

THE REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC NO 240 OF 2018

BETWEEN

SAMSON KANDIE

.....PLAINTIFF

AND

JOEL KAMAU KIBE1ST

DEFENDANT

ESTHER WAMBUA MUTURI2ND

DEFENDANT

BASELINE LOGISTICS & INVESTMENTS CO. LTD ..

.....3RD DEFENDANT

MICHAEL NJAU NJOROGE4TH

DEFENDANT

PETER NJUGUNA NJENGA5TH

DEFENDANT

THE CHIEF LAND REGISTRAR6TH

DEFENDANT

ATTORNEY GENERAL7TH

DEFENDANT

JUDGMENT

The Pleadings

1. Vide a Further Amended Plaint dated 14.11.2018, the Plaintiff contends that he is the beneficial owner of the land parcel known as LR No. 21795 registered as the grant number IR 71563 measuring 0.7331 hectares hereinafter known as the **'suit property'**. He avers that using forged documents, the 1st to 5th Defendants have been encroaching on the suit property without any colour of right or legal basis. That the Defendants have unlawfully erected a barbed wire fence on the said property thereby denying him access. The Plaintiff therefore prays for judgment against the Defendants for:

“a) A declaration that the Plaintiff is the lawful and registered owner of the suit property;

- b) A permanent injunction restraining the Defendants, their agents, servants, directors and/or assigns from interfering with the suit property;**
- c) A mandatory injunction compelling the Defendants to remove the barbed wire fence and any other materials placed on the suit property;**
- d) The OCS Runda Police Station do assist in compliance for purposes of maintaining peace and order;**
- e) Costs of this suit and interest thereon.**

2. The 1st to 3rd Defendants have opposed the suit vide their statement of defence and counterclaim dated 24.10.2018. They contend that the 1st and 2nd Defendants are the shareholders of the 3rd Defendant of which, the latter is the registered owner of the suit parcel L.R. No. 14970/57 contained in the grant no. I.R.85922. That from year 2013, the 3 Defendants have

been in possession of the suit property until year 2017, when the Plaintiff attempted to trespass upon the suit land.

3. The 1st -3rd Defendants aver that Plaintiff's suit is incompetent and that his title was fraudulently, unlawfully and illegally obtained. They therefore seek the following orders in their counterclaim;

“a) A declaration that the 3rd defendant is the bona fide owner of the suit property, L.R. No. 14970/57, Nairobi located along Kiambu Road and contained in the Grant registered at the registry of titles as I.R No. 85922.

b) A decree for the cancellation of Grant No. I.R 71563 issued to the plaintiff, Samson Kandie.

c) A decree for the cancellation of Grant No. I.R 85922 purportedly issued to the 4th and 5th defendants, Michael Njau Njoroge and Peter Njuguna Njenga.

d) Costs of the suit and the counter claim”.

- 4.** The 4th and 5th Defendants opposed the suit vide their defence and counterclaim dated 25.6.2018 where they contend that they are the registered owners of the suit property by dint of the certificate of title no. 14970/57 (I.R 85922). They seek orders to be declared as the lawful owners of the suit property and for the eviction of the defendants.
- 5.** The 6th and 7th Defendants filed a statement of defence dated 18.11.2019 where they deny that the Plaintiff is the registered owner of parcel L.R. 21795 IR, 71563. They contend that I.R 71563 is for L.R.4275/84 (Original No.) LR 4275/2/8 and not L.R 21795.

The Evidence

Plaintiff's Case

- 6.** The Plaintiff SAMSON KANDIE called five witnesses in support of his case where he testified as PW1. He adopted his witness statement dated 18/5/2018 as his

evidence in chief. He reiterated that he is the registered owner of the suit parcel L.R.No. 21795, IR No. 71563 situated along Kiambu road, of which the Defendants have encroached upon the said land, thereby denying him access. He avers that in year 1995, he was looking for a piece of land to develop Agricultural machinery and someone told him about the suit land, he did due diligence and found that the land in question was government land no L.R 14970/57 which had been surrendered after the subdivision of LR 14970, so the Plaintiff applied for allocation of the same.

7. He avers that the original parcel was subdivided into 57 subplots, of which the suit plot was no.57 as seen in the survey plan FR209/61 where the size of the land is 0.733 hectares. He was then given a letter of allotment on 30.10.1995, he accepted the offer by paying the stand premium of Sh. 479 997. He was advised that a resurvey had to be done, so he engaged a private surveyor, one Mrs. Rabuku who carried out a survey on 14.3.1996

which was approved and that is when the parcel L.R 14970/57 was allocated a new number L.R. 21795. He received a deed plan upon the re-survey. Thereafter, PW1 was registered as the owner of the suit land on 20.8.1996, and he took over possession thereof.

8. PW1 avers that after the regime change of year 2002, some time in year 2003-2004, he was required to take back all the documents pertaining to the land for verification, but getting the documents back took a long time. That is why he sued the Chief Land Registrar, the Cabinet Secretary and Director of Survey in the case ELC NO. 365 OF 2016. He was later called by a land registrar, the late Lubullelah who told him to go and pick his title. That after he got his title, there was no need to continue with the case which he withdrew.

9. PW1 states that he had no problems until year 2018 when someone came with a tractor and deposited building materials thereon. He reported the matter at

Runda police station where he was shown copies of the competing titles.

10. In support of his case, PW1 produced the documents in his trial bundle, excluding the ones which were produced by his witnesses.

11. On cross examination by counsel for the 6th and 7th Defendants, PW1 stated that he had been looking around for the land which he found and applied for it at the Ministry of Lands. That the letter of allotment for parcel 14970/57 was issued to himself, (S.K Kandie), F.K Ngeno and J.M Mwangi, all of the same address. All three paid for the land, but the title was in the name of PW1. He stated that he didn't have a letter of allocation for allotment. He contends that the suit property was the remainder of a subdivision of number 1-56 and plot 57 remained as a surrender to the government. After applying and getting the allotment, the land was resurveyed from parcel 14970/57. He avers that the persons allocated the land agreed that the title be issued

in Plaintiff's name, so PW1 was issued with a title deed, the one at page 15 of his trial bundle dated 20.8.1996.

12. He took possession in the year 1996 by planting maize. He admitted that he had not carried out any commercial activities on the suit property. He filed the case of year 2016 complaining about his title issued in year 1996.

13. On cross examination by counsel for the 1st-3rd Defendants, PW1 stated that he had not seen an advert in relation to the suit property. He had just gone around looking for vacant government land. He then went to the land's office with a PDP which he had obtained from the physical planning office and a survey map. The purpose of the PDP was to establish the location of the suit property. At the land's office, PW1 was told that the suit property was available for allocation and advised to apply. He then made a written application. He stated that he did not know why the initial owner had surrendered the suit plot and neither did he know

whether the surrender was done for use as a public utility.

14. He admitted to having filed the case No 365 of 2016 though the contents of that plaint at paragraph 9 have the wrong content because it was filed when he was upcountry. However, the case was withdrawn under his instructions after he was issued with a title. PW1 stated that he had surrendered his title to the National Land Commission pursuant to an advert in the papers in year 2013-2014, but he had nothing to show that he did so. His principal prayer was for the ministry to issue him with a title for parcel 21795 which had initially been issued to him in 1996. He stated that the National Land Commission advised him to pay Ksh.480, 000/- for replacement of title and issuance of a new title.

15. PW1 admitted that in 1996 when he got a title, he was not issued with the lease. At some point he came across the lease which was produced at page 67 of the 1st-3rd Defendants' bundle. He stated that it was

prepared after he had paid the Ksh. 480,000/- in the year 2016. He denied having any other lease.

16. PW1 stated that in a different case he sued one Jackson Mwangi Wanjugi on 3.8.2017 for trespass on the suit property, but the case has not been prosecuted.

