



**Njoki v Abdi & 5 others (Environment and Land Case 875, 876 & 877 of 2016
(Consolidated)) [2025] KEELC 5434 (KLR) (17 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5434 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE 875, 876 & 877 OF 2016 (CONSOLIDATED)**

**AA OMOLLO, J
JULY 17, 2025**

BETWEEN

**RACHEL NJOKI NIELSEN (ALSO KNOWN AS RACHEL NJOKI
KARUMBI) PLAINTIFF**

AND

**AHMED MOHAMED ABDI 1ST DEFENDANT
NAJMA AHMED MOHAMED 2ND DEFENDANT
PETER O. ONGORI T/A ONGORI AUTA & CO.
ADVOCATES 3RD DEFENDANT
INVESTMENTS & MORTGAGES BANK LTD 4TH DEFENDANT
CHIEF LAND REGISTRAR, NAIROBI 5TH DEFENDANT
ISEME KAMAU & MAEMA ADVOCATES 6TH DEFENDANT**

(The Plaintiff filed three (3) separate suits against the 1st -6th Defendants vide further amended complaints all dated 21st March 2023 in ELC No. 875 of 2016, ELC No. 876 of 2016 and ELC No. 877 of 2016. By an Order given by the honourable Mr. Justice Okong'o on 12th October 2016, the three (3) suits were consolidated and the Judge directed that ELC No. 875 of 2016 shall be the lead file.)

JUDGMENT

1. The Further Amended Complaint dated 21st March 2023 filed in ELC No. 875 of 2016 seeks several reliefs in respect to Flat No. 8 as follows:-
 - a. A permanent injunction restraining the 2nd Defendant whether by herself, her servants or authorized agents from selling, transferring, leasing, charging or alienating the property known



as Flat No. 8, Amani Flats, developed on Land Reference No. 2X5/1X9 Riverside Drive, Nairobi and/or from registering or presenting any document at the Nairobi Lands registry or elsewhere for the purpose of registration and/or from adversely dealing or interfering in any manner whatsoever with the records of the suit property.

- b. A declaration that the transfer registered in favour of the 2nd Defendant on 21st March 2012 in respect of all that property known as Flat No. 8, Amani Flats, developed on Land Reference No. 2X5/1X9 Riverside Drive, Nairobi is fraudulent, illegal, null and void and the said transfer be cancelled and/or annulled.
 - c. An order directing the 5th Defendant to forthwith cancel and delete the transfer registered in favour of the 2nd Defendant on 21st March 2012 in respect of the property known as Flat No. 8, Amani Flats, developed on Land Reference No. 2X5/1X9 Riverside Drive, Nairobi.
 - d. An order directing the 1st and 2nd Defendants and/or their authorized servants and agents to forthwith vacate and hand over the vacant use and possession of the suit property to the Plaintiff without any conditions whatsoever and in default the 1st and 2nd Defendants be forcefully evicted therefrom at their cost.
 - e. As against the 1st, 2nd, 3rd, 4th, 5th and 6th Defendants jointly and severally appropriate damages for the loss, inconvenience and anxiety under paragraph 12 and 14 of the Plaintiff.
 - f. As against the 1st and 2nd Defendants jointly and severally, mesne profits/accrued rent amounting to Kshs. 10,600,000/- in terms of Paragraph 15 of the Plaintiff.
 - g. As against the 1st and 2nd Defendants jointly and severally, further mesne profits at the rate of Kshs. 200,000/- per month from July 2016 until the date when the 1st and 2nd Defendants will hand over the vacant possession and use of the suit property to the Plaintiff in terms of Paragraph 15 of the Plaintiff.
 - h. Such other order as this honourable court may deem fit and just to grant in the interests of justice.
 - i. Costs of this suit together with interest thereon.
2. The Further Amended Plaintiff dated 21st March 2023 filed in ELC No. 876 of 2016 seeks several reliefs in respect to Apartment No. 1B10 as follows:-
- a. A permanent injunction restraining the 2nd Defendant whether by herself, her servants or authorized agents from selling, transferring, leasing, charging or alienating the property known as Apartment No. 1B 10 in Block 1B, developed on Land Reference No. 2X9/1XX6 Riverside Drive, Nairobi and/or from registering or presenting any document at the Nairobi Lands registry or elsewhere for the purpose of registration and/or from adversely dealing or interfering in any manner whatsoever with the records of the suit property.
 - b. A declaration that the transfer registered in favour of the 2nd Defendant on 21st March 2012 in respect of all that property known as Apartment No. 1B 10 in Block 1B, developed on Land Reference No. 2X9/1XX6 Riverside Drive, Nairobi is fraudulent, illegal, null and void and the said transfer be cancelled and/or annulled.
 - c. An order directing the 5th Defendant to forthwith cancel and delete the transfer registered in favour of the 2nd Defendant on 3rd January 2012 in respect of the property known as Apartment No. 1B 10 in Block 1B, developed on Land Reference No. 2X9/1XX6 Riverside Drive, Nairobi.



- d. An order directing the 1st and 2nd Defendants and/or their authorized servants and agents to forthwith vacate and hand over the vacant use and possession of the suit property to the Plaintiff without any conditions whatsoever and in default the 1st and 2nd Defendants be forcefully evicted therefrom at their cost.
 - e. As against the 1st, 2nd, 3rd, 4th, 5th and 6th Defendants jointly and severally appropriate damages for the loss, inconvenience and anxiety under paragraph 12 and 14 of the Plaintiff.
 - f. As against the 1st and 2nd Defendants jointly and severally, mesne profits/accrued rent amounting to Kshs. 10,600,000/- in terms of Paragraph 15 of the Plaintiff.
 - g. As against the 1st and 2nd Defendants jointly and severally, further mesne profits at the rate of Kshs. 200,000/- per month from July 2016 until the date when the 1st and 2nd Defendants will hand over the vacant possession and use of the suit property to the Plaintiff in terms of Paragraph 15 of the Plaintiff.
 - h. Such other order as this honourable court may deem fit and just to grant in the interests of justice.
 - i. Costs of this suit together with interest thereon.
3. The Further Amended Plaintiff dated 21st March 2023 filed in ELC No. 877 of 2016 seeks several reliefs in respect to Flat No. I as follows :-
- a. A permanent injunction restraining the 2nd Defendant whether by herself, her servants or authorized agents from selling, transferring, leasing, charging or alienating the property known as Flat No. 1, Amani Flats, developed on Land Reference No. 2X5/1X9 Riverside Drive, Nairobi and/or from registering or presenting any document at the Nairobi Lands registry or elsewhere for the purpose of registration and/or from adversely dealing or interfering in any manner whatsoever with the records of the suit property.
 - b. A declaration that the transfer registered in favour of the 2nd Defendant on 21st March 2012 in respect of all that property known as Flat No. 1, Amani Flats, developed on Land Reference No. 2X5/1X9 Riverside Drive, Nairobi is fraudulent, illegal, null and void and the said transfer be cancelled and/or annulled.
 - c. An order directing the 5th Defendant to forthwith cancel and delete the transfer registered in favour of the 2nd Defendant on 21st March 2012 in respect of the property known as Flat No. 1, Amani Flats, developed on Land Reference No. 2X5/1X9 Riverside Drive, Nairobi.
 - d. An order directing the 1st and 2nd Defendants and/or their authorized servants and agents to forthwith vacate and hand over the vacant use and possession of the suit property to the Plaintiff without any conditions whatsoever and in default the 1st and 2nd Defendants be forcefully evicted therefrom at their cost.
 - e. As against the 1st, 2nd, 3rd, 4th, 5th and 6th Defendants jointly and severally appropriate damages for the loss, inconvenience and anxiety under Paragraph 12 and 14 of the Plaintiff.
 - f. As against the 1st and 2nd Defendants jointly and severally, mesne profits/accrued rent amounting to Kshs. 10,600,000/- in terms of Paragraph 15 of the Plaintiff.
 - g. As against the 1st and 2nd Defendants jointly and severally, further mesne profits at the rate of Kshs. 200,000/- per month from July 2016 until the date when the 1st and 2nd Defendants



will hand over the vacant possession and use of the suit property to the Plaintiff in terms of Paragraph 15 of the Further Amended Plaintiff.

- h. Such other order as this honourable court may deem fit and just to grant in the interests of justice.
 - i. Costs of this suit together with interest thereon.
4. The Plaintiff averred that by three (3) separate Leases, two both dated 18th July 2006 and one dated 20th June 2006 signed between Avtar Singh Bahra, Aman Management Limited and the Plaintiff and registered at Nairobi Lands registry on 9th August 2006 and 25th July 2006 respectively, the Plaintiff became the lawful and registered proprietor of all that property known as Flat No. 8 and 1 Amani Flats and Apartment No.1B 10 in Block 1B developed on Land Reference No. 2X5/1X9 and 2X9/1XX6 Riverside Drive, Nairobi respectively, hereinafter called "the suit properties".
 5. The Plaintiff avers that she acquired the suit properties for a consideration of Kshs. 9,000,000 and Ksh.10,500,000 for Flat 8 and 1 respectively as indicated in the two Leases dated 18th July 2006 and Apartment IB 10 at Ksh. 6,000,000 as indicated in the lease dated 20th June 2006 with the current market value of each flat being approximately Kshs. 23,000,000 and Ksh.22,000,000.
 6. The Plaintiff further avers that the purchase of the suit properties was financed by the 4th Defendant who registered three Charges, two dated 20th July 2006 for Ksh. 8,000,000 and Ksh.7,000,000 against the flat 8 and 1 respectively and another charge dated 24th July 2006 against the Apartment IB 10 for Ksh.1,000,000. The original title documents for the suit properties were therefore released to the 4th Defendant for custody as security for the loans.
 7. The Plaintiff further avers that upon purchase of the properties were furnished, rented out to tenants and she travelled to Norway where she has been residing and working. That upon her return into Kenya in the year 2014, she discovered that the suit properties had been illegally occupied by an unknown persons and all efforts to gain access into the suit properties and/or find out identity of the persons in occupation were frustrated and/or obstructed since she was prevented by the guards at the main gates from accessing the suit properties.
 8. She pleaded avers that all efforts to conduct official search at the Nairobi Lands Officer were frustrated and the 5th Defendant advised her that the respective suit properties' Deed files were not available. It is upon making further investigations that she discovered in June 2016 that the flats 8 and 1 had purportedly been sold to the 1st Defendant vide Sale Agreement dated 23rd November 2011 and the Apartment vide Sale Agreement dated 28th September 2011 for a consideration of Kshs. 14,500,000 which prices were inclusive of the furniture, fixtures and equipment's in the suit properties.
 9. The Plaintiff stated that after further investigations, revealed that Flat 8&1 Apartment IB 10 were thereafter fraudulently transferred in favour of the 2nd Defendant as a nominee of the 1st Defendant. the transfer of the two flats was at a consideration of Kshs. 11,000,000 each vide Transfer of Lease both dated 10th February 2012, and the Apartment IB 10 at Ksh.9,000,000 vide a Transfer of Lease dated 21st December 2011 which were registered at Nairobi Titles Registry on 26th March 2012 and 3rd January 2012 respectively.
 10. She asserted that further investigations revealed that the three Agreements for Sale and the Transfer documents were prepared and witnessed by the 3rd Defendant who falsely and fraudulently represented that he had instructions to act on behalf of the Plaintiff in the sale of the suit properties. The Plaintiff contends that she never instructed the 3rd Defendant to sell the suit properties on her behalf and/or to deal with the suit properties in any manner whatsoever as purported in the Agreements for Sale.



