

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA**  
**ELC NO. E002 OF 2024**

**JOHN GITHUI.....**  
**PLAINTIFF**

**VERSUS**

**VINCENT MBUGUA THIONGO.....1<sup>ST</sup>**  
**DEFENDANT**

**LAND REGISTRAR, NAIVASHA.....2<sup>ND</sup>**  
**DEFENDANT**

**ATTORNEY GENERAL.....3<sup>RD</sup>**  
**DEFENDANT**

**JUDGMENT**

1. Vide a Complaint dated 17<sup>th</sup> January 2024, the Plaintiff herein sought the following orders:
  - i. A declaration that the registration of the 1<sup>st</sup> Defendant as the proprietor of land known as Naivasha/Maraigushu Block 10 (Kedong) 992 and/or the conveyance of the parcel of land to the 1<sup>st</sup> Defendant was illegal, fraudulent and obtained through corruption.
  - ii. An order that the green card illegally created in favour of the 1<sup>st</sup> Defendant be revoked.
  - iii. An order that any title deed issued in favour of the 1<sup>st</sup> Defendant be revoked forthwith.
  - iv. An order that the 2<sup>nd</sup> Defendant does register the transfer by chargee issued to the Plaintiff by KCB bank and issues a title deed in favour of the Plaintiff.
  - v. Costs of the suit be borne by the Defendants jointly and severally.
2. The 1<sup>st</sup> Defendant filed his Statement of Defence dated 26<sup>th</sup> February 2025, wherein he denied the allegations contained in the complaint, putting the Plaintiff to strict proof, while arguing that no good title could be passed because unlike Geoffrey Kiiru Kinyanjui, he was the rightful owner of the land parcel Naivasha/Maraigushu Block 10 (Kedong)992 having purchased it

from its original owner Sayid Mohamed Amin. He asserted that Geoffrey Kiiru Kinyanjui, had perpetrated fraud when he fraudulently transferred the property to himself before securing a charge on the said property.

3. Accordingly, the prayer sought in the Complaint cannot be granted since title or entries cannot be cancelled concerning the sale and transfer of property from the genuine owner. In fact, it was the entries related to the said charge that were invalid and void ab initio. Furthermore, the Plaintiff failed to demonstrate how the said Chargor acquired the property while the original owner was still alive, despite the owner not having sold or transferred the property to him. He therefore prayed that the instant suit be dismissed with costs.
4. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendant, on the other hand, vide their Statement of Defence of 6<sup>th</sup> May 2024, denied the allegations contained in the Complaint, putting the Plaintiff to strict proof. They contended that the entire Complaint as filed was bad in law, ambiguous, and premature. That the prayers sought in the Complaint were untenable and would only amount to engaging the Honourable Court in an academic exercise. They thus prayed that the Plaintiff's suit be dismissed with costs.
5. The parties having complied with the pretrial directions, the matter proceeded for hearing on 11<sup>th</sup> June 2025, wherein counsel John Githui, the Plaintiff herein in his opening statement stated that the case relates to a property known as Naivasha/Maraigushu Block 10 (Kedong) 992 that had been sold by KCB through public auction. That he, being the highest bidder, was subsequently issued with all the original documents to register a discharge and transfer. The 2<sup>nd</sup> Respondent had registered a court order against the title, and the case was concluded. That, nonetheless, in a second attempt to register, he had realized that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants had removed the original green card, which had a Charge in favour of KCB, and created a new Green Card. That subsequently, he was going to demonstrate that the second Green card and the title in favour of the 1<sup>st</sup> Defendant were procured through fraud, illegality and corruption.
6. He then proceeded to testify as PW1 to the effect that he was a lawyer by profession dealing with conveyancing and dispute resolution mostly on land matters and substantially on co-operative litigation. That he had sued the

Defendants in respect to parcel of land known as Naivasha/Maraigushu Block 10 (Kedong)/992 (suit property).

7. He adopted his Witness Statement dated 17<sup>th</sup> February 2024 as his primary evidence, stating that he would rely on his list of documents in evidence. He then testified that he had come across an advertisement for an auction by KCB in the Standard newspaper dated 11<sup>th</sup> July 2016, indicating that the public auction was scheduled for 16<sup>th</sup> July 2016. He attended the auction held in Naivasha, placed his bid, and was the highest bidder. The total amount was Ksh. 4,250,000/=, and he paid the first deposit of 25%, which was Kshs. 950,000/= on 17<sup>th</sup> October 2016, after which he was issued with a Memorandum of Sale.
8. That upon paying the balance of Kshs. 3,800,000/-, he was issued a certificate of sale indicating that he was the highest bidder and the ultimate buyer. He attempted to register the land, but the land registrar R. K. Maritim wrote to him informing him of ownership disputes on the suit property, even showing him a court order issued in Nakuru High Court Civil Case No. 57 of 2014 between Geoffrey Kiiru Kinyanjui and Others vs Sayid Mohamed Amin.
9. To appreciate the alleged wrangles, he had applied to be joined in the case and thereafter filed a statement of claim. He also applied to the land registry for a copy of the Green Card, which was issued after some resistance, showing that the property was initially registered to Sayid Mohammed Amin, who transferred it to Longonot Dairies Limited, which then charged the property to KCB for a loan of Kshs. 10,000,000/=. That a court order had then been registered against that title.
10. Unfortunately, the suit was marked as abated on 2<sup>nd</sup> October 2023 after the death of both the Plaintiff, Geoffrey and Sayid.
11. He subsequently presented his original documents to the land registry after conducting an official search, which were rejected, specifically the discharge of charge. The official search he had obtained indicated that the land was registered to the 1<sup>st</sup> Defendant on 15<sup>th</sup> December 2021, where a title deed was issued. When requesting a copy of a green card, he discovered that the charge in favour of KCB had been removed. Additionally, the entry in favour of Longonot Ltd had also been removed. The Green Card contained only two entries: one for Sayeed Mohammed Amin and another

for the 1<sup>st</sup> Defendant herein.

12. He submitted that the two remaining entries in the Green Card were fraudulent and illegal and which was the basis for the instant suit for the following reasons: -
  - i. Assuming the first Green Card was misplaced, the proper procedure in conveyancy would be to gazette the loss before a new Green Card was issued. Nothing had been displayed to that effect.
  - ii. The Charge which had been registered to KCB was removed by creating another Green Card yet the proper procedure would have been to register a discharge.
  - iii. The conveyance of land which had a Charge without Discharging the Charge.
  - iv. The transfer of the title by a person who did not have interest in the land.
  - v. The very fact that the land was transferred when there was an injunction registered by the court without first removing it by a court order.
13. He submitted that the actions mentioned above constituted illegalities and acts of corruption, and requested that the register be amended and that the title issued to the 1<sup>st</sup> Defendant be revoked. He also sought an order that the 2<sup>nd</sup> Defendant do properly register the transfer by the Chargee.
14. He then proceeded to produce his documents as follows: -
  - i. Title deed for disputed land as Pf Exh. 1.
  - ii. Copy of the RTGS transfer as Pf Exh. 2.
  - iii. Copy of memorandum of sale and certificate as Pf Exh. 3 (a and b).
  - iv. Copy of transfer by Chargee as Pf Exh. 4.
  - v. Copy of letter dated 28<sup>th</sup> November 2016 as Pf Exh. 5
  - vi. Application for joinder dated 16<sup>th</sup> January 2017 as Pf Exh. 6.
  - vii. Statement of Claim against the Defendant dated 25<sup>th</sup> September 2018 as Pf Exh. 7.
  - viii. Court Order dated 22<sup>nd</sup> February 2017 as Pf Exh. 8.
  - ix. Application dated 21<sup>st</sup> Mach 2017 as Pf Exh. 9.

