



**Nzeki & another v Diya Holdings Limited & 3 others (Environment and Land Case E012 of 2023) [2025] KEELC 5464 (KLR) (22 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5464 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT AND LAND CASE E012 OF 2023**

**CA OCHIENG, J**

**JULY 22, 2025**

**BETWEEN**

**BENEDICT NYAMAI NZEKI ..... 1<sup>ST</sup> PLAINTIFF**

**VIVIAN OLIVER WESONGA ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**DIYA HOLDINGS LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**DILSUN ENTERPRISES LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**RAM HARDWARE SUPPLIERS LIMITED ..... 3<sup>RD</sup> DEFENDANT**

**THE CHIEF LAND REGISTRAR ..... 4<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. The Plaintiffs commenced this suit by a Complaint dated the 10<sup>th</sup> February 2023. Their claim is that they are the registered owners of Land Reference Number 16115/16, but the 1<sup>st</sup> to 3<sup>rd</sup> Defendants have fraudulently trespassed thereon and commenced construction of a perimeter wall. Further, that in collusion with officials from the Lands Registry, they have secured sub titles for the said property, which titles were registered in July 2022 and fraudulently Charged to Bank of Baroda (K) Limited on the same day. They pray for judgement against the Defendants jointly and severally for:
  - a. A permanent injunction restraining the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants together with their servants and agents jointly and severally from trespassing, entering, constructing or interfering in whatsoever manner with the property known as Grant No.164679 Land Reference No. 16115/16 Syokimau in Machakos County.
  - b. A declaration that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants' certificate of titles are null and void.



- c. An order compelling the 4<sup>th</sup> Defendant to cancel the certificate of titles IR No. 249066 LR No. 16115/40, IR No. 249068, LR No. 16115/42 and IR No. 249065 LR No. 16115/38.
  - d. General and exemplary damages for loss of use of the property and trespass.
  - e. Costs of this suit with interest.
2. The suit is opposed by the 1<sup>st</sup> Defendant vide its Statement of Defence and Counterclaim dated the 5<sup>th</sup> April 2023. It contends that LR No. 16115/16 is no longer in existence, having been subdivided into several land parcel numbers being 16115/39, 16115/40, 16115/41, 16115/42, 16115/43 and that it is the valid proprietor of LR 16115/40 (Original number 16115/16/2) measuring 0.75 acres which it purchased from Museum View Office Suites Limited hereinafter referred to as 'Museum View Suites', for ksh.20,120,000/= in the year 2021, after ascertaining that the said company was the registered owner. Further, that it obtained title on 1<sup>st</sup> July 2022 and that the said title is Charged to Bank of Baroda (K) Limited for Kshs.15 million. It contends that the Certificate of title to land parcel number 16115/16 purportedly registered in the name of the Plaintiffs is non-existent. It seeks the following orders:
- a. A declaration that the title to land parcel number 16115/16 purportedly registered in the names of the Plaintiffs or any other person or persons claiming under the Plaintiffs is void and illegal having been acquired illegally and/or fraudulently.
  - b. A declaration that the title to land parcel number 16115/16 purportedly registered in the names of the Plaintiffs or any other person or persons claiming under the Plaintiffs is invalid since the said land parcel number 16115/16 is no longer in existence, having been subdivided into several parcels, Land reference number 16115/40 being one of the resultant subdivisions.
  - c. An order for cancellation of the title to land parcel number 16115/16 which is purportedly registered in the names of the Plaintiffs.
  - d. An order for rectification of the Land Register (if any) by way of cancellation of the certificate of title and all entries on the land register in respect to Land Reference 16115/16, held or made in favour of the Plaintiffs.
  - e. A declaration that the 1<sup>st</sup> Defendant is the valid, legal, beneficial, and/or bona fide owner of land parcel number 16115/40 having acquired a bona fide title to the same for valuable consideration.
  - f. An order of permanent injunction against the Plaintiffs, their agents, servants or employees restraining them from leasing, selling, transferring, charging, taking possession, or in any other manner howsoever from dealing/interfering with the 3<sup>rd</sup> Defendant's peaceful and quiet enjoyment of the title to land reference Number 16115/40.
  - g. General damages for fraud.
  - h. Costs of and incidental to the suit.
  - i. Any other or further relief the court may deem fit and just to grant.
3. The suit is opposed by the 2<sup>nd</sup> Defendant vide its Statement of Defence and Counterclaim dated 5<sup>th</sup> April 2023. It avers that upon subdivision of LR No. 16115/16, it purchased LR No. 16115/42 (Original number 16115/16/42) measuring 0.75 acres from Museum View Suites in 2021, after ascertaining that the said Company was the registered owner. Further, that it Charged its title to the property to Bank of Baroda (K) for Kshs.15 million. It contends that the Certificate of title to land



parcel number 16115/16 purportedly registered in the name of the Plaintiffs is non-existent. It seeks for the following Orders:

- a. A declaration that the title to land parcel number 16115/16 purportedly registered in the names of the Plaintiffs or any other person or persons claiming under the Plaintiffs is void and illegal having been acquired illegally and/or fraudulently.
  - b. A declaration that the title to land parcel number 16115/16 purportedly registered in the names of the Plaintiffs or any other person or persons claiming under the Plaintiffs is invalid since the said land parcel number 16115/16 is no longer in existence, having been subdivided into several parcels, Land reference number 16115/40 being one of the resultant subdivisions.
  - c. An order for cancellation of the title to land parcel number 16115/16 which is purportedly registered in the names of the Plaintiffs.
  - d. An order for rectification of the Land Register (if any) by way of cancellation of the certificate of title and all entries on the land register in respect to Land Reference 16115/16, held or made in favour of the Plaintiffs.
  - e. A declaration that the 2<sup>nd</sup> Defendant is the valid, legal, beneficial, and/or bonafide owner of land parcel number 16115/42 having acquired a bona fide title to the same for valuable consideration.
  - f. An order of permanent injunction against the Plaintiffs, their agents, servants or employees restraining them from leasing, selling, transferring, charging, taking possession, or in any other manner howsoever from dealing/interfering with the 2<sup>nd</sup> Defendant's peaceful and quiet enjoyment of the title to land reference Number 16115/42(Original Number 16115/16/4).
  - g. General damages for fraud.
  - h. Costs of and incidental to the suit.
  - i. Any other or further relief the court may deem fit and just to grant.
4. The suit is also opposed by the 3<sup>rd</sup> Defendant vide its Statement of Defence and Counterclaim dated 5<sup>th</sup> April 2023. It denies allegations levelled against it in the Plaint and contends that after conducting due diligence, it purchased LR No. 16115/39, a subdivision of LR No. 16115 from Museum View Suites. It seeks the following reliefs:
- a. A declaration that the title to land parcel number 16115/16 purportedly registered in the names of the Plaintiffs or any other person or persons claiming under the Plaintiffs is void and illegal having been acquired illegally and/or fraudulently.
  - b. A declaration that the title to land parcel number 16115/16 purportedly registered in the names of the Plaintiffs or any other person or persons claiming under the Plaintiffs is invalid since the said land parcel number 16115/16 is no longer in existence, having been subdivided into several parcels, Land reference number 16115/40 being one of the resultant subdivisions.
  - c. An order for cancellation of the title to land parcel number 16115/16 which is purportedly registered in the names of the Plaintiffs.
  - d. An order for rectification of the Land Register (if any) by way of cancellation of the certificate of title and all entries on the land register in respect to Land Reference 16115/16, held or made in favour of the Plaintiffs.



- e. A declaration that the 3<sup>rd</sup> Defendant is the valid, legal, beneficial, and/or bona fide owner of land parcel number 16115/39 having acquired a bona fide title to the same for valuable consideration.
  - f. An order of permanent injunction against the Plaintiffs, their agents, servants or employees restraining them from leasing, selling, transferring, charging, taking possession, or in any other manner howsoever from dealing/interfering with the 3<sup>rd</sup> Defendant's peaceful and quiet enjoyment of the title to land reference Number 16115/39.
  - g. General damages for fraud.
  - h. Costs of and incidental to the suit.
  - i. Any other or further relief the court may deem fit and just to grant.
5. On 22<sup>nd</sup> April 2024, the Plaintiffs' suit was dismissed for non-attendance and the 1<sup>st</sup> to 3<sup>rd</sup> Defendants were directed to proceed with their respective Counterclaims.

### **Evidence of the 1<sup>st</sup> - 3<sup>rd</sup> Defendants**

6. The 1<sup>st</sup> to 3<sup>rd</sup> Defendants called DW1 who was John Kiumi Wambugu, as their joint witness. He confirmed that he is an Advocate of the High Court and a director of Museum View Office Suites Limited. He adopted his witness statement as his evidence in chief. He claimed that in a newspaper advertisement posted by Keysian auctioneers on 23<sup>rd</sup> October 2013, the said auctioneers notified bidders that LR No. 16115 was scheduled for auction on 8<sup>th</sup> November 2013. Having considered the parcel a viable investment, Museum View Office Suites Limited's representative attended the auction and placed a bid of ksh.570 million which was declared the highest bid at the fall of the hammer. It was his testimony that subsequently, the auctioneers presented the offer to their principal, Kenya Commercial Bank Limited, which communicated their acceptance of the bid for the said property. He explained that Museum View Suites remitted Kshs.143, 500,000/= as a deposit of the purchase price to secure the property on the understanding that the balance of the purchase price would be paid within sixty (60) days. Further, that the Auctioneers then prepared a Memorandum of Sale which was executed between the said Auctioneers and Museum Office Suites. It was his testimony that pursuant to the sale, Museum Office Suites secured financing from Jamii Bora Bank Limited to settle the balance of the purchase price with the proceeds thereof were utilized to settle the balance of the purchase price in full and a Certificate of sale was issued confirming the said sale.
7. He clarified that subsequently, the said property was transferred to Museum Office Suites pursuant to a Transfer by Charge in exercise of the statutory power of sale dated the 28<sup>th</sup> February 2014 and the Transfer was duly registered on 7<sup>th</sup> March 2014, after payment of Stamp Duty. Thereafter, the title was Charged to Jamii Bora Bank Limited (now Kingdom Bank Limited) which still holds the original title (s) and only permits partial discharges once the various parcels of land are sold.
8. He claimed that after transfer, Museum Office Suites submitted a proposal to the County Government of Machakos County sometime in April 2014 to have LR No. 16115 subdivided into thirty - four (34) subplots of different sizes of which, its proposal was approved by the County Surveyor, County Physical Planning Department, County Administration Office, National Land Commission and the Director of Survey. Further, that amongst the Deed Plans submitted was Deed Plan number 376172, which was in relation to Land Reference number 16115/16 which parcels forms the substratum of this suit. Further, the same was also registered as a Leasehold for a term of forty five (45) years with effect from 1<sup>st</sup> March 1991 in favour of Museum View Office Suites Limited



9. He stated that in July 2021, Museum Office Suites was approached by five (5) companies being the 1<sup>st</sup> to 3<sup>rd</sup> Defendants herein, OM Shree Holdings Limited and Nihal Construction Limited who were desirous of purchasing the parcels of land resulting from the subdivision of LR No. 16115/16 and pursuant to various agreements for sale executed on 13<sup>th</sup> August 2021, Museum Office Suites sold different portions of land measuring 0.75 acres each to the 1<sup>st</sup> to 3<sup>rd</sup> Defendants, which were titles numbers; 16115/39 (Original number 16115/16/1), 16115/40 (original number 16115/16/2), and 16115/42 (original number 16115/16/4), that were transferred to 1<sup>st</sup> to 3<sup>rd</sup> Defendants pursuant to various Transfer Instruments duly executed between them.
10. He confirmed that Museum Office Suites is the registered and bonafide proprietor of Land Reference Number 16115/16 and has never sold it to the Plaintiffs. Further, that it has had exclusive possession of the suit property from the time it purchased it. He produced the 1<sup>st</sup> to 3<sup>rd</sup> Defendants' joint supplementary list of documents dated 9<sup>th</sup> January 2024 as D. Exhibits 1-22.
11. DW2 was Ramesh Gangji Vekariya, a director of the 3<sup>rd</sup> Defendant. He adopted his witness statement as his evidence in chief and produced the 3<sup>rd</sup> Defendant's bundle of documents dated the 7<sup>th</sup> June 2023 as D. Exhibits 23-40.
12. His evidence was that with an intention to purchase a portion of LR No. 16115/16, the 3<sup>rd</sup> Defendant commissioned Wanjohi Holdings Limited (a firm of land consultants and surveyors) to conduct an independent investigation to ascertain the history of the title. Further, that the said investigation revealed that LR No. 16115 was a grant from the President of Kenya to Crescent Construction Limited for a Leasehold term of forty five (45) years with effect from 1<sup>st</sup> March 1991. He testified that, the said land was then purchased by Museum Office Suites for a consideration of Ksh.570 million. It was his testimony that in April 2014, Museum Office Suites submitted a proposal to the County Government of Machakos to subdivide the land into thirty - four (34) plots, which proposal was approved and amongst the Deed Plans submitted was LR No. 16115/16, which was registered to Museum Office Suites. Further, that pursuant to a Sale Agreement executed on 13<sup>th</sup> August 2021, Museum Office Suites sold to the 3<sup>rd</sup> Defendant a portion measuring 0.75 acres for Ksh.20,120,000/= but since the 3<sup>rd</sup> Defendant was not financially sound to complete the sale, it sought a loan facility from Bank of Baroda (Kenya) Limited.
13. He averred that after successful subdivision, Museum Office Suites obtained the title deed for allocation to the 3<sup>rd</sup> Defendant as title number 16115/39 (original number 16115/1) and transferred it to the 3<sup>rd</sup> Defendant pursuant to a Transfer Instrument dated 8<sup>th</sup> September 2022. Further, that the 3<sup>rd</sup> Defendant then remitted the unsecured balance of Kshs. 3,108,000/= to Museum Office Suite's Advocates. Further, it then Charged its Certificate of title to Bank of Baroda (Kenya) Limited for Ksh.15 million, to secure its interest in the said parcel of land pursuant to an Instrument of Charge dated 17<sup>th</sup> October 2022. He explained that the Instruments of Transfer and Charge were registered simultaneously at the Land Registry on 2<sup>nd</sup> November 2022, after payment of statutory taxes.
14. DW3 was Mavji Devji Vekariya, a director of the 2<sup>nd</sup> Defendant. His witness statement was adopted as his evidence in chief. He produced the 2<sup>nd</sup> Defendant's bundle of documents dated the 7<sup>th</sup> June 2023 as D. Exhibit 41-59. His evidence is similar to that of DW2 with regard to the history of the suit parcel. He averred that the 2<sup>nd</sup> Defendant was issued with a Certificate of title number 16115/42 (Original Number 16115/16/4) by Museum Office Suites following purchase and that it Charged the said land to Bank of Baroda (K) Limited.



15. DW4 was Bhimji Jadv Varsani, a director of the 1<sup>st</sup> Defendant. His evidence as pertaining to the history of the suit parcel is similar to that of DW2. He produced the 1<sup>st</sup> Defendant's bundle of documents dated 7<sup>th</sup> June 2023 as D. Exhibit 60-77. He stated that in July 2021, the 1<sup>st</sup> Defendant sought to purchase a portion of land measuring 0.75 acres for Ksh.20,120,000/= which was a subdivision of land reference number 16115/16, from Museum Office Suites after conducting due diligence and carrying out independent investigations to ascertain its history.
16. He testified that at the time of purchase, the 1<sup>st</sup> Defendant was not financially sound to complete the sale thus it sought a loan facility from Bank of Baroda (Kenya) Limited. Further, after a successful subdivision of the suit property into several portions, Museum Office Suites obtained the title deed for allocation to the 1<sup>st</sup> Defendant referenced as title number 16115/40 (Original Number 16115/16/2) dated 1<sup>st</sup> July 2022, after settling all statutory payments.
17. He confirmed that the said Certificate of Title was transferred to the 1<sup>st</sup> Defendant pursuant to a Transfer between Museum Office Suites and itself, dated 8<sup>th</sup> September 2022. Further, that their then Advocates remitted the unsecured balance of Ksh.3,108,000/= to Museum Office Suites' Advocates. He confirmed that the said Certificate of Title was then Charged to Bank of Baroda Kenya Limited for Ksh.15 million.

### Submissions

18. The 1<sup>st</sup> Defendant submits that having adduced a copy of the Certificate of title in respect of Land Reference Number 16115/40 which indicates that the interest in the said parcel of land was transferred to it on 2<sup>nd</sup> November 2022 and by dint of Section 26 (2) of the *Land Registration Act*, sufficient proof of ownership has been adduced. Further, that it produced an uncontested trail of transactions that culminated into the said registration, thus it satisfied the test laid out by the court in *Hubert L. Martin & 2 Others v Margaret J Kamar & 5 Others* [2016] eKLR.
19. It submitted that while the Plaintiffs' have a Certificate of Title to LR 16115/16, registered to them as joint owners, it is not enough proof of ownership as held in the case of *Munyu Maina v Hiram Gathiha Maina* [2013] eKLR, *David Kiptugen v Commissioner of Lands, Nairobi & 4 Others* [2016] eKLR and *Alberta Mae Gacci v Attorney General & 4 Others* [2006] eKLR.
20. It also submitted that it is trite law that there can never be two Certificates of title in regard to one piece of land, thus the Plaintiffs' title should be cancelled under Section 80 of the *Land Registration Act*. To this argument, it relied on the following decisions: *Siriekesi Morris Wanjala v Boniface Bruno Wanjala* [2021] eKLR, *Nkena Ole Kashu v Mateki Ole Tiima* [2021] eKLR and *Jan Wulfert Verwoedrd & Another v Victor Innocent Otieno & 5 Others* [2019] eKLR.
21. The 1<sup>st</sup> Defendant further submitted that the Plaintiffs have admitted to have trespassed into its land as in the affidavit sworn by the 1<sup>st</sup> Plaintiff herein, he averred that by the time the 1<sup>st</sup> Defendant began building a perimeter wall around its land, they had already built a site house on it and stationed a caretaker thereon, thus the 1<sup>st</sup> Defendant is entitled to damages. To support its averments, it relied on the following decisions: *Adrian Gilbert Muteshi v William Samoei Ruto & 4 Others* [2013] eKLR and *Fleetwood Enterprises Ltd v Kenya Power & Lighting Co. Limited* [2017] eKLR.
22. In respect to quantum for damages for trespass, the court was urged to consider that the 1<sup>st</sup> Defendant's parcel is situated in the prime and lucrative economic zone of Syokimau area and given that the 1<sup>st</sup> Defendant had started developing it by putting a perimeter wall thereon, its not unforeseeable that were it not for the interim status quo order issued herein, it could have been making substantial amounts from the parcel by now. It sought general damages of Kshs.5 million for trespass. It further relied on



very many decisions including: Hema Hospital v Wilson Makongo Marwa [2015] eKLR; Tushar Shah & Another v John Mariara Kingotho & Another; John Munge (Interested Party) [2021] KEELC 879 (KLR) [2021] eKLR; Kenya Power & Lighting Co. Limited v Sherrif Molana Habibi [2018] eKLR; Mohamed v Fadhil & 2 Others (Environment & Land Case 68 of 2016) [2022] KEELC 3278 (KLR) (26 July 2022) and Re estate of Raphael Ngugi (deceased) [2022] eKLR.

23. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants also filed submissions in which they reiterated their respective averments made in the pleadings and evidence. The said submissions mirror those of the 1<sup>st</sup> Defendant, thus this court will avoid duplicating them. It is however worth pointing out that both parties also sought Ksh.5 million each as general damages for trespass.

### **Analysis and Determination**

24. Upon consideration of the Complaint, Defences including Counterclaims, testimonies of the witnesses, exhibits and submissions, the following are the issues for determination:

- a. Whether the Plaintiffs have established ownership to title LR No. 16115/16.
- b. Whether the 1<sup>st</sup> to 3<sup>rd</sup> Defendants lawfully acquired titles to LR Nos. 16115/40, LR No. 16115/42, and LR No. 16115/39 respectively.
- c. Whether the 1<sup>st</sup> to 3<sup>rd</sup> Defendants are entitled to the Orders as sought in the Counterclaim.

25. Before I proceed to determine the aforementioned issues, I wish to point that the Plaintiffs' never filed a Reply to Defence and Defence to Counterclaim. Further, on 22<sup>nd</sup> April, 2024 after time allocation, the Plaintiffs including their Counsel failed to attend Court culminating in their suit being dismissed with costs, for non - attendance. The 1<sup>st</sup> to 3<sup>rd</sup> Defendants hence proceeded with their Counterclaim.

As to whether the Plaintiffs have established ownership to title LR No. 16115/16 or if the 1<sup>st</sup> to 3<sup>rd</sup> Defendants lawfully acquired titles to LR Nos. 16115/40, 42, and LR No. 16115/39 respectively.

26. The Plaintiffs' claim is that they are the registered proprietors of LR 16115/16 and have a title to that effect. The 1<sup>st</sup> to 3<sup>rd</sup> Defendants opposed the Plaintiffs' suit and contended that LR 16115/16 does not exist, having been subdivided into several plots which gave rise to several parcels of land among them being the parcels in contention herein which are: LR No. 116115/40, LR 16115/43 and LR 16115/39 respectively. They claim that they have valid Certificates of title whose authenticity has not been challenged and that they have provided a trail of transactions they undertook, to acquire their respective parcels of land.

27. While the Plaintiffs claimed to be the registered proprietor of LR 16115/116, they did not call any witness in evidence. Be that as it may, the 1<sup>st</sup> - 3<sup>rd</sup> Defendants still had the burden of proving their case. In *Gichinga Kibutha v Caroline Nduku* [2018] eKLR, the court stated as follows:

“It is not automatic that in instances where the evidence is not controverted, the claimant's claim shall have his way in Court. He must discharge the burden of proof. He must prove his case however much the opponent has not made a presence in the contest”.

28. Being that the Plaintiffs claimed that they had a registered title to LR 16115/16, they had the burden to prove how they acquired the same. Equally, the 1<sup>st</sup> to 3<sup>rd</sup> Defendants were also required to demonstrate



to the court how they acquired their respective titles. The Supreme Court held as follows in *Dina Management Limited v County Government of Mombasa & 5 Others* [2023] KESC 30 (KLR):

“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...”

29. In this instance, DW1 confirmed that Museum Office Suites acquired LR No. 16115 through a public auction. He explained that in a newspaper advertisement posted by Keysian auctioneers on 23<sup>rd</sup> October 2013, the said auctioneers notified bidders that LR No. 16115 was scheduled for public auction on 8<sup>th</sup> November 2013. Further, that Museum Office Suites purchased the said land for Kshs.570 million through a public auction from Kenya Commercial Bank. DW1 explained that Museum Office Suites first remitted Kshs.143, 500,000/= as deposit of the purchase price and later secured financing from Jamii Bora Bank Limited to finalize the settlement of the balance of the purchase price. He confirmed that subsequently, the said property was transferred to Museum Office Suites pursuant to a Transfer by Charge dated the 28<sup>th</sup> February 2014 and the Transfer was duly registered on 7<sup>th</sup> March 2014, after payment of stamp duty. Thereafter, the title was Charged to Jamii Bora Bank Limited (now Kingdom Bank Limited) which still holds the original title (s) and only permits partial discharges once the various parcels of land are sold. It was DW1’s further testimony that sometime in April 2014 LR No. 16115 was subdivided into thirty four (34) subplots of different sizes. Further, that in July 2021, Museum Office Suites was approached by five (5) companies being the 1<sup>st</sup> to 3<sup>rd</sup> Defendants herein, that purchased resultant subdivisions of LR No. 16115/16 pursuant to various agreements for sale executed on 13<sup>th</sup> August 2021 and the titles sold were: LR Nos. 16115/39 (Original number 16115/16/1), 16115/40 (original number 16115/16/2), and 16115/42 (original number 16115/16/4), which were transferred to the 1<sup>st</sup> to 3<sup>rd</sup> Defendants pursuant to various Transfer Instruments duly executed between the 1<sup>st</sup> to 3<sup>rd</sup> Defendants. DW1 denied that Museum Office Suites sold land to the Plaintiffs.
30. DW2, DW3 and DW4 respectively confirmed that the 1<sup>st</sup> to 3<sup>rd</sup> Defendants purchased their respective parcels of land from Museum Office Suites. They further confirmed that they took possession of the said parcels of land that are now Charged to Bank of Baroda (K) Limited.
31. Looking at the documents presented by the 1<sup>st</sup> to 3<sup>rd</sup> Defendants noting that the Plaintiffs never filed a Defence to the Counterclaims to controvert their averments, I opine that the 1<sup>st</sup> to 3<sup>rd</sup> Defendants have indeed demonstrated the root of their respective titles. I note the Plaintiffs except for claiming ownership of the suit land and presenting a title, did not demonstrate the root of their title.
32. On proof of proprietorship, section 26 (1) of the *Land Registration Act* provides inter alia:

“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.”



33. While Section 24 (a) of the *Land Registration Act* further stipulates as follows:
- “Subject to this Act, the registration of a person as a proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.....”
34. The Court of Appeal stated as follows in *Wambui v Mwangi & 3 Others* (Civil Appeal 465 of 2019) [2021] KECA 144 (KLR):
- “...No court of law should sanction either the acquisition of title to property in favour of a party (christened crooks by the court) who has acquired such title from a legally registered innocent proprietor using forgery, deceit or any kind of fraud...”
35. While in *Munyu Maina v Hiram Gathiha Maina* [2013] eKLR, the Court of Appeal held 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.”
36. Based on the pleadings together with the evidence presented before Court, while relying on the legal provisions cited as well as associating myself with the quoted decisions, in my view the 1<sup>st</sup> to 3<sup>rd</sup> Defendants have actually explained the root of their titles through the entering into Sale Agreements with Museum Office Suites that was the proprietor of the mother title, paying the full purchase price including stamp duty and obtaining their respective Certificates of Title. I note the Plaintiffs did not controvert the 1<sup>st</sup> to 3<sup>rd</sup> Defendants averments or tender any evidence to demonstrate that the 1<sup>st</sup> to 3<sup>rd</sup> Defendants Certificates of Title were obtained fraudulently. I hence opine that the Plaintiffs have not established ownership to title LR No. 16115/16 but the 1<sup>st</sup> to 3<sup>rd</sup> Defendants have indeed demonstrated that they lawfully acquired titles to LR Nos. 16115/40, 42, and LR No.16115/29 respectively. In the circumstances, I find that the 1<sup>st</sup> to 3<sup>rd</sup> Defendants hold valid titles to their respective parcels of land. I further find that the Plaintiffs’ title should be cancelled in accordance with the provisions of Section 80 of the *Land Registration Act*
- As to whether the 1<sup>st</sup> to 3<sup>rd</sup> Defendants are entitled to the Orders as sought in the Counterclaim.
37. The 1<sup>st</sup> to 3<sup>rd</sup> Defendants have sought for various Orders in the Counterclaim which I have enumerated above. They have further sought for general damages for trespass in their submissions, which they never sought in the Counterclaim. However, it is trite that parties are bound by their pleadings and are estopped from introducing new issues in the submissions.
38. I note DW1 who was representing the vendor, confirmed that indeed the various parcels of land which form the fulcrum of the dispute herein belong to the 1<sup>st</sup> to 3<sup>rd</sup> Defendants. DW2, DW3 and DW4 confirmed that they had taken possession of their various parcels of land but had Charged them to the Bank of Baroda (K) Ltd. They admitted that they had only commenced putting up a perimeter wall on the suit property, but did not demonstrate if there were any further developments thereon. They tried to make a case that the orders of status quo affected their loan repayment but I did not find that convincing. Further, except for the site house, the parcels of land had not been developed in any way and there was no indication if they were obtaining income therefrom. In the circumstances, I am



unable to grant them any general damages for trespass as claimed. I however find that they are entitled to the other orders sought in the respective counterclaims except for general damages for fraud.

39. In the foregoing, I find that the 1<sup>st</sup> to 3<sup>rd</sup> Defendants have proved their case as per the three Counterclaims and will proceed to enter judgement in their favour and make the following final orders:
- a. The Plaintiffs' suit stands dismissed.
  - b. A declaration be and is hereby issued that the title to land parcel number 16115/16 purportedly registered in the names of the Plaintiffs or any other person or persons claiming under the Plaintiffs is void and illegal having been acquired illegally and/or fraudulently.
  - c. A declaration be and is hereby issued that the title to land parcel number 16115/16 purportedly registered in the names of the Plaintiffs or any other person or persons claiming under the Plaintiffs is invalid since the said land parcel number 16115/16 is no longer in existence, having been subdivided into several parcels, Land reference number 16115/39, 40 and 42 respectively being some of the resultant subdivisions.
  - d. The 4<sup>th</sup> Defendant be and is hereby directed to cancel the title to land parcel number 16115/16 which is purportedly registered in the names of the Plaintiffs.
  - e. An order be and is hereby issued for rectification of the Land Register (if any) by way of cancellation of the certificate of title and all entries on the Land Register in respect to Land Reference 16115/16, held or made in favour of the Plaintiffs.
  - f. A declaration be and is hereby issued that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are the valid, legal, beneficial, and/or bona fide owner of land parcel number 16115/40, 16115/39, and 16115/42 respectively having acquired bona fide titles to the said parcels of land for valuable consideration.
  - g. An order of permanent injunction be and is hereby issued against the Plaintiffs, their agents, servants or employees restraining them from leasing, selling, transferring, charging, taking possession, or in any other manner howsoever from dealing/interfering with the 1<sup>st</sup> to 3<sup>rd</sup> Defendant's peaceful and quiet enjoyment of the title to land reference Number 16115/40, 16115/42, and LR No. 16115/29 respectively.
  - h. Costs of the suit and Counterclaim awarded to the 1<sup>st</sup> to 3<sup>rd</sup> Defendants to be borne by the Plaintiffs.

**DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 22<sup>ND</sup> DAY OF JULY 2025.**

**CHRISTINE OCHIENG**

**JUDGE**

In the presence of:

Mbugua Anthony for 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendant

Kuria for 4<sup>th</sup> Defendant

Court Assistant: Joan