11. Further, the Plaintiff posity that she never sold the suit properties to the 1st and 2nd Defendants and that its directors never signed the said Sale Agreements nor the Transfer documents, neither did she appear before the 3rd Defendant to sign the said documents.
12. She impleads avers that the purported Special Power of Attorney dated 20th June 2011 prepared by the 3rd Defendant is strange to her as she did not execute the said document in favour of one Orlov Oleg before C.P Onono Advocates as alleged. The Plaintiff also stated that the 3rd Defendant falsely and fraudulently represented that he had instructions to prepare the said Special power of attorney and that she never instructed the 3rd Defendant to deal with the suit properties in any manner. Thus her signature on the special power of attorney is a forgery and the persons who purported to execute the power of attorney and transfer documents thereon were imposters. The purported sale and transfers of the suit properties are null and void.
13. The Plaintiff avers that she completed the repayment of mortgage loan due to the 4th Defendant sometimes in the year 2012 and she has never instructed the 4th Defendant to discharge the suit properties to-date. Neither did she authorized the 4th Defendant to release the original Title documents to any person whatsoever.
14. She avers that the 4th Defendant's action in discharging the suit properties and releasing the original Title documents to the 1st and 2nd Defendants and/or any other person without her express consent was illegal, reckless, unauthorized, fraudulent and it facilitated the fraudulent sale and transfer of the suit properties. That Plaintiff states that the Defendants colluded and acted fraudulently in the sale and transfer of the suit properties.
15. Further, the Plaintiff stated that vide a letter dated 6th December, 2011, the 6th Defendant requested the 4th Defendant to sign and forward to them a Discharge of charges in respect to the suit properties and also release the Original documents. That the 4th Defendant discharged the respective charges and released the original Title documents in respect of the suit properties without doing due diligence thus acting carelessly and recklessly.
16. The Plaintiff states that she has never received the original title documents to the suit properties to date and that she never instructed the 6th Defendant to write the letter dated 6th December 201, neither instructed the 4th and/or 6th Defendants to deal with the Title documents in any manner thus their actions were unlawful and fraudulent.
17. That as a consequence of their unlawful actions, the 6th Defendant eventually released the original Title documents and the duly executed Discharge of Charge to a third party other than the Plaintiff thus leading to the fraudulent sale and transfer of the suit properties to the 1st and 2nd Defendants.
18. The Plaintiff aver that the 1st and 2nd Defendants continue to be in wrongful and unlawful possession and use of the suit properties and that they have no right whatsoever to continue with the same.
19. She contends that the purported sale and transfer of the suit properties in their favour is fraudulent, illegal, null and void ab initio and as a result the Plaintiff has suffered substantial inconvenience, anxiety, loss and damage.
20. The Plaintiff outlined the particulars of fraud and illegalities against the Defendants stating that they colluded to fraudulently sell and register the transfer of the Plaintiff's properties without her knowledge or consent. Inter alia, that they prepared and relied on falsified documents, including a Special Power of Attorney, Sale Agreement, and Transfer of Lease not signed or approved by her forging



her signature and failing to pay any consideration to her and in alternative paying the consideration to unauthorized person.

21. She added that the defendants dealt with unauthorized law firms without her instructions and as against she pleads that the 3rd Defendant falsely attested to the Plaintiff signing the Agreement for sale and transfer documents at a time she was out of the country.
22. As against the 3rd, 4th and 6th Defendants, dealing with the suit properties without the Plaintiff's express instructions, the 3rd Defendant purporting to act as an advocate when not licensed under law to act as such and effecting the transfer of the suit properties without obtaining from the Plaintiff the original Title documents stipulated in the Agreement for sale.
23. The allegations and fraud levelled against the 4th Defendant, was the action of discharging the charges and releasing the original documents to the 6th Defendant and/or a third party without her consent, knowledge or approval and as against the 5th Defendant, effecting the registration of the transfers without a valid transfer document dully executed by her.
24. She impleads the Defendants jointly and severally transferring the suit properties in favour of the 2nd Defendant without her consent, indicating a different and or contradictory sale price in the Agreement for sale and Transfer of lease with; and paying less stamp duty thus cheating and denying the Government of Kenya the appropriate Stamp Duty.
25. She continued to plead that the Defendants failed to investigate the Titles before entering into the sale agreement and the 6th Defendant falsely representing that it had instructions from the Plaintiff to write the letter dated 6th December 2011, discharging the charges and obtaining the original titles to the suit properties from the 4th Defendant.
26. The Plaintiff stated that she has suffered substantial loss and damages in the form of mesne profits and/ or unpaid rent as a direct consequence of the said illegal sale and use of the suit properties by the 1st and 2nd Defendants and claims appropriate damages against the Defendants jointly and severally.
27. She particularized the loss of mesne profits and or accrued rent at the rate of Kshs. 200,000/- per month from February 2012 up to 30th June 2016 (53 months) totalling to Ksh.10,600,000 payable by the 1st and 2nd Defendants jointly and severally together with further mesne profits at the rate of Kshs. 200,000/- per month from July 2016 until the date when the 1st and 2nd Defendants will vacate and or hand over vacant possession and use of the properties.
28. The Plaintiff stated that despite demand and notice of intention to sue having been served, the 1st and 2nd Defendants have refused to vacate and or hand over vacant possession and use of the suit properties her while and the 3rd 4th, 5th and 6th Defendants have refused to concede-liability or to compensate the Plaintiff.

Defendants' defences.

29. The 1st and 2nd Defendant filed further amended defence dated 29th September 2020 denying Plaintiff's allegations and particulars of fraud and illegality pleaded against them. They stated that through as estate agent known as Joash Ombati Kengere, the 1st Defendant became aware of the suit properties were for sale and was thereafter introduced to one Orleg Orlov who informed them that he was the beneficial owner to the said properties registered in the name of his partner/ girlfriend. That they entered into negotiations with Orleg Orlov for the purchase of the suit properties and instructed Messrs Masese & Company Advocates to undertake the transaction on their behalf and to conduct



- the relevant due diligence. The 1st Defendant stated that a sale agreement was drawn up on the agreed purchase prices and was executed by both the 1st Defendant and the vendor.
30. That after execution of the sale Agreement, the Vendor's Advocate forwarded to the 1st Defendant's advocate the transfer which had been executed by the Vendor in the presence of her advocate, in favour of the 1st Defendant's daughter Najma Ahmed Mohamed, the 2nd Defendant.
 31. The 1st Defendant stated that it was his belief that the Plaintiff had duly executed the transfer as the same were duly witnessed by an advocate and that they were for all intents and purposes innocent purchasers for value without notice.
 32. The Defendants aver that upon being served with process in this suit, they contacted Orleg Orlov, who had been unceremoniously deported from this country but informed them that he purchased and furnished the suit properties with his own money and at all material times prior to selling them, he was collecting all the rental income for his own benefit and at no time did the Plaintiff have any benefit of the properties.
 33. They plead that he also told the (1st and the 2nd Defendants) that the Plaintiff duly signed the sale agreements and the transfers of the suit properties and believes the Plaintiff orchestrated his deportation so as to pave way for her to grab the properties. He added that in respect of the facilities taken from the 4th Defendants, he guaranteed the subject facilities, which he serviced, and eventually redeemed.
 34. That the Plaintiff had issued a power of Attorney to Orleg Orlov to transact on her behalf in respect of the suit properties, which she subsequently attempted to disown by making a report to the Police, who found no culpability on his part.
 35. The 1st & 2nd Defendants avers that Mr. Orleg told them that there has been various litigation matters between the Plaintiff and himself which touch on matters the subject of this case such as HCC NO. 625 Of 2012 Faith Wachira Munyui (Suing as Attorney of Rachael Njoki Karumbi also known as Rachael Njoki Nielsen) versus Orlov Oleg and Joshua Ombati and HCC No. 316 of 2012 Orlov Oleg versus Faith Waithera Munyui.
 36. These Defendants contend that although the suit properties are registered in the name of the Plaintiff, they had been bought by Orleg Orlov. That it was Orleg Orlov who secured the loan facility from the 4th Defendant and financed the same through the rental proceeds from the property, and further furnished and rented out the suit properties.
 37. They stated that they have been in possession of the suit properties since the year 2011 and at no point has the Plaintiff queried their possession. That the Plaintiff visited the suit properties for the first time on 16th June 2016 in the presence of her advocate on record where the 1st Defendant's youngest wife informed them that she owned the suit premises together with the fittings therein.
 38. The 1st Defendant admit that the suit properties were transferred to the 2nd Defendant as his nominee and denied that the said transfer was fraudulent.
 39. The 1st and 2nd Defendants asserted that they received clean titles free from all encumbrances.
 40. The 3rd Defendant filed statement of defence to the further amended plaint dated 26th January 2024 denying the Plaintiff's allegations against him.
 41. The 3rd Defendant stated that in the year 2007, they were introduced to one Mr. Orleg Orlo by one Mr. Joash Ombati who was a known business man/real estate agent on the information that the former wanted to buy an apartment.



42. That on or about 20th June 2011, the said Mr. Orlov and the Plaintiff, in the company of two other men, went into their chambers and requested for the preparation of a Special Power of Attorney in which the Plaintiff (the "Donor") was to grant Mr. Orlov (the "Donee"), special powers over several properties in Nairobi, including the suit properties.
43. That the manner of interaction between the Plaintiff and Mr. Orlov while in their presence appeared pleasant. He pleaded acting on the instructions and drafted the said Special Power of Attorney dated 20th June 2011 granting the Donee special power to do all such things that the Donor could legally do including the power to sign necessary documents, transfer, charge discharge and execute all such instruments in so far as the same related to the aforesaid properties.
44. The 3rd Defendant stated that upon preparation of the Special Power of Attorney, he advised the Plaintiff to look and appear before a Commissioner for Oaths for the purpose of appending her signature to the said Special Power of Attorney. That the 3rd Defendant did not witness the appending of the Plaintiff's signature on the drafted power of attorney and neither did he lodge and register the same.
45. The 3rd Defendant stated that on or about 8th September 2011, Mr. Orlov instructed them to represent him in the disposal of several properties which included in the suit properties pursuant to the Special Powers of Attorney dated 20th June 2011 which had been properly executed and registered in the Land Titles Registry at Nairobi.
46. The 3rd Defendant stated that upon execution of the sale agreements, the advocates for the purchasers Messrs. Masese & Co. Advocates wrote to them vide their letter dated 28th November 2011, indicating that there was a charge in favour of the Investments and Mortgages Bank Limited (the 4th Defendant) over the suit properties and requested that the same be discharged to enable furtherance of the transaction.
47. That the letter further requested for share certificates for shares held by Mr. Orlov in Amani Management Limited and Memorandum and Articles of Association of Amani Management Limited.
48. The 3rd Defendant brought to the attention of Mr. Orlov the requests made and issues raised by the purchasers concerning the charge on the suit properties. That on 1st December 2011, Mr. Orlov furnished them with two deposit slips from I&M. Bank Limited in favour of account number 00300070962001 in the name of the Plaintiff, which proceeded to discharge the suit properties.
49. The 3rd Defendant further stated that on the same date, Mr. Orlov served the 3rd Defendant with a letter from the 4th Defendant dated 1st December 2011 which confirmed that the bank had received all the requisite payments with regard to the home loan facility with the bank.
50. Consequently, the Purchaser's advocates proceeded to prepare the relevant transfers for the suit properties which the parties executed in the presence of their respective counsels and proceeded to lodge the transfers for registration at the Nairobi Lands Registry.
51. The 3rd Defendant contends that at all material times, he acted on the express instructions of Orlov and that the preparation of the Powers of Attorney and the subsequent transfer of the suit properties was legal and were conducted in the presence and participation of the Plaintiff.
52. The 4th Defendants filed Defence to amended plaint dated 18th January 2018 denying the Plaintiff's allegations against it particularly that it falsely represented that it had instructions to prepare the special power of attorney dated 20/6/2011 and puts the Plaintiff to strict proof thereof.



53. The 4th Defendant also denied the particulars of fraud and illegality against it as pleaded and denies that it is liable to the Plaintiff for the loss and damages allegedly suffered as pleaded. The 4th Defendant state that their relationship with the Plaintiff was subject to and governed by terms and conditions in the charge under which the Plaintiff agreed to indemnify and keep indemnified the 4th Defendant of all liabilities and expenses incurred directly or indirectly in execution or purported execution of any powers, authorities or discretion vested in any of them.
54. The 4th Defendant stated that the Plaintiff irrevocably appointed the 4th Defendant and/or its employees and/or agents (and any person deriving title from it) and severally and separately any person appointed under the Charge to see the Plaintiff's attorney and in the Plaintiff's name and on her behalf and as the act or deed of the Plaintiff or otherwise to execute, seal and deliver any documents which the 4th Defendant may require and do all such deeds, documents, acts or things as may be required for the full exercise of the powers conferred by the charge.
55. They further stated that the Plaintiff covenanted with them and separately with its agents or employees to ratify and confirm any deed, documents, act and thing and all transactions which the 4th defendant may lawfully execute or do.
56. That the Plaintiff irrevocably acknowledged and agreed that the said power of attorney inter alia govern the 4th Defendant and/or its servant or agent to secure the performance of those obligations owed to the 4th Defendant or any of its receivers.
57. Additionally, that parties to the Charge agreed that references to indemnifying any person against any circumstances would include indemnifying and keeping such a person harmless from all actions, claims, or proceedings from time to time against that person and all loss or damage and all payments, costs, and expenses made or incurred by that person as a consequence of or which would have arisen but for the circumstance.
58. The 4th Respondent stated that at all material times, they acted lawfully, reasonable and in accordance with the Charge in discharging the suit properties on the instructions or purported instructions of the Plaintiff's lawyer and releasing the original title documents.
59. The 5th Defendant filed statement of defence dated 25th August 2017 denying the Plaintiff's allegations and any liability levelled against them.
60. The 6th Defendants filed their defence dated 9th Feb 2018 denying the Plaintiff's averments in general.
61. The 6th Defendant stated that on 1st December 2011, one Orlov Oleg visited its offices and informed an advocate at the firm that he had been sent to them by the 4th Defendant to prepare for him discharges of charges over the suit properties.
62. That he also presented to them copies of title documents with respect to the suit properties and power of attorney in his favour from the Plaintiff duly registered at the Lands Office and a letter dated 1st December 2011 that he claimed had been issued to him by the 4th Defendant confirming that all the outstanding sums which had been secured by the legal charges over the suit properties had been settled.
63. The 6th Defendant stated that the said Orlov Oleg informed them that the 4th Defendant had refused to accept certain Discharges that had been drawn by the 3rd Defendant on the basis that the discharges must be prepared by a firm in its panel and that is how he was referred to them. The 6th Defendant stated that its Conveyancing department then prepared the discharges and sent them to the 4th Defendant for execution on 6th December 2011 and upon execution, the 4th Defendant sent them back.



