



**Nzimba v Kalunde & 29 others (Environment and Land Case  
234 of 2018) [2026] KEELC 1546 (KLR) (17 March 2026) (Judgment)**

Neutral citation: [2026] KEELC 1546 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT AND LAND CASE 234 OF 2018**

**AY KOROSS, J**

**MARCH 17, 2026**

**BETWEEN**

**CHRISTOPHER MUINDI NZIMBA ..... PLAINTIFF**

**AND**

**JOSEPH MASAU KALUNDE ..... 1<sup>ST</sup> DEFENDANT**  
**HOMEWARD AGENCIES LIMITED ..... 2<sup>ND</sup> DEFENDANT**  
**FELIX MANUAL JOSEPH ..... 3<sup>RD</sup> DEFENDANT**  
**LAMKA PROPERTIES LIMITED ..... 4<sup>TH</sup> DEFENDANT**  
**BHARAT PAREKH ..... 5<sup>TH</sup> DEFENDANT**  
**PRAVINCHANDRA JAMNADAS KAKAD ..... 6<sup>TH</sup> DEFENDANT**  
**PRANJAL VARSANI ..... 7<sup>TH</sup> DEFENDANT**  
**JOSEY NJOKI MUKIRI ..... 8<sup>TH</sup> DEFENDANT**  
**RODGERS MOTURI ONGERA ..... 9<sup>TH</sup> DEFENDANT**  
**NAOMI MWENDE KAISHA ..... 10<sup>TH</sup> DEFENDANT**  
**HENRY OIRERE ONGONDI ..... 11<sup>TH</sup> DEFENDANT**  
**PAARAS VARSANI ..... 12<sup>TH</sup> DEFENDANT**  
**ANTHONY MASOTI ONGONDI ..... 13<sup>TH</sup> DEFENDANT**  
**ROSE B. ONGERA ..... 14<sup>TH</sup> DEFENDANT**  
**BABU VARSANI ..... 15<sup>TH</sup> DEFENDANT**  
**FREDRICK INDOKO LUBULELLAH ..... 16<sup>TH</sup> DEFENDANT**  
**CHIEF LAND REGISTRAR ..... 17<sup>TH</sup> DEFENDANT**



HON. ATTORNEY GENERAL .....	18 <sup>TH</sup> DEFENDANT
RECEIVERS OF UNITED INSURANCE COMPANY LIMITED (IN LIQUIDATION) .....	19 <sup>TH</sup> DEFENDANT
EVANS OMBATI ONCHWERI .....	20 <sup>TH</sup> DEFENDANT
CAROL MUTHEU .....	21 <sup>ST</sup> DEFENDANT
ANNE KALEKYE .....	22 <sup>ND</sup> DEFENDANT
MAUREEN KAISHA .....	23 <sup>RD</sup> DEFENDANT
MOSES OSIKO .....	24 <sup>TH</sup> DEFENDANT
KENVIN NYAKUNDI .....	25 <sup>TH</sup> DEFENDANT
JOB MAKORI .....	26 <sup>TH</sup> DEFENDANT
BEATRICE TOILI .....	27 <sup>TH</sup> DEFENDANT
RICHARD SIMWA .....	28 <sup>TH</sup> DEFENDANT
MAROA KEGOCHA .....	29 <sup>TH</sup> DEFENDANT
JATIN MEHTA .....	30 <sup>TH</sup> DEFENDANT

## JUDGMENT

1. This suit was instituted by a plaint dated 10/12/2018, filed by the plaintiff against the 1st to 18th defendants. Subsequently, an amended plaint dated 18/03/2019 was filed, joining the 19th defendant (now in receivership) as a party to the proceedings. Upon an application, the 20th to 30th defendants were joined to the proceedings, and, as a consequence, the plaintiff filed a further amended plaint dated 17/05/2021, in which he sought the following reliefs from this court: -
  - a. A declaration that the subdivision and subsequent transfer of LR. no. 12715/383 to LR nos. 12715/12049, 12050, 12051, 12052, 12053, 12054, 12055, 12056, 12057, 12058, 12059, 12060, 12061, 12062, 12063, 12064, 12065, 12066, 12067, 12068, 12069, 12070, 12071, 12072, 12073, 12074, 12075, 12076, 12077, 12078, 12079, 12080, 12081, 12082, 12083, 12084, 12085, 12086, 12087, 12088, and 12715/383/3, 4, 6, 7, 8, 14, 15, 17, 18, 31, 32, 33, 69, 84 and 85, and 12715/383/37838, by the defendants, are irregular, null and void.
  - b. An order for cancellation of title nos. LR NO.12715/12049, 12050, 12051, 12052, 12053, 12054, 12055, 12056, 12057, 12058, 12059, 12060, 12061, 12062, 12063, 12064, 12065, 12066, 12067, 12068, 12069, 12070, 12071, 12072, 12073, 12074, 12075, 12076, 12077, 12078, 12079, 12080, 12081, 12082, 12083, 12084, 12085, 12086, 12087, 12088, plus any other subdivision, thereby reverting to the original title known as LR no. 1215/383 in the names of the plaintiff.
  - c. An order restraining the defendants, either by themselves, servants, agents, or anyone claiming through them from alienating, disposing of, occupying, cultivating, constructing, and/or developing on the suit property, or interfering in any way with the quiet possession of all parcels of land originally known as LR no. 12715/383 and now known as LR nos. 12715/12049, 12050, 12051, 12052, 12053, 12054, 12055, 12056, 12057, 12058, 12059, 12060, 12061,



12062, 12063, 12064, 12065, 12066, 12067, 12068, 12069, 12070, 12071, 12072, 12073, 12074, 12075, 12076, 12077, 12078, 12079, 12080, 12081, 12082, 12083, 12084, 12085, 12086, 12087, 12088, and 12715/383/3, 4, 6, 7, 8, 14, 15, 17, 18, 31, 32, 33, 69, 84 and 85 and 12715/383/37838.

- d. General damages for loss of use and unlawful occupation by the defendants.
  - e. Costs of this suit and interest.
  - f. Any other relief that this honourable court may deem fit and just to grant.
2. In the further amended plaint, the plaintiff maintained that he was the registered owner of all the property known as IR No. 44524 LR no. 12715/383 [“suit property”], measuring 2.023 ha, having acquired it from Syokimau Farm Limited in his capacity as a shareholder, and that he was listed on 25/10/1989 as member no. 616. Afterwards, Syokimau Farm Limited transferred the suit property to him, and he took possession and began grazing on it.
  3. He stated that in 2013, he received a surprising call from the Directorate of Criminal Investigations (“DCI”) questioning why he had declined to execute a transfer in favour of an alleged purchaser. Again in 2013, he received another call from Advocate Priscila Kioko enquiring whether he was selling his land. A year later, in May 2014, he noticed 2 individuals constructing on the suit property.
  4. On noticing this, he promptly reported to Mlolongo Police Station, which, on investigation, established that these invaders were the 4th defendant’s agents and that the suit property had ostensibly been transferred from his name using the following documents retrieved from the Ministry of Lands:
    - I. Gazette Notice no. 1476 dated 15/03/1996 for the issuance of a provincial certificate by the 16th defendant, purportedly as the Registrar of Titles, Mombasa.
    - II. An application for a provisional certificate, allegedly made by him.
    - III. An affidavit purportedly sworn by him.
    - IV. Provisional certificate of the suit property.
    - V. An agreement for the sale of the suit property, purportedly executed by him and United Insurance Limited, the 19th defendant.
    - VI. The provisional certificate was created by the 1st and 19th defendants through forgery, with the assistance of the 13th defendant, and this culminated in an alleged transfer by the plaintiff to the 19th defendant.
    - VII. The receivers of the 19th defendant then transferred the suit property to the 2nd defendant, who, in turn, transferred it to the 3rd defendant, who also transferred it to the 4th defendant, who subdivided the suit property into several portions.
  5. To him, these documents and many others were created, and entries were made therein, without his knowledge or participation. He also stated that the process for the application of a provisional certificate, subdivision, and transfer from him, and the issuance of new title documents, was irregular, unlawful, null and void, and pleaded and particularised fraud in the following manner;
    - 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup>, 19<sup>th</sup>, 20<sup>th</sup>, 21<sup>st</sup>, 22<sup>nd</sup>, 23<sup>rd</sup>, 24<sup>th</sup>, 25<sup>th</sup>, 26<sup>th</sup>, 28<sup>th</sup>, 29<sup>th</sup> and 30<sup>th</sup> defendants: -
      - I. In dealings with the 19<sup>th</sup> defendant, the 1<sup>st</sup> defendant portrayed himself as the agent of the plaintiff.



- II. The 1<sup>st</sup> defendant received money from the 19<sup>th</sup> defendant, while knowing he had no authority from the plaintiff.
- III. Making and uttering false documents.
- IV. Fraudulently executing an agreement for sale.
- V. Fraudulently publishing a gazette notice no. 1476 for the issuance of a provisional certificate of title of the suit property, allegedly by the 16<sup>th</sup> defendant as a registrar of titles, well knowing the 16<sup>th</sup> defendant was never a registrar in Mombasa.
- VI. Impersonating the plaintiff.
- VII. Fraudulently initiating the process of subdivision and transfer without notice to the plaintiff.
- VIII. Subdividing and transferring the suit property to 3<sup>rd</sup> parties.
- IX. Disposing of the suit property and facilitating fraud.

16<sup>th</sup> and 17<sup>th</sup> defendants' servants and or their employees: -

- I. Publishing a gazette notice no. 1476 dated 15/03/1996 for the issuance of a provisional certificate of title of the suit property, and causing the same to be conducted at the Mombasa lands office.
  - II. Issuing a provisional certificate of title to facilitate the fraudulent transfer of the suit property and subsequent subdivision.
  - III. Facilitating the fraudulent process of subdivision and transfer of the suit property to 3<sup>rd</sup> parties.
  - IV. Failure to make inquiries before taking steps to subdivide, transfer and issue new title documents to 3<sup>rd</sup> parties.
  - V. As the custodian of land records, allowing strangers to deprive the plaintiff of the suit property.
  - VI. Subdividing the suit property while knowing it was fraudulent and unlawful to do so.
  - VII. Proceeding to carry on with registration whilst ignoring entry 775/8/96 that rejected the documents lodged at the Ministry of Lands.
  - VIII. Colluding to facilitate fraud.
6. He stated that the defendants' actions, including the occupation, contravened his property rights and threatened to lay waste to his right to occupation, development and ownership, and thus he had suffered loss and damages.
  7. Upon service of the pleadings, several law firms entered appearances for some of the parties, namely: Ms. Kingoo & Associates for the 2nd defendant; Ms. Goa & Co. Advocates for the 3rd defendant, subsequently replaced by Ms. Kaka Kamau & Co. Advocates; Ms. Nyamweya Mamboleo Advocates for the 5th to 16th defendants; Ms. P.J. Kakad & Co. Advocates for the 6th defendant; and Ms. Millimo, Muthomi Advocates for the 19th defendant. Later, the firm of Ms. Ochieng Opiyo & Co. Advocates filed a notice of appointment for the 4th and 10th defendants.



8. Furthermore, on the law firm of Ms. Nyamweya Mamboleo Advocates' application, the 20th to 30th defendants were joined to the proceedings, with this law firm acting for them. Significantly, the 1st and 16th defendants died during the proceedings, and because they had not been substituted as required by law, the suit against them was marked as abated.
9. In response to the claim, the 2nd defendant's defence dated 7/07/2021, which was largely composed of denials, put the plaintiff to strict proof and informed this court that it was a stranger to the allegations of fraud and forgery. It admitted the contents of paragraphs 27 (ii)-(iv) of the further amended plaint and stated that the suit property was transferred to it on 20/02/2007 and that it transferred it to the 3rd defendant on 30/03/2007. It asserted that it was an innocent purchaser for value without notice of any defect in title.
10. Additionally, the 5th to 16th defendants filed their defence dated 30/07/2019, and later, an amended defence was filed by these defendants together with the 20th to 30th defendants, denying the assertions made in the amended plaint except for the descriptive parts. They maintained that the plaintiff transferred the suit property to United Insurance Co. Limited on 22/08/1996 vide entry no. 44524/4, and therefore his interests therein stood extinguished, and that they were strangers to the allegations made against them.
11. They argued that they bought their respective portions with vacant possession, conducted due diligence before the purchase, and were innocent purchasers for value without notice of the fraud. The 4th and 16th defendants also stated that they bought their portions as innocent purchasers from the 4th defendant and did not notice any defect in the head title.
12. Moreover, the 13th defendant denied the allegation in paragraph 27 (i) of the claim, and the 5th and 16th defendants maintained that they had filed Machakos ELC No. 274 of 2017, a case between the 4th and 8th defendants and Evans Makori against the plaintiff and DCI, which arose after the plaintiff sought to demolish their structures and evict them. In the course of the proceedings, this court, on 21/07/2022, directed that ELC No. 274 of 2017 and this one be heard alongside each other.

### **Hearing and evidence**

13. The matter eventually came on for hearing on 2/03/2023. The plaintiff testified as PW1, and reliance was placed on his witness statement, oral testimony, and several produced documents. His evidence was also led by Inspector Gilbert Kipngeno Tanui (PW2), a forensic document examiner, and Sergeant Meshack Mumo (PW3), both independent witnesses and officers from the DCI. In total, they produced documents marked as Pex1-22.
14. In chief, the plaintiff's evidence was a reiteration of the averments in the further amended plaint, and it is unnecessary to reiterate them. Besides, he informed the court that he had placed the original title document for the suit property in the custody of his advocate, Gibson Kinuka Ndunda ("Gibson"), who is now deceased, and that to date he had not sighted the certificate of title.
15. The documents produced by the plaintiff show that he was member no. 190 of Syokimau Farm Limited and held plot nos. 688-714 (See Pex. 1). Subsequently, by an instrument of transfer dated 16/10/1989, Syokimau Farm Limited transferred the suit property to him (See Pex. 2), and this is reflected in the certificate of title as entry no. 2 (See Pex. 3). The registration and ownership up to this point were not disputed by the defendants.
16. However, the plaintiff informed the court that dealings in relation to the suit property took a turn after this, as they were tainted with fraud. To buttress this, he relied on an application for loss of title dated 8/09/1995, allegedly by him, together with an alleged forged affidavit sworn by him, in which



- he allegedly asserted that he had lost the certificate of title of the suit property 15 months before the time of making the application, and a gazette notice no. 1476 dated 15/03/1996.
17. He further stated that this gazette notice, allegedly issued by the 16th defendant, was issued in Mombasa; nonetheless, a provisional certificate of title was issued on 22/08/1996. To further demonstrate fraud, an instrument of transfer dated 15/08/1996, allegedly executed by him, was produced before this court. It must be mentioned that all these documents were contained in the original file produced by PW3.
  18. This file also revealed that the suit property had changed hands several times by way of ownership and subdivisions, inter alia: the 19th defendant transferred the suit property to the 2nd defendant for Kshs 3,300,000/- on 20/2/2007. Next, on 30/03/2007, the 2nd defendant transferred it to the 3rd defendant. Later, the 3rd defendant transferred the suit property to the 4th defendant on 16/11/2011. Finally, the 4th defendant subdivided the suit property and effected transfers of the subdivisions to various parties in the following manner: -
    - I. LR No. 12715/12066 to the 5<sup>th</sup> defendant on 12/02/2014.
    - II. LR No. 12715/12088 to the 6<sup>th</sup> defendant on 12/02/2014.
    - III. LR No. 12715/12076 (original no.12715/383/29) to the 7<sup>th</sup> defendant on 12/02/2014.
    - IV. LR No. 12715/12063 to the 8<sup>th</sup> defendant on 12/02/2014.
    - V. LR No. 12715/12057 to the 9<sup>th</sup> defendant registered on 28/03/2014.
    - VI. LR No. 12715/12058 to the 9<sup>th</sup> defendant registered on 28/03/2014.
    - VII. LR No. 12715/12079 to the 10<sup>th</sup> defendant on 12/02/2014.
    - VIII. LR No. 12715/12080 to the 10<sup>th</sup> defendant registered on 28/03/2014.
    - IX. LR No. 12715/12082 to the 11<sup>th</sup> defendant registered on 28/03/2014.
    - X. LR No. 12715/12059 jointly to the 13<sup>th</sup> and 14<sup>th</sup> defendants on 12/02/2014.
    - XI. LR No. 12715/12067 to the 15<sup>th</sup> defendant on 12/02/2014.
    - XII. LR No. 12715/12074 to the 15<sup>th</sup> defendant registered on 28/03/2014.
    - XIII. LR No. 12715/12075 to the 15<sup>th</sup> defendant registered on 28/03/2014.
  19. Moreover, under Section 70 of the retired Registration of Titles Act, the entries in the certificate of title of the suit property showed that the resultant subdivisions were registered, thus: 4th defendant LR Nos. 12715/12049, 12715/12050, 12715/12051, 12715/12052, 12715/12053, 12715/12054, 12715/12055, 12715/12061, 12715/12062, 12715/12064, 12715/12065, 12715/12071, 12715/12072, 12715/12075, 12715/12077, 12715/12078, 12715/12081, 12715/12037, 12715/12085 and 12715/12086; 5th defendant LR No. 12715/12066; 6th defendant LR No. 12715/12088; 7th defendant LR No. 12715/12076; 8th defendant LR No. 12715/12063; 9th defendant LR Nos. 12715/12057 and 12715/12058; 10th defendant LR Nos. 12715/12079 and 12715/12080; 11th defendant LR Nos. 12715/12082 and 12715/12083; 12th defendant LR Nos. 12715/12068, 12715/12069 and 12715/12070; 13th and 14th defendants LR Nos. 12715/12059 and 12715/12060 and lastly, 15th defendant LR Nos. 12715/12067, 12715/12074 and 12715/12075;
  20. Also produced were a bundle of payment vouchers, which showed that the 19th defendant paid kshs. 60,000/- to the 1st defendant on 7/03/1996 for land rent, rates and stamp duty in respect of the suit



property. Furthermore, the following sums were paid to him as the alleged vendor of the suit property: kshs. 200,000/= each on 8/03/1996 and 13/03/1996, and kshs. 40,000/= on 29/04/1996.

21. Other sums of kshs. 35,000/= and ksh. 1500/ were paid to him on 29/03/1996 and 17/06/1996, respectively, as commissions. A sum of kshs 200,000/= and kshs. 260,000/= were paid to him on 15/05/1996 and 12/07/1996, respectively, without any disclosure of the payments. Lastly, the sums of kshs. 200,000/= and 100,000/= were respectively paid to J.M. Njage & Co. Advocates by the 19th defendant on 22/07/1996 and 30/07/1996. To finish, another sum was also paid to this law firm on 11/9/1996, but the amount of the payment was illegible.
22. On cross-examination, he stated that the call he received in 2013 was from Chief Inspector Magini, a stranger to him, and that the person who had complained against him for allegedly failing to transfer the suit property to him was of Indian descent - the 3rd defendant, who was also a stranger. Further, the person who allegedly sold the suit property to the 3rd defendant was also a stranger to him.
23. He informed the court that Advocate Gibson also acted for Syokimau Farm Limited, and that he deposited his certificate of title with that counsel around 1993, while it was still registered in his name. According to him, he instructed the advocate to dispose of 1 acre by sourcing a buyer and remitting the purchase price to him, but regrettably, the advocate died. Consequently, he visited the advocate's offices to retrieve his certificate of title, to no avail, as staff informed him that they could not trace it.
24. He maintained that in 2013-2014, he went to the Athi River police station to report the loss of the certificate of title. Further, in 2013, Advocate Priscilla Kioko, who is based in Tala and known to him, called him and informed him that she had seen the certificate of title for the suit property without disclosing the possessor.
25. He averred that it did not end there, as in 2014, he saw strangers building on the suit property and therefore reported the matter to Inspector Mugo of Mlolongo CID, who barred them from constructing. On investigation, it was established that his certificate of title had been altered in Mombasa. He stated that the signature contained in an affidavit deposed on 8/09/1995, purportedly by him in support of an application for a provisional certificate under Section 71 of the Registration of Titles Act (Repealed), was not his, and that the law firm of J.M. Njage & Co., advocates, which drew it, was a stranger to him.
26. When questioned about his connection with the 1st defendant, he testified that they knew each other as they were both members and former directors of Syokimau Farm Limited, but served at different times, and that they were neither friends nor business partners. He stated that he also complained to the National Land Commission (NLC), where he and the 1st defendant appeared before it, and that it was not true that the 1st defendant informed it that he had been authorised by him to sell the land.
27. He disclosed to the court that he used to graze on the suit property, fenced it, and erected an iron-sheet structure that was utilised by a herdsboy. However, persons who allegedly bought the suit property dug the existing borehole and expelled the herdsboy from the land. He stated that the suit property had been divided into 40 plots without his knowledge. He further stated that during DCI investigations and appearances before the NLC, samples of his signatures were examined.
28. He informed the court that, in his view, the fraudster was the 1st defendant, who died in 2014, as investigations had revealed that he sold the suit property and received the purchase price. He did not know who sold various properties to the 5th to 30th defendants, and he stated that during his lifetime, he had never held a cheque book. Concerning the 16th defendant, he averred that he was arrested, and the 16th defendant denied ever signing documents.



29. PW2, who produced the forensic document examination report prepared by retired Chief Inspector Daniel Kutu, was summoned to appear before the court. According to him, the signatures contained in various letters by the plaintiff were compared with signatures contained in the alleged transfer instrument between him and the 19th defendant over the suit property, an application for a provisional certificate of title, and an affidavit in support thereof.
30. On examination, the examiner opined that the questioned signatures were not made by the same author. In other words, the plaintiff did not sign the latter set of documents. He expounded on the machines used in the examination and on factors usually considered, such as the period during which the signatures were made, writing instruments, changes in writing habits, signature initials, terminal strokes, signature construction, and pen movement, among others. This evidence, given in chief, was unshaken during cross-examination, and he further stated that there was no place in the report where the examiner listed the differences or similarities in the signatures.
31. PW3 in referring to the produced report and findings by Inspector Mugo, who is now deceased, informed the court that it was found that: a) someone had impersonated the plaintiff, deposed an affidavit, and sold the suit property; b) the plaintiff never sold the suit property to the 19th defendant; c) the gazette notice was issued by the land registrar at Mombasa, while the suit property is in Machakos; d) the 16th defendant had never worked as a land registrar in Mombasa; e) the provisional certificate had been rejected at registration but was somehow registered, hence fraud; and finally, f) the 17th defendant's officers were involved in the fraud.
32. He informed the court that the report recommended that these officers be charged with abuse of office, that all transactions relating to the suit property be cancelled, that a certificate of title be reissued to the plaintiff, and that the 19th defendant's directors be charged with fraud.
33. He also stated that the investigation established that the entry on the certificate of title recording the provisional certificate of title had embossed remarks "RR", meaning Rejected and Returned, yet this rejected document was used for registration. The entire police file containing the investigation was produced in court.
34. On cross-examination, he informed the court that during the investigations, the 19th defendant's directors, Oburu Tema Ramogo, advocate, who allegedly witnessed the impugned affidavit, J.M. Njage & Co. Advocates, or the person who made the remarks "RR" on the certificate of title, were never summoned. Nonetheless, this did not undermine the investigations, as they had other sources of information that supported the findings. He informed the court that in any case, the investigations were ongoing, with no time limits, and the report was not final.
35. Upon the closure of the plaintiff's case, the defence hearing commenced on 5/12/2023, and Andrew Mbaluto Musila (DWI), a property agent, gave oral testimony as the 2nd defendant's witness, relying on his witness statement and the documents produced as Dex. 1-23.
36. He informed the court that the 2nd defendant conducted due diligence before purchasing the suit property and that all due processes were followed. He maintained that the 19th defendant's statutory manager advertised the suit property for sale, and that the 2nd defendant made an offer (Dex. 3) and thereafter conducted an official search on 4/10/2006 (Dex. 4), which showed the 19th defendant was the owner of the suit property. This search certificate, at entry no. 3, had remarks "RR".
37. It was his evidence that an agreement for sale was executed between the 2nd defendant and the 19th defendant's statutory manager on 11/10/2006 for a consideration of kshs. 4,300,000/=. As a result, the 2nd defendant paid a deposit of kshs. 500,000/- (Dex. 6-8), and the balance was allegedly paid later. After this, the suit property was transferred to the 2nd defendant on 11/02/2007 (Dex. 16) after all



