Mbugua (Suing as the Administrator of the Estate of Joseph Kiarie Mbugua alias Joseph Kiarie Mbogwa) v Tripple Eight Properties Ltd & 2 others (Civil Appeal 612 of 2019) [2026] KECA 699 (KLR) (25 March 2026) (Judgment)

Neutral citation: [2026] KECA 699 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT NAIROBI

CIVIL APPEAL 612 OF 2019

PO KIAGE, LA ACHODE & WK KORIR, JJA

MARCH 25, 2026

BETWEEN

FLORENCE WAIRIMU MBUGUA (SUING AS THE ADMINISTRATOR OF THE ESTATE OF JOSEPH KIARIE MBUGUA ALIAS JOSEPH KIARIE MBOGWA) ..... APPELLANT

AND

TRIPPLE EIGHT PROPERTIES LTD ..... 1ST RESPONDENT

STEPHEN KAHUGU KINYANJUI ..... 2ND RESPONDENT

COMMISSIONER OF LANDS ..... 3RD RESPONDENT

(Being an appeal against the judgment and decree of the Environment and Land Court at Nairobi (C. Ochieng, J.) dated 25th September 2019 in ELC Civil Suit No. 188 of 2011)

JUDGMENT

1. In an Originating Summons amended on 5th May 2017, the appellant sought to declare null and void the 1st respondent's Grant IR No. 125768 for L.R. No. 209/1627 Nairobi issued by the 3rd respondent. She also sought an order directing the 3rd respondent to cancel the grant issued to the 2nd respondent. Finally, the appellant sought an order renewing her late husband's lease over the property, in her name as the administratrix of his estate, for a period of 99 years plus damages against the respondents for loss of income, destruction of property, and deprivation of her right to occupy and enjoy the suit property. In a judgment delivered on 25th September 2019, C. Ochieng, J. of the Environment and Land Court ("ELC") dismissed the appellant's case with costs to the respondents, giving rise to the present appeal.

2. The appellant is dissatisfied with the judgment and has raised 20 grounds of appeal. Essentially, the appellant faults the learned Judge for affirming the 1st respondent's title; for finding that her late

husband's lease had expired; that the 1st respondent was procedurally granted the new lease over the suit property by the 3rd respondent in 2010; that the 3rd respondent had powers to issue the new lease; and that she had failed to prove the allegations of fraud against the respondents. It is her prayer that the judgment of the trial court be set aside and the amended Originating Summons be allowed as prayed. In the alternative, the appellant prays that upon allowing the appeal, the Court remits the case back to the E&LC for hearing and determination on a priority basis.

3. The claim as advanced by the appellant was that her late husband, Joseph Kiarie Mbugua alias Joseph Kiarie Mbogwa, was the owner of the suit property whose lease expired on 1st January 2001. She was the administratrix of the deceased's estate. She averred that the acquisition of the suit property by the 1st respondent and subsequent transfer to the 2nd respondent was fraudulent and against her right to renewal of the lease. She faulted the title issued to the 1st respondent on the grounds that the same was unprocedurally issued by the 3rd respondent and later transferred to the 2nd respondent. According to the appellant, the allotment of the suit property by the 3rd respondent to the 1st respondent was marred by irregularities, and that during the pendency of her own application for renewal of the lease, the 3rd respondent lacked the necessary legal authority to occasion the issuance of any lease.

4. In her evidence, the appellant reiterated her right to the suit property, stating that she was in possession of the property. She testified that prior to the expiry of the lease, her late husband had on 29th August 2000 applied for its renewal, which application was accepted vide a letter dated 9th November 2006, subject to certain conditions that the husband did not meet. She accused the 3rd respondent of issuing a new lease to the 1st respondent using her deed plan, which was still in her custody. She also stated that she had filed a complaint with the National Land Commission, and in a decision gazetted on 17th July 2017 vide Kenya Gazette Notice No. 6865, the title to the 1st respondent was revoked and a directive issued for the suit property to be allocated to her.