- x. Court order dated 21<sup>st</sup> March 2017 as Pf Exh. 10.
  - xi. Certified copy of Green Card as Pf Exh.11.
  - xii. Court order dated 2<sup>nd</sup> March 2016 as Pf Exh.12.
  - xiii. Court order dated 21<sup>st</sup> November 2022 as Pf Exh.13.
  - xiv. Official search dated 21<sup>st</sup> December 2023 as Pf Exh.14.
  - xv. A copy of the fraudulent Green Card as Pf Exh. 15.
15. He proceeded to testify that he had later learnt that Longonot Dairy had filed a suit asking for accounts from KCB in case No. Nakuru ELC 292/2017, now Naivasha ELC originating summons, the number of which he was not sure. He produced the Originating Summons as Pf Exh. 16.
16. He stated that he was aware of the 1<sup>st</sup> Defendant's allegation in his Statement of Defence, which claimed that the suit property had been sold to him by Sayid Amin. As he testified, Amin had no interest to pass because the property had already been transferred to Longonot Dairies. He explained that the correct procedure would have been for Sayeed to apply to the court to challenge the sale and have the title reverted to him before selling it to the 1<sup>st</sup> Defendant. Furthermore, he pointed out that no sale could have been made to the 1<sup>st</sup> Defendant because the suit property was charged, and therefore the consent of the Chargee was necessary.
17. That, furthermore, at the time the sale was purportedly being conducted to the 1<sup>st</sup> Defendant, the court order issued in Nakuru HCC 57/2014 was still in effect since the order declaring the suit as abated had been issued on 2<sup>nd</sup> October 2023. All the aforementioned evidence indicated illegality and fraud; therefore, his Plaint should be allowed as prayed. He submitted the original title issued to him by KCB and all the documents produced as exhibits for the court's perusal, after which they were returned to him for safekeeping.
18. In cross-examination by the counsel for the 1<sup>st</sup> Defendant, he confirmed that his name was John Githui Kingenu as per his Identity Card (ID) and that he was the Plaintiff in the instant case.
19. When he was referred to the Memorandum of Sale of 17th October 2016, he confirmed that although the court order in Nakuru HCC 57/2014 had been issued on 2<sup>nd</sup> March 2016, the sale had taken place on 17<sup>th</sup> October 2016. He read paragraph "b" of the said Court Order and confirmed that the

Plaintiff/Respondents were Geoffrey Kiiru Kinyanjui and another, while the Applicant was Sayeed Muhammed Amin. He explained that this was the time of the purchase of the suit property and that there had been a court order restricting the transfer and subdivisions of untransferred portions arising from Naivasha/Maraigushu Block 10/2 (Kedong).

20. That whereas he did not know if the sub-divisions originated from the land, he indicated that it related to all untransferred portions arising from the said property. He maintained that there was a valid court order restraining the sub-division of untransferred portions. Upon further enquiry, he admitted that he did not know if the suit property was a sub-division of Naivasha/Maraigushu Block 10/2 (Kedong). He confirmed that he had obtained Pf Exh. 5, a letter dated 28th November 2016 concerning land No. 992 from the land Registrar. He also confirmed that he received the due diligence documents from the bank. However, he did not establish whether there was a court order against the suit property.
21. That he was not aware that Longonot Dairies was owned by Geoffrey Kiiru Kinyanjui, who was the Plaintiff in HCC 57 of 2014, although he had applied to be joined to the suit, he was also unaware of the contents of a counterclaim filed by Sayeed, despite knowing that Sayeed had filed a counterclaim. He insisted that the sale in question had occurred despite there being an order prohibiting it.
22. When he was referred to Pf Exh. 12, he confirmed that the same had prohibited the Plaintiffs/Respondents and that the said order in case No. 57/2014 had been registered on the Green Card on 29<sup>th</sup> April 2016. However, there was no order attached to the copy of the Green Card that he received.
23. In reference to Pf Exh.3 (a), he confirmed that it was a Certificate of Sale dated 17th October 2016 and that the Memorandum of Sale, which is Pf Exh. 3 (b), also bore the same date, 17th October 2016. He stated that the original owner of LR Naivasha Maraigushu Block 10/2 (Kedong) was not known to him, as he had no interest in the land which could have been the mother title. However, he confirmed that the first registered owner of land No. 992 was Sayeed Muhammed Amin.

24. He reiterated that he was not aware of the contents of the Counter Claim in HCC 57/2014 and neither did he know David Muhammend or his whereabouts. He also was not aware of whether Longonot Dairies was operational.
25. He was referred to Pf Exh. 11 in cross-examination by the counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, where he confirmed that the 4<sup>th</sup> Entry in that Green Card was a charge with rights noted under Section 87 of the Land Registrations Act and was dated 3<sup>rd</sup> June 2014. He stated that he bought the suit property at a public auction on 17<sup>th</sup> October 2016. He confirmed that there was an order dated 2<sup>nd</sup> March 2016 in a case filed in 2014. He also mentioned that there had been a court order at the time of the auction. He confirmed that KCB was not a party to the proceedings and that he did not know whether the order had been served upon KCB. He further verified that the said order concerned Block 10/2 (Kedong).
26. When he was referred to a Counter Claim in case No. 57/2014 (1st Defendants Document No. 7), he confirmed that paragraph 11 of the counter claim listed all properties but did not mention the suit property. He stated that there are 81 properties in total. He confirmed that property No. 75 is parcel No. 991 and parcel No. 76 is 993, meaning parcel No. 992 was skipped.
27. His response regarding his Complaint was that he had listed several particulars of fraud, but he had not reported the illegalities, as he had no interest in pursuing the entities. He admitted he did not report the matter to the police. He also confirmed that he had several claims against the 2<sup>nd</sup> Defendant on fraud, illegality, and corruption
28. Regarding the second Green Card, that is Pf Exh.15, he confirmed it was a different Green Card from the one he had produced as Pf Exh.11. However, he referred the court to Pf Exh.12 and testified that the order was specific because it addressed the un-transferred portions in Block 10/2. He confirmed that the suit property was transferred to Longonot Dairies on 18<sup>th</sup> September 2012, according to the attached Green Card. He stated that the order was for an injunction against the persons named therein and that it was an order in personam, to which KCB and Longonot Dairies were not parties.