64. That upon the 6th Defendant forwarding the discharges to the said Oleg, he thereafter requested the 6th Defendant to obtain, on his behalf, the title documents for the leases from the 4th Defendant which they did and he collected the same from their offices on 13th January 2012.
65. The 6th Defendant stated that the particulars of fraud and illegality pleaded against them are denied and puts the Plaintiff to strict proof thereof.

Plaintiff's reply to the Defendants' Defences.

66. In response to the Defendants' defences, the Plaintiff filed reply to 1st and 2nd Defendant's defence dated 27th January 2017, replies to 4th and 5th Defendant's defence both dated 6th September 2017 where she reiterated her averments in the further amended plaint.
67. The Plaintiff denied having executed the impugned Sale Agreement or transfer documents transferring the suit properties or meeting and/or instructing the 3rd Defendant to transact the sale of the properties on her behalf.
68. She further stated that the 3rd Defendant did not have a valid practicing certificate therefore the alleged sale agreement and transfer documents are null ab initio and that the 1st and 2nd Defendants failed to conduct proper due diligence prior to purchasing the suit properties.
69. The Plaintiff contended that she has never known or associated herself with Oleg Orlov and that she is a stranger to the allegation that the said Oleg was the owner of the suit properties. She added that the suit HCCC No.625 of 2012 was also to serve that the alleged power of attorney was fraudulent.

Plaintiff Evidence.

70. The Plaintiff called a total of five (5) witnesses. She opened her case testifying as PW I. She adopted her written statement dated 21st September 2018 as evidence in chief and adduced the bundle of documents filed on 30/1/2017 as PExh1 and Plaintiff's supplementary bundle of documents filed on 30/10/2018 as PExh2. She stated that she had sued the 1st defendant because he purchased her properties, challenging how he acquired them since she is not the one who sold them to him. That she has also sued the occupants of the suit properties and the 3rd Defendant, the advocate who drew the sale agreements whom she does not know of.
71. The Plaintiff testified that she sued the 4th defendant because she held mortgages with them and had left her original documents of title to the suit properties with them as securities but the 4th Defendant did not return them to her. That she has sued the 6th defendant because they were not her advocates and they released her original documents of title to third parties. The 5th Defendant is sued for registering transfer of her properties.
72. The witness stated that she is both a Kenyan and Norwegian Citizen where she was married and employed as a nurse but used to visit Kenya when on vacation. That after her divorce, she invested in Real Estate using financials from the divorce settlement through her Advocate Wagaki Murage who acted for her in purchase of the suit properties and that she has produced the documents in proof of her purchase. These include: Letter of offer for Apartment 1B10 (at page 196 of PEXh2), the lease for apartment No.1 (at page 168 of PEXh2), the lease for Apartment No.8 (at Page 5 of PEXh1) and the agreement for sale for Apartment 1B10 found at page 227 of PEXh2.
73. The Plaintiff stated that she purchased Apartment 1B10 when complete and the other two flats were purchased while under construction and that the proof of payment for the said purchases are produced at pages 239,240,245-263 of PEXh 2.



74. She testified that the exhibits produced shows how her Advocate dispatched the payments to the vendor's advocates and was issued with titles to the suit properties by Taj Management under cover of letter dated 9/10/2006 at page 264 of PEXh2 and was also issued with a share certificate.
75. It is her evidence that she obtained a loan from the 4th Defendant to finance the purchases as evidenced the letter dated 24th August, 2006 from the 4th Defendant produced (33 of the PEXh2). She executing charge documents which is a copy of produced at page 152 PEXh. She also produced bank statements showing how she was repaying the loan. She avers that in her purchase transactions, it was her advocate Wagaki Murage who acted for her as shown in the correspondence produced at pages 270 to 275 of PEXh2.
76. She testified that after acquiring the properties she rented them out and the rent was being used to pay the mortgage loan. That the rent was being collected initially by Wagaki Murage but subsequently, it was collected by Faith Waithera Munyui, her niece and was deposited with the 4th Defendant. That in the year 2007, she had brought on board Faith Waithera to assist in the management of the houses in consultation with the management companies for Taj View and Amani Flats which were well organized and was a shareholder by virtue of owning the properties therein.
77. Further, the plaintiff stated that she incorporated Executive Kiritu Investments Limited whose shareholders and directors were herself with majority shares and Faith under which Apartment 1B1 among other properties were transferred to. That she left Kenya for Norway on 20/9/2011 and only came back on 5/6/2014 as shown in the copies of her passport produced at pages 34 to 36 of PEXh1.
78. She stated that the suit properties were sold while she was in Norway. That it was Faith Waithera Munyui who called her about six months after she had left Kenya and informing her that she had been told by a Mrs. Milka Mburu, who was among the managers at Amani Apartments that Flat 1 & 8 were being offered for sale.
79. PW 1 then asked Faith to inform Mrs. Milka that they were not for sale and sent Faith (PW 2) to confirm if the bank to had the Titles with the bank stated they had not been discharged.
80. PW 1 continued to state that sometime on 18th April 2011, she was informed by Faith that the 4th Defendant called and informed her that the suit properties' titles had been discharged through their alleged Advocates, the 6th Defendant.
81. She stated that Faith instructed an Advocate Mr. Pawel Murango to find out circumstances under which the properties were discharged and as advised by the said Advocate, the Plaintiff gave Faith Waithera Munyui a power of attorney shown at page 42 of the PEXh2 which she signed while in Norway. That she has never signed any other power of attorney, so as to effectively deal with the matter. That on coming back in June 2014, she found that the suit properties had been sold, tenants evicted and rent ceased.
82. The Plaintiff reported to the police as evidenced in her correspondences with them at pages 7A to 32 of PEXh2 but was not able to get the properties back. She confirms that it is Ahmed Mohammed and his children who are occupying the suit properties.
83. She contends that from the documents showing how the properties were sold, there is a letter from the 6th Defendant dated 6/12/2011 to the 4th Defendant where the firm purported to be acting for her and called for release of titles to the suit properties. She asserted that the said firm was not acting for her and that she does not know Oleg Orlov, the man who allegedly sold the suit properties to the 1st Defendant.



84. She accuses the 6th Defendant for acting without liaising with her Advocates on record, Susan Murage or herself to confirm the authenticity of the alleged power of attorney.
85. She added that the 4th Defendant did not contact her before releasing the original titles to the properties to the 6th Defendant despite having her address and being aware she was the one making the loan repayment.
86. That before leaving for Kenya, she had written a letter dated May 2011 to the 4th Defendant through her advocate, categorically informing them that all security documents in their possession should not be released to anybody else.
87. She stated due to her strict working conditions she was not able to travel back to Kenya immediately and so Faith followed up with the matter by reporting to police at Kileleshwa and later Kilimani Police station.
88. In making reference to the letter dated 21/11/2011 at page 5 of 1st and 2nd Defendant's bundle purportedly written by Masese & Co. Advocates to her offering to purchase her suit properties, PW 1 stated that she neither received this letter nor knows the said Advocate noting that the same was written while she was not in Kenya.
89. The Plaintiff denied that she executed any of the sale agreements and transfers of the suit properties and stated that the photograph on the said transfers is an old photograph of hers.
90. With regard to the consent at page 27 of PExh1, she was not a director of Aman Management Ltd and did not sign the said consent. She added that she was not paid the purchase prices for the suit properties referred to in the transfers and neither did she appear before the 3rd Defendant to sign any document.
91. She stated that she did not give the powers of attorney filed at pages 35 and 36 of the 1st and 2nd Defendants' bundle of documents filed in Elc No. 876/2016 and that the only power of attorney she signed was to Faith Waithera Munyui.
92. She further referred to the forensic document examination report at page 26 of PExh 2 which confirmed that she did not sign the various documents referred to in the alleged sale of the suit properties.
93. The Plaintiff stated that she learnt from the police that Orlov Oleg has two names, one which is Roger Dyrnes Klinge which name is known to her as she had brought him from Norway to show him Kenya. That he had gone back to Norway and came back in Kenya under the name Orlov Oleg.
94. She stated that she had not given Roger Dyrnes Klinge any power of attorney and that signatures on the sale agreements and transfers were not signed by her or any of the directors of Executive Kiritu Investments Limited.
95. That the alleged power of attorney with regard to Apartment 1B1 ought to have been signed by at least two lawful directors of the company and should bear the official seal of company.
96. That she avers the alleged power of attorney had been given to Oleg Orlov, then it was illogical to have the alleged transfers signed by her or lawful directors of the company.
97. During cross examination, PW 1 confirmed that on 20/6/2011 she was in Kenya but was sick and could not have signed the said Power of Attorney. She affirmed powers of attorney to her niece Faith so as to enable her sue Orleg Orlov for collecting rent for the suit properties which Faith did file vide case HCC 625 of 2012 relating to one property, House No.23 Millennium Villa but the case was withdrawn after



the Plaintiff came to Kenya. That she did not sue for the offer suit properties herein, because they had been sold to the 1st and 2nd Defendants.

98. The witness said that she had lease agreements with the tenants but the same were collected by Orleg Orlov after he broke into her Kenya Apartment where she used to reside when visiting.
99. The Plaintiff stated that in the loan documents witnessed by her lawyer, Orleg Orlov came in as a friend and signed some papers. Also in the letter dated 24/8/2006 from the 4th Defendant at page 33 of PEXh 2, it is witnessed by the same advocate and signed by Roger Nielson aka Orleg Orlov as a guarantor.
100. The Plaintiff also confirmed that when she was executing a charge in favour of the 4th Defendant, that the said charge at page 74 of PEXh1 had conditions in clause 15,16 and 17.
101. The Plaintiff stated that the lease at page 23 of PEXh1, has her photograph of when she was young and that the passport number and ID no. given are not hers since her passport no is 26515799 issued in 2008 and her ID is 1906406.
102. She further states that as of 6/11/2011 when the 6th Defendant wrote to the 4th Defendant with regard to discharge of charge on the suit properties, she had not finished paying the loan that she finished payment of the loan in the year 2012.
103. Faith Waithera (PW2) testified and adopted her written statement dated 15/10/2018 as her evidence in chief. She confirmed that she is the niece to the Plaintiff and a director and shareholder in Executive Kiritu Investments Ltd, a company incorporated in 2008 where she holds 1 share and the Plaintiff holds 99 shares.
104. She added that the Plaintiff donated to her powers vide Power of Attorney dated 13/3/2012 to enable her manage her properties that she had purchased. That Apartment 1B1 among others were owned by Executive Kiritu Investments Ltd and Flats 1 and 8 were under the Plaintiff's name.
105. That around March 2012, she was asked whether Apartment 23, one of the Plaintiff's properties was on sale and after informing the Plaintiff about it, she went to the bank to confirm that they still had the titles to the suit properties in their custody.
106. That they then instructed an Advocate, Mr. Ombaya who accompanied her back to the bank and the bank informed them that they had released the title documents to the 6th Defendant.
107. They then reported the matter to the police and it was through the police that they were able to get the documents which were used to transfer the suit properties.
108. The witness testified that the Plaintiff was not in the country on 10/2/2012 when the transfer lease is dated and that the consent to the transfer indicates that the Plaintiff had signed it as a director of Amani Management Ltd noting that she was not a director of Amani.
109. That the Plaintiff was not in the country on 21/12/2011 when the lease of transfer at page 107 of PEXh107 is dated and was executed.
110. Further from the consent at pages 110 and 111 Taj View Management ltd did not give consent and the Plaintiff was not a manager or a director of Taj View Management ltd.
111. The witness testified that she did not sign nor authorize the signing of the power of attorney dated 20/6/2011.
112. During cross examination she admitted knowing Roger Klinge stating that she knew him to be a boyfriend of the Plaintiff but they parted ways in 2008. That in 2008, she used to live in Norway having