17. PW1 avers that his application for another deed plan was because of the loss of his title at NLC. He got a police abstract but he did not produce the same in court. He reported the loss of a deed plan and not a title on advise from NLC which was done by verbal communication. That in 1996, he paid the stand premium by bankers' cheque. He denied that the title was unlawfully issued to him or that it has no supporting documents.

18. On cross examination by counsel for the 4th and 5th Defendants, PW1 stated that the neighbouring parcels include 14970/55. He contends that a deed plan is a result of a re-survey. In his case his parcel was 57 and a note was sent to the Director of Survey who generated a

deed plan for number 21795. He reiterated that the National Land Commission had misplaced his initial title, the one given in year 1996. That he accepted the allotment by paying stand premium thus to him, it was not a requirement to do an acceptance letter. He stated that he had been paying rates but has accrued debts because of this matter. In year 2016, he was required to make payments again for his lost title in order to get a new title. He is aware that the 4th and 5th Defendants are claiming the same suit property on the basis of a title no 14970/57. He insisted that he got his title lawfully in the year 1996.

19. Upon re-examination, PW1 stated that he got the letter of allotment on the date of 30.3.1995, then he paid the stand premium on 10.4.1996 via bankers cheque no. 008418 and that the payment has not been the subject of any litigation. He stated that he filed case number ELC 365/2016 because he had gone several times to the National Land Commission for his title which

had been recalled only to be told 'come tomorrow'. He got his title back from the ministry of lands, so he withdrew his case. He stated that the 6th and 7th Defendants were added in this suit through instructions by the court.

20. PW2 ERIC NDUHIU introduced himself as a licenced land surveyor whose evidence was taken virtually. He produced his report at page 32 of the Plaintiff's bundle as an exhibit. He stated that the object of the report was to confirm the existence of three parcels, namely LR number 21795, LR 14970/57 and 209/8294/182. His findings were that L.R. No.14970/57 was cancelled after resurvey and superseded by L.R. No. 21795. That LR No. 21795 had no relation to LR. 209/8294/182 as they are two different parcels, the former being along Kiambu Road and the latter being in South C. He further stated that parcel 14970/57 was cancelled meaning that the survey was done, whereby Director of Survey gave the

suit parcel a new LR. Number 21795, its survey plan No. being 296/161.

21. Upon cross examination by counsel for the 1st-3rd Defendants, PW2 while referring to FR 209/61, stated that LRs 14970. 1-57 are subdivisions arising from parcel 14970 which existed prior. He did not know the previous owner of parcel 14970. He explained that a survey plan doesn't show who did the subdivision, such a plan shows the parcel of land, measurements and dimensions but does not indicate the proprietorship. That aside from the map, a copy of the title for LR 21795 was availed to him by the advocates for the Plaintiff. For the other two titles, he relied on survey plans. He stated that LR 14970/57 was cancelled by the Director of Survey on the survey plans and not via a letter, adding that that is how land transactions are traced on the survey plan. He stated that it is only the Director of Surveys who can issue new numbers.

22. On cross examination by Counsel for the 6th and 7th Defendants, PW2 stated that he is familiar with the report of 2018. He did not consult the Director of Survey when he received instructions from Plaintiff's Counsel. He confirmed that LR 21795 and 14970/57 are related. He explained that the cadastral plan no. 209/61 was authenticated on 14.3.1990. Further, that a new deed plan for 14970/57 was issued on 9.6.1997 after cancellation. He confirmed that the older plan no. FR 209/61 was one of the references for the new FR 296/161.

23. Upon re-examination, PW2 stated that he did not write to the Director of Survey because the maps he was relying on came from that office. The title he got was for parcel 21795 and the deed plan. He stated that beacons do not change upon resurvey, unless the property is being subdivided.

24. PW3 PRISCILLA NJERI WANGU, is a land surveyor working at the Ministry of Housing and Urban

Development as an Assistant Director of Survey. She testified that on 8.6.2021 she wrote a letter to the DCI, CID Gigiri regarding LRs 21795 and 14970/57. This was in response to the letter from the DCI Gigiri dated 27.5.2021 where they were investigating a case of illegal fraud on the two parcels and asked for a number of documents.

25. She avers that she got information from the survey plan no. 209/61 indicating that parcel 14970/57 was surveyed upon subdivision of parcel 14970 into 57 plots, of which the approval was given on 19.3.1990. That upon subdivision, deed plans were issued for parcels 14970/1-57 through a slip issued by Director Survey, however, no deed plan was issued for parcel 14970/57 as the same had been preserved for a public utility or for a different use, adding that LR. No. 14970/57 was cancelled and a new number was given (LR. No. 21795) pursuant to a new grant dated 14.3.1996.

26. That a deed plan was issued on 18.3.1996 pursuant to that survey and is no 203882. That from a survey point of view, cancellation of 14970/57 meant that the said number ceased to exist, as it was superseded by no. 21795 as reflected in the survey map 209/61. Thus, the records at survey shows that as at 14.3.1996, the parcel 14970/57 ceased to exist. However, another deed plan no. 209169 for parcel 14970/57 was issued on 9.6.1997 which was an error, as the one for L.R No. 21795 still existed.

27. In support of her averments, PW3 produced the following documents; Deed plan FR no. 209/61 at page 55, FR no. 296/161 at page 54 and deed plan no. 203882 issued on 18.3.1996 at page 17 of Plaintiff's bundle.

28. On cross examination by Counsel for the 1st-3rd Defendants, PW3 stated that apart from the survey plan, she did not produce anything else to show the cancellation, adding that the map containing the cancellation shows reasons as to why it was cancelled

which is because another LR number was given. She stated that the survey for 14970 was done by Gatome, a licensed surveyor while the other surveyor was done by Rabuko of which the cancellation by the Director of Survey is indicated on the map by the inscription 'cancelled'. She explained that the cancellation is authenticated as a matter of practice. And the authentication of the cancellation was the only way the parcel could be changed to a new grant no. 21795. PW3 stated that the Plaintiff thereafter applied for a change of use after he picked up the deed plan.

29. On surrender, PW3 stated that it is a condition of a subdivision, of which one does not submit any document of surrender to the Director of Survey. That by law, the evidence of a surrender is reflected in the subdivision scheme of the County of Nairobi and in a subdivision approval certificate. However, for a formal surrender there is no instrument of surrender, but the surrender is given to the Chief Land Registrar. She stated that the

allotment cannot be done on land which has not been surrendered. Before subdivision, PW3 did not know the owner of the suit parcel. She knows of another deed plan which was issued in the year 1997 by the Director of Survey but she was not aware if it was ever cancelled.

30. On cross examination by counsel for the 6th and 7th Defendants, PW3 stated that Survey is governed by the Survey Act cap 299 which provides for the procedure of cancellation of a survey plan. She stated that when deed plans are issued, they are registered in the deed plan register. That for the deed plan no. 203882 issued on 18.3.1996, the same is with the Director of Survey but she did not know if it was provided to the DCI. As for L.R. No. 14970, PW3 stated that she saw the subdivision plan in the computation file no. 35963, but corrected and said it was no. 24377 where Deed Plan no. 209/61 is contained.

31. Referring to her letter dated 8.6.2021 regarding the deed plan no. 209169, PW3 stated that the date of

9.6.1997 was a typing error and should have been 6.6.1997. But before the said deed plan, there was another deed plan 203882 issued on 18.3.1996. Thus, the issuance of deed plan No. 209169 was an error because the other one had not been cancelled. She however noticed the error when the case was ongoing and that the Director of Survey could not recall the deed plan which had been initiated in error because the title had already been issued.

32. PW3 explained that that for the cadastral plan FR 209/61, she referred to parcel 14970/57 having been cancelled when the new one was issued after 14.3.1996. She stated that cadastral plan FR 209/61 was submitted by licensed surveyor Gatome on 24.1.1990 while for the new grant survey was submitted on 13.3.1996 by Mrs. Bibiana Rabuko. She further stated that deed plans are issued sequentially, adding that she supplied the two computation files to the CID.

