



REPUBLIC OF KENYA



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**Mas Construction Limited v Sheikh & 6 others (Civil Appeal
E789 of 2023) [2025] KECA 349 (KLR) (28 February 2025) (Judgment)**

Neutral citation: [2025] KECA 349 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL E789 OF 2023
DK MUSINGA, K M'INOTI & FA OCHIENG, JJA
FEBRUARY 28, 2025**

BETWEEN

MAS CONSTRUCTION LIMITED APPELLANT

AND

ABDUL WAHEED SHEIKH 1ST RESPONDENT

ABDUL HAMEED SHEIKH 2ND RESPONDENT

HASSAN ABDI SALAN 3RD RESPONDENT

JOSEPH NDERITU T/A JOGANDRIES AUCTIONEERS 4TH RESPONDENT

MAHAT ADAN ABDIRAHMAN IBRAHIM 5TH RESPONDENT

NAIROBI CITY COUNTY 6TH RESPONDENT

CHIEF LAND REGISTRAR 7TH RESPONDENT

(Being an appeal from the Judgment of the Environment and Land Court of Kenya at Nairobi (O. A. Angote, J.) delivered on 27th July 2023 in ELC Case No. 1480 of 2014)

JUDGMENT

1. Fraudulent land dealings in this country, often facilitated by a few unscrupulous officers at various land registries, who facilitate unlawful alteration of land documents; issuance of fake or unauthorized documents, or cause 'loss' of vital land records, among other malfeasances, have substantially contributed to long drawn-out cases in our courts. Land ownership and land rights is both a historical and emotive subject in Kenya. A right to hold property is a constitutional right as well as a human right, and no person should be deprived of their property, except in accordance with the provisions of the Constitution or Statute. See the decision of this Court in Chief Land Registrar & 4 others v Nathan Tirop Koech & 4 others [2018] eKLR.



2. The dispute that gave rise to this appeal relates to the ownership of a parcel of land located along 1st Parklands Avenue within Nairobi. As it will become evident later in this decision, not only is the ownership thereof contested, but also the description of the property.
3. The genesis of the dispute that culminated in this appeal can be traced to a suit that was instituted in the Environment and Land Court, (ELC) at Nairobi, ELC Case No. 1480 of 2014, by the 1st and 2nd respondents, Abdul Waheed Sheikh and Abdul Hameed Sheikh, (hereinafter referred to as “the Abduls”) against the appellant and the 3rd to 7th respondents. Vide a Complaint dated 24th November 2014, the Abduls contended that property land reference number 209/1916/5 contained in Grant number 94707 dated 26th February 2003 was registered in the name of the late Sheikh Fazal Ilahi (their deceased father), pursuant to: a Transfer registered on 2nd July 1937; Provisional Certificate of Title registered on 20th September 1989; and a Grant registered on 5th April 2004.
4. They contended that the estate of the deceased had been in occupation of the said property since 1937 and was still in occupation even as at the time of filing the suit. They further contended that at all material time the estate of the deceased had met all its obligations attendant to the ownership thereof, including but not limited to the payment of land rates and land rent to the Nairobi City County and the Chief Land Registrar. In addition, that the accounts for the property held by these two entities were in the name of the estate of the deceased and that the two entities had, time and again, confirmed the aforementioned ownership status of the property through their acceptance of the payments for rates and rent and issuance of rates and rent clearance certificates to the deceased’s estate.
5. The event that precipitated the filing of the suit took place on 10th October 2014 when the appellant and the 5th respondent wrongly broke into and entered a residential house on the property, seized and took possession of the furniture, goods and chattels therein. At the time of that wrongful entry the property was occupied by the Abduls’ caretaker, one Ngina Kimeu and her husband, Jackson Muema. The wrongful entry into the suit property was in purported distress for rent and enforcement of an order made on 10th October 2014 by the Milimani Chief Magistrates’ Court, in Misc. Application No. 972 of 2014, which directed that the 5th respondent be given police escort to the premises occupied by Jackson Muema on Plot No. LR 209/1916/5 Nairobi to enable the 5th respondent to remove the proclaimed goods for purposes of auctioning them to recover rent arrears amounting to Kshs.700,000 owed to the appellant plus other incidental costs.
6. The Abduls maintained that at the time of the entry into the property and at all other times their appointed caretaker and her husband were not tenants of the appellant and therefore, there was no rent due and owing for the use and occupation of the house on the property to the appellant. In any case, that the appointed caretaker and her husband were in lawful occupation and possession of the property, with the permission of the Abduls and therefore, the appellant was not in any way entitled to any rent or rent service or mesne profits from them.
7. The Abduls posited that the wrongful entry into the property was an attempt by the appellant and the 5th respondent at dispossessing them of the property through illegal distress for rent, and that the said actions amounted to trespass. They set forth various actions perpetuated by the appellant and the 3rd to 5th respondents, which they stated were geared at dispossessing them of the property. The said actions included: creation of a rates account by the appellant in its name thus misrepresenting that it was the registered and ratable owner of the property; unlawful procurement of drawings number CPF AF dated 10th April 2010 by the appellant for the construction of apartments on the property; unlawful creation of a rates account by the 3rd and 4th respondents in their name, thus misrepresenting that



they were the lawfully registered and ratable owners of the property; and the deposit of construction materials inside the grounds of the property.

8. The Abduls maintained that the Grant held by the appellant from the 3rd and 4th respondents did not relate to the property in question, and that if it did, then it was acquired through fraud and misrepresentation, error or misdescription by the said parties, acting jointly and severally.
9. The orders sought in the plaint were: a declaration that the order of 10th October 2014 and proceedings in Milimani CM Misc. Appln No. 972 of 2024 pursuant to which the appellant and the 3rd respondent levied distress for rent on property land reference number 209/1961/5 is null and void; a declaration that Grant number I.R. 147524 for property land reference number 209/1961/5 dated 18th February 2013 or any such Grant pursuant to which the appellant, the 3rd and 4th respondents claim entitlement to ownership to property land reference number 209/1961/5 is null and void ab initio; the appellant and the 5th respondents be ordered to pay the Abduls general damages for unlawful execution, attachment and trespass; the appellant, the 3rd to 5th respondents by themselves or by their agents, officers, servants or otherwise howsoever be restrained from entering or remaining upon property land reference number 209/1961/5 and/or in any manner whatsoever interfering with the Abduls' occupation of the property; the Nairobi City Council by itself or by its agents, officers, servants or otherwise howsoever be restrained from approving any development applications and drawings, issuing any permits, permissions or authorizing for any demolition or construction works of whatever nature on the property; the Chief Land Registrar by himself or agents, officers, servants or otherwise howsoever be restrained from registering against the register of property land reference number 209/1916/5 any documents adverse to the interests off the Abduls at the behest of the appellant, the 3rd and 4th respondents or at all; and that the appellant and the 3rd to 7th respondents be ordered to pay the Abduls costs of the suit together with interest thereon at court rates from the date of filing of suit until payment in full.
10. The appellant opposed the suit vide a statement of defence dated 10th February 2015. It denied the allegations by the Abduls that the property LR No. 209/1961/5 registered as IR 147524 belonged to their deceased father's estate. The appellant contended that it entered into a sale agreement with the 3rd and 4th respondents for the sale of the said property; that it complied with all the requirements for the transfer of the property; that before the transfer of the property, the necessary clearances and consents were obtained; and that the searches conducted on 12th March 2014, 2nd July 2014 and 17th October 2014 confirmed that the property was registered in the name of the appellant.
11. The appellant further contended that the Chief Land Registrar had confirmed, vide a letter dated 17th December 2014, that the property LR No. 209/1961/5 registered as IR 147524 (and not IR 94707 as alleged by the Abduls) was owned by the appellant and that the title documents being held by the Abduls were not legitimate.
12. The appellant posited that it was the legitimate owner of the property in question, and contended that the Abduls had made fraudulent claims, forged documents and perjured themselves, all in an attempt to deny it of its rightful claim to the property.

It pleaded several particulars of fraud and misrepresentation against the Abduls which included: failing to exhibit any evidence to prove that they owned the property before the expiry of the lease which they allege was renewed; discrepancies between the letters of allotment and title with the allotment letter being dated 21st July 2003 whereas the title was signed on 26th February 2003; discrepancy in size of the allotted property, the letter of allotment showing that the property measures about 0.506Ha, while the title shows that it measured 0.2044 Ha; a Gant of Letters of Administration registered against the



- title on 27th December 2012 and against the Certificate of Confirmation of Grant which was made almost two years later.
13. In addition, the appellant contended that it obtained Nairobi Succession Cause No. 445 of 1986 relating to the estate of the deceased where it observed the following: Sheikh Fazal Ilahi who is alleged to have owned LR No. 209/1916/5 died in 1955 leaving behind a Will and Codicil that never at all mentioned the property in question; that Letters of Administration were sought by Abdul Shakoor Sheikh in 1986 and in his affidavit sworn on 6th June 1986, he listed as among the forgotten properties of the deceased LR No. 209/19916/2 and not LR No. 209/1916/5 and that nowhere in his petition did he make reference to LR No. 209/1916/5; even though it is alleged that Abdul Shakkor Sheikh obtained a letter of allotment for the estate in July 2003 and later a title in July 2004 in regard to LR No. 209/1916/5, this was not mentioned in the succession cause until his death in 2010; and the current Administrators of the estate of Sheikh Fazal Ilahi (the Abduls) also do not mention LR 209/1916/5 as an asset of the estate.
 14. On their part, the 3rd and 4th respondents (Hassan Abdi Salan and Mahat Adan Abdirahman Ibrahim) vide their Statement of Defence dated 10th February 2015 contended, inter alia: that the property LR. 209/1916/5 registered as IR 147524 was registered in their name and that it has never been registered as IR 94707 and as such, any such registration as claimed by the Abduls was fraudulent; and that the Grant (IR 147524) was transferred to the appellant and they (3rd and 4th respondents) did not have any claim on the said property.
 15. They also averred specifically that: they were at all material times the owners of the property before selling and transferring it to the appellant; at the time of obtaining the Letter of Allotment dated 3rd March 1997, the property had neither been leased nor allotted to any person; the ownership of the property was pursuant to a Grant registered as IR Number 147524 dated 18th February 2013 issued to them after complying with all the requirements in the Letter of Allotment dated 3rd March 1997; that they had at all material times paid the outgoings on the property to the Nairobi City County that recognized them as the owners of the property; that the Chief Land Registrar had at all times recognized them as the owners of the property and even issued them with Rent Clearance Certificate for the year ending 31st December 2014 and Consent to Transfer dated 6th March 2014 for purposes of the transfer to the appellant; that the documents of title in the name of the Abduls were forged in that title LR 209/1916/5 was registered as IR 147524 and not IR 94707 as shown in the documents held by the Abduls; and that the Letter of Allotment relied on by the Abduls was issued post the execution of the Grant by the Commissioner of Lands and issuance of the certificate of title to them.
 16. The Chief Land Registrar denied the allegations set out in the Plaint and contended that the appellant was registered as the bona fide proprietor of the property LR 209/1916/5 Grant Number I.R 147524 on 10th March 2015 vide a transfer instrument from the previous owners, Hassan Abdi Salan and Mahat Adan Abdirahman Ibrahim (the 3rd and 4th respondents); that before the said transfer, the 3rd and 4th respondents were registered as tenants in common in equal shares on 30th July 2014 vide a Grant (I.R. 147524 and LR No. 209/1916/5) signed by the Commissioner of Lands on 18th February 2013 for a term of 99 years with effect from 1st March 1997; that from the records pertaining to the property in question, the 3rd and 4th respondents were issued with a letter of allotment on 3rd March 1997 and as of then, the said property had neither been leased nor allotted to any other party.
 17. The Chief Land Registrar disowned the title in the possession of the Abduls, that is, LR No. 209/1916/5, I.R 94707, and averred that it did not emanate from his office and that it was a forgery.



The Chief Land Registrar also disowned the letter of allotment which was in the possession of the Abduls and denied ever issuing the said letter to them.

18. According to the Chief Land Registrar, title LR 209/1916/5 was never held by the Abduls or their deceased father before 1st April 2003 or at all, and as such, there was no Grant that could have been renewed in the deceased's favour. In his view, the properties described as LR 209/1916 and 209/1916/5 were, for all intent and purposes, different properties.
19. As regards the allegation by the Abduls that they had always paid land rent and were issued with rent clearance certificates, it was contended that the documents in their possession relating to payment of land rent were not in the Deed File or in the Correspondence File for LR 209/1916/5, and that in any case, payment of rates and/or rent in any particular name could not be said to confer title. It was contended that the 3rd and 4th respondents and subsequently the appellant had been paying land rent for LR 209/1916/5, I.R. 147524 since registration of the title to date.
20. In sum, the Chief Land Registrar contended that from the records available, the appellant was the registered proprietor of the property and that the Abduls or their deceased father's estate had no claim over it, whatsoever.
21. Although it appears that the Nairobi City County did not file any defence to the suit, it is evident from its written submissions dated 17th November 2022 that it was not in support of the said suit. In the said submissions, it maintained that the approvals it made in favour of the appellant for construction of apartments on the property in question were made upon production of ownership documents, and that it was not its duty to decide whether the documents presented before it were genuine or not, and that any attempt to do so would have amounted to a usurpation of the duties, powers, functions and responsibilities of the Chief Land Registrar. The Nairobi City County contended that it ought not to have been a party to the suit, and prayed that the suit against it be dismissed with costs.
22. During the hearing, various witnesses gave viva voce evidence.
David Gacanja Kago, a licensed land surveyor, practicing under the name and style Ardhi Survey Consultant Limited, testified as PW1. His testimony was that he had been instructed by the Abduls to prepare a report in respect of LR No. 209/1916/5, and more specifically to trace its origins. In order to undertake the instructions, he was given a title document and the original deed plan.
23. He testified that the mother title for the land was LR 209/1926, (actually 209/1916) which was subdivided in the year 1930, gave rise to two portions namely, LR 209/1916/1 and 209/1916/2. In the year 1952, LR No. 209/1916/2 was further subdivided, with the resultant plots being 209/1916/3 (original 209/1916/2/1), 209/1916/4 (original 209/1916/2/2) and 209/1916/5 (original 209/1916/2/3) and finally 209/1916/2/R which is a road measuring 0.076 acres. According to PW1, LR No. 209/1961/5 had been in existence from the year 1952. The mother title was a leasehold interest for a term of 99 years from 1st April 1904 to 1st April 2003.
24. He further testified that the estate of the deceased made an application for extension of lease for LR No. 209/1916/5, which the Commissioner of Lands approved vide his letter reference number 5914/10 on 26th July 2002. He stated that one of the conditions in the letter from the Commissioner of Lands was the submission of a new Deed Plan duly signed by the Director of Surveys. The said plot (LR 209/1916/5) was resurveyed and a new plan was approved and authenticated and that the Director of Surveys, vide his letter dated 2nd December 2002, informed the surveyor who carried out the survey that Survey Plan F/R No. 418/77 had been approved for purposes of extension of the lease. The said



surveyor then prepared Deed Plan 244601 and had it sealed by the Director of Surveys and that the said Deed Plan was used to prepare Grant No. 94707 for the renewal of the lease.

25. PW1 further testified that the grant in possession of the Abduls was issued in the year 2003, while that in favour of the 3rd and 4th respondents was issued on 18th February 2013. Annexed to the appellant's Grant was a certified copy of the same Deed Plan that had been lawfully procured by the Abduls; that the 3rd respondent had submitted an affidavit to the Director of Surveys stating that he had lost the original Deed Plan and was therefore seeking a certified copy thereof; that the Grant made in favour of the Abduls was the first to be issued; the declaration by the 3rd respondent about the loss of Deed Plan No. 244601 was not true because it was in existence and was attached to Grant number 94707 that was issued for renewal/extension of the lease in favour of the Abduls.
26. Abdul Hameed Sheikh testified as PW2. The gist of his testimony was that LR No. 209/1916/5 contained in Grant number 94707 was registered in the name of their deceased father, Sheikh Fazal Ilahi, pursuant to a Transfer registered on 2nd July 1937, Provisional Certificate of Title registered on 20th September 1989 and Grant registered on 5th April 2004.
27. He testified that after the death of his father in the year 1955, his brother known as Abdul Ghafoor Sheikh obtained limited Grant of Probate in respect of their deceased father's estate but later migrated to Britain, upon which Abdul Shakoor Sheikh, another brother obtained Grant of Letters of Administration in respect of the deceased's estate.
28. PW2 further testified that the Grant for the property registered on 5th April 2004 was an extension of the lease contained in the Provisional Certificate of Title registered on 20th September 1989, for which an application was made by Abdul Shakoor Sheikh and a letter of allotment issued on 21st July 2003. He stated that the Grant of Letters of Administration made to Abdul Shakoor Sheikh was registered against the title on 21st December 1988. However, the said Abdul Shakoor Sheikh died in the year 2010 before he had completed the distribution of the estate, prompting the Abduls to obtain Grant of letters of administration de bonis non in respect of their late father's estate. The Grant made in their favour was registered against the title on 27th December 2012.
29. The witness further testified that their late father had met all the obligations and duties attendant to the ownership of the property, including payment of land rates and land rent, and that the estate of the deceased had been in continuous, uninterrupted occupation of the property since 1937, a period of 77 years, notwithstanding the identity of the successive administrators of the estate. Consequently, no rent was due and/or payable to the appellant for the residential house on the property as the house had always been on the property from the date their late father acquired the property. He reiterated that the appellant had moved into the property by force and without any legal justification, purported to levy distress for rent, and unlawfully demolished the house.
30. He also testified as to the interferences affecting the rates account as well as the register of the property at the lands office, which interferences were brought to the attention of the respective offices. He said that the deed file in respect of the property in question was missing at the Lands registry which issue had been brought to the attention of relevant officers at the said registry.
31. On its part, the appellant presented one Chueb Adan Ali, its director, who testified as DW1. The gist of his testimony was that the appellant purchased LR No. 209/1916/5 from the 3rd and 4th respondents at a consideration of Kshs.25,000,000; that the appellant conducted due diligence before the said purchase and established that the property was registered in the names of the 3rd and 4th respondent; that the appellant paid land rates to the Government and obtained consent to transfer; paid stamp duty and got the property transferred in its name. He further testified that the appellant intended to



put up apartments on the property, and that it had obtained approvals from the Nairobi City County, but before it could commence construction, the Abduls began laying claims of ownership over the property. However, the Chief Land Registrar confirmed that the property belonged to the appellant and not the Abduls. DW1 denied the allegation by the Abduls that the appellant had interfered with records pertaining to this property at the Lands registry.

32. Ms. Gildine Gatwiri Karani, Principal Land Registration Officer at the Ministry of Lands, testified as DW2. She adopted her witnesses statement dated 12th October 2020. It is important that we reproduce paragraphs 6 to 11 of her statement, which are as follows:

- “6. That in the Deed File for grant IR. 2605 which is held by the Chief Land Registrar as the official records the following is evident: -
- a. A copy of the original title 209/1916 IR. 2605 for a term of 99 years from 1st April, 1904 to 1st April, 2003 is in the file.
 - b. The original title has an annexed Deed Plan No. 27380 dated 22nd January, 1929 for an area measuring 4.85 Acres.
 - c. At entry No. 5 of the grant IR. 2605, a transfer was registered in favour of Sheikh Fazal Ilahi under presentation No.1641 and registered on 2nd July, 1937.
 - d. At Entry No. 21 there is a caveat registered under presentation No. 913 registered on 28th July, 1962 by Abdul Ghaful Sheikh as trustee of the Sheikh Fazal Ilahi Noordin Charitable Trust claiming a purchaser’s interest of LR. 209/1916/5 absolutely.
 - e. The last entry in the grant is entry No. 28 presentation No. 1467 registered on 26th June, 1996 which is a caveat by Abdul Hameed Sheikh claiming beneficial interest absolutely.
 - f. The Deed file cover has entries dating back to 21st June, 1956.
7. That I was unable to obtain Deed File for grant IR. 94707 LR. 209/1916/5 registered on 5th April, 2004 for a term of 99 years from 1st April, 2003 in consideration of renewal of lease in favour of Abdul Shakoore Sheikh though from the letters at pg. 66 of the plaintiff bundle the same seems to have been missing for a while at the land registry allegedly courtesy of “unscrupulous person and brokers”.
8. That in our records there is Deed File No. IR. 147524 opened on 21st August, 2013 and contains the following set of documents: -
- a. A Memorandum of Registration of Transfer of Land and a document dated 18th February, 2013 between the President of the Republic of Kenya and Hassan Abdi and Mahad Aden as tenants in common.
 - b. The LR No. is indicated as 209/1916/5 area 0.2044 for a term of 99 years from 1st March, 1997.



- c. There is no indication of the Memorandum of Registration of Transfer of lands presented on 30th July, 2013 having been registered.
 - d. An application for registration of new grant dated 18th February, 2013 was booked on 30th July, 2013 by Mahad Aden of P. O. Box 28328 ID. 11550371.
 - e. A copy of transfer between Hassan Abdi Salan and Mahat Adan Abdirahman Ibrahim and Mas Construction Limited dated 7th January, 2014 was booked on 10th March, 2014.
9. That I am not aware of the process and the procedure under which grant IR. 147524 LR. 209/1916/5 which was a new grant came into being as registration is the last stage before a title is issued and our department is not involved in the allocation process.
10. That it is imperative to note that I have perused the grant IR. 94707 LR 209/1916/5 at pg. 15 of the plaintiffs' bundle on one hand and grant IR 147524 LR. 209/1916/5 at pgs. 32-34 of the 1st defendant's bundle and wish to state as follows:-
- a. The original grant IR. 2605 for LR. 209/1916 was for a term of 99 years from 1st April, 1904 to 1st April, 2003.
 - b. The plaintiffs grant IR. 94707 indicates to be in consideration of renewal of lease wherein the President of the Republic of Kenya grants unto Abdul Shakoor Sheikh as administrator of the estate of the late Shekh Fazal Ilahi the suit land measuring 0.2044 for a term of 99 years from 1st April, 2003.
 - c. The 1st defendant grant IR. 147524 LR. 209/1916/5 registered on 30th July, 2013 indicates to be for a term of 99 years with effect from 1st March, 1997 in consideration of the sum of shillings eighty thousand (Kshs 80,000) by way of stand premium.
 - d. The Inland Registry (IR) numbers are district (sic) and are issued consecutively thus IR. 94707 was issued way before IR. 147524.
 - e. That its unprocedural to have one suit land with two distinct Inland Registry numbers but wish to state that issuance of Land Registry numbers is the domain of the Director of Surveys.
7. That is all I wish to state and reserve the right to adduce additional evidence on trial.”

33. After a full hearing and the highlighting of submissions, the trial court (Angote, J.) delivered judgment on 27th July 2023. Part of the findings by the trial court was that whereas the appellant claimed to have lost its original Deed Plan, the evidence before court showed that they procured a certified true copy of the original in order to secure a parallel Grant. The appellant did not have an original Deed Plan in the first place and on that basis, the court arrived at the conclusion that the title held by the appellant was procured through fraud perpetuated in two ways: firstly, by obtaining a certified true copy of Deed



Plan No 244601 original whereof the Abduls held, and secondly, procuring the opening of a Deed File IR 147524 on 21st August 2013 for a piece of land whose title was already in existence.

34. The trial court further held that Deed File number 2605 which was the mother title contained all the entries relied upon by the Abduls, save for those submitted for registration after the disappearance of the Deed File in 2013. The court held that the Abduls' Grant was not only first in time after the Lease was renewed, but was part of the land that was issued to their kin way back in 1937. The court held that the title in favour of the Abduls was valid and took precedence over that of the appellant, which was second in time and which was fraudulently procured and therefore invalid.
35. Regarding the claim for compensation for the demolished building on the property, the court held that no valuation report was filed by the Abduls. However, the court held that the appellant, the 3rd and 4th respondents had trespassed on the property belonging to the Abduls and as such, the Abduls were entitled to damages for trespass, which the court assessed at Kshs.10,000,000.
36. In the end, the court found the claim by the Abduls to be merited and allowed it. The dispositive orders issued by the trial court were: A declaration be and is hereby issued that the order of October 10, 2014 and proceedings in Milimani, CM Misc Appln. No 972 of 2014, pursuant to which the appellant and the 5th respondent levied distress for rent on property land reference number 209/1916/5 is null and void ab initio; A declaration be and is hereby issued that Grant number IR 147524 for property land reference number 209/1916/5 dated February 18, 2013, or any such Grant pursuant to which the appellant, 3rd and 4th respondents claim entitlement to ownership to property land reference number 209/1916/5 is null and void ab initio; the appellant be and is hereby ordered to pay the Abduls damages for trespass of Kshs 10,000,000; the appellant, the 3rd to 5th respondents by themselves or by their agents, officers, servants or otherwise howsoever be and are hereby restrained from entering or remaining upon property land reference number 209/1916/5 and/ or any manner whatsoever interfering with the Abduls occupation of the property; the Nairobi City County by itself or by its agents, officers, servants or otherwise howsoever be and are hereby restrained from approving any development applications and drawings, issuing any permits, permissions or authorizing for any demolition or construction works of whatever nature over property land reference number 209/1916/5 at the behest of the appellant, 3rd and 4th respondents; the Chief Land Registrar by itself or by its agents, officers, servants or otherwise howsoever be and are hereby restrained from registering against the register of property land reference number 209/1916/5 any documents adverse to the interests of the Abduls at the behest of the appellant, 3rd and 4th respondents or at all; and the appellant to pay the Abduls the costs of the suit.
37. Dissatisfied with the decision made by the trial court, the appellant preferred this appeal on the grounds that the learned judge erred in law and in fact by, inter alia: failing to consider the compelling evidence adduced by the appellant and the Chief Land Registrar showing that the appellant had established its root of title in that the Letter of Allotment, Deed Plan and Grant issued in favour of the 3rd and 4th respondents were issued sequentially and that the 3rd and 4th respondents had complied with all the requirements in the said letter of allotment; failing to appreciate the evidence that the property in question was never held by the Abduls or their late father before the renewal or at all and that there was no lease or Grant that could be renewed in their favour; failing to consider evidence showing inconsistencies in the documents presented by the Abduls and upon which the Grant was issued in their favour; cancelling the appellant's title when there was no evidence to impeach it; and arbitrarily awarding damages to the Abduls against the overwhelming evidence of the absence of any proprietary right in the suit property.



38. When this appeal came up for hearing before this Court, learned counsel Mr. Sagana was present for the appellant, while the Abduls were represented by learned counsel Mr. Havi. On their part, the 3rd and 4th respondents were represented by Mr. Mureithi, learned counsel, while Ms. Naazi held brief for Mr. Kithi, learned counsel for the 6th respondent. The 7th respondent was represented by Mr. Kamau, learned counsel. Mr. Mureithi indicated his clients support the appeal, while Ms. Naazi left the matter to this Court's determination and therefore did not make any oral submissions. In essence, therefore, it is only Mr. Sagana, Mr. Havi and Mr. Kamau who made oral highlights of their respective clients' written submissions.
39. Highlighting the appellant's written submissions, Mr. Sagana contended that a dispute as to the ownership of a property where there are two or more titles issued over the same property cannot be resolved without interrogating the root of each title. In that regard, he submitted that the 3rd and 4th respondents were issued with a letter of allotment dated 3rd March 1997 and did comply with all the requirements thereof. He contended that as per the testimony of the Chief Land Registrar before the trial court, the property had not, before the allotment in favour of the 3rd and 4th respondents, been leased or allotted to any third party. Counsel submitted that his client entered into a sale contract with the 3rd and 4th respondents over the property in question, and that upon payment of the purchase price, the property was transferred to the appellant and registered in its favour on 10th March 2015. He submitted that the necessary clearances and consents were obtained before the transfer, and that the applicable duty was also paid. According to counsel, the clearances, consent and proof of payment of stamp duty together with searches dated 12th March 2014, 2nd July 2014 and 17th October 2014 were all presented before the trial court in evidence. Counsel also reiterated that the Chief Land Registrar had in his letter dated 17th December 2014 confirmed that the property in question was registered as Grant Number IR 147524 and in the name of the appellant.
40. Counsel contended that his client's claim of title to the property was through Grant Number IR 147524 dated 18th February 2013, which was issued pursuant to a letter of allotment dated 3rd March 1997, and that evidence was placed before the trial court showing that the 3rd and 4th respondents had lost the original Deed Plan dated 7th October 2002 and were issued with a certified copy by the Director of Surveys. He submitted that the documents giving title to his client were issued sequentially and showed the same acreage for the property in question. He asserted that the letter of allotment of the property in his client's favour was issued on 3rd March 1997, followed by the issuance of a Deed Plan dated 7th October 2002, and finally Grant Number IR 147524 dated 18th February 2013. He stated that the three documents uniformly depicted the size of the property as 0.2044 Ha.
41. According to counsel, owing to the evidence presented before the trial court and the testimony by the Chief Land Registrar that the only records held by the lands office over the property in question were those of the appellant's Grant, the only conclusion to be made was that the appellant had proved the root of its title and therefore there was no basis for the trial court to issue orders directing cancellation of the title in the appellant's name.
42. To buttress the appellant's claim of title over the property, counsel submitted that there existed a system and a sequence in the way titles are issued in Kenya. In that regard and for purposes of the appeal, he submitted that a letter of allotment is the first document in the process, followed by a deed plan, and a Grant being the last document in the sequence. He contended that any document which negated this sequential process would negate such a title. Counsel submitted that the Abduls' title was issued inverse of the process and procedure highlighted hereinabove, in that the Deed Plan in their favour is dated 7th October 2002 and which they obtained almost 10 months before they were issued with the letter of allotment, Grant number 94707 is dated 26th February 2003 and was registered on 5th April



- 2004, almost 5 months before they were issued with the letter of allotment dated 21st July 2003, and the letter of allotment which is dated 21st July 2003 appears to have been issued after the Abduls had already been issued with a Grant and a Deed Plan, which according to counsel, only means that the title in favour of the Abduls was a product of forgery.
43. To further diminish the Abduls' claim of title to the property, counsel contended that the property was never transferred to the Abduls or to their late father on 2nd July 1937; that neither in the Will of Sheikh Fazal Ilahi nor any of the succession matters was the property ever mentioned or claimed; that Mr. Birundi who was the then Deputy Chief Land Registrar and who purportedly registered the Abduls' Grant issued a statement disowning the document and said that it was a forgery; and that the Abduls never placed before the trial court a copy of the title that they held before Grant No. 94707, meaning that there was no prior Grant that was available for renewal.
44. Counsel discounted the claim by the Abduls that the grant for the property registered on 5th April 2004 was an extension of the lease contained in the provisional certificate of title registered on 20th September 1989 and issued pursuant to a transfer registered on 2nd July 1937. He submitted that the provisional certificate to title registered on 20th September 1989 was in respect of the mother title LR No. 209/1916 and not in respect of the property in question.
45. As regards the trial court's appreciation of the evidence placed before it, counsel contended that the court failed to interrogate glaring inconsistencies in the evidence and outright departure from the procedure of issuing Grants.
46. Counsel cited the decision of this Court in *Ng'ok v Moiyo Ole Keiwua & 4 others* [1997] eKLR regarding ownership of property arising from an allotment, that:
- “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.”
47. In sum, counsel contended that the trial court erred by holding that the Abduls' Grant was first in time after a lease was renewed; that the suit property was part of the land that was issued to the Abduls' kin back in 1937; and that the appellant's title was fraudulently procured.
48. Lastly, regarding the damages awarded in favour of the Abduls in respect of their claim for trespass, counsel submitted that the assessment of the said damages at Kshs.10,000,000 was without any basis whatsoever, and was in any case, excessive. He urged this Court to allow the appeal as prayed.
49. On his part, learned counsel Mr. Havi contended that the Abduls trace their root of title to the property to a transfer made to their late father, Sheikh Fazal Ilahi, on 2nd July 1937 for property Land Reference Number 209/1916 (original property); that the property in question was a subdivision of the original property and that the Grant for the suit property registered on 5th April 2004 was derived from a renewal of the expired term of the lease for the property in question. He reiterated that the family of the late Sheikh Fazal Ilahi had been in continuous occupation of the property in question since 1937. Counsel further contended that the trial court properly analyzed the evidence on record in establishing the Abdul's root of title, and that it correctly observed that the appellant did not have an original Deed Plan in the first place, and that its title had been procured through fraud perpetuated by way of obtaining a certified copy of Deed Plan No. 244601, whose original was held by the Abduls, and by causing the opening of a Deed File IR 147524 on 21st August 2012 for a piece of land whose title was already in existence.