- due processes were followed, including obtaining a rates clearance certificate (Dex. 10), rent clearance certificate (Dex. 14), consent to transfer (Dex. 15), and stamp duty payments of kshs. 132,000 (Dex. 17).
38. Nevertheless, a few days later, before the completion period had expired, it entered into an agreement for sale with the 3rd defendant on 23/10/2006 (Dex. 18) for a consideration of kshs. 8,200,000/=.
  39. On cross-examination, he testified that when the 2nd defendant was purchasing the suit property, the 19th defendant's surveyor pointed it out to him, and he found it vacant but did not make any enquiries about it. Moreover, the root of the suit property's title was never questioned during the 2nd defendant's transactions in relation to it. He further stated that, during transactions with the 3rd defendant, the 2nd defendant handed over to him the completion documents, including a land rates clearance certificate.
  40. On being shown the certificate of title, he testified that the transfer to the 19th defendant occurred on the same day the alleged provisional certificate was issued. He told the court that the land rent payment was made by the plaintiff, as evidenced by the receipt dated 24/11/2006, which was given to the 2nd defendant by the 19th defendant's receiver manager. He further testified that the 2nd defendant believed the 19th defendant had a good title, because if it had known it did not, it would not have bought the suit property, and furthermore, various documents had been sanctioned by the government.
  41. The 10th defendant, who is also the 4th defendant's director, testified as DW2, and her evidence comprised her witness statement, oral testimony, and documents produced as Dex. 24-30. She testified that the 4th defendant bought the suit property from the 3rd defendant pursuant to the agreement for sale dated 25/05/2011 for a consideration of kshs. 25,000,000/= (Dex. 26), and a transfer was effected to it on 16/11/2006 (Dex. 25). Subsequently, the 3rd defendant transferred the suit property to the 4th defendant through a transfer dated 12/02/2014. According to her, a good title was passed to the 4th defendant, and she held a certificate of title no. IR no. 154359 LR.no. 12715/12061, which was transferred to Richard Onyino Simwa and Christine Anita Simwa on 16/03/2017 (Dex. 28).
  42. She informed the court that the 4th defendant subsequently transferred the suit property to her on 12/02/2014 (Dex. 29). She further testified that the 4th and 10th defendants were innocent purchasers for value, and that if there was any fraud, it rested with the 1st defendant, as he had conducted the very first transfer from the plaintiff's name. She also testified that most of the defendants are in occupation and have undertaken extensive development.
  43. On cross-examination, she stated that she learnt of the suit property through a newspaper advert that included the contact details of Mr. Goa, the 3rd defendant's advocate. Thereafter, the parties had several engagements, including a site visit, which showed the suit property was vacant and fenced, with a borehole and a cemented plate in situ. She asserted that she conducted due diligence by conducting an official search and checking the history of court cases, and that she established the suit property had a clean bill. She also spoke to locals who knew the 3rd defendant.
  44. She stated that one of the completion documents was a provisional certificate of title. When she inquired about it, the receiver manager informed her that the 19th defendant had acquired it after the original title was lost. Moreover, she had subdivided the suit property and sold the subdivisions to several persons in possession.
  45. When she was shown the plaintiff's documents, she testified that, had she known the information she now knew about the improper issuance of the provisional certificate of title, she would never have purchased the suit property. She informed the court that she had subdivided the suit property into 40



parcels of land, retained 4 (the 4th and 10th defendants) that contained a site house and a borehole, and sold the rest, all of which was done before orders were issued by this court.

46. Since the other defendants did not testify, the cases of the 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, and 19th to 30th defendants were closed.

### **Submissions.**

47. Upon the court's directions, written submissions were filed by various law firms representing the parties. Ms. Ng'ani & Oluoch Advocates for the plaintiff, dated 18/03/2025; M/s. King'oo & Associates Advocates for the 2nd defendant, dated 9/10/2025; Ms. Kaka Kamau & Co. Advocates for the 3rd defendant, dated 24/09/2025; and Ms. H. Kago & Co. Advocates for the 4th & 10th defendants, dated 7/11/2025. This court is grateful to counsel for the invigorating submissions, which it will consider in its analysis and determination.