33. On re-examination PW3 stated that the cancellation is manifested on the survey plan of the new LR number, of which the new survey was conducted pursuant to a new grant. She reiterated that parcel 14970/57 was surrendered as a condition for subdivision.

34. PW4, JULIANNA ACHIENG RABUKO OMALA introduced herself as a licensed surveyor and a registered planner in private practice. She adopted her witness statement dated 17.11.2021 contained at page 10 of the Plaintiff's bundle as her evidence. She avers that carried out a new grant survey via the allotment number 67273/73 dated 30th October 1995 in favour of S.K Kandie and others. The survey was approved vide F/R no. 296/161 representing LR number 21795. The approval was communicated by the Director of Survey vide the letter reference no. CR/199/6/742 dated 14.3.1996. Further, that she submitted the attendant deed plan on 15.3.1996 which was numbered as Deed Plan 203882, sealed and was issued to the Plaintiff.

35. Upon cross examination by Counsel for the 1st-3rd Defendants, PW4 stated that when her client, the Plaintiff, brought the allotment to her, a copy was made which she kept in the survey file. That aside from the Plaintiff, there were two other allottees, namely Mr. Ngeno and J.M. Mwangi, but she only got instructions from the Plaintiff who gave her the allotment, a copy of payment receipt for the allotment and she bought the survey plan. She stated that after the resurvey, she presented the same (Survey plan) to the Director of Survey. That once presentation is done, it is checked against existing data.

36. PW4 gave the step by step account of the process as follows; That the director of surveys receives the survey plan; they check it against their data; they register it as they have what is needed in the cadastral survey; preliminary checking after registration; final checking; authentication, paving way for the submission of the deed plan.

37. PW4 further stated that surveyors rely on documents which have been availed to them. That one cannot do a survey without supporting documents, which come from the lands office, the County or the Ministry in the case of a new grant. She stated that in those days, deeds would be taken directly to the commissioner of lands to generate titles. The Director of Survey would give the deed plan to the Commissioner of lands and the latter would confirm that payments had been made. For the case at hand, PW4 was surveying parcel 14970/57, which was the L.R NO. prior to the survey.

38. Regarding the letter at page 53 of the 1st-3rd Defendants' bundle of documents, PW4 stated that she did not know if a grant was processed in favour of the Plaintiff. She stated that the grant comes first, then survey, then deed plan and then title comes last. Further, after allotment is survey, depending on the nature of allotment.

39. On cross examination by counsel for the 6th and 7th Defendants, PW4 stated that when she found out that there was a dispute related to the new grant which she had prepared, she checked her files which is where the Plaintiff got the slips which he produced, adding that the allotment letter contained in page 21 of Plaintiff's supplementary list dated 17.11.2021 was the authority document. She stated that a re-survey had to be done since it was a new allotment. She confirmed that she prepared the cadastral plan FR 296/161, while relying on the data in 209/61. That for the indent, the Commissioner of lands calls for deed plans via an indent but she never came across a deed plan that was being called for. She assumed her deed plan was used to get the title for that was the purpose. She confirmed the letters between her and Mr. Njoroge, a Deed Plan Officer produced at pages 25 and 26 of the Plaintiff's bundle confirming that the deed plan was signed on 18.3.1996 having been submitted on 15.3.1996. She does not

recall communicating with the Survey Director after 1.12.2017.

40. Upon re-examination, PW4 stated that she did not recall who instructed her to write the letter dated 10.11.2017 at page 25 of the Plaintiff's bundle, but the query therein was responded to by the letter at page 26 confirming that a deed was issued pursuant to her survey. She stated that a resurvey was necessary to confirm that the land was intact and to confirm the measurements. She did not know that there was a cancellation of the surveys done prior to her survey, adding that her survey would not have been authenticated if it was not properly done.

41. PW5, CHARLES KIPKURUI NGETICH is a Land Registrar. He confirmed that he was the author of the letter at page 30 of the Plaintiff's bundle. His evidence is that he checked the particulars of the suit property at Ardhi house headquarters where he found that there was a title in the name of the Plaintiff. That his letter was

explaining the difference between I.R. 71563 and IR 85922. That IR 71563 relates to L.R. 21795 registered on 28.11.1996 measuring 0.7331 in favour of Samson Kandie. For IR 85922, the same relates to L.R. no. 209/8294/184 registered to one Grace Wangui Nyagu in the Central Business District of Nairobi County.

42. On cross examination by counsel for the 1st- 3rd Defendants, PW5 stated that the records he is referring to are those at Ardhi House and he was responding as a Land Registrar to Howard Nick's Advocates. He contends that the record relates to titles registered under the Registration of Titles Act (Cap 281 repealed), thus he looked for the deed file where copy of title and other registration instruments are kept, as well as at the land administration records and valuation department. He stated that the interest in the land holding was a new grant leasehold where annual rent had to be paid, but the file had no lease, it only had a grant to Samson Kandie. He explained that the lease instruments used

nowadays were not there in the 1990s. He confirmed that he saw the lease signed by the Late Fredrick Lubulellah and referred to it in his letter. It was signed and registered on 28.8.1998. He told the court that there were also other documents in the parcel but he was only interested in the title, as he was only responding to the validity of that title.

43. He stated that for I.R. 85922 he did a print out to the system and it relates to a different parcel of land in the CBD which is L.R. No. 209/8294/82. That for any parcel with Nos 209, it means that such land is within 10 kilometers of the CBD. He also stated that parcel 14970/57 was not in their system and there was no physical file to that effect.

44. Referred to the title of the 1st -3rd Defendants which is at page 17 of their bundle, PW5 stated that for IR No. 85922, L.R No. 14970/57, he could not remember if there was an entry of 7.10.2013.

45. In writing the letter of 13.9.2018 at page 30 of Plaintiff's supplementary bundle, PW5 stated that he relied on the following documents; Title numbers IR Nos. 71563 which corresponds to L.R 21795 registered on 28.11.1996 in the name of Samson Kandie meaning he was in possession of a title which was a new grant, of which the records are in the Deed file no 71563.

46. Referred to paragraph 12 of Plaintiff's plaint at page 41 of the 1st -3rd Defendants' bundle, PW5 stated that the Plaintiff was mentioning the allotment letter, but to them, a title had been issued to the Plaintiff in 1996. Adding that one can pay a stand premium after a certificate of title has been issued but that it is not possible to pay Kshs. 480,000/- as averred by the Plaintiff because the amount is usually small. Further, PW5 stated that the officers referred to in paragraph 18 of the plaint had no capacity to issue him with a title as he already had one. He stated that in his letter at page 4 of the supplementary bundle was the other grant IR No.

85922 which formed part of the record. As for L.R no. 14970/57 he stated that the grant exists but the same does not correspond with the IR number 85922 for L.R 14970157 issued to Quench Limited.

47. Still on the letter at page 30 of the Plaintiff's list, PW5 confirmed that he was writing to the firm of K. Howard Advocates to confirm the areas in which the LR number fell under, adding that unlike the IR numbers, the LR numbers refer exactly to the physical grounds. He was also guiding the advocates to go to the Surveyors of Kenya.

48. Referred to the witness statement of Edwin Munoko Wafula, PW5 stated that the job of a land registration officer is to register an interest in land in which an interest is already existing for example a charge or a transfer. Therefore, a registrar deals with the records that are available. He further stated that at paragraph 10 of that witness statement, Edwin Munoko stated that the records at ministry indicated that file number 67273

was opened for LR number 3989/13 in favour of one Zacharia Kimemia Gakungu. However, the said file no. 67273 was not available to him since he is only a land registrar and not a land administration officer.

49. On cross examination by counsel for the 6th and 7th Defendants, PW5 reiterated that he authored the letter dated 13.9.2018 at page 30 of the Plaintiffs bundle in response to the advocates letter at page 28 of Plaintiff's bundle, which letter makes reference to a surrender of L.R 14970/57. He confirmed that he came across the surrender. That he was interested in the I.R. numbers. That he checked several records including copies of titles, respective deed files which were both intact as well as the I.R. Registration and presentation books and he gathered that title I.R. No. 71563 was corresponding with L.R. No. 21795, while I R No. 85922 was corresponding to LR No. 209/8294/184. PW5 affirmed that he came across the grant at page 4 of the 1st-3rd Defendant's bundle (the IR No. 85922 for L.R. No.