5. Opposing the summons, the 1st respondent asserted that it acquired a good title and reiterated that the same was procedurally allocated to it. The 1st respondent's director, Peter Wanjohi Karanja (DW1), testified that in a letter dated 30th July 2010, the 1st respondent applied to the 3rd respondent for allocation of the suit property. He noted that the 3rd respondent acceded to their request, subject to certain conditions, including the payment of Kshs. 629,430, and clearance of pending rent and rates. They paid the lease amount and cleared the pending rates through a banker's cheque. He stated that on 27th September 2010, the 3rd respondent issued them with a lease over the suit property. It was his evidence that through an agreement dated 3rd December 2010, the company sold the suit property to the 2nd respondent, and that, before the transfer of title to the 2nd respondent, they obtained the consent of the 3rd respondent. In short, his case was that the acquisition of the lease by the 1st respondent complied with the legal requirements and that, since the lease to the appellant had expired, there was no impediment barring the 3rd respondent from processing their application for the lease.

6. The 2nd respondent testified as DW2. His was a case of bona fide purchaser for value without notice of defect in the title. DW2 testified that under a Sale Agreement dated the 3rd December 2010, he purchased the suit property, paying an initial Kshs. 5 million at the time of executing the agreement and later paying the remaining Kshs. 48 million. He stated that upon paying the purchase price, the 1st respondent effected the transfer in his favour on 18th February 2011. He reiterated that he undertook due diligence and ascertained that the 1st respondent was the proprietor of the suit property and that upon taking ownership of the premises, he entered a tenancy agreement with one Mr. Ndungu, who was living on the property as the appellant's tenant. He denied participating in any fraud to acquire the suit property and insisted that he was a purchaser for value without notice.

7. The case by the 3rd respondent was advanced through the affidavit of one Silas Kiogora Mburugu, a Principal Land Administrator at the National Land Commission, who also testified as DW3. He confirmed that the suit property was assigned to Joseph Kiarie Mbugua through an Indenture dated 3rd August 1977, having been purchased from Hiram Singh for the unexpired period of the 99-year lease, which ran from 1902. However, the Indenture to Mbugua was extinguished on 1st January 2001, when the term of the 99-year lease lapsed, and the property reverted to the government. He denied knowledge of any application or subsequent approval by the 3rd respondent for the renewal of the lease to Mbugua. According to him, the suit property having reverted back to the Government, the 3rd respondent, upon receiving an application from the 1st respondent to be granted a lease over the suit property, acceded to the application and vide a letter dated 14th September 2010, issued a letter of allotment subject to annexed conditions. He stated that the 1st respondent accepted the terms of allotment and forwarded payment of the requisite charges of Kshs. 629, 430/= through a letter dated 15th September 2010 and was subsequently issued with a grant of lease. He further testified that in December 2010, the 1st respondent applied for consent to transfer the lease over the suit property to the 2nd respondent, and the same was approved by the 3rd respondent. He denied any connivance or fraudulent activity by the 3rd respondent in the dealings over the suit property and asserted that the title owned by the 2nd respondent is founded on legal process and valid in accordance with their procedures.

8. When this matter came for hearing, learned counsel, Ms. Grace Ndida, held brief for Mr. Babu for the appellant. Learned counsel Mr. Koyyoko, learned counsel Mr. Mwangi, and learned Chief State Counsel Mr. Eredi, respectively, appeared for the 1st to 3rd respondents. With all counsel already having written submissions on record, counsel proceeded to briefly highlight those submissions.

9. For the appellant, counsel began by urging that the 3rd respondent failed to comply with sections 9, 12, and 13 of the repealed Government Lands Act when granting the lease to the 1st respondent. Counsel referred to the 1st respondent's application letter dated 30th July 2010, urging that the 3rd respondent erred in approving the lease over the suit property despite the 1st respondent having applied for a different parcel. Counsel faulted the 3rd respondent's approval of the lease to the 1st respondent, urging that the decision was made unilaterally, hence was illegal, unfair, unjust, and contrary to procedures and propriety as it was done without notice to the appellant, who had been in continuous and active possession of the suit property. Counsel also faulted the grant, arguing that the same was in disregard of the appellant's rights and interests since the appellant's husband was the previous immediate holder of an expired lease and was therefore entitled to first consideration in respect of its renewal or extension.

