



**Shiundu v Agricultural Development Corporation & 3 others (Environment and Land Petition E004 of 2017) [2025] KEELC 5336 (KLR) (17 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5336 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA**

**ENVIRONMENT AND LAND PETITION E004 OF 2017**

**MC OUNDO, J**

**JULY 17, 2025**

**IN THE MATTER OF ARTICLES 20, 23, 40, 47, 67  
AND 159 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF THE CONTRAVENTION OF THE FUNDAMENTAL  
RIGHTS AND FREEDOMS UNDER ARTICLES 40 AND 47 OF THE CONSTITUTION**

**AND**

**IN THE MATTER OF LAND ACT, 2012, THE LAND REGISTRATION ACT AND THE  
ENVIRONMENT AND LAND COURT, THE AGRICULTURAL DEVELOPMENT  
CORPORATION ACT, CAP 444 AND THE FAIR ADMINISTRATIVE ACTION ACT, 2015**

**AND**

**IN THE MATTER OF L.R NO. 28068/551, GRANT NUMBER IR 162069**

**BETWEEN**

**JOHN SHIUNDU ..... PETITIONER**

**AND**

**AGRICULTURAL DEVELOPMENT CORPORATION ..... 1<sup>ST</sup> RESPONDENT**

**ANDREW TUIMUR ..... 2<sup>ND</sup> RESPONDENT**

**KWALITY ENTERPRISES IMITED ..... 3<sup>RD</sup> RESPONDENT**

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

**JUDGMENT**

1. Vide a Petition dated the 2<sup>nd</sup> May 2024, the Petitioner herein sought from court the following orders;



- i. A declaration that the 1<sup>st</sup> Respondent validly sold and transferred interest over the parcel of land known as title number I.R 162XXX9, Land Reference Number 280XXXX1 situated at Naivasha in Nakuru County to the Petitioner.
  - ii. A declaration that the Petitioner is lawfully registered as the proprietor of the property known as title number I.R 162XXX9, Land Reference Number 280XXXX1 situated at Naivasha in Nakuru County, having acquired a lawful and legal title thereof.
  - iii. A declaration that the Petitioner is entitled to ownership, occupation and use of the property known as title number I.R 162XXX9, Land Reference Number 280XXXX1 situated at Naivasha in Nakuru County to the exclusion of the Respondents herein.
  - iv. An order of prohibition prohibiting the Respondents herein from interfering with the Petitioner's right to access, use and otherwise deal with the property known as title number I.R 162XXX9, Land Reference Number 280XXXX1 situated at Naivasha in Nakuru County.
  - v. A declaration that the conduct of the Respondents in preventing the Petitioner from his continued use, possession and occupation of title number I.R 162XXX9, Land Reference Number 280XXXX1 situated at Naivasha in Nakuru County violates the Petitioner's right to property and fair administrative action under Articles 40 and 47 of *the Constitution* and is there unconstitutional, illegal, null and void to this extend.
  - vi. A declaration that the actions of the Respondents in interfering with the Petitioner's use and occupation of title number I.R 162XXX9, Land Reference Number 280XXXX1 situated at Naivasha in Nakuru County violates his legitimate expectation.
  - vii. A permanent injunction restraining the Respondents by themselves, their agents, assigns or representatives from remaining on, trespassing onto, charging, leasing, alienating, transferring, selling, auctioning or interfering with the Petitioner's title and possession of the property known as title number I.R 162XXX9, Land Reference Number 280XXXX1 situated at Naivasha in Nakuru County by forcible entry or otherwise in any manner prejudicial to the Petitioner, in default, an eviction order do issue which should be enforced by the OCPD Naivasha Sub County, Officer Commanding Station, Kongoni Police Station.
  - viii. A mandatory injunction compelling the 4<sup>th</sup> Respondent to annul, cancel and revoke any title document and instrument purporting to confer to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents ownership rights over title number I.R 162XXX9, Land Reference Number 280XXXX1 situated at Naivasha in Nakuru County, within seven (7) days of the judgment herein.
  - ix. An order that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents pay the Petitioner compensation of Kenya Shillings One Hundred Million (Kshs. 100,000,000.00) for violation of his rights and fundamental freedoms under *the Constitution*.
  - x. An order for costs of this petition.
2. The Petition was supported by an Affidavit of equal date sworn by John Shiundu, the Petitioner herein who deponed that he was the validly registered proprietor of all that parcel of land known as Land Reference Number 280XXXX1, Grant Number 1.R 162069 situated at Ndabibi in Naivasha Sub-County within Nakuru County ("the suit property"). That indeed, the 4<sup>th</sup> Respondent who was the custodian of all land records in the Republic of Kenya had on a number of occasions issued searches confirming that the Petitioner had been validly registered as the owner of the suit property.



3. That interest over the suit property was lawfully conveyed from the 1<sup>st</sup> Respondent to himself vide an instrument of transfer dated 26<sup>th</sup> November 2012 after the 1<sup>st</sup> Respondent had allocated him the suit property vide a letter dated 5<sup>th</sup> June, 2012 as an alternative to property known as L.R No. 205XXXX0 there having been a double allocation, upon receipt of his application for allocation vide his letter dated 7<sup>th</sup> January, 1997.
4. That accordingly, the 1<sup>st</sup> Respondent had communicated the allocation of property L.R No. 205XXXX0 vide its letter dated 24<sup>th</sup> July, 1997 which allocation he had duly accepted through a letter of 28<sup>th</sup> August, 1997.
5. That pursuant to the 1<sup>st</sup> Respondent's letter dated 16<sup>th</sup> April, 1998 communicated to him the purchase price for the property and other requisite charges which he was expected to remit to facilitate the processing of a transfer instrument and title in his favour, he had subsequently made the requisite payments of Kshs. 779,450/= as directed through a banker's cheque forwarded vide his letter dated 13<sup>th</sup> May, 1998 and whose receipt had been duly acknowledged through the 1<sup>st</sup> Respondent's letter dated 18<sup>th</sup> May, 1998 and receipt no. 14164.
6. That despite compliance, the 1<sup>st</sup> Respondent did not procure relevant completion documents to facilitate the registration of property L.R No. 205XXXX0 in his favour wherein after several reminders, the 1<sup>st</sup> Respondent vide its letter dated 5<sup>th</sup> June, 2012 allocated him the suit property as an alternative land which he accepted vide his letter dated 12<sup>th</sup> June, 2012. That the previous payment of Kshs. 779,450/= that had been made towards the purchase of L.R No. 205XXXX0 had then been applied towards the acquisition of the suit property via the letter of allocation.
7. That subsequently, he had executed a transfer instrument dated 26<sup>th</sup> November, 2012 with the 1<sup>st</sup> Respondent which instrument was duly registered on 29<sup>th</sup> November, 2012 by the 4<sup>th</sup> Respondent and he had been issued with a Certificate of Title IR No. 162069. That he took possession of the suit property and has been carrying out farming activities since the year 2012.
8. That despite the lawful acquisition of the suit property and taking possession thereto, the 1<sup>st</sup> Respondent in cahoots with the 2<sup>nd</sup> Respondent, who was its former Managing Director, gained forcible entry onto the suit property on 12<sup>th</sup> April, 2024 and purported to unlawfully evict him and his agents without any valid reason or justification wherein the 1<sup>st</sup> Respondent was in the process of conveying the same to the 2<sup>nd</sup> Respondent.
9. That subsequently, vide the petition herein, he was challenging the actions of the 1<sup>st</sup> Respondent on the basis that they had violated his right to property, fair administrative action and legitimate expectation under the provisions of Articles 40 and 47 of the Constitution respectively.
10. The 1<sup>st</sup> Respondent vide its response to the Petition filed a Cross-Petition all dated 20<sup>th</sup> November, 2024 denying the allegations contained in the Petitioner's Petition as if the same were traversed seriatim while stating that it was the absolute registered proprietor of property LR No.280XXXX1 derived from title IR No.23XXXX8 pursuant to a subdivision of IR.135943/1 as alienated from Land Survey plan number 334239. That it had never at any point attempted to sell and or transfer the suit property to the Petitioner. That it had been in occupation of the suit property from the time it took possession of the same to date and had all along engaged in the cultivation of seed maize on the suit parcels over the years.
11. That it had no record whatsoever of having allocated the suit property or any other parcel of land for that matter for purchase to the Petitioner herein and any documents and or correspondences that had purportedly been executed on behalf of the 1<sup>st</sup> Respondent were mere forgeries and a blatant act of



fraud on the part of the Petitioner. That contrary to the Petitioner's allegations, it was the Petitioner who has attempted to illegally trespass on the suit property and erect illegal structures thereon. That indeed, *the Constitution* of the Republic of Kenya protects both private and public property and in the present scenario, the suit property being public and held in trust by the 1<sup>st</sup> Respondent, the same should be protected by *the Constitution*.

12. That the Petition herein was an abuse of the Court process and did not meet the criteria of a proper constitutional petition as the issues raised herein and the remedies sought were based purely on a land dispute as to title and ownership and as such the same does not attract any constitutional sanctions. No demand or notice has been served upon it regarding the matter herein.
13. In its Cross-Petition, the 1<sup>st</sup> Respondent's stand was that the Petitioner herein had taken advantage of the ex-parte interim orders and trespassed into the suit property and erected illegal structures thereon. That he should therefore be evicted once the petition was dismissed.
14. It thus prayed for the dismissal of the Petition and that the cross-petition be allowed with costs.
15. In a rejoinder, the Petitioner denied the allegations contained in the 1<sup>st</sup> Respondent's response to Petition and Cross-Petition putting the 1<sup>st</sup> Respondent to strict proof thereof and reiterated the contents of his Petition and supporting affidavit. He stated that the 1<sup>st</sup> Respondent was not the absolute registered proprietor of property LR No.280XXXX1 derived from title of IR No.23XXXX8 pursuant to a subdivision of IR.135943/1 as alienated from Land Survey plan number 334239.
16. He reiterated the content of his Supporting Affidavit to the effect that he was the registered proprietor of the suit property and was currently in occupation of the same where he had cultivated maize and other crops in addition to drilling boreholes. That subsequently, the allegations that the 1<sup>st</sup> Respondent had neither sold nor transferred the suit property to the Petitioner was untrue. That in any case, the 1<sup>st</sup> Respondent having already transferred the suit property to him, on 29<sup>th</sup> November 2012, its interest in the suit property had ceased to exist thus it could not purport to confer the same on any other party including the 2<sup>nd</sup> Respondent herein who was its former Managing Director.
17. That the allegations that the 1<sup>st</sup> Respondent was in possession or occupation of the suit property was misleading since vide its own letter dated 9<sup>th</sup> April 2024, it had informed the DCC at Naivasha that the current occupant of the suit land was Dr. Andrew Tuimur, the 2<sup>nd</sup> Respondent herein.
18. That the ownership documents were not forgeries but had emanated from the 1<sup>st</sup> Respondent who had duly issued them to him. That further, he had not trespassed on the suit property and erected illegal structures thereon but instead, it had been the 1<sup>st</sup> Respondent who had repeatedly attempted to dispossess him of the land to confer it to the 2<sup>nd</sup> Respondent, its former Managing Director under circumstances that had clearly shown blatant abuse of office, corruption and fraud. That the Petition herein had satisfied the threshold for a constitutional Petition as required by law hence it was properly before court.
19. In response to the Cross-Petition, the Petitioner denied the contents therein and reiterated the contents of his Petition stating that his ownership and occupation of the suit property were legitimate and continuous since the year 2012 as the same had been validated by the transfer documentation that he had filed herein. That the activities undertaken on the land had been protected by the court's interim orders for which the 1<sup>st</sup> Respondent's Cross-Petition dated 20<sup>th</sup> November 2024 should be struck out, and judgement entered for him as prayed in his Petition dated 2<sup>nd</sup> May, 2024.
20. The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents did not Respond to the Petition.