14970/57) saying it was pursuant to a certain Vol N44 folio 209/19 GLA file 137/57 which files would be in the custody of their office. He did not mention these files in the body of his letter.

50. He confirmed that the document at page 8 of the 1st-3rd Defendants' bundle is a search issued on 28.1.2014 by Gladys Muyanga, a colleague of PW5, of which entry no. 5 is a cancellation of a charge dated 7.10.2013. He confirms that he is the one who did the cancellation, he is also the one who withdrew the caveat on 9.10.2013 registered at entry number 6 of the grant. Referred to page 32 in the bundle of the 1st- 3rd Defendants, PW5 stated that the document was a letter purportedly authored by P.S lands dated 6.6.2018 which came before his letter. He cannot recall when the file went missing or when the deed of indemnity for reconstruction was made.

51. On re-examination PW5 clarified that IR numbers are issued on registration and thereafter indicated in the

IR register book. In the case at hand, there were two IR numbers namely 1) 71563 and 2) 85922, thus this was a case of double registration where IR 71563 was corresponding with L.R 21795, while IR 85922 was corresponding with LR 209/8294/184. PW5 identifies the document at page 42 of Plaintiff's bundle as a search certificate for I.R 85922 and it corresponded to L.R. 209/8294/182. He stated that as per the register, I.R. No. 71563 was issued on 28.8.1996. Regarding the certificate of title of the 3rd Defendant at page 7 of his bundle, PW5 noted that the I.R. 85922 was registered on 11.4.2001, about six years later, after 1996; meaning I.R. 85922 was used to register two titles. He confirmed that the letter of allotment at page 21 of the Plaintiff's bundle bears the date of 30.10.1995 in respect of L.R. 14970/57 along Kiambu road and is in the name of the Plaintiff and J.M Mwangi. At page 23 of the same bundle, he confirms that it is a receipt for payment of a stand premium by the Plaintiff, F.K Ngeno and J.F Mwangi to

the Commissioner of Lands Office. The amount paid corresponded to the amount in the letter of the allotment. He stated that the title at page 18 of the Plaintiff's bundle was issued after payment of the stand premium.

52. Regarding the witness statement of Edwin Munoko Wafula, PW5 stated that paragraph 9 is incorrect when Edwin says that L.R. No. 21795 did not exist as at 30.10.1995 when the letter of allotment was issued, since the allotment at page 21 of the Plaintiff's bundle does not make reference to the same L.R. number. Further, that at paragraph 10 of the said witness statement, the witness refers to file no. 67273/73 as the allocation file, but the records indicated that file 67273 was opened for LR number 3989/13 in favour of Zacharia Gakunga and that the finding was supposed to be made by the Director of Land Administration, formerly the Commissioner of lands and Director of Survey of Kenya.

53. PW5 avers that he was shown two certificates of title for comparison, the one at page 4 of the 1st-3rd Defendant's bundle and the one at page 15 of the Plaintiff's bundle, of which both were registered pursuant to allocation of New Grants, the one at page 15 shows grant no. 71562 (New Grant) and the one for the 1st-3rd Defendants being New Grant No. 85922 and that both were hence issued pursuant to letters of allotment.

54. PW5 further stated that at page 007B of the 1st- 3rd Defendants' bundle, he is the one who effected the entries at no 5 and 6, which he did in good faith not knowing that there was a parallel title in respect of the same parcel of land. He also discovered another hurdle in respect of IR number 85922, that the same belonged to parcels of land in the CBD, and that there was another title with similar entries from number 2 to 6 which had been signed by different Registrars from the ones shown at page 007B. This caused confusion as to which was the genuine title.

55. For the letter at page 23 of the 1st-3rd Defendants' bundle, PW5 stated that the letter dated 6.6.2018 was authored by PC Muraguri in reference to a complaint made by parties that is; Baseline logistics and Samson Kandie. By then PW5 had no knowledge of the loss of the file of baseline, and he doesn't think there was such a loss. He also doesn't know if the deed of indemnity was prepared.

1st -3rd Defendants' case

56. DW1, JOEL KAMAU KIBE is the 1st Defendant. He introduced himself as the husband of the 2nd Defendant, and that the two are co-owners of Baseline Logistics which is the 3rd Defendant, of which, he was giving evidence on behalf of the 2nd and 3rd Defendants. He adopted the contents of his affidavit sworn on 24.10.2018 as his evidence at page 10-13 of their bundle. His evidence is that the 3rd Defendant's company was registered as the proprietor of the suit

property on 21.1.2014, having acquired it by way of transfer from the 2nd Defendant, who had acquired it by way of purchase for valuable consideration from the Triton Service Stations Limited which was under the statutory management of Kenya Commercial Bank Ltd. They have been in possession of the suit land since then and have fenced the same.

57. DW1 deponed that the copies of titles presented by the Plaintiff and the 4th and 5th Defendants are all fraudulently procured with the intention of depriving him of his property. He had reported the matter to the Director of Criminal Investigations which investigated the case. DW1 avers that the 1st Defendant (he meant Plaintiff) had initially filed another suit against one Jackson Mwangi in which he used a different set of documents from the current ones, meaning that he is speculating with various sets of fraudulent documents to try and acquire the suit property, adding that the Plaintiff did not claim to have title to the suit property in

that other suit, yet in the present suit he seems to have mysteriously acquired title.

58. In support of his case, DW1 produced the documents in his affidavit as exhibits namely; their title, transfers, and court documents filed by the Plaintiff.

59. On cross-examination by counsel for the Plaintiff, DW1 averred that he has no documents in court showing that the 2nd Defendant is his wife or that she authorised him to give evidence on her behalf, similarly he has no resolution from the company to represent 3rd Defendant. Referred to the copy of title at page 004 of their bundle, DW1 stated that the L.R. no. is 14970/57 grant no. 85922. He could not discern the first registered proprietor of the suit property, he could only see the transfer from Triton Stations Ltd at entry no. 2 as there is no entry no 1. That at page 4, it states that the President of Kenya grants to Kwench Ltd L.R. No. to hold for 99 years from 1.7.1999, and was transferred from

Kwench Ltd to Triton Ltd for Kenya Shillings 18,000,000/- on 25.5.2007.

60. He further stated that the title was registered on 23.1.2001 by the then Commissioner of Lands, Sammy Mwita, then the entry was made by a Land Registrar on 11th April but he could not say the year was 2001. He avers that the suit land was purchased by the 2nd Defendant from the Kenya Commercial Bank as money was paid to the said bank where it was charged, of which he didn't have a sale agreement save the document at page 014 of their bundle which is a transfer.

61. He explained that Triton had taken a loan with Kenya Commercial Bank which was holding the title and that Triton was under statutory management. That the transfer instrument dated 23.10.2013, produced at page 15 of the 1st to 3rd Defendants' trial bundle was signed by Triton Ltd in favour of Kenya Commercial Bank with the transfer being in favour of the 2nd Defendant who paid valuable consideration amounting to Ksh. 80,000,000/-

through RTGS. But DW1 had no evidence of how the money was paid, though he was fully involved in the transaction. They had come to know that the suit property was on sale through their lawyer on record, Mr. Njenga, who also acted for them in that transaction and also conducted due diligence. He has no document to show that stamp duty was paid.

62. DW1 identified the title at page 4 of his bundle as grant No 85922, and that the document at page 42 of Plaintiff's bundle (a search) bears IR 85922 for LR No. 209/8294/182 registered in the name of Grace Wangui Nyaga. He has no search for his own title. He identifies the document at page 6 of their bundle as a copy of deed plan no. 209167 which was issued on 6.6.1997 for L.R. 14970/57. That at page 4, it shows that the president of Kenya granted the land on 1.7.1999 to Kwench ltd, but he is not sure when the deed plan was issued.