- travelled there on 12/12/2003 and that she was jailed there for a year because of overstaying her visa and giving false information.
113. She also stated that she managed the Plaintiff's properties from 2007 to 2009, a duty which entailed attending to the tenants' complaints but not collecting rent, thus Paragraph 5 in the statement is not accurate stating that she became aware that the houses were being sold by Roger Klenge noting that she became aware of him in 2011/2012.
 114. The witness testified that her first interaction with I & M bank was in 2012 when Milka who was managing Amani Flats stating that they had received some documents for signature as the managers of the flats and inquired if the suit properties were on sale making her contact the bank.
 115. She stated that she does not know the exact date the discharge of charge was done but knew that rent from the tenants in occupation of the suit properties was being deposited to I&M bank in an account in the name of the Plaintiff and the tenants would submit banking slips.
 116. That also she compared the Plaintiff's signatures in her power of attorney and that uses by Mr. Oleg and saw that they varied.
 117. PW3, Peter Chunga Onono, an advocate working and practicing as CP Onono & Co. Advocates testified and adopted his recorded statement dated 19/3/2021 as evidence in chief and the daily Nation newspaper of 22/9/2020 article attached to it as evidence.
 118. He stated that the article was on a Norwegian fraudster who had been deported and that his name and that of the firm appeared alleging that the Plaintiff had appeared before him in execution of a power of attorney. He testified that he did not know the Plaintiff or the Norwegian man.
 119. That the rubber stamp used in the power of attorney resembled that of his office bearing the same postal address but his stamp had never left his possession.
 120. He added that he did not sign the said document thus informed John Kamau, a journalist vide email at page 12 of his statement that the Plaintiff could reach him if she wished to. That in the execution part of the power of attorney, next to two small seal, there is a signature signed as Oleg and the next signature is of Racheal Njoki Karumbi.
 121. He added that he does not know the firm of Ongori Advocates and the said firm has never sent any power of attorney to him. That on the date 20/6/2011, the date the power of attorney was executed, he was attending to officials of Matatu Sacco as evidenced by a copy of his diary and on 21/6/2011 conducted criminal case number 428/2011 in Garissa.
 122. He testified that he has never done legal work in Nairobi. He stated that in his practice, he has had an occasion to deal with powers of attorney and that he never the donor to appear unless to sign the power of attorney. That he would not ask the done to bring the donor unless there is something suspicious.
 123. PW4, Susan W. Murage the Plaintiff's lawyer during purchases of the suit properties practicing under the name Wagaki Murage firm testified and adopted statement dated 15th October 2018.
 124. She stated that the Plaintiff had visited her office and told her that she wanted to purchase the suit properties through financing from the bank.
 125. That she witnessed the Plaintiff's letter of offers with regard to the suit properties and the Apartment was registered under her name and the Flat leases registered in favour of I&M bank which was the financing bank.



126. During cross examination she stated that she first met the Plaintiff in 2002 in the company of Rodger Djives but has never advised them that Rodger being a foreigner cannot register property under his name.
127. That the Plaintiff told her that the money to be used for purchasing the first property was from a divorce settlement and that she was having a difficult transferring money to KCB thus advised to open a Barclays Bank Account.
128. The witness testified that after purchase of the first house which is not a subject of this case, she visited her and Rodger was in the house. That with regard to the suit properties, she collected rent on behalf of the Plaintiff for 6 months and that she did not prepare any lease just gave the tenants her account to deposit the money.
- 1X9. She testified that as a third party you would not suspect anything wrong with the power of attorney in the 1st and 2nd Defendants' documents.
130. She also stated that she read and explained the banks documents to the Plaintiff and witnessed her signature.
131. That at page 33 of the Plaintiff's supplementary list is a letter offer dated 24/8/2006 from the 4th Defendant and at the bottom of the page, it has a Plaintiff signature which was appended in her presence but does not know the signature at the right hand corner of the same page.
132. PW5, Gitonga Akotha, a valuer by profession registered and practicing under Inter Consult Valuers Ltd testified and adopted witness statement dated 15th October 2018 as evidence in chief.
133. He stated that he received instructions vide letter at page 63 in the supplementary list from the Plaintiff's Advocates to conduct a valuation of the suit properties, which he did and produced report as at page 104-110 and put the value as at 31/7/2018.
134. That in addition to giving the value of the suit properties, he added monthly rent market value at page 11 which was based on comparing with the years 2011-2018 and further advised on the escalation element at 8% per annum but did not include the analysis which made him adopt the same.

Defence Evidence.

135. DW1, Ahmed Mohamed, the 1st Defendant testified and adopted his written statements on ELC 876,877 and 875 as evidence in chief and produced a consolidated bundle of documents as 1st Defendant's exhibits. He also adopted the witness statement dated 10/2/2020 by Oleg Orlov who died on 31/5/2023 as part of evidence in support of his case.
136. He stated that while buying the properties, he first met the Plaintiff, Oleg and Bert Israel who was the agent of the Plaintiff and Oleg at westgate and negotiated on the purchase and the second time, they met at forex where he paid and executed the agreements.
137. That another time the Plaintiff accompanied by Mr Kangethe came to his residence claiming the house and later the said Kangethe convened a meeting in the presence of the 1st Defendant's daughter, Israel, the Plaintiff and Masese, his advocate. In the meeting Kangethe said that Oleg had taken off so to resolve the dispute, he had to give one house to the Plaintiff instead of this case being filed in court but he refused.
138. He stated that he paid the money partly in cash and partly in account and that after paying the full purchase price he received transfer documents.



139. During cross examination, he confirmed that before purchase of the suit properties, they were registered under the Plaintiff's name and that Orleg showed him a power of attorney stating that the houses belonged to him.
140. That Orleg however did not show him how he purchased the suit properties or evidence that he deposited money in the Plaintiff's account.
141. The witness confirmed that his witness statement does not say that Orleg was together with the Plaintiff when they were selling the property neither does it mention the Plaintiff being part of the transaction.
142. That it was an oral agreement to sell with the Plaintiff and Orleg present although when in writing it was only Orleg who was signed.
143. The 1st Defendant stated that in the sale agreement at page 126, the seller is indicated as the Plaintiff and indicates that she signed the same, it did not include the name of Orleg and that also the transfer was executed by the Plaintiff not Orleg.
144. That in the agreement at pages 231-234, the transaction is signed between the Plaintiff and himself which was witnessed by Peter Ongori Advocates.
145. He added that proof of payment of the purchase price runs from page 42-47 of the bundle dated 7/10/2011 and it shows payments made in October before the agreement.
146. He explained that he made payment to Orleg because he was together with the Plaintiff as husband and wife and that also he paid them \$328,367 in cash in their presence.
147. That the agreement at page 232 is dated 23/11/2011 while payment of dollars is dated 24/11/2011 and confirmed that clause 3 of the sale agreement provided for mode of payment.
148. DW2, Joash Ombati Kengere testified and adopted his witness statement dated 6/3/2020 as evidence in chief. He stated that Orleg contacted him through an advert he had put up in Sarit Centre where he was marketing a house on behalf of his client and he knew the 1st Defendant as he was a neighbor to his client.
149. That he met Orleg in company of the Plaintiff and Fiath Waithera more than once and that Orleg introduced the Plaintiff as his wife.
150. He stated that Orleg instructed him to manage the suit properties on his behalf and the Plaintiff's and at one point he informed him that he wanted to sell them. He added that the suit properties were sold to the 1st Defendant and Masese & Co. Advocates acted for him.
151. DW2 contended that at no time Faith was managing the suit properties and that it was him who was doing so and collecting rent however did not produce instructions to manage or receipts issued for payment of rent.
152. He stated that it is not true that the Plaintiff was not involved in the selling transactions stating that she was fully aware that the properties were being sold.
153. DW3, Peter Okombe Ongori testified for the 3rd and 4th Defendants' case. He stated that he joined A.G on 29/5/2009 and that prior to that he was practicing privately as Ongori Auta & Co. Advocates, the 3rd Defendant herein. He adopted the 3 filed statements dated 26/1/2024 as evidence in chief.
154. The witness stated that he got to know the Plaintiff around June 2011 when Orlog came to his chambers in the company of the Plaintiff and two other men having been introduced to him by Joash Ombati, DW2.



155. He testified that Orleg told him that he had bought some properties which were registered under the name of the Plaintiff, who was there and in court he recognized her and were seeking for a power of attorney.
156. That he drew the power of attorney and asked them to look for a commissioner of oaths because he was not one.
157. He stated that the Plaintiff and Orleg came again in July 2011 for an affidavit which is at pages 90,282 and 185. That the said affidavit was commissioned by Osoro Ogunyio with whom they shared office with and the same was signed by the Plaintiff. That he saw them again next in September 2011 with instructions to represent them in the impugned sale transactions.
158. On cross examination, the witness confirmed that since May 2009 he was employed with the AG and that he was not practicing side to side as a state counsel. He then said that it was the firm of Ongori Auta which drafted the P.O.A and the affidavit referred to and that it is not correct to say that he had no capacity to run the firm of Ongori Auta & Co. Advocates.
159. He stated that when preparing the Power of Attorney, the Plaintiff produced a copy of her Passport No. 25011199 at page 3 of the DW2's bundle which was issued on 10/10/2005 and expiry date given as 23/4/2011 and confirmed that at page 114 of the PExh1 is a copy of her passport no. 26515799 issued on 18/4/2008 expiring on 18/4/2018.
160. He confirmed that he was not the one who made the alteration "and Orlov Oleg the directors of Executive Kiritu Investments Limited". That he prepared the POA but was altered and does not know who did it and the POA has a registration No.IR/A/57176/1 registered on 4th October 2011.
161. That on Page 5 of DW2's bundle is another POA he drew and has alteration as the previous. He also stated that at the time of drawing the sale agreement dated 23/11/2011, he was not aware that the suit property was charged and did not see the original titles and that he had indirect instructions from the Plaintiff by virtue of the POA but states that since the Plaintiff, the vendor was present, the POA is not mentioned.
162. DW4, Andrew Muchina, testified in support of the 4th Defendant's case and adopted his written statement dated 10/2/2020 as evidence in chief and produced bundle of documents filed on 1/2/2017 as bundle in 875 as 3rd and 4th Defs Exh 1, 876 bundle produced as DEx Ex 2 and 877 bundle as DExh 3.
163. He stated he works with the 4th Defendant in the legal department and that on 1/12/2011 they wrote to the Plaintiff confirming that all the loans outstanding had been paid and the letter was sent via post. In response on 6/12/2011, they received a letter dated 1/12/2011 from 6th Defendant and they forwarded the discharges for the suit properties to them. That there was also a correspondence from the 6th Defendant dated 15/12/2011 which required the bank,4th defendant to verify that the loans had been settled.
164. The witness confirmed that as shown at page 34 of sup. bundle the Plaintiff signed as the borrower while Roger Nielsen as a guarantor but did not sign a personal guarantee. That the letter dated 1/12/2011 was sent to the Plaintiff vide postal address 1172-00406 but the address in the charge document is 1172-00606.
165. That further, the loan was to be repaid with the last date of payment being May 2012 (Page 36) and that as at page 44 of PExh1, there are two deposits of Ksh.2.5 M and Ksh.557,033 with the statement not showing who deposited the money. The witness stated that they did not deal with Orleg and were not aware of any Power of Attorney since the letter from the 6th Defendants did not mention of it.



166. DW5, Mark Mungai testified for the 5th Defendant's case and adopted his written statement dated 3/10/2024 as evidence in chief and produced bundle of documents dated 30/9/2024 as DEx 4(5th Defendant). He stated that at page 120 is a transfer of lease and the parties were the Plaintiff and 1st Defendant, registered on 3/1/2012, at page 122 is signed by the Plaintiff and that at page 85 is dated 10/2/2012 with the Plaintiff as the transferor, signed by her and registered on 26/3/2012.
167. He added that there was no mention of POA in the transfers and that in the transfer was through POA, the IPA number would be indicated at the point of execution or in the recitals. That further, as a registrar, he would satisfy himself that the POA is registered and be provided with a copy thereof.
168. DW6, Emma Wachira testified for the 6th Defendant's case and adopted her written statement dated 19/11/2018 as evidence in chief and produced bundle dated 13/12/2018 as DEx6(6th Defendant's Exhibits). She stated that prior to the transactions in subject, they did not know Oleg Orlov and confirmed that she is the one who signed the letter dated 6/12/2011.
169. That they received the documents attached to the letter dated 21/5/2012 from the bank and released them to Oleg on behalf of the Plaintiff pursuant to the POA which was in her judgement as an advocate proper.

Submissions.

170. The Plaintiff filed submissions dated 31st January 2025 where they gave a background of the matter, each party's case and outlined 16 issues for determination. On the first issue, the Plaintiff asserts that she purchased suit properties as among seven properties between 2002 and 2006. She stated that she has provided documentary evidence, to support her ownership, including respective letters of offer and Sale Agreements, their leases and title documents registered in her name, bankers' cheques showing full payment forwarded to her lawyer, Susan Wagaki Murage and charge documents confirming she financed Flat No. 1 and 8 through I&M Bank with the charge registered in 2006.
171. That also the principal Land Registrar DW5 Mark M. Wanderi confirmed that the three suit properties were initially registered in the Plaintiff's name and charged to I&M Bank.
172. On whether Oleg Orlov acquired any legal and/or beneficial proprietorship of the suit properties, the Plaintiff submitted that there is no documentary evidence of ownership such as receipts, bank record, trust deed that was produced in support thereof.
173. That the assertions by the 1st and 2nd Defendant that Oleg was the beneficial owner and Plaintiff was merely a nominee were made via oral statements and in a witness statement authored by Oleg Orlov (now deceased), which stated he funded the purchase, collected rental income, and repaid loans related to the properties. She stated that the lack of documentary evidence renders the statements hearsay and inadmissible as conclusive proof of ownership.
174. The Plaintiff added that under the *Trustee Act* (Cap 167), if Oleg Orlov intended for her to hold the properties in trust, a formal trust deed was required and none was produced and further Oleg did not initiate any proceedings to declare a constructive or resulting trust in his favour before his death.
175. The Plaintiff submitted that Sections 107, 108, and 109 of the *Evidence Act* place the burden of proof squarely on the party asserting a fact and the Defendants failed to discharge this burden. That Section 24, 25, and 26 of the *Land Registration Act* vest absolute and indefeasible ownership in the registered proprietor, except in cases of fraud or misrepresentation and that no valid claim of fraud or trust was substantiated.



176. In support, the Plaintiff cited the case of Republic v Land Registrar, Taita Taveta District & Another (2015) eKLR which held that title cannot be defeated without proof of fraud or illegality, Mohansons (Kenya) Ltd v Registrar of Titles & 2 Others (2017) eKLR that reinforces the primacy of the certificate of title, Willy Kipsongok Morogo v Albert K. Morogo (2017) eKLR and Ahmed Ibrahim Suleiman v Noor Khamisi Sunur (2013) eKLR which recognize the absolute rights of a registered proprietor.
177. The Plaintiff denied executing the Special Power of Attorney (SPA) dated 20/6/ 2011 in favour of Oleg Orlov, authorising the 3rd Defendant to draft it and also denied appearing before C.P. Onono, the Commissioner for Oaths who allegedly witnessed her signature. To prove forgery, the Plaintiff submitted that the SPAs contained overwritten text, alleged forged signature, and incorrect passport details, referring to an expired passport with a different passport number.
178. That in addition, Advocate C.P. Onono, PW3 testified that he did not commission the SPA, that he was not in Nairobi on the alleged date, has never met the Plaintiff or Orlov and his stamp and signature on the SPA were forged. That also he produced his original stamp and diary to corroborate this.
179. The Plaintiff submitted that the 3rd Defendant admitted he did not witness the Plaintiff's signing nor register or lodge the SPA. That he also admitted that the SPA produced was altered from the original draft he prepared and he could not produce any written instructions or evidence of payment for legal services from the Plaintiff.
180. The Plaintiff submitted that mere oral claims, without corroboration, do not establish a valid retainer and in support cited the case of Mereka & Co. Advocates v Zakhem Construction (Kenya) Ltd (2014) eKLR and Ochieng Onyango Kibet & Ohaga Advocates v Akiba Bank Ltd (2008) 1 EA 300).
181. The Plaintiff stated that once she denied executing the SPA, the burden shifted to the Defendants under Sections 109 and 112 of the Evidence Act and they failed to prove authenticity, execution, or lawful use of the same.
182. In support of her case, the Plaintiff cited the case of Sambayon Ole Semera v Kalka Flowers Ltd (2021) eKLR where it was held once the plaintiff denies signing a Power of Attorney, the burden shifts to the party relying on it to prove its validity, Raila Odinga & Another v IEBC & 2 Others (2017) eKLR that evidential burden shifts depending on effectiveness of each party's evidence and CMC Aviation Ltd v Crusair Ltd (No. 1) (1987) KLR 103: on that pleadings are not evidence unless proved or admitted.
183. The Plaintiff stated that the 1st, 2nd and 3rd Defendants assert that she executed a Special Power of Attorney (SPA) dated 20/6/2011, granting Oleg Orlov authority to transact on her behalf. Further the 3rd Defendant, who acted as Advocate, claimed in his witness statement that the SPA was registered, and that all transactions were executed pursuant to the said SPA, with Oleg Orlov signing the Sale Agreements as done for the Plaintiff.
184. The Plaintiff submitted that there is contradictory documentary evidence because despite the above assertions, none of the Sale Agreements or Transfer documents mention the SPA, and that instead show that the Plaintiff personally signed all the key documents. That the Land Registrar's Testimony, DW5 confirmed that the SPA dated 20/6/2011 was never used in any of the Transfers, neither mentioned thereon or its registration number as required and that all transfers were made directly by the Plaintiff.
185. The Plaintiff submitted that under Section 3(3) of the Law of Contract Act (Cap. 23) provides a valid land sale contract must be in writing, signed by all parties, and attested thus the lack of a signed Sale Agreement for Flat No. 8 renders that transaction illegal and void ab initio. Further, that the SPA must be expressly referenced in property transfers when used, which was not the case in this scenario.



186. The Plaintiff stated that the Defendants' claims that the SPA was used contradict their documentary evidence, which binds them to their pleadings and in support cited the case of Daniel Otieno Migore v. South Nyanza Sugar Co. Ltd (2018) eKLR, where the court held that evidence inconsistent with a party's pleadings must be disregarded and Sections 97 and 98 of *Evidence Act* which bar parties from contradicting written agreements by oral testimony, unless fraud or mistake is pleaded.
187. The Plaintiff submitted that she did not instruct or authorize the 3rd Defendant to handle the sale of the suit properties and that the 3rd Defendant was not lawfully licensed to act as an Advocate in 2011 and therefore acted as an unqualified person.
188. She produced her original passport, which confirmed that she was out of the country from 20/9/2011 to 5/6/2014, covering the entire period during which the documents were allegedly signed. She maintained that the Sale Agreements and Transfers were prepared and executed in her absence, confirming her lack of participation thus cannot be bound by documents executed in her absence without proper authority or representation.
189. She added that 3rd Defendant consistently stated that he was instructed by Oleg Orlov, not the Plaintiff, and that the sale was done pursuant to a Special Power of Attorney but the sale and transfer documents do not mention Oleg Orlov or the Power of Attorney, and instead falsely attribute execution directly to the Plaintiff.
190. She submitted that the contradictions undermine the credibility of the 3rd Defendant and confirm her position and in support cited Daniel Otieno Migore v. South Nyanza Sugar Co. Ltd (2018) eKLR which held that parties are bound by their pleadings, and any evidence inconsistent with pleadings must be rejected, Independent Electoral & Boundaries Commission & Another v. Stephen Mutinda Mule & 3 Others (2014) eKLR where it was held that pleadings form the foundation of a case, and deviations through oral or inconsistent evidence are inadmissible.
191. With regard to the illegality of the 3rd Defendant's legal practice, the Plaintiff stated that she proved via LSK correspondence that the 3rd Defendant did not hold a valid practicing certificate in 2011, and had declared himself as a State Counsel at that time and that he failed to rebut this by producing any practicing certificate for that period.
192. The Plaintiff submitted that Section 9, *Advocates Act* (Cap 16) provide that only Advocates with a current Practising Certificate can legally act as advocates, Section 10, *Advocates Act* provide that a State Counsel may only act as an Advocate in connection with official duties and section 34(1), *Advocates Act* provide that an unqualified person may not prepare conveyancing documents or charge fees for such services.
193. That the 3rd Defendant acted in private practice and charged fees while employed as a State Counsel, in direct violation of Sections 9, 10, and 34 of the *Advocates Act*.
194. The Plaintiff stated that the Sale agreements and transfers bear the Plaintiff's name as vendor, yet the Plaintiff was not present and did not sign them and no credible evidence was adduced to show proper execution or authority through a valid power of attorney, thus no lawful transfer of title was effected. In support, the Plaintiff relied on Section 97 & 98 of the *Evidence Act* (Cap 80) which provides that when a matter is required to be in writing such as a sale agreement, oral evidence cannot contradict or vary its terms.
195. As the said documents show the Plaintiff as the vendor, the 3rd Defendant cannot now claim they were executed by Oleg Orlov under Power of Attorney. On whether the 1st and 2nd Defendants were bona fide and innocent purchasers for value without notice of any defect in title, the Plaintiff relied on the



- criteria on *Lawrence Mukiri v Attorney General & 4 Others* (2013) eKLR to submit that the 1st and 2nd Defendants failed to conduct any due diligence, including official searches at the Lands Registry before the purchase.
196. That DW1 (Ahmed Mohamed Abdi) admitted he dealt exclusively with Oleg Orlov, whom he never verified was a lawful owner or agent without asking to meet the Plaintiff who was the registered owner. Further, the payments were made before signing the Sale Agreements and even before due diligence with significant sums being paid in cash (USD) to a party with no legal link to the properties, indicating a rushed and suspicious transaction.
 197. Additionally, she stated that no Power of Attorney was presented to confirm Oleg Orlov's authority and the Defendants' lawyer, Masese & Co. Advocates, failed to raise concern over the glaring irregularities such as the charge registered in favour of I&M Bank, which was not addressed in the sale documents.
 198. In support the Plaintiff relied on the case of *Mary Ngonyo Kiume v Charles Muisyo David & 2 Others* (2022) eKLR where it was held that a search is key to determine land ownership under the Torrens system, *Robert Mwanja Kiattu v Peter Njenga Muhika* (ELC 410/2019) which emphasized conditions for establishing bona fide purchase, *Hussein Abdalla Said v Yawa Chome Shume & 2 Others* (2024) KECA 866 (KLR) among others which held that bona fide purchaser defense is not available where purchaser fails to make proper inquiries and innocence is not presumed when red flags exist.
 199. The Plaintiff stated that Oleg Orlov had no registered interest, no legal authority, and the purported Special Power of Attorney was proven to be forged because PW3, Advocate C.P. Onono denied ever witnessing or attesting the execution. She argued that the payment of the purchase price was made to Oleg Orlov, not to the registered owner, which violated the doctrine of privity of contract. The Plaintiff cited the case of *Kenya Women Finance Trust v Bernard Oyugi Jaoko* (2018) eKLR).
 200. She submitted that relying on the doctrine of *nemo dat quod non habet*, Orlov could not pass title he did not have and in support cited the case of *M. Oriental Bank Ltd v Samuel Nyingi Matimu* (2021) eKLR and *Republic v Registrar of Titles Mombasa ex parte Emfil Ltd* (2012) eKLR.
 201. Accordingly, she insists that the 1st and 2nd Defendants' title was not lawfully obtained as it was based on fraud, forged documents, and lack of authority. Also, she relied on the provisions of section 26(1) of the *Land Registration Act* (2012) which permits courts to cancel titles obtained by fraud, misrepresentation, or through illegality to state that the 1st and 2nd Defendants' titles are null and void and should be cancelled.
 202. The Plaintiff submitted that the 4th Defendant violated its contractual and fiduciary duty by releasing Title documents without her knowledge or authority, enabling fraud and the 6th Defendant acted recklessly by accepting instructions from an unauthorized third party and misrepresenting their role, thereby facilitating the fraudulent transaction. Therefore, both the 4th and 6th Defendants are jointly and severally liable for negligence and breach of duty that led to the unlawful transfer of the Plaintiff's properties.
 203. The Plaintiff stated that on 1st December 2011, the 4th Defendant issued a letter confirming loan repayment which letter was allegedly prompted by Oleg Orlov and handed over to him, not the Plaintiff noting that the said letter address used was inconsistent with that of the Plaintiff. The 4th Defendant then received a letter dated 6th December 2011 from the 6th Defendant requesting release of the titles, enclosing a draft Discharge of Charge and the titles and signed Discharge on 20/12/2011 without verifying the Plaintiff's instructions.