10. Counsel for the appellant relied on the holding in Communications Commission of Kenya & 5 Others vs. Royal Media Services Ltd & 5 Others [2014] KESC 53 (KLR) to urge that the 3rd respondent was under a legal obligation to protect the appellant's legitimate expectation and the right to ownership of property as envisioned in *the Constitution*. She referred to the High Court decision in Diana Kethi Kilonzo & Another vs. Independent Electoral & Boundaries Commission & 10 Others [2013] eKLR to reiterate the doctrine of legitimate expectation. Counsel also cited Commissioner of Lands vs. Kunste Hotel Limited [1997] KECA 335 (KLR) for the proposition that it was necessary for the Commissioner of Lands to involve all the affected parties before conferring land to a private individual.

11. It was counsel's submission that the National Land Commission was mandated under Article 67 of *the Constitution* of Kenya, 2010 and section 14 of the *National Land Commission Act* to review all grants and dispositions of public land and that by deciding to revoke the 1st respondent's title through Gazette Notice No. 6865 of 17th July 2017, the National Land Commission was exercising its independent constitutional mandate. Counsel further submitted that since one cannot pass on a better title than

he has, the 1st respondent's grant over the suit property, having been acquired unlawfully and thus null and void ab initio, there was therefore no valid title that could pass to the 2nd respondent. Relying on the holding in Arthi Highway Developers Limited vs. West End Butchery Limited & 6 Others [2015] KECA 816 (KLR) that a bona fide purchaser defence cannot stand where the seller's title was acquired through fraud, counsel argued that the suit property having been fraudulently procured by the 1st respondent, the instrument of transfer dated 7th February 2011 was incapable of transferring any proprietary interest to the 2nd respondent. In the end, counsel urged us to allow the appeal and grant the prayers sought in the amended Originating Summons.

12. Opposing the appeal, counsel for the 1st respondent started by pointing out that the lease for the suit property expired on 1st January 2001 and no application for extension was made before the appellant's death in 2006. Relying on the principle that property rights tied to a lease vanish once the lease expires, counsel urged that upon expiry of the lease, the property reverted back to the government, and the land was no longer part of the estate of the deceased husband of the appellant. Counsel distinguished the decision in Kenya Industrial Estates Ltd vs. Anne Chepsiror & 6 Others [2019] KEELC 3152 (KLR) from the current case, arguing that whereas in the case before us, the land was private land whose lease had expired, the dispute in the cited case concerned public land.

13. Counsel maintained that the Commissioner of Lands followed lawful process in issuing a letter of allotment and subsequently a Certificate of Title (I.R. 125768), which he argued was indefeasible. Still rooting for the legality of the lease, counsel submitted that under the transitional provisions of the Sixth Schedule to *the Constitution*, the Commissioner retained the authority to administer land until the National Land Commission was fully established in 2012. Counsel referred to the case of Muhu vs. Commissioner of Lands & 2 Others [2014] KEHC 7541 (KLR) to demonstrate that the office of the Commissioner of Lands remained functional and legally competent to issue allotment letters until May 2012.

14. It was also the submission of counsel for the 1st respondent that the appellant failed to provide evidence of fraud or procedural impropriety, emphasizing that allegations of fraud must be proved to a standard higher than a balance of probabilities. It was further counsel's submission that the transfer of the property to the 2nd respondent met all the legal requirements, including the consent of the Commissioner of Lands. It was thus counsel's ultimate plea that we dismiss the appeal with costs.

15. Counsel for the 2nd respondent also opposed the appeal and submitted that the 3rd respondent had the authority to renew leases, handle expired reversion interests, and issue titles before the new land laws passed pursuant to the 2010 Constitution took effect. He asserted that Article 67 of *the Constitution* could not be implemented without a corresponding Act of Parliament and the appointment of commissioners. Additionally, that Article 62, which defines public land, was suspended under Article 262 until the National Land Commission was formed, and that according to Clause 31(1) of the Sixth Schedule of *the Constitution*, officials in place under the repealed Constitution remained in office until their terms ended. He referenced sections 5 and 7 of the repealed Government Lands Act to support the position that the 3rd respondent lawfully allotted the land to the 1st respondent and approved its transfer to the 2nd respondent.