63. DW1 further stated that he took possession of the suit property from year 2013 whereby, his wife was planting maize thereon and there was a small security house. As from year 2021, he got a tenant by the name Mwangi who utilizes the property by selling cars. He admits to having written the complaint letter at page 28 of his bundle dated 21.5.2018 to the DCI about someone who was interfering with the property. He did not get a response to the said letter.

64. On cross examination of DW1 by counsel for the 6th and 7th Defendants, DW1 stated that the parcel he is claiming is L.R. 14970/57, I.R. 85922 which is at page 16 of their bundle bearing registration stamp of 11.4.2001 which he could not clearly see. He averred that he got to know about the availability of the suit property in his normal interactions with KCB after Triton Service Ltd was placed under receivership by the bank. He came to know from one of the Directors of Triton, a Mr. Atwetwe that they were trying to dispose off some property so as to

pay KCB and that their documents were with KCB. DW1 explained that he paid Triton Service Ltd Kenya Shillings 80 million through the 2nd Defendant's account at KCB. Their lawyer for the transaction was Kangata & Co Advocates. He averred that they did a search on the suit property and confirmed that Triton owned it.

65. He was familiar with the suit property at Runda because he lives near it. Further, between the years 2006 and 2007, his own brother was interested in purchasing the suit property from the previous owner Zakaria Kimemia Gakunju who is also the person who has sold all the properties at Runda Evergreen area which used to be a coffee plantation. Referring to the original title of the land at page 13 of his trial bundle, DW1 stated that the suit property was owned by Kwench Ltd which was owned by Kimemia Warurie and his children.

- 66.** DW1 averred that from the colonial times, the land came to Gakunju, then to the service station and then to the 2nd Defendant and ultimately to the 3rd Defendant.
- 67.** Referred to page 21 of Plaintiff's bundle, DW1 stated that the document is a letter of allotment dated 1.11.1995 for parcel 14970/57, the same property he is claiming. He is not aware if Gakunju had an allotment.
- 68.** Referred to page 33 of his trial bundle, DW1 stated that this was case no 516 of 2017 filed by the Plaintiff against one Jackson Mwangi. He avers that though he didn't know the Plaintiff (Kandie), he knew Jackson Mwangi as he was like his caretaker. That the Plaintiff was told that Jackson was the owner of the suit property when he was trying to defraud him. He came to learn later that the case was withdrawn. He contends that the acreage of the suit property is just below 2 acres, the document at page 13 of his bundle indicates the acreage of 0.7331 Ha. That this is the same acreage

in the deed plan at page 47 of his bundle meaning that him and the Plaintiff were claiming the same acreage.

69. Referred again to the letter by PS Muraguri, DW1 stated that the PS was responding to investigations. That the letter refers to IR 71563 and LR No. 4275, of which the latter is not his title. He avers that the letter indicates that there was a surrender. He contends that the file disappeared, so he made an application for its reconstruction. That he did a search and bought the land. DW1 does not understand why the Plaintiff had to file the case no 365 of 2016, yet he had a title of year 2001, he thinks the case was withdrawn. He avers that he has never filed a case against the Plaintiff as he doesn't understand that title.

70. DW1 reiterated that he paid stamp duty for the suit land even though there is no evidence to that effect. He didn't pay stamp duty for the registration of the suit land to 3rd Defendant as there was no consideration. He also reiterated that he has been on the land since year 2013.

71. On re-examination, DW1 stated that he has a valid title from the government. He contends that the document at page 23 of their bundle shows that stamp duty was assessed at sh. 80 million by the ministry and there is evidence of payments, He avers that in Plaintiff's case no 365 of 2016, the Plaintiff is seeking orders for his title to be processed for parcel 21795. He reiterates that they lawfully purchased the suit land from Triton, and that as a family, they agreed that he was the one to give evidence.

Case for the 4th and 5th Defendants

72. The 4th and 5th Defendants were represented by a firm of advocates in these proceedings. They filed pleadings where they were claiming to be the registered owners of the suit land, they were participating in the prosecution of the case at its infancy stages and even cross-examined the Plaintiff on 25.7.2023. However,

they didn't make any appearance thereafter despite the fact that they were served.

Case for the 6th and 7th Defendants

73. The case of the 6th and 7th Defendants (hereinafter, the AG) was advanced by two witnesses. DW2 is one ERICK WEKESA, who introduced himself as the DCI officer based at Gigiri station. He adopted his witness statement dated 21.3.2025 as his evidence. He also produced the 29 documents in their list dated 31.8.2023 as their exhibits. His evidence is that on 3.5.2021, a report was made to their office by the 3rd Defendant that a group of people sent by the Plaintiff had invaded the suit parcel, of which their office managed to remove the said group. Their office also carried out investigations in which DW1 and PW1 supplied them with documents of ownership of the suit land. They also wrote to the ministry of lands vide letters of 17.5.2021 and 15.2.2023 in which the department of land administration vide their letter of 6.7.2023 indicated that parcel 14770/57 was a

resultant subdivision of L.R 14970, of which parcel 14770/57 was allocated to the Plaintiff and one Ngeno.

74. On cross examination by counsel for the Plaintiff, DW2 reiterated that the report of 3.5.2021 was made by DW1 to the effect that his parcel had been invaded, of which the reportee had a copy of the title but not a search. On cross examination by counsel for the 1st- 3rd Defendants, DW2 stated that he is a police officer who is not trained in land matters. He rehashed the processes their office undertook in carrying out investigations and confirmed that he saw the title of the 1st Defendant. On re-examination, DW2 stated that in the course of their investigations, they got information that offices of the land administration and survey were the custodians of the relevant documents.

75. DW3 is one EDWIN MUNOKO WAFULA, a Senior Land Registration Officer based in Chuka as at the time of his testimony, but was based at the Headquarters in year 2019. He adopted his witness statement dated

18.11.2019 as his evidence. He also produced the 22 documents in their bundle (its dated 18.11.2019) as their exhibits. His evidence is that he is conversant with the issues relating to the two Grants; IR 85922 and IR 71563. He gave an account of how a new grant is issued which process entails;

Making an application for allocation,

Confirmation of availability of the plot,

Issuance of the letter of allotment to the applicant,

Payment of the requisite fees,

Survey of the particular plot,

Issuance of the deed plan by Director of survey,

Processing and execution of the new grant by

Commissioner of lands,

Registration by Registrar of titles.

76. DW3 avers that the allotment letter ref no. 67273 issued to the Plaintiff on 30.10.1995 appears to be suspect, because it reflects parcel 20795 on survey plan F/R296/161, yet this survey plan was first recovered at

Director of survey on 13.3.1996, and was authenticated by the same office on 14.3.1996. Thus, as per the ministry records, parcel L.R.21795 did not exist as at 30.10.1995. He avers that the allocation file in the allotment letter was No. 67273/73 and was opened in respect of L.R No. 3989/13 in favour of Zacharia Gakumu. Further, the Plaintiff apparently paid Ksh.480 000 vide cheque no 011760, but the forwarding letter is dated 10.8.2011 with no explanation as to why it took him 4 years to make the payments.

77. DW3 further avers that file no. 175695 which the Plaintiff claims to be his allocation file contains correspondence for L.R 14970/57 in favour of Kwench limited. That from their records, IR 71563 is for LR. 4275/84 registered in the name of Barkat Developers on 28.11.1996. Adding that the purported grant no. 85922 for parcel 14970/57 issued to the 4th and 5th Defendants is not supported by any records from the ministry,

78. On cross examination by Plaintiff's advocate, DW3 stated that he started working in central registry at ministry of lands in year 2008 and was at legal department, court section. He has never worked at Directorate of Land Administration, Physical planning or Survey. He contends that the registration records he refers to are; the deed file, IR Registers as well as information from sister departments. That there was a write up from department of land administration, but he did not have the write up in court. That before recording his statement, he saw specific officers from land administration and survey who gave him information. DW3 did change his testimony and stated that he specifically got information from land administration. He did not get information from survey and he didn't go there. That in the department where he worked, that is land registration, their role was to deal with documents presented to them, thus the said department comes last in registration of title.