21. By consent the Petition herein had proceeded for hearing through viva voce evidence on 12<sup>th</sup> February 2025 wherein the Petitioner herein testified as PW1 and introduced himself as a businessman and a farmer and that he lived in Nakuru.
22. His testimony was that in the year 2012, the 1<sup>st</sup> Respondent had allocated him the suit property, being land parcel No. 280XXXX1 measuring 32.26 hectares which land was located at Ndabibi within Naivasha.
23. He referred to the Petition dated 2<sup>nd</sup> May 2024 and confirmed that the same had set out the prayers that he had sought from court for which he sought to rely on. He also confirmed having executed the supporting affidavit sworn on 2<sup>nd</sup> May 2024 for which he also sought to rely on the contents therein and sought that the court adopts both the Petition, the Supporting Affidavit as well as the Supplementary Affidavit Sworn on 17<sup>th</sup> July 2024 and his Statement dated 3<sup>rd</sup> February 2025 as his evidence in chief.
24. He then confirmed that being in possession of a Certificate of Title to Land parcel of IR 162069 LR No. 280XXXX1, he was its proprietor after having purchased it. That he had been issued with the title on the 26<sup>th</sup> July 2012. He produced the copy of the title as Pet exh 1.
25. He referred to entry No. 2 on the title and confirmed that the land had been transferred to him on the 29<sup>th</sup> November 2012 by the 1<sup>st</sup> Respondent. That a search conducted on the 21<sup>st</sup> July 2016 had indicated that he was the owner of the suit property. He produced a copy of the search as Pet exh 2.
26. He further referred to a transfer document dated 26<sup>th</sup> November 2012 stating that the parties therein had been the 1<sup>st</sup> Respondent transferring the land to him wherein the transfer had been registered on 29<sup>th</sup> November 2012 affixed with a rubber stamp from the land's office therein. He produced a copy of the Transfer document as Pet exh 3.
27. That vide a letter from the 1<sup>st</sup> Respondent dated 5<sup>th</sup> June 2012 and signed by one Beatrice Kosgei, he had been allocated Ndabibi land Reference No. 28068/55 in place of LR 205XXXX0. That in fact the 1<sup>st</sup> Respondent had apologized to him because the initial land had been unavailable and hence they were giving him another land. That the land L.R No. 205XXXX0 had been given him to him earlier but was replaced with LR No. 280XXXX1 which was the subject matter of the case herein. That the second last paragraph of the said letter was a confirmation that the amount of money that he had earlier paid of Ksh. 779,450/= was applied towards the purchase of the subsequent land and the processing of a title deed. He produced a copy of the said letter as Pet exh 4.
28. He also produced an acceptance letter dated the 12<sup>th</sup> June 2012, as Pet exh 5, stating that he had addressed the same to the managing director of the 1<sup>st</sup> Respondent as an acceptance of land LR No. 280XXXX1 that they had given him as an alternative.
29. That prior to the acceptance letter he had sought from the 1<sup>st</sup> Respondent's Managing Director, vide a letter dated 7<sup>th</sup> January 1997, a parcel of agricultural land measuring 100 acres within Naivasha, to do some farming. He produced a copy of the said letter as Pet exh 6.
30. That after six months of his application, the 1<sup>st</sup> Respondent through a letter dated 24<sup>th</sup> July 1997 had informed him that he had been allocated land Reference No. 205XXXX0 measuring 23.05 hectares at a purchase price of Kshs. 750,000/=. That the said purchase price was not inclusive of survey, conveyance and other disbursement. That he had been informed that taking possession of the land was subject to payment. He produced the said letter dated 24<sup>th</sup> July 1997 as Pet exh 7. He had accepted the land vide his letter dated the 28<sup>th</sup> August 1997 wherein he had sought for full details of the amount that he was supposed to pay. He produced a copy of the said letter dated 28<sup>th</sup> August 1997 as Pet exh 8. That the



- said letter had been delivered to the 1<sup>st</sup> Respondent on the same day wherein it had been stamped as received.
31. That the 1<sup>st</sup> Respondent's response was through a letter dated the 16<sup>th</sup> April 1998 giving him a full tabulation of the amount of money that he was to pay to the 1<sup>st</sup> Respondent. That he was to pay a sum of Kshs. 779,450/= which was up by Kshs. 29,450/= from the initial purchase price so that he could be given ownership of the initial land being LR No. 205XXXX0. He produced a copy of the said letter dated 16<sup>th</sup> April 1998 as Pet exh 9.
  32. The through a letter dated the 13<sup>th</sup> May 1998, he had written to the 1<sup>st</sup> Respondent's Managing Director enclosing a banker's cheque for payment for the land which letter and cheque had been delivered to the 1<sup>st</sup> Respondent on the same day and acknowledged by being stamped. He produced the said letter as Pet exh 10. That the 1<sup>st</sup> Respondent acknowledged payment of Kshs. 779,450/= through a letter dated the 18<sup>th</sup> May 1998 which had enclosed and confirmed that receipt had been from Lands Ltd for payment for LR No. LR 205XXXX0. He produced the said receipt as Pet exh 12.
  33. That when it took long to make good of the transfer of land and issuance of title he had written a letter to the 1<sup>st</sup> Respondent's Managing Director dated 25<sup>th</sup> November 1999 asking them to make good of the transfer of land and issuance of title. That the said letter had been delivered to the 1<sup>st</sup> Respondent on the said date and acknowledged by being stamped. He produced the letter dated 25<sup>th</sup> November 1999 as Pf exh 13.
  34. His contention was that whereas he had been allocated parcel LR No. 205XXXX0, the same was not transferred to him. That was not until receipt of a letter dated 5<sup>th</sup> June 2012 that he had been informed that he had been given an alternative land LR No. 280XXXX1 (the suit property herein).
  35. That on the 5<sup>th</sup> November 2012, he had the 1<sup>st</sup> Respondent had executed an application for consent of Land Control Board (LCB) relating to parcel LR No. 280XXXX1 which showed that the purchase price was Kshs. 750,000/= He produced the Application for LCB Consent as Pet exh 14.
  36. That the subsequent letter of consent dated 14<sup>th</sup> November 2012 indicated he and the 1<sup>st</sup> Respondent as the parties in regard to LR No. 280XXXX1 – Naivasha. He produced the said letter of consent as Pet exh 15.
  37. The Petitioner then proceeded to testify that vide a letter dated 9<sup>th</sup> April 2024 the 1<sup>st</sup> Respondent had informed the DCC Naivasha that the suit property belonged to the 2<sup>nd</sup> Respondent which was wrong as he had been in possession of the suit property from the year 2012 to date. He produced a copy of the said letter as Pet exh 16.
  38. He then produced as Pet exh 17, a valuation report dated 22<sup>nd</sup> July 2024, by Reliance Valuers Limited which had placed the value of the suit property at Ksh. 80,000,000/= accompanied with the report, he also produced photographs of the suit property as Pet exh 18 (a-c).
  39. He testified that vide a letter from his Advocate M/S Keaton and Keaton Advocates dated 16<sup>th</sup> May 2024 and addressed to OCPD Naivasha Sub-County he had lodged a complaint against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents of interferences with his parcel of land because he could not enjoy his peace. He produced the said letter as Pet exh 19. That subsequently the court had directed its Deputy Registrar to visit the scene and prepare a report for which the scene was visited and a report dated 2<sup>nd</sup> May 2024 was prepared and which report he sought to relay on as his evidence.
  40. He thus requested the honorable court to grant the prayers sought in his Petition of 2<sup>nd</sup> May 2024.



41. In cross-examination Counsel for the 1<sup>st</sup> Respondent, he produced his identity card and confirmed that he was born in the year 1970. That in the year 1997, he had established that the 1<sup>st</sup> Respondent had land which was available for allocation because it had been in public domain.
42. When he was referred to Pet exh 6, he confirmed that he had applied for a parcel of land measuring 100 acres. He confirmed knowledge that one could be given a different acreage from the one sought depending on the affordability of the willing seller and willing buyer. He confirmed that he could afford the 100 acres at that time.
43. He further confirmed that on 24<sup>th</sup> July 1997 he had been allocated land Parcel LR No. 205XXXX0 measuring 23.05 hectares that was approximately 60 acres for which he had paid for in the year 1998 and that whereas Pf exh 7 had been copied to one Kirui, he had not meet him since he was dealing with the Headquarters. That he had accepted the land as one of the steps to take possession and paid the consideration but did not taken actual possession and neither had he physically gone to the 1<sup>st</sup> Respondent for a surveyor to take him around. He confirmed that Pet exh 9 was a tabulation in reference to the same parcel of land and that the amount therein was what he had paid for.
44. He also stated that he was not in control of the process and that he did not know why the 1<sup>st</sup> Respondent had not transferred the land. That between the year 1997 – 2012 which was a period of about 15 years, nothing had been forthcoming. That it had been after he had inquired from the 1<sup>st</sup> Respondent why the transfer of land had not been done, that he had been given a different parcel of land measuring 32.26 hectare which had a discrepancy of about 10 hectares, but for the same amount of money and that he did not pay extra money despite the suit land having measured 80 acres.
45. That however, it had well been articulated in their letter that they had given him an alternative land. That when he got the second allocation in the year 2012, he had accepted the land and asked them to speed up the process so that he could get the document processed. That in the same year 2012, he had been shown where he was residing today, which land measures 80 acres and the 1<sup>st</sup> Respondent had processed documents in his favour.
46. That he had been taken aback when the 1<sup>st</sup> Respondent claimed that his documents were forgeries yet the same were genuine as they had emanated from the 1<sup>st</sup> Respondent.
47. That he had come to court because on Friday the 12<sup>th</sup> April 2024, the 1<sup>st</sup> Respondent's employees and the 2<sup>nd</sup> Respondent had interfered with his peace occupation of the land wherein they had looked for goons to interfere with his peace. That since he had employed the villagers who knew people around, they had told him that the said people were the 1<sup>st</sup> Respondent's employees.
48. When he was virtually cross-examined by the Counsel for the 2<sup>nd</sup> Respondent, he confirmed that he was in possession of a title that had been issued to him on 29<sup>th</sup> November 2012. That Pet exh 1 was the mother title where his land had been derived from. That the said title had been derived from Survey Plan No. 334239. That he had paid a sum of Kshs. 779,000/= to the 1<sup>st</sup> Respondent for the land.
49. He maintained that his land was LR No. 280XXXX1. That he had produced a receipt dated 18<sup>th</sup> May 1998 as Pet exh 12 that showed that the money had been paid to Lands Limited which was not a party to the suit. That he did not make a copy of the banker's cheque. That whereas his identity card bore more than two names, the proceedings and documents herein bore two names, John Shiundu.
50. When he was referred to the 2<sup>nd</sup> Respondent's list of documents contained in the Replying Affidavit as annexure 2 in comparison to Pet exh 1, he confirmed that the words "Land Registration Act No. 3 of 2012 at Section 8", was "Land Act No. 6 of 2012", "Registration of Titles Act Cap 281 (repealed)



- was missing from his title and “Government Land Act 280 (repealed)” were also missing from his title. That further, in his title, the word “Certificate of Title” had appeared after the Court of Arms. He however clarified that he was not an expert hence he could not differentiate the documents.
51. He confirmed that the 2<sup>nd</sup> Respondent’s IR was indicated as 23XXXX8 while his was indicated as 162069. He responded that the title was registered to the 1<sup>st</sup> Respondent and had been delineated from Land Survey Plan No. 334239 which survey plan was the same with the one where his land had been delineated. He confirmed that the parcel of land being referred to was LR No. 280XXXX1 and that he was not aware of the case that had been filed by the 2<sup>nd</sup> Respondent in the Magistrate’s Court.
  52. When he was referred to the 2<sup>nd</sup> Respondent’s annexure 5, he confirmed that the document therein was not the same as his title on the face of it. That the IR No. was 123175. That although the certificate was not clear, he could see the name “Mike Kiangu Kazungu” and the land Reference No. 28058/551 which number was similar to the one on his title and the title in the 2<sup>nd</sup> Respondent’s annexure 2. That however, he was unable to see the location of the property on annexure 3. He confirmed that in Pet exh 1, the location of the land was west of Lake Naivasha in Nakuru District which was similar with the location in annexure 2.
  53. On being referred to annexure 5, he testified that the location therein was blurry. When he was referred to the land survey plan on annexure 5, he confirmed seeing the delineated survey Plan No. 470754. That at entry No. 3 the land had been transferred to Kwality Enterprises Limited, the 3<sup>rd</sup> Respondent herein on 13<sup>th</sup> May 2020.
  54. He confirmed that there were 3 titles to the suit property, one held by the 1<sup>st</sup> Respondent, himself and the 3<sup>rd</sup> Respondent. He also confirmed that he had a claim against the 3<sup>rd</sup> Respondent. He further confirmed that he had paid the total sum and not in piece meal.
  55. He reiterated that after applying for land in July 1997, the parcel of land that he been initially allocated was LR No. 205XXXX0 measuring 23.05. He confirmed that he had a non-disputed land and a disputed land. That he had been given Land parcel LR No. 280XXXX1 which he was now claiming and which was the disputed parcel of land the reason for the current suit. That the non-disputed land was what had remained with the 1<sup>st</sup> Respondent being LR No. 205XXXX0.
  56. When he was referred to Pet exh 9, he confirmed that the letter had been signed by Kilele (DR) for Managing Director and that he did not know who the Managing Director was at the time. That whereas he could see the photograph of the Managing Director in Pet exh 3, he did not know him although he could also see both the PIN number and ID No. He also stated that whilst he had been summoned to sign the document, he had never met with the Managing Director and neither did he know whether or not the said Director was signing the documents for the 1<sup>st</sup> Respondent.
  57. He also confirmed that he did not know the person whose image appeared at Page 10 of his bundle and whether the number appearing therein was the identity card or Passport since he was not aware of the documents that had been used. His evidence was that the Managing Director might have been acting on behalf of the 1<sup>st</sup> Respondent since he could see a rubber stamp or seal.
  58. On being referred to Pet exh 4, he confirmed that he was given LR No. 280XXXX1 in place of LR No. 205XXXX0 and that he did not have a claim over LR No. 205XXXX0. He further confirmed that Beatrice Koskei who had been the Managing Director had signed the letter. When he was referred to Pet exh 5, he confirmed that he had served the letter upon the 1<sup>st</sup> Respondent on 12<sup>th</sup> June 2012 wherein he had remained with several copies. He admitted that No. “2” has been inserted therein with a pen.



59. In re-examination, and when referred to Pet exh 3, he confirmed that they had never met with the person in the photograph physically. That further, he had never met the Chairman of the 1<sup>st</sup> Respondent and that the said photograph had been affixed on the document at the time the title was being transferred.
60. He opined that since the Chairman and the Managing Director were the owners of the land, they could act on behalf of the 1<sup>st</sup> Respondent. He also confirmed that the first number was an identity Card while the second was the PIN number. His evidence had been that there had been no evidence that both the Managing Director and Chairperson had no authority to sign the document on behalf of the 1<sup>st</sup> Respondent.
61. He confirmed that the purchase price of the parcel of land before the court was Kshs. 779,450/= which had not been determined as per acre and that it had been the seller to determine the cost. That he had been referred to Pet exh 1 side by side with the 2<sup>nd</sup> Respondent's annexure 2, and whereas the said annexure was not signed, his title had been signed.
62. He explained that Pet exh was first issued on 26<sup>th</sup> July 2012 by the registrar of titles and that he did not have control over the format of the document and whereas it had referred to Registration of Titles Act Cap 281 annexure 2 had referred to both the Registered Land Act and Land Registration Act.
63. When he was referred to annexure 5, he confirmed that whereas the IR No. of his certificate of title was 162069 the IR No. on annexure 5 was 123175. That further, whereas the Land Survey Plan No. on Pet exh 1 was 334239, the one in annexure 5 was 470754. That subsequently although both the IR and the land survey plan numbers were not the same, there had been no report suggesting that he had committed any fraud.
64. On being referred to Pet exh 7, he confirmed that at the time, the Managing Director had been one Dr. W. K. Kilele MBS who had signed the letter although he was not familiar with the process of signing letters in the 1<sup>st</sup> Respondent. That Beatrice Kosgei had signed the title dated 5<sup>th</sup> June 2012 (Pet exh 4) as a Managing Director but that they had allocated him the land and the 1<sup>st</sup> Respondent was responsible for the Documents that he held which had been sent to him through his postal address.
65. He also confirmed that the 1<sup>st</sup> Respondent had instructed him to make payments to lands limited meaning that they were one and the same. That indeed, the 1<sup>st</sup> Respondent had acknowledged his payment by giving him a receipt meaning that they had seen his banker's cheque.
66. He confirmed that the two parcels of land were not in the same location and that whereas it was not his duty or responsibility to lodge documents in the lands office, he had taken positive steps to follow up the process wherein in the year 1999, he was unhappy and had written a letter in protest.

**The Petitioner thus closed his case.**

67. The Respondents case began with the testimony of one Benson Okello, the 1<sup>st</sup> Respondent's Security Manager who testified as DW1 to the effect that he was in court following the dispute between the 1<sup>st</sup> Respondent and Mr. John Shiundu, where the Petitioner had lay claim to ownership of the suit property.
68. He adopted his witness statement dated 3<sup>rd</sup> February 2025 as his witness statement in chief and proceeded to testify that the suit parcel of land LR No. 280XXXX1 Grant No. LR 162069 measuring approximated 80 hectares was situated in Ndabibi Central area. That the 1<sup>st</sup> Respondent had been in occupation of the said land and he that he did not know whether or not the land was sold to the Petitioner or not.



69. On cross-examination by the Counsel for the 2<sup>nd</sup> Respondent, he confirmed that he works at the 1<sup>st</sup> Respondent who had been in occupation of the suit property wherein the Petitioner had entered into the suit property in the year 2024 although he did not know how. He also confirmed that the 1<sup>st</sup> Respondent was in possession of the title to the suit property
70. When he was referred to the title marked as “annexure NA 1” in the Affidavit of Nicholas Ayugi, RMFI 1, he confirmed that the same was registered to the 1<sup>st</sup> Respondent and was in respect of L.R No.280XXXX1 and IR 23XXXX8 measuring 32.26 hectares in deed plan No. 334239. He also confirmed that the second annexure was the deed plan No. 334239 to the title and that this document contained 3 rubber stamps from the department of lands.
71. When he was referred to the deed plan annexed on the Pet exh 1, he testified that there were no rubber stamps from the department of lands thereon. He also confirmed that the Petitioner’s certificate of title was IR No. 162069. That the acreage on the said title was 32.26 hectares and the same was in the 1<sup>st</sup> Respondent’s name.
72. He maintained that he did not know whether the 1<sup>st</sup> Respondent had sold the land to the Petitioner neither was he aware of a matter that had been filed in the lower court by Quality Enterprise, the 3<sup>rd</sup> Respondent herein. He confirmed that he was only aware of the issue between the 1<sup>st</sup> Respondent and the Petitioner.
73. Upon being referred to annexure DKT 5 – RMFI 2 in the 2<sup>nd</sup> Respondent’s list of documents, he confirmed that the same was a title in respect of LR No. 28065/551 that was west of Lake Naivasha within Nakuru District. That the IR No. was 123175 while the survey plan was No. 470754 and that the said land had been transferred to Kwality Enterprises Limited, the 3<sup>rd</sup> Respondent herein. That subsequently, there had been three (3) titles.
74. When he was cross-examined by the Counsel for the 4<sup>th</sup> Respondent, he confirmed that he was a Security Manager at the 1<sup>st</sup> Respondent and that the said 1<sup>st</sup> Respondent had been in occupation of the suit property since its inception around the year 1960.
75. He confirmed that there were structures on the ground comprising of buildings, Green houses and animals. That there was a permanent bungalow house therein. He confirmed that he when he visited the land, the Petitioner was living in the said house and had drilled a bore hole.
76. He however maintained that the 1<sup>st</sup> Respondent owned the suit property and although it had documents to show the said ownership, he was neither the custodian of the said documents nor had he seen them but had only heard that they existed. That the 1<sup>st</sup> Respondent’s advocates were in custody of the documents. He reiterated that he was not aware of whether or not the 1<sup>st</sup> Respondent had sold the land to the Petitioner.
77. When cross-examined by Counsel for the Petitioner, he confirmed that he had joined the 1<sup>st</sup> Respondent as an employee on 1<sup>st</sup> October 2019 as head of Security Manager. That there was a record department at the 1<sup>st</sup> Respondent hence he could not speak on matters relating to allocation of land by the 1<sup>st</sup> Respondent. He confirmed that the 1<sup>st</sup> Respondent was not currently in occupation of the suit property, instead, the Petitioner was the one occupying the same although he did not know the specific date of occupation but that the Petitioner had undertaken numerous economic developments on the suit property.
78. He confirmed that the 1<sup>st</sup> Respondent was a state corporation that was obligated to keep records on specific activities it undertook on the land and also keep records on inputs and out puts of farm produce