16. Counsel proceeded to submit that the appellant's claim of fraud lacked evidence and was based on misconceptions rather than solid proof, citing R. G. Patel vs. Lalji Makanji [1957] EA 314 for the holding that although the standard of proof for fraud may not be so heavy as to require proof beyond reasonable doubt, something more than a mere balance of probabilities is required. He also referenced Morjaria vs. Darbar & Another [2000] eKLR, asserting that the appellant failed to specify the allegations of fraud. Counsel argued that since the lease to the appellant's husband had lapsed, the

land was available for allocation by the 3rd respondent to the 1st respondent, asserting that the process was legitimate with no collusion. Furthermore, he submitted that the 2nd respondent was not involved in the fraud allegations and is an innocent purchaser with legally protected ownership rights.

17. Turning to another issue, counsel argued that the suit property had reverted back to the government due to the appellant's failure to seek the renewal of the lease. Urging that equity aids the vigilant, not the indolent, counsel submitted that the appellant could not base her claim on the doctrines of equity. Counsel further took issue with the cancellation of the 2nd respondent's title by the National Land Commission, arguing that the action was taken without hearing the 1st and 2nd respondents and during the pendency of an active suit before the E&LC, thus violating the 2nd respondent's right to be heard as guaranteed by Articles 47 (1) and 50 (1) of *the Constitution*. Buttressing this view, counsel referred to the holding in Satima Enterprises Ltd vs. Registrar of Titles & 2 Others [2012] eKLR, where it was held that issuing a Gazette Notice amid ongoing court proceedings undermined the proceedings and breached constitutional rights.

18. Supporting the learned Judge's finding that there was a legitimate sale despite discrepancies in the stamp duty paid compared to the purchase price, counsel contended that stamp duty is assessed by the collector based on government valuations, not the parties' agreement, and in any event the appellant did not contest the assessment of the stamp duty by the Government valuer. Buttressing this submission, counsel referred to Benedictor Makani Bahat - Chairman & 4 Others vs. Ben Muneria Wesonga & 5 Others [2018] eKLR, where the Environment and Land Court opined that irregularities do not equate to fraud, and that the remedy for undervaluation is not to nullify the agreement but to require payment of the difference. Counsel therefore submitted that claims about stamp duty cannot be interpreted as fraud or serve as a valid ground for challenging the transaction's validity, as the court should simply order the payment of any outstanding duty. In the end, learned counsel for the 2nd respondent urged us to dismiss the appeal.

19. For the 3rd respondent, counsel opposed the appeal pointing out that whereas Article 62 (2) and (3) of *the Constitution* provides that the National Land Commission is to administer public land, the provision was suspended by Clause 2(4) of the Sixth Schedule of *the Constitution* until the Commission was established with the members gazetted on 20th February 2013. Counsel urged us to adopt the reasoning in Gitson Energy Limited vs. Francis Chachu Ganya & 6 Others [2017] eKLR and find that the National Land Commission could only administer public land on behalf of the government as from 20th February 2013. Counsel submitted that during the pendency of the establishment of the Commission, the 3rd respondent continued to allocate public land and therefore the allocation of the suit property to the 1st respondent was legal. Counsel proceeded to argue that the Court should discard the appellant's claim of non-compliance with Part III of the Government Lands Act as it was raised for the first time in the appellant's submissions at the E&LC and was never canvassed at the hearing. Asserting that the learned Judge was right in not considering the issue, counsel referred to Twaher Abdulkarim Mohamed vs. Independent Electoral & Boundaries Commission (IEBC) & 2 Others [2014] eKLR and Clips Ltd vs. Brands Imports (Africa) Ltd formerly named Brand Imports Ltd [2015] eKLR to argue that submissions are not pleadings, and that parties should be restricted to their pleadings and cannot raise new issues at the submission stage. Additionally, it was counsel's submission that the learned Judge correctly nullified the National Land Commission's decision to cancel the 2nd respondent's title. Additionally, counsel contended that the appellant was barred from relying on the letter dated 9th November 2006 as she repudiated the letter and that the letter never emanated from the 3rd respondent. According to counsel, this letter could not be relied upon as proof that the appellant had applied for renewal of the lease. Counsel urged us to dismiss the appeal and uphold the judgment of the trial court.