### **Issues for determination, Analysis and Determination**

48. Having carefully reviewed the pleadings filed and considered the documentary and oral evidence of the witnesses who testified, together with the written submissions, this court finds that 3 issues arise for determination: -
- a. Whether the provisional certificate of title (if any) and the initial transfer from the plaintiff's name were fraudulently obtained, and who were the parties to the fraud?
  - b. Whether the 2<sup>nd</sup>, 4<sup>th</sup> and 10<sup>th</sup> defendants were innocent purchasers for value and without notice of defect in title.
  - c. What orders should this court issue including an order as to costs?  
And they are hereby addressed sequentially.
    - a. Whether the provisional certificate of title (if any) and the initial transfer from the plaintiff's name were fraudulently obtained, and who were the parties to the fraud?
49. To start us off, as held in the Court of Appeal decision of Vijay Morjaria v Nansingh Madhusingh Darbar & Hulashiba Nansingh Darbar (Civil Appeal 106 of 2000) [2000] KECA 223 (KLR) (Civ) (1 December 2000) (Judgment), it is trite law that fraudulent conduct must be distinctly alleged and particularly proved on a standard higher than a balance of probabilities but below reasonable doubt, and it is not permissible to leave fraud to be inferred from the facts.
50. As highlighted in the preceding paragraphs, the plaintiff pleaded and particularised fraud against all the defendants except the 18th defendant. Further, it is uncertain when the 1st and 16th defendants died; nonetheless, the suit against them was marked as abated. Significantly, the plaintiff's evidence and that of his witnesses exonerated the 16th defendant from any acts of fraud.
51. Furthermore, their evidence pointed to the officers of the 17th defendant and the 1st and 19th defendants, not the other defendants. It is concluded that they were only joined to these proceedings as persons who subsequently acquired the suit property and its subdivisions after the alleged fraud was committed. It is on this basis that the court has framed the 1st issue as it has.
52. Reverting to the issue of determination and the legal framework governing the legitimacy of title documents, which are adequately governed by our laws, Article 40 (1) and (6) of *the Constitution* of Kenya limits legal protection to lawfully acquired and owned property. By these Articles, every person has the right, either individually or in association with others, to acquire and own property within



Kenya; however, this protection is not extended to any property that has been found to have been unlawfully acquired.

53. Sections 24 and 25 of the *Land Registration Act* recognise the registered owner as the absolute owner of the land and grants him protection, with Section 24 providing as follows:

“Subject to this Act—

- (a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and
- (b) the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.”

54. Even so, a title document can be challenged on grounds set out in Section 26 of the said Act, which reads;

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

- (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
- (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

55. Section 23 (1) of the repealed Registration of Title Act, which was the applicable law when the suit property was still registered in the plaintiff’s name, gave him legal protection subject to such limitations in instances of fraud or misrepresentation by stating: -

“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, subject to the encumbrances, easements, restrictions and conditions contained therein or endorsed thereon, and the title of that proprietor shall not be subject to challenge, except on the ground of fraud or misrepresentation to which he is proved to be a party.”



56. When it comes to jurisprudence, Kenya's courts have been barraged with cases of land fraud, and the law is now settled that when fraud is alleged, the root of a party's title must be interrogated. This court will highlight the abundant decisions that are binding on this court: -

The Supreme Court of Kenya decision of *Dina Management Limited v County Government of Mombasa & 5 others* [2023] KESC 30 (KLR) stated: -

“ 110. Indeed, the title or lease is an end product of a process. If the process that was followed prior to issuance of the title did not comply with the law, then such a title cannot be held as indefeasible. The first allocation having been irregularly obtained, HE Daniel Arap Moi had no valid legal interest which he could pass to Bawazir & Co (1993) Ltd, who in turn could pass to the appellant.

111. Article 40 of *the Constitution* entitles every person to the right to property, subject to the limitations set out therein. Article 40(6) limits the rights so as not to extend them to any property that has been found to have been unlawfully acquired. Having found that the 1<sup>st</sup> 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.”

In *Joseph N.K. Arap Ng'ok v Moiyo Ole Keiwua & 4 others* [1997] KECA 1 (KLR), the Court of Appeal, in explaining Section 23 (1) of the repealed Registration of Title Act, stated:

“Section 23(1) of the Act gives an absolute and indefeasible title to the owner of the property. The title of such an owner can only be subject to challenge on grounds of fraud or misrepresentation to which the owner is proved to be a party. Such is the sanctity of title bestowed upon the title holder under the Act. It is our law and law takes precedence over all other alleged equitable rights of title. In fact the Act is meant to give such sanctity of title, otherwise the whole process of registration of titles and the entire system in relation to ownership of property in Kenya would be placed in jeopardy.”

In another Court of Appeal decision, *Munyu Maina v Hiram Gathiha Maina* [2013] KECA 94 (KLR), which addressed who bore the burden of proving the root of title, the court stated as follows:

“We state that when a registered proprietor's root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which need not be noted on the register.”

57. The allegations of fraud call for exhaustive evidence to meet the threshold of proof. In the case of *Koinange and 13 others – vs - Koinange* [1986] KLR 23, which has been cited in a line of court decisions, the court restated the cardinal precept of the law of evidence that he who alleges must prove it. In the cases of *Ratilal Gordhanbhai Patel V Lalji Makanji* [1957] EA 314 and another [1979] KLR,



it was held that fraud has everything to do with one's state of mind and intentions, not the outcome of actions.

58. Further, fraud has been defined by Black's Law Dictionary, 11th Edn, at p. 802, as follows:

- “1. A knowing misrepresentation or knowing concealment of a material fact made to induce another to act to his or her detriment. Fraud is usu. a tort, but in some cases (esp. when conduct is willful) it maybe a crime.)- Also termed intentional fraud...
2. A reckless misrepresentation made without justified belief in its truth to induce another to act.
3. A tort arising from a knowing or reckless misrepresentation or concealment of material fact made to induce another to act to his or her detriment. Additional elements in a claim of fraud may include reasonable reliance on the misrepresentation and damages resulting from this reliance.
4. Unconscionable dealing; esp., in contract law, the unfair use of the power arising out of the parties' relative positions and resulting in an unconscionable bargain.”

59. Concerning the root of the title, it was incumbent upon the 19th defendant, as the person who allegedly acquired the certificate of title from the plaintiff, to demonstrate how it acquired it; however, it failed to discharge this burden, as it did not call any evidence, and its defence remained mere unsubstantiated assertions. Hence, this court finds that the 19th defendant failed to prove the root of its title.

60. The relevant law governing the issuance of a lost certificate of title was found in Section 71 of the repealed Registration of Title Act, which stated:

- “71. In the event of a grant or certificate of title being lost or destroyed, the proprietor of the land, together with other persons, if any, having knowledge of the circumstances, may make a declaration, stating the facts of the case, the names and descriptions of the registered owners and the particulars of all changes and other matters affecting the land and the title thereto to the best of the declarant's knowledge and belief, and the registrar, if satisfied as to the truth of that declaration and the bona fides of the transactions, may issue to the proprietor of the land a provisional certificate of title which shall contain an exact copy of the original grant or certificate of title bound up in the register, and of every memorandum and endorsement thereon, and shall also contain a statement why the provisional certificate is issued; and the registrar shall, at the same time, enter in the register notice of the issuing of the provisional certificate, and the date thereof, and why it was issued, and the provisional certificate shall be available for all purposes and uses for which the grant or certificate of title so lost or destroyed would have been available and as valid to all intents as the lost grant or certificate: Provided that the registrar, before issuing a provisional certificate, shall give at least ninety days' notice in the Gazette of his intention so to do.”

61. Turning to the particulars of fraud, the plaintiff pleaded that there was a false utterance of documents in the application for a provisional certificate in the plaintiff's name. To prove this, PW2 produced



- a forensic document examination report, which revealed that the plaintiff's signature was forged in the making of an application for loss of title, an affidavit in support thereof, and a transfer of the suit property to the 19th defendant.
62. In evaluating this unchallenged evidence, PW2 vouched for the author of the report, having worked closely together. The report set out the investigative methodologies in detail, and this court finds it credible. It also finds that the plaintiff's signatures were forged and that the plaintiff never applied for a provisional certificate or transferred the suit property to the 19th defendant.
63. In their evidence, the plaintiff and PW3 testified that the legal process was not followed in issuing a provisional certificate and transferring it to the 19th defendant. This court agrees with them, and this is corroborated by DW2's testimony, in which she stated that the 19th defendant's receiver manager informed her that it was the 19th defendant who had applied for a provisional certificate of title after it had lost the original. In other words, it was not the plaintiff who applied for the provisional certificate of title.
64. We will now turn to the gazette notice. Sections 25 and 26 of the repealed Registration of Title Act show that the registers, presentation books and memorials of land transactions are vested in the registrar of titles of a particular district, in this case Mombasa and Nairobi, as described in the repealed subsidiary legislation thereof in the following manner:
- “Kenya has been divided into two registration districts, as follows—
- (a) the Coast District, comprising the Coast Province;
- (b) the Inland District, comprising the rest of Kenya.”
65. Having carefully scrutinised the questioned gazette notice, it appears that it failed to meet the legal threshold because the suit property, as shown by the certificate of title, is located in the North West of Athi River in Machakos. A reading of Sections 25 and 26 of the repealed Registration of Title Act, together with the repealed subsidiary legislation, shows that, if the gazette notice was to be issued at all, it was to be issued solely by the Inland District, which, this court takes judicial notice, used to be located at the Central Land Registry in Nairobi. Yet the gazette notice strangely states that the Mombasa Registry issued it.
66. Thus, it can only be concluded that it was fraudulent. Further, uncontroverted evidence revealed that the 16th defendant never issued it, as he had never been a Registrar of Titles in Mombasa. This line of evidence is anchored in Section 33 (1) of the said repealed Act, which specifically prohibited a land registrar from registering any instrument purporting to transfer, deal with, or affect any land except land situated within the registration district for which he had been appointed.
67. We will now consider the certificate of title that was presented to this court. On its face, it bears the remarks “RR” against the entry for the issuance of a provisional title. PW3 explained that these remarks meant “Rejected and Returned”. Under the repealed Section 33(1), a land registrar was empowered to reject any instrument appearing to be unfit for registration, as was done in this case. However, none of the defendants presented any documents to demonstrate that the land registrar's decision to reject the registration of the provisional title was ever overturned by the Registrar-General or the court, as provided for by Sections 33(1) and 62 of the repealed Act. In his report, Inspector Richard Mugo



was perplexed about how, despite the rejection, subsequent entries were made in the register, as he remarked as follows:

“...RR means ‘rejected and returned’ so one wonders how the other register could continue with transaction...”

68. If Inspector Mugo were alive, he would have found an answer to his bewilderment-fraud and illegality. In the absence of a valid provisional certificate of title, it follows that all transactions after such rejection, including the transfer to the 19<sup>th</sup> defendant, entered as entry no. 4 and undertaken on the date of the rejection, were tainted by fraud. The court notes that none of the defendants’ witnesses ever produced a copy of the alleged provisional certificate they claimed to have obtained during their various transactions.
69. Regarding the actors in the fraud and for the reasons stated above, this court concludes that the 19<sup>th</sup> defendant was the perpetrator. As for the 17<sup>th</sup> defendant, this court is uncertain about the extent of its participation, as it had earlier rejected the registration of the fraudulent transactions.
70. In conclusion, this court makes the following findings: plaintiff’s evidence and that of his witnesses were consistent, substantiated and credible, the 19<sup>th</sup> defendant fraudulently acquired the provisional certificate of title, the initial transfer from the plaintiff’s name to the 19<sup>th</sup> defendant was fraudulent, due to the fraud, the 19<sup>th</sup> defendant could not have passed a valid or better title to the 2<sup>nd</sup> defendant, and all transactions after the rejection of issuance of a provisional certificate of title were tainted with the fraud.

**b. Whether the 2<sup>nd</sup>, 4<sup>th</sup> and 10<sup>th</sup> defendants were innocent purchasers for value and without notice of defect in title.**

71. This defence was raised by them, and the apex court elucidated it in *Sehmi & another v Tarabana Company Limited & 5 others* [2025] KESC 21 (KLR), affirming that it is a fundamental principle of the law that a purchase of a legal estate for value without notice is an absolute, unqualified and unanswerable defence against the claims of any prior equitable owner or encumbrancer.
72. Having considered the evidence of these defendants, this court is not satisfied that they met the legal threshold, as they contended that they had conducted official searches over the suit property, yet the very face of such a search would have shown the remarks “RR”. Indeed, the 2<sup>nd</sup> defendant produced a search certificate showing that the application for issuance of the provisional certificate of title was rejected and never registered. In this court’s humble opinion, this particular entry in the certificate of title gave them notice of a rival interest in the suit property. Furthermore, the 2<sup>nd</sup> defendant failed to substantiate by evidence that it had settled the outstanding balance of the purchase price, amounting to Kshs. 3,300,000. Additionally, it is strange that, before the conclusion of the agreement between it and the 19<sup>th</sup> defendant’s receiver-manager, the 2<sup>nd</sup> defendant entered into another agreement to sell the suit property to the 3<sup>rd</sup> defendant. Suffice it to say, this court finds that these defendants were not innocent purchasers for value without notice.
73. Most importantly, in light of the findings concerning the first issue and guided by the binding decisions in *Sehmi* (Supra) and *Dina Management Limited* (Supra), these defendants, being purchasers, could not avail themselves of the protection afforded by the legal doctrine of innocent purchasers for value and without notice of defect in title.
74. This is because the certificates of title held by the defendants were the product of a process. The processes preceding the issuance of their title documents have been found fraudulent; such certificates of title are therefore not indefeasible. The certificate of title issued to the 19<sup>th</sup> defendant was obtained



through fraudulent means, and consequently, it had no valid legal interest capable of passing to the 2nd defendant. Consequently, the subsequent transfers and subdivisions which were derived from this title also share the same invalidity. It is hereby so found.

**c. What orders should this court issue including an order as to costs?**

75. This court concludes that the plaintiff testified and pleaded that the defendants trespassed upon and occupied the suit property from 2014. This was corroborated by the testimony of DW2, who acknowledged that not only the 4th and 10th defendants were in occupation, but also the clients of the 4th defendant, who had purchased various subdivisions of the suit property. However, the defendants possessed title documents substantiating their occupancy. Accordingly, up to the time of this court's findings, the defendants were in lawful possession. Consequently, the court finds that general damages are not applicable under these circumstances.
76. Ultimately, for the reasons and findings set forth above, the plaintiff's claim is hereby deemed meritorious. In accordance with the established legal principle that costs follow the event, and given the plaintiff's successful claim, he shall be awarded the costs of this suit. Accordingly, the following final orders are hereby issued:
- a. A declaration that the 19th defendant fraudulently transferred LR No. 12715/383 to itself and that all other subsequent transfers and subdivisions emanating therefrom were irregular, null and void.
  - b. A declaration that LR Nos.12715/12049, 12050, 12051, 12052, 12053, 12054, 12055, 12057, 12058, 12059, 12060, 12061, 12062, 12063, 12064, 12065, 12066, 12067, 12068, 12069, 12070, 12071, 12072, 12074, 12075, 12076, 12077, 12078, 12079, 12080, 12081, 12082, 12083, 12085, 12086, 12088, or any other parcel of land emanating from LR No. 12715/383 are irregular, null and void.
  - c. An order for the cancellation of title nos. LR NO.12715/12049, 12050, 12051, 12052, 12053, 12054, 12055, 12056, 12057, 12058, 12059, 12060, 12061, 12062, 12063, 12064, 12065, 12066, 12067, 12068, 12069, 12070, 12071, 12072, 12073, 12074, 12075, 12076, 12077, 12078, 12079, 12080, 12081, 12082, 12083, 12084, 12085, 12086, 12087, 12088, together with all other subdivisions emanating from LR No. 12715/383, is hereby made thus, reverting to the original title known as LR NO.1215/383 in the plaintiff's name.
  - d. A permanent injunction is hereby issued restraining the defendants, either by themselves, their servants, agents, or anyone claiming through them, from alienating, disposing of, occupying, cultivating, constructing, and/or developing LR NO.1215/383, or interfering in any way with the quiet possession of LR No.12715/383.
  - e. The defendants in occupation of LR Nos.12715/12049, 12050, 12051, 12052, 12053, 12054, 12055, 12057, 12058, 12059, 12060, 12061, 12062, 12063, 12064, 12065, 12066, 12067, 12068, 12069, 12070, 12071, 12072, 12074, 12075, 12076, 12077, 12078, 12079, 12080, 12081, 12082, 12083, 12085, 12086, 12088, or any other parcel of land emanating from LR No. 12715/383 are hereby granted 180 days from the date of service of the orders of this court to remove themselves, their servants, agents, or anyone claiming through them together with their developments therein and give the plaintiff vacant possession, and in default, the plaintiff shall forcefully evict them.
  - f. The costs of the suit are awarded to the plaintiff, which shall be borne jointly and severally by the defendants.



Judgment accordingly.

**DELIVERED AND DATED AT MACHAKOS THIS 17<sup>TH</sup> DAY OF MARCH, 2026.**

**HON. A. Y. KOROSS**

**JUDGE**

03.2026

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

Ms Kanja Court Assistant

Mr. Ngani for Plaintiff

Mr. Kaka for 3<sup>rd</sup> Defendant

Mr Kingoo for 2<sup>nd</sup> Defendant

No appearance for other parties.