204. That the 4th Defendant debited Kshs. 3,052,457 from the Plaintiff's account without her instructions and she never authorized the discharge or release of the documents. By this, the Plaintiff argues that the 4th Defendant breached Clause 31 of the Charge document, which required a discharge to be initiated only by the Plaintiff (Chargor) or as she may direct. In support she cited the case of Equity Bank of Kenya Ltd & Another v. Robert Chesang [2016] eKLR among others where it was held that a bank owes its customer a duty of reasonable care and skill and any deviation without justifiable reason breaches this duty.
205. She stated that "DW6" Emma Wacira admitted that Oleg Orlov instructed her noting that Power of Attorney presented was from Executive Kiritu Investments Ltd, not the Plaintiff which did not cover Flat No. IBIO and the received letter did not disclose the existence of or attach the Power of Attorney. The Plaintiff relied on the case of Alice Chemutai Too v Nickson Kipkurui Korir & 2 Others [2015] eKLR where it was held that parties involved in fraudulent land dealings could not benefit from illegality.
206. She also stated that valuation reports by PW5 substantiate rental income losses since 2011 due to unlawful possession and the same is based on comparable market rates. The Plaintiff submitted that her claim is for recovery of land, not solely fraud as argued by the 1st and 2nd Defendant that the same is provided under section 7 of the Limitation of Actions.
207. It is her contention that even if her claim is based on fraud, Section 26 suspends the limitation period until the fraud is discovered and she discovered the fraud around 2014, and filed suit in 2016, which is within time.
208. The 1st and 2nd Defendants filed submissions dated 9th May 2025 contending that the Plaintiff's suit is statute-barred under Section 7 and Section 26 of the *Limitation of Actions Act* (Cap 22, Laws of Kenya), as it is founded on allegations of fraud discovered in 2011/2012.
- 2X9. That the applicable limitation period is three years from the date of discovery of fraud, not twelve years for recovery of land and in support cites the case of Kabogo v Gitau [2025] KECA 193 and Javed Iqbal Abdul Rahman & Another v Bernard Alfred Wekesa Sambu & Another, where the Court held that in cases of fraud involving land, the limitation period begins at the point of discovery and is strictly three years.
210. The 1st and 2nd Defendants submit that the Plaintiff's suit is both statutes barred under Section 7 of the *Limitation of Actions Act* and res judicata under Section 7 of the *Civil Procedure Act*. They also argue that the issues raised in the current consolidated suits were directly and substantially in issue in prior litigation specifically HCCC No. 316 of 2012 and HCCC No. 625 of 2012, which were consolidated and dismissed for non-attendance in 2017.
211. That in those suits, the Plaintiff challenged the legitimacy of the same powers of attorney and the same transactions now in dispute and since the Plaintiff was aware of all alleged frauds involving multiple properties but only sued over one, the doctrine of res judicata prevents her from re-litigating these matters.
212. They also stated that the Plaintiff failed to join Orleg, a necessary party central to the disputed transactions, undermining the validity of the suit. That the Plaintiff's own pleadings and submissions frame Orleg as the alleged impostor who forged powers of attorney and sold the suit properties fraudulently yet, despite Orleg's availability and active involvement in previous related proceedings, she deliberately omitted him as a party and actively resisted his participation including opposing his re-entry into the country and the admission of his evidence.



213. The 1st and 2nd defendants submitted that this omission undermines the Court's ability to fairly adjudicate the real issues, as emphasized in *Apex International Ltd & Anglo Leasing and Finance International Ltd v Kenya Anti-Corruption Commission (2012)* eKLR, which cited *Goodwill and Trust Investment Ltd v Witt & Bush Ltd*, where the court held that absence of proper parties affects jurisdiction, rendering proceedings a nullity.
214. That similarly, in *Zephir Holdings Ltd v Mimosa Plantations Ltd & 12 Others (2014)* eKLR, the Court stressed the importance of joining all necessary parties to enable a just determination.
215. Further they submitted that the Plaintiff's claim that she used her savings and divorce settlement to purchase the properties is not supported by documentary evidence and that her testimony under cross-examination was self-contradictory and unreliable. That she claimed to have transferred funds through multiple conflicting methods, including cheques, travelers' cheques, and cash and failed to produce proof of her salary, divorce settlement, or bank transactions, despite asserting she had such evidence.
216. Also, in a sworn statutory declaration dated 16/7/2011, the Plaintiff expressly acknowledged that she purchased the suit properties on behalf of Orleg, that she held no beneficial interest in them, and that she had sold all her shares in Executive Kiritu Investments Ltd to Orleg. They argued that the Plaintiff's evidence concerning repatriation of funds for purchasing the suit properties is internally inconsistent and should either be rejected or construed adversely against her.
217. In support they cited the case of *S.C.IV v Republic*, as cited in *Jackson Muuanza Musembi v Republic [2017]* eKLR, that grave contradictions unless satisfactorily explained will usually ... lead to the evidence ... being rejected and also in *Richard Munene v Republic [2018]* KECA 186, the Court held that substantial contradictions affecting the main issues must be resolved in favour of the opposing party.
218. That the Plaintiff offered conflicting accounts, cheques, travelers' cheques, cash, different bank branches which, as per *Jason v Republic [2022]* eKLR, undermines her credibility when not supported by corroborative proof.
219. Further, the 1st and 2nd Defendants posit that the Plaintiff initially portrayed her relationship with Orleg Orlov (alias Roger Drynes Klinge) as distant. However, in her oral testimony and witnesses' statements from Faith, Susan and her own evidence contradicted this. Hence, revealing that they cohabited in Kenya and he was present during the property identification, purchase instructions, and even guaranteed her bank loan.
220. These Defendants submitted that despite challenging the Powers of Attorney, Sale Agreements, and Transfer of Leases, the Plaintiff did not subject the disputed signatures to independent forensic examination. That in addition, two expert reports by Emmanuel Kenga and V. Owoko although not produced by their authors in court but there was no objection, confirmed that the signatures on POA were those of the Plaintiff.
221. They also submitted that the stamp dated 20/9/2011 on her passport had the word "exit" handwritten, unlike all other stamps suggesting possible tampering to mislead the court. Additionally, the Defendants contend that Orleg having funded the purchase of the suit properties and collected rent proceeds, the Plaintiff held title as trustee based on a resulting trust and in support relied on Sections 24, 25, and 28 of the *Land Registration Act* and the case of *Esther Wanjiru Githatu v Mary Wanjiru Githatu [2019]* eKLR to assert that registered ownership is subject to equitable trusts.



222. That also the allegations of fraud leveled by the Plaintiff against the Defendants are not substantiated with evidence meeting the heightened standard of proof required for fraud claims, as per *Gichinga Kibutha v Caroline Nduku* [2018] KELC 3981 (KLR).
223. They submitted that they are bona fide purchasers for value without notice of any defect in title and with regard to mesne profits, the Plaintiff failed to present factual evidence of rent received or comparable rental values, relying solely on speculative expert opinions and in support cited *Stephen Kinini Wang'onde v The Ark Ltd* [2016] eKLR.
224. The 3rd Defendant filed submissions dated 7th April 2025 stating that the issue of whether the Powers of Attorney and Transfers were fraudulently procured hinges on the Plaintiff's allegation that she did not sign the said documents and was out of the country at the time of execution. The 3rd Defendant avers he drafted the Powers of Attorney but did not witness her signing. He testified that the Plaintiff signed the Sale Agreements and Transfers in his presence.
225. He submitted that this was corroborated by the evidence of Joash Ombati Kengere and also Forensic handwriting experts Emmanuel Kenga and I.P.V. Owoke confirmed the Plaintiff's signatures on the documents, while only one expert dissented. On the 3rd Defendant's qualifications, although his 2011 practising certificate was not initially filed, he produced it in court and explained its delay. Thus, on a balance of probabilities, the Plaintiff's claim of fraud is unsubstantiated.
226. The 4th Defendant filed submissions dated 5/3/2025 where they denied colluding or acting fraudulently with the other Defendants in the discharge of charges over, and the sale and transfer of the suit properties.
227. They submitted that the Plaintiff failed to comply with Order 2 Rule 10 of the Civil Procedure Rules, which requires fraud allegations to be specifically pleaded and strictly proved because no specific particulars or supporting evidence of fraud or collusion by the 4th Defendant were presented thus should be dismissed.
228. That all its actions particularly in discharging the Charges of the suit properties, were consistent with the terms of the Charge agreement and based on the full repayment of the loan by the Plaintiff. That Clause 17 of the Charge authorized the 4th Defendant to act as the Plaintiff's attorney in effecting the discharge, and Clause 31 obligated the bank to do so upon full settlement and the Plaintiff's lawyer, acknowledged understanding these terms.
229. The 4th Defendant submitted that there was no contractual relationship between it and the other Defendants and that they acted based on reasonable professional standards, including relying on the 6th Defendant, a reputable law firm, as the Plaintiff's representative. Further, that the Plaintiff's complaints about notice delivery and alleged absence from the country were unsupported by credible evidence.
230. The 4th Defendant submitted that the role of Oleg Orlov in the matter is central to their case, which hinges on the assertion that Orlov acted with implied or apparent authority on behalf of the Plaintiff due to their long standing romantic and financial relationship. There is substantial evidence was presented showing that the Plaintiff and Orlov cohabited both in Norway and Kenya, jointly engaged in property transactions, and that Orlov even guaranteed a loan granted to the Plaintiff by the 4th Defendant.
231. Further, witnesses consistently described their relationship as intimate and intertwined, both personally and financially, with Orlov often acting in the Plaintiff's presence and with her acquiescence in property and loan dealings. The 4th argued that Orlov had the authority to act on the Plaintiff's



- behalf, and that she should be held to the terms of the contract, including indemnifying the 4th Defendant against any resulting losses from her unsubstantiated legal claims.
232. The 6th Defendant filed submissions dated 28/4/2025 stating that it acted lawfully and professionally under the authority of two registered Powers of Attorney dated 20/6/2011 presented by Oleg Orlov, who claimed to act on behalf of the Plaintiff.
233. That the Powers of Attorney were registered with the Land's Office, bore official stamps, and were prima facie valid and in support cited the case of Stephen Nihia Mbugua v Stephen Kihara Muchui & 2 others where it was held that a registered POA is sufficient authority unless proved otherwise and an advocate relying on it cannot be held liable unless actual knowledge of forgery is shown.
234. The 6th Defendant asserts that Oleg Orlov was a necessary party, given the serious allegations against him that he allegedly forged POAs and unlawfully dealt with the suit properties yet the Plaintiff failed to join him, despite having already sued him before and then withdrew the case, depriving the court of a full adjudication of the central factual disputes.
235. The 6th Defendant also submitted that its involvement was limited to preparing discharge documents at the instruction of Oleg Orlov, who produced valid-looking POAs and provided a letter from the 4th Defendant confirming the loan had been repaid.

Analysis and Determination;

236. Having reviewed the evidence and the submissions rendered, I note the following facts are not disputed.
1. That the suit properties Flat Nos 1 and 8 on L.R 2X5/1X9; that No. IB-10 on L.R 2X9/1XX6 were registered in the Plaintiff's name before the contested transfer to the 1st and 2nd defendants.
 2. That the suit properties were charged to the 4th defendant.
237. The dispute arises in the manner the said suit properties changed hands from the name of the Plaintiff. Hence, I raise the following questions for determination of the dispute:
- a. Whether or not the Plaintiff's suit is statute barred.
 - b. Whether or not the plaintiff has proved fraud levelled against the defendants.
 - c. Who between the plaintiff and the 1st and 2nd defendants are entitled to the suit property.
 - d. Who bears the costs.

Is the suit statutorily barred?

238. That 1st and 2nd Defendants pleaded and submitted that this claim is statute barred. This submission was grounded on the provisions of Section 7 and 8 of the *Civil Procedure Act* and Section 7 of the *Limitation of Actions Act*. Section 7 of *Civil Procedure Act* speaks to limitation under the doctrine of res judicata. It is not in dispute from the evidence of the Plaintiff and Faith Waithera (PW 2) that before the filing of the present suits, Faith had filed a suit against Oleg Orlov cited as HCC 625 of 2012 and Orlov had also sued the Faith on behalf of the plaintiff vide HCC 316 of 2012.
239. According to PW 2, she withdrew her suit after the Plaintiff returned into the Country to follow up the matters by herself. For the suit filed by Orlov, PW2 stated that the same was dismissed for want of prosecution. Their evidence is that none of the cases were heard and concluded on merit to invoke the application of resjudicata.



240. The evidence of dismissal for want of prosecution is corroborated by the Plaintiff's documents produced at pages 52-53. It is an order indicating that the two suits were consolidated and when the matter came up in Court on 12th October, 2017, it was dismissed for non-attendance. Secondly, I noted from copy of the said order that the land reference and house number 23 quoted appears different from the apartments in dispute here.
241. In order for the 1st and 2nd Defendants to rely on this doctrine, it was incumbent for them to prove that the previous suits were substantially heard and determined on merits. The rule of evidence under section 107 of the *Evidence Act* Cap 80 is that the party who alleges a fact must establish its existence for a judgment to be entered in their favour. None of their witnesses produced a judgment in either HCC 625 of 2012 or ELC 316 of 2012. Therefore, in the absence of proof of determination on merit, the argument that the current suits as consolidated is res judicata does not lie.
242. Section 8 of the *Civil Procedure Act* provides thus;
- “Where a plaintiff is precluded by rules from instituting a further suit in respect of any particular cause of action, he shall not be entitled to institute a suit in respect of that cause of action.”
243. The provisions of section 8 would only be bar the Plaintiff from filing a further suit if the proposition of res judicata was proved and in this case, the evidence rendered was insufficient.
244. The other ground of limitation presented is premised on section 4 of the *Limitation of Actions Act* with the 1st and 2nd Defendants arguing that this case ought to have been commenced within a period of three years since it is founded on fraud. On the face of the original plaint and the subsequent amended plaints, the Plaintiff alleges the Defendants took away her properties through fraudulent means.
245. The Plaintiff pleaded and emphasized through her oral testimony and those of her witnesses that she did not enter into a sale agreement with the 1st and 2nd Defendants. Neither did she execute the transfer of lease documents which passed the title and ownership to the 1st and 2nd Defendants.
246. In support of their argument, the 1st and 2nd Defendants cited the case of Kabogo vs Gitau Court of Appeal No. 82 of 2019 (2025) KECA 193 (KLR) judgment where the Court of Appeal cited its decision in Jared Iqbal Abdul Rahman & Another vs. Benard Alfred Wekesa Sambu & Another C. A. No 11 of 2001 which held that in a claim for land on the basis that the registration was done by way of fraud. The time starts running when the said registration is discovered and the limitation period is three years.
247. Hence for this case, the question is whether it is a claim for land where limitation is fixed at twelve (12) years or whether the fraud pleaded forms the cause of action thus limiting the time to three (3) years. In all the three suits (875, 876 and 877 of 2016) filed on 27th July, 2016 the Plaintiff is asking the court to declare the manner in which the suit properties were sold as fraudulent and an order be made to retransfer the same back to her name. Thus, the substance of the claim is ownership of land and fraud as pleaded is a mode that was used to obtain the suited properties. I am therefore not persuaded that the limitation of three (3) years is the applicable one. This averment is dismissed for want of merit.