20. As this is a first appeal, our mandate flows from rule 31(1) of the Court of Appeal Rules, and it entails re-appraising the evidence and drawing inferences of fact. The Court in Equity Bank Limited vs. Neptune Credit Management Limited [2016] KECA 385 (KLR) aptly captured this mandate thus:

> " As was held by this court in Selle vs. Associated Motor Boat Company Ltd [1968] EA 123, this Court is empowered to subject a matter on a first appeal to a retrial and come to its own conclusion."

21. In line with our mandate as expounded above, we have considered the record of appeal, the submissions, and the authorities cited by counsel for all parties. In our view, the key issue for determination is whether the 3rd respondent properly granted the lease over the suit property to the 1st respondent.

22. Upon considering the record as a whole, it is clear that the lease in favour of Kiarie Mbugua over the suit property, L.R. No. 209/1627, extinguished on 1st January 2001. Even though learned counsel Ms. Ndida took the view that the appellant had applied for renewal, we note from the record that the appellant recanted this line of evidence. In her affidavit sworn on 3rd May 2011, the appellant stated that her late husband never instructed M/S D. Ndung'u & Company Advocates on the matter, thus disowning the letter dated 9th November 2006, which purported to be responding to the appellant's application for renewal of the lease. The appellant confirmed the contents of this affidavit in cross-examination and denied ever instructing the said advocate. Instead, she attributed the actions of the advocate to the 1st respondent. In such circumstances, the appellant is barred from relying on the letter as proof of intention to renew the lease. Without any other evidence, it cannot be said that the appellant's deceased husband or herself had applied to renew the lease.

23. From the foregoing, can the appellant then plead breach of legitimate expectation? We think not. In Fanikiwa Limited & 3 others vs. Sirikwa Squatters Group & 17 others [2023] KESC 105 (KLR), the Supreme Court, addressing the question of legitimate expectation, pointed out that:

> "88. For an individual to invoke the principle of legitimate expectation, an expectation must have been induced by some conduct of the public authority. The principle extends to any individual who is in a situation in which it appears that the administration's conduct has led him to entertain certain expectations.
>
> 89. It is important to point out that the principle protects only those expectations which have arisen through the conduct of the administrative body concerned, and not those which have arisen as a result of an individual's subjective hopes. Put differently, it is concerned with upholding trust in the administration rather than protecting expectations which the individual has decided to entertain at his or her own risk."

24. Similarly, in Sehmi & Another vs. Tarabana Company Limited & 5 Others [2025] KESC 21 (KLR), the Supreme Court expounded on the doctrine of legitimate expectation thus:

> " 76. Turning to the issue as to whether the principle of legitimate expectation applies to the renewal of leases over public land, we are constrained to revisit the process by which such leases may be renewed. The most defining element of any leasehold estate, is the element of its subsistence for a definite time, or a time determinable by an event whose occurrence is definite to occur. It follows therefore, that if such a lease is not renewed, or renewable, it ceases to exist

upon effluxion of time. A lease of public land may contain an option for its renewal either conditionally or unconditionally. In the first instance, the lease becomes renewable upon the fulfillment of the condition/s by the lessee, in which case, the latter would be free to exercise such option. Where however the lease is either silent or contains an unconditional option for its renewal, the lessee must give an unequivocal indication to the landlord regarding his/her desire to have the lease renewed in his/her favour."

25. From the foregoing, it is clear that for the appellant to have had legitimate expectation that the lease would be renewed, she or her deceased husband ought to have first applied for the renewal of the expired lease. The evidence before us shows that such an application was never made. It follows that the appellant cannot plead or benefit from the doctrine of legitimate expectation as the terms of the expired lease did not guarantee the estate a renewal of the fixed-term lease. Consequently, we find that the lease to the appellant's husband expired on 1st January 2001 and no application for renewal was ever made. The appellant, therefore, did not have a legitimate expectation that the same would be renewed in the absence of her application for such renewal.

26. The answer to the foregoing question leaves unanswered the issue as to whether the grant issued to the 1st respondent by the 3rd respondent was procedural and legal. The Supreme Court in Sehmi & Another vs. Tarabana Company Limited & 5 Others (supra) nullified an allotment partly because it was not preceded by the requisite advertisements and biddings. And in Dina Management Ltd vs. County Government of Mombasa & 5 Others [2023] KESC 30 (KLR), the same Court held that 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.

27. Section 12 of the repealed Government Lands Act provided that leases of town plots shall, unless the President otherwise orders in any particular case or cases, be sold by auction. Section 13 further provided that:

> " 13. The place and time of sale shall be notified in the Gazette not less than four weeks nor more than three months before the day of sale, and the notice shall state -
>
> a. the number of plots and the situation and area of each plot;
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> b. the upset price at which the lease of each plot will be sold;
>
> c. the amount of survey fees and the cost of the deeds for each plot;
>
> d. the term of the lease and the rent payable in respect of each plot; and
>
> e. the building conditions and the special covenants, if any, to be inserted in the lease to be granted in respect of any plot:
>
> Provided that the lease of any plot may be withdrawn from sale by the Commissioner at any time before it is offered for sale."

28. From the foregoing, it is clear that a lease issued in non- compliance with sections 12 and 13 of the Government *Land Act* is irregular and therefore invalid. Whereas the appellant contends that there was noncompliance with Part III of the Government Lands Act in granting the lease to the 1st respondent,

the respondents, on their part, hold that the lease was procedurally granted. According to the witness for the 1st respondent, he lived near the suit property and, upon search, he realized that the lease had expired. He also stated that he applied for the lease vide a letter dated 30th July 2010, accepted the lease vide a letter dated 14th September 2010, and the title was issued on 27th September 2010. On cross-examination, he affirmed that he had been a neighbour to the suit land for approximately 30 years. Despite denying the existence of structures on the suit property, the 1st respondent's witness admitted that there was a wall constructed around the suit property. On his part, DW2 stated that at the time of purchasing the property from the 1st respondent, he found the property surrounded by a wall and metal structures erected therein. He also stated that he found a tenant, one Mr. Mburu, who resided in a wooden house within the suit property.

29. From the foregoing, it is evident that the grant of lease to the 1st respondent did not adhere to the statutory procedure laid down. There was no advertisement of the lease, and instead, the 1st respondent testified that he became aware of the empty plot as his plot neighboured it. There was also no auction carried out. Allowing the procedure adopted by the 1st respondent and fully supported by the 3rd respondent, without compliance with the provisions of the repealed Government *Land Act*, essentially permitted land grabbers to scavenge the land registries and, in collusion with corrupt officials, allocate themselves land with expired leases despite there being active occupation of the premises by those whose leases had expired. The procedure ran afoul of the rights of the immediate former lessors to be informed of the adverse decisions that were being made against their interests. We therefore find that the lease to the 1st respondent was irregular, unprocedural, and unlawful.

30. The question is: where does our finding leave the 2nd respondent's title? According to the 2nd respondent, he is an innocent purchaser for value without notice. In Sehmi & Another vs. Tarabana Company Limited & 5 Others (supra), the Supreme Court extensively addressed the issue of an innocent purchaser for value without notice. The Court pointed out that the onus of proof lies upon the person claiming to be a bona fide purchaser who must establish the existence of three ingredients, namely, innocence, purchase for value, and a legal estate. As to whether the doctrine protects a purchaser of an illegally acquired property, the Court held that:

> " In view of this court's pronouncement in Dina Management Limited (supra), the answer as to whether the doctrine of innocent purchaser for value without notice protects a purchaser of an illegally or irregularly allocated title to public land lies squarely in the negative. We hasten to add that such a transaction cannot attract the protection of equity because "the latter follows the law". In this regard, two critical elements of the doctrine would be missing because, first, the purchaser must have purchased "a legal estate", and secondly, such purchase must have been without "notice". Since the holder of an illegally allocated title cannot confer a valid title upon a third party, there would be no "legal estate" to be purchased in the first place. Similarly, the absence of "notice" is in reference to the existence of "an equitable interest" in the land and not "the incidence of illegality or irregularity of the title" in question. Therefore, there can be no protectable "purchaser of an illegal title without notice of such illegality". In other words, a purchaser will only be regarded as bona fide if he buys property in good faith without notice of any defect or claims against the title. So that if the title in question is illegal or obtained through unlawful means, the purchaser cannot claim protection even if he was not aware of the illegality."