79. That for IR numbers, there is no need to seek information from sister departments because the said numbers are issued in their registry. That IR NO. means “Inland Registry” and its purpose is to identify the property and corresponds to a particular L.R NO. Similarly, they have information on LR Numbers in that registry, but the same are generated at the survey works of which LR No. identifies the land parcel on the ground.

80. DW3 avers that there are 3 claimants in the dispute, of which each of them has a title in their respective trial bundles, all of them issued under the Registration of Titles Act, and each title has an I.R No. That for the Plaintiff’s title, the IR no. is 71563 for 99 years term from 1.11.1995, the one for the 1st- 3rd Defendant is no. 85922 for 99 years from 1.7.1999, while that of the 4th and 5th Defendants is also no. 85922 for 99 years from 1.8.1985. He contends that it is not

possible for two different titles to have the same IR numbers.

81. DW3 further stated that Plaintiff's interest was acquired via an allocation where he paid consideration of Ksh. 450 000, which was a new grant through a letter of allotment. For the title to the 1st - 3rd Defendant, it was a surrender where the President of the Republic granted the land to Kwench Ltd, thus it was an allocation through a surrender but DW3 cannot authoritatively confirm that averment. That for the title to the 4th and 5th Defendants, it also connotes an allocation from the face, a new grant via allocation. He avers that the land in question could have been surrendered for purposes of conversion for GLA to RTA.

82. DW3 identifies the document at page 14 (its actually at page 17) of Plaintiff's bundle as a deed plan no 203882 for L.R.21795 dated 18.3.1996, the one for the 1st- 3rd Defendant being 209167 for LR 14970/57 issued on 6.6.1997, while the title for the 4th and 5th

Defendants has no deed plan. He reiterated that the date when the term begins is when the lease commences, so the lease for the Plaintiff begun on 1.11.1995, then the deed plan came on 18.3.1996. For the 1st-3rd Defendants, their lease begun from 1.7.1999 and were issued with the deed plan on 6.6.1997, of which it was not possible for one to get a term lease from 1.7.1999 where the deed plan was dated 6.6.1997.

83. He confirms that the document at page 20 of Plaintiff's bundle, which is the government approval is the same document at page 35 of their (6th and 7th Defendants) bundle of 31,8.2023, adding that the same was authenticated by Director Land administration and it is the 'go ahead and prepare the allotment letter'.

84. DW3 stated that before a lease starts to run, there must be an allotment. DW3 could not recall if he saw Plaintiff's documents, including the allotment letter at page 21 of Plaintiff's bundle as at the time he recorded his statement. He conceded that as at 28.8.1996,

Plaintiff had a title, but he would not know the circumstances under which the Plaintiff filed a notice of motion application dated 14.4.2016, adding that in his witness statement, his explanations resonated with the 2016 suit.

85. DW3 stated that in all his findings at page 8 of his witness statement, he was referring to another allotment letter and not the one at page 21 of Plaintiffs bundle which is the same allotment letter that they (6th and 7th Defendants) have availed at page 16 of their bundle dated 31.8.2023, thus could his earlier testimony be cancelled. He added that the department responsible for authenticating documents has authenticated Plaintiff's letter of allotment at page 21 of Plaintiff's bundle. That allotment has been certified by Director Land Administration as a true copy of the original.

86. DW3 further added that the deed plan for the Plaintiff at page 17 No. 203882 is the same one in AGs second bundle at page 25, of which there is

authentication. He also identifies the survey plan at page 48 of AG'S second bundle as Plan 209 register 61 approved on 14.3.1990 representing parcels 14970/ 1-57, thus parcel 14970/57 emanated from a larger parcel.

87. DW3 avers that at paragraph 16 of his witness statement, he stated that IR no 71563 was for LR No. 4275/84 and that he got this information from the IR Register as seen at page 2 of AGs 1st bundle, However, he can see that Plaintiff's title at page 15 of his bundle is dated 28.8.1996 whereas the one in AGs 1st bundle is dated 28.11.1996, thus on the face of it, Plaintiff's title was registered first, and that title of 1st-3rd Defendants was registered when there was an existing IR NO.

88. On further cross examination by another counsel for the Plaintiff. DW3 stated that he doesn't know if 1st -3rd Defendants paid stamp duty for the transfer of the land to themselves as they don't keep receipts. He confirmed that they do register surrenders after they are prepared by land administration.

89. On cross examination by counsel for the 1st-3rd Defendants, DW3 reiterated that indeed a surrender is a registrable document, but he has never seen a surrender for LR 14970/57. He identifies the document at page 23 of 1st-3rd Defendant's bundle as the transfer document between Triton and Esther Wambura Muturi and that there is endorsement of stamp duty, thus stamp duty was paid. On the letter of allotment referred to in his witness statement, DW3 stated that it is the same one in the AG's 1st bundle at page 58 (the page is identified as 12/74) where the parcel is captured as LR 21795 which corresponds with Plaintiff's title at page 15 of Plaintiff's bundle. He reiterates that at paragraph 8 of his witness statement, he has given reasons as to why Plaintiffs title is suspicious. In particular, that LR No. 21795 could not have existed as at 30.10.1995 as it was only created on 18.3.1996.

90. DW3 averred that for an allotment to be created, a file with a number must exist and for the parcel in

question, the file was 67273/73, which was for a totally different parcel which is 3989/13 and not LR 21795. That in the issuance of a new grant, the 1st step in the allotment is the written application, of which Plaintiff had none, even though a confirmation of the availability of the parcel was made by the Commissioner of lands. DW3 went on to state that he has not seen such a letter from the Commissioner of lands. DW3 also did not see the letter of acceptance of the allotment letter for Plaintiff's parcel and that the stand premium was not paid within 30 days as it ought to have been made by November 1995. That failure to pay means that the property can be re-allocated.

91. He reiterated that IR No. 71563 in their records, which happens to be the IR for Plaintiff's title relates to parcel 4275/84, yet it is not possible legally to have two LR nos with one IR Number, thus one of the tiles is not genuine.

92. DW3 reiterated that a fresh grant can be issued pursuant to a surrender on account of; change of user, subdivision, amalgamation or conversion, thus a new grant would in such cases not be based on a new allotment. He confirms that a grant can be transferred to another person, and the latter acquires the remainder of the existing terms. He cannot know the term given to Zacharia for L.R.3989/13 which he mentions at paragraph 10 of his witness statement. DW3 confirms that the title of the 1st Defendant was given pursuant to a surrender, but the purpose of surrender is not indicated. That the title was first registered on 11.4.2001 for 14970/57 for a deed plan 209167, of which a transfer was effected upon 3rd Defendant on 21.1.2014.

93. DW3 avers that from the documents relating to the previous case filed by the Plaintiff, the one of 2016, the latter was not asking for the release of his title, he was asking for the processing and issuance of a new title.

94. On re-examination DW3 maintained the position he has taken in his witness statement, reiterating that what he received from land administration was a brief. He also confirms that the two letters of allotments mentioned at paragraph 10 of his witness statement, at page 21 of Plaintiffs bundle and at page 77 of the AGs' 1st bundle bear reference no. 67273 with the date of 30.10.1995, but allottees are different as the one availed by Plaintiff relates to the Plaintiff, PK Ngeno and JM Mwangi, while the one in the 1st bundle of the AG relates to Plaintiff alone.

95. DW3 avers that the issue of surrenders are dealt with by the department of land administration, of which their role (at registration department) concerns registration of the surrender.

