021.
4. In spite of the caveat emptor, on 7th July 2023, one of the Plaintiff's director was informed by a neighbour that the suit property was being subdivided and offered for sale. The suit property had apparently been subdivided into six(6) new parcels. Eventually, the 1st Defendant discovered that the 1st

Defendant, Meron Limited, was the purported registered owner of the resultant six(6) subdivisions. The Plaintiff asserts that it has never transferred the suit property to the 1st Defendant or to any other person for that matter.

5. The Plaintiff further avers that the 1st Defendant is a trespasser on the suit property and therefore seeks a permanent injunction to restraining the 1st Defendant from dealing with or alienating the suit property and further prays for judgment against the Defendants for the following orders;

(a) A declaration that the Plaintiff is the registered owner of the property known as L.R. No. 28401 and the title of the property now vests in it.

(b) A declaration that the fraudulent subdivision of the suit property is illegal null and void.

(c) An order directed at the 2nd and 3rd Defendants to cancel any certificates of title that may have been issued on account of the fraudulent subdivision.

(d) A permanent injunction restraining the 1st Defendant whether by themselves, their members, beneficiaries, employees, servants and or agents and anyone, from entering, encroaching on, selling,

transferring, alienating, developing or whatsoever dealing with the property known as L.R. No. 28401.

(e) Damages for trespass.

(f) Costs of the suit.

Responses by the Defendants.

A. Response by the 1st Defendant.

6. The 1st Defendant's initial response to the Plaintiff's suit was vide the statement of defence dated 24th November 2023 through the law firm of Mutunga Justus & Associates Advocates. In the said statement of defence, the 1st Defendant asserted that it was the registered proprietor of all those parcels of land known as **Nairobi/Block 219/48, Nairobi/Block 219/49, Nairobi/Block 219/50, Nairobi/Block 219/51, Nairobi/Block 219/52 and Nairobi/Block 219/53** (all being resultant titles from the subdivision of the former land reference No. 28401 I.R. 152720).
7. The 1st Defendant further averred that prior to the subdivision of L.R. No. 28401, the Chief Land Registrar had on 14th July 2023, pursuant to a gazette notice No. 5664 of 5th May 2023 contained in Kenya Gazette Vol. CXXV – No. 103, issued a provisional certificate of title on account of loss of the original grant for I.R. 152720/1. The 1st Defendant pleaded that the 2nd

Defendant duly transferred the title to the suit property to it after being satisfied that it had lawfully acquired the same from the Plaintiff. According to the 1st Defendant, the register for land reference No. 28401 I.R. 152720 was closed following the subdivision and the new certificates of leases issued, all in the name of the 1st Defendant who allegedly then thereafter took possession and has since been enjoying quiet possession of the suit property.

8. Upon changing advocates, the 1st Defendant filed another statement of defence dated 14th June 2024 through its current lawyers, Echessa & Bwire Advocates LLP. In the course of the hearing, the 1st Defendant's advocate was categorical that the 1st Defendant's defence was the latter one dated 14th June 2024.
9. In the said statement of defence dated 14th June 2024, the 1st Defendant asserts that it had on 5th April 2023 concluded a joint venture agreement with the Plaintiff wherein it was agreed that the suit property was to be transferred to it, being the determined special purpose vehicle for purposes of the venture whose objective and intention was the development of the suit property. According to the 1st Defendant, it was to initially invest Kshs. 100 million to be applied to the process of resurvey and subdivision of the

suit property for purposes of the venture. It was also its responsibility to obtain all approvals necessary for the venture; and further procure investors and financiers to actualize the venture.

10. It was the 1st Defendant's case that the Plaintiff transferred the title of the suit property to it in pursuance of the objectives of the venture, **not to own as a proprietor**, but for purposes of re-survey and subdivision for the ends of the venture. The suit property was the Plaintiff's contribution to the venture.
11. The 1st Defendant averred that the subdivision of suit property into six (6) portions was strictly in accordance with the venture agreement. In undertaking the said resurvey and subdivision processes, the 1st Defendant allegedly incurred costs of Kshs. 100 million in survey fees, subdivision costs and stamp duty. The 1st Defendant insists that it performed its obligations under the venture agreement and therefore demands that the 1st Defendant performs its contractual obligations too under the joint venture agreement.
12. The 1st Defendant further averred that the conclusion of the venture agreement and the transfer of the title of the suit property to it was preceded by due diligence on its part. It insists that it confirmed the directorship of the Plaintiff company through the CR 12 as at 5th April 2023; when the venture agreement was allegedly concluded, and as at 24th July

2023; when the transfer of the title to the suit property to it was undertaken.

13. The 1st Defendant denied the allegations of fraud or impropriety against it pleaded in paragraphs 13, 14, 15, 16, 17, 18, and 19 of the plaint. It denies being a trespasser stating that the entry into the suit property by the contracted surveyor was not trespass, it was for purposes of resurvey and sub-division of the suit property in accordance with the terms of the venture agreement.

14. The 1st Defendant affirms that the venture is valid and enforceable. The Plaintiff is therefore in breach of the contract by reneging on its obligations under the venture agreement and purporting to deny the transfer of the suit property to the 1st Defendant, the special purpose vehicle.

15. The 1st Defendant asserts that the breach by the Plaintiff has caused it astronomical losses incurred in the re-survey, stamp duty payment and sub-division of the suit property into six (6) titles amounting to Kshs. 100 million and loss of business opportunity contemplated under the contract. The 1st Defendant did not however raise a counter-claim against the Plaintiff.

16. The 1st Defendant denies the jurisdiction of this court to determine and grant the reliefs sought in the plaint, without the determination of the five (5)

questions of law and fact listed under paragraph 14 of its statement of Defence by the High Court. It gave a notice of preliminary objection premised on the five (5) questions of law and fact listed under paragraph 14 of its statement of Defence, which preliminary objection however, was not raised prior to or during the hearing of the suit.

B. The 2nd and 3rd Defendant's statement of defence.

17. The 2nd and 3rd Defendants statement of defence is dated 29th December 2023. The 2nd and 3rd Defendants admit that the Plaintiff was at all material times the registered owner of the suit property L.R. No. 28401 measuring approximately 21.85 hectares, premised on the records held by the Ministry of Lands, Public Works, Housing and Urban Development.

18. Regarding the history of the suit property, the 2nd and 3rd Defendants elaborate that the correspondence File No. 198865 shows that L.R No. 18068 measuring 21.85 hectares was transferred from Starehe Boys Centre Registered Trustees to Edwin Alfred Bristow, Kenneth Hamish, Wooler Keith and Nyambura Mpesha as trustees of Kohlenberg Foundation vide a Memorandum of Registration of Transfer of Lands dated 7th April 1993 as L.R. 57907/03. An application for a change of user from private school to

residential was then made and approved. A development approval application made was initially declined but was eventually allowed upon an appeal to the Commissioner of Lands by Langton Investments Limited.

19. The suit property was, in June 1999, transferred to the Plaintiff, Langton Investments Limited, as grant I.R. 57907/7. Pursuant to a resurvey, upon change of user and surrender of grant I.R. No. 57907/7 in the name of Langton Investments Limited, the suit property was granted a new L.R. No. 28401 and Langton Investments Limited registered as the proprietor of grant I.R. No. 152720/1 vide a Memorandum of Registration of Transfer of Lands dated 5th June, 2013 with the new residential user after the surrender of the old title.

20. Regarding the registration status of the Plaintiff company, the 2nd and 3rd Defendants relying on the records held by the Registrar of Companies aver that the company was registered as a private company on 28th October 1997. They listed the shareholding and directorship status of the company as at 21st November 2023.

21. The 2nd and 3rd Defendants further asserted that the purported registration and subsequent subdivision of the suit property by Meron Ltd was

predicated on fraudulent documents and misrepresentation to them reason wherefore the subdivisions were cancelled vide gazette notices No. 16350 of 2023 and 16351 of 2023.

22. In respect to the claims of trespass, the 2nd and 3rd Defendants stated that they were aware that the structures and invasion/possession by the intruders/goons occurred on or about 14th November 2023 and not before. They were categorical that the suit property lawfully belongs to the Plaintiff based on the records held by the Ministry of Lands, Public Works, Housing and Urban Development.

Analysis of evidence

23. The dispute before this Court concerns the ownership and legal status of the land parcel known as L.R. No. 28401 (the suit property), situated within the Garden Sub-location of Nairobi City County. The Plaintiff, a limited liability company incorporated in 1997, asserts a claim of absolute ownership based on an original Grant I.R. 152720 and continuous possession, alleging that the 1st Defendant has encroached upon the suit property through fraudulent and unorthodox means. Conversely, the 1st Defendant asserts ownership on two alternative grounds: firstly, as the registered proprietor of six resultant

subdivisions (L.R. Nos. 28401/1–6) which were subsequently the subject of a cancellation by the 2nd Defendant via Gazette Notices No. 16350 of 2023 and 16351 of 2023, and secondly, based on a Joint Venture Agreement allegedly executed with the Plaintiff on 6th April 2023 that required the Plaintiff to transfer the suit property to the 1st Defendant in pursuance of the objectives of the venture, not to own as a proprietor, but for purposes of re-survey and subdivision for the ends of the venture.

24. The Court has carefully considered the oral testimonies of the witnesses called by both parties, the expert and technical evidence presented by government officials, and the voluminous documentary exhibits tendered in support of the respective claims.

Plaintiff's Case

25. The Plaintiff's case was opened by the testimony of its Director, **David Muchai Kunyiha (PW1)**, who adopted his various witness statements and produced the documents in the Plaintiff's Trial Bundle as exhibits in support of the Plaintiff's case. **PW1** testified that the Plaintiff company holds the original Grant I.R. 152720 for the suit property and has held the same without interruption. He categorically stated that the Plaintiff had never, at

any one time reported the title lost, nor had it ever applied for a provisional title or for the subdivision of the land into the parcels claimed by the 1st Defendant. He showed to the court the original title document which he confirmed had always been in the Plaintiff's custody and had never been reported lost. His testimony was that the Plaintiff had not applied for a provisional title since it always had the original title under its custody.

26. In addressing the 1st Defendant's claim of a Joint Venture Agreement with the Plaintiff, PW1 firmly denied the existence of any such agreement and disowned the individuals purporting to have signed the agreement on behalf of the Plaintiff. He drew the Court's attention to significant discrepancies in the documentary evidence, specifically noting that the Plaintiff's Kenya Revenue Authority (KRA) PIN certificate ends with the suffix "L" whereas the documents relied upon by the 1st Defendant bore a PIN number ending with the suffix "Z" and are registered to a completely different address in Karen.

27. PW1 further testified that he had no knowledge of Francis Muhuhu Ndinguri or Stella Wanjiru, stating none of them had ever been a director or shareholder of the Plaintiff company.

28. Under cross-examination regarding the issuance of titles to the 1st Defendant, PW1 confirmed that while such titles had been issued by the 2nd Defendant, they were subsequently cancelled vide Gazette Notice No. 16352 dated 1st December 2023, correcting the register after the 2nd Defendant realized that he had been misled.

29. To corroborate its claim of possession and the timeline of events, the Plaintiff called Francis Michuki (PW2), a director of Fairview Investments Ltd, the entity that originally owned the mother title (L.R. 18608) before its subdivision and transfer to the Plaintiff. PW2 testified that he has managed the adjacent property since 1996 and had personal knowledge of the suit property's usage. He told the Court that the Plaintiff had permitted his employees to cultivate the land for years and that the property remained vacant of any permanent development until July 7, 2023, when he witnessed unauthorized subdivision works commenced by the 1st Defendant.

30. The testimony of PW2 was reinforced by that of Evans Anekaya Omulubi (PW3), the Senior Assistant Chief for the Garden Sub-location. PW3 provided an administrative perspective, confirming that the suit property falls within his jurisdiction. He testified that to his knowledge, the land had historically been associated with the late John Michuki and had remained

vacant until November 2023, when structures began to be erected thereon by unidentified persons. PW3 confirmed that the Plaintiff had raised complaints regarding an invasion of the land, leading to police involvement, at the Kasarani Police Station.

31. The Plaintiff further relied on professional evidence adduced by Eric Nyandimo (PW4), a licensed surveyor and Director of Oakar Services Ltd. PW4 produced a report based on high-resolution satellite imagery (30 cm resolution) to objectively determine the timeline of the developments on the land. His analysis of imagery dated 5th February 2022 and 1st July 2023 showed the land to be entirely vacant, directly contradicting the 1st Defendant's assertion of long-term possession. PW4 testified that structures, specifically temporary shanties, only became visible on the imagery dated 20th October 2023. Furthermore, PW4 gave evidence regarding the re-establishment of the boundaries, stating that despite the disturbance on the ground, he successfully identified an original survey beacon labeled TR4, which allowed him to mathematically define the 54-acres' extent of the suit property, although his mandate to subdivide the land for the Plaintiff was stalled by the ongoing dispute.