Has the plaintiff proved the fraud?

248. The plaintiff listed the particulars of fraud and illegalities against all the defendants jointly and severally under paragraphs 12 and 14(I) – XXVI of the amended plaint. The documents at the center of the fraud consists; the Special Power of Attorney to Orleg Orlov; the sale agreement, and the transfer of



lease. She pleaded that the sale and transfer documents which are alleged she signed were executed at the time she was out of the Country, without her authority and or consent. She has denied all her signatures appearing on all those documents.

249. It is trite law that the burden of proof lay on her to demonstrate/prove that her signatures in the impugned documents were forged. The standard of proof required for fraud is above the standard in civil cases. To begin with, she produced copies of pages of her passport document as evidence that she was not in Kenya at the time of the impugned transaction. She added that the passport number used during the contested transaction was for her expired passport.
250. The documents bearing the disputed signatures are;
- i. Two Special Powers of Attorney to Orleg Orlov dated 20/6/2011
 - ii. Sale agreements dated 28/9/2011 and 23/11/2011
 - iii. Letter requesting for discharge of charge by 6th Defendant dated 6/12/2011
 - iv. Transfer of leases 1st December, 2011 and 10th February, 2012

Special Powers of Attorney;

251. The sale transactions disputed hinged heavily on the authenticity/validity or otherwise of the two Special Powers of Attorney donated to Orleg Orlov. Although these proceedings commenced in 2016, Orlov was not sued or joined by any of the parties. Instead, the Plaintiff chose to sue the 3rd Defendant who on the face of the documents was the advocate who drew them. Both the Plaintiff and the 1st and 2nd defendants produced reports of the handwriting experts who examined the signatures denied by the Plaintiff. The hand writing experts have returned conflicting reports.
252. The report presented by the plaintiff dated 8th May, 2017 recorded a verdict that the signatures were not appended by her. Similarly, the expert report presented by the 1st and 2nd Defendants dated 18th August, 2016 concluded that the signatures on the P.O.A were signed by the plaintiff. The 1st and 2nd Defendants produced proceedings filed in civil case no 316 of 2012 by Orleg which annexed an earlier handwriting expert report dated 30.11.2011. This report found that the signature on the special power of attorney was that of the Plaintiff.
253. In light of the conflicting conclusions by the experts, this court will alongside the three reports consider other evidence adduced to determine whether or not the impugned signature was appended by the plaintiff. The reason for relying on other evidence other than that of the experts has been discussed in various cases.
254. For instance, in the Indian case of Niranjan Singh Versus Ashwani Kumar & Another 2009 (Punjab & Haryana High Court) held;

“Moreover, where there are contradictory reports of two handwriting experts, the court may ignore both the reports and may place reliance upon the testimonies. The court is justified in ignoring the reports of the two reports and placing reliance on the testimony of attesting witnesses and the scribes.”



255. The Supreme Court India in the case of Madan Gopal Kakkad vs Naval Dubey & Another (1992) 3 SCC 204 at paragraph 41 held that;

“We really need to reiterate various judgments which have taken the view that the purpose of an expert opinion is primarily to assist the court in arriving at a final conclusion. The court is expected to analyse the report, read it in conjunction with the other evidence on record and then form its final opinion as to whether such report is worthy of reliance or not.”

256. The Court of Appeal in the case of Kagina vs Kagina & 2 Others (Civ. Appeal No. 21 of 2017) (2021) KECA 242 (KLR) at paragraph 12 cited the case of Stephen Kinini Wangondu vs The Ark Limited (2016) eKLR where it was held thus;

“I have considered the evidence tendered by the document examiner and the report prepared by the said witness and I am persuaded that the said evidence is not built on a sub-stratum of facts which are proved to the satisfaction of the court according to the appropriate standard of proof. As stated above, such evidence must be read together with the rest of the evidence but not independently. The evidence by the document examiner in the opinion of this Court does not establish that it is ‘highly probable’ that the documents in question were forged.”

257. The Plaintiff admitted she was in the country in June 2011 but alleges that she was too ill to sign the impugned powers of attorney. There were no medical reports produced to corroborate this assertion, rather she called Mr C.P Onono advocate (PW3) who stated that he generally does not practice in Nairobi and that he did not commission the impugned special Power of Attorney. Mr Onono said that the stamp used in the impugned POA resembled the one he had in his office in Garissa where he ordinarily practiced.

258. PW3 said the rubber stamp has always been in his possession and he has never given it to anyone but denies stamping or signing the said document. Besides undertaking his activities for the day in Garissa, PW3 said he travelled to Nairobi and reached in the evening of 21st June, 2011. Since PW3 admits the similarity of the rubber stamp in his possession and the one appearing on the impugned document, and the proximity of dates of his presence in Nairobi, his denial of the signature ought to have been accompanied with a handwriting expert’s report. His evidence per se is inconclusive on this contested matter.

259. The 6th Defendant produced documents in their list which included two affidavits sworn by the Plaintiff inter alia one dated on 18th March 2011. In this affidavit of March she deposed thus;

“

“3. That in my passport no. 25011199 and birth certificate, my names appear as Rachel Njoki Nielsen.

4. That my names Rachel Njoki Karumbi and Rachel Njoki Nielsen refer to one and the same person”



260. This affidavit was sworn before a Ms Jane K. Ocharo advocate and was drawn by Makori & Co Advocates. It is not clear why it was drawn but it seems to have been registered in the Lands Registry. Despite the Plaintiff referring to Orlov's real name as Rogers Drynes, it appears that that he was also called Rogers Nielsen as shown in the letter of offer dated 26.8.2006 from the 4th Defendant financing the purchase of the suit property which letter Orleg signed as Rogers Nielsen as a guarantor to the Plaintiff in the presence of Susan Murage (PW4).
261. Further, PW4 who is an advocate who represented the Plaintiff during the purchase of the suit properties confirmed that she had met Orleg Orlov and the Plaintiff during the purchase process. Although she did not know the nature of the relationship between the two, they appeared as pleasant friends. Under cross-exam, PW4 stated that when the Plaintiff gave her instructions, Orleg was present with her. At one time she went to their residence in one of the purchased houses, she found the two together.
262. Faith Waithera (PW2) admitted she knew Orleg through the Plaintiff when she visited her aunt in Norway. During cross-exam, she affirmed that Orleg and the Plaintiff at one time lived together in Norway. It is discernible from the evidence presented by the Plaintiff that she had known Orleg for a while. Before the impugned transaction, she does not state any criminal/fraudulent activities committed by Orleg. It was funny therefore for the Plaintiff to plead that Orlov was a stranger and a criminal who was on the run (see for instance her advocates letter dated 17th February 2017).
263. Thus, reviewing the evidence from both sides of this case including the fact that the Plaintiff was even using Orleg's surname of Nielsen point me to conclude that they had known one another at a level to deal. In fact, the plaintiff testifies of bringing him to Kenya in the year 2001. Consequently, this court forms the opinion and hold that it was possible for the Plaintiff to sign and did sign the powers of attorney in favour of orleg for whatever arrangement. The evidence of PW3 and conflicting handwriting report does not meet the threshold of fraud for two parties who had known each other.
264. The Plaintiff was served with the court documents through her attorney (PW2) in 2012. By this time, they had already obtained the alleged special power of attorney, yet it is until the year 2017 that she engages a handwriting expert which makes the decision sound as an after-thought. Whether she was in the country or otherwise, as soon as her representative was denied access, she would have continued the suit filed against orleg to sort out the issue of fraud between the two of them before the alleged deportation.

Signature on the sale agreement and transfer of leases:

265. The Plaintiff asserts that at the time the impugned documents were signed, she had already left Kenya. She also said that the passport number given did not belong to and criticized the passport photo used to be her when she was young. She relies on the copies of her passport number 26515799 with stamping of the date of 20th September 2011 as part of the pages of the passport exhibited.
266. I have perused the copy of the plaintiff's passport produced at pages 114 – 121 of the consolidated bundles. At page 118 bears the date stamps of 2011 by the JKIA immigration office with dates of 01/02/2011 and 26/4/2011. The other part exhibited looks like a visa and or visitors' pass valid from 26/04/2011 to 31/07/2011. Page 10 of the passport has immigration stamps (JKIA) of 3/8/2011 and 20/9/2011 with the word "exit" in hand fixed next to the stamp on 20/9/2011.
267. Comparing with page 29 where the passport has writings of her departure from Norway on 28th October is indicated including the airline used (KQ and KL) and the destination. Such indication should have been entered for the date of arrival in Norway on the date of 20th September 2011 or the



day after depending on the times of the flights used. I find this was an important link to corroborate her allegations of forgery premised on the signing done when she was outside the country.

268. Another argument put forth by the Plaintiff in renouncing the signature was that it beat logic that if it is true she had donated the power of attorney to the said Orlov Orleg why would she still be the one signing the impugned sale agreement and transfer of lease? The purpose of a power of attorney was stated In re Estate of David Wang'ang'a Gichuhi (Deceased) [2021] eKLR L.Achode J (as she then was) held that;

According to Black's Law Dictionary, 10th Edition at page 136 a Power of Attorney defined as:

“An instrument granting someone authority to act as agent or attorney-in-fact for the grantor”

“In context a power of attorney is used to allow another person to act as if it was the person that is giving the power to act on their behalf. Examples are in transactions for sale of land, registration of intellectual property, filing of lawsuits, signing off on documents, opening of a bank account. A Power of Attorney can either be specific and is only executed for a particular purpose, or it can be general.”

269. I take the view that although the power of attorney donates to a third-party authority, it does not oust the power/authority of a donor to do a thing. Therefore, if Mr Orlov negotiated the prices of the properties and received payments thereof allegedly as the donee, nothing in law stopped the Plaintiff from executing the impugned documents in her own hand during the life of that PoA. Consequently, the fact of the existence of the PoA and her signing the documents may impute questionable conduct but does amount to proof of the alleged forgery of her disputed signature.
270. The Defendants on their part also explained why they were not party to any fraud as follows. It is the evidence of the 1st Defendant that he was introduced to Orlov by Joash Ombati (DW2) with Mr Ombati describing himself as an estate agent. The 1st Defendant affirmed that although the Plaintiff had accompanied Mr Orlov, he negotiated the price with the said Orlov premised on the power of attorney he held.
271. The 1st Defendant's case is that although it is the Plaintiff who signed the sale agreement and the transfer of lease, the negotiations was between him and Orlov. Further, at the time of signing the said documents, the 1st Defendant was not present (as she signed before her advocate). The discharge of charge was to be executed by the 4th Defendant hence the 6th Defendant relying on the PoA did not require the presence of the plaintiff to write the letters.
272. The 3rd Defendant also testifies to having been introduced to Orlov by DW2 and for purposes of this transaction, he proceeded deal with Mr Orlov (accompanied by the Plaintiff) premised on the strength of the power of attorney. The Plaintiff produced a letter from the Law Society of Kenya dated 22nd July 2016 which said the 3rd Defendant had not taken practicing certificate for 2011 but had taken the practicing certificate for the year 2012.
273. The 3rd Defendant said he had taken the practicing certificate for the year 2011 although the same was taken out late. If it was true that Mr Ongori did not have a practicing certificate at the time of drawing the agreement, it has been held that the omission does not invalidate the said document. See the case of National Bank of Kenya v Anaj Warehousing Limited (2015) eKLR where the Supreme Court held that documents drawn by an advocate who has not taken out a practising certificate are not necessarily invalid and the effect of striking out the pleadings drafted by such an advocate in that case amounted to unjust enrichment of one of the parties.



274. The 4th Defendant's is accused of releasing title documents to a third party without the consent of the Plaintiff. The Plaintiff made reference to an email/letter to the 4th Defendant not to release her titles. I perused through the documents filed but I did not come across the email or any letter written to the 4th Defendant before the 28th of September 2011. Therefore, the loan having been cleared and a representative of the Plaintiff presenting a PoA, the 4th Defendant could not again seek authentication for executing the discharges and or releasing the titles in their custody.
275. The 5th Defendant's role was administrative and involved the registration of the documents presented to them. By virtue of statute, its not their mandate to question signatures on documents.
276. The 6th Defendant through their witness stated that Mr Orlov was referred to them by the 4th Defendant also on the strength of the Special Power of Attorney. The 6th Defendant proceeded to draw the discharge of charges and also request for release of the suit titles. Thus the 6th Defendant claims writing to be acting on behalf of the Plaintiff was on account of the PoA donated.
277. The 1st Defendant's case is that although it is the Plaintiff who signed the sale agreement and the transfer of lease, the negotiations was between him and Orlov. Further, at the time of signing the said documents, the 1st Defendant was not present (as she signed before her advocate). The discharge of charge was to be executed by the 4th Defendant hence the 6th Defendant relying on the PoA did not require the presence of the plaintiff to write the letters.
278. The 6th Defendant has also explained themselves that Orlov informed them that the bank had rejected the discharge of charge prepared by the 3rd Defendant because he was in their panel of advocates. That this is the reason Orlov ended up at the 6th Defendant's offices. Was the 6th Defendant required to call the Plaintiff before undertaking the instructions? It is my considered opinion that doing so would defeat the purpose of a Power of Attorney.
279. The Plaintiff has denied selling the suit properties to the 1st and 2nd Defendants and accuse the 3rd, 4th and 6th Defendant's in colluding to dispossess her of the said properties. The fraud alleged finds its origin from a Mr. Orleg Orlov who claimed he was a beneficial owner the suit properties. In his witness statement dated 19th February, 2020 produced by the 1st and 2nd Defendants, he stated that he met the plaintiff in Norway in 1995.
280. Mr. Orlov stated that he would come into the Country with actual dollars, exchange the same into Kenya shillings and deposit them into the Plaintiff's account. He added that he guaranteed the loans obtained by the Plaintiff from I & M Bank and used to purchase the suit properties. Subsequently that he paid off those loans. He stated, that the Plaintiff signed the P. O. A to him to enable him deal with the properties as the owner.
281. To contradict the assertion of Mr Orlov, the Plaintiff called PW4 who is the advocate who represented her during her purchase transaction. The fact that there is no dispute that the properties were registered in the name of the Plaintiff and the fact that it is her signature appearing on the sale documents, the evidence of PW4 in regard to the impugned transaction is limited. This is because she did not take any part in the later sale. The advocate said she collected rent on behalf of the Plaintiff for a while but the instructions ceased.
282. The testimony of PW2 was three-fold, first to corroborate the evidence of the Plaintiff that the Plaintiff was outside the country at the time the sale to the 1st and 2nd Defendants took place. Secondly, that she was acting on behalf of the Plaintiff to manage the properties and thirdly, that she is the one who discovered the fraud after being called by Milka Mburu who told her the houses were on sale.



283. The evidence of PW5 in my view would be relevant in the event the case of the Plaintiff succeeds. Otherwise, whether the purchase price paid by the 1st and 2nd Defendants were an undervalue cannot be treated as a ground of fraud. Selling at an under value becomes fraud when there is evidence of coercion and or undue influence is proved to have been applied during the negotiations for the price. In this instance, the Plaintiff's case was that she did not sell but not I sold but under duress/undue influence.
284. The 3rd Defendant said Mr. Orlov in the company of the Plaintiff was introduced to him by Joash Ombati (DW 2) in the year 2007. That he saw Orlov in June 2011 still in the company of the Plaintiff and 2 others when now they asked him to draw the impugned power of attorney. In July of 2011, DW 3 said Orlov Orleg asked him to draw the affidavit dated 16th July, 2011 (found at page 144 of 1st and 2nd Defendants' bundle).
285. He met them again in September of 2011 with instructions to represent them in the disputed sale transaction. In cross-examination, the 3rd Defendant stated that before the enactment of the Attorney General's Act, nothing barred him from operating his private law practice. The Attorney General [Act no. 49 of 2012](#) was operationalized on 4th January 2013 so it is possible nothing stopped him from drawing the impugned sale agreement.
286. The 3rd Defendant said he was given verbal instructions by Mr. Orleg Orlov on the basis of the P.o.A. and he admits that there is no mention of the P.o.A in the sale agreement. He justified failure to include the power of attorney because the vendor was present. He insisted that the plaintiff appeared before him and he witnessed her sign.
287. Under further cross-examination the 3rd defendant admitted the special power of attorney was not exercised/applied. He also affirms that the plaintiff did not acknowledge any of the payments but he still insists the payment was made to both.
288. It is evident that the instructing client to the 3rd Defendant was Orleg Orlov who he avers had a special power of attorney. It is trite law and counsel admitted under cross-examination that a P.O.A can only be applied when the donor is absent. Hence it is inferred that where the donor was present, the proper person to have given him instructions ought to have been the plaintiff. Thus, the sale agreement as drawn as if the Plaintiff was the instructing client was irregular.
289. Although the Plaintiff allege that she was never paid consideration for the suit properties, that allegation is partially not true. The Plaintiff admits that she had a loan with the 4th Defendant. Although she presented evidence showing deductions from her account towards settling the loan, she did not give accounts how much had been paid and the outstanding balance as at the time the suit properties were disposed. The 4th Defendant confirmed receipt of payment of the outstanding balance and any such payments remitted to clear her indebtedness is deemed as monies received by her.
290. The only other persons who could have forged her signature in this instance is Orlov or the 3rd Defendant on the impugned transactions. Yet the Plaintiff did not sue him and so the court could not condemn him unheard under the doctrine of natural justice (although a mention is made that he died in the year 2023). The 3rd Defendant has explained himself that he witnessed the signature of the Plaintiff. His signature appearing on the impugned documents were not compared by an expert to confirm that they were made by the same person.
291. There is no evidence tendered that the 3rd Defendant did any part of the consideration to impute basis why he would forge the signature of the Plaintiff. There was no wrong doing on the part of the 4th and 6th Defendants who relied on the special power of attorney that was duly registered to release the title



documents. Thus, from the conduct of the plaintiff premised on the evidence adduced, I conclude by holding that she did sign the two sale agreements and the transfers of lease of the three suit properties in the presence of the 3rd Defendant.

Who is entitled to retain ownership of suit the property?

293. Assuming the Plaintiff is right that she never sold the land and so the orders sought in the further amended plaint in each of the three suits should be granted. Are the 1st and 2nd Defendants claim that they are bonafide purchasers for value valid and so their title should not be interfered with. The 1st Defendant stated that they made payments of the agreed purchase price and presented evidence of payments in favour of Orleg Orlov (some in form of acknowledgment signed and others via cash deposit into Orleg Orlov as shown in the bank Statement). It was stated on their behalf from Orlov's statement produced that part of the money was used to offset the loan.
294. The payments did not go through the accounts of the 3rd defendant who was allegedly acting for the plaintiff in the transaction. The 1st and 2nd Defendants thus affirm by way of evidence that they did not directly make any payments of the consideration to the Plaintiff. The burden then shifted on them to prove that they were innocent purchasers for value without notice as they were ably represented in the transaction with counsel.
295. The standard of proof for a bonafide purchaser for value was settled in the case of *Dina Management Limited vs County Government of Mombasa & 5 others* (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR), the Supreme Court stated that,

“for a court to establish whether a party is a bona fide purchaser for value, the court must first establish the root of the title right from the first allotment. The Court upheld the dicta in *Samuel Kamere vs Lands Registrar, Kajiado*, (supra) and stated that:“...in order to be considered a bona fide purchaser for value, they must prove; that they acquired a valid and legal title, secondly, they carried out the necessary due diligence to determine the lawful owner from whom they acquired a legitimate title and thirdly that they paid valuable consideration for the purchase of the suit property”

This position has recently been reaffirmed by the Supreme Court of Uganda in *Lwanga vs Mubiru and Others* (Civil Appeal 18 of 2022) [2024] UGSC 7, where the court held:‘The principle of bona fide purchaser for value without notice is a general defence in any transaction of sale or purchase of any property particularly land. The definition of bona fide purchaser for value without notice is “that buyer who has paid a stated price for the property without knowledge of existing or prior claims or prior equitable interest. Bona fide is a Latin word meaning good faith, without fraud, sincere, genuine. See (Black’s Law Dictionary 9th Edn Page 199). A bona fide purchaser is a buyer who buys without constructive or actual notice of any defects or infirmities against the seller’s title. See (page 1355 Black’s Law Dictionary 9th Edn. It is trite law that a person who relies on the defence of bona fide purchaser for value without notice has the burden to prove that he or she acted in good faith. The purchaser must have given due consideration and purchased the land without notice of the fraud. Such notice covers both actual and constructive notice of fraud. In the case of *Jones v. Smith* [1841] 1 Hare 43, the Chancery Court held: “a purchaser has constructive notice of fraud if he had actual notice, that there was some encumbrance and a proper inquiry would have revealed what it was (but if) it abstained either deliberately, carelessly from making those inquiries which a prudent purchaser would have made...then



the defence cannot be available to him or her” See Yakobo M. N Senkungu & Others v. Cresencio Mukasa Civil Appeal No 17 of 2014.”

296. The Plaintiff has referred to the decision in the case of Robert Mwanja Kiattu & Ano versus Peter Njenga Muhika & ano that listed the criteria to be fulfilled by a person relying on the doctrine of innocent purchaser. In this instance, the 1st Defendant stated how he met Orlov and the Plaintiff through one Joash Ombati. The said Joash Ombati gave his testimony, confirming that he knew both Orlov and Plaintiff at the time he introduced them to the 1st Defendant.
297. The houses were rented out at the time of sale and after the impugned transfers, the 1st and 2nd Defendants were put in possession. No evidence was led that they obtained the said possession by force. They produced a letter of offer for flat numbers 1 and 8 addressed to the Plaintiff drawn to the attention to Orleg. Both sale agreements were drawn by the 3rd Defendant acting on behalf of the vendor with the signing by the 1st Defendant and or his nominee before his advocate John A. O Masese.
298. In her evidence before this court, the Plaintiff has not created a nexus on the her signatures complained of and the role of the 1st and 2nd Defendants. For instance, the impugned special powers of attorney were drawn in June before the purchasers met the 3rd Defendant or Orleg Orlov. During the transaction each of them had their respective advocates. The impugned signature of the Plaintiff on the sale agreement was not appended in the presence of the 1st and 2nd Defendants. Neither did they (1st and 2nd Defendants) or their advocates request for the discharge of charges.
299. The only question raised by the Plaintiff is why they were paying the large sums of money in cash. The action of making a payment in cash by itself doesnot constitute fraud. Further, the Plaintiff wondered why the 1st and 2nd Defendants agreed to make payments to Orlov instead of her since it was her name in the sale agreement.
300. The 1st Defendant stated that they negotiated the price with Orlov (in the presence of the Plaintiff). Orlov was holding a PoA and legally, paying him was as good as paying the Plaintiff. By this time a complaint had not been raised to the PoA.
301. The Plaintiffs also submitted that the 1st and 2nd Defendants did not do a search to establish the status of the property. The status of the property did not change as the 1st and 2nd Defendants were aware the suit properties were in the name of the Plaintiff and Orleg was in the picture as a beneficial not registered owner so absence of a search does not take away the claim of innocent purchase. The evidence that the 1st and 2nd Defendants paid for the properties was not disputed except that payments if at all were made to the wrong person and the same were an under value.
302. Therefore, I conclude that the 1st and 2nd Defendants not having participated in the alleged fraud, they are entitled to retain the suit property. The question of the difference in the person signing the agreement being different from the person whose name appeared in the transfer of lease is not material. This is because there is no dispute on ownership as between the 1st and the 2nd Defendant and the 1st Defendant explained they were his nominees.

What orders should the court grant?

303. Following the analysis given herein above, I hold that the Plaintiff’s claim as against the 1st, 2nd, 4th, 5th and 6th Defendants are not proved. All the prayers as against them are hereby dismissed.
304. The only limb of prayers which included a prayer against the 3rd Defendant was stated under paragraph (e) seeking appropriate damages for the loss, inconvenience and anxiety set out in paragraph 12 and



14 of the further amended plaint. No particulars of loss are pleaded against the 3rd Defendant under paragraph 12.

305. Paragraph 14(viii) accuses him (3rd Defendant) of dealing with the property without express instructions. From the evidence adduced, the 3rd Defendant admitted the instructions were not in writing and so as the person representing the Plaintiff, he should have taken her best interests by explaining to her the weight and import of the documents she was appending her signatures on throughout the transaction. For this reason, I order the 3rd Defendant to pay the Plaintiff damages assessed at Kshs One Million (kes 1,000,000) for breach of duty of care.
306. Although the Plaintiff has lost the case as against the 1st 2nd 4th 5th and 6th Defendants, the circumstance of this case I find that the proper order to make on costs is that each party bear their respective legal costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 17TH DAY OF JULY, 2025

A. OMOLLO

JUDGE