- on the land. That there would be an audit on the said activities as there was a budget and the money had to be accounted for. That nonetheless, he did not have the records of the said activities by the 1<sup>st</sup> Respondent on the land.
79. He confirmed that there was a report that had been made to the police about the occupation by the Petitioner on the suit property but the report was not acted upon. That to date, there had been no finding by the police to the effect that the Petitioner's occupation of the suit property had been illegal neither had they charged the Petitioner.
80. That he was aware of the allegations of forgery and fraud that had been made against the Petitioner. That since his training was in Criminology and Security Management, he understood that fraud and forgery were very serious matters and that they were not to be made without expert reports. That there needed to be a forensic examiner's report to conclude that a document was a forgery. That whereas the report had to be prepared by a forensic report examiner, he did not have such report since they had not reported to the forensic examiners.
81. When he was referred to Pet exh 1, he confirmed that the deed plan annexed therein was dated 31<sup>st</sup> May 2012 and that the same had been verified by the Director of Surveys. That he had never seen the copy or original title held by 1<sup>st</sup> Respondent. He confirmed that Pet exh 1 was title No. IR 162069 that had been issued to the 1<sup>st</sup> Respondent on 26<sup>th</sup> July 2012. That entry No. 2 had indicated that the same had been transferred to the Petitioner on 29<sup>th</sup> November 2012. That further, it had an original deed plan No. 334239 annexed therein which had a seal. That he had not seen the originals of the other two titles that he had been referred to.
82. When he was referred to transfers, that is, Pet exh 3, the original document, he confirmed that whereas he had been referred to RMFI 2, he had not been shown any transfer that had gave rise to that title. He confirmed that the date of transfer on the said document was 26<sup>th</sup> November 2012, where the parcel of land was LR 280XXXX1 and the parties therein were the 1<sup>st</sup> Respondent as the transferor to the Petitioner as the transferee.
83. That the transfer had been presented to the lands office on 29<sup>th</sup> November 2012 where it had been executed by the 1<sup>st</sup> Respondent. He confirmed that the photograph therein was the image of the former Managing Director of the 1<sup>st</sup> Respondent, one Mr. William Kirua. That the document had a signature of the said Director and that he could see and feel a seal on the transfer.
84. He confirmed that he could also see the photograph of the former Chairman of the 1<sup>st</sup> Respondent whose signature had appeared on the document. He confirmed that the photograph of the Petitioner whom he had seen testifying was also on the last page. That the transfer had been registered on 29<sup>th</sup> November 2012 and that the seal appearing on the transfer belonged to the 1<sup>st</sup> Respondent.
85. His response when he was referred to Pet exh 4, was that the said document had been written on the 1<sup>st</sup> Respondent's letter head and had been signed by Beatrice Koskei, the 1<sup>st</sup> Respondent's Managing Director and a former Cabinet Secretary. That there was nothing to show that she had disowned the letter.
86. In relation to Pet exh 7, he confirmed that the same was a letter dated 24<sup>th</sup> July 1997 on the 1<sup>st</sup> Respondent's letter head and whose original copy he had seen. That the said letter had been signed by the late former Managing Director, one Mr. Kilele. That he had nothing to show that both letters had been disputed as having been signed by Beatrice and Kilele.
87. In reference to Pet exh 9, he confirmed that the same also had the 1<sup>st</sup> Respondent's letter head, was dated 16<sup>th</sup> April 1998 and was signed by Dr. Kilele (EBS). That he had nothing from the 1<sup>st</sup> Respondent



contradicting the said signature. When he was referred to Pet exh 11 and 12 he confirmed that the same was a letter dated 18<sup>th</sup> May 1998 on the 1<sup>st</sup> Respondent's letter head signed by Mr. Otieno who was the former lands administrator and that he had nothing from the said Mr. Otieno disowning the letter.

88. That Pet exh 12 was a receipt that had been issued by Lands Limited. He explained that the 1<sup>st</sup> Respondent had started in 1960's with Lands Limited hence payments were made to Lands Limited which was a subsidiary of the 1<sup>st</sup> Respondent. That the said receipt bore a signature and that he had nothing from the 1<sup>st</sup> Respondent that contradicted them.
89. In relation to annexure AKT 1 – "RMFI 3", he confirmed that he had not come across the said letter dated 9<sup>th</sup> April 2024 and that although in his evidence he had alluded that the 1<sup>st</sup> Respondent was in occupation of the suit property, he did not want to allude that Dr. Tuimur, the 2<sup>nd</sup> Respondent herein was in occupation. That he had neither been shown or seen a title in the name of the said 2<sup>nd</sup> Respondent nor a lease issued by the 1<sup>st</sup> Respondent to the 2<sup>nd</sup> Respondent who was a former Managing Director of the 1<sup>st</sup> Respondent.
90. He confirmed that the 1<sup>st</sup> Respondent could only get into an arrangement for lease of land with its Managing Director officially but not otherwise and that he had not seen any such arrangement. He confirmed that the dispute herein was between the 1<sup>st</sup> Respondent and the Petitioner.

The 1<sup>st</sup> Respondent thus closed its case.

91. On 28<sup>th</sup> April 2025 when the matter had come up for further hearing of the Respondents' case, the 2<sup>nd</sup> to 4<sup>th</sup> Respondents' Advocates on record indicated that they would not be calling any witnesses. Subsequently, their respective cases were marked as closed and directions taken for the filing of submissions as summarized herein under.

### **Petitioner's submissions**

92. Vide its Submissions dated 13<sup>th</sup> May 2025, the Petitioner summed up the case before framing his issues for determination as follows:
- i. Whether the Petitioner has established that his registration as the owner of L.R No. 280XXXX1 (the suit property) is valid.
  - ii. Whether the Respondents have proved allegations of fraud against the Petitioner.
  - iii. Whether the 1<sup>st</sup> Respondent has established that grant number 23XXXX8 for L.R No. 280XXXX1 is valid.
  - iv. As between the Petitioner, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents who has been in occupation of the suit property?
  - v. Whether the 2<sup>nd</sup> Respondent is entitled to ownership and occupation of the suit property.
  - vi. Whether the Respondents have violated the Petitioner's constitutional rights
93. On the first issue for determination, as to whether the Petitioner had established that his registration as the owner of L.R No. 280XXXX1 (the suit property) was valid, reliance was placed on the provisions of Section 107 of the *Evidence Act* and the decided case of Richard Kipkemoi Limo v Hassan Kipkemboi Ngeny & 4 others [2019] eKLR to submit that he had a duty to prove that his registration as the owner of the suit property was valid, legal and free from any encumbrance before a determination could be made on whether the conduct of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents constituted a violation of his right to property, legitimate expectation and fair administrative action under *the Constitution*.



94. His reliance was then hinged on the Court of Appeal's decisions in the case of Dr. Joseph Arap Ngok v Justice Moiyo Ole Keiwa & 5 others [1997] eKLR and Wreck Motors Enterprises v The Commissioner of Lands & 3 others CA No. 71 of 1997 (Nairobi) (unreported) to submit that it was not contested that the suit property had previously belonged to the 1<sup>st</sup> Respondent, a State Corporation which was established under Section 3 of the Agricultural Development Corporation Act with the powers of to sell, dispose of or deal with any immovable property. That the Court had settled the position that where one alleged acquisition of land from the 1<sup>st</sup> Respondent, he must, pursuant to the provisions of Section 13 (2) (c) of the Agricultural Development Corporation Act, establish the existence of documentary evidence to that effect and payment of the agreed price. Reliance was placed in the decided case of Joseph Muya Njuru v Stephen Njoroge Kunda & 4 others [2019] eKLR.
95. That the Petitioner had proved that he held a valid interest over the suit property as he had not only produced the Grant No. 162069 in his name but that he had also produced documentary evidence that had shown how he had acquired the said land from the 1<sup>st</sup> Respondent which included, letters of allotment dated 24<sup>th</sup> July 1997 and 16<sup>th</sup> April 1998, his acceptance of the said offers, and a payment receipt of Kshs. 779,450/= to the 1<sup>st</sup> Respondent dated 13<sup>th</sup> May 1998. That the 1<sup>st</sup> Respondent did not transfer the land to him but offered to allocate him another land vide a letter dated 5<sup>th</sup> June 2012 to wit L.R No. 280XXXX1, the suit property herein, in place of L.R No. 205XXXX0, which was a subject of double allocation, and on the same terms of consideration as the earlier allotment, an offer which the Petitioner accepted vide a letter dated 12<sup>th</sup> June 2012. That there had been a transfer dated the 26<sup>th</sup> November 2012 executed by the 1<sup>st</sup> Respondent herein as well as a consent from the Naivasha Land Control Board that had been obtained on 14<sup>th</sup> November 2012 wherein he had subsequently procured his instrument of title, Grant No. 162069 legitimately on the 29<sup>th</sup> November 2012 He placed reliance in the decided case of Munyu Maina v Hiram Gathiha Maina [2013] eKLR.
96. On the second issue for determination as to whether the Respondent had proved the allegations of fraud against the Petitioner, submissions were to the effect that where fraud was claimed, there must be a clear and distinct allegation of fraud in the pleadings. Reliance was placed in the decided case of Vijay Morjaria v Namsing M Darbar & another [2000] eKLR. That allegations of fraud could not be established by affidavit evidence but must be pleaded and proved at a hearing with cross-examination. Reliance was placed in the decisions in Namisha Somchand Shah v Resident Magistrate, Mombasa & 3 others [2017] eKLR and Vivo Kenya Limited v Maloba Petrol Station Limited & 3 others [2015] eKLR.
97. That although the allegations of fraud against the Petitioner had been set out in the 1<sup>st</sup> Respondent's Replying Affidavit of one Nicholas Ayugi sworn on 27<sup>th</sup> May 2024 and the 2<sup>nd</sup> Respondent's witness statement dated 4<sup>th</sup> February 2025, none of these persons had testified at the hearing or cross-examined during the viva voce hearing. The said allegations were therefore unsubstantiated. Indeed, DW1 (the 1<sup>st</sup> Respondent) confirmed in evidence that he did not know whether or not the disputed parcel was sold or transferred to the Petitioner by the 1<sup>st</sup> Respondent and that there was no basis for the Respondent to allege fraud against the Petitioner as no forensic document examination report had been obtained nor a report of fraud lodged with the police. That indeed the documents held by the Petitioner had originated from the 1<sup>st</sup> Respondent and had been signed by its officials who had not disowned them.
98. On the third issue for determination as to whether the 1<sup>st</sup> Respondent had established that grant number 23XXXX8 for L.R No. 280XXXX1 was valid, submissions were to the effect that the said Grant was not produced in evidence and while placing reliance on the decision in Richard Kipkemoi Limo's case (supra) submitted that after the Petitioner had led evidence of ownership of the suit land,



- the 1<sup>st</sup> Respondent bore the burden of not just disputing transfer of interest, but also demonstrating that Grant No. IR 23XXXXX8 which it held, validly existed. This burden was not discharged.
99. He placed reliance in the decided case of *Kenneth Nyaga Mwige v Austin Kiguta & 2 others* [2015] eKLR to submit that the said Grant No. IR 23XXXXX8 was hearsay and untested hence incapable of conferring any proprietary interest. That aside, no evidence was tendered by DW1 on how the said Grant, if it existed, had been acquired long after the interest over the suit property had been conveyed to the Petitioner. To this effect, the 2<sup>nd</sup> Respondent's claim over the disputed land was also without foundation. Reliance was placed in the decided case of *Macfoy v United Africa Co. Ltd* [1961] 3 All ER, 1169.
100. His reliance was placed in the decided case of *David Kimani Gicharu v Peter Mburu Burugu & 4 others* [2024] eKLR to submit that whereas the 1<sup>st</sup> and 2<sup>nd</sup> Respondents had not proved that Grant Number IR 23XXXXX8 validly existed, the Petitioner's title number IR 162069, whose validity had been established was in existence had constituted impropriety. Reliance was placed on the provisions of Section 26 (1) (b) of the [Land Registration Act](#) and the decided case of *Elijah Makeri Nyangwara v Stephen Mungai Njuguna & Another* [2013] eKLR to submit that the purported Grant No. 23XXXXX8 that had been issued on 13<sup>th</sup> February 2020 had been acquired illegally and unprocedurally by the 1<sup>st</sup> Respondent since the interest in the same had long been transferred to the Petitioner and should therefore be revoked/cancelled pursuant to the provisions of Article 40(6) of [the Constitution](#) and Section 26 (1) (b) of the [Land Registration Act](#).
101. As to who had been in occupation of the suit property between the Petitioner, the 1<sup>st</sup> and the 2<sup>nd</sup> Respondents, their submission had been that a site visit as ordered by the court had confirmed that the Petitioner was and had been in occupation of the suit property. That there had also been the production of photographs as evidence and a certificate under the provisions of section 65(8) and 106B (4) of the [Evidence Act](#) that spoke to the nature of his occupation and the activities carried out on the suit property.
102. That the court should reject the 1<sup>st</sup> Respondent's assertion that it had taken possession of the suit property in the year 2024 which assertion was not sustained by the evidence of DW1 who had informed the court that he could not tell the date and time when the Petitioner had allegedly taken possession nor did he provide evidence of any eviction report that had been made to the police.
103. On the fifth issue for determination as to whether the Respondents had violated the Petitioner's constitutional rights, he placed reliance on the provisions of Section 24 (a) of the [Land Registration Act](#) to submit that the registration of the Petitioner as the proprietor of the suit land had vested in him absolute ownership thereof including the right to access and use the land as he please. That the 1<sup>st</sup> Respondent had not placed any material before the court to controvert the assertion by the Petitioner that it had trespassed onto the suit property on 12<sup>th</sup> April 2024 or threatened him with eviction. That further, the record had shown that despite transferring interest over the suit property to the Petitioner on 29<sup>th</sup> November 2024, the 1<sup>st</sup> Respondent had obtained another questionable title number IR 23XXXXX8 over the same land.
104. That the procurement of a parallel title over the suit property in the year 2020 whilst aware that the Petitioner had acquired interest over the same way back in the year 2012 coupled with the threat to convey interest to the 2<sup>nd</sup> Respondent had run afoul of the provisions Section 24 of the [Land Registration Act](#) and Article 40 of [the Constitution](#) which protects the Petitioner's property rights including the right to access and utilize the suit property with the intent of depriving the Petitioner the suit property.



105. He thus urged the court to find that the 1<sup>st</sup> Respondents actions were a violation of the Petitioner’s right to acquire, own and use the suit property under the provisions of Article 40 (1) of *the Constitution*.
106. He placed reliance on the provisions of Article 40 (3) of *the Constitution* and the Court of Appeal’s decision in *Mtana Lewa v Kahindi Ngala Mwangandazi* [2015] eKLR where the court had cited the India Supreme Court’s decision in *State of Haryana v Mukesh Kumar & Others*, Petition for Special Leave to Appeal (Civil) No. 28034 to submit that the right to property was a human right that was constitutionally protected and that could only be deprived of as provided for in *the constitution*.
107. That the deprivation of the Petitioner’s right to free access and use of the suit land did not meet the constitutional muster since the same had neither been for public purpose nor in the public interest. That further, the Petitioner had not received prompt payment, in full of a just compensation for the suit property. He thus urged the court to indict the 1<sup>st</sup> and 2<sup>nd</sup> Respondents for violating his right to acquire, own and utilize the suit property under the provisions of Article 40 of *the Constitution*.
108. Reliance was also hinged on the decisions in the case of *Kenya Re-Insurance Corporation v National Land Commission* [2018] eKLR and *Onyango v Attorney General* (1986-1989) EA 456 to submit that it was settled under *the Constitution* and the *Land Registration Act* that a registered proprietor’s right to use and access his land could not be revoked or varied without the proprietor being afforded an opportunity to be heard. That further, courts had been consistent on the importance of the rules of natural justice and in particular hearing a person who was likely to be adversely affected by a decision before the said decision was made.
109. That the 1<sup>st</sup> Respondent’s decision to procure a parallel title whilst the Petitioner was registered as the owner of the disputed parcel had interfered with his occupation and its further threat of transferring the interest in the suit properties to the 2<sup>nd</sup> Respondent vide a letter dated 9<sup>th</sup> April 2024, although illegal, had constituted administrative actions that must meet the threshold set by *the Constitution* and the provisions of the Fair Administrative Actions Act, 2015. That the making and implementation of the decision to either obtain parallel title or interfere with the Petitioner’s continued use and occupation of the suit property had violated his right to fair administrative action under the provisions of Article 47 of *the Constitution* and Section 4 (2) of the *Fair Administrative Action Act*, 2015 in the following ways:
- i. The 1<sup>st</sup> Respondent was aware that it had allocated the Petitioner the suit property, wherein he had complied with conditions for allocation and had obtained a valid title and his rights were bound to be adversely affected by its conduct. That however, no prior and adequate notice of the nature and reasons for the proposed administrative actions had been given.
  - ii. That no opportunity to be heard or make representation on whether the Petitioner’s continued use suit property should be denied had been given to him.
  - iii. That no notice of a right to review or internal appeal against the cations/decisions of the 1<sup>st</sup> Respondent was given to the Petitioner.
  - iv. That the 1<sup>st</sup> Respondent did not provide the Petitioner with information, material and evidence that had been relied upon in making the decision to interfere with his ownership and occupation.
110. He placed reliance in the Supreme Court’s decision in the case of *Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others* [2014] eKLR to submit that for a claim based on legitimate expectation to succeed, there must be an express, clear and unambiguous promise given by a public authority. That the Petitioner had relied on the 1<sup>st</sup> Respondent’s representation and



promise contained in its letter dated 5<sup>th</sup> June 2012 that had created a legitimate expectation, that it would pass good title over the suit property to the Petitioner whose rights should not be liable for impeachment and should enjoy all the privileges and appurtenances thereto free from other interests and claims.

111. That it was lawful and valid for the 1<sup>st</sup> Respondent to make and fulfil the said promise hence in procuring the Grant No. IR 234038 over the suit property while aware that it had sold and transferred the same to the Petitioner who was holding Grant No. IR 162069 to date, the 1<sup>st</sup> Respondent had violated the Petitioner's legitimate expectation that it would pass a good title to him. He thus urged the court to find that his claim to the effect that the 1<sup>st</sup> Respondent had violated his legitimate expectation had merit.
112. In conclusion, he urged that since he had demonstrated that he had been allocated the suit property herein by the 1<sup>st</sup> Respondent who had failed to lead evidence that it had proprietary right over the same property, the Court should grant prayers (i) to (ix) in the Petition dated 2<sup>nd</sup> May 2024 and further award him costs.

### **1<sup>st</sup> Respondent's Submissions.**

113. The 1<sup>st</sup> Respondent vide its submissions dated 13<sup>th</sup> May 2025 also summarized the factual background of the matter and then framed its issues for determination as follows;
  - i. Who is the lawful proprietor of the suit property?
  - ii. Who is in the actual occupation of the suit property?
  - iii. Whether allegations of fraud have been proven.
  - iv. What remedies should issue?
114. On the first issue for determination as to who was the lawful proprietor of the suit property, the 1<sup>st</sup> Respondent submitted that there were different parties claiming the suit property being:
  - i. The Petitioner on the strength of the certificate of title for Land Reference Number 280XXXX1, IR No. 162069 as delineated on Land Survey Plan No. 334239.
  - ii. The 1<sup>st</sup> Respondent through the certificate of title for Land Reference Number 280XXXX1, IR 234029 as delineated on Land Survey Plan No.334239.
  - iii. The 2<sup>nd</sup> Respondent, on the strength of the letter by the 1<sup>st</sup> Respondent dated 9<sup>th</sup> April 2024 that had indicated that he was the lawful occupant.
  - iv. The 3<sup>rd</sup> Respondent, based on a certificate of title for Land Reference Number 280XXXX1 IR 133175 as delineated on Land Survey Plan No. 470754.
115. Reliance was placed on the decided case of Hubert L. Martin & 2 Others v Margaret J. Kamar & 5 Others [2016] eKLR to the effect that there cannot be two titles to a land. Further reliance was placed on the decisions in the cases of Wreck Motor Enterprises v Commissioner of Lands & others [1997] eKLR, Torino Enterprises Ltd v Attorney General [2023] KESC 79 (KLR) and Satan Investments Ltd v J.K Mbugua Civil Appeal No. 164 of 2004 to submit that whereas the Petitioner, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents had claimed the suit property on the basis of the allocation by the 1<sup>st</sup> Respondent, there was a settled jurisprudence on how interest over property allocated by the government could legally accrue to an individual.



116. In analyzing the Petitioner's case, it submitted that indeed the Petitioner's case had been that he was the validly registered proprietor of the suit land having been allocated the same as an alternative to the parcel of and known as L.R No. 205XXXXX0 which had been previously allocated to him and which had a double allocation.
117. That although the Petitioner had produced a list of documents in evidence which on the face of it he appeared to have acquired the suit property lawfully and through a regular process, none of the said documents, could be traced in the 1<sup>st</sup> Respondent's records thus casting doubts on their authenticity.
118. The fact that the Petitioner confirmed that he did not meet the Managing Directors of the 1<sup>st</sup> Respondent in his dealings made his case doubtful, given the span of the transactions and the colossal amounts involved. That subsequently, there was doubt on the authenticity and legality of the allocation, hence the Petitioner's claim was fatally flawed for want of proper root of title and should fail.
119. On the 2<sup>nd</sup> Respondent's case, it submitted that the 2<sup>nd</sup> Respondent's claim of the suit property based on a letter dated 9<sup>th</sup> April 2024 which was a communication by the 1<sup>st</sup> Respondent to the effect that the 2<sup>nd</sup> Respondent was the lawful allottee in occupation of the suit property was doubtful. That firstly, the 2<sup>nd</sup> Respondent had closed its case without testifying or producing any evidence yet it was a settled proposition that failure by a party to produce evidence in support of an assertion in a pleading renders the assertion a mere allegation which no decision could be founded upon. Reliance was placed in the decided case of *CMC Aviation Ltd v Kenya Airways Ltd (Cruisair Ltd)* [1978] eKLR. That subsequently, the contents of the 2<sup>nd</sup> Respondent's Replying Affidavit, witness statement and list and bundle of documents in so far as they purport to claim ownership of the suit property and/or even dispute any pleadings filed by the Petitioner and the 1<sup>st</sup> Respondent herein who had testified during the trial were mere assertions that had not been substantiated by the production of documentary evidence or oral testimony for which no decision could be founded upon. Reliance was placed in the decided case of *CMC Aviation Ltd v Kenya Airways Ltd (Cruisair Ltd)* [1978] eKLR.
120. Regarding the 3<sup>rd</sup> Respondent's claim of ownership of the suit property, it submitted that the 3<sup>rd</sup> Respondent did not file any pleadings in the suit save for its grounds of opposition dated 11<sup>th</sup> June 2024. That further, the 3<sup>rd</sup> Respondent did not participate in the trial to show how he had acquired his certificate of title and the validity of its root and therefore the same stood to be revoked under the provisions of Section 26 of the *Land Registration Act*. Reliance was placed in the decided case of *Daudi Kiptugen v Commissioner of Lands & 4 others* [2015] eKLR.
121. On the second issue for determination as to who was in actual occupation of the suit property, it placed reliance in the decided case of *Benia Properties Limited v Syedna Mohammed Burhannudin Sahed & 4 Others* [2015] eKLR to submit that it was the 1<sup>st</sup> Respondent and not the Petitioner or the 2<sup>nd</sup> Respondent who had always been in occupation of the suit property as evidenced in the list and bundle of documents dated 7<sup>th</sup> February 2025 being:
- i. A letter dated 27<sup>th</sup> March 2024 that had been authored by Maella Ward Agricultural Officer and addressed to Kongoni Police Station that had confirmed the ownership and occupation of the suit property by the 1<sup>st</sup> Respondent.
  - ii. A statement by Benson Okello and an OB report dated 21<sup>st</sup> May 2024 bespeaking the trespass onto the suit property and damage to the 1<sup>st</sup> Respondent's crops.
  - iii. Photographs of the damaged crops on the suit property.



122. That it had been the evidence of DW1, Mr. Benson that the Petitioner had entered into the suit property in the year 2024 upon obtaining interim orders of this court. That subsequently, it was clear that the 1<sup>st</sup> Respondent had always been in occupation of the suit property until the year 2024 when the Petitioner had invaded the same.
123. As to whether the allegations of fraud had been proved, it placed reliance on the decisions in the case of *Emfil Limited v Registrar of Titles Mombasa & 2 others* [2014] KECA 348 (KLR) and *Rosemary Wanjiku Murithi v George Maina Ndinwa* [2014] eKLR to submit that no evidence whatsoever had been led by the Petitioner to demonstrated any fraud that he had sensationally accused the 1<sup>st</sup> Respondent of perpetrating hence the said limb of the Petition must fail.
124. In conclusion, it submitted that the only orders that commended themselves were those in its response to both the Petition and its Cross-Petition dated 20<sup>th</sup> November 2024.

## **2<sup>nd</sup> Respondent's Submissions**

125. The 2<sup>nd</sup> Respondent's submissions dated 13<sup>th</sup> May 2025, placed reliance on the provisions of Articles 40 and 47 of *the Constitution* to submit that ther having been on record a letter dated 9<sup>th</sup> April, 2024 from the 1<sup>st</sup> Respondent addressed to the Deputy Commissioner of Naivasha indicating that the 2<sup>nd</sup> Respondent, was the lawful occupant of the suit property wherein there was pending a transfer of the suit property, the same was indicative that there had been clear and unambiguous administrative action made within the lawful mandate of the 1<sup>st</sup> Respondent. That a decision from this Court that decided otherwise would violate the 2<sup>nd</sup> Respondent's right to property and fair administrative action.
126. That in any case, it was apparent from all the documents on record that there were three certificates of title for the parcel of land known as L.R No. 280XXXX1 thus the Court had the jurisdiction and duty to determine which certificate of title for L.R No. 280XXXX1 it should uphold. Reliance was placed in the Court of Appeal's decision in *Presbyterian Foundation v Kibera Siranga Self Help Group Nursery School (Civil Appeal 64 of 2014)* [2023] KECA 371 (KLR) (31 March 2023) (Judgment) to implore the Court to be guided by the same in evaluating the evidence on record and determining which of the three titles before it was legitimate.

## **4<sup>th</sup> Respondent's Submissions**

127. Lastly the 4<sup>th</sup> Respondent, vide their undated submissions framed its issues for determination to wit; who was the legal and registered proprietor of the suit property and who had demonstrated fraud in the acquisition of the title held by the rival parties. Reliance was placed on the decisions in the case of *Joseph Kiprotich Bor v Tabutany Chepkoech Chebusit* [2021] eKLR where the court had cited the case of *Hubert L. Martin & 2 Others v Margaret J. Kamar & 5 Others* [2016] eKLR and *Munyu Maina v Hiram Gathiha Maina* [2013] eKLR to submit that where there were two of more competing titles, the Court had to interrogate the competing titles to determine which title should be upheld. That it was thus clear that the parties herein claiming titles in the suit property had to demonstrate which of their titles was acquired procedurally and legally.
128. That pursuant to the evidence adduced in court, he who alleges must prove. That there having been no evidence adduced by the 2<sup>nd</sup> Respondent, and production of crucial documents, the same was fatal to him as was held in the case of *Be Energy Limited v Dorine Emily Akinyi Okeno t/a Regold Etipet Enterprises (Civil Appeal E213 of 2023)* [2024] KEHC 7721 (KLR) (25 June 2024) (Judgment) where the court had cited the case of *Kenneth Nyaga Mwigie v Austin Kiguta & 2 others* [2015] eKLR.



129. That the same case applied to the 3<sup>rd</sup> Respondent who never participated in the proceedings. The court was thus urged to go beyond the Certificate of Title and determine who among the rival parties herein had established validity of the root of their respective titles.
130. That it was clear from the proceedings that the current lawful owner of the suit property was either the Petitioner or the 1<sup>st</sup> Respondent, where there had been no contestation that the 1<sup>st</sup> Respondent was the original valid registered owner of the suit property and the holder of the root interest.
131. That subsequently, whereas the Petitioner had produced documents to prove his ownership of the suit property, the 1<sup>st</sup> Respondent had neither filed a current official search to authenticate its claim that it was the current lawful registered owner of the suit property and neither had it lead any evidence to dispute the Petitioner's evidence showing that the official records held by the 4<sup>th</sup> Respondent had reflected him as the current lawful owner of the suit property.
132. Equally, no evidence had been adduced by the 1<sup>st</sup> Respondent demonstrating the alleged forgery of the documents held by the Petitioner in proving the validity of his interest. Reliance was placed on the decisions in the case of Chief Land Registrar & 4 Others v Nathan Tirop Koech & 4 Others [2018] eKLR and Philemon Wambia v Gaitano Lusitsa Mukofu & 2 others [2019] eKLR.
133. On the second issue for determination as to who had demonstrated fraud in the acquisition of the title held by rival parties, the 4<sup>th</sup> Respondent's submissions had been that it was trite law that fraud, being a quasi-criminal accusation, must be specifically pleaded and proved. Reliance was placed in the Supreme Court's decision in Fanikiwa Limited & 3 others v Sirikwa Squatters Group & 18 others [2023] eKLR. That whereas both the Petitioner and the 1<sup>st</sup> Respondent had pleaded fraud against each other, neither of them had provided any iota of proof or evidence to support their claim.
134. That whereas no forensic examination report had been produced by either party to prove fraud, the claim by the 1<sup>st</sup> Respondent that the Petitioner's documents could not be found in their records was not proof of fraud. Reliance was placed in the case of Kinyanjui Kanau v George Kamau Njoroge [2015] eKLR. That the allegations of fraud by both parties remained unsubstantiated.
135. In conclusion, it submitted that the Petition against the 4<sup>th</sup> Respondent be dismissed with costs since there had been no cause of action that had been established against it.

#### **Determination.**

136. I have considered the contents of the Petitioner's Petition, the 1<sup>st</sup> Respondent's response and Cross-Petition as well as the evidence adduced, the submissions, the authorities cited and the applicable law.
137. The threshold of what constitutes a constitutional Petition has been established in the case of Anarita Karimi Njeru vs The Republic [1979] eKLR where the court had held that a Constitutional Petition should set out with a degree of precision the Petitioner's complaint, the provisions infringed and the manner in which they are alleged to have been infringed.
138. This principle was later reaffirmed by the Court of Appeal in the case of Mumo Matemo vs Trusted Society of Human Rights Alliance & 5 others (2013) eKLR where the Court had stated as follows:-

“It is our finding that the petition before the High Court was not pleaded with precision as required in Constitutional Petitions. Having reviewed the petition and supporting affidavit we have concluded, that they did not provide adequate particulars of the claims relating to the alleged violations of the constitution of Kenya and the Ethics and Anti-corruption



Commission Act, 2011, accordingly the petition did not meet the standard enunciated in the Anarita Karimi Njeru case.”

139. The Petitioner brings this Petition alleging violation of his right to own property in terms of Article 40 of the Constitution and the right to fair administrative action under Article 47 of the Constitution.
140. The Petitioner’s Petition stems from his argument that having been allocated land by the 1<sup>st</sup> Respondent wherein he had complied with all the requisite procedure thereafter including acceptance of the said offer, payment therein, where the transfer was subsequently executed by the 1<sup>st</sup> Respondent and a consent obtained from the Naivasha Land Control Board followed by which he had been issued with a Grant No. 162069 in his name, the 1<sup>st</sup> Respondent now sought to dispossess him of the land and confer it to the 2<sup>nd</sup> Respondent, its former Managing Director.
141. In response the 1<sup>st</sup> Respondent denied the allegations by the Petitioner holding the position that it was the absolute registered proprietor of the suit property and had never at any one point attempted to sell and or transfer the same to the Petitioner. In its Cross-Petition however, the 1<sup>st</sup> Respondent’s stand was that it was the absolute registered proprietor of property LR No.280XXXX1 derived from title IR No.23XXXX8 pursuant to a subdivision of IR.135943/1 as alienated from Land Survey plan number 334239. That the Petitioner herein had taken advantage of the ex-parte interim orders issued and trespassed into the suit property where he had erected illegal structures thereon.
142. There had been no response by the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents.
143. Parties took directions for the Petition to proceed by way of viva voice evidence wherein the court had received evidence from the Petitioner and the 1<sup>st</sup> Respondent only wherein Petitioner had testified that vide a letter dated 7<sup>th</sup> January 1997, (Pet exh 6) he had requested from the 1<sup>st</sup> Respondent’s Managing Director a parcel of agricultural land measuring 100 acres within Naivasha, to do some farming. That the 1<sup>st</sup> Respondent through a letter dated 24<sup>th</sup> July 1997 (Pet exh 7) had informed him that he had been allocated land Reference No. 205XXXX0 measuring 23.05 hectares at a purchase price of Kshs. 750,000/= which was not inclusive of survey, conveyance and other disbursement. That taking possession of the land was subject to payment. That he had accepted the land vide his letter dated the 28<sup>th</sup> August 1997 (Pet exh 8) wherein he had sought for full details of the amount that he was supposed to pay. That vide a letter dated the 16<sup>th</sup> April 1998 (Pet exh 9) the 1<sup>st</sup> Respondent had given him the full tabulation of the amount of money that he was to pay which totaled to Kshs. 779,450/= He wrote to the 1<sup>st</sup> Respondent’s Managing Director enclosing a banker’s cheque for the sum of Kshs. 779,450/= through a letter dated the 13<sup>th</sup> May 1998 (Pet exh 10). Wherein the payment had been acknowledged through a letter dated the 18<sup>th</sup> May 1998 which had enclosed and a receipt (Pet exh 12) of payment from Lands Ltd for LR No. 205XXXX0.
144. That subsequently he had received a letter from the 1<sup>st</sup> Respondent dated 5<sup>th</sup> June 2012 (Pet exh 4) allocating him an alternative parcel of land Reference No. 280XXXX1 in place of LR 205XXXX0, for the same purchase price, for reason that the initial land had double allocation. He accepted the land via his acceptance letter of 12<sup>th</sup> June 2012, (Pet exh 5)
145. That on the 5<sup>th</sup> November 2012, he and the 1<sup>st</sup> Respondent had executed an application for consent of Land Control Board (LCB) (Pet exh 14) relating to parcel LR No. 280XXXX1 and a letter of consent dated 14<sup>th</sup> November 2012 (Pet exh 15) indicated he and the 1<sup>st</sup> Respondent as the parties in regard to LR No. 280XXXX1. That he subsequently obtained title to the suit property on the 26<sup>th</sup> July 2012 (Pet exh 1) wherein a search conducted on the 21<sup>st</sup> July 2016 (Pet exh 2) had indicated that he was the owner of the suit property.



146. That despite the 1<sup>st</sup> Respondent having transferred ownership of the suit to him, vide a letter dated 9<sup>th</sup> April 2024 (Pet exh 16) the 1<sup>st</sup> Respondent had informed the DCC Naivasha that the suit property belonged to the 2<sup>nd</sup> Respondent. That indeed when the 1<sup>st</sup> and 2<sup>nd</sup> Respondent proceeded to deny him peaceful occupation of the suit property, his Counsel had made a complaint to OCPD Naivasha Sub-County vide a letter dated 16<sup>th</sup> May 2024 (Pet exh 19)
147. The 1<sup>st</sup> Respondent's stand through the evidence of DW1 its Security Manager was that the dispute herein was between the 1<sup>st</sup> Respondent and Mr. John Shiundu, the Petitioner herein, who had claimed ownership of the suit property. That the 1<sup>st</sup> Respondent was the registered proprietor in respect of L.R No.280XXXX1 and IR 23XXXX8 measuring 32.26 hectares in reference to a deed plan No. 334239. That as far as he was aware, the land had not been sold to the Petitioner. He however maintained that the 1<sup>st</sup> Respondent owned the suit property and although it had documents of ownership, he was neither the custodian of the said documents nor had he seen them. That he was aware of the allegations of forgery and fraud that had been made against the Petitioner. That there were three titles in existence for the same parcel of land for which the Petitioner, the 1<sup>st</sup> Respondent and the 3<sup>rd</sup> Respondent also held titles to the land, whereas the 2<sup>nd</sup> Respondent lay claim to the suit land on the strength of the letter of allotment issued by 1<sup>st</sup> Respondent and dated 9<sup>th</sup> April 2024 that had indicated that he was the lawful owner.
148. From the aforesaid narration, I find the issues for determination as being;
- i. Whether Petitioner's rights under *the Constitution* were violated by the Respondents and what remedies if any are available to him.
  - ii. Whether the 1<sup>st</sup> Respondent's Cross Petition was pleaded with precision as required in Constitutional Petitions.
  - iii. Whether either party is entitled to compensation for the violation of their constitutional right.
149. The particular question to be decided herein so as to put this matter into the ambit of a Petition was whether the state was liable for acts committed by its agents while on duty as constitutional rights protect individuals from governmental injury and regulate the discretion of the Government to inflict injury.
150. It was held in Republic vs Senior Registrar of Titles Ex-parte Brookside Court Limited (2012) eKLR, that the statutorily, the sanctity of title to land is assured and protected under Sections 24, 25 and 26 of the *Land Registration Act*. From the above provisions of the law, and the fact that the Petitioner holds a title to land parcel I.R 162XXX9, LR No. 280XXXX1, I find prima facie that he had disclosed a legal interest capable of protection under the law and therefore he ought not to be deprived of its land by the State or any public authority against his wish unless expressly authorized by law and public interest which decisively demands so, and with compensation.
151. The Petitioner's case is that by the 1<sup>st</sup> Respondent purporting to procure subsequent parallel titles over the suit property whilst aware that he had acquired prior interest over the same land coupled with the threat to convey interest to the 2<sup>nd</sup> Respondent wherein on the 12<sup>th</sup> April 2024, the 1<sup>st</sup> Respondent's employees and the 2<sup>nd</sup> Respondent had interfered with his peaceful occupation of the land by invading it, clearly violated his right to property as enshrined under Article 40 of *the Constitution*.
152. The provisions of Article 40 of *the Constitution* provide as follows;
- (1) Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property—



- (a) of any description; and
  - (b) in any part of Kenya.
- (2) Parliament shall not enact a law that permits the State or any person—
- (a) to arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description; or
  - (b) to limit, or in any way restrict the enjoyment of any right under this Article on the basis of any of the grounds specified or contemplated in Article 27(4).
- (3) The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation—
- (a) results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or
  - (b) is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that—
    - (i) requires prompt payment in full, of just compensation to the person; and
    - (ii) allows any person who has an interest in, or right over, that property a right of access to a court of law.
- (4) Provision may be made for compensation to be paid to occupants in good faith of land acquired under clause (3) who may not hold title to the land.
- (5) The State shall support, promote and protect the intellectual property rights of the people of Kenya.
- (6) The rights under this Article do not extend to any property that has been found to have been unlawfully acquired.

153. In the case of *R vs Chief Immigration Officer* (1976) 3 AER 843 Lord Denning stated this regarding the Universal Declaration of Human Rights;

“... Among the important rights which individuals traditionally have enjoyed is the right to own property. This right is recognized in the Universal Declaration of Human Rights (1948). Article 17(1) which states that everyone has the right to own property and Article 17(2) guarantees that “no one shall be deprived of his property”

154. Article 40(1) of *the Constitution* sets out the general right of every Kenyan to acquire and own property, while Art 40 (3) confirms that the State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description unless through lawful compulsory acquisition, in conformity with the provisions of the said Article 40(3). The thrust of Article 40 of *the Constitution* is to protect proprietary rights under the law which rights are governed by statutes, for example, in this case, the *Land Registration Act* and *Land Act* which statutes are clear that once a title is issued under the Act, the holder thereof acquires an indefeasible title which cannot be taken away except in accordance with *the Constitution* and the law as was held in the case of *Wreck Motors Enterprises v The Commissioner of Lands and Others* [1997] eKLR.

155. The Petitioner justified his claim of ownership to the suit land by producing the certificate title and a search as herein above stated which showed that he was the proprietor of the suit land. The



Petitioner's complaint is that the 1<sup>st</sup> Respondent, a State Corporation established under Section 3 of the *Agricultural Development Corporation Act* sought to deprive him of the suit land by issuing parallel titles over the suit property, coupled with the threat to convey interest to the 2<sup>nd</sup> Respondent vide a letter addressed to the DCC Naivasha dated 9<sup>th</sup> April 2024 herein produced as Pet exh 16 stating that the suit property belonged to the 2<sup>nd</sup> Respondent and wherein subsequently the land had been invaded in an effort to evict him and disposes him off his land wherein a complaint had been made to the police vide a letter dated the 16<sup>th</sup> May 2024 herein produced as Pet exh 19.

156. The Supreme court in the case of Attorney General v Zinj Limited [2021] KESC 23 (KLR) had held as follows;

‘This being the case and despite the appellant’s protestations to the contrary, we must reach the conclusion, in agreement with the trial court, that the issuance of titles over a portion of the suit property, in favour of third parties was unlawful, un-procedural, and an egregious violation of the respondent’s right to property. We therefore have no doubt, that the issuance of titles to third parties over a portion of the suit property, amounted to a violation of article 40(3)(a) and (b) of *the Constitution*.’

157. I therefore find that the 1<sup>st</sup> Respondent’s issuance of duplicate title deeds and a letter of allotment to third parties over the suit property leading to trespass on the same by third parties, was illegal and amounted to unlawful compulsory acquisition, deprivation and violation of the Petitioner’s right to property as envisaged under Article 40(3)(a) and (b) of *the Constitution*.

158. The Petitioner’s further complaint was that his right as envisaged under Article 47 of *the Constitution* had been violated. The provisions of Article 47(1) of *the Constitution* stipulate as follows;

1. "Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair."
2. If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.
3. Parliament shall enact legislation to give effect to the rights in clause (1) and that legislation shall—
  - (a) provide for the review of administrative action by a court or, if appropriate, an independent and impartial tribunal; and
  - (b) promote efficient administration.

159. Article 47 of *the Constitution* of Kenya, 2010, is a cornerstone of administrative justice in Kenya. It entrenches the right to fair administrative action as a fundamental right. A violation of Article 47 occurs when an administrative action (or inaction) by a public body or official does not meet the standards set out in this Article and the accompanying *Fair Administrative Action Act*.

160. When a public body creates a legitimate expectation through its promises, representations, or consistent past practices, and then frustrates that expectation without due process or a reasonable justification, it is seen as acting unfairly, thus violating Article 47. *Fair Administrative Action Act*, 2015 was enacted to give effect to Article 47 wherein it provides a statutory framework for challenging administrative actions, and while it doesn't explicitly list "legitimate expectation" as a standalone ground, unreasonableness, procedural unfairness, or acting for an ulterior motive encompass situations



where a legitimate expectation has been violated. The Act reinforces the constitutional right to fair administrative action, which includes the protection of legitimate expectations. The doctrine protects individuals from arbitrary or unfair changes in policy or practice by public bodies, especially when those individuals have relied on the prior representations or conduct and courts have found that violations of legitimate expectation was a breach of the right to fair administrative action under Article 47 of *the Constitution*.

161. The Petitioner's contention was that 1<sup>st</sup> Respondent's decision to procure a parallel titles whilst the Petitioner was registered as the owner of the disputed parcel had interfered with his occupation and its further threat of transferring the interest in the suit properties to the 2<sup>nd</sup> Respondent vide a letter dated 9<sup>th</sup> April 2024, although illegal, had constituted administrative actions that must meet the threshold set by *the Constitution* and the provisions of the Fair Administrative Actions Act, 2015.
162. The Court of Appeal in the case of *Judicial Service Commission v Mbalu Mutava & another* [2014] eKLR observed as follows;

“ Article 47(1) marks an important and transformative development of administrative justice for, it not only lays a constitutional foundation for control of the powers of state organs and other administrative bodies, but also entrenches the right to fair administrative action in the Bill of Rights. The right to fair administrative action is a reflection of some of the national values in article 10 such as the rule of law, human dignity, social justice, good governance, transparency and accountability. The administrative actions of public officers, state organs and other administrative bodies are now subjected by Article 47(1) to the principle of constitutionality rather than to the doctrine of ultra vires from which administrative law under the common law was developed.”
163. In the instant case, there is no indication that the 1<sup>st</sup> Respondent gave any reasons whatsoever for the allocation of the suit property to third parties whilst the same was registered to the Petitioner herein. Such action therefore failed the test of a fair administrative action and was a breach of the Petitioner's legitimate expectation and a violation of his right to a fair administrative action under Article 47 of *the Constitution*.
164. In its cross Petition, the 1<sup>st</sup> Respondent's stand had been that it was the absolute registered proprietor of property LR No.280XXXX1 derived from title IR No.23XXXX8 pursuant to a subdivision of IR.135943/1 as alienated from Land Survey plan number 334239. That it had never at any point attempted to sell and or transfer the suit property to the Petitioner. That it had been in occupation of the suit property from the time it took possession of the same and had all along engaged in the cultivation of seed maize on the suit parcel over the years.
165. The 1<sup>st</sup> Respondent further spoke of the documents and/or correspondences that had purportedly been executed on its behalf as being mere forgeries and a blatant act of fraud on the part of the Petitioner. It must not be lost that Section 107 of the *Evidence Act* provides that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. While Section 109 of the same act stipulates that the burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence. If an expert witness was necessary, the evidential burden of proof was on the 1<sup>st</sup> Respondent to call the expert witness.
166. In the present suit although the 1<sup>st</sup> Respondent alleged that it was the proprietor of the suit land, there had been no evidence tendered to support its allegation. No documentary evidence in the form of a title was produced in evidence therein.



167. The Court of Appeal in *Kenneth Nyaga Mwige v Austin Kiguta & 2 others* [2015] KECA 334 (KLR), had observed as follows:

“Once a document has been marked for identification, it must be proved. A witness must produce the document and tender it in evidence as an exhibit and lay foundation for its authenticity and relevance to the facts of the case. Once this foundation is laid, the witness must move the court to have the document produced as an exhibit and be part of the court record. If the document is not marked as an exhibit, it is not part of the record. If admitted into evidence and not formally produced and proved, the document would only be hearsay, untested and an unauthenticated account.”

168. It is therefore my finding that the failure and/or omission by the 1<sup>st</sup> Respondent to formally produce the documents marked for identification being RMFI 1, RMFI 2 and RMFI 3 was fatal to its case as the documents did not become exhibits because they had simply been marked for identification. They therefore have no evidential weight in this matter.

169. Secondly, it is trite law that fraud, being a quasi-criminal accusation, must be specifically pleaded and proved.

170. The Court of Appeal in *C O Okere v Esther Nduta Kiiyukia & 2 others* [2019] eKLR, had observed as follows:

“We have scrutinized the amended Plaint. There are no particulars of fraud pleaded in the Plaint... To succeed, the appellant needed not only to plead and particularize fraud, but also a basis by way of evidence, upon which a trial court would make a finding. In the instant appeal, failure by the appellant to plead fraud and to give particulars thereof is fatal to submissions founded on fraud. The trial court had no pleading and particulars to consider and determine any allegations on fraud... Failure by the appellant to plead and particularize fraud lead us to find that this ground of appeal has no merit...”

171. The Supreme court in *Fanikiwa Limited & 3 others v Sirikwa Squatters Group & 17 others* (Petition 32 (E036), 35 (E038) & 36 (E039) of 2022 (Consolidated)) [2023] KESC 105 (KLR) (15 December 2023) (Judgment), held as follows;

“We are unconvinced that such vague particulars of fraud were proved to the required standard going by the absence of any serious attempt to table concrete evidence to prove the subject allegations to the required degree. Our appellate court has over the years developed settled jurisprudence on the requisite standard of proof for allegations of fraud which we endorse. In *Central Kenya Ltd v Trust Bank Limited & 4 others*, Civil Appeal No 215 of 1996; [1996] eKLR the appellate court determined: ...”

172. I find that mere allegations of fraud without substantiation remained just that, mere allegations, and did not assist the 1<sup>st</sup> Respondent. General allegations, however strong may be the words in which they are stated, are insufficient to amount to an averment of fraud of which any Court ought to take notice.

173. Lastly, it must be noted that a constitutional question is an issue whose resolution requires the interpretation of a Constitution rather than that of a statute. Indeed, the Supreme Court in



Communications Commission of Kenya & 5 others vs Royal Media Services Limited & 5 others [2014] eKLR in defining the principle of constitutional avoidance had stated as follows:-

“The principle of avoidance entails that a Court will not determine a constitutional issue, when a matter may properly be decided on another basis. In South Africa, in *S v Mhlungu*, 1995 (3) SA 867 (CC) the Constitutional Court Ketrtridge AJ, articulated the principle of avoidance in his minority Judgment as follows [at paragraph 59]: I would lay it down as a general principle that where it is possible to decide any case, civil or criminal, without reaching a constitutional issue, that is the course which should be followed.”

174. The issue of competing claims as to the ownership of the suit parcels as has been held in numerous decisions in courts, fell squarely within the exclusive jurisdiction of civil suits and constitutional Petitions are not the proper forum for determining such factual and legal complexities of title which requires a trial in a process that would involve examination, cross-examination and re- examination of the witnesses as a way of resolving the competing allegations and counter allegations. In the case before the court however the Respondents did not lead any evidence to rebut the Petitioner’s title which then has to be taken as valid prima facie.

175. I note that despite the 2<sup>nd</sup> and the 4<sup>th</sup> Respondents not having taken part in the proceedings herein, they filed their submissions. It is trite that submissions cannot take the place of evidence. The court of Appeal in the case of *Daniel Toroitich Arap Moi vs. Mwangi Stephen Muriithi & Another* [2014] eKLR, had held as follows:

“Submissions cannot take the place of evidence. The 1st respondent had failed to prove his claim by evidence. What appeared in submissions could not come to his aid. Such a course only militates against the law and we are unable to countenance it. Submissions are generally parties’ “marketing language”, each side endeavoring to convince the court that its case is the better one. Submissions, we reiterate, do not constitute evidence at all. Indeed, there are many cases decided without hearing submissions but based only on evidence presented.”

176. To this effect these submissions herein filed without evidence are naught.

177. In the end, I find that the 1<sup>st</sup> Respondent’s Cross-Appeal has no merit and is herein dismissed with costs.

178. On the issue of compensation for the violation of constitutional rights, the Supreme Court of Kenya in the case of *Charles Muturi Macharia & 6 others v Standard Group & 4 others* (SC Petition No. 13 (E015) of 2022), held as follows:

“...In assessing the appropriate sum to be awarded as compensation, the court must feel satisfied that the sum will afford the victim adequate redress to vindicate the victim’s constitutional right. Assessment of the right quantum for compensation will take into account all the relevant facts and circumstances of the violation and the victim in the particular case, bearing in mind any aggravating features. We stress that the purpose of constitutional relief of an award of compensation is not necessarily intended to punish the violator, but only to vindicate the right of the victim.

Therefore, once a petitioner has presented proof on a balance of probabilities that his or her rights were violated, the court must vindicate and affirm the significance of the violated rights, even though the petitioner may not present evidence of any loss or damage suffered as a result of the violation. For these reasons, it can be said that the approach in awarding



damages or compensation in constitutional rights violation cases is different from that in tortious claims..."

179. There having been sufficient proof that the Petitioner's Constitutional right pursuant to the provisions of Article 40(3)(a) and (b) and Article 47 had been contravened and further, having cognizance of the fact that an order of prohibition can be issued in a constitutional Petition where the target is usually the unlawful administrative conduct or jurisdictional overreach of a public body or official, and there having been no aggravating features alluded to by such contravention for which an award of compensation is discretionary and will not always be coterminous with the cause of action, I find in favour of the Petitioner's Petition which is herein allowed with costs with an exception of the orders as to payment of compensation which prayer is disallowed.

**DATED AND DELIVERED VIA MICROSOFT TEAMS AT NAIVASHA THIS 17<sup>TH</sup> DAY OF JULY 2025.**

**M.C. OUNDO**

**ENVIRONMENT & LAND – JUDGE**