Submissions

96. The submissions of the Plaintiff are dated 15.8.2025 where he has rehashed the evidence tendered by the parties herein. He submits that the simultaneous

existence of conflicting or duplicate Land Reference numbers over the same parcel of land is indicative of administrative error, fraud or both, thus it is imperative that the court ascertains the true identity of each parcel. He avers that parcel 14970/57 came about as a surrender during the subdivision of parcel 14970 even if questions were raised regarding the deed of surrender. To this end, reference was made to the case of **Mwinyi Hamisi Ali v Attorney General Civil Appeal No. 125 of 1977** cited in **Hiram Bere Kinuthia & Others v Edick Omondi Anyanga & Others**, where it was held that; **“Section 44 does not envisage a situation whereby lack of such registration (of a deed of surrender) would make null and void de facto surrenders”**.

97. It is argued that Section 2 of the Survey Act defines a grant as any conveyance, lease or license of unalienated Government Land made on behalf of the Government. That a plain reading of the three

competing titles clearly indicate that the proprietary interests therein were issued pursuant to the exercise of the presidential powers to grant land, thus at the time of allocation, LR 14970/57 was government land, and that there was no reversionary interest whatsoever once the said land was surrendered to the government. It is argued that parcel 14970/57 was cancelled by director of survey on 14,3,1996 upon authentication and approval of survey plan no FR 296/161, leading to the issuance of LR no. 21795. Thus, the LR No. 14970/57 no longer exists, hence the claim of the 1st -5th Defendants are untenable while his claim is plausible and credible.

98. The submissions of the 1st-3rd Defendants are dated 23.10.2025 where they equally rehash the evidence tendered herein. It is argued that Plaintiff's claim was based on trespass and not fraud, thus the Plaintiff is bound by his pleadings. On the other hand, the Defendants have pleaded fraud against the Plaintiff, of which their counterclaim was not defended or disputed.

Thus, the court has jurisdiction to cancel the unlawfully obtained title of the Plaintiff. To this end, the Defendants relied on several authorities including **Alice Chemutai Too v Nickson Kipkurui Korir 7 2 Others (2015) eKlr** and **Ardhi Highway Developers v West End Butchery Limited 7 6 Others, (2015) eKlr**.

99. It is observed that in the submissions of the 1st -3rd Defendants running from paragraph 11 to the end, Defendants are actually adducing evidence on the platform of submissions, a situation which is unacceptable and untenable, hence the contents in the said paragraphs are disregarded.

DETERMINATION

100. There are three competing claims in this matter relating to one parcel of land which is located along Kiambu road. The Plaintiff's certificate of title bears an IR NO. 71563, LR NO. 21795 issued on 20.8.1996 under the Registration of Titles Act (RTA), the certificate of title of

the 1st- 3rd Defendants also an RTA title bears IR NO 85922, LR NO.14970/57 issued on 23.1.2001, while the certificate of title of the 4th and 5th Defendants, again an RTA title bears similar Nos. to the title of 1st - 3rd defendants that is Nos; IR NO. 85922 LR NO. 14970/57.

101. Pursuant to Section 23 of the repealed Registration of Titles Act, a certificate of title was held as conclusive evidence of proprietorship in the following terms;

“The certificate of title issued by the registrar to a purchaser of land upon a transfer or transmission by the proprietor thereof shall be taken by all courts as conclusive evidence that the person named therein as proprietor of the land is the absolute and indefeasible owner thereof....”

102. Buoyed by the lure of the statutory sanctity of title, it is apparent that land fraudsters lurked here, there, everywhere including at the ministry of lands, otherwise, how does one explain the existence of the three titles for

one parcel. It is certainly not logical or even legal for such a scenario to exist. The provisions of **Article 40 (1)** of the **Constitution** do enshrine the right to own property, but there is a rider at **Article 40 (6)** where it is provided that;

“The rights under this Article do not extend to any property that has been unlawfully acquired”

103. Thus, the post 2010 Constitution has brought about new jurisprudence where the central question is no longer **“who is the registered owner”** but **“How did you become the registered owner”**. In **Daudi Kiptugen v Commissioner of Lands & 4 Others [2015] eKLR** the court stated that:

“...the acquisition of title cannot be construed only in the end result; the process of acquisition is material. It follows that if a document of title was not acquired through a

proper process, the title itself cannot be a good title.”

104. In Sehmi & another v Tarabana Company Limited & 5 others (Petition E033 of 2023) [2025] KESC 21 (KLR) (11 April 2025) (Judgment) Neutral citation: [2025] KESC 21 (KLR), the Supreme Court of Kenya cited its earlier decision of **Dina Management Limited vs. County Government of Mombasa & 5 Others (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR)**, where the court stated that;

“Indeed, the title or lease is an end product of a process. If the process that was followed prior to issuance of the title did not comply with the law, then such a title cannot be held as indefeasible. 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.

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.”

105. What the new jurisprudence portends is that the sanctity of a title is contingent upon the legality of the process that created it. Consequently, a registered proprietor cannot merely dangle the instrument of title as proof of ownership when the root is challenged, See **Munyu Maina v Hiram Gathiha Maina, Civil Appeal number 239 of 2009.**

106. Back to the claimants; The title of the Plaintiff is predicated upon an allocation of the suit land by the government vide the letter of allotment dated

30.10.1995 issued to S.K KANDIE, P.X NGENO and J.M MWANGI for LR No. 14970/57 for a term of 99 years. The acquisition of an interest in such an allocation has aptly been captured by DW3 at paragraph 3 of his witness statement where the process includes; An application, confirmation of availability of the plot, issuance of the allotment letter, payment of the requisite fees, survey of the specific plot, issuance of the deed plan by director of survey, leading to registration of the title.

107. In his evidence, Plaintiff avers that the land was vacant, that the Ministry of Lands confirmed to him that the suit land was government land pursuant to a surrender resulting from subdivision of parcel 14970. The document at page 20 of Plaintiffs bundle as well as page 35 of AG's 2nd bundle indicates that the land was available as at 16.10.1995. PW4, B.A Rabuku the surveyor has given an account of how she embarked on carrying out the new grant survey vide F/RNO. 296/161, which was duly forwarded to Director survey and

approved on 14.3.1996 paving way for the issuance of L.R NO. 21795.

108. This piece of evidence was confirmed by PW3, one Priscilla Wangu, an assistant Director at Survey at the Ministry of Lands who stated that from their records including the computation file no 24377, she found the survey plan no. F/R 209/61 which is at page 48 of Attorney General's 2nd bundle as well as at page 54 of Plaintiff's bundle. This survey plan captures the subdivision of the original parcel L.R 14970 into 57 parcels vide the approval and authentication of 14.3.1990. PW3 avers that parcel 14970/57 was cancelled as captured in survey plan 206/61 upon the issuance of the new grant for the survey 296/161 of which a deed plan No. 203882 for parcel 21795 was issued. That from a survey point of view, parcel 14970/57 ceased to exist. PW3 further stated that by law, the person mandated to cancel LR numbers and to issue new ones is the Director survey.

109. Further, in AG's 2nd bundle at page 14, the department of land administration indicates that parcel 14970/57 was a surrender to the government resulting from subdivision of parcel 14970, and that 14770/57 ceased to exist when the new number 21795 was given.

110. On registration, PW5, one Charles Ngetich avers that the registration records at Ardhi house headquarters reflect the Plaintiff to be the registered owner of the suit land which records are contained in a deed file. He found that the registration was a new grant leasehold where annual rent had to be paid. He avers that parcel LR No. 14970/57 is not captured in the land information system. This evidence is in tandem with Plaintiff's assertion that he is the current registered owner of the suit land going by the search at page 19 of Plaintiff's bundle. The same captures details of parcel LR NO. 21795 IR no. 71563 where the leasehold interest runs from 1.11.1995. This far, the Plaintiff has a plausible account regarding the root of his title.

111. The 4th and 5th Defendants did not testify hence the circumstances under which they came to be registered as the owners of the suit land are unknown.

112. For the claim of the 1st -3rd Defendants, their interest in the land is anchored on the Certificate of title at page 004 of their bundle. The same indicates that the land LR NO. 14970/57 was registered unto Kwench limited company on 23.12.2001 of which a transfer was effected in favour of Triton Service Station on 25.5.2007 and was transferred to the 2nd Defendant on 23.10.2013, then to the 3rd defendant on 21.1.2014. As indicated earlier in the body of this judgment, a title is but an end product of a process. In the entire bundle of documents availed by the 1st to 3rd Defendants, there is not a single document indicating how this title and its deed plan no. 209167 came to be.

113. The said deed plan no. 209167 at page 006 of 1st - 3rd Defendants' bundle is dated 6.6.1997 for parcel 14970/57. However, the lease interest captured in the

title document runs from 1.7.1999. DW3, a Senior Land Registrar had this to say in such a scenario; *“The lease for the 1st to 3rd Defendants begun to run from 1.7.1999 and were issued with a deed plan on 6.6.1997. I would say that it is not possible for one to get a term lease on 1.7.1999, yet their deed plan came on 6.6.1997 as in the case of the 1st -3rd Defendants. Before a lease starts to run, there must be an allotment”.*

114. Both PW4 and DW3 state that LR Nos. are issued by the survey department, an averment that is not in contention from any party. That such land reference numbers identifies the actual land on the ground, of which the issuance of a deed plan comes almost at the tail end of acquisition of an interest in land and its registration thereof, coming at number 6 amongst the 8 steps listed by DW3 in the aforementioned process. However, for the case of the 1st - 3rd Defendants, their deed plan No. 209167 just happened to come into

existence way before any other step could be undertaken, including the term lease.

115. During cross-examination, the DW1 (1st Defendant) had stated that the original land belonged to one Gakumu. DW3 stated that for any allotment to be created, there must exist a file number of which the file no for the Plaintiff was 67273/73. That the said allocating file No. 67273/73 was for parcel 3989/13 for one Zakaria Kimemia Gakumu. However, DW3 did not avail any records to that effect. DW3 went on to state that the title of the 1st -3rd Defendants was an allocation pursuant to a surrender but no cogent details were given to support that claim. He has simply advanced a general explanation as to the circumstances under which a surrender occurs, which is on account of change of user, subdivision, amalgamation, or conversion without attributing any specific scenario to the alleged surrender that gave birth to 1st -3rd Defendants title. As it were, it suffices to note that the title of the 1st -3rd Defendants

was a grant by the president to Kwench limited “pursuance of surrender registered in the Government Land titles Registry” which connotes that this was land in the hands of the government necessitating an allocation, of which there is no evidence of an allocation to Kwench limited.

116. It is further noted that the 1st -3rd Defendants have not availed any search from the lands office to confirm that indeed the 3rd Defendant is the truly registered owner of parcel LR 14970/57 and that the said title actually exists in the land’s information system at the Ministry of Lands.

117. It is quite apparent that the 1st -3rd Defendants focus was on attacking the title of their opponent, the Plaintiff without fortifying the root of their own title, as manifested in their trial bundle where save their title and its misplaced deed plan, they have nothing to anchor their title upon in the 45-page bundle of documents. Instead, the rest of their documents relate to the Plaintiff.

Similarly, in the witness statement of DW3, the focus again is a specific attack on the title of the Plaintiff with no cogent explanation as to how all the other titles in the mix came to be.

118. This is a rather disturbing scenario where by officers from the ministry of lands have tendered conflicting evidence regarding the validity of the titles herein. In particular, PW5, a Land Registrar has stated that IR no. 85922 (which happens to be the IR no. for titles of 1st-3rd Defendants and 4th - 5th Defendants) relates to parcel 209/8294/82 in the name of Grace Wangui Nyaga which is located in the Central Business District of Nairobi. However, at page 42 of Plaintiff's bundle, there is a search certificate for IR 85922 which is for parcel 209/8294/182 indicating that this land is registered in the name of Grace Wangui. It is not clear if parcel 209/8294/182 captured in the search certificate at page 42 of plaintiff's bundle is the same parcel referred to by PW5 in his letter at page 30 of the plaintiff's bundle

indicated as 209/8294/184. Nevertheless this piece of evidence tends to buttress PW5's averment that indeed IR 85922 did not relate to parcel 14970/57.

119. On the other hand, DW3, another land Registrar avers that the IR 71563 (the one for Plaintiff's title) is for LR 4275/84 registered in the name of Barkat Developers Limited. However, for this piece of evidence, no search was availed to buttress this information.

120. PW3, the Assistant Director at survey has given a cogent account of what happens at survey, indicating that she referred to records contained in the Computation file no.24377, thus she had the raw data relating to the suit parcel with a plausible explanation as to the source of parcel LR. NO.21795.

121. Certainly, there are weak and missing links in the acquisition of the title of the Plaintiff, starting with there being no application, but again the Plaintiff did get a confirmation that the land was available for allocation prior to the said allocation. Further, the payment of the

stand premium by the Plaintiff was not made in good time, nevertheless, the payments were made and there is no evidence of cancellation of Plaintiff's allotment letter. Further, the allotment to the Plaintiff also mentioned two other persons, Ngeno and Mwangi but again, the Plaintiff has explained that they agreed that Plaintiff was the one to be registered. There is also the issue that the Plaintiff was given the title much later when he filed a case in court, but he has proffered an explanation that he had taken his title to NLC for verification, and efforts to get it back were futile. By and large, the Plaintiff has met most of the steps undertaken during the process of acquisition of rights and interests in the suit land. Thus in comparison to the defendants, plaintiff's title has a better interest.

122. In contrast, one cannot talk of missing or weak links in the claim of the 1st - 3rd defendants. There is simply no evidence of the root of the title of these Defendants. The logical conclusion to make is that the same is an illegal

title. The same case applies to the title of the 4th and 5th Defendants, seeing that the titles bear same LR Nos. and IR Nos.

123. Further, it is noted that when the two titles are compared as between the Plaintiff and the 1st -3rd Defendants, the 1st in time was that of the Plaintiff issued on 20.8.1996, as the other one was issued on 23.1.2001.

124. In the case of **Hubert L. Martin & 2 Others v Margaret J. Kamar & 5 Others [2016] eKLR**, cited in Registered **Trustees of Sheik Bayed Bin Sultan Al Nahyan v Pelican Engineering & Construction Company Limited & 4 others (Environment & Land Case 639 of 2015) [2024] KEELC 6534 (KLR) (3 October 2024) (Judgment) Neutral citation: [2024] KEELC 6534 (KLR)**, it was stated that;

“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 the 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.”

125. In the case of **Registered Trustees of Sheik Bayed Bin Sultan Al Nahyan v Pelican Engineering & Construction Company Limited & 4 others (supra)**, the court did not hesitate in nullifying the unlawful titles issued to all claimants (both Plaintiff and

Defendants), and reverting the land back to its lawful owners. Not so in the case at hand, as the Plaintiff's claim has met most of the of the critical processes in acquisition of rights and interests in land, and the registration of the same thereof.

126. In the circumstances, the court proceeds to give the following orders;

1) Plaintiffs claim as set out in the Further Amended Plaint dated 14.11.2018 is hereby allowed. For avoidance of doubts, the 1st - 3rd Defendants are hereby declared to be trespassers and are directed to vacate the suit land forthwith, failure to which, the Plaintiff is at liberty to evict them. Further, the titles issued to the 1st - 3rd Defendants as well as 4th -5th Defendants are hereby nullified.

2) The Counter claim of the 1st- 3rd Defendants is hereby dismissed.

**3.) The counterclaim of the 4th-5th Defendants
is hereby dismissed.**

**4) The Plaintiff is awarded costs of the suit as
against the 1st-3rd Defendants.**

**DATED, SIGNED AND DELIVERED AT NANYUKI THIS 19TH
DAY OF FEBRUARY 2026 THROUGH MICROSOFT
TEAMS.**

**LUCY N. MBUGUA
JUDGE**

In the presence of: