



Kingsway Industrial Park Limited (Formerly Real Industrial Park Limited) v Cabinet Secretary, Ministry of Lands and Physical Planning & 13 others (Environment & Land Case 279 of 2017) [2024] KEELC 529 (KLR) (24 January 2024) (Judgment)

Neutral citation: [2024] KEELC 529 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 279 OF 2017
AA OMOLLO, J
JANUARY 24, 2024**

BETWEEN

KINGSWAY INDUSTRIAL PARK LIMITED (FORMERLY REAL INDUSTRIAL PARK LIMITED) PLAINTIFF

AND

CABINET SECRETARY, MINISTRY OF LANDS AND PHYSICAL PLANNING 1ST DEFENDANT
CHIEF LAND REGISTRAR 2ND DEFENDANT
COUNTY SECRETARY NAIROBI CITY COUNTY 3RD DEFENDANT
COUNTY EXECUTIVE COMMITTEE MEMBER FOR LAND NAIROBI CITY COUNTY 4TH DEFENDANT
DIRECTOR OF COUNTY PLANNING NAIROBI CITY COUNTY 5TH DEFENDANT
DIRECTOR OF PHYSICAL PLANNING 6TH DEFENDANT
DIRECTOR OF SURVEY 7TH DEFENDANT
NATIONAL POLICE SERVICE 8TH DEFENDANT
OFFICER COMMANDING POLICE DIVISION EMBAKASI ... 9TH DEFENDANT
THE DIVISIONAL CRIMINAL INVESTIGATION OFFICER EMBAKASI 10TH DEFENDANT
THE HON ATTORNEY GENERAL 11TH DEFENDANT
BUSINESS REGISTRATION SERVICE 12TH DEFENDANT



JUDGMENT

1. Vide a detailed plaint dated 25th April, 2017, the plaintiff sued the Fourteen (14) defendants for a claim over LR No. 209/11287, L. R No. 209/11288 and L.R No. 209/11289 situated at Embakasi, off Mombasa Road in Nairobi City County.
2. The Plaintiff pleaded that;
 - i. Real Industrial Park Limited was incorporated under certificate of incorporation number C-54643 on 14th July, 1993 and was/is the owner property registered as L.R No. 209/11287, L.R No. 209/11288 and L.R No. 209/11289 situated at Embakasi off Mombasa Road in Nairobi City County. Through a special resolution dated 15th February, 2010 and filed on 22nd June 2010, Real Industrial Park Limited lawfully changed its name to Kingsway Industrial Park Limited of certificate incorporation number C-54643.
 - ii. Immediately after the change of name to Kingsway Industrial Park Limited of certificate incorporation number C-54643, the 1st and 2nd Defendants maliciously, in total bad faith and with intent to defraud the plaintiff, hid the correspondences files and the registers to its properties being L.R No. 209/11287, L.R No. 209/11288 and L.R No. 209/11289 and denied the plaintiff the right of access thereto to effect the change of names from Real Industrial Park Limited to Kingsway Industrial Park Limited on the lands registers and titles of the subject properties to date.
3. The plaintiff stated that the 1st – 14th Defendants conspired together Mr. Mutege from Urban Planning department to defraud and dispossess it of its parcels of land. That they also discovered criminal activities of a sub-division scheme being undertaken on L.R No. 209/11288 and 11289 by the 1st – 7th Defendants purporting to act on behalf of Real Industrial Park Ltd.
4. It is the averment of the Plaintiff that the purported “Real Industrial Park” does not exist and amounts to an identity theft. The plaintiff asserted that the 1st and 2nd defendants as the custodians of land records and have a duty to maintain a correct, accurate and proper records and not facilitation of criminal activities and dispossessing owners of their private land. It is pleaded that the same responsibilities are expected of the 11th to 14th Defendants.
5. The claim against the 8th to 10th Defendants is that despite being requested to investigate the criminal activities going on at the Plaintiff’s suit parcels, they deliberately and intentionally refused to carry their mandate including refusing to enter the complaint in the occurrence book.
6. The plaintiff seeks the following prayers;
 1. A declaration that real Industrial Park Limited company No. 54643 was incorporated on 14th July, 1993 and that its changed its name by resolution dated 15th February, 2010 to Kingsway Industrial Park Ltd Company No. 54643 and was issued with a certificate of change of name by the registrar of companies on 22nd June, 2010.



2. A declaration that prior to change of name Real Industrial Park Ltd Company No. 54643 was on 18th august, 1993 registered as the proprietor of the suit properties.
3. A declaration that Kingsway Industrial Park Ltd. Company No. 54643 and Real Industrial Park Ltd. Company No. 54643 are one and the same entity and the date of registration and the number of certificate of incorporation does not change upon the change of name and such change of name does not affect its right and activities including property owned before the change of name.
4. A declaration that assumption of the new name does not affect the status of a company and that Kingsway Industrial Park ltd. company No. 54643 continued to operate as formerly known as Real Industrial Park Ltd. company No. 54643 and that the name Real Industrial Park Ltd. Company No. 54643 was in elate to the company and could not assumed by any other person or any entity as it would not be registable.
5. A declaration that the change of name by the plaintiff on the effective date that is 22nd June, 2010 the registrar of companies was bound not to register or to allow any person to operate as either Kingsway Industrial Park Ltd Company No. 54643 or Real Industrial Park Ltd. Company No. 54643 as both names referred to one entity incorporated under the certificate of incorporation No. C-54643 the plaintiff herein.
6. A declaration that any act of the registrar general of registering and or allowing the use of either Kingsway Industrial Park Ltd or Real Industrial Park Ltd is unprocedural, unlawful, illegal and is a breach of the [*Companies Act*](#).
7. A declaration that the Chief Land Registrar has a statutory duty to open, maintain and keep land record professionally, accurately, in good order and safely and make them available and accessible to the general public upon request.
8. A declaration that the registrar general of the business registration service and the registrar of companies as a statutory duty to open, maintain and keep companies records, professionally, accurately, in good order and safely and make them available and accessible to the general public upon request.
9. A declaration that the chief land registrar's failure to make the record and file available to the applicant so as to affect the change of name in respect of the suit properties was un-procedural, unlawful, illegal, administratively unfair and has deprived the plaintiff of its constitutionally guaranteed right to own, use and enjoy its property.
10. A declaration that the chief land registrar's actions of hiding the files only to make them available three years after effecting the change of name on the property registered as LR. No.209/11288, in un-procedural, unlawful, is administratively unfair, abuse of office and deprived plaintiff of the use and enjoyment of its property for an undue reason or period contrary to Article 40 of [*the Constitution*](#) of Kenya 2010.
11. A declaration that failure of the Registrar General of Business Registration Service and the Registrar of Companies to keep proper and accurate records, failure to respond to searches undertaken by the plaintiff, and deliberate acts and actions of allowing the use of either Kingsway Industrial Park Limited and Real Industrial Park Limited by other persons other than the plaintiff herein, as well as the acts of issuing CR 12's acknowledging the company belonged to any other person other than the plaintiff herein, were unprocedural, unlawful, illegal and administratively unfair towards the plaintiff herein.



12. A declaration that Kingsway Industrial Park Limited Company number 54643, being one and the same entity as Real Industrial Park Limited company number 54643 after it change of name it was and is entitled to effect the change against the land records and its titles in respect of its properties registered as L.R No. 209/11287 and L.R No. 209/11289 to portray the new name.
 13. A declaration that the plaintiff is the lawful owner and registered proprietor of the suit properties.
 14. A permanent mandatory injunction compelling the 1st and 2nd defendant to make available the property files and any other record necessary to enable the plaintiff to effect the change of name from Real Industrial Park Ltd. Company No. 54643 to Kingsway Industrial Park Limited Company No. 54643 in respect of LR. NO. 209/11287 and L.R NO. 209/11298.
 15. A permanent injunction restraining the defendants jointly and severally from any manner depriving, dispossessing and defrauding the plaintiff of its parcels of land namely the suit properties.
 16. A mandatory injunction compelling the 8th, 9th and 10th defendants to protect the property of the plaintiff and ensure that the orders, judgments, decrees and decisions of the court are obeyed and that the defendant collectively and severally do not in any manner deprive, dispossesses and defraud the plaintiff of the suit properties which falls in the area of jurisdiction.
 17. A mandatory injunction compelling the respondents to revoke, amend, suspend, cancel any approval or entry granted or made touching or in any way affecting the suit properties granted and or applied for by the companies masquerading as Real Industrial Park Limited and without the authority of the plaintiff.
 18. A permanent injunction restraining the 1st, 2nd, 11th, 12, 13th and 14th defendants from in any way interfering with the plaintiff's files and record both at the Lands office and the Companies Registries or in any manner dealing with the same without the authority, approval and permission of the plaintiff.
 19. Any other remedy, prayer and relief the court may deems fit and just grant to protect the plaintiff's right to properties.
 20. A mandatory injunction compelling the 11th, 12th, 13th and 14th defendants to remove, struck off and expunge of the register of companies any Company interfering with the Plaintiff's suit properties by purporting to be either Real Industrial Park Limited company number 54643 or Kingsway Industrial Park Limited Company No. 54643 without the authority of the plaintiff.
 21. The costs of the suit and interest.
7. The 11th Defendant (the Honourable Attorney General) filed a statement of defence dated 16th July, 2019 on behalf of the 1st, 2nd, 6th to 14th Defendants. The Attorney General pleaded that they strangers to the alleged criminal activities and put the plaintiff to strict proof. They also denied the contents of paragraphs 19 – 22 of the plaint.
 8. It is pleaded on behalf of the 1st, 2nd, 6th – 14th defendants inter alia that;
 - i. The land records confirm that in deed L.R No. 209/11287, L.R No. 209/11288 and L.R No. 209/11289 are registered parcels of land appearing on the land register, with the registered proprietor thereof being Real Industrial Park Limited.



- ii. Subsequently, Real Industrial Park Limited used L.R No. 209/11/11287 to acquire loan from Industrial Development Bank Limited, and on 15th December, 1998, Industrial Development Bank Limited registered a caveat on the said parcel of land claiming Chargor's interest under presentation day book No. 937 of 12th December, 1998. Later Industrial Development Bank Limited withdrew the caveat claiming chargor's interest on 30th July, 2007 under presentation day book No. 1810 of the same day.
 - iii. Before a provisional certificate of title is issued, the Registrar issuing the title must be satisfied that the title is lost/misplaced, and that the person claiming to be registered proprietor is actually the registered proprietor of the suit property. Further, the registrar must give a notice of at least 60 days, for any person to object to the issue of the provisional certificate of title. There is no dispute that Gazette Notices Nos. No. 4090 of 23rd July, 1999 and 10345 of 31st December, 2004 and the provisional certificates of title in respect of L.R No. 209/11288 were duly and properly issued and registered.
 - iv. The land records also confirm that a certificate of change of name from Real Industrial Park Limited to Kingsway Industrial Park Limited was registered in respect of L.R No. 209/11288 on 26th September, 2014 under presentation day book No. 2867 of the same day. Kingsway Industrial Park Limited remain the validly registered owner of L.R No. 209/11288.
 - v. That Real Industrial Park Limited has never transferred any of the three parcels of land registered as L.R No. 209/11287, L.R No. 209/11288 and L.R No. 209/11289, though there is information that the company changed its name from Real Industrial Park Limited to Kingsway Industrial Park Limited.
9. The 11th Defendant denied the contents of paragraph 23 – 25 of the plaint and urged that the suit as against the 1st, 2nd, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th and 14th Defendants be dismissed with costs.
 10. The 3rd – 5th Defendants vide a notice of appointment filed on its behalf by the firm of Mareka & Company Advocates on 21st June, 2017. There was also filed a list of documents dated 5th December, 2022 and witness statement dated 7th February, 2018.
 11. The interested parties "Real Industrial Park" filed a parallel suit ELC 472 of 2017 against Evans Ochieng Otieno, Gerald Otieno, William Njoroge Mungai and James Wanjohi Mwai vide a plaint dated 14th July 2017 claiming ownership of L.R No 209/11289 (one of the suit properties in the present suit). The plaintiff (in 472 of 2017) pleaded that it was the sole proprietor of title No. 209/11289. The plaintiff pleaded that on December, 2016 it started the process of sub dividing its property after obtaining the necessary approvals.
 12. That on or about the month of June 2017, the plaintiff instructed Riza Works Limited to erect a perimeter wall around its said property. However, the Defendants for no apparent reason demanded that the works be stopped and threatened to chase the contractor's agents away. The plaintiff contended that it sought to see copies of the Defendant's title documents but none was availed.
 13. The Interested Party (Plaintiff) avers that the illegal and unlawful actions of the Defendants have infringed on the plaintiff's right to ownership and quiet possession which has resulted in great financial loss and damage.
 14. This plaintiff (in ELC 472 of 2017) asked to be granted the following reliefs;
 - a. A permanent injunction restraining the Defendants by themselves, servants, legal representatives, agent of howsoever from invading, chasing away workers, blocking,



occupying, trespassing or any other manner interfering with or wasting the plaintiff's property being Title No. L.R No. 209/11289 (IR No. 52219) situate in Nairobi.

- b. General damages.
 - c. Costs of the suit and interest.
15. An order was made on 15th February, 2018 staying ELC 472 of 2017 pending the determination of ELC 279 of 2017 (this suit). Meanwhile when the hearing commenced on 20th April, 2018, S. Okongo J opted to do a trial within a trial in view of the existence of numerous companies purporting to be registered as Real Industrial Park Limited and Kingsway Industrial Park Limited with different directors that were claiming the suit properties, the parties agreed on 15th February, 2018. The trial judge then with concurrence of the advocates on record saw the necessity should determine as a preliminary issue which of the various companies before the court bearing the names, Kingsway Industrial Park Limited and Real Industrial Park Limited were valid and lawful and the valid and lawful directors of the said legitimate companies before considering the various applications which were pending in this suit and in ELC No. 472 of 2017
 16. Consequently, the evidence was taken of five (5) witnesses although for purposes of giving a brief background to this judgement I have given summaries of the evidence of PW1 and PW2 only. The Registrar of Companies, Ms. Margaret Wangu gave evidence as PW 1 and produced their file for the company known as Kingsway Industrial Park Limited No. C 54643 which was incorporated on 14th July, 1993 under the name of Real Industrial Park Ltd. PW 1 stated that there were four directors of the company at the time of incorporation named: Pradip Kharamshi Shah – 1 share. Ramesh Panday – 1 share. Surrinder Paul Datta – 1 share. Gurivat Shah – 1 share
 17. PW 1 continued in evidence that Real Industrial Park changed its name to Kingsway Industrial Park Ltd. through a special resolution dated 15th February, 2010 and filed with their office on 22nd June, 2010. Thereafter, the Registrar of companies issued a certificate of change of name on the same day 22nd June, 2010. The names of the shareholders of the new company were;
Growth and Management Ltd - 1 share
Kingsway Holdings Ltd - 99 shares
Manish shah – 1 share
 18. It was the further evidence of PW 1 that another company called Kingsway Industrial Park was inadvertently registered on 4th April, 2011 under number CPR/2011/44366 whose directors and shareholders were; Henry Oketch Opondo – 10 shares. Ernest Kiprotich – 80 shares. Charles Muluku Matoto – 10 shares
 19. The witness explained that the company was inadvertently registered because there was another company existing in their register. That they acted and rectified the error by informing the directors of the other company to change the name. Consequently, through a gazette notice No. 962 of 3rd February, 2017, the impugned company was listed for dissolution and that the gazette notice was never challenged. At this point, the advocates on record agreed to have the name of the Interested Party; Real Industrial Park Limited and whose directors are Paul Chemgok and Kenton Construction Ltd discharged from the proceedings.
 20. During cross-examination by Mr. Ouma learned Counsel for Plaintiff, PW 1 said that every company registered is given a unique number and when it changes its name, the unique number remains the same. PW 1 confirmed that when Real Industrial Park Ltd changed its name to Kingsway Industrial



- Park Ltd, it retained the unique number C54643 which appears in the certificate of incorporation produced in evidence at page 195 of the affidavit of Joyce Koech.
21. Under further cross-examination by Mwititi learned Counsel for the 3rd to 5th Defendants, PW 1 confirmed the affidavit sworn by Jeneby Taita Too on 22nd May, 2017 in support of the application dated 22nd May, 2017, the two certificates of incorporation annexed have similar numbers and names. Consequently, a third party would not know which of the documents are genuine.
 22. PW 1 went on to state that summons requiring her attendance in court asked her to produce only the file for Kingsway Industrial Park Ltd, formerly Real Industrial Park Ltd. That she did not have the reservation for the name of Real Industrial Park Ltd. She affirmed that a company cannot be registered unless stamp duty is paid. She also said the file in court was re-constructed from documents obtained from the company secretary of Kingsway Industrial Park Ltd who is also the custodian of their records. PW 1 confirmed that she is the one who issued the notice de-registering Kingsway Industrial Park Ltd of CPR/2011/44366 and also reconstructed the file at hand.
 23. In re-examination by Mr. Kamau Senior State Counsel, PW 1 said she had never come across the tax compliance certificate shown to her and it did not originate from their office. It is her evidence that the genuine certificate of incorporation is the one whose copy is attached to the affidavit of Joyce Koech. That there was nothing peculiar in their writing to the plaintiffs' advocates requesting for documentation from the plaintiff's company secretary used for reconstruction of file. She also confirmed receipt of the letter dated 27th January, 2011 from Synergy Registrars at page 197 of Ms. Koech's affidavit. That the letter formed one of the reasons for dissolving Kingsway Park Ltd of CPR 2011/44366. PW 1 added that she could not confirm that the 1st Defendants' documents at page 12 and 13 originated from their (Registrar's) office.
 24. Sanjay Rammulal Shah testified as PW 2 and introduced himself as the director of Growth Management Ltd. He said that he was aware of the dealings in respect of the former Real Industrial Park Ltd now Kingsway Industrial Park Ltd. PW 2 gave a narration on the names of directors at incorporation Real Industrial Park Ltd and the subsequent change of directorship before the company finally changed its name on 22nd June, 2010. The details of directors are found in the documents produced by consent as P ex 2, 3, 4, 5, 6, 7 and 8.
 25. PW 2 stated that after the change of name, the company instructed their advocates to have the change of name effected in their title deeds at the lands office. It is the evidence of PW 2 that when this process of change began, their advocates could not trace the records of the title at the lands office. However, in 2014, the parcel file for L.R 209/11288 was traced and the changes effected to read Kingsway Industrial Park Ltd (annexed MS – 2 in affidavit of Manish sworn on 25th April, 2017).
 26. PW 2 confirmed that the parcels files for L.R Nos 209/11287 and 11289 are still missing. He informed the court that L.R No. 209/11289 had been charged to Industrial Development Bank (I.D.B) for a loan advanced to a sister company while they had registered a caveat on L.R 209/11287. That although the loan to IDB had been paid, they have not been able to register the discharge of charge.
 27. On cross-examination by Mr. Kamau, Senior State Counsel appearing for the Attorney General, PW 2 said that the shareholding in Kingsway Industrial Park is the same as given by PW 1. PW 2 confirmed Synergy Registrars is their company Registrar and that Synergy wrote the letter dated 27th January, 2011 (found at page 197 of A. G's trial bundle). The letter had registered a complaint over interference with their file at the companies Registry. PW 2 said the complaint was acted upon when the file was reconstructed. He confirmed that as at 31st August, 2007, Kingsway Industrial Park had only two



- shareholders namely Kingsway Holdings Ltd (99 shares) and Growth Management Ltd (1 share). PW 2 stated that they have never had any dealings with Henry Kipkirong Lelei and David Kimutai.
28. During further cross-examination by Mr. Mwiti learned Counsel for the 3rd to 5th Defendants, PW 2 said the parcel files of the 3 properties were missing at the lands office from time to time. The witness was shown a letter 16th December, 2016 from the Nairobi City County referring to some subdivisions of L.R No. 209/11289. The witness said their advocates bumped on this letter while they were tracing the parcel files. He added that they had put notices warning the public not to deal with the suit parcels. PW 2 averred that the letter dated 18th January, 2018 by Nairobi City County to Nairobi Land Council was not copied to the plaintiff. Later the Nairobi City county nullified the subdivision approval over L.R 209/11289.
29. PW 2 was also cross-examined by Mr. Kiarie learned Counsel for the Interested Party and he reiterated that Real Industrial Park and Kingsway Industrial Park are one and the same company sharing certificate of incorporation No. 54643. He said he had the original a Memorandum of Association in court but he had not compared it page for page with P ex 1. He admitted not having stamp duty assessment form for Memorandum and Articles of Associations of Real Industrial Park.
30. The witness continued that as at 31st August, 2010, the three shareholders of Real Industrial Park were Kingsway Holdings Ltd, Hashit G. Shah and Kishore K. Meghji Shah. PW 2 asserted that the transfer of shares form produced have been registered (as seen in P ex. 4). That their company secretary had made a complaint regarding interference with the company file in 2011. That pursuant to their complaint, Henry Lelei was arrested and charged with a criminal case in court while David is still at large.
31. PW 2 proceeded to show the court original titles for the suit parcels which they hold. That the parcels are adjacent to each other and were undeveloped until the time when the fraudsters invaded the land and constructed a boundary wall. He continued that the fraudsters were busy constructing structures contrary to the court order. PW 2 said he did not know all the trespassers but two of them that had been arrested and charged with the criminal offence. The witness denied that the plaintiff had filed entry transferring the Plaintiff's property.
32. After hearing the evidence of additional 3 witnesses, Justice S. Okong'o in his endeavor to determine the question of which of the two companies were genuine framed the following issues;
- a. Which of the various companies before the court bearing the names Kingsway Industrial Park Limited and Real Industrial Park Limited are valid and lawful?
 - b. Who are the lawful directors of the legitimate companies?
33. After analysis of the evidence before him, S. Okomgo J. rendered himself on 30th January, 2020 thus:
- i. The only lawful Real Industrial Park Ltd. is the one that was incorporated on 14th July, 1993 under company number C. 54643 with Pradeed Karsnshir Shah, Ramesh Pandya, Surrinder Paul Datta and Unit Gunvant Shah as shareholders and directors.
 - ii. The only lawful Kingsway Industrial Park Limited is that which came into existence on 22nd June, 2010 when Real Industrial Park Ltd. Company number C. 54643 changed its name to Kingsway Industrial Park Ltd. Company number C. 54643.
 - iii. Real Industrial Park Ltd. Company number C. 54643 and Kingsway Industrial Park Ltd. Company number C. 54643 is one and the same company.
 - iv. The lawful directors and shareholders of Kingsway Industrial Park Ltd. Company number C. 54643 formerly Real Industrial Park Ltd. Company number C. 54643 which is the plaintiff



herein are Growth Manager Ltd., Kingsway Holdings Ltd. and Manish Shah (non-shareholder director).

- v. The other entities known as Real Industrial Park Ltd and Kingsway Industrial Park Ltd. formed by Jeneby Taita Arap Too and Paul Maiyo, Henry Kipkirong Lelei and David Kimunai Milgo, Ken Wycliffe Lugwili, and Henry Okech Opondo, Ernest Kiprotich Kimutei and Charles Mutuku Matolo are illegal and fraudulent vehicles which were created for the sole purpose of fraudulently and illegally acquiring the suit properties which are owned by the plaintiff.
 - vi. The costs shall be in the cause.
34. Consequent to the interlocutory determination, Sanjay R. Shah took the stand once again as PW 1 now for purposes of proving their claim of the suit property. He adopted his witness statement dated 17th August, 2019 and produced as exhibits P 1 – P 12 comprised of the documents in the list dated 17th August, 2019.
35. The witness was cross-examined by Counsels appearing for the Defendants and under cross-examination by Mr. Kamau Senior State Counsel appearing for the Attorney General, PW 1 said that the suit properties were transferred to the plaintiff on 27th September, 1996. Since then, the plaintiff has never surrendered their titles for subdivision. He confirmed that he had original titles in his possession. The witness contended that the claim by Chiko Investments Ltd (Petitioner in Pet. 35 of 2019) over one of their titles was fraudulent. For instance, the original grantee in L.R 209/11288 was Alunde Investments Ltd who transferred it to the plaintiff on 18th August, 1993 (as shown in documents found at pages 27 – 28).
36. That in 2010, the company changed its name to Kingsway Industrial Park Ltd. However, the said change has not been effected because the parcel files at the lands office went missing. That they have not made application for subdivision of any of the suit parcels and it is these interferences which made them file present suit.
37. In further cross-examination by Mr. Mereka learned Counsel for the 3rd – 5th Defendants, the witness reiterated that they had never applied for any subdivision. PW 1 confirmed that the proposed subdivision was cancelled by the Nairobi City County after the plaintiff lodged a complaint challenging the approvals. That at the time of filing this suit, the information they had was the Nairobi City County had approved the irregular subdivision. He added that they had made several complaints to the police but they did not receive any assistance. This marked the close of the plaintiff's case.
38. Domic Mutegi who introduced himself as a registered physical planner working with the Nairobi City County as a Director in charge of Development Management, gave evidence as DW 1. He adopted his witness statement dated 7th February, 2019 and added that the following; That David Gichohi – deceased was a private practitioner and he is the one who prepared the application (PPI) which the County Government approved (PP2). That the approved is subject to the land not being in dispute and not being a public utility. DW 1 said that where a dispute is found, the City Council is indemnified.
39. DW 1 confirmed that while undertaking the approval process, they rely on documents presented by parties/developers. That the planning committee approved the application vide its sitting held on 10th November, 2015. Later the proposed subdivision was disapproved and a communication made to National Land Commission. There has been no re-application for subdivision. DW 1 denied they were parties to the conspiracy.



40. In cross-examination, DW 1 admitted being in charge of development approvals. In instances where development are undertaken without approval, they serve enforcement notice and can demolish or take them to court. The witness stated that he had no evidence of cancellation of PPA 2 over L.R No. 209/11288. He admitted that they do not circulate applications made within the office before approving. He further admitted that the documents at pages 91 and 95 of the bundle were signed on his behalf. This marked the close of the case by the 3rd – 5th Defendants.
41. Edwin wafula gave evidence as DW2 testifying on behalf of the 1st, 2nd and 6th – 14th defendants. He currently works as the Principal Land Registrar for West Pokot, Turkana and Marakwet Counties. DW 2 adopted his as witness statement dated 16th July, 2019 together with two (2) gazette notices as exhibits. Under cross-examination by Mr. Ouma Learned Counsel for the plaintiffs, DW 1 confirmed issuing the search found at page 80. That the search (certified) confirmed the plaintiff was the owner of the suit properties.
42. The parties agreed to file written submissions within 21 days each from 17th July, 2023. Instead the plaintiff filed their submissions dated 19th January, 2024. The plaintiff gave a summary of the history of their case and the evidence adduced. The plaintiff in their submissions raised the following issues for determination;
- a. Whether the Real Industrial Park Limited of C.54643 is the same company as Kingsway Industrial Park, and who are the genuine directors of the Company?
 - b. Who is the registered proprietor of the parcels of land registered as L.R No. 209/11287, LR No. 209/11288 and L.R No. 209/11289?
 - c. Whether the land parcels for L.R No. 209/11287, L.R No. 209/11288 and L.R No. 209/11/289 have been missing and interfered with at the land registry, preventing the Plaintiff from dealing with the property?
 - d. Whether there was unlawful attempts to sub-divide the Plaintiff's property without the Plaintiff's consent or permission?
 - e. Whether the Plaintiff is entitled to orders of permanent injunction preventing any trespass, dealing or transaction on its L.R No. 209/11287, L.R No. 209/11/288 and L.R No. 209/11289 without the Plaintiff's permission.
 - f. What orders should the Court grant?
43. In supporting ground (a) above, the plaintiff reproduced the ruling of S. Okong'o J. rendered on 20th January, 2021. On issue No. (b) the plaintiff reiterated the evidence preferred by Sanjay Shah who stated that they had legally acquired the suit properties. They also relied on the exhibits produced inter alia;
- a. Copy of title for L.R No. 209/11289; I.R No. 52219
 - b. Copy of Tile L.R 209/11288; I.R No. 59164
 - c. Copy of Title 209/11287; I.R No. 52220
 - d. Certificate of change of name from Real Industrial Park Ltd to Kingsway Industrial Park Ltd. issued on 22nd June 2010.
 - e. Certificate of Incorporation for Real Industrial Park Ltd dated 14th July, 1993.
 - f. Transfer if shares by Directors' of the two companies.



- g. Memorandum and Articles of Association of Kingsway Industrial Park Ltd.
44. It is further submitted that the plaintiff has provided evidence that it did not present any application for submissions. The plaintiffs argue that;
- “The 3rd, 4th and 5th Defendants cannot purport to claim that they are indemnified against such negligence which was deliberately intended to defraud the Plaintiff of its land, by implying that they could not have been aware that there was a dispute on the subject property and such responsibility at all times remained on the part of the “plaintiff” who, the Plaintiff alleges, submitted fraudulent documents for approval to the Defendants, and that it was not their responsibility to investigate the ownership or any fraud thereof and craves innocence with respect to the alleged conspiracy to disentitle the Plaintiff of its properties. The 3rd, 4th and 5th Defendants’ purported defence is baseless and without merit, on considering the importance of the planning approvals, the land ownership and the effects that follows the approval. On this fact the 3rd, 4th and 5th Defendants cannot be suggesting that the approvals are granted casually in unthinkingly automatic manner without any due diligence.”
45. Consequently, the plaintiff argues that if there are no permanent orders of injunction restraining these activities, the same are likely to continue and which actions will deprive the plaintiff of its properties. Further that there is need to compel the 1st and 2nd Defendants to effect the change of name of the plaintiff on the land file in respect LR Nos 209/11287 and 11289. The plaintiff urged the court to grant all the 21 reliefs sought in the plaint.
46. I have reviewed the evidence adduced by the plaintiff and the 1st to 14th Defendants together with the submissions filed on behalf of the plaintiffs. I have equally noted that the interested parties who initially raised a claim in the suit title applied to withdraw from these proceedings. Essentially no one tendered evidence to challenge the plaintiff’s ownership of the three titles L.R Nos 209/11287, 11288 and 209/11289.
47. The 3rd – 5th Defendants who had approved the illegal submissions confirmed that once they realized there was a dispute over the suit titles, they cancelled the approvals (as per the evidence of DW 1). Similarly, the Registrar of Companies who had testified in the trial within trial proceedings (as PW 1) confirmed that once they realized the registration of the second company “Real Industrial Park Ltd” vide CPR 2011/44366 was illegal as there already existed in their register a company with similar name, they cancelled the latter registration. The registration was cancelled vide gazette notice No. 962 of 20 ... The Registrar confirmed there is no one who has challenged that cancellation.
48. The land Registrar (Edwin Wafula) also confirmed that their records show the plaintiff is the Registered owner of the suit properties. He confirmed that he is the one who certified the certificate of official searches produced in evidence by the plaintiff. Consequently, the evidence tendered by the witnesses of the 1st – 14th Defendants corroborated the plaintiff’s case that although they (plaintiff) were the owners of the suit properties, there was evidence of interference of records bearing their ownership both at the Registrar of Companies offices and the Ministry of Lands Offices. There was also evidence of an illegal attempt to subdivide the L.R 209/11289.
49. The plaintiff proved that despite complaints lodge to the various government departments to address their concerns of interference of their parcels of land, no action was taken until this suit was filed. This explains the plaintiff’s anxiety that unless this court issues orders of an injunction of a permanent



nature, the interferences, demonstrated may re-cur. I am therefore satisfied that the plaintiff has proved her case as a balance of probability and enter judgment for her.

50. Since the Plaintiff in this suit succeeds, the claim over L.R No 209/11289 by the Plaintiffs in ELC 472 of 2017 is dismissed with no order as to costs

51. In conclusion, the orders sought in this suit (ELC 279 of 2017) are granted as prayed.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 24TH DAY OF JANUARY, 2024

A. OMOLLO

JUDGE