The Plaintiff closed its case.

29. The Defence case began with the testimony of Josephine Mburu, the Land Registrar for Naivasha, who testified as DW1. She stated that she was in court regarding land parcel No. Naivasha/Maraigushu Block 10/992 and that their office had filed the relevant green card. She explained that parcel No. Naivasha/Maragushu Block 10/992 is a subdivision of Naivasha/Maragushu Block 10/2, covering an area of 1.01 hectares. According to the Green Card, the first owner was Sayid Mohamed Amin, registered as proprietor on 11th December 2009, with a title deed issued on 29th September 2021. Subsequently, entry No.3 was made on 15<sup>th</sup> December 2021, recording the transfer of the land to Vincent Mbugua Thiongo, with a title deed issued on the same day. Entry No.5 was made on 6th March 2024, registering an order that stated; *“No dealings till hearing and determination of Suit No. 2 of 2024 ELC Naivasha.”* The Green Card reflected the current records, which she confirmed was the only document she had found. She then produced the Green Card as Df Exh. 1.
30. During cross-examination by the counsel for the 1<sup>st</sup> Defendant, she confirmed that the first registered owner, Sayid Mohamed Amin, was the one who carried out the subdivision. She stated that the parcel in question was No. 992 and that the registration to Mr. Sayid occurred in 2009.
31. When she was cross-examined by the Plaintiff, she confirmed that the Land Registry is the custodian of all documents related to land and that a Green Card is a document showing the transactions that have taken place. Every transaction is recorded in the Green Card, which is an extract from the register. She had been at the Naivasha Registry for the past two years, and G.G. Karani, who is the In-Charge, was her boss and was currently in the office.
32. In reference to Pf Exh.12, she confirmed that she could see the stamp with the initial G.G. Karani. She stated that the first registration in the Green Card had indicated Sayid Mohamed and was dated 11<sup>th</sup> December 2009. The second entry, dated 18<sup>th</sup> September 2012, was in the name of Longonot Dairies Ltd and was not included in Df Exh.1. She confirmed that the third entry was a charge in favour of KCB dated 3<sup>rd</sup> June 2014, which was also

absent from Df Exh.1. The fifth entry, on the other hand, was a court order registered on 29<sup>th</sup> April 2016 in HCC Case No.57 of 2014, which was not present in her Green Card.

33. When she was referred to Pf Exh.6, she confirmed that she could see the stamp but could not speak about the authenticity of the signature. She read the letter aloud and testified that it contained a reference to a 2016 court order concerning the land and that the writer was referring to an order linked to a green card. However, the Green Card she had produced contained no such entry.
34. On being referred to Document No. 3 filed by the 1<sup>st</sup> Defendant, she confirmed that it was a Court order issued on 2<sup>nd</sup> March 2016 in a case between Sayid Mohamed and Geoffrey Kinyanjui. However, she stated that the court order shown as No. 6 was not reflected in the Green Card that she had produced as Df Exh. 1. She confirmed that the said court order had been registered in the Plaintiff's exhibit on the same day, which was not permitted as it was illegal.
35. Regarding Df Exh.1, the Registrar who signed the first entry was Wachuka, and her signature is visible there. The second entry, however, was signed by Phillip Odida, Registrar, and his signature is visible. Subsequently, the Green Card could be attributed to M/S Wachuka and Mr. Odida, Registrars, who recorded the transactions. She maintained that the entry in Longonot Diaries was not reflected in Df Exh.1, nor was the Charge in favour of KCB.
36. Apart from the Green Card, she did not have any other documents with her in court because they were still searching for the parcel file, which she did not possess. She stated that she had only brought Df Exh. 1, containing all the transactions to court; the only information she could discuss related to its contents, which did not include a Charge or Discharge. She explained that in Df Exh. 1, there was no order removing the 2016 order. However, if such an order existed, the proper procedure would have been to obtain another court order to have it removed. Conversely, if there was a Charge, the correct process would be to Discharge the Charge. She noted that while it was illegal to create two parallel Green Cards, she had no idea why this was the case in this situation, hence she concluded that one of the Green

Cards did not originate from their office. She reiterated that she could only speak about Df Exh. 1.

37. Regarding the 2nd Defendant's Statement of Defence, she read paragraph 7 and confirmed that although both the Green Cards listed the name Sayid Mohamed, one of them was false. She stated that if an entry was removed or cancelled, the reason should be noted. She admitted that she did not possess the parcel file. Regarding lost title deeds, the owner would submit an application that required fingerprints. The process is then advertised in the Kenya Gazette, and after 60 days, a new title deed is re-issued with the same details as on the Green Card. She explained that if a Green Card is lost, the same procedure is followed, but an on-site inspection is also conducted, with a surveyor providing a ground report. However, there was no Green Card indicating that a re-issue had occurred, which would result in two Green Cards.

38. When she was referred to Df Exh. 1 in comparison to Pf Exh. 12, she confirmed that the acreage on Pf Exh. 12 was 0.8835 hectares and the map sheet number is 133/4/9. Conversely, the acreage on Df Exh. 1 is 1.01 hectares, but the map sheet number remains the same. She confirmed that the acreage in Df Exh. 1 was larger than that in Pf Exh. 12. Additionally, while Pf Exh. 12 was dated 29th March 2017, Df Exh. 1 had no date next to the map sheet. She explained that this was not a requirement and therefore did not understand why a date was inserted in Pf Exh. 12. Although she did not know why there was a difference in acreage, she regarded it as evidence of an illegality.

39. In re-examination, she was referred to Df Exh. 1, and she confirmed that the same did not have entries Nos. 2, 3, 4, and 5 in Pf Exh. 12. Whatever is recorded in the Green Card was contained in the parcel file. Upon reviewing the records, she found no evidence of fraud.

The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants had thus closed their case.

40. DW2, one Vincent Mbugua Thiongo, the 1<sup>st</sup> Defendant herein, adopted his Witness Statement as his evidence in chief and then testified that he had purchased the suit property No. Naivasha Maraigushu/Block 10 (Kedong) 992 from Sayid Mohamed Amin via a sale agreement dated 16<sup>th</sup> November

2021, at a purchase price of Kshs.3,000,000/=. He produced the sale agreement as Df Exh 2. He confirmed that subsequently, he was issued with a title deed for Naivasha Maraigushu/Block 10/992 (Kedong) on 15<sup>th</sup> December 2021, which he produced as Df Exh.3.

41. That he has been paying for land rates and possesses the official receipts for land rates and the clearance certificate, which is dated 2<sup>nd</sup> December 2023, while the two official receipts are both dated 3<sup>rd</sup> July 2023 for Kshs.1,000/= and Kshs.575/= respectively. He produced the receipts as Df Exh. 4 (a-c). That he also had a beacon certificate for land parcel No. Naivasha Maraigushu Block 10/992 Kedong, which was issued on 13<sup>th</sup> November 2021. He produced it as Df Exh. 5. He also has a green card for the suit property, which was produced by the Land Registrar as Df Exh. 1. Furthermore, he had a letter dated 28<sup>th</sup> November 2016 from the Ministry of Lands addressed to Githui and Company Advocates, advising on land disputes concerning the said parcel of land, which he produced as Pf Exh 6.
42. He testified that he possesses a copy of a court order dated 2nd March 2016 in Nakuru Civil Suit No. 57 of 2014, which he presented as Df Exh.7, and explained that it was an order for a temporary injunction concerning land parcel No. Block 10 (2) Kedong. He also referred to a copy of a letter to Sayid Mohamed regarding land parcel No. Naivasha Maraigushu Block 10/992 (Kedong), which he produced as Df Exh.8. Additionally, he mentioned holding a Memorandum of Sale dated 17th October 2016 for the sale of Naivasha Maraigushu Block 10/992, a transaction they were instructed to undertake by KCB, and he wished to withdraw this document.
43. He then testified that when he bought the property, the vendor, a Mohamed, had fallen ill, and that he (DW2) made payments in instalments. He explained that Mohamed attended dialysis weekly in Nairobi, which is how he came to purchase the property. However, after buying it, he received a letter from court alleging that he had forged documents with the Registrar and the Attorney General. He maintained that he bought the property from the original owner, Mr. Mohamed whom he knew in Nairobi.
44. When he was examined by the court, he confirmed that he had visited the land before purchasing. Although his initial aim was not to buy the property, he bought it when Mohamed fell ill.

45. During cross-examination by the Plaintiff, he confirmed that he had written a witness statement based on the information he knew. He stated that he had instructed an agent to handle the title registration, and that the agent did everything for which he took responsibility. However, if the agent did not do so, he would not accept responsibility. He also confirmed that his agent was Mohamed's son, and that if the agent did anything wrong, he would demand his money back. Additionally, he confirmed that the sale agreement had been executed before Rhumba Kinuthia, Advocate.
46. When he was referred to Df Exh.2, he confirmed that it was the sale agreement and that Mohamed had signed it himself as the seller, with his signature appended there. He denied that the signature was for Abdis Aziz Amin, stating he was present when Mohamed signed the sale agreement. He identified and confirmed the signature and ID number in the agreement, then testified that he had purchased land No. 992, measuring 0.01 hectares, and that he had no other agreement for a different acreage.
47. Upon being referred to Df Exh.3 (original), he admitted that the acreage on the title and sale agreement was different. He stated that although he had executed a transfer form, he did not have it. He did not hear the land registrar saying that the parcel file contained nothing. Although he had paid for stamp duty, he did not receive the receipt from his agent. He did not attend the meeting at the LCB, but his agent did. He confirmed that his agent was the vendor's son, but he did not know whether the vendor had attended the LCB. He admitted that he did not have a letter of consent from the LCB, as he had only brought the relevant documents and did not consider the consent relevant. He explained that a fresh survey had been conducted, hence he obtained a beacon certificate.
48. In reference to Df Exh. 1 and Pf Exh. 12, he confirmed that they had the same map sheet number. However, he was not aware that if a new survey had been conducted, it could result in a different map sheet number. He stated that while the Plaintiff purchased the land at an auction on 17<sup>th</sup> October 2016, this was considered illegal as per paragraph 3 of his statement. He confirmed that the order had been registered against the title in 2016.
49. His response regarding Df Exh 1 confirmed that the court order had not

been registered on that Green Card. He stated that his agent conducted an official search before purchasing the land, although he did not produce it. He claimed he was unaware of the court order before buying the land and only saw it in the Plaintiff's documents. He noted that Df Exh. 1 and Pf Exh. 12 were different, but he did not know how the Green Cards had been prepared, as his agent merely presented the documents for registration.

50. When he was referred to Df Exh.6, he stated that the said letter had confirmed that there had been land disputes as early as 2016, but his agent had not brought this to his attention. Subsequently, he claimed he did not know anything about the auction, as he only learnt about it after the case was filed, gaining this information upon reading the Plaintiff's documents.
51. Referring to Df Exh.7, he confirmed that the document was issued on 2nd March 2016, signed on 26<sup>th</sup> March 2016, and pertained to un-transferred portions concerning Naivasha Maraigushu Block 10/2 in case No.57 of 2014 between Sayid Mohamed and Kiiru. He mentioned that he could not find the name of Longonot Dairies Ltd. Furthermore, he noted that while the case involved the subdivisions of land related to the current case, No. 992 was not included.
52. His response to being referred to Df Exh.1 was that Longonot Diaries was registered on 18<sup>th</sup> September 2012. He confirmed that the order was dated in March 2016, after registration had been completed in favour of Longonot Diaries. He thus admitted that, by the time the order was issued, No. 992 was not included in the said order. He also stated that he was unaware of anything that had prevented the auction, as he only learned about the auction when the suit was filed. He confirmed that in Nakuru HCC No.57 of 2014, Longonot and KCB were not parties.
53. That everything had been done for him until he obtained the title. Therefore, if he ended up in that situation, he would either lose the land or get his money back. His intention was to assist the Vendor, who was his agent's father, to receive medical attention, and he had made payments in instalments. He used to give the money to Abdul, his agent herein, who would take the Vendor to the hospital. He made these payments via cash and M-Pesa. However, the Vendor did not sign a receipt for the money. The M-Pesa statements could verify the amount of money he had sent to Mr.

Mohamed.

54. When he was cross-examined by the counsel for the 2nd and 3rd Defendants, he confirmed that he bought a parcel of land measuring 1.01 hectares from Sayid Mohamed Amin. He stated that he did not conspire with the land registrar, whom he did not know, to register the land in his name. He admitted that he did not carry out a search before purchasing the land and therefore did not attach any search certificate. Although he engaged an advocate to draft the purchase agreement, he did not employ an advocate to obtain the title.
55. That he had given his agent, who was not an advocate, his KRA Pin number, ID, personal identification and photos, which the agent had submitted the said documents for registration at the land registry. That, nonetheless, he did not know if they were registered. That whereas he had his original ID, Pin and Tax, he did not retain the copies of what had been submitted to the Land Registrar.
56. In re-examination, he was referred to Df Exh.7. He read paragraph b, lines 4 to 5, and confirmed that the order related to any subdivisions and therefore covered the entire block 10/2.
57. Abdul Aziz Amin adopted his witness statement as his evidence in chief while testifying as DW3, and asserted that Mr. Sayyid Amin (deceased) was his father. He also testified that he had witnessed a sale agreement between the 1st Defendant and his father. His father used to suffer from kidney problems, had been admitted to Agha Khan Hospital, where he required money for his medical treatment.
58. That his father, the deceased, had land in Kedong Maraigushu Block 10/2 measuring 71.3 hectares since he was a shareholder in Kedong from the year 1969. Subsequently, he had sold part of the land, measuring 2½ acres, to the 1<sup>st</sup> Defendant for Kshs. 3,000,000/= because he needed money for treatment. The 1<sup>st</sup> Defendant, who used to work near Agha Khan, paid Kshs. 100,000/= every week on Fridays in cash, but sometimes he paid via M-Pesa. He witnessed the sale agreement at his father's house in Lavington, during which the deceased, who had been bedridden from a spinal cord injury, was present.
59. That after the deceased had signed all the documents for the transfer, he

(DW3) took them to the Lands Office, Naivasha, where documents had been brought to the car for the deceased to sign. At the time, Ms. Wachuka was the Land Registrar. The deceased then invited the 1<sup>st</sup> Defendant to their home in Lavington to sign the agreement.

60. Subsequently, in 2016, the deceased received court orders regarding the suit property because some individuals were acquiring titles and selling them. One of these individuals was Geoffrey Kinyanjui, and the orders had been issued in High Court Case No.57 of 2014, Nakuru, in March 2016. He confirmed that there was a court order in place when the Plaintiff was purchasing the property. He asserted that the 1<sup>st</sup> Defendant had legally bought the land. He also stated that the weekend before purchasing the suit property, the 1<sup>st</sup> Defendant had visited the farm and seen the suit property.
61. During cross-examination by the Plaintiff, he confirmed that the land measured 71.3 hectares and was the property of his father, Sayyid Mohamed Amin (Deceased). He stated that the land had been subdivided into multiple portions, with one of these being No.992, which is the suit property herein. In 2014, the deceased filed a court case, Civil Suit No.57 of 2014 (Df. Exh.7), in which he sued Geoffrey Kinyanjui and Dawood Mohamed.
62. When he was referred to Df. Exh.7, he confirmed that there were three parties in the said suit, namely the 1st Plaintiff, Geoffrey Kinyanjui; the 2nd Plaintiff, Dawood Mohamed; and Sayid Mohamed, his father (deceased), as the Defendant. He further stated that the deceased had filed a counterclaim seeking orders for the cancellation of some plots. Although he could not see plot No.992, the deceased obtained a court order regarding it.
63. In reference to Df. Exh.3, he testified that although he did not know about the court order specifically, he was aware that it related to the entire shamba. He read paragraph 'b' of the court order and stated that he did not understand all the details of the order. He also noted that he could not see No.992 on the list of parcels of land.
64. On being referred to Df. Exh.4, he confirmed that it was a green card. He stated that entry No. 1, dated 11<sup>th</sup> December 2009, was issued to Sayyed Mohamed. Entry No. 2, dated 18<sup>th</sup> September 2012, was issued to Longonot Dairies, who had allegedly stolen the land. He confirmed that at entry No. 3,

a title deed had been issued to Longonot Dairies. Entry No. 4, on the other hand, was an encumbrance section dated 3<sup>rd</sup> June 2018, showing a charge to KCB for Kshs. 10,000,000/= Entry No. 5 was a court order.

65. He confirmed that Longonot Dairies belonged to Geoffrey Kiiru, who was the Director, but his name was not listed here. He stated that while they had records of companies, he did not have records for this one. He mentioned that the deceased had sued Longonot Dairies, but he did not have the court papers; his Advocate should have them. He indicated that, according to the green card, it was incorrect to state that Longonot Dairies was the owner of the land. He confirmed that he did not possess a court order cancelling Longonot's ownership but knew the land had belonged to the deceased. He clarified that the court order was not meant for the 1<sup>st</sup> Defendant but for Kinyanjui. He also stated that he did not know whether the deceased had removed the court order before selling the land to Vincent, as he could not see any entry of removal on the green card.
66. When he was referred to Df. Exh.4, he confirmed that after KCB, there was no other entry. He stated that the agreement between the deceased and the 1<sup>st</sup> Defendant was in 2021. However, he did not know if the deceased had attended the Land Control Board (LCB). Although he was acting as the 1<sup>st</sup> Defendant's agent, he did not go to the LCB.
67. On being referred to Df. Exh.3, he read paragraph 2 and confirmed that the acreage was 1.01 hectares. When he was referred to Df. Exh.4, he confirmed that the approximate area was 0.8835 hectares and that it could have been a typing error.
68. In reference to Df. Exh.1, he confirmed that the same was a title in the name of the 1<sup>st</sup> Defendant for an area of 1.01 hectares. He stated that he did not assist the 1<sup>st</sup> Defendant in obtaining all the documents. He mentioned that he and the deceased had taken the documents to the Land Office. He also stated that no survey had been carried out before the land was sold. The land in question measures 2½ acres, where the Lands Office had helped change the title from the deceased's name to the 1<sup>st</sup> Defendant's.
69. When he was referred to Pf. Exh.16, he confirmed that it was a green card and that the first entry was Sayyid Mohamed Amin while the third entry

was Vincent Mbugua. He stated there was no court order registered. He recognised the card as the one he knew. Although he did not know the outcome of High Court Case No.57 of 2014 Nakuru, he suggested it might not have ended as both his father and Kinyanjui died. Referring to Pf. Exh.14, he confirmed that the case had concluded because both parties had died. He also reiterated that the 1<sup>st</sup> Defendant purchased the land while his father was alive, and this land initially belonged to his father.

70. The deceased had contacted the land registrar, Wachuka, who had gone to the car because he could not come out; he then handed her all the documents and left them with her. After 14 days, she called him to collect the documents, which included a title deed in his father's name and the documents of the 1st Defendant, including PIN number and the sale agreement. There was consent from the LCB, although he did not possess a copy. He could not recall paying stamp duty or being issued any receipts. The land registrar did not inform the deceased of the court order. In fact, she did not tell him about the court case, despite knowing there had been one concerning the entire farm. His father needed money for medical treatment, so she assisted with the transfer. The property belonged to his father, who sold it in portions to fund his treatment.
71. In re-examination, he maintained that the plots belonged to his father, and therefore it did not matter whether or not there was an emergency. He stated that the court order was restraining Geoffrey, who had stolen the farm, and not his father. He argued that the deceased had the right to sell the property because it was his. Although the deceased had filed a case, he claimed that No. 992 was not listed. He confirmed that his father's claim was against the entire plot and that the court order had included all the plots since it covered un-transferred plots.
72. He maintained that the suit property had been stolen by Kinyanjui, who was the owner of Longonot Diaries, and both he and his wife Sarah were directors. The deceased had gone to court because Dawood and Kinyanjui had stolen his land, and to prevent any further interference, a prayer was granted, resulting in the order. He could not recall all the documents that had been taken to the registry; however, he remembered the title, the 1<sup>st</sup> Defendant's PIN number, and an agreement.

73. At the close of the 1<sup>st</sup> Defendant's case, parties were directed to file written submissions.

### **Plaintiff's Submissions.**

74. The Plaintiff based his submissions, dated 18<sup>th</sup> December 2025, on the following issues for determination:

- i. The nature of the cause of action under section 26 of the Land Registration Act.
- ii. That the Defendants, acting jointly, acted fraudulently, corruptly and illegally and that the title held by the 1<sup>st</sup> Defendant cannot stand.

75. In summary, the Plaintiff presented a rigorous legal argument centred on the sanctity of the land registration process and the impeachment of title under the Land Registration Act (LRA), where he argued that under Section 26(1) of the Land Registration Act, a title is not absolute if it is obtained through fraud or misrepresentation, where the beneficiary was a party to the deception, through illegality or unprocedural means even if the holder was not a direct participant in the fraud, the title could still be impeached if the *process* of its creation was corrupt or illegal which was an action *in rem*. Reliance was placed on the decided decisions in the cases of **Abukar G Mohamed v Independent Electoral and Boundaries Commission [2017] eKLR**, **Elijah Makeri Nyangw'ra v Stephen Mungai Njuguna & Another [2013] eKLR** and **Alice Chemutai Too v Nickson Kipkurui Korir & 2 others [2015] eKLR**.

76. The Plaintiff identified four primary footprints that proved that the 1<sup>st</sup> Defendant's title is fraudulent. He submitted that the creation of a second Green Card that had erased the previous history, which included the Longonot Dairies, the KCB Charge, and the Court Order, was a deliberate act to circumvent existing property rights and court injunctions.

77. Secondly, whereas the original records showed that the suit land measured 0.8835 hectares, the fraudulent title had magically expanded the land to now measured 1.01 hectares without there having been a new survey conducted.

78. Third, although the 1<sup>st</sup> Defendant's claim had been that he had purchased the land from the deceased, Sayid Mohamed Amin, Amin's interest had been extinguished in 2012 when he transferred the land to Longonot Dairies. That one could not sell what they do not own.
79. Fourth, that indeed the 1<sup>st</sup> Defendant had admitted to having no Land Control Board (LCB) consent and no proof of payment for stamp duty—both of which are mandatory for a legal conveyance.
80. The Plaintiff contended that the Land Registrar had acted with calculated corruption when she ignored the legal procedure for replacing a lost Green Card (which requires gazetting). That instead of correcting the illegal entry under Section 79(2) of the LRA when the fraud was pointed out, the Registrar filed a bare denial in court.
81. The Plaintiff then deconstructed the 1<sup>st</sup> Defendant's defence by pointing out that the auction from which he had bid for and bought the suit land was Legal and that it did not violate any court orders because the 2014 suit at Nakuru HCC 57/2014 did not specifically list Plot 992 as a disputed parcel.
82. That the terms of the court order had been conjunctive and dealt with the subdivisions which were un-transferred. That the said court order had been registered on 29<sup>th</sup> April, 2016. That indeed, at the time of registration to Longonot Dairies Ltd on 18<sup>th</sup> September 2012 and a Charge registered in favour of KCB bank on 3<sup>rd</sup> June, 2014, the parcel of land did not fall within the category of un-transferred portions
83. That further, the court order could only affect parties to the proceedings. That, however, in the proceedings in which the court had issued the court order, Longonot Dairies Ltd and KCB bank Ltd were not parties, and there was no evidence that the two had been served with the court order. That subsequently, the suggestion that the sale by public auction had been illegal and in contravention of the court order does not hold.
84. His submission was that if the 1<sup>st</sup> Defendant believed that the title held by Longonot Dairies was "stolen," the only legal remedy was to seek a court order revoking it and not to "conspire" with the Registrar to create a new, parallel record.
85. In conclusion, the Plaintiff's submission was that the 1<sup>st</sup> Defendant's title was a product of a corrupt scheme that "unravels everything." As was held

in the decided case of **Muriithi Imanyara v. Equity Bank Ltd [2019] eKLR**. He sought for the court to revoke the said title and thereafter direct the Registrar to register the transfer of the same in his favour (Plaintiff) as the legitimate purchaser from the KCB auction. That since the 1<sup>st</sup> Defendant hired DW3, the deceased's son, as his agent, any fraud committed by the agent in the course of duty was legally blamed on the 1<sup>st</sup> Defendant as was held in **Express (Kenya) Limited v Manju Patel Civil Appeal No. 158 of 2000 and Karanja v Phoenix of EA Assurance Co Ltd High Court, at Kisumu HCCC No 56 of 1987**.

86. The 1<sup>st</sup> Defendant's summarised submissions dated 10<sup>th</sup> January 2026, focus on the legitimacy of the original ownership and the Plaintiff's alleged failure to conduct due diligence. His key argument was that his title was valid because it originated directly from the true owner, Sayid Mohamed Amin, and was therefore superior.
87. He contended that Geoffrey Kiiru Kinyanjui, and by extension Longonot Dairies, never had any legal right to the property. Consequently, under the principle of *nemo dat quod non habet* (one cannot give what they do not have), any charge created by Longonot Dairies in favour of KCB was void, and the bank could not pass a valid title to the Plaintiff.
88. His center pillar was that there had been a violation of a subsisting Court Order in Nakuru Civil Suit No. 57 of 2014 where a temporary injunction had been issued on 2<sup>nd</sup> March 2016, specifically restraining any dealings with subdivisions arising from the mother title **L.R No. Naivasha/Maraigushu Block 10/2(Kedong)**.
89. Since the Plaintiff's auction took place in October 2016, after the injunction, the entire sale process was illegal and in contempt of court, regardless of whether Kenya Commercial Bank participated in the proceedings.
90. That the Plaintiff, who is a lawyer and a purchaser, bore the responsibility of verifying the status of the land by conducting due diligence. He asserted that even if KCB was not a party to the 2014 suit, the court order was a public record endorsed at the Land Registry. The Plaintiff's failure to discover the order of the Court before bidding at the auction constituted a lack of due diligence, which could not be cured by the court.

91. The 1<sup>st</sup> Defendant emphasized that allegations of fraud were serious and required a higher standard of proof than a mere balance of probabilities. That the Plaintiff had failed to meet this threshold. He relied on established jurisprudence in **Gachenga & 6 others v Kimuhu & & others [2025] KEELC 8204(KLR)**, where the case of **Munyu Maina vs HiramGathiha Maina, Civil Appeal No. 239 of 2009**, was cited. Further reliance was placed on the decided cases of **Hubert L. Martin & 2 others v Margaret J. Kamar & 5 Others [2016] KEELC 1092 (KLR)** and **Gichinga Kibutha v Caroline Nduku [2018] KEELC 3981(KLR)** to argue that the court should protect a registered proprietor unless fraud is strictly proved and directly linked to the current owner.
92. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants did not file their Submissions.

### **Determination.**

93. I have considered the matter before me, the evidence as well as the submission, the authorities and the applicable law. From the summation of the evidence in question, the court is faced with two diametrically opposed versions regarding Naivasha/Maraigushu Block 10 (Kedong) 992. The Plaintiff's case is that he was a bona fide purchaser of the suit land at an Auction of 16<sup>th</sup> July 2016, where he was the highest bidder and bought the land for Ksh. 4,250,000/= . That suit land had initially been registered to the deceased Sayid Amin Mohamed, who sold it to Longonot Dairies in 2012, who then charged it to KCB Bank in 2014, where the bank sold it to him at Auction in 2016.
94. The Plaintiff's argument is that he is a bona fide purchaser for value without notice of any fraud. He relied on a certified Green Card showing a valid charge stating that the 1<sup>st</sup> Defendant's title was created by deleting previous valid entries, without following the legal procedure of gazetting lost titles or obtaining a discharge of charge.
95. The Defendants' Case, on the other hand, was that the 1<sup>st</sup> Defendant was a private purchaser directly from the original owner of the suit land, Mr Sayid Amin Mohamed, at a purchase price of Kshs.3,000,000/= vide a sale agreement dated 16<sup>th</sup> November 2021.
96. That the intermediate transfer to Longonot Dairies was fraudulent and

"void." Therefore, Sayid Amin remained the "genuine" owner and had the right to sell the land to the 1<sup>st</sup> Defendant. That the Plaintiff's auction was illegal because a court order in Nakuru HCC 57/2014 had restricted any dealings on the mother title Naivasha/Maraigushu Block 10/2.

97. The case therefore centers on the existence of two conflicting Green Cards for the same parcel of land, where the Plaintiff's records produced as Pf Exh. 11 & 12 show the land was transferred from Sayid Mohamed Amin to Longonot Dairies Ltd in 2012, subsequently charged to KCB Bank for Kshs. 10,000,000/= in 2014, and later sold to the Plaintiff via public auction in 2016 after Longonot Dairies Ltd defaulted.
98. The 1<sup>st</sup> Defendant's record, produced as Df Exh. 1, indicates that Sayid Mohamed Amin was the owner of the suit land until 2021, when it was transferred directly to the 1<sup>st</sup> Defendant. The record does not show the transfer to Longonot Dairies or the KCB Bank charge.
99. From the summation of the above, the issues that stand out for determination are as follows;
- i. Whether the 1<sup>st</sup> Defendant's registration as proprietor of the suit land was lawful or obtained through fraud.
  - ii. Whether the Plaintiff is entitled to the orders sought in his Plaintiff.
  - iii. Who is entitled to pay the costs of the suit.
100. On the first issue for determination as to whether the 1<sup>st</sup> Defendant's title was lawful or obtained through fraud, the onus was on the Plaintiff to prove these allegations. It is not in dispute that the suit parcel of land, being Naivasha/Maraigushu Block 10 (Kedong) 992, was a subdivision of Naivasha Maragushu Block 10/2, and that the deceased Sayid Mohamed Amin was registered as its proprietor on 11<sup>th</sup> December 2009.
101. The dispute then arises after the registration of Sayid Mohamed as proprietor, because whereas the Plaintiff's evidence was that Sayid Mohamed Amin sold the land to Longonot Dairies Ltd in 2012, it was subsequently charged to KCB Bank for Kshs. 10,000,000/= in 2014, and later sold to the Plaintiff via public auction in 2016 after Longonot Dairies

Ltd defaulted, the 1<sup>st</sup> Defendant's claim was that he had purchased the said land from its original proprietor, Sayid Mohamed Amin, in the year 2021, wherein he had been issued a title and was therefore the legitimate proprietor.

102. Section 26 (1) of the Land Registration Act of 2012 which provides as follows:-

*"The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except;-*

*a. On the ground of fraud or misrepresentation to which the person is proved to be a party; or*

*b. Where the certificate of title has been acquired illegally, unprocedurally, or through a corrupt scheme.*

103. In the case of **Republic v Senior Registrar of Titles Ex parte Brookside Court Limited (2012) eKLR**, it was held that, statutorily, the sanctity of title to land is assured and protected under Sections 24, 25 and 26 of the Land Registration Act. The court is also aware of the attribute of Section 26(1) (a) and (b) of the Land Registration Act, which provides that a Title to land shall not be absolute and indefeasible because it can be impeached where it is shown to have been obtained through fraud, misrepresentation, illegally, un-procedurally or through a corrupt scheme.

104. Now, since the Plaintiff challenged the Title held by the 1<sup>st</sup> Defendant, evidence according to Section 26 of the Land Registration Act had to be led to prove that the 1<sup>st</sup> Defendant's title to parcel No. Naivasha/Maraigushu Block 10 (Kedong) 992 was acquired illegally.

105. The Court of Appeal in **R.G Patel vs Lalji Makanji 1957 E.A 314**, had held as follows:

*"Allegations of fraud must be strictly proved although the standard of proof may not be so heavy as to require proof*

*beyond reasonable doubt, something more than a mere balance of probabilities is required”.*

106. Indeed, where the registered proprietor’s root title was under challenge, it was not enough to dangle the instrument of title as proof of ownership; the registered proprietor must go beyond the instrument and prove the legality of the title and show that the acquisition was legal, formal and free from any encumbrance. (See the Supreme Court decision in **Dina Management Limited vs. County Government of Mombasa & 5 others [2023] KESC 30 (KLR)**).

107. The Court of Appeal in the case of **Jacob Wekesa Bokoko Balongo vs. Kincho Oloki Adeya & another [2020] eKLR** held as follows:

*“The historical background to the acquisition of the title is as good as the title itself. How else, for example, can a person seeking to impugn or impeach the title on the grounds of fraud, misrepresentation or it having been obtained unprocedurally or through corrupt means do so without placing the title in its historical context? On the ground of indefeasibility of title, it was urged that the trial judge erred in failing to find that the appellant’s title to the suit land was indefeasible... In the persuasive case of **Fahiye & 2 others - v- Omar & 4 others [2014] 2KLR, 224**, it was held that indefeasibility of title is not absolute particularly where the whole transaction was void. In **Milankumar Shah and 2 Others vs. City Council of Nairobi & Attorney General (Nairobi HCC Suit No. 1024 of 2005 (OS))**, it was correctly pointed out that: “The concept of absolute and indefeasible ownership of land cannot be clothed with legal and constitutional protection if the interest was acquired through fraud, misrepresentation, illegality, unprocedural ways or corrupt schemes. This concept cannot be used to sanitize the commissioner if it allocates or issues title in such manner. In the case of **Champaklal Ramji Shah & 3 Anors -v- AG & Anor, HCCC No. 145 of 1997**, it was held that the court has*

*a duty to examine the process of acquisition of such title and if it determines that there is an illegality, should nullify the titles as required.”*

108. To prove his case, evidence had been presented indicating that the 1<sup>st</sup> Defendant and the Land Registrar acted in concert to ‘launder’ the title by erasing a legitimate history. The Plaintiff’s evidence was that there were two conflicting Green Cards (the official register), one produced as Pf exh 11, which showed a chronological history of the transfer of the land to Longonot Dairies, a clear chain of encumbrances including a Ksh 10,000,000/= charge to KCB Bank and a Court Injunction.
109. The Plaintiff produced a title deed for No. Naivasha/Maraigushu Block 10 (Kedong) 992 issued to Longonot Dairies Ltd on 18<sup>th</sup> September 2012, as Pf exh 1, and the transfer by charge in exercise of the power of sale, as Pf exh 5. Lastly, the Plaintiff produced as Pf exh 13, a copy of the court order issued on 31<sup>st</sup> July 2014 in the Nakuru High Court Civil Suit No. 57 of 2014. The parties had been Geoffrey Kiirui Kinyanjui and Daud Mohammed vs Sayid Mohammed Amin, and the court had issued interim orders of injunction for 14 days, restraining the Defendant, by himself his agents or servants from selling, alienating, disposing, transferring or in any manner whatsoever from dealing with any subdivisions of plots of land and un-transferred portions of land arising from LR No. Naivasha/Maraigushu Block 10/2 (Kedong). The court directed that the order be registered with the District Land Registrar of Naivasha.
110. Vide an order of 2<sup>nd</sup> March 2016, herein produced as Pf exh 14, in the same matter, the court again issued interim orders of injunction, restraining the Plaintiffs/Respondents from dealing with any subdivisions, plots of land and un-transferred apportions of land arising from LR No. Naivasha/Maraigushu Block 10/2 (Kedong). The court directed that the order be registered with the District Land Registrar of Naivasha. I find that the above encumbrances were supportive of the entries made in the Register herein produced as Pf exh 11.
111. Entry No. 1 on the encumbrance section of Pf exh 11 was that the title had been charged to KCB on the 3<sup>rd</sup> June 2014. There had been no evidence

that the charge had been discharged. In land law, a charge cannot simply vanish; it must be formally discharged or removed through a Court Order.

112. On the other hand, the newer Green Card produced by the 1<sup>st</sup> Defendant as Df Exh. 1, in support of his claim to ownership of the suit land had completely omitted these entries. The Land Registrar's evidence was that, although creating two parallel Green Cards was illegal, she was unsure why this was the case in this situation. She had concluded that one of the Green Cards did not originate from their office. The fact that the Registrar "started over" with a clean card while the bank's interest was still active, in my view, was a classic indicator of a fraudulent scheme to defeat a creditor's interest.

113. Evidence had been led on the discrepancy of the size of the suit property in that, whereas Pf exh 1 and Pf exh 11 showed the suit land as measuring 0.8835 hectares, the 1<sup>st</sup> Defendant's title produced as Df exh 3 showed that the land had now expanded and was now 1.01 hectares, despite there having been no evidence led that it had been resurveyed. Land does not naturally expand. The Land Registrar (DW1) having admitted that no fresh survey was conducted. An increase in acreage without a formal survey and mutation process strongly suggests that one of the titles was generated outside official, legal channels.

114. The evidence of the 1<sup>st</sup> Defendant was that he had purchased the suit, property No. Naivasha Maraigushu/Block 10 (Kedong) 992 from Sayid Mohamed Amin via a sale agreement dated 16<sup>th</sup> November 2021, at a purchase price of Kshs.3,000,000/=. However, going by documentary evidence adduced in court by the Plaintiff in the form of Pf exh 1, Sayid Amin had already transferred the property to Longonot Dairies Ltd in 2012 and therefore he could not have sold what he did not thus the principle of *nemo dat quod non habet* (one cannot give what they do not have) came into play. The title deed had not been legally reverted to him via a court order or a formal cancellation of the Longonot title and therefore, by ignoring the current registered owner, which was Longonot Dairies, and the Chargee (KCB), the 1<sup>st</sup> Defendant had bypassed the legal "chain of title," which is a fundamental requirement of land ownership.

115. The Plaintiff also bought out the fact that apart from the above captioned anomalies leading to the 1<sup>st</sup> Defendant's acquisition of title to the suit land, there had been non-compliance with mandatory statutory procedures to the effect that the 1<sup>st</sup> Defendant had neither obtained consent from the Land Control Board in the transaction between him and the deceased Sayyid Mohamed or paid any stamp duty, thus rendering their controlled land transaction void. Although this may not be far from the truth, wherein indeed the 1<sup>st</sup> Defendant admitted in evidence that his agent handled everything and he had no copies of these mandatory documents, having found, in the first instance, that the deceased Sayyid had no good title to pass, I shall not belabour on this issue.

116. The 1<sup>st</sup> Defendant relies on the trite law that a title deed is the end of the road. However, for a title to be valid, the administrative chain must be unbroken. The Supreme Court's reasoning was that where the registered proprietor's root title was under challenge, it was not enough to dangle the instrument of title as proof of ownership; the registered proprietor must go beyond the instrument and prove the legality of the title and show that the acquisition was legal, formal and free from any encumbrance. In **Dina Management Limited** (supra) the Supreme Court held as follows:

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

*Article 40 of the Constitution entitles every person to the right to property, subject to the limitations set out therein. Article 40(6) limits the rights as not extending them to any property that has been found to have been unlawfully acquired...."*

117. In the present circumstances, I find that the process by which the 1<sup>st</sup> Defendant obtained his title to the suit land was neither legal, formal, nor free from encumbrances, and was therefore fraudulent. The said title cannot be protected under Section 26 of the Land Registration Act and strips him of the protection afforded to a "bona fide purchaser."

118. Having found that the root of the 1<sup>st</sup> Defendant's title was fraudulent,

Section 80 (1) of the Land Registration Act comes into play, and provides that:-

*“Subject to sub Section (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.”*

119. From the above provisions, it is clear that the court has the power to order rectification of a register by directing that the registration be cancelled or amended if it is satisfied that any registration was obtained, made, or omitted by fraud or mistake. There having been sufficient evidence adduced, as earlier stated, in support of the Plaintiffs’ claim to impugn the 1<sup>st</sup> Defendant’s title, I find that the said title must be revoked in line with the maxim *fraus omnia corrumpit* (Fraud unravels everything). I thus enter judgment in favour of the Plaintiff as follows:

- i. A Declaration is hereby issued that the registration of the 1<sup>st</sup> Defendant as the proprietor of Naivasha/Maraigushu Block 10 (Kedong) 992 was fraudulent, illegal, and void *ab initio*.
- ii. An Order is issued directing the 2<sup>nd</sup> Defendant to cancel and revoke the fraudulent Green Card and Title Deed held by the 1<sup>st</sup> Defendant within 30 days of delivery of this Judgment.
- iii. An Order is issued that, within 30 days of delivery of this judgement, the 2<sup>nd</sup> Defendant shall restore the original Green Card and register the Transfer by Chargee in favour of the Plaintiff.
- iv. Costs of the suit are awarded to the Plaintiff.

**Dated and delivered via Teams Microsoft at Naivasha this 12<sup>th</sup> day of March 2026.**



**M.C. OUNDO**  
**ENVIRONMENT & LAND - JUDGE**