50. Counsel submitted that his client's title was the first in time and that where there are two titles over the same property, the first in time prevails. Reliance for this argument was placed on the decision of this Court in *Gitwany Investment Limited vs Tajmal Limited & 3 Others* [2006] eKLR. Counsel stated that the trial court cannot be faulted in any way for finding that the Grant held by the Abduls was first in time and therefore prevailed over the Grant held by the 3rd and 4th respondents and which was eventually transferred to the appellant.
51. He also cited the decision of this Court in *Dina Management Limited vs County Government of Mombasa & 5 Others* (2023) eKLR for the proposition that where one's root of title is challenged, the title must be proved with more than the title document itself, through documented history of ownership. He contended that the 3rd and 4th respondent could not explain the root of their title to the property prior to 21st August 2013 when the Deed File for the Grant issued to them was opened. It was contended that the Grant held by the 3rd and 4th respondents was acquired through fraud and that as per the decision of this Court in *Arthi Highway Developers Limited vs West End Butchery Limited & 6 Others* [2015] eKLR, a holder of a legal title cannot be dispossessed of interest in the property by a fraudster.
52. On whether the trial court disregarded evidence establishing that the title held by the Abduls was irregular and unlawful, it was contended that the finding by the trial court that the Abduls' Grant was regular and lawful was preceded by the court's recognition of the principles of ascertainment of validity of two competing titles, which is that the said parties bear the burden of proving the validity of their titles, while proving that the opposing party obtained theirs fraudulently. Counsel submitted that the trial court examined the grounds upon which the Grant held by the Abduls was impugned by the appellant and the 3rd and 4th respondents and in the end made a finding that as a matter of fact, the root of the Grant held by the Abduls could be traced to 1937, notwithstanding fraudulent actions by the appellant and the 3rd and 4th respondents to interfere with records of the property at the lands office.
53. Counsel further contended that although his client sufficiently proved the root of its title, the appellant and the 3rd and 4th respondents' challenge to his client's Grant was unsustainable for reasons that no counterclaim was lodged before the trial court challenging the said Grant, an avenue that was available to the said parties under Order 7 rule 3 of the Civil Procedure Rules and Section 80 of the [Land Registration Act](#). Therefore, in the absence of a counterclaim, the allegation of fraud levelled against the Abduls has no basis at all. The second reason advanced by counsel as to why a challenge to his client's title could not be sustained was the fact that the trial court, having established that the Grant held by the 3rd and 4th respondents and transferred to the appellant contained a certified copy of the Deed Plan attached to the Grant held by the Abduls, they could not rely on the alleged inconsistencies in the Grant held by the Abduls subsequent to the disappearance of the Deed file for the grant to sustain the defence of their Grant.
54. Mr. Havi cited the decisions of this Court in *James Henry Mundiar t/a Kabarak Development Services vs Tradewheel Kenya Limited* [1987] eKLR, *Samuel Otieno Otieno vs Municipal Council of Malindi & another* (2015) eKLR, and *Caroget Investment Limited vs Aster Holdings Limited & 4 Others* (2019) eKLR, for the general argument that a plaintiff could only attack the position of the defendant on the strength of some title of its own and not on the basis of weaknesses in the title of the defendant.
55. In that regard, mere identification of inconsistencies in the Grant held by the Abduls could not suffice as a bona fide legal challenge to the said Grant and that the appellant and the 3rd and 4th respondents were duty bound to lead evidence to justify their Grant.



56. Lastly, as regards the award of Kshs.10,000,000 as damages for trespass, counsel contended that the appellant found a caretaker on the property when it purported to levy distress for rent, and that during the pendency of the suit before the trial court, the appellant destroyed a 2-storey building standing thereon. On that basis, it was submitted that the award for trespass was justified and should not be disturbed.
57. In sum, counsel contended that the appellant had not made out a case to warrant interference with the judgment of the trial court and urged that this appeal be dismissed with costs.
58. Although the 3rd and 4th respondents indicated their support of this appeal and did not make any oral submissions at the hearing hereof, they had filed their written submissions which we have perused. The gist of their submission is that the Chief Land Registrar had tendered proof that the Grant issued to the Abduls had been issued in an unprocedural manner, evidence whereof the trial court ignored; that it was incumbent upon the Abduls to disprove the evidence of the Chief Land Registrar and that of the 3rd and 4th respondents, which they did not; and that the evidence they had adduced was consistent in terms of the land reference number, the IR number, as well as the acreage in the Grant and the letter of allotment. In addition, the Abduls did not prove that they had a good root of title, having alleged that they were issued with the new Grant following expiry of the original lease. It was contended that they did not prove any surrender of title which would have enabled the issuance of their Grant following the said expiry. In addition, that they did not prove that the property was referred to in the mother title LR No. 209/1916.
59. In essence, therefore, the 3rd and 4th respondents contend that the trial court erred in disregarding the evidence that the Grant relied on by the Abduls had been issued contrary to procedure; in failing to find that the evidence by the Abduls was inconsistent with the documents which they produced; and in failing to find that the Abduls had not established a good root of title. They urged that this appeal be allowed as prayed.
60. Mr. Kamau highlighted submissions of the Chief Land Registrar, the 7th respondent, which were in sharp contrast with the 7th respondent's position before the trial court, where he supported the appellant's case, but before this Court urged us to dismiss the appeal.
61. He submitted that pursuant to the provisions of section 108 of the *Evidence Act*, the Abduls bore the burden to prove their case on a balance of probabilities which burden they were able to discharge. A plethora of decisions, including *Dr. Samson Gwer & 5 Others vs Kenya Medical Research Institute & 3 Others (2020) eKLR*, and *Rhesa Shipping Co. SA vs Edmunds (1955) 1 WLR 948*, were cited in support of the principle that he who asserts must prove.
62. Regarding the competing titles by the appellant and the Abduls, counsel contended that in a case of competing titles, each disputant ought to place before the court documents justifying the process culminating in the issuance of the impugned Certificate of Title, and that as per the decision of this Court in *Daudi Kiptugen vs The Commissioner of Lands & 4 Others [2015] eKLR*, it is not enough for the title holder to merely wave the Certificate of Title and believe that such title shall suffice as proof of ownership. Such title holder must demonstrate through evidence that its title was properly acquired and that the process of its acquisition becomes material.
63. Counsel submitted that the 3rd and 4th respondents did not have a good title which they could pass to the appellant. In this connection, counsel stated that the property in question was not available for alienation to the 3rd and 4th respondents by way of allotment, having already been leased to the estate of the late Sheikh Fazal Ilahi. He contended that it was imperative for the 3rd and 4th respondent to demonstrate that as at the date of alienation in their favour, the said property was unalienated



government land and that the procedure for alienation was adhered to. He submitted that no new lease could be issued in respect of the property when the original lease was still in existence.

64. In sum, he contended that the appellant had not advanced any good grounds to warrant interference with the decree and judgment of the trial court and urged that this appeal be dismissed.

65. This being a first appeal from a decision of the trial court, the mandate of this Court is as explicitly set out in rule 31(1) of the Rules of this Court. It provides:

- (1) On any appeal from a decision of a superior court, acting in exercise of its original jurisdiction, the Court shall have power –
 - a. To reappraise the evidence and to draw inferences of fact; and
 - b. In its discretion and for sufficient reason, to take additional evidence or direct that additional evidence be taken by the trial court.”

66. The Court itself has gone further and delineated the parameters in the exercise of that mandate in a plethora of case law. We take it from the often-cited case of *Selle vs Associated Motor Boat Co.* [1968] E.A 123 in which the Court expressed itself as follows:

“...this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court ... is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect...”

67. We have considered our above mandate in light of the totality of the record as assessed above. This appeal turns on the singular issue of who between the appellant and the Abduls holds a superior title to the property in question. Our findings on this issue will inform the question whether the trial court erred by issuing a declaration that Grant number IR 147524 for property land reference number 209/1916/5 dated 18th February 2013, or any such Grant pursuant to which the appellant, 3rd and 4th respondents claim entitlement to ownership to property land reference number 209/1916/5 is null and void ab initio.

68. It is an indisputable fact that the appellant and the Abduls claim ownership and/or title to the same parcel of land. This Court in *Presbyterian Foundation v Kibera Siranga Self Help Group Nursery School* (Civil Appeal 64 of 2014) [2023] KECA 371 (KLR) (31 March 2023) (Judgment) stated as follows regarding a claim over the existence of two titles in respect of the same parcel land:

“The best evidence of ownership of immovable property is the title deed to it and that is why the question of the root of title is important. Root of title is the deed to which title to a property is ultimately traced to prove that the owner has good title. Accordingly, when there are competing interests as in this case, the parties are required to give evidence of title, starting with a "good root of title." A good root of title and an unbroken chain of ownership is required. To be a good root of title, a document must satisfy each of the following requirements: (a) it must deal with or show the origin of the ownership of the whole legal and equitable interest in the land in question; (b) it must contain a recognizable



description of the property; (c) it must not contain anything that casts any doubt on the title.”

69. In the same vein, this Court in *Munyu Maina vs Hiram Gathiha Maina* [2013] eKLR held that:
- “We state that when a registered proprietor’s root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances, including any and all interests which need not be noted on the register.”
70. In establishing their root of title, the Abduls contended that the said property LR No. 209/1916/5 contained in Grant No. 94707 dated 26th February 2003 was registered in the name of their late father Sheikh Fazal Ilahi pursuant to a Transfer dated 2nd July 1937, a Provisional Certificate of Title registered on 20th September 1989, and a Grant registered on 5th April 2004. Their evidence through David Gacanja Kago, a licensed land surveyor who testified as PW1, was that the mother title for the land, LR 209/1926, was subdivided in the year 1930, giving rise to two portions namely, LR 209/1916/1 and 209/1916/2. In the year 1952, LR No. 209/1916/2 was further subdivided, with the resultant plots being 209/1916/3 (original 209/1916/2/1), 209/1916/4 (original 209/1916/2/2) and 209/1916/5 (original 209/1916/2/3) and finally 209/1916/2/R which is a road measuring 0.076 acres. According to PW1, LR No. 209/1961/5 had been in existence from the year 1952.
71. The Abduls also gave a history of how the property had been administered since 1955 when their father died, with letters of administration being issued at different times to their brothers known as Abdul Ghafoor Sheikh and Abdul Shakoor Sheikh. As at the time the Grant for the property was being registered on 5th April 2004, Abdul Shakoor Sheikh was the administrator of the said estate. They contended that the said Grant registered on 5th April 2004 was an extension of the lease contained in the Provisional Certificate of Title registered on 20th September 1989 for which an application was made by Abdul Shakoor Sheikh and a letter of allotment issued on 21st July 2003. The said Abdul Shakoor Sheikh is said to have died on 3rd May 2010 without completing the distribution of the estate of Sheikh Fazal Ilahi, necessitating the Abduls to obtain a Grant of letters of administration de bonis non in respect of their late father’s estate.
72. In essence, therefore, the Abduls claimed that their late father and/or his estate had been the registered owner of the property in question and had been in continuous and uninterrupted occupation thereof since 1937, a period of more than 77 years. In addition, that the said estate had met all the obligations attendant to the ownership of the property, including but not limited to payment of land rent and land rates. In addition, there was a residential house on the suit property, which was occupied by their caretaker.
73. On the other hand, the appellant claimed title to the suit property by way of purchase from the 3rd and 4th respondents at a consideration of Kshs.25,000,000. It contended that the property LR 209/1916/5 was registered in the name of the 3rd and 4th respondents, and that before the said purchase, the appellant conducted due diligence and established vide an official search dated 23rd October 2013 that the 3rd and 4th respondents were the registered owners thereof. It contended that the appellant complied with all the requirements for the transfer of the property, including obtaining the necessary clearances and consents and payment of duty, upon which a transfer of LR No. 209/1916/5, IR 147524 was made in its favour, and that after the said transfer it continued and/or continues to pay land rent and land rates to the respective offices.



74. The 3rd and 4th respondents, who supported the appellant's claim of title, contended that the property LR No. 209/1916/5 (IR 147524) was registered in their names following an allotment in their favour dated 3rd March 1997. They contended that they did comply with all the conditions contained in the letter of allotment, upon which they applied for a new Grant vide an Application for Registration received by the Lands Office on 30th July 2013, and that the Grant registered as IR 147524 was issued in their name on 30th July 2013 for a term of 99 years with effect from 1st March 1997. They further stated that in October 2013 they entered into an agreement for sale of the said property with the appellant at a consideration of Kshs.25,000,000 and the property was thereafter transferred to the appellant pursuant to a Transfer dated 7th January 2014.
75. As is evident from the preceding paragraphs, the disputants went to great lengths to prove their root of title, all in a bid to show that they were holding a good title, while at the same time attacking the legitimacy of the title held by the other party. The mother title produced in evidence by the Abduls contains an Entry No. 5, with a transfer to Sheikh Fazal Ilahi. The said entry was registered on 2nd July 1937. There is no dispute that the interest that Sheikh Fazal held was leasehold for a term of 99 years from 1st April 1904 to 1st April 2003. Entry No. 2 on the mother title shows that approval for subdivision of the original parcel of land had been issued on 26th March 1931. Indeed, according to PW1, the land surveyor appointed by the Abduls, the mother title for the land (LR 209/1916) was subdivided in the year 1930, giving rise to two portions namely, LR 209/1916/1 and 209/1916/2. In the year 1952, LR No. 209/1916/2 was further subdivided into four portions, which included 209/1916/5.
76. There was evidence that Sheikh Fazal died in 1955. Entry No.21 dated 28th July 1962 shows that a caveat by Abdul Ghafoor Sheikh (a brother to the Abduls and as of then an administrator of the estate of their late father) registered a caveat in his capacity as a trustee of the Shiekh Fazal Ilahi Noordin Charitable Trust claiming a purchaser's interest on LR 209/1916/5. On 21st December 1988 a Grant of letters of Administration of the estate of Sheikh Fazal Ilali to Abdul Shakoor Sheikh was registered against the title. In 1989 a provisional certificate of title was issued. The loss of the original title had been gazetted on 10th March 1989. By then the original 99 years lease was still in force and no one else had come to the scene to challenge ownership of the suit land by the Abduls.
77. PW1 testified about the actions that were taken by the Abduls to renew the lease that was about to expire, which led to preparation of Deed Plan No. 244601 dated 7th October 2002 for LR. No. 209/1916/5.
78. Fast-forward to the year 2003, the Abduls were issued with a letter of allotment dated 21st July 2003 in respect of LR/209/1916/5. It was in favour of Abdul Shakoor Sheikh, who was then the administrator of the estate of their late father. They got the Grant for the property registered in their favour on 5th April 2004. The property that was allotted was LR No. 2019/1916/5, Nairobi, for a term of 99 years from 1st April 2003. According to the allotment letter, the size of the property was approximately 0.506 Ha. However, PW1 said that the said measurement must have been erroneous, it should have been 0.506 acres, not hectares, which if converted to hectares would be 0.2044 hectares as shown in the Grant and the Deed Plan.
79. The root of the Grant held by the Abduls is therefore well documented, and its history goes back to 1937, as we have demonstrated. There is clear evidence as to how the Deed Plan that is annexed to the Grant was obtained by the Abduls. There is also no dispute that the Grant was lawfully and procedurally issued nearly ten years before that of the appellant.



80. Turning to the claim of title by the appellant, the evidence by the 3rd and 4th respondents who sold the property in question to the appellant was that LR 209/1916/5 was allotted to them vide a letter dated 3rd March 1997, and that after complying with the conditions contained in the said letter, they were issued with Grant Number 147524 for the said property on 18th February 2013. The term of the lease was 99 years from 1st March 1997. They contended that before the said allotment in their favour, the property was unalienated government land.
81. That cannot be true. The original property had long been alienated, a leasehold interest having been issued for a term of 99 years from 1st October 1904 to 1st April 2003. The suit property was not therefore available for alienation. The Commissioner of Lands or any other office had no power to do so as it was not unalienated government land. See the Supreme Court decision in Torino Enterprises Limited vs Attorney General (Petition 5) (E006) of 2022 [2023] KESC 79 (KLR).
82. Secondly, the 3rd respondent swore a false affidavit in order to procure a certified copy of Deed Plan No. 244601 from the Director of Surveys. He knew that he had never been in possession of that Deed Plan, and so by falsely swearing that he has misplaced it, when all along it was lawfully in the hands of the Abduls, the 3rd respondent obtained the Deed Plan fraudulently. The 3rd and 4th respondent did not have a good title that they could pass on to the appellant.
83. It follows, therefore, that the learned trial judge was spot on in holding that the appellant's title was "procured through fraud perpetuated through two ways: firstly, by obtaining a certified true copy of Deed Plan No. 244601 of which the plaintiffs held and, secondly, procured the opening of a Deed File IR 147524 on 21st August 2013 for a piece of land whose title was already in existence."
84. Turning to the demolition of the house that was standing on the suit property, the appellant and the 3rd and 4th respondents undertook a fraudulent exercise. The appellant admitted that he had not put any tenant in the said house, yet he instructed the 5th respondent to levy distress for rent against the occupier of the house, to recover alleged arrears of rent amounting to Kshs.700,000. The appellant and/or the appointed auctioneer went even further to demolish the house. We have no reason to disturb the award of Kshs.10,000,000 that was made by the trial court.
85. This was a well-orchestrated nefarious act by the appellant, the 3rd and 4th respondents to unlawfully acquire the suit property and obtain vacant possession thereof, to pave way for construction of apartments thereon by the appellant. Their well calculated moves must have been supported by some deceitful officers at the Lands Registry, Nairobi, who caused the Deed File for IR 94707 to go missing.
86. In conclusion, we uphold the trial court's judgment and dismiss this appeal with costs to the Abduls (1st and 2nd respondents) as against the appellant, 3rd and 4th respondents, jointly and severally. It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 28TH DAY OF FEBRUARY 2025.

D. K. MUSINGA, (PRESIDENT)

.....

JUDGE OF APPEAL

K. M'INOTI

.....

JUDGE OF APPEAL

F. OCHIENG



.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR.