31. The above excerpt seals the fate of the 2nd respondent's title. The 2nd respondent cannot benefit from the doctrine pleaded. We have already found that the grant to the 1st respondent was unconscionable. Consequently, the 2nd respondent cannot establish the ingredients of the doctrine of bona fide

purchaser without notice. Specifically, the 2nd respondent fails on two fronts, namely, innocence and a legal estate. Despite the DW2 stating that at the time of purchase of the suit property, he was aware of structures erected on the property, and indeed found a tenant placed thereon by the appellant, he did not show the lengths he went to ascertain the background of those structures. In this regard, we remind ourselves of the Supreme Court's statement in Torino Enterprises Limited vs. Attorney General [2023] KESC 79 (KLR) where in declining to find in favour of the appellant, the Court held that "fact that the suit land was occupied must have sounded a warning of "buyer be aware" to the appellant." Additionally, having found that the 1st respondent did not have a valid title, the 2nd respondent cannot be said to have gained a legal estate in the purchase. Consequently, the 2nd respondent's title is as bad as the one acquired by the 1st respondent.

32. This appeal would be settled at this point. However, we feel inclined to address a few more issues raised by the parties. First, on the question of fraud and award of damages. We note that that the appellant's lease expired and was not renewed. The land already reverted to the government and the appellant only lived on it as a tenant at will. In those circumstances, even if fraud was proved, which we find it was unproved, the appellant would still not be entitled to an award of damages. It must be restated that in disputes touching on land, the key element that must be established at the initial stage is ownership or interests accruing from rights over the suit property. In this case, the appellant did not establish such interests as the land belonged to the government.

33. There was also the respondents' argument that the claim by the appellant that there was no compliance with Part III of the Government *Land Act* was raised for the first time in her submissions before the trial court. In our view, this was a point of law touching on the process of acquisition of the title. The record shows that the process of acquisition of the title was at the centre of the evidence adduced by the parties. The respondents cannot, therefore, urge, as they have, that this issue is not for determination in this appeal.

34. Finally, and notwithstanding our finding that the lease to the appellant's deceased husband had expired, justice and common sense requires that the appellant ought to be given priority before the lease can be offered to any other party. We will accordingly issue an appropriate order.

35. In the end, we find that the appeal partially succeeds. From the foregoing discussions, we hereby derive the following declarations and consequential orders:

    i. The allotment of the suit property to the 1st respondent was procedurally flawed and hence illegal.

    ii. The 2nd respondent was not a bona fide purchaser of the suit property for value without notice and therefore the title in his favour over the suit property is invalid for all purposes.

    iii. The appellant, with an expired lease and without an application for extension, did not have a legitimate expectation that their lease would be extended.

    iv. The Chief Land Registrar (3rd respondent) is hereby directed to effect a cancellation of the 2nd respondent's title from the proprietorship section of the Land Register;

    v. The title and proprietorship of the suit land to be reverted back to the Government;

    vi. The appellant is at liberty to apply for the renewal of the lease for the suit property within 120 days from the date of this judgment and that application shall be given priority by the authority concerned with renewal of leases.

36. With regard to the costs, even though parties never addressed this issue, we are obliged to consider the historical background of this dispute and interests advanced by the parties. The appellant was a tenant at will in the suit property prior to the commencement of the dispute. The respondents have on their part not encountered any success. Consequently, the appropriate order on costs is to direct each party to meet own costs of the trial and the appeal, which we hereby do.

37. It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 25TH DAY OF MARCH 2026.

P. O. KIAGE

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JUDGE OF APPEAL

L. ACHODE

.....

. JUDGE OF APPEAL

W. KORIR

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR