



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET**

**E & L SUIT NO. 483 OF 2013**

**NICHOLAS KIPROTICH TARUS.....PLAINTIFF**

**VERSUS**

**WILLIAM KIPKORIR TANUI.....DEFENDANT**

**JUDGMENT**

**Nicholas Kiprotich Tarus** a male adult of sound mind and a resident of Uasin Gishu District within the Republic of Kenya (**hereinafter referred to as the plaintiff**). has filed this suit against **William Kipkorir Tanui**, a male adult of sound mind residing in Eldoret Town (**hereinafter referred to as the defendant**). The plaintiff claims to be the lawful owner and allottee and or lessee of the parcel of land known as Eldoret Municipality Block 5/565 (**hereinafter referred as to suit property**) from the Municipal Council of Eldoret (**hereinafter referred to the lessor**) The plaintiff claims that on or about 12th July 2011, he instructed his workers to go to the suit property to put up a site house in preparation of the construction but was shocked when his workers were chased away by persons who alleged that the suit property belonged to the defendant herein.

Upon further inquiries, a search conducted in the Lands Registry revealed that the certificate of lease was issued on the 25th May, 2011 in favour of the defendant. It is the plaintiff's contention that the said acts by the defendant in obtaining the certificate of title were done illegally and/or fraudulently. The particulars of fraud and/or illegality on the part of the defendant either by himself/agents and/or servants are taking possession and/or illegally and/or fraudulently acquiring title over the suit land without the consent of the plaintiff and consequently violating the plaintiff's constitutional right to peaceful enjoyment of his proprietary rights and trespassing and/or encroaching into the plaintiff's parcel of land. Erecting buildings on the plaintiff's parcel of land without obtaining the relevant approvals and failing to comply with the mandatory legal requirements regulating property in land and in particular failing to follow all the procedures precedent to the issuance of certificate of title. The plaintiff alleges that by presenting a forged lease purportedly executed by the Municipal Council of Eldoret thereby misrepresenting to the officials at the Uasin Gishu lands registry to issue him with a certificate of lease where none ought to have issued was a fraudulent act.

The plaintiff avers that as a result of the defendant's acts to wit, the fraudulent acquisition of the certificate of lease over that parcel of land known as Eldoret Municipality Block 5/565 measuring 0.085 ha or thereabouts, the plaintiff has been unable to acquire a certificate of lease over the suit land and has therefore suffered loss and damage.

The plaintiff's claim against the defendant is for an order of revocation of title and/or the certificate of lease issued on the 25th day of May, 2011 over that parcel of land known as Eldoret Municipality Block 5/565.

The plaintiff further avers that despite demand and notice of intention to sue having been issued, the defendant has refused/neglected and/or ignored to vacate the suit premises and surrender the illegally acquired certificate of title hence necessitating this suit.

The plaintiff prays for judgment against the defendant for an order revoking the certificate of lease issued on 25.5.2011 over that parcel of land known as Eldoret Municipality Block 5/565 measuring 0.085 ha or thereabout illegally issued in favour of William Kipkorir Tanui and thereafter an order requiring the District Land Registrar, Uasin Gishu District to issue a proper title over that parcel of land known as Eldoret Municipality Block 5/565 in favour of Nicholas Kiprotich Tarus, the plaintiff herein. He further prays for an order of eviction against the defendant, his agents, his employees and/or assigns from plaintiff's property known as Eldoret Municipality Block 5/565. He also seeks for damages/mesne profits for conversion and trespass on the plaintiff's property. Lastly, he seeks an order of permanent injunction restraining the defendant either by himself, his agents, his employees and/or assigns from entering, trespassing into and/or in any other way interfering and/or dealing with the plaintiff's property known as Eldoret Municipality Block 5/565 and costs of this suit.

The defendant filed defence and counterclaim and denied that the plaintiff is the lawfully registered owner of the whole of the land measuring 0.085 ha allegedly registered as Eldoret Municipality Block 5/565 and singularly denies the particulars of fraud in paragraph 5 and states that the parcel No. Eldoret Municipality Block 5/565 is his and has acquired good Title over it and that the defendant is the owner both in possession and occupation of the land. He claims that the title document he has for the parcel is genuine and the same is as a result of a genuine process and documents. He avers that the plaintiff has no capacity to sue over the suit land and that he is the *bonafide* registered owner of the parcel No. Eldoret Municipality Block 5/565. The defendant prays that the plaintiff's suit be dismissed with costs and judgment be entered for the defendant against the plaintiff for an order directing the plaintiff to give quiet possession of the suit land and an order restraining the plaintiff from interfering with the defendant's possession, occupation and development of the land parcel Eldoret Municipality Block 5/565 and costs of this suit.

**In his defence to counterclaim** the plaintiff avers that the defendant's action in un-procedurally registering himself as the proprietor of the suit land has denied the plaintiff his constitutional right to peaceful enjoyment of his property and asserts that he has locus to institute the present proceedings and that the suit is not barred in law as claimed or at all.

The matter came for hearing on the 9.2.2015 when the plaintiff, **Nicholas Kiprotich Tarus** testified that he is a resident of Chemuswo village, Nandi County. He is a prison officer, currently attached to Rumuruti G. K. Prison. On or about 11.4.2011, he purchased a parcel of land known as Eldoret Municipality Block 5/565 located at West Indies, from Cheruiyot Arap Randich. Prior to the said purchase, he did due diligence from Municipal Council of Eldoret and established that the said property indeed belonged to the said Cheruiyot Arap Randich. He paid the full purchase price to the vendor and thereafter sought and obtained consent from the aforementioned council for the said transaction.

At the time of purchase, he also confirmed that the title in respect of the property had not been issued to anyone else. He therefor commenced the process for obtaining the lease from the Municipal Council of Eldoret.

On the 12th of July 2011, he instructed his worker to go to the land and put up a site house in preparation of the construction but was shocked when his workers were chased away by persons who alleged that plot belonged to the defendant herein. He reported the matter to the police at Eldoret and thereafter he conducted a search which revealed that the defendant was issued with a certificate of lease on the 25.5.2013.

The Municipal Council of Eldoret however, claimed that they had never allocated the suit property to anyone nor executed a lease in favour of the defendant. The defendant title was hence obtained through fraud and without following due process and should be canceled forthwith. Despite notices of intention to sue and demand being issued to the defendant has declined to give him vacant possession

hence this suit.

**PW2, Cheruiyot Kiprandich** testified under oath that he is a farmer by profession and that he sold the land in dispute to the plaintiff, which was initially referred to as plot no 38 in the allotment letter that was produced as evidence. He does not remember the number after survey but remembers that he was invited to be shown beacons on 15.2.1994 and signed a certificate which he produced.

He rectified his names from Cheruiyot Kiprotich to Cheruiyot Arap Rotich when he appeared before Terer Advocate and swore an affidavit correcting his names. He claims to have made payments to the Municipal Council, and does not owe any money. He sold this land to Nicholas Kiprotich Tarus but has never sold the property to William Tanui.

**PW3, Barnabas Cheruiyot** testified that he works at Uasin Gishu County as an administrative officer. The lessor of the Plot No. 38 is Eldoret Municipal Council. The plot was advertised in the Newspapers in 1992. when members of public were required to apply and pay a deposit of Kshs.1000. The applications were approved by the District Plot Allocation Committee. There was a meeting for this plot held on 23.4.1992 when J. C. Kendagor was the Town Clerk. The plot was allocated to Cheruiyot Arap Randich. He produced the Minutes as PEx.12. The Municipal Council issued allotment letter the Cheruiyot Arap Rotich on 23.10.1992. He had been informed on 2.12.1992 of the allocation and made the payments in full and was issued a rates clearance certificate.

According to **PW2**, Mr. Cheruiyot Kiprandich was shown the beacons on 3.3.1994. Provisional plot No. 38 and Eldoret Municipality No. 5/565 are the same plot. Mr. Cheruiyot went to the Commissioner for Oaths and confirmed that Cheruiyot Kiprandich and Rotich are the same person.

From his records, the plot is owned by Nicholas Kiprotich Tarus. They do not have Minutes allocating the land to William Kipkorir Tanui. There is no lease prepared by the Municipal Council.

**PW4, Chief Inspector Gutu**, a forensic document examiner testified that he has been a document examiner for 7 years, trained at National Rabat University in Khartoum, Sudan. In regard to the matter before court on 12.3.2015, he testified that documents were brought in their Laboratory from the Criminal Investigation Department., Eldoret. The exhibits were accompanied with the Exhibits Memo Form. The exhibits were A1 and A2 as questioned signatures and stamp impression respectively and B1-B6 as specimen signatures and stamp impressions of David Rioba Omboto.

There were request for examinations thus the first request, they were supposed to examine and compare questioned signatures pointed by Red arrow on exhibits A1 and A2, if the signatures were made by the same author when compared with exhibits marked B1-B6 as per the report produced as **PEX 13**. He did the examination and in his opinion, the signatures were made by different authors meaning Mr. David Rioba Omboto did not append his signature on the documents.

Secondly, they were supposed to examine and compare the rubber stamp impression pointed by red arrow and exhibits marked **A1 and A2**, if the stamp impressions were made by the same individual when compared with the specimen rubber stamp impressions on exhibits **B1---B6**.

He did the examination and in his opinion, the stamp impressions were made by different individuals. That means Mr. Rioba's stamp impression was forged.

During examination, he did subject both questioned and specimen signature to image magnification procedures using video spectral comparator for better visibility and inspection of individual characteristics for absolute identification.

His opinion on different authorship and signatures is based on the following individual characteristics. These are:-

1. ***Signature initialization and their terminal strokes,***

2. **Signature construction and their arrangements,**
3. **Natural pen lifts,**
4. **Pen pressure and ink flow,**
5. **Signature spacing and alignment,**
6. **The natural variations.**

He also subjected questioned and specimen rubber stamp impression to superimpositions procedures. The impression did not match. He prepared the report on 12.3.2015. He signed the report on the same day.

The defence called the defendant who testified that he is a stock seller and a farmer who stays at Kipkeiyo village within Eldoret Municipality. He was allocated the land in issue in 1992 when he applied for the plot. The area Councilor offered to give him the plot at that time referred to as No. Plot no 38. He was allocated the plot through a letter of allotment dated 23.10.1992 though he did not produce it. The purchase price was Kshs.54,954/=. He paid Kshs.54,954/= after 3 years on 20.2.1995. After paying the money, he was shown the land and started utilizing it and built rental houses in 2008. In 2010, he visited the Municipal offices and was given the names of the lawyers. He was told to take one of the lawyers to prepare the lease. The lease was to be used for rates. He has a copy of the lease dated 24.4.2010 and registered on 25.5.2011 he started paying rates after registering the lease document. He paid rates of Kshs.5,172/= on 21.3.2011 and was later issued with a lease certificate. He produced the lease certificate as DEX4. After being given the certificate, he proceeded with the constructions on the disputed land. He wanted to take a loan from the bank and went to the lands office to obtain a certificate of official search but found that there were restrictions made on 29.7.2011. Later, Criminal Investigation officers sought him and told him to produce documents as the certificate of lease was suspected forged. Municipal Council has neither complained nor stopped him from using the land. He has been paying rates. He produced a bundle of receipts as DEX5(a) – 5(g). The last payment for 11.2.2015. The council gave them notice to attend a session to discuss the issue. He was told that the *shamba* was his.

Nobody complained in respect of his plot. PW3 Barnabas Cheruiyot was part of the committee that investigated the plot allocation. He has the Minutes of the meeting which comprised of Administration officers and Councilors which he produced as DEX6 He prayed that the court finds the disputed land is his. He has constructed and have no place to manufacture leases and lease certificate. Mr. Rioba Omboto did the transaction and therefore there is no illegality.

The defence called **DW2** who testified that he is a Land Registration Officer, Uasin Gishu County. He caused a lease document dated 24.4.2010 and signed by Eldoret Municipal Council registered in the name of William Kipkorir Tanui on 25.5.2011. That lease was presented by the Municipal Council to their offices and registered on condition that registration fees and stamp duty had been paid.

He saw the endorsement by the Mayor and town Clerk. However, there is no signature by the lessee but there is attestation. The document was registered by the Lands Office. He produced the document as DEX3.

The certificate of lease was issued to William Kipkorir Tanui on 25.5.2011. He produced a certificate of Registration as DEX7. However, there was a restriction placed on 29.7.2011 by the District Land Registrar. There must have been a complaint in writing. He has a letter from the DCIO dated 2.8.2011, it seems to be a complaint by the DCIO. There is no response on record. He has documents on payment to the Lands Office. The payment was made on 12.4.2011. The payments were for registration, certificate of lease and register. He produced the documents as defence exhibits No. 8(a) (b) (c) and (d). According to their records, the registered owner is William Kipkorir Tanui.

**DW3, David Rioba Omboto** testified that he is an Advocate of High Court of Kenya. He practices as Rioba Omboto Advocate. He does confirm that he used to sign lease documents for the Municipal Council of Eldoret. They receive quite a number of documents. On the 24.4.2010, he received documents in respect of William Kipkorir Tanui in relation to parcel No. Eldoret Municipality Block

5/565. He prepared the lease document. There is a lease document duly signed by the Mayor, Town Clerk and lessee. Mr. William Kipkorir Tanui who appeared before him also personally signed. He produced a copy as DEx9. He claims that the documents came to him in a bundle. There is a possibility that he did not sign a copy. After signing, he gives the documents back to the lessee. One of the clerks accompanies them. He is usually given a copy after registration by the Lands Office.

It is not in dispute that on the 23rd of October, 1992, Cheruiyot Arap Randich was allocated a plot in Eldoret Municipality being Plot No. 38 at West Indies Estate vide PDP No. 17/84/2 on condition that he pay Kshs.54,954/= exclusive of legal and survey fees or costs.

The allocation was subject to the plaintiff complying with County by laws with regard to building constructions and the plot was to be developed within 2 years. On the 13.5.2011, he wrote to the town Clerk, Eldoret Municipal Council requesting to transfer the Plot No. 31/38 Title No. 5/563 to Nicholas Kiprotich Tarus, the plaintiff herein. On the 3.6.2011, the Town Clerk Municipal Council of Eldoret wrote to Mr. Cheruiyot Araprandich instructing him that his request to transfer the property as indicated in his letter of 13.5.2011 had been approved.

In a letter of 2.12.1992, to Cheruiyot Araprandich produced as PEX.7. The Town Clerk, Eldoret Municipal Council intimates.

### **RE-ALLOCATION OF A RESIDENTIAL PLOT NO. 38 WITHIN ELDORET MUNICIPALITY**

I refer to past correspondence hereon resting with ours Ref. No. ELD/WI/RES/38/2 of 23rd October, 1992 and take pleasure in informing you that Council has kindly offered you the above captioned plot (the boundaries of which are shown and edged red on Plan No. 17/84/2 attached hereto), subject to your formal written acceptance of the conditions contained in our letter under reference, within thirty (30) days from the date hereof.

In the event of your accepting this offer, Council shall require you to make payment in the sum of Kshs.54,954/= within ninety (90) days from the date of this letter.

In the meantime, do please acknowledge the receipt of this letter.

Mr. Cheruyuiot Arap Randich was given an offer and was to make a personal acceptance within 30 days. Moreover, in the event of accepting the offer, he was to make payment within 90 days from the date of the letter thus 90 days from 2.12.1992.

There is no evidence of a personal acceptance of the offer and there is no evidence of payment of Kshs.54,954/= within 90 days as requested by the Town Clerk.

On the 7.6.1994, the Town Clerk, Eldoret Municipal Council wrote to the said Cheruiyot Arap Rotich giving him terms and conditions of the allocation of the plot. Such terms were:

- 1. That you will be granted a leasehold title for 99 years over the plot effective from 1st January, 1992.**
- 2. That you will meet the survey fees in the sum of Shs.3,000/= and that rates and land rent will be recovered from you from 1.1.92.**
- 3. That you will be required to construct a dwelling house on the said plot in accordance with plans approved by the Council.**
- 4. That Council reserves the right to revise any charges consistent with any additional expenses incurred by it in respect of increased costs, relative to roads, foot-paths, water drains, sewer, conservancy, dustbin charges etc.**
- 5. That you will not permit or suffer to be done anything in the said premises which may become a nuisance or annoyance to the Council or its other tenants or owners or occupiers of the adjoining properties.**
- 6. That you will allow the Council or its authorised agents, servants, employees and workmen**

**at all reasonable times to enter upon the land to inspect the same and you will comply with all lawful instructions given to you by the Council, its duly authorized servants, employees, agents and workmen.**

- 7. That further to clauses 3 herein above, you are required within a period of 24 months from the date hereof to develop the said plot according to plans and specifications provided or otherwise approved by the Council.**
- 8. That you will not carry on, permit, or suffer to be carried on, in or about the said plot any trade or business whatsoever without the prior written consent of Council.**

There is no evidence that these terms were complied with. Things appear to have gone quiet until the 11.4.2011 when Mr. Cheruiyot Randich entered into an agreement with the plaintiff where it was said that the vendor Cheruiyot Kiprandich was the owner of that parcel of land known as Block 5/565 measuring approximately 0.0851 ha. It is important to note that the vendor, Mr. Cheruiyot had not paid the Kshs.54,954/= as condition precedent to allocation of the plot within the required 90 days.

Mr. Cheruiyot received Kshs.650,000/= on the date of the agreement before even paying the Eldoret Municipal Council the agreed amount of Kshs.54,984/= almost 20 years after he had been requested to pay the same. The total purchase price on allocation is indicated as indicated as Kshs.40,000/=.

This court finds that Mr. Cheruiyot Arap Randich lost the right in the property when he failed to comply with the conditions set out in the letters of 23.10.1992 (PEx.6), letter dated 2.12.1992 (PEx7) and 7.6.1994.

By the time the plaintiff was buying the property from Mr. Cheruiyot Randich, the offer had expired as he had not paid the full purchase price within the stipulated period of time.

However, the above notwithstanding, the court finds that the plaintiff has established that he was allocated the parcel of land by the Municipal Council of Eldoret which allocation has never been revoked but lapsed due to effluxion of time and therefore, all the transactions carried out after the effluxion of time are a nullity and as it stands, the plaintiff is only entitled to a refund of all monies paid on the transaction.

In making a distinction between a party who holds a letter of allotment and one who was registered proprietors of the land in question, the High Court in the case of John Mukora Wachihi & Others –vs- Minister For Lands & Others High Court Petition No. 82 of 2010 observed that the distinction is based on the fact that the right to property protected under the law and the Constitution is afforded to registered owners of land; that a letter of allotment is not proof of title as it is only a step in the process of allocation of land. The Court relied in that regard on the position enunciated by the Court of Appeal in the case of Wreck Motors Enterprises –vs- The Commissioner of Lands and 3 Others Nairobi Civil Appeal No. 71 of 1997 (Unreported), where the Court of Appeal stated as follows:

*‘Title to landed property normally comes into existence after issuance of a letter of allotment, meeting the conditions stated in such a letter and actual issuance thereafter of a title document pursuant to provisions held.’ (Emphasis added)*

A similar finding was made in the case of Joseph Arap Ng’ok –vs- Justice Moiwo Ole Keiwua NAI Civil Application No. 60 of 1997 in which the Court of Appeal observed as follows:

*‘It is trite that such title to landed property can only come into existence after issuance of letter of allotment, meeting the conditions stated in such letter and actual issuance thereafter of title document pursuant to provisions in the Act under which the property is held.’*

On the other part, this court finds that the defendant was never issued with an allotment letter or did not produce one at the hearing. The allotment letter marked DMFI.1 was only marked but not produced. The lease document produced and marked as Dex).9 was allegedly executed by the Mayor of

the Eldoret Municipal Council as it then was in compliance with Section 109(1) of the Registration Land Act Cap. 300, Laws of Kenya. It can be said that the lease document was signed by the proprietor of the land thus the Eldoret Municipal Council in view of the provision of **Section 109 of the Registration Land Act which provides that.**

***109. (1) Every instrument evidencing a disposition shall be***

***executed by all persons shown by the register to be proprietors of the***

***interest affected and by all other parties to the instrument:***

***Provided that the Registrar may dispense with execution by***

***any particular party (other than the transferor or transferee) where he***

***considers that the execution is necessary.***

***(2) Subject to section 124 (2), an instrument shall be deemed to***

***have been executed only -***

***(a) by a natural person, if signed by him;***

***(b) by a body corporate if -----***

***(i) bii) being a body corporate incorporated under any other writ-***

***ten law and not subject to the provisions of the Companies***

***Act, such persons as are authorized in that behalf by any***

***law or by the statute, charter or other instrument creating***

***the body corporate, or, in the absence of any express pro-***

***vision, by the person appointed in writing for that purpose***

***by the body corporate, evidence of which appointment is***

***produced to the satisfaction of the Registrar.***

**However, the above provision is subject to section 110(1) and (2) which provides that**

***110. (1) Subject to subsection (3), a person executing an instrument shall appear before the Registrar or such public officer or other person as is prescribed and, unless he is known to the Registrar or the public officer or other person, shall be accompanied by a credible witness for the purpose of establishing his identity.***

***(2) The Registrar or public officer or other person shall satisfy***

***himself as to the identity of the person appearing before him and***

***ascertain whether he freely and voluntarily executed the instrument, and shall complete thereon a certificate to that effect.***

***(3) The Registrar may dispense with verification under this***

*section -*

*(a) if he considers that it cannot be obtained or can be obtained only with difficulty and he is otherwise satisfied that the document has been properly executed; or*

*(b) in cases in which to his knowledge the document has been properly executed,*

*and shall record on the document his reasons for dispensing with the appearance of the parties.*

*(4) .....*

I have looked at DEX3 and DEX9, the lease documents and do find that DEX3 is irregular as the signature of the lessor's signature was not verified by the Registrar, Public Officer or any person authorized to do so. Though the same was registered on 25.5.2011, DEX9 though appears to be signed by the Town Clerk, it is not properly executed for the lessor as the signatures of the town clerk and mayor are not verified as required by law. Dex3 appears to be stamped in accordance with the stamp duty Act whilst DEX9 is not stamped and therefore Dex 9 is also irregular.

The Registrar testified that DEX9 was the lease document in respect of the suit property and therefore, it appears that the said document is the lease relied upon by the Registrar to prepare the certificate of lease. The document appears irregular as it is not stamped by the collector of stamps.

The upshot of the above is that the lease document was not properly executed in compliance with section 108, 109, 110 and 111 of the Registration Land Act repealed. It follows that the Certificate of Lease issued on 25.5.2011 was issued irregularly and therefore is a nullity.

On the issue as to whether the signatures on the lease document and rubber stamps purportedly by Rioba Omboto were forged, this court finds that in view of the fact that Mr. Rioba Omboto confirmed that the signatures on the lease documents attesting or verifying the documents were his, the plaintiff has not proved beyond balance of probabilities, but not beyond reasonable doubt that the signatures or stamp were forged. I,m inclined to believe Mr Omboto that the signature and stamps are his because I do not see what Mr. Omboto would benefit in lying that he is the maker of the stamps and signature

In conclusion, this court finds that though DW2 was allocated the plot No. 38, he did not comply with the requirement of the allocation letter within the stipulated and therefore the offer expired within 24 months from the date of allocation. The purchase price was not paid until the year 2011. By the date of the purported sale and transfer, **DW2** did not have any right in the property. The purported consent to transfer has no legal basis as the plaintiff had acquired no right in the property as he was in breach of the terms in the allocation letter.

The defendant has demonstrated that he is the registered owner of L.R.NO.209/13415 the title that he holds requires protection under the law. Under section 25 (1) of the Land Registration Act NO.3 the rights of a proprietor are indefeasible except as provided under the Act.

**Section 25(1) provides** that the rights of a proprietor whether acquired on first registration or subsequently for valuable consideration or by an order of court shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor together with all privileges and appurtenances belonging thereto free from all other interests and claims whatsoever but subject to-

1. To the leases, charges and other encumbrances and to the conditions and restrictions, if any shown in the register; and
2. To such liabilities, rights and interest as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register”.

Under section 26 the certificate of title is *prima facie* evidence of ownership and cannot be challenged except on grounds of fraud or where it is shown the title has been acquired illegally, unprocedurally or through corruption.

Section 26(1) provides:-

1. The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by a proprietor shall be taken all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances easement, restrictions and conditions contained or endorsed in the certificate and the title of that proprietor shall not be subject to challenge except:-
  1. On the ground of fraud or misrepresentation to which the person is proved to be a party or
  2. Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

Article 40 of the constitution guarantees property rights of every person and specifically under article 40 (3) provides that no person shall be deprived of property or of any interest in or right over property of any description without prompt and just compensation being made to the person deprived of the property. However, where property is found to have been unlawfully acquired protection is waived under Article 40 (6) of the constitution.

Thus, it is patently clear that in the instant case unless it is established the defendants title is challenge-able under section 26(1) (a) (b) of the Land Registration Act or his found to fall within the exemption of protection under Article 40(6) of the constitution the title is indefeasible. As I have held no fraud has been proved and/or established to which the plaintiff can be said to have been a party. However, I do find that the Certificate of Lease held by the defendant was not procedurally obtained due to failure to verify the lessor's signature.

The upshot of the above is that the suit is dismissed on the basis that the plaintiff has failed to establish that he has proprietary interest in the suit property having failed to accept the offer within the stipulated period. Whilst the counterclaim by the defendant is also dismissed on the basis that the lease document was not properly executed. Each party to bear own costs .

**DATED AND DELIVERED AT ELDORET THIS 30TH DAY OF NOVEMBER, 2015.**

**ANTONY OMBWAYO**

**JUDGE**