Defendants' Case

32. The 1st Defendant's case rested primarily on the testimony of its director, Anthony Wachira Njoroge (DW1) who adopted his witness statement dated 14th June 2024 as his evidence in chief and further produced as exhibits the documents on the 1st Defendant's lists and bundles of documents as exhibits in support of the 1st Defendant's case.
33. DW1's evidence was that Meron Ltd came into contact with the suit property In July 2022 after a joint venture agreement with the Plaintiff company. Under the terms of the agreement, the Plaintiff was to transfer the suit property to the 1st Defendant which transfer was concluded on 24th July 2023. The suit property was subdivided into six (6) parcels pursuant to the JVA with the resultant titles being registered in the name of the 1st Defendant as well.
34. DW1 discussed the terms of the JVA outlining the responsibilities of the 1st Defendant and the actions taken in pursuit of the venture. He affirmed that one Francis Muhuhu Ndinguri who had introduced himself as a director of the Plaintiff Company signed the JVA on behalf of the Plaintiff. He had brought with him a copy of e CR 12, which was one of the 1st Defendant's exhibits, indicating that he was a director of the Plaintiff Company with 100,000 ordinary shares.

35. DW1 insisted that their entry into the suit property does not amount to trespass in view of the terms of the JVA with the Plaintiff. He asserted that the 1st Defendant has remained in possession of the suit property since then.
36. Responding to questions in cross-examination by the Advocates for the Plaintiff and the Senior state counsel on behalf of the 2nd and 3rd Defendants, DW1 reiterated that Meron Ltd, the 1st Defendant herein, had no claim of ownership either of the suit property or the resultant subdivisions. He was explicit that the 1st Defendant was not the registered proprietor of the suit property or the resultant subdivisions. He admitted that the statement that Meron Ltd was the proprietor was incorrect.
37. DW1 confirmed that Peter Maina and himself were the only directors of Meron Ltd with himself being the majority shareholder. That was the reason why he was testifying on behalf of the company. He saw no good reason for Peter Maina to testify in the case.
38. It was the testimony of DW1 that Meron Ltd had not undertaken any other business prior to the JVA with the Plaintiff.
39. Responding to the question whether Meron Ltd had undertaken any due diligence to establish the directorship of the Plaintiff company prior to entering into the JVA, DW1 admitted that they did not conduct any searches

at the Registrar of Companies to verify the directorship. They entirely relied on the CR 12 form shown to them by Francis Muhuhu Ndinguri. As he put it, they had no reasons to doubt Francis Muhuhu Ndinguri in spite of the fact that they had not known him before.

40. DW1 confirmed that he had the contacts of Francis Muhuhu Ndinguri but he had not requested him to testify as his witness in this case despite the denials by the Plaintiff that he was neither a director nor a shareholder of Langton Investments Ltd. He did not see the need to call him as a witness.
41. Despite having had other cases with the Plaintiff over the suit property, DW1 admitted that Meron Ltd had not produced the JVA in any of those cases.
42. The Court also received evidence from technical and investigative witnesses from the State, whose testimonies cast further doubt on the validity of the 1st Defendant's documentation. Nyandoro David Nyambaso, the Chief Land Registrar, testified that there were "obvious" discrepancies between the signatures of one Francis Ndung'u appearing on the 1st Defendant's documents and those in the Ministry's records. He asserted the legal principle that an original title takes precedence over a provisional one, and that a provisional title cannot validly exist while the original grant is in the

possession of the proprietor. This was supported by Ojwang Omolo Pakpoba (DW3), the Deputy Director of Land Administration, who testified that the requisite approvals for the subdivision claimed by the 1st Defendant were missing from the official correspondence file (File No. 198865), and as such, he could not confirm that the subdivision was conducted in accordance with the law.

43. Finally, the Court heard from **Chief Inspector Enid Njuki (DW4)** of the DCI Land Fraud Investigation Unit. She testified that her investigation concluded that the transfer documents relied upon by the 1st Defendant were forgeries. She stated that her inquiry at the Company Registry (Sheria House) confirmed that the individuals purporting to be directors of the Plaintiff in the 1st Defendant's transaction, including Njunge Musabaca, were not in fact directors or shareholders of Langton Investments Limited. While the Court upheld an objection regarding the admissibility of certain hearsay documents within her file, her direct evidence regarding the lack of a financial trail for the alleged purchase price and the fraudulent nature of the directorship remains on record. The totality of the evidence demonstrates a stark divergence between the Plaintiff's documented root of title and the 1st Defendant's claim, which is marred by admitted procedural irregularities, a

lack of financial proof, and forensic inconsistencies identified by the relevant state agencies.

44. DW5 was the Assistant Registrar of Companies who adopted his witness statement dated 28th March 2024 as his evidence in chief and produced documents from the Registrar of Companies office regarding the Plaintiff Company. He confirmed that from the records, Njunge Murabaca and Francis Muhuhu Ndinguri have never been directors or shareholders of Langton Investments Ltd.

45. Regarding the purported search (CR 12) in the 1st Defendant's bundle and which had been produced as one of the exhibits, he pointed out various shortcomings including the wrong spelling of the word Investments which had been spelt as "Investements". The date of incorporation of the Plaintiff company indicated therein was also wrong. The reference number on the search was an imposition from a search conducted earlier.

46. Upon the conclusion of the hearing, the court directed parties to file written submissions. The Plaintiff and the 1st Defendant complied and filed their submissions. The Plaintiff with leave of the court further filed supplementary submissions.

Analysis of submissions

47. The Plaintiff prefaces its submissions by invoking the cautionary principle articulated by the Supreme Court of Uganda in *Lwanga vs. Mubiru and Others (Civil Appeal 18 of 2022) [2024] UGSC 7*, asserting that "*lands are not vegetables which are bought from unknown sellers*". Guided by this premise, the Plaintiff submits that the 1st Defendant failed to exercise the requisite due diligence in ascertaining the true ownership of the suit property, L.R. No. 28401, prior to the impugned transaction. The Plaintiff asserts continuous ownership and possession of the property since June 30, 1999, which it claims the 1st Defendant unlawfully interfered with.

48. The Plaintiff heavily relies on the statutory rules governing the burden of proof to challenge the 1st Defendant's claims of a valid transfer and a Joint Venture Agreement (JOINT VENTURE AGREEMENT). The Plaintiff cites **Section 107 of the Evidence Act**, noting that the legal burden lies on the party who desires the court to give judgment as to any legal right dependent on the existence of facts which they allege. This, the Plaintiff submits, is supplemented by **Sections 109 and 112 of the Evidence Act**, which cast an evidential burden on the party desiring the court to believe in the existence of a particular fact.

49. To reinforce this, the Plaintiff cites the Supreme Court's decision in *Dina Management Limited v County Government of Mombasa & 5 others [2023] eKLR*, which itself quoted the Court of Appeal in *Munyu Maina v Hiram Gathiha Maina Civil Appeal No 239 of 2009 [2013] eKLR*, reaffirming that a party must prove the facts upon which their case depends. Furthermore, relying on *Sakar, Law of Evidence, 18th edition at page 1900*, the Plaintiff argues that matters pleaded by the Plaintiff and controverted by the Defendant must be positively proved, and a failure to call necessary witnesses entitles the court to draw adverse inferences against the 1st Defendant.
50. The Plaintiff points to the 1st Defendant's contradictory pleadings; the first alleging a lawful acquisition for Kshs. 100 million and terming the Plaintiff a trespasser, and the second alleging a Joint Venture Agreement, as evidence of a lack of credibility. The Plaintiff relies on *Kitui County Council v Mwakini Ranching Co. Limited Civil Appeal (Application) No. 221 of 1997 (Unreported)* to submit that the court is bound to examine all filed and withdrawn affidavits and pleadings.
51. Further, the Plaintiff invokes **Section 34(1)(b) and (d)** of the Evidence Act (Cap 80), alongside the Court of Appeal's decision in *Central Kenya Limited*

v Trust Bank Limited Civil Appeal 215 of 1996 EA, arguing that evidence and admissions from prior judicial proceedings are admissible in subsequent proceedings to prove the stated facts. Emphasizing the binding nature of pleadings, the Plaintiff cites *Galaxy Paints Company Ltd V Falcon Guards Ltd [2000] KECA 215 (KLR)*, asserting that the 1st Defendant cannot depart from its own pleadings and prior admissions.

52. In dismantling the 1st Defendant's claim of a Joint Venture Agreement, the Plaintiff refers to *Chitty on Contracts, 34th edition, Volume 1, at paragraph 4-001 page 258*, highlighting the essential requirements for contract formation: offer, acceptance, and consideration. The Plaintiff submits that no valid agreement was formed, as there was never any communication of acceptance by the Plaintiff to the 1st Defendant regarding any joint venture.

53. The Plaintiff contends that the transfer and the subsequent subdivision of the property into six parcels were facilitated by forged documents, specifically an irregularly issued Provisional Certificate of Title. Grounding its argument on the maxim *ex turpi causa non oritur actio*, and relying on the jurisprudence in *Civil Appeal No. 174 of 1994 and Civil Appeal No. 175 of 1995*, the Plaintiff urges the Court not to lend its aid to enforcing obligations arising from illegal and

forged acts. The Plaintiff additionally submits that the fraudulent procurement of these title documents constitutes a criminal offense under **Section 103 (1) (c) (i) of the Land Registration Act.**

54. The Plaintiff also asserts that the 1st Defendant significantly underpaid stamp duty. Despite the 1st Defendant's witness valuing the property at Kshs. 4 to 5 billion, stamp duty was paid on a declared consideration of only Kshs. 100 million. The Plaintiff argues this intentional underpayment violates **Schedule 12A of the Stamp Duty Act** and constitutes an offense under **Section 113 (1) of the Stamp Duty Act**, further rendering the transfer illegal.

55. On the tort of trespass, the Plaintiff cites the Court of Appeal in *M'Mukanya v M'Mbijiwe (1984) KLR 761*, which relied on the English case of *Thomson v Ward. (1953) 2QB 153*, to define trespass as a violation of the right to immediate and exclusive possession. The Plaintiff asserts the 1st Defendant's unauthorized entry, erection of structures, and deployment of armed persons disrupted its exclusive possession. To justify an award for damages, the Plaintiff relies on *Halsbury's Laws of England 4th Edition Vol. 45 at para 26 pg. 1503*.

56. Finally, the Plaintiff relies on **Section 27 of the Civil Procedure Act**, submitting that the costs of and incidental to the suit are at the discretion of

the court, and prays that costs be awarded in its favor alongside declarations of ownership, cancellation of the fraudulent subdivisions, and a permanent injunction against the 1st Defendant.

57. On its part, the 1st Defendant challenges the Plaintiff's claims on three primary fronts: a threshold challenge to the court's jurisdiction, the legal impracticability of the pleaded reliefs, and a substantive defence rooted in the existence of a Joint Venture Agreement (JOINT VENTURE AGREEMENT).

58. The 1st Defendant raises an objection to the jurisdiction of the Environment and Land Court. It submits that the court's jurisdiction is strictly ring-fenced by **Article 162(2)(b) of the Constitution of Kenya** and **Section 13 of the Environment and Land Court Act (Cap 8D)**. The 1st Defendant argues that the dispute revolves around a commercial Joint Venture Agreement dated 5th April 2023, rather than the use and occupation of land. Relying on the Court of Appeal decisions in *Co-operative Bank of Kenya vs. Patrick Kangethe Njuguna and 5 Others [2017] KECA 79 (KLR)* and *Bank of Africa Kenya Limited and Another vs. TSS Investment Limited and 2 Others [2024] KECA 410 (KLR)*, the 1st Defendant contends that the court's jurisdiction

under **Section 13(2)(d) of the ELC Act** over contracts is limited to those incidental to the use of land, such as tenancies and leases.

59. Applying the "predominant issue test," the 1st Defendant asserts that the core issues—namely the validity of the JOINT VENTURE AGREEMENT and the proper composition of the Plaintiff's Board of Directors—are commercial and company law matters that fall within the exclusive province of the High Court pursuant to **Section 3(1) of the Companies Act (Cap 486)**. To underscore the fatal consequence of a lack of jurisdiction, the 1st Defendant cites the *locus classicus* of *Owners of the Motor Vessel "Lillian S" v. Caltex Oil (Kenya) Ltd [1989] KLR 1*, alongside the Supreme Court's pronouncements in *Re Interim Independent Electoral Commission [2011] eKLR* and *Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] eKLR*, as well as *Kakuta Maimai Hamisi vs. Peris Pesi Tobiko & 2 Others [2013] eKLR*, urging the court to down its tools and strike out the suit *in limine*.

60. Without prejudice to the jurisdictional challenge, the 1st Defendant submits that the reliefs sought in the plaint are legally impracticable and overtaken by events. It emphasizes the settled legal principle that parties are bound by their pleadings, citing the Court of Appeal in *Galaxy Paints Company*

Limited vs. Falcon Guards Limited [2000] KECA 215 (KLR), which relied on *Gandy v Caspair [1965] EACA 139*.

61. The 1st Defendant points out that the suit property, L.R. No. 28401, no longer exists as it was lawfully subdivided into six new titles: L.R. Nos. Nairobi/219/48 through to 53. The 1st Defendant notes that the legality of these new titles was affirmed by this very court in Judicial Review Application No. E001 of 2024 (*Ex parte Meron Limited vs. Registrar of Titles and Langton Investments Limited*), which quashed a prior attempt to revoke them. Consequently, declarations and injunctions regarding the non-existent L.R. No. 28401 cannot be granted.
62. Furthermore, the 1st Defendant argues that the Plaintiff failed to join the Director of Surveys as a mandatory party to proceedings seeking the nullification of subdivision and survey work, rendering the suit fatally defective under **Section 30(2) of the Survey Act (Cap 299)**. The 1st Defendant also relies on **Section 80(1)** read with **Sections 7(4) and 7(5) of the Land Registration Act**, arguing that any order for rectification must specifically target the existing entries in the land register, an amendment the Plaintiff failed to make.

63.

On the merits, the 1st

Defendant asserts that it lawfully dealt with the Plaintiff through a JOINT VENTURE AGREEMENT dated 5th April 2023. The 1st Defendant invokes the doctrine of indoor management established in Royal British Bank v Turquand (1856) 6 E&B 327, arguing that it was entitled to rely on the representations of Francis Muhuhu Ndinguri, who held himself out as a director of the Plaintiff.

64. The 1st Defendant accuses the Plaintiff and the Registrar of Companies of suppressing official records that would confirm Ndinguri's directorship during the material period of February to July 2023. Relying on **Section 112 of the Evidence Act (Cap 80)**, the 1st Defendant urges the court to draw an adverse inference against the Plaintiff for withholding this crucial evidence, citing the holding in Kenya Akiba Microfinance Limited vs Ezekiel Chebii and 14 others (which adopted the position in Kimotho vs KCB [2003] 1 EA 108). Finally, the 1st Defendant submits that it has fully performed its obligations under the JOINT VENTURE AGREEMENT by expending funds on survey, subdivision, and titling costs, and that granting the Plaintiff's prayers would cause it egregious prejudice.

65. In response to the 1st Defendant's submissions, the Plaintiff filed Submissions in Reply, mounting a robust defence of the Court's jurisdiction and systematically rebutting the substantive and procedural challenges raised.
66. The Plaintiff strongly opposes the 1st Defendant's assertion that the suit is a commercial dispute beyond the Environment and Land Court's jurisdiction. It argues that the 1st Defendant's "predominant test argument" is founded on a fallacy, specifically the assumption that the Court should only consider the 1st Defendant's second defence. The Plaintiff reminds the Court of its duty to frame issues based on the entirety of the pleadings, citing **Order 15 Rules 1 and 2 of the Civil Procedure Rules**. To emphasize this duty, the Plaintiff relies on the authoritative text *Mulla, The Code of Civil Procedure, 18th Edition*, which asserts that the duty of raising issues rests on the court after going through all pleadings.
67. Addressing the jurisdictional challenge directly, the Plaintiff cites the Court of Appeal in *Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 others [2017] eKLR*. The Plaintiff submits that its suit does not seek the enforcement of commercial rights under the Joint Venture Agreement; rather, it challenges the process by which L.R. No. 28401 was alienated, transferred, and registered. The Plaintiff maintains that questioning the

legality of a transfer that divested an owner of title lies at the very heart of the Court's mandate under **Article 162(2)(b) of the Constitution** and **Section 13 of the Environment and Land Court Act**.

68. The Plaintiff rebuts the 1st Defendant's argument that the suit property (L.R. No. 28401) ceased to exist upon subdivision. The Plaintiff contends that a party cannot permanently extinguish a rightful owner's interest simply by subdividing the land before the fraud is detected. Relying on the Court of Appeal's holding in *Funzi Island Development Limited & 2 others v County Council of Kwale & 2 others [2014] KECA 882 (KLR)*, the Plaintiff asserts that a court cannot sanction an illegality or approve an irregularly obtained title under the guise of indefeasibility.
69. Furthermore, the Plaintiff dismisses the 1st Defendant's contention that the Court is restricted to ordering the rectification of the register under **Section 80 of the Land Registration Act**. To support its prayer for the outright cancellation of the subdivided titles, the Plaintiff cites *Super Nova Properties Limited & another v District Land Registrar Mombasa & 2 others [2018] eKLR*. It further notes that this decision was affirmed by Mwangi J. in Nairobi ELC Judicial Review Application No. E001 of 2024, which held that

a court of law is the only institution with the mandate to cancel a title on the basis of fraud or illegality.

70. Finally, the Plaintiff addresses the 1st Defendant's reliance on the indoor management rule established in *Royal British Bank v Turquand (1856)* regarding its dealings with an alleged director, Francis Muhuhu Ndinguri. The Plaintiff cites *Arthi Highway Developers Limited v West End Butchery Limited & 6 others [2015] KECA 816 (KLR)*, which outlines clear exceptions to the rule, noting that it does not apply where corporate signatures are forged or where circumstances demand further inquiry.
71. The Plaintiff argues that the Joint Venture Agreement and subsequent transfer were executed by an impostor without authority, constituting forgery under **Section 345 of the Penal Code**. Given that the transaction involved the subdivision of high-value land, the Plaintiff submits that enhanced due diligence was required, which the 1st Defendant failed to conduct. Consequently, the Plaintiff argues that the indoor management rule cannot be invoked to cure or validate a transaction that was inherently fraudulent and illegal from its inception. The Plaintiff concludes by praying that the Court grants the reliefs sought in the Plaintiff.

Issues for determination

72. Having considered the pleadings filed herein, the evidence adduced and the submissions filed, the following issues commend themselves for determination;

- a) *Whether the Environment and Land Court has jurisdiction to hear and determine this dispute.*
- b) *Whether there existed a valid and enforceable Joint Venture Agreement between the Plaintiff and the 1st Defendant.*
- c) *Whether the suit property known as L.R. No. 28401 (I.R. 152720) was lawfully transferred to the 1st Defendant and subsequently subdivided into the resultant parcels.*
- d) *Whether the 1st Defendant's entry onto and activities on the suit property amounted to trespass.*
- e) *Whether the Plaintiff is entitled to the reliefs as sought in the plaint.*

ANALYSIS AND DETERMINATION

A. *Whether the Environment and Land Court has jurisdiction to hear and determine this dispute.*

73. The 1st Defendant challenges the jurisdiction of this Court, contending that the dispute primarily arises from a Joint Venture Agreement allegedly entered into

between the Plaintiff and the 1st Defendant and issues relating to the directorship of the Plaintiff company. According to the 1st Defendant, such matters fall within the jurisdiction of the High Court as commercial and company law disputes rather than within the mandate of the Environment and Land Court.

74. Jurisdiction is a fundamental issue which must be determined at the earliest opportunity, as a court acting without jurisdiction acts in vain. The law on jurisdiction is well settled. In *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KLR 1*, the Court of Appeal held:

"Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence."

75. Similarly, the Supreme Court in *Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 Others [2012] eKLR* stated:

"A Court's jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the Constitution or other written law."

76. The jurisdiction of this Court is derived from the Constitution and statute.

Article 162(2)(b) of the Constitution of Kenya provides:

“Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—

(a)...

(b) the environment and the use and occupation of, and title to, land.”

77. Pursuant to that constitutional provision, Parliament enacted the Environment and *Land Court Act. Section 13(2) of the Environment and Land Court Act* provides:

“In exercise of its jurisdiction under Article 162(2)(b) of the Constitution, the Court shall have power to hear and determine disputes—

(a) relating to environmental planning and protection, trade, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;

(b) relating to compulsory acquisition of land;

(c) relating to land administration and management;

(d) relating to public, private and community land and contracts,

choses in action or other instruments granting any enforceable interests in land; and (e) any other dispute relating to environment and land.”

78. The Court of Appeal in *Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 Others [2017] eKLR* clarified the scope of the Environment and Land Court’s jurisdiction and held:

“The jurisdiction of the Environment and Land Court is limited to disputes relating to the environment and the use and occupation of, and title to, land.”

79. In determining whether a court has jurisdiction, the court must examine the pleadings and the substance of the dispute rather than the form in which the parties present their arguments.

80. In the present case, the Plaintiff’s claim as set out in the plaint is anchored on ownership of the suit property known as L.R. No. 28401 (I.R. 152720). The Plaintiff seeks, inter alia:

a) A declaration that it is the lawful registered owner of the suit property;

b) A declaration that the subdivision of the suit property is illegal and void;

c) Cancellation of the titles arising from the subdivision; and

d) A permanent injunction restraining the 1st Defendant from dealing with the property.

81. The dispute, in its essence, therefore directly concerns the legality of the transfer of title, the validity of the subdivision, and the propriety of the resultant registrations.

82. Even though the 1st Defendant relies on a Joint Venture Agreement and alleges issues relating to the Plaintiff's directorship, those matters arise only as part of the defence explaining how the suit property was allegedly transferred. They do not change the fundamental character of the dispute, which is a contest over ownership and title to land.

83. In essence, the central question before the Court is whether the suit property was lawfully alienated from the Plaintiff and whether the subsequent titles issued to the 1st Defendant were valid. Such questions fall squarely within the jurisdiction of this Court under Article 162(2)(b) of the Constitution and Section 13 of the Environment and Land Court Act.

84. Further, this Court is empowered to interrogate the legality of instruments affecting land, including transfers and agreements that confer

interests in land. Section 13(2)(d) of the Environment and Land Court Act expressly extends the Court's jurisdiction to disputes relating to:

“contracts, choses in action or other instruments granting any enforceable interests in land.”

85. In this case, the alleged Joint Venture Agreement and the transfer instruments are precisely the instruments through which the 1st Defendant claims an interest in the suit property. Determining their validity is therefore incidental and necessary to resolving the dispute over title to the land.
86. The Court also notes that the Plaintiff's case is founded on allegations of fraud in the transfer and subdivision of the suit property. Questions relating to the validity of title, fraudulent transfers, and cancellation of titles are matters that fall squarely within the mandate of the Environment and Land Court.
87. Having considered the pleadings, the evidence on record, and the rival submissions by the parties, this Court is satisfied that the predominant issue in dispute relates to title to land and the legality of the processes that led to the registration of the 1st Defendant as proprietor of the resultant parcels.

88. Accordingly, the Court finds and holds that it has the requisite jurisdiction to hear and determine this dispute. The 1st Defendant's objection on jurisdiction is therefore without merit and is hereby rejected.

B. Whether there existed a valid and enforceable joint venture agreement between the Plaintiff and the 1st Defendant.

89. The 1st Defendant in its statement of defence dated 14th June 2024, at paragraph 5 thereof averred that it concluded a joint venture agreement with the Plaintiff dated 5th April 2023, wherein parties covenanted that the suit property was to be transferred to the 1st Defendant as the determined special purpose vehicle for the venture. It was further agreed that the 1st Defendant was to initially invest Kshs. 100 million to be applied to the process of re-survey, and subdivision of the suit property for purposes of the venture. The 1st Defendant was further responsible for procuring approvals, investors and financiers for the venture.

90. The 1st Defendant at paragraph 6 of the statement of defence while ostensibly acknowledging the Plaintiff as the owner of the suit property stated that the suit property was the Plaintiff's contribution to the joint venture. The 1st Defendant is categorical that the suit property was

transferred to it, not to own as a proprietor, but for the ends of the venture.

91. The agreement referred to by the 1st Defendant and which was produced as DE 2 is at page 19 of the 1st Defendant's trial bundle. On the part of Meron Limited, the agreement is signed by Anthony Wachira Njoroge (Director) and Peter Maina Mwangi (Director) in the presence of Dennis Juma Advocate. On behalf of Langton Investments Limited, the agreement is signed by Francis Muhuhu Ndinguri (Director) only, in the presence of Dennis Juma Advocate.

92. The court observes that on the part of Meron Limited, there is a resolution of the Board of Directors of the Company dated 17th March 2023, authorizing the Company to enter into the joint venture agreement. However, there is no similar corresponding resolution by the Board of Directors of Langton Investments Limited authorizing Langton Investments Limited to enter into the agreement or giving authority to any of its directors to bind the company in any such engagement. It is noteworthy that one of the key terms of the alleged joint venture agreement was transferring the suit property, L.R. No. 28401 to the 1st Defendant. A resolution of the Board of Directors of Langton Investments Limited was

absolutely necessary on such a weighty decision of giving out the only company's property which according to the witness for the 1st Defendant is valued at over Kshs. 1 billion.

93. The Plaintiff plainly denies entering into the joint venture agreement with the 1st Defendant. The evidential burden was on the 1st Defendant to rebut that denial. In *Muriungi Kanoru Jeremiah –vs- Stephen Ungu M'Mwarabua (2015) eKLR, Gikonyo J* distinguished between the legal burden of proof and evidential burden of proof referring to *The Halsbury's Laws of England, 4th Edition, Volume 17 at paragraphs 13 and 14* as follows.

“The legal burden is the burden of proof which remains constant throughout a trial. It is the burden of establishing the facts and contentions which will support a party's case. If at the conclusion of the trial he has failed to establish these to the appropriate standard, he will lose. The legal burden of proof normally rests upon the party desiring the court to take action; thus a claimant must satisfy the court or tribunal that the conditions which entitle him to an award have been satisfied. In respect of a particular allegation, the burden lies upon the party whom substantiation of that particular allegation is an essential of his case. There may therefore be separate burdens in a case with

separate issues. The legal burden is discharged by way of evidence, with the opposing party having a corresponding duty of adducing evidence in rebuttal. This constitutes evidential burden. Therefore, while both the legal and evidential burdens initially rested upon the appellant, the evidential burden may shift in the course of trial, depending on the evidence adduced. As the weight of the evidence given by either side during the trial varies, so will the evidential burden shift to the party who would fail without further evidence.”

94. Clearly, the evidential burden was on the 1st Defendant to prove the existence of a valid joint venture agreement as alleged in its defence.

95. A company acts through its directors or its general meeting as stated in *Affordable Homes Africa Limited –vs- Henderson & 2 others (2004) eKLR*,

“As an artificial person, a company can only take decisions through the agency of its organs, which are primarily the board of directors or the general meeting of its shareholders.”

96. Odunga J (as he then was) in *Ephantus M. Kagomo & others –vs- Industrial and Commercial Development Corporation (2012) eKLR*, also expressed a similar opinion stating that;

“A corporation is an artificial legal entity. Accordingly, it must of necessity act through agents, usually Board of Directors. In other words, the corporation’s brain is the Board of Directors who make decisions on behalf of the company.”

97. The fact that, there was no resolution by the Board of Directors of Langton Investments Limited should have raised eye brows. If Meron Limited had the authority in form of a resolution of its board of Directors, why then would it agree to transact with a sole individual purporting to represent Langton Investments Limited without a similar Board Resolution? The fact that a single individual presented himself as acting on behalf of Langton Investments Limited, on its own, should have been a cause of concern to Meron Limited.
98. Meron Ltd through its witness, DW1 stated that it had no reason to doubt the individual, Francis Muhuhu Ndinguri. It did not attempt to verify his authenticity despite the fact that it had not known him prior to this transaction. Meron Ltd did not conduct a search at the Companies’ registry to verify the directorship of Langton Investments Ltd.
99. Evidence was produced from the office of the Registrar of Companies by the Assistant Registrar of Companies, Zacharia Mwangi to the effect that Francis

Muhuhu Ndinguri who purportedly signed the JVA on behalf of Langton Investments Limited has never been a director or Shareholder of the Plaintiff company, according to the official records in the Office of the Registrar of Companies.

100. The Assistant Registrar of Companies described the purported CR 12 Form presented by the 1st Defendant (at page 59 of the 1st Defendant's bundle) as a fake CR 12, manipulated to look like it had originated from the Registrar of Companies yet it had not. He pointed out obvious errors to validate this claim that it was a forgery as follows:

- i) The name of the Plaintiff company was incorrectly spelt as "Langton Investement Limited."
- ii) The date of incorporation indicated on the purported CR 12 was incorrect.
- iii) The reference number on the purported CR 12 was superimposed/edited from a search of the Plaintiff company conducted on 15th September 2022. It was purporting to have been conducted on 24th February 2023.

101. The evidence of the Assistant Registrar of companies was not rebutted by the 1st Defendant in any way.

102. It is critical to note that Francis Muhuhu Ndinguri was not called as a witness in spite of the 1st Defendant's witness's confirmation that he was still alive and he had his contacts. Indeed the director, Anthony Wachira Njoroge confirmed under oath that he had the contacts of Francis Muhuhu Ndinguri but did not find it necessary to call him as a witness to testify in support of his assertion of having entered into a JVA with the Plaintiff, or that he was duly authorized to enter into such an agreement on behalf of the Plaintiff.

103. The conduct of the 1st Defendant points to collusion between it and Francis Muhuhu Ndinguri. How did Meron Ltd just trust a stranger who came to them alleging that he was a director of Langton Investments Ltd and commit Kshs. 100 million (towards the venture) without having verified the authenticity of the claims by the stranger?

104. The 1st Defendant in its submissions specifically at paragraphs 104 and 105 attempts to shift the burden on the Plaintiff to prove that Francis Muhuhu Ndinguri was not its director. The 1st Defendant submits that;

“My lord, the material dates of the engagement, are the 24th February 2023 which is the date of the CR 12 showing Mr. Ndinguri as the director of the Plaintiff, the 5th April 2023 which is the date of the joint venture agreement and the 4th July 2025 which is the date of the transfer of the property L.R. No. 28401 to the joint venture. The Plaintiff and the Registrar of Companies were therefore obligated to show the official record of the companies confirming directorship of the Plaintiff on the said dates”.

105. I reiterate that the evidential burden of proof was on the 1st Defendant to prove that it had entered into a legal binding agreement with the Plaintiff; the Plaintiff having denied entering into any such agreement and further disowning Francis Muhuhu Ndinguri as its director. As far as the Plaintiff is concerned, Francis Muhuhu Ndinguri was an impostor and a fraudster. The Plaintiff went further through the evidence of the Assistant Registrar of Companies to demonstrate that the CR 12 relied on by Francis Muhuhu Ndinguri, dated 24th February 2023 was not genuine and had not originated from the Registrar of Companies. That is the CR 12 that the 1st

Defendant had relied on. They did not conduct one of their own. It was therefore upon the 1st Defendant to rebut this evidence.

106. The burden lies on the 1st Defendant whom substation of that particular allegation is an essential of his case/defence. That burden can only be discharged by way of evidence. That having not been done, the court finds and holds that Francis Muhuhu Ndinguri was not a director of the Plaintiff and his actions cannot bind the Plaintiff. He was a pretender to the throne, an impostor and a fraud. His actions were not authorized by a resolution of the Board of Directors or of the General Meeting of the Plaintiff company.

107. The purported Joint Venture Agreement was but an instrument of fraud used by the 1st Defendant in cahoots with Francis Muhuhu Ndinguri in an attempt to defraud the Plaintiff of his land, the suit property. The purported Joint Venture Agreement is therefore not binding upon the Plaintiff in any way whatsoever.

C. Whether the suit property L.R. No. 28401 was lawfully transferred to the 1st Defendant and subsequently subdivided into the resultant parcels.

108. The ownership of L.R. No. 28401 is not disputed. As pointed out earlier, the 1st Defendant states that the suit property, L.R. No. 28401 was the Plaintiff's contribution to the Joint Venture Agreement. The evidence of the Chief Land Registrar too confirms the Plaintiff's ownership of L.R. No. 28401. I will therefore not spend time on a non-issue.

109. The issue in contention is whether the suit property was lawfully transferred to the 1st Defendant and if the subsequent subdivisions were lawful.

110. The 1st Defendant's case is that L.R. 28401 was transferred to it pursuant to the terms and objectives of the Joint Venture Agreement. The subdivision too into six (6) parcels was pursuant to the objectives of the joint venture agreement.

111. This court having found that the purported joint venture agreement was not a legally binding agreement, it follows that all actions pursuant to the said joint venture agreement are unlawful, null and void. The transfer of the suit property, from the Plaintiff's names to that of the 1st Defendant was therefore null and void. The subsequent subdivisions too.

112. The judicial policy in this country concerning illegal contracts/transactions is well spelt out. In David Sironga Ole Tulai –vs- Francis Arap Muge & 2 others (2014) eKLR, the court held that,

“No court of law will enforce an illegal contract or one, which is contrary to public policy”.

113. The above policy is in line with the well-established common law position on the subject as spelt out by Lord Mansfield CJ, in Holman –vs- Johnson (1775 -1802) ALLER 98, where he stated that;

“The principle of public policy is this; Ex dolo Malo no oritur actio. No court will lend its aid to a man who found his cause of action on an immoral or an illegal act. If, from the Plaintiff’s own stating or otherwise, the cause of action appears to arise ex turpi causa, or the transgression of a positive law of this country, there the court says that he has no right to be assisted. It is on that ground the court goes not for the sake of the Defendant, but because they will not lend their aid to such a Plaintiff.”

114. I may as well say in regard to the next issue, (whether the 1st Defendant's entry onto, and activities on the suit property amounted to trespass), that the entry into the suit property by the 1st Defendant purportedly in pursuit of the alleged joint venture amounts to trespass in view of the court's finding that the alleged JVA is not binding. The entry into the suit property by the 1st Defendant was unauthorized by the proprietor. It was a violation of the Plaintiff's right to peaceful and quiet enjoyment of its land.

D. Whether the Plaintiff is entitled to the reliefs sought in his plaint.

115. The Plaintiff was indeed the registered proprietor of the suit property L.R. No. 28401 prior to the fraudulent transfer to the 1st Defendant and subsequent subdivision by the 1st Defendant into 6 parcels.

116. The actions by the 1st Defendant and Francis Muhuhu Ndinguri of transferring the title to the suit property through a provisional title were outrightly fraudulent. The Director of the Plaintiff, PW1, confirmed and indeed showed to the court the original title to the suit property which was at all times in his possession. Francis Muhuhu Ndinguri, purporting to act on behalf of the Plaintiff allegedly reported the title to the suit property as having been lost and went ahead to obtain a provisional title which was used to transfer the suit property to the 1st Defendant.

117. The title in the name of the 1st Defendant which was subsequently subdivided into six parcels which were also registered in the name of the 1st Defendant are subject to having been obtained fraudulently is subject to cancellation under Section 80 of the Land Registration Act. The court directs the cancellation of the titles and that the register too must be rectified and amended accordingly by cancellation of the entry of transfer to the 1st Defendant and the subsequent subdivisions.

118. The 1st Defendant's witness in his testimony actually admitted and explicitly stated that the 1st Defendant has no claim of proprietorship over the suit property or the subdivisions. This is in line with paragraph 6 of the 1st Defendant's statement of defence where the 1st Defendant claims that the Plaintiff transferred the suit property to the 1st Defendant, not to own as a proprietor, but for the ends of re-survey and subdivision for ends of the venture.

119. Reference has been made to a judgment of this court in the judicial review case, ELCLJR E001 of 2024 challenging the action of the Chief Land Registrar to cancel the titles for the six parcels resulting from the subdivision of the suit property. The decision in the Judicial Review Case was obviously not a determination on the ownership of the suit property. It was a determination

on the legality or otherwise of the action of the Chief Land Registrar which the court indeed found to have been illegal under Section 80 of the Land Registration Act, since the Land Registrar has no powers to cancel a title. That power is reserved exclusively for the court under ***Section 80 of the Land Registration Act***. That is indeed the power that this court has now exercised by directing the cancellation of the six titles (subdivisions) and the title prior to the subdivision in the name of the 1st Defendant.

120. Having found in favour of the Plaintiff, the Plaintiff is entitled to permanent injunction restraining the 1st Defendant directly or indirectly from entering, encroaching, selling, transferring alienating, developing or, whatsoever, or however dealing with the suit property as sought in the plaint. A proprietor of land is entitled to absolute ownership of the land with all rights and privileges belonging to or appurtenant thereto.

121. As held in the case of *Kenya Power & Lighting Co. Limited – Versus - Sheriff Molana Habib [2018] eKLR:-*

“...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. 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...”

122. The Plaintiff prays for damages for trespass of Kshs. 200,000,000/- based on the principles elaborated in the case of *Aster Holdings Limited –vs- City Council of Nairobi & 4 others (2017) eKLR*, being the size, value and location of the land as well as the duration for which the rightful owner has been kept of the land. The court agrees that the considerations in the award of damages for trespass include the period for which the proprietor has been kept of the land, the size and value of the land amongst others.

123. In this case, having considered the above factors and the particular circumstances of this case, the court awards general damages of Kshs. 54,000,000/- to the Plaintiff against the 1st Defendant with interest at court rates from the date of this judgment until payment in full.

124. Finally, on the issue of costs. The guiding principle in awarding costs of the suit is stipulated in Section 27 Civil Procedure Act (Cap. 21) as follows:

“(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers: Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.”

125. The above provision was further elaborated upon by the Supreme in its decision in Rai & 3 others v Rai & 4 others [2014] KESC 31 (KLR) as follows

“It emerges that the award of costs would normally be guided by the principle that “costs follow the event”: the effect being that the party who calls forth the event by instituting suit, will bear the costs if the suit fails; but if this party shows legitimate

occasion, by successful suit, then the defendant or respondent will bear the costs. However, the vital factor in setting the preference, is the judiciously-exercised discretion of the Court, accommodating the special circumstances of the case, while being guided by ends of justice. The claims of the public interest will be a relevant factor, in the exercise of such discretion, as will also be the motivations and conduct of the parties, prior-to, during, and subsequent-to the actual process of litigation.”

126. Guided by the provisions of the *Section 27 of the Civil Procedure Act*, and the holding by the Supreme Court cited above, the court awards the costs of the suit to the Plaintiff against the 1st Defendant.

127. The upshot is that the court enters judgement for the Plaintiff against the 1st Defendant in the following terms;

I. A declaration be and is hereby made that the Plaintiff is the registered owner of the property known as L.R. No. 28401 and the title of the property vests in it.

II. A declaration be and is hereby made that the fraudulent subdivision of the suit property is illegal null and void.

- III. An order directed at the 2nd and 3rd Defendants is hereby issued to cancel any certificates of title that may have been issued on account of the fraudulent transfer and subdivision of the suit property L.R. No. 28401 and the register be rectified and amended accordingly by cancellation of the entry of transfer to the 1st Defendant and the subsequent subdivisions.*
- IV. A permanent injunction be and is hereby issued restraining the 1st Defendant whether by themselves, their members, beneficiaries, employees, servants and or agents and anyone, from entering, encroaching on, selling, transferring, alienating, developing or whatsoever dealing with the property known as L.R. No. 28401.*
- V. The Plaintiff is awarded Damages for trespass amounting to Kshs. 54,000,000/- with interest at court rates from the date of this judgement until payment in full.*
- VI. The Costs of the suit are awarded to the Plaintiff against the 1st Defendant.*

It is so ordered.

Dated Signed and Delivered at Kajiado Virtually this 4th Day of March 2026.

M.D. MWANGI
JUDGE

In the virtual presence of:

Mr. Kiragu Kimani SC with Mr. Stephen Njiru for the Plaintiff

Ms. Werimo Nangayo h/b for Mr. Bwire for the 1st Defendant

Mr. Allan Kamau for the 2nd and 3rd Defendants

Court Assistant: Mpoye

M.D. MWANGI
JUDGE